

***Case No COMP/M.2510 -
CENDANT / GALILEO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/09/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.09.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.2510– Cendant/Galileo

Notification of 09.08.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 5 July 2001, the Commission received a notification of a proposed concentration whereby the undertaking Cendant Corporation (“Cendant”) acquires sole control of the undertaking Galileo International, Inc. (“Galileo”) by way of an exchange of shares. As a result of the operation Galileo will be a wholly owned subsidiary of Cendant. The notification was declared incomplete on 31.07.2001. On 09.08.2000, the parties completed their notification.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Cendant is a quoted company based in the USA and has operations in the following sectors (related to the travel industry): it operates a switch company (WizCom) that offers an electronic interface between hotels and rentals car providers, on the one hand, and GDSs² on the other, and provides travel services. In the latter sector, Cendant operates a hotel franchise business (without owning or operating hotels), provides timeshare exchange services (together with ancillary travel services such as airline and rental car reservations), acts as an agent for property owners who wish to let their properties for holidays, operates

¹ OJ L 395, 30.12.1989, p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17), hereinafter the “Merger Regulation”.

² Global Distribution System.

the rental car business Avis in the USA and has entered into a franchise agreement with Avis Europe.

4. Galileo is an international group, based in the USA, whose principal activity is the operation of an electronic GDS through its computer reservation system ("CRS"). By this, Galileo provides travel service providers such as airlines, hotels and rental car agencies access to travel agents, Internet sites as well as to self-booking corporations and makes available all kind of travel information, as well as booking reservations and ticket issuing capabilities. In addition, Galileo has limited activities with respect to online travel distribution services, operates a web portal for travel agencies to create their own websites, provides IT services to airlines and enterprise network services, and delivers virtual private network, and telecommunications services world-wide.

II: THE OPERATION

5. Pursuant to an agreement and plan of merger, Galaxy Acquisition Corp., a wholly owned subsidiary of Cendant, shall be merged with and into Galileo and Galileo shall be the surviving corporation in the merger and become a wholly-owned subsidiary of Cendant.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover³ of more than EUR 5 billion (for the year 2000: EUR 8.9 billion Cendant, EUR 1.7 billion Galileo). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (for the year 2000: Cendant EUR [...], Galileo [...]), 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.

IV. RELEVANT MARKETS

7. As far as the EEA is concerned, the markets vertically affected by the concentration will be the following:

GDS

8. Galileo's principal activity is the operation of GDS through its CRS. In previous cases⁴ the Commission has defined GDS as a tool provided to travel agencies in order to allow them to obtain information and make reservations related to airlines and other internationally operating travel services providers including car rental companies and hotels. These travel services providers supply the GDS with data on the products they provide.
9. The Commission has not considered it necessary in the past⁵ to decide whether the GDS (or CRS) relevant product markets should be narrowed down further, for instance, on the basis of the type of travel service concerned (air travel, rail travel, car rental, hotel accommodation, etc.). Neither it is necessary in the present case as Galileo's competitive

³ Turnover calculated in accordance with Article 5 (1) of the Merger Regulation (Council Regulation No 4064/89) and the Commission Notice the calculation of turnover (OJ No. C 66/25 of 2.3.1998).

⁴ See particularly case COMP/M. 2315 Accor/Forte/Hilton

⁵ Case IV/M. 1547 Lufthansa/Amadeus/Start

position in car rental bookings does not differ significantly from its position in overall bookings. For the sake of greater accuracy, in order to assess the impact of the transaction in the car rental market only Galileo's market shares as regards to car rental bookings will be taken into account.

10. As regards the means of access, the Commission has stated in the past⁶ that the GDS market includes the provision of GDS (or CRS) to virtual travel agencies over the Internet as well as to non-virtual travel agencies.
11. During the Commission's market investigation, the question was raised whether each GDS constitutes a separate market. It was pointed out that in general travel agencies use only one GDS to which they are tied and each GDS constitutes an essential facility to make reservations. However, most of the companies consulted did not share this opinion. They only indicated that despite the traditional dominance of one particular system in certain European countries and hence, its preferred use by local suppliers and the reluctance of users to change the system that they are accustomed to use there is substitutability as between systems. That is shown by the fact that Galileo's market shares have diminished during the last two years in most of the countries where it is dominant (-10% in Austria and Ireland, -12% in Italy, -8% in the Netherlands) as well as in other countries (-26% in Belgium, - 40% in Denmark, -12% in Germany).
12. However, in the present case it can be left open whether Galileo (as each of the other GDSs) can be considered as a separate market since the transaction would not lead to competitive concerns even if there were no substitutability as between different GDSs.
13. The relevant geographic market for major GDSs (Galileo, Amadeus, Sabre and Worldspan) has usually been regarded as national in character mainly because the conditions of sale vary from country to country⁷ and the fact that travel agencies operate in national markets. This has been confirmed in the market investigation carried out in the present case. However, taking into consideration the development of Internet-based travel service information and reservation systems that make information and data accessible across borders, the market may have a wider geographical scope.

Switch services

14. Cendant operates WizCom which is primarily a switch company that offers an electronic interface between hotel and rental car providers on the one hand and GDSs on the other hand, thus enabling these providers to supply data from their internal reservation systems without the need of maintaining a separate connection to each GDS. Conversely, when a travel agent enters a room or car reservation into a GDS, Wizcom converts the data into a format that can be read by the travel serviceprovider's reservation system. However, travel services providers can also sell directly to customers with or without travel agents or directly supply data to major GDS.
15. The parties as well as most of the companies consulted during the market investigation believe that the market for switch services is global.

⁶ Case COMP/M. 2197 Hilton/Accor/Forte/Travel Services JV.

⁷ See footnote 4

Hotel franchising

16. In previous cases the Commission has taken into account franchised hotels when calculating market shares of companies that operate in the hotel sector⁸.
17. With respect to the geographic market, the Commission in previous decisions has stated that the hotel sector displays both national and local (cities) characteristics⁹. As regards hotel franchising the market investigation in the present case has shown that it could have a supra-national dimension since hotel franchisors act in a global market. However, given Cendant's situation, it is not necessary to further define it because this operation will not lead to the creation or strengthening of a dominant position under any alternative market definition considered.

Package-type holidays

18. Cendant offers timeshare exchange services, which Cendant submits are part of a broader "package type" holiday market. The Commission has found that package holidays constitute a separate market in which the package will typically include accommodation, return travel and other related services¹⁰ and that this market is national in scope¹¹. This has been confirmed by the market investigation in the present case.

Rental Car Business

19. In case COMP/M.1810 VW/Europcar the Commission stated that, for the purpose of that case the market for short term rentals, replacement rentals and long term rentals was national in scope and did not take a position on possible further divisions of the product market.
20. In the present case Cendant is of the opinion that the product market for short term car rentals can be divided into leisure and corporate car rentals. As regards the geographical scope, in accordance with the Commission's decision in case COMP M./1810, Cendant submits that rental car markets are, at minimum, national in scope and particularly, with respect to corporate rentals, possibly Europe-wide.
21. The market investigation has confirmed that corporate short term car rental is a separate market from leisure car rental. Corporate car rentals mainly are the result of corporate agreements concluded between major car rental companies and large corporations. While leisure customers in general rent cars from a wide range of companies, corporate car rentals are usually booked on the basis of corporate agreements from a small group of large, international reliable rental companies that have the requisite airport network, reputation, and service levels.
22. Furthermore it has been pointed out that there is a specific market for corporate car rental bookings made via GDS as these bookings differ from bookings via non-GDS channels.

⁸ Case COMP/M. 2197 Hilton/Accor/Forte/Travel Services JV.

⁹ See case IV/M. 1596 Accor, Colony, Blackstone/Vivendi and Case COMP/M. 2197 Hilton/Accor/Forte/Travel Services JV

¹⁰ Case IV/M. 1502 Kuoni/First Choice

¹¹ case IV/M.1341 Westdeutsche Landesbank/Carlson/Thomas Cook.

GDSs allow travel agents and corporate business to book a complete package for the client in a one-stop shop. From a traveller's point of view, bookings via GDS channels are therefore much easier and less time-consuming. Since most of flight reservations are done through GDS, car and hotel bookings can be added to the existing flight reservation without any additional effort. However, in the present case the market investigation has shown that 65% to 70% of corporate car rental bookings in Europe are not made via GDS. The Commission has also investigated to which extent corporate car rental bookings at airports (which are supposed to be made in combination with air travel bookings) are made via GDS. The result is that for corporate car rental bookings at airports approximately the same ratio of bookings via GDS/via other means applies as to the overall corporate car rental bookings. On the basis of these findings the Commission has arrived to the conclusion that there are strong indications that corporate car rental bookings via GDS do not constitute a separate product market.

V. COMPETITIVE ASSESSMENT

23. Concerning the GDS market, Galileo is presently dominant in the following countries: Austria ([50-60%]), Ireland ([70-80%]), Italy ([50-60%]), the Netherlands ([65-75%]), Portugal ([90-100%]), and the UK ([55-65%]). According to the market investigation carried out by the Commission GDSs tend to be dominant in the markets where their airline owners (or ex-owners) are the flag carriers. This tendency will not change with the merger and, in general, all companies operating in the travel sector (GDS, travel agencies, car rental companies etc.) consulted by the Commission, did not show any concern in relation to the possibility for Galileo to strengthen a dominant position in any of these national markets. Moreover it has to be borne in mind that Galileo's position has deteriorated during the last two years (see point 13 above).
24. The conclusion does not change if Galileo is considered as constituting a separate market. According to this market definition Galileo would be dominant by definition in each country. However, the merger does not change this assessment and does not strengthen the dominant position of Galileo in any of these markets.
25. As regards downstream markets, in relation to switch services, given the possibility for companies to directly supply data to major GDS, the operation does not raise any risk of foreclosure.
26. However, by taking over Galileo Cendant could favour and promote the companies belonging to its group which provide travel services (Avis, Avis Europe and its franchised hotels). The means by which Cendant could favour the companies belonging to its group are the following:
 - a) forcing competitors to leave the Galileo reservation system and loose it as distribution channel;
 - b) using Galileo in a non-neutral way in order to enhance Cendant's companies or raising the bookings costs for its competitors; or
 - c) obtain confidential information from Galileo in order to favour the companies belonging to its group
27. As regards hotel accommodation and package type holidays, given Cendant's market shares in these sectors at national level (less than [5%] in the UK) and local level (always

less than [20%] in UK cities) as well as at EEA level (negligible), the operation will not lead to the creation or strengthening of a dominant position.

28. The question arises whether there is a risk of creation of a dominant position within the EEA in the corporate car rental market for Avis Europe. Avis Europe is a franchisee of Avis America (controlled by Cendant). They have a common commercial policy and submit joint bids to corporate customers. Cendant's financial interest in Avis Europe can be summarised as follows:

- A stream of revenue as a reimbursement for Cendant's provision of booking-related services;
- Avis Europe pays a referral fee to Avis whenever a US resident rents a car in certain EU countries. According to the parties, approximately 27% of all bookings that triggered such a referral fee were made through GDS.

29. The Commission has analysed all the consequences within the EEA deriving from a possible foreclosure in favour of Avis Europe as a result of a bias in the Galileo system, the use of confidential information or attempts to force competitors to leave the system and has arrived to the conclusion that the operation will not lead to the creation or strengthening of a dominant position.

30. The biasing of the Galileo system or the use of other discriminative means in order to favour Avis Europe would be counterbalanced by alternative means of bookings. According to the Commission's market investigation there is no reason to doubt that corporate customers will be able to choose a car rental company when they make a reservation via a travel agency. 30% - 35% of the corporate car rental customers using Galileo are bound by exclusive or preferential contracts with determined car rental companies. They will insist on booking a car rental with a specific car rental firm, independent of the way the booking is made. Furthermore, although 80% of car rental bookings made via travel agencies go through a GDS, the fact that 20% of the times this is not the case proves that, even if Avis was the only car rental company available through Galileo, travel agencies would have the possibility to book via other means. Moreover, an increasing number of travel agencies are using software products that can override any bias in the GDS system in favour of a specific vendor, and some travel agencies, in particular those focusing on corporate travel, have more than one GDS in place. In addition, the market investigation has not provided evidence that there is any group of corporate car rental customers that are "locked in" to booking through travel agencies or through Galileo. Only 30%-35% of corporate bookings are channelled via GDSs which suggests that those potential customers "locked in" to Galileo or to travel agencies could readily book via the alternative means used for the other 65%-70% of corporate car rental bookings. In the market investigation the Commission has not found evidence that the ratio is different for airport bookings for which at first glance – due to the combination of bookings of airline tickets and rental cars - a higher share of bookings via GDSs would be expected.

31. Accordingly, other reservation tools (other GDSs, call-centres of car rental companies to be contacted by toll-free telephone numbers, Internet, the outlets of the car rental company, etc.) are credible alternatives to bookings via Galileo. Therefore, corporate customers could in any case switch to other means.

32. However, even if it were assumed that most of the corporate car rental reservations that are currently booked via Galileo with Avis Europe's competitors would be shifted to Avis

Europe this car rental firm would not become dominant under any alternative market definition considered. The Commission has analysed Avis Europe's position for the case the geographical scope of the corporate car rental market is considered as nation-wide a) taking into account the place where the car is picked up and b) taking into account the place where the booking is made.

33. The scenario envisaged above assumes that approximately 65% of those corporate car rental bookings which are currently booked via Galileo with Avis' competitors were to be shifted to Avis. The remaining 30% - 35% of the corporate car rental bookings made with Avis' competitors are based on exclusive or preferential agreements. It is to be assumed that bookings under those contracts will not be shifted to Avis since even if the booking takes place under a preferential (and not an exclusive) agreement Avis (as non-preferred car rental company) will only be chosen in case there is no car available from the preferred car rental company. Bearing in mind that only 30% to 35% of corporate car rental bookings are made via GDS, and the fact that Galileo's share of total corporate car rental bookings in Europe is [less than 10%], the following conclusions have been reached:
34. As regards Avis position at national level taking into account the place where the car is picked up, Avis Europe's market shares for corporate car rental bookings would not increase substantially and would not in any case attain the dominance threshold. The highest market share would be attained in the UK with less than 40% following an increase of market share of [less than 10%]. Bearing in mind that other competitors, especially Hertz and Europcar fiercely compete with Avis for corporate car rentals the risk of creation of a dominant position can also be excluded.
35. Given Galileo's dominance in certain countries and its possibilities of foreclosure, the Commission in the present case has also considered the situation if the market were to be defined on the basis of the place where the booking is made. In this case, Avis' market shares as result of a 65% shift to Avis from bookings through Galileo of other car rental companies would be in any event below [35%] in all the countries where Galileo is dominant.
36. The conclusions remain the same if Galileo was considered to constitute a separate market, in which it would be dominant by nature. In this case the worst case scenario – with the parameters as described above – has to be applied to all EEA countries. However, as the volume of bookings made via Galileo is comparatively low in those countries where Galileo is not dominant in terms of a wider GDS market Avis Europe's car rental bookings would not increase substantially and would in no country attain the dominance threshold. The highest market share with respect to the pick up of the car in a country not already mentioned would be attained in Denmark with approximately [35-45%], following a [less than 10%] increase. With regard to a market defined on the basis of the place where the booking is made a non-negligible increase of market share would only be attained in Denmark. In any event, Avis' market share would be below [40%].
37. The Commission has also considered whether Avis could become dominant by the use of confidential information provided to Galileo by Avis' competitors. According to the Commission's investigation rental rates which are not fixed in advance in corporate contracts will only be known to Galileo (and therefore can only be then passed on to Avis) at the time when the rental booking is already made. At this time, the information will not give Avis the opportunity to use it as a means to achieve a dominant position. Prices fixed in corporate agreements could become known to Avis during the life of the contract. However, as the rental car companies cannot change the prices during the life of the

contract Avis will not be in a position to exploit this information. At the time of re-negotiation of the contract the competitors are free to change the prices in comparison to those formerly fixed in the corporate contract. Thus, the information on pricing in the past may give Avis some indications about future behaviour, but cannot be considered as providing Avis with the means to achieve a dominant position in the market for corporate car rentals.

CONCLUSION

38. 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.

For the Commission,

Signed by Franz Fischler,
Member of the Commission