

*Case No IV/M.782 -
Swissair / Allders
International*

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/07/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case IV/M.782-SWISSAIR/ALLDERS INTERNATIONAL

Notification of 14.06.96 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.06.96 the Commission received a notification of a proposed concentration by which Swissair Associated Companies Ltd.(SAC) acquires control of the whole of Allders International by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. SAC is a subsidiary of the Swissair Group, active in hotel and catering business comprising airline catering, rail catering, hotels, staff restaurants and duty free and retail trading. The duty free and inflight sales of SAC is headed by its subsidiary Nuance International Holding Ag (Nuance).
4. Allders International comprises a group of four companies: Allders International Limited, Allders Bye-Bye Limited, Allders Group Employment Services Limited and Okefind Limited (Allders Int.). The group is active in the field of international tax and duty free retail sales. Prior to the notified operation it has been wholly owned by the UK company Allders plc.

II. CONCENTRATION

5. The acquisition consists in the purchase of all the issued share capital of Allders International and its subsidiaries, by way of private sale and purchase agreement among Allders plc. and its wholly owned subsidiary Modegain Limited as vendor, and SAC and its wholly owned subsidiary Nuance International Holding as purchaser.
6. The transaction constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation since Swissair Group will acquire sole control of Allders International.

III. COMMUNITY DIMENSION

7. The aggregate worldwide turnover in 1995 of the Swissair Group (4.309 million ECU) plus half of that of Sabena Group (825 million ECU) and Allders International (617 million ECU) exceeded 5 billion ECU. In the same year, the aggregate Community-wide turnover of the Swissair Group (1.403 million ECU) including half of Sabena Group and of Allders International (355 million ECU), amounted to more than 250 million ECU. Although Allders International achieves more than two-thirds of its Community-wide turnover in the UK, the Swissair Group including Sabena does not achieve more than two-thirds of its Community-wide turnover in one Member-state. Therefore, the notified operation has a Community dimension.

IV. THE RELEVANT MARKETS

a) Relevant Product Market

8. According to the notifying party the relevant product market is the market for international travel retail, comprising all retail outlets used specifically by international travellers at airports, on-board aircraft and on-board ships. A large segment of the international travel retail market is made up of traditional tax and duty free sales of alcohol, tobacco, perfumes and cosmetics, the bulk of the remainder consists of fashion electronics, photographic equipment and newagency sales.
9. The segment of the retail travel market in which the parties to the concentration are most active is airport sales, in particular traditional tax and duty free sales. Even on the basis of this narrowest market definition, the concentration will not lead to the creation or strengthening of a dominant position.

b) Relevant Geographic Market

10. The parties believe that the relevant geographic market should be defined as the EEA as a whole, although, in their view, the area in which the condition of competition are homogeneous is wider and covers at least the whole of western Europe if not the world.
11. In intra-Community travel, for a large number of travellers there are a variety of routes between any two non-adjacent countries. Consumers can purchase the same kind of products at most travel retail outlets, regardless of their geographic location. From the supply side, the same retailers are active in many different regions.

12. For the purpose of this case, however, the exact definition of the relevant geographic market can be left open because even on the basis of the most unfavourable market definition (namely the tax and duty free segment in the EEA), the concentration will not lead to the creation or strengthening of a dominant position.

V. ASSESSMENT

13. Allders International's share of the European tax and duty free segment is approximately 4.7% for 1994. The Swissair Group only current activities in the relevant product market in the EEA are through its 49.5% holding in Sabena SA/NV over which Swissair has joint control with the Belgian Government. Sabena sells retail travel products on board its aircraft, from which it derived a turnover of ECU 6.2 million in 1995. The remainder of the Swissair Group's activities in the relevant product market are in Switzerland and Australia, from which it derived a turnover of ECU 204 million in 1995.
14. The combination of Allders International with the Swissair Group (including the Sabena Group) will increase EEA market share of the tax and duty free segment to 5.8% for 1994. Therefore the concentration will not lead to any significant increase in market share in the EEA.
15. The parties are not vertically integrated. Suppliers to the parties, being the manufacturers of the products sold, are not connected or associated with the parties. Further there are no exclusive distribution contracts at the retail level.

VI. CONCLUSION

16. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

VII. ANCILLARY RESTRAINTS

17. The agreement between SAC and Allders plc. contains a non-competition clause pursuant to which Allders plc. agrees not to have any interest in any tax free or duty free business in [...] ⁽¹⁾ for a period of two years. Since the operation involves the transfer of goodwill acquired by Allders International in the course of its business the non-competition clause can, in principle, be accepted as ancillary to the notified operation. There does not however seem to be any objective justification. as to [...] ⁽²⁾ of the clause. Therefore this decision only covers the clause insofar as it relates to [...] ⁽³⁾.

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

⁽¹⁾ Deleted business secret
⁽²⁾ Deleted business secret
⁽³⁾ Deleted business secret