



EUROPEAN COMMISSION  
DG Competition

***Case M.9546 - GATEGROUP /  
LSG EUROPEAN BUSINESS***

Only the English text is available and authentic.

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

---

Decision on the implementation of the commitments -  
Purchaser approval  
Date: 15/10/2020



## EUROPEAN COMMISSION

Brussels, 15.10.2020  
C(2020) 7196

### **PUBLIC VERSION**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

gategroup Holding AG  
Sägerstrasse 20  
8152– Glattbrugg  
Switzerland

Dear Sir/Madam,

**Subject: Case M.9546 – GATEGROUP / LSG EUROPEAN BUSINESS  
Approval of Horizon Star Catering GmbH as purchaser of Gategroup Holding AG’s in-flight catering business with (legacy) airlines at Frankfurt International Airport and Munich International Airport and Gategroup Holding AG’s in-flight catering business with low-cost and charter airlines in Germany following your letter of 20 August 2020 and the Trustee’s opinion of 27 August 2020.**

#### **1. FACTS AND PROCEDURE**

- (1) By decision of 3 April 2020 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,<sup>1</sup> the Commission declared the operation by which Gategroup Holding AG (“Gategroup”) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over parts of the European business of LSG Lufthansa Services Holding AG (“LSG”) by way of a purchase of shares and selected assets (the “Transaction”) compatible with the internal market and with the EEA Agreement, subject to full compliance with the

---

<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

commitments submitted by the notifying party annexed to the clearance Decision (the “Commitments”).<sup>2</sup>

- (2) In particular, the Commitments provide that Gategroup is to divest:

### **Germany**

- (a) Gategroup’s in-flight catering network operations in Germany, including certain customer contracts with low-cost and charter airlines for the provision of services at relevant airports, as well as certain related assets and employees, (the “German LCC Network Divestment Business” as described in more details in Schedule A of the Commitments);
- (b) Gategroup’s customer contracts at Frankfurt International Airport (“FRA”) and Munich International Airport (“MUC”), including, where applicable and at the option of the Purchaser, certain related assets (that, by way of example, could also include the necessary infrastructure for the operation of the divested business) and employees (the “FRA/MUC Divestment Business” as described in more detail in Schedule B of the Commitments);

### **Belgium**

- (c) Gategroup’s [...] % shareholding in Newrest Servair Belgium SPRL operating an in-flight catering business in Belgium (the “Belgian Divestment Business”);

### **Italy**

- (d) Certain of LSG EU’s customer contracts at Rome Fiumicino Airport (“FCO”) including, where applicable and at the option of the Purchaser, certain related assets and employees (the “FCO Divestment Business” as described in more detail in Schedule C of the Commitments);

### **France**

- (e) LSG EU’s in-flight catering customer account at Paris Charles de Gaulle (“CDG”) (the “CDG Divestment Business”, as described in more detail in Schedule D of the Commitments).
- (3) By letter of 20 August 2020 the Parties proposed Horizon Star Catering GmbH (“Horizon Star” or “Proposed Purchaser”) for approval by the Commission as purchaser of the German LCC Network Divestment Business and the FRA/MUC Divestment Business (together the “German Divestment Businesses”) and submitted the proposed Asset Purchase Agreement between Horizon Star and Gategroup (the “Proposed Agreement” or “APA”), a Transitional Service Agreement (“TSA”) between Horizon Star and Gategroup and a draft service contract between Horizon Star and Käfer Service Holding GmbH (Käfer Service Holding GmbH is a subsidiary of Käfer AG (together with its subsidiaries: “Käfer” or “Käfer group”)). [Details of relationship between Käfer Group and Horizon Star].

---

<sup>2</sup> The capitalised terms in this decision have the meaning as set out in the Decision and the Commitments attached thereto, unless indicated otherwise.

- (4) On 27 August 2020, RSM Corporate Finance LLP as the Monitoring Trustee (the “Trustee”) submitted an assessment of Horizon Star’s suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the German Divestment Business would be sold in a manner consistent with the Commitments.
- (5) As part of the approval process, a management presentation was given to the Commission by the Shareholders of Horizon Star, Michael Käfer and Alexej Oberoi, on 12 August 2020. In addition, in order to obtain the information necessary to fully assess the suitability of Horizon Star as the purchaser of the German Divestment Businesses, several subsequent exchanges between the Commission and the legal counsels of Gategroup, Horizon Star, as well as a second call with the [shareholder] of Horizon Star on 22 September 2020 took place.

## **2. ASSESSMENT OF THE PROPOSAL**

- (6) According to paragraph 21 of the Commitments, in its assessment of the Proposed Agreements, the Commission has to verify that the Purchaser fulfils the Purchaser Criteria set out in Section D and that the Divestment Business is being sold in a manner consistent with the Commitments, including with their objective to bring about a lasting structural change in the market.

### **2.1. Introduction**

#### *2.1.1. Purchaser Criteria*

- (7) As set out in paragraph 20 of the Commitments, the Purchaser must fulfil the following Purchaser Criteria:
  - (a) be independent of and unconnected to the Notifying Party/Notifying Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
  - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors;
  - (c) neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

#### *2.1.2. The Proposed Purchaser*

- (8) The proposed acquiring entity of the German Divestment Businesses is Horizon Star Catering GmbH. Horizon Star is an entity established to undertake the acquisition of the German Divestment Businesses. Its shares are held by [Description of shareholding and governance structure] Michael Käfer is [...] the sole shareholder of the Käfer group. While Horizon Star [details about ownership of Horizon Star],

according to the Trustee, the Business plan indicates that the German Divestment Businesses would be materially dependent on the provision of certain resources and services by the Käfer group, for example facilities and personnel.

- (9) According to the Proposed Purchaser, the reason for this legal construction is that [Details on shareholding structure]. Consequently, the acquiring entity has been established outside the Käfer group. Due to the [...] between the proposed purchaser and Käfer (see below in paragraph 10), the Commission will also include Käfer for the assessment of the suitability of the proposed purchaser in this decision.
- (10) In addition to [Details on shareholding structure], Horizon Star and Käfer will further be operationally connected through different co-operation agreements, in particular a service contract between Horizon Star and various Käfer-subsidaries as well as a licencing agreement regarding the use of the brand “Käfer”. [Details on content of agreements].
- (11) The close relation of Horizon Star to the Käfer group is further being exemplified by the fact that [Details on commercial arrangement].
- (12) The Käfer AG is a German stock company, which was started as a family business in Munich in 1930, where it is still currently registered. Today, Käfer is an international fine foods company with over 1,400 employees and activities in four countries (Germany, Switzerland, China and Japan). In 2018, Käfer achieved revenues of EUR 135.5 million. Its four business divisions encompass catering, gastronomy, retail and licensing. Käfer has experience in catering and fine-foods, in particular the catering of major events (such as the FIFA Football World Cup 2006, various Formula One events and other international events worldwide), the operation of a variety of restaurants as well as in high level security environment catering (such as the World Economic Forum in Davos, and operating the restaurants for members and visitors of the German Parliament in Berlin since 1998).
- (13) Neither Horizon Star nor Käfer has been previously active in the provision of in-flight catering for scheduled passenger flights. However, the Proposed Purchaser will take on board several key staff members that have long-standing experience in the in-flight catering sector (see below in paragraph 34). In addition, Käfer has been active in the provision of meals to private aviation clients (general aviation) and therefore has experience regarding the special requirements of food consumed at high altitude.

## **2.2. Independence from the Parties**

- (14) The Notifying Party submits that there are no significant corporate, structural or other equity links at the holding company level between either of the Parties and its affiliated undertakings and any of the entities which belong to Käfer and its affiliated undertakings. Similarly, the Parties are not aware of interlocking directorships at the holding company level between either of the Parties and any member of Käfer group.
- (15) In addition, the Notifying Party states that prior to completion of the Transaction, there are no commercial relationships between Käfer and LSG EU or Gategroup, except for occasional catering of company events.

- (16) As part of the transaction, Gategroup will enter into an Transitional Services Agreement with the Proposed Purchaser (“TSA”), pursuant to which Gategroup will provide certain services for the Proposed Purchaser, in particular last-mile services, for a transitional period only ([confidential details on time-period]). According to the Reasoned Proposal, the Proposed Purchaser plans to source these services independently of the Notifying Party in the foreseeable future by way of launch of a tender. [Confidential contract details of the TSA which will be] allowing Käfer to initiate a new tender process. During that time, the services will be provided at [details on cost-structure].
- (17) In order for Gategroup to be able to provide these services, it will keep the necessary assets (in particular: high-loaders) and Käfer/Horizon Star will be granted an option to acquire these assets at the end of the TSA period, at pre-agreed prices [details on cost-structure as agreed between Gategroup and Horizon Star]. According to the Trustee, this arrangement provides flexibility for the Proposed Purchaser to acquire high-loaders if required, for example if it intends to take on these services itself or to provide additional vehicles to another sub-contractor, or alternatively it may not need to acquire these vehicles if the services are subsequently sub-contracted to a third-party already with sufficient high-loaders.
- (18) According to the Notifying Party, the TSA will however not put into question the independence of the purchaser from the Notifying Party, due to the temporary limitation of the agreement, the fact that such agreements are commonplace in the industry, the relative ease with which the Proposed Purchaser expects to be able to procure last-mile services from a third party as well as the right to purchase as many assets from Gategroup as needed (e.g. high-loaders) to perform the last mile service either on its own or by a third party, at the end of the lifespan of the TSA. In fact, the Notifying Party notes that the Proposed Purchaser plans to insource last mile service at some point, building on and expanding the activities of [company envisaged to provide these services].
- (19) As a further link between the Parties and the Proposed Purchaser, the German Divestment Businesses will [description of future business strategy of Divestment Business]. [Information on facilities]. As the Trustee notes, the Proposed Purchaser states that it is intended that [Information on business plan].
- (20) The Trustee in its Reasoned Opinion concludes that Horizon Star is independent of the Parties within the meaning of the Purchaser Criteria set out in paragraph 20 of the Commitments.
- (21) Given the transitional nature of the TSA, the fact that Horizon Star may terminate or prolong the duration of this contract depending on [details of TSA], as well as the availability of alternative service providers on the market, the Commission concludes that Horizon Star fulfils the Purchaser criterion of being independent of and unconnected to Gategroup and LSG Europe and their Affiliated Undertakings.

### **2.3. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor**

- (22) The Notifying Party submits that Horizon Star has the financial resources, proven expertise and incentive to maintain and develop the German Divestment Businesses as a viable and active competitive force in competition with Gategroup and LSG Europe and their Affiliated Undertakings.

- (23) The Trustee in its Reasoned Opinion concluded that Horizon Star has the financial resources, proven expertise and incentive within the meaning of the Purchaser Criteria set out in paragraph 20 of the Commitments.

#### 2.3.1. *Financial resources*

- (24) The Proposed Purchaser will have a registered share capital in the amount of [Details on share capital], provided by its shareholder. In addition, Horizon Star will have at its disposal [Details on financial arrangements]). According to the Trustee, despite the current status of the in-flight catering sector, there are no concerns regarding the [Details on financial resources]. The Trustee bases this on the fact that [Details on financial resources].
- (25) Furthermore, according to the Notifying Party, several investments will be made by the Käfer group regarding the Divestment Businesses. In this regard, Käfer has informed the Trustee that that [Details on financial resources].
- (26) In 2018, Käfer achieved revenues of EUR 135.5 million, is fully funded by its own equity and does currently not rely on bank credits nor any other borrowing. According to the Notifying Party, Käfer thus has sufficient resources to undertake the necessary investments for its entry into the in-flight catering market and the development of the German Divestment Businesses. This is also true for any additional investments that could be required should the market development significantly divert from current business scenarios. Regarding the funding by Käfer, the Trustee notes that the Käfer group has additional funding which it can invest if required, and that there is a close connection between the Proposed Purchaser and the Käfer group, [Details on shareholding structure].
- (27) Furthermore, the Trustee has noted that the effects of the COVID-19 pandemic on Käfer [effects of COVID-19 pandemic on Käfer's business].
- (28) According to the Trustee, [Assessment of Business Plan].
- (29) In conclusion and in light of all the above, the Commission concurs with the assessment by the Trustee and considers that, also taking into account its close connection to the Käfer group, Horizon Star has the financial resources to maintain and develop the German Divestment Businesses as a viable and active market force in competition with the Parties and other competitors.

#### 2.3.2. *Proven expertise*

- (30) The Notifying Party submits that Horizon Star/Käfer have the proven expertise to maintain and develop the German Divestment Businesses.
- (31) The Notifying Party argues that firstly, Käfer has extensive experience in related markets with similar requirements as in-flight catering services. Specifically, according to the Notifying Party, Käfer is an established catering company with over 80 years of experience that has developed a profound knowledge of the catering/foodservice market and the related food safety and regulations, in particular with regard to catering large events and logistically complex organisations, dealing with the complexities of delivering quality for large volumes of meals and handling the related logistics. Further, this also includes experience in catering in high security environments (at the German Parliament since 1998, the World Economic

Forum in Davos and catering for private aviation customers at Munich Airport), an experience the Notifying Party claims, the Proposed Purchaser will be able to transpose for in-flight catering services. According to the Notifying Party, Käfer has positioned itself as a high quality food caterer and will therefore also be able to address the needs of legacy airlines, and in particular for their business/first class offerings that are part of the FRA/MUC Divestment Business.

- (32) Secondly, the Notifying Party claims that Käfer would be able to create synergies between the existing and the acquired business. Käfer operates a central production facility in Parsdorf (near Munich), which is its main kitchen for congress and catering services, as well as further production facilities in [business secret of Käfer]. According to the Notifying Party, Käfer would thus already have the capacity to serve the customers of the German Divestment Businesses at these respective locations, and this demonstrates that Käfer has the know-how for managing large facilities and logistic chains, including for remote catering. As stated by Käfer, without any additional investments, the company does already have the capacity to produce [details about production capacity] per day. Moreover, the Reasoned Proposal states that the Proposed Purchaser would benefit from a [...] of the Käfer group.
- (33) Thirdly, the Notifying Party claims that Käfer brand is well-known and established and that the company has good historical long-term relationships with airlines such as [...] from various events and is therefore confident to win more customers in the foreseeable future.
- (34) Lastly, key personnel of the Proposed Purchaser has long-standing experience in the in-flight catering industry and closely related businesses. This includes [confidential personnel information].
- (35) In addition, according to the Notifying Party, Käfer also has experience in acquiring/combining businesses, for example from the merger of Käfer Schweiz AG with Wassermann & Company in 2016, or more recently, from Käfer's acquisition of Stockheim Catering Hamburg GmbH that enabled Käfer to win Hamburg Messe and Congress GmbH as customers in 2018.
- (36) The Trustee notes that although Horizon Star and Käfer do not as corporate bodies have experience in the in-flight catering sector, *"in view of the proposed management team's experience in the in-flight catering sector, and Käfer's expertise in a range of catering activities, that Käfer has the proven expertise to maintain and develop the German Divestment Businesses"*. In addition, with regard to the provision of last mile services, the Trustee notes that [...].
- (37) In light of the above, the Commission concludes that Horizon Star has the expertise to maintain and develop the German Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors.

### 2.3.3. Incentives

- (38) The Notifying Party submits that as a strategic purchaser and a new entrant, Käfer has a strong incentive to maintain and develop the German Divestment Businesses as part of its broader, global catering business.



- (39) According to the Notifying Party, there is a strong strategic incentive of the Proposed Purchaser/Käfer to develop its activities in [Assessment of Business plans], where it can create synergies. Moreover, the Notifying Party claims that being active internationally, Käfer would be able to attract new airline customers flying from German airports.
- (40) The Trustee, while acknowledging Horizon Star's/Käfer's ambitious plans to develop [...] and win new airline customers, does note that the Proposed Purchaser's committed investment [details on the planned investment] and that *"it seems that the Proposed Purchaser/Käfer has limited financial exposure and that if the German Divestment Businesses under-perform against the business plan, for example due to a prolongation of the current market conditions, the Proposed Purchaser may have a reduced incentive to continue to maintain and develop the business"*.
- (41) The Trustee however goes on to conclude that it would be reasonable to assume that the Proposed Purchaser has sufficient incentive to maintain and develop the German Divestment Businesses. This assessment by the Trustee is based on i) the strong strategic interest of Horizon Star/Käfer to develop the new business, the fact that the [...] would allow the Proposed Purchaser/Käfer significant time to operate and seek to develop the German Divestment Businesses even if profitability is not achieved as forecast and iii) that in the event that the German Divestment Business would not be able to be returned to profitability eventually, *"is likely that no party would continue to operate such a business in perpetuity"*.
- (42) While Horizon Star's shareholders have only committed [Details on financial resources]. The Käfer group has further committed key personnel of the Käfer group to be transferred to Horizon Star. Given these significant upfront investments, the Commission considers the purchaser has sufficient incentive to maintain the business, even if it should develop not according to the business plan or if the current market conditions in the in-flight catering sector persist.
- (43) In addition, the support and incentive of Käfer group regarding the Divestment Businesses are demonstrated by [Details on financial resources].
- (44) Moreover, [confidential details on shareholding], the Proposed Purchaser has already [confidential details of Business Plan], further establishing their strong incentive to maintain and develop the Divestment Businesses.
- (45) The Commission therefore concludes that Horizon Star has the incentive to maintain and develop German Divestment Businesses.

#### 2.3.4. Conclusion

- (46) In view of the above, and in line with the Trustee's Reasoned Opinion, the Commission concludes that Horizon Star fulfils the Purchaser criterion of having the financial resources, proven experience, and incentive to maintain and develop the German Divestment Businesses as a viable and active competitive force in competition with Gategroup and other competitors.

## **2.4. Absence of prima facie competition problems**

- (47) The Notifying Party submits that the acquisition of the German Divestment Businesses by Horizon Star will not create any competition concerns or delays in the implementation of the Commitments.
- (48) According to the Notifying Party, the Proposed Purchase would not lead to any horizontal overlaps, as Käfer is not currently active on the market for in-flight catering. Käfer would enter the market at the relevant German airports and face competition from the combined Gategroup/LSG entity as well as other suppliers active at the relevant airports. The Proposed Purchaser furthermore does not raise prima facie competition concerns with respect to vertical links between the Parties.
- (49) In addition, Käfer has confirmed that no external approvals are required, including in respect of German or any other merger control regime as Käfer's consolidated global annual turnover did not exceed €150 million in 2019.
- (50) With regard to implementation, the Notifying Party reports that closing of the Proposed Purchase is expected to take place [expected implementation period], enabling Käfer to quickly replicate the competitive position of Gategroup.
- (51) Based on the above, the Commission considers, in line with the Trustee's Reasoned Opinion, that the acquisition of the German Divestment Businesses by Horizon Star does not give rise to prima facie competition concerns.
- (52) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Horizon Star by a competent competition authority under applicable merger control rules.

## **2.5. Sale in a manner consistent with the Commitments**

- (53) According to the Notifying Party, the sale of the German Divestment Businesses to Horizon Star will be completed in a manner consistent with the Decision and the Commitments.
- (54) Specifically, Gategroup will transfer (i) all customer agreements of the FRA/MUC Divestment Business and German LCC Network Divestment Business for provision of services at relevant German airports; (ii) [Information on facilities]; (iii) [Information on facilities], (iv) [Information on facilities]; (v) a TSA for (last mile) services; (vi) up to [...] employees to be determined based on the Proposed Purchaser's needs.
- (55) While certain assets ([information on assets]) will not be transferred immediately, the Proposed Purchaser will have an option to purchase [information on commercial arrangements] and will be able to exercise this option [information on commercial arrangements].
- (56) This, the Notifying Party claims, will enable the Proposed Purchaser/Käfer to operate the German Divestment Businesses as a competitive business from day one.
- (57) According to the Trustee, the Sale of the German Divestment Businesses without certain Assets or members of the personnel would not affect the viability of the

German Divestment Businesses after the Sale, taking account of the Proposed Purchaser.

- (58) Based on the above and in line with the Reasoned Opinion by the Trustee, the Commission concludes that the German Divestment Businesses are being sold in a manner consistent with the Decision and the Commitments and is capable of achieving the lasting structural change in the market intended by the Commitments.

### **3. CONCLUSION**

- (59) On the basis of the above assessment, the Commission approves Horizon Star as a suitable purchaser for the above-mentioned reasons.
- (60) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (61) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Gategroup has complied with its Commitments.
- (62) This decision is based on Section D, paragraph 20 of the Commitments attached to the Commission Decision of 3 April 2020.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*