COOPERATION AGREEMENTs (AIRLINES): THE AIR FRANCE CASE

Subject: Cooperation agreements

Industry: Airlines

Parties: Air France
Alitalia

Source: Commission Statement IP/02/966, dated 1 July 2002

(Note. Although the Commission tends to look kindly on cooperation agreements, it rightly judges that there are factors which may offset the usual advantages - "connectivity", "cost savings and synergies", as they put it, - and jeopardize free access to the market. The outcome of the present case therefore hangs in the balance and may well depend on the reactions by third parties to the Commission's announcement in the Official Journal, inviting comments.)

The Commission has informed Air France and Alitalia that it has serious doubts that their co-operation agreement can be approved in its current form. Overall, the alliance, which was notified for clearance at the end of last year, contributes to technical and economic progress, given the improvements in connectivity and the cost savings and synergies achieved by the parties. However, the agreement will significantly reduce competition on key routes between France and Italy, including between Paris, on the one hand, and Rome and Milan, on the other hand, which would be against the interests of passengers on these routes. The Commission invites Alitalia and Airfrance to reflect on how best these problems can be addressed with a view to reaching a solution allowing the alliance to go through while protecting consumers and respecting the rules on competition.

Bilateral co-operation agreements in the airline sector and especially between national flag carriers often eliminate competition on the routes concerned as the companies agree on virtually everything from capacity and flight schedules to pricing. The Commission's practice in this field has shown that such restrictive agreements can be allowed only if conditions are created to preserve consumer choice and competitive prices.

In November 2001, Air France and Alitalia notified to the Commission a number of co-operation agreements and requested an exemption under competition rules, more precisely under Regulation 3975/87, the regulation which spelt out the application of the European Community's antitrust rules to the air transport sector. The agreements pursue the double aim of integrating Alitalia into the world-wide SkyTeam alliance created by Air France and Delta Air Lines, the United States's third largest airline, and of building a far-reaching, long-term strategic bilateral alliance based on close co-operation between the parties. The agreements would also interconnect the two airlines' respective hubs at Paris-Charles de Gaulle, Rome Fiumicino and Milan Malpensa.

The current co-operation agreement runs the risk of significantly restricting competition between Air France and Alitalia, as they will agree on passenger capacity, flight frequencies and prices to be charged on flights between France and Italy. As for other bilateral aviation pacts in the past, the agreements also involve code-sharing, sharing of earnings and the pooling of frequent flyer programmes.

Air France and Alitalia put together will control practically the whole of the traffic on a number of routes between the two countries, including Paris-Rome, Paris-Milan and Paris-Venice, where the two airlines have very high market shares. The pooling of the forces between the two flag carriers will also make it difficult for third parties to enter the routes concerned in the future.

On May 8 this year, the Commission published a summary of the co-operation agreements in the Official Journal of the European Communities, giving third parties the opportunity to submit their views. Under Regulation 3975/87, publication of the summary triggers a 90-day period within which the Commission must decide whether to raise serious doubts or not. If it does not raise serious doubts, the agreement is automatically exempted for a period of six years from the date of publication. Meanwhile, the Commission has informed the parties that it does indeed have competition concerns and cannot, at this stage of the procedure, grant an antitrust exemption. This does not prejudge the outcome of the procedure nor does it prejudge the companies' right to defend their position.

Commissioner Mario Monti has said: "The final outcome of the case will depend on Air France's and Alitalia's response and particularly on their ability to create conditions favouring the emergence of new competitors on the affected routes, failing which passengers would have little or no choice and potentially higher prices. I invite the two airlines to start discussions with the Commission on possible remedies as soon as possible".

The Commission has already examined many bilateral alliances between European flag carriers; and a solution has always been found to ensure that consumers would have enough choice of services and competitive prices. The most recent example was given by the partnership agreement between Lufthansa and Austrian Airlines where the two airlines agreed, among other things, to liberate landing and take off rights at their respective hubs in a sufficient number and at times attractive enough to encourage other carriers to operate flights between Austria and Germany where a monopoly would been created. (See the report on the following page.) ■

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