



EUROPEAN COMMISSION

Hearing Officer

## **Final Report<sup>1</sup> in the COMP/M.5141 - KLM/ Martinair case**

On 17 July 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which KLM Royal Dutch Airlines N.V., ultimately controlled by Air France-KLM Holding S.A. acquires, within the meaning of Article 3 (1)(b) of the EC Merger Regulation, control of the whole of Martinair Holland N.V. by way of purchase of shares.

Based on the results of the first phase market investigation, the Commission concluded that the proposed transaction raised serious doubts as to its compatibility with the common market due to competition concerns identified with respect to air passenger transport on certain routes. The notifying party submitted subsequently a commitment proposal. It consisted in benchmarking the post-merger price evolution of economy class fares on the routes where competition concerns had been identified vis-à-vis the price evolution of economy class fares on a basket of comparable routes. However, the market test of the commitments revealed doubts as to the workability and effectiveness of the price control mechanism and showed that the commitment was too complex to implement and monitor. The proposed commitment therefore proved to be not sufficiently clear-cut to eliminate the serious doubts identified by the Commission in the course of its first phase investigation.

Accordingly, on 8 September 2008, the Commission concluded that the transaction raised serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement and decided to initiate proceedings under Article 6(1)(c) of the EC Merger Regulation.

The notifying party submitted comments on the Article 6(1)(c) decision and orally requested access to the key documents in the file, in accordance with the Best Practices rules for merger cases. The case team replied on the same day that no substantiated submissions within the meaning of para. 45 of the Best Practices rules had been made and that, therefore, no key documents existed to which access could be granted. The notifying party did not further pursue this issue.

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<sup>1</sup> Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21.

Following an in-depth market investigation, the Commission concluded that the proposed concentration would not significantly impede effective competition in the common market or in a substantial part of it and that it should therefore be declared compatible with the common market pursuant to Article 8(1) of the EC Merger Regulation and with the EEA Agreement pursuant to Article 57 thereof. Accordingly, no statement of objections was sent to the notifying party.

No queries or submissions have been made to me by the parties or any third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 12 December 2008

*(signed)*

Michael ALBERS