Recent trends in the Commission's review of airline mergers

Daniel Boeshertz, DG Competition, European Commission

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The views expressed are purely those of the speaker and cannot be construed as the official position of the European Commission
Introduction

4 major decisions in 2009

- Iberia/Clickair/Vueling (M.5364) - January 2009
- Lufthansa/BMI (M.5403) - May 2009
- Lufthansa/SN Airholding (M.5335) - June 2009
- Lufthansa/Austrian Airlines (M.5440) - August 2009
Main issues

- Jurisdiction
- Market definition
- Assessment
  - Counterfactual
    - Effects-based route-by-route analysis
- Efficiencies
- Remedies
Jurisdiction: turnover

- “point of sale method”
  - but internet sales... difficult to apply!
- “50%/50%”
  - country of origin / country of final destination (so as to take into account the cross border character of the service provided)
- “point of departure”
  - Good proxy for determining where the service is provided / where competition takes place
  - What about tickets for roundtrips?
Market definition

- O&D approach / Airport substitutability
- TS and NTS passengers
- Other transport modes (train)
- Long / Short haul
  - Direct / indirect connections
Assessment (1/2)

• Relevant counterfactual:
  – Counterfactual: normally the pre-merger situation
  – An illegal situation cannot be used as the relevant counterfactual
  – If an agreement is in breach of Art. 81, it must be set aside and the counterfactual is the situation of competition

• Case-by-case analysis
  – specific effects of the creation of a permanent structural link as opposed to a contractual link between the parties in order to assess the extent to which competition may be affected post-merger.
Assessment (2/2)

- Effects-based route-by-route analysis
  - Market shares / frequencies / number of competitors
  - Closeness of competition
  - Barriers to entry (congestion, city presence, hub, etc.)
  - New entrant?
  - …
Efficiencies

• Verifiability
• Merger specificity
• Consumer benefits (pass-on)
Remedies

- Improved slot release remedies to make entry more attractive
  - Opportunity for transfer of grandfather rights
  - +/- 20 minutes from requested time
  - Facilitation of the procedure
- Package of complementary measures
Conclusion

- Commission is open for consolidation in the aviation industry...
- ...provided that it is not to the detriment of the consumers/passengers