



**REPUBLIC OF ALBANIA**  
**-THE COMPETITION AUTHORITY-**  
**The Competition Commission**

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**DECISION**

**No. 108, Dated 23. 04. 2009**

**“On**

**the authorization of concentration realized through the acquisition of control at the company Austrian Airlines AG, by company Deutsche Lufthansa AG, through the purchase of 75% of the shares.”**

The Competition Authority, in its meeting held on 23.04.2009, with the participation of:

- |                           |                 |
|---------------------------|-----------------|
| ▪ Ms. Lindita Milo (Lati) | Chairwoman      |
| ▪ Mr. Lush Përpali        | Deputy chairman |
| ▪ Ms. Servete Gruda       | Member          |
| ▪ Mr. Koço Broka          | Member          |
| ▪ Znj. Rezana Konomi      | Member          |

Discussed the following issue :

**Subject:** The authorization of concentration realized through the acquisition of control at the company Austrian Airlines AG, by company Deutsche Lufthansa AG, through the purchase of 75% of the shares.”

**Legal basis :** Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, Article 24, letter “d”, and Articles 10-12, Chapter IV “Procedures for the control of concentrations”, Articles 53-56, Regulation “On the implementation of the procedures for the concentration of the undertakings”, the Guideline “On the form of the notification of concentration” and Annex I – The Form “On the notification of concentration” .

The Competition Authority, after reviewing the Report prepared by the Secretariat and the Presentation made by the Secretary General, enclosed to the report,

**N O T E D   T H A T:**

**I. The participating parties:**

1. The company **Deutsche Lufthansa AG** (hereinafter referred as "Lufthansa"), in the quality of **buyer**, is a joint stock company of Lufthansa Group, with headquarters in Cologne, Germany. Lufthansa operates in air transport, with a total of 513 aircrafts to 208 destinations in more than 85 countries, and an average number of passengers of 62.9 million.
2. The company **Austrian Airlines AG** (hereinafter referred as "Austrian"), in the quality of **seller**, is a joint stock company with headquarters in Vienna, Austria. The company operates in air transport, with the 100 aircrafts to 130 destinations in 59 countries, with an average number of passengers of 10.8 million.
3. Austrian Airlines and Lufthansa cooperate together as a joint venture since March of 2000: (i) to cover all flight corridors between Austria and Germany, (ii) in a mutual sharing of code service and division of income, (iii) in providing services to joint customers, such as flights and providing common program "Mile & More."

*Other parties participating for the realization of the concentration*

4. **Osterreichische Industrieholding Aktiengesellschaft (OIAG)**, is a state-owned stock company with headquarters in Vienna, Austria. OIAG owns 41.56% of capital in the company Austrian Airlines.
5. **Gomele Beteiligungsverwaltungs GbmH (StraCo)**, a branch company, 100% by Lufthansa, is a joint stock company, with headquarters in Vienna, Austria.
6. **Austrian Private Foundation (APF)**, is an Austrian private foundation based in Vienna, Austria; created with the aim of securing majority control in the first part of the transaction with the company Austrian Airlines.
6. 7. **Sobire Beteiligungsverwaltungs GbmH (NewCo)**, a joint stock company with headquarters in Vienna, Austria. The company NewCo represents Lufthansa in the Framework Agreement for the purchase of a 41.56% of shares in the Austria Airlines and is also responsible for buying 75% of shares through the Public Bid.

## II. The operation

8. On 5 December 2008, individual companies, such as **OIAG, Lufthansa, StratCo, NewCo, APF** and **Austrian Airlines**, have signed a Framework Agreement with the purpose of realizing the process, through which Lufthansa will acquire control over 75% of the shareholders' capital in Austria Airlines. Due to the complex structure of the transaction and the obligation of the state-owned shareholder (OIAG) to implement the conditions dictated by the Austrian government to mandate privatization, and in particular to secure traffic rights with third countries, the acquisition of the control is structured into several steps. A holding structure that includes the establishment of **NewCo** and **APF** has been created to implement the acquisition of shares at Austrian Airlines. NewCo is a company controlled jointly by APF (50%) and indirectly by Lufthansa via StratCo (50%).
9. **OIAG**, in the quality of the **buyer**, and **NewCo**, in the quality of the **seller**, have signed the share sale agreement for the 41.56% of shareholders' capital and the right to vote in Austrian Airlines. With the transfer of shares of NewCo to OIAG, the company Lufthansa (through StratCo) will be indirect shareholders in the company Austria Airlines. The transaction, which realizes the acquisition of 41.56% of shareholders' capital, does not constitute a concentration, because (i) the situation after the purchase does not constitute a sustainable change of control, (ii) the creation of the joint enterprise NewCo is transitory and in accordance with the terms and conditions set forth in framework agreement, will be converted into a single control by Lufthansa.
10. Lufthansa company aims at obtaining the sole control through the realization of the Public Bid, after which it will become the owner of at least, 75% of the shareholders' capital in Austria Airlines

## IV. Economic rationale for the concentration

**III.** The proposed transaction will help Austrian Airlines to sustain its brand name over a long period of time, as well as its management, while giving to Lufthansa a key role in its broadened network of connectivity centers, also for destinations in East European countries and the Middle East.

**IV.** The value of this transaction is 36.626.875 Euro

## V. Turnover for the year 2007

14. Total turnover in the **international market** is xxxx billion Lek, ku:
  - Deutsche Lufthansa AG : 22 billion Euro<sup>(1)</sup> = **xxxx billion Lek**
  - Austrian Airlines AG : 2.4 billion Euro = **xxxx billion Lek**

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<sup>1</sup> According to the official Exchange rate applied by the Bank of Albania for the year 2007, 1 EUR=123.6 Lek.  
Source: Statistical report.

15. Total turnover in the **national market** is xxxx billion xxx million Lek, ku:
- Deutsche Lufthansa AG : 2.3 million Euro = **xxx million Lek**
  - Austrian Airlines AG : 9.3 million Euro = **xxx billion Lek**

## **VI. Relevant market**

In the relevant product and geographic market, the companies Austrian Airlines AG and Deutsche Lufthansa AG are active in four areas: a) air transport service of passengers, b) cargo transport service, c) maintenance and repair services to aircraft, d) catering Service.

16. **The relevant product market in Albania:** The parties are present in the market of passenger air transport and cargo air transport. For this reason, the relevant product market will be considered the passenger air transport service and cargo air transport.

17. **The relevant geographic market:** To evaluate the transaction and the effects of that it will produce in the market, relevant geographic market will be considered the internal market / the territory of the Republic of Albania.

## **VII. The evaluation of Competition**

16. *The service of air transport of passengers*

Referring to cases of concentrations considered by the European Commission <sup>(2)</sup>, <sup>(3)</sup>, in a traditional fashion, the relevant market of air transport is determined on the basis of individual lines and groups of lines (bundle of routes). While in defining the market of air transport service of passengers, the used approach is the binome points of origin / destination points (O & D). According to this assessment, any combination of point of origin and destination point, seen from the perspective of substitutability of customer demand, is considered as a separate market. To assess that, when a pair of O & D forms a relevant product market are taken into account not only the direct lines between the two airports, but also other alternatives that are seen as close substitutes of these lines. In this context, the realization of the concentration does not bring superposition in providing the service of air transport of passengers, after the companies Lufthansa AG and Austrian Airlines AG, starting from Tirana, have different flight destinations.

- Deutsche Lufthansa AG (Tirana / Munich and vice versa) is active in providing direkt passengers air transport services at relatively short distance, about 616 miles, every day of the week (with frequency 7 times a week), reaching an approximate number of 65 276 passengers per year;
- Austrian Airlines AG (Tirana / Vienna and vice versa) is active in providing direct services for passengers air transport, at a relatively short distance, about 486

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<sup>2</sup> Airline Alliances and Mergers; Commission cases in COMP/M.4439 - *Ryanair/Aer Lingus*, paras. 65-66, case nr. COMP/M.3770 - *Lufthansa/Swiss*, paragraph. 12, and case No. COMP/M.3280 - *Air France/KLM*, paragraph 9.

miles every day of the week (with a frequency 10 times a week), reaching a total number of 99 947 passengers per year.

Being that both companies are part of Star Alliance Group, they also realize indirect flights, using links with companies within this group, with market shares that vary according to the number of passengers, for the following destinations:

### **Itinerary Tirana – Vienna**

The airline company Austrian Airlines AG offers air transport service for passengers with destination Vienna, direct line, with a frequency of flights of 10 times a week flight time about 1 hour and 40 minutes.

Also, for Vienna destination, the indirect line service is provided by the following companies:

- Adria Airways, the main destination, starting from Tirana, is Ljubljana. The destination Vienna is made possible by Adria company through indirect flight with a stop in Ljubljana, and with a flight time about 4 to 5 hours (including the time of stay at the Ljubljana airport);
- Lufthansa, the main destination, starting from Tirana, is Munich. Lufthansa offers services to transport passengers to their destination Munich, through indirect flights with stops in Munich with a flight time by about 5 to 6 hours (including the time of stay at the airport in Munich).

### **Itinerary Tirana-Munich**

The airline company Lufthansa offers air transport service for passengers with destination Munich, direct line, with a frequency of flights of 7 times a week flight time about 1 hour and 50 minutes.

Also, for Munich destination, the indirect line service is provided by the following companies:

- Adria Airways, the main destination, starting from Tirana, is Ljubljana. The destination Munich is made possible by Adria company through indirect flight with a stop in Ljubljana, and with a flight time about 4 to 5 hours (including the time of stay at the Ljubljana airport);
- Alitalia, the main destination, starting from Tirana, is Rome. Alitalia offers services to transport passengers to their destination Munich, through indirect flights with stops in Rome with a flight time by about 5 to 6 hours (including the time of stay at the airport in Rome).

19. About 12 companies participate in the domestic market of passenger air transport. The biggest competitors with a considerable market share are: Belle Air (37%); Alitalia (17%), Albanian Airlines (11%); which perform flights mainly on short distance through the airport in Tirana. In the year 2008 were completed over 19,194 flights and processed about 1 267 041 passengers.

#### 17. *Cargo transport services*

The relevant market for cargo transport services, is defined as the whole European market, which includes road transport and / or other ways of transport<sup>(3)</sup>. Referring to the definition provided by the European Commission in analogous cases reviewed by the same, the cargo market service in Albania, the parties:

- Deutsche Lufthansa AG does not offer this service in the Albanian market.
- Austria Airlines is active in providing this service, with 15% market share for 2007 and 12% for 2008. The turnover realized in 2007 is about € xxxx million.

For this reason we can say that this transaction, in the meaning of section 6.3 of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", as amended has not affected the markets in this product.

18. Competitors in the domestic market that offer this service are constituted by 11 companies, where the biggest 5, owning market shares varying from 10% to 32%, are: Air ABC (32%); Turkish Air Lines (19%); Alitalia (13 %); SWIFT Air (10%), Malev (5%) and 5 others with market share varying from 1% - 3% (BelleAir, Olympic, Aegean, Albanian, Adria).

19. After the realization of the concentration, Austrian Airlines AG remains an independent company with headquarters in Austria, with a brand name and management separated from Lufthansa. Austrian Airlines AG will continue to have the its rights on air traffic, the licenses, aircrafts and its crews, and can to pursue its strategy to improve its service with a focus on East.

20. The concentration will bring a steady increase of competition in the market: for Lufthansa, shall bring expansion of lines, increasing of revenues, etc., while Austrian Airlines will be in a position to benefit from the experience of Lufthansa, the economies of scale, the presence in the market and the strength of competition of Lufthansa.

21. The concentration will generate additional operational and network synergies through the optimization of connectivity and the addition of direct and indirect services, by providing quality service to the customers, and easy transfers

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<sup>3</sup> Case No Comp/M.3280 –Air France/KLM etc..

through Frankfurt, Munich, Zurich, Brussels and Vienna. The integration into the multimodal connection system of Lufthansa Group will make the network of lines more attractive to customers of both companies and will provide them a link with Vienna.

24. The transaction will result in cutting costs through optimization of the use of aircraft, insurance, financing, sales and marketing. Lufthansa anticipates that the synergies created through the proposed transaction will amount up to € xxxx million annually.

**FOR THESE REASONS:**

The Competition Commission, pursuant to Article 24, letter “d”, and Article 56, paragraph 1, of the Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended,

**DECIDED:**

1. To authorize the concentration realized through the acquisition of control at the company Austrian Airlines AG by company Deutsche Lufthansa AG.
2. The Secretary General is in charge for the notification of the parties.
3. This decision enters into effect immediately.

Was proclaimed today, on 23.04.2009, in Tirana.

**THE COMPETITION COMMISSION**

**Lush Perpali**

**Servete Gruda**

**Rezana Konomi**

**Koço Broka**

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**Deputy Chairman**

**Member**

**Member**

**Member**

**Lindita Milo (Lati)**

**CHAIRWOMAN**