

# Completed acquisition by Menzies Aviation Plc and Menzies Aviation Inc of ASIG Holdings Limited and ASIG Holdings Corp.

## Decision on acceptance of undertakings in lieu of reference

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

ME/6639/19

### Introduction

1. On 16 September 2016, Menzies Aviation plc and Menzies Aviation Inc. (**Menzies**) agreed to acquire ASIG Holdings Limited and ASIG Holdings Corp. (**ASIG**) (the **Merger**). Menzies Aviation and ASIG are together referred to as the **Parties**.
2. On 15 December 2016, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 22 December 2016, Menzies offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Menzies on 3 January 2017, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Menzies' offer (the **UILs Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.<sup>1</sup>
5. On 31 January 2017, the Merger completed. The CMA imposed an Initial Enforcement Order on Menzies on 1 February 2017, which remains in place pending the outcome of the CMA's investigation.<sup>2</sup>

## The undertakings offered

6. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of ground handling services (which includes baggage, ramp, passenger, airside cargo handling and de-icing services) (**Ground Handling Services**) at Aberdeen Airport (**ABZ**).
7. As set out in the UIL Provisional Acceptance Decision, Menzies offered to divest ASIG's ground handling business at ABZ (the **Divestment Business**), as set out in more detail in the text of the consultation in Annex 1 below (the **UILs**).
8. Menzies also offered to enter into an agreement for the sale and purchase of the Divestment Business to an upfront buyer, before the CMA finally accepts the UILs. Menzies has proposed Dalcross Holdings Ltd (**Dalcross**) as the upfront buyer.
9. Menzies has agreed to ensure that the completion of the divestment of the Divestment Business to Dalcross takes place within a period not exceeding [X] from the date the UILs take effect.

## Consultation

10. On 9 March 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.<sup>3</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.<sup>4</sup>

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<sup>1</sup> See [case page](#).

<sup>2</sup> See [case page](#).

<sup>3</sup> The full consultation text was published [here](#).

<sup>4</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

11. The CMA received a submission from a third party raising concerns about whether Dalcross would be able to obtain approval from the operator of ABZ to operate a ground handling business at ABZ. The CMA made inquiries of the operator of ABZ and based on those inquiries is satisfied that Dalcross will be able to obtain the relevant approval. Accordingly, the CMA has not changed its preliminary view that the UILs would be acceptable.
12. The CMA therefore considers that the UILs offered by Menzies are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that Dalcross is a suitable purchaser of the Divestment Business.

## **Decision**

13. For the reasons set out above, the CMA considers that the UILs provided by Menzies are as comprehensive a solution as is reasonable and practicable to remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Menzies pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
14. The undertakings, which have been signed by Menzies and will be published on the CMA webpages,<sup>5</sup> will come into effect from the date of this decision.

**Kate Collyer**  
**Deputy Chief Economic Adviser**  
**Competition and Markets Authority**  
**25 April 2017**

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<sup>5</sup> See [case page](#).

## Annex 1

### Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6639/16

#### Introduction

1. On 16 September 2016, Menzies Aviation plc and Menzies Aviation Inc. (**Menzies**) agreed to acquire ASIG Holdings Limited and ASIG Holdings Corp. (**ASIG**) (the **Merger**).
2. On 15 December 2016, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpage.<sup>6</sup>
3. On 22 December 2016, Menzies offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 3 January 2017, the CMA gave notice to Menzies, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering Menzies' offer (the **UIL Provisional Acceptance Decision**).
5. On 31 January 2017, the Merger completed. The CMA imposed an Initial Enforcement Order on Menzies on 1 February 2017, which remains in place pending the outcome of the CMA's investigation.<sup>7</sup>

#### The undertakings offered

6. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of ground handling services (which includes baggage,

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<sup>6</sup> See <https://www.gov.uk/cma-cases/menzies-aviation-asig-merger-inquiry>.

<sup>7</sup> See <https://www.gov.uk/cma-cases/menzies-aviation-asig-merger-inquiry>.

ramp, passenger, airside cargo handling and de-icing services) (**Ground Handling Services**) at Aberdeen Airport (**ABZ**).

7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, Menzies has offered undertakings to divest ASIG's ground handling business at ABZ, comprising ground handling equipment, all existing customer contracts held by ASIG Ground Handling Services Limited for the provision of ground handling services at ABZ, and the employees and offices used by ASIG at ABZ (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>8</sup>
8. Menzies has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Menzies has proposed Airline Services Ltd (**Airline Services**) and Dalcross Holdings Ltd (**Dalcross**) as alternative prospective upfront buyers. Any agreement reached with one of these prospective buyers will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of the prospective buyer as the buyer of the Divestment Business.

## **CMA assessment**

9. The CMA currently believes that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>9</sup> This is because the Proposed Undertakings will result in the divestment of ASIG's entire ground handling operations at ABZ, thereby removing the overlap between Menzies and ASIG at ABZ and the increment resulting from the Merger in relation to the supply of Ground Handling Services at ABZ. The CMA also currently believes that the Proposed Undertakings would be capable of ready implementation because the Divestment Business is a viable, standalone business, which will continue to be managed by an experienced existing management team which will transfer to the buyer upon completion of the divestment. However, these views are subject to responses to this consultation, as required by Schedule 10 of the Act.

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<sup>8</sup> See <https://www.gov.uk/cma-cases/menzies-aviation-asig-merger-inquiry>.

<sup>9</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

### ***Suitability of the proposed purchaser***

10. In approving a purchaser, the CMA's starting position is that it must be confident, without undertaking a detailed investigation, that the proposed purchaser will restore pre-merger levels of competition.
11. The CMA therefore seeks to ensure that:
  - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
  - (b) the proposed purchaser is independent of and unconnected to the merging parties;
  - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
  - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.<sup>10</sup>
12. The CMA sets out below its assessment of each of Airline Services and Dalcross in turn against these criteria, with the exception of criterion (d) (regulatory requirements) which is set out thereafter.

#### ***Airline Services***

13. Airline Services is an established ground handler providing the full range of ground handling services to 14 customers at London Gatwick Airport. It also provides de-icing and aircraft presentation services at a number of other airports across the UK and is in discussions to establish ground handling operations at Edinburgh, Luton and Manchester airports. Its current customers include British Airways, EasyJet, Flybe, Jet2, Lufthansa, Ryanair, Thomas Cook, Thomson and Virgin. Airline Services' turnover from ground handling services in the most recent financial year was between £30 and £35 million. The ultimate majority shareholder of Airline Services is the private equity division of a major UK bank.

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<sup>10</sup> [OFT1122](#), paragraphs 5.25–5.30.

14. Airline Services is not presently active at ABZ and it told the CMA that it does not have plans to begin operating at ABZ absent the acquisition of the Divestment Business. The CMA is not aware of Airline Services having bid for contracts at ABZ in recent years.
15. Airline Services told the CMA it is independent of the Parties, with no common shareholdings, directorships, significant structural links or commercial arrangements.
16. Having considered Airline Services' funding and reviewed its recent financial accounts, the CMA believes that Airline Services would have the necessary financial resources to finance the purchase of the Divestment Business and to operate it effectively.
17. Given that Airline Services is an established provider of the full range of Ground Handling Services, and based on information provided by Airline Services about its plans for the Divestment Business, the CMA considers that Airline Services has the necessary expertise, incentives and intention to maintain the Divestment Business as an effective competitor to Menzies at ABZ.
18. Overall, the CMA believes that Airline Services would have access to appropriate financial resources, expertise and assets to be an effective competitor at ABZ.
19. The CMA also believes that an acquisition by Airline Services would not itself create an SLC within any market or markets in the UK.
20. Airline Services proposes that the ground handling equipment of the Divestment Business be sold directly by Menzies to an independent third party leasing company, SPS, which would contemporaneously lease-back the equipment to Airline Services. The CMA understands that leasing arrangements of this kind are common in the industry and it has found no reason to indicate that this arrangement would impact adversely Airline Services' ability to compete effectively at ABZ.
21. Therefore, subject to responses to this consultation, the CMA currently believes Airline Services to be a suitable purchaser of the Divestment Business.

*Dalcross*

22. Dalcross provides the full range of Ground Handling Services at Inverness Airport. Its turnover in the most recent financial year was £[~~3~~]. Its main

customers are British Airways, Cityhopper, EasyJet, Flybe, KLM and Loganair.

23. Dalcross is not currently active at ABZ and it told the CMA that it did not have any plans to enter ABZ before the opportunity to acquire the Divestment Business arose. The CMA is not aware of Dalcross having bid for contracts at ABZ in recent years.
24. Dalcross told the CMA it is independent from the Parties, with no common shareholdings, directorships, significant structural links or commercial arrangements.
25. Having regard to representations made by Dalcross as to its funding and having reviewed Dalcross' recent financial accounts and plans for the Divestment Business, the CMA believes that Dalcross would have the necessary financial resources to finance the purchase of the Divestment Business and to operate it effectively.
26. Given that Dalcross is an established ground handling services provider, operating a business of a similar size and with close proximity to the Divestment Business, the CMA believes that Dalcross has the expertise to operate the Divestment Business as an effective competitor to Menzies at ABZ. Based on information provided by Dalcross about its plans for the Divestment Business and its rationale for the acquisition, the CMA believes that Dalcross has the necessary incentive and intention to operate the Divestment Business as an effective competitor to Menzies at ABZ.
27. Overall, the CMA believes that Dalcross would have access to appropriate financial resources, expertise and assets to be an effective competitor at ABZ.
28. The CMA also believes that an acquisition by Dalcross would not itself create an SLC within any market or markets in the UK.
29. Therefore, subject to responses to this consultation, the CMA currently believes Dalcross to be a suitable purchaser of the Divestment Business.

#### *Regulatory requirements*

30. As neither Airline Services nor Dalcross are currently present at ABZ, either operator would require an authorisation (or 'licence') to operate at ABZ from the airport operator, Aberdeen International Airport Limited (**AIAL**).
31. The CMA understands that if Airline Services or Dalcross apply to AIAL to access ABZ in order to provide ground handling services, the only grounds on



which they could be refused would be if they did not satisfy the airport's conditions of access. Such conditions might include, for example, environmental, health, safety or security standards. AIAL informed the CMA that it would resist granting a licence to a new operator if the operator was not known to AIAL and did not have good references or a good track record for safety.

32. As set out above, the CMA notes that both Airline Services and Dalcross are established providers of Ground Handling Services and there is no reason to believe that they would not be capable of complying with the airport policies of AIAL at ABZ. Therefore, the CMA currently believes that both Airline Services and Dalcross can be reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority to supply Ground Handling Services at ABZ.

### **Proposed decision and next steps**

33. For the reasons set out above, the CMA currently believes that the Proposed Undertakings and the purchase of the Divestment Business by Airline Services or Dalcross are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
34. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.<sup>11</sup>
35. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>12</sup>
36. Representations should be made in writing to the CMA and be addressed to:

John McKellar  
Mergers Group

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<sup>11</sup> See <https://www.gov.uk/cma-cases/menzies-aviation-asig-merger-inquiry>.

<sup>12</sup> Under paragraph 2(4) of Schedule 10 to the Act.

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**Deadline for comments: 24 March 2017**