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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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AIRLINE COMPETITION

-- Note by Spain --

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This document reproduces a written contribution from Spain submitted for Item IX of the 121st meeting of OECD Competition Committee on 18-19 June 2014.

*More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/airlinecompetition.htm>.*

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1. As a contribution to the roundtable on “Airline Competition”, to be held in the next Competition Committee in June 2014, this competition authority submits the main points that have been discussed on cases and reports related to the Spanish airline sector for the last 7 years.

1. Key features of the airline sector

1.1 Market definition: regular flights/charter flights

2. Overall this competition authority has defined the relevant market for those mergers related to regular passenger air transport sector on the basis of the European case law, that is, taking into account criteria such as the point of origin / point of destination ("O & D city-pair approach"), the substitutability between airports ("airport substitutability"), substitutability between flights (direct flights vs. connecting flights), the type of passenger or airline alliances and business venture¹.

3. However, while European and national backgrounds have considered, from a demand perspective, scheduled and charter flights as separate product markets, the evolution experienced by the passenger air transport market in Spain has led the competition authority to question the validity of this criterion for defining markets.

4. In the framework of the analysis of the acquisition of sole control of Orizonia Travel Group, SLU by Globalia Corporación Empresarial, SA², both tour groups, we observed that the increasing competitive strength that scheduled flights have acquired in Spain (including the flights offered by low cost carriers), has blurred the line of separation between the market for the supply of tour operators air transport services (charter) and the market for the supply of air passenger transport services (scheduled flights). The reasons for this change are:

- Charter airlines are declaring an increasing number of flights as scheduled flights, which can be observed in the decrease in the number of charter flights.
- In charter companies more and more individual stalls are sold. While in the past the operator made available the entire aircraft capacity to the tour operator, at present it is more common that the operator runs through its direct channel (website mainly) a portion of its capacity, reducing the availability for the tour operator.
- The factor that determines effective competition in the charter flights market is mainly the price. Holidays are the main reason for these flights and the choice between different holiday destinations is strongly influenced by the price of the air tickets. Therefore, at least in Spain, the notion of holiday charter flight is beginning to disappear, being replaced by low cost ones.

1.2 Co-operation, horizontal and cartel agreements, alliances: code-sharing

5. Another issue that has caused some controversy in the Spanish competition authority has been the so-called codeshare partnerships signed by two airlines to jointly operate a route so that the “operating carrier” allows the marketing carriers to sell, with its own code and flight number, a portion of the capacity of certain flights and / or sectors of flights. In principle this type of agreement allows companies to

¹ Through certain alliances and / or JVs different companies stop competing with each other to maintain a high degree of cooperation, thus acting as a sole trader in the market ("single entity").

² Case C/0492/13 GLOBALIA/ORIZONIA. <http://www.cnmc.es/es/competencia/buscadorde/expedientes.aspx>. While the operation entered into a second phase of the merger control procedure on the ground that could hinder the maintenance of effective competition in all or any of the markets concerned, finally, the parties abandoned the operation because in 2013 the group Orizonia announced it was bankrupt.

improve the use of aircraft capacity and, therefore, reduce air tickets prices, provides better opportunities to travel to any destination and provides connections to passengers in long-haul flights with intermediate stops.

6. As part of the merger operation between Orizonia Travel Group, SLU and Globalia Corporación Empresarial, SA, the Directorate of Investigation analyzed codeshare partnerships signed by the parties in order to see whether they comply with the codeshare definition or, on the contrary, they were an instrument to allow companies to share routes seasonally (one operated routes in summer and the other one in winter). However, in the end the Directorate did not reach a definitive conclusion because Orizonia went bankrupt and the merger, therefore, was not executed.

2. Main competition issues arising in the airline sector in the context of mergers and alliances, restrictive agreements and unilateral conducts

2.1 Handling Services

7. On August 8th 2011, Ryanair filed a complaint against AENA³ Airports, SA Handling and Iberia, alleging practices prohibited by Competition Act 15/2007, of 3rd July⁴. Specifically, Ryanair complained, first, the refusal of AENA to grant it an authorization to provide, under a self-assistance regime at the Bajas-Madrid airport, airport baggage handling services, support, ramp handling and cleaning snow, ice and frost from aircraft, because of its dominant position in the market operation and provision of infrastructure at such airport (article 2); and, second, the existence of alleged agreements between AENA and Iberia, which would infringe article 1 of the Competition Act, since it aims to close ground handling and clearing snow, ice and frost from aircraft markets to third party operators at the Madrid-Barajas airport.

8. On May 29th 2013, the Council decided not to initiate proceedings due to the absence of any evidence of an infringement of the Competition Act.

- The Council considered that there was no evidence of a breach of article 1. No evidence of alleged agreements were found beyond the contracts signed between Iberia and AENA under i) a tender where Iberia had been awarded, along with two other companies, for the provision of ground handling services; and ii) a request for authorization from Iberia for providing deicing services at the centralized management infrastructure of Madrid-Barajas, request that any company that carries out self-handling services complying with the procedure established by AENA can carry out.
- The Council did not appreciate evidence of abuse of dominant position (article 2) and, therefore, any evidence that AENA tried to exclude competitors or to exploit consumers. First, AENA and Ryanair are not competitors because they operate in different markets. Therefore, there is not an exclusionary conduct. Second, AENA did not exploit consumers because, firstly, the relationship is confined between who holds the dominant position, AENA, and one of the airlines using the airport services at the Madrid-Barajas airport; secondly, it does not follow that AENA is gaining a particular benefit from the alleged conduct. In fact, the decisions taken by AENA seem to be based on technical reasons and, whether they are wrong or unjustified, should be checked by the competent body and not by the competition authority.

³ Aeropuertos Españoles y Navegación Aérea (AENA): public entity responsible for airport management and the provision of air navigation services in Spain. <http://www.aena.es/csee/Satellite/Home/es/>

⁴ Case S/0387/11 AENA <http://www.cnmc.es/es/competencia/buscadorde/expedientes.aspx>.

2.2 *Fingers*

9. On October 31st 2011, Ryanair filed a complaint against AENA Airports, SA alleging practices prohibited by the Competition Act⁵. In particular, an abuse of dominant position (article 2). Ryanair complained about the imposition of fingers in the new terminal at Malaga-Costa del Sol Airport by AENA, setting unreasonable conditions for the new boarding and disembarking procedure for foot passengers, which allows the public entity to collect high public benefits from it.

10. On November 7th 2012, in light of the information gathered, the Directorate of Investigation decided to close proceedings on the ground that there was no evidence of violation of article 2 of the Competition Act based on two arguments:

- First, airports are responsible for the allocation of airport resources. Concerning fingers, since its installation at airports, the allocation of these fingers in terms of security, accessibility, quality and optimization of airport operations are a priority.
- Second, AENA grants the use of fingers, remote parkings or boarding parking for foot passengers according to the situation, at any time, of the limited airport infrastructures and on equal terms to all carriers.

3. **Relationship between competition law and regulation in the air transport sector**

11. The III Report on State aid in Spain⁶ devotes a chapter to the actions of the government and public authorities aimed at increasing passengers to certain destinations.

12. The Spanish airport sector has undergone remarkable changes as a result of its growing role in the transport sector and the liberalization of the air transport initiated in 1992 within the framework of EU policy. In addition, we must add the importance of certain public instruments aimed at promoting the influx of travelers to various airport locations. These include the state aid that the government and its subsidiary companies attach to airlines for the opening of new routes, its permanence at a given airport or to increase passenger flow to a certain area.

13. The goal of this report is to analyze whether the widespread and indiscriminate use of these public economic incentives, for the purpose of promoting tourism, may create distortions in the efficient functioning of such management.

14. Some of the conclusions reached by the study on the efficiency of these public funds are summarized in the following points:

- There is an unequal distribution of these funds among regions and, therefore, among airports.
- The main recipients of these funds are low cost companies. There seems not to be a positive correlation between the amount of funds received and the influx of travelers but between those funds received by the low-cost and the number of passengers that may be contributing to reinforce the process of deviation demand from traditional airlines companies towards low cost companies.
- Many airports benefiting from these funds have seen their passenger traffic reduced, exceeding the national average so i) it casts doubt on the efficiency of this funds to the extent that helps to support routes, airlines or airports economically unviable, and ii) it is necessary to consider the negative impact that, in certain circumstances, may have on effective competition between economically profitable routes, airlines or airports.

⁵ Case S/0388/11 PASARELAS AEROPUERTOS
<http://www.cnmc.es/es/competencia/buscadorde/expedientes.aspx>.

⁶ Report on State Aid (2010) <http://www.cnmc.es/es-es/promoci%C3%B3n/ayudasp%C3%BAblicas.aspx>