Commission clears online travel agency Opodo

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Introduction

Opodo is an online travel agent created as a joint venture by nine of the largest European airlines. It was notified to the Commission in November 2000. Opodo offers internet travel agency services including airline ticket sales, hotel bookings, car hire and insurance. It has already launched its website in Germany, the UK and in France and intends to offer its services on a pan-European basis.

As notified, the case might have raised some concerns under Article 81 and 82 of the Treaty and the notifying parties proposed a set of undertakings to remedy these concerns. The Commission took these undertakings into account as part of its assessment of the joint venture and eventually issued a ‘negative clearance’ type comfort letter on 18 December 2002.

In December 2001, a complaint had also been lodged against the notified agreement by TQ3, a German travel agent. As the arguments put forward by the complainant were similar to those raised by other travel agents in response to the Opodo notification, the Commission took the view that these concerns would be dealt with in the final package of undertakings submitted by the parties and rejected the complaint by decision. (1)

Procedure

The Commission published a first notice requesting comments on Opodo on 2 February 2001. (2) In November 2001, the Commission issued a 19(3) Notice setting out the undertakings proposed by the parties and noting its intention to clear the agreement on this basis, subject to any comments from third parties. (3) In the light of the comments received in response to the 19(3) Notice, a revised set of undertakings was discussed with the parties. Interested third parties having provided comments in response to 19(3) Notice were consulted on these revised undertakings.

Substance

Given the shareholder airlines’ strong positions on the up-stream air transport market, one of the main competition concerns raised by the joint venture was that it might have provided a forum for the airlines to share commercially sensitive information and to collude in price-fixing or market-sharing on the air transport market.

It however results from the facts as set out by the parties that Opodo will operate as an independent travel agency and on an arms-length basis from its shareholders. Notably, marketing agreements and any other agreements between Opodo and the participating airlines — shareholders and non-shareholders — are negotiated individually and confidentially between Opodo and each of the airlines. In addition, the parties have offered certain undertakings to remedy possible concerns under Article 81. They have notably put in place a number of safeguards to ensure that the shareholder airlines do not get access to commercially sensitive information about each other through Opodo.

In the light of these undertakings, the Commission came to the conclusion that the joint venture will not be used as a vehicle for the shareholders to coordinate their competitive behaviour. This assessment is reinforced by the fact that (i) the agreements do not place restrictions on shareholder airlines with regard to the distribution of their products through existing or additional distribution channels and that (ii) it would not be in the airlines’ commercial interest to bundle their sales through Opodo. The shareholder airlines indeed continue to distribute the vast majority (around 80%) of their tickets indirectly, through travel agents. They are also actively promoting their direct sales which represent the cheapest way for them to distribute their products.

Another possible concern was that the shareholder airlines might have used their strong position on the air transport market to foreclosure the travel agency services market. Since they have a financial interest in ensuring Opodo rapidly gains a

(1) This decision, to which the undertakings submitted by the parties are attached, is available on DG Competition website (http://europa.eu.int/comm/competition/index_en.html).
(2) OJ C 35, 2.2.2001, p. 6.
significant share of the travel agency services market, shareholder airlines might indeed be tempted to favour Opodo to the detriment of other travel agents.

In order to relieve this concern, each shareholder of Opodo has undertaken not to discriminate between Opodo and the other travel agents unless the difference in treatment is objectively justified by reference to the commercial basis on which that shareholder normally deals with travel agents. This also means that conferring exclusive rights or a Most Favoured Nation (MFN) status to Opodo cannot be a requirement for shareholders or non-shareholder airlines to sell their inventory through Opodo. This principle is also clearly stated in the undertakings.

The Commission will closely monitor the implementation of these undertakings. Each shareholder airline has indeed undertaken to maintain a memorandum recording the benefits upon which it has assessed the commercial justification for affording exclusive rights or MFN status to Opodo. If a shareholder airline refuses to contract with another travel agent on the same basis as with Opodo with respect to MFN or exclusive rights, the reasons for the difference in treatment between Opodo and that travel agent will also be recorded in the memorandum. These memoranda, as well as the copies of the relevant agreements, will be provided to the Commission six months following the date of the comfort letter issued by the Commission and thereafter, on an annual basis or upon request by the Commission.