COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1035 - Hochtief/Aer Rianta/Düsseldorf Airport
Notification of 20.11.97 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 20.11.97 Hochtief Projektentwicklung GmbH ("HTP"), Aer Rianta International ("ARI") and the City of Düsseldorf notified to the Commission a proposed concentration pursuant to article 4 of Council Regulation (EEC) N 4064/89 by which a 50% shareholding in Flughafen Düsseldorf GmbH ("FDG"), hereto held by the Land of North Rhine-Westphalia, will be acquired by an acquisition vehicle, Airport Partners GmbH owned by HTP and ARI (shares held 60:40 respectively). The remaining 50% shares in FDG will remain with the City of Düsseldorf.

2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

THE PARTIES

3. Airport Partners is owned by HTP and ARI and is formed solely for the purpose of exercising control by both parents over FDG.

4. HTP/Hochtief is a subsidiary of Hochtief Aktiengesellschaft ("Hochtief"), Essen, the holding company of the RWE/Hochtief group. Hochtief is active, both in Germany and internationally, in the planning, financing, building, management and operation of all types of construction projects.

5. ARI is a wholly-owned subsidiary of Aer Rianta cpt ("AR"). AR is a company owned by the Irish State and is active in the management, development and operation of Dublin, Shannon and Cork Airports ("the Irish Airports"). AR is active in the airport management and retail management sectors and also operates a chain of hotels and other catering activities.

6. The City of Düsseldorf, in the exercise of its public function, has a number of direct and indirect shareholdings in companies active in such areas as utilities, transportation, waste collection and disposal. Its involvement in FDG is limited to its 50% shareholding.

THE CONCENTRATION

Joint control

7. The notified transaction concerns the acquisition by Airport Partners GmbH of 50% of shares in FDG. The remaining 50% of the shares in FDG will continue to be held by the City of Düsseldorf. The relationship of joint control between Airport Partners GmbH and the City of Düsseldorf will be governed by a Consortium Agreement and also the existing FDG Shareholder's Agreement. These Agreements require the consent of both shareholders in all important business decisions (including initial and annual business plan). An arbitration mechanism has been agreed in cases of deadlock. Therefore FGD is jointly controlled by Airport Partners GmbH and the City of Düsseldorf.

Full function joint venture

8. FDG already performs the functions normally carried out by an airport manager and operator and has and will continue to have sufficient finance, personnel and assets to carry out its business on a lasting basis. The joint venture will therefore, perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination

9. Aer Rianta and Hochtief are both active in the field of airport management but their airport activities are carried out in an area geographically distinct from that in which FDG operates. The transaction will not therefore lead to the coordination of the competitive behaviour between the parents AR/ARI, Hochtief/HTP and the City of Düsseldorf since none of the parents will be active in the market of the joint venture nor on a market in which one of the other parents is active.

COMMUNITY DIMENSION

10. AR, RWE/Hochtief, FDG and the City of Düsseldorf have a combined aggregate world-wide turnover in excess of ECU 5,000 million (AR, ECU 291,521m; Hochtief, ECU 37,776,637m; FDG, ECU 260,127m; City of Düsseldorf ECU 1,454,905m). The Community-wide turnover of each of RWE/Hochtief and FDG exceeds ECU 250 million but in both cases more than two thirds of it is achieved in Germany. However, the Community-wide turnover of Aer Rianta exceeds ECU 250 million and it does not

achieve more than two thirds of this within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

11. As decided previously in case No. IV/M.786 - Birmingham International Airport, the activities of airport operation and management for passengers and cargo and the provision of associated services can be seen as a distinct product market. These activities consist of the provision of infrastructure services (e.g. runway facilities, taxi-ways), groundhandling services (e.g. passenger and baggage handling, fuel and oil provision, aircraft maintenance) both types of services being provided to airlines and aircraft, and the associated commercial services (e.g. catering facilities, car parking, car hire, duty-free shops and other retail outlets) being offered to any users of the airport, in particular passengers. Airport management also includes the coordination and supervision of the activities of third parties who supply such services through contracts or concessions.

12. It was left open in the Birmingham International Airport case whether the market for airport management and operation could be further subdivided into several broad categories of services of infrastructure, ground handling, and commercial services. It can again be left open in this case since there are no competitive overlaps of the parties' activities and furthermore, there is no creation or strengthening of a dominant position whether the market is defined narrowly or wider.

Relevant geographic market

13. There is some question as to whether the relevant geographic market definition varies as between infrastructure services and commercial services and whether the market is limited to the confines of an airport, or to its catchment area or if, in fact, it encompasses airports within a larger area comprising airports or airlines targeting cost-conscious and less time-sensitive charter and economy class passengers who will consider travelling further away to an airport that can offer lower fares. However, the exact geographic market definition can be left open since, in any of the alternative geographic markets, the concentration will not lead to the creation or strengthening of a dominant position which would significantly impede effective competition in the Community or in the EEA or any substantial part of it.

Assessment

14. ARI is engaged in activities in Birmingham in the UK and Dublin, Shannon and Cork airports in Ireland. Apart from its present interest in Düsseldorf Airport, ARI has no airport management activities in Continental Europe and is not therefore active in any management of any airports that could conceivably compete with the services offered to airlines and passengers by FDG.

15. HTP's involvement in airport management has up until now been limited to its stake in the new Athens Airport, which will be operational in 2001. However, because of

the geographical distance between Athens and Ireland, Birmingham and Düsseldorf no competition problems arise as a result of the proposed concentration.

16. FDG's airport management activities are limited to Düsseldorf and Mönchengladbach. Consequently, there can be no aggregation of market shares as a result of this operation.

17. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Community or in the EEA or in any substantial part of that area.

ANCILLARY RESTRICTIONS

18. The parties submitted two provisions as ancillary restrictions directly related to and necessary for the implementation of the concentration.

19. Pursuant to section 2 (2) of the Consortium Agreement, the parties undertake to conclude a [...][1]-year consulting contract benefiting FDG, whereby HTP and ARI agree to provide their expertise in the running of the airport.

20. Pursuant to section 4 of the FDG Shareholders' Agreement and section 8 of the Consortium Agreement, the parties shall not divest, before the end of [...][2], their shareholdings in FDG without the consent of the other party, and only under certain conditions thereafter. Furthermore, section 11 of the Share Purchase Agreement prevents Airport Partners from divesting its shareholding in FDG without the written consent of the Land Northrhine-Westfalia prior to year [...][3], such written consent not to be unreasonably withheld after[...][4].

21. The clause relating to the [...][5]-year consultancy contract merely seeks to provide FDG with the expertise of HTP and ARI during a 'start-up' period. This is intended to ensure that the aims of the partial privatisation are achieved and it does not restrict competition. The clause relating to non-divestiture of shareholdings is aimed at securing the success of the joint venture by guaranteeing a sufficient duration to allow and also justify the necessary investments and long-term planning by the parties. This clause is therefore, an integral part of the concentration.

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CONCLUSION

22. For the above reasons, the Commission decides 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 (EEC) No 4064/89.

For the Commission,