

***Case No COMP/M.6513 -
AVENANCE ITALY /
GEMEAZ CUSIN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/03/2012

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EUROPEAN COMMISSION

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6513 - Avenance Italia/ Gemeaz Cusin
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 22 February 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Avenance Italia ("**Avenance**", Italy) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of Gemeaz Cusin as well as some of its subsidiaries (together "**Gemeaz**", Italy) by way of acquisition of shares. (**Avenance** and **Gemeaz** are referred to hereinafter as the "parties to the proposed transaction".)

(1) THE PARTIES

2. Avenance, is active in contract foodservices and facilities management services in Italy, directly or through its subsidiaries.² It provides contract foodservices to clients in business, healthcare, education and defence sectors. Avenance is indirectly jointly controlled by Charterhouse Capital and Robert Zolade.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). 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.

² Concerta S.p.A., Meridia S.p.A., Hospital Service Italia S.r.l. and Copra Ristorazione S.p.A.

3. Gemeaz is active in contract foodservices in Italy.³ It provides contract foodservices to clients in business, healthcare, education and defence sectors. It also carries out activities in nursery facilities and in the meal vouchers business. Gemeaz is currently owned by Restaurant Holding II, a company ultimately controlled by Barclays Private Equity, and nine managers of the company.
4. Gemeaz holds interests in four other companies: (i) **Gemeaz Immobiliare**, which does not have any market presence as its sole activity is to rent real estate properties to Gemeaz; (ii) Servizi Integrati Area Fiorentina S.p.A. ("**Siaf**"), which provides contract foodservices in the Florence area for schools, hospitals and nursing homes;⁴ (iii) Ristorazioni Gemeaz Cusin Lamaro ("**RGL**") which has been put in winding up procedure in 2009 and which therefore does not carry out any activity anymore; (iv) **Gemeaz Vending**, which is active in the vending machines sector. Gemeaz vending does not fall within the scope of the transaction.

(2) THE OPERATION AND THE CONCENTRATION

5. Gemeaz's shareholding is currently divided in two classes, A and B. Shares A, representing approximately 91,6% of the share capital of Gemeaz, are owned by Restaurant Holding II. Shares B, representing approximately 8.4% of the share capital of Gemeaz, are held by nine managers of Gemeaz. Avenance will acquire the entire share capital of Gemeaz, i.e. all of the class A and B shares of Gemeaz, by way of a sale and purchase agreement.
6. Therefore, following the transaction, Avenance ("the notifying party") will exert sole control over Gemeaz, within the meaning of Article 3(1)(b) of the Merger regulation.

(3) EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR [...] million⁵ (Charterhouse: EUR [...] million; Robert Zolade: EUR [...] million; Gemeaz: EUR [...] million). With the exception of Robert Zolade, each of them has an EU-wide turnover in excess of EUR 250 million (Charterhouse: EUR [...] million; Gemeaz: EUR [...] million) and only Gemeaz achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State (Italy). The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

(4) COMPETITIVE ASSESSMENT

³ Gemeaz has residual activities in other Member States, but the generated turnovers are negligible.

⁴ The notifying party put forward convincing arguments proving that Gemeaz does not control Siaf. In any event, there is no need to take firm views on this instance. Siaf's activities are so limited that its control or not post-merger by Avenance will not significantly impact the competitive assessment, as Siaf's turnover represents 0.3% of the total market value of the Italian contract foodservices in 2010.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

A. Relevant markets

1. **Product market definition: Contract food services**

8. Both parties are active in the provision of contract foodservices.⁶ The notifying party takes the view that the relevant product market is the market for contract food services which should not be further segmented according to the activities' of the purchaser.
9. In past Commission decisions,⁷ contract foodservices were defined as the provision of foodservices outside the home, performed by third parties, typically on the premises of public or private sector clients and involving the supply of food and drink to customers for whom that service is not the primary reason for their presence on the premises i.e. principally in the business industry, health (hospitals, nursing homes), education (schools, universities) and prison sectors. The client pays the contract caterer a fee for the provision of the catering service and the food is often sold to the customer at subsidised prices. In various instances, the Commission considered that the market for contract foodservices constituted a separate market.⁸ In the decision *Granada/Compass*,⁹ the Commission looked at the possibility, without taking any firm position, to segment the market for contract foodservices according to the activities of the client.
10. The market investigation confirmed, to some extent, that segmentation on the basis of the customer's activities is relevant since each type of clients has its own specificities and e.g. the foodservices provided in a nursing home are not the same as those provided to the military.
11. Avenance and Gemeaz provide contract foodservices to clients active in the following sectors: (i) business and industry, (ii) health, (iii) education and (iv) defence & other.¹⁰
12. However, the exact product market definition can be left open for the purpose of the present decision as the proposed transaction does not give rise to competition concerns irrespective of whether the market should be considered as an overall market for contract foodservices or divided by segment.

⁶ Avenance provides facility management services on a stand-alone basis mainly through its subsidiary Hospital Services Italia (cleaning and technical services). Also Gemeaz provides facility management services but on an ancillary basis since the facility management services cannot be dissociated from the provision of contract foodservices. Gemeaz provides principally two types of facility management services: (i) maintenance services in the premises made available by the client for the supply of the foodservices and (ii) in some cases, reporting of cash receipts received by the users of the canteen services. Therefore, it can be concluded that there is no overlap between the parties' activities on the facility management market.

⁷ See *inter alia* COMP/M.4202-Charterhouse/Elior.

⁸ See *inter alia* COMP/M. 2373-Compass/Selecta and COMP/M.3104-Compass/Cremonini/JV.

⁹ COMP/M.1972.

¹⁰ The notifying party deems that, in view in particular of the similarities of the demand side (e.g. tender procedures, same security requirements, defence), prison, fire station and police are to be included in the same segment. This has been confirmed by market participants.

2. Geographic market definition

13. The notifying party considers the market for the contract foodservices (including all various segments) to be national. Gemeaz is almost exclusively active in Italy.
14. This position is in line with the Commission's previous decisions where it took the view that due to legislative differences (public procurement and labour law), national preferences (in terms of taste, quality and prices) and strong differences with respect to in-house providing of feeding needs, the market for contract foodservices is national.¹¹
15. Market participants confirmed this view by pointing at the specific requirements of Italian customers. In particular, one competitor underlined that only people with a deep knowledge of Italian tastes can actually provide foodservices to Italian customers.
16. It follows that the relevant geographic market for the purpose of the present transaction should be defined as national, confined to Italy.

B. Competitive assessment

17. As indicated above, the relevant markets on which the effects of the proposed transaction are assessed in this case are the following:
 - The overall market for contract foodservices in Italy;
 - The market for contract foodservices in the Business & Industry sector in Italy;
 - The market for contract foodservices in the Healthcare sector in Italy;
 - The market for contract foodservices in the Education sector in Italy and
 - The market for contract foodservices in the Defence & other sector in Italy.
18. As concerns the overall market for contract foodservices in Italy, the combined market share of the merged entity would reach [10-20]% in terms of value and less than [10-20]% in terms of volume. Should the market be subdivided in various segments, the market for Foodservices in healthcare sector in Italy would not be an affected market, since the combined market share is below [10-20]% in both volume and value. The combined market shares in all other markets are below [20-30]%, with the sole exception of Defence & other sector where the market share is almost [30-40]% in value and less than [20-30]% in volume. This market structure has been essentially confirmed in the course of the market investigation.

Table 1: Parties' 2010 market shares on the overall Italian contract foodservices market.

	Market share in value	Market share in volume
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¹¹ See inter alia COMP/M.1972 and COMP/M.2373.

Avenance	[5-10]%	[5-10]%
Gemeaz	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%

Table 2: Parties' 2010 market shares on the Italian contract foodservices market presented by segment

	Market share in value	Market share in volume
<u>Business and industry</u>		
Avenance	[5-10]%	[5-10]%
Gemeaz	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%
<u>Education</u>		
Avenance	[5-10]%	[5-10]%
Gemeaz	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%
<u>Healthcare</u>		
Avenance	[5-10]%	[0-5]%
Gemeaz	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%
<u>Defence & other</u>		
Avenance	[10-20]%	[10-20]%
Gemeaz	[20-30]%	[10-20]%
Combined	[30-40]%	[20-30]%

19. In view of the combined market shares presented in the table above, the competitive assessment of this decision focuses on the Defence segment in Italy.

(i) The market for contract foodservices in the Defence & other sector in Italy

20. With respect to the Defence & other segment where the combined market share of the merged entity reaches [30-40]% in value, the competition concerns are unlikely for the

following reasons: There are three other large and internationally active operators whose market shares are as follows: Sodexo ([10-20]% in value and [10-20]% in volume), Dussman Services ([10-20]% in value and [5-10]% in volume), Compass Group Italia ([10-20]% in value and [0-5]% in volume). An important number of smaller companies are present in this segment, accounting together for a market share of [40-50]% in volume and of [5-10]% in value. The discrepancy between these two figures supports the claim by the notifying party that small companies tend to price more aggressively, which has been confirmed by the market participants.

21. The relatively high market share of the merged entity is to large extent the result of one particular contract and rather temporary. In 2009, Avenance and Gemeaz have, together with other providers, set up an "Associazione Temporanea di Imprese" ("ATI"), which won a call for tender launched by the Ministry of Defence for a value of EUR [...] million, which mainly explains the high market shares of the parties in this segment. The total size of the market was estimated both by an independent study ¹² and a market participant as being between EUR 160 million and EUR 200 million. The contract was concluded for two years and accounts therefore for between [10% and 20%] of the total market in value. It is the main reason for the relatively high combined market share of the parties.
22. That contract expires this year, and a new bidding process will be organised in the course of the present year. Also smaller competitors may participate in this tender by setting up an ATI, a common practice in the Italian market of the contract foodservices, thereby competing effectively with bigger companies. As confirmed by the market investigation, this new call for tender is likely to completely reshuffle the positions of the players in this segment. Consequently, it can be expected that the currently strong position of Avenance and Gemeaz in this segment will come to an end in the near future.

(ii) Closeness of competition between the merging parties on any alternative market

23. Most of the contract foodservices are procured through calls for tender, both by public bodies and private companies. In 2011, Avenance participated in [...] calls for tender and Gemeaz in [...]. Over the last three years, Avenance and Gemeaz have simultaneously participated in only [...] major tender procedures¹³ out of 43. Out of these [...], Avenance won [...], and Gemeaz [...].
24. Furthermore, Gemeaz owns 25 cooking centres spread all over Italy, in particular in South Italy, while Avenance owns only 6 cooking centres centralized in Northern Italy. In terms of technology, Avenance and Gemeaz use different cooking techniques. While none of Avenance's cooking centres implements the cook and chill technology,¹⁴ whereas 4 of Gemeaz' implement this technology.
25. In light of the above, the Commission concludes that Avenance and Gemeaz are not particularly close competitors neither geographically nor in terms of cooking techniques.

¹² Gira Study Food Service 2010 – Food Service Markets Fuori Casa Italy 2002 -2012 Overview.

¹³ Based on the value, the margin, the duration, the investments realized and the reputation of the site.

¹⁴ Currently, there are three technologies used alternatively in cooking centres: (i) traditional hot-cold meals; (ii) cook and chill: the food is cooked, refrigerated with specific equipment and served at a later stage and (iii) cook and chill in protected atmosphere: this combines the refrigeration technology seen above with protected atmosphere preservation.

(iii) Possibilities of switching supplier on any alternative market

26. As mentioned above, most of the contract foodservices are awarded after calls for tender. The duration of the contracts fluctuates between one year and 6 years in general. In addition, private customers can withdraw from an agreement with a service provider without any financial penalty and after a three-month prior notice. The notifying party argues that it is common practice that, as soon as contract foodservices provider decides a price increase, the client asks competitors for their price in order to compare them and possibly to switch to a cheaper supplier. In the past years, Avenance has lost various on-going contracts to the benefit of competitors offering cheaper services, which seems to support its claim.
27. In light of the above, there is substantial evidence that consumers will not face major hurdles if they wish to change supplier.

(iv) Barriers to entry / expansion on any alternative market

28. The Italian contract foodservices market is fragmented, the ten biggest players sharing between 65% and 70% of the market while around one thousand companies share the remaining part of the market. Small companies, however, can compete and win calls for tender of important value. For example, Avenance lost a call for tender launched by the Opera Universitaria di Trento for a value of EUR [...] million to the benefit of SMA, a smaller competitor. In the same vein, JD Service, another small company, won against Gemeaz a call for tender launched by the Comune di Besana Brianza for a value of ca. EUR [...] million.¹⁵
29. As regards the investments necessary to penetrate the market, it has been confirmed both by the notifying party and the market participants that they were rather low. Indeed, it is not necessary to possess infrastructure to enter the market insofar as the majority of contract foodservices are provided on-site, at the clients' premises. For instance, the food processing on-site (i.e. at the client's premises) represents the majority of the services rendered: around 95% for Avenance and around 80% for Gemeaz.
30. However, the ownership of a cooking centre may be required by the contracting authorities as a pre-condition to participate in those tender procedures, where the client does not have an on-site kitchen. The party evaluates the cost of the setting up of a cooking centre to be below EUR 50 000 and the handling and management costs to start from at least EUR 10 000 a year. These costs are seen as reasonable by the market participants and should it represent an unbearable cost for a company wishing to participate in a call for tender, it could easily set up an ATI with a competitor possessing such infrastructure in order to sidestep this impediment.
31. Overall, the party estimates that the cost to enter the market and provide on-site service is around EUR 20 000 and 100 000, which in light of the number of small companies (around 1000) does not seem to represent a high barrier to entry.

¹⁵ Considering the 43 major tenders in which both Parties participated in the last three years, the average value is EUR [...] million.

32. In light of the above the Commission concludes that the market for contract foodservices is characterised by rather low barriers to entry.

(v) No Elimination of an important competitive force on any alternative market

33. Gemeaz is not a recent entrant as it is active on the contract foodservices market since 1949. Furthermore, it cannot be regarded as a maverick in this industry as its market shares have not been increasing to a significant extent over the recent years, except in the Defence & other segment due to the contract with the Ministry of Defence. Nevertheless, as seen above, this contract is going to expire this year and will be subject to a new bidding procedure. Gemeaz was also not seen as a maverick by market participants. Therefore, the Commission concludes that the concentration will not result in the elimination of an important competitive force.

Conclusion

34. Therefore, the Commission considers that the transaction does not raise serious doubts as to its compatibility with the internal market and this irrespective of the precise product market definition.

(5) CONCLUSION

35. For the above reasons, the European Commission has decided not to oppose the notified operation 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)
Joaquín ALMUNIA
Vice-President*