

***Case No IV/M.1387 -
LUFTHANSA /
MENZIES / SIGMA AT
MANCHESTER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/01/1999

*Also available in the CELEX database
Document No 399M1387*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.01.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1387 - Lufthansa/Menzies/Sigma at Manchester

Notification of 3.12.1998 pursuant to Article 4 of Council Regulation (EEC) N° 4064/89¹

1. On 3 December 1998, the Commission received a notification pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 according to 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 Sigma Aviation (UK) Ltd ("Sigma").
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.

THE PARTIES AND THE OPERATION

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

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.

as air transport-related business. LAGS is mainly active in passenger and aircraft handling services at airports in Germany, London Heathrow and Manchester Airport.

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.
5. Sigma is currently a 100% owned subsidiary of LAGS. Sigma is active in passenger and aircraft ground handling at Manchester Airport.
6. The proposed operation consists in the acquisition by MTS of 49% of the issued share capital of Sigma.

Joint Control

7. Sigma will be jointly controlled by LAGS and MTS. According to the Shareholders Agreement concluded between them, there are a number of matters including the adoption of the annual budget and the business plan which require the prior written consent of all shareholders having at least 25% of the issued ordinary share capital of Sigma.

Full-function character

8. Sigma will perform on a lasting basis all the functions of an autonomous economic entity. In particular, Sigma will have all the resources (including personnel) to operate independently on the market for passenger and aircraft ground handling.
9. The Commission therefore concludes that the operation is a concentrative joint venture within the meaning of Article 3 of Council Regulation.

COMMUNITY DIMENSION

10. 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.

COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

11. Sigma will be active in third party passenger and aircraft handling services at Manchester Airport. This activity consists of the provision of passenger (including passenger lounge services and ticketing), ramp, aircraft (loading, cleaning, push back and towing) and baggage handling services to airlines. Self-passenger and aircraft handling are the same activities, which are carried out by airline companies directly. Passenger and aircraft ground handling are within the various activities considered by

Council Directive 96/67/CEE of 15.10.1996. The parties claim that passenger and aircraft ground handling do form part of the same relevant product market, in particular given that these services are normally provided as a package by a given operator for a given airline company. In addition, most of the companies operating in the sector would provide both passenger and aircraft handling services. Some market operators contacted by the Commission confirm this view.

12. It is however not necessary for the purpose of this decision to take a final decision on the exact product market definition, as the proposed operation does not create or strengthen a dominant position in the common market even on the most restrictive product market definition adopted.

Relevant geographic market

13. The parties claim that the relevant geographic market is confined to Manchester Airport, in particular in view of the necessity of a licence from the airport for a company to be able to operate in passenger and aircraft handling. The licence determines the extent of the activity, which can be carried out by the relevant operator. This activity is limited to Manchester Airport.
14. The question could be raised whether the geographic market is not larger than Manchester Airport, in particular with reference to passenger ground handling. As a matter of fact, under Directive 96/67 Manchester Airport is not permitted to limit the number of licences to be granted for such activity (whilst for aircraft handling a minimum of only 2 operators per airport is imposed). This circumstance would imply that a prospective customer could ask any operator to come to Manchester Airport and provide services. However, elements in the possession of the Commission show that such a possibility remains rather theoretical, due mainly to the general reduced availability of check-in desks in airports.
15. For the purpose of the present decision it is however not necessary to decide on the exact geographic geographic market definition as the proposed operation does not create or strengthen a dominant position irrespective of the definition adopted.

Competitive assessment

16. As indicated above, Sigma is active in third party passenger and aircraft handling services at Manchester Airport. This airport is very competitive, as far as these activities in particular are concerned.
17. Sigma handles about [less than 15] % of [...] flights handled at Manchester Airport by third party handlers in the last year. If self-handling was to be included, Sigma would have around [less than 10] % of the flights (self-handlers are represented by British Airways and British Midland). Third party handlers include Servisair ([more than 30] %) and GHI ([less than 30] %). These figures would remain substantially unchanged when considering passenger handling and aircraft handling separately.
18. On the basis of Sigma's market share and the presence of strong competitors, the Commission concludes that the proposed operation does not lead to the creation or strengthening of a dominant position in the common market.

ANCILLARY RESTRAINTS

19. The parties have agreed a non-compete clause not to compete with the business of Sigma during the parties' participation in Sigma and for a period of twelve months after this. In addition, the parties have agreed to keep confidential any information, which is disclosed by one party to another, and not to use such information outside the provision of the Shareholders Agreement.
20. To the extent that they constitute restrictions of competition, the confidentiality obligations are directly related and necessary to the proposed operation.
21. As far as the non-compete obligations are concerned, the Commission does not consider them to be necessary and directly related to the concentration for so long as the parent companies remain a shareholder in Sigma. However, to the extent that the non-compete obligations agreed by the parties would be limited to the situation where the parent companies enjoy a controlling stake in Sigma, they 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 these clauses for so long as the parent companies hold a controlling stake in Sigma.

CONCLUSION

22. 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.
23. For the above reasons, the Commission has decided 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.

For the Commission,