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Case No COMP/M.6818 - DEUTSCHE BAHN / VEOLIA TRANSPORT CENTRAL EUROPE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION

Date: 30/04/2013

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6818 – DEUTSCHE BAHN / VEOLIA TRANSPORT CENTRAL EUROPE
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 21 March 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[2] by which **Deutsche Bahn,** *via* its subsidiary DB Mobility Logistics AG **("DB", "the Notifying Party")** acquires sole control over **Veolia Transport Central Europe GmbH ("Veolia")** within the meaning of Article 3(1)(b) of the EU Merger Regulation (EUMR)[3]. DB and Veolia are collectively referred to as the **"Parties".**

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

[3] Publication in the Official Journal of the European Union No C 94, of 3.4.2013, p. 10.

1. THE PARTIES AND THE OPERATION

(2) **DB**, the acquirer, is a fully owned subsidiary of the state-owned German transport operator Deutsche Bahn AG, a multinational mobility and logistics group. DB is engaged in, *inter alia*, passenger transport by rail and bus, freight forwarding and logistics (including freight transport) and ancillary services. Through the acquisition of Arriva, Deutsche Bahn has been able to enter passenger transport markets in various Member States.

(3) **Veolia**, the target, which is located in Berlin, Germany, is part of the Veolia Transport Transdev Group ("VTD").[4] Veolia operates bus passenger transport networks […] in six Central Eastern European countries: the Czech Republic, Poland, Slovakia and Slovenia within the EEA and Croatia and Serbia outside of the EEA. In addition, Veolia operates one limited rail service in the Czech Republic.

(4) The proposed concentration concerns the acquisition by DB of sole control of Veolia within the meaning of Article 3(1)(b) EUMR through the acquisition of all shares of Veolia.

2. EU DIMENSION

(5) The proposed concentration is deemed to have an EU dimension pursuant to Article 4(5) EUMR.[5]

3. COMPETITIVE ASSESSMENT

(6) Both DB and Veolia operate passenger bus and rail transport services in Europe. While Veolia has significant experience in Central Eastern Europe, DB has only limited operations in passenger transport services in that region. The rationale of the acquisition thus is to grow DB's international public transport operations in Central Eastern Europe.

(7) The analysis below (Sections 3.2 and following) is presented by Member State due to the particularities of the different Member States that have an impact on the product and geographic market definitions as well as on the competitive assessments. However, given that there is EU legislation harmonising certain regulatory rules governing public passenger transport by road and by rail, this regulatory framework will be described separately in Section 3.1.

3.1. Regulatory Framework

(8) Regulation (EC) No 1370/2007 governs the award of public service contracts in the field of public passenger transport by road and by rail, in particular the award of service concessions for transport services by bus or tram.[6]

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4 VTD currently holds a 65% share in Veolia with the remaining 35% share being held by the European Bank for Reconstruction and Development ("EBRD"). VTD will acquire the shares held by EBRD prior to the concentration.

5 On 18 January 2013 the Parties informed the Commission by means of a reasoned submission that the concentration is capable of being reviewed under the national competition laws of at least three Member States and requested that it should therefore be examined by the Commission. The Commission transmitted this submission to all Member States on 21 January 2013. The Member States competent to examine the concentration did not within 15 working days express their disagreement to the request for referral.

(9) Since the Parties operate public passenger transport services by bus and by train, granted as service concessions in the sense of Article 5(1) of Regulation (EC) No 1370/2007, the relevant provisions applicable are those of Regulation (EC) No 1370/2007.

(10) Article 5(2) of Regulation (EC) No 1370/2007 provides that, unless prohibited by national law, any competent local authority may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority exercises control similar to that exercised over its own departments.

(11) Article 5(3) of Regulation (EC) No 1370/2007 provides that, where a competent authority has recourse to a third party other than an internal operator to provide public passenger transport services, it shall award public service contracts by means of a competitive process, which is fair, open, transparent and non-discriminatory.[7] Article 8(2) provides that, without prejudice to its paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5, and in particular with Article 5(3), as from 3 December 2019. During this transitional period, Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems, in particular relating to transport capacity.

(12) Article 5(6) of Regulation (EC) No 1370/2007 provides that unless prohibited by national law, public service contracts for rail transportation services may be directly attributed by the competent authority without competitive tendering procedure, with the exception of other track-based modes such as metro or tramway competent authorities.[8]

(13) The Parties to the operation, whether DB or Veolia, are not controlled, in the sense of Article 5(2), by a competent local authority in the countries concerned by the operation. As a matter of principle, future awards of public service contracts should therefore be granted through a competitive tendering process, in the sense of Article 5(3).

(14) Finally, the compensation of the service provider can be calculated on a gross revenue or net financial effect basis. For gross contracts, the operator bids for the full operating costs, and all revenue goes to the authority; with net contracts the operator will be granted all revenue, and will bid only for the necessary difference between fare revenue and the amount needed to make the desired profit. The use of gross contracts reduces the risk of the operator since they do not need to estimate the number

6 Such contracts may at the same time fall within the scope of Directive 2004/17/EC or Directive 2004/18/EC. Article 5(1) of Regulation (EC) No 1370/2007 specifies that the award of public service contracts for transport services by bus or tram is governed by Directives 2004/17/EC and 2004/18/EC, except when these contracts take the form of service concessions

7 However there are exceptions to this rule: Article 5(4) provides that, unless prohibited by national law, service contract of a small volume or to a small or medium sized operator, may be directly attributed by the competent authority without a competitive tendering procedure. Article 5(6) provides that unless prohibited by national law, public service contracts for rail transportation services may be directly attributed by the competent authority without competitive tendering procedure, with the exception of other track-based modes such as metro or tramway competent authorities.

8 The Commission's proposal 1013/0028 (COD) of 30 January 2013 for an amendment of Regulation (EC) No 1370/2007 amends Article 5(6) by denying competent authorities the option of deciding whether to award a public service contract for rail directly or based on a competitive tender. Competitive tendering would be mandatory for both rail and bus.

of passengers. Article 5(2) of Regulation 1370/2007 stipulates that the competent authority shall compensate the public service operators for the *net financial effect,* positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation.

3.2. Czech Republic

(15) In the Czech Republic both Parties are active on the passenger bus market (concessionary bus services and commercial bus services).[9]

3.2.1. Relevant product markets

(16) The Notifying Party distinguishes concessionary bus services from commercial long-distance services.

3.2.1.1. The view of the Notifying Party

(17) Concessions for public bus services are awarded by the relevant public transport authorities ("PTA"), namely (i) the 14 regions *(Krajs)* for regional bus transport and (ii) the cities for municipal bus transport. With respect to concessionary bus services, the Notifying Party considers the relevant market to be the *market for the award of contracts to operate public transport bus services*.[10] It does not distinguish between regional or municipal bus services.

(18) With respect to commercial long-distance bus services, the Notifying Party submits that these are to be distinguished from unscheduled or charter bus services. It states that the narrowest potential product market is *the market for the provision of commercial long-distance services by bus.*

3.2.1.2. The Commission's assessment

(19) The Commission has in the past, with respect to other Member States, identified specific markets for the award of contracts to operate public bus services (concessionary bus services).[11] The Commission thereby considered that it was not appropriate to distinguish between urban, inter-urban and long-distance concessionary bus services given that they were regulated by the same regulatory framework and given that there were only few distinct features that relate to technical specifications.[12]

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9 In addition, Veolia offers very limited passenger rail services in the Czech Republic (namely in the region of Olomoucky Kraj). DB does not offer any domestic passenger rail services in the Czech Republic. It only offers limited cross-border services to the Czech Republic (from Germany, the Netherlands, Denmark and Switzerland). These cross-border services are carried out by CD, the Czech incumbent railway operator, on a successive-carrier basis, meaning that CD operates the Czech part of the route. There are no overlaps between the Parties' rail activities in the Czech Republic. For the sake of completeness, it is noted that there are also no geographic overlaps between the bus and rail services offered by the Parties in the Czech Republic. In the light of the above, the Czech passenger rail market is, therefore, not further discussed in this Decision.

10 The Notifying Party submits that bus and rail services are not substitutable but rather complementary; Form CO, paragraph 142. Given that there are no geographic overlaps between the rail and bus services offered by the Parties, the question whether bus and rail services are substitutable can be left open.

11 See for example M.5855 – *DB/Arriva,* recital 20 to 25 in relation to public bus services in Denmark.

12 See for example M.5855 – *DB/Arriva,* recital 24 in relation to public bus services in Denmark.

(20) The replies to the market investigation were inconclusive with regard to the question of whether PTAs have different requirements regarding the award of regional or municipal bus services. While some PTAs stated that differences between municipal and regional services may pertain to, among others, vehicle requirements (municipal transport necessitates for instance low-floor buses with a larger number of doors) or the number of frequencies offered, others did not see any difference.[13] Several competitors pointed out that requirements of PTAs varied according to criteria such as timetables, comfort of customers, accessibility of disabled persons or type of buses.[14]

(21) The Commission considers that the different requirements of PTAs highlighted by some respondents to the market investigation are not specific enough to conclude on separate product markets, one regional and one municipal, for the award of contracts to operate public transport bus services. In order to be awarded a concession to operate on the municipal or regional level, the bus operators have in principle to follow the same regulatory framework and can adapt their offer to the requirements of the respective PTA.

(22) The replies to the market investigation confirmed the Notifying Party's assertion that the competition between bus operators took place at the level of bidding for contracts, namely the market *for* the award of contracts to operate public transport bus services, and not afterwards *in* the market on price, capacity, frequency or other service features.[15] The replies to the market investigation also confirmed that the operators had no say in determining the setting of fares, timetable, quality of services or material conditions (for instance infrastructure or buses) with respect to concessionary services.[16]

(23) The Commission considers that concessionary bus operators usually have very little influence on basic dimensions of competition *for* passengers like frequencies including timetables, fares or comfort of passengers. These features are usually set by the awarding PTA. Concessionary bus operators offer the bus services they are obliged to carry out according to the concessionary contract with the PTA. They do not adapt their services according to demand from passengers. Therefore, the Commission concludes that competition takes place at the level of bidding for the award of concessionary contracts thus constituting competition *for* the market.

(24) As regards commercial long-distance bus services, competitors unanimously stated that such services differed from concessionary bus services. One competitor argued that commercial long-distance bus service were governed only by the needs of the

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13 See answers to question 8 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

14 See answers to question 5 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013

15 See answers to question 4 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013 and answers to question 7 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

16 See answers to question 15 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

market whereas concessionary bus services were subject only to the requirements and needs of the PTA.[17]

(25) The Commission considers that long-distance bus operators compete in the market on price, capacity, frequency or other service features. The market for the provision of long-distance commercial services has therefore to be distinguished from the market for the award of contract to operate public transport bus services.

(26) In light of the above, the relevant product markets are the market for the award of contracts to operate public transport bus services and the market for the provision of commercial long-distance services.

3.2.2. Relevant geographic markets

3.2.2.1. The view of the Notifying Party

(27) With respect to concessionary bus services, the Notifying Party submits that the relevant geographic market is national, covering all of the Czech Republic.

(28) With respect to commercial long-distance services, the Notifying Party proposes an "origin and destination" approach and submits that the markets are point-to-point, origin-to-destination markets limited to the individual routes served.

3.2.2.2. The Commission's assessment

(29) In previous decisions, the Commission, while most often leaving the exact geographic market definition open, considered the relevant geographic market for the award of contracts to operate public transport bus services to be an area in which there is a common regulatory framework for competitive tendering of bus services.[18]

(30) During the market investigation, a majority of responding competitors claimed to compete for concessions in whichever city or *Kraj* in the Czech Republic.[19] While competitors stressed that they had to follow national Czech public procurement laws with regard to bidding for concession, they, however, also pointed out that the specific requirements of the awarding PTA and possibly a local presence in the region also mattered in order to be awarded a concession.[20]

(31) The Commission therefore considers that there is some indication that the geographic market for the award of contracts to operate public transport bus services is national in scope because of a uniform regulatory framework and actual competition for the award of concessions between bus operators from various regions in the Czech Republic. However, the question can ultimately be left open because no competition concerns arise on either the regional or the national level.

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17 See answers to question 9 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013. The answers from PTAs were inconclusive on the matter; see answers to question 12 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

18 See for example M.5855 – *DB/Arriva,* recital 27 in relation to public bus services in Denmark.

19 See answers to question 20 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

20 See answers to question 16 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

(32) Concerning the market for commercial long-distance bus services, the Commission has in past decisions (including in relation to international commercial long-distance bus services)[21] adopted an "origin and destination" approach and assessed individual point-to-point routes.

(33) The Commission considers that the replies to the market investigation confirmed this approach.[22]

(34) Given that the point-to-point approach has been used by the Commission in similar cases in the past and given that competitors in the market have confirmed its appropriateness in the present case, the Commission concludes that the geographic scope of the markets for the provision of commercial long-distance bus services should be assessed at the "origin to destination" level.

3.2.3. Competitive assessment

3.2.3.1. Concessionary bus services

(35) The Notifying Party explains that – even though the PTAs have the ability and are encouraged to organise tenders – competitive tenders still represent the exception and that the vast majority of routes are directly awarded without competitive tendering.

(36) The Notifying Party expect that, since the existing concessions are in general valid until between 2016 and 2019, there will be only a gradual change in the competitive structure of the Czech bus sector following the entry into force of Regulation 1370/2007.[23]

(37) The Notifying Party explains that most contracts awarded before December 2009 were granted on a "net contract" basis which means that the bus operators have the right to keep fare revenues and bear the relevant cost and revenue risk.[24] The majority of the new tenders are on a "gross contract" basis according to the Notifying Party. In these cases, the service provider is remunerated by the PTA for providing the service, with the PTA receiving all fare revenues and assuming the revenue risk. The use of gross cost contracts reduces the risks incurred by private operators. The PTAs are responsible for setting fares, time tables and setting quality of service. Quality criteria are part of the contract, which cover bus specification, roles and responsibilities, penalties etc.

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21 See M.5741 – *CDC/Veolia Environnement/Transdev/Veolia Transport*, recital 16 to 19 in relation to long-distance bus services in France.

22 See answers to question 11 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013. The answers from PTAs were inconclusive on the matter; see answers to question 14 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

23 The Notifying Party submits that as of 3 December 2009, Regulation 1370/2007 is directly applicable in the Czech Republic and thus, PTAs must act in compliance with the Regulation. On 1 July 2010, Regulation 1370/2007 was implemented by the national act no. 194/2010 Coll., on public services in passenger transport (the Public Services Act). In addition, public service contracts for road transport are also governed by the Czech Road Act (the Road Act); Form CO, paragraph 136.

24 Under a net contract, the mechanism for the remuneration of bus operators consists of two elements: (i) a framework agreement with a duration of four to eight years; and (ii) a financing contract which is negotiated on a yearly basis; Form CO, paragraph 149.

(38) The responses to the market investigation largely confirmed the Notifying Party's assertions. Several questioned PTAs directly award their contracts, some acknowledged that public bus services will mandatorily have to be procured by use of tender as of 2019, others said they used tenders already now.[25] A majority of competitors confirmed that PTAs determined their fares, timetables or frequencies and set the quality of the service.[26]

(39) The Commission therefore considers that competition for the award of public bus services takes place in a changing market environment. While there is still the possibility to award contracts to bus operators directly, the use of public tendering is increasing. In concessionary bus services, bus operators have little influence on main elements of competition like fares, frequencies or quality of service.

3.2.3.2.Concessionary bus services in the Czech Republic at national level

(40) Most bus routes in the Czech Republic are currently operated by companies which were formerly part of the state-owned incumbent ČSAD. Following the proposed transaction, the merged entity would be the biggest private bus operator for concessionary services in the Czech Republic.

(41) However, according to the Notifying Party's estimates, at national level the merged entity's combined market share with respect to concessionary bus services would remain below [10-20]% (both in terms of number of buses and in terms of revenues). At national level, there would therefore not be an affected market. Furthermore, given that DB currently has an estimated market share of below [0-5]%, the proposed transaction would only result only in a very small increment. Table 1 provides an overview of the respective market shares.

Table 1: Czech Republic – concessionary bus services estimated market shares at the national level 2011

Company	*Revenue (in mio. Euros)*	*% by revenue*	*Number of buses*	*% by buses*
DB	[…]	[0-5]%	[…]	[0-5]%
Veolia	[…]	[5-10]%	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**
Z-Group	[…]	[0-5[%	[…]	[5-10]%
ICOM	[…]	[0-5]%	[…]	[5-10]%
CIDEM	[…]	[0-5]%	[…]	[0-5]%

25 See answers to question 2 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

26 See answers to question 15 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

Bus Line (Former Semily)	[…]	[0-5]%	[…]	[0-5]%
Other private (all below 5% indivually)	[…]	[40-50]%	[...]	[40-50]%
Other municipal (all below 5% indivually)	[…]	[30-40]%	[…]	[20-30]%
Total	[…]	100%	[…]	100%

Source: Commission's own calculations based on market investigation and Form CO, Table 4 (the Notifying Party submits that data for 2012 are not yet available)

(42) The Notifying Party moreover points out that the Czech bus market for concessionary services is highly fragmented with approximately 250 operators. It argues that there are many other credible bidders for the award of concessions through competitive tenders. The Notifying Party also claims that barriers to entry and expansion are low, and that PTAs exert significant buyer power.

(43) The Commission's considers that the replies to the market investigation confirmed that while the merged entity would become the largest operator in the Czech market, its overall market share will be rather low. In addition, there is a significant number of medium-sized or smaller competitors which are credible bidders. During the market investigation, no competitor or PTA raised tangible competition concerns. Most PTAs that expressed an opinion said that the transaction would have no impact.[27] Likewise, most competitors stated that the transaction would have no effects on their businesses.[28]

(44) Given that the PTAs are the only purchasers of public service contracts for concessionary bus lines, the Commission further considers that PTAs wield significant buyer power. In view of the fact that most responding competitors stated they would consider competing for concessions in whichever city or *Kraj* in the Czech Republic and that requirements for concessionary bus operators within the Czech Republic are not fundamentally different from PTA to PTA, the Commission finds that barriers to expansion are rather low.

(45) On the basis of the above the Commission concludes that the proposed transaction does not raise serious doubts if the relevant market for the award of concessionary bus services were considered to be national.

3.2.3.3. Concessionary bus services in the Czech Regions (regional level)

(46) The Parties' activities overlap in three regions, namely the region of Prague, *Stredocesky Kraj* and *Kralovehradecky Kraj.* Due to the lack of availability of public data, the Notifying Party was not able to provide market shares for these three regions.

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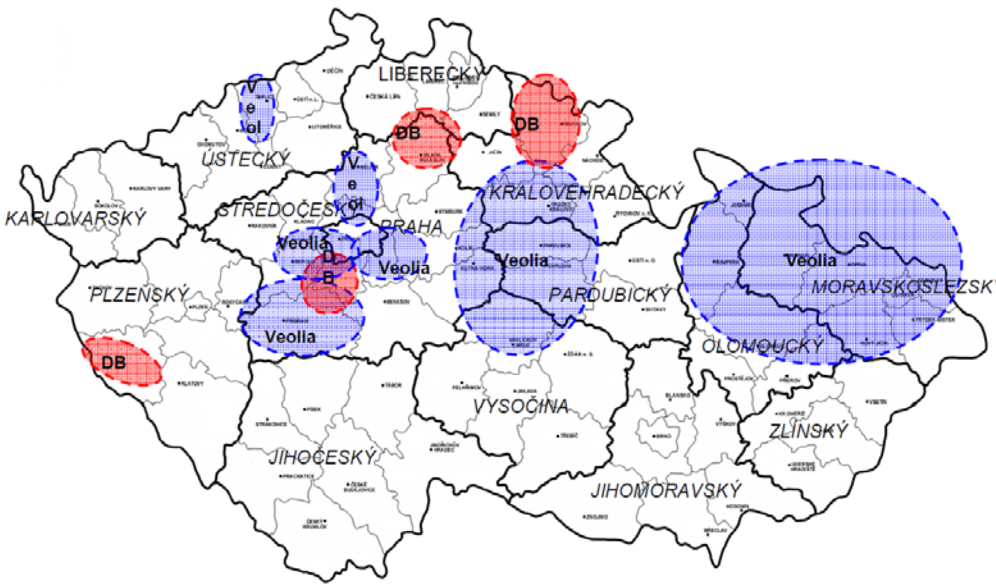
27 See answers to question 21 of Q2 – Questionnaire to Public Transport Authorities – Czech Republic of 26 March 2013.

28 See answers to question 25 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

Figure 1: Regions in the Czech Republic in which the Parties are active



Source: Form CO, Figure 5

(47) In the region of Prague and in *Stredocescky Kraj,* the Parties' activities overlap only on one route, namely Prague–Pribram. The replies to the market investigation confirmed the Notifying Party's claim that the fares, the frequencies and the timetables were set by the PTAs.[29] This excludes the possibility for the Parties to increase their prices or significantly change the service. The parties also provided names of other credible bidders on a regional level. The credibility of these competitors was confirmed by the replies to the market investigation.[30] The replies to the market investigation also revealed that the competitors from other regions exert a competitive constraint in the market for the award of concessions in the region of Prague and in *Stredocescky Kraj*.[31]

(48) In *Kralovehradecky Kraj,* the Parties' activities overlap on several lines. The Notifying Party claims that the fares, the frequencies and the timetables are set by the PTAs, so that the merged entity cannot raise its prices nor significantly change its service post-transaction. The replies to the market investigation confirmed this aspect.[32] The parties also provided names of other credible bidders on a regional level. The credibility of these competitors was confirmed by the replies to the market investigation.[33] The replies to the market investigation also revealed that the competi-

29 See answers from *Stredocescky Kraj* and Prague (confidential) to question 19 of Q2 – Questionnaire to Public Transport Authorities (PTAs) – Czech Republic of 26 March 2013.

30 See answers from Stredocescky Kraj and Prague (confidential) to question 19 of Q2 – Questionnaire to Public Transport Authorities (PTAs) – Czech Republic of 26 March 2013.

31 See answers to question 20 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

32 See answers to question 15 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

33 See answers to question 12 of Q2 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

tors from other regions exert a competitive constraint in the market for the award of concessions in *Kralovehradecky Kraj*.[34]

(49) In light of the above, the Commission concludes that the proposed transaction does not raise serious concerns if the relevant market for the award of concessionary bus services were considered to be regional.

3.2.3.4. Commercial long-distance bus services

(50) Contrary to concessionary bus services, the Parties' long-distance bus services are operated commercially, that is without a concession from a PTA and at the Parties' own risk. Competition here takes place *in* the market and not *for* the award of concessions.

(51) The Parties' long distance bus services overlap on a limited number of segments in their network, namely on the following routes: Hradec Kralove–Pardubice, Pardubice–Hradec Kralove, Hradec Kralove–Prague, Svitavy–Brno, Brno–Svitavy.

(52) The Notifying Party claims that all these segments are also served by competitors and it provides frequency data which show that on these routes, the frequencies offered by the merged entity are at the most no more than one third of the total number of frequencies offered on the routes. The control sample collected during the market investigation largely confirmed these claims.[35] The table below depicts the share of frequencies offered by the merged entity on each of the overlapping routes.

Table 2: Parties' share of frequencies on CZ commercial long-distance bus lines

Overlapping segment	*Share of frequencies offered by the merged entity*
Hradec Kralove–Pardubice	[30-40]%
Pardubice–Hradec Kralove	[10-20]%
Hradec Kralove–Prague	[5-10]%
Svitavy–Brno	[20-30]%
Brno–Svitavy	[20-30]%

Source: Commission's own calculations based on Form CO and results of the market investigation

(53) In the replies to the market investigation respondents indicated that starting up a scheduled commercial long-distance service is not considered difficult by competi-

34 See answers to question 20 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

35 See answers to question 21 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013.

tors and PTAs alike,[36] which supports the assessment that on each of the overlapping segments the merged entity will face a credible competitive constraint.

(54) On the basis of the information provided by the Notifying Party, the results of the market investigation and the Commission's own assessment, the Commission therefore concludes that the proposed transaction does not raise serious doubts as regards the market for provision of commercial long-distance services.

3.3. Slovakia

(55) In Slovakia, both Parties are active on the passenger bus market (concessionary bus services and commercial bus services).

3.3.1. Relevant product and geographic markets

(56) For the definition of the relevant product and geographic markets, the Notifying Party follows the same approach as for the Czech Republic. In particular, it considers the relevant markets to be (i) the market for the award of contracts to operate public transport bus services, which they submit is national, covering all of Slovakia; and (ii) the market for the provision of commercial long-distance services by bus, for which they propose a point-to-point approach. For a more detailed analysis, see paragraphs (16) and following above.

(57) The responses to the market investigation largely confirmed the relevance of the product and geographic market definitions as proposed by the Notifying Party. A large majority of competitors considered that commercial long-distance bus services differ from concessionary bus services.[37] A large majority of competitors confirmed that (scheduled) commercial long-distance bus services do not belong to the same market as unscheduled or charter long-distance bus services.[38] Equally competitors unanimously confirmed that the "origin and destination" approach whereby each individual point-to-point route is considered to be a separate market is appropriate for commercial long-distance services by bus.[39]

(58) Concerning the market to operate public transport bus services, competitors confirmed that competition took place *for* the market and not *in* the market.[40] A majority of competitors claimed to have largely no say with regard to the setting of fares,

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36 See answers too Question 24 of Q1 – Questionnaire to Competitors – Czech Republic of 26 March 2013 and answers to question 20 of Q2 – Questionnaire to Public Transport Authorities (PTAs) – Czech Republic of 26 March 2013.

37 See answers to question 9 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013; the replies from PTAs were inconclusive; see answers to question 12 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

38 See answers to question 10 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013; The replies from the PTAs proved to be inconclusive; see answers to question 13 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

39 See answers to question 11 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013; the replies from PTAs were inconclusive; see answers to question 14 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

40 See answers to question 4 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013. The replies from the PTAs proved to be inconclusive; see answers to question 7 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

timetables and frequencies, or the quality of services and material conditions (e.g. infrastructure and buses).[41]

(59) Regarding the *geographic scope* of the market, a majority of competitors and PTAs argued that PTAs did not have different requirements regarding the award of regional or municipal bus services[42] and that concessionary regional and municipal bus lines could in principle be served by the same type of bus operator.[43] While a majority of PTAs considered that bus operators active in a region or municipality somewhere in Slovakia can operate concessionary bus services in other regions or municipalities of the country,[44] the opinions among competitors were inconclusive.[45] A slight majority of competitors considered that PTAs in general do not apply different procedures or set different award criteria for contracts,[46] while the answers from PTAs were indecisive on the matter.[47]

(60) The Commission considers that competition takes place at the level of the bidding for the award of contracts concerning concessionary bus services in Slovakia and not in the market itself given that bus operators have no say over the main dimensions of competition in the market such as fares, frequencies or quality of service once the contract is awarded. As regards the market for the provision of commercial long-distance services by bus, the Commission considers that competition takes place in the market since bus operators can set fares, frequencies or the quality of service themselves.

(61) The Commission therefore concludes that for the purpose of the assessment of the present case the relevant markets are (i) the market for the award of contracts to operate public transport bus services in municipalities and regions and (ii) the market for the provision of commercial long-distance services by bus.

(62) With regard to the *geographic scope* of the market for the award of contracts to operate public transport bus services it can be left open whether it is national or regional as no competition concerns arise on either level. The geographic scope of the market for the provision of commercial long-distance services by bus follows the origin and destination approach.

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41 See answers to question 15 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

42 See answers to question 5 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013 and question 8 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

43 See answers to question 6 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013 and question 9 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

44 See answers to question 10 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

45 See answers to question 7 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

46 See answers to question 8 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

47 See answers to question 11 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

3.3.2. Competitive assessment

3.3.2.1.Concessionary bus services

(63) As is the case in the Czech Republic, concessions for public bus services in Slovakia are awarded by the relevant PTAs, namely the regions *(Krajs)* and the municipalities.

(64) The Notifying Party explains that concessions for public bus services in Slovakia currently remain largely based on directly awarded contracts. The award of passenger bus services in cities is still to a large extent closed, with to date only approximately 5% having been competitively tendered.[48] For regional passenger bus services, competitive tendering is more common and in 2011 several tenders have already taken place.

(65) The Notifying Party submits that a change in the competitive structure of the Slovak market is expected to take place as a consequence of the entry into force of Regulation 1370/2007.[49] It further holds that, since a large majority of the directly awarded contracts had been renewed just before Regulation 1370/2007 came into force and only come to an end between 2015 and 2017, the number of tenders coming up in the next years will remain low.

(66) The Notifying Party points out that the majority of directly awarded contracts are granted on a gross-cost basis, meaning that the service provider is remunerated by the PTA for providing the service, with the PTA receiving all fare revenues and assuming the revenue risk. The PTAs are responsible for setting fares, timetables and quality of service.

(67) The Commission considers that the market investigation largely confirmed these assertions.[50]

3.3.2.2.Concessionary bus services in Slovakia at national level

(68) The Notifying Party explains that bus services in Slovakia are mainly operated by 17 regional bus companies created when the former national operator SAD was split up and partially privatised. DB and Veolia currently have estimated market shares (in terms of number of buses and in terms of revenues) of comparable size at the national level in Slovakia (Veolia around [5-10]% and DB around [5-10]%). Following the proposed transaction, the merged entity would be the biggest bus operator for concessionary services in Slovakia (both in terms of revenues and in terms of number of buses). However, at national level, the merged entity's estimated combined market share would remain below [10-20]%. Table 3 provides an overview of the competitive situation at national level.

Table 3: Concessionary bus services estimated market shares at the national level in SK (2011)

Company	*Revenue (€ m)*	*% (by revenue)*	*No. buses*	*% (by buses)*

48 Form CO, para. 425.

49 As of 3 December 2009, Regulation 1370/2007 is directly applicable in Slovakia. The relevant law under which bus services are to be tendered is the Slovak Transportation Act No. 56/2012.

50 See answers to question 15 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

DB	[…]	[5-10]%	[…]	[10-20]%
Veolia	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**
Municipal transport Bratislava	[…]	[10-20]%	[…]	[5-10]%
SAD Zvolen	[…]	[5-10]%	[…]	[5-10]%
SAD Trenčín	[…]	[5-10]%	[…]	[5-10]%
Municipal transport Košice	[…]	[5-10]%	[…]	[0-5]%
SAD Žilina	[…]	[5-10]%	[…]	[5-10]%
Eurobus	[…]	[5-10]%	[…]	[5-10]%
SAD Trnava	[…]	[0-5]%	[…]	[5-10]%
Slovak Lines Bratislava	[…]	[0-5]%	[…]	[0-5]%
Other private (individually below 5%)	[…]	[0-5]%	[…]	[0-5]%
Other municipal (individually below 5%)	[…]	[20-30]%	[…]	[30-40]%
Total	[…]	100%	[…]	100%

Source: Commission's own calculations based on market investigation and Form CO, para. 441 (the Notifying Party submits that data for 2012 are not yet available)

(69) The Notifying Party moreover submits that the Slovak market for concessionary bus services is fragmented with many operators, at least three of which are larger than Veolia alone. It indicates that the competitive landscape in Slovakia will not be affected by the proposed transaction in the mid-term due to directly awarded contracts on a gross-cost basis with a validity period until 2015 and longer.

(70) The Notifying Party also claims that there is no competition in the market that could be affected by the proposed transaction. It argues that the introduction of competitive tendering on a significant scale from 2015 onwards will open the market for a large number of additional competitors and that their own presence on the market will not grant them any advantage in view of increasing competitive tendering.

(71) The replies to the market investigation largely confirmed the assertions of the Notifying Party. No competitor or PTA raised any substantial competition concerns

brought about by the present transaction with regard to the market of concessionary bus services in Slovakia at national level.[51]

(72) In light of the relatively low market shares of the Parties on the national level and the existence of several credible competitors, the Commission concludes that the proposed transaction will not give rise to serious doubts on the market of concessionary bus services in Slovakia at national level.

3.3.2.3.Concessionary bus services in the Slovak regions (regional level)

(73) The Parties' activities overlap in one region, *Nitriansky Kraj*. Due to the lack of availability of public data, the Notifying Party was not able to provide market shares for this region. It argues however that due to the gross cost business model applied by the PTAs and non-existing price competition on the bus passenger market, the competitive landscape in the region will remain unaffected until 2015 when the bus services will be tendered on a large scale. It further argues that in future tenders, the merged entity will face significant constraints from competitors, that barriers to entry are low and that the PTAs have significant buyer power.

(74) The replies to the market investigation largely confirmed the Notifying Party's considerations. No competitor raised any substantial competition concerns brought about by the present transaction with regard to the market of concessionary bus services in the Slovak regions.[52] PTAs either expected the effects of the transaction to be insignificant or positive for competition in general.[53]

(75) Considering that the Parties' routes are complementary rather than overlapping within *Nitriansky Kraj*,[54] the effects of the transaction will be even more limited.[55] Since the PTAs in *Nitriansky Kraj* are responsible for setting fares and receive all fare revenues under the gross-cost model applied in the region, the merged entity can thus directly control only its costs and there is no room for price competition in the passenger markets.

(76) In light of the information provided by the Notifying Party, the results of the market investigation and the Commission's own assessment, the Commission therefore concludes that the proposed transaction will not give rise to serious doubts on the market of concessionary bus services in Slovakia at the regional level.

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51 See answers to question 25 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013 and question 21 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

52 See answers to question 25 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

53 See answers to question 21 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

54 DB has been awarded contracts for the operation of city bus transport by the following PTAs: Cities of Nové Zámky, Komárno, Štúrovo, Šala, Šurany,Levice and Šahy. Veolia has been awarded contracts for the provision of city bus transport by the following four PTAs: Cities of Nitra, Zlaté Moravce, Topoľčany, Vráble; Form CO, para. 480 and following.

55 For completeness it must however be mentioned that the Parties do operate eight lines altogether that run partly into their respective territories (only one of these lines overlaps); Form CO, para. 484 and following. This does however not contradict the overall character of complementarity of the Parties' activities.

3.3.2.4. Commercial long-distance bus services

(77) Contrary to the concessionary bus services, the Parties' long-distance bus services are operated commercially, which means without a concession by a PTA and at the Parties' own risk. Competition here takes place *in* the market and not *for* the award of concessions.

(78) The Parties' long distance bus services overlap only on two segments of the connection between Nitra and Bratislava. The Notifying Party claims that these segments are also served by competitors. It provides frequency data which show that on all overlapping segments, the frequencies offered by the merged entity are less than 25% of the total number of frequencies offered on the route. It also argues that in each case, passengers can resort to alternative modes of transport such as rail.

(79) The replies to the market investigation largely confirmed the Notifying Party's claims. Of the responding competitors at least two said that they considered themselves credible competitors to the Parties with regard to the overlap on the two segments of the connection between Nitra and Bratislava.[56]

Table 4: Share of frequencies offered by the merged entity on SK commercial long-distance bus lines

Overlapping segment	*Share of frequencies offered by the merged entity*
Nitra–Bratislava	[20-30]%
Bratislava–Nitra	[20-30]%

Source: Commission's own calculations based on Form CO and results of the market investigation

(80) A majority of bus operators and PTAs considered it difficult to start up scheduled commercial long-distance bus services in Slovakia.[57] The reasons given for this were that it was difficult to find slots on the timetable because frequencies were already quite dense, that there were already well-known bus operators established in the market or that the required quality of rolling stock was rather high whereas the price level was low.

(81) However, no competitor or PTA raised any substantial competition concerns brought about by the present transaction with regard to the market of long-distance bus services.[58]

(82) Given the relatively low marked shares of the merged entity and the presence of a number of credible competitors on the connection between Nitra and Bratislava, the Commission considers that the proposed transaction will not give rise to serious doubts on the market for commercial long-distance bus services in Slovakia.

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56 See answers to question 22 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013.

57 See answers to question 24 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013 and question 20 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

58 See answers to question 25 of Q3 – Questionnaire to Competitors – Slovakia of 26 March 2013 and question 21 of Q4 - Questionnaire to Public Transport Authorities (PTAs) – Slovakia of 26 March 2013.

3.4. Poland

(83) In Poland, both Parties are active albeit with different activities: DB offers only rail services, whereas Veolia only offers bus services (concessionary and commercial) – therefore there is no overlap on the market for the award of concessionary bus services and the market for the award of concessionary rail services – these markets will therefore not be assessed individually. The Parties' activities overlap geographically to a limited extent.

3.4.1. Regulatory frameworks

3.4.1.1. Regulatory framework for bus services in Poland

(84) A distinction must be made between *commercial regional long-distance or inter-city transport services,* on the one hand, and *city transport,* on the other hand.

(85) *Commercial regional long-distance or inter-city transport services* are fully open to competition and are provided on a commercial basis, meaning that the operator is at full liberty to determine the tariffs.

(86) As regards *city transport* however, contracts are awarded for a particular route in a city or for a particular network of lines within a city. Contracts are usually gross contracts (paid per km) and PTAs retain the ability to impose financial obligations and constraints on operators such as a renewal of the fleet of buses.

3.4.1.2. Regulatory framework for rail services in Poland

(87) The Voivodeships (provinces), and in particular the Marshall Office of each Voivodeship, are the PTAs in charge of procuring the concessionary rail services in Poland.

(88) Concessionary rail contracts are typically net-cost contracts whereby the operator is free to set its own tariff. Frequencies are normally imposed by the authority, but the operator is at liberty to offer more frequent services (these frequencies would be offered commercially, meaning without a subsidy). In some instances, PTAs nevertheless set the ticket price.

3.4.2. Relevant product and geographic markets

3.4.2.1. The view of the Notifying Party

(89) The Notifying Party submits that bus and rail services are not part of the same market.

(90) The Notifying Party is not aware of any Commission decision dealing with competition between bus and rail in Poland. The Notifying Party is also not aware of a decision of the Polish competition authority specifically dealing with the definition of such a market.[59]

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[59] Form CO, para. 386.

3.4.2.2. The Commission's assessment

(91) The potential competition between bus and rail was addressed in relation to the UK in the Commission's decision in *DB/Arriva*.[60] The Commission left open the precise market definition, as the transaction was not raising serious doubts under any alternative market definition. Nevertheless, the geographic overlaps were addressed through a general analysis of "the market on flows where the activities of the Parties overlap".

(92) The market investigation was inconclusive as to whether *intra*-city bus services and train services were substitutable to each other.[61] A majority of respondents however considered that intercity bus services and train services might be substitutes to each other.[62]

(93) While PTAs generally considered DB's and Veolia's services to be valid alternatives to each other in areas where they overlap,[63] the *Kujawsko-Pomorskie* Marshall Office explained that *"in practice, train and bus routes never overlap 100%. In big cities (like Toruń), buses stop in many different places which gives the opportunity for passengers to get where they want without having to change. Trains only get to train stations, which entices the passengers to take another means of transportation to reach their final destination. In such cases, even though the train ticket is cheaper than the bus ticket, the whole trip can at the end be cheaper and faster by bus. Also, even on the same route, the bus connection may prolong the train route making it easier to reach places far away from the train station".*

(94) Competitors indicated that an operator offering both rail and bus services might possibly be in an advantageous position as compared to individual bus or individual rail operators with respect to the winning of future competitive tenders organised for the award of bus concessions.[64]

(95) Given however that the notified transaction will not give rise to any competition concerns, the question of whether bus and rail services are substitutes to each other as well as the possible geographic delineations can be left open.

3.4.3. Competitive assessment

(96) Since there is no overlap on the market for the award of concessionary bus services and the market for the award of concessionary rail services, these markets will not be assessed individually.[65] In the following the Commission assesses first the effects of the transaction for a hypothetical combined market for the award of rail and bus concessions – competition *for* the market (section 3.4.3.1) – and second the effects of the transaction on a hypothetical combined market of rail and bus flows where the activities of the parties overlap – competition *in* the market (section 3.4.3.2).

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60 See case COMP/M.5855 – *DB/Arriva,* recitals 67 to 69.

61 See answers to question 7 and 8 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

62 See answers to question 9 and 10 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

63 See answers to question 8 and 9 of Q6 – Questionnaire to Public Transport Authorities (PTAs) – Poland of 27 March 2013.

64 See answers to question 17 and 27 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

65 See already recital (83).

3.4.3.1. Competition *for* the market – award of rail and bus concessions

(97) At national level, Veolia is a small bus operator, with a market share of approximately [0-5]%. Also DB is a small rail operator at national level, with a market share of approximately [0-5]%. At national level, the proposed transaction therefore would in any event not raise competition concerns.

(98) At regional level, the Parties' activities mainly overlap on routes in the *Kujawsko-Pomorskie* region. There is also a limited overlap with regard to two towns that are located outside of this region: one in Chojnice in the *Pomorskie* region and the other in Unislaw in the Wielkopolska *(Wielkopolskie)* region. However, whenever there is an overlap with regard to either Chojnice or Unisław, the town which is connected to these two cities is located in Kujawsko-Pomorskie.

(99) With regard to the PTAs in relation to DB's rail services, contracts have been awarded by the respective Voivodeships themselves, namely by the Voivodeships of *Pomorskie* and *Kujawsko-Pomorskie* at Voivodeship level.

(100) In relation to Veolia's bus services in *Kujawsko-pomorskie* and *Pomorskie voivodeships,* contracts have been awarded by the administrative unit of the respective city (as for city transport) or by the respective municipality *(gmina).* As regards Veolia's bus service, there are contracts for city transport signed with the City of Grudziądz and two contracts for school transport signed with the *gmina* of Tczew.[66]

(101) Even though both Parties are active in the Voivodeships of *Pomorskie* and *Kujawsko-Pomorskie* in Poland (DB offering rail and Veolia offering bus services in this region), the PTAs organising the tender are not the same and are looking for a different service. The Notifying Party contends that there are numerous competitors for both rail and bus concessions.[67] The replies of competitors and PTAs in the market investigation did not point to any significant competition concerns,

(102) The Commission considers that even if the merged entity had an advantage for the award of bus or rail concessions by the fact that they offer both rail and bus services, these two services constitute no close competitors, since they compete for distinct concessions (rail concessions, intra-city or inter-city concessions), awarded by distinct PTAs (cities or Voivodeships).

(103) In light of the information provided by the Notifying Party, the results of the market investigation and the Commission's own assessment, the proposed transaction does therefore not raise serious doubts with regard to the competition *for* the market concerning the award of rail and bus concessions.

3.4.3.2. Competition *in* the market – Rail and bus flows with overlapping activities of the parties

(104) The Parties' activities (namely Veolia's bus services and DB's rail services) overlap on a number of routes in the *Kujawsko-Pomorskie* region and on two routes connect-

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66 Form CO, para. 382.

67 Form CO, para. 323 and 358.

ing a town located outside this region with the region. The Notifying Party submits that there will be no impact on competition.[68]

(105) In particular, with respect to the *intra-city overlaps,* the Notifying Party argues that DB cannot set fares for its rail services since the ticket price is set by the Marshal Office of the *Pomorskie* and *Kujawsko-Pomorskie* Voivodeship. As regards Veolia's concessionary bus services, these are awarded on a gross-cost basis and ticket prices and time tables/frequencies are set by the PTAs.[69] The contracts are also limited in the total number of km *per annum* which can generally not be changed.

(106) The *Kujawsko-Pomorskie* Marshall Office confirmed during the market investigation that the Voivodeship regulated the operation of train services with respect to price in this region. It also provided indications on the requirements the Voivodeship sets for rail operators.[70] With respect to concessionary bus services, the market investigation indicated that the fares as well as the schedules were determined by the relevant PTA.[71]

(107) With respect to the *intercity overlaps,* Veolia operates on a number of commercial lines in the *Pomorskie* and *Kujawsko-Pomorskie* Voivodeship which overlap with DB's rail network.

(108) However, the Notifying Party argues that on the entire territory of the Voivodeship of *Kujawsko-Pomorskie,* including all potential overlaps with Veolia, the Marshall Office of the Voivodeship sets the fare prices for DB. DB cannot set prices without approval by the Marshall Office.[72]

(109) The Notifying Party also explains that train fares are much cheaper than bus fares. According to the Notifying Party, the merged entity would therefore have no incentive to raise bus ticket prices to make passengers switching away from bus and towards rail.[73] Moreover, according to the Notifying Party, customers do not switch in relevant numbers from using bus services in *Kujawsko Pomorskie* to DB's rail services. Rather, the Notifying Party argues, customer preferences for a specific mode of transport are largely set irrespective of price – they either use the (much more expensive) buses or the (cheaper) trains, depending on where they want to get from where, when and how. In this context, it should also be noted that bus stations are frequently located in the centre of a city, while train stations are more frequently located outside of the city centre, thus making bus the mode of transport of choice, if a passenger wants to reach the centre of a city.[74]

(110) The replies to the market investigation largely confirmed the Notifying Party's assertions.[75] Concerning barriers to entry, competitors stated that it was not difficult to set

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68 Form CO, para. 388 and following.

69 Veolia can suggest some changes to the official timetables but requires the PTA's approval before doing so. (See paragraph 29 of the Responses of 19 March 2013 to RFI of 7 March 2013)

70 See answers to question 10 of Q6 – Questionnaire to Public Transport Authorities (PTAs) – Poland of 27 March 2013.

71 See answers to question 15 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013 and to question 3 of Q6 – Questionnaire to Public Transport Authorities (PTAs) – Poland of 27 March 2013.

72 See the Notifying Party's reply to the RFI of 20 March 2013, para. 8.

73 See the Notifying Party's reply to the RFI of 20 March 2013, para. 14.

74 See the Notifying Party's reply to the RFI of 20 March 2013, para. 14.

75 See answers to question 3 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

up scheduled commercial bus services in Poland and in the *Kujawsko-Pomorskie* Voivodeship in particular.[76] Moreover, competitors who so far do not offer commercial services in the *Kujawsko-Pomorskie* Voivodeship unanimously responded they would consider doing so in the future.[77] Furthermore, the *Kujawsko-Pomorskie* Marshall Office stated that the merged entity would have to apply bus fares that are substantially more expensive than railway fares.[78]

(111) The Commission considers that not only will there be sufficient potential competition due to low barriers to entry, but also that the Parties will not be in a position to raise prices profitably following the transaction.

(112) On the one hand, the Parties will not be able to change rail prices in the *Kujawsko-Pomorskie* region because these are set by the relevant PTA. On the other hand, it is highly unlikely that raising bus prices would entice passengers to switch away from bus to train services on those overlap flows. Rather, customer would switch to other bus operators already in the market. After all, the bus routes served by Veolia are not congruent with the rail routes served by DB. Given that starting operations only requires obtaining a licence, there is also the threat of new entry.

(113) Therefore, in light of the above and of the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as regards a potential market on rail and bus flows where the activities of the Parties overlap.

4. CONCLUSION

(114) 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 functioning of 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

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76 See answers to question 21 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

77 See answers to question 20 of Q5 – Questionnaire to Competitors – Poland of 2 April 2013.

78 See answers to question 10 of Q6 – Questionnaire to Public Transport Authorities (PTAs) – Poland of 27 March 2013.