



EUROPEAN COMMISSION
DG Competition

Case M.9546 - GATEGROUP / LSG EUROPEAN

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 26/11/2020



EUROPEAN COMMISSION

Brussels, 26.11.2020
C(2020) 8488 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

gategroup Holding AG
Sägereistrasse 20
CH-8152– Glattbrugg
Switzerland

Dear Sir/Madam,

**Subject: Case M.9546 – GATEGROUP / LSG EUROPEAN BUSINESS
Approval of dnata s.r.l. as purchaser of the Divestment Business at Rome
Fiumicino following your letter of 10 November 2020 and the Trustee’s
opinion of 10 November 2020.**

1. FACTS AND PROCEDURE

- (1) By decision of 3 April 2020 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,¹ the Commission declared the operation by which Gategroup Holding AG (“Gategroup” or the “Notifying Party”) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over parts of the European business of LSG Lufthansa Services Holding AG (“LSG”) by way of a purchase of shares and selected assets (the “Transaction”)

¹ OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

compatible with the internal market following modification by Gategroup, subject to conditions and obligations (the “Commitments”).²

- (2) In particular, the Commitments provide that Gategroup is to divest:

Germany

- (a) Gategroup’s in-flight catering network operations in Germany, including certain customer contracts with low-cost and charter airlines for the provision of services at relevant airports, as well as certain related assets and employees, (the “German LCC Network Divestment Business” as described in more details in Schedule A of the Commitments);
- (b) Gategroup’s customer contracts at Frankfurt International Airport (“FRA”) and Munich International Airport (“MUC”), including, where applicable and at the option of the Purchaser, certain related assets (that, by way of example, could also include the necessary infrastructure for the operation of the divested business) and employees (the “FRA/MUC Divestment Business” as described in more detail in Schedule B of the Commitments);

Belgium

- (c) Gategroup’s [...] % shareholding in Newrest Servair Belgium SPRL operating an in-flight catering business in Belgium (the “Belgian Divestment Business”);

Italy

- (d) Certain of LSG EU’s customer contracts at Rome Fiumicino Airport (“FCO”) including, where applicable and at the option of the Purchaser, certain related assets and employees (the “FCO Divestment Business” as described in more detail in Schedule C of the Commitments);

France

- (e) LSG EU’s in-flight catering customer account at Paris Charles de Gaulle (“CDG”) (the “CDG Divestment Business”, as described in more detail in Schedule D of the Commitments).
- (3) By letter of 10 November 2020, Gategroup proposed dnata Catering Services Limited (“Dnata”) for approval by the Commission as purchaser of the FCO Divestment Business (“Reasoned Proposal”) and submitted the proposed Framework Agreement (the “Proposed Agreement”). Thereafter, RSM Corporate Finance LLP as the Monitoring Trustee (the “Trustee”) submitted an assessment of Dnata’s suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision (“Reasoned Opinion”). In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

² The capitalised terms in this decision have the meaning as set out in the Decision and the Commitments attached thereto, unless indicated otherwise.

2. ASSESSMENT OF THE PROPOSAL

- (4) According to paragraph 21 of the Commitments, in its assessment of the Proposed Agreements, the Commission has to verify that the Purchaser fulfils the Purchaser Criteria set out in Section D and that the Divestment Business is being sold in a manner consistent with the Commitments, including with their objective to bring about a lasting structural change in the market.

2.1. Introduction

2.1.1. Purchaser Criteria

- (5) As set out in paragraph 20 of the Commitments, the Purchaser must fulfil the following Purchaser Criteria:
- (a) be independent of and unconnected to the Notifying Party/Notifying Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

2.1.2. The proposed Purchaser

- (6) The proposed purchaser is Dnata. Dnata is headquartered in Dubai and provides aircraft ground handling, cargo, travel and in-flight catering services worldwide. It was incorporated under an Emiri Decree in 1987 and is wholly owned by the Investment Corporation of Dubai (the “ICD”), a Government of Dubai entity. The ICD also wholly owns the Emirates group including Emirates Airline (“Emirates Group”). According to the Notifying Party, as well as the Trustee, both Dnata and the Emirates Group are under common management, however are independent entities and do not form a group as defined by International Financial Reporting Standards.
- (7) Dnata operates today at 127 airports in 35 countries and is a well-established in-flight caterer with more than 46.000 employees. Dnata’s Catering Services division serves 119 airlines and prepares over 93 million meals annually, with more than 60 kitchens around the world. Dnata has noted that it has operations at 18 airports in Italy, including at FCO. Dnata can thus be considered a well-established in-flight catering service provider with know-how of the FCO market as well as a customer base and business operations at FCO already.

2.2. Independence from the Parties

- (8) According to the Reasoned Proposal, to the best of the Parties' knowledge, there are no cross-shareholdings, significant corporate, structural or other equity links at the holding company level between either of the Parties and its affiliated undertakings and any of the entities which belong to Dnata and its affiliated undertakings. The Notifying Party further stated that it is not aware of interlocking directorships at the holding company level between either of the Parties and any member of Dnata.
- (9) According to the Reasoned Proposal, there are no further material links between Dnata and its affiliate undertakings that would call into question their independence from the Parties. The Notifying Party noted however that LSG used to operate a joint venture with Dnata's subsidiary Alpha Flight Group Limited (called Alpha LSG). Dnata acquired these shares in March 2020 and the company is now wholly owned by Dnata. In addition, there are contractual relationships between Dnata and Gategroup, which, according to the Notifying Party, consist of [Details on commercial arrangements]. These services represent a very small part of Dnata's business ([...]%) and [Details on commercial arrangements]. Moreover, both LSG and (more substantively) Gategroup provide [Details on commercial arrangements].
- (10) According to the Notifying Party however, these commercial relationships do not compromise the independence of Dnata from the Notifying Party and its Affiliated Undertakings as they do not represent a material part of the overall Emirates Group business.
- (11) The Trustee in its Reasoned Opinion concluded that, as commercial relationships between Dnata and the Parties are at an arm's length basis, Dnata is independent of the Parties within the meaning of the Purchaser Criteria set out in the Commitments.
- (12) Given the above, the Commission concludes that Dnata fulfils the Purchaser criterion of being independent of and unconnected to Gategroup and LSG Europe and their Affiliated Undertakings.

2.3. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

- (13) The Notifying Party submitted that Dnata has the financial resources, proven expertise and incentive to maintain and develop the [FCO Divestment Businesses] as a viable and active competitive force in competition with Gategroup and LSG Europe and their Affiliated Undertakings.
- (14) The Trustee in its Reasoned Opinion concluded that Dnata has the financial resources, proven expertise and incentive within the meaning of the Purchaser Criteria set out in paragraph 20 of the Commitments.

2.3.1. Financial resources

- (15) According to the Notifying Party, the acquisition of the FCO Divestment Business would not require any significant investment by Dnata, which already runs operations at FCO airport and according to the Notifying Party has sufficient resources to maintain and develop the FCO Divestment Business.

- (16) In the financial year which ended 31 March 2020, Dnata reported a revenue of AED 14.2 billion (EUR 3.2 billion) and other operating income of AED 0.5 billion (EUR 0.1 billion) as well as profit attributable to the owner of AED 618 million (EUR 138 million) and cash flows from operating activities of AED 1.4 billion (EUR 0.3 billion). As of 31 March 2020, Dnata reported cash assets of AED 5.3 billion (EUR 1.2 billion), comprised of AED 3.7 billion (EUR 0.8 billion) of short term bank deposits and AED 1.6 billion (EUR 0.4 billion) of cash and cash equivalents. As summarised below, as of 31 March 2020, Dnata reported i) term loans and bank overdrafts of AED 1.7 billion (EUR 0.4 billion), of which AED 1.1 billion (EUR 0.3 billion) were non-current; and ii) lease liabilities of AED 2.2 billion (EUR 0.5 billion), of which AED 1.8 billion (EUR 0.4 billion) were non-current.
- (17) The 2020 Annual Report noted that the COVID-19 pandemic severely dented Dnata's performance towards the year end, eroding more than AED 250 million (EUR 56 million) of profit in a single month, with the cost reduction measures taken in response to the sudden fall in revenue gradually filtering through to the bottom line. Nevertheless, Dnata has noted that [Information on financial resources].
- (18) The Monitoring Trustee considered that in view of i) the consideration for the FCO Divestment Business being EUR [...]; ii) Dnata's existing assets and infrastructure at FCO and consequent ability to service the FCO Divestment Business without any material investment; iii) the terms of the Proposed Agreement which [Details on content of agreement] and iv) Dnata's material cash assets, notwithstanding the impact of COVID-19, Dnata has sufficient resources to maintain and develop the FCO Divestment Business.
- (19) In conclusion and in light of all the above, the Commission concludes that Dnata has the necessary financial resources to maintain and develop the FCO Divestment Business as a viable and active market force in competition with the Parties and other competitors.

2.3.2. *Proven expertise*

- (20) The Notifying Party submitted that Dnata has the proven expertise to maintain and develop the FCO Divestment Business.
- (21) According to the reasoned proposal, Dnata is an established catering company, having many years of experience in the sector and at FCO Airport. Dnata's catering business is its [...] largest segment and accounted for AED 3.3 billion (USD 903 million) of its FY 2019/2020 revenue, which has increased by 26 % from the previous year.
- (22) With regard to in-flight catering capabilities, Dnata delivers over 320,000 meals a day (covering the whole range of different cuisines), serving 119 airline customers at 60 locations globally. Dnata's strategy is geared towards further expansion in the in-flight catering business. In particular, the business delivered more than 93 million meals to airline customers in 2019/2020, representing an increase of 32 % from the previous financial year. Dnata is active at 18 airports in Italy, including FCO, providing mainly in-flight catering services but also ground-handling services at Milan Malpensa as well as travel services.

- (23) In addition, Dnata's senior management has extensive experience and expertise in in-flight catering and the aviation industry. Moreover, Dnata has won multiple awards for its in-flight catering.
- (24) Finally, Dnata also has experience in integrating in-flight catering businesses, having acquired for instance Qantas' catering business and "121 Inflight Catering" in 2018/2019.
- (25) The Trustee considered that, in view of Dnata's well established in-flight catering operations, including in Italy (and specifically at FCO), and its management's knowledge and expertise in the sector, Dnata has the proven expertise in in-flight catering in order to maintain and develop the FCO Divestment Business.
- (26) In light of the above, the Commission concludes that Dnata has the expertise to maintain and develop the FCO Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

2.3.3. *Incentives*

- (27) The Notifying Party submitted that Dnata, as a strategic purchaser and because of its already established position at FCO, has a strong incentive to maintain and develop the FCO Divestment Business as part of its broader, global catering business. Dnata would be indeed committed to continue developing its activities on the in-flight catering services market, as evidenced by the recent investments made by the company in its last financial years.
- (28) In addition, Gategroup stated that it understands that Dnata views the acquisition of the FCO Divestment Business as a way to continue to grow and strengthen relationships with airlines, and as a result compete even more strongly in tenders for in-flight catering services contracts at FCO.
- (29) Given that the sale would complement Dnata's existing business as it already has a strong presence elsewhere in Italy and that many of the customers of the FCO Divestment Business are customers of Dnata in other locations, and Dnata would anyway seek to win contracts with these customers if they went out to tender at FCO, the Trustee considers Dnata to have sufficient incentive to maintain and develop the FCO Divestment Business.
- (30) The Commission therefore concludes that Dnata has the incentive to maintain and develop the FCO Divestment Business.

2.4. Absence of prima facie competition problems

- (31) The Notifying Party submitted that the acquisition of the FCO Divestment Business by Dnata will not create any competition concerns or delays in the implementation of the Commitments.
- (32) The Notifying Party submitted that, as a result of the sale of the FCO Divestment Business to Dnata, Dnata's market share at FCO will increase from [10-20]% to [30-40]% and thus as such, prima facie, not raise concerns, but to the contrary will allow for even stronger competition between Dnata and the merged entity. The FCO Divestment Business would fit well into a Dnata business already consisting of high-end customers such as [...].

- (33) Furthermore, according to the Notifying Party, most departing flights in Rome are operated by low-cost carriers with a retail-on board offering, making the in-flight catering market increasingly less attractive for potential new entrants.
- (34) The Monitoring Trustee considered that there is good cause for the Commission to consider that the acquisition of the FCO Divestment Business by Dnata is not likely to create prima facie competition concerns.
- (35) The Commission considers, based on the available evidence, that the sale of the FCO Divestment Business to Dnata will not raise prima facie competition concerns.
- (36) Firstly, the Commission notes that the sale to Dnata would lead to the reinforcement of the smallest of the firms currently operating in the FCO in-flight catering market, allowing Dnata to compete more effectively against the Notifying Party. Indeed, Dnata currently has a market share of [10-20]% of the in-flight catering market at FCO. Given, as explained in paragraph 38 below, the limited demand for in-flight catering supply at Rome FCO and the declining trend of the market, the sale would strengthen Dnata's ability to compete with Gategroup at FCO in the future.
- (37) In particular, the severe deterioration of the market situation at FCO, which was considerably exacerbated by the COVID-19 epidemic, has led to an important overcapacity, likely to persist for the foreseeable future, intensifying the competitive situation between the remaining in-flight caterers,³ including Dnata, as confirmed by the Trustee. According to the Trustee, there is in fact currently no appreciable market at Rome FCO due to tremendous volume-reductions.⁴ The Notifying Party understands that [...].⁵ The increased contract volume brought about by the FCO Divestment Business would thus [...], which could lead to a more competitive market environment in the in-flight catering market at FCO.
- (38) Secondly, the Commission observes that the structure of demand for in-flight catering situation at FCO does not seem to be attractive for new entrants. Unlike at other airports in European capitals, no new entry other than Gategroup had occurred over the past five years. In the future, FCO is expected to increasingly miss out on long-haul routes and become more and more a low cost destination (which is often served with retail on board products instead of in-flight catering), with the Notifying Party expecting it to rather function as a "regional airport". The COVID-19 crisis has further deteriorated the attractiveness of FCO. [...],⁶ [...]. After inquiring with [...] potential purchasers on 18 September 2020 directly, the Commission comes to the conclusion that Dnata seems to indeed be the only realistic and credible purchaser for the FCO Divestment Business.
- (39) New entry is therefore highly unlikely at FCO, in view notably of the reduction of the total size of the market for in-flight catering services at FCO. This situation is unlikely to change in the short and medium term. The COVID-19 crisis has further deteriorated this market situation at FCO. It is thus unlikely that any new entrant would be interested in entering the FCO in-flight catering market and that it could

³ According to capacity analyses provided by Gategroup and verified by the Trustee, [...].

⁴ As indicated e.g. by data provided by the FCO Hold Separate Manager, according to which the FCO Divestment Business reported [Information on revenues].

⁵ According to the Notifying Party, [...].

⁶ [Details on commercial arrangements].

run the FCO Divestment Business in a profitable way, particularly in the current economic context.

- (40) According to the Notifying Party, based on the current status of analysis, with the proposed Purchaser, there would be no further merger control filing requirements.
- (41) Based on the above, the Commission considers, in line with the Trustee's Reasoned Opinion, that due to the specific circumstances at Rome FCO Airport, the acquisition of the FCO Divestment Business by Dnata does not give rise to prima facie competition concerns at Rome FCO and would also not create any negative delays.
- (42) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the FCO Divestment Business by Dnata by a competent competition authority under applicable merger control rules.

2.5. Sale in a manner consistent with the Commitments

- (43) According to the Notifying Party, the sale of the FCO Divestment Business to Dnata will be completed in a manner consistent with the Decision and the Commitments.
- (44) Pursuant to the Commitments, the FCO Divestment Business consists of certain LSG EU's customer contracts at FCO representing a budgeted volume of approximately EUR [...]. A list of contracts envisaged at the time to be ("currently") part of the package was included in Annex 1 to Schedule C to the Commitments (and namely: [List of contracts]). Gategroup was subsequently informed that [...]. In the course of negotiations with Dnata, the package of contracts was discussed, and on request of Dnata it was agreed that the following contracts would be transferred: [List of contracts]. These contracts represent a similar budgeted volume (EUR [...]) as the initially envisaged package.
- (45) [Information on customer contracts].
- (46) The Commitments further provide that assets and employees related to customer contracts will be transferred where applicable and at the option of the Purchaser. [Details on commercial arrangements].
- (47) As Dnata currently has operations at FCO, it already possesses the necessary assets to operate the FCO Divestment Business as a competitive business.
- (48) The contracts will be transferred at [Details on commercial arrangements].
- (49) Based on the above and in line with the Reasoned Opinion by the Trustee, the Commission concludes that the FCO Divestment Business is being sold in a manner consistent with the Decision and the Commitments and is capable of achieving the lasting structural change in the market intended by the Commitments.

3. CONCLUSION

- (50) On the basis of the above assessment, the Commission approves Dnata as a suitable purchaser.

- (51) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (52) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Gategroup has complied with its Commitments.
- (53) This decision is based on Section D, paragraph 20 of the Commitments attached to the Commission Decision of 3 April 2020.

For the Commission

(Signed)
Olivier GUERSENT
Director-General