

**Group 4 Falck A/S
and
The Wackenhut Corporation**

A report on the merger situation



COMPETITION COMMISSION

Group 4 Falck A/S and The Wackenhut Corporation

A report on the merger situation

**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
October 2002**

Members of the Competition Commission as at 26 September 2002

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¹These members formed the Group which was responsible for this report under the Chairmanship of Mr E J Seddon.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which she considers would not be in the public interest to disclose and which, in her opinion, would seriously and prejudicially affect certain interests.

The omissions are indicated by a note in the text or, where space does not permit, by the symbol ✂.

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Part I

Summary and Conclusions

1 Summary

1.1. On 9 May 2002, the Secretary of State for Trade and Industry referred to us the acquisition by Group 4 Falck A/S (G4F) of The Wackenhut Corporation (TWC). Our terms of reference are set out in Appendix 1.1. We were required to report by 30 August 2002, subsequently extended to 27 September 2002.

1.2. G4F is a Danish company listed on the Copenhagen Stock Exchange. The company has three main business divisions: Global Solutions, Security Services and Safety Services. In the UK, its subsidiary company, Group 4 Falck Global Solutions Limited (GSL), provides outsourced facility management services for the public sector, including the provision of prison and detention facilities and the transport of prisoners between courts and prisons and between prisons. The Security Services division provides manned guarding and aviation security, alarm and CCTV services. The Safety Services division does not carry on any of its activities (ambulance, fire-fighting and rescue services) in the UK.

1.3. G4F announced the acquisition of TWC on 8 March 2002, stating that this was part of its strategy to become a global provider of security and security-related services.

1.4. TWC is a Florida corporation whose shares were listed on the New York Stock Exchange (NYSE) prior to the acquisition. TWC provides security and security-related services worldwide with a particular focus on North and South America.

1.5. TWC's UK subsidiary, Wackenhut UK Ltd, provides custodial and facility management services in the UK, including custodial and transport services for the Home Office in respect of immigrant detainees. It also provides certain airlines with manned guarding and other security-related services.

1.6. TWC's main involvement in custodial services in the UK comes through the medium of Wackenhut Corrections Corporation (WCC), another Florida corporation listed on the NYSE of which TWC owns 57 per cent. WCC's operations in the UK are, in turn, carried out by a joint venture company, Premier Custodial Group Limited (Premier), which is jointly owned and managed by WCC and Serco Group plc (Serco). Premier provides outsourced custodial services for the Home Office and the Scottish Executive including the provision of prisons and immigrant detention centres, prisoner transport services and the electronic monitoring of offenders.

1.7. We concluded that the CC had jurisdiction over the acquisition of TWC by G4F, and that it qualified for investigation because the value of TWC's assets acquired exceeded £70 million. For the purposes of our inquiry, we defined the enlarged G4F group as consisting of G4F and its subsidiaries, TWC and its subsidiaries and Premier.

1.8. Analysis of the impact of the acquisition on competition in the markets relating to manned guarding, alarm and CCTV installation and monitoring and aviation security led us to conclude that there was very little likelihood that the enlarged G4F group would gain market power in any of these particular markets and would therefore not be able to raise prices or lower quality as a result of the acquisition. We concluded that no competition issues were likely to arise from the acquisition in respect of these markets.

1.9. The other markets we investigated were four categories of custodial market and the market for the provision of prisoner and immigrant detainee transport where the supply of services by companies in the enlarged G4F group overlap as a result of the acquisition. The four custodial markets were the provision of services to Design, Construct, Manage and Finance (DCMF) prisons; Management-only (MO) services for prison establishments; MO services for immigrant detention centres (IDCs); and DCMF services for Secure Training Centres (STCs). Both the Home Office and several of G4F's competitors expressed concerns about the effect of the acquisition on these custodial and transport markets. As a result of the acquisition, companies in the enlarged G4F group hold the majority of the relevant custodial and prisoner and immigrant detainee transport contracts. Other indicators pointed to the possibility that the enlarged G4F group might be able to exercise market power in these markets as a result of the acquisition.

1.10. In respect of two of these markets, namely those for prisoner and immigrant detainee transport services and MO services for IDCs, we unanimously concluded that the existence of competitive constraints (including strong inter-firm rivalry, the threat of new entry and the potential use of countervailing buyer power by the monopsony public sector purchasers) would be sufficient to prevent companies in the enlarged G4F group winning future contracts at a higher price or on the basis of a reduced quality of service than would be the case before the acquisition. We concluded that no competition issues were likely to arise from the acquisition either in respect of the prisoner and immigrant detainee transport market or in respect of MO services for IDCs.

1.11. On the other hand, as regards the DCMF prison market, the MO prison market and the DCMF STC market, a majority among us had concerns that the strength of competitive constraints in these markets would not be sufficient to prevent the enlarged G4F group from exercising its market power. That majority considered that whilst the Home Office and the Scottish Executive, as monopsony purchasers of these services, had sufficient countervailing power to induce new entry or revert to 'self-supply', there was not sufficient evidence on which to form a reasonable expectation that the Home Office and Scottish Executive would exercise such powers in practice. A minority of us, on the other hand, considered that the monopsony purchasers had both the potential and the willingness to deploy their countervailing power in these markets in such a way as could be expected to protect the public interest in the situation following the acquisition. We were therefore divided in our views on the competitive constraints in these three markets for custodial services operating on any likely market power which the enlarged G4F group might have gained as a result of the acquisition.

1.12. We then considered the status of Premier. We examined whether it was likely to continue to compete with GSL and other participants in the markets with which we were concerned notwithstanding that Premier was a company within the enlarged G4F group.

1.13. We took the view that an assessment of Premier's status following the acquisition must depend upon a consideration of the terms and effectiveness of the Safeguards Agreement and related agreements (which are governed by the laws of the State of Florida), the likelihood of the parties' compliance with those terms, and the nature of Premier itself as a 50:50 joint venture company regulated by two Shareholders' Agreements (governed by the law of England and Wales). We examined these factors against the background that competitors of Premier and GSL might have a reduced incentive to compete if they perceived that Premier and GSL were not to be regarded as independent of each other. We took legal advice from a Florida law firm on the applicable Florida law.

1.14. The legal advice we obtained on the Safeguards Agreement and related agreements provided us with a considerable degree of reassurance that Premier would continue to act independently from, and in competition with, G4F. We separately considered whether there was any reason to be concerned whether Premier and G4F might seek to cooperate with each

other in the relevant markets rather than to compete in them. We reached the conclusion that the provisions of the Competition Act 1998 and Articles 81 and 82 of the EC Treaty would operate to deter any anti-competitive conduct of that kind.

1.15. Our findings on the legal framework and on the commercial factors which determine the ability of Premier to compete with G4F led us to conclude that Premier was an independent competitor in the relevant markets and would have the necessary resources to compete effectively.

1.16. We therefore unanimously concluded that there were no competition concerns arising from G4F's acquisition of TWC in respect of the markets for DCMF prison contracts, MO contracts for prison services and DCMF contracts for STCs.

1.17. We are therefore unanimous in finding that the acquisition may be expected not to lead to a significant reduction in competition in the markets for the services affected by the acquisition. We conclude that the acquisition may be expected not to operate against the public interest.

1.18. During our inquiry, we considered G4F's intentions to sell its interest in WCC, recognizing that this would have the effect of removing all ties between G4F and Premier. G4F had announced at the time of the acquisition that it intended to sell its shareholding in WCC on the grounds that its core business was security and safety services, not custodial and correctional services. G4F told us that financial and legal advisers had been appointed to handle the sale of its interest in WCC and that the disposal was intended to be completed before Christmas 2002.

1.19. We formed a reasonable expectation that G4F's sale of its shareholding in WCC would go ahead in the near future notwithstanding the current volatility in the stock market and the uncertain outcome of a disputed claim by Serco that it could now exercise a pre-emption right to acquire WCC's shareholding in Premier. We unanimously concluded that a sale either to Serco or to a third party should eliminate the concerns expressed by competitors relating to the connection between G4F and Premier.

1.20. [

Details omitted. See note on page iv.

]

1.21. We furthermore concluded that the prospect [*Details omitted. See note on page iv.*] would encourage [✂] Premier to win contracts to enhance company values thereby promoting competition within the enlarged G4F group.

1.22. We also believed that competition in all these markets could be further enhanced if the public sector purchasers of the relevant services were to exercise their buyer power more effectively. Our report sets out our suggestions how this could be brought about.