

Notul Airport - Case Study for online Damages Directive training

I. INTRODUCTION

1. Notul is a seaside town on the North coast on Norland close to the border with the neighbouring EU member state of Wesland which has many picturesque tourist resorts on its North coast. After some years of a stagnant regional economy both sides of the border, a substantial EU grant was made to the Notul Town Council back in the 1980s that, alongside some long term borrowing, enabled the Council to develop a former military airfield as an international airport with flight offering access to tourist destinations either side of the border.
2. In the early years of its operation Notul promoted the use of the airport by subsidising landing fees and by allowing free access to buses and coaches from both sides of the border. Latterly the success of tourism has led the Notul Council to create a Norland registered trading subsidiary, Notul Airport Limited, which, in turn, has a Norland registered subsidiary called Notul Airport Bus Terminal Limited.
3. On the Norland side of the border both local bus services and chartered coach services were for a long time operated by another trading subsidiary of the Town Council, Notul Bus Services Limited. Notul Bus has long provided services connecting the airport to Notul resorts. Notul Bus was the subject of a management buy out in 2010.
4. On the Wesland side of the border, a Wesland registered company, Wesbus Services Ltd., they are the principal providers of bus services amongst the coastal resorts in Wesland and, until recently, provided scheduled bus services connecting Notul Airport to those resorts.
5. Wesbus Coaches Ltd. is a Wesland registered subsidiary company of the Wesbus Services Ltd and the principal providers of chartered coach services amongst the coastal resorts in Wesland and, until recently, provided most of the chartered coach services connecting Notul Airport to those resorts.
6. Gradually, as the airport became successful, subsidies declined, borrowing increased and fees for handling aircraft arrivals and departures, car parking, retail and catering rentals together with initially modest fees for access to the bus and coach stands made the airport a profitable venture for Notul Council.
7. In 2004, Wesbus expressed to the Norland NCA, its concern about the increasing fees for access to the bus and coach stands. Rather than face an investigation, Notul Town Council gave an undertaking to the NCA, for a five year period, that such fees would be fair, reasonable and non-discriminatory - that undertaking expired in 2009.
8. In 2010, the newly elected town council decided to sell off 51% of Notul Airport Limited to a Spanish registered company known as Multiple Airport Holdings. The new management, appointed by Multiple Airport Holdings, announced a significant increase in fees for access to the bus and coach stands but continued to allow open access on payment of the fees.
9. Wesbus complained to the Norland NCA who responded that, as a matter of administrative priority, that complaint would not be investigated.
10. In 2014, Notul Airport Bus Terminal Limited informed bus and coach operators that it had decided to award seven year franchises for each of bus and coach access to the airport and that the minimum bidding level would be such as to raise its income to at least twice the existing fee based level with a royalty of at least 20%.

11. In the event the bids were substantially identical and Notul Bus was chosen. The new franchise agreements in August 2015 granted:
 - a. exclusive rights to operate bus/coach services to and from the airport;
 - b. require the franchisee to pay a fee calculated as 20% of relevant revenues;
 - c. provide that that payment shall not be less than twice the income previously received by the airport for bus/coach services.
12. Notul Bus took advice that the new arrangement might infringe EU competition law and made a leniency application to the European Commission. At the point when the claims were made to the Notul Civil Court, the Commission had not started an investigation.

II. Claimants

13. The first and second initial claimants were Wesbus Services and Wesbus Coaches. In parallel, Wesbus, which alleges that the franchising process was biased against them as a non Norland group, sent complaints to the European Commission, to the Wesland NCA and to the Norland NCA. These three authorities have agreed that the Norland NCA should take the lead in any investigation.
14. The Wesbus companies argue that Notul Airport Bus Terminal Limited hold a dominant position in the market for the grant of rights to use the Airport land and infrastructure to operate bus and coach services from the Airport and that they have abused that dominant position contrary to Article 102 and that their agreement with Notul Bus infringes Article 101. They seek an injunction requiring access to be restored on fair, reasonable and non-discriminatory terms together with damages and costs.
15. The third claimants are Notul Bus. It also alleges that the approach to the franchising constituted an abuse of a dominant position and it also asks that the franchise agreement be declared void for infringing Article 102 by foreclosing the market. They also seek damages for overpayments and costs.
16. The fourth claimants are a major package tour intermediary known as PTO specializing in the Norland and Wesland markets but registered in Luxembourg. They provide a variety of virtual services for well known package tour companies who sell holidays in Norland and Wesland. Their services including booking hotels and chartering coaches that transfer passengers between Notul Airport and those hotels in Norland and Wesland. They have contractual relationships with the hotels and coach companies but pass through the costs of the coaches to tour operators and take a 10% commission on those costs. They seek damages for overpayments, loss of revenue opportunities and costs.
17. The fifth claimants, Packaged Holidays PLC, registered in England & Wales, are major sellers of packaged holidays, including holidays in Norland and Wesland. Packaged Holidays rely on PTO to procure chartered coaches to transfer their clients between the Airport and their hotels. Packaged Holidays do not have direct contracts with PTO or with the coach companies but contract indirectly through a Guernsey registered company, Packaged Contracting, it passes through the costs plus a commission. They seek damages for overpayments, loss of revenue opportunities and costs.

III. Defendants

18. The first group of defendants consists of:

- a. Notul Airport Limited and its wholly owned subsidiary;
- b. Notul Airport Bus Terminal Limited;
- c. The Spanish registered company known as Multiple Airport Holdings, which owns 51% of the shares in Notul Airport Limited; and
- d. Notul Town Council as owners of the remaining 49%.

19. Having regard to their claims under Article 101, the Wesbus companies have added Notul Bus as a fifth defendant.