

# / Code Shares: Anti-competitive by any other name?

COMPETITION LAW IN THE TRANSPORT SECTOR

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# / Types of Code Share Agreements (1)

## ➤ **Operations**

- ▷ Parallel/reciprocal
- ▷ Unilateral

## ➤ **Overlap**

- ▷ Wing-to-wing
- ▷ Behind-and-beyond routes

## ➤ **Sales type**

- ▷ Hard-block
- ▷ Soft block
- ▷ Freesale

## ➤ **Type of agreement**

- ▷ Code sharing within an alliance or another cooperation
- ▷ Stand-alone code share

# / Types of Code share Agreements (2)

## ➤ **Compensation mechanism**

- ▷ Fixed rate
- ▷ Proration
- ▷ Revenue or profit sharing/metal neutral JVs

## ➤ **Exclusivity**

- ▷ Exclusive code shares
- ▷ Non-exclusive code shares

## ➤ **Ancillary benefits**

- ▷ Accrual of miles to FFP of codeshare partner
- ▷ Lounge access
- ▷ Upgrade possibilities
- ▷ ...

# / Competition Concerns

## **Authorities were or are concerned about**

- Price alignment
  - ▷ Information exchange between parties
  - ▷ Direct cost alignments
- Capacity reductions
  - ▷ Re-scheduling can lead to fewer flights
- Discrimination of competing airlines
  - ▷ Discriminatory access to capacity
  - ▷ Discriminatory proration
  - ▷ Exclusive code shares

=> These concerns vary depending on the type of codeshare agreement.

# / Recent EU Cases

- **DG Comp sent a Statement of Objections to SN/TAP for their code share agreement on BRU-LIS, alleging**
  - ▷ Discussion to reduce capacity (number of seats) and alignment of their pricing policy
  - ▷ Granting each other unlimited rights to sell seats on each other's flights on the route (where they had previously competed)
  - ▷ Implementing these arrangements by actually reducing capacity, completely aligning their fare structures and ticket prices
- **DG Comp announced that it terminated its investigation into LH/TK's code share agreement on FRA-IST**
  - ▷ Carriers did not have full marketing rights to each other's seat inventory
  - ▷ Applied differing pricing strategies
  - ▷ Code share agreement accounted for only a marginal share of the parties' sales on the routes of concern

See DG Comp press release, IP/16/3563, 27 October 2016

# / Factors to consider

## ➤ **Market shares**

- ▷ Traditional O&D approach
- ▷ Alternative approach possible?

## ➤ **Demand and service level on route**

- ▷ Thick routes are more likely to attract direct operations
- ▷ For thinner routes (reciprocal) code sharing can create a better service level (e.g. two daily flights)

## ➤ **Likelihood that code share partner enters route**

- ▷ Is every code share partner a potential entrant?
- ▷ Regulatory hurdles
- ▷ Economic incentive

# / Efficiencies

## **Efficiencies also vary depending on type of code share agreement**

- Extended network
  - ▷ Code shares on behind-and-beyond routes
- Better connectivity
  - ▷ For all types but to different degrees
- No double marginalization
  - ▷ Especially for JVs
- Carrier combinability
  - ▷ All types
- Potentially higher seat load factors due to increased feeder traffic
  - ▷ all code share agreements

# / Assessment

- A deeper cooperation can cause more competition concerns...
  - ▷ cost and price alignment
  - ▷ capacity reduction
- ... but can also create more efficiencies
  - ▷ favorable scheduling
  - ▷ larger customer choice



# / Example: behind-and-beyond code shares

- Concerns

- ▷ Beneficial pro-rate agreements might foreclose competitors relying on feeder traffic

- Efficiencies

- ▷ „Online“ ticket for passengers
- ▷ Extended network carriage
- ▷ Incentive to schedule flight to minimize connection times

# / Example: wing-to-wing hard-block code shares with fixed rate

## ➤ Concerns

- ▷ Price alignment (risks with fixed rate are reduced compared to pro ration)
- ▷ Capacity reduction

## ➤ Efficiencies

- ▷ Improved scheduling (potential to ensure daily services)
- ▷ Better connectivity
- ▷ Option to combine carriers for outbound and return journey

# / Example: Metal neutral JV

- Concerns:

- ▷ Revenue or profit sharing leads to increased price transparency
- ▷ Potential spill-over effects
- ▷ Potential capacity effects

- Efficiencies:

- ▷ Improved scheduling
- ▷ Improved connectivity
- ▷ Regularly FFP access

/ Thank you for your attention!

## Questions & Answers

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