

Mergers: Commission opens in-depth investigation into joint ventures proposed by Boeing and Embraer

The European Commission has opened an in-depth investigation to assess the proposed creation of two joint ventures by aircraft manufacturers Boeing and Embraer, under the EU Merger Regulation. The Commission is concerned that the transaction may reduce competition as regards commercial aircraft.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *“Markets for commercial aircraft need to function well to deliver innovative and efficient products to customers at a fair price. Therefore, with our in-depth investigation, we want to make sure that mergers in commercial aircraft do not significantly reduce effective competition on prices and product development.”*

The planned transaction consists in the creation of:

(i) a joint venture solely controlled by Boeing that would take over Embraer’s global commercial aircraft business (product development, production, marketing, services), and

(ii) a joint venture jointly controlled by the two companies that would be in charge of the marketing of the Embraer KC-390 military aircraft.

The parties compete mainly in the markets for commercial aircraft. **Boeing** is besides Airbus one of the two leading globally active manufacturers of commercial aircraft, in particular as regards single-aisle and twin-aisle large commercial aircraft. Within the single-aisle market (100-225 seats), Boeing offers the 737 MAX family of aircraft. **Embraer** is the leading globally active manufacturer of regional jets and offers the E2 family of aircraft, which serve both the regional jet market (below 100 seats) and the lower end of the single-aisle market.

The Commission preliminary competition concerns

At this stage, the Commission is concerned that the proposed transaction may remove Embraer as the third largest global competitor in the already highly concentrated commercial aircraft industry. Potential entrants from China, Japan and Russia seem to face high barriers to entry and expansion and may be unable to replicate within the next five or even ten years the competitive constraint currently exerted by Embraer. The transaction may therefore result in higher prices and less choice.

In particular:

- As regards the segment for small single-aisle commercial aircraft (100-150 seats), Boeing and Embraer have an aircraft offering that appears to target, at least to a certain extent, the same demand

and customers. While they face important competition from Airbus, Boeing and Embraer also seem to engage in head-to-head competition as regards price and other parameters in important aircraft purchasing campaigns globally and in the European Economic Area (EEA).

- As regards the overall single-aisle market (100-225 seats), Embraer has been steadily expanding its customer base as well as its technical and commercial capabilities to bring new aircraft models to the market. Despite Embraer's comparatively small market share it also seems to exert some price constraint on the market leaders Boeing and Airbus even beyond the boundaries of the lower 100-150 seats segment. The transaction may therefore eliminate a small but important competitive force in the concentrated overall single-aisle market.

The Commission will now carry out an in-depth investigation into the effects of the proposed transaction to determine whether it is likely to significantly reduce effective competition.

The transaction was notified to the Commission on 30 August 2019. Boeing and Embraer have decided not to submit commitments during the initial investigation to address the Commission's preliminary concerns. The Commission now has 90 working days, until 20 February 2020, to take a decision. The opening of an in-depth investigation does not prejudice the outcome of the investigation.

Companies and products

Boeing, based in the US, designs and manufactures large commercial aircraft and defence, space and security systems. It also provides aftermarket services.

Embraer, based in Brazil, designs and manufactures regional and small commercial aircraft, business executive jets and military aircraft.

Merger control rules and procedure

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 effective competition in the EEA 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 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are two on-going phase II merger investigations: the [proposed acquisition of Lotos by PKN Orlen](#) and the [proposed acquisition of Bonnier Broadcasting by Telia Company](#).

More information will be available on the competition [website](#), in the Commission's public [case register](#) under the case number [M.9097](#).