



Jersey Competition Regulatory Authority (“JCRA”)

Decision M553/10

Proposed Joint Venture

between

Caisse des Dépôts et Consignations

and

Veolia Environnement S.A.

The Notified Transaction

1. On 23 June 2010, the JCRA received an application (the “**Application**”) for approval under Article 20(1) of the Competition (Jersey) Law 2005 (the “**Law**”) concerning the proposed joint venture between Caisse des Dépôts et Consignations (“**CDC**”) and Veolia Environnement S.A. (“**VE**”). CDC and VE propose to create a full-function joint venture comprising Transdev (a subsidiary of CDC) and Veolia Transport (a subsidiary of VE). Veolia Transport is the parent company of Connex Transport Jersey Limited.
2. The merger would be carried out by way of contribution of Veolia and Transdev to a new entity, jointly controlled by VE, acting as the industrial operator of the new group, and by CDC, acting as long term strategic shareholder.
3. The JCRA registered a notice of its receipt of the application in the Jersey Gazette and on its website on 24 June 2010, inviting comments on the proposed joint venture by 8 July 2010. The JCRA received one comment, considered below.

The Parties

(a) CDC

4. CDC is a state owned French public group and a long term investor intended to serve the general interest and economic development of France. CDC owns a majority stake in Transdev. Transdev is active in passenger public transport in many countries including the United Kingdom. Any reference to CDC includes reference to any of its subsidiaries including Transdev.
5. According to the Application, CDC does not have a share of supply of goods or services of any description purchased from, or supplied, to persons in Jersey.

(b) Veolia Transport

6. VE is a French registered company and is listed on the Paris Stock Exchange. According to the Application, VE has four divisions: Veolia Water, Veolia Properte (involved with waste management), Veolia Energie and Veolia Transport. Veolia Transport is active in passenger public transport systems in 28 countries worldwide. Veolia Transport is the parent company of Connex Transport Jersey Limited (“**Connex**”).
7. Connex is the sole provider of omnibus and school transportation services in Jersey. Since November 2002, Connex has provided network omnibus services under a contract with the States of Jersey which is due to end 31 December 2012. Pursuant to another single contract with the States of Jersey, Connex provides school bus services and a tourist orientated bus service “myExplorer”, the latter between April and October of each year.

The Requirement for JCRA Approval

8. According to Article 20(1) of the Law, a person must not execute a merger or acquisition of a type described by the Mergers Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the “**Order**”) except with and in accordance with the approval of the JCRA. According to Article 2(5)(a) of the Law, a merger or acquisition occurs for the purposes of the Law on the creation of a joint venture, being a business activity carried on jointly by two or more persons, whether or not in partnership.
9. The Parties applied for JCRA approval under Article 4 of the Order on the basis that Connex, a subsidiary of Veolia Transport, holds an existing share of 40% or more of the supply of omnibus and school transportation services in Jersey. On this basis, pursuant to the Order, the JCRA’s approval is required under Article 20(1) of the Law before the proposed joint venture is executed.

Assessment

10. Under Article 22(4) of the Law, the JCRA must determine if the proposed venture would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline.¹ As detailed below, the JCRA concludes that this would not be the case.

Defining the affected relevant market(s)

(i) The Relevant Product Market(s)

11. *“A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use.”*²

12. The Parties suggest that the relevant economic markets in which Connex has been active are:

- the provision of omnibus services,
- the provision of school bus services, and
- the provision of the leisure service.

Regarding the provision of omnibus services, the Parties distinguish omnibus services (that make a particular route and stop to pick up to set down passengers along the line of the route) from char-à-banc services - such as offered in Jersey by Tantivy - (that make a journey from one point to another which does not involve a stop to take up or set down passengers except in the neighbourhood of the point of departure and of the common destination). The leisure service is a tourist orientated “step on step off service” using a single ticket.

¹ JCRA Guideline, *Mergers and Acquisitions* at 6.

² *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 (9 December 1997), at 2.

13. The JCRA distinguishes two possible categories of relevant markets. The first category relates to the various bus services. For the purpose of this Decision it is not necessary to determine to what extent the various forms of public transport are substitutes as only one of the Parties is currently supplying public transport services in Jersey. The proposed joint venture therefore would not affect competition for public transport services in Jersey irrespective of the definition of the relevant product market.
14. The second category relates to the award of the contracts for the school bus and leisure services and the omnibus services. The public transport contracts have been subject of a public tender process. Public tender processes are often in relation to unique, or at least infrequent, contracts and projects. In a way, many public tender processes constitute their own relevant product market, resulting in for example joint bids by undertakings that normally operate in competition. The competitive constraints are exerted by the other bidders participating in that particular public tender process.
15. For the purpose of this Decision, therefore, the relevant product markets are the public tender processes for the school bus and leisure services and the omnibus services.

(ii) The Relevant Geographic Market

16. *“The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area”.*³
17. According to the Parties the relevant geographic market is exclusively local.

³ Ibid, at 8.

18. The JCRA concludes that there is no need to define the relevant geographic market as the conclusion of the competitive analysis indicates no substantial lessening of competition in Jersey or any part of Jersey irrespective of the definition of the relevant geographic market.

Effect on Competition

19. In a bidding market, market shares based on turnover at a specific moment in time may not effectively reflect competitive constraints on the companies supplying goods and services at that particular moment in time. Guidance by the European Commission suggests that the numbers of player, rather than sales, may be most appropriate for calculating market shares in a bidding market.⁴
20. As a result of the proposed joint venture, control in Connex will change as CDC will obtain joint control. Connex in Jersey has been involved in several bids – in 2002 for the omnibus contract and in 2006 for the school bus service contract.
21. The JCRA has assessed to what extent competition for future public transport contracts in Jersey could be affected as a result of the proposed concentration. The underlying assumption for this analysis is that the interest to submit a bid in a previous tender process for public transport services in Jersey provides an indication for such interest in future tender processes.
22. [REDACTED] Transdev is active in the sector of passenger transport in France, the United Kingdom, Portugal, Spain, Italy, Germany, the Netherlands, Canada and Australia. Therefore, the JCRA considers Transdev at least as a potential bidder for the contract for public transport services in Jersey, the current one of which expires in 2012.
23. The Parties assess that there are many operators that should be considered to readily meet the requirements to submit a successful bid for the future Jersey public transport services contract. The Parties identify Tantivy, Arriva,

⁴ Ibid, at 54.

FirstGroup, Stagecoach Group, Go-Ahead Group, National Express Group, Keolis and RATP. The JCRA has no reason to assume that the conclusion that a significant number of operators would be able to bid against Connex in a future tender process for Jersey public transport services is incorrect.

24. The JCRA notes that Connex's successful bid for the omnibus contract was in competition with the then-incumbent operator. This indicates that an entrant imposed a competitive constraint upon the incumbent, and there is no reason to assume that this would not equally be the case for future tender process regarding public transport services in Jersey.
25. Based on this information, the JCRA concludes that the proposed joint venture is not likely to result in a substantial reduction of competition in the public transport bidding markets in Jersey.

Ancillary Restraints

26. Article 8.5 of the Shareholders' Agreement of 4 May 2010 between CDC and VE contains a non-competition clause. Article 8.5(a) states that for the term of the agreement, (30 years), CDC and VE undertake not to develop, carry on and/or acquire, directly and/or indirectly, personally or through other entities, on any basis and in any way whatsoever, transport activities on the territory of counties in which Transdev and/or Veolia Transport are active.
27. Agreements, which do not form part of the asset or share transfer but are considered to be directly related and necessary to the implementation of the concentration, are identified as "ancillary restraints". Under competition law as defined in the European Union, ancillary restraints are subject to analysis in a merger review.⁵

⁵ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03, (5 March 2005), ¶¶ 1, 10. Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

28. In order to determine whether or not clauses of this kind are justified by the legitimate objective of implementing the concentration, it is necessary to consider whether their duration, their geographical field of application, their subject matter and the persons subject to them do not exceed what is reasonably necessary. This in turn, makes it necessary to examine what would be the state of competition if the clause did not exist.⁶
29. There can be good arguments to allow a non-competition clause between a joint venture and its shareholders. For example, a shareholder may have an economic incentive to offer products or services developed by the joint venture for its own account. Without a non-compete clause, undertakings may be reluctant to enter into a joint venture even though the joint venture may have clear benefits not only for the shareholders but also for the economy or society in general.
30. According to European Commission Guidance applicable to commonly encountered restrictions in cases of joint ventures, a non-competition obligation between the parent undertakings and a joint venture may be considered directly related and necessary to the implementation of the concentration where such obligations correspond to the products, services and territories covered by the joint venture agreement or its by-laws.⁷ This is the case here with respect to the proposed joint venture, as the scope of the non-competition clause is limited to the joint venture's provision of transport services. This non-competition clause would therefore appear to be in accordance with the relevant EC guidance cited above, and the JCRA has no reason to deviate from this guidance in this case.

Other

31. The JCRA received one comment in response to its public consultation. The comment appeared to relate to environmental concerns. The JCRA's remit under the Law in merger review is to determine whether or not the merger or acquisition

⁶ See ECJ Case 42/84 *Remia*, par.18-20 and CFI Case T-112/99 *Métropole Télévision*, par.109.

⁷ *Commission Notice on restrictions directly related and necessary to concentrations* (see footnote 5), at section 36.

in question “would substantially lessen competition in Jersey or any part of Jersey.” The comment raised was not relevant to this sole consideration raised under the Law, and for that reason it will not be considered in more detail.

Conclusion

32. Based on the analysis above, the JCRA concludes that the proposed joint venture is not likely to lessen competition. Given this conclusion, the JCRA hereby approves the proposed joint venture under Article 20(1) of the Law.

19 July 2010

By Order of the JCRA Board