32010M5889

Commission Decision of 27/07/2010 declaring a concentration to be compatible with the common market (Case No COMP/M.5889 - UNITED AIR LINES / CONTINENTAL AIRLINES) according to Council Regulation (EC) No 139/2004 (Only the English text is authentic)

(.PICT.) |EUROPEAN COMMISSION |

Brussels , 27.07.2010

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description. SG-Greffe (2010) D/11623/11624 C(2010) 5346

PUBLIC VERSION

MERGER PROCEDURE ARTICLE 6(1)(b) DECISION

To the notifying parties: Dear Sir/Madam, Subject: Case No COMP/M.5889 – United Air Lines/ Continental Airlines Notification of 21 June 2010 pursuant to Article 4 of Council Regulation No 139/2004 [1]

1. On 21 June 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking United Air Lines, Inc. ("United", U.S.) enters into a full legal merger within the meaning of Article 3(1)(a) of the Merger Regulation with Continental Airlines, Inc. ("Continental", U.S.).

I. The Parties

2. United provides air transport services for passengers and freight, as well as other services (maintenance, repair and overhaul of aircraft). United operates network hubs in Los Angeles, San Francisco, Denver, Washington and Chicago. United operates approximately 3,300 flights per day to/from more than 230 U.S. domestic and international destinations, 9 of which are EEA/Switzerland destinations.

3. Continental provides air transport services for passengers and freight, as well as other services (maintenance, repair and overhaul of aircraft). Continental operates network hubs at the following airports: Newark, Houston, Cleveland and Guam. It operates more than 2,700 daily departures throughout the Americas, Europe, and Asia, serving 132 domestic and 137 international destinations, 26 of which are EEA/Switzerland destinations.

4. Both companies are members of the Star Alliance and the A++ joint venture, which also includes Lufthansa and Air Canada and which will be further described below.

II. The Concentration

5. Pursuant to the Merger Agreement announced on 3 May 2010, a special purpose vehicle wholly-owned by […] [2] (the parent company of United) will merge with and into Continental, with Continental being the surviving undertaking. Continental's shareholders will receive shares in […]* which will be renamed United Continental Holdings Inc. Post-closing, and pending the ultimate operational integration of the two airlines, Continental and United will be two distinct and wholly-owned subsidiaries of United Continental Holdings.

6. The proposed transaction thus constitutes a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

III. EU Dimension

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 00 million [3] (United: EUR 9 023 million; Continental: EUR 11 711 million). Each of them has an EU-wide turnover in excess of EUR 250 million (United[…]; Continental: […]), without achieving more than two-thirds of their aggregate EU-wide turnover within one and the same Member State, regardless of the turnover allocation method used [4] .

8. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. Market Definition

A. Scheduled passenger air transport services

(i) Point of origin / point of destination ("O&D") approach

9. The Commission has in the past defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" (O&D) city-pair approach. This market definition essentially corresponds to the demand-side perspective whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination which they do not consider substitutable to a different city-pair. On this basis, every combination of a point of origin and a point of destination is considered to be a separate market.

10. The notifying parties claim that, from the supply-side, network competition between airlines based on the hub-and-spoke structure of traditional carriers may be an important parameter of competition in the context of a merger of two network airlines and thus should be duly taken into account for the purpose of market definition.

11. Most respondents to the Commission's market investigation agreed with the Commission's traditional market definition, at least from a demand-side perspective. Some respondents (most of them competitors) also suggested that the O&D approach should be completed by a network approach since the airline industry is a network industry and from a supply-side perspective, competition takes place between networks and alliances [5] . This was notably substantiated by marketing strategies (volume rebates to incentivise corporate customers to choose an airline regardless of the price on specific O&Ds). However, it remains that customers still need the transportation from one point to another and that competition still takes place on an O&D city-pair basis (even though some customers, in particular corporate customers, may have concluded corporate agreements for a range of routes and the commercial advantages stemming from such agreements may lead them to prefer one airline among the different airlines that operate on the route) [6] .

12. Given the evidence supporting the Commission's traditional approach to market definition in the air transport of passengers relying on demand-side substitution, for the purposes of this decision, the relevant markets will be defined on an O&D basis.

(ii) Airport substitutability at the point of origin / point of destination

13. As regards airport substitutability, the Commission has traditionally found that flights from or to airports which have sufficiently large overlaps in their catchment areas (in particular in the case of airports serving the same city) can be considered as substitutes in the eyes of passengers. Recent cases [7] have shown that airport substitutability should be assessed on a route-by-route basis taking into account various elements such as the existence of connecting traffic, the specificities of the airports concerned, the characteristics of passengers travelling on a specific route or the difference between short-haul/long-haul.

14. In the present case, there are only a few cities for which the issue of airport substitutability may be relevant (London, Paris, New York, and Washington). In previous cases, the Commission has considered various airports serving New York City to be substitutable as well as those serving Washington D.C. However, as concerns London and Paris, the question of whether the different airports serving London and Paris belong to the same market in each of these two cities can be left open for the purpose of this decision as the competitive analysis would not change regardless of the exact market definition. This is mainly because (i) the vast majority of London flights on the affected routes serve the same airport (Heathrow), and therefore including other London airports would not have any material effect on the competition analysis; and (ii) the competitive assessment of the Paris routes is based on a relevant market including only the Charles de Gaulle

airport, which is the least favourable to the parties because, should other Paris airports be included, the parties' market shares would be smaller.

(ii) Premium v. non-premium passengers

15. The Commission has traditionally found that passengers travelling on unrestricted tickets, i.e. time-sensitive passengers, which are mainly business customers having a need for flexibility, may be in a different market from passengers travelling on restricted tickets, so called non time-sensitive passengers, attaching more importance to price than to frequency or direct/indirect itinerary of the flight [8] .

16. Lately, particularly in the context of its antitrust investigations into airline alliances, the Commission has refined its terminology to distinguish between two main categories of customers on long-haul flights [9] . In order to better reflect the various comfort and service levels offered on long-haul flights and single out passengers willing to pay higher price for tickets in high-end comfort class, it is appropriate to distinguish between (i) "premium" customers who tend to travel for business purposes, require significant flexibility with their tickets as well as in-flight services and ground services, and tend to pay higher prices for this flexibility and level of comfort; and (ii) "non premium" customers who travel predominantly for leisure purposes, do not require flexibility with their booking and are more price-sensitive, and are therefore usually not willing to pay higher prices in exchange for additional services.

17. Overall, the vast majority of respondents to the market investigation agree with the distinction between premium and non-premium passengers. Respondents generally included only business customers in the former category, and a combination of business and leisure customers in the latter category, with corporate customers becoming more and more price sensitive. However, while most respondents agree with the need to separate the two categories of passengers, they also acknowledge that the frontier is blurred by evolving needs.

18. For the purposes of this decision, the exact dividing line between premium and non-premium passengers can be left open, as the proposed transaction does not raise serious doubts as regards its compatibility with the internal market under any alternative market definition.

(iii) Nonstop v. one-stop flights

19. With respect to long-haul flights the Commission has traditionally found that "indirect" flights constitute a competitive alternative to "direct" flights under certain conditions, notably when (i) they are marketed as connecting flights on the O&D pair in Global Distribution Systems, (ii) they operate on a daily basis, and (iii) they only result in a limited increase of total travel time (maximum 150 minutes) [10] .

20. A recent Commission's decision refers to "nonstop" flights and "one-stop" flights [11] . This terminology was introduced to better reflect the reality on transatlantic routes where it is common to market a flight as "direct" (i.e. with a single flight number) even though it entails a stop (and even sometimes a change of planes) along the way.

21. The notifying parties argue that the Commission's 150-minute limit is an unrealistic and conservative approach, especially with regard to transatlantic flights, because consumers can and do regard one-stop flights as viable alternatives to direct flights even where the extension of travel time exceeds 150 minutes. In this respect, the notifying parties submit that one-stop flights with an extension of travel time of up to 240 minutes exert a competitive constraint on nonstop flights given that wireless technology allows businessmen to work during layovers.

22. The Commission's recent market investigations in airline alliance cases have revealed that indeed the 150-minute limit did not always reflect the reality of substitutability in the eyes of passengers on long-haul flights. In particular, booking data showed that a number of passengers do purchase one-stop tickets that are more than 150 minutes longer than nonstop options.

23. Although the respondents to the market investigation in this case generally agreed that one-stop flights can exert a certain competitive constraint on non-stop flights, they also suggested that this constraint should not be overestimated, notably in the case of corporate customers.

24. In particular, the notifying parties' argument that one-stop flights with an extension of up to 240 minutes exert a competitive constraint on nonstop flights was not confirmed by the market investigation (except for one competitor), in spite of facilities provided by airports (wifi,

lounges…): respondents suggested that a cut-off of 90 to 180 minutes at most would be more appropriate (120 minutes was the most frequent answer).

25. For the purposes of this decision, all one-stop flights reflected in the booking data are considered to be part of the same relevant market as nonstop flights on each relevant transatlantic city-pair, it being understood that one-stop flights are not considered close substitutes of non-stop flights for the same routes. The Commission takes the view that instead of applying a cut-off at 120 or 150 or 240 minutes, the analysis may include all booked one-stop tickets because the low popularity of very long one-stop flights will be reflected in the booking data in that they will only account for a very small part of the relevant market. Accordingly, the outcome of the competitive assessment in the present case does not change regardless of whether one applies a cut-off at 120 or 150 or 240 minutes or no cut-off at all.

B. Cargo air transport services

26. As regards cargo air transport services on intercontinental routes, the Commission has previously found that the corresponding catchment areas broadly correspond to continents, at least for those continents where local infrastructure is adequate to allow for onward connections. This is the case for the EEA and North America.

27. It should be noted that the cargo transport is by nature unidirectional as the demand on each end of the route differs substantially. Accordingly, the relevant markets have to be defined on this basis.

28. Accordingly, for the purposes of this decision, the relevant markets for the purpose of this case are the air transport of cargo from the EEA to North America; and from North America to the EEA.

V. Conceptual Framework for the Assessment of the United/Continental Merger

29. Both United and Continental are members of the Star Alliance and the A++ joint venture (Section A). The current cooperation between the parties therefore raises questions with respect to (i) the relevant counterfactual for the assessment of the effects of the present transaction (Section B), and (ii) the treatment of alliance partners both for the purpose of identifying the affected markets and assessing the competitive impact of the proposed transaction (the issue of aggregation of market shares) (Section C).

A. Current cooperation between United and Continental

Star Alliance

30. Both United and Continental are members of the Star Alliance [12] . The Star Alliance provides a framework within which member airlines may agree to enter between themselves into bilateral and multilateral cooperation agreements as a result of which they cooperate more or less extensively.

The A++ joint venture

31. On 1 November 2009, United and Continental together with Air Canada and Lufthansa (all Star Alliance members, the "A++ parties") started integrating their transatlantic services through the A++ joint venture [13] , whereby the parties coordinate pricing and capacity and will eventually share revenues.

32. The A ++ joint venture is characterized by "metal neutrality" ("metal" being used as a synonym of aircraft). This means that no preference is given to sales on any of the A++ parties' aircraft and services with the objective of offering more seamless travel across one integrated network. Effectively, this means that United, Continental, Air Canada and Lufthansa effectively operate their routes, flights, prices and sales on the transatlantic corridor as a single entity.

33. […] the parties have already started implementing the A++ joint venture with regard to the most essential parameters of competition between airlines such as network planning, scheduling, pricing and sales have been in place and operational since 1 November 2009. […] the A++ parties will also share revenues in addition to coordinating capacity and pricing. […] for the purpose of this decision reference is made to the Lufthansa/Continental/United/Air Canada transatlantic cooperation as "A++", since its key elements have already been implemented.

34. The Commission is currently investigating the A++ joint venture under Article 101 TFEU [14] , […].

35. The A++ joint venture was granted antitrust immunity by the U.S. Department of Transportation ("DoT") on 10 July 2009 [15] .

B. Relevant counterfactual in the context of the A++ joint venture

36. When assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger ("the counterfactual"). In most cases the competitive conditions existing at the time of the merger constitute the relevant point of comparison, but the Commission may also take into account future changes in the market that can reasonably be predicted [16] .

37. In this respect, the Commission considers that it cannot be required to accept as a counter-factual pre-merger cooperation that is contrary to Article 101 TFEU [17] . It cannot reasonably be predicted that such illegal cooperation would continue.

38. The notifying parties submit that, since the implementation of the A++ joint venture, the A++ partners (United, Continental, Lufthansa and Air Canada) no longer compete on transatlantic routes. They therefore claim that the relevant counterfactual is a situation of absence of competition and that the proposed merger does not change this situation.

39. The Commission does not accept that claim. The merger would change the contractual relation between United and Continental into a permanent structural link, removing the possibility that one of them would discontinue the cooperation and start competing again. This removal of potential competition could potentially have anti-competitive effects when the conditions set out in paragraph 60 of the Horizontal Merger Guidelines are met.

40. Moreover, the Commission is currently investigating the A++ joint venture, which might lead to a future change in the market, and possibly a situation of actual competition between United and Continental.

41. However, it is not necessary to decide whether the effects of the proposed merger have to be assessed against the current competitive conditions, characterized by the cooperation in the A++ joint venture, or against a future situation of actual competition in absence of that joint venture. As explained in the competitive assessment below, the merger would not raise serious doubts either way.

42. Thus, the assessment of this case is without prejudice to the assessment of the A++ joint venture under Article 101 TFEU.

C. Treatment of alliance partners

Treatment of close partners for the purpose of determination of affected markets

43. With respect to the determination of affected markets, horizontally affected markets consist of relevant markets where both parties to the concentration are engaged in business activities and hence on which the concentration produces merger-specific effects [18] . Accordingly, markets where one merging party's activities only overlap with a third party's activities are in principle not affected markets. However, a concentration may also have a significant impact on other markets in which case the effects on competition on such market should also be assessed.

44. In the airline sector, this is the case in particular where a factual inquiry indicates that, as a direct result of the merger or as its foreseeable consequence, close links are to be established between a merging party and a close partner of the other merging party [19] . In such cases, the incentives to compete with the third party airline would indeed be altered as a result of the merger.

45. In the present case, United has hub-to-hub […] [20] code-share agreements with Swiss, TAP and SAS. Continental has a similar agreement in place with SAS only. It is in the process of negotiating such code-share agreements with Swiss and TAP. The question is therefore whether as a direct or foreseeable result of the merger, Continental will be integrated into United's […] cooperation with Swiss and TAP [21] .

46. According to the parties, none of the existing agreements between either United or Continental and any of Swiss, TAP and SAS will be extended from one merging party to the other party as a result of the merger.

47. Regardless of whether these code-share agreements constitute a "close link", elements in the file indicate that Continental is already in the process of negotiating such code-shares with Swiss and TAP [22] , independently of the proposed transaction. For the purpose of determining the affected markets, the market shares of Swiss, TAP and SAS are therefore not taken into account [23] .

48. In addition, on the markets where the parties' activities overlap, the Commission adds the market shares of the close partners (with whom the merging parties effectively operate as a single entity due to the existence of an integrated cooperation) for the purpose of determining the affected markets. On the routes where United and Continental services overlap [24] , in order to determine the affected markets, the market shares of the parties' A++ partners (i.e. Lufthansa and Air Canada) are added to the combined market shares of the parties [25] .

Treatment of close partners for the purpose of competitive assessment

49. Market shares of a third party must be aggregated with those of the merging parties if on the basis of factual elements, such as existence of common pricing, it can be concluded that they all effectively operate as a single entity. In the airline industry this applies to revenue-sharing joint ventures, such as the A++ joint venture. Therefore, in the route-by-route assessment of the combined position of United and Continental the market shares of all A++ partners are aggregated as A++ partners cannot be regarded as effective competitors to the parties.

50. However, on some routes, the high combined market shares of the A++ partners do not result from the specific combination of United and Continental, but mostly from Lufthansa's strong position on these routes.

51. Since the scope of a merger investigation is limited to merger-specific effects, for the purpose of this decision, the Commission focuses solely on the market position of United and Continental and the merger-specific change in their competitive interaction.

52. The assessment of this case is without prejudice to the assessment of the A++ joint venture under Article 101 TFEU.

VI. Competitive Assessment

A. General assessment

53. As far as European markets are concerned, United and Continental are both present in the area of air transport of passengers and cargo between the EEA and the United States. However, the operation results in horizontally affected markets only with regard to long-haul scheduled passenger air transport services between the EEA and the United States. With respect to cargo, the overlaps between the parties' activities are limited and do not give rise to affected markets.

54. With regard to potential competition, due to their different hubs in the U.S., none of the parties is likely to be best positioned to enter and start competing so as to be a strong competitive force on a route where the other party operates a direct service within the conditions set out in paragraph 60 of the Horizontal Merger Guidelines. The following assessment therefore focuses on an "actual competition scenario" which in any event represents the least favourable scenario for the parties.

55. The proposed transaction gives rise to 45 affected transatlantic routes for the air transport of passengers: 14 nonstop/nonstop overlaps, 15 nonstop/one-stop overlaps and 16 one-stop/one-stop overlaps [26] .

56. For each of the affected routes, the Commission assesses whether the proposed transaction would give rise to competition concerns by considering only the merger-specific effects arising from the overlaps between United and Continental on a route, and disregarding the position of their A++ partners.

57. The vast majority of respondents to the market investigation foresee no impact or a minimal impact as a result of the proposed transaction. A limited number of respondents identified a risk of price increases and reduction in capacity and frequencies. However, such concerns were not substantiated and related to competition on specific routes that would be affected by the proposed concentration.

58. Some respondents also identified a risk of a lessening in the bargaining power of travel agencies with respect to airlines, eventually leading to more direct sales by the airlines. As a

result, the ability for the final customers to compare prices may be reduced giving the possibility for airlines to raise prices. Such a theory of harm was however mentioned only by two travel agents and not substantiated or related to competition on specific routes that would be affected by the proposed concentration. Notably, no evidence was provided to demonstrate that such practices would in the end have a negative impact on prices or choice for final customers.

59. None of the respondents to the market investigation perceive United and Continental to be the closest competitors on any route (notably in the absence of non-stop/non-stop "operating" overlaps, as opposed to "operating/marketing" overlaps).

60. As regards nonstop/nonstop overlaps, since Continental and United operate from different hubs in the U.S., the transaction does not give rise to any operating overlap on transatlantic routes. All nonstop/nonstop overlaps concern only transatlantic routes where one of the parties (either United or Continental) operates the flight directly while the other party only markets seats on that flight. In such cases, the merging party that is only a marketing carrier generally has a very limited market share and exerts limited competitive pressure on the merging party operating the nonstop service.

61. As regards nonstop/one-stop overlaps, the proposed transaction generally leads to limited increments of at most 5%. The merging party operating a one-stop service therefore generally exerts a limited competitive constraint on the merging party operating a nonstop service while there are competitors exerting greater competitive pressure with a nonstop service.

62. As regards one-stop/one-stop overlaps, the combined market shares of the parties never reach more than 40% and there are generally a number of alternative airlines/routings to connect a given city-pair [27] .

B. Route by route assessment

Nonstop/nonstop overlaps

63. There are 14 nonstop/nonstop transatlantic overlaps arising from the proposed transaction, all of them resulting from United or Continental being present as a marketing carrier on a route operated nonstop by the other merging party.

	Pax number	CO	UA	CO+UA	A++
Flights from / to United hubs					
Washington/Baltimore - London	[300,000-350,000]	[0-5]%	[30-40]%	[30-40]%	[30-40]%
San Francisco - London	[250,000-300,000]	[0-5]%	[30-40]%	[30-40]%	[30-40]%
Chicago - London	[200,000-250,000]	[0-5]%	[20-30]%	[20-30]%	[20-30]%
Los Angeles - London	[350,000-400,000]	[0-5]%	[10-20]%	[10-20]%	[20-30]%
Flights from / to Continental hubs					
New York - Shannon	[40,000-60,000]	[40-50]%	[0-5]%	[40-50]%	[40-50]%
New York - Geneva	[100;000-150,000]	[30-40]%	[0-5]%	[30-40]%	[30-40]%
New York - Zurich	[150,000-200,000]	[10-20]%	[0-5]%	[20-30]%	[20-30]%
New York - Lisbon	[80,000-100,000]	[20-30]%	[0-5]%	[20-30]%	[20-30]%
New York - Stockholm	[100;000-150,000]	[20-30]%	[0-5]%	[20-30]%	[20-30]%
New York - Copenhagen	[100;000-150,000]	[10-20]%	[0-5]%	[10-20]%	[20-30]%
New York - Dublin	[100;000-150,000]	[30-40]%	[0-5]%	[30-40]%	[30-40]%
New York - Frankfurt	[350,000-400,000]	[10-20]%	[5-10]%	[10-20]%	[40-50]%
New York - Munich	[100;000-150,000]	[0-5]%	[5-10]%	[10-20]%	[60-70]%
Houston - Frankfurt	[20,000-40,000]	[5-10]%	[10-20]%	[20-30]%	[80-90]%

Source: Information compiled from the Form CO. Figures based on MIDT data of 2009.

64. The combination of United and Continental is unlikely to raise competition concerns on any of these routes for the following reasons:

65. First, four routes connecting to United's hubs, namely Washington/Baltimore-London, San Francisco-London, Chicago-London, Los Angeles-London are only operated by United. Continental

does not operate flights on these routes but markets seats under code share arrangements with United and, to a limited extent, Virgin Atlantic. On these city-pairs only United offers nonstop services. The combined market share of the parties post-merger is less than [30-40]% for all passengers (less than [40-50]% for premium passengers; less than [30-40]% for non-premium passengers). The increment brought about by the present transaction is limited, ranging from [0-5]% to [5-10]% (including premium passengers and non-premium passengers). In any event, Continental, as marketing carrier, does not exert a strong competitive constraint on United, as operating carrier.

66. Secondly, of the remaining ten routes, Continental offers direct services while United code-shares on a third carrier, on seven routes, namely New York-Shannon, New York-Geneva, New York-Dublin, New York-Lisbon, New York-Stockholm, New York-Zurich, New York-Copenhagen, United does not operate flights but markets seats under code-share arrangements with Continental and with Swiss, SAS, TAP or Aer Lingus. The parties' combined market share on these seven routes is at most [40-50]% for all passengers, with a limited increment not exceeding [0-5]%. The parties' combined market shares are less than [40-50]% for premium passengers, with an increment ranging from [0-5]% to [0-5]% –(except for New York-Lisbon and New York-Shannon, where the parties' combined market shares are [50-60]% and [60-70]% respectively with an increment of less than [0-5]%). The parties' combined market shares are less than [30-40]% for non-premium passengers with an increment ranging from [0-5]% to [0-5]%. In any event, United, as marketing carrier, does not exert a strong competitive constraint on Continental, as operating carrier.

67. The remaining three city-pairs, namely Houston-Frankfurt, New York-Frankfurt and New York-Munich are nonstop/nonstop overlap routes as a result of the code-share arrangements between United, Continental and Lufthansa in the A++ joint venture. Prior to the implementation of the A++ joint venture, Continental operated Houston-Frankfurt on a one-stop basis via New York, it sold New York-Munich tickets on a one-stop basis via European Skyteam hubs, and it operated New York/Frankfurt with a daily nonstop service, while United code-shared with Lufthansa on all three routes. The combined market share of the parties is only [20-30]% for all passengers ([20-30]% for premium passengers; [10-20]% for non-premium passengers), [10-20]% ([10-20]% for premium passengers; [10-20]% for non-premium passengers) and [10-20]% ([5-10]% for premium passengers; [10-20]% for non-premium passengers) respectively.

68. The Commission's market investigation confirmed the proposed transaction does not raise serious doubts on these routes as no specific concern was raised on any of these routes. Respondents to the market investigation always identified other airlines as being closer and stronger competitors.

69. Therefore, with respect to these routes, the proposed concentration does not raise serious doubts as to its compatibility with the internal market, regardless of the market definition and regardless of the counterfactual.

Nonstop/one-stop overlaps

70. There are 15 affected routes on which Continental or United operates nonstop services and the other party offers one-stop services.

	Pax number	CO	UA	CO+UA	A++
Flights from / to United hubs					
Washington/Baltimore - Brussels	[40,000-60,000]	[0-5]%	[60-70]%	[60-70]%	[70-80]%
Washington/Baltimore - Zurich -	[20,000-40,000]	[0-5]%	[60-70]%	[60-70]%	[70-80]%
Washington/Baltimore - Geneva	[20,000-40,000]	[5-10]%	[50-60]%	[60-70]%	[70-80]%
Washington/Baltimore - Rome	[60,000-80,000]	[0-5]%	[50-60]%	[50-60]%	[50-60]%
Washington/Baltimore - Amsterdam	[40,000-60,000]	[0-5]%	[30-40]%	[30-40]%	[40-50]%
Washington/Baltimore - Paris	[100,000-150,000]	[0-5]%	[20-30]%	[20-30]%	[30-40]%
Washington/Baltimore - Copenhagen	[20,000-40,000]	[0-5]%	[20-30]%	[20-30]%	[30-40]%
Denver - London	[60,000-80,000]	[0-5]%	[30-40]%	[30-40]%	[30-40]%

Los Angeles - Frankfurt	[100,000-150,000]	[0-5]%	[10-20]%	[20-30]%	[60-70]%
Flights from / to Continental hubs					
New York - Hamburg	[60,000-80,000]	[40-50]%	[0-5]%	[40-50]%	[60-70]%
New York - Oslo	[40,000-60,000]	[40-50]%	[0-5]%	[40-50]%	[40-50]%
Houston - London	[100,000-150,000]	[40-50]%	[0-5]%	[40-50]%	[40-50]%
Other					
Portland - Frankfurt	[0-20,000]	[0-5]%	[20-30]%	[20-30]%	[70-80]%
Orlando - Frankfurt	[60,000-80,000]	[0-5]%	[10-20]%	[20-30]%	[60-70]%
Miami - Frankfurt	[80,000-10,000]	[0-5]%	[5-10]%	[10-20]%	[50-60]%

Source: Information compiled from the Form CO. Figures based on MIDT data of 2009.

71. The competitive impact from the combination of United and Continental on each of these routes is not significant as the increment resulting from the combination of United and Continental is at most [0-5]% of all passangers on all routes irrespective of the type of passengers [28] (and even less than [0-5]% on 11 of these 15 routes for all passengers and less than [0-5]% on all routes for premium passengers). Moreover, as mentioned in recital 25, one-stop flights are not considered close substitutes of non-stop flights for the same routes. Therefore, on none of the above routes, the parties are considered close competitors.

72. In seven of these routes, namely Denver-London, Portland-Frankfurt, Washington-Paris, Washington-Copenhagen, Orlando-Frankfurt, Los Angeles-Frankfurt, Miami-Frankfurt, the parties' combined market shares remain limited, slightly exceeding [30-40]% at most irrespective of the type of passengers (the only exception being the Denver-London and the Washington-Copenhagen routes where the parties have combined market shares for premium passengers of [30-40]% and [40-50]% respectively). Moreover, in the three routes originating from/going to Frankfurt, United offers nonstop flights solely because of its code-share arrangement with Lufthansa. Similarly, on Washington-Copenhagen, United offers nonstop flights solely because of its code-share arrangement with SAS. In both cases the routes would otherwise be listed as one-stop/one-stop overlaps. Finally, on Washington-Paris, Air France and Delta also offer nonstop flights, with Air France being by far the largest carrier on the route with a market share of [40-50]% ([50-60]% for premium passengers and [30-40]% for non-premium passengers) and [40-50]% combined with Delta, taking into account the transatlantic joint venture between Air France, KLM and Delta ([50-60]% and [40-50]% for premium and non-premium passengers respectively); and on Denver-London, while United offers nonstop flights on these routes only during the summer season, British Airways operates a year round nonstop service and is by far the largest carrier on this route with a market share of [40-50]% ([50-60]% and [30-40]% for premium and non-premium passengers respectively).

73. In six of the remaining routes, namely Washington-Brussels, Washington-Rome, New-York-Hamburg, Houston-London, New York-Oslo and Washington-Amsterdam, the increment resulting from the combination of the two parties is limited, not exceeding [0-5]% irrespective of the type of passengers (with the exception of the Washington-Brussels and the Houston-London routes where the increment for non-premium passengers is [0-5]% and [0-5]% respectively). Moreover, on most of these routes (Brussels-Washington, Washington-Rome, New York-Hamburg, New York-Oslo), the relatively high market shares of one of the parties are due to the fact that it is the only carrier that offers nonstop services; however, for all of these routes there are many other carriers offering one-stop flights, such as British Airways, Air France and Delta (who has a hub in NYC), each of them accounting for a higher share of traffic than the smaller of the two parties [29] . Finally, on the Houston-London route, British Airways also offers nonstop services and has similar market shares as the combined parties. Similarly, on the Washington-Amsterdam route, KLM and Delta also offer nonstop service with market shares of [30-40]% for all passengers ([30-40]% for premium and [30-40]% for non-premium passengers) and [10-20]% ([5-10]% for premium and [10-20]% for non-premium passengers) respectively (i.e. [40-50]% combined for all passengers taking into account the transatlantic joint venture between Air France, KLM and Delta – [30-40]% for premium and [40-50]% for non-premium passengers).

74. On the two Washington-Zurich and Washington-Geneva routes, United is the only carrier that operates a nonstop service and Continental code-shares on United's service. On both routes, the

increment resulting from the combination of the two parties is limited, not exceeding [5-10]% for all passengers and for premium passengers ([5-10]% for non-premium passengers). On these two routes, there are other carriers offering one-stop flights, such as British Airways, Air France, Delta and American Airlines, generally accounting for a higher share of traffic than the smaller of the two parties [30] .

75. The Commission's market investigation confirmed that no specific competition concerns arise from the proposed transaction on any of these routes.

76. Therefore, with respect to these routes, the proposed transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the market definition and regardless of the counterfactual.

One-stop/one-stop overlaps

77. There are 16 affected transatlantic routes on which both parties operate one-stop flights [31] .

	Pax number	CO	UA	CO+UA	A++
Orlando - Amsterdam	[40,000-60,000]	[5-10]%	[20-30]%	[30-40]%	[30-40]%
San Diego - London	[20,000-40,000]	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Miami - Stockholm	[20,000-40,000]	[20-30]%	[0-5]%	[20-30]%	[30-40]%
Las Vegas - Paris	[20,000-40,000]	[10-20]%	[10-20]%	[20-30]%	[20-30]%
Las Vegas - Frankfurt	[40,000-60,000]	[0-5]%	[20-30]%	[20-30]%	[30-40]%
San Francisco - Brussels	[20,000-40,000]	[0-5]%	[20-30]%	[30-40]%	[40-50]%
San Francisco - Zurich	[40,000-60,000]	[5-10]%	[10-20]%	[20-30]%	[40-50]%
San Francisco - Amsterdam	[60,000-80,000]	[0-5]%	[10-20]%	[20-30]%	[20-30]%
San Francisco - Copenhagen	[20,000-40,000]	[5-10]%	[10-20]%	[20-30]%	[30-40]%
San Francisco - Rome	[40,000-60,000]	[0-5]%	[10-20]%	[10-20]%	[30-40]%
San Francisco - Milan	[20,000-40,000]	[5-10]%	[10-20]%	[10-20]%	[20-30]%
San Francisco - Barcelona	[20,000-40,000]	[0-5]%	[5-10]%	[10-20]%	[20-30]%
Los Angeles - Brussels	[40,000-60,000]	[5-10]%	[20-30]%	[20-30]%	[30-40]%
Los Angeles - Stockholm	[20,000-40,000]	[5-10]%	[5-10]%	[10-20]%	[20-30]%
Los Angeles - Copenhagen	[40,000-60,000]	[5-10]%	[5-10]%	[10-20]%	[20-30]%
New York - Florence	[20,000-40,000]	[0-5]%	[0-5]%	[0-5]%	[20-30]%

Source: Information compiled from the Form CO. Figures based on MIDT data of 2009.

78. On all these routes, the combined market shares resulting from the transaction will be limited, to [30-40]% at most for all passengers in the case of Orlando-Amsterdam ([40-50]% at most for premium passengers in the case of Las Vegas-Frankfurt; and [30-40]% at most for non-premium passengers in the case of Orlando-Amsterdam). In addition, the parties will face strong competition from a number of players [32] , such as British Airways, Delta, US Airways and Air France, active on these routes.

79. This was confirmed by the market investigation as no specific concern was raised for any of these routes.

80. Therefore, with respect to these routes, the proposed concentration does not raise serious doubts as to its compatibility with the internal market, regardless of the market definition and regardless of the counterfactual.

VII. Conclusion

81. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission, (signed) Neelie KROES Member of the European Commission

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such

as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

[2] should read "UAL Corporation"

[3] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

[4] The methodology used by the notifying parties to calculate their turnover is based on the "point of sale" methodology, although in any event the thresholds would also be met under the "point of origin" or "50/50 split" methods. These three methodologies are explained in the Commission decision of 27 June 2007 in Case No. COMP/M.4439 – Ryanair/Aer Lingus, OJ C 47, 20.2.2008, pp. 9-20, paragraphs 13 et seq.

[5] As explained by one respondent (reply to question 6.1 of the questionnaire to competitors): "From the supply side perspective, it is [company]'s position that there are clear signs that major airlines compete on a network-to-network basis. However, [company] appreciates that, from the demand side, the customer continues to ask for a transport service between two points and that, on this basis, each point of origin/point of destination may constitute a relevant market".

[6] This is also consistent with the pre-eminence given to demand substitution in the Commission's notice on market definition – see Commission Notice on the definition of the relevant market, paragraph 13 (OJ C 372, 09.12.1997, p. 5).

[7] See, for instance, COMP/M.5440 – Lufthansa/Austrian Airlines, paragraph 12.

[8] See COMP/M.5335 – Lufthansa/Brussels Airlines, paragraph 12 et seq; COMP/M.3280 – Air France/KLM, paragraph 19 and COMP/M.3770 – Lufthansa/Swiss, paragraph 15.

[9] See Commission decision of 14 July 2010 in Case 39.596 – Oneworld.

[10] See COMP/M.5335 – Lufthansa/Brussels Airlines, paragraph 50.

[11] See COMP/M.5747 – British Airways/Iberia, paragraphs 17-18.

[12] Continental left Skyteam to join Star on 25 October 2009.

[13] The scope of the A++ joint venture agreement encompasses all routes operated by the parties connecting a point between Panama and Canada at one end and another point in Europe, Africa, the Middle East, India and Western Russia at the other end.

[14] See Case 39.595 – AC/CO/LH/UA.

[15] DOT final order 2009-7-10 (Docket DOT-OST-2008-0234).

[16] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 5.2.2004, p. 5, paragraph 9.

[17] If the illegality of a pre-merger agreement between the parties could not be taken into account, the parties could argue that there would only be a small reduction or even no reduction of competition as a result of the merger. A merger decision in such circumstances would effectively incorporate and perpetuate the pre-merger illegality for ever, since mergers that are approved under the Merger Regulation are no longer challengeable under Article 101 TFEU. See in particular COMP/M.5335 – Lufthansa/Brussels Airlines, paragraph 263 and footnote 265, COMP/M.5403 Lufthansa/bmi, paragraph 42, and COMP/M.5440 Lufthansa/Austrian Airlines, paragraph 106.

[18] See Annex I, Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1), paragraph III (a).

[19] See COMP/M.5335 – Lufthansa/Brussels Airlines, paragraph 107.

[20] […].

[21] Since both United and Continental already have similar code-share agreements with SAS, there is no question of one of them being drawn into […] cooperation with SAS as a result of the merger.

[22] Continental itself has stated in documents filed with the U.S. Department of Transportation (DoT) well before this merger that it "intends to engage" in extensive cooperation with "other Star ATI carriers", including Swiss and TAP.

[23] Some U.S.-Switzerland and U.S.-Portugal routes are nonetheless affected by the proposed transaction (see the competitive assessment below) but this is on account of overlaps between United and Continental (and not on the basis of the close links).

[24] Moreover, where relevant, Lufthansa's market shares include Swiss's market shares as Lufthansa owns 100 % of Swiss and therefore Swiss cannot be considered as separate undertakings for the purpose of merger control.

[25] See Commission's recent decision in case M. 5747 Iberia/British Airways of 14 July 2010, paragraph 56.

[26] In the airline industry it is common that a transaction gives rise to a high number of affected markets. It has been a constant practice in airline cases to not carry out a full competitive assessment for insignificant markets where no competition concerns are deemed to arise. Accordingly, in conformity with its prior practice, the Commission's competitive assessment in the present case covers (i) all nonstop-nonstop overlaps (noting that there are no United-Continental nonstop operating overlaps); (ii) nonstop-one-stop overlaps with a combined (including A++) market share above 25% and an increment of at least 2% (for United and Continental); (iii) one-stop-one-stop overlaps with a combined (including A++) market share above 25%, an increment (for United and Continental) of at least 2% and at least 30,000 passengers a year (as all affected routes are long haul routes).

[27] As regards the market data that are used in the route-by-route competitive assessment below, all bookings on one-stop flights on a particular O&D route will be included within the relevant market and taken into account in the competitive assessment for the affected routes. In any event, this does not change the analysis as one-stop flights with a long connecting time account only for a very small part of the overall market.

[28] The only exception is the Washington-Geneva route where the increment for non-premium passengers is [5-10]%.

[29] Washington-Brussels: British Airways: [5-10]% for all passengers ([5-10]% for premium and [5-10]% for non premium passengers); Delta: [5-10]% for all passengers ([0-5]% for premium and [5-10]% for non premium passengers). Washington-Rome: combined market share of Delta, Air France and KLM, taking into account their transatlantic joint venture: [10-20]% for all passengers ([5-10]% for premium and [10-20]% for non premium passengers); British Airways: [5-10]% for all passengers ([5-10]% for premium and [5-10]% for non premium passengers). New York-Hamburg: Delta, Air France and KLM: [10-20]% for all passengers ([5-10]% for premium and [10-20]% for non premium passengers); British Airways: [5-10]% for all passengers ([5-10]% for premium and [5-10]% for non premium passengers).New York-Oslo: Delta, Air France and KLM: [10-20]% for all passengers ([0-5]% for premium and [10-20]% for non premium passengers); SAS: [5-10]% for all passengers ([10-20]% for premium and [5-10]% for non premium passengers); Finnair: [10-20]% for all passengers ([5-10]% for premium and [10-20]% for non premium passengers); British Airways: [5-10]% for all passengers ([5-10]% for premium and [5-10]% for non premium passengers).

[30] Washington-Zurich: British Airways: [0-5]% for all passengers ([0-5]% for premium and [0-5]% for non premium passengers); Delta: [0-5]% for all passengers ([0-5]% for premium and [0-5]% for non premium passengers); American Airlines: [0-5]% for all passengers ([0-5]% for premium and [0-5]% for non premium passengers); Air France: [0-5]% for all passengers ([0-5]% for premium and [0-5]% for non premium passengers).Washington-Geneva: British Airways: [5-10]% for all passengers ([10-20]% for premium and [5-10]% for non premium passengers); Air France: [5-10]% for all passengers ([5-10]% for premium and [5-10]% for non premium passengers); Delta: [0-5]% for all passengers ([0-5]% for premium and [0-5]% for non premium passengers).

[31] The route London-Cleveland has become a one-stop/one-stop overlap route as Continental has ceased operating a nonstop service to London in 2009. There are only [0-20,000] passengers annually on this route, and this route is therefore not assessed as it falls below the 30,000 annual passengers filter.

[32] The merged entity will become the main player on [5-10]% out of these 16 routes. However, on each of these [5-10]% routes, it will face competition from at least two players (and in most cases three or four) with a market share above 10%.