

***Case No COMP/M.2627 -
OTTO VERSAND /
SABRE / TRAVELOCITY
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2001

*Also available in the CELEX database
Document No 301M2627*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2001
SG(2001) D/292879

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2627 - Otto Versand/Sabre/Travelocity JV

Notification of 16/11/2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16 November 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹ (the Merger Regulation), whereby the undertakings Otto Versand GmbH & Co (Otto) and Sabre Holdings Corporation (Sabre) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Travel Overland Flugreisen GmbH & Co KG (Travel Overland) by way of purchase of shares and contribution of activities. After the operation the joint venture will be called Travelocity Europe.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

THE PARTIES

3. Otto is a limited partnership registered in Germany, the shares of which are ultimately owned by the Otto family. The main business of Otto is the retailing of non-food products through catalogue mail order. In a number of other Member States Otto is active through locally based companies in which it holds controlling interests or which are wholly owned and controlled subsidiaries. Otto is the owner of Otto Freizeit und Touristik GmbH (OFT)

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, 09.07.1997, p.1, corrigendum OJ L 40, 13.02.1998, p.17).

active in the market for tourist and travel services and has started business via the Internet and other new media distribution channels in Germany. OFT currently holds 74,9% of Travel Overland². If the transaction becomes effective, the remainder of the partnership interests will be acquired by OFT immediately prior to the contemplated transaction with Travelocity (see below).

4. Sabre is active in the marketing and distribution of travel through its Global Distribution System (GDS). Today Sabre, through a wholly-owned subsidiary, holds a 60% interest in Travelocity.com. lp (Travelocity), the remainder being held by Travelocity.com (TVLY, Inc). As Sabre also holds 25% of TVLY, Inc, its combined holdings represent an approximate 70% voting interest in Travelocity.
5. Travelocity Europe will be an on-line travel agency which will operate in Europe.

THE OPERATION

6. Travelocity intends to acquire [...] % of the limited partnership interest of Travel Overland and to contribute its European activities in the online travel market in to it, thereby acquiring joint control of it. This entity will be known as Travelocity Europe. More particularly, Travelocity will provide its technology and its brand names to Travelocity Europe. Otto will provide parts of its clients database. OFT and Travelocity will have joint control over Travelocity Europe.

Full functionality

7. Travelocity Europe will be a full-function joint venture. The joint venture will have a management dedicated to its day-to-day operations. Travelocity Europe will have sufficient access to resources. OFT and Travelocity agreed that Travelocity Europe at all times shall have sufficient capital to stand alone. Travelocity Europe is intended to operate on a lasting basis and has been created for a term of at least [...].
8. The activities of Travelocity Europe will not be limited to one specific function within the parent companies' activities.
9. The terms on which Travelocity Europe will have access to the Sabre GDS will be comparable to those offered to other agencies of similar size.
10. Accordingly, the transaction is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million. In each of eight Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million (Austria, Belgium, France, Germany, Italy, the Netherlands, Spain and the UK) and in each of three of these Member States, the aggregate turnover of each Otto and Sabre is more

² Travel Overland is a limited partnership registered in Germany. It is active in the market for discount flights and travel for individuals and has 17 offices in Germany, as well as an internet website. At present, Travel Overland is the fulfilment agent of Travelocity in Germany: it operates a call centre for problems with online booking and delivers the tickets ordered by the Travelocity customer.

than EUR 25 million (Germany, Italy and the UK) but 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.

COMPETITIVE ASSESSMENT

Travel Agency

Relevant product market

12. As regards the supply of travel agency services the Commission has defined travel agents³ as retailers which supply various services to travellers such as flights, car rental, hotel booking etc. and which are generally remunerated by the supplier of the service concerned. In addition, the Commission has stated in previous decisions that there are two distinct relevant product sub-markets that can be identified in the travel agency sector: business travel services and leisure travel services⁴. Business travel agency services meet the needs of companies for business travel of management and employees in accordance with corporate travel budgets and plans. Leisure travel agencies provide services to individuals in connection with their non-business vacation and personal travel needs. Travel Overland, Travelocity as well as the new entity (Travelocity Europe) have both leisure and business customers. As regards a further possible distinction between on-line travel agencies and traditional travel agencies, the Commission has stated⁵ in the past that the provision of travel agency services on-line is not a different market from the provision of travel agency services by traditional travel agencies. In fact, as regards demand side substitutability, services provided by virtual travel agencies are substitutable with services provided by traditional travel agencies and customers can choose whether to source their requirements from virtual travel agencies or traditional travel agencies. From the supply-side substitutability point of view, travel agencies are able to migrate to providing services over the Internet without considerable efforts and vice versa. In the present case, the parties agree with this definition of the relevant product market. However, the Commission did not exclude that, in the future, there could be an independent evolution of the on-line travel agency sector. In this case, the definition, of the relevant product market can be left open as the operation does not lead to competition concerns in any possible market definition.

Relevant geographic market

13. Also in the Telefónica Terra/Amadeus case the Commission considered that the geographical market for virtual travel agencies was national in scope. This geographic definition was based on language barriers and the need to set up national distribution arrangements for tickets and vouchers given that the "ticketless system" has not been extended yet.
14. As regards the present transaction, the parties submit that the market is in the process of broadening, as the emerging on-line segment is increasingly accepted by consumers in Europe, and on-line travel agencies can distribute tickets using secure mail, or electronically using the "ticketless system". As the remaining barriers are cultural and

³ Case IV M 1524 Airtours/First Choice

⁴ Case IV M.229 Thomas Cook/LTU/West LB, case IV/M 564 Havas Voyages/ American Express, case IV/ M. 867 Wagons Lits/Carlson and case IV/M 988 Maersk DFDS Travel

⁵ case Comp M/1812 Telefónica/Terra/Amadeus

linguistic, an on-line agency has only to establish multilanguage sites and customer support before it can serve customers across a broad geographic area. Notwithstanding this, the question whether online travel services have a geographical scope larger than national can be left open in the present case since the concentration will not lead to the creation or strengthening of a dominant position under either assumption.

GDS

Relevant product market

15. Sabre's principal activity is the operation of a GDS. In previous cases⁶ the Commission has defined a GDS as a tool provided to travel agencies in order to allow them to obtain information and make reservations related to airlines and other internationally operating travel services providers including car rental companies and hotels. These travel services providers supply the GDS with data on the products they provide.
16. The Commission has not considered it necessary in the past⁷ to decide whether the GDS (or CRS) relevant product markets should be narrowed down further, for instance, on the basis of the type of travel service concerned (air travel, rail travel, car rental, hotel accommodation, etc.). Neither it is necessary in the present case since the transaction will not create or strengthen a dominant position on any possible market.
17. As regards the means of access, the Commission has stated in the past⁸ that the GDS market includes the provision of GDS (or CRS) to on-line travel agencies over the Internet as well as to traditional travel agencies.
18. The parties believe that GDSs compete with each other and belong all to the same product market. They argue, among other things, that (i) the intended use to the consumers of each GDS system is the same, (ii) the GDS Code of Conduct Regulation⁹ presumes that GDSs compete amongst themselves for content and content functionality and in fact it is designed to encourage such competition by attempting to ensure that collusion between airline owners of GDSs and the GDS itself cannot harm this competition to the detriment of consumers¹⁰, (iii) GDSs cannot unilaterally change their pricing levels materially without such a change provoking a competitive response from the remaining systems and suppliers in due course. This would indicate that each GDS views the others, and indeed other distribution channels, as competitive restraint and cannot act independently of them. (iv) moreover, GDSs attempt to persuade content providers to grant access to their content, whether or not such content has been obtained by others. Demand side substitutability also exists, according to the parties, from the point of view of travel agents. Actually, under the GDS code of conduct Regulation, travel agent subscribers are free to change GDSs without penalty after one year and subscribers are in many cases beneficiaries of incentives in their pricing schemes.
19. However, since it was pointed out by third parties in a recent case that, in general, travel agencies use only one GDS to which they are tied and each GDS constitutes an essential facility to make reservations, the Commission did not rule out in its decision that each

⁶ See particularly case Case COMP/M. 2197 Hilton/Accor/Forte/Travel Services JV

⁷ Case IV/M. 1547 Lufthansa/Amadeus/Start

⁸ Case COMP/M. 2197 Hilton/Accor/Forte/Travel Services JV.

⁹ Council Regulation (EC) N° 2299/1989 OJ L 220 of 29.7.1989 as amended by Council Regulation (EC) No 3089/93 of 29 October 1993 OJ L 278 of 11/11/1993 and Council Regulation (EC) No 323/1999 of 8 February 1999 OJ L 040 of 13/02/1999 on a code of conduct for computerised reservation systems.

¹⁰ Article 3.2 (a) of Council Regulation (EC) N° 2299/1989 OJ L 220 of 29.7.1989.

GDS may constitute a separate market¹¹. Nevertheless, in the present case it can be left open whether Sabre (as each of the other GDSs) can be considered as a separate market since the transaction would not lead to competitive concerns even if there were no substitutability as between different GDSs.

Relevant geographic market

20. The relevant geographic market for major GDSs (Galileo, Amadeus, Sabre and Worldspan) has usually been regarded as national in character mainly because the conditions of sale vary from country to country¹² and the fact that travel agencies operate in national markets. However, taking into consideration the development of Internet-based travel service information and reservation systems that make information and data accessible across borders, the market may have a wider geographical scope. Nevertheless in the present case it is not necessary to define the relevant geographic market since the impact of the operation will not give rise to competition problems.

Assessment

Horizontal aspects

21. The combined market shares of the parties in the travel agency sector is [0,1 – 5%] in any possible product and geographic market definition.

Vertical aspects

22. As regards vertical aspects, Travelocity Europe, will be vertically integrated with Sabre. Did GDSs compete with each other and were the geographical scope of the market is national, the only vertically affected markets where Sabre's market share is above 25% would be Belgium [25-35%], Greece [25-35%] and Luxembourg [25-35%]. If each GDS constituted a separate market there would be vertically affected markets in each country. However, given Travelocity Europe's low market shares, the transaction will not lead to the creation or strengthening of a dominant position on the basis of either market definition.

CONCLUSION

23. 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,

Signed by
Mario Monti
Member of the Commission

¹¹ Case COMP/M 2510 Cendant Galileo

¹² Case COMP/M 1812 Telefónica/Terra/ Amadeus, COMP/M 2197 Hilton/Accor/Forte/Travel Services JV COMP/ M 2510 Cendant/Galileo.