



EUROPEAN COMMISSION

Competition DG

Policy and Strategy

Antitrust and Mergers – Policy and Scrutiny

## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**

**given at its meeting of 13 January 2011**

**concerning a preliminary draft decision relating to**

**CASE COMP/ M.5830 – OLYMPIC/AEGEAN**

**Rapporteur : UK**

### *Concentration*

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Community dimension pursuant to Article 1(3) of the Merger Regulation.

### *Market definition*

3. The Advisory Committee agrees with the Commission's definitions of the relevant markets in the draft Decision.

In particular, the Advisory Committee agrees with the Commission's approach to leave open in this case

3a) the distinction between time-sensitive and non-time sensitive passengers;  
and

3b) the inclusion of ferry services in the relevant market for non time sensitive passengers and all passengers on the 7 routes specified in the draft Decision.

### *Situation absent the merger (counterfactual)*

4. The Advisory Committees agrees with the Commission that, for the purpose of the competition assessment of the proposed merger, the most likely situation absent the merger (relevant counterfactual) is the one whereby Aegean and Olympic Air would continue to be in actual competition on 10 Greek domestic routes and on a number of international routes as specified in the draft Decision.

### *Competition assessment*

5. The Advisory Committee agrees with the Commission's assessment that the notified transaction leads to a significant impediment of effective competition due to the elimination of actual competition between Aegean and Olympic Air on the following 9 domestic routes:
  - a) Athens-Thessaloniki,
  - b) Athens-Herakleion,
  - c) Athens-Chania,
  - d) Athens-Rhodes,
  - e) Athens-Santorini,
  - f) Athens-Mytilini,
  - g) Athens-Chios,
  - h) Athens-Kos, and
  - i) Athens-Samos.
6. The Advisory Committee agrees with the Commission that the proposed transaction would significantly impede effective competition as a result of the elimination of a credible potential entrant on the Athens-Corfu route.
7. The Advisory Committee agrees with the Commission that the proposed transaction would not significantly impede effective competition as concerns the market for attribution of PSO routes in Greece.
8. The Advisory Committee agrees with the Commission that the proposed transaction would not significantly impede effective competition as concerns the market for groundhandling in Greece.

### *Entry*

9. The Advisory Committee agrees with the Commission's conclusion that no post merger entry by international and/or domestic carriers establishing a base at Athens airport is likely in the foreseeable future.

### *[The parties' financial situation]*

10. Although not formally put forward by the Notifying Parties, the Advisory Committee agrees with the Commission's analysis of the failing firm defense criteria and the Commission's conclusion that these criteria would not be met in the present case.

### *Commitments offered by the Notifying Parties*

11. The Advisory Committee agrees with the Commission's assessment that the final commitments offered by the Notifying Parties on 6 December 2010 do not address the competition concerns identified in the market investigation in an adequate manner and are therefore not likely to eliminate the significant impediment to effective competition resulting from the merger.

12. The Advisory Committee agrees with the Commission's assessment that the final commitments offered by the Notifying Parties on 6 December 2010 would not lead to likely, timely and sufficient entry by one or more airlines.
13. The Advisory Committee agrees with the Commission's assessment that in the absence of a timely, likely and sufficient entry, the mere existence of the commitments would not discipline the merged entity and counteract anticompetitive effects of the proposed transaction.

*Conclusion*

14. The Advisory Committee agrees with the Commission's conclusion that in view of the anticompetitive effects of the proposed transaction and in the absence of an adequate remedy, the notified concentration must be declared incompatible with the internal market and the functioning of the EEA Agreement.

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