

EN

***Case No COMP/M.5036
- G4S / GLOBAL
SOLUTIONS LIMITED***

Only the English text is available and authentic.

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

Article 4 (4)
Date: 07/03/2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7-III-2008

SG-Greffe(2008) D/201024/201025

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying party(ies)

To the Office of Fair Trading

Dear Sirs,

Subject: Case No COMP/M.5036 – G4S / GLOBAL SOLUTIONS LIMITED
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to the United Kingdom.

Date of filing: 08/02/2008

Legal deadline for response of Member States: 29/02/2008

Legal deadline for the Commission decision under Article 4(4): 14/03/2008

I. INTRODUCTION

1. On 08 February 2008, 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 a concentration leading to the acquisition of control by G4S plc (“G4S”, UK) over Global Solutions Limited (“GSL”, UK). The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom. They argue that there are no affected markets outside of UK and that each of the affected markets present all the characteristics of a distinct market within the UK, and in particular within Great Britain. The parties submit that the conditions for referral set out in Article 4(4) of the EC Merger Regulation are therefore fulfilled.

2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 08 February 2008.
4. By e-mail of 19 February 2008, the Office of Fair Trading (OFT) as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. THE PARTIES

5. G4S is a worldwide provider of security solutions. It is a publicly owned company listed in London and Copenhagen Stock Exchanges and it operates globally in two key sectors: security services (including manned security, security systems and care and justice services), and cash services (secured transport and storage of cash and valuables). It is active in over 100 countries around the world.
6. GSL is active in public sector outsourcing and meter reading markets, mainly in the UK. It is managed by three divisions (GSL Care and Justice Services, GSL Integrated Services and GSL Data and Management Services). All shares of GSL are held by DeFacto 1119 Limited, which is a holding company created exclusively for the purpose of holding the shares of GSL.

III. THE PROPOSED CONCENTRATION

7. The proposed concentration concerns the acquisition of sole control by G4S of the whole GSL through acquiring the entire issued share capital of DeFacto 1119 Limited.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregated world-wide turnover¹ of more than EUR 5 000 million². Each of them has a Community-wide turnover in excess of EUR 250 million³. One of the undertakings concerned, G4S, does not achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10/07/2007.

² G4S 6,386 million EUR, GSL 590.3 million EUR, the parties combined 6,976.3 million EUR.

³ G4S [...] million EUR, GSL [...] million EUR.

V. ASSESSMENT

A. Relevant product markets

9. G4S and GSL both provide the following services in the care and justice services sector in Great Britain:
 - the operation of adult custodial facilities (prisons);
 - the operation of youth justice facilities;
 - the operation of Immigration Removal Centres ("IRCs");
 - the provision of support services to police forces (including the operation and/or construction of police custody suites); and
 - the secure transportation of prisoners and/or immigrants/asylum seekers.
10. In addition, both companies have bid for electronic tagging and monitoring of offenders, illegal immigrants and asylum seekers, although only G4S is a provider of such services in Great Britain.
11. The parties are of the view that there is relatively limited demand-side substitutability between the different types of care and justice services listed above. All government entities have to operate within the constraints of primary legislation, differing government policy guidelines, legal requirements and judgments of the courts when allocating detainees to prisons, youth justice facilities, IRCs and police facilities.
12. The parties submit however that there is significant supply-side substitutability between the different types of custodial services set out above and between these types of custodial service and transportation of offenders, immigrant detainees and asylum seekers in that a credible bidder for one type of service is a credible bidder for other types of care and justice service. Providers of and bidders for prisons in particular are credible bidders for any of the other types of care and justice service. The operation of a prison contract includes a wider range of services than the operation of other types of care and justice facilities and services and therefore a credible bidder for a prison contract is well-equipped to operate any of the other types of custodial facility and/or offender/immigrant detainee transportation contracts.
13. It is submitted by the parties that even if each of the above-listed types of care and justice service is to be considered a relevant product market, credible bidders for one or more of these types of services, in particular for prisons, should be considered potential new entrants for other of these services where appropriate.

B. Relevant geographic market

14. The parties' activities only overlap in relation to the provision of care and justice services in Great Britain. Indeed, on the basis of the information submitted in the Reasoned Submission, the relevant geographic market in this case appears to be national in scope.
15. Great Britain is one of the five countries around the world, and the only one within the EEA, to have outsourced justice services to such a significant degree. Moreover, as it

relates to Great Britain the demand for seeking the provision of such services by firms from the private sector is driven by British governmental and quasi-governmental entities. This suggests that Great Britain is likely to be the relevant geographic market in this case.

C. Assessment of the Referral Request

16. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the UK Competition Authority in accordance with Article 4(4) of the EC Merger Regulation.
17. The transaction meets 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 distinct markets in the United Kingdom.

Great Britain is a distinct market

18. The relevant markets in which the parties compete present all the characteristics of a distinct market within the UK. There are no other Member States within the EEA that have outsourced the provision of care and justice services to the private sector to the same extent as has been the case in Great Britain. Other than Great Britain, no countries in the EEA have outsourced to the private sector the custodial services required to operate a prison. In fact, France and Germany in particular have specifically ruled out the private provision of the custodial elements of prison services. Moreover, no European countries other than Great Britain have procured from the private sector the services of transportation of prisoners and other detainees.
19. Furthermore, the customers for each of the relevant affected markets in this case are the British government or quasi-governmental entities procuring the relevant services on behalf of the British state pursuant to laws and policies specific to Great Britain.
20. There are no affected markets outside Great Britain as GSL has no current activities in the EEA outside the UK. Finally, the relevant services at issue in this case are only provided in relation to facilities or regions located within Great Britain.

Competition may be significantly affected

21. The parties to this proposed concentration are active bidders in respect of a number of British markets. There are the two of a limited number of active or credible bidders for the provision of the care and justice services concerned by this transaction. For instance, the parties are aware of only five active bidders for the provision of police custody suite services in Great Britain.
22. Depending on the type of care and justice service, the parties are two of only three to six private firms currently providing these services under contract in Great Britain. In particular, the parties' combined market shares in value of the services that are being outsourced from private operators are [30-40] % and [45-55] % in relation to the operation of police custody suites and the provision of transportation of offenders and of immigrant/asylum applicants in Great Britain respectively.

23. The above information and the other information provided by the parties in the Reasoned Submission indicate that competition in the provision of care and justice services in Great Britain may be significantly affected by the proposed concentration.

Additional factors

24. On the basis of the information provided by the parties, the locus of the competitive effects of the transaction is within the UK and the relevant geographic market is likely to be national in scope. Moreover, considering their previous experience in this sector⁴, the UK National Competition Authorities are best placed to scrutinise this operation.

VI. REFERRAL

25. 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 concentrations⁵ (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 of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

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

For the Commission

(Signed)

Philip LOWE

Director General

⁴ The UK Competition Commission has previously dealt with market for prisons in Great Britain in *Group 4 Falck A/S and The Wackenhut Corporation (Cm 5624) case*.

⁵ OJ C 56, 05.03.2005, p.2.