

**Case Summary****29.5.2018**

No proceeding against Lufthansa for abusive pricing

Sector: Air Traffic

Ref: B9-175/17

Date of Decision: May 2018:

The Bundeskartellamt will not initiate a proceeding against Lufthansa for abusive pricing on German domestic routes. A random analysis of Lufthansa's and Eurowings' price data did indeed show that in November and December 2017, the prices of flights on connections which had become monopoly routes after the insolvency of Air Berlin were on average approx. [25-30] % above the level of the previous year. However, due to the market entry of the British airline easyJet into the German air traffic sector, these price increases did not last long on the majority of routes. On average the price level on the routes which are now served by easyJet has since returned to the level prior to Air Berlin's exit from the market. Another fact which had to be considered in the Bundeskartellamt's decision was that the domestic routes examined had suffered from a significant decline in capacity due to Air Berlin's insolvency. This would have resulted in rising prices even in an intact competitive situation.

In August 2017, Air Berlin, which up to that time had been the second-largest German carrier, filed for bankruptcy. Its flight services finally ended with the operation of its last flight on 27 October 2017. Until then Air Berlin had been granted a special loan by the Federal Government to maintain its flight operations. The company was then split into various parts. Already in the December of that year, the British airline easyJet was able to acquire 25 jets stationed in Berlin and the respective take-off and landing rights. On the grounds of its pro-competitive effects the European Commission cleared the planned acquisition in a simplified procedure (DG COMP M.8672¹). Lufthansa also initially intended to acquire substantial assets of Air Berlin. This plan failed, however, because its intention to acquire the Air Berlin subsidiary NIKI, the former airline of the Austrian racing driver Niki Lauda, met with resistance from the European Commission (DG COMP M.8633²). In the following NIKI insolvency proceedings at an Austrian insolvency court Niki Lauda

¹ http://ec.europa.eu/competition/mergers/cases/decisions/m8672_673_5.pdf

² http://ec.europa.eu/competition/mergers/cases/decisions/m8633_2370_3.pdf

emerged as the highest bidder and acquired the company which he had once founded. Shortly after this, however, he sold the majority of shares in NIKI to the Irish low-cost carrier Ryanair. The European Commission is currently examining this merger.

Prior to its insolvency Air Berlin held a market share of up to 56% on a number of high-volume German domestic routes; in the interim period there was an overall shortage of up to 40% seating capacity on domestic flights.³ As a consequence the Bundeskartellamt received an increasing number of complaints. Complaints were regularly received about substantial price increases by Lufthansa which had become a monopolistic supplier on a number of routes as a result of Air Berlin's market exit. The majority of the complaints concerned German domestic flights. Price increases of up to 300% were reported in the media.⁴

By carrying out a random analysis of the price developments the Bundeskartellamt conducted preliminary investigations to ascertain whether or not it was necessary to initiate a proceeding on account of abusive pricing. The authority selected a number of flights from autumn 2017 immediately after the cessation of Air Berlin's flight operations and compared the prices of Lufthansa and its subsidiary Eurowings with those of identical flights from autumn in the previous year (2016) (temporal comparative market concept). In a second step, price data were collected for the same flights from February 2018 in order to assess the effect on prices of easyJet's entry into the market. Overall the data basis included 56,064 single tickets of the airlines Lufthansa und Eurowings, for 412 flights, 44 reference dates and 13 routes. The 13 busiest domestic routes were selected. Air Berlin was active on nine of these routes before it became insolvent.

The investigations showed that the prices of the flights selected had risen by an average of [25-30] % compared to the previous year. In an assessment of some individual routes on which capacity was reduced as a result of the insolvency, the authority was able to establish price increases of between approx.10 and just over 50 %. However, the majority of the price increases were only short-term because since January 2018 easyJet has offered flight connections from Berlin Tegel to Munich, Frankfurt, Stuttgart and Düsseldorf. From June 2018 a fifth domestic connection will be added from Berlin to Cologne. It is thus easyJet, and not Lufthansa, that has mostly taken over Air Berlin's market position. Approximately seven months after Air Berlin's exit from the market, easyJet is now operating domestic German routes with a total passenger volume of around 6 million. It therefore offers a new alternative for around two-thirds of the passengers

³ <http://www.airliners.de/strecken-routen-verbindungen-lufthansa-monopol-air-berlin-analyse/42275>

⁴ German newspaper Handelsblatt of 14.11.2017: "Preisexplosion bei der Lufthansa alarmiert Politik" ("Politicians alarmed by price explosion at Lufthansa")

who as a result of Air Berlin's insolvency were temporarily reliant on Lufthansa as the monopolistic supplier. The prices on these routes fell by on average approx. [25-30] % in February 2018 as compared to autumn 2017, and are now roughly at the same level as before Air Berlin's exit from the market.

This development demonstrates the importance of strict merger control for markets and consumers. Firstly, the European Commission (in close cooperation with the Bundeskartellamt) had very quickly cleared the acquisition of certain Air Berlin assets by easyJet and secondly, due to its firm intervention in the NIKI takeover, had prevented Lufthansa from securing key assets of Air Berlin.⁵ It is unlikely that the flight prices would have developed in such a positive way if it had not been for the acquisition of these important domestic connections by a second, independent carrier.

In addition to the (partial) acquisition of Air Berlin's assets by easyJet and the resulting price effects, another fact which had to be considered in the Bundeskartellamt's decision was that the price development prior to the acquisition was accompanied by a strong decline in capacity on the routes affected due to Air Berlin's insolvency. In 2016, Air Berlin accounted for approx. 40% of the seating capacity on German domestic routes. Although Lufthansa was able to compensate for some of this capacity loss with greater flight frequency or larger aircraft, there was still a reduction in capacity of approx. 20% on the routes examined in comparison to the previous year. This capacity loss would have led to price increases irrespective of the number of airlines serving the market. This capacity effect as well as other remaining uncertainties have to be taken into account in assessing the price level by adding adequate surcharges to correct the calculation. Moreover, the threshold above which abusive pricing is presumed is only exceeded if a price is excessively high. In view of the order of magnitude of the price increases and decline in capacity, the Bundeskartellamt has ultimately decided not to initiate a proceeding on account of abusive pricing.

In the authority's view the question whether the price increases were the result of a price algorithm or human intervention was of no significance in the current case. The use of an algorithm for pricing will certainly not relieve a company of its responsibility. The investigations in this case have also shown that the airlines specify the framework data and set the parameters for dynamic price adjustment separately for each flight. They also actively manage changes to these

⁵ However, where take-off and landing rights reverted to the slot coordinator as a result of the insolvency, or where Lufthansa purchased or leased aircraft previously used by Air Berlin, these transactions are not subject to merger control.

framework data and enter unanticipated events manually, as these are not automatically included in the system.

The Bundeskartellamt will continue to closely observe developments on the German domestic flight markets. If it receives tip-offs about abusively excessive prices it will again consider whether to initiate proceedings.