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***Case No COMP/M.7008 - AENA INTERNACIONAL/ AXA
PE/ LLAGL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/10/2013

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EUROPEAN COMMISSION

Brussels, 9.10.2013
C(2013) 6749

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.7008 – AENA INTERNACIONAL/ AXA PE/ LLAGL
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 5 September 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which AENA Desarrollo Internacional, S.A. ("Aena Internacional", Spain) and AXA Investment Managers Private Equity, S.A.² ("AXA PE", France) (together the "Parties") acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of London Luton Airport Group Limited ("the Target", United Kingdom) by way of purchase of shares.

1. THE PARTIES

- (2) **Aena Internacional** is a wholly-owned subsidiary of Aena Aeropuertos, S.A. (Aena Aeropuertos), which in turn is wholly owned by the Spanish statutory corporation "*Entidad Pública Empresarial Aeropuertos Españoles y Navegación Aérea (AENA)*".

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 Via AXA Infrastructure Fund III S.C.A. SICAR (AXA Infrastructure Fund III), a fund managed by its general partner AXA Infrastructure III S.à.r.l., a company indirectly controlled by AXA PE.

AENA and its Group of companies (the AENA Group) form the public Spanish entity in charge of the civil air navigation services and airport management in Spain. The Aena Group does not have any controlling interest in any airport outside Spain. It is active in the provision of airport infrastructure services in Spain to airlines through its ownership and operation of a network of 47 airports.

- (3) **AXA PE** is an international private equity firm and subsidiary of the AXA Group³. AXA PE manages and controls private equity funds, in which private investors participate as limited partners. Other than via AXA PE, the AXA Group is not engaged in activities related to those in which the Target is engaged; in particular AXA Group does not own any airports in the UK or anywhere else, nor does it have any controlling interest in an activity that is vertically related to the Target.
- (4) **The Target's** wholly owned subsidiary London Luton Airport Operations Limited (LLAOL) is the concessionaire company operating the London Luton Airport ("Luton"), located 32 miles northwest of central London and the UK's 5th largest passenger airport. Among the London airports, Luton is a major base for low cost or "no frills" air travel. It operates primarily as a low cost, scheduled airport, offering scheduled and charter flights to a wide range of mainly European destinations.

2. THE OPERATION

- (5) Aena Internacional and AXA PE intend to acquire the entire issued capital of the Target from its current owner TBI Airport Holdings Limited, ultimately controlled by Abertis Infraestructuras, S.A. (Abertis). Pursuant to the transaction, AENA Internacional will indirectly hold 51% of the Target's shareholding, while AXA PE will indirectly hold the remaining 49%.

3. THE CONCENTRATION

- (6) According to a shareholders' agreement entered into on 31 July 2013, Aena Internacional and AXA PE will exercise joint control over the Target through TopCo. [Information regarding the Target's governance's structure].⁴
- (7) [Information regarding the Target's governance's structure].^{5,6}
- (8) [Information regarding the Target's governance's structure].⁷

³ The AXA Group received an irrevocable offer to sell substantially its entire stake in AXA PE to a group of investors, a transaction which is expected to be closed in the third or fourth quarter of 2013. [...].

⁴ [...].

⁵ [...].

⁶ [...].

⁷ OJ C 95, 16 April 2008, p.1

- (9) Therefore the contemplated transaction would lead to the acquisition of joint control by Aena Internacional and AXA PE over the Target. It is hereafter referred to as the Transaction.

4. EU DIMENSION

- (10) The undertakings concerned – namely Aena Internacional, AXA PE and the Target - have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR 3 307 million for Aena Internacional, EUR 90 126 million for AXA PE and EUR 145 million for the Target). Two of them have an EU-wide turnover in excess of EUR 250 million (EUR [...] for Aena Internacional and EUR [...] for AXA PE). There is no Member State where each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover.⁸ Therefore, the Transaction has an EU dimension in the sense of Article 1(2) of the Merger Regulation.

5. MARKET DEFINITION

- (11) The AENA Group and the Target are engaged in the management of airports and in activities related to the operation of airports.

5.1. Management and operation of airport infrastructures

- (12) As regards the management and operation of airport infrastructures, by relying on previous Commission decisions,⁹ the Parties distinguish between three categories of services:
- i. the provision of airport infrastructure services, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructures. The geographic scope of these markets has been considered to be the catchment areas of individual airports.¹⁰ As regards London airports specifically, the Commission has in the past 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 London. Anyhow, the radius of the catchment area of an airport has been found to be no larger than 300 kilometres (for international airports).¹¹
 - ii. the provision (or contracting) of ground-handling services, which includes notably ramp-handling, passenger and baggage handling, fuel and oil handling, aircraft

⁸ In accordance with Article 5(4) of the Merger Regulation, AXA PE's turnover is the turnover of the whole of AXA Group.

⁹ See decisions of the European Commission n°COMP/M.4164 - *Ferrovial/Québec/GIC/BAA*, recital 10 and subsequent and COMP/M.6862 - *Vinci/Aeroportos de Portugal*, recital 16 and subsequent.

¹⁰ See decisions of the European Commission n°COMP/M.4164 - *Ferrovial/Québec/GIC/BAA*, recital 15 to 24, COMP/M.6862 - *Vinci/Aeroportos de Portugal*, recital 19 and 20.

¹¹ See decisions of the European Commission n°COMP/M.2315 - *The Airline Group/NATS*, recital 20 and n°COMP/M.3823 - *MAG/Ferrovial Aeroportos/Exeter Airport*, recital 18.

maintenance, ground administration and supervision, crew administration. In its practise the Commission has repeatedly found that the geographic dimension of these markets was limited to individual airports, or was at most local.¹²

- iii. the provision (or contracting) of associated commercial services, which includes notably catering facilities, car parking, car hire and sale of advertising space. The Commission has repeatedly concluded that the geographic scope of such a market was limited to an individual airport and its immediate surroundings.¹³
- (13) The product market delineation proposed by the notifying party can be used as a starting point for the competitive analysis of the Commission in the present case. However, and in any event, the precise definition of the product market for the management and operation of airport infrastructures can be left open since the Transaction does not raise any competition concerns under any plausible product market definition.
- (14) With respect to the geographic market definition, the precise determination of the geographic markets can be left open since the activities carried out by the Parties are located in different, non-neighbouring countries with no potential geographic overlap given the distance between Luton and the airports operated by Aena Internacional in Spain.

5.2. Airport air traffic services

- (15) The Commission has in its practice drawn a distinction between "en route" and "airport" air traffic services.¹⁴ "Airport air traffic services" relate to the approach and departure of aircrafts within a certain distance of an airport on the basis of operational requirements. In the United Kingdom airport managers are responsible for contracting with providers of airport air traffic services. "En route" services are provided by a designated service provider on an exclusive basis for the airspace which for the case at hand comprises the United Kingdom. For that reason "en route" traffic services are not vertically linked to the management and operation of airport infrastructures.
- (16) The Notifying Parties support the distinction between "en route" and "airport" air traffic services.
- (17) In the Airline Group/NATS case, the Commission also came to the conclusion that that market was probably no larger than national in scope and even considered the

¹² See decisions of the European Commission n°COMP/M.4164 - *Ferrovial/Québec/GIC/BAA*, recital 15 to 24, COMP/M.6862 – *Vinci/Aeroportos de Portugal*, recital 19 and 20.

¹³ See decisions of the European Commission n°COMP/M.2262 *Flughafen Berlin II*, paragraph 17; n°COMP/M.4164, *Ferrovial/Quebec/GIC/BAA* paragraph 24, n°COMP/M.6862 – *Vinci/Aeroportos de Portugal*, recital 19 and 20.

¹⁴ See decision of the European Commission n°COMP/M.2315 – *The Airline Group/NATS*, recital 13 and following.

possibility that each individual airport would constitute separate relevant markets in relation to "airport air traffic services".¹⁵

- (18) The Parties argue that the market for "airport air traffic services" is at most national.
- (19) However, the implementation of the Single European Sky legislation¹⁶ is enhancing competition between airport air traffic services providers. Therefore an EEA-wide dimension cannot be fully excluded.
- (20) In the case at hand, the geographic scope of the market for airport air traffic services can be left open since the Transaction does not raise any competition concerns under any plausible product and geographic market definition.

5.3. Automatic handling material systems and accompanying services for baggage handling at airports

- (21) AXA PE jointly controls the Fives Group,¹⁷ an industrial engineering group whose division Fives Cinetic supplies automatic handling material systems and accompanying services. These services are an input for the downstream market for airport infrastructure services in which the Target is active.
- (22) The Parties submit that in relation to the production of automatic handling material systems and accompanying services used for baggage handling at airports, distribution centres and express parcel sorting facilities, the narrowest possible market definition would be the supply of automatic handling material systems and accompanying services for baggage handling at airports (BHS).¹⁸
- (23) The Parties submit that the potential geographic market is at least EEA-wide in scope.
- (24) According to the Parties, the supply-side conditions are such that suppliers compete for airport contracts across the EEA or the world. For instance, MacDonald Humfrey (Automation) Ltd., the current supplier of the Target has, in addition to other airports in the United Kingdom, supplied the Larnaca Airport in Cyprus, the Otopeni Airport in Romania and the Paphos Airport in Cyprus. On the

¹⁵ See decision of the European Commission n°COMP/M.2315 – *The Airline Group/NATS*, recitals18-20.

¹⁶ The Single European Sky legislative framework consists of four Regulations (framework Regulation No 549/2004, service provision Regulation No 550/2004, airspace Regulation No 551/2004 and the interoperability Regulation No 552/2004). It covers the provision of air navigation services, the organisation and use of airspace, and the interoperability of the European Air Traffic Management Network. It aims at de-fragmenting the European airspace, reducing delays, increasing safety standards and flight efficiency and at reducing costs related to service provision.

¹⁷ The acquisition of joint control by AXA PE over the Fives Group was notified to the Commission in the case n°COMP/M.6691 - AXA IMPEE/FIVES

¹⁸ The only precedent in this sector is case n°COMP/M.5362 - *SHV/ Vanderlande* which involved the acquisition by SHV Holdings N.V. (SHV) of Vanderlande Industries B.V. However, the *SHV/Vanderlande* case was treated under the simplified procedure.

other hand, Five Cinetic provided BHS services to customers in the United States and in Italy.

- (25) The Parties argue that procurement of BHS services takes place on a very wide geographic area which is at least EEA-wide, with no regulatory barriers to trade within the EEA.
- (26) In the case at hand, there is no need to reach a final view regarding the precise definition of a potential market for the supply of BHS at airports since the Transaction does not raise competition concerns under any plausible product and geographic market definition.

6. COMPETITIVE ASSESSMENT

6.1. Horizontal overlaps : management and operation of airport infrastructures

- (27) AENA Group, through Aena Aeropuertos¹⁹, operates airports in Spain while the Target is active in the markets for airport infrastructure services in Luton. There is therefore no geographic overlap between the Parties' activities in relation to the markets for the provision of airport infrastructure services, regardless of any further sub-segmentation . Indeed, the catchment areas between the airports operated by the Parties do not overlap, nor do the Parties offer associated services in the same specific airport or its immediate surroundings.
- (28) The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to its horizontal effects on the markets for the provision of airport infrastructure services, regardless of any further sub-segmentation.

6.2. Vertical relationships

- (29) The AENA Group is active in Spain and the Target in the United Kingdom. Vertical relationships arise because of the activities of the parents (AENA Group and AXA PE) and the Target. AENA Group provides "airport air traffic services"; AXA PE owns a controlling stake in Fives Cinetic, a company which supplies automatic handling material systems and accompanying services. Both of these services can be considered as inputs for the downstream market for airport infrastructure services in which the Target is active.²⁰ The Transaction therefore gives rise to vertical relationships (i) between airport air traffic services and airport infrastructure services (ii) between handling material systems and accompanying services and airport infrastructure services.

¹⁹ In the United Kingdom, neither Aena Internacional nor AXA PE control any interest in airports. Although the AENA Group does control airports in the EEA, this does not give rise to any horizontally affected markets.

²⁰ Indeed automatic handling material systems are necessary for the baggage handling at airports. As for the provision of airport air traffic services, no aircraft can land or take-off without them.

- (30) These minimal vertical relationships resulting from the Transaction are not capable of raising competition concerns (either input or customer foreclosure) as explained in the paragraphs that follow.
- (31) The Target's market share on the downstream market for the provision of airport infrastructure services would vary depending on the precise definition of the catchment area but could reach up to 100% if the relevant market is considered to be limited to Luton airport. The Transaction could give rise to vertical relationships as regards upstream services provided by the Parties and in particular (i) "airport air traffic services" provided by the AENA Group in Spain (if these services are to be considered as part of an EEA-wide market) and (ii) the supply of automatic handling material systems and accompanying services for baggage handling at airports provided by AXA PE (if these services are to be considered as part of an EEA-wide market).

6.2.1. *Automatic handling material systems and accompanying services for baggage handling at airports*

- (32) As regards the supply of automatic handling and material systems and accompanying services for baggage handling at airports, the Parties submit that Fives Cinetic's market is in any event less than 1% both on a UK-wide and a EEA-wide market. Moreover, airports represent a minor part of Fives Cinetic's sales, the major part being generated through transportation and courier companies (posts) and, increasingly, from ecommerce companies. Therefore, the Parties appear unable to engage into a successful input foreclosure strategy with respect to BHS.
- (33) Besides, Luton accounts for a limited share of the overall demand for BHS both in the United Kingdom, where this share does not exceed [5-10%], and in the whole of the EEA, where it is negligible. Therefore the Transaction does not give rise to any risk of customer foreclosure.
- (34) The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical links between the market for automatic handling material systems and accompanying services for baggage handling at airports and the market for the provision of airport infrastructure services.

6.2.2. *Airport air traffic services*

- (35) AENA Group, through AENA, provides "airport air traffic services" at 34 Spanish airports. Therefore, there would be a vertical relationship between a market where AENA Group operates and a market where the Target operates only with an EEA-wide dimension for the market for airport air traffic services.
- (36) AENA Group's market share on a hypothetical EEA-wide upstream market for "airport air traffic services" would equate [10-20%]. Such market shares are under the circumstances of the present case not capable of raising any risk of input foreclosure. In the wake of the Single European Sky legislation, airports can obtain airport air traffic services from any licensed air navigation services provider. For example, most airports in United Kingdom – including the Target – are nowadays supplied

by NATS Services Limited (NSL). Therefore, airports competing against the Target could easily find alternative suppliers of airport air traffic services if AENA were to engage into an input foreclosure strategy.

- (37) Moreover, the Transaction does not give rise to any risk of customer foreclosure either given that the Target only operates a single airport in the EEA.
- (38) The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical links between a hypothetical EEA- wide market for airport air traffic services and the market for the provision of airport infrastructure services.

6.3. Conglomerate effects

- (39) One of the Target's customers raised issues concerning the routes from Luton to other airports controlled by AENA in Spain, particularly about AENA's alleged ability and incentives to increase fares for access to the airports at both ends of these routes. This third party indicated that it had no concerns in relation to AXA PE's investment in Luton airport.²¹
- (40) The Parties contest these arguments, noting in particular that the airport charge setting mechanisms in place at Spanish airports and Luton will not allow them to raise or bundle airport charges in Spain and at Luton. They also argue that the airlines flying between Luton and Spain have significant countervailing buyer power and could threaten to switch to other airports if the Parties attempted to raise airport charges.
- (41) The Commission considers that airport charge setting mechanisms in place at Spanish airports and Luton, which are subject to regulatory control and contain safeguards against undue discrimination between carriers, would indeed make it very difficult for the Parties to raise charges selectively for the airlines flying between Luton and Spanish airports.²² Moreover, in view of the profile of these airlines (low-cost and scheduled leisure carriers), the risk that they move from Luton to another London airport or would exit the routes concerned altogether if the Parties were to raise airport charges appears sufficiently high to deter the Parties from attempting to implement such increases. Besides, the Transaction appears to have no specific effect on the ability of Luton to increase airport charges and on the ability of AENA to increase airport charges in Spain. In particular, the Transaction has no effect on the ability and willingness of airlines to switch away from Luton to another London airport (or exit routes from that airport) when they face higher airport charges at that airport. In view of these elements, the Transaction does not raise serious doubts as to its

²¹ The Commission is of the view in this regard that AXA PE, which is jointly controlling the Target, has indeed no incentive to accept diversion of flights or bundling practices from Luton to AENA's airports, or vice-versa.

²² Airport charges are regulated by EU Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009) which was implemented in Spain by Law N° 1/2011 and in the United Kingdom by the Airport Charges Regulation 2011.

compatibility with the internal market with respect to the hypothetical conglomerate effects evoked by the above-mentioned third party.

7. CONCLUSION

- (42) 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*