

***Case No COMP/M.2190 -
LSG / OFSI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/06/2001

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Brussels, 01.06.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2190 - LSG/OFSI

Notification of 27.04.2001 pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹

1. On 27.04.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the German undertaking LSG Lufthansa Service Holding AG ("LSG"), controlled by Deutsche Lufthansa AG, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the US undertaking Onex Food Services, Inc. ("OFSI") by way of purchase of shares.
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

3. LSG, which is a wholly-owned subsidiary of Deutsche Lufthansa AG ("DLH"), provides, *inter alia*, world-wide catering services to airlines (in-flight catering) and, to a lesser degree, in airport restaurants. In addition, as it is common practice for the operators of the field, LSG also provides a series of ancillary services related to the in-flight catering performances such as wrapping, packaging, transportation to the aircraft. Within the EEA, LSG is actively operating throughout several airports and precisely in Germany, Italy, Austria, Sweden, Norway and Denmark. LSG, together with OFSI, controls LSG/Sky Chefs Europe Holding Limited ("Sky Chefs Europe"), which provides in-flight catering

¹ O.J. L 395, p.1; corrected version O.J. L 257 of 21.09.1990, p.13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.07.1997, p. 1; corrigendum in O.J. L 40 of 13.02.1998, p. 17.

services in Spain, France and UK. LSG is also active in the production and the supply of frozen meals and in the sector of food hygiene maintenance.

4. OFSI is a US corporation, which provides in-flight catering services throughout various parts of the world. As explained in the previous paragraph, OFSI, together with LSG, controls Sky Chefs Europe, which provides in-flight catering services in three EU countries, namely Spain, UK and France. OFSI also provides in-flight catering services in Portugal through its participation in CateringPor-Catering de Portugal S.A..

II. THE CONCENTRATION

5. OFSI is currently jointly controlled by various subsidiaries and affiliates of ONEX Corporation (“the Onex Group”) and by LSG. Pursuant to an Agreement dated [...], LSG agreed to purchase all remaining shares of OFSI by the ONEX Group and by the OFSI management respectively. As a result of this purchase, it is expected that LSG will directly and indirectly hold 100% of OFSI voting securities upon completion of the transaction.
6. LSG by acquiring sole control of OFSI will also acquire sole control of Sky Chefs Europe, which is currently under the joint control of LSG and OFSI. The previous operation by which LSG and OFSI acquired joint control over Sky Chefs Europe was notified to the European Commission and cleared on 09.11.1998 (Case No IV/M.1269 – LSG/ONEXCorp/Sky Chefs/Caterair).
7. This operation will result in LSG acquiring sole control of the undertaking OFSI, therefore, it constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. LSG and OFSI have a combined world-wide turnover in excess of EURO 5,000 million (the DLH-LSG group in conjunction with the OFSI group in the financial year 1999 exceeded [...] Euro). Each of them have a Community-wide turnover in excess of EURO 250 million (the turnover of DLH-LSG group in the financial year 1999 was [...] Euro, whereas OFSI’s turnover in financial year 1999 has been Euro [...]). Only the DLH-LSG group achieves more than two-thirds of its aggregate Community-wide turnover within one Member State, Germany. The notified operation has therefore a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. The Product Market

9. The Parties state that the in-flight catering services represent a single product market. According to the Parties, sub-segments of this market such as long/short-haul flights, economy/business/first class as well as hot/cold meals and snacks may not be defined as separate product markets. The Parties argue that the competitive conditions in these segments do not differ to the extent that these segments could constitute separate product markets.
10. In its previous decision in Case No IV/M.1269 – LSG/ONEXCorp/Sky Chefs/Caterair, the European Commission has defined the relevant product market as comprising all the in-flight catering services. Furthermore, the Commission found that catering companies often provide in-flight catering services in conjunction with a series of ancillary services such as

trucking to and from the aircraft, galley loading/off loading, supervision, equipment, warming, preparation, menu design and promotion.

11. The market investigation in the present case has shown that catering companies normally provide the entire range of required meals. In fact, the major caterers are usually able to offer a very wide range of meals (cold/hot/snacks), which can meet all the different needs of airlines. Furthermore, the same catering supplier is organised to provide both for long-haul and short-haul flights. Such “One-Stop Shopping” is commonly preferred by airlines as being time and cost saving.
12. Therefore, the relevant product market is defined as being the one for the general category of in-flight catering services.

B. The Geographic Market

13. The Parties further submit that the relevant geographic market for in-flight catering services is restricted to the area of a given airport, given that, from the customers’ point of view (i.e. airlines), a particular airport as the location of demand for on-board food is not normally interchangeable with other airports. The Parties argue that airlines would be unlikely to consider switching their flights to another airport, even if suppliers at that airport offered lower prices for in-flight catering services. In particular, due to relatively high transportation cost barriers, caterers serve airlines from kitchens that are normally established at, or close to, the airport where the service is provided.
14. The exact geographic market definition for in-flight catering services was previously left open by the Commission. In particular, in the Case No IV/M.1165 – Lufthansa/Menzies/LCC although the notifying parties have proposed as geographic market the “London Airport System” (composed of Heathrow, Stansted and Gatwick Airports), the Commission has not deemed necessary to precisely define the relevant geographic market for cargo handling in sheds at airports. Same conclusion stems from the decision taken by the Commission in the Case No IV/M. 1124 – Maersk Air/LFV Holding, whereby the relevant geographic market for ground-handling services (which comprises the in-flight catering services) has been left open. In the more recent Case No IV/M.1269 – LSG/ONEXCorp/Sky Chefs/Caterair, the Commission did not define the exact geographic scope of the market for in-flight catering services.
15. In the present case, the exact geographic market definition can be left open since, in all alternative geographic market definitions considered, this concentration will not lead to the creation or strengthening of a dominant position which could significantly impede effective competition in the Community, in the EEA or in any part thereof.

C. Competitive assessment

16. Since LSG, by acquiring sole control over OFSI, is simply moving from joint control (with OFSI) to sole control of Sky Chefs Europe and as there is no overlap between the in-flight catering activities of LSG, on the one side, and the ones of OFSI through Sky Chefs Europe and CateringPor-Catering de Portugal S.A., on the other side, the proposed concentration will not have any impact on EEA Member State level. In fact, as above-mentioned, LSG is active, within the EEA, in Germany, Italy, Austria, Sweden, Norway and Denmark. On the contrary, OFSI through Sky Chefs Europe provides in-flight catering services in Spain, UK and France. OFSI also provides in-flight catering services in Portugal through its participation in CateringPor-Catering de Portugal S.A..

17. In particular, if we consider that each airport or airport system forms a separate geographic market, since there is no overlap between the OFSI group and the LSG group at any airport or airport system, with the exception of Sky Chefs Europe, there are no affected markets. The same conclusion is reached if the geographic market would be defined as encompassing all the airports of a given EU Member State.
18. In case the market for airline catering services is considered to be EEA-wide, there would be an overlap between the OFSI group and the LSG Group. The combined market share of the OFSI group together with the LSG group in the EEA market for airline catering service in the year 2000 was [30-40]%. The major competitors are Gate Gourmet (owned by Swissair) [20-30]%, Servair (controlled by Air France) [10-20]%, Alpha [1-10]% and Eurest [1-10]%. This market share would not confer dominance to LSG, considering that there are sufficient significant competitors serving the EEA market. Furthermore, a number of these competitors, such as Gate Gourmet, Servair and IberSwiss (a joint venture between Swiss Air and Iberia), are as well as LSG vertically integrated with airlines.

IV. CONCLUSION

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 4069/89.

For the Commission,
David Byrne
Member of the Commission