

***Case No COMP/M.4202 -
CHARTERHOUSE /
ELIOR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/05/2006

***In electronic form on the EUR-Lex website under document
number 32006M4202***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.05.2006

SG-Greffe(2006) D/202674

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4202 – Charterhouse / Elior
Notification of 7 April 2006 pursuant to Article 4 of Council Regulation No 139/2004¹**

I. INTRODUCTION

1. The Commission received on 7 April 2006 a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the undertakings Charterhouse Capital Limited (‘Charterhouse’, United Kingdom) and Holding Bercy Investissement SAS (‘HBI’, France) controlled by Robert Zolade, a French citizen, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over Elior SCA (‘Elior’, France) by way of public bid announced on 27 March 2006.

II. THE PARTIES

2. **Charterhouse** is a UK-based parent company of a group which provides equity capital and fund management services. Charterhouse controls a number of companies in a broad range of businesses in different sectors. Charterhouse controls *inter alia* **Autobar**, a European operator in vending services and a manufacturer of disposable cups and other food service products and packaging. Autobar also operates as a wholesale distributor and

¹ OJ L 24, 29.01.04, p.1

logistics provider of non-food disposables to professional catering operators in several European countries.

3. **HBI** is the holding company controlling Elior.
4. **Elior** is a *société en commandite par actions* ("SCA") listed on Eurolist by Euronext Paris S.A. Elior is controlled by Robert Zolade, a French citizen, who holds (through HBI) approximately 21 per cent of the *commanditaire* shares of Elior. Elior is mainly active in the food services industry and in particular in contract catering and concession catering. Elior also operates, to a lesser extent, facility management, travel retail and vending services. Elior operates in several European countries, as well as in Latin America and most recently in the United States.

III. THE OPERATION

5. On 27 March 2006, HBI filed a tender offer for all the shares and securities of Elior that it does not currently hold (the "Offer"). This Offer will be financed with funds made available by Charterhouse, with funds made available by Chequers Capital Partners ("Chequers") and with bank debt. The Offer is conditional upon HBI holding at least two-thirds of Elior's voting rights on the closing date of the Offer. In the event that HBI would hold at least 95% of the voting rights in Elior, it would launch a public buyout offer followed by a compulsory squeeze-out and Elior would be delisted from Eurolist. HBI will be transferred into a SCA.
6. Charterhouse and Chequers will take a majority shareholding in HBI. Charterhouse, Chequers and Robert Zolade will enter into a Securityholders Agreement whereby Charterhouse and Robert Zolade will jointly control Elior. Chequers will not have the ability to exercise decisive influence on the commercial behaviour of Elior, and thus does not acquire joint control under Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR [...] billion for Charterhouse in 2004, EUR 2.8 billion for Elior in 2005). Both Charterhouse and Elior have a Community-wide turnover in excess of EUR 250 million (Charterhouse EUR [...] billion in 2004, Elior EUR 2.7 billion in 2005), but they do not achieve more than two-third of their aggregated Community-wide turnover within one and the same Member State. Therefore, the notified operation has a Community dimension.

V. COMPETITIVE ASSESSMENT

1. Relevant product markets

8. The notifying parties have identified the markets for contract foodservices, concession foodservices and vending services as the affected markets by the proposed transaction.

a) *Contract foodservices and concession foodservices*

9. The parties define the market for *contract foodservices* as the provision of foodservices outside the home, performed by third parties, typically on the premises of public or private sector clients and involving the supply of food and drink to customers for whom that service is not the primary reason for their presence on the premises i.e. principally in the business, industry, health (hospitals, nursing homes), education (schools, universities) and prison sectors. The client pays the contract caterer a fee for the provision of the catering service and the food is often sold to consumers at subsidised prices.
10. *Concession foodservices* are defined as the outsourcing of foodservice requirements in the transport (airports, railway stations), leisure and sport (at leisure centres, cinemas, theme parks etc.) or occasional (for race meetings, conferences or other individual events), and retail sectors (concessions in department stores, shopping malls etc). The contractor pays the client a rent for the right to trade at the premises; the contractor's income is sourced entirely from sales made to the public.
11. The notifying parties consider that the markets for contract foodservices and concession foodservices constitute different product markets. This is in line with previous Commission decisions².
12. According to the parties, no recent developments have occurred which has changed the competitive conditions in the contract foodservice and concession foodservice sector with relevance for the product market definition. The market investigation has also endorsed the parties' view that contract foodservices and concession foodservices could be considered as two separate relevant product markets. However, for the purpose of the current transaction the exact product definition can be left open as the transaction would not raise competition concerns.

b) *Vending services*

13. According to the parties, the so-called vending services market (also known as automatic retailing) is the sale of products and services at an unattended point of sale through a machine operated by introducing coins or other means of payment. This service would include the supply and installation of vending machines, the cleaning and maintenance of such machines, the management and supply or procurement of products/ingredients to stock the machines and the collection of cash takings or other means of payment. Vending machines can be used to provide a large range of products, such as hot drinks, cold drinks, food/snacks, tobacco, transportation tickets, flowers, etc.
14. Full vending services are offered by companies which specialise in such services (like Autobar) and ancillary vending services are offered by foodservice providers as an extension of their core services (like Elixir).

² Case No COMP/M.2977 - Compass/Onama spA, Commission decision of 15/11/2002; Case No COMP/M.2639 - Compass/Restorama/RailGourmet/GourmetNova, Commission decision of 26/02/2002; Case No COMP/M.1972 - Granada/Compass, Commission decision of 29/06/2000.

15. In *Compass/Selecta*³, the Commission left open whether the market for vending services should be further segmented between full vending services and ancillary vending services. The parties consider that this could also be the case in the current transaction since irrespective of the definition adopted the assessment of this transaction would not be affected.
16. From the market investigation it appears that the large majority of competitors and customers agree that full vending services and ancillary vending services constitute one product market. However, the exact product market definition can in this respect be left open as the transaction, even with the narrowest market definition, would not raise competition concerns.

2. Relevant geographic market

a) *Contract foodservices and concession foodservices*

17. In previous decisions⁴, the Commission has taken the view that the geographical dimension of both the contract foodservice and concession foodservice markets could be national.
18. In the present case, the notifying parties consider that the market is at least national, but that the exact definition of the geographic market can be left open since the transaction would not raise competition concerns irrespective of definition.
19. The market investigation has also shown that a large majority of competitors and customers sees the market for contract foodservices and the market for concession foodservices as national. However, some competitors and customers argued that the geographical market could be wider than national due to the fact that concession food services are very similar over Europe. Furthermore, call for tenders attract responses from abroad, which could indicate that the geographical market is wider than national.
20. However, the exact definition of the geographical market can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

b) *Vending services*

21. In its *Compass/Selecta* decision⁵ the Commission considered that the relevant geographical market for vending services is national due to differences in legislation, culture and security differences among different EU countries and the need for staff available at proximity.

³ Case No COMP/M. 2373 - *Compass/Selecta*, Commission decision of 8/05/2001.

⁴ Case No COMP/M.126 - *Accor/Wagons-Lits*, Commission decision of 28/04/1992, para. 16; Case No COMP/M.1972 - *Granada/Compass*, Commission decision of 29/06/2000, para. 18.

⁵ Case No COMP/M. 2373 - *Compass/Selecta*, Commission decision of 8/05/2001.

22. In the present case, the notifying parties consider that the geographical market for vending services remains national in scope.
23. From the market investigation it appears that competitors and customers agree that the geographical market for vending services is national in scope. However, the exact definition of the geographical market can in this respect be left open as the transaction, even with the narrowest definition of the geographical market, does not raise any competition concerns.

3. COMPETITION ASSESSMENT

i. Horizontal overlap

24. The notifying parties consider that the market for vending services in the Netherlands is the only horizontally affected market.
25. Autobar, controlled by Charterhouse, and Elior are both active in this market. Autobar is the main player in this market and it has a market share of almost [35-45]% (in terms of both volume and value). Elior holds less than [0-5]% (in volume and value) of the market for vending services in the Netherlands.
26. Given the fact that other strong competitors like Douwe Egberts (market share of around [20-30]% in value), Maas International (market share of around [10-20]% in value) and Selecta (market share of around [5-10]% in value) are present in this market, the parties argue that Autobar and Elior will continue to be faced with fierce competition post merger. Taking also into account the fact that the transaction will only lead to a very small increment of market shares, they argue that the horizontal overlap would not give rise to competition problems in the market for vending services in the Netherlands.
27. The market investigation has confirmed that customers have sufficient possibilities for sourcing their vending services from other strong competitors such as Maas, Douwe Egberts and Selecta. The market investigation also showed that there are no barriers to enter the market for vending services in the Netherlands; several companies actually entered the market during the last five years (like Snack Moments and Arrom Automaten). None of the companies participating in the market investigation expresses any concern that the transaction would have an impact on the market for vending services in the Netherlands.
28. In view of the foregoing, it can be concluded that the proposed transaction will not result in a significant impediment to effective competition in the market for vending services in the Netherlands.

ii. Vertical relationships

29. Besides its vending services activities Autobar operates as a wholesale distributor and logistics provider of non-food disposables to professional catering operators (hotels, restaurants, caterers) in the United Kingdom, France, Spain, The Netherlands and Belgium. This gives rise to vertical relationships with the downstream contract foodservice and concession foodservice activities of Elior.

30. Given the market share of Elior in the different countries, the notifying parties consider that the vertically affected markets are the following:
 - Contract foodservices in France (Elior holds a market share of around [20-30]%),
 - Concession foodservices in France (Elior holds a market share of around [30-40]%),
 - Concession foodservices in Spain (Elior holds a market share of around [55-65]%).
31. In these markets, Autobar has a market share for the small catering equipment and non-food consumables to catering professionals of below 5% (France [0-5]% and Spain [0-5]%)
32. The parties argue that the vertical relationship between the activities of Elior and the upstream limited activities of Autobar would not raise any competition problems in either France or Spain. First, non-food items such as small catering equipment and non-food consumables represent only a small fraction of caterers' total supplies, less than [5-10]% of their total purchases. Second, Elior's competitors will continue post-merger to have several alternative sources of supply for non-food items. Autobar is a small player in a fragmented market. In any event, the contract and concession catering sector represent only a small fraction of the clients in the disposables sector.
33. The market investigation also showed that the cost of disposables amounts between 0.5% and 2% of the turnover within the different product markets for catering services in France and Spain i.e. this limited cost level will not have a significant influence on the price setting of contract and concession foodservices. Furthermore, none of the participants in the market investigation expected that the concentration would have an impact on their company or on the market.
34. As far as the market position of Elior is concerned, Elior will continue to face competition from a number of competitors. On the contract foodservice market in France, a market in which Elior has an estimated market share of around [20-30]%, Elior will continue to compete with Sodexo and Compass who have estimated market shares of [30-40]% and [15-25]% respectively. On the concession foodservice market in France, with an estimated market share of [30-40]%, Elior will also continue to face competition from a number of significant market players, namely Autogrill with [10-20]% of the market and Compass with an estimated market share just above [10-20]%. Finally, in the Spanish concession foodservice market, where Elior holds a market share of around [55-65]%, it faces competition from Autogrill (market share of around [10-20]%) and from Compass (market share of [10-20]%).
35. Therefore, it can be concluded that the proposed transaction does not create foreclosure effects, as a result of which effective competition would be significantly impeded in the market for contract foodservices in France, concession foodservices in France and concession foodservices in Spain.

VI. CONCLUSION

36. 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 by Janez Potočnik)
Member of the Commission