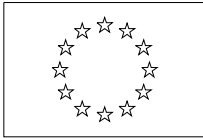


Case No COMP/M.5803 – EUROVIA / TARMAC

Only the English text is available and authentic.

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

Article 9(3)
Date: 10/06/2010



EUROPEAN COMMISSION

Brussels, 10/06/2010
C(2010)3917

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

COMMISSION DECISION

of 10.06.2010

referring case No COMP/M.5803 - Eurovia / Tarmac

to the competent authorities of CZECH REPUBLIC,

pursuant to Article 9 of Regulation (EC) No 139/2004

COMMISSION DECISION

of 10.06.2010

**referring part of case No COMP/M.5803 - Eurovia / Tarmac
to the competent authorities of CZECH REPUBLIC,
pursuant to Article 9 of Regulation (EC) No 139/2004**

THE EUROPEAN COMMISSION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings¹ (hereinafter, "the Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by Eurovia on 19 April 2010, pursuant to article 4 of the said Regulation,

Having regard to the request of Czech Republic on 17 May 2010 to refer to the Office for the Protection of Competition the part of the proposed concentration relating to Czech Republic,

WHEREAS:

1. On 19 April 2010 the Commission received notification of a proposed concentration² by which Eurovia S.A. (hereafter "Eurovia", France) controlled by the Vinci group (hereafter "Vinci", France) acquires, sole control of six subsidiaries of Tarmac located in France, Germany, Czech Republic and Poland by way of purchase of shares.
2. The Czech Office for the Protection of Competition ("the Office") received a copy of the notification on 22 April 2010³.
3. By letter dated 17 May 2010, Czech Republic requested the referral to its competent authorities of the part of the proposed concentration concerning Czech Republic with a view to assessing it under Czech national competition law, pursuant to article 9(2)(a) of the Merger Regulation ("the request").

I THE PARTIES

4. Eurovia is active in road construction and maintenance as well as production of construction materials (aggregates and asphalt) and services related to infrastructure. It is a subsidiary of the Vinci group, which is active in construction (building, civil engineering and hydraulic engineering), concessions (motorways and car parks) and

¹ OJ L 24, 29.1.2004, p.1

² Pursuant to Article 4 of Regulation n°139/2004.

³ The Commission and the Office has been in close cooperation in accordance with Article 19 of the Merger Regulation throughout the case.

energy-related activities (electrical engineering, thermal engineering and mechanical engineering).

5. Tarmac's subsidiaries produce and sell aggregates in France, Germany, Czech Republic and Poland.

II THE OPERATION

6. Under a Share and Purchase Agreement dated 12 February 2010, Eurovia agreed to acquire sole control of those subsidiaries⁴ by way of purchase of shares. The notified operation is therefore a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III UNION DIMENSION

7. Taking into consideration the data for the last financial year submitted by the parties, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵ (Vinci: EUR 33,458 million) but Tarmac has a Union-wide turnover under EUR 250 million (Tarmac: EUR [...] million in 2009).
8. However, in at least each of three Member States the aggregate turnover of all the undertakings concerned is above EUR 100 million (Vinci: EUR [...] million in the Czech Republic, EUR [...] million in France, EUR [...] million in Germany, EUR [...] million in Poland) and in those markets the aggregate turnover of each of Vinci and Tarmac is more than EUR 25 million (Tarmac: EUR [...] million in the Czech Republic, EUR [...] million in France, EUR [...] million in Germany and EUR [...] million in Poland). Each of them has a Union-wide turnover in excess of EUR 100 million (Vinci: EUR [...] million, Tarmac: EUR [...] million). Vinci achieves more than two-thirds of its Union turnover in France but Tarmac does not. The notified operation therefore has a Union dimension.

IV RELEVANT MARKETS

Product Markets

Aggregates

9. Aggregates are granular material from 0 to 150 mm extracted from quarries and pits. They can be used as end-products (in railway ballast) and constitute the primary raw material for construction products such as ready-mixed concrete (made of 80% aggregates), pre-cast products, asphalt (made of 95% aggregates), lime and cement. Aggregates can be further distinguished between primary (extracted from natural raw materials) and secondary aggregates (artificial origin). However, as the targets are not active in secondary aggregates, the assessment will only focus on primary aggregates.

⁴ Tarmac has other aggregates businesses in the United Kingdom and Romania. [...]

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

10. Two main types of primary aggregates can be distinguished: sand and gravel in one hand and crushed rock on the other hand. Sand and gravel aggregates derive from the erosion of hard stone particles that were transported and deposited by water and ice and are now extracted from shallow pits. Crushed rock aggregates result from the blasting and crushing of stones and can be separated between limestone (sedimentary) and hard stones.
11. In past cases, the Commission stated that there are no compelling reasons to distinguish between those different kinds of primary aggregates, the choice of aggregates deriving primarily from the distance from the point of use rather than the type of material⁶. For its part, the Office has left open the possibility for further distinction between primary aggregates in its referral request as it did not affect the competitive assessment of the case⁷.
12. Although Eurovia submits that the Commission should not depart from its past decisional practice, the results of the market investigation of the Commission in the Czech Republic show that a majority of customers are of the opinion that sand and gravel and crushed rocks are not fully substitutable notably because of different usage patterns. Sand and gravel aggregates are often used in concrete production thanks to their rounded shape whereas asphalt manufacturers prefer crushed rock aggregates notably hard stone. In the end, the market definition can be left open as the proposed transaction threatens to affect significantly competition on the market of aggregates irrespectively of the precise market delineation.

Asphalt mix

13. Asphalt mix is a composite material commonly used for construction of pavement, highways, parking lots or airport runways. Asphalt mix is typically composed of 95% aggregates and 5% bitumen.
14. The Commission has addressed asphalt mix in several decisions⁸ and found that asphalt mix is a distinct product market from aggregates and road works. Eurovia submits that no distinction should be made between the different asphalt mixes mentioned above and this approach is consistent with the position of the Office in the referral request. In the end, the market definition can be left open as the competitive assessment does not change independently of the precise product market delineation.

Civil engineering (including road works)

15. Road works activity (or road construction) is a special type of civil engineering including all road traffic infrastructure made with aggregates (notably in the lower layers of roads), asphalt mix and sometimes concrete. The Commission has considered the road construction market as a relevant market in itself, distinct from

⁶ See inter alia decision in COMP/M.1827 Hanson/Pioneer.

⁷ The Office is familiar with the markets for aggregates, asphalt mix and civil engineering from its past decision-making practice. Cases of concentrations on these markets include for example STRABAG/Štěrkovny (S 125/2008/KS), Českomoravský beton/Českobudějovické pozemní stavby/CBPS beton (S 312/06), Shapedirect Limited/Lafarge Kamenivo (S 17/02), COLAS/Čermák a Hrachovec (S 193/06), Metrostav/Subterra (S 262/03), Bouygues Bâtiment/VCES HOLDING (S 150/06) and STRABAG/MITTAG (S 334/06).

⁸ See for example decision in COMP/M.5158 Strabag/Kirchhoff.

the materials used (aggregates and asphalt)⁹. The Office considers the product market for civil engineering (including the area of road works) without further segmentation and the parties have relied on this basis to define the product market. In the end, the market definition can be left open as the competitive assessment does not change independently of the precise product market delineation.

Geographic markets

Aggregates

16. Aggregates are heavy and voluminous products whose transportation costs constitute a significant part of delivery prices. The parties submit that prices of aggregates double over 50 km by road depending of the topography of the area and the value of aggregates. Aggregates can also be transported over longer distances by barge or by train but this only occurs in areas where there is a lack of available resources. In general though, aggregates markets are local. In previous cases, the Commission has retained a radius of 50-80 km around each production site depending of the particularities of the areas concerned¹⁰.
17. The notifying parties had proposed a market definition and provided market shares based on clusters of quarries with varying size depending on the local circumstances (radiuses between 40 and 70 km). The Office considers the geographic scope for primary aggregates to be local (radius of 50 to 60 km around the production sites), an approach that is consistent with the result of the market investigation of the Commission.

Asphalt mix

18. Asphalt mix is a perishable product which needs to be transported in special heated containers to prevent it from setting before it can be delivered and laid. Consequently the Commission has considered a geographic market within a radius of 25-100 km from the asphalt plant¹¹. The parties as well as the Office are also of the opinion that the geographic market is local.

Civil engineering (including road works)

19. The Commission has previously assessed the road works markets on a national basis¹², although the question whether a more local segmentation was warranted was left open. The Office holds the view that the geographic scope of the market for civil engineering (in which road works is included without further segmentation as explained above) can be considered, in the light of the past decision-making practice of the Office, to be national. The parties have relied on this basis to define the geographic market. In the end, the market definition can be left open as the

⁹ COMP/M.5158 Strabag/Kirchhoff.

¹⁰ See decision in case COMP/M.4719 Heidelberg Cement/Hanson.

¹¹ COMP/M.3754 Strabag/Dywidag; COMP/M.1827 Hanson/Pioneer; COMP/M.1779 Anglo American/Tarmac; COMP/M.678 Minorco/Tilcon.

¹² COMP/M.5158 Strabag/Kirchhoff.

competitive assessment does not change independently of the precise geographic market delineation.

V COMPETITION ASSESSMENT

Preliminary assessment

20. According to the Office, the notified concentration gives rise to the following horizontally affected markets: the market for primary aggregates in the Plzeň/Klatovy area and in the Plaňany area with a combined markets shares of [30-40]% in Plzen/Klatovy area and [10-20]% in Planany area.
21. The Office also emphasises that Tarmac alone has market shares for primary aggregates above 25% in other areas, in particular of [30-40]% in Karlovy Vary/Chomutov, [20-30]% in Liberec/Mlada Boleslav and [20-30]% in Dvur Kralove.
22. Moreover the notified concentration gives rise to at least five vertically affected markets: the markets for asphalt mix and civil engineering¹³ (including road works), where only Eurovia is active, in the Plzeň/Klatovy area (in 2008, the parties combined market shares were [30-40]% for aggregates and [10-20]% for asphalt), in the Plaňany area (in 2008, the parties combined market shares were [10-20]% for aggregates and [30-40]% for asphalt), in the Karlovy Vary/Chomutov area (in 2008, Tarmac's market shares was [30-40]% for aggregates and Eurovia holds a share of [20-30]% for asphalt), in the Liberec/Mladá Boleslav area (in 2008, Tarmac's market shares was [20-30]% for aggregates and Eurovia holds a share of [10-20]% for asphalt) and in the Dvůr Králové area (in 2008, Tarmac's market shares was [20-30]% for aggregates and Eurovia holds a share of [20-30]% for asphalt).
23. The Office holds the view that the notified operation raises vertical concerns as primary aggregates are a key input for asphalt mix and roads works and Tarmac's strong position on several upstream local markets for primary aggregates would be further strengthened by the acquisition of Eurovia's aggregates quarries while Eurovia is a strong player in the downstream area of roads works. The Office comes to the conclusion that the merged entity could be able to exercise its market power on the upstream local markets for primary aggregates to the detriment of its customers who purchase primary aggregates to produce asphalt mix and build roads by raising price of primary aggregates or stopping the supply of primary aggregates. The concerns raised by the Office are supported by a majority of respondents to the market investigation launched by the Commission.
24. The broad majority of the respondent to the Commission's market investigation were critical about the effects of the proposed transaction on competition. In particular customers of the Parties in aggregates saw a negative impact on competition in the relevant markets.
25. In particular, respondents have expressed to the Commission that the overall capacity and the quality of the aggregate quarries should be taken into account in the competitive assessment. It was mentioned that larger scale projects prefer in general

¹³ Regarding civil engineering activities, the parties only provide market shares at the national level which are of [10-20]% (only Eurovia is active in that market).

larger quarries as they are mostly equipped with stationary crushers for the production of hard stone while smaller quarries rent mobile crusher from time to time only and therefore are not able to supply the required amount of hard stone within the limited construction time of a large scale project. In addition, it was mentioned from customers that the quality of the aggregates of the quarries differs so that not all aggregate quarries can supply the quality needed for a number of applications. Therefore, it was stated from a number of customers that the market shares of the combined entity might be in reality significantly higher.

26. In this context, it should be noted that the barriers to entry in the markets for primary aggregates are high caused by the fact that the creation of new production site involves several years of preparation to obtain necessary administrative authorizations and rights on the land as well as production facilities.
27. A significant number of market respondents indicated that through the vertical relationship between aggregates and asphalt mix and road work/engineering respectively the proposed transaction would negatively affect competition in the downstream markets.
28. In particular, some respondents to the market investigation consider that Eurovia could internalise Tarmac's actual production for its own use downstream, e.g. on the markets for asphalt mix and civil engineering. Taking into account Tarmac's significant market shares in the market for primary aggregates, respondents to the market investigation put forward that Eurovia could have an incentive to restrain its competitors access to Tarmac's production with the view to increase its market power on the markets for asphalt mix and civil engineering. They could therefore decide to either raise the rival's cost or stop supplying its competitors at all.
29. It was also mentioned that the main demand is driven by large-scale projects and the access to a large number of production sites is required to provide the capacities required for the completion of such kind of projects. Such capacities could regularly not be met by a single production site, but requires the access to several production sites in the relevant areas. According to a market respondent, the merged entity will be one of the only competitors which maintain a larger number of production sites in the relevant local or regional markets of Bohemia.

Article 9 of the Merger Regulation

30. The Office's findings with regard to the geographic scope of the markets for aggregates, asphalt mix and civil engineering (including road works) are consistent with the Commission's practice. As the markets at stake are not wider than national¹⁴ it can be concluded that the Czech markets are distinct from other geographical areas.
31. Second, these *prima facie* concerns of the Office are consistent with the results of the market investigation of the Commission in Czech Republic and it can indeed be concluded that the proposed concentration threatens to significantly affect competition in the aggregates, asphalt and civil engineering (including road works) markets in the Czech Republic.
32. The two requirements for an Art. 9(2)(a) referral are therefore fulfilled.

¹⁴ Imports of aggregates and asphalt mix do not play any significant role in the Czech Republic.

33. Under Article 9(3), the Commission has discretion as to whether to refer the case. The Office argues that it would be the most appropriate authority to review the Czech part of the case as the affected markets at stake are within the territory of the Czech Republic and the Office has a decision-making practice in these sectors¹⁵.
34. In addition the market investigation showed that there might be regional differences within Czech Republic (for example the specific geological conditions is important to consider the exact scope of the geographic market) that would be better grasped and analyzed by the Office. This places the Office in a better position to investigate the effect of the merger in Czech Republic.
35. Consequently, it can be concluded that a referral under Article 9(2)(a) is justified.

VII CONCLUSION

36. From the above it follows that the conditions to request a referral under Article 9(2)(a) are met. The Commission also considers that, given at most national scope of the markets affected by the transaction, the competent authorities of the Czech Republic are better placed to carry out a thorough investigation of part of the case, and that it is therefore appropriate for the Commission to exercise its discretion under article 9(3)(b) so as to grant the referral.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration resulting in the acquisition of control of six subsidiaries of Tarmac by Eurovia, as regards the aspects concerning the markets in Czech Republic, is referred to the competent authority of Czech Republic, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This decision is addressed to the Czech Republic.

Done at Brussels,

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President of the Commission

¹⁵ As mentioned previously, the Office is familiar with each of these relevant markets from its past decision-making practice. Cases of concentrations on these markets include for example STRABAG/Štěrkovny (S 125/2008/KS), Českomoravský beton/Českobudějovické pozemní stavby/CBPS beton (S 312/06), Shapedirect Limited/Lafarge Kamenivo (S 17/02), COLAS/Čermák a Hrachovec (S 193/06), Metrostav/Subterra (S 262/03), Bouygues Bâtiment/VCES HOLDING (S 150/06) and STRABAG/MITTAG (S 334/06).