

JCRA Media Release

27 October 2009

JCRA Issues Fine under Jersey's Competition Law

German multinational Lufthansa AG fined £25,000.00 for failing to comply with Jersey's Competition Law concerning mergers & acquisitions

The Jersey Competition Regulatory Authority ("JCRA") has fined Lufthansa AG ("Lufthansa"), a company headquartered in Cologne, Germany, £25,000.00 for failing to comply with the Competition (Jersey) Law 2005 (the "Law") concerning its acquisition of the UK airline British Midland PLC ("BMI"). This is the fourth fine the JCRA has issued under the Law, and highest fine to date.

The fine concerns a procedural infringement of the Law, arising from an acquisition of BMI by Lufthansa that required formal notification to, and approval by, the JCRA prior to its completion. The requirement is based on the pre-existing business activities in Jersey of BMI's subsidiary airline, bmibaby. The facts available to the JCRA indicate that Lufthansa acquired sole control of BMI on 1 July 2009, but the acquisition was never notified to the JCRA, even though the JCRA previously had contacted Lufthansa in November 2008 and informed it of Jersey's merger approval requirements. As a result of Lufthansa's infringement, the JCRA did not have an opportunity to assess the potential competitive effects of this acquisition in Jersey.

Chuck Webb, the JCRA's Executive Director, states:

"The JCRA is only able to protect Jersey consumers from the adverse effects of mergers and acquisitions resulting in a substantial lessening of competition if the JCRA receives timely notifications as required by the Law. Any failure to notify the JCRA regarding a merger or acquisition that meets the thresholds therefore undermines the effectiveness of the Law as it was established by the States of Jersey."

Under the Law, infringements are punishable by fines of up to 10% of a company's turnover during the period of the infringement. In addition, the JCRA may order companies to unwind mergers and acquisitions completed in violation of the Law's requirements. Because the facts of this case indicate that the violation was solely procedural, the JCRA concluded that the most appropriate and proportional remedy was an administrative fine. Mr Webb concludes:

“Multinational companies operating in Jersey need to be aware of the merger approval requirements under Jersey's Competition Law. Because Jersey falls outside of both the United Kingdom and the European Union, merger filings with the OFT or DG Competition are not effective under the Law in Jersey. Also, unlike in the UK, in Jersey merger filings are mandatory for transactions that satisfy a merger threshold. The JCRA stands ready to assist companies in applying Jersey's merger thresholds to particular transactions, with the goal of avoiding these types of infringements in the future”

Pursuant to the JCRA's decision, Lufthansa must pay the penalty by 15 January 2010. As required by the Law, the JCRA will transfer the money it receives from this penalty to the States of Jersey.

A copy of the JCRA's decision in this matter may be obtained from the JCRA's website, www.jcra.je. All enquiries should be directed to the JCRA's Executive Director, Chuck Webb, on +44 (0)1534 514990.

About the JCRA

The JCRA is an independent authority established by the States of Jersey to enforce Jersey's competition law and regulate its telecommunication and postal sectors. In each of these areas, the JCRA's primary mission is to promote consumer welfare through efforts that encourage lower prices and greater choice and innovation in the goods and

services available in Jersey. The JCRA is recognized internationally as a leading voice in the application of competition law and policy in small economies.

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