



## **Final Report of the Hearing Officer<sup>1</sup>**

### **Aegean/Olympic II**

**(COMP/M.6796)**

#### **I. BACKGROUND**

1. On 28 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation<sup>2</sup> by which Aegean Airlines S.A. ("Aegean") intends to acquire sole control over Olympic Air S.A. ("Olympic") by way of purchase of 100% of its shares, within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The proposed transaction (the "Transaction") does not have an EU dimension within the meaning of Article 1 of the Merger Regulation. The Transaction was notified to the European Commission following a referral request from the competition authorities of the Hellenic Republic and of the Republic of Cyprus (under Article 22(1) of the Merger Regulation) on 6 November 2012. The Commission accepted the referral requests by decisions of 3 December 2012.

#### **II. PROCEDURE**

3. The European Commission initiated proceedings according to Article 6(1)(c) of the Merger Regulation on 23 April 2013. Aegean was given access to non-confidential versions of certain key documents collected during the first phase investigation on 30 April 2013, 3 May 2013 and 8 May 2013.

##### **Statement of Objections**

4. On 8 July 2013, the European Commission adopted a Statement of Objections ("SO") pursuant to Article 18 of the Merger Regulation. In the SO it was preliminarily found that the Transaction would significantly impede effective competition in a substantial part of the internal market and would be incompatible

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<sup>1</sup> Pursuant to Articles 16 and 17 of Decision of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29. ("Decision 2011/695/EU")

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation"), OJ L 24, 29.1.2004, p. 1.

with the internal market within the meaning of Article 2 of the Merger Regulation and the EEA Agreement (protocol 21 of the EEA Agreement).

5. In particular, the SO preliminarily concluded that in the market for scheduled passenger air transport services, the Transaction gave rise to horizontal overlaps on a number of Greek domestic routes from Athens. The SO also found that the Transaction would result in the elimination of the most credible potential competitor on a number of other domestic routes.
6. Aegean replied to the SO on 23 July 2013. Aegean did not request an oral hearing.

#### **Access to File**

7. Aegean received access to the file through CD-ROMs on 9 July 2013, 23 July 2013, 30 July 2013, 29 August 2013 and 24 September 2013 respectively.
8. On 12 July 2013, Aegean submitted a request for further access to file to the Directorate General for Competition ("DG Competition"). On 15 July 2013, DG Competition rejected Aegean's request. On 18 July 2013, Aegean referred the matter to me requesting additional access to 11 documents to which access had only been partially granted or had not been granted at all. Aegean noted that for most of those documents there was no explanation or very limited explanations supporting the confidentiality claims, and that either no summary or informative summary had been provided.
9. Following my intervention, DG Competition contacted the information providers so as to obtain either that they drop their confidentiality claims or provide adequate justifications for their confidentiality claims. As a result, DG Competition disclosed to Aegean a significant part of the information requested. In relation to the remaining documents, Aegean was provided with the precise justification for the confidentiality invoked by the information providers, which in the majority of the cases also provided an informative summary. On the basis of the above, I concluded that Aegean's request had been fulfilled.

#### **Commitments**

10. In order to address the competition concerns identified in the SO, Aegean submitted commitments on 25 March 2013. The Commission concluded that the commitments were insufficient to address the competition concerns arising from the Transaction and did not market-test them.
11. On 8 August 2013, Aegean submitted a second package of commitments consisting of a cap on fare prices and an aircraft sub-lease offer to potential entrants under certain conditions. The Commission considered that the commitments did not address sufficiently the competition concerns and did not market-test them. However, in view of the failing firm defence put forward by Aegean (below), it was considered that there was no need for remedies in this case.

#### **Failing Firm Defence**

12. On 24 August 2013, Aegean made a submission arguing that given Olympic's financial situation, absent the Transaction, Olympic would cease operating and as a

result, with or without the Transaction, Aegean would become the only operator on the overlapping routes of concern.

13. Following a detailed assessment of whether the financial situation of Olympic was such that it could be deemed a failing firm, the draft decision concludes that under the particular and exceptional circumstances of the case, Olympic meets the criteria of a failing firm. In particular, it is concluded that (i) it is more likely than not that in the near future Olympic is forced out of the market because of financial difficulties if not taken over by Aegean, (ii) the emergence of an alternative purchaser for Olympic in the immediate future is unlikely and (iii) in the absence of the Transaction, Olympic's assets would inevitably exit the market.

### **III. DRAFT DECISION**

14. Pursuant to Article 16(1) of Decision 2011/695/EU, the Final Report shall consider whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views.
15. Upon review of the draft decision, I conclude that it does not deal with any objection in respect of which the parties have not been afforded the opportunity of making known their views.

### **IV. CONCLUSION**

16. Overall, I conclude that all participants in the proceedings have been able to effectively exercise their procedural rights in this case.

Brussels, 2 October 2013

*(signed)*  
Wouter WILS