

***Case No COMP/M.6862 - VINCI/  
AEROPORTOS DE PORTUGAL***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION

Date: 10/06/2013

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## EUROPEAN COMMISSION

Brussels, 10.6.2013

C(2013) 3693 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.6862 - VINCI/ AEROPORTOS DE PORTUGAL  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 2 May 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking VINCI (France) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking Aeroportos de Portugal ("ANA", Portugal) by way of purchase of shares.

### **1. THE PARTIES**

- (1) **VINCI** is a diversified group, notably active in the fields of (i) concessions and infrastructures (mainly motorways and parking lots, as well as airports in France and in Cambodia), (ii) electrical engineering, (iii) climatic engineering and mechanical engineering, (iv) building, public works and civil engineering and (v) road works. It is divided in two branches: (i) the "concessions branch" and (ii) the "contracting branch", which gathers VINCI's construction, road work and energy business lines.

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<sup>1</sup> 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) **VINCI Concessions** is VINCI's concessions branch active in the development and management of concessions of (i) transportation infrastructures and (ii) public facilities. VINCI Concessions, mainly via its subsidiary VINCI Airports, manages and operates predominantly regional airports in France<sup>2</sup> and three international airports in Cambodia.
- (3) **ANA** is a Portuguese company fully owned by the Portuguese State, through the State-owned holding company Parpública, Participações Públicas (SGPS) ("Parpública"). It is active in the field of management and operation of airport infrastructures in Portugal and currently holds the concessions for civil aviation operations in 10 public service airports in Portugal.
- (4) By means of a 50-year concession contract executed in December 2012, ANA manages and operates the Portuguese mainland airports (Lisbon, Porto, Faro and Civil Terminal of Beja) and Azores archipelago airports (Ponta Delgada, Horta, Santa Maria and Flores).
- (5) **ANAM** operates the Madeira archipelago airports Funchal and Porto Santo. ANAM is currently a 70% subsidiary of ANA. The remaining 30%, owned by the Autonomous Region of Madeira (20%) and the Portuguese State (10%), is expected to be transferred to ANA as part of the privatization transaction.
- (6) ANA also holds 100 % of **Portway**, its handling subsidiary, which provides ground handling services to airline companies in four Portuguese airports (Lisbon, Porto, Faro and Funchal) and in the Civil Terminal of Beja.

## 2. THE OPERATION AND THE CONCENTRATION

- (7) The proposed transaction (hereafter referred as the "Transaction") originates from a tender procedure launched by the Portuguese State in the context of ANA's privatisation procedure implemented as a condition of the Economic and Financial Assistance Programme provided to Portugal by the European Union, the European Central Bank and the International Monetary Fund. As a result of the tender procedure, VINCI was selected by the Portuguese Government (among 8 competing candidates).
- (8) The Transaction will consist of the acquisition by VINCI of sole control of ANA, through the purchase of 100% of ANA's share capital and voting rights, and, indirectly, the acquisition of the shares representing 100% of ANA's subsidiaries ANAM and Portway. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>2</sup> VINCI manages Ancenis, Chambéry-Savoie, Clermont-Ferrand Auvergne, Dinard-Bretagne, Grenoble-Isère, Nantes-Atlantique, Quimper-Cornouaille, Rennes-Bretagne, Saint-Nazaire-Montoir and Poitiers-Biard airports.

### **3. EU DIMENSION**

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup>. Each of them has a EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

### **4. COMPETITIVE ASSESSMENT**

- (10) Both VINCI and ANA are active in the management and operation of airport infrastructures. While ANA only manages airports infrastructures in Portugal, VINCI is active in this sector in France and in Cambodia. In addition, VINCI supplies mechanical, climatic and electrical engineering services in Portugal which are inputs to the downstream activities of ANA. Only these vertical relationships give rise to affected markets. However, they do not lead to competition concerns, as will be set out below.

#### **A. The relevant product and geographic markets**

##### **A.1. Granting of airport management and operation concessions**

- (11) In line with previous Commission decisions, the Notifying Party suggests a market for the award of concessions for the management and operation of airports, i.e. competition for the market.
- (12) The Commission has held in the past that the grant of a licence or a concession for the exploitation of a particular State-regulated activity is distinguishable from the running of that particular activity.<sup>4</sup> Therefore, for the purpose of the present case, the market for granting airport management and operation concessions will be analysed.
- (13) The Notifying Party considers that the relevant geographic market for the award of airport management and operating concessions is EEA-wide and potentially worldwide. This analysis is supported by the fact that tendering processes for the award of airport infrastructure concessions attract not only European undertakings but also bidders from other parts of the world.
- (14) The Commission has not analysed the geographic scope of a possible market for the granting of airport management and operation concessions in the past.
- (15) For the purpose of the present case, a precise definition of the geographic market can nonetheless be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

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<sup>3</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>4</sup> See decisions of the European Commission n°IV/M.567 *Lyonnaise des Eaux/Northumbrian Water*, recital 11 and COMP/M.4087 *Eiffage/Macquarie/APRR*, recitals 9 to 11.

## **A2.Management and operation of airport infrastructures**

- (16) As regards the management and operation of airport infrastructures, the Notifying Party distinguishes three categories, which is in line with previous Commission decisions<sup>5</sup>:
- (a) the provision of airport infrastructure services, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure;
  - (b) the provision (or contracting) of ground-handling services, which includes notably ramp-handling, passenger and baggage handling, fuel and oil handling, aircraft maintenance, ground administration and supervision, flight operations, crew administration;
  - (c) the provision (or contracting) of associated commercial services, which includes notably catering facilities, car parking, car hire, duty free shops, other retail outlets and sale of advertising space.
- (17) The Commission has so far left open whether these categories constitute separate product markets.
- (18) For the assessment of this case, the precise product market definition can also be left open since the proposed transaction does not lead to any horizontal overlap regardless of the product market segmentation and only to a marginal vertical relationship, for which the assessment would not change either.
- (19) As regards the relevant geographic market definition for the provision of airport infrastructure services, the Notifying Party considers that it should be the appropriate size of the catchment area of airports. With respect to the market for the provision (or contracting) of ground-handling services, as well as the market for the provision (or contracted) of associated commercial services, the Notifying Party considers that the geographic scope of such markets are restricted to a specific airport.
- (20) When defining the geographic scope of the above mentioned markets, the Commission has in its past decisional practice tended to focus on the appropriate size of the catchment area of airports.<sup>6</sup> Each of the Portuguese airports managed by ANA have been previously been considered as constituting a separate market.<sup>7</sup>

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<sup>5</sup> See decisions of the European Commission, No IV/M.786 of 25 March 1997, *Birmingham International Airport*; recital 14 and 15, COMP/M.4164 of 23 May 2006, *Ferrovial/Québec/GIC/BAA*; recital 10 to 14, COMP/M.5652 of 26 November 2009, *GIP/Gatwick Airport*, recital 8 to 11 and COMP/M.5648 of 11 December 2009, *OTPP/Macquarie/Bristol Airport*, recital 8 to 10

<sup>6</sup> See decisions of the European Commission n°IV/786 *Birmingham International Airport*, recital 16, COMP/M.4164 *Ferrovial/Quebec/GIC/BAA*, recital 15 to 24, COMP/M.5648 *OTPP/Macquarie/Bristol Airport*, recital 11 to 16 and COMP/M.5652 *GIP/Gatwick Airport*, recital 12 to 15

<sup>7</sup> See decision of the European Commission n° IV/35.703 – *Portuguese airports*, recital 17

- (21) For the purpose of the case at hand, the question of the geographic scope of the three market segmentations can be left open since the airports managed and operated by VINCI and ANA are located in different, non-neighbouring catchment areas with no overlap.

### **A3.Provision of electrical, mechanical and air-conditioning engineering services**

- (22) In line with previous cases dealt with by the Commission, the Notifying Party claims that a basic distinction can be made between the provision of electrical, mechanical and air-conditioning engineering services,<sup>8</sup> but did not submit a more refined definition claiming that no competition concern would arise irrespective of the market segmentation.
- (23) In previous cases the Commission has with respect to the provision of electrical, mechanical and air-conditioning engineering services considered a further differentiation according to (i) the type of business (residential and non-residential buildings), (ii) the type of work (installation / maintenance), and (iii) the nature of the service (infrastructures, industry and tertiary sector).<sup>9</sup>
- (24) For the purpose of the present case, a precise definition of the product market can nonetheless be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.
- (25) The Notifying party submits that the relevant geographic market is national, i.e. Portugal in the case at hand. This would be in line with previous cases whereby the Commission has considered electrical, mechanical and air-conditioning engineering services markets to be national in scope, but has left the precise definition ultimately open.<sup>10</sup>
- (26) In the case at hand, there is no horizontal overlap in any of these product markets, but only a vertical relationship with the markets for the management and operation of airports. Moreover, VINCI has no regional offices but operates on a national basis, and ANA purchases its requirements for electrical, mechanical and air-conditioning engineering services centrally. Consequently, for the purpose of the case at hand, the markets for the provision of electrical, mechanical and air-conditioning engineering services will be considered as national in scope.

## **B. Competitive assessment**

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<sup>8</sup> See decision of the European Commission n° COMP/M.6623 *VINCI/EVT Business*, recital 7.

<sup>9</sup> See decision of the European Commission n° COMP/M.5701 *VINCI/CEGELEC*, recital 14

<sup>10</sup> See decision of the European Commission n° COMP/M.6623 *VINCI/EVT Business*, recital 13 to 15

## **B1.Horizontal relationships**

### **B1.a.Granting of airport management and operation concessions**

- (27) Competition for this market takes place at the moment of the bidding process and is therefore competition *for* the market. VINCI Concessions faces a significant number of experienced and credible competitors on the market for the award of airport concessions. This is illustrated by the number of bidders for ANA's privatization, which stood initially at 54 of which 8 eventually submitted non-binding bids.
- (28) When looking at the current situation in the EEA, the cumulated market shares of VINCI and ANA would be less than [0-5]% and even lower should the market be considered as global.
- (29) Moreover, ANA cannot be seen as a strong potential competitor on the EEA or world market, as ANA has never tried to obtain concessions outside Portugal during the past ten years.
- (30) The Commission therefore comes to the conclusion that the Transaction does not raise serious doubts with respect to the market for obtaining concessions for the management and operation of airports.

### **B1.b.Management and operation of airport infrastructures**

- (31) With regard to the markets for the management and operation of airport infrastructures, VINCI manages and operates airports in France and in Cambodia, whereas ANA owns and manages airports in Portugal. There is therefore no overlapping catchment area and no horizontal overlap with respect to the markets for the management and operation of airport infrastructures, namely the market for the provision of airport infrastructure services, the market for the provision (or contracting) of ground-handling services, and the market for the provision (or contracting) of associated commercial services.
- (32) The Commission therefore comes to the conclusion that the Transaction does not raise serious doubts with respect to the market for the management and operation of airport infrastructure.

## **B2.Vertical relationships**

- (33) The Transaction leads to vertical relationships between the parties' activities, namely on the markets on which ANA Group is active and the market for electrical, mechanical and air-conditioning engineering services in Portugal, on which VINCI is active.
- (34) VINCI's electrical, mechanical and air-conditioning engineering services are an input for the market for the provision of airport infrastructure services, as well as for the market for the provision (or contracting) of associated commercial services. All these inputs are not airport specific or could be used with little changes in other industries as well.

- (35) Based on data submitted by the Notifying Party<sup>11</sup>, there is no foreclosure risk. First, the new entity could not restrict access to supplies ("input foreclosure"). The market shares of VINCI on the relevant upstream markets are well below [10-20]% on all segments and possible sub-segments, as well as on the global market encompassing electrical, mechanical and air-conditioning engineering services. Moreover, there a great number of alternative credible suppliers.
- (36) Second, there is no risk that the new entity will restrict access to markets ("customer foreclosure"). ANA represented a share of purchases of less than [0-5]% in 2012 on the global market encompassing electrical, mechanical and air-conditioning engineering services. This share of purchase would be lower than [0-5]% irrespective of the market definition on the upstream markets. Therefore, ANA does not represent a significant customer base.
- (37) The Commission therefore comes to the conclusion that the Transaction does not raise serious doubts with respect to the vertical relationships between the upstream markets for electrical, mechanical and air-conditioning engineering services and the downstream markets for the provision of airport infrastructure services and for the provision (or contracting) of associated commercial services.

## 5. CONCLUSION

- (38) For the above reasons, the 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)*  
*Algirdas ŠEMETA*  
*Member of the Commission*

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<sup>11</sup> Data from LEK Consulting, *Portugal market analysis – Electrical contracting*, February 2013