

***Case No COMP/M.4164 -  
FERROVIAL / QUEBEC  
/ GIC / BAA***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 23/05/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-V-2006

SG-Greffe(2006) D/202742

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam/Dear Sir,

**Subject: Case No COMP/M.4164 - Ferrovial/Quebec/GIC/BAA  
Notification of 11/04/2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 11/04/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (hereinafter the “Merger Regulation”) by which Ferrovial Infraestructuras S.A. (“Ferrovial”, Spain), Caisse de dépôt et placement du Québec (“Quebec”, Canada) and GIC Special Investments Pte Ltd (“GIC”, Singapore) intend to acquire joint control of BAA plc (“BAA”, UK) within the meaning of Article 3(1) b of Council Regulation (EC) No. 139/2004 (“Merger Regulation”) by way of either a scheme of arrangement or a public takeover.
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. Ferrovial provides airport management and infrastructure services globally and it is a part of Grupo Ferrovial S.A. Through Ferrovial Aeropuertos S.A. it controls and manages Belfast City airport (100% shareholding) and together with Macquarie Airports Group Limited (“Macquarie”) it jointly controls Bristol airport (50% shareholding) in the United

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

Kingdom<sup>2</sup>. In October 2005 it acquired Swissport, an international ground and cargo handling business, with a presence in 41 countries worldwide and 12 countries in the EU. Ferrovial offers also railway maintenance services through its subsidiary Amy Ferrovial.

4. Quebec is a financial institution and Canada's leading institutional fund manager. It manages funds for public and private pension and insurance funds and invests in the main liquid markets as well as in private equity and real estate. Quebec holds non-controlling interests in the airports of Athens, Düsseldorf, Hamburg and Sydney.
5. GIC is the private equity arm of the GIC Group and manages investments in private equity, venture capital and infrastructure funds, as well as direct investments in private companies. The companies belonging to the GIC Group do not have any activity which would be of relevance for the notified concentration.
6. BAA is primarily active in airport management inside and outside the EU. In the UK it is the operator of seven airports (London Heathrow, London Gatwick, London Stansted, Southampton, Glasgow, Edinburgh and Aberdeen) and it operates the Heathrow Express railway line which connects Heathrow with London Paddington. Furthermore, BAA holds a 65% stake in Naples airport (Italy) and 75% minus 1 share in Budapest Ferihegy airport (Hungary).

## **II. THE OPERATION AND CONCENTRATION**

7. The acquisition of the entire issued share capital of BAA by way of public bid or scheme of arrangement is intended to take place through an acquisition vehicle ("Newco") jointly controlled by Ferrovial, Quebec and GIC. Ferrovial will hold 64% shares in Newco and Quebec and GIC will hold stakes of 26% and 10% respectively. As decisions on the appointment of the management as well as the annual budget and investments of Newco and thus of BAA post-transaction require the approval of all three parties, Ferrovial, Quebec and GIC will acquire joint control of BAA within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Ferrovial €7.3 billion, CDPQ €[...] billion and BAA €3.1 billion). Ferrovial and BAA have a Community-wide turnover in excess of EUR 250 million (Ferrovial over €[...] billion; BAA over €2.8 billion), 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**

9. Both Ferrovial and BAA are active in the management and operation of UK airports. Ferrovial also provides ground-handling services at airports in the UK through its subsidiary Swissport.

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<sup>2</sup> See Case No COMP/M.3823 MAG/Ferrovial Aeropuertos/Exeter Airport.

<sup>3</sup> 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).

## ***1. Product market definition***

10. The parties submit that the following product markets should be considered as relevant markets: (i) provision of airport infrastructure services to airlines (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).
11. The parties' approach is in line with previous decisions, where the Commission considered that the relevant product market could be divided into the above mentioned categories<sup>4</sup>. The vast majority of respondents to the market investigation have confirmed the differentiation into the above mentioned product markets as being appropriate.
12. As regards the provision of airport infrastructure services to airlines the market could be further subdivided according to the categories of customers of airline infrastructure services, i.e. airlines: full service scheduled airlines, low cost airlines and charter airlines. This could be justified by the fact that full service scheduled airlines run a timetable based service with a higher service compared to other types of airlines and lower load factors. In addition, full service airlines need an airport being able to handle interline traffic, whereas neither low cost carriers nor charter airlines have this requirement. Furthermore, charter airlines operating to holiday destinations need airports which provide capacity in peak times but do not need the airport for much of the year. At the same time the distinction between the different types of airlines becomes less evident e.g. full service airlines competing with low cost carriers start to offer discounts.
13. In the market investigation some of the airlines also suggested that the market definition differentiate between airports providing long-haul services or short-haul services. Airports which offer long-haul services need longer runways and attract different kind of customers than airports which offer only short-haul services. However, it can be left open whether market for the provision of airport infrastructure services to airlines has to be further sub-segmented on the basis of the type of customer, i.e. charter operators, scheduled full service carriers and low cost carriers or on the kind of service the airports provide (short-haul or long-haul routes) as the concentration does not raise competition concerns under any product market definition considered.
14. For the purposes of this case, it is not necessary to consider whether the markets for the provision (or contracting) of ground-handling services and associated commercial services need to further subdivided, since the proposed operation would not raise competition concerns under any possible product market definition.

## ***2. Geographic market definition***

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<sup>4</sup> See Case No IV/M. 786 *Birmingham International Airport* paragraph 14; Case No IV/M. 1035 *Hochtief/Aer Rianta/Düsseldorf Airport* paragraph 11; Case No COMP/M.2262 *Flughafen Berlin II* paragraph 13; and Case No COMP/M.3823 *MAG/Ferrovial Aeropuertos/Exeter Airport* paragraph 15.

*a) Airport infrastructure services*

15. As far as the provision of airport infrastructure services to airlines is concerned, in previous decisions the Commission has left open the exact geographic market definition. In some previous cases the parties argued that the dimension of the market could be limited to a single airport on the basis of a fixed radius around an airport (for example 100 km for regional airports and 300 km for international airports) or an otherwise determined catchment area or an area which encompasses different airports within a given larger area which offer similar services. The Commission has found that factors, such as potential passenger volumes of type of flights could also determine the geographic scope<sup>5</sup>.
16. The parties have also submitted that it is appropriate to differentiate between hub airports and non-hub airports. Hub airports in the EEA compete against each other as they each offer feed and connecting opportunities. Non-hub airports compete against other airports located within their catchment area, both hubs- and non-hub airports.
17. The market investigation has largely confirmed that the size of the relevant catchment area is determined by the size and density of the population, level of wealth and type and size of businesses in the area and that it is on that basis airlines determine whether to start operations at a given airport and use it as a hub airport.
18. As regards London airports, the large majority of airlines stated that they would not move operations to Bristol airport if prices were to raise significantly and permanently for airport infrastructure services at any of the London airports (Heathrow, Gatwick, Stansted, Luton, London City) since they were considered not part of the same catchment area. Instead of moving to Bristol airlines would rather stop serving the routes from one of the London airports. At the same time if prices were to rise significantly and permanently for airport infrastructure services at Bristol airport, the airlines would not move operations to any of the London airports. Therefore it can be concluded that Bristol airport is not part of the same geographic market as any of the London airports.
19. As regards moving operations between London airports at least some of the airlines did not see the London airports to be substitutable with each other due to capacity constraints for slots and facilities (Heathrow, Gatwick) or the particularity of the airport (e.g. Heathrow flights demanded by high yield business passengers and corporate customers). However, it can 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 as no competition concerns arise under either alternative geographic market definition.
20. Southampton and Bristol airports were also not seen as substitutes for airline infrastructure services by the majority of the airlines. It can be left open whether Southampton airport is in the same geographic market as the London airports in view of the train links, which allow consumers in central and South West London easy access to

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<sup>5</sup> See Case No COMP/M.2262 *Flughafen Berlin II* paragraph 14; Case No IV/M. 786 *Birmingham International Airport* paragraph 16; Case No IV/M. 1035 *Hochtief/Aer Rianta/Düsseldorf Airport* paragraph 13; Case No COMP/M. 3823 *MAG/Ferrovial Aeropuertos/Exeter Airport*, paragraph 18.

Southampton airport, as no competition concerns arise under either geographic market definition.

21. Moreover, the market investigation confirmed that the BAA airports located in Scotland (Glasgow, Edinburgh, Aberdeen) are not substitutable with Belfast City airport and vice versa. . The precise market definition as regards the airports in Scotland and Northern Ireland can be left open as no competition concerns arise to the extent that the Scottish airports and Belfast City airport are not part of the same geographic market.
22. Therefore, for the purpose of the present case, it is not necessary to define the exact scope of the geographic market for airport infrastructure services since it can be concluded that the airports operated by Ferrovial and BAA are not part of the same geographic market.

*b) Ground-handling services*

23. The notifying parties submit that the geographic scope for the provision (or contracting) of ground-handling services is restricted to a specific airport given that the services required at a particular airport cannot normally be substituted by services provided at other airports. This is in line with past Commission decisions where it was concluded that the relevant geographic market for the provision of these services could be the area of a specific airport<sup>6</sup>. For the purposes of this case, the Commission therefore considers that the geographic market for the provision of ground-handling services is limited to a specific airport.

*c) Associated commercial services*

24. As regards the geographic market definition for the provision (or contracting) of associated commercial services, the parties submit in line with past Commission decisions that it is confined to the airport in question or possibly its intermediate surroundings<sup>7</sup>. For the purposes of this case, the Commission therefore considers that the geographic market for the provision of associated commercial services is limited to a specific airport or its immediate surroundings.

### **3. Competitive effects**

*a) Horizontal effects*

25. In the market for the provision of airport infrastructure services to airlines, the parties' activities do not overlap since the parties are not active in the same geographic markets. As mentioned above the airport of Bristol is not in the same geographic market as the London airports (Heathrow, Gatwick and Stansted) as well as Southampton. Furthermore, Belfast city airport is not in the same geographic market as the airports in Glasgow, Aberdeen and Edinburgh. The market investigation has broadly confirmed that Bristol is not a competitive constraint for any of the BAA London airports (Heathrow, Gatwick and Stansted) or Southampton and vice versa. The same is true for

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<sup>6</sup> See Case No COMP/M.2262 *Flughafen Berlin II* paragraph 13 and Case No COMP/M.1913 *Lufthansa/Menzies/LGS/JV* paragraph 11.

<sup>7</sup> See Case No COMP/M.2262 *Flughafen Berlin II* paragraph 13.

Belfast City airport in relation to the Scottish airports in Glasgow, Aberdeen and Edinburgh.

26. Moreover, several market participants mentioned that relocating airplanes from one airport to the other is very costly and to change hub or base airports is even more difficult. The costs do not only include the costs for moving infrastructure, labour and equipment but also the loss of significant market presence and market awareness that carriers have built over the years. Changing airports also requires a considerable amount of time, so that a timely switching of airports is not possible. For instance, charter carriers often make their plans for package holidays including ground handling contracts, crew and ground staff positioning and marketing investments up to 18 months in advance. Therefore, airlines are very unlikely to change airports between Bristol airport and the BAA London and Southampton airports.
27. In addition to the absence of horizontal overlaps it can be argued that in any event negative competitive effects between Bristol airport and the BAA London and Southampton airports are unlikely to materialise for the reasons stated below.
28. Firstly, Ferrovial's stake in Bristol is only 50% and it exercises joint control over the airport with Macquarie. Macquarie has no incentive to see Bristol's competitive conduct aligned with that of the London airports. Secondly, airport charges at the three London airports are subject to a price regulation by the Civil Aviation Authority (CAA). In addition, the London airports charges are set for a five year period in a transparent process. Therefore the parties' customers will get full knowledge of the business plans at the London airports. At Heathrow and Gatwick the prices charged to airlines for the airport infrastructure services are currently set at the maximum allowed level.
29. Due to the absence of overlapping activities of the parties, the transaction does not raise horizontal competition concerns with regard to the market for the provision (or contracting) of associated commercial services and the market for the provision (or contracting) of ground-handling services.

*b) Vertical effects*

30. Ferrovial is active in the ground-handling service market via its subsidiary Swissport. Swissport provides ground-handling services in some of the BAA airports. In particular, Swissport's activities cover passenger and ramp operations in Stansted and Gatwick; cargo operations in Heathrow<sup>8</sup> and to a very limited extent cargo operations in Budapest. Swissport also has a licence to provide services at Glasgow but currently it does not carry out operations in this airport. BAA does not provide any ground-handling services at any airport except Budapest, where it is currently in the process of selling the business.
31. The parties argue that ground-handling services are provided by suppliers directly to the airlines and that airport operators are not a party to this relationship. Airlines responding to the market investigation have largely confirmed this point and in general, they perceive the market for the provision of ground-handling services in the UK as a healthy competitive market. However, airport operators charge a number of fees to ground-

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<sup>8</sup> Swissport's ground-handling activities at Heathrow went into administration two years ago.

handling service providers<sup>9</sup>. Few competitors of Swissport, however voiced some concerns regarding the possibility that the proposed transaction would allow (i) Ferrovial to influence the ground-handlers' costs; (ii) that Ferrovial may influence their access to/availability of facilities; and (iii) that Ferrovial may cross-subsidise its ground-handling activities via the revenue earned through the operation of BAA airports. The Commission's investigation has however shown that these concerns are unlikely to materialise for the reasons stated below.

32. The provision of ground-handling services is subject to Council directive 96/67/EC on access to the ground-handling market at Community airports ("the Ground-handling Directive")<sup>10</sup>. This directive was implemented in UK law by the Airports (Ground-handling) Regulations 1997. All airports with more than 2 million passengers a year (all BAA airports except Southampton where Swissport is not active) or who handle more than 50,000 tonnes of freight a year are subject to these regulations.
33. The aim of the directive is to open up the ground-handling service market. To this end, airport operators must take all necessary measures to ensure free access by suppliers of ground-handling services to the market for the provision of services. The accounts of the ground-handling services must be separated. Additionally, airport operators must allow airlines wishing to do so the possibility to "self-handle".
34. Regarding the first concern on costs, according to information from the parties, the main part of ground-handlers' costs is related to labour costs (65-70%). Leasing and acquiring equipment accounts for approximately 10-15% of the costs. The fees paid to the airport operator account only for 10-15% of the total costs. Any increase of the latter fees cannot be considered, therefore, to have a major impact on the total costs of the ground-handling services supplier. Additionally, it should be noted that Ground-handling Directive expressly requires that the determination of the fee is done according to "*relevant, objective, transparent and non-discriminatory criteria*".
35. With respect to BAA "regulated" airports (i.e. Heathrow, Gatwick and Stansted) these fees are to some extent determined by the CAA. In general, the fees charged by an airport operator to ground-handling companies comprise both aeronautical charges and non-aeronautical charges. In BAA regulated airports, the aeronautical charges are directly set by the CAA for a five year period. The parties put forward that these charges have an impact on non-aeronautical charges via the "single till" mechanism. Pursuant to this mechanism, the CAA determines the revenue that an airport will need to cover its operating expenses and capital expenditure. The CAA then subtracts from the amount its estimate of the airport's likely non-aeronautical revenues to give the figure that must be recovered through the aeronautical charges. If non-aeronautical charges increase, at the next price review period the CAA will lower the amount of aeronautical revenues that can be generated and vice versa.
36. Regarding access to facilities, it should be noted that pursuant to the Ground-handling Directive, the airport operator must ensure that "*the space available for ground-*

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<sup>9</sup> According to the parties, they cover the rent of facilities (e.g. rooms for staff) and check in desks (60% of the fees); car parking, airside passes, use of baggage facilities and use of IT caballing (20-30% of the fees); the remainder of the fees covers a number of ancillary services.

<sup>10</sup> Council Directive 96/67/EC of 15 October 1996, Official Journal L 272, 25/10/1996 p. 0036 – 0045.



*handling at the airport is divided among the various suppliers of ground-handling services and self-handlers, including new entrants, to the extent necessary for the exercise of their rights". Moreover, airport operators must allow "effective competition and fair competition on the basis of the relevant, objective and on-discriminatory rules and criteria" <sup>11</sup>.*

37. The airport operator subject to the Ground-handling Directive has therefore no influence on the number or identity of ground-handlers. Relationship between ground-handlers and airports is of a legal nature. Ground-handlers are generally granted seven year licences to operate at an airport based on security and safety criteria. The only exception regarding BAA's airports is Gatwick. In 1998 and pursuant to the Ground-handling regulations, Gatwick successfully applied to the CAA to limit the number of ground-handlers to four. The same year, Heathrow applied to the CAA to limit the number of ground-handling service suppliers. The CAA rejected the application.
38. With regard to the concern on cross-subsidies, it should be first mentioned that the Ground-handling Directive explicitly allows airport operator companies to operate a ground-handling company at such airports. However, in order to prevent any cross-subsidisation, they are required to have separate accounts for the airport operator company and the ground-handler. According to Ferrovial, Swissport and Ferrovial Infraestructuras (the subsidiary of Grupo Ferrovial acquiring the stake in BAA) have separate activities and are run at arm's length and therefore, the separation of accounts requirement is met and cross-subsidies are not possible.
39. Moreover, even if cross-subsidies were to happen, the impact on competitors would be relatively low, bearing in mind the cost structure of ground-handling services, where airport operator fees represent 10-15% of the costs. Due to the fact that it is an airline that has commercial relations with a ground-handler and the selection of ground-handlers is most of the times subject to a tendering procedure, an airport operator has no guarantee to recoup subsidies in future contracts.
40. The barriers to entry are relatively low as also shown by recent entries<sup>12</sup>. Exiting the market also appears easy, considering that there are almost no sunk costs. As seen above, the main part of the costs is labour costs. Equipment such as check-in desks can be returned to the airport operators and ground equipment could be relocated or sold. Therefore, a ground-handling service provider which would be pulled out of the market would be able to relatively quickly re-enter the market. In this view the excessive pricing should be regarded as not likely.
41. Southampton, where Swissport is not active, is the only BAA airport not subject to the Ground-handling Directive<sup>13</sup>. However, in view of Southampton growth of 20% in 2005 and BAA's traffic forecast for year ending March 2007 (i.e. 2 million passengers)<sup>14</sup>, it is

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<sup>11</sup> See Article 16 of the Ground-handling Directive.

<sup>12</sup> Servisair at Liverpool John Lenon Airport and Menzies at Manchester and East-Midlands airports.

<sup>13</sup> Southampton had 1.877 million passengers in the year from April 2005 to April 2006, showing an increase of 19.3%. See BAA's press release of 9 May 2006 at [http://www.southamptonairport.com/assets/B2CPortal/Static%20Files/Traffic\\_April\\_06\\_final.pdf](http://www.southamptonairport.com/assets/B2CPortal/Static%20Files/Traffic_April_06_final.pdf).

<sup>14</sup> BAA forecasts passenger traffic in Southampton of 2 million passengers. See press release of 3 May 2006 [http://www.southamptonairport.com/assets/B2CPortal/Static%20Files/10YearTrafficForecasts\\_CIP06.pdf](http://www.southamptonairport.com/assets/B2CPortal/Static%20Files/10YearTrafficForecasts_CIP06.pdf)

expected that Southampton will be subject to the Ground-handling Directive in the near future.

42. As stated above, Swissport provides ground-handling services in BAA airports mainly in Stansted and Gatwick. According to Swissport, its market share on the basis of revenues at Gatwick airport is [10-20]%, other strong competitors being Servisair (25%), Aviance (20%) and British Airways (20%). Consequently, on the basis of Swissport's market shares and the presence of strong competitors, the present operation would not raise competition concerns on this market.
43. At Stansted, the market share is significantly higher [60-70]%, other competitors being Servisair (10%), Aviance (10%) and AGS (8%). Swissport's high market share at Stansted airport is due mainly to the services it provides to Ryanair and easyJet. Ryanair is the largest airline operator at Stansted, followed by easyJet. Both companies represent [...]% of Swissport's business at Stansted and approximately 70% of total airlines turnarounds in this airport (Ryanair 50% and easyJet 20%). Airlines usually select their ground-handlers through bidding procedure and are generally awarded for a duration that varies from 1 to 6 years. The average of Swissport's contracts is [...] to [...] years. Additionally, ground-handlers are generally granted 7 year licences to operate at an airport. Due to the tendering procedure, ground-handlers can easily be changed; therefore market shares do not necessarily reflect market power of particular ground-handlers. In the market inquiry, airlines confirmed that there is healthy competition for ground-handling contracts, which should exclude Ferrovial's incentives to cross-subsidise its ground-handling subsidiary.

## **V. CONCLUSION**

44. 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