



OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 21 August 2009

regarding a draft decision relating to

Case COMP/M.5440 – LUFTHANSA/ AUSTRIAN AIRLINES

Rapporteur : UNITED KINGDOM

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.
3. The Advisory Committee agrees with the Commission that the markets for scheduled passenger air transport services are to be defined on the basis of point of origin/point of destination ("O&D") city pairs.
4. The Advisory Committee agrees with the Commission that, for the purpose of making a competition assessment of this proposed transaction, the acquisition of Austrian Airlines by Air France-KLM is the most likely foreseeable alternative counterfactual (if the proposed acquisition by Lufthansa of Austrian Airlines were to fail) to the pre-merger situation.
5. The Advisory Committee agrees with the Commission's assessment that the notified transaction, as originally proposed by the notifying party, raises serious doubts as to its compatibility with the common market or a substantial part of it with respect to passenger air transport on the following routes:
 - a) Vienna-Stuttgart,
 - b) Vienna-Cologne,
 - c) Vienna-Munich,
 - d) Vienna-Frankfurt and
 - e) Vienna-Brussels.

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6. The Advisory Committee agrees with the Commission's assessment that the implementation of the commitments submitted on 31 July 2009 by the notifying party will lead to timely market entry by one or more airlines into, and thereby sufficiently resolve the competition concerns identified with respect to, the supply of passenger air transport services on the following routes:
 - a) Vienna-Stuttgart,
 - b) Vienna-Cologne,
 - c) Vienna-Munich,
 - d) Vienna-Frankfurt and
 - e) Vienna-Brussels.
 7. The Advisory Committee agrees with the Commission's assessment that the notified transaction would not significantly impede effective competition with respect to the markets for passenger air transport on other routes.
 8. The Advisory Committee agrees with the Commission's assessment that the notified transaction would not significantly impede effective competition with respect to the following markets:
 - a) the markets for air transport of cargo,
 - b) the markets for wholesale supply of airline seats to tour operators,
 - c) the markets for maintenance, repair and overhaul (MRO) services,
 - d) the market for in-flight catering and
 - e) the markets for ground-handling services.
 9. The Advisory Committee agrees with the Commission that the notified transaction should be declared compatible with the common market and with the functioning of the EEA Agreement in accordance with Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, subject to compliance with the commitments set out in the Annex to the Commission's Decision.

<u>BELGIË/BELGIQUE</u>	<u>BULGARIA</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>
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<u>ITALIA</u>	<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>
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