

***Case No IV/M.1165 -
LUFTHANSA /
MENZIES / LCC***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/1998

*Also available in the CELEX database
Document No 398M1165*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1165 - Lufthansa/Menzies/LCC

Notification of 27.05.1998 pursuant to Article 4 of Council Regulation (EEC) N° 4064/89¹

1. On 27 May 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which Lufthansa Airport and Ground Services GmbH ("LAGS") and Menzies transport Services Ltd ("MTS") notified a proposed operation consisting of the acquisition of joint control of a company named The London Cargo Center Ltd ("LCC").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89, and does not raise serious doubt as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. LAGS belongs to Deutsche Lufthansa AG ("Lufthansa"). Lufthansa is the ultimate parent company of the group and is active in passenger and cargo air transport as well as air transport-related business. LAGS is mainly active in passenger and aircraft handling services. LCC will acquire from Lufthansa Cargo AG (a wholly-owned subsidiary of Deutsche Lufthansa AG) its entire cargo ground handling business at Heathrow Airport in London.

¹ O.J. L 395, p.1; corrected version O.J. L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.7.1997, p. 1; corrigendum in O.J. L 40 of 13.2.1998, p. 17.

4. MTS is a wholly-owned subsidiary of John Menzies plc. which is principally involved in the distribution of books, magazines music and video articles in the UK. MTS is also active in cargo ground handling, in freight forwarding and in landside and airside air cargo trucking in the UK through a company named Concorde Express.

LCC will operate in cargo handling in sheds in the London Airport System (Heathrow, Gatwick, Stansted).

II. THE OPERATION

5. LCC is an existing company which has never traded nor has any assets or liabilities. The parties intend to increase the share capital of LCC and subscribe each half of the shares. In addition, LCC will acquire from Lufthansa Cargo AG, a wholly-owned subsidiary of Lufthansa, its entire cargo handling business (in sheds) at Heathrow Airport (Building 557 at London Heathrow).

Joint Control

6. LCC will be jointly controlled by LAGS and MTS. According to the Joint Venture Agreement concluded between them, there are a number of matters including the adoption or the amendment of the annual budget and the business plan which require the prior written consent of all shareholders having at least [...] ² of the issued ordinary share capital of LCC.

Full-function character

7. LCC will perform on a lasting basis all the functions of an autonomous economic entity. In particular, LCC will have all the resources (including personnel) to operate independently on the market for cargo handling in sheds, that is the providing of the link between the trucking of cargoes from the customer to the airport terminals and to the aircraft. At London airports there are currently seven airlines and six independent companies which are active on this market. LCC will perform cargo handling services both for Lufthansa and other carriers.
8. The Commission therefore concludes that the operation is a full-function joint venture within the meaning of Article 3 of Council Regulation.

III. COMMUNITY DIMENSION

9. The combined aggregate world-wide turnover of all undertakings concerned is more than ECU 5,000 million. The 1996 aggregate Community-turnover of each of the parties exceeded ECU 250 million,. The parties do not achieve more than two-thirds of their Community-turnover within one and the same Member State. Therefore, the proposed operation has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

² Deleted for publication.

Relevant product market

10. LCC will be active in cargo handling in sheds at airports. As indicated above, this activity includes providing the link between the trucking of cargoes from the customer to the airport terminals and to the aircraft. This activity has to be differentiated from that of freight forwarding (transport from the client to the shed) as well as from landside and airside trucking (transport from the shed to the aircraft). Apart from airlines, there are independent companies operating in this sector which have specific skills and dedicated equipment. Currently, despite a tendency for companies to operate in all the activities constituting cargo handling at airports, these companies (with the exception of MTS which through Concorde Express is active in freight forwarding and landside and airside trucking and will be active in cargo handling in sheds through LCC) operate neither in freight forwarding nor in landside and airside trucking for which specific regulatory frameworks exist.
11. There are therefore indications that cargo handling in sheds at present constitutes a separate product market. Nonetheless, the precise product market definition can be left open in this case, as the operation does not create or strengthen a dominant position in the common market even in this narrowest product market definition.

Relevant geographic market

12. The parties submit that the relevant geographic market for cargo handling in sheds is the whole of the "London Airport System" (i.e. Heathrow, Stansted and Gatwick) mainly because of the very high number of cross-carriings (cargoes which are trucked from one airport site to another).
13. It is however not necessary to conclude on the exact geographic market definition in this case, as the operation does not create or strengthen a dominant position even on the narrowest geographic market definition (i.e. Heathrow Airport).

Competitive assessment

14. The overall cargo volume handled at Heathrow Airport in 1997 is equal to 1.200.000 tons. The overall cargo volume handled within the London Airport System is equal to 1.600.000 tons. On this basis LCC will have in cargo handling in sheds a market share of approximately [...] ³ at Heathrow Airport and [...] ³ within the London Airport System. LCC will face competition both from independent companies (Plane Handling Ltd.: about [...] ³ at Heathrow, about [...] ³ within the London Airport System; Ogden Cargo Ltd., about [...] ³ at Heathrow Airport, about [...] ³ within the London Airport System) and airline companies (i.a. British Airways: about [...] ⁴ at Heathrow, [...] ⁴ within the London Airport System); United Airlines (about [...] ³ at Heathrow, [...] ³ within the London Airport System). Given these market shares and the number and strength of competitors it can be concluded that the operation does not lead to the creation or strengthening of a dominant position in the common market.

³ Deleted for publication. Less than 15%.

⁴ Deleted for publication. Less than 55%.

15. The question has been raised in the course of the investigation of the effects of the operation on the downstream market of and airside trucking from the shed to the aircraft. In particular, it has been indicated that the operation, which would reinforce the position of the parties in cargo handling in sheds, might lead to a strong reduction of airside cargo trucking companies available for independent companies operating in cargo handling in sheds. This effect would be reinforced by the circumstance that a licence is needed to operate in this field and that the policy in granting these licences would appear to be restrictive. While it is certainly true to assume that the operation will improve the competitive position of the parties (in cargo handling in sheds as well as a result of their presence in both freight forwarding and airside cargo trucking) it has to be excluded that it would amount to the creation or strengthening of a dominant position. In particular, the investigation has shown that there appears to be a sufficient number of strong competitors operating in airside cargo trucking, namely, besides Concorde Express, (which has around [...]³ of the total movements at London Heathrow) airline companies like British Midland, Air Lingus and Air Canada which provide services for third parties.
16. For the reasons above it is considered that the operation does not lead to the creation or strengthening of a dominant position in the common market.

V. ANCILLARY RESTRAINTS

17. The parties have agreed a non-compete clause not to compete with the business of LCC during the parties' participation in LCC and for a period of [...]⁵ after this.
18. The Commission considers that the restriction on the parent companies not to compete with LCC as long as they remain a shareholder in LCC and for a period of [...]⁵ after this is not, as such, necessary and directly related to the concentration. However, to the extent that the non-compete obligation agreed by the parties would be limited to the situation where the parent companies enjoy a controlling stake in LCC, the non-compete clause would aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture. Therefore, this decision only covers this non-compete clause for so long as the parent companies hold a controlling stake in LCC.

VI. CONCLUSION

19. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
20. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89.

⁵ Deleted for publication.

For the Commission,