

Economic Regulation Group
Economic Regulation and Competition Policy



Professor Paul Geroski
Chairman
Competition Commission
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29 September 2004

Dear Prof. Geroski,

Thank you for giving us the chance to comment on your consultation paper on the use of divestiture remedies in merger cases, and I apologise for replying somewhat later than your response date.

In general, the CAA agrees with the general thrust of the paper in favour of structural remedies wherever possible ahead of behavioural remedies, which have often been shown to be ineffective and/or difficult to enforce. Similarly, the focus on ensuring that any divestment of assets will in fact address the competition concerns identified is welcomed.

The CAA's particular interest in merger cases has tended to be in connection with mergers between airlines, where the divestment issue is often connected with divestment of some of the merging party's slot holdings. Because slots can be switched to serve any route from the relevant airport at the airline's choice, it is difficult to ensure that divesting slots can allay concerns about the exercise of market power on particular routes – it is also important to recognise that slot holdings alone do not necessarily confer market power on an airline, given the possible substitutes available to consumers.

For example, if Lufthansa and British Airways were to merge, and the main competition concern was on routes between London and Frankfurt, it would not be enough to require divestment of slots at Heathrow and Frankfurt to deal with the substantial lessening of competition in the Frankfurt-London market – attempts to require slots to be sold to airlines who would serve this market may be difficult to bring about (Part 4 on "suitable purchasers" outlines the key issues that would have to be taken into account in such a case). But equally, for the merged entity to be able to raise prices on Heathrow-Frankfurt, it would have to be able to stop consumers switching away to, for example, low-cost carriers operating from Stansted-Frankfurt Hahn, or to other carriers offering Heathrow-Frankfurt services, or from other London airports.

Yours sincerely

Nick Fincham

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