



EUROPEAN COMMISSION
DG Competition

***Case M.8881 - BERGE /
GEFCO / JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/12/2018

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EUROPEAN COMMISSION

Brussels, 11.12.2018
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PUBLIC VERSION

To the notifying parties:

Subject: Case M.8881 - BERGÉ / GEFCO / JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 12 November 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Bergé Automotive Logistics, S.L. ("BAL") and GEFCO España, S.A. ("GEFCO España") acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly-created company that would integrate and manage the finished vehicle logistic businesses and assets of both companies in Spain. The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture (the "JV")³. BAL and GEFCO España are designated hereinafter 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 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 421, 21.11.2018, p. 15. The same concentration was already notified to the Commission on 16 October 2018, but the notification was subsequently withdrawn on 8 November 2018.

1. THE PARTIES

- (2) BAL, an indirect subsidiary of the Spanish company Bergé y Cía, S.A., is mainly dedicated to finished vehicle logistic ("FVL") services to the automotive industry in Spain.
- (3) GEFCO España is a subsidiary of the French company, GEFCO, S.A. that is ultimately controlled by the Russian state-owned rail company RZD. GEFCO España is active in the provision of logistic services, transport solutions and integrated logistics to a variety of industries, particularly in the provision of FVL services to the automotive industry in Spain.

2. THE OPERATION

- (4) The Parties signed on 7 July 2017 a Memorandum of Understanding and on 28 June 2018 an "Integration Protocol" in which they agreed to negotiate the integration and to transfer their common activities in the provision of FVL services, namely the provision of (i) vehicles logistic services, (ii) vehicles compound storage services, and (iii) workshop services to vehicles, to the JV, a Spanish special purpose vehicle company (the "Operation"). The JV will run and develop all the activities and assets transferred by the Parties.⁴

3. THE CONCENTRATION

- (5) The Operation constitutes a concentration in terms of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3.1. Joint control

- (6) The Parties will each hold 50% of the JV's share capital.⁵ The JV's board of directors will include [number] members nominated by GEFCO España and [number] by BAL.⁶ Although the budget will be adopted by the board of directors by simple majority,⁷ unanimity will be required with respect to several strategic decisions: [description of decisions]^{8-9, 10} Consequently the JV will be jointly controlled by the Parties.¹¹

3.2. Full functionality

- (7) The JV will have dedicated management, workforce and assets to run its activities.¹² It will have a long-lasting¹³ and autonomous presence in the market going beyond a specific function for the Parties¹⁴ and will maintain an arm's length commercial

⁴ Form CO, paragraphs 4-6, 50 and 112-118, Annex 1.2.

⁵ Form CO, paragraphs 49 and 71.

⁶ Form CO, paragraph 54.

⁷ Form CO, paragraph 57.

⁸ Form CO, paragraph 57 and 68.

⁹ Form CO, paragraphs 60-64 and 68.

¹⁰ Form CO, paragraph 57.

¹¹ See recitals 69-71 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C95/2, 16.4.2008 ("CJN").

¹² Form CO, paragraph 102.

¹³ Form CO, paragraphs 110-111.

¹⁴ Form CO, paragraphs 105-109.

relationship with them.¹⁵ The Operation will therefore lead to the creation of a full functional joint venture.¹⁶

4. EU DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹⁷. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.¹⁸ The notified Operation therefore has an EU dimension.

5. RELEVANT MARKETS

- (9) The Parties have identified horizontally affected markets in the sector for the provision of FVL services. The Operation will also create a link with the activities of the Bergé group in the distribution (i.e. sale) of cars, giving rise to vertically affected markets.

5.1. FVL services

5.1.1. Relevant product market

- (10) In previous decisions¹⁹ the Commission considered a separate market for FVL services the providers of which are capable of responding to the multiple requirements of car manufacturers all along the car supply chain and thus have a special know-how, distinct from general logistics. The Commission considered various possible segmentations of market according to type of vehicles (light commercial and passenger vehicles in a separate segment from heavy vehicles) and according to the mode of transport (rail, road, sea) although finding partial substitutability between the different modes of transport.
- (11) In the *Deutsche Bahn / Transfesa* decision²⁰ the Commission noted that Deutsche Bahn, while not deeming it appropriate, considered nevertheless a potential segmentation of FVL introduced in a decision of the German Bundeskartellamt²¹ into (i) the collection of finished cars (from plant to compound), (ii) compound services (storage and post-production services) and (iii) regional delivery of finished cars (from compound to dealer). In its decision the Commission dismissed competition concerns in this segments but left the product market definition open.

The Parties view

- (12) The Parties do not contest the Commissions approach identifying a market for FVL services distinct from the market for general logistics services. The Parties consider that FVL services should be segmented between transport services and compound

¹⁵ Form CO, paragraph 103.

¹⁶ See section IV of the CJN.

¹⁷ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹⁸ Form CO, section 4.

¹⁹ M.2411 – *Autologic / TNT / Wallenius / CAT JV*; M.2722 - *Autologic / TNT / Wallenius / Wilhelmsen / CAT JV*; M.4786 *Deutsche Bahn / Transfesa*.

²⁰ M.4786 *Deutsche Bahn / Transfesa*.

²¹ Az. B9 – 2013/94 (26 June 1994) – *ATG/Menke/Silcock&Colling, WuW/E BKartA 2659*.

services as they are distinct services requiring different assets and know-how.²² The Parties argue that a distinction between collection and regional delivery would not be necessary as they are paid for indistinctly based on the distance travelled and provided by the same resources.²³

- (13) With respect to FVL transport services the Parties agree with the Commission's approach that FVL transport services should be divided between light commercial and passenger vehicles in a separate segment from heavy vehicles which the Parties cannot transport with their equipment.²⁴ The Parties view is that FVL transport services by road and by rail are to be considered as forming part of the same product market (land transport), noting that requests for quotation launched by car manufacturers are generally open to all FVL operators irrespective of their mode of transport, especially to railway and road transport operators that accordingly compete on the same terms.²⁵

Commission's view

- (14) The market investigation tended to confirm that there is a distinct market for FVL services with almost all responded confirming that such services require specific expertise and are provided by specialised operators.²⁶
- (15) Since the Parties only provide FVL services to light commercial and passenger vehicles, the Commission's market investigation focused on this segment which is the narrowest on which their activities overlap without it being necessary to determine whether it belongs to a wider market including also FVL services for heavy vehicles.
- (16) The market investigation tended to support the Parties argument that it is unnecessary to distinguish within FVL transport service between collection services and regional delivery services. None of the respondents to the market investigation opined that FVL transport services should be segmented to collection and delivery services. Respondent explained that although it is possible that some smaller local FVL companies will focus on regional transport to dealers, in general FVL companies provide both collection and delivery services and customers purchase door-to-door transport solutions from their FVL services providers.²⁷ This conclusion is supported also by recent decisions of the Spanish competition authority²⁸ and several other national competition authorities.²⁹
- (17) The large majority of respondents to the market investigation consider that there is a high degree of substitutability between all modes of transport (sea, rail and road) when large volumes are concerned. Large volumes typically concern cross-border flows and

²² Form CO, paragraph 247.

²³ Form CO, paragraph 250.

²⁴ Form CO, paragraphs 253.

²⁵ Form CO, paragraph 257.

²⁶ Questionnaire to competitors, responses to question 12; questionnaire to customers, responses to question 11.

²⁷ Agreed non-confidential minutes of call of 14 November 2018 with Grupo Sesé, point 5; Agreed non-confidential minutes of call of 15 November 2018 with Transfesa and Deutsche Bahn, point 4.

²⁸ Decision of the Spanish Competition Authority of 23 of December 2016, C/0823/16: CAT/SINTAX.

²⁹ See for example: Decision of the French Competition Authority n° 17-DC-165 of 10 October 2017; Decision of the Italian Competition Authority in case C11032 - GEFCO/GRUPPO MERCURIO Provvedimento n. 22386 of 4 May 2011; Decision of the Italian Competition Authority in case C11823 - JSC RUSSIAN RAILWAYS/GEFCO Provvedimento n. 24086 of 28 November 2012.

also domestic flows from factories to compounds, from sea terminals to compounds and to a lesser extent between compounds.³⁰

- (18) On the basis of the decisional practice of the Commission and the outcome of the market investigation, the Commission concludes that there is a separate market for FVL services. Within this market the Commission will assess the case on the basis of the segment for FVL services to passenger and light commercial vehicles which is the narrowest segment on which the Parties' activities overlap. For the purpose of this case, the Commission will examine the effects of the Operation considering sub-segments for compound and transport services without distinguishing between collection and delivery. Finally, it can be left open whether FVL transport services for passenger and light commercial vehicles according to mode of transport (sea, land, rail and road) constitute separate product markets as the present concentration does not raise serious doubts under any of these segmentations.

5.1.2. *Relevant geographic market*

- (19) In past decisions³¹ the Commission considered but ultimately left open the question whether the market for FVL services and its potential plausible submarkets is national or EEA-wide. It also found indications for a further plausible segmentation of inbound and outbound FVL services to and from Spain within which further sub-segmentation by routes may be considered.³²
- (20) The Parties submit that the market for FVL services is EEA-wide.³³
- (21) The market investigation tended to support the view that the relevant geographic market for FVL services in this case should be limited to Spain with a distinction between domestic flows and cross-border flows. FVL services providers who responded to the market investigation consider other FVL services providers from outside of Spain as competitors mainly for cross-border flows to and from Spain.³⁴ This view is confirmed by the customers who responded to the market investigation. The large majority of them do not contract FVL services providers from outside of Spain. Those who contract foreign FVL service providers do so for cross-border flows to and from Spain.³⁵
- (22) For the purpose of this case the question could be left open whether the relevant geographic market is EEA-wide or whether it should be segmented between a Spanish

³⁰ Questionnaire to competitors, responses to question 16; questionnaire to customers, responses to question 14, Agreed non-confidential minutes of call of 13 November 2018 with UECC, points 5 and 9; Agreed non-confidential minutes of call of 13 November 2018 with Volkswagen (Spain), points 3 and 6; Agreed non-confidential minutes of call of 13 November 2018 with Pecovasa, point 5; Agreed non-confidential minutes of call of 12 November 2018 with SEAT S.A., points 2 and 3; Agreed non-confidential minutes of call of 14 November 2018 with Grupo Sesé, point 3; Agreed non-confidential minutes of call of 15 November 2018 with Transfesa and Deutsche Bahn, point 3.

³¹ See references in footnote 19.

³² M.4786 *Deutsche Bahn / Transfesa*, paragraphs 51 and 76.

³³ Form CO, paragraphs 267.

³⁴ Questionnaire to competitors, responses to question 20; Agreed non-confidential minutes of call of 14 November 2018 with Grupo Sesé, point 5; Agreed non-confidential minutes of call of 15 November 2018 with Transfesa and Deutsche Bahn, point 5; Agreed non-confidential minutes of call of 13 November 2018 with UECC, point 10.

³⁵ Questionnaire to customers, responses to question 19.

market for domestic flows and separate market for cross-border flows. The operation does not raise competition concern under any plausible market definition.

5.2. Distribution of cars

- (23) The Commission has in previous decisions distinguished between the wholesale and retail distribution of motor vehicles. The Commission has also considered but ultimately left open the further sub-segmentation of the market according to types of vehicles (passenger, light commercial and industrial vehicles). The Commission also left open the question whether the geographic scope of the market should be regional, national or EEA-wide.³⁶
- (24) The Parties do not object to the Commission's previous decisional practice and argue that the exact market definition can be left open. In the Parties' view considering the low presence of the Bergé group in the relevant markets and segments, it is unlikely that the Operation will lead to negative effect on competition.³⁷
- (25) The Commission considers that for the purpose of the present case the precise market definition can be left open since the Operation does not raise serious doubts as to its compatibility with the internal market under any of these plausible market definitions.

6. COMPETITIVE ASSESSMENT

6.1. Horizontal overlap: FVL services

- (26) The Parties did not identify in their notification any affected markets when the relevant geographic market is considered to be the EEA.³⁸ BAL has only marginal activity outside of Spain and is not competing with GEFCO España. It is therefore appropriate to examine the effects of the Operation in Spain, the narrowest geographic market in which the Parties overlap.³⁹
- (27) Considering that BAL provides only marginal cross-border FVL transport services and does not compete with GEFCO España, the Operation does not give rise to competition concerns also on a separate market for cross-border FVL transport.
- (28) The Operation will create affected markets in Spain. The table below presents the Parties' estimates of their individual and combined market shares in the affected segments of the market for FVL services. Since it is left open whether cross-border transport should be considered as a separate (and not affected) market, the table presents market shares under the two possibilities. A segment for transport by rail and road excluding sea is considered separately because sea transport is not used for internal FVL transport in mainland Spain.⁴⁰

³⁶ See most recently M.8309 *Volvo / Car Corporation / First Rent a Car*, paragraphs 15-18 and 22-26 and the references there.

³⁷ Form CO, paragraph 295.

³⁸ See also the Parties' submission of 29 November 2018, Annex 2.

³⁹ BAL's cross-border activity in the EEA in 2017 was limited to the transportation of approximately [...]; Form CO, paragraph 304.

⁴⁰ Within Spain vehicles are transported by sea to the Spanish Islands, Ceuta and Melilla; Parties' submission of 31 October 2018, response to question 6.

Affected markets

Mode of transport	Parties	Spain (excluding cross-border transport)	Spain (including cross-border transport)
Road	BAL	[20-30] %	[10-20] %
	GEFCO España	[10-20] %	[10-20] %
	Combined	[30-40] %	[30-40] %
Land ⁴¹ (road or rail)	BAL	[10-20] %	[10-20] %
	GEFCO España	[10-20] %	[10-20] %
	Combined	[20-30] %	[20-30] %
Sea	BAL	Not affected	[0-5] %
	GEFCO España		[20-30] %
	Combined		[20-30] %
All modes of transport	BAL	[10-20] %	[5-10] %
	GEFCO España	[10-20] %	[10-20] %
	Combined	[20-30] %	[20-30] %

- (29) The Parties' combined market shares in all affected markets are moderate and in any way below 40%, the threshold above which concerns of the creation or strengthening of a dominant position typically arise.⁴² In two affected markets, the market for all modes of transport in Spain (including cross-border transport) and the market for land transport in Spain (excluding cross-border transport) the Parties' combined market share are below 25%, the ceiling below which mergers can be presumed to be compatible with the common market.⁴³
- (30) In the market for sea transport in Spain (including cross-border transport) the increment is minimal, only [0-5]%, and is accounted for by BAL's domestic FVL activities inside Spain. BAL is not active in cross-border sea transport and does not compete with GEFCO España in this sector. The Parties compete to a limited extent in domestic sea transport in Spain but according to their estimates their combined market shares in this segment remain below 20% and the Operation will not give rise to an affected market in this segment.
- (31) The Parties' combined market shares are above 30% only in the two road transport segments. However, the market investigation confirmed that there is a high degree of substitutability between all modes of FVL transport with respect to high volumes and the Parties' combined market shares in the segments that include also rail and sea transport are below 30%.
- (32) The majority of respondents to the market investigation, both customers and competitors, were of the opinion that there is sufficient competition in Spain for FVL

⁴¹ On a plausible separate market for FVL services by road or rail separately the concentration would not lead to affected market for FVL transport by rail.

⁴² Recital 17 of the Guidelines on the assessment of horizontal merger under the Council Regulation on the control of concentration between undertakings, OJ C 31, 5 February 2004, p.5.

⁴³ Ibid, recital 18.

services.⁴⁴ The large majority of respondents considered that one competitor, CAT group, will enjoy similar size as the JV⁴⁵ and that several other credible competitors will remain in the market such as Tradisa, Setram, Metrator and Grupo Sesé.⁴⁶ Other smaller competitors will also remain in the market.⁴⁷ The majority of respondents also considered that it would be relatively easy for a new FVL services provider to enter the Spanish market providing examples of several recent new entrants.⁴⁸

A small number of customers, large car manufacturers, account for significant proportion of the Parties' activities. [...] % of the turnover of GEFCO España is generated from services provided to [customer],⁴⁹ [...].⁵⁰ The top three customers of BAL account to [...] % of its turnover.⁵¹ These figures suggest that the Parties' customers enjoy buyer power as they could threaten to switch volume to one of the several remaining competitors.

- (33) The large majority of respondents to the market investigation, customers or competitors, were either neutral or even positive with respect to the Operation.⁵² This may also be due to the fact that FVL services represent only a small share of the total cost of a vehicle (1-5%).⁵³ Among customers, some consider the Operation serving their interest as it will create an additional large operator in the market with capacities that will allow it to offer the scope of services they require.⁵⁴ One competitor opined that the Operation may create opportunities for competitors to grow since customers prefer working with several FVL companies in parallel and will look for alternatives to the JV.⁵⁵
- (34) In conclusion, the horizontal overlap in the Parties' FVL services is unlikely to give rise to competition concerns.

6.2. Vertical overlap: FVL services and distribution of cars

- (35) The Bergé group is active in the wholesale and retail distribution of cars in Spain. In the wholesale segment the Bergé group imports and distributes several brands with reduced presence in Spain.⁵⁶ In the retail segment it is active through its 29 dealerships

⁴⁴ Questionnaire to competitors, responses to question 23; questionnaire to customers, responses to question 22.

⁴⁵ According to the Parties' estimates, the CAT group will have market shares between [20-30] % and [30-40] % in the different transport segments; Form CO, paragraphs 319-325.

⁴⁶ Responses to the Commission's follow-up questions of 20 November 2018.

⁴⁷ Form CO, paragraphs 312-315.

⁴⁸ Questionnaire to competitors, responses to question 25; questionnaire to customers, responses to question 24; Agreed non-confidential minutes of call of 14 November 2018 with Grupo Sesé, point 6; Form CO, paragraph 349.

⁴⁹ Form CO, paragraph 349.

⁵⁰ Form CO, paragraph 71.

⁵¹ Parties' submission of 31 October 2018, response to question 3.

⁵² Questionnaire to competitors, responses to question 29; questionnaire to customers, responses to question 28.

⁵³ Questionnaire to competitors, responses to question 11; questionnaire to customers, responses to question 10.

⁵⁴ Agreed non-confidential minutes of call of 13 November 2018 with Volkswagen (Spain), point 8.

⁵⁵ Agreed non-confidential minutes of call of 14 November 2018 with Grupo Sesé, point 8.

⁵⁶ Form CO, paragraph 287.

in Spain.⁵⁷ The Parties estimate that the market share of the Bergé group is not more than [0-5]% on any plausible market and segment in Spain.⁵⁸

- (36) The Operation creates a vertical link between the car distribution activities of the Bergé group and the Parties' FVL services. Affected markets are created only when the segments for road transport (including or excluding cross-border transport) are considered where according to the Parties' estimates their joint market shares exceed 30%.⁵⁹
- (37) In light of its small presence in the markets for car distribution in Spain, the Bergé group represents a very limited share of demand for FVL services in Spain and therefore will not be able to engage in effective customer foreclosure.
- (38) By the same token, the JV is unlikely to engage in effective input foreclosure because the limited demand for FVL services of the Bergé group will not be able to replace the foreclosed customer volumes. In addition, GEFCO España is not active in car distribution and therefore does not have an incentive to engage in input foreclosure.
- (39) The ability of the JV to engage in input foreclosure in the road transport segments is limited by the existence of other strong competitors and competition from other modes of transport.⁶⁰ It is further limited because FVL services do not represent a significant factor in the total cost of vehicles (1-5%).⁶¹
- (40) In conclusion, the vertical link between the car distribution activities of the Bergé group and the Parties' FVL services is unlikely to give rise to competition concerns.

7. CONCLUSION

- (41) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

⁵⁷ Form CO, paragraph 288.

⁵⁸ Form CO, paragraph 294.

⁵⁹ See table in paragraph (28) above.

⁶⁰ See paragraph (32) above.

⁶¹ See paragraph 0 above and recital 34 of the Guidelines on the assessment of non-horizontal merger under the Council Regulation on the control of concentration between undertakings, OJ C 265, 18 October 2008, p.6.