

Brussels, 29 October 2002

Commission closes probe into KLM/NorthWest and Lufthansa/SAS/United Airlines transatlantic air alliances

The European Commission has decided to close its investigations into the alliances between KLM and NorthWest, on the one hand, and between Lufthansa, SAS and United Airlines, on the other hand. In the latter case, the airlines successfully addressed concerns about reduced competition on a number of routes between the German airport of Frankfurt and US destinations. In the case of KLM/NorthWest no remedies were held necessary. "I am happy that we were able to bring these investigations to a successful end. Airline alliances generally present benefits for the consumer, but regulators must ensure that they do not result in the elimination of competition on specific routes and we achieved that" European Competition Commissioner, Mario Monti, said.

In July 1996 the Commission decided to open, on its own initiative, proceedings into a number of transatlantic alliances in the aviation sector, including the Wings alliance between KLM and NorthWest and the Star Alliance alliance between Lufthansa (LH), Scandinavian Airlines System (SAS) and United Airlines (UAL).

It should be noted that unlike for alliances between EU carriers, the Commission does not have specific enforcement powers to rule on air transport between the European Union and third countries¹. This includes alliances between EU and US carriers for which the Commission uses Article 85 of the EU Treaty, which allows it to take steps to have Member States put an end to infringements of EU competition law.

The Commission's investigation of both the Wings and the Star Alliance did not have a suspension effect on the agreements. It is also in conformity with the earlier findings of the US Department of Transport in both cases.

The LH/SAS/UA Alliance

The Commission in 1998 informed the three partners that it had serious concerns that the Star alliance would have significantly reduced competition on four transatlantic routes, on which the partners held combined market shares of between 56% and 95%. The affected city pairs were Frankfurt-Chicago, Frankfurt-Washington, Frankfurt-Los Angeles and Frankfurt-San Francisco.

The Commission also took the view then that the alliance was unlikely to feel the competitive pressure of rivals due to significant regulatory and structural market entry barriers. National governments still impose price controls on indirect services and landing and take off slots are in shortage at Frankfurt.

¹ The scope of Regulation (EEC) No 3975/87, laying down rules for the application of Article 81 and 82 of the Treaty to the air transport sector, is limited to transport services between Community airports.

But after receiving comments from the alliance partners and other interested parties and after an additional market investigation, the Commission concluded that indirect flights, under certain conditions, could constitute suitable alternatives to non-stop services on long haul routes. This reassessment and a close co-operation with the EU Member States concerned to reduce the market entry barriers has allowed the Commission to adopt a more positive approach on this alliance.

The Commission's fears were assuaged when the three Star alliance partners offered to surrender slots at Frankfurt airport to allow new air services (either direct or indirect) on the routes concerned. The parties have offered to surrender sufficient slots to allow two additional daily competing air services on the Frankfurt-Washington route and one additional daily competing air service on each of the other three routes. In addition, new entrants using the slots, if they operate a non-stop service, will be admitted to the parties' frequent flyer programme and offered interlining facilities. The text of the commitments is attached to the notice to be published in the Official Journal tomorrow (OJ C 264 of 30 October 2002).

Furthermore, the German Government has agreed not to apply anymore restrictive price control measures vis-à-vis competitive indirect services (so-called sixth freedom services) on the routes concerned. The text of the declaration is also attached to the notice.

The Commission considers the proposed commitments and the declaration by the German Government address possible entry barriers for competitors and remove the risk that competition would be eliminated.

The Commission also took the view that the alliance brought benefits to consumers in terms of increased frequencies and reduced fares.

The KLM/NW alliance

As concerns the KLM/NW alliance, the Commission was initially concerned by the parties' high position on the Amsterdam-Detroit and Amsterdam-Minneapolis/St Paul routes where they hold 88 % and 78% combined market shares respectively.

But after further reflection it concluded that although the parties have high market shares on the routes concerned, the alliance will face competition from competitors providing substitutable indirect services. The Commission also concluded that there were no structural barriers to entry in terms of slot constraints or regulatory barriers. Like the Star alliance, the KLM-Northwest agreement also brings benefits for consumers in terms of increased frequencies and reduced fares.

Background

The Commission on 30 July 2002 announced in notices published in the EU's Official Journal its intention to take a favourable position on the two alliances and to close the respective proceedings.² Interested third parties did not raise any substantial new elements. Therefore, the Commission has decided to close the cases.

In 1998 the Commission communicated to the parties a so-called draft proposal under Article 85(1) of the Treaty in which it set out its preliminary view that the alliance infringed Article 81(1) of the Treaty.

When the Commission initiated its proceeding into the LH/SAS/UA and KLM/NW Alliances in July 1996, it also started a probe into two other transatlantic alliances: the planned link-up between British Airways and American Airlines and an alliance between Swissair, Austrian Airlines and Delta.

² OJ C 181 of 30.07.2002, p 2-8.

The first one, also referred to as OneWorld, was abandoned (twice) by the parties, most recently at the beginning of this year, after the US Department of Transportation requested the divestiture of 224 slots to address the competition concerns. Consequently the Commission's case was closed without the need to take any further action. The alliance between Swissair/AuA and Delta, in which the Commission opened a proceeding in 1996, does no longer exist in that form.

The Commission is, however, currently investigating the Skyteam Alliance, between Air France, Alitalia, Delta, CSA, Korean Air and AerMexico, which was officially launched in July 2000. To that end in March 2002 a notice has been published Official Journal³, inviting third parties to comment. It is too early to provide a preliminary assessment but it can be expected that the Commission will apply a similar approach as in the KLM/NW and LH/SAS/UA transatlantic alliance cases. Naturally, any new developments on the membership of Skyteam will be taken into account in the assessment

³ OJ C 76 of 27.03.02 p. 12.