

***Case No IV/M.1124 -
MAERSK AIR / LFV
HOLDINGS***

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1124 - Maersk Air/LFV Holding

Notification of 03.06.98 pursuant to Article 4 of Council Regulation No 4064/89

1. On 03.06.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertakings LFV Holding AB ("LFV Holding") and Maersk Air A/S ("Maersk Air"), belonging to the group A.P. Møller, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Novia Holding A/S ("Novia") which will provide airport groundhandling services.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. Maersk Air is Denmark's leading independent airline company which has developed into a medium-sized, versatile carrier engaged in domestic scheduled airline services in Denmark and the UK. Maersk Air is also engaged in international scheduled airline services from Denmark, the UK and Estonia. Furthermore, Maersk Air operates international non-scheduled (charter) airline services as well as airline-related services, such as aircraft groundhandling at the Kastrup airport (near Copenhagen) through its subsidiary Copenhagen Air Services A/S ("CAS"). Thus, CAS is the operating company responsible for

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

groundhandling in the Maersk Air group. Maersk Air is part of the Danish A.P. Møller Group.

4. LfV Holding is a Swedish limited liability company and is the holding company for the LfV group of companies. This group of companies forms a "sub-group" to the Swedish Civil Aviation Administration ("The Swedish CAA") which is controlled by the Swedish State. One of LfV Holding's main activities is to provide groundhandling services at the Swedish airports, Arlanda (situated in the Stockholm area) and Landvetter (in the Gothenburg area), through its wholly-owned subsidiary LfV Handling AB ("LfV Handling"). Thus, LfV Handling is the operating company responsible for groundhandling services in the Swedish CAA group.
5. Novia is a newly-created, wholly-owned subsidiary of Maersk Air and LfV Holding which will act as a holding company for the existing groundhandling services of LfV Holding and Maersk Air (*i.e.* LfV Handling and CAS).
6. Novia is a shelf company purchased by Maersk Air for the purpose of the joint venture. Through the Joint Venture Agreement, the parties agree that 50% of the shares in Novia will be transferred to LfV Holding which will then transfer the entire issued share capital of LfV Handling to Novia. Similarly, Maersk Air will transfer its entire holding in CAS to Novia.

II. THE CONCENTRATION

A. Joint control/Full function joint venture

7. Both Maersk Air and LfV Holding will each hold 50% of the shares in Novia. According to the Articles of Association for Novia, the board of directors will be composed of 6 to 10 members appointed by the general meeting. Initially, the board will be formed by each shareholder appointing 3 members. The chairman and the deputy chairman will be appointed jointly by the shareholders alternately.
8. Novia will be managed and administered by a managing director who will be appointed by the board and who will also act in such capacity for CAS and LfV Handling, under the supervision of the board of directors. The managing director will be responsible for the day-to-day management, save for important business and substantial day-to-day matters, which must be decided upon by the board of directors. Decisions of the board will generally require unanimity.
9. Therefore, Novia will be jointly controlled by Maersk Air and LfV Holding.
10. Novia will act as the holding company for the parties' groundhandling operating companies, LfV Handling and CAS. Its activities will involve marketing and customer services, whereas LfV Handling and CAS will continue to offer their full range of groundhandling services but under the Novia logo and subject to the joint-control of the notifying parties. The existing groundhandling agreements which LfV Handling and CAS have with their respective customers will remain with the relevant parties with whom the agreements were concluded. However, all new agreements will be concluded under the name "Novia".

11. Novia will have approximately 1,500 employees including its own staff and the staff of LFV Handling and CAS.
12. Thus, the Novia group will perform all of the functions normally carried out by undertakings operating on the ground handling market.
13. The notified transaction is thus a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

14. LFV Holding's shares are held by the Swedish CAA. Ordinance SFS 1988:78 of the Swedish government states that the CAA and those companies in which the Swedish State directly or indirectly has a decisive influence through the CAA, together form a State enterprise group called the Swedish CAA group.
15. Swedish CAA group consists of the wholly-state owned holding company, LFV Holding, and the limited liability companies, LFV Handling, LFV AirportCenter AB and Swedavia AB, which are wholly-owned by LFV Holding. Thus, the combined turnover for the Swedish CAA group should be included for purposes of calculating the turnover under Article 5 of the EC Merger Regulation, *i.e.* LFV Holding should be considered as part of the CAA group.²
16. A.P. Møller and the Swedish CAA have a combined aggregate world-wide turnover in excess of ECU 5,000 million (A.P. Møller: ECU [...] million; the Swedish CAA: ECU 506 million). The Community-wide turnover of each of A.P. Møller and the Swedish CAA exceeds ECU 250 million (A.P. Møller: ECU [...] million; the Swedish CAA: ECU 506 million). The Swedish CAA achieves more than two-thirds of its Community-wide turnover in Sweden. However, the A.P. Møller group does not achieve more than two-thirds of its aggregate Community-wide turnover within Sweden. The concentration therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

17. The general economic sector involved in the agreement being notified is the provision of groundhandling services.⁵

² This in line with point 44 of the Commission's Notice on calculation of turnover where it is stated that where a Member State's interests are grouped together in holding companies, or are managed together, or where for other reasons it is clear that State-owned companies form part of an "economic unit with an independent power of decision", then the turnover of those businesses should be considered part of the undertaking concerned's group for the purposes of Article 5.

³ Deleted for publication.

⁴ Deleted for publication.

⁵ See case No. IV/M.786 - Birmingham International Airport; and case No. IV/M.1035 - Hochtief/Aer Rianta/Düsseldorf Airport.

18. It could be maintained that groundhandling services are divided into several distinct markets. The IATA's Standard Ground Handling Agreement (the "IATA Agreement"), which both LFV HANDLING and CAS use when concluding agreements with airlines, differentiates between fourteen main groups of groundhandling services, which are in turn divided into sub-groups. The IATA Agreement requires that airlines be able to contract for individual groundhandling services. However, general practice among airlines is to contract for groundhandling services as an overall package, whenever possible.
19. A corresponding delineation of the market is also found in the EC Groundhandling Directive. In broad terms, groundhandling covers the supply of a variety of airport services which are essential to carriers for performing their air transport activities. These services include baggage-handling (e.g., loading and unloading of aircraft), cargo and mail handling, and aircraft servicing such as maintenance, cleaning, portable water, toilet service, de-icing and catering.
20. A general distinction could also be made between "air-side services" and "land-side services", depending on the nature of the service supplied.
 - (i) Air-side services are furnished between the airport terminal and the aircraft and include ramp handling (e.g., loading and unloading of the aircraft), baggage handling, fuel and oil handling, as well as freight and mail handling.
 - (ii) Land-side services are carried out mainly within the airport terminal and include passenger handling, ground administration and supervision, flight operations and crew administration.
21. For the purpose of the present assessment, however, the precise scope of the relevant product market for groundhandling services can be left open since, in any event, the concentration will not lead to the creation or strengthening of a dominant position which could significantly impede effective competition in the Community or in the EEA or any substantial part of it.

B. Relevant geographic market

22. LFV Handling operates at the Arlanda (near Stockholm) and Landvetter (near Gothenburg) airports. CAS operates at the Kastrup airport (near Copenhagen).
23. The relevant geographic market for groundhandling services is normally restricted to the area of the airport, given that, from the customers' point of view (*i.e.* the airlines), a particular airport is not normally interchangeable with other airports. On the other hand, according to the parties arguments can be forwarded for a wider geographic market which encompasses airports within a larger area comprising airports that could feasibly target cost-conscious airlines who might consider switching to another airport in a specific area if it offered lower prices for groundhandling services. In the present case, however, the parties submit that the relevant geographic market might be limited to the airports themselves at Copenhagen and Gothenburg.
24. However, with regard to the geographic market in Stockholm, the parties submit that there are other airports in the vicinity where the conditions of competition are not appreciably different and they should therefore be considered as part of the

same geographic market. For example, Skavsta, Bromma, Västerås and Norrköping airports would appear to be substitutable with the Arlanda airport, at least to a certain extent, in particular for charter traffic.

25. However, the exact geographic market definition can be left open since, in any of the alternative geographic markets, the concentration will not lead to the creation or strengthening of a dominant position which could significantly impede effective competition in the Community or in the EEA or any substantial part of it.

C. Assessment

26. Following the joint venture agreement, Novia's shareholders wish to establish a combined Ground Handling business in the airports of Arlanda, Landvetter, Kastrup and Gardemoen (Oslo).
27. In relation with Gardemoen (Oslo), [...] ⁶ that operator will [...] ⁷. Therefore, no further assessment is needed in relation with the impact of the present operation at Oslo airport.
28. With regard to the airports of Arlanda, Landvetter and Kastrup, the market leader is, by far, SAS (the Scandinavian airline). Also, Servisair provides groundhandling services at Arlanda and Landvetter airports.
29. In any event, given that CAS and LFV Handling are active in complementary geographic markets, the combined business of the parties under Novia will not result in any horizontal overlap. Consequently, there can be no aggregation of market shares as a result of the present operation.
30. However, there is a vertically affected market within the meaning of the EC Merger Regulation. Maersk Air operates scheduled air carrier services to and from Arlanda airport in which LFV Handling is active and in which LFV Handling accounts for more than 25% of the market, assuming that the groundhandling geographic market were to be limited to the Arlanda airport in the Stockholm area.
31. In any case, this vertical relationship should not cause any competition foreclosure concerns because Maersk Air accounts for only approximately [...] ⁸ of the total turnarounds at Arlanda airport and LFV Handling's market share at this airport is less than 35%.
32. Therefore, in the absence of any significant horizontal or vertical effect, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Community or in the EEA or in any substantial part of that area.

⁶ Deleted for publication.

⁷ Deleted for publication. Oslo Airport Handling Gardemoen AS will lose its concession to groundhandle as of July 1, 1998.

⁸ Deleted for publication – less than 5%.

V. ANCILLARY RESTRICTIONS

33. The parties have in their notification identified the following possible ancillary restrictions:
34. Article 7 of the Joint Venture Agreement contains a non-competition clause whereby each of the parties undertake to ensure that its respective group does not compete with Novia; and a non-solicitation clause whereby both Maersk Air and LFV Holding promise not to solicit any customers, employees, suppliers etc from Novia until the agreement being notified has been completed. Thereafter, Article 10 of the Shareholders' Agreement becomes applicable.
35. Article 10 of the Shareholders' Agreement contains a non-compete clause which shall apply while the Shareholders' Agreement is in force and shall survive the Shareholders' Agreement and shall continue to apply for a period of [...] ⁹ years after the date of termination of the Shareholders' Agreement. According to Article 12, the Shareholders' Agreement shall be binding on the shareholders as long as they own shares of Novia.
36. The Commission does not consider the restriction for the parent companies not to compete with the joint venture for so long as they own shares in Novia and for a period of [...] ¹⁰ years after the date of termination of the Shareholders' Agreement to be necessary and directly related to the concentration. However, to the extent that the non-compete obligations set out in Articles 7 of the Joint Venture Agreement and 10 of the Shareholders' Agreement would be limited to the situation where the parent companies enjoy a controlling stake in Novia, the non-compete clauses 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 this non-compete clause for so long as the parent companies hold a controlling stake in Novia. Furthermore, the non-solicitation clause is directly related and necessary for the implementation of the concentration and can therefore be considered ancillary to it.
37. Schedule 11 of the Joint Venture Agreement sets out the following agreements:
- (i) a Lease Agreement between Cargo Center Copenhagen ("CCC") (a wholly-owned subsidiary of Maersk Air) and CAS, whereby CCC agrees to lease certain property to CAS for use in its groundhandling activities;
 - (ii) a Property Administration Agreement between CCC and CAS, whereby CAS agrees to administer property owned by CCC;
 - (iii) a Service Agreement between CAS and Novia, whereby Novia agrees to administer the managerial affairs of CAS, including the day-to-day management of CAS;

⁹ Deleted for publication – less than 5 years.

¹⁰ Deleted for publication – less than 5 years.

- (iv) a Service Agreement between LFV Handling and Novia whereby Novia agrees to administer the managerial affairs of LFV Handling, including the day-to-day management of LFV Handling; and
 - (v) An Administration and Option agreement between Maersk Air and Novia concerning Oslo Airport Handling Gardemoen AS, whereby Novia will administer Oslo Airport Handling and [...] ¹¹.
38. The Lease Agreement and the Property Administration Agreement mentioned above in 11 (i) and (ii) aim to ensure to Novia the necessary assets that are physically linked to where Novia's subsidiary, CAS, will operate, *i.e.* the Copenhagen airport. These agreements concerning the premises are among the elements constituting the concentration and therefore an integral part.
39. The service agreements between CAS/Novia and LFV Handling/Novia are consistent with the structure and the partitioning of functions agreed between the parties for the functioning of the Novia group in which Novia shall be in charge of the managerial affairs of its wholly owned subsidiaries; CAS and LFV Handling. The agreements simply reflect the division of tasks within one single economic entity.
40. In relation with the Administration and Option agreement between Maersk Air and Novia concerning Oslo Airport Handling Gardemoen AS, the notifying parties have not motivated how this agreement would be necessary to the implementation of the concentration. On the contrary, the parties have explained that [...] ¹². Therefore, this agreement is not covered by the present decision.

VI. CONCLUSION

41. 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,

¹¹ Deleted for publication.

¹² Deleted for publication. Oslo Airport Handling Gardemoen AS will lose its concession to groundhandle as of July 1, 1998.