

***Case No COMP/M.5123 -
AUTOGRILL / WORLD
DUTY FREE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 16/05/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/05/2008

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.5123 – AUTOGRILL/ WORLD DUTY FREE
Notification of 7 April 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 7 April 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Autogrill S.p.A. ("Autogrill", Italy) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of World Duty Free Limited ("WDF", UK) by way of purchase of shares.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation 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. **Autogrill**, a company ultimately controlled by Ragione SAPA di Gilberto Benetton e C. ("Ragione SAPA"), the Benetton family's holding company, is a worldwide provider of food, beverage and retail services to travellers. In the travel retail business, it operates through its fully-owned subsidiaries Alpha Airport Group plc ("Alpha") and Aldeasa S.A. ("Aldeasa")². Alpha operates retail stores at a number of airports in the UK, Italy

¹ OJ L 24, 29.1.2004 p. 1.

² The Commission has cleared the acquisition of sole control by Autogrill over Aldeasa on 8 April 2008 in Case COMP/M.5081 Autogrill/Aldeasa.

and other non-EU countries as well as at the Eurotunnel terminals in the UK. Aldeasa is active in travel retailing in Spain, in one airport in Portugal, and in a number of airports outside the EU.

4. **WDF**, the target, is currently a wholly-owned subsidiary of BAA Limited ("BAA"), the owner of seven airports in the UK³ as well as the majority shareholder in the company operating Naples airport. BAA is ultimately controlled by Grupo Ferrovial S.A. WDF is active in travel retail services, holding concessions for the operation of 62 stores in the seven UK airports owned by BAA.

II. THE CONCENTRATION

5. Through the proposed operation, Autogrill intends to acquire, directly or through a controlled company, sole control of WDF by way of purchase of 100% of its shares. Following the conclusion of the Share Purchase Agreement, WDF will enter into a new 12-year Framework Concession Agreement with the seven BAA UK airport companies to operate the duty-free stores within those airports.

III. COMMUNITY DIMENSION

6. The undertakings concerned have combined aggregate worldwide turnover of more than EUR 5 billion (EUR [...] million for Autogrill in 2006, and EUR [...] million for WDF in 2007). The undertakings concerned each have a Community-wide turnover in excess of EUR 250 (EUR [...] million for Autogrill in 2006, and EUR [...] million for WDF in 2007). Although WDF achieves its entire turnover in the United Kingdom, the Ragione SAPA group does not achieve more than two thirds of its turnover in a Member State. The notified operation has therefore a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

7. Autogrill and WDF are both active in retail sales of various types of duty-paid and duty-free articles in general stores, shop in stores, boutiques, etc. to domestic and international travellers in airports.

Relevant product markets

Retail services at airports

8. In line with previous Commission decisions⁴, the notifying party submits that the relevant market is that for the provision of travel retail services, which could be further sub-divided according to the type of travel location (e.g. retail outlets at airports, on-board aircraft, on-board ships). In its previous decisions, the Commission had left open whether the travel retail market should be further segmented according to the type of travel location.
9. Airport travel retailing classifies the goods sold into duty-free goods, that are exempt from excise duties and tax, and duty-paid goods. However, following the abolition on 30

³ London Heathrow, London Gatwick, London Stansted, Glasgow, Edinburgh, Aberdeen and Southampton.

⁴ Case COMP/M.4581 – Imperial Tobacco/Altadis, Case COMP/M.4762 – Autogrill/Alpha Airports, Case COMP/M.3728 – Autogrill/Altadis/Aldeasa and Case IV/M.782 – Swissair/Allders International.

June 1999 of the right for intra-Community travellers to acquire goods duty-free, a new marketing category of travel retail goods aimed at such travellers has been introduced by some travel retail operators, namely "travel value"/"tax free" goods, whereby the retailer bears the cost of VAT in order to offer the same or similar prices to intra-Community travellers as those offered on duty-free products (with the exception of a number of alcohol and tobacco lines).

10. The market investigation was not conclusive as to whether retail services at airports constitute a separate relevant product market or whether they represent a part of a broader market for all travel retail services.
11. Several respondents confirmed that they consider the relevant product market to comprise all travel retail services irrespective of the type of travel location. Some respondents even argued for a broader market comprising non-travel retail services such as high-street or downtown VAT-refund stores given the abolition of duty-free sales for intra-Community travellers, the airport restrictions on liquids that can be carried on-board and the introduction of the VAT refund scheme for non-EU residents.
12. In any event, respondents indicated that travel retail operators active in a given type of travel location could in any event easily expand to other types of travel location.
13. Some respondents nevertheless expressed the view that airport retail services constitute a distinct product market, in light of the fact that airport retail stores are mostly located within security-restricted areas and that most duty-free retailers are not well represented in other travel locations such as railway stations or in high street.
14. In any case, for the purposes of the present decision, the exact product market definition can be left open since the proposed concentration does not give rise to any competition concerns even on the narrower market of travel retail services at airports.

Concessions for the operation of retail services at airports

15. Retail activities at airports in Europe are mostly carried out on the basis of concession agreements, pursuant to which the retailer pays the airport owner/operator a percentage of the revenue, as it was overwhelmingly confirmed by respondents to the market investigation⁵. Competition for concessions takes place in the form of public tenders or bilateral negotiations. According to the notifying party, concessions may be awarded separately for duty-free and for other sales due to the need to control liquor and tobacco sales to non-qualifying intra-Community and domestic passengers and to account for all stock movements to the customs office. Concession agreements for duty-free sales are often based on exclusivity, extending to the entire relevant retail area with respect to the sales of "core" products (perfume and cosmetics, alcohol, tobacco and some confectionery). The concessions awarded to duty-free specialists generally also include a range of other products (luxury goods, food, sunglasses, travel essentials, etc.), but for these non-core goods the exclusivity only applies to duty-free sales, not to duty-paid or travel value. In this case, duty-free specialists may also compete with other companies awarded a separate concession for the sale of these products under duty-paid or other non duty-free regimes in the same airport.

⁵ Travel retail activities are carried out also on the basis of alternative business models such as joint venture contracts with the airport operators, own management of travel retail stores by the airport operator itself, management contracts with other retailers, or on the basis of normal lease agreements.

16. According to the notifying party, and as confirmed by respondents to the market investigation, apart from competition in the operation of concessions for retail services at airports (competition in the market, after award of the concession), another competitive arena is the bidding process for the award of concessions (competition for the market). The market investigation therefore examined whether concessions for travel retail services at airports could be considered as a distinct product market. Indeed, most of the respondents found that there is (also) a separate market for concessions for retail services at airports, where competition *for* the market takes place (i.e., for securing a concession), indicating that concessions constitute a sector with individual characteristics given the know-how and experience required by the retailer in order to effectively participate in the bid/negotiate with the airport operator.
17. The present decision therefore also assesses the impact of the proposed concentration on a separate market for concessions for the provision of retail services at airports.

Relevant geographic market

Retail services at airports

18. In line with previous Commission decisions, the notifying party submits that the relevant geographic market is EEA-wide, if not global⁶. In particular, the notifying party claims that sales at each airport are subject to competition from multiple national and international "return airports" and from "duty-free shops on arrival" (which are increasingly becoming common), given that each airport serves a large number of destinations, each individual destination accounts for a small percentage of passenger traffic to/from a given airport, and duty-free operators offer broadly comparable ranges of core products to passengers at all destinations⁷.
19. A few respondents to the market investigation confirmed that the market for travel retail services at airports is at least EEA-wide, in particular in view of the fact that consumers have a variety of choice of routes on different journeys and at different points in their journey. However, the overwhelming majority of the respondents indicated that they consider the market to be worldwide in scope, given that an increasing number of international hubs (such as Dubai and Qatar) are acquiring significant size, thereby increasing, through the help of the advances in aircraft technology (large capacity aircraft such as Airbus A380 and Boeing 787), competition between airports at the global level, that an important number of passengers can purchase in airports outside the EEA and that most travel retail service providers are active globally or run openly global growth strategies.
20. In line with the notifying party's claims, almost all of the respondent airport operators and competitors indicated that the travel retail shops operated in their airport(s)/the airport(s)

⁶ In Case IV/M.782 – Swissair/Alders International, the Commission indicated that "*in intra-Community travel, for a large number of travellers there are a variety of routes between any two non-adjacent countries. Consumers can purchase the same kind of products at most retail travel outlets [i.e. airport shops], regardless of their geographic location. From the supply side, the same retailers are active in many different regions*".

⁷ In particular, the notifying party claims that even if one company were the sole travel retail service operator at both ends of a route, its prices would continue to remain constrained by prices available at different other destinations supplied by rival operators, to/from which travellers are flying from/to either end of the route. A similar situation would apply even if a company were the sole duty-free operator in a country. In addition, given that operators are unable to price discriminate between EEA customers, domestic passengers would remain protected by passengers travelling to/from other EEA countries.

where they are active compete with retail shops at other airports connected to the respective airport(s) by both direct and transit routes. Moreover, all competitors confirmed that prices of travel retail goods at return airports constrain their pricing policies, with the majority indicating also a constraining effect exercised by "shops on arrival".

21. For reasons of demand side considerations, the narrowest conceivable relevant geographic market would nevertheless appear to be the individual airport.⁸
22. In any event, for the purposes of the present decision, the exact scope of the geographic market can be left open, as the proposed concentration does not give rise to any competition concerns under any alternative market definition.

Concessions for the operation of retail services at airports

23. As far as the market for concessions for the operation of retail services at airports is concerned, most respondents expressed the view that this market is worldwide in scope. In particular, they indicated that concession bids are open to all operators active in any country and confirmed the notifying party's claim that, since most travel retail specialists carry out their retail activity at a global level, the award of major concessions is subject to international competition.
24. In any event, for the purposes of the present decision, the exact geographic scope of the market for concessions for the operation of retail services at airports can be left open, as the proposed concentration does not give rise to any competition concerns under any alternative market definition.

V. COMPETITIVE ASSESSMENT

25. The parties' activities overlap only in the airport segment of the travel retail market. There are no vertical relationships between the parties.

Retail services at airports

26. The parties' combined market share in the airport retail market in 2006 amounted to [10-20]% at the EEA level (Autogrill: [10-20]%, WDF: [5-10]%) and [5-10]% worldwide (Autogrill: [5-10]%, WDF: [0-5]%). As confirmed by the market investigation, although the merger will create the largest market player, the new entity will still face numerous qualified competitors with extensive international operations as well as a plethora of "other" small (local or regional) competitors at both the EEA and global levels (such as Belgian Sky Shops and Hellenic Duty Free in Europe and Dubai Duty Free, Lotte Hotel (Korea) and Duty Free Americas (USA) worldwide):

Operator	EEA market share (2006)	Global market share (2006)
Autogrill	[10-20]%	[5-10]%

⁸ In previous cases, the Commission has defined the geographic market for the retail sale of daily consumer goods to be local in scope, on the basis of demand side arguments, by the boundaries of a territory where the outlets can be reached easily by consumers, unless the different local areas are connected in such a way that they result in overlapping circles (cf., for instance, Case No COMP/M.4950 - REWE/Delvita, paragraph 18).

WDF	[5-10]%	[0-5]%
<i>Autogrill/WDF</i>	<i>[10-20]%</i>	<i>[5-10]%</i>
Gebrüder Heinemann	11.8%	5.2%
Nuance	6.5%	6.9%
Aelia	6.5%	2.7%
Dufry	3.8%	3.7%
Aer Rianta	<1%	3%
Hellenic Duty Free	4.1%	1.5%
DFS (Asia/Pacific/USA)	--	3.6%
Dubai Duty Free	--	3%
Others	[50-60]%	[60-70]%

Source: Form CO, based on the figures provided in Verdict's "Global Airport Retailing 2007" Report.

27. In particular, as regards competition in the airport retail market, the market investigation confirmed that duty-free specialists face a number of important competitive constraints. First, respondents indicated that, since retail sales represent an important revenue source for airport operators, they almost always impose pricing policies on the travel retail operators, such pricing guidelines, notably by benchmarking of prices to high street prices, and/or carrying out price surveys/comparisons, and/or the obligation to show cost savings to travellers on price tags.
28. Secondly, respondents indicated that exclusivity is not always awarded with respect to all ranges of goods, as the airport operators intend to stay flexible and maintain competition among the retail services operators within each airport. Nevertheless, business models with exclusivity for certain product categories (usually core products) are also in place. Hence, in such case, duty-free operators are subject to competition from other outlets present at the airport, especially for non-core, duty-paid products as well as from travel retail stores in other airports in the EEA and the world, notably stores at return airports. Some respondents also indicated that "buy on arrival" and high street stores exercise a competitive constraint.
29. Thirdly, even though some respondents expressed the view that there may be some barriers to entry on the airport retail market, in particular the know-how and reputation, it was confirmed that numerous high-street stores and brands have become active in various airports across the EEA, such as Emporio Armani and Ferrari.
30. At the level of the particular airports, Autogrill (via Alpha) and WDF only overlap in 3 UK airports (London Stansted, London Gatwick and London Heathrow). Nevertheless, due to the different concessions operated by each company (Alpha: souvenirs/destination goods, WDF: tax- and duty-free products), their only product overlaps concern specialist souvenir shortbread, biscuits and confectionery. Moreover, Alpha's activities at these airports appear to be marginal (EUR [...] million out of EUR [...] million achieved through retail sales in Stansted, EUR [...] million out of EUR [...] million in Gatwick and EUR [...] million out of EUR [...] million in Heathrow).
31. Any competition concerns in relation to the market for airport retail services can thus be excluded under any alternative geographic market definition.

Concessions for the operation of retail services at airports

32. Respondents to the Commission's market investigation confirmed that concession agreements constitute one of the most common contractual bases upon which airport operators and travel retail operators agree for the provision of travel retail services at the premises of the former. The majority of respondents (both competitors and airport operators) indicated that they mostly or exclusively negotiate such concession agreements through public tenders rather than bilateral negotiations. Bilateral negotiations appear to be only occasionally used in the context of the renewal of a concession. A few airport operators (such as The Schiphol Group and Milan Airports) nevertheless indicated that they exclusively negotiate concession agreements bilaterally. The duration of such concessions was indicated to be ranging from 3 to 10 years, depending on the products covered and the investments required, with the majority of the respondents pointing out that, apart from concessions for "core" products duty-free sales that are often exclusive, airport operators usually grant multiple concessions to various retail operators within the same airport.
33. Most airport operators indicated that switching costs are low or inexistent, and that switching between travel retail operators is easy upon termination of the concession contract. An airport operator nevertheless expressed the view that the choice offered when switching *duty-free* operators is more limited, in light of the lower number of specialists experienced in duty-free sales.
34. Most respondents indicated that airport retail operators face strong competition when bidding for airport retail concessions, and that post-merger the merged entity will continue to face numerous strong international players that operated globally, in particular Gebr. Heinemann, Dufry, Nuance and DFS.
35. Furthermore, it was overwhelmingly confirmed both by competitors and airport operators that WDF is not really active on the market for the award of airport retail concessions, given that, contrary to Autogrill, WDF has historically not bid aggressively for concession contracts beyond the BAA airports (having only placed an unsuccessful bid in the 2005 [...])⁹. Any competition concerns in relation to a possible market for concessions for the operation of travel retail services at airports can therefore be excluded.

Conclusion

36. On the basis of the above, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the common market.

VI. CONCLUSION

37. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

⁹ [...]

For the Commission
(Signed)
Neelie KROES
Member of the Commission