

***Case No COMP/M.3068 -
ASCOTT GROUP /
GOLDMAN SACHS /
ORIVILLE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/02/2003

SG (2003 D/228491 - D/228492)

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.3068 - ASCOTT GROUP/GOLDMAN SACHS/ORIVILLE
Notification of 13/01/2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 13 January 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the Singapore-based undertaking The Ascott Group Limited (“Ascott”) acquires within the meaning of Article 3(1)(b) of the Council Regulation joint control of Oriville SAS (“Oriville”), currently 90% controlled by The Goldman Sachs Group (“Goldman Sachs”).
2. After examining the notification, the Commission has concluded that the notified transaction falls within the scope of the Council Regulation (EEC) No. 4064/89 and that it does not raise serious doubts as to its compatibility with the Common market and with the EEA agreement.

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).

² 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).

I. THE PARTIES

3. Ascott is a Singaporean company controlled by Singapore Technologies Pte Ltd, a technology-based conglomerate active inter alia in the accommodation sector, mainly but not exclusively through Ascott. Ascott is principally active in the management of serviced short stay residences in Asia, Australia and the UK. It operates its short stay residences under the Ascott (high-end) and Somerset (mid-range) brands.
4. Goldman Sachs is a US-based global investment banking and securities firm active in global capital markets, asset management and securities services. It is also active, although only marginally, in the hotel accommodation sector.
5. Oriville is a French company currently 90% owned by Goldman Sachs and 10% by Westmont Hospitality Group. Oriville operates short stay residences mainly in France, but also in United Kingdom, Belgium, Spain and Germany, under the mid-range "Citadines" and the higher-end "Citadines Prestige" brands.

II. THE OPERATION AND THE CONCENTRATION

6. Goldman Sachs, currently holds 90% of the shares in Oriville, through three of its affiliates (WW OCR Seven B.V., WW OCR B.V. and Orilux Invest SARL), the remaining 10% being held by the Westmont Hospitality Group ("Westmont").
7. Pursuant to a Share Purchase Agreement dated 04.12.2002, Goldman Sachs will transfer 50% of the outstanding shares and voting rights in Oriville to Ascott. Furthermore, Ascott will be granted a call option to acquire from Goldman Sachs all remaining shares and voting rights in Oriville, between the date of the closing of this transaction and end of May 2004. However, this option does not constitute a legally binding agreement whereby joint control by the parties will be converted to sole control by Ascott and it remains uncertain whether it will be exercised. Therefore the existence of the call option does not put into question the joint control exercised by Ascott and Goldman Sachs over Oriville.
8. Pursuant to the provisions of a Shareholders' Agreement, Goldman Sachs and Ascott will have joint control over Oriville as each of them will have veto rights over the appointment and removal of the president of the Board and the adoption of strategic decisions, including the approval of the business plan and annual budget.
9. In the light of the factors set out above, the acquisition by Goldman Sachs and Ascott of joint control in Oriville is a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ in 2001 (Goldman Sachs: € [...] million; Singapore Technologies Pte Ltd: € [...] million) . Each of the undertakings concerned has a Community wide turnover in excess of € 250 million in 2001 (Goldman Sachs: € [...] million; Singapore Technologies Pte Ltd: € [...] million), 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.

IV. COMPETITIVE ASSESSMENT

A. The product market

11. The parties submit that the relevant product market is the hospitality market including all hotels and short stay residences, with an alternative market definition being the mid-priced hospitality market.
12. The parties argue that short stay residences, which are studios, one, two or, more rarely, three bedroom units, can be used by customers in the same way as a conventional hotel room of the same category. Indeed, they explain that the only difference in the product is the flexibility offered by short stay residences, where the customer has the choice to opt for conventional hotel services (cleaning, laundry, food, etc) or to do his own catering. The parties also explain there is a strong supply-side substitutability from conventional hotel accommodation to short stay residences and vice versa. Indeed, according to the parties, a conventional hotel, or parts of it, may relatively easily be converted into a short stay residence and similarly a short stay residence, or parts of it, may relatively easily be converted into a conventional hotel.
13. In its past decisions with respect to the accommodation sector, the Commission has not considered whether short stay residences should or should not be included in the traditional hotel sector. On the traditional hotel accommodation market, the Commission had analysed possible distinctions based on the price or comfort category, or on the ownership (independent or by a chain) but has always left the definition open.
14. The Commission's market investigation has pointed out some differences between short stay residences and conventional hotels that can be summarised as followed:
 - (a) in the product: short stay residences' units are usually larger and equipped with a kitchen. Short stay residences generally do not have "public" area such as lobby, restaurant, gymnastic facilities, etc. and the services offered are more limited.
 - (b) in the customer: there is a higher level of corporate client at short stay residences compared to conventional hotel and groups are not as frequent as in hotels.
 - (c) in the stay: the average duration in short stay residences is longer than in conventional hotels and there is less difference in occupancy rates between the week days and week ends.

³ 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.

15. However these differences in characteristics are not sufficient to clearly differentiate markets for the provision of short stay residences services and conventional hotels.
16. Regarding a possible division of the short stay residences market based on the price or comfort category, since the short stay residences are targeted at the business market, most of the supply falls in the middle priced categories. Nevertheless it should be noted that there are high-end brands such as Ascott and Citadines Prestige.
17. The exact definition of the relevant product market can, however, be left open, as no competition problems arise whatever product market definition is considered.

B. The geographic market

18. As already indicated in past decisions⁴, the Commission believes that the hotel sector displays both national and local (cities) characteristics:
 - national, because it appears that the conditions of competition are homogeneous at a national level; and
 - local, because a second degree of competition exists at a local level and takes place between all hotels, the primary criterion for the choice of a hotel by an individual customer being its location.
19. The respondents to the Commission's investigation have stressed the local characteristics of the short stay residences segment.
20. However, the exact definition of the relevant product market can be left open as no competition problems arise whatever product market definition is considered.

C. Assessment

21. The parties' activities only overlap in London, where Orville operates four residences and Ascott seven. In addition, both Singapore Technology and Goldman Sachs have controlling interests in hotels located in London. As in previous decisions⁵, the market shares are calculated on the basis of the number of units (capacities) and nights spent (occupancy).

Overall hospitality market

22. Based on the information provided by the parties, the transaction does not give rise to competition concerns in the overall hospitality market in London, where the combined market shares of the parties would be less than 1% both in terms of capacity (in units) and occupancy (nights spent). This has also been confirmed by the Commission's market investigation.

⁴ See inter alia case IV/M.1596 Accor, Colony, Blackstone/Vivendi

⁵ See inter alia case IV/M.1596 Accor, Colony, Blackstone/Vivendi

Mid-range hospitality market

23. On the basis of the parties' figures, the transaction does not give rise to competition concerns in the mid-range hospitality market in London, where the combined market shares of the parties would be less than 1% both in terms of capacity (in units) and occupancy (nights spent). This has also been confirmed by the Commission's market investigation.

Short stay residences

24. With regard to the market for short stay residences, the combined entity would have a combined market share in the London area of [approximately 25%] in capacity (Ascott, [10-15%]; Oriville, [10-15%]) and [approximately 25%] in occupancy (Ascott, [10-15%]; Oriville, [10-15%]).
25. Notwithstanding this combined market share, the parties argue that the impact of the transaction is very limited on the short stay residences market in London as they will face direct competition from other short stay residences. Indeed according to a recent report⁶, there are seven large suppliers in London including Ascott and Oriville and numerous smaller operators. During the market investigation, none of these competitors have expressed concerns about the potential effects of the operation.
26. In addition this study also indicates there has been a substantial growth in the supply of short stay residences in London, with an increase in the number of buildings of 53% between 2000 and 2002. Part of increase is due to the entry in the short stay residence business of conventional hoteliers such as Marriott.
27. Finally, as mentioned above, conventional hotels could be considered as a credible alternative to and therefore a price constraint on short stay residences.
28. For the reasons detailed above, it is unlikely that the operation will create or strengthen any possible dominant position of the parties on the short stay residences market.
29. In case the short stay residences market should be further divided into high-end and mid-range markets, the proposed transaction would not raise competitive concerns. Indeed on the hypothetical high-end market, the parties' activities do not overlap as only Ascott is active in this segment under the Ascott brand. Citadines does not operate any high-end short stay residences in London. With regards to an hypothetical mid-range market, the combined share of supply of the parties would not materially differ from their combined share of supply in the overall short stay residences market. Indeed, as mentioned above, the short stay residences mainly fall in the middle priced categories. In addition the other factors of competition mentioned above also apply to these hypothetical markets.

⁶ "London Serviced Apartment Report", FPD Savills, December 2002.

Vertical relationships

30. Both Ascott and Goldman Sachs are active in the property development and investment market in the UK. None of them hold a significant share of this market. Therefore, the proposed transaction does not raise any vertical issues.
31. It can be concluded that the operation does not raise serious doubts as to its compatibility with the common market. There is no risk that the operation will create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

V. CONCLUSION

32. 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)
Mario MONTI
Member of the Commission