

Decision from the Portuguese Competition Authority dated December 7, 2021: Ferrovial Serviços / Autonomous Business Unit of Hidurbe Serviços, S.A.¹

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On November 3, 2021, the Portuguese Competition Authority (hereinafter "AdC") received a notification of a concentration process aimed at the acquisition by Ferrovial Serviços (hereinafter "Ferrovial") of sole control of a company to be incorporated, to whose assets, liabilities and contractual positions were related to an Autonomous Business Unit of Hidurbe Serviços, S.A. (hereinafter "Hidurbe").

To this end, Ferrovial would acquire the shares representing the entire share capital of Hidurbe and, as a result, sole control over these assets.

It should be noted that with regard to merger control, the action of the antitrust authorities is carried out in advance to prevent changes in the competitive structure of the market that may, in the future and negatively affect the maintenance of free competition in the markets. For this reason, a prior control is established, through which, once certain conditions or purposes (quantitative or qualitative) are met, an obligation of prior notification of the concentration operations is set to the companies so that those antitrust authorities may express their opinion on the conformity of the operation with the level of competition that it is intended to ensure.

Ferrovial is dedicated to the providing urban services, presenting various solutions for the collection, transport and management of facilities for the treatment and recovery of urban waste, urban cleaning, as well as the provision of services related to the installation, maintenance and renovation of public spaces.

Hidurbe's activity is environmental, including the cleaning and maintenance of green spaces, the collection and treatment of waste and photovoltaic self-consumption.

Given the above and according to the notification received, Ferrovial and Hidurbe's activities overlapped so that the notified transaction would be horizontal in his nature, and there would be no vertical relationship.

In delimiting the relevant market, the AdC considered the following:

¹ Ref. Ccent/2021/52 - Ferrovial Serviços / Autonomous Business Unit of Hidurbe Serviços, S.A.



- i. Treatment and recovery of municipal waste: the AdC agreed with the market definition proposed by Ferrovial, considering as relevant the market for the (partial) provision of treatment, recovery and/or disposal services of municipal waste to entities managing regulated municipal waste management services, regardless of their location within mainland Portugal;
- ii. Collection and transport of municipal and non-municipal waste, as well as urban cleaning of the public highway and public infrastructures: accepted the market delimitation proposed by Ferrovial and considered as relevant the market for the provision of support services to the management of municipal waste under municipal responsibility "downstream" (collection and transport of municipal waste and urban cleaning) in mainland Portugal; and
- iii. Maintenance and cleaning of green spaces (gardens and wooded areas): the market for the provision of green space management services in mainland Portugal is relevant.

In the markets with overlapping activities, at stake would be *i)* the (partial) provision of urban waste treatment, recovery and/or disposal services to entities managing regulated municipal waste management services in mainland Portugal; *ii)* the provision of support services for the management of municipal waste "downstream" in mainland Portugal; and *iii)* the provision of green space management services in mainland Portugal.

As regards the first point, there is a wide range of operators in the market, which provide services to municipal waste management entities. Therefore, the fact that Hidurbe provides urban waste treatment and recovery services to LIPOR, under a service agreement, would not call into question the inexistence of effective alternatives to the companies participating in the operation under scrutiny, and Ferrovial would become the second market operator. Therefore, the AdC considered that, from this perspective, the merger does not hinder competition.

As to the second point, the provision of the services depends on the participation of the entities in tender procedures, with a view to their contracting, the AdC having concluded that there is a wide range of alternatives to Ferrovial/Hidurbe and, for this reason, no competition issues are anticipated.

Finally, as to the third point, since there are two larger operators and five operators with a relevant dimension, the AdC did not consider that competition could be jeopardized.

ERSAR - Entidade Reguladora dos Serviços de Águas e Resíduos (Regulatory Authority for water and waste services) was asked for its opinion, and concluded that the concentration "does not alter the structure of the regulated market".

In light of the above, on December 7, 2021, the AdC adopted a decision not to oppose the merger because it would not be likely to restrict effective competition in the domestic market or in a substantial part of it.