

*Case No COMP/M.1913 -
LUFTHANSA /
MENZIES / LGS / JV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.08.2000
SG(2000)D/106441-106442

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.1913 – Lufthansa/Menzies/LGS/JV

Notification of 27/07/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On the 27 July 2000, the Commission received a notification of a proposed concentration pursuant of Article 4 of Council Regulation (EEC) No. 4064/89¹, whereby Menzies will acquire joint control of Lufthansa Ground Services which is presently wholly owned by Globe Ground GmbH.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation (EEC) NO 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I THE PARTIES

3. GlobeGround GmbH (GG GmbH), Germany, is ultimately owned by Deutsche Lufthansa AG (DL). It is active in passenger and aircraft handling services at airports in Germany, UK and outside Europe. It is also involved in de-icing and towing aircraft at Munich airport, cargo handling at Athens and Heathrow airports.
4. **Menzies Transport Services Limited**, (MTS) UK is a subsidiary of John Menzies plc (JM). It is active in cargo handling and cargo trucking, freight forwarding, passenger and ramp handling services, aircraft handling and fuelling, security and medical services at airports in the UK.

¹ OJ L 395, 30.12.1989 p.1 corrigendum OJ L 257 of 21.09.1990, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p1, corrigendum OJ L 40, 13.2.1998, p 17)

5. **Lufthansa Ground Services (London) Limited (LGS)**, UK is fully owned by GG GmbH, it provides passenger and ramp ground handling services at Heathrow.

II THE OPERATION

6. The operation involves the sale by GG GmbH of 49% of the share capital in LGS to MTS. Subsequently both GG GmbH and MTS's shareholdings in LGS will be transferred to GlobeGround (UK) Limited (GG (UK)) with the aim of placing their passenger and ramp ground handling operations at Heathrow, Manchester and Stansted airports into one ownership structure. GG (UK) (the joint venture) is a new holding company owned by GG GmbH and MTS. Further to the above transaction shares held in GG Manchester by the parties which will also be transferred to GG (UK), this however involves not change in ownership.

III CONCENTRATION

Joint Control

7. GG GmbH will hold 51% of GG (UK) and the remaining 49% will be held by MTS. The board of GG (UK) will consist of 2 directors from GG GmbH and 2 directors from MTS. GG GmbH will appoint the chairman of GG (UK) who will hold the casting vote but MTS will have veto rights over strategic decisions including the adoption of business plans and budgets. These provisions indicate that GG GmbH and MTS will exercise joint control over the joint venture GG (UK).

Full functionality

8. GG (UK) will have its own dedicated management and access to sufficient resources to undertake its business activities. It is estimated that 62% of LGS' sales for the first year of operation will be to Lufthansa but this proportion is expected to decrease in the future as the company seeks new customers. LGS is therefore intended to act independently of its ultimate parents and accordingly terms agreed between LGS and Lufthansa are on normal commercial terms.
9. Given this GG (UK) is expected to perform on a lasting basis, all the functions of an economic autonomous economic entity and is geared to play an active and independent role on the market. Therefore the operation constitutes a concentration in the meaning of Article 3(2) of the Merger Regulation.

IV COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover in 1999/2000 of more than € 5 billion² [DL € 12.8 billion; JM € 2.13 billion]. The aggregate Community-wide turnover of each party exceeds € 250 million [DL € 8.7 billion; JM € 2.13 billion], but they do not achieve more than two-thirds of their

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.

aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V COMPETITIVE ASSESSMENT

(i) The Relevant Market

11. LGS is active in the passenger ground handling services and ramp handling services. Passenger handling involves the check-in and handling of passengers and their baggage at airport terminals. Ramp handling involves the loading and unloading of aircraft. The parties view passenger handling, ramp handling and cargo handling as separate markets as these services requires specific know-how and expertise that is distinct from each other and thus each individual ground handling service may be performed by a different provider.
12. It is however not necessary for the purpose of this decision to decide on an exact product market definition, as the proposed operation does not create or strengthen a dominant position in the common market even irrespective of the market definition adopted.
13. The geographic market is limited to Heathrow airport but includes check-in services provided to passengers at Paddington station. Passenger and ramp handling services to airlines are provided under a licence at Heathrow airport.

(ii) Competitive assessment

14. The market share has been calculated on the basis of aircraft movements rather than the present number of people who use third party operators for their passenger and ramp handling services. This captures operators which 'self handle' and 'part handle' which have the option of using third party handlers.
15. On this basis LGS market share is 6.5% for passenger handling and 10.9% for ramp handling services. MTS has no activities at present in either market and there are thus no affected vertical markets. Moreover, there are no horizontal overlaps in the activities of Lufthansa and Menzies.
16. The Commission therefore concludes that the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded.

VI ANCILLARY RESTRAINTS

17. Clause 15 of the Shareholders Agreement obliges the parties to refrain from any sort of competition within the passenger, baggage or ramp handling business handled by LGS at Heathrow, Gatwick, Stansted, Manchester, Birmingham and Dublin airports. This obligation continues while the parties retain an interest as shareholders in GG (UK) and for a period of 12 months after this.
18. This clause is only ancillary to the extent it covers areas where the LGS had established services prior to the joint venture. The duration of the non-compete clause is only considered ancillary for the duration of the joint venture after which it is unrelated to the concentration in question.

19. Clause 14 of the Shareholders Agreement obliges the parties to keep any information confidential which is disclosed by one party to another and not to use such information for any purpose other than as contemplated by the Shareholders agreement.
20. To the extent that this is necessary and directly related to the concentration this restriction will be considered as ancillary.

VI CONCLUSION

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 and Article 57 of the EEA agreement.

For the Commission,

Günter VERHEUGEN
Member of the Commission