



European Commission

Competition

Recent trends in the Commission's review of airline mergers

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The views expressed are purely those of the speaker and cannot be construed as the official position of the European Commission



Introduction

4 major decisions in 2009

- o Iberia/Clickair/Vueling (M.5364) - January 2009
- o Lufthansa/BMI (M.5403) - May 2009
- o Lufthansa/SN Airholding (M.5335) - June 2009
- o Lufthansa/Austrian Airlines (M.5440) - August 2009



Main issues

- o Jurisdiction
- o Market definition
- o Assessment
 - o Counterfactual
 - o Effects-based route-by-route analysis
- o Efficiencies
- o Remedies



Jurisdiction: turnover

- **“point of sale method”**
 - but internet sales... difficult to apply!
- **“50%/50%”**
 - country of origin / country of final destination (so as to take into account the cross border character of the service provided)
- **“point of departure”**
 - Good proxy for determining where the service is provided / where competition takes place
 - What about tickets for *roundtrips* ?



Market definition

- o O&D approach / Airport substitutability
- o TS and NTS passengers
- o Other transport modes (train)
- o Long / Short haul
 - o Direct / indirect connections



Assessment (1/2)

- Relevant counterfactual:
 - Counterfactual: normally the pre-merger situation
 - An illegal situation cannot be used as the relevant counterfactual
 - If an agreement is in breach of Art. 81, it must be set aside and the counterfactual is the situation of competition
- Case-by-case analysis
 - specific effects of the creation of a permanent structural link as opposed to a contractual link between the parties in order to assess the extent to which competition may be affected post-merger.



Assessment (2/2)

- o Effects-based route-by-route analysis
 - o Market shares / frequencies / number of competitors
 - o Closeness of competition
 - o Barriers to entry (congestion, city presence, hub, etc.)
 - o New entrant?
 - o ...



Efficiencies

- Verifiability
- Merger specificity
- Consumer benefits (pass-on)



Remedies

- o Improved slot release remedies to make entry more attractive
 - o Opportunity for transfer of grandfather rights
 - o +/- 20 minutes from requested time
 - o Facilitation of the procedure
- o Package of complementary measures



Conclusion

- o Commission is open for consolidation in the aviation industry...
- o ...provided that it is not to the detriment of the consumers/passengers