

***Case No IV/M.901 -  
GO-AHEAD / VIA /  
THAMESLINK***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/04/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.04.1997

PUBLIC VERSION

MERGER REGULATION  
ARTICLE 6(1)(b) DECISION

To the notifying parties

**Subject: Case N° IV/M.901 - Go-Ahead/Via Générale/Thameslink  
Notification of 18.03.1997 pursuant to Article 4 of Council Regulation  
N° 4064/89.**

- 1 On 18 March 1997 the Go-Ahead Group plc (United Kingdom) (Go-Ahead) and Via Générale de Transport et d'Industrie (France) (Via) notified to the Commission an operation whereby they acquire within the meaning of article 3(1)(b) of Council Regulation 4064/89 joint control of Thameslink Rail Ltd (United Kingdom) (Thameslink).
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application 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 Go-Ahead is a transport company operating solely in the United Kingdom. It has bus and coach operations, principally in north east England, the south west Midlands, London and south east England, and a rail franchise, Thames Trains Ltd, which has a network in London and to the west and south of London.

- 4 Via is an ultimate subsidiary of Compagnie Financière de Paribas (France). It provides transport and industrial services in France, Spain, Germany, Belgium and Hungary. Within the United Kingdom its only activity is vehicle rental.
- 5 Thameslink is a train-operating company created by the British Railways Board which supplies railway passenger transport services between Bedford and Brighton (via London); it also provides services in a loop extending from central London through the south west of the capital.

## II THE OPERATION

### Introduction

- 6 The operation is part of the privatisation of the railway system in the United Kingdom. Govia Ltd (United Kingdom), a company formed by Go-Ahead and Via for the sole purpose of acquiring and operating the Thameslink rail franchise, has acquired the share capital of Thameslink from the British Railways Board and has entered into a franchise agreement with the Director of Passenger Rail Franchising (the Franchising Director) whereby Thameslink acquires the exclusive right to operate for seven years the franchise of the Thameslink network.

### Joint control

- 7 According to the joint venture agreement between the parties Go-Ahead holds 65 per cent and Via 35 per cent of the shares in Govia; Go-Ahead appoints [...] directors and Via [...] directors. The agreement provides that Govia (and therefore Thameslink) will not act without the prior written consent of at least one director appointed by Go-Ahead and one director appointed by Via in relation to (inter alia):

- the engagement or dismissal of employees having a salary above ECU [...]
- approval of the annual business plan, annual budget or any further material capital investment
- contracts above ECU [...]
- material changes in the franchise

The agreement therefore confers upon Go-Ahead and Via joint control of Thameslink.

### Autonomous long-lasting economic entity

- 8 Thameslink will continue to have all the resources necessary to provide rail transport services. The joint venture agreement requires the parties through Govia to subscribe for shares of ECU [...] in Thameslink. They must also make to Thameslink a subordinated loan of ECU [...] . The Franchising Director will pay to Thameslink a subsidy of ECU [...] in 1997 and ECU [...] in 1998 (thereafter

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Thameslink must make increasingly substantial annual payments to the Franchising Director). Thameslink will therefore have sufficient finance, assets and staff to operate the Thameslink franchise.

- 9 Thameslink will operate its franchise for seven years.
- 10 Thameslink will therefore perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination

- 11 Although Go-Ahead has other transport interests in the United Kingdom, neither Via nor any other company in the Paribas group has transport interests there. Therefore, in accordance with the geographic market definition adopted in section IV below there is no possibility of coordination between Go-Ahead and Via as a result of the operation.

Conclusion

- 12 The operation accordingly constitutes a concentration within the meaning of article 3(1)(b) of the Regulation.

**III CONCENTRATION OF COMMUNITY DIMENSION**

- 13 Go-Ahead has an aggregate worldwide turnover of ECU 295 million, all generated in the United Kingdom<sup>8</sup>. The aggregate worldwide turnover of Via (ie that of the Paribas corporate group) is ECU 28,400 million, of which ECU [...] is generated in the European Community. Thameslink has an aggregate worldwide turnover of ECU 116 million, all generated in the United Kingdom. Go-Ahead, Via and Thameslink therefore have a combined aggregate worldwide turnover in excess of ECU 5000 million. Go-Ahead and Via each has a Community-wide turnover in excess of ECU 250 million. Go-Ahead and Thameslink (but not Via) each achieves more than two-thirds of its aggregate Community-wide turnover within the United Kingdom.
- 14 The operation therefore has a Community dimension within the meaning of article 1(1) of the Regulation. It does not qualify for cooperation under the ESA Agreement.

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<sup>8</sup> Deleted for publication

<sup>9</sup> Paribas, through Compagnie Navigation Mixte, holds 66.8 per cent of the shares in Via and appoints eight of the nine members of the managing board. Compagnie Générale des Eaux (France) (CGEA) holds 10 per cent of the shares in Via and appoints one member of the managing board. Given in particular its shareholding and other interests neither these nor any other provisions confer upon CGEA any substantial influence over Via. The earlier indirect acquisition by CGEA of two United Kingdom rail franchises - Networks South Central (decision IV/M.748 - CGEA/Networks South Central, 21 April 1996) and South East Trains (decision IV/M.816 - CGEA/South Eastern Train Co Ltd, 7 October 1996) - is therefore irrelevant to the question of coordination.

<sup>10</sup> The turnover of Go-Ahead for the year ended 23 June 1996 was ECU 158 million. Between that date and the date of the operation it acquired Thames Trains Ltd (turnover to March 1996 - ECU 74 million) and Mokett Ltd (London General Buses) (turnover to March 1996 - ECU 63 million).

<sup>11</sup> deleted for publication, >10,000 million ECU

## IV COMPATIBILITY WITH THE COMMON MARKET

### a) Relevant product and geographical reference markets

- 15 In decisions IV/M.748 - CGEA/Networks South Central and IV/M.816 - CGEA/South Eastern Train Co Ltd) the Commission considered that the relevant product market in relation to a franchise of a railway service was the supply of public passenger transport services by railway, and that the relevant geographic market was defined by reference to the extent of the network comprising the railway routes, stations and depots the operation of which is the subject of the franchise agreement. In CGEA/South Eastern Train Co Ltd the Commission recognised that competitive pressure might be exerted on a railway franchise by other types of public transport, including buses. The principles applied in those decisions can be applied also in the present case.

### b) Competitive assessment

#### Go-Ahead/Thameslink

- 16 The network of Thames Trains, the other rail franchise operated by Go-Ahead, has an overlap with Thameslink only between two stations (Redhill and Gatwick Airport); this overlap can be considered insignificant in competition terms and must also be assessed in the context of competition from a well established operator. Although both the Thameslink and Thames franchises contain routes into London, the geographical areas which they serve are distinct. Thameslink faces competition on various parts of its network from other rail operators.
- 17 Limited overlaps exist between Thameslink and Go-Ahead bus services in London (London Central Bus Co and London General Transport Services) and in the Brighton area (Brighton & Hove Bus and Coach Co). Even if rail passenger services and bus services were considered to be in the same product market, the overlaps can in each case be treated as insignificant in competition terms and there are in each area well established competitors. On the other hand, even if bus services are considered only to exert competitive pressure on rail passenger services, these competitors provide restraint on the power of Thameslink.

#### Via/Thameslink

- 18 As explained in section II above, the minority interest of CGEA in Via confers upon it no substantial influence over Via. Accordingly its control of Networks South Central and South East Trains can in the context of the present operation give rise to no increase in market share.

#### Conclusion

- 19 The operation therefore does not result in the creation or strengthening of a dominant position in the common market or a substantial part of it. Considered as a stage in the privatisation of British Rail, which involves periodic competitive tendering for the franchises, the operation is overall pro-competitive. Competition by other rail operators on the franchised network will initially be moderated in accordance with the policy of the Rail Regulator but will be introduced gradually from 1999. Furthermore for the majority of its fares the maximum which

Thameslink can charge will also be subject to regulation under the franchise agreement.<sup>12</sup>

## **V ANCILLARY RESTRAINTS**

20 The parties have requested that the following provisions, in so far as it contains any restriction, be considered as ancillary to the concentration:

- The parties will maintain confidentiality regarding their respective business secrets

In so far as this provision contains any restriction, the restriction is necessary for the implementation of the concentration and is therefore ancillary to it.

## **VI CONCLUSION**

21 For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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22 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.

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<sup>12</sup> Prices charged by bus operators are subject to similar regulation. The franchises are also subject to periodic competitive tendering.