

***Case No COMP/M.5901 -
MONTAGU/ GIP/
GREENSTAR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/08/2010

***In electronic form on the EUR-Lex website under
document number 32010M5901***



EUROPEAN COMMISSION

Brussels, 03/08/2010

SG-Greffe(2010) D/11953/11954
C(2010) 5475

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6(1)(b) DECISION

To the notifying Parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5901 – MONTAGU/ GIP/ GREENSTAR
Notification of 30 June 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 30 June 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertakings Montagu Private Equity LLP ("Montagu", United Kingdom) and Global Infrastructure Partners – ("GIP", USA) (the "notifying parties") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Greenstar Holdings Ltd. ("Greenstar", England and Wales) and its subsidiaries (together the "Greenstar Group",), currently belonging to NTR ("NTR", Ireland), by way of purchase of shares (the "proposed transaction").

I. THE PARTIES AND THE OPERATION

2. Montagu (a limited liability partnership established under English law) is a private equity investor and deals within a broad range of industry sectors, including professional medical products, hair care products and pre-insulated pipes. Montagu is the exclusive advisor to, and manager of, certain funds under the Montagu brand. No individual or undertaking has veto rights over the strategic business decisions of Montagu other than

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

typical minority protection rights, and therefore no individual or undertaking controls Montagu.

3. GIP is an investment fund which invests in equity and equity-related investments in infrastructure and infrastructure-related assets across both the Organisation for Economic Co-operation and Development ("OECD") and selected emerging market countries. GIP targets investments in the transportation, energy, water, waste and other public service sectors. Global Infrastructure Management, LLC ("GIM") manages GIP. GIM is a full-functional joint venture jointly controlled by affiliates of General Electric Company ("GE", USA) and Credit Suisse Groupe ("CSG", Switzerland) which therefore jointly control GIP.
4. Montagu and GIP jointly hold a controlling interest in Biffa Group Limited ("Biffa") which is involved in the UK waste management sector.
5. Greenstar is the parent company of Greenstar Group, a recycling led waste management group providing waste management and recycling solutions to industrial and commercial customers and local authorities across the United Kingdom. It is currently 100% owned by NTR, an international renewable energy group, which also has interests in Greenstar Ireland and Greenstar North America; the two latter are not part of the proposed transaction.
6. Prior to the proposed transaction, NTR held 100% of the shares in Greenstar. For the acquisition of Greenstar a Special Purpose Vehicle ("GS AcquisitionCo") was established in which GIP and Montagu both hold indirectly 50% of the shares and which they jointly control. GS AcquisitionCo and NTR entered into a share purchase agreement (the "SPA") on 8 June 2010 pursuant to which GS AcquisitionCo will purchase and NTR will procure the sale of 100% of the shares in Greenstar. Following the completion of this transaction, GS AcquisitionCo (Montagu and GIP) will control 100 % of the shares and voting rights in Greenstar.
7. In light of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5000 million in 2009 (Greenstar: [...], Montagu: [...], GIP: [...], GE: EUR 112,405 million, CSG: [...]). Moreover, the aggregate Union-wide turnover of at least two of the undertakings concerned is more than EUR 250 million (Greenstar: [...], GIP: [...], Montagu: [...], GE: [...], CSG: [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence, the proposed transaction has an EU dimension in the meaning of article 1(2) of the Merger Regulation.

III. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS

9. The proposed transaction gives rise to a horizontal overlap in the sector of waste management. The Parties' activities overlap in the following markets: (i) collection of

municipal (non-hazardous) waste; (ii) collection of industrial and commercial (non-hazardous) waste; and (iii) waste treatment by way of recycling.

(i) Market for the collection of municipal (non-hazardous) waste / Market for the collection of non-hazardous I&C waste

Relevant product market

10. In previous decisions, the Commission has expressed the view that the supply of waste management services for non-hazardous waste is not part of the same market as the supply of management services for hazardous waste².
11. Non-hazardous waste means municipal and industrial and commercial (I&C) waste that does not have a toxic or dangerous character³.
12. Municipal waste includes waste directly from households and from street cleaning activities and other municipal services. It is collected by, or on behalf of, a local authority.
13. I&C waste is waste originating from companies in the industrial and commercial sectors⁴. Contrary to municipal waste, I&C waste is collected by specialist contractors.
14. As regards non-hazardous waste, the Commission has previously found that separate markets exist for the collection of non-hazardous waste and the treatment and disposal of non-hazardous waste⁵.
15. Regarding the collection of non-hazardous waste, the Commission has distinguished in its previous decisions the markets for (i) collection of municipal waste; and (ii) collection of I&C waste⁶.
16. Since the proposed transaction does not lead to competition concerns under any alternative product market definition, it is not necessary to conclude on a further sub-segmentation of the product market definition for I&C non-hazardous waste collection in function of type of waste ((i) industrial, (ii) commercial and (iii) construction and demolition)⁷ or customer size.

² Case COMP/M.4576 – AVR / Van Gansewinkel, para. 9.

³ Case No IV/M.1059 – Suez Lyonnaise des Eaux / BFI, para. 11.

⁴ Commercial waste means waste from premises used wholly or mainly for the purposes of a trade or business or for sport, recreation or entertainment excluding: (a) household waste; and (b) industrial waste. Industrial Waste originates from: (a) factories; (b) premises related to any public transport services; (c) any premises used for supply to the public of gas, water or electricity or the provision of sewage services; or (d) any premises used for the provision to the public of postal or telecommunication services. In the United Kingdom, “industrial waste” and “commercial waste” are legal terms defined in Article 75 of the Environmental Protection Act 1990 (see paragraphs 77, 78 and 92 of the Short Form CO).

⁵ Cases COMP/M.295 - SITA-RPC/SCORI, COMP/M.283 - Waste management International/SAE, COMP/M.448 - GKN/Brambles/Leto Recycling, IV/M.1059 – Suez Lyonnaise des Eaux / BFI, para. 12, and COMP/M.4576 – AVR / Van Gansewinkel, para. 10.

⁶ Case No IV/M.295 - SITA-RPC-SCORI; Case No IV/M.916 - Lyonnaise des Eaux/Suez; and Case No IV/M.1059 – Suez Lyonnaise des Eaux / BFI and COMP/M.4576 – AVR / Van Gansewinkel, para. 10.

⁷ Case No IV/M.4576 – AVR / Van Gansewinkel, para. 11.

Relevant geographic market

17. With regard to France the Commission has held that the geographic scope of the markets for municipal and I&C waste collection is national⁸.
18. The parties agree with this definition, as in their view waste collection is a simple economic activity which requires loaders and drivers, vehicles and a vehicle depot. The vehicles are by nature mobile assets and sites which are suitable as vehicle depots are usually easy to find. While there are some economies of scale in serving neighbouring local authority areas, the largest waste collection contractors will bid for most contracts regardless of location⁹.
19. However, it is not necessary to conclude on the precise geographic market definition since the proposed transaction does not raise serious doubts as to its compatibility with the common market under any plausible market definition.

(ii) Market for waste treatment by way of recycling

Relevant product market

20. The Commission has previously considered that the market for non-hazardous waste disposal can be further segmented into disposal by way of landfill, incineration and waste treatment alternatives (such as recycling and composting)¹⁰.
21. Concerning waste treatment alternatives, according to the UK Office of Fair Trading local authorities have the following options available: (i) mechanical treatment (requires a materials recovery facility, "MRF"¹¹), (ii) biological treatment (composting and anaerobic digestion), (iii) thermal treatment (energy from waste and advanced thermal technologies), and (iv) hybrid treatments/mechanical biological treatments¹².
22. In previous cases the Commission left open the product market definition¹³. However, in respect of the proposed transaction the product market to be assessed is the narrowest one possible, namely mechanical waste treatment of dry mixed recyclables¹⁴ with an MRF, because the parties are active only in this type of waste treatment.

⁸ Case No IV/M.916 - *Lyonnaise des Eaux/Suez* and Case No IV/M.1059 – *Suez Lyonnaise des Eaux / BFI*, para. 17, and Case COMP/M.5464 - *Veolia Eau / Société des Eaux de Marseille / Société des Eaux d'Arles / Société Stéphanoise des Eaux*, para. 30.

⁹ For instance, Biffa currently has contracts in numerous areas at great distance from each other, e.g. Middlesbrough, Woking, Stafford, Vale of Glamorgan.

¹⁰ Case COMP/M.5464 - *Veolia Eau / Société des Eaux de Marseille / Société des Eaux d'Arles / Société Stéphanoise des Eaux*, para. 28.

¹¹ In an MRF, waste is separated or sorted into materials which can be recycled or composted.

¹² OFT, *More competition, less waste, Public procurement and competition in the municipal waste management sector*, May 2006, figure 1.1 (page 4) and chapter 4 (page 55), http://www.of.gov.uk/shared_of/reports/comp_policy/oft841.pdf.

¹³ Case COMP/M.4576 – *AVR / Van Gansewinkel*, para. 13.

¹⁴ In addition to MRFs there are also source separated recycling facilities which process a single type of recyclable. As neither of the Parties operates any source separated recycling facilities, the analysis in this notification considers the narrowest possible product market which only includes MRFs.

Relevant geographic market

23. The Commission has previously considered with regard to France that the geographical scope of the market for landfill and non-hazardous waste treatment is local ("*départemental*")¹⁵. With regard to Sweden, the Commission has considered that the disposal of non-hazardous waste could be defined in function of a catchment area for each MRF of 200 km. However, the Commission has left the exact geographic market definition open¹⁶.
24. The same applies for a Commission decision concerning glass-recycling¹⁷. However the parties in that case submitted that each recycling facility had a catchment area of 400 km whilst competitors had indicated in the market investigation that the catchment areas would be of radii of approximately 150 km.
25. In the present case, the parties submit that due to its weight, density and commodity value it is usually less economical to transport glass for longer distances, and thus the catchment area of a glass recycling facility will generally be smaller than that for an MRF which sorts dry mixed recyclables¹⁸. The parties also submit that the geographic market for waste disposal by way of recycling is national. They argue that (i) the catchment area of each individual MRF is approximately 200km¹⁹, (ii) the catchment areas of the individual MRFs overlap and form a chain of substitution creating a UK-wide market of overlapping circles (iii) there are a number of local authorities which have contracts for disposal/treatment of their recyclables to an MRF located more than 200km away²⁰.
26. In addition, in the parties' view the transport costs are not the only factor that is taken into consideration when pricing a contract and if certain mixes of recyclable products (e.g. excluding glass) could bring higher returns in commodity markets this may result in dry mixed recyclables being transported over longer distances²¹.
27. However, there is no need to precisely define the relevant geographic market since even on a local market with a radius of 150km the proposed transaction will not give rise to competition problems.

¹⁵ Case COMP/M.5464 - *Veolia Eau / Société des Eaux de Marseille / Société des Eaux d'Arles / Société Stéphanoise des Eaux*, paragraphs 31 and 32.

¹⁶ Case COMP/2897 – *SITA Sverige AB / Sydkraft Ecoplus*, para. 12.

¹⁷ Case COMP/M.4576 – *AVR / Van Gansewinkel*, para. 20.

¹⁸ Paragraph 114 of the Short Form CO.

¹⁹ According to the parties, whilst the cost per mile is lower the longer the distance, the incremental cost per tonne only increases significantly beyond 125 miles (200 km).

²⁰ Monmouthshire Council (203km to MRF), Hull City Council (220.8km to MRF) and Stoke-on-Trent City Council (294.4km to MRF).

²¹ Paragraphs 110-115 of the Short Form CO.

IV. COMPETITIVE ASSESSMENT

1. Horizontal

Collection of municipal (non-hazardous) waste

28. The proposed transaction gives rise to an overlap below 10% in the market for collection of municipal (non-hazardous) waste.
29. The parties estimate (since precise data is difficult to obtain on a tendering market) that, based upon value, Biffa and Greenstar have a [5-10]% combined market share with individual shares of [0-5]% and [0-5]%, respectively. Based on volumes the parties' combined market share post-merger would be around [5-10]%.
30. In consequence, the proposed transaction does not raise horizontal concerns with regard to competition situation post-merger.

Collection of non-hazardous I&C waste

31. In the UK, the estimated combined market share of the parties is lower than [0-5]% by volume (around [0-5]%, with Biffa [0-5]% and Greenstar [0-5]%) and lower than [5-10]% by value²² (around [5-10]%, with Biffa [5-10]% and Greenstar [0-5]%), on a fragmented market characterized by a large number of competitors such as Veolia and SITA with similar or higher market shares or smaller players like Severnside and Reconomy.
32. As for the segment of construction and demolition waste, neither Greenstar, nor Biffa carries out specialist construction waste activities.²³ Hence, they are unable to estimate the size of the market by value. However, even if the total I&C volumes handled by the parties were to be considered as construction and demolition waste, their market share would still only be around [0-5]% and the proposed transaction would therefore not raise competition concerns.
33. Even taking into consideration different customer sizes (large, medium and small) the parties' combined market shares would be significantly lower than [5-10]%²⁴.

²² According to the parties, the differences in the market shares per volume and value can be explained by the fact that [...].

²³ Greenstar provides waste management services to companies that are active in the construction sector and has a small number of skip trucks in its I&C depots that are used to collect, recycle and ultimately dispose of construction type waste. The skips and trucks used to collect waste from builders and other construction customers are multitask and are used to collect waste from a range of customers. Biffa has some contracts with construction customers/sites that relate to general waste and recyclable materials and which may include the collection of some construction waste. However, the skips and trucks used for these contracts are the same as for any other I&C customer and Biffa focuses on processing commercial waste from these customers.

²⁴ Paragraph 154 of the Short Form CO.

Waste treatment by way of recycling

34. Greenstar currently operates a network of five MRFs that are capable of providing recycling services to both local authorities and the private sector. Biffa operates 11 small manual MRFs and one automated MRF²⁵ across the UK.
35. Based upon the parties' estimates, post-merger they would have a combined national market share of around [5-10]%²⁶. If Greenstar's future projects at Edmonton and South Oxfordshire and Biffa's Trafford Park MRF²⁷ were to be included, their combined market share would be around [10-20]% without even considering new MRF projects developed by competitors.
36. If one considers regional markets (using the chain of substitution argument), taking into account the location of Greenstar's facilities and the overlaps between catchment areas the combined market share in 2009 would be [10-20]% even taking into account the parties' expansion plans and without considering the competitors' MRF projects²⁸.
37. As for potential local geographic markets, each comprising catchment areas around Greenstar's MRFs, both for a radius of 200km and 150km the parties' activities overlap in all the five catchment areas. With respect to the catchment areas of 200km, only in one area (Darwen) would the combined market share of the parties post-merger slightly exceed [10-20]% in 2009²⁹. Concerning a catchment area of 150km, the parties' combined market share would be above [10-20]%, but below [10-20]%, in four such areas³⁰. However, even these overlaps remain modest, the market is fragmented³¹ and characterized by the presence of a considerable number of competitors in each catchment area, including internationally operating firms such as SITA and Veolia.
38. In consequence, the Commission considers that the proposed transaction does not raise horizontal competition problems.

2. Vertical

39. The proposed transaction does not raise vertical competition problems.
40. Vertical links exist between the upstream (collection of waste) and downstream (disposal of waste) waste management markets.
41. Waste management companies may have contracts to collect waste for a local authority or I&C customer in an area where they do not have treatment facilities. In those occasions, it is possible that an arrangement with a competing waste management

²⁵ The automated MRF is located at Trafford Park and it started operations in January 2010 (200kt capacity).

²⁶ Biffa and Greenstar have a combined MRF capacity of [...]kt on an overall market with an estimated MRF capacity of [...]kt.

²⁷ Biffa has one automated MRF at Trafford Park which started operations in January 2010 (200kt capacity).

²⁸ Paragraph 160 of the Short Form CO.

²⁹ In the other four areas the combined market share is between [10-20] and [10-20]%.

³⁰ Aldridge: [10-20]%, Darwen: [10-20]%, Derby: [10-20]%, Leicester: [10-20]%.

³¹ Generally, in both the 200km- and 150km-catchment areas, only two or three companies (including the combined market presence of Biffa and Greenstar) have market shares above 10%.

company would be in place so that collected waste volumes can be brought to a MRF or landfill of a competitor.

42. However, taking into account the relatively low market shares of both Biffa and Greenstar in the markets for both the collection and treatment of waste³², the proposed transaction does not raise vertical concerns.

V. CONCLUSION

43. For the above reasons, the Commission has decided not to oppose the notified transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Janusz Lewandowski
Member of the Commission

³² The parties' combined market share under any plausible geographic market definition does not exceed 10% on the markets for municipal and I&C waste collection and is less than 20% for treatment services.