

***Case No COMP/M.2830 -
LUFTHANSA CARGO /
AIR FRANCE FINANCE
/ BRITISH AIRWAYS /
GLOBAL FREIGHT
EXCHANGE / JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 25/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/10/2002

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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.2830 - GFEL/LH/BA/AF – GF-X
Notification of 26 September 2002 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 26 September 2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertakings *Global Freight Exchange Limited*, controlled by Sunningdale Holdings Limited, on the one hand and *Lufthansa Cargo AG*, a wholly-owned subsidiary of Deutsche Lufthansa AG, *Air France Finance SA* and *British Airways Plc* on the other hand acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of GF-X Operations Limited (hereinafter "GF-X") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. Lufthansa ("LH"), Air France ("AF") and British Airways ("BA") are three European airlines, providing scheduled passenger and cargo air services as well as air-transport related services.
4. Global Freight Exchange Limited ("GFEL"), which was originally founded in 1998 by private individuals and commenced commercial trading in 2000, is the current owner of GF-X. GF-X provides an electronic business to business (B2B) trading platform, facilitating the sale of air freight capacity between air freight forwarders (the buyers) and air freight carriers (the sellers).

II. THE OPERATION AND THE CONCENTRATION

5. The notification concerns a full function joint venture for operating GF-X to perform on a lasting basis all the functions of an autonomous economic entity.

Joint control

6. The transaction comprises several phases. LH, AF and BA ("the carriers") will become indirect shareholders in GF-X through a new carrier investment vehicle ("CIV"). GF-X will be operated as a joint venture (JV) between GFEL and CIV. [...] CIV named directors will have to vote first among themselves on any decision concerning GF-X. In relation to such vote, each CIV director will have a number of votes [...]. The majority of such votes will control all CIV votes in the GF-X board of directors. In all phases GFEL will have the remaining shareholding and votes. The carriers, through CIV, will be able to exercise decisive influence by the right of veto over strategic board decisions³ and thereby acquire joint control together with GFEL in GF-X. Hence, the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation No 4064/89.

Full function

7. GF-X will be operated as a full function joint venture. It will have access to the market and will conduct its business with third parties on a direct basis. It will have management and human resources dedicated to its day-to-day operations and access to sufficient resources to conduct its business activities. [...] Accordingly, GF-X is a full-function joint venture within the meaning of Article 3(2) of Council Regulation No 4064/89.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregated turnover of more than 5 billion⁴ in 2001. LH, AF and BA each have a Community-wide turnover in excess of

³ Strategic board decisions are for example the approval of financial statements, business plans and budgets, appointment of the managing director, distribution of profits, liquidation or merger of GF-X.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the

€250 million but they do not achieve more than two-thirds of their aggregate Community-turnover in one and the same Member State. The notified operation has therefore Community dimension.

IV. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET

9. The parties consider GF-X to be an additional distribution channel for air freight carriers. It facilitates, according to the parties, air freight forwarders in conducting simultaneous searches or negotiations with multiple air freight carriers and thus leading to more efficiency and reduced costs by providing air freight forwarders with a similar class of data as other distribution channels.
10. Information provided by the parties suggests that the relevant product market for the assessment of the present concentration is the market for air freight capacity distribution, comprising both traditional (e.g. direct contacts by phone, fax or email) and electronic distribution channels (e.g. weblinks, cargo community systems (CCSs) and B2B platforms). The parties submitted that the electronic trading platform GF-X competes with other air freight capacity distribution channels both on a national and on a world-wide basis. In addition, the parties presume air freight transport and forwarding to be vertically-related markets.
11. The market investigation confirmed that both carriers and forwarders regard GF-X as an additional distribution channel for air freight capacity. Moreover, each of the above mentioned air freight distribution channels is considered to be inter-changeable on a national and world-wide basis.
12. It appears from the above that the relevant product and geographic market is the world-wide market for air freight distribution. However, for the purpose of this decision, the product and geographical market definition can be left open since on the basis of all alternative market definitions considered, the transaction will not lead to the creation or strengthening of a dominant position.

V. COMPETITIVE ASSESSMENT

Horizontal aspects

13. The market investigation has shown that the share of worldwide cargo capacity of air carriers traded via electronic trading platforms and other CCSs [is not significant]. Freight forwarders are booking [between 15% to 25%] of their total worldwide air cargo via various electronic trading platforms. None of the freight forwarders uses only one distribution channel and all of them use traditional distribution channels.
14. Apart from GF-X there are a number of other electronic air cargo capacity trading platforms (e.g. Cargohub.com, Cargonow.com and Cargoreservation.com), CCSs (such as Traxon Europe, Traxon Korea, Syntegra, Cargo Community Network, Cargo Connect, Tradevision) and 'Logistics Solutions Providers' active in the market. With the exception of a shareholding of AF and LH in Traxon Europe, the parties have no

period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

interest in any other electronic distribution channel. Moreover, electronic distribution channels are under competitive pressure from traditional distribution channels.

Vertical aspects

15. GF-X does not give member carriers any preferential treatment. Moreover, member carriers are not obliged to offer better rates or discounts for GF-X than for alternative distribution channels.
16. Moreover, there are low barriers to entry with regard to establishing an air freight distribution platform whilst new entrants can interconnect their systems with GF-X as GF-X uses open standards.
17. Restrictions on the carriers to operate and develop electronic on-line markets for trading of air freight capacity are limited to a [...] start-up period. [...]
18. It follows from the above that the transaction does not give rise to concerns as regards foreclosure of the electronic air freight distribution market.
19. Membership is currently open to all air freight forwarders and carriers subject to reasonable commercial, objective and non-discriminatory criteria. Although forwarders and carriers are at present welcome as additional shareholders, shareholding is not a prerequisite for membership. All members are treated under the same conditions irrespective of whether or not they are shareholders.
20. Legal mechanisms, such as confidentiality undertakings and obligations, have been set up for CIV directors⁵ to ensure that the carriers are not able to use their shareholding in GF-X in order to enhance their market share in the vertically-related market for air freight transport⁶. GF-X is managed separately and independently of the carriers and is open for membership to all air freight forwarders and air freight carriers subject to objective and non-discriminatory criteria.
21. In view of the above the transaction is not likely to trigger any foreclosure effects on the air freight transport market.
22. In addition, the transaction does not give rise to any anti-competitive effects in relation to air freight forwarding as it is operated as an independent trading platform open for membership to all air freight forwarders. With the exception of an investment interest by BA in Dunwoody, a UK air freight forwarder (which is not a member of GF-X), the parties do not have any shareholdings or any control over any freight forwarders.
23. Considering the preceding analysis, there are no concerns that the proposed transaction will lead to dominance on any of the possible market definitions considered.

Co-ordination effects

⁵ [...]

⁶ LH, BA and AF currently hold an aggregated market share in air freight transport of [25% to 35%] on all outward Europe-other continent routes. On all other intercontinental routes the parties hold [25% to 35%].

24. GF-X is set up in such a way (i.e., confidentiality rules, firewalls, safeguards etc) as to prevent the exchange of commercially sensitive information between the members. The Commission's investigation confirmed that such an exchange is technically impossible. In particular, member carriers will not have access to the air freight fares or capacity figures of other member carriers. Moreover, sales negotiations will be conducted on a bilateral basis and as such they will not reveal more information than is currently made available to buyers under the existing sales channels (i.e., telephone or fax). The creation of the joint venture will therefore not lead to any co-ordination of the competitive conduct of the parent companies on the market for air freight transport.

VI. CONCLUSION

25. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Signed

Mario MONTI
Member of the Commission