

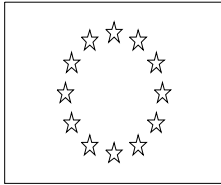
*Case No COMP/M.3101 -
ACCOR / HILTON / SIX
CONTINENTS / JV*

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 16/05/2003

*Also available in the CELEX database
Document No 303M3101*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.05.2003

SG (2003) D/229797

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: **Case No COMP/M.3101 – ACCOR / HILTON / SIX CONTINENTS / JV**
Notification of 9 April 2003 pursuant to Article 4 of Council Regulation No 4064/89¹.

1. On 27 September 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Accor.Com S.A. (“Accor”), Ladbroke Group International Limited, controlled by Hilton Group Plc. (“Hilton”), InterContinental Hotels (Overseas) Limited, controlled by Six Continents Plc. (“Six Continents”) and Worldres.Com Inc. (“Worldres”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking WorldRes Europe Limited (“WRE”), by way of purchase of shares in a newly created company constituting a joint venture.
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 TO THE OPERATION

3. Accor (France), Hilton and Six Continents (UK) are leading European hotel groups². Worldres (US) operates business-to-business e-commerce solutions for on-line marketing and reservations to the global lodging industry.

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 Accor’s brands include Sofitel, Novotel, Mercure, Ibis, Formule 1 and Etap. Hilton’s brands include Conrad, Scandic and Hilton. Six Continents’ brands are InterContinental, Crowne Plaza, Holiday Inn and Staybridge.

4. WRE (UK), the Joint Venture to be established, will operate an internet-based reservations system to allow hotels to promote accommodation on the Internet and to provide travel agents and other distributors access to a wide range of hotel accommodation which may be reserved on a real-time basis. WRE will also operate the EU versions of the placestostay websites.

II. THE OPERATION

Joint control

5. As a result of the transaction, Accor, Six Continents and Worldres will each hold 31.25% of the shares in WRE. Hilton will initially hold only 6.25% of the total issued equity, although it holds an option to increase that participation to the same level as the other participants to the JV. Pursuant to the Shareholder's Agreement, and given that each shareholder has significant veto rights (in the case of Hilton after having increased its participation), all parties can be considered to have joint control over WRE.

Full function

6. WRE will perform, on a lasting basis, all the functions of an autonomous economic entity. The JV will have its own management, its own resources (including technology), limited medium/long term dependency on the parents and will be merchant market oriented. The parties state that the success of the JV depends to a large extent on the rate of third party hotels (other than the parent hotels) signing up to the distribution activities of WRE. The proposed transaction is therefore a full-function joint venture constituting a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Community dimension

7. The combined worldwide turnover of all undertakings concerned is well in excess of €5,000 million in 2001. The aggregate Community-wide turnover of more than two undertakings concerned amounted to more than €250 million in 2001. The undertakings concerned did not achieve more than two-thirds of their EU turnover within one and the same member state. The concentration therefore has a Community dimension pursuant to the Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

Introduction

8. WRE will act as a distributor of hotel accommodation by maintaining an Internet-based infrastructure that will allow the hotel industry to promote, manage and distribute information concerning their hotel accommodation and to provide booking facilities on a real-time basis. The JV targets an existing distribution model (third party managed online bookings) that is expected to become an increasingly important revenue source for hotel companies (currently accounting for [0-10]% of online bookings in the US, compared to [0-10]% in the EU).
9. The hotel accommodation information gathered by WRE will be made available to a variety of hotel accommodation distributors, ranging from travel websites to travel agencies and to existing facilities provided by GDS services suppliers. These distributors will be able to offer end users information on the hotel accommodation and their availability and to reserve a

room on real-time basis. WRE will also operate the EU versions of the placestostay websites³.

Relevant Product Market

10. The Parties submit that WRE will function as a Computerised Reservation System (CRS) or global distribution system (GDS), as it provides travel agencies with information and enables them to make hotel reservations. Accordingly, the parties consider the supply of GDS services to constitute the relevant product market. The Commission had previously considered CRS / GDS to form a distinct market⁴. In previous cases, the Commission has not considered it necessary to decide whether the relevant product market should be narrowed down further on the basis of the type of travel service concerned (i.e. air travel, car rental, hotel accommodation etc.).
11. A CRS/GDS is different from the travel agency services market. Travel agents act as retailers supplying various services to travellers such as flights, car rental, hotel booking etc. which are remunerated by the supplier of the service concerned⁵. In this respect, travel agents act as the front end company, whilst the GDS (or CRS) functions as the back-end company, providing travel agencies with a tool to obtain information and make reservations.
12. The market investigation has only partly confirmed the parties' submission. Third parties have emphasised that the relevant market is to be narrowed down to a market for online hotel accommodation sales. However, in the present case it is not necessary to conclude whether the relevant market is either that of CRS/GDS or as narrow as the online hotel accommodation sales market as this would not materially affect the assessment of the notified concentration.

Relevant geographic market

13. As the Internet allows a free flow of information across borders at low cost, it is not necessary for GDS service providers or online hotel accommodation sales channels to have a presence in the countries in which the services are offered. The content of the GDS and online sales channels is the same across borders and available in different languages. The relevant geographical market is, as confirmed by the market investigation, EEA- wide in scope.

Competition effects

A. Horizontal relationships

14. Amadeus, Galileo and Sabre are the leading GDS suppliers, accounting for more than [90-100]% of the EEA market. It is expected that WRE will account for less than [0-10]% of this market. If the market would be considered as narrow as that that for online hotel accommodation sales, the market share of WRE would not be significantly higher ([0-10]%).

³ The placestostay websites are targeted at the leisure travel sector and allow end users to make direct hotel accommodation bookings for (mostly independently owned) hotels, bed & breakfasts and resorts. In so far as this activity is in the market for travel agency services, it does not lead to material horizontal overlaps with Accor's activities in that market .

⁴ COMP/M.1812 Telefónica/Terra/Amadeus and case IV/M 1547 Lufthansa/Amadeus/Start.

⁵ Case IV M 1524 Airtours/Firs Choice

Thus, regarding horizontal relationships, the operation does not raise any competition concerns.

B. Vertical relationships

15. Although the JV operates downstream of the parties' hotel accommodation activities, it is not intended to distribute the parties' hotel accommodation exclusively. Based on historical data, Accor, Hilton and Six Continents ("the Hotel parents") represent around [25-35]% of WRE's projected room capacity output. The parties submit that the combined turnover of the Hotels parents would not be sufficient to constitute a viable source of business for WRE. It would therefore not be reasonable for the JV to deny third party hotels to use WRE as a distribution vehicle. Rather, as clearly indicated by the parties' business plan, the JV aims to sign up as many third party hotels as possible to ensure the viability of the JV.
16. Third parties have argued that the Hotel parents would have access to the commercially sensitive information that third party hotels provide to the JV. As the Hotel parents will be both suppliers to the JV and intermediary distributors, third parties have raised the concern that the Hotel parents could abuse the commercially sensitive information communicated and that WRE could present the information in a biased way to favour the activities of the Hotel parents.
17. The Commission's analysis has not confirmed these concerns. As to the Hotel parents' incentive to discriminate third party hotels, it is to be emphasised that the success of the JV hinges on third party hotels being able to distribute their hotel accommodation on equal terms as the Hotel parents. Any possible risk of discrimination, abuse of the information supplied by third party hotels or biased presentation of that information would seriously undermine the JV's prospects of success. The open and non-discriminatory basis on which WRE will operate is reflected in the Hotel Company Agreements which establish identical terms of distribution for both the Hotel parents and third party hotels that wish to distribute their hotel accommodation through WRE. The JV will determine its commercial policy in full independence from its parents.
18. Although the JV gathers three of the leading Hotel groups active in Europe, the parties will not have a combined market share above 25% in any national market for all hotels. If alternative hotel accommodation market definitions, according to star categories, are to be used as a basis for the assessment, the Hotels parents would have combined market shares above 25% in France in the 0/1 star category ([25-35]%), in Belgium in the 2 star category ([25-35]%), in Luxembourg and Sweden in the three star category (respectively [25-35]% and [30-40]%) and in Luxembourg in the 4 star category ([40-50]%). As described above, the Hotel parents' position on the GDS / online hotel accommodation sales market is de minimis. As such, the exclusion of third party hotels from WRE cannot be a viable commercial policy for the parties.
19. Equally so, WRE cannot foreclose competing online distribution systems (such as GDS's) of the Hotel parents' accommodation offer as such would unreasonably limit the latter's ability in distributing their hotel accommodation. WRE will distribute only a fraction of the Hotel parents' capacity⁶. Applying more favourable conditions to the Hotel parents than to competing CRS's or GDS's would be ineffective and have a negative impact on the Hotel parents' activities.

⁶ even if WRE delivers the targets forecast in its business plan, alternative internet-based distribution channels (such as competing CRS/GDS and the parent hotels' proprietary websites) will continue to be more important distribution channels than WRE in the foreseeable future.

20. The above also applies to WRE's operation of the place-to-stay websites. In addition, this activity of WRE is mainly targeted at independent hotels in the leisure travel sector.
21. In conclusion, as to vertical relationships, the operation does not raise any competition concerns.

C. Co-ordination effects

22. The Commission has examined whether the operation would give rise to a risk of co-ordination between the parents on the related market for hotel services, in accordance with Article 2 (4) of the Merger Regulation.
23. As indicated by the parties, WRE will allow the hotel industry to store, manage and distribute room, rate and availability information. This information is gathered by WRE on a real-time basis through a direct link with the Hotel parents and third party associated hotels. Travel websites and other distributors will be able to link into the system to look up information and generate reservations.
24. The market investigation has focused on whether the creation of the JV could, directly or indirectly, increase the flow of information between the Hotel parents, providing them with the incentive and ability to co-ordinate.
25. Some third parties have argued that through the JV, the Hotel parents will be able to collect and interpret information concerning rates and room availability in a dynamic way and on a real-time basis which would allow them to interpret demand patterns, on the basis of which the Hotel parents could then adjust their pricing and room availability policy. According to these third parties, such form of supply or pricing collusion could lead to higher prices, especially in those geographic areas where the Hotel parents hold a significant share of the market.
26. The Commission's analysis has not confirmed these concerns. As to the risk of possible co-ordination of the Hotel parents competitive information, the market investigation has shown that the Hotel parents will not have access to information relating to their respective activities or to the activities of associated third party hotels. WRE will not hold comprehensive information on rates, types of room or their availability in the WRE system. Hotel chains will maintain such dynamic data in their proprietary CRS systems whilst WRE will only dispose of information that is presented in a fragmented way. Moreover, according to the parties there is no correlation between the rates offered for hotel accommodation through WRE's system and the rates offered through other, traditional channels of hotel accommodation distribution. The information available to WRE could thus not form a basis that would allow to deduce patterns of offer and demand on which the Hotel parents could develop a co-ordinated commercial strategy. In addition, all information available to WRE can be obtained from websites in the WRE network⁷ to which third party hotels and distributors (travel agencies) have access.
27. Quite apart from the above, WRE's management is separated from the hotel business through "Chinese walls" and confidentiality obligations⁸. The Hotel parents will only obtain such information as is necessary to protect their position as shareholders in the JV.

⁷ The WRE network includes all distributors that are linked to the WRE system.

⁸ Hotel Company Agreements clause 13, Shareholders' Agreement clause 19.1

28. It appears that, in view of WRE's limited importance for the Hotel parents' distribution of hotel accommodation, the need for the JV to attract the largest number of third party hotels possible and the provisions as reflected in the Hotel Company Agreements, an Article 2(4) issue can be excluded.

IV. CONCLUSION

29. In light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

30. 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
Franz FISCHLER
Member of the Commission