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***Case No COMP/M.6723 -
FERROVIAL / QATAR
HOLDING / CDPQ /
BAKER STREET / BAA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 13/12/2012

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 13/12/2012

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6723 - Ferrovial / Qatar Holding / CDPQ / Baker Street / BAA
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 12 November 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² ("the Merger Regulation") which would result in FGP Topco Limited, the ultimate parent company of Heathrow Airport Holdings Limited (previously BAA Limited³, "BAA", United Kingdom), being jointly controlled within the meaning of Article 3(1)(b) of the Merger Regulation by Ferrovial S.A. ("Ferrovial", Spain), Qatar Holding LLC ("QH", State of Qatar), Caisse de dépôt et placement de Québec ("CDPQ", Canada) and Baker Street Investment Pte. ("Baker Street", Singapore) by way of purchase of shares and agreement.
2. Ferrovial, QH, CDPQ and Baker Street are designated hereinafter as the "Parties".

(1) THE PARTIES

3. **Ferrovial** is a multinational company involved in the design, construction, financing, operation and maintenance of transport, urban and services infrastructure.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004 p. 1.

³ Post-notification BAA Limited was renamed into "Heathrow Airport Holdings Limited", without this change affecting the ownership structure or the substance of the company.

4. **QH** is a global investment holding company, founded by the Qatar Investment Authority ("QIA"). It invests internationally in strategic private and public equity, as well as in other direct investments. Its investment sectors are diversified. QH owns the Harrods group⁴, which is active in the retail sector and through Harrods Aviation in aircraft handling and maintenance at Stansted and Luton airports. QIA also owns a 50% stake in Qatar Airways ("QA").
5. **CDPQ** is a leading institutional fund manager in Canada that invests in the main liquid markets as well as in private equity, infrastructure and real estate. It jointly controls Budapest Airport with GICSI and others⁵.
6. **Baker Street** is a company managed by GICSI, a subsidiary of the Government of Singapore Investment Corporation Pte. Ltd. ("GIC" and together with all of GIC's group companies and undertakings, the "**GIC Group**"). GICSI manages a diversified global portfolio of investments in private equity, venture capital and infrastructure funds, as well as direct investments in private companies. It holds a joint-control interest in Budapest Airport together with CDPQ and others⁶.
7. **BAA** is the operator of five airports in the United Kingdom, namely London Heathrow, London Stansted, Southampton, Glasgow and Aberdeen. BAA is also involved in airport-related property development and operates the Heathrow Express rail link between Heathrow and Paddington, London.

(2) THE OPERATION AND CONCENTRATION

8. Pursuant to the proposed Transaction, QH will acquire a 20% interest in BAA from three of BAA's current shareholders: Ferrovial will sell 10.62% of its shareholdings, CDPQ will sell 5.63% and Baker Street will sell 3.75% of their respective shares to QH.
9. Ferrovial's share will be reduced to 33.65%, while the remaining four shareholders will each hold a share smaller than 20%: CDPQ's share will decrease to 13.29%, Baker Street's share will decrease to 11.88%.⁷
10. The shareholders of BAA will enter into a New Shareholders' Agreement which foresees special majority requirements for the approval or amendment of BAA's budget or business plan, as well as the appointment of the CEO and CFO (so called "Special

⁴ The Harrods group also includes Air Harrods which offers helicopter charter and helicopter management services to private individuals at Stansted and operates a fleet of three helicopters. BAA's 2011 revenues derived from Air Harrods amounted to approximately EUR [CONFIDENTIAL]. As the very limited activities of Air Harrods at Stansted and the fact that BAA has to divest Stansted airport in execution of a definitive decision of the UK Competition Commission (see also recital 48), the Commission has not further investigated the effects of the Transaction on this market.

⁵ Case COMP/M.4582 of 15 March 2007 – HTA / CDPQ / Baker Street / Budapest Airport.

⁶ See footnote 5 above.

⁷ The shareholders of BAA are currently: Ferrovial, CDPQ, Baker Street, Alinda and Stable Investment Corporation. The shares of the non-controlling shareholders Alinda and CIC will remain 11.18% and 10% respectively and are thus not affected by the proposed Transaction. The Commission had cleared the exercise of joint control over BAA by Ferrovial, CDPQ, and Baker Street/GICSI in its decision M.4164 of 23 May 2006.

Majority matters"). Special majority consent can only be achieved with the agreement of the holders of the shares representing more than 80% of the total number of shares. As QH and Ferrovial will be the only two shareholders to each hold 20% or more of BAA's shares, they will be able to exercise negative joint control over BAA because of their ability to individually block special majority decisions.

11. Immediately following completion of the proposed Transaction, CDPQ and Baker Street will enter into a Cooperation Agreement⁸ concerning the voting in BAA.
12. Under the terms of this agreement, CDPQ and Baker Street [CONFIDENTIAL]
13. Acting together, CDPQ and Baker Street will have in excess of 20% of the total number of FGP shares. Therefore, between them, they will have sufficient shares to block Special Majority matters.
14. QH and Ferrovial, together with the unity of CDPQ and Baker Street will thus acquire joint control over BAA within the meaning of Article 3(1) of the EU Merger Regulation⁹.

(3) EU DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹⁰ (Ferrovial EUR [CONFIDENTIAL] million, QH EUR [CONFIDENTIAL] million, CDPQ: EUR [CONFIDENTIAL] million, Baker Street EUR [CONFIDENTIAL] and BAA EUR [CONFIDENTIAL] million). Each of at least two of the undertakings concerned has an EU-wide turnover in excess of EUR 250 million (Ferrovial EUR [CONFIDENTIAL] million, QH EUR [CONFIDENTIAL] million, CDPQ EUR [CONFIDENTIAL] million, Baker Street EUR [CONFIDENTIAL] and BAA EUR 2.765 billion), but they do not each achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
16. The notified operation therefore has an EU dimension.

(4) COMPETITIVE ASSESSMENT

17. BAA is active in the provision of airport infrastructure services to airlines for the airports Heathrow, Stansted, Southampton, Glasgow and Aberdeen. This involves the day-to-day running of these airports, investing in construction and maintenance of the airport infrastructure, providing security to passengers and users of the airports and ensuring full compliance with relevant airport regulation.

⁸ On 12 September 2012, CDPQ and Baker Street signed a Letter of Intent providing for this Cooperation Agreement. See paragraph 17 of the Form CO.

⁹ For the two remaining shareholders Alinda and CIC no commonality of interests exists.

¹⁰ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

18. Ferrovial is only active in the airport sector in the EEA by virtue of its interest in BAA¹¹.
19. CDPQ and Baker Street are active in the airport sector in the EEA by virtue of interests in BAA and Budapest Airport ; CDPQ has a further interest of 40% in HOCHTIEF¹².
20. The Harrods group has entered into [CONFIDENTIAL] retail area concession agreements with BAA at Heathrow. Besides, Harrods Aviation offers aircraft handling services at Stansted airport. These services comprise executive fixed-base operations, aircraft maintenance and engine repair and maintenance. Finally, QA provides airline services to passengers and air cargo transport services between Doha and Heathrow.

1. Relevant Markets

a) Provision of airport infrastructure services to airlines

21. The Parties submit, in line with previous Commission's decisions¹³, that the provision of airport infrastructure services to airlines should be considered as *relevant product market*. This includes 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. A further subdivision of the market according to the categories of customers of airline infrastructure services could be envisaged, i.e. full service scheduled airlines, low cost airlines and charter airlines.
22. For the purposes of this case, it is not necessary to consider whether the market for the provision of airport infrastructure services to airlines has to be further sub-segmented on the basis of the type of customer, since the proposed operation would not raise competition concerns under any plausible product market definition.
23. As for the *geographic market* definition, the Parties consider that, in line with the Commission's previous decisional practice, the question can be left open as no competition concerns arise under any alternative market definition¹⁴. Specifically with regard to the London airports, the Commission left open whether the market for the provision of airport infrastructure services to airlines should comprise all London airports, or should be limited to a certain airport in London¹⁵.
24. However, for the purposes of this case, the Commission considers that the geographic market can be left open as regards the provision of airport infrastructure services and

¹¹ Ferrovial sold its previous interests in Bristol airport in 2006, in Belfast City airport in 2008 and in Swissport in 2010.

¹² Through its shareholding in Hochtief, CDPQ holds non-controlling interests in various airports: none of these are located in the UK. See paragraph 156 of the Form CO.

¹³ 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; Case No COMP/M.4164 *Ferrovial/Quebec/GIC/BAA*, paragraph 10 to 14.

¹⁴ Case No COMP/M.2262 *Flughafen Berlin II*, paragraph 14; Case No COMP/M. 3823 *MAG/Ferrovial Aeropuertos/Exeter Airport*, paragraph 18; Case No COMP/M. 4164 *Ferrovial/Quebec/CIG/BAA*, paragraph 22.

¹⁵ Case No COMP/M. 4164 *Ferrovial/Quebec/CIG/BAA*, paragraphs 15 – 22; Case No COMP/M.5652 *GIP/Gatwick*, paragraph 2.52.

associated commercial services, since no competition concerns arise under any alternative market definition.

b) Concessions at airports

25. As for the *product market definition*, the Parties agree with the Commission's previous decisional practice in which the Commission considered the existence of a product market for the granting of concessions for the operation of retail services at airports¹⁶. Pursuant to these concession agreements, the concession holders pay the airport infrastructure operator a percentage of the revenue generated from sales to customers of the concessions. Competition for concessions takes place in the form of public tenders or bilateral negotiations. Therefore, apart from competition in the operation of concessions for retail services at airports (competition in the market, after award of the concession), another competitive arena is the bidding process for the award of concessions (competition for the market). For the purposes of this case the Commission considers that the product market definition can be left open since the proposed operation would not raise competition concerns under any plausible product market definition.

26. As for the *geographic market definition*, the Parties submit, in line with the Commission's previous practice¹⁷, that there are elements indicating that such market would be at least EEA-wide. However, for the purposes of this case, the Commission considers that the geographic market definition can be left open since the proposed operation would not raise competition concerns under any plausible geographic market definition.

c) Travel retail services

27. As for the *product market definition*, the Commission has in its previous decisional practice considered the existence of a product market for the provision of travel retail services, which could be further sub-segmented according to the type of travel location (e.g. retail outlets at airports, on-board ships).¹⁸ In its previous decisions, the Commission has left open whether the travel retail market should be further subdivided according to the type of travel location and whether the retail services at airports constitute a separate product market or whether it represents a part of a wider market for all travel retail services. For the purposes of this case, the Commission considers that the product market definition can be left open since the proposed operation would not raise competition concerns under any plausible product market definition.

28. As for the *geographic market definition*, the Commission considered that there are elements indicating that such market is at least EEA-wide, if not global.¹⁹ However, for

¹⁶ Case No COMP/M.5123 *Autogrill/World Duty Free*; Case No COMP/M.6263 *Aelia/Aéroports de Paris*.

¹⁷ Case No COMP/M.5389 *Aéroports de Paris/The Nuance Group*, paragraph 23; Case No COMP/M.5123 *Autogrill/World Duty Free*, paragraph 24.

¹⁸ IV/M. 782 *Swissair/Allders International*, COMP/M. 3728 *Autogrill/Altadis/Aldeasa*, COMP/M. 458 *Imperial Tobacco/Altadis*, COMP/M. 4762 *Autogrill/Alpha Airports Group*, COMP/M. 5123 *Autogrill/World Duty Free*, COMP/M.5389 *Aéroports de Paris/The Nuance Group* and COMP/M.6263 *Aelia/Aéroports de Paris/IV*.

¹⁹ IV/M. 782 *Swissair/Allders International*, COMP/M. 5123 *Autogrill/World Duty Free* and COMP/M.5389 *Aéroports de Paris/The Nuance Group*.

the purposes of this case the Commission considers that the geographic market definition can be left open since the proposed operation would not raise competition concerns under any plausible geographic market definition.

d) Airline services (provision of scheduled passenger flights and of air cargo transport)

29. The Parties submit that the relevant markets are the following: (i) the provision of scheduled passenger flights and (ii) the provision of air cargo transport.

30. The Parties' submissions are in line with previous Commission's decisions.

31. As for the provision of *scheduled air passenger transport services*, the relevant product and geographic market has to be defined on the basis of the O&D approach, whereby every route between a point of origin and a point of destination is to be considered as a separate market²⁰. According to this approach, flights operated to different airports which serve the same city or region might be part of the same market²¹, for example the Commission has further identified a degree of substitutability between the London airports²².

32. As for the provision of *air cargo transport services*, the Commission has established that there is no separate product market for direct and indirect flights and there is no need to further sub-segment the market according to each type of provider and/or to the nature of the goods transported²³. With regard to the geographic market definition of the provision of air cargo transport, the Commission found that air cargo transport markets are one-directional in nature, as the demand for air cargo transport can differ substantially between the ends of a route²⁴. Moreover, for intercontinental transport of cargo, the Commission considered the markets to consist of continent-to-continent pairs, at least when it concerns continents with a sufficiently developed infrastructure allowing for onward connections²⁵.

33. For the purposes of this case, the Commission considers that it is not necessary to precisely define both these product and geographic markets, since the proposed operation would not raise competition concerns under any plausible product market definition.

2. Competitive Effects

²⁰ Case No COMP/M. 3280 *Air France/KLM*, paragraph 36; Case No COMP/M.5403 *Lufthansa/BMI*, paragraph 10; Case No COMP/M.5889 *United Airlines/Continental Airlines*, paragraph 12; Case No COMP/M.6447 *IAG/BMI*, paragraph 10.

²¹ Case No COMP/M.5747 *Iberia/British Airways*; Case No COMP/M. *Air France/KLM*; Case No COMP/M.6447 *IAG/BMI* paragraph 43.

²² Case No COMP/M.967 *KLM/Air UK*, recital 24; Case No COMP/M.6447 *IAG/BMI* paragraph 58.

²³ Case No COMP/M.5141 *KLM/Martinair*, paragraphs 33, 34 and 43; Case No COMP/M. 6447 *IAG/BMI* paragraph 89; Case No COMP/M. 3280 *Air France/KLM*, paragraph 37 and 38.

²⁴ Case No COMP/M.5141 *KLM/Martinair*, paragraph 38.

²⁵ Case No COMP/M.5141 *KLM/Martinair*, paragraph 36.

34. As a preliminary remark, it should be pointed out that each of Ferrovial, CDPQ and Baker Street are existing shareholders of BAA²⁶.
35. The effects of the Transaction will be ascertained only as regards the activities of QH, the only new controlling shareholder in BAA.

a) Horizontal Effects

36. QH is not involved in the provision of airport infrastructure services, the market in which BAA is active. QH does not own any airports in the UK and only indirectly holds non-controlling interests in a number of different airports, all of which are outside of the United Kingdom. Due to the absence of overlapping activities between QH and BAA, the Transaction does not raise horizontal competition concerns with regards to all identified markets.

b) Vertical Effects

37. The minimal vertical links resulting from the Transaction are not capable of raising competition concerns (either input foreclosure or customer foreclosure) as explained in the recitals that follow.
38. BAA's market share on the market for the provision of airport infrastructure services to airlines in 2011 was [40-50]%²⁷ if the geographic market were to be UK-wide²⁸. If the market was to be considered narrower in scope, BAA would have a [60-70]% market share in 2011 on a London wide basis and a [90-100]% market share if the relevant market was limited to London Heathrow.
39. With regard to possible vertical relationships, relevant relationships arise at London Heathrow Airport between BAA's services and QH's activities via the Harrods Group, namely as regards retail concessions at London Heathrow airport²⁹ (as upstream market) and retail activities at airports (as downstream market).
40. The market share of Heathrow on a market for concessions to provide retail services at airports on an EU-wide basis amounts to [CONFIDENTIAL]%. However, the concession fees that BAA obtains from Harrods correspond to [CONFIDENTIAL]% of BAA's total retail income at Heathrow. The same applies for the retail space that the Harrods concessions represent at Heathrow, where the [CONFIDENTIAL] concession agreements between Harrods and BAA amount to [CONFIDENTIAL]% of the total retail space at Heathrow. Harrods' market share in a market for retail sales at Heathrow would be [CONFIDENTIAL]%.

²⁶ Case No COMP/M.4164 *Ferrovial/Quebec/GCI/BAA*.

²⁷ This figure includes the share of Stansted, however Stansted will be divested and no longer owned by BAA. The Transaction would likewise lead to affected markets if a distinction was drawn between the type of airlines (scheduled, charter, low cost).

²⁸ On a wider market, BAA's market share would be below 25% irrespective of the precise further subdivisions.

²⁹ Harrods has been granted concessions for seven retail areas at Heathrow by BAA under [CONFIDENTIAL] concession agreements, all of which are due to expire by the end of [CONFIDENTIAL]. In 2011, the total gross retail income (including duty- and tax-free, shops, catering and car parking) at Heathrow was EUR [CONFIDENTIAL].

41. The main providers of commercial services and beneficiaries of concessions at Heathrow are [CONFIDENTIAL] with a market share of [40-50]% and [CONFIDENTIAL] and [CONFIDENTIAL] with a market share of [5-10]% respectively.
42. Concessions at Heathrow are granted in a [CONFIDENTIAL] process consisting in the following: [CONFIDENTIAL] BAA and its shareholders are driven to meet the customers' needs in terms of variety, quality and quantity of offer. The major beneficiaries of concessions at Heathrow did not raise any concerns as regards the Transaction. The Transaction does therefore not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between BAA's concessions activities at Heathrow and QA's activities through the Harrods Group.
43. As regards a potential vertical relationship between QA's air passenger services and cargo services and BAA's airport services at London Heathrow, QA is a minor operator which operates 70 scheduled flights per week between Heathrow and Doha. QA only has a small market share of less than [CONFIDENTIAL] in terms of flights operated at Heathrow (the flights operated by QA at Heathrow constitute less than [CONFIDENTIAL]% of the total slots available per week), in terms of passengers flew to or from Heathrow per week and less than [CONFIDENTIAL]% in terms of the overall cargo handled at London Heathrow³⁰.
44. For the sake of completeness it should be mentioned that QA has been invited to join the *oneworld* Alliance. QA is not yet a full member of the alliance but only a "member designate". British Airways is acting as QA's sponsor airline. However, joining the *oneworld* Alliance does not entail any type of cooperation between QA and British Airways, or any other Alliance member, that would be regarded as a "metal neutral" alliance³¹. Therefore, QA joining the *oneworld* Alliance has not impact on the current assessment.
45. Consequently, the Transaction does not raise any serious doubts as regards its compatibility with the internal market in respect of the potential vertical relationship between BAA's and QA's activities at Heathrow³².
46. For completeness, the Commission notes that it is not necessary to assess any further possible vertical effects relating to Stansted airport³³ as BAA's involvement in this airport has to come to an end. Based on a final and definitive decision of 19 July 2011 of

³⁰ Considering that airlines benefit from airport infrastructure services for their entire activities at an airport and that in this case, the share of these activities is in general small, it is not relevant to assess the share of QA on the air passenger transport market on an O&D basis or for air cargo transport on the basis of direct or indirect routes.

³¹ See Case No COMP/M.5889 *United Airlines/Continental Airlines*.

³² BAA is not active in the provision of any ground-handling services at Heathrow or any of the airports which it owns and operates and it does not offer itself ground-handling services to the airlines operating from Heathrow. Moreover, BAA neither directly nor indirectly controls any of the ground-handling services providers at Heathrow.

³³ Stansted airport is operated by the BAA; Harrods Aviation provides ground-handling and maintenance, repair and overhaul services at this airport.

the UK Competition Commission, BAA must divest its shareholding in Stansted airport³⁴.

47. Lastly, the coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU can be excluded in this transaction as BAA and its shareholders will continue to have an incentive to compete on their respective markets.
48. In the light of the above, the Transaction would not raise any serious doubts as regards its compatibility with the internal market.

(5) CONCLUSION

49. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President

³⁴ BAA's deadline for a final appeal lapsed on 23 August 2012.