

***Case No COMP/M.3858 -  
LEHMAN BROTHERS /  
SCG / STARWOOD / LE  
MERIDIEN***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 20/07/2005

***In electronic form on the EUR-Lex website under document  
number 32005M3858***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.07.2005

SG-Greffe(2005) D/203753

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3858 - LEHMAN BROTHERS/SCG/STARWOOD/LE MERIDIEN**  
**Notification of 15.06.2005 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 15.06.2005 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Lehman Brothers Inc. ("Lehman Brothers", US), Starwood Capital Group Global, L.L.C. ("SCG", US) and Starwood Hotels & Resorts Worldwide Inc. ("Starwood", US) acquire joint control over 23 hotels owned and leased by Le Meridien ("Le Meridien target hotels") by way of purchase of shares and management contracts.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of Council Regulation (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

---

<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## I. THE PARTIES

3. Lehman Brothers is an investment company active in equity and fixed income sales, trading and research, private investment management, investment banking, investment in real estate and asset management.
4. SCG is a privately held global investment management firm, active in real estate investment.
5. Starwood is a worldwide hotel and leisure operator. Its brands include Sheraton, Westin, W, Four Points by Sheraton, St. Regis and the Luxury Collection.
6. Le Meridien target hotels consist in 23 owned and leased Le Meridien hotels located mainly in the EU.

## II. THE OPERATION

7. Following the completion of the proposed operation, Le Meridien owned and leased hotel portfolio (comprised of 35 hotels worldwide) will be sold to a Newco, jointly controlled by Lehman Brothers and SCG. Pursuant to a signed Term Sheet, both Lehman Brothers and SCG will have 50% of the shareholding in Newco, each will appoint [half of the] members of the board of directors of the Newco which will adopt all the decisions by simple majority.
8. Conditional to this transaction, Starwood shall enter into management agreements with each hotel owned and leased by Newco. These hotels are divided into three categories, Tier I, Tier II and Tier III. Only the Tier II and Tier III hotels (Le Meridien target hotels, comprised of 23 hotels mostly located in the EU) are part to the notified operation.<sup>2</sup>
9. Although Starwood will not have ownership rights over the Le Meridien target hotels, given the characteristics of the management contracts to be concluded between Newco and Starwood, it can be concluded that Le Meridien target hotels will be jointly controlled by Newco and Starwood. *First*, it is a condition precedent to the acquisition of Le Meridien target hotels by Newco that Starwood enters into management contracts for all of these hotels. *Second*, Starwood has a veto right over the operating plans (budget) of each of Le Meridien target hotels. Starwood will prepare for each of Le Meridien target hotels, annual operating plans which will be submitted to Newco. Both companies' agreement is necessary for the approval of the operating plan and in case a final agreement is not reached, the dispute will be submitted to a third-party arbitrator. *Third*, the duration of the management agreements is [10-15] years<sup>3</sup>[...]<sup>4</sup>[...]. *Fourth*, Starwood will be the exclusive operator on behalf of the Newco, of Le

---

<sup>2</sup> Tier I hotels will also be managed by Starwood but only for a duration of 3 years [or less] and on the basis of the characteristics of these management contracts, Tier I hotels will not be jointly controlled by Newco and Starwood. The acquisition of Tier I hotels by Newco does not have Community dimension.

<sup>3</sup> [...]

<sup>4</sup> [...]

Meridien target hotels which will imply establishing the room rates, managing every hotel's human resources and providing managed hotel centralised services. *Last*, in case of sale of Le Meridien assets, Starwood has to give its reasonable opinion, *inter alia*, on the buyer's financial resources and good repute.

10. Additionally, it should also be noted that both Lehman Brothers and SCG are property investors without know-how of the hotel sector. Neither party manages the day-to-day operations of any hotel that it owns.
11. Last, it is worth noting that pursuant to separate transactions (not part to this concentration), Starwood will acquire the "Le Meridien" brand (the intellectual property rights of Le Meridien business), the third party management and franchise business of Le Meridien, third party centralised services contracts and related IT hardware and software, records and certain employees and Lehman Brothers will acquire a Le Meridien hotel in Sardinia (Italy). However, these two operations do not have Community dimension.

### **III. CONCENTRATION**

12. The operation concerns the acquisition by Newco (jointly controlled by Lehman Brothers and SCG) and Starwood of joint control over the Le Meridien target hotels. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

### **IV. COMMUNITY DIMENSION**

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>5</sup>. Each of Lehman Brothers, Starwood and Le Meridien target hotels has a Community-wide turnover in excess of EUR 250 million, 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.

### **V. COMPETITIVE ASSESSMENT**

14. The proposed transaction involves the market for hotel accommodation in the EU. Lehman Brothers and SCG both own hotels located in the UK (75 and 11 hotels respectively). They do not have further activities in the hotel accommodation segment in the EU.
15. Starwood's EU portfolio (owned or managed hotels) consists of 77 hotels in 16 Member States. In the EU, the Le Meridien target hotels are located in Austria,

---

<sup>5</sup> 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).

Belgium, Denmark, France, Germany, Italy, Malta, the Netherlands, Poland, Portugal, Spain and the UK.

*Product market definition*

16. The notifying parties submit that within the hotel accommodation market one could consider the competitive effects of a concentration following two different approaches. *First*, segmentation of the market by price and/or comfort level based on the grading or stars awarded to the particular hotel. The parties state that a chain of substitution may exist between the different categories of hotels (e.g. 2, 3, 4 star). *Second*, segmentation by ownership, i.e. whether they formed a network of hotels (chain) or were independent. The proposal of the parties is in line with previous Commission decisions.<sup>6</sup>
17. In the present case, it is not necessary to further delineate the relevant product markets because even in the narrowest product market definition, the parties' combined market share is below 20%.

*Geographic market definition*

18. The notifying parties submit that following the Commission decisions, the market for hotel accommodation may be both national and local. National because the structure of supply may vary from one market to another since the hotel industry is linked to national economic trends. Local because competition exists at a local level between all types of hotels (chains and independents) since consumer choice of hotel will be heavily determined by location.
19. The parties' approach is in line with past Commission practice<sup>7</sup> where it was concluded that the hotel industry may be assessed from both (i) a national approach for graded and chain hotel services, given that competition conditions are homogeneous at a national level (particularly for chain hotel services); and (ii) a local approach for graded hotel services since the primary criterion for the choice of a hotel by a client is its location.
20. In the present case, it is not necessary to further delineate the relevant geographic market because, in both alternative geographic market definitions considered, the parties' combined market share is below 20%.

*Compatibility with the Common market*

21. In the EU, the parties have overlapping activities in Austria, Belgium, France, Germany, Italy, Malta, the Netherlands, Poland, Portugal, Spain and the UK. However, in all of these countries, the parties' combined market share in the overall hotel market is below 7%. Moreover, the parties' combined market share in the segment for all chain hotels is below 15% in these countries. In the segment for graded hotels, the

---

<sup>6</sup> See Cases No IV/M. 1133 *Bass Plc/Saison Holdings BV*, No. COMP/M.3373 *Accor/Colony/Desseigne Carrière JV*, No IV/M. 126 *Accor/Wagon-Lits*, and No COMP/M. 1596 *Accor/Blackstone/Colony/Vivendi*.

<sup>7</sup> See Cases No IV/M. 126 *Accor/Wagons-Lits* and No COMP/M.2197 *Hilton/Accor/Forte/Travel Services JV*

parties' activities only overlap in the upscale sub-segment (4-star or 5-star). However, also in this segment the parties' combined market share is below 15% in the above-mentioned EU countries.

22. With regard to local markets, in the overall hotel segment, the parties' combined market share is below 15% in those locations with overlapping activities (i.e. Vienna, Brussels, Paris, Nice, Cologne, Frankfurt, Munich, Nuremberg, Milan, Rome, St. Julians, Amsterdam, Warsaw, Algarve Region, Lisbon, Porto and London). In the upscale hotels sub-segment, the parties' combined market shares only exceed 15% in the following locations: Frankfurt [15-20%], Munich [15-20%] and Warsaw [15-20%]. In Porto, the parties' combined market share is [15-20%] if one includes in the market definition hotels owned by the parties but franchised to third parties (therefore, not operated by the parties)<sup>8</sup>.
23. Given the parties' low combined market shares and the presence of strong competitors (e.g. Accor, Hilton, Marriott) the proposed transaction will not raise competition concerns.

*Co-operative effects*

24. As regards potential co-ordination effects of the transaction, the parties have further submitted market share information on locations where Starwood, Lehman Brothers and/or SCG have overlapping hotel interests and Le Meridien target hotels are not present (as noted above, SCG and Lehman Brothers do not manage any hotel). These locations are Edinburgh, Leeds, Norwich and Portsmouth (all in the UK). However, in none of these cities, Starwood, Lehman Brothers and/or SCG combined market shares in any possible segmentation of the market (overall or upscale segment) exceeds 15%. In these circumstances, the concentration will not lead to co-ordination between the Lehman Brothers, SCG and Starwood.

**VI. CONCLUSION**

25. 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 (EC) No 139/2004.

For the Commission  
signed  
Neelie KROES  
Member of the Commission

---

<sup>8</sup> Starwood has one hotel in Porto whereas Le Meridien hotel is franchised and operated by a third party.