EN

Case No IV/M.1269 - LSG / ONEXCORP / SKY CHEFS / CATERAIR

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 09/11/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09-11-1998

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No IV/M. 1269 - LSG/ONEXCORP/SKY CHEFS/CATERAIR

Notification of 5.10.1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 5 October 1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Arlington Services Holding Corporation ("Arlington"), controlled by Onex Food Services Inc. ("OFS"), and Lufthansa Service Holding AG ("LSG"), controlled by Deutsche Lufthansa AG acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Sky Chefs UK Ltd., Sky Chefs Barcelona S.A, Sky Chefs Madrid S.A. and Sky Chefs France S.A., by way of purchase of shares in a newly created company constituting a joint venture.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. The LSG group is active in airline and airport catering. OFS, a U.S. company controlled by Onex Corporation ("Onex")is the holding company for Onex group's US and international airline catering business traditionally operating under the "Sky Chefs" brand ("Sky Chefs group"). Onex is a Canadian based conglomerate active in

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airline catering, automotive components, electronics manufacturing services, sugar processing, foodservice distribution and film production. The notified operation concerns the creation of a joint venture "LSG/Sky Chefs Holding Europe Ltd" ("LSG/Sky Chefs"), active in the EU in the airline catering sector, by LSG and Arlington.

4. The LSG group and the Sky Chefs group have been closely linked since 1993, when LSG acquired a 25% shareholding (since diluted to 23%) in OFS. At the same time LSG and the Sky Chefs group entered into a marketing agreement providing for institutionalised cooperation in strategic aspects of marketing their catering services and the development of a common brand name and logo.

5. In 1995, Onex group entered into a series of related transactions which effectively combined the worldwide catering business of Sky chefs and Caterair International Corporation ("Caterair"). The former European activities of Caterair, referred to as "European Kitchens", will form the basis of the joint venture to be created through the present operation. The European Kitchens are Sky Chefs UK Limited (UK), Sky Chefs Barcelona, S.A. (Spain), Sky Chefs Madrid, S.A. (Spain) and LSG Lufthansa Service/Sky Chefs France, S.A. (France).

6. At present Arlington, which is wholly owned by OFS, directly holds 100% of all companies that constitute the European Kitchens. Arlington has created the holding company LSG/Sky Chefs to which it will transfer its shares in the European Kitchens. By the current transaction LSG will acquire 50% of the shares in LSG/Sky Chefs.

II. CONCENTRATION

7. LSG already has a minority shareholding in OFS. The Stockholders' Agreement entered into by the parties in 1993 provides LSG with the right to appoint three of nine members of the boards of directors of OFS and of Sky Chefs. Approval by at least one of the directors appointed by LSG is, inter alia, necessary for any closing by OFS or its subsidiaries of catering operations at an airport of strategic importance to both LSG and Sky Chefs if the revenues during the preceding 12 months were at least US Dollar […] or any investment by OFS or its subsidiaries in a business other than catering where this investment exceeds US Dollar […].

8. These veto rights, however, are as such not sufficient to enable LSG to exercise decisive influence in relation to the strategic commercial behaviour of OFS. The latter one is related to decisions on the essence of the joint venture and constitutes the normal protection of the rights of a minority shareholder. The first one might go beyond the classical protection of minority shareholders. However, given the limited number of airports where the European Kitchens are active, a complete closing of a catering operation would primarily affect an essential financial interest of LSG. Moreover, LSG has no veto rights related to strategic decisions on the business policy of the joint venture, such as the budget, the business plan or major investments.

9. Together with the Stockholders' Agreement of 1993 LSG and Sky Chefs entered into a marketing agreement providing for institutionalised cooperation in strategic aspects of marketing their catering services and the development of a common brand name and logo. The marketing agreement provided the establishment of Marketing and Sales Committee with an equal number of members for LSG and Sky Chefs which allowed both LSG and Sky Chefs to participate in decisions on important aspects of the marketing strategy of the two groups. In this respect, LSG's actual influence on OFS subsidiaries exceeded the influence reflected by its minority shareholding in OFS. However, this influence was not the result of LSG being able to exercise joint control over all activities of OFS and all its Sky Chefs subsidiaries It resulted from the cooperation between the two groups established on the basis of the marketing agreement and was reciprocal.

10. For the above reasons, on the basis of the rights provided for LSG by the Stockholders' Agreement of 1993 and on the basis of the marketing agreement it cannot be established that LSG had already joint control of all the Sky Chefs subsidiaries and, in particular, the European Kitchens.

11. Through the proposed operation LSG and Arlington will have equal stakes in the joint venture. The Shareholders' Agreement provides that LSG and Arlington will each nominate three directors to the board of LSG/Sky Chefs, with all decisions being made by majority vote. LSG has the right to appoint the Chairman of the board and this chairman shall have a casting vote on all matters decided by the board. However, for a number of key decisions, the written approval of a majority of shares is required. These key decisions include the approval of the annual operating budget (including budget and operating plan), dividends or other distributions to shareholders, catering contracts for more than a three year term or projected annual revenues of US Dollar […] and for acquisitions or dispositions of assets involving an amount of US Dollar […].

12. The casting vote on behalf of LSG reflects the intention of the parties to provide LSG with a greater say in the day-to-day management of Sky Chefs' European catering activities and thus make use of its knowledge of the European market. Therefore, the existence of a casting vote on behalf of LSG does not exclude the existence of joint control. Since important strategic decisions on the business policy such as the annual budget, the business plan or major investments have to be taken unanimously LSG and Arlington are both able to exercise decisive influence on LSG/Sky Chefs. Therefore, LSG and Arlington acquire joint control of LSG/Sky Chefs through the proposed operation.

13. LSG/Sky Chefs will perform on a lasting basis all the functions of an autonomous undertaking. It will have sufficient finance, staff and capital and resources, dedicated to carrying on business on a lasting basis. It will not merely undertake ancillary functions for its parents. In particular, it will not rely to any significant extent on sales to LSG's parent company Lufthansa. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

14. However, in substantive terms the proposed operation has to be seen more like an intra-group restructuring. Although the minority shareholding in OFS did not provide

LSG with joint control of all the Sky Chefs subsidiaries, LSG group and Sky Chefs group were closely linked. Because of the pre-existing links and in particular the marketing agreement they already acted as a competitive unit in the market. Therefore, the proposed acquisition of joint control has to be seen as a structural change that has a relatively insignificant impact on LSG/Sky Chefs position on the market.

III. COMMUNITY DIMENSION

15. Lufthansa and Onex have a combined aggregate world-wide turnover in excess of ECU 5,000 million (Lufthansa, ECU […]; and Onex, ECU […]). Each of them has a Community-wide turnover in excess of ECU 250 million (Lufthansa, ECU […]; and Onex, ECU […]). Only Lufthansa achieves more than two-thirds of its aggregate Community-wide turnover within one Member State, Germany. The notified operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT/ RELEVANT GEOGRAPHIC MARKET

16. The relevant market is the market for in-flight catering services. Although there are identifiable sub-segments such as long-haul or short-haul flights, economy/business/first class catering or hot meals/cold meals/snacks, the competitive conditions in these segments do not significantly differ. Customers usually appoint one supplier to supply the full range of catering services at a given airport.

17. The vast majority of catering suppliers also provide a range of ancillary services, such as trucking to and from the aircraft, galley loading/off loading, supervision, equipment, warming and preparation, menu design and food promotion. Airlines usually design their menu concept and then select their supplier based on product quality and consistency and on price competitiveness.

18. The notifying parties state that the relevant geographic market is restricted to the area of a particular airport. It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. ASSESSMENT

19. If each airport is considered to be a relevant market there is no overlap between any Sky Chefs subsidiaries including the European Kitchens and any subsidiary of LSG group. The European Kitchens are active in airline catering on the following airports where LSG is not active: Barcelona, Madrid, Malaga, Palma de Mallorca, Mahon, Gerona, London-Heathrow, London Gatwick, Manchester and Paris (Charles de Gaulle). The same analysis would apply if one defines the geographic market as encompassing all the airports within a given Member State, as LSG subsidiaries are not active at any airport in any of the Member States in which Sky Chefs/The European Kitchens are present. LSG is active in Germany, Austria, Italy, Sweden and Portugal whereas Sky Chefs/European

Kitchens are active in France, Spain and United Kingdom. Only under a wider market definition, i.e. the EEA, there would be an overlap between the Sky Chefs and LSG group.

20. According to the parties, the combined market share of LSG and Sky Chefs in the market for airline catering in the EEA in 1997 was [25-35%] (LSG: [20-25%], Sky Chefs: [5-10%]). Most of the major competitors of LSG and Sky Chefs are vertically integrated with airlines, since airlines have traditionally handled their own in-flight catering. Its major competitors are Gate Gourmet, owned by Swissair (market share: [10-15%]), Servair, a Paris-based catering company owned 70 % by Air France (market share: [5-10%]) and Alpha (market share: [0-5%]). Further competitors are IberSwiss, a joint venture between Gate Gourmet and Iberia, being owned 70 % by Iberia which is active at Madrid Airport and has a second kitchen in Malaga and KLM catering based at Amsterdam Schiphol airport, which is the major supplier of catering services to KLM in Schiphol.

21. 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,