Case M.9270 - VINCI AIRPORTS / GATWICK AIRPORT

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: Case M.9270 — VINCI Airports / Gatwick Airport
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

Dear Sir or Madam,

(1) On 8 February 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which VINCI Airports (the 'Notifying Party', France), belonging to the VINCI Group, which is ultimately controlled by VINCI S.A. (France), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Ivy Topco Limited (Cayman Islands), a holding company indirectly controlling Gatwick Airport Limited ('GAL', United Kingdom), by way of purchase of shares (the 'Transaction').³

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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) VINCI Airports manages and operates airports in a number of territories, namely France, Portugal, the United Kingdom (only in Northern Ireland - Belfast), Sweden, Serbia, Cambodia, Japan, Dominican Republic, Chile, Brazil, Costa Rica and the United States of America. **VINCI Group**, ultimately controlled by VINCI S.A., 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) energy and information technology services and (iv) road works.

(3) **Ivy Topco Limited** is a holding company that indirectly controls GAL, which owns and operates Gatwick Airport, the second largest airport of the London area.

2. **THE OPERATION AND THE CONCENTRATION**

(4) Pre-Transaction, Ivy Topco Limited is owned by Ivy Guernsey Holdings, a consortium that is solely controlled by the private equity fund Global Infrastructure Partners (‘GIP’), which in turn is managed by Global Infrastructure Management LLC.\(^4\)

(5) Pursuant to a Share Purchase Agreement concluded on 27 December 2018, VINCI Airports acquires, via a special purpose vehicle, 50.01% of the shares in Ivy Topco Limited. [details about other shareholders]\(^5\) [details about the composition of Ivy Topco Limited’s Board of Directors]\(^6\) [details about the decision making process]\(^7\) [further details about the decision making process]\(^8\) Therefore, Ivy Topco Limited will be solely controlled by VINCI Airports.

(6) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. **EU DIMENSION**

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million\(^9\) (VINCI Airports (VINCI Group): EUR 40 248 million, Ivy Topco Limited: EUR [... million). Each of them has an EU-wide turnover in excess of EUR 250 million (VINCI Airports (VINCI Group): EUR

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\(^4\) Short Form Co, paragraphs 3 and 5.

\(^5\) Short Form Co, paragraph 8 et seq.; Annex 5.1.a, Share Purchase Agreement concluded on 27 December 2018.

\(^6\) [further details about the composition of Ivy Topco Limited’s Board of Directors]

\(^7\) [further details about the decision making process] (see Short Form Co, paragraph 53 et seq.; [reference to internal document].

\(^8\) Short Form Co, paragraph 49.

\(^9\) Turnover calculated in accordance with Article 5 of the Merger Regulation.
[...] million, Ivy Topco Limited: EUR [...] million), but they do not both 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 pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(8) While both, VINCI Airports and Ivy Topco Limited, through its operating company GAL, are active in the management and operation of airport infrastructures, the Transaction does not give rise to horizontally affected markets. The Transaction creates vertical relationships and vertically affected markets between VINCI Group’s upstream activities in the market for construction and maintenance services as well as in the market for electrical and mechanical services, and, GAL’s activities in the downstream market for the management and operation of airport infrastructures.

4.1. Management and operation of airport infrastructures (downstream)

4.1.1. Product market

(9) While leaving the exact definition of the product market open, the Commission has in its previous decisional practice considered that the market for the management and operation of airport infrastructures can be subdivided into three distinct product markets:

a) the provision of airport infrastructure services, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure as well as the coordination and control of the activities performed on these infrastructures. It was considered if 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);

b) the provision (or contracting) of ground-handling services, which includes ramp handling, passenger and baggage handling, fuel and oil handling,

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10 GAL only operates one airport, Gatwick Airport in London. VINCI Airports manages and operates airports throughout the world, but only operates one airport in the United Kingdom, Belfast airport in Northern Ireland. The Transaction does not give rise to a horizontal overlap even under the widest plausible geographic market definition for the management and operation of airport infrastructures (a catchment area of 300 km around Gatwick Airport).

11 Apart from GAL, none of the companies controlled by Ivy Topco Limited (which are, apart from GAL, Ivy Midco Limited, Ivy Property Holdings Limited, Ivy Holdco Limited, Gatwick Funding Limited, Ivy Bidco Limited, Gatwick Airport Pension Trustees Limited) is active in a market that might be horizontally or vertically related to a market in which an undertaking controlled by VINCI Group is active (see Short Form CO, paragraphs 76 and 77).

12 See Cases M.7398 – Mirael / Ferrovial / NDHI, paragraph 19; Case M. 7008 – AENA Internacional / AXA PE/LLAGL, paragraph 12; Case M. 6862 – VINCI / Aeroportos de Portugal, paragraph 16.
aircraft maintenance, ground administration and supervision and crew administration; and

c) the provision (or contracting) of associated commercial services, which includes catering facilities, car parking services, car hire and sale of advertising space.

(10) The Notifying Party agrees with the Commission’s approach.13

4.1.2. Geographic market

(11) As regards the market for the provision of airport infrastructure services, the Commission has left the exact geographic market definition open in its prior decision practice and, in the case of London, considered the following different plausible geographic markets: a) limited to a certain London airport (Gatwick)14; b) a wider area comprising some or all of the London airports15; or c) the catchment area of individual airports, which was considered no larger than 300 km for international airports or 100 km for regional airports.16

(12) As regards the market for the provision (or contracting) of ground-handling services, the Commission has in its prior decisional practice considered that the geographic scope of the market is restricted to a specific airport.17

(13) For the market for the provision (or contracting) of associated commercial services, it was considered that the market is limited to a specific airport or its immediate surroundings.18

(14) The Notifying Party agrees with the Commission’s approach.19

4.1.3. Conclusion on the market definition

(15) The Commission considers that the exact definition of the product and geographic market can be left open for the purpose of the present case, as the Transaction does not raise serious doubts as to its compatibility with the internal market under

13 Short Form CO, paragraphs 104 et seq.

14 See Case M.5652 – GIP / GATWICK AIRPORT, paragraph 15.

15 See Case M.5652 – GIP / GATWICK AIRPORT, paragraph 15.

16 See Case M. 7008 – AENA International / AXA PE/LLAGL, paragraph 12; Case M. 7398 – Mirael / Ferrovial / NDH1, paragraph 21.

17 See Cases M. 8470 – DAAM / INFRAVIA / FIH / AI, paragraph 19; Case M. 7398 – Mirael / Ferrovial / NDH1, paragraph 22.

18 See Case M.7398 – Mirael / Ferrovial / NDH1, paragraph 23.

19 Short Form CO, paragraphs 111 and 114.
any plausible product and geographic market definitions, including under the narrowest plausible geographic scope consisting of Gatwick Airport only.

(16) The only product market segments affected by the present Transaction are the market segments for (i) provision of airport infrastructure services, and (ii) provision (or contracting) of ground-handling services. The Commission will therefore only assess these two market segments in the following.

4.2. Construction and maintenance services (upstream)

4.2.1. Product and geographic market

(17) Within construction services,\textsuperscript{20} the Commission has considered to distinguish between (i) the construction of residential buildings covering blocks of flats, other multi-household buildings and single household buildings; (ii) the construction of non-residential buildings (such as, e.g., industrial buildings, offices, shopping centres and hospitals); and (iii) the construction of infrastructure/civil engineering (such as roads, bridges, railroads, sewage systems). The exact product market definition was ultimately left open.\textsuperscript{21} Concerning the geographic scope, the Commission has considered that the markets for construction services are likely national, but ultimately left the market definition open.\textsuperscript{22}

(18) The Notifying Party agrees with the Commission’s approach.\textsuperscript{23}

4.2.2. Conclusion on the market definition

(19) The Commission considers that the exact product and geographic market definition can be left open for the purpose of the present case, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product and geographic market definition.

(20) The only market segments affected by the present transaction are the market segments for (i) construction and maintenance of non-residential buildings in the United Kingdom and (ii) construction and maintenance of infrastructure/civil engineering in the United Kingdom. The Commission will therefore only assess these two market segments in the following.

\textsuperscript{20} As concerns maintenance services, these are ancillary to the construction services.

\textsuperscript{21} See Cases M.6020 – ACS / HOCHTIEF, paragraph 6; M.6841 – Goldman Sachs / TPG Lundy / Tulloch Homes Group Limited, paragraph 17.

\textsuperscript{22} See Cases M.6020 – ACS / HOCHTIEF, paragraph 7; M.6841 – Goldman Sachs / TPG Lundy / Tulloch Homes Group Limited, paragraph 18.

\textsuperscript{23} Short Form CO, paragraph 133 and 135.
4.3. **Electrical and mechanical engineering services (upstream)**

4.3.1. **Product market**

(21) While leaving the exact market definition open, the Commission has in its previous decisional practice considered a segmentation of the product market according to (i) the nature of the service (electrical engineering, mechanical engineering and air-condition services), (ii) the type of work (installation and maintenance), and (iii) the customer group (residential and non-residential engineering, with the latter sub-divided into infrastructure, industry and the tertiary sector.)

(22) The Notifying Party agrees with the Commission’s approach.

4.3.2. **Geographic market**

(23) The Notifying Party submits that the relevant geographic markets for electrical and mechanical engineering services are national.

(24) The Commission has in its previous decisional practice considered the electrical engineering markets to be at least national in scope, while for some sub-segments within electrical engineering the Commission also considered regional markets, given that there were several regional players in France.

4.3.3. **Conclusion on the market definition**

(25) The Commission considers that the exact product and geographic market definition can be left open for the purpose of the present case, as the transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product and geographic market definition.

(26) VINCI Group is not active in the market for the provision of air-condition services in the UK. The only market segments affected by the present transaction are (i) the non-residential markets for the installation and maintenance of electrical engineering services in the infrastructure and tertiary sectors and (ii) the non-residential markets for the installation and maintenance of mechanical engineering services in the infrastructure and tertiary sectors. The Commission will therefore only assess these two market segments for the national (UK-wide) and the regional (England-wide) market in the following.

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24 See Cases M.6623 – VINCI/EVT Business, paragraphs 7 et seq; M.5701 – VINCI/Cegelec, paragraphs 9 et seq.; M.3004 – Bravida/Semco/Prenad, paragraphs 8 et seq.

25 Short Form CO, paragraph 136 et seq.

26 Short Form CO, paragraph 141.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

(27) In the absence of any horizontal overlap between the parties' activities, the Commission will examine whether the Transaction is likely to result in foreclosure in any of the markets that are vertically affected by the Transaction.

(28) According to the Non-Horizontal Merger Guidelines, foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete. Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered; and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.

(29) For input or customer foreclosure to be a concern, three conditions need to be met post-transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on customers (customer foreclosure). In practice, these factors are often examined together since they are closely intertwined.

5.2. Vertically affected markets

(30) The Transaction leads to vertical relationships between the parties' activities, namely between

a) the upstream markets for construction and maintenance services (construction and maintenance of non-residential buildings and construction and maintenance of infrastructure/civil engineering), on which VINCI Group is active, and the downstream markets for the management and operation of airport infrastructures (provision of airport infrastructure services and provision (or contracting) of ground-handling services), on which Ivy Topco Limited, via GAL, is active; and

b) the upstream non-residential markets for electrical and mechanical engineering services in the infrastructure and tertiary sectors, on which VINCI Group is active, and the downstream markets for the management and operation of airport infrastructures (provision of airport infrastructure


29 Non-Horizontal Merger Guidelines, paragraphs 29.

30 Non-Horizontal Merger Guidelines, paragraph 31.

31 Non-Horizontal Merger Guidelines, paragraph 58.

32 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.
services and provision (or contracting) of ground-handling services), on which Ivy Topco Limited, via GAL, is active.

5.2.1. Construction and maintenance services (upstream) / management and operation of airport infrastructures (downstream)

(31) VINCI Group’s construction and maintenance services are an input for the market for the provision of airport infrastructures, as well as for the market for the provision (or contracting) of ground-handling services. GAL is active on those markets through the operation and management of Gatwick Airport and has – considering the narrowest plausible geographic market definitions consisting of Gatwick Airport only – a market share of 100%. The Notifying Party submits that these inputs are not airport specific and do not require a particular expertise or set of skills nor any special equipment.

(32) Based on data submitted by the Notifying Party, any foreclosure risks seem unlikely. First, the new entity could not restrict access to supplies (input foreclosure). The market shares of VINCI Group on the relevant upstream markets would be at most [0-5]% in the UK in 2017 ([0-5]% on the market segment for the construction and maintenance of non-residential buildings; [0-5]% on the market segment for the construction and maintenance of infrastructure/civil engineering; [0-5]% on the overarching market for construction and maintenance services). Moreover, there are several other alternative suppliers active in the United Kingdom.

(33) Second, the input from the upstream construction markets is not airport-specific and does not require a particular expertise nor any special equipment. Therefore, providers of construction and maintenance services competing with VINCI Group have many possible outlets for their services. GAL represented a share of purchases of less than [0-5]% in 2017 on the UK-wide market for construction and maintenance of non-residential buildings and less than [0-5]% in 2017 on the UK-wide market for the construction and maintenance of infrastructure and civil engineering. On the overarching market for construction and maintenance services, GAL purchased less than [0-5]% in 2017 in the UK. Therefore, GAL does not represent a significant customer base for providers of construction and

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33 Short Form CO, paragraph 169.

34 Short Form CO, paragraph 168; source of the data is VINCI Group’s estimates and Hewes’ market analysis. All financial data provided in this section have been converted based on the ECB average annual conversion rate for 2018: £1 = EUR 1.1304.

35 Short Form CO, paragraph 168.

36 Short Form CO paragraph 171.

37 Short Form CO, paragraph 170.
maintenance services in the UK. Consequently, there is no risk that the merged entity will restrict access to downstream markets (customer foreclosure).  

(34) Based on the considerations above and all evidence available to it, the Commission concludes that post-Transaction an input foreclosure or customer foreclosure strategy by VINCI Group is unlikely.

(35) The Commission therefore concludes that the Transaction does not raise serious doubts with respect to the vertical relationships between the upstream markets for construction and maintenance services and the downstream markets for the management and operation of airport infrastructures, under any plausible product and geographic market definitions.

5.2.2. **Electrical and mechanical services (upstream) / management and operation of airport infrastructures (downstream)**

(36) VINCI Group’s electrical and mechanical services are an input for the market for the provision of airport infrastructures as well as for the market for the provision (or contracting) of ground-handling services. GAL is active on those markets through the operation and management of Gatwick Airport and has – considering the narrowest plausible geographic market definitions consisting of Gatwick Airport only – a market share of 100%.

(37) Based on data submitted by the Notifying Party, any foreclosure risk stemming from these links seems unlikely. First, the new entity could not restrict access to supplies (input foreclosure). The market shares of VINCI Group in the market for electrical and mechanical services as well as in the sub-segments of (i) the non-residential market for electrical services in the infrastructure and tertiary sectors and (ii) the non-residential market for mechanical services in the infrastructure and tertiary sectors were less than [0-5]% in the UK in 2017.  

39 If these markets were considered to be regional (encompassing England), the market shares of VINCI Group would be less than [0-5]% in these markets.

(38) Second, the input from the upstream markets is not airport-specific and could be used with little changes in other industries as well. Therefore, providers of electrical and mechanical services competing with VINCI Group have many possible outlets for their services. GAL represented a share of purchases of less than [0-5]% in 2017 on the UK-wide market for electrical and mechanical services and less than [0-5]% if the sub-segments for (i) non-residential market for electrical services in the infrastructure and tertiary sectors and (ii) non-residential market for mechanical services in the infrastructure and tertiary sectors were considered. Therefore, GAL does not represent a significant customer base

38 See also case M. 6862 – *VINCI / Aeroportos de Portugal*, paragraph 36.

39 Short Form CO, paragraphs 180-181.

40 In 2018, see Notifying Party’s response to RFI 1, question 2.

41 Short Form CO, paragraph 182.
of electrical and mechanical services in the UK. Consequently, there is no risk that the merged entity will restrict access to downstream markets (customer foreclosure).\textsuperscript{42}

(39) Based on the considerations above and all evidence available to it, the Commission concludes that post-Transaction an input foreclosure or customer foreclosure strategy by VINCI Group is unlikely.

(40) The Commission therefore concludes that the Transaction does not raise serious doubts with respect to the vertical relationships between the upstream markets for electrical and mechanical services and the downstream markets for the provision of airport infrastructure services and for the provision (or contracting) of ground-handling services.

6. CONCLUSION

(41) 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.

\textit{For the Commission}

\textit{(Signed)}

Margrethe VESTAGER

Member of the Commission

\textsuperscript{42} See also case M. 6862 – VINCI / Aeroportos de Portugal, paragraph 36.