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*Case No COMP/M.7398 - MIRAEI/ FERROVIAL/ NDHI*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/11/2014

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## EUROPEAN COMMISSION

Brussels, 19.11.2014  
C(2014) 8919 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 M.7398 - MIRAEL/ FERROVIAL/ NDH1**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 17 October 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Macquarie Infrastructure and Real Assets (Europe) Limited ("**MIRAEL**", the United Kingdom), through its management of the Macquarie European Infrastructure Fund 4 LP investment fund ("**MEIF 4**"), and Ferrovial Aeropuertos S.A.U. ("**Ferrovial Aeropuertos**"), an indirect wholly owned subsidiary of Ferrovial, S.A. ("**Ferrovial**", Spain), through its wholly-owned subsidiary Faero UK Holding Limited ("**Faero**"), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Airport Holdings NDH1 Limited ("**NDH1**", the United Kingdom) by way of purchase of shares (the "**Transaction**").<sup>3</sup> MIRAEL and Ferrovial are collectively referred to as the "**Parties**".

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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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

<sup>3</sup> Publication in the Official Journal of the European Union No C 378, 24.10.2014, p. 6.

## 1. THE PARTIES

- (2) MIRAEL is a wholly-owned subsidiary of Macquarie Group Limited, which is the ultimate parent of Macquarie group ("**Macquarie**") based in Australia. Macquarie is a global provider of banking, financial, advisory, investment and fund management services. MIRAEL manages Macquarie's European infrastructure funds, including MEIF 4, a diversified essential services infrastructure fund focusing on transportation and utilities assets located in the EU, the limited partners of which are mainly institutional investors.<sup>4</sup>
- (3) Ferrovial Aeropuertos is an indirect wholly-owned subsidiary of Ferrovial, a multinational company active in the design, construction, financing, operation and maintenance of transport, urban and services infrastructure. Ferrovial Aeropuertos jointly controls FGP TopCo Limited ("**FGP**") together with Qatar Holding LLC ("**QH**"), Caisse de dépôt et placement de Québec ("**CDPQ**") and Baker Street Investment Pte ("**Baker Street**"). FGP is the ultimate company of Heathrow Airports Holdings Limited ("**HAHL**"), which owns NDH1 and London Heathrow Airport ("**LHR**") in the South of England.
- (4) **NDH1** is the parent company of Aberdeen International Airport Limited, Glasgow Airport Limited and Southampton International Airport Limited which respectively own and operate three airports in the United Kingdom: Aberdeen Airport ("**ABZ**"), Glasgow Airport ("**GLA**") in Scotland and Southampton Airport ("**SOU**") in the South of England (together, the "**Target Airports**"). Currently, NDH1 is wholly-owned by HAHL.

## 2. THE OPERATION

- (5) The Transaction consists in the acquisition of joint control over NDH1 by MIRAEL, through its management of MEIF 4 investment fund, and Ferrovial Aeropuertos, through its wholly-owned subsidiary Faero.
- (6) NDH1 is currently jointly controlled by Ferrovial Aeropuertos (together with QH, CDPQ and Baker Street) through HAHL and, ultimately, FGP<sup>5</sup>.
- (7) Following the Transaction, the governance of NDH1 would be as follows: [...].
- (8) The Parties will set up a special purpose vehicle, AGS Airports Holdings Limited ("**HoldCo**"), which will indirectly acquire 100% of NDH1 shares from HAHL.<sup>6</sup>

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<sup>4</sup> MIRAEL also manages the Macquarie European Infrastructure Fund LP ("MEIF 1") investment fund, which previously held a jointly-controlling stake in Bristol Airport ("BRS") in the South-West of England. On 30 September 2014, MIRAEL sold MEIF 1's interest in BRS to Ontario Teachers' Pension Plan. For completeness, it should be noted that MIRAEL manages other infrastructure funds that have investments in Copenhagen Airports and Brussels Airport in the EEA as well as interests in non-EEA airports.

<sup>5</sup> As a result of the Transaction, FGP will continue to be jointly controlled by Ferrovial Aeropuertos together with QH, CDPQ and Baker Street. However, as HAHL is selling its stake in the Target Airports, HAHL and, ultimately FGP, will only control LHR post-Transaction. In addition, Ferrovial Aeropuertos will continue to jointly control the Target Airports together with MIRAEL.

- (9) HoldCo will be owned indirectly by Ferrovial Aeropuertos, through Faero (50%+1 share) and another special purpose vehicle, AGS Ventures Airports Limited ("**MacCo**") (50% - 1 share).
- (10) MacCo will be owned by MIRAEL, through MEIF 4, [details of governance structure] <sup>7</sup>
- (11) Ferrovial Aeropuertos and MIRAEL will have the rights to appoint [...] of directors of the Board of HoldCo.
- (12) Pursuant to the shareholders' agreement, the following matters will require the approval of shareholders holding more than [...] <sup>8</sup>.
- (13) Therefore, none of MIRAEL and Ferrovial can decide upon strategic decisions on its own, but each of them can block them.
- (14) In light of the above, MIRAEL and Ferrovial will be able to influence the commercial behaviour of NDH1 and thus will jointly control it.

*Full-functionality*

- (15) NDH1 owns, manages and operates ABZ, GLA and SOU, which are businesses with market presence and turnover.
- (16) Therefore the Transaction will lead to a change in the quality of control over full-function undertakings.
- (17) In light of the above, the Transaction results in a concentration under Article 3(1)(b) of the Merger Regulation.

**3. EU DIMENSION**

- (18) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>9</sup> (MIRAEL: EUR [...] million; Ferrovial: EUR [...] million; NDH1: EUR 211 million). Two of them have an EU-wide turnover in excess of EUR 250 million (MIRAEL: EUR [...] million; Ferrovial: EUR [...] million) but neither of them achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. Therefore, the notified operation has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

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<sup>6</sup> The Sale Purchase Agreement was signed on 16 October 2014.

<sup>7</sup> [Details of governance structure].

<sup>8</sup> See [...] of the SHA.

<sup>9</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

## 4. COMPETITIVE ASSESSMENT

### 4.1. Market definition

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

##### 4.1.1.1. Relevant product market

(19) In previous decisions the Commission has considered, while leaving the exact scope of the market open, that the market for management and operation of airports consists of three distinct relevant product markets<sup>10</sup>:

- i. the provision of airport infrastructure services, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport structures as well as the co-ordination and control of the activities performed on these infrastructures. The market could be further segmented according to the categories of customers of airline infrastructure services (full service airlines, low cost airlines and charter airlines) or according to the type of service provided by the airports (short-haul or long-haul routes);
- ii. the provision (or contracting) of ground-handling services, which includes ramp handling, passenger and baggage handling, fuel and oil handling, aircraft maintenance, ground administration and supervision, and crew administration); and
- iii. the provision (or contracting) of associated commercial services, which includes, car-parking services to airport users, car hire, catering facilities and sale of advertising space.<sup>11</sup>

(20) The Parties submit that the exact definition of the relevant product market can be left open, since no competition concerns arise under any plausible market definition.

##### 4.1.1.2. Relevant geographic market

(21) As regards the market for the provision of airport infrastructure services, the Commission has considered, while eventually leaving the exact market definition open, that the geographic scope could be the catchment area of individual airports. In particular, the Commission has considered that the catchment area of an airport is no larger than 300 kilometres for international airports or 100 kilometres for regional airports.<sup>12</sup>

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<sup>10</sup> See M.786 - *Birmingham International Airport*, decision of 25 March 1997, recitals 14 and 15; M.3823 - *MAG/Ferrovial Aeropuertos/Exeter Airport*, decision of 8 August 2005, recital 15; M.4164 - *Ferrovial/Quebec/GIC/BAA*, decision of 23 May 2006, recital 11. In M.5648 - *OTPP/Macquarie/Bristol Airport* of 11 December 2009, the Commission concluded that there exist distinct markets for airport infrastructure services and ground handling services, but did not consider associated commercial services (recitals 8 and 9).

<sup>11</sup> Associated commercial services encompass various services that are not substitutable to each other, such as retail shops, advertising space, car parking and car hire. As the Transaction creates a vertical link only with regards car-parking services, the competitive assessment will focus only on the car parking segment within associated commercial services.

<sup>12</sup> M.7008 - *AENA Internacional/AXA PE/LLAGL*, decision of 9 October 2013, recitals 12 to 14.

- (22) As regards the provision (or contracting) of ground-handling services, the Commission has concluded that the geographic scope of this market is restricted to a specific airport, or is at most local.<sup>13</sup>
- (23) Likewise, the Commission has previously concluded that the geographic market for the provision (or contracting) of associated commercial services is limited to a specific airport or its immediate surroundings.<sup>14</sup> As regards a possible segment for the provision of car parking services at airports, based on the UK decisional practice, the market includes *on-airport* (i.e. car parks located at the airport premises) as well as *off-airport* parking within the vicinity that offers transfers to the airport concerned (i.e. a dedicated shuttle service to and from the airport terminal).<sup>15</sup>
- (24) The Parties submit that there is no need to reach a conclusion on the exact geographic scope of the relevant markets, given that the Transaction does not give rise to any competition concerns under any plausible geographic market definition.

#### 4.1.1.3. Conclusion on market definition

- (25) The Commission concludes that for the purpose of the present case the precise scope of the product and geographic market definition for the management and operation of airport infrastructures can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definitions.

#### 4.1.2. *Car park management services*

##### 4.1.2.1. Product market definition

- (26) In M.4613 – *Eurazeo SA/Apcoa Parking Holdings GmbH*, the Commission considered a possible market for parking management services, but ultimately left the exact scope of the product market definition open.<sup>16</sup>
- (27) The Parties submit that there is a market for car parking management services, as the service provided does not vary greatly according to the type of facility managed (whether in a city centre or retail complex, at an airport, at hotel or events venue or at a railway station). This would be confirmed by the high degree of supply-side substitutability, as it would be very easy for a player to re-focus from one type of facility to another without significant costs. From a demand-side perspective, customers for car park management services do not distinguish between car park management services providers in terms of their expertise in relation to particular facility types.

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<sup>13</sup> M.4164 - *Ferrovial/Quebec/GIC/BAA*, decision of 23 May 2006, recitals 15 to 24.

<sup>14</sup> M.4164 - *Ferrovial/Quebec/GIC/BAA*, decision of 23 May 2006, recital 24. M. 6862 – *Vinci/Aeropuertos de Portugal*, decision of 10 June 2013, recitals 19 and 20.

<sup>15</sup> See *Report on BAA airports market investigation* of 19 March 2009 of the UK's (former) Competition Commission.

<sup>16</sup> Parking management services mainly consists in the maintenance and the supervision of parking spaces, located at the road side, in airports, hospitals, shopping centres, cities, hotels, etc. Parking management services can be for paid parking or not. See M.4613 – *Eurazeo SA/Apcoa Parking Holdings GmbH*, decision of 20 April 2007, recital 8.

#### 4.1.2.2. Geographic market definition

- (28) The Commission has considered that the market for car park management services could be wider than national (EEA-wide or regional) given strong supply-side substitutability, but ultimately left the exact geographic definition of the market open.<sup>17</sup>
- (29) The Parties concur with the Commission's position.

#### 4.1.2.3. Conclusion on market definition

- (30) The Commission concludes that for the purpose of the present case the precise scope of the product and geographic market definition for car park management services can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definitions.

### 4.2. Competitive assessment

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

- (31) Neither MIRAEL nor Macquarie has interests in any UK airport. Therefore, no horizontal overlap will arise as a result of the proposed Transaction in respect of the management and operation of airport infrastructures, the provision (or contracting) of ground handling services to airlines or of associated commercial services.

#### 4.2.2. *Car park management services*

- (32) MIRAEL, through its management of Macquarie European Infrastructure Fund II (MEIF 2), controls NCP, a provider of car park management services to a range of third parties in the United Kingdom, including UK airport operators, one of which is GLA.<sup>18</sup> Therefore, a vertical relationship exists between MIRAEL and NDH1, since MIRAEL controls a company active in the provision of car park management services, which may be considered upstream to the market for the provision (or contracting) of associated commercial services (including car parking services) to airport users.
- (33) On the assumption of a relevant product market that is confined to the provision of car park management services at off-street parking facilities in the United Kingdom, NCP estimates that it has only a [5-10]% share of this narrow market by revenue and by number of car parking spaces. Furthermore, NCP estimates its market share on the market for car park management services at airport level in the United Kingdom to be less than 10%. As such, a vertically-affected market arises only by reason of NDH1's position on the narrower downstream market for the provision of associated commercial services (including car parking services) to airport users.

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<sup>17</sup> M.4613 – Eurazeo SA/Apcoa Parking Holdings GmbH, decision of 20 April 2007, recital 18.

<sup>18</sup> Apart from GLA, NCP does not operate any other on-airport or off-airport car parks at any of NDH1's other owned and operated airports (i.e. ABZ or SOU).

- (34) On this basis, NDH1's share in the geographic area covering on-airport parking at the airport itself and all off-airport car parks offering a shuttle transfer to the airport terminal, will be over 30% at each of ABZ, GLA and SOU.<sup>19</sup>
- (35) However, the Transaction would not lead to anticompetitive effects on the market for provision of parking management services. On the one hand, there is no risk of input foreclosure, because at the upstream level in the market for the provision of car park management services NCP's share is well below 30% and there are a number of credible alternative providers such as APCOA, VINCI Park, ECP and Q-Park.
- (36) On the other hand, with regard to customer foreclosure, MIRAEL lacks the ability and the incentive to foreclose.
- (37) First, MIRAEL has no ability to foreclose competing providers of car park management services. Indeed, other car park management services providers will continue to be able to compete to manage off-airport parking facilities. In relation to on-airport parking, the Transaction will make no difference in the short-to-medium term to the issue of which company manages the on-airport parking facilities at ABZ or SOU. These on-airport parking facilities are currently managed by APCOA and are secured under contracts which are due to expire in [...] with respect to ABZ and in [...] with respect to SOU.<sup>20</sup> In addition, even once the existing contracts with APCOA and NCP have expired, MIRAEL will have no ability to ensure that NCP is selected as provider, since Ferrovial Aeropuertos, which will retain joint control over NDH1, has no incentive to accept a contract being awarded to NCP except on the basis that it offers the most economically-advantageous proposition.
- (38) In addition, the ABZ, GLA and SOU on-airport contracts are three contracts among a very large array of car park management services contracts that periodically come up for tender in the United Kingdom. NDH1's share of demand on the relevant procurement market would be less than 5% on a UK-wide basis.
- (39) Second, MIRAEL lacks the incentive to foreclose. NDH1 will be owned by a different Macquarie investment fund (MEIF 4) to the investment fund which owns NCP (MEIF 2), each of which has different owners. Consequently, MIRAEL would act against the interests of the owners in one of its fund to benefit the owners of another if it favoured NCP as the car park manager at the ABZ, GLA and SOU airports of NDH1.
- (40) For all these arguments, it seems very unlikely that MIRAEL will have the ability and the incentive to engage in input or customer foreclosure.
- (41) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise any serious doubts as to its compatibility with the internal market under any plausible market definition.

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<sup>19</sup> At around [60-70]% for ABZ, [30-40]% for GLA and [80-90]% for SOU (market shares calculated on the basis of number of car parking spaces).

<sup>20</sup> GLA's on-airport car parking for airline customers is managed by NCP under contracts which are due to expire in [...] and [...].



## 5. 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 and Article 57 of the EEA Agreement.

*For the Commission  
(Signed)  
Margrethe Vestager  
Member of the Commission*