The Autorité de la concurrence clears the acquisition of sole control of the Transdev group by the Caisse des Dépôts et Consignations subject to the maintenance of the commitments made in 2010

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On 26 April 2013, the European Commission referred the acquisition of sole control of the Transdev Group (formerly Veolia Transdev) by the Caisse des Dépôts et Consignations to the Autorité de la concurrence. The Autorité carefully examined this operation, which involves the public transport sector. It has today published a decision clearing, subject to commitments, the acquisition of sole control of the Transdev group by Caisse des Dépôts et Consignations.

For the record, on 30 December 2010 the Autorité de la concurrence authorised, subject to commitments, the creation of a joint venture (Veolia Transdev) by the Veolia Environnement Group and the Caisse des Dépôts et Consignations. At the time, it considered that the sharing by Veolia Transport and Transdev of their respective subsidiaries operating in the public passenger transport sector would result in various risks to competition. The notifying parties then subscribed to behavioural and structural commitments in order to address the identified risks to competition.

The acquisition of sole control of the Transdev group (formerly Veolia Transdev) by the Caisse des Dépôts et Consignations, which had already enjoyed joint control since 2011, required the continuation of the commitments made at the time of the merger of Veolia Transport and Transdev in 2010.

The Autorité de la concurrence is of the opinion that the competition concerns

identified in 2010 also apply in 2013. At the end of 2010, the Autorité stressed that the removal of one of the players would be conducive, in particular, to affect the intensity of competition prevailing at the time of invitations to tender issued by local authorities for management of their urban transport networks. Since the markets in question have not experienced any major structural changes, and the competitive positions of the parties and of their main competitors are substantially the same, the necessity of the commitments defined in 2010 has not been obviated by the move from the joint control of Transdev Group by Caisse des Dépôts et Consignations to majority control.

The Caisse des Dépôts et Consignations thus confirmed the commitments entered into in 2010 and has agreed to implement all of the provisions thereof under the same conditions.

Update regarding the commitments entered into in 2010 and their implementation

• Vis-à-vis urban public passenger transport (excluding Ile-de-France):

The competition risks identified by the Autorité were particularly appreciable in the Provence-Alpes-Côte d'Azur region where the operation resulted in the new entity being assigned management of the majority of the region's urban transport network. Veolia Transdev consequently undertook to assign four of its urban network management contracts in the region. This assignment was supposed to foster competition, and the Autorité particularly noted that the main barriers to entry into the urban market are the experience and reputation acquired with the authorities responsible for organising transport (hereinafter AOTs). The contracts related to the urban transport networks of Aubagne, Carpentras, Salon de Provence and Fréjus-Saint Raphael.

Insofar as this assignment was subject to the approval of the AOTs concerned, it was agreed that other urban networks could be assigned if to transfer the operation of these four networks turned out to be impossible. If no part of the assignment proved to be possible, the parties would then agree not to bid again for contracts they held in those towns when they were reopened for

competition.

In fact, the AOTs concerned refused to approve the assignment of management contracts for their networks, whether for the aforesaid connurbations or for alternative networks. The Transdev Group is therefore not entitled to bid for future tenders to operate the urban transport networks in the towns of Aubagne, Carpentras, Salon de Provence and Fréjus-Saint Raphael, thus opening up opportunities for new operators.

The parties also proposed to finance a "fund for stimulating competition" to enable the AOTs to organise their calls for tender more effectively and encourage operators to submit bids. With 6.54 million Euros of funding, the fund should benefit the 44 urban transport networks which, at the date of the 2010 decision, were operated by Veolia or Transdev, and which were supposed to be open to competition before the end of 2016.

The fund for stimulating competition is managed by the Natixis Bank, an independent manager approved by the Autorité de la concurrence. It is supervised by a trustee who ensures that the funds are allocated objectively, transparently and with no discrimination. By the end of the first half of 2013, twelve AOTs had thus been compensated in the amount of 1.94 million Euros. To date, eight AOTs, whose networks had to be opened up to competition in 2012, have not responded to the proposals for compensation made to them by the fund manager.

• **Vis-à-vis intercity public passenger transport (excluding Ile-de-France):**

In 2010, Veolia Transport and Transdev undertook to assign various assets (coach operations, including rolling stock, depots and repair workshops) in four départements where the new group's position could threaten competition, namely, Var, Vaucluse, Eure-et-Loir and Loir-et-Cher. In fact, these assets were sold in 2012 and 2013 to several companies operating in the départements in question.

In Haute-Savoie, a département where the 2010 operation was less harmful to

competition, the new entity agreed not to make any significant new acquisitions until 2016.

In all of these départements, Veolia-Transdev further agreed that until 2016, it would not bid for tenders organised by the AOTs by submitting joint offers with other national or international operators in order to maintain a sufficient number of bids and to ensure that the tenders were successful.

In the urban and intercity public passenger transport sectors, these behavioural commitments will be pursued by the Transdev group, thereby enabling full competition between the main market players, to the benefit of local authorities and ultimately transport-users themselves. The independent trustee approved by the Autorité de la concurrence will carry out his assignment in order to ensure that all of these commitments are fully implemented.

See the decision