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***Case No COMP/M.6179
- ALPHA FLIGHT/
LSG SKY CHEFS/ JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4 (4)
Date: 19.07.2011



EUROPEAN COMMISSION

Brussels, 19.07.2011
C(2011)5337

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:
To the Office of Fair Trading

Dear Sirs,

Subject: Case No COMP/M.6179 – ALPHA FLIGHT/ LSG SKY CHEFS/ JV
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the United Kingdom.

Date of filing: 22.06.2011

Legal deadline for response of Member States: 14.07.2011

Legal deadline for the Commission decision under Article 4(4): 28.07.2011

I. INTRODUCTION

1. On 22 June 2011, the Commission received a Reasoned Submission from the Parties requesting a referral of the transaction cited above pursuant to Article 4(4) of Council Regulation (EC) No 139/2004 (the "Merger Regulation"). The Parties requested that the operation be examined in its entirety by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 22 June 2011.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. By letter of 4 July 2011, the Office of Fair Trading (the "**OFT**") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. THE PARTIES

Alpha Flight Group Limited (Alpha)

5. Alpha is wholly-owned by Dnata, a sister company of Emirates.² Dnata and Emirates are wholly owned subsidiaries of the Investment Corporation of Dubai (ICD) which is in turn wholly owned by the Government of Dubai. Alpha is engaged in providing in-flight catering services to a number of international airlines including Emirates and has a presence in eleven countries in the Middle East, Australia and Europe (particularly in Bulgaria, the Czech Republic, Ireland, the Netherlands, Romania and the United Kingdom³).
6. Dnata is engaged in the provision of airline services, including passenger handling, cargo handling, ramp, maintenance and other technical services for airlines in a number of countries worldwide.

LSG Lufthansa Service Holding AG (LSG)

7. LSG is a wholly-owned subsidiary of Deutsche Lufthansa AG ("**LH**"). Under the brand LSG Sky Chefs, it provides airline catering and related business activities worldwide. In the EEA, LSG provides in-flight catering services in 11 countries: Belgium, Denmark, Estonia, Germany, Italy, Latvia, Lithuania, Norway, Portugal, Sweden and the United Kingdom.⁴
8. LH is the largest German airline. It provides scheduled passenger and cargo transport and related services (maintenance, repair and overhaul services, in-flight catering and IT services). LH controls several other airlines⁵ and is a member of Star Alliance.

III. THE OPERATION AND CONCENTRATION

9. The **transaction** concerns the creation of a new joint venture (the "**JV**") in the United Kingdom by combining Alpha's and LSG's (together the "**Parties**") activities in in-flight catering services in the United Kingdom. A subsidiary of Alpha will hold 50% of the shares in the JV and a subsidiary of LSG will hold the remaining 50% of the shares. The Parties will be equal partners, with each holding 50% in the JV. The JV will not include any operations in any country outside the UK.⁶

2 The acquisition of Alpha by Dnata was approved by the Commission; see Case COMP/M.6037 Dnata/Alpha Flight Group.

3 In addition to these countries, Alpha is active in Italy at 25 airports via its 50% share holding in a joint venture with Servair the subsidiary of Air France/KLM.

4 It also owns facilities in the Netherlands, [...].

5 LH controls Swiss International Air Lines Ltd., Air Dolomiti, Contact Air, Augsburg Airways, Eurowings, and Eurowings' subsidiary, the low-cost carrier Germanwings, British Midland International ("bmi"), Brussels Airlines and Austrian Airlines. In addition, LH holds 15.85% of the shares of Jet Blue, a low-cost airline active in the United States of America, as well as 50% of SunExpress and 14.44% of Luxair.

6 The JV will provide management services [...].

IV. EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ (EUR [...] billion for LH/LSG and EUR [...] billion for Emirates Group/Alpha). Each of them has an EU-wide turnover in excess of EUR 250 million (EUR [...] billion for LH/LSG and EUR [...] billion for Emirates Group/Alpha) and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

11. Alpha and LSG are both active in the provision of in-flight catering services to airlines within the EEA. The JV will only include the UK operations of the Parties. Alpha currently operates at 16 airports in the United Kingdom⁸ while LSG currently operates at 12 UK airports.⁹ The Parties overlap for the supply of in-flight catering services at 10 airports in the United Kingdom, namely Birmingham, Cardiff, East Midlands, Glasgow, London Gatwick, London Heathrow, London Stansted, Luton, Manchester and Newcastle (the "**Overlap Airports**").

A. Relevant product market

12. In previous decisions concerning in-flight catering services¹⁰, the Commission has defined the relevant product market as comprising all in-flight catering services, leaving open whether the in-flight catering market should be further segmented into traditional suppliers and so-called non-traditional suppliers (for example logistic companies acting in joint ventures with branded or non-branded food suppliers).
13. The Parties submit that in-flight catering services include the full range of catering services i.e. for all classes (economy/business/first class). According to the Parties, traditional and non-traditional suppliers are usually able to offer a very wide range of meals (hot/cold/snacks) which meet all of the different needs of airline customers. The Parties argue that, as a result, customers (airlines) would always or nearly always enter into "one-stop shop" agreements for the supply of in-flight catering services and it would therefore not be appropriate to divide this market into further segments.
14. The Parties also submit that this market includes back-catered flights. Back-catering means that planes are loaded with food/drinks at one airport, normally at the airline's hub or base, in a quantity that is sufficient for both legs of a return flight.

⁷ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

⁸ Aberdeen, Belfast International, Birmingham, Bristol, Cardiff, Edinburgh, East Midlands, Glasgow, Leeds Bradford, London Gatwick, London Heathrow, London Stansted, Luton, Manchester, Newcastle and Prestwick.

⁹ Birmingham, Cardiff, Doncaster, East Midlands, Glasgow, London City, London Gatwick, London Heathrow, London Stansted, Luton, Manchester, and Newcastle.

¹⁰ See Case COMP/M.6037 Dnata/Alpha Flight Group, COMP/M.4170 LSG Lufthansa Service Holding/Gate Gourmet Switzerland.

15. For the purpose of the present referral, however, the precise product market definition can be left open.

B. Relevant geographic market

16. In past decisions concerning in-flight catering services¹¹, the Commission left the definition open, noting however that the geographic scope of the market was likely to be restricted to the area of a given airport or possibly several airports in a region encompassing airports in close vicinity (e.g. London area). The Parties agree with this approach. Consequently, the present referral is assessed on this basis.

C. Assessment

17. On the basis of the information provided by the Parties in the Reasoned Submission, it is appropriate to make a pre-filing referral of the present case from the Commission to the OFT in the United Kingdom in accordance with Article 4(4) of the Merger Regulation.
18. The transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in the United Kingdom.
19. In order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4) of the Merger Regulation two legal requirements must be fulfilled: (i) there must be an indication that *the concentration may significantly affect competition* in a market or markets and (ii) the market(s) in question must be within a Member State and *present all the characteristics of a distinct market*.¹²
20. The two legal requirements of Article 4(4) of the Merger Regulation are met. First, in line with previous cases, the transaction may be considered on the basis of geographic markets that correspond to each individual airport, being local or regional in scope. Thus, the requirement that any potential effects on competition occur in a market, which "*must be within a Member State and present all the characteristics of a distinct market*"¹³ is met.
21. Second, the criterion relating to the demonstration that the transaction "*is liable to have a potential impact on competition on a distinct market, [...] which may prove to be significant*"¹⁴ is also met. As demonstrated below, even based on the broad market definition proposed by the Parties, which includes back-catering and non-traditional suppliers, the Parties' combined market shares would mean that there are horizontally affected markets and the impact of this on competition may prove to be significant (see paragraphs 22-25 below and **Annex I** attached).¹⁵ Furthermore, given the vertical links between the JV and Lufthansa and Emirates, respectively, the transaction would also lead to vertically affected markets in several UK airports (see paragraphs 26 to 31 below).

11 See for example COMP/M.6037 Dnata/Alpha Flight Group, paragraphs 13-15, COMP/M.4170 LSG Lufthansa Service Holding/Gate Gourmet Switzerland, paragraphs 18-22.

12 Commission Notice on Case Referral in respect of concentrations, para 16, OJ C 56, 05/03/2005, p.2-23.

13 Commission Notice on Case Referral in respect of concentrations, para 16 (ii), OJ C 56, 05/03/2005, p.2-23.

14 Commission Notice on Case Referral in respect of concentrations, para 17, OJ C 56, 05/03/2005, p.2-23.

15 The market shares further increase when back-catered flights and non-traditional suppliers are excluded.

Horizontally affected markets

22. The transaction brings together the number two (Alpha) and the number three (LSG) in in-flight catering services in the United Kingdom (Gate Gourmet is currently number one in the United Kingdom).
23. The Parties estimated the size of the market by two different means: (i) departing passengers and (ii) estimated revenue. Irrespective of the estimation method, following the transaction, the JV would be the leading provider of in-flight catering services in the following airports: Gatwick, Manchester, Birmingham, East Midlands, Cardiff and Stansted. On the basis of a broad market as proposed by the Parties and including both traditional and non-traditional caterers (for example joint ventures of food producers and logistics companies) as well as back-catered flights¹⁶, the Parties' combined market share based on estimated revenue will range between [60-70]% and [80-90]% (see **Annex I** for the estimated market shares of the Parties and their main competitors at the Overlap Airports).
24. The Parties argue that despite the high market shares the transaction would not lead to competition concerns as (i) there would be no barriers to entry, (ii) recently entered non-traditional caterers would constitute significant competitive constraints, and (iii) airlines would have buyer power and could and have already sponsored entry of in-flight caterers.
25. Without prejudice to an examination of these arguments, in light of the affected markets in the Overlap Airports in the United Kingdom, prima facie there are indications that the concentration is liable to significantly affect competition in the respective affected markets.

Vertically affected markets

26. The Parties are both part of groups which include airlines. The Emirates Group includes the airline Emirates, which is a customer of both Alpha and LSG and which serves six airports in the United Kingdom.¹⁷ With a few exceptions¹⁸, the Lufthansa Airlines Group operates to all airports served by Alpha and/or LSG in the United Kingdom.
27. At all these airports (except at Doncaster, Prestwick and Luton), the combined market share of Alpha and LSG exceeds 25%. Accordingly, there are vertically affected markets at all the UK airports served by Alpha and LSG.¹⁹ Furthermore, there are also some vertically affected airports where there is no horizontal overlap between Alpha and LSG.²⁰

¹⁶ If back-catered flights are excluded, the combined market shares of the Parties increase by up to 28 percentage points, depending on the individual airport.

¹⁷ Heathrow, Gatwick, Birmingham, Manchester, Newcastle and Glasgow.

¹⁸ Belfast International, Doncaster, Prestwick and Luton.

¹⁹ These airports are: Aberdeen, Birmingham, Bristol, Cardiff, East Midlands, Edinburgh, Glasgow, Leeds, Bradford, London Gatwick, London Heathrow and London Stansted.

²⁰ These airports and the respective market shares on a per departing passenger basis and without accounting for back-catering are: Aberdeen (Alpha's market share [40-50]%), Bristol (Alpha's market share [20-30]%), Edinburgh (Alpha's market share 50-60]%), Leeds Bradford (Alpha's market share [70-80]%) and London City (LSG's market share [40-50]%).

28. According to the Parties, based on the share of purchases of in-flight catering or departing passengers, the Emirates Group and the Lufthansa Airline Group individually or jointly account for less than 25% market shares at any airport in the United Kingdom, with the exception of East Midlands where the Lufthansa Airline Group has 40% of the share of purchases of in-flight catering services.
29. The Parties also argue that in-flight catering is not a significant cost factor for the provision of airline services. The Parties estimate that the in-flight catering costs accounted for approximately [...] % of total costs of Emirates (fixed and variable) in the last financial year, ended 31 April 2010.²¹
30. However, considering the fact that there are vertically affected markets in the United Kingdom and that the Lufthansa Airline Group has a high share of purchases of in-flight catering services in East Midlands, prima facie it cannot be excluded that the concentration could significantly affect competition in vertically affected markets.

Additional factors

31. Given that the focus of the competitive effects of the proposed transaction is confined to the United Kingdom, that Member State's competition authorities are the more appropriate authorities to examine the case. Furthermore, as a potential referral would only be made to a single Member State only, the benefits of the one-stop-shop would be preserved.

VI. REFERRAL

32. On the basis of the information provided by the Parties in the Reasoned Submission, and given the analysis carried out above, the Commission considers that the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the transaction constitutes a concentration with EU dimension that may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. In sum, the Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the Commission notice on case referral in respect of concentrations.²²

VII. CONCLUSION

33. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission

²¹ The Parties note that Emirates provides a high quality services for passengers and this is reflected in a relatively large spend on in-flight catering. The average spent on in-flight catering services by airlines operating in the EU is likely to be considerably lower.

²² OJ C 56, 05.03.2005, p.2.

(signed)

Alexander ITALIANER
Director General

Annex I

Estimated market share data for 2009 at the Overlap Airports based on Passengers and Revenue (£ '000)

	Alpha + LSG		Alpha *		LSG Sky Chefs **		Gate Gourmet		Comissair		NDM		Servisair		Do + Co		Plane Catering		Harrods		Back Catered		Own Catered		None		Total Market	
	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	% P	% R	Passengers	Revenue
Birmingham	[70-80]	[70-80]	[50-60]	[60-70]	[10-20]	[10-20]	<[0-5]	<[0-5]	[10-20]	[10-20]	-	-	-	-	-	-	-	-	-	-	[10-20]	[10-20]	-	-	<[0-5]	<[0-5]	4,084,219	[...]
Cardiff	[70-80]	[70-80]	[10-20]	[10-20]	[50-60]	[50-60]	-	-	[10-20]	[5-10]	[5-10]	[5-10]	-	-	-	-	-	-	-	-	[5-10]	[10-20]	-	-	-	-	727,782	[...]
East Midlands	[80-90]	[80-90]	[60-70]	[60-70]	[10-20]	[20-30]	[10-20]	[10-20]	-	-	-	-	<[0-5]	[0-5]	-	-	-	-	-	-	[0-5]	[0-5]	-	-	-	-	2,072,378	[...]
Glasgow	[40-50]	[40-50]	[30-40]	[30-40]	[5-10]	[5-10]	[20-30]	[20-30]	[5-10]	[5-10]	-	-	-	-	-	-	-	-	-	-	[20-30]	[20-30]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	3,249,167	[...]
London Heathrow	[30-40]	[40-50]	[10-20]	[10-20]	[20-30]	[20-30]	[50-60]	[50-60]	-	-	-	-	-	-	[0-5]	[0-5]	<[0-5]	<[0-5]	-	-	[10-20]	[5-10]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	29,807,986	[...]
London Gatwick	[40-50]	[60-70]	[30-40]	[40-50]	[10-20]	[20-30]	[30-40]	[20-30]	[0-5]	[0-5]	-	-	-	-	-	-	-	-	-	-	[10-20]	[5-10]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	14,600,264	[...]
London Stansted	[70-80]	[70-80]	[70-80]	[60-70]	[0-5]	[0-5]	[10-20]	[10-20]	-	-	-	-	-	-	-	-	-	-	-	-	[5-10]	[10-20]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	9,026,762	[...]
Luton	[20-30]	[30-40]	[20-30]	[20-30]	[5-10]	[5-10]	[50-60]	[40-50]	<[0-5]	<[0-5]	-	-	-	-	-	-	-	-	<[0-5]	<[0-5]	[20-30]	[20-30]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	4,130,897	[...]
Manchester	[80-90]	[80-90]	[40-50]	[40-50]	[30-40]	[30-40]	[0-5]	[0-5]	[5-10]	[0-5]	-	-	-	-	-	-	-	-	-	-	[10-20]	[10-20]	<[0-5]	<[0-5]	<[0-5]	<[0-5]	8,421,101	[...]
Newcastle	[30-40]	[40-50]	[20-30]	[30-40]	[10-20]	[10-20]	[20-30]	[20-30]	[5-10]	[5-10]	-	-	-	-	-	-	-	-	-	-	[20-30]	[20-30]	<[0-5]	<[0-5]	-	-	2,055,289	[...]

Source: Parties' estimates

* including Airfayre, Alpha-Airfayre

** including City Net

- not present at airport

P – passenger

R – revenue