EN

Case No COMP/M.5403 -
LUFTHANSA / BMI

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.5403 – Lufthansa/ British Midland**
Notification of 03.04.2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 3 April 2009, the Commission received a notification of a proposed concentration by which Deutsche Lufthansa AG ("Lufthansa" or "LH", Germany) acquires sole control of British Midland PLC ("BD" or "bmi", UK) by way of purchase of shares.

I. THE PARTIES

2. Lufthansa ("LH") provides scheduled passenger and cargo transport and related services (maintenance, repair and overhaul services ("MRO"), in-flight catering, and IT services). It has hubs at Frankfurt International Airport and Munich airport, and a base at Düsseldorf airport. Lufthansa is a member of Star Alliance. Its subsidiaries include the airlines Swiss, Air Dolomiti, Eurowings and Germanwings.

3. British Midlands ("BD"), through its subsidiaries bmi mainline, bmi regional, and bmibaby, operates flights on 56 routes in the United Kingdom, Europe, Eastern Europe, the Middle East, Africa and Asia. On those routes it has also limited MRO and cargo operations. BD is also a member of Star Alliance. Bmi mainline operates from its home base in London Heathrow while bmi regional and bmibaby operate from a number of bases in the United Kingdom.

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1 OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. Lufthansa currently holds 30% minus one share in BD, Scandinavian Airlines Systems Denmark Norway Sweden ("SAS") holds 20% and BBW Partnership Limited ("BBW") holds 50% plus one share. On 10 October 2008, BBW gave notice to Lufthansa that it was exercising its put option with respect to its share in BD. This put option exercised by BBW is contained in the shareholders' agreement regarding BD entered into on 9 November 1999. As a result Lufthansa will increase its shareholding in BD to 80%, and thus acquire sole control over BD. On 3 February 2009, SAS has announced its intention to divest its share in BD.

5. The proposed operation constitutes a concentration within the meaning of Article 3(1)(b) ECMR.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Lufthansa EUR 22,420 million, BD EUR 1,495.3 million)[2]. Each of them have a Community-wide turnover in excess of EUR 250 million (Lufthansa EUR […] million, BD EUR […] million), but Lufthansa does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The turnover thresholds are met under any of the following methodologies: "point of sale", "point of origin", and "50/50 split"[3]. The notified operation therefore has a Community dimension.

IV. MARKET DEFINITION

7. LH and BD's activities overlap in air transport of passengers, cargo and maintenance, repair and overhaul.

A. Scheduled passenger air transport services

Point of origin/point of destination ("O&D") approach

8. The Commission has in its practice defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" (O&D) city-pair approach[4]. This market definition corresponds to the demand-side perspective whereby customers consider all possible alternatives of travelling from a point of origin ("O") to a point of destination ("D"), which they do not consider substitutable to a different city-pair. On this basis, every combination of a point of origin and a point of destination is considered to be a separate market.

9. The Commission has nevertheless also taken into consideration supply-side elements such as network competition between airlines based on the hub-and-spoke structure of traditional

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[2] Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

[3] These three methodologies are defined in COMP/M.4439 Ryanair/Aer Lingus, para 13 et seq.

[4] See, *e.g.*, Case COMP/M.3280 - Air France/KLM, at paragraphs 9 and following, and Case COMP/M.3770 - Lufthansa/Swiss, at paragraphs 12 and following.

carriers. Although in theory from a supply-side perspective a carrier could fly from any point of origin to any point of destination, in practice the network carriers construct their network and take decisions to fly almost exclusively on routes connecting to their hubs. From a demand-side perspective, it was generally considered that while networks have some importance for corporate customers whose demand is driven both by network effects and O&D considerations, their role remains rather limited for individual customers who are normally concerned with finding the cheapest and most convenient connection between two cities[5].

10. The market investigation has generally confirmed that the market should be defined on the basis of the Commission's traditional O&D city pair approach. Accordingly, for the purpose of this decision, the relevant markets should be defined on an O&D basis.

Airport substitutability

11. Previous Commission decisions have recognised that flights from or to airports which have overlapping catchment areas can be regarded as substitutes[6]. Such airport substitution has often been accepted for several airports located in the same city, such as the Milan-Linate and Milan-Malpensa airports or the JFK and Newark airports in New York.[7] Moreover, in its previous decision in the Ryanair/Aer Lingus case, which concerned the combination of two airlines with typical attributes of low-frills point-to-point carriers, the Commission indicated in relation to flights out of Dublin that secondary airports are likely to be in the catchment area of a city if they are within 100 km or one hour of travel time of the city centre.[8] This 100km/1 hour-“rule” was however only used as a first “proxy” to define a catchment area. Far from limiting its analysis to this rule-of-thumb, the Commission has listed in the Ryanair/Aer Lingus decision a number of different factors, including the travel time, and has explicitly stated that “It is the combination of these factors that drives passengers’ choice for the one or the other airline service. […] This does not depend only on journey time, however, but also on timing and frequency.”[9] Also, the rule was applied by the Commission in the specific case of routes served out of Dublin by Ryanair and Aer Lingus.

12. Due to the specificities of the respective airports, the characteristics of passengers travelling on a specific route and other evidence, the catchment area may be wider or narrower in reality and will therefore be discussed in greater detail on a case-by-case basis in the competitive assessment, insofar as this is relevant for the assessment of the present case. As will be seen in recitals 45 and following, for the purpose of the assessment of the proposed concentration, the issue of airport substitutability will be discussed in particular in relation to flights connecting (i) the airports of Manchester and Leeds Bradford and (ii) the airports of Birmingham and East Midlands to Brussels.

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5 See Case COMP/M.3280 - Air France/KLM, at paragraphs 11-16.

6 Case COMP/M.3280 – Air France/KLM, paragraph 24 et seq.

7 Case COMP/M.3280 – Air France/KLM, paragraph 31 et seq.

8 See case COMP/M.4439 – Ryanair/Aer Lingus, paragraph 99.

9 See case COMP/M.4439 – Ryanair/Aer Lingus, paragraph 74.

Time-sensitive v. non time-sensitive passengers

13. The Commission has found in previous cases that passengers travelling on unrestricted tickets, i.e. time-sensitive passengers which are mainly business customers having a need for flexibility, may be in a different market from passengers travelling on restricted tickets, so-called non time-sensitive passengers attaching more importance to the price than to the frequency or schedule of the flight[10].

14. In the present case, the existence of distinct markets for time sensitive and non-time sensitive passengers can be left open as it does not alter the competition assessment.

Direct v. indirect flights

15. With respect to long-haul flights the Commission has found in the past[11] that indirect flights constitute a competitive alternative to non-stop services under certain conditions in particular when they are marketed as connecting flights on an O&D pair in the computer reservation systems, they operate on a daily basis and they only result in a limited increase of travelling time (max. 150 minutes of waiting time).

16. The market investigation in the present case has largely confirmed that indirect flights constitute an alternative to direct long-haul flights. Accordingly, for the purposes of the present decision, direct long-haul flights and indirect long-haul flights resulting in only a limited increase in total travelling time are considered to be part of the same relevant market on each relevant city-pair.

17. On the contrary, with respect to short-haul routes, the Commission has found in previous cases that indirect services generally do not provide a constraint to direct services absent exceptional circumstances (e.g. the direct flight does not allow for a typical one day return trip or a substantial portion of passengers travel via indirect flights).[12] This has been largely confirmed by the market investigation in the present case.

B. Cargo air transport services

18. With respect to the air cargo transport market, the Commission previously found that the O&D approach to market definition is inappropriate given that cargo is generally less time-sensitive than passengers and that cargo is commonly transported by trans-modal methods beyond and behind the origin and destination points. Accordingly, the geographic market can be defined as being wider. As concerns intercontinental routes, the corresponding catchment areas broadly correspond to continents, at least for those continents where local infrastructure is adequate to allow for onward connections.[13] For continents (e.g. Africa) where local infrastructure is less developed, the catchment area corresponds to the countries of destination. In the present case, with respect to the two markets that could be impacted by the transaction, the market investigation clearly indicated that air cargo from Europe to Sierra Leone should be considered as a separate market. While the majority of respondents

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10 See, *e.g.*, Case COMP/M.3280 - Air France/KLM, at paragraph 19 and Case COMP/M.3770 - Lufthansa/Swiss, at paragraph 15.

11 See, e.g., Case COMP/M.2041 - United/US Airways, at paragraphs 13-19 as regards specifically transatlantic city-pairs.

12 Case COMP/2041 – United/US Airways; case COMP/M.2672 – SAS/Spanair.

13 See case COMP/M.3280 - Air France/KLM, para. 36 and case COMP/M.3770 -Lufthansa/Swiss, para. 19.

also indicated that air cargo from Jordan to Europe was a separate market, some respondents suggested that the market could include other neighbouring countries. This last point can in any event be left open, as the conclusion of the competitive assessment would be the same under both alternatives.

19. Cargo air transport is by nature unidirectional as the demand on each end of the route differs substantially. Accordingly, the relevant markets have to be defined on this basis.[14] This was confirmed by the market investigation in the present case.

20. The parties argue that this market should not be further divided by different types of transported goods (e.g. dangerous or perishable goods), although in previous decisions the Commission left the exact market definition open.[15] With respect to the intra-EU market, the parties submit that the relevant market should include all means of cargo transportation (that is to say air, train & road), which is in line with previous Commission practice.[16] Respondents to the market investigation (customers and competitors) agreed with the parties that the cargo markets should not be segmented according to the type of transported good and that air cargo transport is subject to competition of other transportation means in the intra-EU market. These two points can however be left open as the transaction would not give rise to competition concerns under any alternative market definition.

C. Maintenance, Repair and Overhaul (MRO)

21. In its past practice, the Commission has distinguished within the MRO sector four separate markets, namely line maintenance, heavy maintenance, engine maintenance and components maintenance.[17]

22. BD is only active in the provision of line maintenance services.[18] In previous decisions, the Commission has left open the geographic dimension of line maintenance services: although the dimension of MRO services is usually considered as at least EEA-wide[19], the dimension of line maintenance could be narrower (regional) and the Commission has left open the geographic market definition of MRO services in its latest decisions.[20] The exact geographic definition of the market can also be left open for the purpose of the present decision as the transaction does not raise competition concerns under any of the alternative definitions.

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14 Case COMP/M.5181 – Delta Air Lines/Northwest Airlines, para.19; case COMP/M.5141 – KLM/Martinair, para. 38.

15 See case COMP/M.3280 - Air France/KLM, para. 38; case COMP/M.5141 – KLM/Martinair, para. 34.

16 See case COMP/M.3280 –Air France/KLM, para. 36.

17 See case COMP/JV.19 – KLM/Alitalia, Case COMP/M.3280 – Air France/KLM and Case COMP/M.3374 – SR Technics/FLS Aerospace.

18 Line maintenance comprises pre-flight, daily and weekly checks. These light maintenance procedures consist largely of visual inspections and the use of onboard instruments to detect basic faults.

19 See case COMP/JV.19 KLM/Alitalia.

20 See case COMP/M.3280 - Air France/KLM, para. 41, and case COMP/M.3374 – SR Technics/FLS Aerospace, para. 13.

V. CONCEPTUAL FRAMEWORK FOR THE ASSESSMENT OF THE PRESENT TRANSACTION

A. Introduction

23. It should be noted that, prior to the notification of the present concentration, the Commission received on 26 November 2008 a notification of a transaction according to which Lufthansa intends to acquire sole control of SN Airholding SA/NV, the holding company of SN Brussels Airlines ("SN").[21] On 26 January 2009, the Commission initiated proceedings in that case pursuant to Article 6(1)(c) of the Merger Regulation. Given the pending proceedings in that case, as a cautious approach, the impact of the present transaction will be assessed as if SN were already part of the Lufthansa group. As a result, the routes operated by both SN and BD are considered as affected markets for the purpose of the present transaction.

24. On the other hand, following the notification of the present concentration, the Commission received on 8 May 2009 a notification of a subsequent transaction according to which Lufthansa also intends to acquire sole control of Austrian Airlines AG ("Austrian Airlines").[22] In view of the dates of notification, the present concentration will be assessed independently of that subsequent transaction and Austrian Airlines will generally not be treated as a subsidiary of Lufthansa for the purpose of the present case. This approach of "first come, first served" is in line with the Commission's practice in other recent cases of parallel mergers.[23]

25. Apart from that, prior to assessing the impact of the present transaction on the relevant markets, the conceptual framework for the assessment of the proposed concentration must be determined. In this respect, the present transaction raises two conceptual issues.

26. The first issue concerns the treatment of Lufthansa's alliance partners for the purpose of both the determination of affected markets and the competitive assessment.

27. The second issue relates to the treatment of code-share agreements concluded between Lufthansa (or SN) and BD for the purpose of the determination of the relevant counterfactual for the assessment of the effects of the proposed concentration on the numerous routes covered by these code-share agreements.

B. Treatment of Lufthansa's alliance partners

28. The notifying party submits that it would be inappropriate to treat any of its alliance partners as if they were parties to the proposed transaction. First, there would be no legal basis for such a treatment as the EC Merger Regulation does not provide for an assessment of "spill-over effects" between companies that remain independent. Second, alliance relationships in question would not change the merging parties' incentives to compete because both Lufthansa and BD are already part of the same alliance per merger and because the overlap routes between BD and LH's alliance partners are not

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21 Case COMP/M.5335 – Lufthansa/SN.

22 Case COMP/M.5440 – Lufthansa/Austrian Airlines.

23 See in particular Commission decisions in cases COMP/M.4601 KarstadtQuelle / MyTravel, of 4 May 2007 and COMP/M.4600 TUI / First Choice of 4 June 2007; and Commission decisions in cases COMP/M.4854 – TomTom / Tele Atlas and COMP/M.4942 – Nokia / Navteq).

covered by the respective joint venture agreements. In addition, these agreements would not automatically extend to BD.

Determination of affected markets

29. With respect to the determination of affected markets, horizontally affected markets consist of relevant product markets where the parties to the concentration are engaged in business activities and hence on which the transaction produces merger-specific effects.[24] Accordingly, product markets where one party's and a third party's activities overlap are in principle outside of the scope of the investigation as the transaction is not likely to produce merger-specific effects on these markets. However, a transaction may also have a significant impact on other markets in which case the effects on competition on such market should also be assessed.

30. In the airline sector, this is the case in particular where a factual inquiry indicates that, as a direct result of the merger or as its foreseeable consequence, close links are to be established between a merging party and a close partner of the other merging party, as was the case for instance between KLM and Alitalia in *Air France/KLM*. In such cases, the incentives to compete would indeed be altered as a result of the merger.

31. In the case at hand, the concentration plan of the parties does not foresee that LH's cooperation agreements with SAS and LOT will be extended to BD as the agreements do not provide for such automatic extension unless they are renegotiated. With respect to the LH/Austrian agreement, originally containing a provision whereby the LH/Austrian cooperation could indeed be extended to all 80 % subsidiaries of LH, LH provided a side letter signed by Austrian airlines to the effect that the agreement will not be extended to BD. As a result, no merger specific spill-over effects are expected to arise concerning the relationships between BD and LH's partner, Austrian Airlines. With respect to the agreements between LH and United Airlines and between LH and Air Canada, LH also submits that the agreements do not provide for such automatic extension. In any event, even if the overlaps between BD and United Airlines or between BD and Air Canada were considered as affected markets, the merger would not give rise to competition concerns on these routes[25].

32. Equally, BD has no close relationship with a Star Alliance partner so that no merger specific spill-over effects are expected to arise in this respect.

33. In light of the above, LH’s and BD’s alliance partners should not be taken into account for the determination of affected markets.

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24 See Annex I to the Commission Regulation 802/2004 implementing Council Regulation 139/2004, paragraph III (a).

25 All these overlaps are on routes between the United Kingdom and North America and are due to code-share agreements whereby BD markets tickets on flights operated by the alliance partner. Given that BD has discontinued all its flights to North America and considering its network development strategy (see below), it would not be a likely entrant susceptible to compete with the operating carrier.

Competitive assessment

34. With respect to the competitive analysis on the affected markets, the relationship between the airlines and its consequence for their incentive to compete post-merger ought to be assessed on a route-by-route basis. If it is found that a merging party and a third party will have a lower incentive to compete as a consequence of the merger, this fact has to be taken into account qualitatively in the assessment.

35. For the purpose of the competitive assessment in the present case, however, the issue of the treatment of the parties' alliance partners can be left open, as the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to any of the routes on which the parties' activities overlap, irrespective of whether Lufthansa's alliance partners should be considered as competitors of Lufthansa or not.[26]

C. Relevant counterfactual with respect to the routes where the parties are code-share partners

Background: code-share agreements between Lufthansa/SN and BD

36. In 1999, Lufthansa, BD and SAS concluded a tripartite joint venture agreement (TPJVA) with respect to their intra-European flights to and from London Heathrow and Manchester. Within the framework of this agreement, Lufthansa, BD and SAS coordinated their fares and schedules and shared profits and losses. This agreement was exempted by the Commission under Article 81(3) EC in 2001 for a six-year period subject to commitments submitted by the parties on the London-Frankfurt route.[27] The TPJVA expired on 31 December 2007 due to Lufthansa's decision to terminate it.[28]

37. Lufthansa and BD also signed a code-share agreement in the context of their partnership in 1999. This code-share agreement covered not only the routes included in the TPJVA, but also a large number of routes within their respective networks, including intra-UK regional routes, routes between Germany and the UK, and routes not connected to the marketing carrier's home country. The code-share agreement was, for the most part, a standard free-flow agreement[29], with the operating carrier retaining the revenue for the respective flights while paying a fee of […]% to the marketing carrier. However, the code-share agreement also provided for coordination of the operating and marketing carriers' fare structures.

38. Although the code-share agreement formally expired at the end of 2007, Lufthansa and BD have continued to code share on the same routes as before with the only difference

26 None of Lufthansa's alliance partners is active on an affected market analysed in the competitive assessment below.

27 See case COMP/37.812 British Midland / Lufthansa / SAS, OJ C 83, 14.03.2001, p. 6-10.

28 The decision by Lufthansa was notably motivated by its wish to put an end to the annual compensatory loss payment benefiting BD. In this context, […] during the period from 2000-2005.

29 In a free-flow code-share agreement, the marketing carrier does not have its own reserved inventory on the code-shared flight but has real-time access to the operating carrier's seat inventory. The operating carrier retains full control over its inventory (through the opening and closing of booking classes). The marketing carrier is free to set its fares but the turnover achieved by the marketing carrier is entirely transferred to the operating carrier, except for a marketing fee called interlining service charge (ISC).

that Lufthansa and BD have stopped coordinating their fares and therefore submit that their code-share is now only a standard free-flow code-share. For each route, the code-share arrangement is only unilateral, that is to say that only one of the two carriers actually operates its own aircraft. The operating carrier (through a mapping system of sales performed by the marketing carrier) maintains the inventory control and can therefore restrict the inventory (by closing booking classes) in case the marketing carrier is selling seats in the low yield category. Against this background, the notifying party submits that code-sharing is used principally for the purpose of network extension and thus not as a means of the marketing carrier to compete against the operating carrier. Consequently, Lufthansa argues that it does not compete pre-merger with bmi on any of the routes where they have a code-share agreement and therefore no merger-specific anti-competitive effects would result from this transaction.

39. Besides, SN and BD code-share on seven routes between the UK and Belgium. These are also unilateral free-flow code-shares: SN is the only operating carrier on four of these routes and BD the only operating carrier on three others. Lufthansa's subsidiaries (Swiss, Eurowings, Germanwings etc.) and BD do not have any code-share agreement.

Analytical framework

40. Paragraph 9 of the Horizontal Merger Guidelines states that "[i]n assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted."

41. Changes in the pre-merger situation that can reasonably be predicted to occur independently from the merger should be taken into account.

42. In the present case, the pre-merger situation is a situation in which the parties cooperate under the described code share agreements. Pre-merger cooperation that is contrary to Article 81 of the Treaty cannot be considered as a relevant counterfactual.[30] However, the Commission's investigation has not provided any indications that the relevant code share agreements in the present case would be contrary to Article 81of the Treaty. For the purpose of the assessment of the present case, the relevant counterfactual is therefore a situation in which the parties cooperate under the described code share agreements.

43. Taking these code share agreements as the starting point for the assessment, the proposed concentration could raise serious doubts only if (i) despite the code share agreements, the operating carrier and the marketing carrier exert a significant constraint on each other as actual competitors (with respect to sales of seats on the operating carrier's flights) or (ii) if, in presence of the code-share agreement, the marketing carrier were to be likely to enter the respective route as an operating carrier and that, as a result,

[30] In the context of merger control, if the illegality of a pre-merger agreement between the parties could not be taken into account, the parties could argue that there would only be a small reduction or even no reduction of competition as a result of the merger. A merger decision in such circumstances would effectively incorporate and perpetuate the pre-merger illegality for ever, since mergers that are approved under the ECMR are no longer challengeable under Article 81 of the Treaty.

the marketing carrier already exerts a significant constraining influence on the operating carrier or there is a significant likelihood that it would grow into an effective competitive force.[31] In particular, anti-competitive affects may occur where the marketing carrier is very likely to incur the necessary sunk costs to enter the relevant code shared route as an operating carrier in a relatively short period.[32]

44. The Commission's investigation in this case has shown that a marketing carrier does not exert more than a residual constraint on the operating carrier and therefore, in the presence of the code-share, the proposed transaction does not raise competition concerns as the result of the elimination of actual competition between the parties. Moreover, the Commission's analysis has confirmed that Lufthansa or SN would not be likely entrants on the routes where they market flights operated by BD. Similarly, the Commission's analysis has confirmed that BD would not be a likely entrant on the routes where it markets flights operated by Lufthansa or SN.

VI. COMPETITIVE ASSESSMENT

A. Scheduled passenger air transport services

VI.A.1. Airport substitutability

45. In this section, the Commission specifically assesses the substitutability of (i) Manchester airport (MAN) vs. Leeds Bradford airport (LBA), and (ii) Birmingham airport (BHX) vs. East Midlands airport (EMA), in relation to flights between these four airports and Brussels. Ultimately the substitutability of MAN and LBA can be left open since the transaction does not raise serious doubts as to its compatibility with the common market irrespective of whether the two airports are substitutable or not. With regard to BHX and EMA, the Commission concludes that the two airports are not substitutable for passengers flying to/from Brussels.

Manchester/Leeds Bradford – routes to Brussels

46. The distance between MAN and the city of Manchester is 16 km whereas the distance between LBA and the city of Manchester is 70 km. In *Ryanair/Aer Lingus* these two airports have been considered as substitutable for passengers on flights from/to Dublin[33]. In the present case, it can be left open whether flights between BRU and MAN and flights between BRU and LBA are part of the same relevant market, since the proposed concentration does not raise serious doubts as to its compatibility with the common market in either case.

47. If the airports MAN and LBA were substitutable and thus flights between Brussels and either Manchester or Leeds Bradford considered as being one market, the transaction would lead to a horizontal overlap between two airlines operating the same route. However the transaction would not raise serious doubts as to its compatibility with the common market.

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[31] See the Horizontal Merger Guidelines, at para. 60.

[32] See the Horizontal Merger Guidelines, at para. 59.

[33] COMP/M.4439 Ryanair/ Aer Lingus, paras. 126-135.

The assessment of the competitive situation of the route MAN/LBA-BRU is conducted in paragraphs 96-99.

48. If the two airports were not substitutable, the routes MAN-BRU and LBA-BRU would constitute separate markets. In such situation, again the transaction would not raise serious doubts as to its compatibility with the common market. The assessment of the competitive situations of the routes MAN-BRU and LBA-BRU are conducted respectively in paragraphs 66-76 and 79-80.

Birmingham/East Midlands – routes to Brussels

49. It should be recalled here that airport substitutability cannot be assessed in the abstract but can only be determined taking into account the characteristics of the passengers travelling on the routes at stake.

50. The distance between BHX and the city of Birmingham is 13 km whereas the distance between EMA and the city of Birmingham is 65 km. In *Ryanair/Aer Lingus* these two airports have been considered as substitutable for passengers on flights from/to Dublin.[34] By contrast the British Office of Fair Trading found that services from EMA to Glasgow and Edinburg would provide at most a weak competitive constraint on Flybe's services from BHX to the same cities.[35] In the present case, the Commission has come to the conclusion that the two airports are not substitutable for passengers travelling from/to Brussels, whether time-sensitive or non time-sensitive.

51. Firstly, passengers travelling between Brussels and either Birmingham or East Midlands are principally business passengers[36]. These passengers have a need for direct connections to places where they need to meet their customers and increasing the travel time is unlikely to be an option for them. In addition, the Birmingham airport is better served by public transport toward the centre of Birmingham than the East Midlands airport, thus also questioning the substitutability of both airports. EMA airport has no adequate public transport connections with Birmingham (no direct rail connection, no direct buses) and the travel time to Birmingham city centre by public transport is more than 2 hours. In contrast, BHX airport has a dedicated railway station, from which trains reach Birmingham city centre in 10-15 minutes. Similarly passengers travelling for business reasons to cities in the vicinity of East Midlands (Nottingham, Derby) will unlikely choose to fly to BHX. There is no direct bus connection from BHX to Nottingham and Derby and train travel from BHX takes between 1h15 and 1h50. In comparison, travellers can reach Nottingham and Derby from EMA in 35-40 minutes. EMA markets itself mainly as an airport for the cities in its vicinity and not for Birmingham, as is shown by its full name "East Midlands Airport - Nottingham, Leicester, Derby". The business-oriented nature of the EMA-BRU route is also evidenced by the business model operated by BD on this route: BD flights are operated

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34 COMP/M.4439 Ryanair / Aer Lingus, paras. 136-142.

35 OFT - 26 June 2007 - ME/2795/06 - Anticipated acquisition by Flybe Group Limited of the BA Connect business of British Airways plc.

36 According to the United Kingdom Civil Aviation Authority, 75% of passengers flying between Brussels and either Birmingham or East Midlands travel for business purposes.

by bmi regional, which flies 49 seat jets with low load factors twice a day at peak times (except on week-ends) to respond to this specific business demand.

52. Secondly, the travel agencies contacted during the market investigation confirmed that corporate customers make specific requests to travel either to Birmingham or to East Midlands, and generally do not ask the travel agency to include both airports in their search for flights. Five travel agencies have provided information with regard to the routes BHX-BRU and EMA-BRU. Four of them have indicated that, when passengers purchase flight tickets on these routes, they specifically ask to book a flight to either BHX or EMA, and that they do not ask the travel agency to include the other airport in their request. This indicates that corporate customers largely consider the routes BHX-BRU and EMA-BRU as not interchangeable.

53. Thirdly, the majority of corporate customers have indicated that their employees fly from Brussels to either Birmingham or East Midlands for different purposes, thereby indicating that the two routes serve to visit different customers or company sites and are therefore not interchangeable. Eight corporate customers out of 13 have confirmed this information, whereas five have indicated that their employees fly to either Birmingham or East Midlands for similar purposes. However, out of these five corporate customers, only two have substantial purchases of flight tickets on both routes BHX-BRU and EMA-BRU, whereas two have the bulk of their purchases of tickets on only one of the two routes (94% or 100% on BHX-BRU vs 6% or 0% on EMA-BRU), and one could not provide any detailed information.

54. Fourthly, a majority of corporate customers does not consider that bmi's services on EMA-BRU and SN's services on BHX-BRU compete against each other to attract customers. This is in line with the fact that most corporate customers do not compare tariffs on BHX-BRU and EMA-BRU but only look at the tariffs on one of the two routes.

55. Fifthly, both airports have confirmed the geographic differentiation between their catchment areas. As noted by the manager of EMA airport, “for the most part, passengers in the West Midlands are more likely to prefer Birmingham Airport, and passengers in the East prefer East Midlands, as these are the most conveniently located. Therefore they are two separate markets.” Similarly, BHX has indicated that “There is some overlap, particularly for non time-sensitive passengers, but Birmingham is located closer to the larger cities of the Midlands and is therefore able to offer a more convenient service, particularly to business passengers.”

56. Sixthly, the economic analysis conducted by the Commission has shown that prices of SN on the route BHX-BRU and prices of bmi on the route EMA-BRU have not evolved in parallel in the recent past. This finding holds for all types of tickets, including business and economy non restricted tickets used by time-sensitive passengers and economy restricted tickets used by non time-sensitive passengers. Such non-parallel evolution is consistent with the conclusion that SN and BD do not compete closely on these routes.

57. For these reasons it can be concluded that Birmingham airport and East Midlands airport should not be considered substitutable for passengers flying from/to Brussels, whether time-sensitive or non time-sensitive. The impact of the present transaction must then be assessed separately for the routes Birmingham-Brussels (paragraphs 66-76) and East Midlands-Brussels (paragraphs 81-82).

VI.A.2. Route assessment

58. The present transaction gives rise to horizontal overlaps between the parties on 31 routes, which can be grouped into several categories[37]:

- **Intra-European route on which both parties operate direct services:** one route only is operated by both BD and SN, London-Brussels.

- **Routes operated by LH (or SN) where bmi acts as marketing carrier:** 21 routes between the United Kingdom and Germany (operated by LH) or between the United Kingdom and Belgium (operated by SN).

- **Routes operated by bmi where LH (or SN) acts as marketing carrier:** Leeds Bradford-Brussels (SN), East Midlands-Brussels (SN), East Midlands-Cologne/Bonn and London-Hanover.

- **Intra-European routes on which bmi operates direct and LH operates indirect services:** Edinburgh-Zürich and Manchester-Lyon.

- **Long-haul routes on which bmi operates direct and LH operates indirect services:** London-Jeddah, London-Riyadh.

- **Route on which bmi and LH operate indirect services:** Manchester-Moscow.

59. The Commission has also assessed the competitive situation on the route MAN/LBA-BRU in the case that MAN and LBA are substitutable airports for passengers flying from/to Brussels.

60. The Commission assessment has concluded that the transaction does not raise serious doubts as to its compatibility with the common market with respect to any of these routes.

VI.A.2.a. Intra-European route on which both parties operate direct services

London - Brussels

61. In 2007, 2,158,000 O&D passengers travelled between Brussels and London, including both air transport and train services. Of those, around [500,000 - 510,000] passengers travelled on this route by plane.

62. The route London-Brussels is operated by bmi (London Heathrow), British Airways (London Heathrow, London Gatwick), Brussels Airlines (London Gatwick) and VLM Airlines (London City). Lufthansa markets flights under a code share with bmi, and SN markets flights under a code share with British Airways from London Heathrow[38]. Until March 2008, Ryanair operated flights between Stansted and Charleroi.

63. In addition, Eurostar operates train services between London and Brussels. A vast majority of respondents to the market investigation considers for reasons such as the short travel time (approximately 2:00h by train, compared to 1:15h by a direct flight) that transportation by train on the route Brussels-London offers a viable alternative to air transportation. For the

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[37] In line with other airline cases, only overlaps routes where the market share of both carriers is larger than 1% are considered in the competitive assessment

[38] Although this code-share is likely to be discontinued as a consequence of the Lufthansa/SN merger.

purpose of the present decision, transportation by train and by air therefore belong to the same market on this route.

64. On such an overall market for train and air transportation services between London (including all London airports) and Brussels, the parties submit that train services account for 80% of all passengers which has been broadly confirmed by the market investigation. The parties' combined market share remains below 15%[39] irrespective of whether the relevant market should include (i) train services and flights to London Heathrow (LHR), London Gatwick (LGW) and London City (LCY); or (ii) train services and flights to only one or two of these airports.

65. In addition, the parties face competition from British Airways and VLM Airlines. The transaction therefore does not raise serious doubts as to its compatibility with the common market with respect to this route.

VI.A.2.b Routes operated by LH (or SN) and where bmi acts as marketing carrier

66. Lufthansa (or SN) operates the following routes, and has a code-share agreement with bmi which markets them:

Routes operated by **LH** and marketed by bmi	Routes operated by **SN** and marketed by bmi
1. Birmingham-Munich 2. Birmingham-Frankfurt 3. Birmingham-Düsseldorf 4. Bristol-Frankfurt 5. Edinburgh-Frankfurt 6. London-Cologne Bonn 7. London-Düsseldorf 8. London-Hamburg 9. London-Munich 10. London-Stuttgart 11. London-Frankfurt 12. London-Berlin 13. Manchester-Düsseldorf 14. Manchester-Frankfurt 15. Manchester-Hamburg 16. Manchester-Munich 17. Newcastle-Düsseldorf	18. Manchester-Brussels 19. Newcastle-Brussels 20. Bristol-Brussels 21. Birmingham-Brussels

67. On 17 routes between Germany and the United Kingdom, Lufthansa operates flights in code-share with BD. In addition, SN operates flights in code-share with BD on four routes between Belgium and the UK. BD markets tickets on these flights but only has a limited market share (maximum 15% and in most cases less than 5%). On more than half of these routes, other operating carriers, in particular FlyBE, are present and exert a competitive constraint on either Lufthansa or SN.

68. By contrast on Birmingham-Munich, Edinburg-Frankfurt, Manchester-Hamburg, Manchester-Munich, Bristol-Frankfurt, Newcastle-Düsseldorf, Bristol-Brussels (SN),

[39] This is true both for 2007 (the latest train data available are from 2007) and for 2008 (when air transport data for 2008 and train transport data for 2007 are used).

Newcastle-Brussels (SN) and Birmingham-Brussels (SN), Lufthansa and BD face no competitors. Lufthansa (or SN) is the only direct operating carrier and BD is the only marketing carrier.

69. The market investigation has confirmed in this case that the marketing carrier only exerts a limited constraint on the operating carrier. In particular, although the marketing carrier has a direct access to booking classes of the operating carrier, the operating carrier can close booking classes at its own will. The marketing carrier therefore has no control on the inventory policy. In addition, if the marketing carrier started to offer fares substantially lower than the operating carrier, the latter could terminate the code-share agreement and thereby deprive the marketing carrier from any benefit of an aggressive pricing policy.

70. The Commission has also undertaken an analysis of the parties' pricing policy for the routes where the parties have a code-share agreement. A comparison of the pricing policy of the marketing carrier and the operating carrier did not reveal in any significant difference. Also when controlling for different booking classes, the difference did not appear significant. Furthermore, the pricing policy of the parties in the code-shared routes has been compared with their pricing policy on routes where one of the parties is the only one operating and no code-share agreement is in place. No significant differences were identified in the pricing policies and, if any, they could mainly be attributed to the characteristics of the routes. The evidence gathered on the parties' pricing policy is thus consistent with the qualitative evidence that BD imposes a limited competitive constraint on the operating carrier Lufthansa (or SN).

71. The proposed concentration could therefore raise serious doubts on the routes operated by Lufthansa only if it resulted in the elimination of BD as a potential competitor on these routes.

72. The market investigation indicates that BD is unlikely to enter or operate any of the code-share routes where Lufthansa (or SN) is the operating carrier and BD is the marketing carrier. These code-share routes are all intra-European short-haul routes and the evidence indicates that bmi mainline has made a strategic focus to withdraw from operating these intra-European routes in order to expand into mid-haul routes to destinations beyond Europe. This conclusion is supported by internal BD documents and an evaluation of the evolution of BD's slot allocations.

73. According to its internal documents, […], BD concluded that […] existing emphasis on operating its own intra-European short-haul routes […]. Indeed, the dramatic growth of low-cost carriers that compete on many of these intra-European routes, particularly easyJet and Ryanair, made it very difficult for […] to generate profits on most of its short-haul European routes. Accordingly, the evidence indicates that BD made a strategic decision to adopt a new strategy aimed at closing down most of its […] intra-European short-haul routes and focusing on […] mid-haul routes from LHR to the Middle-East region and Central Asia.

74. The implementation of this strategy by BD is clearly revealed when evaluating its allocation of slots over the past few years. Indeed, since mid-2006, bmi mainline has increased its number of mid-haul slots by 13[40], while during the same time period, reducing its intra-

40 The following destinations are concerned: Almaty, Amman, Beirut, Cairo, Damascus, Moscow, Yerevan, Freetown, Baku, Teheran, Kiev, Riyadh, Tel Aviv.

European slots by 12[41].[42] While bmi mainline has added flights to destinations such as Cairo, Tel Aviv, Riyadh and Beirut, it has ceased operating routes to Paris, Nice, Milan and Madrid, among other European destinations.

75. Similarly, the market investigation revealed that bmibaby and bmi regional are unlikely entrants on these code-shared routes, as their current strategies consist in entering thin routes where there are few or no competitors. Indeed, an evaluation of the routes that bmibaby and bmi regional have entered most recently confirms this. The market investigation confirms that it is highly unlikely that bmi regional or bmibaby would alter their strategies and enter larger routes where it would have to compete against major network carriers such as Lufthansa.

76. From the above, it can therefore be concluded that entry of BD on routes operated by Lufthansa (or SN) where BD code-shares on Lufthansa (or SN) flights is unlikely. BD does not exert a significant constraining influence on LH (or SN) and there is no significant likelihood that it would grow into an effective competitive force. Consequently, the elimination of BD as a potential competitor of Lufthansa (or SN) on these routes is unlikely to have significant anti-competitive effects. The Commission therefore concludes that the transaction does not raise serious doubts as to its compatibility with the common market with respect to these routes.

VI.A.2.c Routes operated by bmi and where LH (or SN) acts as marketing carrier

77. This section will address the routes Leeds Bradford-Brussels, East-Midlands-Brussels, East Midlands-Cologne Bonn and London-Hanover which are operated by bmi and marketed by Lufthansa via a code-share.

78. As already indicated, in the present case, the market investigation has confirmed the limited competitive pressure exerted by the marketing carrier on the operating carrier. Therefore the main competition concern which could result from the transaction on the routes Leeds Bradford-Brussels, East Midlands-Brussels, East Midlands – Cologne/Bonn or London-Hanover is the removal of Lufthansa as a likely entrant on these routes.

Leeds-Bradford-Brussels

79. On the route Leeds Bradford-Brussels (LBA-BRU), BD operates flights in code-share with SN as a marketing carrier. [10,000 – 20,000] O&D passengers as well as [1,000 – 2,000] behind & beyond passengers were transported on this route in 2008 and BD is the only operating carrier.

80. Considering the thinness of this route, it is unlikely that SN would have started operating its own flights in presence of another competitor, irrespective of whether a code-share with BD is in place or not. Consequently, the transaction does not raise serious doubts as to its compatibility with the common market with respect to the route Leeds Bradford-Brussels.

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41 The following destinations were abandoned or frequencies reduced: Alicante, Amsterdam, Brussels, Paris, Naples, Nice.

42 These intra-European slots do not include UK and Ireland slots. Those slots, however, also decreased by seven. The total number of slots in BD's possession was 80 in Summer 2006 and 86.5 in Summer 2009.

East Midlands-Brussels

81. On East Midlands-Brussels (EMA-BRU), BD operates flights in code-share with SN as a marketing carrier. [20,000 – 30,000] O&D passengers were transported on this route in 2008 as well as [2,000 – 3,000] behind and beyond passengers and BD is the only operating carrier.

82. Similar to the case of the LBA-BRU route, considering the thinness of this route, it appears unlikely that SN would have started operating its own flights in presence of another competitor, irrespective of whether a code-share with BD is in place or not. Consequently, the transaction does not raise serious doubts as to its compatibility with the common market with respect to the route East Midlands-Brussels.

East Midlands – Cologne/Bonn

83. On East Midlands – Cologne/Bonn (EMA-CGN), BD operates flights in code-share with Lufthansa as a marketing carrier. [5,000 – 10,000] O&D passengers as well as [0 – 500] behind & beyond passengers were transported on this route in 2008. easyJet discontinued its service on this route in February 2008, and BD is the only operating carrier.

84. Again, considering the thinness of this route, the Commission has come to the conclusion that it is unlikely that Lufthansa would have started operating its own flights in presence of another competitor, irrespective of whether a code-share with BD is in place or not. Consequently, the transaction does not raise serious doubts as to its compatibility with the common market with respect to the route East Midlands – Cologne/Bonn.

London-Hanover

85. On the London-Hanover route (LON-HAJ), BD operates flights from London Heathrow (LHR) in code-share with Lufthansa as a marketing carrier. The only other competitor is Air Berlin, which operates flights from London Stansted (STN). The LON-HAJ is an O&D route of [170,000 – 180,000] passengers, if both LHR and STN airports are taken into account, out of which [30,000 – 40,000] fly out of LHR. Taking into accounts the seats on BD's flights which are marketed by Lufthansa, the market shares are as follows:

	LHR-HAJ	**LON (LHR+STN)-HAJ**
Pax/year (2008)	[30,000 – 40,000]	[170,000 – 180,000]
BD	[70-80] %	[10-20] %
Lufthansa	[20-30] %	[5-10] %
Combined	**100%**	**[20-30] %**
Air Berlin	0%	[70-80] %

86. The Commission has not taken a position on the substitutability of LHR and STN airports, as it does not affect the competitive assessment. If LHR and STN were substitutable, the transaction would not raise any competition concerns as Air Berlin would by far be the most important competitor on the route. By contrast, if LHR and STN were not substitutable, the competitive assessment should focus on the competitive constraint exerted by Lufthansa on bmi on the route LON (LHR or possibly LHR/London City (LCY))-HAJ.

87. [The Commission concludes on the basis of Lufthansa's internal documents and general approach towards opening new routes that, in the absence of the transaction, there is no

significant likelihood that Lufthansa would have entered the route LON-HAJ in competition with bmi.]

88. The Commission has thus come to the conclusion that it is unlikely that Lufthansa would enter or operate flights on the route LON-HAJ. The transaction therefore does not raise serious doubts as to its compatibility with the common market with respect to this route.

VI.A.2.d Intra-European routes on which bmi operates direct and LH operates indirect services

89. On two short-haul routes, namely Manchester-Lyon (MAN-LYS) and Edinburg-Zurich (EDI-ZRH), a substantial number of passengers are travelling using an indirect service. Therefore, these indirect flights are included in the same relevant market as direct flights and are also affected by the present transaction. Although the parties reach significant market shares on these two routes ([60-70] % on MAN-LYS and [40-50] % on EDI-ZRH), no competition concerns are likely to arise with respect to these routes as both routes are very thin (below or around 20,000 O&D pax/year) and several competitors such as British Airways ([5-10]% on MAN-LYS and [20-30] % on EDI-ZRH) or Air France ([30-40] % on MAN-LYS and [10-20]% on EDI-ZRH) are also active with an indirect service via their hubs. This conclusion still stands if separate markets are distinguished for time-sensitive and non time-sensitive passengers.

90. The transaction therefore does not raise serious doubts as to its compatibility with the common market with respect to these routes.

VI.A.2.e Long-haul routes on which bmi operates direct and LH operates indirect services

91. The present transaction gives rise to a number of affected long-haul routes where BD offers direct and Lufthansa or SN offer indirect services. However most of these routes are too thin to be considered as a substantial part of the common market. The Commission has therefore limited its investigation to the overlaps on London-Jeddah and London-Riyadh.

92. On London-Jeddah, BD operates direct flights (market share: [10-20] %) whereas Lufthansa operates indirect flights (market share: [0-5] %). On this route, the main competitor is Saudi Arabian Airways (SV) whose market share is [70-80] %. [100,000 – 110,000] O&D passengers were transported in 2008, including [90,000 – 100,000] via direct flights and [10,000 – 20,000] via indirect flights. Considering the strong position of SV and the limited market share increment brought about by the merger, no competition concerns are deemed to arise on this route. The same applies if separate markets are distinguished for time-sensitive and non time-sensitive passengers.

93. On London-Riyadh, BD operates direct flights (market share [20-30] %) whereas Lufthansa operates indirect flights (market share: [0-5] %). On this route, the main competitor is again Saudi Arabian Airways (SV) whose market share amounts to [50-60] %. [90,000 – 100,000] O&D passengers were transported in 2008, including [70,000 – 80,000] via direct flights and [20,000 – 30,000] via indirect flights. Considering the strong position of SV and the limited market share increment brought about by the merger, no competition concerns are deemed to arise on this route. The same applies if separate markets are distinguished for time-sensitive and non time-sensitive passengers.

94. Ultimately, the market investigation did not raise any competition concern with regard to any of the long-haul routes on which bmi operates direct and LH operates indirect services.

It can therefore be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to any of these routes.

VI.A.2.f Route on which bmi and LH operate indirect services

95. The present transaction gives rise to one affected route where both BD and Lufthansa offer indirect services, namely Manchester-Moscow (MAN-MOW). No carrier offers direct services and the merged entity will have a market share of [40-50] % on this route. Several competitors (Air France [20-30] %, British Airways [10-20] %, Czech Airlines [5-10] %) will exert a sufficient competitive constraint on the merged entity. It can therefore be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to this route.

VI.A.2.g Manchester/Leeds Bradford-Brussels

96. The competitive assessment of the routes MAN-BRU and LBA-BRU has been conducted in paragraphs 66-76 and 79-80 respectively. This chapter assesses the competitive situation on the route MAN/LBA-BRU under the hypothesis that MAN and LBA are substitutable for passengers flying to/from Brussels.

97. In 2008, [10,000 – 20,000] O&D passengers travelled on the route Leeds Bradford–Brussels while [110,000 – 120,000] O&D passengers travelled on the route Manchester–Brussels. The route LBA-BRU is operated by BD, whereas SN code shares on these BD flights. No other airline is active on this route. By contrast, MAN-BRU is operated by SN, whereas BD code shares on these SN flights. FlyBe also flies on MAN-BRU.

98. If the airports MAN and LBA are substitutable and thus flights between Brussels and either Manchester or Leeds Bradford considered as being one market, the transaction leads to a horizontal overlap between the parties.

99. However, FlyBE would the largest carrier with a market share of [50-60] %, the market share of the parties being [40-50]%. The transaction would therefore not raise serious doubts as to its compatibility with the common market with respect to this route.

B. Cargo air transport services

100. While Lufthansa is active in the air cargo transport market (via Lufthansa Cargo AG & Swiss WorldCargo) and operates its own fleet of […] freighter aircraft, BD does not operate dedicated freighter aircraft, but relies exclusively on "belly space" cargo capacity available on BD passenger flights.

101. Regarding intra-European cargo services, if the relevant market for cargo services were to include several means of transportation (air, road, train), the combined market share of the parties would be below 1% in the EU. The parties submit that their combined market share would still be inferior to 15% on a market limited to intra-European air cargo transport. The market investigation has not indicated any substantiated competition concern regarding the intra-European air cargo markets.

102. Regarding cargo services from/to Europe, the parties submit that, on all cargo markets, their combined market shares remain below 15% or one of the parties only has *de minimis* activities (shipments below 100 tons per year). However, the market shares provided by the parties exceed the 15% threshold for a certain number of markets, although the parties stress that no data is available for these markets so that their market share estimates are not

reliable. This is in particular the case for two markets: air cargo transport from Europe to Sierra Leone and from Jordan to Europe[43]. Although the merged entity will have significant market shares for air cargo transport from Europe to Sierra Leone, the majority of respondents to the market investigation has indicated that the merger will not lead to competition concerns on this market and that other competitors (such as Kenya Airways or Africa West) offer sufficient alternatives. As to air cargo from Jordan to Europe, the merged entity will be constrained by the presence of two strong competitors (Royal Jordanian and Cargolux), and this finding holds whether the market is restricted to Jordan or also includes neighbouring countries. Finally, with one exception[44], respondents to the market investigation confirmed that the merger would not have any significant impact in other cargo markets.

103. For both intra-European cargo services and cargo services from/to Europe, the market investigation has also not indicated any product type with respect to which the parties would have a particularly strong position so that the conclusion of the assessment would be the same if the market were segmented according to product type.

104. In light of the above, the transaction does not raise serious doubts as to its compatibility with the common market with respect to the air cargo transport markets.

C. MRO

105. BD is only marginally active in the provision to third parties of line maintenance services in the United Kingdom. In 2007, BD achieved only about EUR 9.1 million in MRO services sales world-wide. On hypothetical world-wide, EEA-wide and UK-wide markets, BD's activities represent a market share of 1% at the most. On hypothetical markets restricted to each airport, BD is almost exclusively active in London Heathrow where LH is not present. The transaction therefore does not raise serious doubts as to its compatibility with the common market with respect to the MRO market.

VII. CONCLUSION

106. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed by)
Ján FIGEL
Member of the Commission

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43 These two markets meet the following criteria: (i) combined market share of more than 25% and (ii) overlap of more than 1%. Europe to Sierra Leone – 2007 market share: SN ([60-70]%) & BD ([5-10]%). Jordan to Europe: LH ([0-5]%) & BD ([40-50]%).

44 One competitor indicated that the merger could have an impact on the Europe-Egypt cargo market. However, the combined market share of the parties on both cargo markets from Europe to Egypt and from Egypt to Europe will be below 16% and the parties will be subject to the strong competitive constraint exerted by Egypt Air.