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*Case No IV/M.729 -
GEC Alsthom / Tarmac
/ Central IMU*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 18/04/1996

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Brussels, 18.04.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M.729 - GEC Alsthom/Tarmac/Central IMU

Notification of 14 March 1996 pursuant to Article 4 of Council Regulation
No 4064/89

1. On 14 March 1996 the Commission received a notification by which GEC Alsthom Ltd and Tarmac Construction Ltd acquire within the meaning of Article 3(1)b of the Council Regulation joint control of Central Infrastructure Maintenance Company Ltd.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. GEC Alsthom Ltd (GEC Alsthom) is wholly owned subsidiary of GEC Alsthom NV and acts as that company's UK holding company. GEC Alsthom NV is an industrial holding company jointly owned by the General Electric Company plc and Alcatel Alsthom GCE. GEC Alsthom is primarily active in the energy and transport fields.
4. Tarmac Construction Ltd (Tarmac) is a diversified building construction company. It is a wholly owned subsidiary of Tarmac plc, a holding company with interests in construction related activities. As part of the privatisation of the British railway system Tarmac has acquired the Central Track Renewal Unit (CTRU). It also has a small trackwork unit.
5. GT Railway Maintenance Ltd (GTRM) is a company established by GEC Alsthom and Tarmac for the purpose of acquiring CIMHOCO Ltd.

6. CIMHOCO Ltd is a newly established holding company for the entire issued share capital of Central Infrastructure Maintenance Company Ltd (CIMU) which provides "live" railway infrastructure services. CIMHOCO is a wholly owned subsidiary of the British Railways Board (BRB).

II. THE OPERATION

7. The notified operation consists of the acquisition by GTRM of the entire issued share capital of CIMHOCO and hence of its subsidiary CIMU.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 million ECU. Both Tarmac and GEC Alstom have a community-wide turnover in excess of 250 million ECU, but do not achieve more than two thirds of aggregate community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

IV. JOINT CONTROL

9. The issued share capital of GTRM will be owned 51% by GEC Alstom and 49% by Tarmac.
10. The board of GTRM which will decide the general policy of the company will be made up of three directors appointed by each shareholder. The Articles of Association of GTRM ensure that at all board meetings the directors appointed by either shareholder will exercise sufficient votes to veto any proposed decision of the board.
11. Furthermore, major business decisions will require the consent of both shareholders. [...] ⁽¹⁾ GTRM is therefore jointly controlled by GEC Alstom and Tarmac.

V. ABSENCE OF COORDINATION

12. As only Tarmac is engaged in the same product markets as CIMU, that for "live" railway infrastructure services (see points below) there can be no coordination between the parents as a result of the creation of the joint venture.

VI. COMPATIBILITY WITH COMMON MARKET

A. Relevant Product Market

13. The continuing privatisation of BRB has led to a radical restructuring of its operations. As part of this process virtually all of BRB's track network and associated infrastructure was vested in Railtrack plc (Railtrack), a government owned company independent of BRB in April 1994.
14. At the same time, BRB set up British Rail Infrastructure Services (BRIS) to provide Railtrack with infrastructure maintenance, track renewal and other services under contract.

⁽¹⁾ [...] Deleted, business secrets.

15. Subsequently, BRIS was divided into thirteen units, six track renewal units (TRUs) and seven infrastructure maintenance units (IMUs). The contract between Railtrack and BRIS was disaggregated into thirty-six separate contracts which were shared amongst the IMUs and TRUs. The contracts have between three and five years to run.
16. There had not previously been any competition in the provision of infrastructure maintenance services to the railway sector. All the necessary services were provided by the BRB.
17. The work carried out by IMUs and TRUs falls into two distinct classes, the provision of "live" railway services and the provision of normal maintenance.
18. The maintenance of "live" railways, that is railways upon which trains continue to operate while the work is carried out, may be distinguished from other types of major infrastructure work by the requirement for companies to have the licences, safety accreditation and permits for this type of work and a skilled workforce capable of carrying out this specialised work.
19. There appears to be only a difference of degree between the IMUs and the TRUs. IMUs carry out some track replacement, TRUs undertake some infrastructure maintenance activities. Furthermore, the expertise permits, licences etc. are essentially the same for the two types of operation. The relevant product market is therefore the provision of all "live" railway infrastructure services.

B. Geographic Market

20. The conditions of competition in Great Britain, where the various IMUs and TRUs will operate are not replicated elsewhere, as the operation of railways in other Member States is carried out by single entities which own the track and rolling stock and carry out all the necessary maintenance.
21. Within Great Britain (different conditions apply in Northern Ireland) the market conditions are homogenous. The work required from the IMUs and TRUs is essentially the same wherever it is located. The relevant geographic market for "live" railway maintenance services is therefore Great Britain.
22. In relation to the other work carried out by the IMUs and TRUs it is not necessary to exactly define the geographic market since if no problems arise on the United Kingdom market, where competition conditions are homogenous, there will be no competition concerns on any larger market.

C. Assessment

23. Any assessment of the market shares of Tarmac and CIMU is made difficult by the fact that these services have until very recently been carried out by the BRB which made no distinction in its statistics between work carried out on "live" railways and other work.
24. This market is estimated at between £780 million and £1500 million. The higher figure represents BRB's total expenditure on rail infrastructure services. The lower figure is that taken up in the BRB contracts for infrastructure services. It does not take into consideration "live" railway infrastructure services supplied to London Underground, Eurotunnel and other light railways and metro systems. It is not necessary to include

these other consumers since if there are no competition problems on the narrowly defined total market value there will be no problems if a larger market is considered.

25. The total turnover of CIMU for the year ended March 1995 was some £162.6 million of which £119 related to "live" railway infrastructure services. The "live" railway infrastructure services turnover of Tarmac's operations were, CTRU £40 million and its trackwork unit £16 million. The total turnover was about £175 million which represents approximately 22.4% of the lowest estimate of the total market for these services.
26. The group will face competition from other newly privatised IMUs and TRUs including at least four with more than 10% of the market. Furthermore these market shares are artificial in the sense that for the duration of the contracts (3 to 5 years) they will be fixed, thereafter there will be free competition for new contracts. The operation will not therefore create a dominant position.
27. The other infrastructure maintenance carried out by the CIMU forms an extremely small part of the UK non-housing construction market. Taken together with Tarmac' activities in this field the combined market share will be less than 5%. The operation will not create or strengthen a dominant position in the market for these services (see points 28 and 29 below).
28. Both Tarmac and GEC Alstom provide goods which are used by CIMU in the provision of services to Railtrack. Tarmac provides concrete sleepers and cable troughs, GEC Alstom provides signalling equipment. However these goods make up only a small proportion of the sales of both the supplying company and of CIMU's sales.
29. Tarmac is an important supplier of both concrete sleepers and concrete cable troughs in the United Kingdom. Both these products are used by companies providing infrastructure services for railways. However Tarmac's total turnover from these products is only £4.4 million. As this represents only a small (less than 0.5%) proportion of the overall turnover of the railway infrastructure operations (at least £1,500 million) and because Tarmac will have to sell a large part of its output of these products to the other IMUs and TRUs the operation will not create or strengthen a dominant position in the supply of these goods by vertical integration.
30. Similarly GEC Alstom and a subsidiary of Alcatel Alstom CGE are important suppliers of signalling equipment to the UK market. However only a very limited proportion of CIMU's turnover is derived from signalling work. In the case of maintenance rather than new equipment the supplier is already defined by the original equipment supplier which is outside CIMU's control. CIMU anticipates that the supply and installation of new signalling equipment will account for just over 1% of its turnover. These sales represent [...] ⁽²⁾ of GEC Alstom and Alcatel Alstom CGE's United Kingdom sales.

⁽²⁾ [...] Deleted, business secrets.

D. Contracts

31. CIMU, like other infrastructure maintenance and track replacement companies, was given a number of pre-existing contracts with Railtrack. Without these contracts CIMU would have no business and indeed without some assurance of future work the privatisation of the maintenance and track renewal operations of BRB would not have been possible. Furthermore Railtrack had to ensure the safe and orderly transition from a closed procurement market to a fully open and competitive one.
32. The contracts which are for a limited duration (three to five years) cover the provision of the necessary infrastructure maintenance services to specific parts of the Railtrack network. When they expire the work will be put out to tender and any suitably qualified company will then be able to offer its services to Railtrack for the work in question. These contracts may therefore be regarded as an integral and essential part of the operation.
33. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,