

DETERMINATION OF MERGER APPLICATION

GCG Ground Services/ Seawell Air Services

Section 20 of the Fair Competition Act, CAP.326C of the Laws of Barbados

Acquisition by GCG Ground Services (Barbados) Limited, of all of the assets of Seawell Air Services Limited pursuant to the Asset Purchase Agreement.

Dated 30 March 2021

Introduction

1. The Fair Trading Commission (hereafter, the 'Commission'), pursuant to Section 20 (1) of the Fair Competition Act CAP. 326C (the "Act" or "FCA") considered the application, filed on May 11, 2020 by GCG Ground Services (Barbados) Limited and Seawell Air Services Limited. The Application sought approval for the proposed acquisition of all of the assets of SAS by GCG (collectively, the "Parties", or the "Applicants") pursuant to an Asset Purchase Agreement ("APA") between the two parties. SAS ceased operations and severed employees in October 2019, while SAS' equipment was rented to GCG pursuant to the aforementioned Asset Purchase Agreement, pending the outcome of the Commission's review of the transaction.
2. This document presents a summary of the review of the proposed transaction and the Commission's decision regarding same.

The Transaction

3. GCG proposed to acquire all of the assets of SAS. These assets include but are not limited to, all goodwill of SAS' business, all patents, trade secrets, trademarks, trade names and copyrights, all inventory and tools, equipment and real estate.
4. Subsequent to SAS terminating its services at the GAIA and severing its employees in October 2019, GCG began operations in November 2019 whereby it established a temporary agreement to operate in the markets that SAS exited.
5. GEL also operates at GAIA through its subsidiary GCG Catering which services commercial and private airlines. As such, by definition, the acquisition of SAS by GCG is considered a subsidiary merger¹ – a form of horizontal concentration as the Applicants are potential competitors.

The Undertakings Involved

The Purchaser: GCG Ground Services (Barbados) Limited

6. **Goddard Enterprises Limited ("GEL")** is a Barbadian conglomerate with a presence in the Caribbean, as well as in North and Latin America. Its portfolio spans

¹ A subsidiary merger is a type of merger that occurs when the acquiring company uses its subsidiary company to acquire a target company. The acquirer may create a subsidiary company or use one of its existing subsidiary companies to execute the merger and acquisition transaction. In a subsidiary merger, the acquired company is merged with the subsidiary of the acquirer rather than merging directly with the acquiring company (the parent company) in a regular M&A deal. Following the deal, the target company then becomes a wholly-owned subsidiary of the acquiring company, with the buyer (the parent company) as the sole shareholder. This means that the acquirer exerts total control over the entity, potentially gaining control also of the latter's non-transferrable assets and contracts. The main purpose of a subsidiary merger is to protect the buyer from the liabilities of the target company.

[<https://corporatefinanceinstitute.com/resources/knowledge/deals/subsidiary-merger/#:~:text=A%20subsidiary%20merger%20is%20a,the%20merger%20and%20acquisition%20transaction>] accessed July 2, 2020.

the manufacturing, catering, automotive, building supplies and financial industries. Subsidiaries are found in airline catering, industrial and restaurant catering, ground handling, meat processing, bakery operations, automobile retail and automotive parts, real estate, the manufacturing of aerosols and liquid detergents, investments, general trading, packaging, biotechnology, property rentals, general insurance, financing, as well as shipping agents and stevedoring.

7. **GCG Ground Services** is a division of the **GCG Group** (a subsidiary of GEL). It was established in 2009 to provide ground handling services to airlines in the Caribbean and Latin America. GCG Ground headquarters in Florida and oversees the six (6) GCG Ground locations; they are located in St. Thomas, U.S Virgin Islands; Montego Bay, Jamaica; Kingston, Jamaica; Liberia, Costa Rica; Alajuela, Costa Rica; and Vieux-Fort, St. Lucia. Pending the necessary approval from the Commission, Barbados will be the 7th GCG Ground location. GCG Ground provides a full suite of ground handling services to airlines—inclusive of ramp handling, aircraft cleaning, passenger services, ground support, cargo support, and baggage services.
8. **GCG Ground Services (Barbados) Limited** is wholly owned by GCG Ground Services (St. Lucia) Limited, an international business company incorporated under the laws of St. Lucia. GCG Ground Services (St. Lucia) Limited is in turn owned by Infinite Holdings (St. Lucia) Limited, a company also incorporated under the laws of St. Lucia in which GEL holds 51% interest. The sole purpose of the incorporation was for the takeover of the operations of SAS when it (SAS) ceases operations at the Grantley Adams International Airport (“GAIA”). The cessation of operations was in October 2019. GCG began operations at GAIA in November 2019 through a temporary agreement with SAS while awaiting approval from the Commission.

The Target: Seawell Air Services Limited

9. **Seawell Air Services Limited** is a company incorporated under the Companies Act, CAP. 308 of the laws of Barbados and is a wholly-owned subsidiary of Massy (Barbados) Limited which is in turn wholly owned by Massy Holdings Limited, a publicly traded company incorporated in Trinidad and Tobago. SAS provides ground handling services, inclusive of passenger and ramp services, cargo services, park-and-fly services² and automotive care services at GAIA.

Rationale for the Transaction

10. The Applicants stated that the decision to exit the ground handling business was made due to the airport ground handling businesses in Barbados and Antigua performing below expectation. This led to GCG's agreement to purchase the assets of SAS, including its park-and-fly business. GCG believes that the acquisition would assist in enhancing its regional presence for ground handling services.

Determining the Relevant Product Market

11. The definition of the market is a critical starting point in the analysis of any merger transaction. The products concerned in the relevant market include those goods and services supplied by the merging firms and their competitors, and the goods and services which could plausibly serve as their substitutes. Therefore, correctly defining the relevant market has a crucial impact on the entire investigation.

² The Park and Fly add-on service provided by SAS allows clients who are embarking on flights to leave their vehicles in the possession of SAS. Clients collect their vehicles on their return. Clients can opt to have valet or car maintenance such as servicing and painting completed through the company's Automotive Care Services.

12. The matter at subject refers to the provision of ground handling services in the aviation industry. In aviation, the term "ground handling" refers to the wide range of services provided to facilitate an aircraft flight or aircraft ground repositioning, preparation for and upon conclusion of a flight which will include both customer service and ramp service functions.³ In its review of ground handling services in the aviation industry the Commission explored occurrences in other jurisdictions. For example, the European Commission ("EC") considered the supply of landside cargo handling services activities in a number of cases, including *Swissport/Servisair*⁴ and *LBO France/Aviapartner*⁵, while the Competition and Markets Authority ("CMA") in the United Kingdom deliberated in *Menzies/ASIG*⁶. In each of these cases, the authorities considered whether it would be appropriate to assess each of the ground handling services provided by the parties independently or jointly. That is to say, the authorities considered whether each of the activities subsumed under ground handling services should represent a separate market, or whether these services should be jointly assessed as the ground handling services market.
13. The above is instructive. The Commission notes that there are a number of different services which SAS provides that can be supplied together by one supplier to the airlines, or by different suppliers, including:
- **Passenger Services:** Inclusive of passenger check-in, ticketing, gate agent/ departure agent (processing customers at the boarding gate), acting as escort or arrivals agent (assisting customers on arrival), assistance to customers with missing luggage and wheelchairs, misconnections, completion of all related administrative duties of clearing the flights with the relevant authorities (including immigration, Customs and Port Health

³ https://www.skybrary.aero/index.php/Ground_Handling. Accessed May 14 2020.

⁴ Case COMP/M.7021 Swissport/Servisair, December 18, 2013

⁵Case COMP/M.6671 – LBO FRANCE / AVIAPARTNER, November 20, 2012.

⁶Case ME/6639/16 Menzies/ ASIG, CMA, December 15, 2016.

authorities) and the administrative functions conducted by the baggage team of managing mishandled or damage baggage;

- **Ramp Services:** The provision of services on the tarmac of the Airport including baggage handling, marshaling, pushback, lavatory drainage, potable water uplift, ground power provisions, passenger stairs and ambulift provision;
- **Cargo Services:** Inclusive of handling air freight for commercial airlines, processing in/out-bound cargo, providing security for in/out-bound cargo, handling consolidations, providing brokerage services, providing clearance and trucking, liaising with airline clients to ensure safe transfer of freight, breaking down and building freight, clearing shipments from the seaport for delivery to the airport and transition to air freight, freight sales, operational auditing of airlines, transportation of live animals, charter operations, acceptance of dangerous goods;

14. The other services that are external to the above (*i.e.* that are not specific to the aircraft) include:

- **Park-and-Fly Services:** Inclusive of concierge and valet services;
- **Automotive Care Services:** Inclusive of tire installation, oil and lube.

15. Though the Applicants submitted that passenger and ramp services should be viewed jointly (while the other services are treated as separate services), a third party highlighted that clients would typically request all of the listed services as a bundle. Moreover, it is noted that ground handling providers utilize their staff to

execute more than one aspect of the service (*i.e.* an agent can perform ticketing services as well as the processing of passengers at the departure gate).

16. Notwithstanding the above, the case law strongly supports the review of the ground handling services as a collective function. For example, in *Servisair/Aviance*⁷, the Office of Fair Trading (OFT) considered the impact of the merger in ground handling services as a whole rather than delineating into separate markets.
17. Additionally, the Commission noted that from a demand perspective, commercial airlines have chosen to use a single ground handler under a single tender or contract. These contracts also are usually of 2-3 years duration primarily for business continuity and safety due to the sensitive nature and security requirements of airline travel. The Commission also noted that from a supply perspective, ground handling requires similar expertise, personnel and equipment.
18. On the basis of the research done, and further to the above, the Commission believes that the appropriate definition of the product market would be the supply of ground handling services, park-and-fly services, and automotive care services.

Determining the Relevant Geographic Market

19. Competition agencies normally use a similar process in defining the product market, to determine the geographic market. The geographic market is the area over which the product is or may be potentially supplied. Specifically, the geographic market is the space in which (i) persons find it feasible to source an alternative

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<https://assets.publishing.service.gov.uk/media/555de33f40f0b669c400007b/Servisair.pdf#:~:text=Aviance%20to%20Servisair%20with%20respect%20to%20the%20large,negotiating%20a%20new%20contract%20with%20a%20different%20supplier> Accessed June 11, 2020.

product; and (ii) suppliers find it viable to supply the product or service in that particular area.

20. The Commission generally defines the relevant geographic market by identifying the area over which the merged firm and its rivals currently supply, or could supply the product. The Commission also will consider the area to which buyers can or would practically turn to find alternative sources of supply.
21. EC best practice indicates that it may be suitable to consider an airport-wide geographic framework. In the *Swissport/Servisair* case, the EC considered that the geographic scope for the supply of cargo handling services was restricted to a specific airport⁸. The Applicants' view in this instant align well with the position of the EC: They submitted that the geographic market affected by the merger is the Grantley Adams International Airport (GAIA) Airport in Barbados.
22. The Commission is also of the view that the geographic market is the GAIA in Barbados. Notably, the assertion is also influenced by further research into the scope of activities at the GAIA which showed that there is a component of the passenger services business functions that includes an '*Air to Sea Service*'⁹. In this regard there is engagement with an entity that is external to the GAIA; namely the Barbados Port Inc. (ground handling services may therefore extend to international cruise liners such as Royal Caribbean International, Carnival and Norwegian Cruise Lines). Importantly, this is an extension of the service that is provided to the airlines.
23. That the GAIA and the Barbados Port Inc. are at distinct locations, resolves to the Commission determining that the geographic market will be that of Barbados.

⁸ Case No COMP/M.7021 - *Swissport/Servisair*, December 18, 2013 (the EC ultimately left the geographic market definition open in this case).

⁹ This is a service which includes the transportation and logistics from GAIA to the Barbados Port to connect passengers to the cruise liners.

However, the fundamental determination remains that the core activities, and hence the relevant geographic market in this instant relate to the provision of the aforementioned services at the GAIA.

Definition of the Relevant Product and Geographic Market

24. Taking the above into consideration, the Commission has determined that the relevant markets that are germane to this review are as follows:
- The market for the provision of ground handling services at the GAIA;
 - The market for the provision of park-and-fly services at the GAIA; and
 - The market for the provision of automotive care services at the GAIA.

Competitive Analysis

25. The Commission considered the potential impacts of the proposed transaction on the relevant product markets in Barbados. The reader is asked to note that Section 20(7)(d) and (e) of the FCA does not require the Commission to prove future conduct. As such, the analyses are *ex ante* in nature and enable the Commission to contemplate potential impacts of the proposed transaction. An important point to note in this regard is that market structure plays a critical role in the competitive landscape and is therefore central in determining the likely effects of the proposed transaction on competition in general and consumer welfare in the main.
26. That said, the Commission in its assessment of the probable effects of the proposed transaction determined whether the transaction itself creates competitive concerns with respect to any significant market power that the resulting structure might confer on GCG; as well as the subsequent likelihood of foreclosure in any of the markets identified above.

27. In examining the structure of the markets affected by the proposed merger, consideration was given to the number and relative size of the firms in the market, and to the size of the barriers facing new firms seeking to enter each market.
28. The Applicants do not overlap in any of the markets identified (*i.e.* the market for the supply of ground handling services for airlines at GAIA, the supply of park-and-fly services at GAIA and the supply of automotive care services at GAIA). Further, third parties raised no competitive concerns about the proposed transaction.
29. Further to the above, pre-merger and post-merger market concentration levels, and the differences in scores were measured using the Herfindahl-Hirschman Index (HHI)¹⁰. An HHI measure below 1,000 is indicative of a market with a low concentration of players (*i.e.* there are many players). HHI measures between 1,000 and 2,500 indicate moderately concentrated markets, while measures above 2,500 suggest a highly concentrated market (*i.e.* a market with relatively few players). Intuitively, highly concentrated markets are more conducive to anticompetitive conduct and are therefore subject to greater scrutiny by competition authorities.
30. The market for the supply of ground handling services at GAIA generated a pre-merger HHI score that is indicative of a highly concentrated market, since the market features only two players servicing commercial flights. However, the merger does not generate a change in concentration (the *delta* score is the difference between pre-merger and post-merger HHI scores) since GCG Ground will be taking

¹⁰ The Herfindahl-Hirschman Index is reliant on the use of the market shares of the competitors within the market. It is derived by calculating the squared market shares of all firms in the market. HHI can lie between zero (which represents a large number of firms in the market each with zero market share (which is synonymous with a market that is under perfect competition) and 10,000 (representative of a monopolist structure where only one firm occupies the market).

over SAS' business operations and equipment. As such the pre-merger and post-merger HHI scores are the same.

31. The Commission therefore concludes that since the merger does not cause a change in concentration levels – which does not create or strengthen the market position of GCG – the proposed transaction will not significantly impede competition.

Conclusion

32. Based on the evidence presented, the Commission has determined that the proposed transaction does not create competitive concerns.

Determination

33. The Fair Trading Commission, pursuant to Section 20(5) of the Fair Competition Act, CAP.326C, determined that the result of the acquisition by GCG Ground of the assets of Seawell Air Services, does not lessen competition in the market for ground handling, park-and-fly and automotive care services in Barbados, and accordingly approves the transaction without condition under Section 20 of the Act.