

***Case No COMP/M.2794 -
AMADEUS / GGL / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/05/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.05.2002
SG (2002)D/229869

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2794 - Amadeus/GGL/JV

Notification of 12/04/2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 12 April 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹, whereby the undertakings AMADEUS Global Travel Distribution S.A. (Amadeus) and LASER S.A. (LaSer) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company constituting a joint venture which will operate as a virtual travel agency by way of purchase of shares and contribution of activities.
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. Amadeus is the ultimate parent company of the Amadeus Group of companies. It is based in Spain and its current main shareholders are Air France, Iberia and Lufthansa which hold 91,53% of the capital. Amadeus is an information technology company which provides technology, marketing and distribution services to the travel industry world-wide. In particular, Amadeus operates a global distribution system (GDS) that enables travel service providers such as airlines, hotels and car rental companies, to disseminate information about schedules, availability, pricing and ticketing of their services. The GDS provides the computer processing, storage and telecommunications links to allow the sale of travel and travel related products.

¹ OJ L 395, 30 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).

4. LaSer is a subsidiary of the French retail group Galeries Lafayette (GGL). LaSer is a European service provider whose activities for retailers and consumers hinge on management of customers relations. Its service line-ups is supported by two entities: E-LaSer, which focuses on Business to Business services and more precisely on CRM (Customer Relationship Management), both remote and in stores and COFINOGA which focuses on two key business: direct consumer credit and private label cards. Private label cards form the backbone of a financial intermediation services between brands and their customers. Its private label cards are backed by a variety of loyalty programmes. LaSer's flagship programme is "Points Ciel", a multi-partner program that enables consumers to redeem their points in a various range of rewards, such as trips.
5. The joint venture will be an on-line travel agency which will operate in France. Its clients will be basically leisure travellers.

THE OPERATION

6. The creation of the joint venture will consist of the following: first LaSer will set up the joint venture with making a contribution in cash to the capital of [les than € 10 000 000], then the joint venture and LaSer/Amadeus will enter into several agreements [...] Finally Amadeus will contribute [less than € 10 000 000] in cash and the joint venture will issue shares to Amadeus so that at the end of this process and, on the basis of their respective contributions, each party (LaSer and Amadeus) will hold 50% of the capital of the joint venture. [...] The final ownership of the joint venture capital is therefore equal between the parent companies and identical voting rights are attached to their shares and the governing body will consist of four members each of the parties being entitled to appoint two of them. Strategic decisions (such as the business plan and budget require unanimous approval). In these circumstances, the JV will be jointly controlled.

Full function company operating on a lasting basis

7. The on-line travel agency will be a full-function joint venture. It will perform on a lasting basis all the functions normally carried out by undertakings operating in the same market. It will be an entity with sufficient financial resources to conduct the business, it will have its own workforce dedicated to its day-to-day operations. Only during the 18 first months of operations LaSer will provide the joint venture with 3 management personnel. All members of the Board of Directors shall be full time employees of the joint venture, except the Chairman who shall be appointed by LaSer during the joint venture's first 2 years of operation. After that initial period, the joint venture will turn into a full independent structure which will progressively have a more significance presence on the market. The joint venture will also be the owner or licensee of the software necessary for its business. It will have its own name and brand as well as its own business policy independent from that of its parent companies being free to decide on its customers and the prices of the goods and services being offered. The joint venture will operate on a lasting basis. The agreement between the parent companies will only terminate on the date upon which only one of the parties holds shares or that upon which the joint venture is liquidated.
8. Accordingly, the transaction is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 000 million, each of them has a community-wide turnover of more than € 250

million. Furthermore, they do not achieve more than two thirds of their aggregate Community-wide turnover in one Member State. The notified transaction therefore has a Community dimension.

COMPETITIVE ASSESSMENT

Travel Agency

Relevant product market

10. As regards the supply of travel agency services the Commission has defined travel agents² 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 services³. 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. As regards a further possible distinction between on-line travel agencies and traditional travel agencies, the Commission has stated⁴ in a recent case that the provision of travel agency services on-line is not a different market from the provision of travel agency services by traditional "brick and mortar" 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, according to the market investigation performed in said recent case. However, the Commission did not exclude that, in the future, there could be an independent evolution of the on-line travel agency sector. The parties are of the opinion that virtual travel agencies belong to the same market as traditional travel agencies. However, 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

11. 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.

12. As regards the present transaction, the parties submit that the market can still be considered as national-wide because of language barriers, the fact that the vouchers and tickets of the joint venture will be issued and distributed at national scale, the points of the

² Case IV M 1524 Airtours/First Choice

³ 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

⁴ case COMP M. 1812 Telefónica Terra/Amadeus

departure of the travel services provided (France) and the legal complications due to the fact that the contracts will be governed by French law. 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

13. Amadeus' principal activity is the operation of a GDS. In previous cases⁵ 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.
14. The Commission has not considered it necessary in the past⁶ to decide whether the GDS 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.
15. The parties believe that GDSs compete with each other and belong all to the same product market. However, since it was pointed out by third parties in a recent case⁷ 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 GDS may constitute a separate market. It has also been pointed out in the present case that, since travel agents are usually connected to one GDS only, airlines are forced to subscribe to, at least, the four major GDSs, i.e. Amadeus, Galileo, Sabre and Worldspan. Only thereby are airlines able to reach the required group of actual and potential travellers. Nevertheless, in the present case it can be left open whether Amadeus (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 between different GDSs.
16. As regards the means of access, according to an investigation recently carried out by the Commission⁸, it would not seem that a GDS adapted to Internet for on-line travel agencies is a different product market from a traditional GDS given that: (i) the service provided to travel agents (availability and bookings) is the same and (ii) substitutability from the supply point of view: GDS companies provide GDS services for both "brick and mortar" and on-line travel agencies. However, in the present case, it has been pointed out that on-line GDSs encompass a number of IT products and services that are not found in traditional GDSs. In the case of Amadeus, it provides software to airline companies that want to be linked to on-line travel agencies that use the Amadeus

⁵ See particularly case Case COMP M. 2197 Hilton/Accor/Forte/Travel Services JV

⁶ Case IV M. 1547 Lufthansa/Amadeus/Start

⁷ Case COMP M. 2510 Cendant Galileo

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

system, computer reservation systems to travel portals as well as the services to travellers that make reservations through travel agencies connected to Amadeus⁹. According to third parties these services are not only provided by GDS companies but also by IT companies. Indeed, the access of Amadeus customers (travel agents and airlines) or private customers to the GDS service requires software to allow the user to connect itself to Amadeus' GDS database. This software is specific since it only serves for the purpose of using Amadeus' GDS database. No other GDS can be accessed through it. According to Amadeus, this software has a purely ancillary nature and cannot be distinguished from the provision of the GDS service itself. It forms part of its core business (the provision of GDS services). As regards booking and reservation engines through Internet, they only allow users and subscribers to have access to the GDS database adapted to Internet. However, the question whether GDSs adapted to Internet constitute a different product market or whether different IT products and services linked to travel reservations through Amadeus via Internet constitute different relevant product markets can be left open in this case because the transaction will not lead to the creation or reinforcement of a dominant position.

Relevant geographic market

17. 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 country¹⁰ 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

18. The combined market shares of GGL and the joint venture in the travel agency sector will be negligible in any possible product market (business and leisure) and geographic market definition. If virtual travel agencies are to be considered as belonging to the same market as traditional travel agencies the market share in France of the new entity in combination with GGL's market share will be below [0-5%] (for business and leisure segments and the combination of both). If virtual travel agencies are considered as a separate market, the concentration will not lead to any overlap in France. According to the expected sales of the joint venture during the next years, compared to the total expected size of the on-line travel agency segment, the market shares of the joint venture in this segment would be [0-5%] in 2002, [0-5%] in 2004 and [0-5%] in 2006. Accordingly, the transaction will not lead to the creation or reinforcement of a dominant position in any market.

Vertical aspects

⁹ In particular in France Amadeus provides reservation engines that allow travel agencies to provide their clients with internet access to travel bookings (Res@pack), E-travel Planitgo and self booking engines (E-Travel Aergo for corporate customers).

¹⁰ Case COMP M. 1812 Telefónica/Terra/ Amadeus COMP M. 2197 Hilton/Accor/Forte/Travel Services JV COMP M. 2510 Cendant/Galileo.

19. The joint venture will be vertically integrated with Amadeus. Did GDSs compete with each other and were the geographical scope of the market national, Amadeus' market share in France is [70-80%] and [80-90%] in the GDS Internet segment. In any event, even if each GDS had to be considered as a separate market, the concentration will not lead to the creation or reinforcement of a dominant position in the GDS market(s) in so far as the parties have minimal market shares in the downstream market for travel agencies that will not enable them to foreclose competitors in the GDS markets.
20. Finally, it has been brought to the attention of the Commission that Air France, Iberia and Lufthansa which have a combined financial participation in Amadeus of 91,53% and are dominant within their home countries and for international services in and out of those countries, could have an inherent economic interest in favouring the joint venture with special or exclusive content, fares, inventory and functionality, special commissions, negotiated fares, frequent flyer redemption and similar benefits not otherwise available to competing ventures on the same terms and conditions at the expense of competition of air carrier market and the market for distribution services. In this respect, it has to be borne in mind that: (i) Air France, Iberia and Lufthansa compete with each other and each of them belongs to different airline alliances (Air France to Skyteam, Iberia to One World and Lufthansa to the Star Alliance). Accordingly it is doubtful that they would accept that the travel agency favours each of them to the detriment of each other and their respective allied partners and (ii) even if we had to accept that airlines might have a financial interest in giving a favourable treatment to the joint venture, this would not lead to the creation or reinforcement of a dominant position in the air carrier market and the market for distribution services given the size and expected market shares of the joint venture . .

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.

For the Commission,

(signed by)

Mario Monti

Member of the Commission