

Competition Act 1998

Decision of the Director General of Fair Trading

No CA98/19/2002

The Association of British Travel Agents and British Airways plc

11 December 2002

(Case CE/1471-02)

SUMMARY

The Director General of Fair Trading (the Director) has concluded that in reducing the booking payments it makes to travel agents for short haul flights British Airways plc (BA) has not infringed the prohibition imposed by Section 18 of the Competition Act 1998 (the Act).

The Director's investigation was initiated by a complaint made by the Association of British Travel Agents (ABTA) on behalf of its members. ABTA alleged that BA was abusing its dominant position in the market for air travel agency services in the UK by making excessively low booking payments that do not allow travel agents to cover their costs. ABTA also argued that, if travel agents charged customers an additional service fee, customers would be encouraged to book their tickets on-line at BA's website instead of through a travel agent.

The Director has considered whether BA could be abusing a dominant position by exploiting any buyer power that it might have in respect of the purchase of travel agency services in order to obtain those services at excessively low prices. He has also considered whether it would be an abuse of a dominant position for BA to make low booking payments which, if travel agents chose to supplement these payments by charging customers service fees, would result in the total cost of tickets through travel agents being higher than the price available through BA's website.

The Director has concluded that it would not be abusive for the booking payments made to travel agents by BA to be set at a level that does not cover the full costs incurred by travel agents in booking BA tickets since, as with any other provider of retail services to consumers, travel agents can recover their costs from end consumers through a mark-up or service fee.

The Director has also concluded that it would not be abusive for BA's tickets to be available via on-line bookings through BA's website at a lower overall cost to customers than booking through a travel agent as costs and service levels differ between distribution methods and a price difference would not eliminate competition between the different methods of distributing air tickets.

The Director has therefore decided to close the case with a finding that, whether or not BA is dominant in any relevant market, in reducing the booking payments it makes to travel agents for short haul flights from £6 to £2.50 for economy tickets and from £11 to £5 for premium tickets BA has not infringed the prohibition imposed by Section 18 of the Act.

I THE FACTS

The complaint

- 1 The case results from a complaint made by ABTA, on behalf of its members, concerning BA's decision to reduce the booking payments it makes to travel agents for short haul flights. From 1 June 2002 BA reduced these payments from £6 to £2.50 for economy tickets and from £11 to £5 for premium tickets.¹
- 2 ABTA argues that the reduced booking payments do not cover the costs incurred by travel agents in selling tickets to customers. It has provided the Director with a report by consultants that suggests that the average cost of issuing an airline ticket is around 35.50 Euros.² ABTA has argued that BA is obliged, by virtue of its alleged dominant position, to pay a reasonable level of remuneration.
- 3 ABTA has also claimed that customers would be resistant to travel agents charging a service fee on top of the fare and that attempts to do so would drive passengers to purchase their tickets through on-line bookings from BA's website. ABTA argues that BA should not be able to reduce payments to travel agents simply because it wishes to become more active within an area of travel agents' business, namely the distribution of air tickets.
- 4 ABTA has also claimed that an advertising campaign which contains the text 'For these ... fares book at ba.com' and 'alternatively visit your travel agent, or a British Airways travel shop where supplements will apply' is designed to lead consumers to expect to be charged more if they book through travel agents and indicates that BA is looking to drive customers to its website to bypass the travel agency network.

¹ Payments for long haul tickets remained at £11 for economy and £20 for premium tickets. In addition to these booking payments, BA makes a money collection payment to travel agents of 1.25% of the price of the ticket. BA switched from paying a commission based on a percentage of the ticket price to making a flat rate booking payment in April 2001.

² Deloitte Consulting (2000) *Scheduled Air Product Distribution Costs Study*. This report was commissioned by the Guild of European Business Travel Agents and the Group of National Travel Agents and Tour Operators Associations within the EU and additional funding was provided by the European Commission.

The parties

- 5 ABTA is a trade association that represents over 2,000 travel agents and tour operators in the United Kingdom.
- 6 BA's principal activities are the operation of international and domestic scheduled air services for the carriage of passengers and cargo. It operates flights to 159 destinations in 74 countries. It is a member of the **oneworld** alliance which serves 551 destinations in 131 countries.³ BA distributes its air tickets through travel agents, its website, its own travel shops⁴ and reservations staff.

II LEGAL AND ECONOMIC ASSESSMENT

Introduction

- 7 The Chapter II prohibition is set out in Section 18(1) of the Act, which states:
- 'any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.'*
- 8 In order to establish that an infringement of the Chapter II prohibition has occurred, the Director must show that the undertaking⁵ concerned:
- holds a dominant position in a relevant market; and
 - has abused that dominant position; and that
 - the abusive conduct may affect trade within the UK.
- 9 In the application of the Chapter II prohibition the Director is required to ensure that there is no inconsistency with either the principles laid down by the EC Treaty and the European Courts or any relevant decision of the European Courts. The Director must also have regard to any relevant decision or statement of the European Commission (Section 60 of the Act).

³ This information was obtained from British Airways website.

⁴ In March 2001 British Airways Travel Shops Limited had 23 outlets (Mintel, *Travel Agents*, Retail Intelligence May 2002.)

⁵ The European Court of Justice, in its judgment in *Höfner & Elser*, stated '*in the context of competition law, ... the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*' (Case C-41/90 *Höfner & Elser v. Macrotron* [1991] ECR I - 1979 at paragraph 21).

The Relevant Market

THE PRODUCT MARKET

- 10 As noted in paragraph 6 above, BA provides air transport services to passengers, and it distributes its air tickets through travel agents, its website, its own travel shops and reservations staff.
- 11 Travel agents sell various products such as package holidays and air tickets to customers and, in some cases, provide customers with a package of products and services (for example, the agent may make accommodation and car hire reservations for the customer at the same time as selling them air tickets). Providers of the services sold by travel agents often, but not always, pay commission to travel agents. If the service provider does not pay a commission, the travel agent has to charge a mark-up to cover the costs it incurs in making the sale or reservation.
- 12 ABTA argues that the relevant market is that for air travel agency services in the UK, expressly adopting the European Commission's market definition in the *Virgin/British Airways* decision.⁶ ABTA also argues that BA is dominant or has substantial market power on a number of routes between UK airports and between a UK airport and an airport abroad.
- 13 In the *Virgin/British Airways* decision the Commission dealt with a complaint that BA's commissions foreclosed other airlines from marketing their services through travel agents. The Commission concluded that the practice by airlines of purchasing marketing and distribution services from travel agents creates a market for air travel agency services. The Commission also concluded that it was not appropriate to aggregate the different services performed by travel agents as the 'nature of travel agency services' is such that travel agents must offer all services rather than deciding to concentrate on one service or another⁷ and because these services are provided under different conditions of supply and demand.⁸ The Commission decided that BA had a dominant position in this market as a result of the buyer power that it was able to exercise as a major provider of air transport services and hence a major purchaser of air travel agency services in the UK.⁹

⁶ Case IV/D-2/34.780 *Virgin/British Airways* OJ [2000] L 30/1, [2000] 4 CMLR 999, on appeal to the CFI Case T-219/99 *British Airways v. Commission*.

⁷ *Ibid.*, paragraph 75.

⁸ *Ibid.*, paragraph 76.

⁹ *Ibid.*, paragraphs 90 and 91.

14 In assessing cases in markets which have already been considered by the European Commission the Director will have regard to how the Commission analysed the market definition. Nevertheless, although the analysis of market definition in previous cases may provide useful information, the definition used may not always be the correct one to use in future cases. The competitive conditions in a market may change over time or vary between different locations, making substitution either easier or more difficult.¹⁰ Market definition can also be affected by the nature of the competition issue¹¹ and the identity of the parties involved.¹² Because of these factors, it is a principle of EC law, established by the Court of First Instance (CFI), that the market must always be defined in any particular case by reference to the facts prevailing at the time and not simply by reference to precedents. The CFI has stated that in the course of any decision applying Article 82:

*'the Commission must define the relevant market again and make a fresh analysis of the conditions of competition which will not necessarily be based on the same considerations as those underlying the previous finding of a dominant position.'*¹³

15 As noted at paragraph 13 above, in the *Virgin/British Airways* decision, BA was found to be abusing its buyer power in order to *encourage* travel agents to sell BA tickets in preference to those of other airlines, thereby foreclosing the market for travel agency services to those other airlines. In this case, the allegation is the reverse - ABTA has argued that the reduction in booking payments *discourages* travel agents from selling BA tickets. ABTA alleges that, as well as exploiting travel agents, this restricts competition between different methods of distributing tickets in the downstream market.

16 The markets that are relevant in this case therefore appear to be:

- the up-stream market(s) for the supply of passenger air transport services, where BA may or may not possess market power;
- the market(s) for travel agency services, where the Commission decided that BA was a dominant purchaser of air travel agency services; and

¹⁰ OFT Guideline on *Market Definition* (OFT 403 March 1999) paragraph 5.15 and Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03) paragraph 12.

¹¹ OFT Guideline on *Market Definition* (OFT 403 March 1999) paragraphs 5.18 to 5.20.

¹² OFT Guideline on *Market Definition* (OFT 403 March 1999) paragraph 5.17.

¹³ Joint Cases T-125/97 and T-127/97 *Coca-Cola v Commission* [2000] A11 ER (EC) 460, at paragraph 82.

- downstream market(s) in which travel agents and BA sell air tickets, where it is alleged that BA's conduct is restricting competition from travel agents.

17 Given the Director's findings on the allegedly abusive behaviour of BA (see paragraphs 27 to 47), it is not necessary to reach conclusions on the scope of each of these markets. The Director has therefore left open the questions of:

- whether the up-stream passenger air transport market(s) should be defined on the basis of individual routes or more broadly, for example as all passenger air transport services sold in the United Kingdom;
- whether the travel agency services market should be defined as 'air travel agency services', as in the *Virgin/British Airways* decision, or more widely, for example as 'all travel agency services' on the grounds that it may be possible for travel agents to switch their provision of travel agency services to other purchasers (for example, package holiday companies) in response to the change in the terms on which BA offers to purchase their services; and
- whether or not there is more than one downstream market in which travel agents and BA sell air tickets, for example because on-line sales by airlines through their websites may not compete with the service provided by travel agents.¹⁴

THE GEOGRAPHIC MARKET

18 In the *Virgin/British Airways* decision the Commission concluded that the relevant geographic market was the United Kingdom as UK customers purchase their tickets from UK travel agents, travel agents operate on the basis that the markets they are serving are delineated on national boundaries and carriers market their services and purchase air travel agency services within the same boundaries. The Commission also noted that BA purchases air travel agency services on a country-by-country basis, even when dealing with a travel agent that operates in more than one country, and that BA applies different conditions

¹⁴ In some recent merger cases the Commission has considered whether on-line travel agency services and 'high street' travel agency services should be considered separate markets (Case COMP/M 2149 *T-Online/TUI/C&N International* (withdrawn 13/6/2001) and Case COMP/M 1812 *Telefónica Terra/Amadeus*, decision of 27 April 2000). In a press release on the joint venture between T-Online, TUI and Neckermann, the Commission stated that its preliminary investigation '*identified online travel agency services as a product market in its own right, distinct from traditional "bricks and mortar" travel agencies. Both demand- and supply-side elements support such conclusion: online-consumers can search and book trips any time, i.e. including outside regular shopping hours, and without leaving their home while, on the other hand, online suppliers face lower distribution costs*' (press release IP/01/670).

to its purchases of air travel agency services in the UK from those it applies elsewhere.¹⁵

- 19 Given the Director's findings on the allegedly abusive behaviour of BA (see paragraphs 27 to 47), it is not necessary to reach a conclusion on the appropriate geographic market definition.

Dominance

- 20 The European Court of Justice (ECJ) has defined a dominant position as:

*'a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.'*¹⁶

- 21 In assessing dominance the Director considers whether and to what extent an undertaking faces constraints on its ability to behave independently. Those constraints might, for example, be existing or potential competitors, or other constraints such as buyer power.

- 22 ABTA notes that in the *Virgin/British Airways* decision the Commission found BA to be dominant in the market for air travel agency services because BA's share of total sales transacted through the IATA Billing and Settlement Plan UK (BSPUK) in 1998 was 39.7 per cent, and this share was significantly greater than that of the second biggest seller, Virgin, whose share was 5.5 per cent.¹⁷ ABTA also highlights the Commission's comments that 'BA's position on the markets for air transport makes it an obligatory business partner for travel agents.'¹⁸

- 23 ABTA has provided further information, derived from a survey of its members, which indicates that sales of BA tickets account for a significant proportion of the revenue of UK travel agents. ABTA estimates that sales of air tickets through IATA BSPUK represent around 39 per cent of travel agents' turnover, and that BA tickets account for around 46 per cent of BSPUK sales. Therefore it estimates that BA ticket sales account for around 18 per cent of travel agents' turnover.

¹⁵ *Virgin/British Airways* (see footnote 6 above), paragraphs 78 and 79.

¹⁶ Case 27/76 *United Brands v EC Commission* [1978] ECR 207; [1978] 1 CMLR 429.

¹⁷ *Virgin/British Airways* (see footnote 6 above), paragraph 88.

¹⁸ *Ibid.*, paragraph 92.

- 24 ABTA also argues that BA's dominance in this market is demonstrated by the fact that BA is able unilaterally to decide to impose the reductions in booking payments on travel agents and that it appears not to be concerned that this may result in a fall in sales of BA tickets.
- 25 As noted above, ABTA also argues that BA is dominant or has substantial market power on a number of routes between UK airports and between a UK airport and an airport abroad.
- 26 Given the Director's findings on the allegedly abusive behaviour of BA (see paragraphs 27 to 47), it is not necessary to consider further whether BA has a position of dominance in a relevant market.

Abuse

- 27 The Director has considered whether BA could be abusing a dominant position by exploiting any buyer power that it might have in order to obtain travel agency services at excessively low prices. He has also considered whether structuring its booking payments to travel agents in such a way as to enable BA to sell tickets through its website at prices that may be lower than the total cost of those available through travel agents could constitute an abuse of a dominant position.

IS BA EXPLOITING BUYER POWER TO OBTAIN TRAVEL AGENCY SERVICES AT EXCESSIVELY LOW PRICES?

- 28 ABTA argues that BA is exploiting its dominant position in the market for air travel agency services by making excessively low booking payments to travel agents. It argues that BA is obliged, by virtue of the fact that it is a dominant purchaser of air travel agency services, to pay travel agents a reasonable level of remuneration. Although there have not yet been any cases in which the payment of excessively low prices has been found to amount to an abuse of a dominant position, it is clear from the case *CICCE v Commission*¹⁹ that such conduct is in principle capable of constituting an abuse.
- 29 BA has informed the Director that the booking payments made to travel agents have been set at a level that covers the costs of making a booking on-line. It recognises that other methods of distribution, such as sales made through call

¹⁹ Case 298/83 *CICCE v Commission* [1985] ECR 1105, [1986] 1 CMLR 486.

centres and travel agents, are likely to incur greater costs per sale. As a result, from 1 June 2002, BA's telephone sales, travel shops and ticket desks began charging customers a £10 fee for bookings to cover the additional costs incurred in distributing tickets by these methods.

- 30 Other 'full service' airlines have also adopted a similar approach to distributing their tickets. For example, SAS announced on 13 June 2002 that from 1 January 2003 it will 'apply net prices, while reducing prices by an amount equivalent to the previous commission' and 'at the same time SAS Airline and travel agencies will begin to charge for their services, as most Scandinavian travel agencies already do.'²⁰ The major US airlines (American Airlines, Continental Airlines, Delta Airlines, Northwest Airlines, United Airlines and US Airways) also moved to paying zero per cent commissions in March 2002.²¹
- 31 ABTA has argued that BA should be obliged to pay travel agents sufficient compensation to cover the costs they incur in issuing tickets on the grounds that BA has a dominant position in the purchase of air travel agency services. The Director notes that, aside from the question of BA's market power, it is questionable whether BA could impose excessively low booking payments since travel agents may be able to respond to this by switching their supply of travel agency services to other purchasers such as other airlines or perhaps package holiday providers or charter airlines. However, in any case, the Director has concluded that making booking payments that are insufficient to cover the costs incurred by travel agents in issuing tickets would not constitute an abuse of any dominant position that BA may have since travel agents are able to supplement the booking payment by charging passengers a service fee.
- 32 Travel agents act as agents on behalf of airlines, enabling airlines to make sales to those customers who are unwilling or unable to book with an airline direct or who prefer to use an intermediary. However, the fact that travel agents act on behalf of airlines does not diminish the fact that they also provide a service that is useful to passengers. Would-be passengers use travel agents, *inter alia*, for convenience, to obtain flight packages that are tailored to their specific requirements and to avoid the search costs that are incurred in finding out about different options direct from airlines and other providers. Therefore, while travel agents have traditionally received an agency payment from airlines, the Director

²⁰ Press release obtained from SAS's website.

²¹ Press releases obtained from American Airlines', Continental Airlines', Northwest Airlines', United Airlines' and US Airways' websites and various press reports including *Travel Weekly*, 14 March 2002.

considers that it is perfectly feasible for them to charge passengers a service fee.

- 33 Customers can be expected to base their purchasing decisions on the total cost of the ticket rather than on the basis of the individual elements of the cost. Therefore, provided that the total price is the same,²² customers' purchasing decisions are unlikely to be affected by whether they are charged an inclusive price by airlines, from which travel agents receive a payment, or a price for the fare plus a service fee to cover the booking costs. While, for presentational reasons, travel agents may have a preference for the former and airlines may have a preference for the latter, the end price to customers and the income received by travel agents is the same in either case.
- 34 ABTA has argued that customers will resist attempts by travel agents to charge service fees for booking airline tickets. It argues that, whereas customers accept that charges may be levied on passengers by travel agents for tickets for 'low cost' carriers and other forms of transport, consumer perceptions are that travel agents are already compensated by airlines for the services they provide in making bookings for 'full service' carriers.
- 35 The Director does not find this argument convincing. Even if customers currently assume that travel agents are fully compensated by airlines, ABTA has not explained why this perception could not change. Travel agents have been able to charge customers fees for other services that they provide, and it is not clear that services provided by 'full-service' airlines are sufficiently different as to mean that such charges would not be accepted in relation to them also. Indeed some travel agents have already introduced service fees for the sale of BA tickets following the replacement of commissions with booking payments in April 2001.
- 36 The issue of service fees was covered in the survey ABTA conducted of its members which was submitted to OFT. Of the travel agents who responded to ABTA's questionnaire, 55.8 per cent indicated that they already charge fees.²³ Respondents were not asked for details of the products or services for which they charge fees and only 30 (20 per cent of the sample) volunteered this information. Of these, 14 only charged fees for 'low cost' carriers and a further

²² The situation where the total price available through travel agents may be higher than that available through BA's website is considered at paragraphs 38 to 45 below.

²³ The questionnaire did not request details of turnover or employee numbers. It was therefore not possible to weight responses in order to calculate figures that better reflect the proportion of the UK travel agency market that currently charges fees.

four indicated that they did not currently charge for BA tickets. Six respondents indicated that they only charged for BA tickets.

- 37 The Director has therefore concluded that, whether or not BA has a position of dominance in a relevant market, the reduction of booking payments to a level at which they do not cover the costs that travel agents incur in booking tickets would not constitute an abuse of a dominant position. The Director considers that it is questionable whether BA could exploit travel agents by making excessively low booking payments since travel agents may be able to redirect their efforts to supplying travel agency services to other scheduled airlines and perhaps other purchasers such as package holiday companies. In any case, the Director does not consider that BA is obliged, simply by virtue of any market power that it may have as a buyer of travel agency services, to make booking payments to travel agents that cover the full cost they incur in issuing tickets since travel agents can supplement their income by charging service fees.

IS BA ABUSING A DOMINANT POSITION BY SETTING A LEVEL OF BOOKING PAYMENTS THAT ENABLES IT TO SELL TICKETS THROUGH ITS WEBSITE AT PRICES THAT MAY BE LOWER THAN THOSE AVAILABLE THROUGH TRAVEL AGENTS?

- 38 ABTA has argued that, if travel agents attempt to supplement the booking payment made by BA with a service fee levied directly on customers, sales will be diverted from travel agents to cheaper on-line bookings through BA's website. ABTA notes that in the *Commercial Solvents* case²⁴ the ECJ held that a dominant undertaking:

'cannot just because it decides to start manufacturing these derivatives (in competition with its former customers) act in such a way as to eliminate their competition.'

ABTA argues that BA similarly should not be able to reduce payments to travel agents simply because it wishes to become more active within an area of travel agents' business, namely the distribution of air tickets.

- 39 The *Commercial Solvents* case concerned the company's refusal to supply an input to a downstream competitor for use in the production of a drug. The refusal to supply would have eliminated the only serious competitor to Commercial Solvents in the downstream market. Subsequent case law on this point has considered whether it is an abuse for a dominant company to refuse to supply or to grant access to a service, facility or intellectual property right that is

²⁴ Cases 6 and 7/73 *Commercial Solvents* [1974] ECR 223, [1974] 1 CMLR 309.

essential to enable the non-dominant company to compete with the dominant company in a downstream market.²⁵

- 40 There does not need to be an outright refusal to supply for an abuse to occur. An offer to supply only on terms that the supplier knows to be unacceptable will be a constructive refusal to supply.²⁶ It is also an abuse for a firm that is dominant in an upstream market and also operates in a downstream market to charge competitors in the downstream market high prices for the input and thereby prevent them from competing. This practice is often referred to as a 'price squeeze' or a 'margin squeeze'.²⁷
- 41 The Director is not convinced that a price squeeze would be feasible in this market, although he has not reached a conclusion on this point. In any case, the Director does not consider that competition between travel agents and other methods of distributing air tickets would be eliminated if BA were able to sell tickets through its website at prices that may be lower than those available through travel agents.
- 42 Firstly, there are significant differences in the nature of 'on-line' distribution, particularly direct sales through an airline's own website, and distribution through travel agents. For example, when buying on-line it is the customers that search the available routes and schedules for a desired flight whereas travel agents provide this service for the customer. Also, travel agents provide a range of other services (such as hotel and car hire bookings) which customers may wish to arrange at the same time as they book their flight. In addition, in the *Virgin/British Airways* decision, the Commission underscored that 'the essence of the service provided by a travel agent and its ability to attract members of the public is that it can arrange travel by all means and via all carriers'²⁸ and an airline which sells its own tickets directly does not provide this range of services. These additional services provided by travel agents can be reflected in the price they charge and on-line sales through BA's website are not a sufficiently perfect substitute for sales through travel agents that tickets distributed under both methods need to be sold at identical or very similar prices.

²⁵ See, for example, *Sealink/B&I – Holyhead: Interim Measures* [1992] 5 CMLR 255.

²⁶ *Trans-Atlantic Conference Agreement (TACA)* OJ 1999 L95/1, [1999] 4 CMLR 1415 (on appeal, Cases T-191/98 etc, not yet decided).

²⁷ The European Commission found a price squeeze to be an abuse of a dominant position in the *Napier Brown/British Sugar* decision (*Napier Brown/British Sugar* [1988] OJ L284/41, [1990] 4 CMLR 196).

²⁸ *Virgin/British Airways* (see footnote 6 above) paragraph 32.

- 43 Secondly, the Director has not been convinced by ABTA's arguments that the loss of revenue obtained from selling BA tickets will result in some travel agents being unable to continue in business. As noted above, travel agents have already withstood the impact of a loss of revenue when BA switched from paying commissions to making booking payments and travel agents can supplement their income by charging passengers a service fee and may be able to switch their supply of travel agency services to other purchasers.
- 44 In addition, refusal to supply is not an abuse where there is an objective justification for the refusal. In this case there is an objective justification for tickets being available through BA's website at a lower cost to passengers than through travel agents in so far as this method of distribution (as noted in paragraph 29 above) is more efficient. It is therefore reasonable to expect those customers that choose to book through travel agents to pay more to cover these additional costs and to enjoy the corresponding benefit of the extra services that travel agents provide.
- 45 The Director does not therefore accept that BA could abuse a dominant position by setting a level of booking payments that enables it to sell tickets though its website at prices that may be lower than those available through travel agents. To the extent that any price difference reflects the additional costs and/or consumer benefits of distributing tickets through travel agents, there is an objective justification for the conduct. The Director also does not consider that any price difference between travel agents and BA's website would eliminate competition between different methods of distributing air tickets as travel agents will be able to supplement the booking payment they receive from BA with a service fee levied on consumers and the additional services provided by travel agents can be reflected in the price they charge for BA tickets.

CONCLUSION ON ABUSE

- 46 The Director has therefore concluded that, even if BA were dominant in a relevant market, the reduction in booking payments it makes to travel agents for short haul flights would not constitute an abuse of that dominant position. He does not consider that BA would be obliged, simply by virtue of any market power that it may have as a buyer of travel agency services, to make booking payments to travel agents that cover the full cost they incur in issuing tickets (or indeed any part of these costs) since travel agents can supplement their income by charging service fees and may be able to increase their supply of agency services to other purchasers.

47 It would also not be an abuse for BA to set the booking payments it makes at a level which, if travel agents chose to supplement this income by charging service fees, would result in the total cost of tickets through travel agents being higher than the price available through BA's website. Firstly, a difference in overall cost to passengers may reflect the difference in the costs and/or consumer benefits of distributing tickets via on-line bookings compared with distribution through travel agents. Secondly, competition in the distribution of air tickets will not be eliminated since travel agents will be able to supplement the booking payment they receive from BA with a service fee levied on consumers and the additional services provided by travel agents can be reflected in the price they charge for BA tickets.

III DECISION

48 On the basis of the facts and for the reasons set out above, the Director has decided that in reducing the booking payments it makes to travel agents for short haul flights from £6 to £2.50 for economy tickets and from £11 to £5 for premium tickets BA has not infringed the Chapter II prohibition.

49 In reaching this decision, the Director has taken the view that:

- there is no obligation on BA, simply by virtue of any market power it may have as a purchaser of travel agency services, to cover the costs incurred by travel agents. As with any other provider of retail services to consumers, travel agents can recover their costs from end consumers through a mark-up or service fee; and
- it is not necessary for BA to make booking payments to travel agents that enable agents to sell BA tickets at the same total price as is available on-line through BA's website. Travel agents provide a different ticket booking service from that provided on BA's website and incur a higher level of costs in providing this service, and this can be reflected in the prices they charge.

John Vickers
Director General of Fair Trading