Bundeskartellamt/Software

Bundeskartellamt preliminarily objects to Lufthansa’s impediment of Condor in the long-haul business

Bonn, 8 February 2022: The Bundeskartellamt preliminarily assesses that Condor is entitled under competition law to have access to feeder flights operated by Lufthansa to transport its long-haul passengers.

Lufthansa and Condor have long-standing agreements. Condor can book feeder flights operated by Lufthansa and its affiliate airlines to transport passengers to its own long-haul flight network. Following an intervention by the Bundeskartellamt, Lufthansa temporarily suspended its original termination of this business relationship, which would have taken effect on 1 June 2021, until 10 May 2022.

Based on its investigations the Bundeskartellamt preliminarily assesses that Condor is entitled under competition law to have access to the feeder flights operated by Lufthansa also after this point in time. The Bundeskartellamt has also found further impediments to competition in the existing agreements between Lufthansa and Condor which the authority considers as critical under competition law.

Andreas Mundt, President of the Bundeskartellamt: “Our preliminary assessment is that the Lufthansa Group has a dominant position on the feeder flights market which...
mainly connects German airports to Condor’s long-haul network. No other carrier operates more than just a few individual feeder flights to the major German hubs Frankfurt, Munich and Düsseldorf. Lufthansa is therefore subject to abuse control under competition law and has to comply with special obligations. We have concerns regarding the admissibility of the termination of its cooperation with Condor insofar as this could lead to an unfair impediment to competition on the downstream markets for long-haul flights.”

Condor itself does not operate a network of feeder flights, and the current state of investigations is that no suitable slots would be available at major hubs like Frankfurt to develop such a network. Passengers who book a feeder flight live on average at least 300 km away from the departure airport of their long-haul flight. According to the investigations, long-distance railway or bus services are not an alternative for them.

Only based on the Special Prorate Agreements (SPAs) concluded by the airlines can Condor offer guaranteed transport from the departure airport to the destination with through-checked baggage, boarding passes issued at the first departure airport and full protection in case of delays or flight cancellations. Lufthansa in turn receives additional revenue to fund its short-haul network. If the agreements are terminated Condor, according to the current state of the investigations, will not even have any roughly equivalent alternatives for transporting its own feeder flight passengers.

The Bundeskartellamt’s preliminary assessment is that a sufficient level of competition in terms of services and prices is only possible on the already strongly concentrated indirect long-haul markets if Condor can access the upstream services of the dominant company Lufthansa. If Condor lost customers who wish to use a feeder flight, this would have severe economic consequences both for the company and for competition. As a consequence, Lufthansa as a current or potential competitor could have considerable competitive advantages and in some cases even gain a dominant position on almost 90 transfer connections to tourist destinations.

The Bundeskartellamt’s preliminary assessment is that the agreements between Lufthansa and Condor contain further illegal impediments to competition, for example limited access to booking classes, discriminatory access to seat capacities on feeder flights and limited pricing options for Condor.

Lufthansa’s new focus on the long-haul tourist business would not be threatened by the envisaged decision. After the consolidation and re-orientation of parts of its own
business the company is still free to enter into competition on the merits of its services with Condor by using measures which are in line with competition law.

Lufthansa and Condor now have an opportunity to comment on the preliminary results of the proceeding.

**Background:**

Lufthansa and its affiliate carriers Austrian Airlines and Swiss Airlines had terminated the SPA effective 1 June 2021. Condor filed a complaint against this termination with the Bundeskartellamt on 6 January 2021. On 21 January 2021, the Bundeskartellamt initiated an abuse proceeding against Lufthansa to examine a possible infringement of Section 19 GWB, Art. 102 TFEU and the suspicion of prohibited conduct pursuant to Section 20(1) GWB in conjunction with Section 19(1) and (2) no. 1 GWB. The Bundeskartellamt also initiated a proceeding to impose interim measures pursuant to Section 32a(1) GWB as at the time the abuse proceeding was initiated there already was an imminent threat that Lufthansa would refuse to accept Condor’s feeder flight bookings, a refusal which in some cases had already occurred ahead of 1 June 2021. Already in these provisional proceedings the Bundeskartellamt had preliminarily determined that the termination of the SPA by the Lufthansa Group constitutes an exclusionary abuse pursuant to Sections 19 and 20 GWB and Art. 102 TFEU. The proceeding was continued in the principal proceeding following the temporary agreement between Lufthansa and Condor. At this point in time, the preliminary findings of the interim proceeding continue to apply after further investigations in the ongoing principal proceeding.