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***Case No COMP/M.4070
– LONDON SOUTH
EASTERN RAILWAY /
THE INTEGRATED
KENT RAIL
FRANCHISE .***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 4 (4)
Date: 30/01/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/01/2006

SG-Greffe(2006) D/200395-200397

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying parties

To the Office of Fair Trading

Dear Sir/Madam,

**Subject: Case No COMP/M.4070 – LONDON SOUTH EASTERN RAILWAY /
THE INTEGRATED KENT RAIL FRANCHISE
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to the United Kingdom.**

Date of filing: 19/12/2005

Legal deadline for response of Member States: 19/01/2006

Legal deadline for the Commission decision under Article 4(4): 31/01/2006

1. On 19/12/2005, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) with respect to the transaction cited above. A copy of this submission was transmitted to Member States on 21/12/2005.
2. In support of their referral request, the submitting parties have mentioned in the Reasoned Submission that the geographic focus of the proposed concentration is on the territory of the United Kingdom.
3. By fax of 13/01/2006, the Office of Fair Trading (“OFT”) informed the Commission that it agrees to the request to refer the case to the UK. The OFT points out that the Commission’s preliminary assessment, as set out in the note to member States of 22 December 2005, takes the view that none of the markets covers an area which could be considered a substantial part of the common market, consistent with the Commission’s decision of 20 July 2001 to grant the UK’s article 9(2) (b) request in respect of Case N°. COMP/ M. 2446- Govia/ Connex South Central. The OFT

therefore agrees that it is appropriate for the transaction to be referred to the UK in its entirety for a fuller examination of its impact under UK competition law.

I. THE PARTIES

4. Go-Ahead is a UK company active in the United Kingdom in the field of transport services mainly train, coach and bus services. Go-Ahead operate bus and through its participation in Govia (which it jointly controls with Keolis), Go-Ahead also operates the passenger train services in the Thameslink¹ and Southern (formerly South Central) franchise areas.
5. Keolis (formerly known as Via) is a French company ultimately owned by SNCF. Keolis is also active in the transport field mainly in bus, coach, rail and metropolitan railway services. Keolis operates primarily in France, Germany and Sweden. Within the UK, Keolis' only interest in the rail industry is through its participation in Govia (see above), i.e. in the operation of the Thameslink and Southern franchise areas. (Keolis also has some limited activities in ticket agencies selling Eurostar and SNCF tickets).
6. Govia Ltd is a shell joint venture company whose sole purpose is to acquire train operating companies ("TOC"s, companies which run train franchises in the United Kingdom) on behalf of its parents, Go-Ahead and Keolis which have joint control over Govia. To date it has acquired the Thameslink and Southern franchise areas. London South Eastern Railway Limited ("LSER") is a wholly owned subsidiary of Govia Ltd whose sole purpose is to acquire South Eastern Train Limited ("SET") and to operate the new franchise The Integrated Kent Franchise ("IKF")
7. South Eastern Train Limited ("SET") is operating a rail franchise on behalf of the Department for Transport in the UK, which will be known as the Integrated Kent Franchise ("IKF").

II. THE OPERATION AND CONCENTRATION

8. The proposed concentration concerns the acquisition by Go-Ahead and Keolis (through LSER) of joint control of SET and the right to operate passenger rail services in the IKF franchise area.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Keolis: EUR 2,2 billion, the Go-Ahead Group: EUR 1,9 billion, SNCF: EUR 22 billion, Govia: 0,7 Billion, SET: 183m). Each of them has a Community-wide turnover in excess of EUR 250 million with the exception of SET. The undertakings do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within Article 1(2) of the EC Merger Regulation.

¹ Govia has not been asked to bid for the Thameslink rail franchise which will expire in March 2006.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

IV. ASSESSMENT

A. Relevant product markets

10. On the basis of the information submitted in the Reasoned Submission, the relevant market is passenger rail services.
11. The product market in which the parties are active is passenger transport services. The relevant product market could be as wide as all passenger transport services (including buses, taxis etc) or it could be as narrow as solely rail services, depending on the views of passengers. The parties submit that the relevant market is solely that for rail services. In any case, as the market shares of the parties would be even more diluted if the Commission was to consider the relevant market as being overall transport services, there is no need to conclude on that point for the purpose of this decision.

B. Relevant geographic market

12. On the basis of the information submitted in the Reasoned Submission, the geographic focus of the proposed concentration would be the UK. All of the potential affected markets are point to point routes. Each of these routes begins and ends in the UK, passing through no other Member States. Furthermore, the markets are primarily “local” in scope, being geographically confined to areas in the South East of England.

C. Assessment

13. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction could be an appropriate candidate for pre-filing referral from the Commission to the OFT in accordance with Article 4(4) of the EC Merger Regulation.
14. The transaction appears to meet the legal requirements set out in Article 4(4) of the EC Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation, it has a Community dimension and it may significantly affect competition in the UK.
15. The relevant geographic market presents all the characteristics of a distinct market. IKF is only active in the South East of England. Even taken as a whole, IKF only represents around 10% of UK rail services. In addition, even though international customers may have to use these routes to access airports, harbours or Eurostar in order to reach a destination in another Member State, it remains that 90% of the total passenger business in the IKF area is local in scope (commuting, local transportation needs).
16. The proposed concentration will affect competition due to the nature of train franchising in the UK. At present competition takes place at the time of bidding for a franchise. Once a franchise is awarded, there is little competition. The company awarded a train franchise has a virtual monopoly on running train services in its area of operation. There is some scope for competition within franchises, but a franchise is largely a monopoly right. Accordingly, the awarding of a franchise effectively

prevents competition in rail services developing in the franchise area. Competition is for the market rather than within the market.

17. Since Govia is currently operating rail services via adjoining franchises (i.e. Thameslink and Southern Railways), the awarding of IKF to Govia could be perceived as reducing both actual and potential competition between IKF and these two franchises.
18. In view of the foregoing, the principal effects of the proposed operation would be restricted to the UK. Further, the markets in question present all the characteristics of a distinct market.

Additional factors

19. Given that the likely focus of the competitive effects of the proposed transaction is confined to the UK, the UK Competition Authority is well placed to examine the case. The Authority has recently investigated the impact of rail franchising and has already considered the two competing bids for IKF, due to the fact that these do not have a Community Dimension.

V. REFERRAL

20. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations³ (point 17) indicates that, in seeking a referral under Article 4(4), “*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition, if any, of the concentration is liable to take place on distinct markets in the UK, and that the requested referral would be consistent with point 20 of the notice.

VI. CONCLUSION

21. For the above reasons, and given that the UK has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the UK. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission

(Signed)

Neelie KROES

Member of the Commission

³ http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf

