

***Case M.6796 - AEGEAN/
OLYMPIC II***

Only the English text is available and authentic.

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

Article 22(3)
Date: 03.12.2012



EUROPEAN COMMISSION

Brussels, 3.12.2012
C(2012) 9186

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 22(3) DECISION

To: Hellenic Competition Commission

Dear Mr Kyritsakis,

Subject: Case No COMP/M.6796 – AEGEAN/ OLYMPIC II
Request for referral by the Hellenic Competition Commission to the European Commission pursuant to Article 22(1) of Council Regulation (EC) No 139/2004

Ref.: Letter of the Hellenic Competition Commission of 6 November 2012

I. INTRODUCTION

1. With the above-mentioned letter the Hellenic Competition Commission formally requests the European Commission ("the Commission") to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004¹ ("the Merger Regulation"), the concentration whereby the Greek airline Aegean Airlines S.A. ("Aegean") intends to acquire sole control of the Greek airline Olympic Air S.A. ("Olympic Air").
2. Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a European Union dimension within the meaning of Article 1 of the Merger Regulation, but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

working days of the date of the notification of the concentration. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request.

3. Aegean notified the proposed acquisition of Olympic Air to the Hellenic Competition Commission on 5 November 2012. Prior to that, on 30 October 2012 the proposed transaction was notified to the Commission for the Protection of Competition of the Republic of Cyprus (the "CPC"). On 30 October 2012, the Commission sent a letter under Article 22(5) of the Merger Regulation informing the Hellenic Competition Commission and the CPC of the Commission's view that the proposed transaction fulfilled the criteria of Article 22(1) of the Merger Regulation and inviting the Hellenic Competition Commission and the CPC to make a request for referral pursuant to this provision.
4. On 6 November 2012, within the time-limit foreseen in Article 22(1) of the Merger Regulation, the Commission received a referral request pursuant to Article 22(1) of the Merger Regulation from the Hellenic Competition Commission. On the same date, the Commission also received a referral request from the CPC.
5. The Commission informed, in accordance with Article 22(2) of the Merger Regulation, the competent authorities of the other Member States on 7 November 2012. None of the Member States joined the referral requests within 15 working days as foreseen by the Merger Regulation.

II. THE PARTIES AND THE OPERATION

6. Olympic Air is a Greek airline active in scheduled air transport of passengers and cargo. It started its operations on 1 October 2009 following the privatisation of the former Olympic Airlines, as a result of which Marfin Investment Group ("Marfin", Greece) acquired the brand, slots and licenses of the liquidated Olympic Airlines. Olympic Air operates a base at Athens International Airport and serves around 40 short-haul destinations. It does not belong to any airline alliance.
7. Aegean is a listed independent² Greek airline providing scheduled and charter air passenger transport as well as air cargo transport. Since 1999, Aegean has been offering scheduled flights on Greek domestic routes and international short-haul routes. It operates a base at Athens International Airport and currently serves more than 50 short-haul destinations. Aegean is a member of the Star Alliance.
8. With the proposed transaction, Aegean intends to acquire sole control over Olympic Air by way of acquisition of shares. The proposed transaction constitutes therefore a concentration within the meaning of Article 3 of the Merger Regulation. However, it does not have a European Union dimension within the meaning of Article 1 of the Merger Regulation.

² Aegean's largest shareholder is Theodore Vassilakis who holds approximately 37% of shares.

III. ASSESSMENT OF THE REFERRAL REQUEST

9. Pursuant to Article 22(3) of the Merger Regulation, the Commission may decide to examine the concentration if it considers that (i) it affects trade between Member States and (ii) it threatens to significantly affect competition within the territory of the Member State or States making the request. If these two legal requirements are met, the Commission may exercise its discretion as to whether it is appropriate that the Commission examines the concentration.

a. Effect on trade between Member States

10. Regarding the first criterion, the Hellenic Competition Commission argues that the proposed transaction affects trade between Member States since it might have a significant impact on trade flows between Member States. The Hellenic Competition Commission submits that the proposed transaction affects, in essence, all domestic airlines inside Greece and, thus, the whole territory of Greece. In addition, the concentration is expected to significantly affect competition with regard to air transport between Greece and other Member States. Specifically, the new undertaking is expected to acquire a significant market share on the Athens - Larnaca route. Furthermore, the Hellenic Competition Commission notes that domestic flights may be used as part of international itineraries (e.g. Paris - Athens – Heraklion). Domestic airlines thus provide air transport services to international passengers. Such passenger flows are facilitated by alliances between airlines established in different Member States.
11. According to paragraph 43 of the Commission Notice on Case Referral in respect of concentrations ("Referral Notice"),³ a concentration fulfils the criterion of effect on trade between Member States laid down in Article 22 of the Merger Regulation if it is liable to have some discernible influence on the pattern of trade between Member States.
12. The proposed transaction concerns the two main airlines in Greece. It seeks to combine the entirety of their operations in the air transport of passengers and cargo.
13. Each of the parties serves a significant number of international routes from Greece (Aegean: ~35 routes; Olympic Air: ~7 routes), primarily to other Member States. According to established case law and Commission's practice,⁴ each of these international routes constitutes a separate market, the geographic scope of which by definition is wider than national. On these routes, the combination of the parties' services would affect the pattern of passenger and cargo traffic, and therefore trade, between Greece and other Member States.

³ Commission Notice on Case Referral in respect of Concentrations, OJ C 56, 05.03.2005, p. 2-23.

⁴ See Case 66/86 *Ahmed Saeed Flugreisen v Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803, paragraph 40; Case T-2/93 *Air France v Commission* [1994] ECR II-323, paragraph 83; and Case T-177/04 *easyJet Airline Co. Ltd v Commission* [2006] ECR II-1931, paragraph 56. See also Commission decision of 30 March 2012 in Case COMP/M.6447 IAG/bmi, paragraphs 31-35; Commission Decision of 26 January 2011 in Case COMP/M.5830 Olympic/Aegean, paragraphs 41-44; Commission Decision of 14 July 2010 in Case COMP/39.596 BA/AA/IB (OJ L 278,15.10.2010), paragraphs 17-19.

14. Furthermore, each of the parties serves a large number of intra-Greece routes (Aegean: ~16 routes; Olympic Air: ~33 routes). A certain proportion of passengers on these routes are nationals of or living in other Member States (e.g. tourists, businessmen, etc.), who use the parties' services either to travel between destinations within Greece or, as noted by the Hellenic Competition Commission, to connect to flights to other Member States. Similarly, Greek nationals or residents may use domestic flights as part of an international itinerary. Such passengers would be affected by the proposed transaction, particularly on the routes where both Aegean and Olympic Air are present.
15. Finally, given the liberalization of air transport services in the EU, any EU carrier has the right to provide services to/from/within Greece. Since the proposed transaction would merge the two main carriers in Greece, it may affect the ability and likelihood of existing and potential competitors from other Member States to provide such services.
16. Based on the above, and in line with the submission of the Hellenic Competition Commission, it is concluded that the transaction affects trade between Member States.

b. Concentration threatens to significantly affect competition within the Hellenic Republic

17. Regarding the second criterion, the Hellenic Competition Commission submits that the proposed transaction will significantly affect competition within Greek territory, given that the undertakings concerned are the only ones active on certain domestic routes which represent a significant part of the Greek air transport segment.
18. In addition, the Hellenic Competition Commission states that the concentration would significantly affect potential competition with regard to routes between Greece and other Member States, in particular Cyprus. According to the preliminary evidence in possession of the Hellenic Competition Commission, the new undertaking is expected to acquire a market share [>40] % on the Athens - Larnaca route.
19. As mentioned in paragraph 14 above, each of Aegean and Olympic Air serves a large number of routes within Greece. On several of these routes both parties are present and on some of them (e.g. Athens-Chania, Athens-Corfu, etc.) Aegean and Olympic Air are the only non-stop air service providers.
20. Moreover, the parties currently provide competing non-stop services on the international route Athens-Larnaca. On this route, as a result of the proposed transaction, the merged undertaking would offer the largest number of frequencies and, as noted by the Hellenic Competition Commission, is expected to have a large market share.
21. Furthermore, given that both Aegean and Olympic Air operate a base at Athens International Airport, they may be likely potential competitors on certain domestic and international routes on which they currently do not compete with non-stop services. The proposed transaction may affect such potential competition between the parties, which would have to be assessed during the investigation.

22. Finally, the Commission has recently examined in depth the routes affected by the proposed transaction in the context of the previously proposed merger between Olympic and Aegean in Case No COMP/M.5830 *Olympic/Aegean Airlines*. In that case, the Commission concluded that the merger would significantly impede effective competition, in particular as the result of the creation of a dominant position on several intra-Greece routes. While the market circumstances might have changed in the meantime, this further supports the *prima facie* evidence that the proposed transaction may significantly affect competition within the territory of the Hellenic Republic.
23. On the basis of the above and without prejudice to the outcome of the investigation by the Commission, it is concluded that the proposed transaction threatens to affect competition significantly within the territory of the Hellenic Republic.

c. Appropriateness of referral

24. Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the European Union level.
25. The present case fulfils the above requirements. Given the inherently international nature of air transport, the effects of concentrations between major carriers often extend beyond a single Member State's borders. For consistency reasons the assessment of such concentrations, such as the one in the present case, would be most appropriate for the Commission at the European Union level. In recent years the European air transport sector has undergone significant restructuring, which has been closely monitored by the Commission, in particular through merger and state aid control.
26. Moreover, the Commission has detailed knowledge of numerous elements relevant to the assessment of the proposed transaction. As mentioned in paragraph 22 above, the Commission investigated all aspects of the contemplated merger between Aegean and Olympic in 2010, before deciding, after an in-depth investigation, to prohibit that merger in January 2011. While some market circumstances might have changed since then and any such changes would need to be carefully considered, the Commission remains well placed to assess the proposed transaction.
27. Finally, given that the Commission received referral requests from national competition authorities of two Member States, accepting the referral would eliminate the risk of inconsistency between national decisions.
28. Therefore, it is concluded that the Commission is the best placed authority to assess the proposed transaction.

IV. CONCLUSION

29. For the above mentioned reasons, the Commission has decided to examine the concentration by which Aegean intends to acquire sole control over Olympic Air. This decision is based on Article 22(3) of the Merger Regulation.

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President