NIKI continued

Written by Lukas Schmidt, Research Fellow at the Center for Transnational Commercial Dispute Resolution (TCDR) of the EBS Law School, Wiesbaden, Germany

The Spanish airline Vueling Airlines S.A. is still intending to acquire large parts of the NIKI business. Vueling is part of the European aviation group IAG, which also includes British Airways, Iberia, Aer Lingus and LEVEL. The provisional insolvency administrator of NIKI Luftfahrt GmbH, therefore, will continue to drive forward the sales process. Vueling has provided interim financing of up to € 16.5 million to finance the NIKI business until the closing of the purchase agreement. This funding is only sufficient for a few weeks.

Meanwhile, NIKI has lodged an appeal with the Federal Court against the ruling by the Regional Court of Berlin. Due to the legal complaint of the NIKI management against the decision, it does not have legal force yet. The preliminary insolvency proceeding in Germany therefore continues.

NIKI is expected to apply for the opening of secondary insolvency proceedings in Austria by the end of the week, as well. According to the provisional insolvency administrator of NIKI this procedure is an important step to ensure the orderly processing of NIKI in Austria. In addition, the purchase agreement for the NIKI business should now be secured at short notice via this Austrian secondary process (see here).

It remains to be seen how the German Federal Court deals with the question of the rebuttal of the assumption that NIKI's COMI is located in Austria (the place of its registered office). It is even possible that the ECJ has to deal with this question for a second time after the Eurofood IFSC (Case C-341/04) case. As we will probably see a secondary proceeding commenced in Austria (NIKI seems to be one of the rare cases where the insolvency administrator of the main proceeding finds the commencement of a secondary proceeding useful for the success of the administration) we might even witness the application of some of the new rules of the EIR on the cooperation and coordination of main and secondary proceedings.