



EUROPEAN COMMISSION
DG Competition

Case M.8470 - DAAM / INFRAVIA / FIH / AI

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/07/2017

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Dear Sir or Madam,

**Subject: Case M.8470 - DAAM / INFRAVIA / FIH / AI
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 13 June 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Deutsche Alternative Asset Management (Global) Limited ("DAAM", United Kingdom), InfraVia Capital Partners ("InfraVia", France), and Finanziaria Internazionale Holding S.p.A. ("FIH", Italy) acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Agorà Investimenti S.p.a. ("AI", Italy), by way of purchase of shares ("the Transaction").³ DAAM, InfraVia and FIH are collectively referred to as the "Parties".

1. THE PARTIES

(2) DAAM is a management company that provides investment management and fund management services. DAAM is a wholly owned subsidiary of Deutsche Bank, a global provider of financial services headquartered in Germany. DAAM

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 197, 21.06.2017, p. 24.

indirectly controls, among others, TCR CapVest SA ("TCR"), a specialist provider of aviation ground support equipment providing rental, maintenance, repair, ramp assistance and fleet management services.

- (3) InfraVia is an independent investment manager dedicated to the infrastructure sectors, including transportation, environment, energy and social infrastructure.
- (4) FIH is a financial company active in three macro-areas: (i) investment banking and asset management, (ii) business process outsourcing, and (iii) proprietary investments.
- (5) AI carries out investments in the transport infrastructure sector in Italy and holds a controlling shareholding in SAVE S.p.A. ("SAVE"), the ultimate target of the Transaction.
- (6) SAVE is the parent company of a group which has integrated operations in the passenger service sector⁴ and operates mainly in the airport management business area. In particular, SAVE holds controlling interests in the managing companies of the airports of Venice (Italy), Treviso (Italy), Verona (Italy), Brescia (Italy) and Charleroi (Belgium).⁵

2. THE TRANSACTION

- (7) Prior to the Transaction, AI and, in turn, SAVE are solely controlled by FIH.
- (8) The Transaction consists of the acquisition by BidCo, an entity jointly established by InfraVia, DAAM and FIH, of 100% of the share capital of AI, and consequently, of a controlling stake in SAVE.
- (9) The governance arrangements for, *inter alia*, BidCo, AI and SAVE are set out in a draft shareholders' agreement (the "SHA"), which aims at ensuring that DAAM, InfraVia and FIH enjoy the same rights. In particular, under the SHA, for BidCo, AI and SAVE, (i) each of DAAM, InfraVia and FIH has a veto right on the shareholders' reserved matters;⁶ (ii) DAAM, InfraVia and FIH have the right to appoint the same number of directors in the board;⁷ and (iii) as a result of the qualified majority or, for SAVE, of the consultation procedure, each of DAAM,

⁴ SAVE develops, projects, realises, adjusts and manages airport facilities and installation.

⁵ SAVE has a minority stake in Brussels South Charleroi Airport ("BSCA"), the Charleroi Airport management company but enjoys a veto right over certain strategic decisions, such as [details on the types of decisions over which SAVE has a veto right]. SAVE considers not to be in the position to effectively exercise this right of veto, given that [details on the governance of BSCA]. However, for the sake of caution, the Commission has assumed that SAVE controls BSCA for the purposes of the competitive assessment of the Transaction.

⁶ Shareholders' reserved matters include e.g. [details on the types of decisions falling within the shareholders' reserved matters].

⁷ BidCo and AI will be managed by a board composed of [...] directors; DAAM, InfraVia and FIH have the right to appoint [...] directors each. SAVE will be managed by a board composed of [...] directors. Each of DAAM, InfraVia and FIH has the right to nominate [details on the nomination rights].

InfraVia and FIH has a veto right on the board's reserved matters.⁸ Those reserved matters pertain to decisions essential for the strategy of BidCo, AI and SAVE, and going beyond the protection of minority shareholders' interests.

- (10) In view of the above, the Transaction results in the acquisition of joint control by DAAM, InfraVia and FIH over AI and, consequently, over SAVE. It therefore constitutes a concentration under Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁹ (DAAM: EUR [...] million; InfraVia: EUR [...] million; FIH: EUR [...] million¹⁰). Each of them has an EU-wide turnover in excess of EUR [...] million (DAAM: EUR [...] million; InfraVia: EUR [...] million; FIH: EUR [...] million¹¹), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (12) The notified operation therefore has an EU dimension according to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (13) SAVE, the ultimate target of the Transaction, has the exclusive purpose to develop, project, realise, adjust and manage airport facilities and installation, in Italy and abroad. Its activities include (i) the provision of airport infrastructure services to airlines, (ii) the provision (contracting) of ground-handling services; (iii) the provision (contracting) of associated commercial services, and (iv) the supply of information technology solutions for airports.
- (14) Neither DAAM nor InfraVia controls companies active in the same markets as SAVE or in upstream or downstream markets. As an exception, TCR, a specialist supplier of aviation ground support equipment controlled by DAAM, provides rental, maintenance, repair, ramp assistance and fleet management services to providers of ground-handling services.
- (15) Therefore, the provision (contracting) of ground handling services and the supply of aviation ground support equipment give rise to relevant markets.

⁸ For BidCo and AI, the board's reserved matters include e.g. [details on the types of decisions falling within the board's reserved matters]. For SAVE, the board's reserved matters include e.g. [details on the types of decisions falling within the board's reserved matters].

⁹ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹⁰ Excluding the turnover of BSCA. This does not have any impact on the EU dimension of the Transaction.

¹¹ Excluding the turnover of BSCA. This does not have any impact on the EU dimension of the Transaction.

4.1. The provision (contracting) of ground handling services

4.1.1. Product market definition

- (16) In its prior decision practice, the Commission has defined a market for the provision of ground handling services, consisting of ramp, passenger, and baggage handling services as well as airside cargo handling services.¹²
- (17) The Parties agree with the Commission's product market definition of ground handling services.¹³
- (18) It is however not necessary to decide on the exact definition of the product market for the provision of ground handling services, more specifically on the distinction between each of ramp, passenger, and baggage handling services, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.1.2. Geographic market definition

- (19) In its prior decision practice, the Commission has concluded that the market for the provision of ground-handling services is limited to a specific airport (or possibly two neighbouring airports), given that the services required at a particular airport cannot normally be substituted by services provided at other airports.¹⁴
- (20) The Parties submit that the market extends beyond a single airport and encompasses the airports within the same catchment area (or at least two neighbouring airports), because pricing for ground handling services is constrained both by competitors active at a particular airport and by other competitors active in the same catchment area.¹⁵
- (21) In any case, it is not necessary to decide on whether the market for the provision of ground handling services is local or extends beyond a single airport, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

4.2. The supply of aviation ground support equipment

4.2.1. Product market definition

- (22) Having regard to the Commission's prior decision practice in relation to other markets upstream from the provision of ground handling services,¹⁶ the

¹² Case M.7021 – *Swissport/Servisair*, paragraph 18; and Case M.6671 – *LBO France/Aviapartner*, paragraph 20.

¹³ Form CO, paragraph 151.

¹⁴ Case M.7021 – *Swissport/Servisair*, paragraph 44.

¹⁵ Form CO, paragraph 151.

¹⁶ The Commission has considered the market for the supply of automatic handling material systems and accompanying services for baggage handling at airports (Case M.7537 – *Ardian France/F2i SGR/F2i Aeroporti*; and Case M.7008 – *AENA Internacional/AXA PE/LLAGL*).

Commission does not exclude that the market for the supply of aviation ground support equipment should be further segmented and that a distinction should be made between ramp, baggage and passengers handling equipment. Further, it might be necessary to distinguish between sale (direct ownership), finance leasing and operating leasing (or rental) of aviation ground equipment.¹⁷

- (23) The Parties submit that any segmentation between ramp, passenger and baggage handling equipment would be artificial as all these types of equipment are used together to handle passengers, luggage and aircraft flows.¹⁸ Conversely, the Parties do not object to the definition of the relevant product market as the operating leasing (or rental) of aviation ground support equipment. They however note that SAVE does not resort – and has no intention to resort to – operating leasing (or rental) of ground support equipment.¹⁹
- (24) In any case, it is not necessary to decide on the exact definition of the product market for the supply of aviation ground equipment, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.2.2. *Geographic market definition*

- (25) The Commission has not yet addressed the geographic scope of the market for the supply of aviation ground equipment. However, considering the Commission's prior decision practice with regard to the supply of automatic handling material systems and accompanying services for baggage handling at airports²⁰ and with regard to the operating leasing of specific types of assets,²¹ the scope of supply of aviation ground equipment may be national, EEA-wide or wider than the EEA.
- (26) The Parties indicate that the ground support equipment rental, maintenance, repair, ramp assistance and fleet management services are not characterised by geographical limitations, given the mobile nature of the units. The Parties therefore submit that the market is at least EEA-wide.²²
- (27) In any case, it is not necessary to decide on whether the market for the supply of aviation ground equipment is national, EEA-wide or wider than the EEA, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

¹⁷ See, by analogy, Case M.6763 – *VWFS/PON Holdings B.V/Pon Equipment Rental & Lease*; and Case M.5263 – *Deutsche Bank London/Lloyds TSB Bank/Antin Infrastructure Partners (BNP Paribas)/Porterbrook Leasing*.

¹⁸ Form CO, paragraph 160.

¹⁹ Form CO, paragraphs 166 and following.

²⁰ Case M.7537 – *Ardian France/F2i SGR/F2i Aeroporti*, paragraph 30; and Case M.7008 – *AENA Internacional/AXA PE/LLAGL*, paragraph 26.

²¹ Case M.6763 – *VWFS/PON Holdings B.V/Pon Equipment Rental & Lease*, paragraph 20; and Case M.5263 – *Deutsche Bank London/Lloyds TSB Bank/Antin Infrastructure Partners (BNP Paribas)/Porterbrook Leasing*, paragraph 19.

²² Form CO, paragraph 173.

5. COMPETITIVE ASSESSMENT

5.1. Overview of the vertically affected markets

- (28) DAAM, through TCR, is engaged in business activities in the market for the supply of aviation ground support equipment, which is upstream of the market for the provision of ground handling services in which SAVE operates.
- (29) SAVE's share of the downstream market for the provision of ground handling services exceeds 30% on three markets (Treviso, Brescia and Charleroi airports), if the geographic scope is defined as limited to one airport.²³ TCR does not operate in any of those three airports, but is active in Belgium and Italy. The Commission will therefore assess in section 5.2 below whether the vertical effects of the Transaction on the upstream market for the supply of aviation ground support equipment and on the downstream market for the provision of ground handling services may raise customer foreclosure issues.
- (30) TCR's share of the upstream market for the supply of aviation ground support equipment exceeds 30% in Italy, Belgium and the EEA, if the product market is limited to the operating leasing (or rental) of aviation ground equipment.²⁴ Under such a product market definition, the Transaction does not give rise to a vertical relationship, since airports that operate ground handling services like SAVE opt in principle for an ownership model of the assets they use. They have no incentive to resort to operating leasing in terms of flexibility, cost, cash or network effects.²⁵ Nevertheless, the Commission will assess in section 5.3 below whether the vertical effects of the Transaction on the upstream market for the operating leasing (or rental) of aviation ground support equipment and on the downstream market for the provision of ground handling services may raise input foreclosure concerns.
- (31) For the purposes of its assessment, the Commission will examine whether the following three conditions set out in the Non-Horizontal Merger Guidelines²⁶ for foreclosure to be a concern are met: (i) the merged entity has the ability to foreclose its rivals; (ii) the merged entity has the incentive to foreclose its rivals; and (iii) the foreclosure strategy has a significant detrimental effect on competition on the downstream market (input foreclosure) or on customers

²³ SAVE's market shares reach up to 100% at those three airports, but fall under 30% if the geographic scope is defined as encompassing two neighbouring airports (Venice-Treviso, Verona-Brescia and Charleroi-Brussels). Considering SAVE's market position in the three affected markets (Treviso, Brescia and Charleroi airports), any segmentation of the market for ground handling services would neither lead to higher market shares than in the overall market for ground handling services nor require a different analytical framework. The competitive assessment will thus cover the market for ground handling services.

²⁴ The distinction between the operating leasing (or rental) of equipment for ramp, passenger and baggage handling services would have no impact on the competitive assessment, because in none of these segments TCR's market shares in Italy or Belgium or in the EEA would be significantly higher than TCR's market shares for aviation ground support equipment overall.

²⁵ Form CO, paragraph 171.

²⁶ Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7.

(customer foreclosure).²⁷ In practice, these factors are often examined together since they are closely intertwined.

5.2. No risk of customer foreclosure

5.2.1. Parties' views

(32) The Parties submit that SAVE has no ability or incentive to engage in a customer foreclosure strategy, in particular because TCR's competitors supply many customers across Italy, Belgium and the EEA.²⁸

5.2.2. Commission's assessment

(33) The ability of a merged entity to foreclose access to downstream markets depends on the degree of market power in the downstream market.²⁹ SAVE's market share in the downstream market for the provision of ground handling services is below 30% in the two countries in which it operates (Italy³⁰ and Belgium³¹). Therefore, SAVE's purchases represent a limited share of the available sales base for suppliers of ground support equipment, even if the market for supply of ground support equipment is defined as national (Italy and Belgium). Conversely, independent and integrated ground handlers other than SAVE constitute a sufficiently large customer base for suppliers of ground support equipment competing with TCR.

(34) In addition, SAVE is currently not a customer of TCR or of other suppliers specialised in operating leasing (or rental) of ground support equipment. Engaging in a customer foreclosure strategy would require that SAVE shifts from an ownership to a rental model for ground support equipment, which would be economically and operationally burdensome. Furthermore, the effects of the re-direction of SAVE's demand from manufacturers of ground support equipment (which sell equipment) to TCR (which rents equipment) would have a limited impact on the sales level of manufacturers of ground support equipment. Indeed, TCR sources the ground support equipment that it later rents to independent ground handlers from manufacturers with which it competes on the overall market for the supply of ground support equipment.

(35) Therefore, the Parties lack the ability and incentive to adopt a successful customer foreclosure strategy.

²⁷ Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

²⁸ Form CO, paragraphs 226 and following.

²⁹ Non-Horizontal Merger Guidelines, paragraph 61.

³⁰ SAVE's market share reaches [20-30]% (based on movements) and [10-20]% (based on passengers) only considering Venice, Treviso, Verona and Brescia airports. It is further diluted when adding other Italian airports.

³¹ SAVE's market share reaches [20-30]% (based on movements and on passengers) only considering Brussels and Charleroi airports. It is further diluted when adding other Italian airports.

5.3. No risk of input foreclosure

5.3.1. Parties' views

- (36) The Parties recall that rental of aviation ground support equipment is not an input for the provision of ground handling services by airport operators like SAVE, since the latter own the equipment they need to provide ground handling services. As an illustration, TCR's customers do not include integrated ground handlers.³²
- (37) In any case, the Parties submit that TCR would not have the ability to raise the costs of the inputs acquired by SAVE's competitors, to deny or delay access to key inputs needed by independent ground handlers or to engage in discriminatory strategies to favour SAVE on the market for the provision of ground handling services.³³

5.3.2. Commission's assessment

- (38) Input foreclosure may raise competition problems only if it concerns an important input for the downstream product³⁴ and if the merged entity has a significant degree of market power in the upstream market.³⁵
- (39) If the upstream product market for which TCR's market share exceeds 30% is considered (i.e. operating leasing or rental of ground support equipment), the input supplied by TCR and its competitors active in the operating leasing (or rental) market is of limited importance for the provision of ground handling services. As direct ownership is the most common ownership model in the EEA, including for independent ground handlers,³⁶ access to rented equipment is not considered as important as access to alternative offerings (purchased or leased equipment through financial leasing) for the provision of ground handling services. It should therefore be concluded that the operating leasing of ground support equipment is not an important input for the downstream product (ground handling services).
- (40) If the product market related to an important input is considered (i.e. supply of ground support equipment, not limited to rental of equipment), the condition related to the significant degree of market power in the upstream market is not fulfilled. TCR's share of the market for the supply of aviation ground support equipment is approximately [5-10]% in Italy, [10-20]% in Belgium and [10-20]% in the EEA.³⁷ Moreover, TCR faces strong competition from local and

³² With the exception of Düsseldorf Airport Ground Handling. [Details on the business rationale behind Düsseldorf Airport's decision](Form CO, footnote 167).

³³ Form CO, paragraphs 218 and following.

³⁴ Non-Horizontal Merger Guidelines, paragraph 34.

³⁵ Non-Horizontal Merger Guidelines, paragraph 35.

³⁶ According to TCR, in the EEA countries in which TCR is present, operational leasing (rental) accounts for [20-30]% of the total supply of aviation ground support equipment to independent ground handlers and for [5-10]% of the total supply of aviation ground support equipment to airlines and airports (Form CO, paragraph 229).

³⁷ Form CO, paragraph 40.

international players (e.g. TLD, Trepel, Goldhofer), including on the segment of full service rental in which TCR specialises (ERAS, Fricke, KLM Equipment Services, Manustra, Mercury GSE, etc.).³⁸

- (41) The Commission therefore considers it unlikely that the Parties have the ability, post-Transaction, to engage in a successful input foreclosure strategy in relation to the supply of aviation ground support.
- (42) In addition, it is unlikely that the Parties would have an incentive to adopt such a strategy, considering that (i) TCR does not achieve any turnover with SAVE and only marginally supplies airlines or airport-owned ground handlers;³⁹ (ii) redirecting TCR's supply to SAVE would require a change in SAVE's ownership model for ground support equipment; (iii) SAVE has a limited capacity to absorb TCR's rented ground support equipment, considering the limited size of the SAVE's ground handling activities⁴⁰ and the size of TCR's fleet (over 22 000 ground support equipment);⁴¹ while (iv) SAVE is unlikely to capture a higher share of the demand for ground handling services as a result of foreclosure of competing ground handlers from TCR's rented equipment, since SAVE only provides ground handling services at the airports it manages⁴² and the EU regulatory framework for ground handling services⁴³ guarantees open competition at large airports.

5.4. Conclusion

- (43) Considering SAVE's limited demand for ground support equipment, in particular rented equipment, as well as the number of competitors on the market for ground support equipment and of alternatives to rented equipment offered to ground handlers, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to non-horizontal effects.

³⁸ Form CO, paragraphs 213-214.

³⁹ Form CO, paragraph 230. More generally, the two countries where SAVE operates are marginal in TCR's activities (each of Italy and Belgium represents approximately [0-5]% of the revenue of TCR) (Form CO, paragraph 40).

⁴⁰ In 2016, SAVE's ground handling services covered 18 700 movements and 2.6 million passengers at Treviso airport; 8 500 movements and 0.02 million passengers at Brescia airport; and 75 000 movements and 7.3 million passengers at Charleroi airport. Those activities are minor compared to the needs for ground handling services at larger airports, including at airports neighbouring those at which SAVE is active (respectively Venice airport: 90 000 movements and 9.6 million passengers; Verona airport: 28 700 movements and 2.8 million passengers; and Brussels airport: 223 700 movements and 21.8 million passengers) (Form CO, paragraphs 197 and 206).

⁴¹ TCR operates, in Italy, at the airports of Venice, Naples, Milan (Linate and Malpensa) and Rome; and in Belgium, at the airports of Brussels and Liège. In the EEA, TCR is also active in the United Kingdom, France, the Netherlands, Norway, Spain, Germany, Sweden, Denmark and Ireland (paragraphs 209-211). Its customers, such as Aviapartner, rank among the main ground handlers at worldwide level (Form CO, paragraphs 200 and 230).

⁴² SAVE's core business is airport management (Form CO, paragraphs 28-29).

⁴³ Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, pp.36-45.

6. CONCLUSION

- (44) 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