



EUROPEAN COMMISSION

The Hearing Officer

Final Report of the Hearing Officer

Case COMP/M.5440 – Lufthansa / Austrian Airlines¹

On 8 May 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking Deutsche Lufthansa AG ("LH") acquires sole control of the undertaking Austrian Airlines ("OS") by way of purchase of shares.

After examination of the notification, the Commission concluded on 1 July 2009 that the notified operation fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and the Agreement on the European Economic Area ("EEA Agreement"). The Commission therefore initiated proceedings in accordance with Article 6 (1) (c) of the Merger Regulation.

LH did not request access to the key documents in the file.

LH submitted remedy proposals on 10 and 17 July 2009 with a view to rendering the concentration compatible with the common market which were considered insufficient by the Commission. On 27 July 2009 LH submitted improved commitments that were market tested by the Commission. The finalized version of the remedy proposal was sent on 31 July 2009.

The Commission has concluded that the commitments are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the notifying party, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement.

No queries or submissions have been made to me by the parties or any third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 26 August 2009

(signed)

On behalf of Karen WILLIAMS

¹ Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21.