

*Case No IV/M.1547 -
LUFTHANSA /
AMADEUS / START*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/08/1999

*Also available in the CELEX database
Document No 399M1547*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.08.1999
SG(99)D/6032

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No IV/M.1547 – Lufthansa/Amadeus/Start

Notification of 29 June 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 29 June 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Amadeus Global Travel Distribution S.A. (“Amadeus”), a jointly controlled subsidiary of Deutsche Lufthansa, Air France, Iberia and Continental Airlines, acquires within the meaning of Article 3(1)(b) of the Council Regulation joint control of Start Amadeus GmbH (“Start”), which was hitherto wholly owned by Lufthansa Commercial Holding GmbH, a subsidiary of Deutsche Lufthansa AG (“Lufthansa”).

I. THE PARTIES

2. Amadeus operates a fully automated travel reservation and distribution system on a world-wide scale (the Amadeus Global Travel Distribution System). Start acts as Amadeus’ exclusive National Marketing Company in Germany and also provides other

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as 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).

electronic reservation services. Lufthansa Commercial Holding GmbH is a holding company for several businesses (information technology, communication, financing and services) which complement the operational activities of the Deutsche Lufthansa airline.

II. CONCENTRATION

Acquisition of joint control

3. Pursuant to a Share Purchase and Assignment Agreement dated 21 April 1999 Amadeus will acquire from Lufthansa 34% of the capital stock of Start. The Articles of Association (Gesellschaftervertrag) for Start stipulate that, [...]. Both Amadeus' and Lufthansa's approvals will, therefore, be required for such decisions, conferring joint control on both companies.
4. The Commission has considered whether Amadeus exercised joint control previously to the notified operation, by virtue of its rights from the National Marketing Agreement concluded with Start. However, these contractual rights do not go so far as to give Amadeus decisive influence over Start. [...].
5. Therefore, the notified operation will lead to the acquisition of joint control by Amadeus over Start (Article 3 (1)(b) of the Council Regulation).

Full-function joint venture

6. Start uses its own resources and staff to operate on the market. Its activities are directed by its own management which does not include employees of its parent companies. None of Start's parent companies are active on those markets in Germany on which Start provides electronic data transmission services and related products to its subscribers. Moreover, Start carries out reservation services for a number of third parties (e.g. tour operators, Deutsche Bahn). Start is not limited in time. It thus performs on a lasting basis all the functions of an autonomous economic entity.
7. Therefore, the notified operation constitutes a concentration within the meaning of Article 3 (2) of the Council Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Amadeus - EUR [...]; Lufthansa – EUR 23 149 million). Each of Amadeus and Lufthansa have a Community-wide turnover in excess of EUR 250 million (Amadeus – EUR [...]; Lufthansa – EUR [...]). 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.

² 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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. COMPETITIVE ASSESSMENT

Relevant product markets

9. Amadeus operates a world-wide computer reservation system (CRS) into which airlines and other internationally operating travel service providers, including car rental companies and hotels, input data on the products they provide. Start, acting as Amadeus' exclusive National Marketing Company, gives its subscribers in Germany, mainly travel agents, access to Amadeus' CRS. Travel agents use the software and data transfer connection provided by Start in order to obtain travel information and make reservations. In view of the existing exclusivity agreement Start does not market similar services offered by other international CRS providers. For other services, i.e. services provided only locally within Germany (rail travel, car rental, hotels), Start operates its own reservation system. Neither is the Amadeus CRS normally used with respect to charter flights. The notifying parties define the relevant product market as the market for comprehensive electronic data transmission services for travel reservation/information between subscribers (essentially travel agents) and travel service providers.
10. According to the notifying parties, Start also operates in Germany on the markets for the sale of back-office products (book keeping and business information systems) to travel agents and for the electronic provision of information and reservation services for events (concerts, sporting events, exhibitions).
11. It is not necessary to decide whether the relevant product markets should be narrowed down further, for instance according to the kind of travel service concerned (air travel, rail travel, car rental etc.), because the notified concentration will not raise competition concerns under any alternative market definition.

Relevant geographic markets

12. The notifying parties submit that the relevant markets are limited to Germany as the only country in which the joint venture is active and for which its products are designed. They quote the fact that Start's electronic travel reservation and information services, as described above, are adapted to the requirements of German customers (travel agents) and would not be of interest to customers outside Germany. The same is the case for the back-office products which Start distributes as these must be adapted to the German rules on VAT, accounting rules etc. As regards electronic information and reservation services in relation to events, these are also generally linked to national events. On this basis, Germany can be considered as the reference market for assessing the impact of the present concentration.

Assessment

13. The notifying parties submit that the present transaction forms part of a wider reorganisation of the relationship between Lufthansa, Amadeus and Start, involving the transfer of shareholdings in various Amadeus and Lufthansa subsidiaries³. They argue

³ The Commission notes that various transactions in this reorganisation process were notified to and cleared by the Bundeskartellamt.

that the reorganisation of the pre-existing relationship between Start and Amadeus will not, in any material respect, change the way in which Start operates on the market.

14. As far as the *market for electronic data transmission services for travel reservation/information between subscribers and travel service providers* in Germany is concerned, the concentration will not lead to any addition of markets shares. Only Start and no other party to the concentration is active on this market.
15. On the basis of the information provided, the concentration will not in any other way materially affect competition in this market. Start will continue to operate on the market under the terms of a National Marketing Agreement concluded with Amadeus in the same way as before the concentration. There are no indications that Amadeus' acquisition of an equity participation in Start and of connected shareholder rights will strengthen its own position. [...]. This position will not be altered by the merger. Start's position in the market will not be affected either, compared to the pre-merger situation of control by one of Amadeus' parent companies. Nor will the transaction materially change the vertical relationship between Start and Lufthansa, a provider of air transport and therefore active in an upstream market. Lufthansa will continue to control Start.
16. Finally, there is no evidence that the transaction will affect the position of Start's competitors or customers, as it does not change the way in which travel agents can have access to competing Computer Reservation Systems and can book flights using such systems.⁴
17. As far as the *market for the provision of back-office products to travel agents* in Germany is concerned, Lufthansa has certain activities in this sector. However, there will be no addition of market shares as Lufthansa already controls Start. Start is the only party to the concentration active on the *market for electronic events information and reservation services* in Germany. There are no indications that the transaction will strengthen Start's position on these markets. On that basis, the concentration will not affect competition in these markets.

V. ANCILLARY RESTRICTIONS

18. The Joint Venture Agreement between Amadeus and Lufthansa Commercial Holding GmbH of 21 April 1999 contains non-competition clauses (Articles IX and XVI), according to which Lufthansa and certain of its subsidiaries are bound for the duration of the joint venture not to participate in equity in computer reservation systems that compete with Amadeus or offer electronic travel distribution products that compete with Amadeus to subscribers. In so far as these clauses prohibit competition within Germany by Lufthansa or by entities which are controlled by Lufthansa for a period of up to [...] years, they reflect the need to use fully the joint venture's assets and can be considered as directly related and necessary for the implementation of the notified concentration.

VI. CONCLUSION

⁴ See also Commission Regulation (EC) No 3652/93 of 22 December 1993.

19. 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,