

## Real Estate Trends

## HOSPITALITY LAW

Choice Hotels' Hostile Bid  
To Take Over Wyndham Hotels

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Following rounds of rejections during negotiations for a merger, in October 2023, Choice Hotels International announced its hostile bid to take over all of the outstanding shares of its competitor Wyndham Hotels & Resorts, Inc. A merger of these two hotel groups would create the largest hotel franchisor in the world.

Choice Hotels franchises approximately 7,500 hotels over 22 brands in 40 countries, concentrated in the economy and midscale segments; Wyndham Hotels franchises over 9,200 properties spanning 24 brands in over 90 countries, with a more diverse portfolio ranging from economy hotels to the more upscale.

**Background**

In April 2023, Choice offered to acquire Wyndham for \$80 per share, an offer that was increased by Choice and publicly rejected by Wyndham four times. In November 2023, Choice issued its fifth and final offer to Wyndham's board of directors of

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a purchase price of approximately \$8 billion, with a transaction value of \$49.50 in cash and 0.324 shares of Choice common stock per Wyndham share—at the time, a total value of \$90 per share, a 31% premium on Wyndham's share price. Wyndham rejected this offer as well.

In response, Choice, claiming Wyndham refused to engage in meaningful negotiations, took its offer directly to Wyndham's shareholders. In an announcement made December 12, 2023 by its President and Chief Executive Officer Patrick Pacious, Choice offered Wyndham's shareholders the same terms proposed to Wyndham's Board in November, and stated that it would be filing the appropriate paperwork to begin the required regulatory review.

The offer provides Wyndham's shareholders the opportunity to receive their consideration

in cash or a combination of cash and shares of Choice, includes reverse termination fees valued at \$435 million, and a 0.5% ticking fee of the total equity purchase price per month, accruing daily commencing on the one-year anniversary of the purchase agreements. As an additional incentive, Choice offered to nominate two of Wyndham's directors to the newly formed Board.

### **Wyndham's Response**

Wyndham publicly remains opposed to the merger, urging its shareholders not to tender their shares. In a filing with the U.S. Securities and Exchange Commission on Dec. 18, 2023, Wyndham advised its shareholders to "reject the offer and NOT tender any of their shares of Wyndham Common Stock to Choice pursuant to the offer." (Emphasis in original.) Following its review of Choice's offer, Wyndham recommended that its shareholders reject Choice's offer for the following reasons:

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If Choice is successful in its hostile takeover, Choice will be the franchisor of more than 50% of all select service and economy hotels in the United States, a prospect likely to draw regulatory scrutiny.

- First, Wyndham claims Choice's offer creates an uncertain regulatory timeline without sufficient protection and compensation for Wyndham's shareholders, leading to business disruption or deterioration. A merger of the two companies would create the largest provider of hotel franchises in the United States, creating a 55% market share in the economy and mid-scale range. Wyndham warns that a merger of this scale would mire the companies in Federal regulatory review for an unknown period of time, preventing either company from engaging in

new business development opportunities during the review period.

- Second, Wyndham asserts that Choice's offer undervalues Wyndham's individual growth prospects, including its existent worldwide brand recognition, its developing extended-stay brand, ECHO Suites, and its upcoming credit card and marketing partnerships. Wyndham posits that this growth potential will result in a \$20 per share EBITDA over the next two years.
- Last, Wyndham warns its shareholders that Choice's hostile bid is an attempt to disguise its own stagnant growth by acquiring Wyndham's diverse portfolio but at a price far below its worth.

### **Legal Issues Raised**

Beyond the companies' respective shareholders, a merger of this scale will most certainly significantly impact the individual hotel owners—the franchisees—of each brand. Hotel franchisees typically purchase the land and develop the buildings according to each brand's standards, amounting to a significant investment for each owner.

The Asian-American Hotel Owners Association (AAHOA), an organization that represents approximately two-thirds of Choice and Wyndham franchisees, has expressed concern that a merger of this scale could diminish competition, most prominently in the economy-scale segment where profit margins are historically thin.

When AAHOA surveyed its 20,000 members concerning the proposed merger, 63% responded that, if given the option, they would terminate their current agreement upon completion of the merger. A staggering 77% of AAHOA members stated that a merger between Choice and Wyndham would negatively impact their businesses and expressed support for Wyndham's rejection of Choice's proposal.

In a press release dated Oct. 17, 2023, AAHOA President and Chief Executive Officer Laura Lee Blake stated the potential merger “has sent a shock wave of high concern and even fear through our AAHOA membership,” and further indicated that members “fear a significant further dilution of the brands” with franchisees “fighting over the guest reservations on one reservation system.” The merger, if completed, may lead to significant disputes between franchisees and the newly combined franchisor concerning these issues among others.

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Combining two of the largest franchise servicers may also raise significant antitrust issues. In addition to further consolidating the number of independent hotel franchisors competing for hotel guests, it will also reduce the number of franchisors available to partner with hotel owners. In exchange for joining a network of recognized hotel brands, franchisees are required to pay the brand a sign-up fee, as well as ongoing royalties and fees for the benefit of utilizing the brand’s technology and marketing services.

Many franchisees lament that despite paying hefty fees, Choice offers little support to its franchisees, leaving some to look forward to the opportunity to join another brand’s franchise family of brands at the end of their existing franchise agreements.

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scrutiny. The AAHOA President posits the merger could be “highly disruptive” to the business practices of franchisees, and may result in a “decrease in revenues overall.”

Having one franchisor control 50% or more of all limited service hotels in the United States may also impact the franchisee community’s ability to ensure franchise agreements are fair and further disincentivize hotel owners from joining a franchise community. This is already an industry concern, as we discussed in an article published on Nov. 28, 2023 concerning efforts to codify certain protections in hotel franchise agreements in a multi-district litigation in the U.S. District Court for the Northern of Georgia.

In *Park 80 Hotels, LLC et al. v. Holiday Hospitality Franchising LLC et al.*, (21-cv-4650) (N.D. Ga.), a class of hotel franchisees have alleged, among other things, that the form franchise agreement of Holiday Hospitality Franchising LLC and Six Continents Hotels, Inc. d/b/a Intercontinental Hotels Group (collectively, “IHG”) is unconscionable and unenforceable. Federal regulators may be swayed by the lack of franchisee support for this merger and the impact it could have on consumer welfare.

### The Takeaway

Choice filed a Schedule 14D-9 with the Securities and Exchange Commission, confirming its solicitation to Wyndham’s shareholders and triggering regulatory review. Given the complexity of this potential merger and vocal opposition from the franchisee community, Choice should expect a robust review process. Wyndham, on the other hand, continues to urge its stockholders not to tender their shares. Choice’s offer is set to expire on March 8, 2024, unless extended or terminated, and is subject to regulatory approval.