

Associations Internationales sans but lucratif

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**By mail and E-mail**

**European Commission  
DG Competition  
Merger Registry  
B-1049 Brussels**

Brussels, 25 November 2008

**Re: HT.1277 – Reply to the public consultation on the application of the Regulation 139/2004 – Non-confidential version**

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ECTAA regroups the national associations of travel agents and tour operators in 29 European countries, of which 25 are Member States of the European Union. GEBTA represents 7 guilds and more than 300 travel management companies throughout the European Union. ECTAA and GEBTA together represent 80.000 enterprises.

With the current trend for concentration in the air transport sector and its potential impact on the travel industry, ECTAA and GEBTA are following with attention the control by the European Commission of concentrations between airlines.

Concerning the questions 1 to 8 on the referral mechanisms between the Community level and the national level, we recommend a casuistic approach to determine the best level to control a given concentration.

Concerning question 9 on the general functioning of the Council Regulation (EC) No 139/2004, we have the following comments:

- We understand that the European Commission controls joint ventures between undertakings, as submitted by those undertakings. It determines on this basis if the joint venture will significantly impede effective competition in the Internal Market. However, we understand that it cannot take into consideration the likely developments of the joint venture and determine whether those developments should be allowed. If such developments occur after the joint venture has been approved, they can only be subject to the application of general competition law on agreement between undertakings or abuse of dominant position (Article 81 and 82 of the EC Treaty). This issue appeared clearly in the joint venture between Amadeus and Sabre to create a payment processing and clearing system for travel services other than air transport (case COMP/m.4760). Though it was likely that the payment and clearing system would one day be extended to air activities and that most competition issues were related to such development, the European Commission could not under Regulation 139/2004 analyse such development or require commitments in this respect.

We recommend in this regard to take consideration as much as possible of the most likely developments of a joint venture to assess whether it should be authorised, and possibly require commitments in view of such developments.

- With the current trend for concentration between airlines, we see more and more cases of mergers based on a competitive situation, which is undergoing another competition investigation by the European Commission (antitrust or merger). For instance, we regret that the merger between Delta and Northwest (case No COMP/M.5181) was assessed without regard to already existing cooperation between the merging airlines, which was being investigated by the European Commission in the Skyteam case (COMP/37.984) under Article 81 of the EC Treaty.

In such cases, we recommend trying to carry out the assessment and investigations in parallel, with cross references between the cases if possible, in order to take into consideration to whole competition environment.

- In the area of air transport, we recommend to give specific consideration in the assessment of mergers/joint ventures to the issue of knowledge sharing between the merging parties. Airlines are very interested in detailed knowledge on the market shares and level of price of other airlines, as well as on the sales carried out by travel agents. Full transparency in concentrated markets can seriously harm competition. Concerning travel agencies, one of the immediate effects of a merger/joint venture with weak safeguards concerning the confidentiality of travel agent data can be the decrease of travel agents' incentives and attempts from airlines to drive travel agents' sales towards certain airlines.

For the sake of preventing the adverse effects of full transparency for airlines on travel agents' sales, the future EC Regulation on a code of conduct for computerised reservation systems (CRSs), which is scheduled to enter into force on 29 March 2009, will prohibit the direct or indirect identification of travel agents in marketing data resulting from the use of a CRS unless under certain conditions. The Regulation will provide that this rule applies equally to the supply of such data by the system vendor to any other party for use by this party other than for billing settlement. We consider that this provision should prevent airlines in a joint venture from exchanging data on travel agents originating from CRSs, thereby preventing the exchange of data on travel agents included in airlines' own sales report, the CRS data called Marketing Information Data Tapes (MIDTs), intelligence products such as IATA PaxIS, etc.

We recommend in this respect to ensure in the framework of joint ventures that airlines are aware of the new EU legislation and commit to comply with it.

- If a concentration raises concerns for competition, the possible remedies are most often in the range of divestiture. Other remedies are more rarely applied. Concerning mergers between airlines, ECTAA and GEBTA have been recommending to the European Commission not only cuts in capacities and rendering of slots, but also to require commitments from merging airlines on their practices:

Considering the reinforcement of airlines' positions in the chain of air transport supply, and their trend to transfer costs with no evidence of reflection in the level of air fares, the merging airlines could be required to take certain commitments to guarantee competitive and transparent distribution of air tickets. In particular, with the growing issue of access to fare content, they should be required not to restrict access to fares and inventories to a single distribution channel, nor to attach unreasonable or discriminatory conditions for access to their fares.

In addition, ECTAA and GEBTA observe that airlines generally have not been cooperative in applying European legislation on passenger rights, notably the Regulation

261/2004 on denied boarding, cancellations and long delays. The European Commission recognized in a press release of 4 April 2007 that although stranded passengers now have specific rights, they are still in a weaker position compared to airlines, who do not comply with their obligations in a number of cases. In order to prevent a merged entity from relying on its market position and from being in a commercial position where it can circumvent passengers' rights, the authorisation of the merger should be made subject to strict compliance with EU legislation on passenger rights.

- From a procedural perspective, the consultation of interested parties takes place in some instances in periods as short as 1 week or 10 days. This is considered insufficient to gather complete and accurate information.

In addition, during deeper investigations carried out by the European Commission on a merger, we understand that formal requests for comments are sent to a number of undertakings presumed to have some knowledge of the concerned market. The workload required to answer to such detailed questionnaires is significant for most undertakings, who do not have specific staff to carry out the necessary research and must deduct work and time from their primary economic activity to answer to the questionnaire.

We therefore suggest trying to limit the lists of undertakings who receive formal requests for comments by focusing on the undertakings that are directly concerned by a given merger, and to give the possibility to other undertakings including trade organisations to comment on a voluntary basis.

We remain at your disposal for any other information that you may need.

With kind regards,

Michel de Blust  
*Secretary General*