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***Case No COMP/M.7537 - ARDIAN FRANCE/ F2i SGR/ F2i
AEROPORTI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/04/2015

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EUROPEAN COMMISSION

Brussels, 21.4.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case M.7537 - ARDIAN FRANCE/ F2i SGR/ F2i AEROPORTI
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

- (1) On 12 March 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which ARDIAN France SA ("ARDIAN", France), part of the Ardian Group (France), and F2i SGR S.p.A. ("F2i", Italy) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of F2i Aeroporti S.p.A ("FA", Italy), currently solely controlled by F2i, by way of purchase of shares. ARDIAN, F2i and FA will hereinafter be referred to as the "Parties".

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 1, 3.1.1994, p.3 ("the EEA Agreement").

1. THE PARTIES

- (2) **F2i** is a private equity firm that manages two funds dedicated to investments in the infrastructure sector in Italy.
- (3) **ARDIAN** is an international private equity firm that is fully owned by ARDIAN SAS (France) and part of ARDIAN Group (formerly AXA PE). ARDIAN Group has no investments in the Italian transport sector. ARDIAN has a controlling interest in the London Luton airport operator,³ but does not have any investment in other airport operators in the EEA.⁴ Lastly, ARDIAN jointly controls the Fives Group, an industrial engineering group, whose division Fives Cinetic supplies baggage systems to airports⁵ and Altares and RGI, two companies providing IT solutions.
- (4) **FA** is a holding company that is wholly owned by F2i First Fund and managed by F2i. FA's activity is limited to Italy and consists in investments in the Italian infrastructure sector. FA holds interests in a number of companies and has sole control over Società Gestione Servizi Aeroporti Campani S.p.A. ("GESAC"), the operator of the Naples Airport; Società Azionaria Gestione Aeroporto Torino S.p.A. ("SAGAT"), the operator of the Turin Airport; and Software Design S.p.A. ("Software Design"), a company providing specialised IT infrastructure to airports ("FA's Controlled Companies").⁶ In addition, FA has minority stakes in Società per Azioni Esercizi Aeroportuali SEA ("SEA"), the operator of the Milan Malpensa and Milan Linate airports; in SACBO, the Bergamo Orio al Serio airport operator (through SEA); and in SAB, the Bologna airport operator (through SAGAT).⁷

2. THE OPERATION AND THE CONCENTRATION

- (5) The transaction consists in the indirect acquisition of 49% of FA's shareholding by ARDIAN, through a newly created vehicle company ("BidCo") ("the Transaction").
- (6) BidCo has been created by a consortium formed by ARDIAN and Crédit Agricole Assurances ("CAA", France), a company of the Crédit Agricole Group (France). BidCo's share capital is held by ARDIAN Funds (60%) and companies of CAA (40%). The Parties submit that BidCo will be solely controlled by ARDIAN, as

³ The Commission approved the acquisition of joint control by ARDIAN and AENA over the Luton airport operator in case M.7008 – *AENA INTERNACIONAL/ AXA PE/ LLAGL* of 9 October 2013.

⁴ ARDIAN also controls NHV, a helicopter operator, which has no activities in Italy. As FA's airports provide services to helicopter operators to a negligible degree, no actual or potential vertical relation can be identified and the activity of NHV is not analysed further in this Decision.

⁵ The Commission approved the acquisition of joint control by ARDIAN over Fives in case M.6691 – *AXA IMPEE / FIVES* of 10 September 2012.

⁶ The Parties submit that FA has two further subsidiaries, F2i Sistema Aeroportuale Lombardo S r.l., a holding company with no business activities, which will likely be wound up after the transaction and F2i Sistema Aeroportuale Campano S.p.A, which is an intermediate holding company managing FA's shareholding in GESAC and Software Design. As these companies have no market presence, the impact of the transaction on them is not analysed further in this Decision.

⁷ The Parties submit that FA has a non-controlling minority stake of 35.7% in the Milan Linate and Milan Malpensa airport operator, a non-controlling indirect (through the Milan airports' operator) minority stake of 31% in the Bergamo airport operator and a non-controlling indirect (through SAGAT) stake of 7% in the Bologna airport operator.

CAA will only have limited rights in influencing FA's and FA's Controlled Companies' activities. Indeed, while ARDIAN, through BidCo, can exercise veto rights related to FA and FA's Controlled Companies strategic decisions,⁸ CAA has only a right to be consulted.⁹ The mere right to be consulted in relation to the veto rights over strategic decisions does not suffice to grant CAA joint control.

- (7) FA is holding and managing interests in companies operating in the airport business in Italy. FA's Controlled Companies are pre-existing companies performing on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(4) of the Merger Regulation.¹⁰
- (8) Therefore, the Transaction will result in a change of control over a full functioning joint venture, amounting to a concentration according to the Merger Regulation.

2.1. Joint control over FA and FA's Controlled Companies

- (9) A minority shareholder is deemed to jointly control a JV, if it is able to exert decisive influence over the JV's strategic commercial behaviour through veto rights attached to its shareholding. Such veto rights can relate to the JV's business plan, budget, major investments or appointment of the senior management.¹¹
- (10) ARDIAN does not have an explicit veto right over FA and FA's Controlled Companies' budget,¹² or investments of a size that would go beyond the usual minority shareholding protection. It has, however, the right to nominate senior management and a veto right over the business plan.
- (11) ARDIAN and F2i will both nominate representatives to FA and FA's Controlled Companies' boards of directors, [Rules governing the designation of the management]¹³ [...] ¹⁴ [...].
- (12) All decisions of FA or FA's Controlled Companies, [description of decisions], will be taken at the respective board level by way of simple majority and the Chairmen will not have a casting vote. [Details on the adoption of board decisions]
- (13) However, in an agreed draft of the shareholders agreement, the Parties provided for an exception to this rule in relation to a number of "Reserved Matters" that require the prior approval of both F2i and ARDIAN. The Parties further set up a deadlock resolution mechanism. In case of a veto by ARDIAN, a consultation is foreseen, aiming at reconciling the position of the Parties. Should this procedure not lead to

⁸ [Details on the type of strategic decisions].

⁹ [CAA's veto rights in relation to BidCo's governance].

¹⁰ FA has its own management, staff and adequate funding to perform its activities, will not be taking over a specific function on behalf of its parents, but is intended to increase its current or acquire shareholding in other airport operators in Italy and has been formed for an indefinite period of time.

¹¹ Paragraph 62 and following of Commission's Consolidated Jurisdictional Notice.

¹² [Details on ARDIAN's veto rights].

¹³ The nomination of members to the boards will be organised as follows in the different companies. [...].

¹⁴ [Details on the designation of the management].

an agreement [duration], the respective proposal of F2i will have to be withdrawn and not resubmitted for at least [duration].

- (14) According to the draft shareholders agreement, the approval of any amendments to existing or new business plans for FA or FA's Controlled Companies is included in the "Reserved Matters" and therefore ARDIAN has a veto right over any amendment. The current business plans of GESAC and SAGAT include a longer-term planning extending to [duration and details on adoption of the business plans].¹⁵ All business plans will be reviewed on an annual basis. The Parties submit that FA does not yet have a business plan but will have one post-Transaction. Even though the scope of the future business plan of FA has not yet been agreed, the fact that ARDIAN will be in a position to block any proposed business plan lacking the scope or level of detail that would enable them to pursue their business strategy indicates that, in this case as well, this veto right would suffice to establish joint control.
- (15) Moreover, ARDIAN is granted a number of additional veto rights. Most of these rights correspond to the usual minority rights protection; two of them however are also significant for FA and FA's Controlled Companies' businesses. These are (i) a right to veto decisions related to the setup of executive committees or the delegation of power to the CEO, as a guarantee that ARDIAN would be involved in structural changes in the companies' operation and (ii) a right to veto any material amendment to the concession agreements for the operation of the two airports and any related provisions potentially affecting the applicable airport tariffs.
- (16) As airport operation is a heavily regulated activity, GESAC and SAGAT undertake this business within the framework of concessions granted by the Italian Civil Aviation Authority. This concession agreement (the Convention) and the adjacent Program Agreement set up a regulatory framework including tariffs, planned major investments etc. ARDIAN's ability to veto any amendment of these agreements therefore grants it an additional degree of influence over the operation and income development of GESAC and SAGAT.

2.2. Conclusion

- (17) In light of the above, it can be concluded that the powers of ARDIAN in influencing FA's and FA's Controlled Companies' commercial strategy go beyond the usual rights of minority shareholders' protection. Therefore, ARDIAN and F2i will have joint control and the Transaction amounts to a concentration, according to Article 3(2) of the Merger Regulation.

3. EU DIMENSION

- (18) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹⁶ (ARDIAN: EUR [...], F2i: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (ARDIAN: EUR

¹⁵ The current business plans of FA's Controlled Companies contain significant level of detail, [details on the content of the business plans].

¹⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice.

[...], F2i: [...]), 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. MARKET DEFINITION

- (19) The Parties submit that they are both active in the management and operation of airport infrastructures; however since ARDIAN is active in the UK and FA in Italy no horizontal overlaps arise in this Transaction.
- (20) In addition, the Parties engage in certain ancillary activities to the operation of airports. A vertical relationship would therefore arise on the basis of the activities of ARDIAN's subsidiary Fives Cinetic, which supplies automatic handling material systems and accompanying services and provides baggage handling services to airports in the EEA. These systems and services can be considered as inputs for the downstream market for airport infrastructure services in which FA is active.
- (21) Moreover, FA is active, through Software Design on a market for the supply of information technology solutions to the airport sector. This market can be considered upstream from the market for the provision of airport infrastructure services in the UK, in which ARDIAN is active by controlling the London Luton airport operator.

4.1. Management and operation of airport infrastructures

- (22) The Commission delineated a separate market for the management and operation of airport infrastructures. In its most recent cases, the Commission indicated that three activities can be distinguished in this market: (i) the provision of airport infrastructure services, including the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure; (ii) the provision (or contracting) of ground handling services, consisting of ramp, passenger, baggage handling and air cargo services; and (iii) the provision (or contracting) of associated commercial services, including catering facilities, car parking, car hire and sale of advertising space.¹⁷
- (23) As for its geographical scope, the Commission defines the market for the management and operation of airport infrastructures as all airports within the same catchment area. The determination of the exact catchment areas of the airports concerned can be left open, as the Parties' activities are located in different, non-neighbouring countries with no potential geographic overlap.¹⁸

17 See, among others, M.7008 – *AENA INTERNACIONAL/ AXA PE/ LLAGL*, paragraph 12; M.6862 – *VINCI / Aeroportos de Portugal*, paragraph 16, M.7270 – *CESKY AEROHOLDING / TRAVEL SERVICE / CESKE AEROLINIE*, paragraph 50 and following.

18 See, among others, M.7008 – *AENA INTERNATIONAL/AXA PE/LLAGL*, paragraph 14; M.6862 – *VINCI / Aeroportos de Portugal*, paragraph 19.

4.2. The granting of airport operation concessions

- (24) The Commission considered in past cases that the grant of a license or a concession for the exploitation of a particular state-regulated activity is distinguishable from the market for the running of such activity.¹⁹
- (25) The specific market for the granting of airport management and operation concessions has also been analysed in the Commission's past practice.²⁰ The market for the award of airport operation concession thus consists in the economic activity where supply is represented by the Public Administration and demand by undertakings of consortia of undertakings with an interest in acquiring airport operation concessions.
- (26) The Parties submit that the geographic scope of this market is EEA-wide, if not world-wide;²¹ the Commission has however in the past left the precise geographic market definition open.
- (27) In this case as well, as the Transaction would not give rise to competition concerns under any plausible geographic delineation of the market since the Parties' activities are located in different non-neighbouring countries, the precise scope of the geographic market may be left open.

4.3. Supply of automatic baggage handling systems

- (28) The Parties submit that the narrowest possible product market definition would consist in the supply of automatic handling material systems and accompanying services for baggage handling at airports, but that a broader product market for the supply of automatic handling material systems and accompanying services was not excluded.²² As the Transaction will not give rise to competition concerns under any plausible product market, the exact product market definition may however be left open.
- (29) In its past practice, the Commission considered that the geographic market for the provision of automatic handling material systems used for baggage handling would be at least EEA-wide, but ultimately left the exact definition open.²³

¹⁹ See among others, M.4087 – *Eiffage / Macquarie / APRR*, paragraphs 11 and 12, M.5855 – *DB / Arriva*, paragraphs 64 and following.

²⁰ See Case M.6862 – *VINCI / Aeroportos de Portugal*, paragraphs 11 and following.

²¹ An analysis of the companies that participated in negotiations for the acquisition of GESAC and SAGAT during their privatisation could suggest that no narrower geographic market definition than national is plausible, since operators from different countries submitted offers: during the privatisation of GESAC in 1997, the British Airports Authority (UK) acquired the majority of GESAC's share capital, which it sold in 2010 to F2i SGR. Other investors competing with F2i were [...] (UK), [...] (IT), and [...] (IT). SAGAT was partially privatised in 2000 when a consortium led by Sintonia (IT, ultimately controlled by the Benetton family), Equiter (IT, part of the Intesa SanPaolo group), Tecnoinvestimenti (IT) and Aviapartners(BE), acquired a minority stake in SAGAT.

²² M.7008 – *AENA INTERNACIONAL/ AXA PE/ LLAGL* at paragraph 22.

²³ M.7008 – *AENA INTERNACIONAL/ AXA PE/ LLAGL* at paragraph 25.

- (30) In the present assessment, the Transaction will similarly not raise serious doubts under any plausible geographic market. The exact definition may therefore be left open.

4.4. Supply of information technology solutions for airports

- (31) The Parties submit that in relation to the supply of information technology solutions, the narrowest possible product market definition would be the supply of information technology solutions to airports. The Commission held in previous decisions that the product market can either be the overall IT services market or a segmented IT services market depending on: i) the functionality of the services, subdivided in seven categories,¹ or ii) the different industry sectors concerned, of which eleven have been identified in previous cases.²⁴ Ultimately however, the Commission left the exact sub-segmentation open.²⁵ The Parties submit that under all alternative product market definitions, the geographic scope of the market should be at least EEA-wide.
- (32) There is no need to reach a definite view regarding the precise definition of a potential market for the supply of information technology solutions to airports for the purpose of this assessment, since the Transaction does not raise serious competition concerns under any plausible product and geographic market definition.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal overlaps

- (33) Both ARDIAN and FA are active on a market for the provision of airport infrastructure services. As however ARDIAN operates the London Luton airport, FA operates airports in Italy and the geographic scope of these markets is limited to the airports' catchment area, there is no horizontal overlap between the activities of the Parties on the same market.
- (34) In relation to the market for the granting of airport management and operating concessions, the Parties submit that FA will not be active on such market and that F2i and ARDIAN will independently compete for concessions, if they decide to do so. The Parties' current share on a market for the granting of airport operation concessions is well below 20% on both the Italian and an EEA-wide market. Moreover, this is a bidding market at both national and EEA-wide level, on which several sizeable operators are active and fiercely competing.
- (35) The Commission therefore considers that the Transaction does not raise serious doubts on the basis of horizontal overlaps on any market.²⁶

²⁴ Sub-segmentations considered for i) communications, media & services; ii) education; iii) transportation, iv) utilities; v) wholesale trade; vi) manufacturing & natural resources; vii) healthcare providers; viii) banking & securities; ix) retail; x) government; and xi) insurance, M.6921 – *IBM ITALIA / UBIS*, paragraph 21.

²⁵ M.6921 – *IBM ITALIA / UBIS* at paragraph 25.

²⁶ If a broader market definition covering the provision of information technology solutions to all sectors were considered, a horizontal overlap could in theory be identified due to ARDIAN's activities through Altares and RGI on a market for the provision of IT solutions. Alters provides

5.2. Vertical relationships

- (36) The Transaction would give rise to affected markets due to vertical relationships created by the Parties' activities in upstream or downstream markets. Indeed, the Parties' market shares on the market for the provision of airport infrastructure services would reach up to 100%, if the narrowest relevant markets, limited to each airport, were considered.
- (37) A vertical relationship would thus arise between ARDIAN, supplying automatic handling material systems and accompanying services for baggage handling at airports through Fives Cinetic, and FA as shareholder in Italian airport operators. A further vertical relationship could be created by the Transaction between FA, providing information technology solutions to airports through Software Design, and ARDIAN as operator of the London Luton airport, if the market for the provision of information technology solutions to airports was EEA-wide.
- (38) The Parties submit that in the upstream markets, the activities of both ARDIAN as supplier of baggage handling systems for airports and FA as supplier of information technology solutions for airports are *de minimis* and purely marginal. The market shares in the two upstream markets of ARDIAN and FA are estimated at less than [0-5]% in the EEA. Furthermore, neither of these companies controls key technologies or inputs that could be seen as essential for airport operators.
- (39) Moreover, the Parties submit that there are a high number of competitors active in both these markets, which are expected to continue exerting competitive constraint on Five Cinetic and Software Design post-Transaction. Such companies will thus constitute alternatives for airport operators also after the Transaction.
- (40) In view of the above considerations, the vertical relationships likely to arise by the Transaction are not capable of raising any risk of foreclosing competing airport operators of an essential input.
- (41) Regarding possible customer foreclosure, the Parties submit that they have no ability or incentive to engage in a customer foreclosure strategy.
- (42) Firstly, the Parties claim that they are unable to foreclose competitors in the upstream markets given that, even if their airport operators decided to acquire all supplies from vertically integrated companies, the customer base of competitors in these EEA-wide markets is very broad and would therefore barely be affected.
- (43) Secondly, the possibility to engage in any foreclosure strategy is largely limited by the fact that airport operators are bound by mandatory provisions under national and EU public procurement regulation, according to which they must organise tenders for acquiring their supplies.

specific products in four key areas (changes to companies' legal information, new customer prospecting for sales growth, credit rating and solvency financial information, and non-financial ratings) and RGI specialises in providing software and advisory services for insurance policy management. Software Design is not active in any of these segments. In any event, the aggregated market share of the three companies in such market post-Transaction would be below 20%.

- (44) Thirdly, the Parties submit that they do not have the incentive to foreclose a rival supplier of baggage handling systems in Italian airports. In particular, F2i has no incentive to allow ARDIAN favouring Fives Cinetic over alternative baggage handling systems suppliers. Indeed, unless Fives Cinetic offers competitive services, F2i would not have an interest in sourcing from them as part of a foreclosure strategy, since this would negatively impact its investment in FA.
- (45) Similarly, the Parties will not have the incentive to foreclose a rival supplier of information technology solutions at the London Luton Airport. Especially AENA, the other controlling parent company of the airport operator, would be able to stop ARDIAN from favouring Software Design ahead of alternative suppliers if it were not competitive.
- (46) In light of the above, the Commission considers that the Transaction is unlikely to raise serious doubts as to the vertical relationships arising between the Parties' activities on a market for automatic handling material systems and accompanying services for baggage handling at airports or a hypothetical EEA-wide market for information technology solutions to the airport sector on the one hand, and the provision of airport infrastructure services on the other hand.

CONCLUSION

- (47) 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