EUROPEAN COMMISSION
DG Competition

Case M.8382 - VINCI / DUFRY / LFP

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/2017

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EUROPEAN COMMISSION

Brussels, 5.7.2017
C(2017) 4866 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Subject: **Case M.8382 - VINCI / DUFRY / LFP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 30 May 2017, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings VINCI Airports International, S.A. (Belgium), a wholly-owned subsidiary of the VINCI Group ("VINCI", France), and DUFRY International AG ("DUFRY", Switzerland), acquire within the meaning of Article 3(1)(b) of the EU Merger Regulation joint control of the undertaking LFP – Lojas Francas de Portugal, S.A. ("LFP", Portugal) by way of purchase of shares ("the Transaction").[3] VINCI and DUFRY are collectively referred to as the "Notifying Parties", and VINCI, DUFRY and LFP as the "Parties".

1. THE PARTIES

(2) **VINCI** is a diversified group notably active in the fields of (i) concessions and infrastructures (mainly motorways and airports), (ii) building, public works and civil engineering, (iii) road works, (iv) energy, and (v) information technology services. VINCI's wholly owned subsidiary VINCI Airports S.A.S ("VINCI

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').

3 Publication in the Official Journal of the European Union No C 180, 08.06.2017, p. 38.

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Airports") manages and operates 35 airports: 13 in France, 10 in Portugal, 3 in Cambodia, 2 in Japan, 6 in Dominican Republic, and 1 in Chile. In Portugal, VINCI Airports is active in the development, management and operation of airports through its indirect wholly-owned subsidiary ANA – Aeroportos de Portugal, S.A ("ANA").[4] ANA manages and operates ten airports through a 50-year concession contract granted by the Portuguese State. ANA is also in charge of ground handling, safety, security and passenger assistance services at the Portuguese airports it operates via its wholly-owned subsidiary Portway.

(3) **DUFRY** operates retail outlets at airports and other transport hubs in North America, South America, Europe, Asia, the Middle East and Africa.

(4) **LFP** is an airport and on-board retailer active only in Portugal. LFP is present in the airports of Lisbon, Porto, Faro, Madeira and Azores.

2. THE CONCENTRATION

(5) On 23 December 2016, VINCI entered into a Sale and Purchase Agreement to acquire from TAPGER – Sociedade de Gestão e Serviços, S.A. ("TAPGER") its majority stake of 51% of LFP's share capital and voting rights.[5] DUFRY currently holds (and will hold post-Transaction) the remaining 49% of LFP's share capital and voting rights.

(6) Pursuant to the Shareholder's Agreement to be concluded between VINCI Airports International and DUFRY,[6] VINCI is entitled […], while DUFRY is entitled […]. In order for the Board to take valid decisions, a minimum quorum of […] members is required, […].

(7) The day to day management of the business of LFP will be carried out by an Operations Committee, consisting of […] members: […]. The members of the Operations Committee will ultimately be appointed […].

(8) In addition, according to the Shareholder's Agreement, […][7].

(9) Therefore, each of VINCI and DUFRY shall have decisive influence over LFP's commercial behaviour. Thus, each of VINCI and DUFRY will jointly control LFP.

(10) In light of the above, the Transaction constitutes a concentration under Article 3(1)(b) of the Merger Regulation.

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4 The Commission approved the acquisition of ANA by VINCI in its Decisions M.6862 – *VINCI/AEROPORTOS DE PORTUGAL*, dated 10 June 2013.

5 The notified operation stems from the privatisation process of the Portuguese flag carrier TAP – Transportes Aéreos Portugueses, S.G.P.S., S.A. ("TAP"). TAPGER is a wholly-owned subsidiary of TAP. Such privatisation is implemented by the Portuguese State as part of the programme for privatisation of several Portuguese State-owned companies which conditioned the Economic and Financial Assistance Programme signed and provided by the European Union, the European Central Bank and the International Monetary Fund.

6 The Shareholder's Agreement is attached as Schedule 9 to the Sale and Purchase Agreement entered into by VINCI on 23 December 2016.

7 […].

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[8] *[VINCI: EUR 38 518 million; DUFRY: EUR 7 147 million; LFP: EUR […]]*. Each of VINCI and DUFRY has an EU-wide turnover in excess of EUR 250 million *[VINCI: EUR […]; DUFRY: EUR […]]*, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(12) The Transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(13) The Parties' activities overlap horizontally in the provision of travel retail services in airports. The Transaction also gives rise to a vertical link between the Parties' activities in the provision of travel retail services (downstream) and VINCI's presence in the market for the award of concessions for the provision of retail services at airports (upstream).

4.1. Travel retail services

4.1.1. Product market

(14) Travel retailers operate shops at different locations including airports, on-board aircraft, seaports, cruise liners and other tourist locations, such as hotels or resort complexes. At airports, travel retailers operate a variety of duty free and duty paid[9] retail outlets including general travel retail shops that sell "typical" duty free products (such as perfumes and cosmetics, confectionery, wine and spirits and tobacco), specialised shops, brand boutiques and news and convenience stores.

Prior decisional practice

(15) As regards the market for the provision of travel retail services in airports, the Commission, in its previous decisional practice, distinguished the following sub-segmentations, ultimately leaving the exact product market definition open:

(a) retail product category (e.g. general travel retail stores, fashion & accessories, alcohol & tobacco, perfume & cosmetics, and fine food & confectionary);[10]

(b) airside areas (duty free and "travel value" only accessible to ticket holding passengers and staff who have passed through customs, immigration and

8 Turnover calculated in accordance with Article 5 of the Merger Regulation.

9 Duty paid products include all taxable goods, including goods where the tax/duty is paid by the consumer and goods where the tax is absorbed by the retailer in order to be able to offer the same or similar prices to intra-EU travellers as the prices for duty free products, so-called "travel value" prices.

10 See Decisions M.5114 – *Pernod Ricard/V&S*, dated 17 July 2008, §41; M.6212 – *LVMH/Bulgari*, dated 29 June 2011, §17; and M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §§ 30-33.

security) and landside areas (duty paid, accessible to non-travellers as well as ticket holders).[11]

The Notifying Parties' view

(16) The Notifying Parties consider that the above sub-segmentations should not be applied. Firstly, as regards retail product category sub-segmentation, the Notifying Parties submit that previous market test investigations were not conclusive as to whether customers' purchasing behaviours and motivations differ depending on the category of products, and revealed a certain degree of demand-side substitutability between the above mentioned product categories.[12] Also, from a supply-side perspective, retail services operators at airports appear to be active (or can easily become active) across several product categories (tobacco, perfumes and cosmetics, liquors, exclusive food, sweet and chocolates, fashion, accessories as is the case for DUFRY and LFP). In this respect, LFP was granted 13 licenses and operates 30 stores marketing different categories of products. Secondly, as to the distinction between landside and airside sales, although prices of certain products differ, this is not the case for all products (some products attract tax and/or duty, equalising the product price across the categories). From the supply-side perspective, many travel retailers are active in both airside and landside areas.

The Commission's assessment

(17) The market investigation results provided some indications that it may not be justified to distinguish between retail product categories. A competitor of LFP for instance indicated that "*they can sell any product category and, as a matter of fact, they adapt to the airport and customer needs (by selling for example more Porto wine in its shops in the airport in Porto)*".[13]

(18) As regards a possible segmentation within the market for the provision of airport retail services between airside and landside areas, the market investigation results also provided some indications that it may not be justified. A competitor of LFP indicated that "*the main retail activity takes place on the airside, where passengers have more time available and are more prone to spend money and shop more impulsively than on the landside*".[14] The same competitor added that "*[n]evertheless, operating retail space airside or landside does not make any difference to the operators and all competitors can be active on both airside and*

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11 See Decisions M.3728 – *Autogrill/Altadis/Aldeasa*, dated 23 March 2005, §9; M.4581 – *Imperial Tobacco/Altadis*, §20; M.5389 – *Aéroports de Paris/The Nuance Group*, dated 22 December 2008, §§16-17; and, M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §§ 25-29.

12 See Decisions M.7622 – *DUFRY/World Duty Free*, dated 05 August 2015, §§16-17; M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §25 and §30.

13 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (first call), paragraph 5.

14 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (first call), paragraph 4.

landside".[15] Similarly, another competitor of LFP indicated that "*the operation of airside and landside stores is similar*".[16]

(19) For the purposes of the present decision, the precise definition of the relevant product market(s) for travel retail services can be left open as the Transaction does not give rise to serious doubts under any of the plausible market definitions.

4.1.2. *Geographic* market

Prior decisional practice

(20) In its previous decisional practice, the Commission left open the exact geographic definition of the market for retail services. Results of previous market investigations indicated that retail areas in different airports exercise competitive pressure on each other at global level, or at least at EEA level.[17] In addition, travellers can compare the prices in the departing airport with those for transit or arrival.[18] Nevertheless, the Commission has not excluded the possibility that there may be local markets at individual airport level.[19]

The Notifying Parties' view

(21) The Notifying Parties submit that the market for retail services at airports should be considered as being at least EEA-wide in scope. According to the Notifying Parties, travellers tend to compare prices between departure, arrival and transit airports. This behaviour is strengthened by the increasing use of on-line tools, mobile access to the Internet and by the fact that core products, such as alcohol, tobacco, perfumes and also branded apparel are standard products marketed across the EEA, which makes it easy to compare prices among retail channels, including other retail channels outside airports. In addition, European airports are more and more subject to the competition of new international airports.

The Commission's assessment

(22) The Commission acknowledges that numerous elements suggest that retail store operators at airports face European and even worldwide competitors, with travellers always having a choice of at least two or even three airports to shop. Since the Transaction does not raise serious doubts as to its compatibility with the internal market under any of the above-mentioned plausible geographic markets, the exact geographic delineation can be left open.

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15 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (first call), paragraph 4.

16 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (second call), paragraph 6.

17 See Decision M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §38.

18 See Decision M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §40.

19 See Decision M.5123 – *Autogrill/World duty free*, dated 16 May 2008, §21: "*For reasons of demand side considerations, the narrowest conceivable relevant geographic market would nevertheless appear to be individual airport*". See also Decision M.4164 – *FERROVIAL QUEBEC/GIC/BAA*, dated 23 May 2006, §24, where the Commission considered the market was confined to the airport in question or possibly its intermediate surroundings.

4.2. Award of concessions for the provision of retail services at airports

4.2.1. Product market

(23) Retail services at airports are provided on the basis of concession agreements between airport operators and travel retail operators, which are mostly awarded through tenders, but which can also be negotiated directly without a tender process. They are typically awarded for a period of 5-10 years. Under these concession agreements, retailers typically pay the airport operator a concession fee which comprises a fixed fee and a variable amount linked to the revenues generated through retail sales.

Prior decisional practice

(24) In previous decisions, the Commission found that a separate market for the award of such concessions exists (i.e. *competition for the market)* but did not contemplate further segmentations.[20]

The Notifying Parties' view

(25) The Notifying Parties agree with the Commission's decisional practice and do not consider a sub-segmentation of this market by product category appropriate given that most retail service operators usually participate in tenders for concessions of different duration with a very standardised range of products (tobacco, perfumes & cosmetics, liquors, exclusive food, fashion, or accessories). Furthermore, licences awarded can accommodate more than one retail store.

The Commission's assessment

(26) The market investigation results did not provide any indications that would warrant departing from the Commission's previous practice and to further segment the market for the purposes of the present decision.

4.2.2. Geographic market

Prior decisional practice

(27) In its previous decisions, the Commission left open the exact scope of the geographic market, while pointing to factors indicating the possible existence of an EEA-wide or even global market.[21]

The Notifying Parties' view

(28) The Notifying Parties agree with the Commission's decisional practice, supported by the fact that tendering processes for the award of airport retail service concessions attract European and even non-European undertakings.

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[20] See Decisions M.5123 – *Autogrill/World Duty Free*, dated 16 May 2008, §§15-17; M.5389 – *Aéroports de Paris/The Nuance Group*, dated 22 December 2008, §21; M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §§44-46; and M.6723 – *Ferrovial/Qatar Holding/CDPQ/Baker Street/BAA*, dated 13 December 2012, §§25 and 26 and most recently M.7622 – *DUFRY/World Duty Free,* dated 05 August 2015, §30.

[21] See Decisions M.7622 – *DUFRY/World Duty Free*, dated 05 August 2015, §33; M.5123 – Autogrill/World Duty Free, §23; M.5389 – *Aéroports de Paris/The Nuance Group*, dated 22 December 2008, §23; M.6263 – *Aelia/Aéroports de Paris/JV*, dated 20 October 2010, §34.

The Commission's assessment

(29) The information obtained from competitors during the market investigation demonstrates the presence of a number of different bidders for concessions that are active at EEA-level and beyond. A competitor of LFP indicated that "*there is no restriction to competitors established in other countries*".[22] The same competitor acknowledged that it "*also bids for licences to operate airport retail space in other countries in addition to Portugal*".[23] This suggests that the scope of the relevant geographic market could be regarded as at least EEA-wide.

(30) In any event, the exact geographic definition can be left open for the purposes of the Transaction as it does not give rise to serious doubts as to the compatibility of the Transaction with the internal market under any of the plausible market definitions.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal overlap - Travel retail services

(31) All Parties are present in the market for travel retail services. DUFRY operates travel retail stores worldwide. In Portugal, DUFRY is active in the market for travel retail services in airports only through LFP.

(32) VINCI indirectly operates seven retail stores at the French airport of Lyon-Saint-Exupéry following its acquisition of sole control of Aéroports de Lyon (“ADL”) in November 2016.[24] In addition, VINCI's indirect subsidiary ANA has created and registered the trademark "Portfolio", which is the commercial brand of three retail stores granted to Feito de Portugal.[25] While VINCI disputes that it exercises control over Portfolio, it cannot be excluded that the additional rights held by VINCI under the licence agreement amount to control in the sense of the Merger Regulation.[26] Portfolio focuses on the sale of products exclusively produced in Portugal such as handicraft, fashion, design, flavours and cultural products.

(33) The overlap between the Parties' activities on the market for travel retail services in airports at EEA-level is very limited, with LFP adding an estimated [0-5]% market share to VINCI's [0-5]% and Feito de Portugal's [0-5]% in terms of 2016 revenues. The Parties would still face competitive pressure from major competitors such as Heinemann ([10-20]%) and Lagardére ([10-20]%).[27]

22 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (second call), paragraph 10.

23 See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (second call), paragraph 10.

24 See the decision by the French Competition Authority n. 16-DCC-167 dated 31 October 2016.

25 The three stores operated by Feito de Portugal under the Portfolio trademark are located in the airside area of the airports of Lisbon, Porto and Funchal (Madeira). A fourth Portfolio store is expected to open in Faro Airport during the summer of 2017.

26 Although Feito de Portugal is managed by the third party Áreas Portugal-Restauração e Distribuição, S.A. ("Áreas"), ANA has […]. In addition, although ANA is not a shareholder of Feito de Portugal, […]. Consequently, the Portfolio stores' shall be considered to be controlled by ANA (VINCI) for the purposes of this decision.

27 Estimated market shares include sales in both airside and landside areas – Form CO, Annex 7.3.4.(c).

(34) At local level, an overlap only occurs if the sales volumes of Feito de Portugal are attributed to VINCI. Feito de Portugal's 2016 revenues would add [0-5]%, [0-5]% and [5-10]% to LFP's market shares in the airports of Lisbon, Porto and Funchal respectively, where LFP's estimated market shares are [60-70]%, [60-70]% and [60-70]%.[28]

(35) Competitors at those three airports include the internationally active group Lagardère, Áreas and Gateleven, with market shares of up to [5-10]%, [5-10]% and [0-5]% respectively, in addition to other smaller players.[29] Although these competitors do not have a substantial market share at these three airports, they can all be considered credible competitors.[30] Even the smaller Gateleven for instance which opened its first store in Lisbon airport in 1996, operates stores for fashion, sports and travel gear not only in Portugal but also in other Member States such as at Frankfurt Airport.[31]

(36) The vast majority of market participants stated in response to the Commission's questions that the Transaction would not materially change the competitive landscape for travel retail. In addition, some brands bid and compete against specialised travel retail operators to operate retail space in airports directly themselves. As one competitor of LFP put it: "*there are other sizable competitors active in the operation of retail space in the Portuguese airports, such as Áreas Portugal – Restauração e Distribução S.A., or high street fashion retailers such as Desigual or Lacoste*".[32] Another competitor of LFP stated that in addition to specialised travel retail operators, there are "*other local Portuguese competitors (e.g. selling hand-made gifts, wine, fashion) and international retailers (e.g. MaxMara, Fnac)*".[33]

(37) Most importantly, LFP and Feito de Portugal (with its Portfolio stores) are not close competitors. The Portfolio stores focus on Portuguese specialties and have a narrower product offering than that of other classical duty free shops like LFP, where the origin of the products on offer is not part of their commercial strategy.

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[28] Should a national geographic market be considered, the competitive assessment would by analogy be similar to the assessment at local level, with Feito de Portugal's Portfolio stores adding an estimated [0-5]% market share to LFP's [60-70]% in Portugal. The Parties' main competitors would be Áreas, Lagardère and Gateleven, with an estimated market share in Portugal of [0-5]%, [0-5]% and [0-5]% respectively.

[29] The Parties' main competitors are: i) in Lisbon airport, Áreas ([5-10]%), Gateleven ([0-5]%) and Erich Brodheim ([0-5]%); ii) in Porto airport, Lagardère ([5-10]%), Áreas ([5-10]%) and Gateleven ([0-5]%); and iii) in Funchal airport, Lagardère ([10-20]%), Sunglass Hut ([0-5]%) and Florasanto ([0-5]%) – estimated market shares including retail sales for all categories in both airside and landside areas – Form CO, Annex 7.3.4.(d) based on 2016 revenues. If market shares were calculated in terms of number of shops, the Parties' combined market shares would always be lower.

[30] If a segmentation by retail product category (such as perfumes and cosmetics, confectionery, wine and spirits and tobacco) is considered, the market shares and the assessment would not change to a material extent. Furthermore, if market shares are calculated on the basis of the number of shops instead of revenues, the market shares of each of the Parties would be significantly lower both at local and national level.

[31] See Gateleven's '*About us*' section on their official website - http://www.gateleven.pt/Home/Aboutus, in conjunction with Frankfurt Airport's website STARTfrei - https://www.startfrei-online.de/?kurzmeldung=zwei-neue-shops-am-flughafen-frankfurt-eroffnet.

[32] See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (first call), paragraph 10.

[33] See agreed non-confidential minutes of the phone call with a competitor on 23 March 2017 (second call), paragraph 8.

In addition, LFP operates a purely duty free concept, while Portfolio is a duty paid store.[34]

(38) Finally, the Parties' retail stores in the Portuguese airports would still face competitive pressure from retail areas in other airports post-Transaction, as travellers normally have a choice between at least the airport of departure and the airport of arrival.

(39) In light of the above, and considering all the evidence available to it, the Commission concludes that the Transaction does not give rise to serious doubts as to the horizontal overlap between the Parties' activities on the market for travel retail services in airports.

5.2. Vertical relationship - Award of concessions for the provision of retail services at airports

(40) The Transaction results in a vertical relationship between the i) upstream market for the award of concessions for travel retail services at airports, on which only VINCI is active (as an airport infrastructure operator) and the ii) downstream market for travel retail services at airports on which all VINCI, LFP and DUFRY are active.

(41) On the upstream market for the award of concessions for retail services at airports, at EEA level, VINCI's market share is well below 30% ([0-5]% in 2015).[35] There are plenty of alternative credible suppliers at EEA level, such as Global Infrastructure Partners, BAA, AENA SA, Fraport AG, Flughafen München GmbH and Aeroporti di Roma. On the downstream market for the operation of travel retail services in airports, at EEA level, the Parties’ combined market share is below 30% both by number of stores ([10-20]%) and by value ([20-30]%). There is, therefore, no affected market at EEA-level.[36]

(42) Only if the downstream market for the operation of travel retail services in airports was considered local in scope, would a vertically affected market arise, since the market shares of LFP are above 30% in all the airports where it is active.[37]

5.2.1. Ability to restrict access to travel retail services in airports

(43) According to the Notifying Parties, there is no foreclosure risk in Portugal. The Notifying Parties submit that VINCI's subsidiary ANA would have no ability to foreclose the downstream market for retail services at airports because i) Portuguese law requires ANA, as concessionaire for the operation of the Portuguese airports, to grant licenses through competitive procedures subject to general principles of competition, transparency and non-discrimination; ii) any discrimination in favour of LFP is prohibited by the Portuguese Decree-Law 254/2012; and iii) the Concession Agreement requires ANA, as concessionaire, to

34 Form CO, paragraphs 232-237.

35 Form CO, paragraph 629.

36 Form CO, paragraph 671.

37 LFP's market shares for travel retail services in the Portuguese airports are [60-70]% (Lisbon), [60-70]% (Porto), [70-80]% (Faro), [60-70]% (Funchal), [80-90]% (Horta), [60-70]% (Ponta Delgada) and [80-90]% (Santa Maria). Estimated market shares include sales based on revenues, in both airside and landside areas – Form CO, Annex 7.3.4.(c).

provide fair and non-discriminatory treatment to all airport passengers and users.[38]

(44) Nevertheless, the Commission understands that ANA is entitled to grant licences to retail operators through a direct award or bilateral negotiations if the legal circumstances allow it.[39] This may be the case when LFP's licences gradually expire between 2018 and 2020.[40] Moreover, a competitor of LFP claimed that ANA would have a "*large margin of discretion to pick the winner*" of a tender for retail space despite a competitive bidding procedure.[41]

(45) However, the Transaction does not modify the ability by ANA to grant licences to the retail operators that best fulfil its interest. Indeed, ANA already controls the market for the award of concessions for retail licenses in the Portuguese airports, and it could even integrate downstream into retail services by opening its own shops if it wished to do so. Therefore, although ANA seems to have the ability to restrict access to retail operators, such ability would not be merger specific.

5.2.2. Incentive to restrict access to travel retail services in airports

The Notifying Parties' view

(46) The Notifying Parties submit that it also has no incentive to discriminate in favour of LFP for the award of retail concessions. The Notifying Parties submit that it is in its best interest to grant the concessions to the most competitive and innovative operators in order to maximise the percentage of the retailers' revenue it receives as an important component of the concession fee.

The Commission's assessment

(47) The market investigation results suggest that the Parties would not have any incentive to foreclose after the Transaction. A competitor of LFP, for instance, indicated that "*it would make no sense for ANA to reduce the sales of LFP's competitors*" and that "*ANA has a direct interest in increasing the operators' revenues to maximise its own profits*".[42]

(48) The absence of VINCI's incentive to foreclose or disadvantage any of LFP's competitors becomes also apparent when analysing the turnover rents LFP paid to ANA in 2015. As explained above, retailers typically pay the airport operator a concession fee comprising a fixed fee (for the rental of the retail space) and a variable amount linked to the revenues generated through retail sales. While VINCI gets 100% of the concession fee, it would have to share any additional profits made by LFP with its joint venture partner DUFRY. An economic analysis of the revenues generated by VINCI shows that any additional revenues generated by VINCI (through its 51% shareholding in LFP) for renting the retail surface to LFP

[38] Clause 8(3) of the Concession Agreement concluded between the Portuguese State and ANA, due to expire in 2062.

[39] Form CO, paragraphs 72-74 in conjunction with paragraphs 168-169.

[40] Out of the 12 LFP licences granted by ANA, 3 are due to expire in 2018, and 9 are due to expire in 2020 – Form CO, paragraphs 68-71.

[41] See agreed non-confidential minutes of a phone call with a competitor on 18 April 2017, paragraph 15.

[42] See agreed non-confidential minutes of a phone call with a competitor on 23 March 2017 (second call), paragraph 11.

for a favourable rate would not compensate for the ensuing losses that a lower rent would generate for VINCI's 100% owned ANA.

(49) In fact, post-Transaction, VINCI would lose out from discriminating in favour of LFP, as can be shown by the following example. In 2015, LFP paid EUR […] to VINCI's subsidiary ANA, amounting to 36.2% (average turnover rate) of its EUR […] revenue.[43] Under the structure envisaged by the Transaction, if ANA decided to award new licences to LFP under more favourable conditions and charged LFP 32% instead of 36.2% (i.e. a discount of about 10% in comparison to the average turnover rate paid in 2015) VINCI's wholly owned subsidiary ANA would lose revenues of EUR […].[44] While LFP would thereby create savings of that value, LFP's earnings are to be shared with DUFRY, which holds 49% of LFP's shareholding, making such a favourable concession fee unprofitable for VINCI.[45] This assumption illustrates that not only it would be detrimental for VINCI to discriminate retail operators in favour of LFP, but that stimulating competition between LFP and its rivals would actually play in favour of VINCI's interest.

(50) Moreover, airport operators, like shopping centre managers, are looking for an optimal mix of retail shops offering product categories that cater for their customers' needs and demand. This was confirmed also by market operators. One competitor of LFP provided that "*when launching a tender, ANA normally specifies the location, surface as well as category of the retail space to be operated - for example, ANA can specify whether the store will be for electronics, fashion, or a convenience store"*.[46] This competitor further stated that *"ANA will continue to need a variety of operators present at its airports, so that the diversity of shops at the airports does not suffer post-Transaction*".[47] It is therefore unlikely that ANA would discriminate against the competitors of LFP, given the diverse product category offerings needed to have the mix that customers expect to find at the airport.

5.2.3. Vertical relationship - Conclusion

(51) Therefore, even if VINCI is able to foreclose the access of travel retail operators in Portuguese airports, this ability is not caused by the Transaction, and any strategy to discriminate retail operators for the award of concessions would be against VINCI's interest in maximising ANA's revenues for the exploitation of the commercial areas in its airports as well as an optimal product offering.

(52) In light of the above, and considering all the evidence available to it, the Commission concludes that it is unlikely that VINCI's indirect subsidiary ANA would be able to successfully engage in a customer foreclosure strategy post-Transaction in relation to the market for travel retail services in airports.

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43 Form CO, paragraph 289.

44 For completeness, any increment or decrease of the fees that LFP pays to ANA would not have an impact on the overhead structure of neither company.

45 The same conclusion would be reached if a different discount value is considered.

46 See agreed non-confidential minutes of a phone call with a competitor on 23 March 2017 (first call), paragraph 8.

47 See agreed non-confidential minutes of a phone call with a competitor on 23 March 2017 (second call), paragraph 11.

6. CONCLUSION

(53) 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