Air transport — The proposed British Airways-American Airlines alliance

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In August 2001, the Commission, the UK Office of Fair Trading (‘OFT’) and the US Department of Transportation (‘DoT’) were informed of the intention of British Airways (‘BA’) and American Airlines (‘AA’) to deepen their bilateral alliance on transatlantic routes. This proposed alliance included profit-sharing, code-sharing, joint marketing and schedule co-ordination. As a result of these arrangements, BA and AA would have ceased to compete against each other.

In February 2002, the parties eventually decided to terminate their alliance agreements in the light of the conditions imposed by DoT to clear the deal. At that time, the joint investigation launched by the Commission and the OFT had not been completed, although both competition authorities had reached a common understanding of the competition concerns raised by the alliance.

Procedure

Council Regulation 3975/87 (1), which lays down the procedure for the application of the rules on competition to undertakings in the air transport sector, only covers air transport between EEA airports. This means that the Commission does not enjoy its traditional investigation and enforcement powers in the competition field as regards air transport between the Community and third countries. (2)

In the absence of implementing regulations under Article 83 of the Treaty, both Member States and the Commission have a duty to ensure the application of Articles 81 and 82. In accordance with Article 85 of the Treaty, the Commission can propose appropriate measures to bring infringements to an end and authorise Member States to take the measures needed to remedy the situation, but it does not have powers to take measures, including granting an exemption, itself. Under a national regulation (3), the OFT has full competence to investigate and rule upon airline alliances on third country routes, including the power to grant a formal exemption. The continuation of the ‘transitional’ regime in this particular sector explains why DG Competition and OFT investigated the BA/AA alliance in parallel.

From the start, both authorities worked very closely together. Notices inviting comments on the alliance were published on the same day and identical questionnaires were sent out to competitors, travel agents and corporate customers. Joint meetings were also held with the notifying parties as well as with third parties. As a result of this close co-operation, both competition authorities were able to reach a common understanding of the benefits arising from the alliance, the possible competition concerns and the remedies that might have been needed to address these.

Substance

Overall it appeared reasonable to conclude that the alliance would have led to improvements in service quality that would have been attractive to consumers and that there would have been benefits from reductions in fares for connecting passengers. However, these benefits were focussed on connecting passengers and the number of these was small relative to the number of passengers who would have been affected by the loss of competition on transatlantic routes. It would have been necessary to weigh these relatively small benefits against the significant loss of competition resulting from the alliance.

The main competition concerns in this case arose on five UK-US routes where both BA and AA offered direct services, i.e. London-New York, London-Chicago, London-Dallas, London-Miami and London-Boston. Most of these city-pairs are thick business routes, where competition would have been particularly restricted for time-sensitive passengers since BA and AA account for a large proportion of these customers. Concerns were also

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(2) A proposal to bring air transport to and from the EU within the scope of Regulation 3975/87 has been pending before the Council since 1997.

(3) The EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (SI 2001/2916), as amended by the EC Competition Law (Articles 84 and 85) Enforcement (Amendment) Regulations 2002 (SI 2002/042).
raised regarding the possible impact on competition at a wider level, for example, for corporate clients.

The most appropriate remedy for these competition problems would have been for BA/AA to give up slots at London Heathrow, since access to these slots was the main barrier to entry or expansion by potential competitors. No final conclusion was reached on whether London Heathrow and London Gatwick were part of the same market. However, it was clear from the investigation that both carriers and consumers had a preference for Heathrow. In particular, services operated from Heathrow appeared to have a higher yield than those operated from Gatwick. Heathrow’s competitive advantage over Gatwick would therefore certainly have been taken into account when considering remedies.

It is also likely that direct flights would have been favoured when designing remedies. In other airline cases, the Commission accepted that indirect flights do compete on long-haul routes to some extent. On many UK-US routes, however, both competition authorities came to the conclusion that only a small number of passengers choose to fly indirect and that direct flights were therefore more competitive.

**Termination of the alliance agreements**

On 25 January 2002, the US DoT tentatively granted BA/AA’s application for antitrust immunity subject to the divestiture of 224 weekly slots at London Heathrow. This was considered too high a price by the parties, and they decided to abandon the proposed expansion to their alliance. On 21 February 2002, the parties officially confirmed that the agreements had been terminated and that they consequently wished to withdraw their notification under the UK Enforcement Regulations. As a consequence, DG Competition and OFT decided to close the procedures they had opened in this case.