

***Case No COMP/M.5652 -
GIP/ GATWICK
AIRPORT***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/11/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No. COMP/M.5652 - GIP / GATWICK AIRPORT
Notification of 21/10/2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 21 October 2009, the Commission received a notification of a Proposed Concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which Global Infrastructure Partners-A1, L.P., Global Infrastructure Partners-B, L.P. and Global Infrastructure Partners-C, L.P. ("GIP", UK) intend to acquire sole control of Gatwick Airport Limited ("GAL", UK) within the meaning of Article 3(1)(b) of the EC Merger Regulation by way of the acquisition of 100% of the issued share capital of GAL from its current owner, BAA Limited ("BAA", UK).

I. THE PARTIES

2. **GIP** is a private equity fund which invests in infrastructure and infrastructure-related assets. Its portfolio includes its 75% joint ownership interest in London City Airport ("LCY")². GIP is managed by Global Infrastructure Management LLC ("GIM")³ and jointly controlled by General Electric Company ("GE") and the Credit Suisse Group ("CSG").

¹ OJ L 24, 29.1.2004 p. 1.

² GIP's joint acquisition of LCY with AIG Financial Products was notified to the Commission in October 2006 (case COMP/M.4429 – *AIG/GIP/STRATFIELD*). Currently GIP holds 75% of LCY, the remaining 25% are held by a subsidiary of AIG Highstar Capital III, L.P.

³ The creation of GIM was notified to the Commission in 2006. See case COMP/M.4315 – *GE/CS/GIMP/JV*.

3. **Gatwick Airport Limited**, currently owned by BAA, operates LGW airport which is currently the UK's second largest airport.

II. THE OPERATION AND CONCENTRATION

4. The acquisition of the entire issued share capital of GAL will take place through the special purpose vehicle Ivy BidCo Ltd. ("Bidco"). Bidco will be controlled by a newly formed Guernsey limited partnership ("JVLP"). The partners in JVLP will be GIP holding around [...] % and a vehicle owned by the Abu Dhabi Investment Authority ("ADIA") holding around [...] % of the shares.
5. ADIA acquires only a [...] % stake in JVLP. Operational and strategic decisions will be taken with simple majority by the board of Bidco, which will comprise three directors appointed by GIP and one director appointed by ADIA. Although ADIA will have certain veto rights for (i) Majority Matters and (ii) Reserved Matters⁴ these rights do not concern any operational or strategic decisions.⁵
6. Therefore, GIP will acquire sole control of GAL within the meaning of Article 3(1) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁶ (GIP: EUR [...] million, GAL: EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (GIP: EUR [...] million, GAL: EUR [...] million), and GIP did not achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

V. MARKET DEFINITION

Relevant product market

8. Both GIP and GAL are active in the management and operation of UK airports. The parties submit that the relevant markets include the provision of airport infrastructure services to airlines (including development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure, as well as the coordination and control of the activities performed on these infrastructures).
9. The parties' approach is in line with previous Commission decisions.⁷ However, given the recent developments in the aviation sector, in particular the increase in the number of low cost operations, the Commission has considered previously also whether the

⁴ Majority Matters govern [CONFIDENTIAL].

⁵ Certain Majority Matters include [CONFIDENTIAL].

⁶ Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation.

⁷ See case IV/M.786 – *Birmingham International Airport* paragraph 14; case M.1035 *Hochtief/Aer Rianta/Düsseldorf Airport*, paragraph 10; case M.2262 – *Flughafen Berlin II*, paragraph 13; case COMP/M.3823 – *MAG/Ferrovial Aeropuertos/Exeter Airport*, paragraph 15; case COMP/M.4164 – *Ferrovial/Quebec/GIC/BAA*, paragraphs 10 to 14.

provision of airport infrastructure services could be further sub-segmented (i) on the basis of the type of airline customer, i.e. charter operators, scheduled full service carriers and scheduled low cost carriers, or/and (ii) on the basis of the type of flight (i.e. long haul / short haul).⁸

10. The market investigation has shown that a majority of respondents did not see the need to further sub-divide the market on the basis of airline customers, i.e. charter operators, scheduled full service carriers and scheduled low cost carriers. However, some respondents considered a further sub-segmentation on the basis of the type of flight (i.e. long haul / short haul), stating that long-haul flights need another infrastructure such as longer runways, larger check-in areas, meeting and gate areas and a possibility to accommodate larger volumes of passengers.
11. However, for the purpose of this case, the precise product market definition can be left open as no competition concerns would arise under any alternative market definition considered.

Relevant geographic market

12. As far as the geographic market for the provision of airport infrastructure services is concerned, the parties submit that they do not consider LCY and LGW to be within the same catchment area. However, the parties suggest two alternative frameworks for the geographic market definition: (i) an area encompassing airports in the South East of England and East Anglia⁹; and (ii) a narrower area encompassing the five London airports.
13. In its previous decisions, the Commission has so far left open the exact geographic market definition for the provision of airport infrastructure services in the London area.¹⁰
14. In the market investigation, most carriers have indicated that switching between the London airports is difficult due to capacity constraints for slots and facilities (especially at LHR) or the particularity of the airport (e.g. LCY being a niche airport serving high yield time-sensitive passengers, whereas LGW serves mainly leisure, less-time sensitive passengers.).
15. In this case, it can however be left open whether the geographic market is limited to a certain airport in London or encompasses a wider area comprising some or all of the London airports and/or other airports as no competition concerns arise under any alternative geographic market definition considered.

VI. COMPETITIVE ASSESSMENT

16. The transaction has to be seen in the framework of implementing remedies imposed by the UK CC.¹¹ The UK Competition Commission has indicated in its final consent in

⁸ Case COMP/M.4164 – *Ferrovial/Quebec/GIC/BAA*, paragraphs 10 to 14.

⁹ Including the five London airports (LHR, LGW, LCY, STN and LTN), Southampton, Bournemouth and Southend.

¹⁰ See case COMP/M.3823 – *MAG/Ferrovial Aeropuertos/Exeter Airport*, paragraphs 16 to 20; and case COMP/M.4164 – *Ferrovial/Quebec/GIC/BAA*, paragraphs 15 to 22.

which it considers GIP as a suitable purchaser, that the acquisition of GAL by GIP would increase competition on the relevant market(s).

17. The parties submit that on the narrowest market definition, a hypothetical market for the provision of airport infrastructure services to full-service scheduled carriers for the operation on short-haul routes in the London area, the combined market share of LCY and LGW would only be [30-35]% (LCY: [5-10]%, LGW: [25-30]%). Under all other geographic market definitions considered, the parties' combined market shares would be lower. However, the parties, in line with the UK Competition Commission¹² note that market shares are of limited significance when assessing competition between airports, and that it is particularly true in the case of LCY and LGW.
18. Indeed, the Commission's investigation in this case confirmed that LCY and LGW were considered as being significantly different by the customers, i.e. airlines, and therefore had very limited demand-side substitutability. According to the notifying parties, LCY is a niche airport serving predominantly premium business passengers. For this reason, neither charter airlines nor low-cost carriers operate from LCY. In addition, due to the length of LCY's runway long haul routes cannot generally operate from this airport.
19. A vast majority of the participants in the market investigation confirmed that LCY was considered as a niche airport dedicated mainly to business passengers travelling on short haul routes and fully serviced schedules carriers while LGW was more oriented toward leisure passengers and low-cost carriers.
20. A respondent to the market investigation indicated that "LCY is much more business oriented, and less volume oriented", which was corroborated by other respondents. According to an airline, "business passengers working in the financial services sector are very time sensitive and appreciate the close distance [of LCY] to the City of London, facilities are designed to serve this demanding clientele, e.g. lounge space, telecommunication & IT infrastructure, many early morning and evening flights". Accordingly, a very large majority of respondents to the market investigation did not consider LGW as a suitable alternative to LCY.
21. Furthermore, some airlines indicated that they would rather stop a service than moving it from LCY to another airport, due to the special features of LCY (proximity from the London City and Canary Wharf area, very efficient check-in and security process, etc.), thereby underlining the niche aspect of LCY and its very limited substitutability with LGW.

¹¹ In March 2007, the UK CC opened a market investigation into whether any feature of the markets for airport services in the UK as exists in connection with the supply of airport services by BAA prevented or distorted competition in the UK or part of the UK. On 19 March 2009, the UK CC published its final report with respect to this investigation (the "UK CC Report") which largely confirmed its previous findings and required BAA to divest LGW and STN, as well as one of either Edinburgh Airport or Glasgow Airport, to different purchasers. On 14 May 2009, the UK CC issued its provisional final opinion approving GIP as a suitable purchaser for GAL, which would not create additional competitive concerns. On 20 October 2009, the UK CC provided an interim consent and launched a 15 day public consultation. The UK CC gave it final consent immediately after the consultation period, on the 5 November 2009.

¹² The UK CC Report, paragraph 2.46: The importance of geographical location for airport competition means that there is a continuum of substitution possibilities depending on distance and other airport characteristics. Hence any market definition beyond a single airport is, to an extent, arbitrary and assessment of market shares is unlikely to be a useful tool in itself for measuring market airport power

22. Conversely, most respondents to the market investigation did not consider LCY as a possible alternative to LGW. Indeed, the technical limitations of the airport (small size of the terminal, short runway adapted to short haul flights only), as well as the difference in airport charges do not allow airlines to consider LCY as a proper substitute of LGW.
23. In the light of the foregoing, the proposed concentration does not raise serious doubts with regard to the market for the provision of airport infrastructure services.

VII. CONCLUSION

24. 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 the EC Merger Regulation.

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