



COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

COMMISSION DECISION

of 08.08.2005

referring case No COMP/M.3823 - MAG/Ferrovial Aeropuertos/Exeter Airport

to the competent authorities of the United Kingdom

pursuant to Article 9 of Regulation (EC) No 139/2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings¹ (hereinafter, ‘the Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by Macquarie Airports Group Limited and Ferrovial Aeropuertos S.A. on 27.06.2005, pursuant to Article 4 of the said Regulation,

Having regard to the request of the United Kingdom Office of Fair Trading of 22.07.2005,

WHEREAS:

1. On 27.06.2005 the Commission received notification of a proposed concentration by which the undertakings Macquarie Airports Group Limited (“MAG”, UK) controlled by Macquarie Bank Limited and Ferrovial Aeropuertos SA (“Ferrovial”, Spain) belonging to Ferrovial Group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Exeter and Devon Airport Limited (“EDAL”, UK) by way of public bid. The acquisition will take place through an acquisition vehicle, South West Airports Limited (“SWAL”) jointly controlled by MAG and Ferrovial.

¹ OJ L 24, 29.1.2004, p.1

2. The United Kingdom Office of Fair Trading (“OFT”) received a copy of the notification on 30.06.2005.
3. By letter dated 22.07.2005, the OFT requested the referral to its competent authorities of the proposed concentration in its entirety with a view to assessing it under UK national competition law, pursuant to article 9(2)(a) of the Merger Regulation (“the request”). The OFT considers that the notified transaction threatens to affect significantly competition in the South West of England in respect of airport infrastructure services to airlines.
4. The notifying party was informed on 25.07.2005 of the referral request made by the OFT. The notifying party also received a copy of the request at the same time. The notifying party submits in its observations of 28 July 2005 that the conditions for referral under Art. 9(2)(a) are not met, disagreeing with the OFT on the geographic scope of the market as well as on the impact of the transaction on competition in a UK local market.

I THE PARTIES AND THE OPERATION

5. MAG is a global private equity fund with investments in airports and associated infrastructure. In the EU, Macquarie Group companies also jointly control the Rome Airports (Ciampino and Fiumicino) and Brussels Airport; hold indirect shares of 24.1% in Birmingham Airport and of 11.3% in Copenhagen Airport. MAG and Ferrovial, through SWAL, jointly control Bristol Airport (50/50).
6. Ferrovial is active in the management of airport infrastructure concessions. Apart from its 50% stake in Bristol Airport, Ferrovial has investments in the following airports: Sydney Airport (20.9%), Belfast City Airport (100%) and Antofagasta Airport (100%)
7. EDAL is a wholly-owned subsidiary of Devon County Council (“DCC”), responsible for the management and operation of Exeter International Airport.
8. Following a tender procedure launched by DCC, SWAL was selected as the preferred bidder for EDAL on 21 April 2005. Under the proposed transaction, SWAL will acquire [...] of the outstanding shares of EDAL from DCC. DCC will retain [...] of the issued share capital of EDAL. Therefore, the proposed transaction will lead to the acquisition of joint control by MAG and Ferrovial of EDAL.

II CONCENTRATION

9. The proposed concentration is an acquisition of joint control for the purposes of Article 3(1)(b) of the Merger Regulation.

III COMMUNITY DIMENSION

10. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation: The parties have a combined aggregate worldwide turnover in excess of €5,000 million (MAG [...], Ferrovial [...] and EDAL [...]), MAG and Ferrovial have each a Community-wide turnover in excess of €250 million (MAG [...] and Ferrovial [...]). EDAL achieved its entire Community-wide turnover in the UK and

MAG achieved more than two-thirds of its Community-wide turnover in the UK, but this was not the case for Ferrovial.

IV RELEVANT MARKETS

Product markets

11. According to the OFT request, the parties activities overlap in the provision of airport infrastructure services to airlines (operating primarily in the leisure, as opposed to business market), the provision of ground handling services and of associated services. The OFT argues that for the purpose of its request it is not necessary to break down the provision of different services to airlines into separate markets. It could be assumed that the relevant product scope is the provision of airport infrastructure services.
12. As regards the provision of airport infrastructure services the OFT takes note of the different categories of customers of airline infrastructure services, i.e. airlines: full service scheduled airlines, low cost airlines, charter airlines. Full service scheduled airlines run a timetable based service with a higher service compared to other types of airlines and lower load factors. [...] Charter services, which operate services to holiday destinations, present airports with the need to provide capacity that will be required in peak times but will be under utilised for much of the year. The OFT leaves open for the purposes of the request, whether a further sub-segmentation of the market according to the type of airline should be made.
13. The parties submit that the relevant product market is the market for the activities of airport operation and management for passengers and cargo and the provision of associated services. The following service markets could be considered as relevant markets: (i) provision of airport infrastructure services (including the development, maintenance, use and provision of the runway facilities, taxiways and other airport structure, as well as the co-ordination and control of the activities performed on these infrastructures); (ii) provision (or contracting) of ground-handling services (e.g. ramp-handling, baggage handling, fuel and oil handling, ground administration and supervision, flight operations, crew administration); and (iii) provision (or contracting) of associated commercial services (e.g. food and beverages, sale of advertising space).
14. Both the OFT's and the parties' approach are in line with previous decisions, where the Commission considered that the relevant product market could be divided into the above mentioned categories but left the final product market definition open².
15. Therefore, a product market for the provision of airport infrastructure services to airlines cannot be excluded.

² See Case No IV/M. 786 *Birmingham International Airport* paragraph 14, Case No/M. 1035 *Hochtief/Aer Rianta/Düsseldorf Airport*; Case No IV/M, Case No/M.2262 *Flughafen Berlin II* paragraph 13 .

Geographic markets

16. The OFT argues that airlines' choice of airport is likely to be a function of demand in the catchment area of a particular airport and the costs of operating from a particular airport. Airlines are the direct customers of airports for their core services, as it is the airline, not the passenger, which decides whether to operate a route and pay the airport charges. However, the airlines' choice of routes and airports ultimately depends on passengers' demand. Passengers will choose between airports based on what could be called the generalised cost of the journey (airline ticket price, cost of getting to and from the airport, cost of parking and journey time). Given these demand constraints, the choice for the relevant frame of reference would be either all UK airports or some subset of airports within the UK. Therefore, according to the OFT it is possible, that the geographic market could be as narrow as the South West of the UK (i.e. airports of Bristol, Exeter, Bournemouth, Plymouth, Newquay and Southampton).
17. The parties submit that in the present case the geographic market extends beyond South West of England and even beyond South of England (comprising London airports) to cover the whole of the UK. The parties state that when airlines decide where to allocate new aircraft capacity, they do not limit their choice to airports within a particular region of the UK. In addition the parties argue that the nature and size of the catchment areas of Bristol and Exeter are very different, Bristol's catchment area being bigger, urban and more business orientated compared to Exeter's more rural and leisure oriented catchment area.
18. The geographic market of airport infrastructure services has not been defined in previous Commission cases. In these cases it has been suggested that the dimension of the market is limited to a single airport; to a radius of a fixed number of kilometres around the airport (100 km for regional airports and 300 km for international airports) or to its catchment area; or it encompasses different airports within a given larger area which offer similar services. It has also been stated that other factors, such as potential passenger volumes of type of flights could determine the geographic scope³.
19. The market investigation in the present case has shown that besides the price, the size and nature of the catchment area seems to be the most important criterion for airlines choosing a certain airport. According to some market participants the airports of Bristol and Exeter serve the same catchment area in the South West of the UK.
20. Therefore, it cannot be excluded that the geographic scope of the market is as narrow as the South West of the UK (i.e. airports of Bristol, Exeter, Bournemouth, Plymouth, Newquay and Southampton).

³ See Case No COMP/M.2262 *Flughafen Berlin II* paragraph 14; Case No IV/M. 786 *Birmingham International Airport* paragraph 16; Case No/M. 1035 *Hochtief/Aer Rianta/Düsseldorf Airport*.

V COMPETITION ASSESSMENT

Impact on competition in the provision of airport infrastructures services in the UK

21. The transaction will lead to some horizontal overlap, whichever way the product or geographic market is defined. According to the parties' estimate, if a UK market for airport infrastructure services was defined the combined market share of the parties would be below 5% (all market shares for 2004 and based on passenger volumes). If a geographic market was defined including the South West airports and the London airports the combined market share of the parties would be well below 15%.
22. If the geographic market was defined as the South West of the UK (comprising the airports of Bristol, Exeter, Bournemouth, Plymouth, Newquay and Southampton), the OFT submits that this operation could significantly affect competition.
23. Under such a narrow geographic market definition the combined post merger market share, based on passenger volumes, of the parties would be [65-70%] (Bristol: [60-65%]; Exeter: [5-10%]). According to the OFT this figure could be even higher if a further examination results in an assessment that Bournemouth should be excluded. One could argue that this airport predominantly serves the South Coast catchment area and has little overlap with South West airports.
24. The parties suggest that even if only the South West is considered, the parties will not have market power following the transaction in particular due to the pull exerted by the London airports on passengers located in the South West and consequently on airlines and the countervailing power of the airlines.
25. As regards the substitutability of London airports (in particular Gatwick and Heathrow) for passengers from the South West of England, the OFT submits that further investigation would be necessary to draw clear conclusions. It could be the case that airlines operating out of the South West are unlikely to be able to shift their operations to capacity constrained London airports. From their perspective the ability to serve demand sourced from the South West will be dependent on the access to low cost airport facilities in a reasonable drive-time from population centres in the South West.
26. The capacity of other airports to service the increased traffic volumes and the impact of increased journey times to a new airport on the elasticity of demand for the services currently run out of Exeter, needs to be explored in more detail. Although the parties point to the fact that two low cost carriers have recently started or will start to offer new services from Newquay, the parties have admitted that neither Plymouth nor Newquay have the capacity to expand services significantly. Both Bournemouth and Southampton would have capacity available but it has to be seen whether these airports constrain airports in the South West as they are situated further away.
27. Furthermore, the OFT mentions that there is no evidence that new airports are planning to open in the South West.

28. As regards buyer power the OFT submits that full service scheduled airlines are likely to have considerably less bargaining power than low cost carriers. Whilst in principle, according to the OFT it seems that low cost carriers do have significant buyer power, third party responses to the Commission which indicate that there may be switching costs associated with moving airports which would reduce the bargaining power of airlines have to be further investigated.
29. The results of the Commission market investigation have confirmed that there is some concern in the market regarding the elimination of competition between Bristol and Exeter airport pursuant to the transaction. The Commission is not in a position to exclude that the combination of the two airports might significantly affect competition in the South West market of the UK for airport infrastructure services. Based on a preliminary analysis the OFT has demonstrated that there is at least a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves closer scrutiny.

Existence of distinct markets

30. The market affected by the transaction is at most national, probably even regional in scope. Bristol and Exeter airport operate their businesses exclusively in the South West of the UK. The transaction is clearly focussed on the UK market and has no cross-border effects. Therefore, the market in which competition might be significantly affected presents all the characteristics of a distinct market.

VI CONCLUSION

31. From the above it follows that the conditions to request a referral are met. The OFT has demonstrated that there is at least a risk of distortion of competition according to Article 9(2)(a)⁴.
32. A referral to the competent authorities of the United Kingdom also seems to be appropriate given the previous experience of the OFT with aviation-related markets and in particular, those concerning airports over the last years⁵.
33. The Commission also considers that, given the local scope of the markets affected by the transaction, the competent authorities of the United Kingdom are better placed to carry out a thorough investigation of the whole case, and that it is therefore appropriate for the Commission to exercise its discretion under article 9(3)(b) so as to grant the referral.

⁴ See Commission Notice on Case Referral in respect of concentrations, paragraph 35, OJ C56, 05.03.2005.

⁵ See e.g. reference of the merger between Belfast International Airport Limited and Belfast City Airport to the (then) Monopolies and Merger Commission in 1995 and an antitrust procedure against BAA with regard to three airports in Scotland in 2003.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration resulting in the acquisition of joint control of Exeter and Devon Airport Limited by Macquarie Airports Group Limited and Ferrovial Aeropuertos SA is referred to the competent authorities of the United Kingdom, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

For the Commission
(signed)
Joaquin ALMUNIA
Member of the Commission