

## The Ferrovial Consortium's acquisition of BAA

### Introduction

1. This appendix sets out the background to the acquisition of BAA by Ferrovial, details of the acquisition and associated shareholder and advisory agreements and information on Ferrovial's other interests in the UK.

### Background on BAA

2. The British Airports Authority (the Authority) was established by the Airports Authority Act 1965 as the owner and operator of four airports then under State control: Heathrow, Gatwick, Stansted and Prestwick. The Authority subsequently took over the regional airports at Edinburgh, Aberdeen and Glasgow. In 1986, the Airports Act was passed, the Authority was dissolved and all its property, rights and liabilities were passed to a new company, BAA plc (BAA). In 1987, BAA was floated on the London Stock Exchange.
3. The Airports Act provided that BAA's charges at the three London airports were to be regulated by the CAA and the CC.
4. In 1990, BAA acquired Southampton Airport. In a later diversification BAA set up an international business. It acquired retail management contracts at three US airports, followed by the acquisition of a management contract at Indianapolis Airport and equity stakes and management contracts for airports in Naples and four Australian airports. In December 2005, BAA acquired a holding of 75 per cent, less one share, in the company operating Budapest Airport, together with a 75-year management contract for £1.255 billion.
5. Until 1990, Prestwick was the only Scottish airport that was allowed to accommodate transatlantic flights, but it lost this gateway status following judgment in a case brought by Air 2000. Soon afterwards most of Prestwick's passenger traffic moved to Glasgow. In 1992, PIK Holdings Ltd acquired Prestwick Airport from BAA.

### BAA Lynton

6. In 1988, BAA acquired Lynton plc with its property portfolio for £230 million, to obtain the expertise needed to develop its airport properties. In 1999, BAA decided to focus it more closely on airport-related property both on and off its airports. The non-airport properties were sold and the property investment and development business of BAA Lynton plc was transferred into BAA plc where it operated as 'BAA Lynton'.
7. In March 2000, BAA Lynton launched the Airport Hotels Partnership (AHP) by the sale, into the partnership, of eight airport hotels. Following its formation, several of BAA Lynton's new developments were added to AHP's portfolio and some hotels were sold on. On 31 January 2006, the Arora Family Trust bought AHP's portfolio of nine hotels located at Heathrow, Gatwick and Stansted for about £300 million. (The Arora Family Trust had also acquired a hotel site next to T5 from BAA.)
8. In December 2000, BAA Lynton sold ten more of its properties to the newly-formed Airport Industrial Limited Partnership. Scottish Widows plc also sold two properties into the partnership and became the principal investor. Three properties have since

been added, so that there are now 15 properties located around BAA's airports. The partnership has a ten-year life.

9. In February 2005, BAA formed the Airport Property Partnership (APP) with Morley Fund Management (part of Aviva plc), contributing further properties together with development sites, options and indirect investments of aviation-related property. At inception the property assets contributed by BAA were valued at £801 million. The same assets had been valued at 31 March 2004 at £628 million, of which £331 million was attributable to BAA's regulated business. BAA received £575 million, representing £225 million from the sale of equity and £350 million from the raising of non-recourse indebtedness in the joint venture. BAA Lynton now provides asset management and development services to APP. Contracts have recently been exchanged for the sale of part of the APP portfolio to the Arora Family Trust.

### ***World Duty Free***

10. World Duty Free (WDF) was established by BAA in November 1996 to take over and run airport and tax-free shops. At the time, there was a need to mitigate the impact of the impending abolition of intra-EU duty-free sales on BAA's UK airports business as well as to improve the quality of the duty-free offer to customers.
11. The UK duty-free business was extended in August 1997 with the purchase of Duty Free International Inc for £429 million. However, in 2001, following a strategic review by BAA, it was decided that management should focus on core UK airport activities and so divest non-core interests. Among these were the non-UK WDF operations, including the American operations, which were sold for £4 million in October 2001.

### ***Heathrow Express***

12. Construction of the £350 million Heathrow Express started in 1993. Originally the rail link was a joint venture between BAA and the British Railways Board, designed to increase use of public transport to and from the airport from 34 per cent (already the highest in the world) to 50 per cent. BAA acquired the British Railways Board's 30 per cent stake in the venture in 1996. BAA's wholly-owned train operating company, Heathrow Express Operating Company Ltd, began services of non-stop trains between Heathrow and Paddington on 25 May 1998.
13. BAA signed a 25-year agreement with Railtrack for the use of the 12-mile mainline stretch from Paddington to Airport Junction near Hayes. BAA is responsible for the 5-mile underground section from Airport Junction to Terminal 4, via the central area. There were two stations, one serving Terminals 1, 2 and 3, and a second serving Terminal 4.
14. T5 includes a new rail station for the Heathrow Express. It is designed as a major public transport interchange with six platforms—two for London Underground's Piccadilly line, two for the Heathrow Express and a further pair safeguarded for future use. When the T5 extension opened in March 2008, the Heathrow Express began services to T5 but ceased serving Terminal 4 (which moved to Network Rail's Heathrow Connect service). Along with the Piccadilly line, the Heathrow Express will play a major part in handling T5's design usage of 30 million passengers a year.

### **The acquisition of BAA**

15. On 8 February 2006 the Chairman of BAA received a first approach from Rafael del Pino, Chairman of Ferrovial, the lead partner in a consortium including Ferrovial

Infraestructuras, SA (Ferrovial Infra), Caisse de dépôt et placement du Québec (CDPQ) and GIC Special Investments Pte Ltd (GIC SI), declaring an interest in acquiring BAA. Ferrovial, Ferrovial Infra, GIC SI and CDPQ entered into a Bid Conduct Agreement. CDPQ nominated a partnership that it managed, Airport Infrastructure Fund LP (acting through its general partner, CDP Investments Inc), to participate in the consortium. GIC SI nominated its subsidiary Baker Street Investment Pte Ltd.

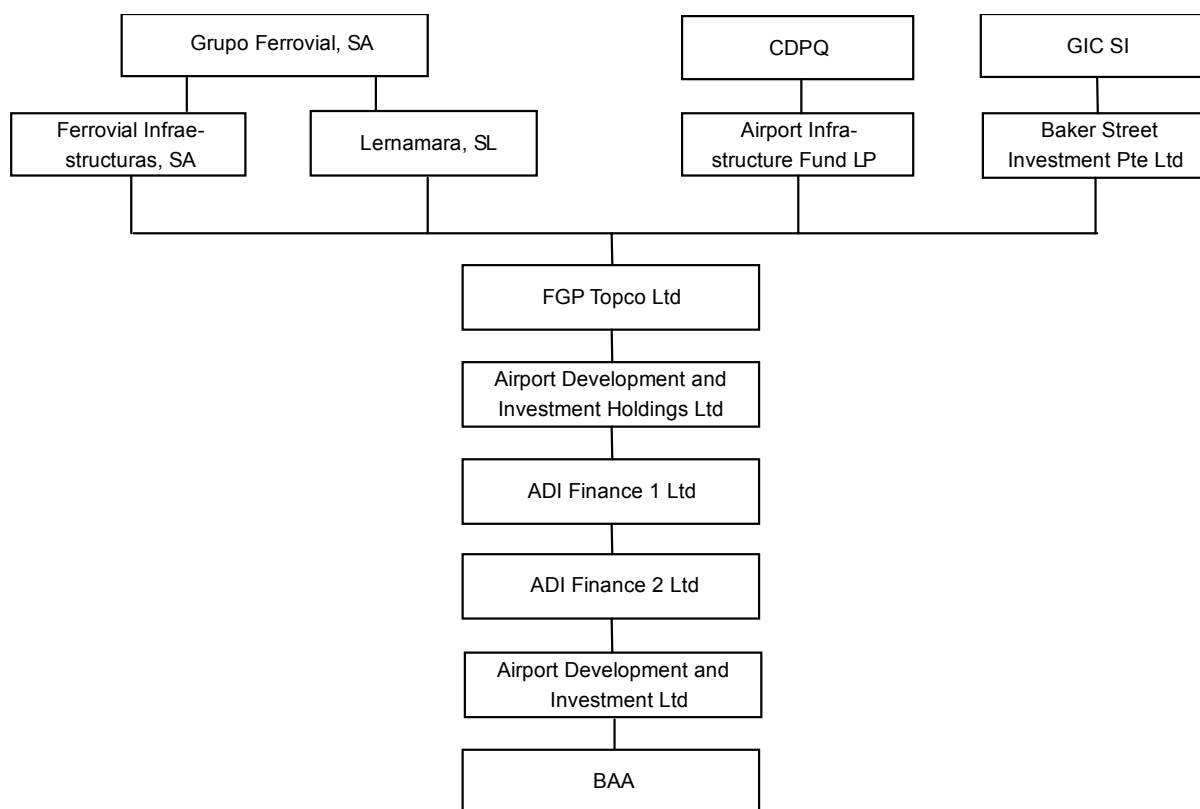
16. On 17 March, BAA's board received an informal bid of 810p per share (compared with a price of around 637p in the month before the consortium's interest had become public), which it rejected. Ferrovial gave Macquarie Bank, one of BAA's advisers, an option to buy its 21 per cent holding in Sydney Airport, worth about £375 million, and its 50 per cent holding in Bristol Airport, worth £106 million. BAA told us that this option was part of a broader agreement between Ferrovial and Macquarie covering toll roads.
17. On 7 April, the Ferrovial Consortium made an unsolicited formal offer again of 810p per share, making it a hostile bid. During May, BAA posted two defence documents to its shareholders, the second claiming that the value of BAA was clearly higher than 940p per share. On 30 May, the Ferrovial Consortium increased its cash offer to 900p per share, which was rejected by BAA's board. On 5 June, the board confirmed that it was holding talks with the Ferrovial Consortium and was also in talks with another party. On the next day it announced that it had agreed a revised definitive proposal from the Ferrovial Consortium valuing BAA at 950.25p per share (including the proposed final dividend of 15.25p). Two days later it informed shareholders that talks between BAA and a consortium including Goldman Sachs had ceased.
18. The Ferrovial Consortium posted an offer document to holders of BAA ordinary shares and of its 2008 and 2009 convertible bonds. The offer was made in the name of Airport Development and Investment Ltd (ADI), a company held by the consortium. An alternative offer to the shareholders and bondholders allowed them to apply for shares in Altitude Assets plc which was to be listed on the AIM market of the London Stock Exchange. Altitude Assets was expected to hold a stake of between 5 and 10 per cent of ADI Holdings Ltd, the holding company of ADI. This alternative offer required the consortium to publish a prospectus.
19. On 26 June, the Ferrovial Consortium announced that it had received valid acceptances from holders of more than 83 per cent BAA's issued shares. Acceptances for the convertible bonds exceeded 96 per cent. There were insufficient acceptances for the alternative offers for the listing of Altitude Assets to proceed. On 15 August 2006, BAA plc delisted from the London Stock Exchange, and in November it ceased to be a public limited company, changing its name to BAA Ltd.

### ***New corporate structure***

20. The new ownership structure of BAA is shown in Figure 1.

FIGURE 1

**BAA—shareholders following Ferrovial Consortium acquisition**



Source: BAA.

21. BAA told us that Airport Development and Investment Holdings was to be wound up with ADI Finance 1 Ltd becoming a direct subsidiary of FGP Topco. The functions of the other companies, in addition to acting as acting as intermediate holding companies, are:
  - (a) ADI Finance 1 Ltd has borrowed £600 million under the Toggle Facility Agreement (this is an unsecured facility);
  - (b) ADI Finance 2 Ltd is a guarantor under the terms of the Subordinated Facility Agreement and as such has entered into a share charge with the banks over the shares it holds in ADI; and
  - (c) Airport Development and Investment Ltd (ADI) is a guarantor under the terms of the Senior Facilities Agreement and has charged all of its assets pursuant to the terms of the Debenture.
  
22. FGP Topco Ltd has two classes of share capital. The holdings of the companies in Figure 1 are set out in Table 1.

TABLE 1 **FGP Topco Ltd: share capital**

<i>Shareholder</i>	<i>Ordinary shares</i>	<i>%</i>	<i>Deferred shares</i>	<i>%</i>
Ferrovial Infraestructuras, SA	2,311,557,797	55.73	860	63.70
Lernamara SL	220,908,465	5.33	-	-
Airport Infrastructure Fund LP	1,199,999,997	28.94	355	26.30
Baker Street Investment Pte Ltd	<u>414,718,470</u>	<u>10.00</u>	<u>135</u>	<u>10.00</u>
Total	4,147,184,729	100.00	1,350	100.00

Source: FGP Topco.

Note: All shares have a nominal value of 10p.

23. Before the acquisition only the Deferred Shares were issued. After the acquisition when the actual amounts contributed to FGP Topco by each of the subscribing shareholders were known, the Ordinary Shares were issued. They carry one vote each, are eligible for any dividend or other distribution, and are redeemable. The Deferred Shares now have no voting rights, are not eligible for any distribution (except their nominal value on a winding up), and are not redeemable.

### ***The Shareholders' Agreement***

24. [X]

25. [X]

[X]

26. [X]

27. [X]

[X]

28. [X]

29. [X]

### ***Effect of BAA acquisition on Ferrovial***

30. Ferrovial is organized into four businesses: construction, infrastructure, airports and services. The Real Estate business was broken up and sold during 2006. BAA forms part of the airports business.
31. The acquisition of a 60.1 per cent holding in BAA greatly increased the size of Grupo Ferrovial, SA and significantly altered the balance of its activities and of its geographical spread.
32. Ferrovial consolidates all the assets and liabilities of BAA and of the other companies that it acquired in 2006 (there were also some disposals). The overall result was a large increase in most balance sheet items. Table 2 is a summary balance sheet based on the consolidated balance sheet in Ferrovial's 2006 annual report.

TABLE 2 **Ferrovial: summary balance sheets at 31 December 2005 and 2006**

	€ million			
	2005	2006	Change	Change %
Investments in infrastructure projects	8,557	30,870	+22,313	+261
Property, plant and equipment	728	754	+26	+4
Consolidation goodwill	1,984	9,275	+7,291	+367
Other non-current assets	<u>1,805</u>	<u>2,192</u>	<u>+387</u>	+22
Non-current assets	13,074	43,090	+30,017	+230
Net current liabilities*	-85	-1,116	-1,032	+1216
Other assets/liabilities (net)	-809	-1,965	-1,155	+143
Total	<u>12,180</u>	<u>40,009</u>	<u>+27,829</u>	+229
<i>Financed by</i>				
Share capital and reserves	2,076	3,504	+1,428	+69
Minority interests	<u>892</u>	<u>3,158</u>	<u>+2,266</u>	+254
Equity	2,968	6,662	+3,694	+124
Long-term borrowings	9,759	32,908	+23,149	+237
Short-term borrowings	1,748	2,838	+1,090	+62
Cash and cash equivalents	<u>-2,295</u>	<u>-2,399</u>	<u>-104</u>	+5
Net debt	9,212	33,347	+24,136	+262
Total	<u>12,180</u>	<u>40,009</u>	<u>+27,829</u>	+229

Source: CC from Grupo Ferrovial, SA annual report 2006.

\*Excluding cash and short-term borrowings.

33. All balance sheet categories increased during 2006 with the largest growth being in infrastructure project assets (most of BAA's fixed assets are in this category) and consolidation goodwill. The increase in minority interests mostly reflects the participation of CDPQ and GIC SI in the acquisition of BAA, and there is a commensurate increase in net debt, reflecting the borrowings of BAA and the additional facilities used by the FGP Topco group to fund the acquisition. Much of this debt, however, is not secured on assets or businesses outside the FGP Topco group.
34. Ferrovial's annual report shows that the number of its issued shares has not changed since 2000. Portman Baela SL, a company controlled by Rafael del Pino and members of his family, held 58.315 per cent of the issued share capital.

### **Ferrovial's other interests in the UK**

35. All of Ferrovial's businesses (Services, Infrastructure, Airports and Construction) have activities in the UK.
36. In 2006, the UK contributed 48.4 per cent of the revenues of the Services business. Its wholly-owned subsidiary, Amey plc, had 7,500 employees with most of its customer base among public bodies such as central or local government for road and railway maintenance. In February 2005, Amey increased its interest in Tube Lines, the concession company which manages and maintains the Jubilee, Northern and Piccadilly lines for London Underground, to 66.67 per cent.
37. In October 2005, Ferrovial's Services business acquired Swissport which, it said, was the world leader in airport passenger and cargo services, present in 42 countries and at over 180 airports. It has operations at all three of BAA's London airports and its Glasgow Airport.

38. In addition to BAA, Ferrovial—through its Infrastructure business—owns and operates Belfast City Airport, which is managed separately from BAA, and holds—through Cerro Moreno Sociedad Concesionaria SA—a concession to operate an airport near Antofagasta in Chile. The infrastructure business, through its 62 per cent Cintra subsidiary, also operates toll roads and car parks, none of them in the UK. A joint venture between Cintra and National Express recently won a contract for the management of car parks and coaching at Stansted Airport.
39. The Construction business, which is headed by Ferrovial Agromán, SA, has set up a subsidiary in the UK. In its 2006 annual report, Ferrovial said that its construction activity outside Spain would continue to be linked to the development of other businesses that generate induced construction work, for example infrastructure concessions and services. At that time Ferrovial had built 35 airports.
40. BAA told us that Ferrovial Agromán had been qualified as a potential contractor for BAA's future projects following the same procedures as other potential contractors. Transactions would be on an arm's length basis. [X]