



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission renders legally binding commitments from Star alliance members Air Canada, United and Lufthansa on transatlantic air transport passenger market

The European Commission has accepted commitments offered by Air Canada, United and Lufthansa to address the Commission's concerns that the parties' cooperation under a revenue-sharing joint venture may be in breach of EU antitrust rules and harm premium passengers on the Frankfurt-New York route. Premium passengers are passengers travelling in the first, business and flexible economy classes. In order to address these concerns, the parties offered to make slots available at Frankfurt and New York airports and to enter into agreements with competitors, allowing them to offer more attractive services. As a result, competition on the Frankfurt-New York route will improve. After having consulted interested parties through a market test, the Commission has now made these commitments legally binding on the three airlines for a period of ten years.

Commission Vice-President in charge of competition policy, Joaquín Almunia said: *"The Commission is committed to ensuring that consumers are not harmed by cooperation between airlines. Thanks to the commitments offered by the three airlines, passengers on the Frankfurt-New York route will benefit from stronger competition. This decision is a further milestone in our effort to create a level playing field on transatlantic aviation markets, following our decision on oneworld in 2010."*

The revenue sharing joint venture eliminated competition between the parties on price and capacity. The Commission had concerns that this may have resulted in higher prices for premium passengers on the Frankfurt-New York route. In addition, due to considerable barriers to entry and expansion, new and existing competitors would have been unable to challenge the market power of the parties.

The parties argued that their cooperation created efficiencies on both the Frankfurt-New York route and on other related routes (such as Prague-Frankfurt-New York or Frankfurt-New-York Seattle), leading to benefits for connecting passengers. However, the Commission found that the efficiencies produced would not outweigh the negative effects of the cooperation on the Frankfurt-New York route.

The parties therefore offered commitments aimed at facilitating the entry of new competitors on the Frankfurt-New York route. Since the main entry barrier remains the slot shortage at airports, the parties offered to make landing and take-off slots available at Frankfurt and/or New York. The parties also offered to enter into agreements allowing competitors to offer tickets on the parties' flights (reducing competitors' frequency disadvantage) and to get better access to the parties' connecting traffic. Finally, the parties committed to submit data concerning their cooperation, which will facilitate an evaluation of the alliance's impact on the markets over time.

An independent trustee will monitor the parties' compliance with these commitments.

In July 2010, the Commission accepted commitments by several members of the oneworld alliance and made them legally binding to ensure competition on transatlantic passenger air transport markets ([IP/10/936](#)). The Commission is also currently investigating the transatlantic joint venture between certain members of SkyTeam ([IP/12/79](#)).

Background on the assessment of efficiencies

In light of the specific characteristics of the aviation industry and of the particular circumstances of this case, the Commission considered it appropriate to broaden the existing test for assessing efficiencies, contained in its [Guidelines](#) for application of Article 101(3) of the Treaty on the Functioning of the European Union (TFEU).

This broadened test includes efficiencies produced on routes related to the route of concern – the so-called "behind and beyond routes" (e.g. Prague-Frankfurt-New York or Frankfurt-New York-Seattle) – provided there is a considerable commonality between passenger groups travelling on the route of concern and these related routes. However, under this broadened test the Commission accepted only those efficiencies that accrued to the passengers also travelling on the Frankfurt-New York route. In other words, the broadened test does not weigh up the harm suffered by one customer group against benefits perceived by another customer group.

Background on the investigation

In April 2009, the Commission opened a formal investigation into the cooperation of the parties relating to passenger air transport on routes between Europe and North America (see [MEMO/09/168](#)).

The Commission had concerns that the airlines' cooperation might infringe EU antitrust rules (Article 101 of the Treaty on the Functioning of the European Union, which prohibits anticompetitive agreements). In December 2012, the companies offered commitments, with a view to alleviating the Commission's competition concerns. In December 2012, the Commission consulted stakeholders on these commitments (see [IP/12/1445](#)). The companies subsequently proposed modifications in order to address issues raised during the market test.

The Commission may adopt a decision under Article 9 of the EU's antitrust Regulation 1/2003, to make commitments offered by parties legally binding. Today's decision makes the commitments offered legally binding and ends the Commission's investigation. If Lufthansa, Air Canada or United were to breach their commitments, the Commission could impose a fine of up to 10% of Air Canada's, United's and Lufthansa's total turnover without having to prove a violation of EU competition rules.

More information, including the full text of the decision and the non-confidential version of the commitments, is available on the Commission's [competition](#) website, in the [public case register](#) under the case number [39595](#).

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