2. Investigation into air alliance between bmi british midland and United Airliness closed

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Introduction

In November 2002, DG Competition decided to close its investigation under the EC competition rules in relation to the alliance between bmi british midland and its US partner United Airlines, both members of the global STAR alliance. In this case the Commission did not launch formal proceedings but co-operated actively with the Office of Fair Trading (OFT) of the United Kingdom. Both authorities have come to the conclusion that the alliance agreement between bmi and United Airlines fulfils the necessary requirements to merit such an exemption.

Background

British Midland Airways Limited and United Airlines, Inc. entered into an Alliance Expansion Agreement on 5 September 2001. On 13 December 2001, the parties notified the Agreement to the Office of Fair Trading under the Enforcement Regulations. The parties did not formally make a parallel notification of the Agreement to the European Commission. However, the parties supplied the Commission with a copy of the Agreement and with all subsequent information supplied to the OFT. The Commission has conducted a parallel informal investigation. (1)

In its decision of November 11, 2002 the OFT concluded that the Alliance Agreement, if implemented, would infringe Article 81(1) of the EC Treaty as it would have the effect of appreciably preventing, restricting or distorting competition in relation to the scheduled air transport of passengers, but that the requirements for individual exemption under Article 81(3) are also met. The OFT has therefore decided to grant the Agreement an exemption from the prohibition in Article 81 of the EC Treaty.

Procedures — Close co-operation between the Commission and the OFT

For procedural reasons the OFT took the lead in this case, using its powers under the EC Competition Law Enforcement Regulations 2001. It should be recalled that Council Regulation 3975/87, which lays down detailed rules for the application of Articles 81 and 82, only relates to air transport between EEA/Community airports. However, the OFT has powers under the Enforcement Regulations to make a decision on the application of Articles 81 and Article 82 in relation to (inter alia) air transport between Member States and third countries. In the absence of such powers, the Commission would have had to investigate the alliance using its powers under Article 85, under which it would only have been able to propose measures to be taken to bring infringements to an end.

The formal exemption decision adopted by the OFT on November 1, 2002 was developed jointly with the Commission through all stages of the enforcement procedure and the assessment is consistent with the approach taken by the Commission in other airline alliance cases. The early and effective co-operation between the two competent competition authorities enabled any enforcement or policy problems to be avoided. It was therefore not necessary for the Commission to open a formal investigation in parallel with the OFT. Consequently the Commission closed its own ex-officio investigation in this case.

This case is a good example of effective and fruitful co-operation between the Commission and a National Competition Authority, in advance of modernisation of the EC Competition rules.