

Mergers: Commission approves the acquisition of Flybe by Connect Airways, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the acquisition of UK regional air carrier Flybe by Connect Airways, a consortium by Virgin Atlantic, Stobart Aviation and Cyrus. The decision is conditional on full compliance with commitments offered by Connect Airways.

Today's decision concerns the proposed acquisition by Connect Airways of (i) Flybe, (ii) Propius Holdings Ltd ("Propius", Stobart Aviation's aircraft leasing business) and (iii) Stobart Air Unlimited Company ("Stobart Air", Stobart Aviation's operating airline business).

Connect Airways is a consortium founded by Virgin Atlantic, Stobart Aviation and Cyrus. Through the consortium, the three companies will jointly control Flybe, Propius and Stobart Air following the merger.

The Commission's merger investigation

The Commission investigated the impact of the proposed transaction on the market for air transport of passengers on routes from British airports to other European airports as well as some intra-UK routes.

The Commission's investigation found that the transaction, as initially notified, would have led to quasi-monopolies on two direct European routes, namely Birmingham – Amsterdam and Birmingham – Paris.

This quasi-monopoly situation would result from Air France-KLM acquiring indirect control over Flybe, via its joint control over Virgin Atlantic. The Commission approved the joint acquisition of Virgin Atlantic by Air France-KLM, Delta and Virgin group in February 2019. The Commission also noted that entry of competitors into these routes would be difficult, considering that both Amsterdam Schiphol and Paris Charles de Gaulle airports are very congested airports.

The Commission also investigated the effects of the transaction on several other markets, such as passenger air transport to/from Amsterdam Schiphol airport, cargo air transport services, ground-handling services or airport infrastructure services but did not find competition concerns in any of these.

The proposed remedies

To address the competition concerns identified by the Commission with regard

to the Birmingham – Amsterdam and Birmingham – Paris routes, Connect Airways offered a set of commitments.

Connect Airways committed to the release of five daily slot pairs at Amsterdam Schiphol airport and three daily slot pairs at Paris Charles de Gaulle airport. Under the proposed commitments, these slots will be released to competing airlines that want to fly the Birmingham – Amsterdam and Birmingham – Paris routes.

The commitments fully address the competition concerns identified by the Commission regarding Connect Airways' acquisition of Flybe. The Commission therefore concluded that the proposed transaction, as modified by the final commitments, would no longer raise competition concerns. This decision is conditional upon full compliance with the commitments.

The Commission's derogation decision of 21 February 2019

Under the EU Merger Regulation, companies have the obligation not to implement a notifiable transaction before it has been declared compatible with the common market (Article 7(1) of the EU Merger Regulation). This serves to avoid that competition could be harmed beyond repair before the Commission has taken its decision. At the same time, EU merger rules enable the Commission to give a temporary approval for certain parts of a transaction (on the basis of Article 7(3) of the Merger Regulation) in a way that does not harm effective competition, and in order to avoid negative effects for consumers.

On 21 February 2019, the Commission granted Connect Airways such a derogation. As a result, Connect Airways was allowed to acquire Flybe's shares prior to the merger clearance, subject to strict conditions, in particular related to voting rights. The derogation decision helped prevent flight cancellations to the detriment of consumers and helped avoid staff layoffs, while the merger review was ongoing.

Companies and products

Flybe, based in the UK, is a British regional airline with a focus on short-haul, point-to-point flights. It currently operates 190 routes serving 12 countries from 73 departure points in the United Kingdom and other European countries.

Cyrus, based in the US, is an investment adviser and an investor in public and private airlines.

Stobart Group, based in Guernsey, is active in aviation and infrastructure markets, including (i) operating regional airline Stobart Air and (ii) developing London Southend Airport.

Virgin Atlantic, is the ultimate holding company of international passenger airline Virgin Atlantic Airways and international tour operator Virgin Holidays. Virgin Atlantic is currently controlled by Virgin Group and Delta

Air Lines. On 12 February 2019, the Commission cleared unconditionally the proposed acquisition of joint control by Virgin Group, Delta Air Lines and Air France-KLM over Virgin Atlantic.

Air France-KLM, based in France, is the holding company of Air France, the French national carrier airline and KLM, the Dutch national carrier airline. The company provides passenger air transport services, cargo air transport services and maintenance, repair and overhaul services.

Merger control rules and procedures

The proposed transaction was notified to the Commission on 14 May 2019.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede competition in the European Economic Area or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II). If commitments are proposed in Phase I, the Commission has 10 additional working days, bringing the total duration of a Phase I case to 35 working days.

More information will be available on the [competition](#) website, in the Commission's [public case register](#) under the case number [M.9287](#).