EN

Case No COMP/M.3728 - AUTOGRILL / ALTADIS / ALDEASA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/03/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3728 - AUTOGRILL/ALTADIS/ALDEASA
Notification of 22/02/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 22/02/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Autogrill S.p.A. ("Autogrill"), controlled by Edizione Holding S.p.A., and Altadis S.A. ("Altadis") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Aldeasa S.A. ("Aldeasa"), by way of public bid announced on 28/01/2005.

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Autogrill is an Italian company active in the commercial foodservice sector and in the fast-food service sector, operating restaurants and catering outlets on motorways, in railway stations, shopping malls and other transit areas in several EU member States and the USA. It also operates restaurants and food service outlets in airports mainly in Italy, but also in other EU member States (including the airport of Santander in Spain)

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[1] OJ L 24, 29.1.2004 p. 1.

and Switzerland. Additionally, Autogrill has a small shop at Rome's Fiumicino airport, selling souvenirs, newspapers and sundries.

4. Altadis is a French-Spanish company active in the manufacturing and wholesale distribution of tobacco products mainly in France, Spain and Italy. Through its subsidiary Logista, Altadis also provides logistic services in France, Spain, Portugal and Italy.

5. Spain-based Aldeasa is mainly active in retail services at airports in Spain (21 airports), Portugal and other non-EU member States. Additionally, Aldeasa provides foodservices in Spain through Foodlasa, a 50/50 joint venture with Compass. Altadis is by far the largest shareholder of Aldeasa, with a stake of 34.6%. The remaining share capital is fragmented amongst a number of shareholders.

II. THE OPERATION. CONCENTRATION

6. On 28/01/2005 Autogrill, through the vehicle company Retail Airport Finance, S.L.U. ("the SPV") launched a public take over bid for the acquisition of 100% of the issued share capital of Aldeasa. Under the terms of the Framework Agreement between Autogrill, Altadis and the SPV, the parties have agreed that in case of success in the bidding competition, Altadis will confer to the SPV its 34.6% participation in Aldeasa and acquire 50% of the share capital of the SPV, the remaining 50% being owned by Autogrill. Most important decisions (e.g. adoption of the budget plan, appointment of the CEO and Chairman of the Board of Directors) require the agreement of both Autogrill and Altadis.

7. The notifying parties will therefore acquire joint control over Aldeasa in the sense of Article 3(1)(b) of Council Regulation 139/2004.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of Edizione Holding S.p.A., Altadis and Aldeasa have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

A.1. Product markets

(i) Retail services at airports.

9. The parties submit that there is a separate product market for retail services at airports, including duty-free and duty-paid retail activities. In previous decisions the

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2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

Commission has analysed the retail travel market[3] but left open the question whether this market should be sub-segmented (e.g. retail outlets used by travellers at airports, on-board aircraft and on-board ships). Products sold in retail outlets at airports can be classified in duty-paid and duty-free products. These products have a different fiscal regime, which could indicate a further segmentation of the market. After 30 June 1999, intra-Community travellers have no longer the right to acquire duty-free products[4]. For that purpose, Aldeasa, as other duty-free operators, has introduced a third category of products for intra-community travellers (named "travel-value") sold at its duty-free outlets. In the present case, the exact definition of the relevant product market can be left open, since the proposed transaction will not raise competition concerns in any of the possible alternative product markets.

(ii) Concession foodservice

10. The parties consider that a separate market for concession foodservices at airports exists. The question whether this market should encompass the outsourcing of foodservice requirements in all transport, leisure, sport and retail sectors or whether the market should be further subdivided (e.g. airports, railway stations, sport and leisure facilities, etc), has been left open by the Commission[5]. In the present case the exact definition can be left open too, as in all alternative product market definitions, the parties' combined market share will not exceed 15%.

(iii) Manufacturing, sale and wholesale distribution of tobacco products

11. The parties submit that the product market for manufacturing and sale of tobacco should be further sub-segmented into cigarettes on the one hand and cigars on the other. This definition is in line with past Commission decisions[6]. The Commission has also analysed the product market for wholesale distribution of tobacco products leaving open the question whether this market should be further sub-segmented on the basis of the tobacco product distributed[7] (e.g. cigars, cigarettes etc.). The sale of tobacco products in Spain is strictly regulated[8]. According to the Spanish legislation, wholesale distributors supply exclusively to official retailers or *estancos*, operated under a monopoly regime controlled by the State. On the contrary, the sale of duty-free (and "travel-value") tobacco products is subject to a special regime, and does not follow the traditional sales channel. Aldeasa acquires its tobacco products directly from

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3 Case No. IV/M. 782 Swissair/Allders International (paras. 8-9).

4 Cf. Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, OJ L 376, 31.12.1991 p. 1.

5 Case No. COMP/M. 1972, Granada/Compass (para. 15); Case COMP/ M. 2373 Compass/Selecta (para. 12); Case No. COMP/M.2639, Compass/Restorama/Rail Gourmet/Gourmet Nova (para. 17). Concession foodservices refer to the outsourcing of foodservice requirements to the public in travel-related locations, retail related locations, sports stadiums and leisure venues.

6 Case No. COMP/M.1735 Seita/Tabacalera (paras. 12 to 15); case No. COMP/M 3248 BAT/ETI (para. 30).

7 Case No. COMP/M. 3553 Logista/Etinera/Terzia (para. 20).

8 Tobbaco market Acto of 4 May 1998 and Royal Decree 1199/99.

manufacturers. Therefore, wholesale distributors like Altadis (through its subsidiary Logista) are not involved in the distribution of tobacco products to duty-free outlets. It should be underlined that some of these manufactures organise their sales to duty-free operators at an international level and not through their national branches. In the present case, however, the exact product market definition for the manufacture and sale and wholesale distribution of tobacco products can be left open given the absence of significant competitive concerns in any of the possible alternative product markets.

A.2. Geographic markets

(i) Retail service at airports

12. The parties consider that the relevant geographic market for retail services at airports is at least EEA-wide if not worldwide. In previous decisions[9] the Commission has left open the exact geographic market definition but suggested that it could be international or, at least, EEA-wide.

(ii) Concession foodservices

13. The parties refer to previous Commission decisions[10] where the concession foodservice market has been considered to be national. However, the parties believe that major concessions are subject to competitive international tender and thus, the market might now be viewed as wider than national.

(iii) Manufacturing, sale and wholesale distribution of tobacco products

14. The parties submit that, in line with previous Commission's decisions, the manufacturing, sale and distribution markets of tobacco products are national in scope.[11]

15. In the present case, the exact geographic definition of the above markets can be left open since the present transaction does not raise any significant competition concerns irrespective of the geographic market definition.

B. Competitive assessment

16. The activities of Aldeasa and Autogrill minimally overlap in the sector for retail outlets used by travellers at airports and in the sector of concession foodservices at airports. A vertical relationship exists between Altadis and Aldeasa, given that Altadis tobacco brands are sold at Aldeasa airport outlets. The markets for the manufacture and distribution of tobacco products in Spain, where Altadis market shares exceed 25%, is affected by the notified transaction.

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9 Case No. COMP/M. 782 Swissair/Allders International (para. 12).

10 Case No. COMP/M. 1972 (para. 20); Case COMP/ M. 2373 (para. 24); Case No. COMP/M. 2639 (para. 23).

11 Case No. COMP/M.1735 (para. 21); Case No. COMP/M. 3248 (paras.27-28).

B.1. Horizontal aspects

17. Both Aldeasa and Autogrill are active in the retail services at airports in Europe and in the concession foodservices at airports in Spain. However, in none of the possible alternative market definitions will the parties hold a combined market share exceeding 15%. Further, the overlap, if any, will be *de minimis*. Autogrill's presence in retail services at airports is marginal and this company has no duty-free (or travel-value) activities, whereas Aldeasa is mainly focused on retail airport activities and has a very limited presence in the foodservice sector. The proposed transaction therefore does not raise any competitive concerns in any of these markets.

B.2. Vertical aspects

18. In the Spanish cigarette sector, Altadis is the larger supplier, with a market share of [30-40%]. Altadis' competitors in this market are Philip Morris ([30-40%]), Japan Tobacco ([0-10%]) and, with less than [0-10%], BAT and Gallaher. In the Spanish cigar sector, Altadis is also the larger supplier, with a market share of [30-40%]. The competitors are Cía Canariense ([25-30%]) and Cita, Guajiro, Nobel Holding, Agio and Swedish Match (each of them with less than 10% market share). Being the former monopolist in distribution, Altadis, through its subsidiary Logista, is the main provider of logistics and distribution services for tobacco products in Spain, with a market share of about [90-100%]. However, as mentioned above, duty-free retailers like Aldeasa acquire its tobacco supplies directly from manufacturers. In addition, the volume of tobacco sold through this special "free" regime in the overall tobacco sale and distribution sector in Spain is not significant, as mentioned below.

19. Any risk of foreclosure of the market as consequence of the proposed transaction can be excluded taking into account the following facts: *Firstly*, the modest share of Altadis cigarette brands ([0-10%]) and cigar brands ([0-10%]) in Aldeasa overall tobacco sales and conversely, the minor importance of Aldeasa purchases in Altadis' overall sales (Aldeasa represented less than [0-5%] of Altadis' cigarette sales and less than [0-5%] of its cigar sales in 2004). *Secondly*, the minor role of Aldeasa's outlets as a channel for the overall sale of tobacco in Spain. According to the notification, Aldeasa's tobacco sales represented only [0-5%] of total tobacco sales in Spain in 2003. This percentage should be further reduced if we consider the whole of the EEA market, as Aldeasa's market share in the downstream market is less than 15%. *Thirdly*, the lack of commercial interest for Aldeasa (or Altadis) to discriminate or for Aldeasa to refuse to sell Altadis' competing brands. Being airport sales mainly international, these tobacco sales at airports do not reflect national customers' taste but international taste. Customers tend to be loyal to the brands they consume. As a consequence, international brands are particularly strong in duty-free sales. This explain the difference between Altadis' market share at national level ([30-40%] for cigarettes and [30-40%] for cigars) and at airport sales through Aldeasa ([0-10%] and [0-10%]). None of Altadis's brands, which are mainly known at a national level, ranks amongst the top ten cigarettes brands in worldwide airport sales[12]. On the contrary, Altadis' competitors include strong international brands such as Marlboro, Camel or Dunhill, that can be easily purchased by customers elsewhere during their trip (e.g. on-board sales, outlets at return or stop-over airports). In this context, mainly due to the

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[12] Worldwide duty free sales in 2002. (cf. The Duty free & Travel-Retail Database and Directory 2004/2005, page 121).

necessity to hold a multi-brand portfolio to satisfy customers' needs, Aldeasa (or Altadis) would hardly have any incentive to foreclose the market or favour Altadis over competitors.

20. […][13] Post-merger, Altadis' commercial interests could be easily offset by its partner Autogrill, who would not be interested in losing Aldeasa's customers by supporting a discriminatory policy vis-à-vis Altadis' competitors.

21. The market investigation shows that Altadis' competitors are not particularly concerned by the present operation.

V. CONCLUSION

22. 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.

For the Commission

(signed)
Neelie KROES
Member of the Commission

13 Deleted business secrets.