

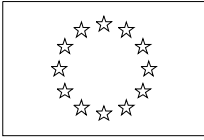
***Case No COMP/M.1596 -
ACCOR / BLACKSTONE
/ COLONY / VIVENDI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/09/1999

*Also available in the CELEX database
Document No 399M1596*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.1999
SG(99)D/7267

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No IV/M.1596-Accor, Colony, Blackstone / Vivendi

1. On 22.06.1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No.4064/89 by which the undertakings Accor, Colony and Blackstone acquire within the meaning of Article 3 (1)(b) of the Council Regulation joint control over the hotel activities of the Vivendi group.
2. On 15 July 1999 the notification was declared incomplete as the notifying parties failed to submit all the final documents bringing about the concentration, that is specifically the Shareholders Agreements. The parties having provided the requested documents, the notification has been declared complete on 09.08.1999.

I. THE PARTIES

3. Accor S.A. (“Accor”) is the parent company of the Accor Group, a French based group operating world-wide in four major sectors: hotels, travel agencies, car rental and corporate services. As far as the hotel industry is concerned, the Accor group has developed its hotel network in all segments of the hotel market, ranging from budget priced facilities to business and leisure hotels, on a world-wide basis (in terms of rooms, in 1998, [50-60%] of the group’s hotels network was in Europe).
4. Colony Investors III, L.P. is an investment fund managed by Colony Capital, Inc. (“Colony”), a US firm particularly active in property and related transactions. As a whole, Colony manages in excess of 4 billion US dollars of assets in a wide spectrum of property investments such as offices, warehouses, golf clubs, mortgages and hotels. In Europe, Colony holds a minority interest in The Savoy Group in London, in which The Blackstone Group is a co-investor. A limited number of hotels held by Colony are in France, in Meribel and on the Riviera.
5. Blackstone Real Estate Acquisitions III, L.L.C. is an entity within the property fund managed by The Blackstone Group (“Blackstone”), a private merchant banking firm based in the US, active mainly in financial advisory services, private equity investing and property investment. The activities of Blackstone in the hotel industry are limited, in Europe, to a controlling investment in The Savoy Group in London. The Savoy Group includes The Savoy, Claridge’s, The Connaught and The Berkeley, four luxury hotels.
6. Vivendi, the French multinational group is mainly active in construction, energy, telecommunications, media and environmental activities. The group operates in the hotel sector two chains of hotels, under the brand names Libertel and Demeure, through its subsidiaries Anjou Services SNC and Compagnie Générale d’Hôtellerie et de Services (together referred to as CGHS).

II. THE OPERATION

7. The notified operation concerns the acquisition of joint control by Accor, Colony and Blackstone over the hotel business activities of the Vivendi Group by way of purchase of shares.
8. On 4 June 1999, Anjou Services SNC and various other legal entities (the “Sellers”), on the one hand, and Accor, Colony and Blackstone (the “Purchasers”), on the other hand, entered into a Share Purchase Agreement. It provides that the Purchaser will acquire directly or indirectly all the assets of the Seller’s activity consisting in the ownership and/or management of hotels operated under the brand names Libertel and Demeure (the “Hotels”), including (i) the 40 hotels owned by the sellers (ii) the management agreements pursuant to which Vivendi, through Compagnie Générale d’Hôtellerie et des Services (CGH), currently operates 8 hotels owned by third parties (iii) the commercialisation agreements pursuant to which CGH currently commercialises 4 hotels owned by third parties under the name Horset, and (iv) trademarks associated with the operation of all the hotels.
9. The parties have also entered into two Memorandums of Understanding which set out the main aspects relating to the structure and financing of the transaction and the management of the acquired hotels. According to these Memorandums of

Understanding, the Shareholders Agreement provides that Accor, Colony and Blackstone will make a joint offer to the Seller to purchase the Hotels. [...] would form among themselves 17 holding companies (the “Holdcos”), which each will acquire from the Seller one newly created company (the “Newcos”), to which the hotel interests will be contributed and/or sold.

10. The memorandums of understanding also provide that Accor will manage and operate the Hotels pursuant to management agreements to be entered into with each Newco with respect to the operation of each Hotel.

III. CONCENTRATION

11. Pursuant to the Shareholders agreement, [...] and Accor will respectively hold [...] of the capital stock and of the voting rights of each one of the Holdcos. It also provides that each Newco will be managed by an executive board composed of three members, one of them representing Accor, and the two other Colony and Blackstone. The strategic business decisions (including the appointment of the management, the determination of budgets, the approval of business plans and the decisions on investments) within each Newco must be taken by unanimous vote of the members of the executive board.
12. The structure of the operation reflects the existence of a jointly exercised control by Accor, Colony and Blackstone over these Newcos, given the fact that each one of these parties enjoys veto rights over strategic decisions regarding such corporate entities.
13. The operation is therefore a concentration since the operations described above will result in a joint acquisition of hotel chains already active on the market under the brand names Libertel and Demeure.

IV. COMMUNITY DIMENSION

14. The undertakings concerned are Accor, The Blackstone Group, Colony and the acquired parts of Vivendi which are subject of the transaction (CGHS). They have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (Accor EUR 5.586 billion, Colony [...], Blackstone [...] and CGHS [...]). Each of Accor and Blackstone have a Community-wide turnover in excess of EUR 250 million (Accor [...] and Blackstone [...]) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. The operation does not qualify for co-operation with the EFTA surveillance Authority pursuant to article 57 of the EEA Agreement.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. COMPETITIVE ASSESSMENT.

A. Relevant product market(s)

15. The overlap takes place within the hotel sector where all undertakings concerned are active. The notifying parties are of the opinion that the relevant product market is the market for all hotels (except for the cheapest and the dearest), whether belonging to a chain or independent, if the local level is considered. They nevertheless admit that there might be a separate product market for hotel chains at national level.

Past Commission decisions in the sector

16. In previous decisions under the Merger Regulation the Commission left the market definition in the hotel sector open because the operations did not raise competition issues in the hotel sector irrespective of the market definition considered. The Commission looked at the hotel sector both generally and separately by category, carried out detailed investigations on differences between hotel chains and independent hotels.
17. The Accor/Wagons-Lits decision also showed there were some differences, both from supply and demand sides, between chain hotels and independent hotels.

In the IV/M.126-Accor/Wagons-Lits decision, the Commission pointed out that the hotel sector appeared to present three categories of hotels suppliers : economically and legally independent hotels, voluntary chains consisting of groups of independent hotels which carry out their marketing, promotion, purchasing etc. under one and the same hotel brand and integrated chains which operate hotels directly through subsidiaries or indirectly by a franchise or management contract.

From the supply side the Commission has found that chain hotels were based on a network concept which meets service requirements that go beyond the purely local framework. Chain hotel offers a more uniform product from one hotel to another and a more extensive range of services (more extended opening hours, restaurant reservation network etc..). Chain hotels have a common policy under a common hotel name and trade mark, a policy which combines the marketing and commercial activities of the various hotels owned and allows them to become better known to the public if compared to independent hotels. Chains also have their own centralized reservation systems (CRS) and access to international reservation systems. Hotel chains pursue a policy of actively seeking customers. They approach intermediaries such as tour operators, travel agencies, airlines, and major companies. They offer them contracts which provide for special prices, promotional packages and access to related service such as car hire, tourism trips etc...

As regards demand, the Commission has found that tour operators, travel agencies and large firms choose mainly hotel chains to work with. These large customers make reservations on the basis of prearranged contracts setting out negotiated conditions for prices, terms of payment, commissions and discounts.

18. In the IV/M.1133 Bass plc/Saison Holdings BV decision the Commission gave a possible alternative method of analysis by distinguishing a market for hotel chains at a

national level, on the grounds of competitive advantages held by chains as indicated in the Accor/Wagons-Lits decision, from a market for all hotels (except perhaps the very cheapest and the most expensive) more focused in smaller geographic areas (cities) because customers could easily substitute their initial choice if price conditions were not the ones expected.

Evolution of the services

19. According to the parties, there is a trend for independent hotels to adhere to structured chains. The number of independent hotels is decreasing, they amounted to 38% of the French supply in terms of rooms while integrated chains totalled 37% and voluntary chains 25%. The evolution in methods of distribution, management, marketing and buying policies incite independent hotels to join in centralised structures.
20. The parties state that, from the customers's point of view, chain hotels and independent hotels are largely substitutable especially at a local level. If there may be some relevances to isolate chain hotels to measure the market power of hotel operators at a national level, there is no reason, according to the parties, to restrict the product market to chain hotels at local level. From the consumer side, most hotels within a certain price range largely compete with each other, irrespective of their belonging to a chain or not. In the chain segment as in the hotel market as a whole, competition takes place within certain categories of hotels which would call for the same type of customers or use the same marketing tools. The independent hotels compete to a large extent with chain hotels as far as a price-based approach to market definition is taken. The presentation made in tourist guides, whether traditional or on-line classifies hotels most of the time by location and range of prices.
21. This view has been widely confirmed by the market test even though it also showed that there might nevertheless be a difference between chain and independent hotels if the demand constituted by the tour operators, travel agencies and big companies was considered separately from the demand of the individual user. For example, big companies are interesting in dealing with chains because they can set up global agreements for the places they are travelling to. Tour operators and travel agencies consider there are major differences in dealing with hotel chains and independent hotels because hotel chains tend to have more rigid corporate structure with limited negotiation on rates and special offers. They have high profile marketing organisations with their own reservation systems, marketing initiatives.
22. The notifying parties believe there is no valid reason to isolate chain hotels as being the only ones able to handle group reservations made by travel agencies, tour operators and other intermediaries. They state that travel agencies and tour operators do use the services of both independent and chain hotels, and that it is reflected in their brochures. They state that chain hotels often target individual customers rather than groups of customers, and that chain hotels and independent hotels have substantially the same type of customers, especially in cities. However it is not necessary to further decide if the chain hotels constitute a market from the perspective of the accommodation of groups of visitors because, in all alternative market definitions considered, the operation will not lead to the creation or strengthening of a dominant position.

Segmentation by categories of hotels

23. As far as prices are concerned, the notifying parties believe that the analysis outlined in the Bass decision in relation to the hotel markets in Berlin, Hamburg, Frankfurt and Brussels [“continuum of prices at all levels from the cheapest to the dearest, with no “break points” at which there were no hotels on offer. The relevant market may therefore be one for all hotels (except perhaps the very cheapest and the most expensive) on the basis of a chain of substitution”] is applicable to Paris.
24. The level of prices in the hotel sector is partially identified by the allocation of “stars” to the hotels, determining the standard and facilities the customer may expect. But the hotel market does not offer a uniform price for all hotels which are within one category of “stars”. Some hotels belonging to neighbouring star categories are entirely substitutable from a consumer point of view in terms of price, location and services. Such a substitutability is particularly shown in tourist guides where, for the purpose of guide classification, hotels belonging to two and sometimes even three distinct categories of “stars” are grouped in more general category including all midscale-upscale hotels.
25. The market investigation has largely confirmed that even if significant price differences exist between the “bottom” and the “top” of the chain of stars (a 1 star hotel will rarely compete with a 4 stars hotel), a distinction relying exclusively on stars might be too rigid and does not reflect the actual substitutability between hotels, especially within hotel chains. Several sub-markets might be rather identified like 1 and 2 stars hotels, 2 and 3 stars, 3 and 4 stars hotels, or 1,2,3 stars hotels and 2,3,4 stars hotels. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, the operation will not lead to the creation or strengthening of a dominant position.
26. The market investigation has also shown that there might be another possible delimitation according to the size of hotel (number of rooms) if demand constituted by the tour operators, travel agencies and big companies was considered separately from the demand of the individual consumer. Should a segmentation of hotels by size be made to assess the possible consequence of the notified concentration on the accommodation of groups of customers at a local level (cities), such segmentation could be based on the minimal threshold of 40 rooms. However, it is not necessary to further delineate the relevant product markets because, even from the perspective of the accommodation of group of customers in hotel with more than 40 rooms, the operation will not lead to the creation or strengthening of a dominant position.

Franchised hotels

27. As regards the relevance of including franchised hotels in the market shares of the new entity, the parties state that franchised hotels are autonomous entities which take themselves all decisions regarding their own management. They consider, like the notifying parties in the Bass decision, that the ties which exist under franchising agreements are not sufficient to consider that franchisees should be integrated in the calculation of market shares of a chain. The investigation has shown that there indeed tends to be a greater degree of commercial flexibility (negotiation on rates and special offers) in hotels which are franchised rather than wholly owned although that some

chains have recently been attempting to steer some of their franchisees into more rigid policies. It could be considered that franchised hotels are not as “autonomous” vis-à-vis the chain to which they are affiliated as other independently owned hotels which do not have any link whatsoever with such chain. However, it is not necessary to further delineate the relevant product markets here because, even if the franchisees were taken in account in the calculation of market shares, the operation would not lead to the creation or strengthening of a dominant position.

Conclusion

28. As the competitive assessment of the present operation, presented further below, does not result in any concerns with regard to the different types of hotel affected, whether taken individually or together, it is not considered necessary to define the relevant product markets more precisely in the present case.

B. Relevant geographic market(s)

29. The hotel sector displays both national and local (cities) characteristics :

- national, because it appears that the conditions of competition are homogeneous at a national level. The structure of supply may vary from one national market to another, especially considering that the hotel industry is closely linked to the national economic trends.

- local, because a second degree of competition exists at a local level and takes place between all hotels, whether or not they belong to a chain, the primary criterion for the choice of a hotel being its location. Local geographic markets are useful to measure the substitutability between individual hotels from the customer’s point of view. Cities can be considered as local markets for hotels as one of the main feature of the hotel sector is its individual city character : customers select hotels in the city where they stay.

30. However, it is not necessary to further delineate the relevant geographic markets because, in both alternative geographic market definitions considered, the operation would not lead to the creation or strengthening of a dominant position in the common market or any part of that area.

C. Assessment

The French market

31. If the relevant geographic market was considered as national, then France would be the only country in which the notified concentration may have an impact. Indeed, the concentration consists in the acquisition of 52 hotels, out of which 48 are located in France, whereas one other is located in the United Kingdom, 1 in the Netherlands, 1 in Belgium and 1 in Switzerland. In all these countries, none of the notifying parties holds a strong market position.
32. In France, where 627,785 hotel rooms are available, the concentration concerns the acquisition of 2,926 rooms. Blackstone does not own nor manage any hotel and Colony operates 7 hotels, representing 421 rooms (0,06% of the total number of rooms available in France), none of which is in a location where the hotels which are to be acquired are located. Accor operates 100,800 rooms on the French hotel market.

33. The parties have presented market shares in terms of “hotels” and “rooms”, that is to say market shares in terms of capacity. The Council Directive on the harmonised collection of statistical information in tourism (95/57/Ec of 23rd November 1995 JOCE of 06.12.95, L 291/32) requiring to collect statistics also in terms of occupancy (“nights spent”), the parties have also provided the average occupancy of hotels in France and in Paris, as well as the average occupancy of their own hotels. These data show that the conclusion would be identical if the market shares were calculated in terms of occupancy.
34. On the level of competition between all hotels on the French market, Accor has a market share in volume (rooms) of [10-20%] and CGHS of [0-1%] with a total of [10-20%]. Should Accor franchised hotels be excluded, the global market share would be [10-20%] and should the hotels under management contracts with Accor or CGHS be further excluded, the global market share would be [10-20%]. The main competitors would be Logis de France (voluntary chain) with [10-20%] market share, Société du Louvre + Hôtels&Compagnie (integrated chain) with [5-10%], Best Western (voluntary chain) [0-5%] and BASS (integrated chain) with [0-5%]. The operation will therefore not lead to the creation or strengthening of a dominant position of Accor at this level.

On the French chain hotels segment, Accor would hold a market share in volume of [20-30%] and CGHS of [0-1%] with a total of [20-30%]. Should Accor franchised hotels be excluded from the Accor hotels, the global market share would be [15-25%] and should the hotels under management contracts with Accor or CGHS be further excluded, the global market share would be [10-20%]. Their main competitors Logis de France, Société du Louvre + Hôtels&Compagnie, Best Western and Bass would hold respectively [10-20%], [10-20%], [0-10%], and [0-10%] market share. The operation would therefore not lead to the creation or strengthening of a dominant position of Accor at this level either.

The Paris market

35. If the relevant geographic market was considered as local, the city of Paris would be the only local area in which the notified concentration may have an impact, since its concerns primarily hotels which are located in Paris. The acquisition of the four hotels in the United Kingdom, Belgium, Switzerland and the Netherlands respectively will have no impact on local competition.
36. If the market for all hotels in Paris, whether independent or not, except for the cheapest (0*) and the dearest (5*) was considered, Accor would have [10-20%] market share in volume, CGHS [0-10%], with an aggregated market share of [10-20%]. Should Accor franchised hotels be excluded from the Accor hotels, the global market share would be [10-20%] and should the hotels under management contracts with Accor or CGHS be further excluded, the global market share would be [10-20%]. Their main competitors would be the other hotel chains active on this market, like Envergure [0-10%], Bass Hotels & Resorts [0-10%], Best Western [0-10%] Le Meridien Forte [0-10%], Concorde [0-10%], Abotel [0-10%]. Most of these competitors are major international hotel groups, the market shares of which on the Paris market should necessarily be put into perspective with their financial power as well as with their international setting. The position which would be held by Accor upon completion of the operation would not allow it to behave independently from its competitors and customers. The operation will therefore not lead to the creation or strengthening of a dominant position of Accor at this level.

37. If the above defined market was further sub-divided according to the classification of hotels based on the number of stars attributed thereto, the aggregated market shares, depending upon the integration of the franchised and managed hotels, would amount to [0-10%] (1* segment ; no overlap) and would range from [15-25%] to [10-20%] (2* segment; overlap of [0-5%]), [15-25%] to [10-20%] (3* segment ; overlap of [0-10%]) and [10-20%] to [10-20%] (4* segment; overlap of [0-5%]). The operation will therefore not lead to the creation or strengthening of a dominant position of Accor at this level.
38. The conclusion would be identical should a segmentation of the above defined market regrouping neighbouring categories of stars be made. The possible impact of the notified operation has been examined on segments defined as follows : 1* and 2* hotels, 2* and 3* hotels, 3* and 4* hotels and 1*,2* and 3* hotels and 2*; 3* and 4* hotels. The investigation has shown that market shares range from [15-25%] to [10-20%] depending upon the segment and the integration of the franchised and managed hotels, with overlaps ranging between [0-5%] and [0-10%].
39. The conclusion would also be identical should a further segmentation of the markets according stars attributed be made between the hotels having less than 40 rooms and the hotels having more than 40 rooms. The aggregated market share of the parties would be [20-30%] for the 2* segment, [15-25%] for the 3* segment and [10-20%] for the 4* segment. The operation will therefore not create nor strengthen any dominant position of Accor on the Paris market and on any eventual sub-market for all hotels, except for the cheapest and the dearest.
40. If the market for hotel chains in Paris except for the cheapest (0*) and the dearest (5*) was considered, Accor would have [15-25%] market share in volume (rooms), CGHS [0-10%], with an aggregated market share of [20-30%]. Their main competitors would be the other hotel chains active on this market, like Envergure [0-10%], Bass Hotels & Resorts [0-10%], Best Western [0-10%], Le Meridien Forte [0-10%], Concorde [0-10%], Abotel (0-10%). Most of these competitors are major international hotel groups, the market shares of which on the Paris market should necessarily be put into perspective with their financial power as well as with their international setting. The position which would be held by Accor upon completion of the operation would not allow it to behave independently from its competitors and customers. If this market was further sub-divided according to the number of stars attributed to the hotels, the aggregated market shares would amount to [30-40%] for the 2* segment (overlap of [0-5%]), [20-30%] for the 3* segment (overlap of [0-10%]) and [10-20%] for the 4* segment (overlap of [0-5%]). Therefore it appears that within the hotel chains sector in Paris as well as on the sub-segmentation of this sector according to different star categories, the operation won't lead to the creation or strengthening of a dominant position and that the addition of market shares held by CGHS will not have any significant impact on any of these segments.
41. The conclusion would not be different if a market for hotel chains in Paris per star, including franchisees and with more than 40 rooms was considered. The aggregated market share would amount to [25-35%] for the 2* segment (overlap of [0-5%]), [20-30%] for the 3* segment (overlap of [0-10%]) and [10-20%] for the 4* segment (overlap of [0-5%]). The operation will therefore not create nor strengthen any dominant position of Accor on the Paris market and on any sub-market for chain hotels.

42. The French hotel market is very competitive and enjoys currently an intermediate position characterised by a strong demand with respect to tourism and business due to the attractiveness of Paris as an important congress and business centre. Since 1993, the demand in the French hotel sector was growing faster than the supply. The average net rate of utilisation was of 55,6 % in 1998 increasing from 53,5 % in 1997. Over the last five years, the French hotel market has considerably changed as a result of new entries of competitors as well as acquisitions of companies active in this sector (e.g. Marriot sets up on the French market the brand-name Courtyard in 1998 and Société du Louvre is taking over the chain Hotel&Compagnie in 1999). The French market is actively targeted by all hotel groups as well as by independent hotels.

VI. CONCLUSION

43. 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,

signed by

Karel VAN MIERT
Member of the Commission