## COOPERATION AGREEMENTS (AIRLINES): THE KLM CASE

Subject: Cooperation agreements

Industry: Airlines

Parties: KLM / North West
Lufthansa / SAS / United

Source: Commission Statement IP/02/1569, dated 29 October 2002

*(Note. Both the Commission and the US anti-trust authorities are concerned about the risks that transatlantic airline alliances may have on routes and slots; and this report brings readers up-to-date on the current situation not only of the airlines listed above, but also British Airways, American Airlines, Swissair, Austrian Airlines, Delta, Air France, Alitalia, CSA, Korean Air and AerMexico.)*

The Commission has decided to close its investigations into the alliances between KLM and NorthWest, on the one hand, and between Lufthansa, SAS and United Airlines, on the other. In the latter case, the airlines successfully addressed concerns about reduced competition on a number of routes between the German airport of Frankfurt and US destinations. In the case of KLM/NorthWest no remedies were held necessary.

In July 1996 the Commission decided to open, on its own initiative, proceedings involving a number of transatlantic alliances in the aviation sector, including the Wings alliance between KLM and NorthWest and the Star Alliance between Lufthansa (LH), Scandinavian Airlines System (SAS) and United Airlines (UAL). The Commission points out that, while it has powers in connection with alliances between carriers within the European Union, the Commission does not have specific enforcement powers to rule on air transport between the European Union and non-member states. (The scope of Regulation EEC/3975/87, laying down rules for the application of Article 81 and 82 of the Treaty to the air transport sector, is limited to transport services between Community airports.) This includes alliances between EU and US carriers for which the Commission uses Article 85 of the EU Treaty, which allows it to take steps to have Member States put an end to infringements of EU competition law.

With regard to the LH/SAS/UA Alliance, the Commission in 1998 informed the three partners that it had serious concerns that the Star alliance would have significantly reduced competition on four transatlantic routes, on which the partners held combined market shares of between 56% and 95%. The affected city pairs were Frankfurt-Chicago, Frankfurt-Washington, Frankfurt-Los Angeles and Frankfurt-San Francisco.

The Commission also took the view then that the alliance was unlikely to feel the competitive pressure of rivals due to significant regulatory and structural market

entry barriers. National governments still impose price controls on indirect services and landing and take off slots are in shortage at Frankfurt. But, after receiving comments from the alliance partners and other interested parties and after an additional market investigation, the Commission concluded that indirect flights, under certain conditions, could constitute suitable alternatives to non-stop services on long haul routes. This reassessment and a close co-operation with the EU Member States concerned to reduce the market entry barriers has allowed the Commission to adopt a more positive approach on this alliance.

The Commission's fears were assuaged when the three Star alliance partners offered to surrender slots at Frankfurt airport to allow new air services (either direct or indirect) on the routes concerned. The parties have offered to surrender sufficient slots to allow two additional daily competing air services on the Frankfurt-Washington route and one additional daily competing air service on each of the other three routes. In addition, new entrants using the slots, if they operate a non-stop service, will be admitted to the parties' frequent flyer programme and offered interlining facilities; and the German Government has agreed not to apply restrictive price control measures on competitive indirect services (so-called sixth freedom services) on the routes concerned. The Commission considers the proposed commitments and the declaration by the German Government address possible entry barriers for competitors and remove the risk that competition would be eliminated. The Commission also took the view that the alliance brought benefits to consumers in terms of increased frequencies and reduced fares.

As to the KLM/NW alliance, the Commission was initially concerned by the parties' high position on the Amsterdam-Detroit and Amsterdam-Minneapolis/St Paul routes where they hold 88 % and 78% combined market shares respectively. But after further reflection it concluded that although the parties have high market shares on the routes concerned, the alliance would face competition from competitors providing substitutable indirect services. The Commission also concluded that there were no structural barriers to entry in terms of slot constraints or regulatory barriers. Like the Star alliance, the KLM-Northwest agreement also brings benefits for consumers in terms of increased frequencies and reduced fares.

When the Commission initiated its proceeding into the LH/SAS/UA and KLM/NW Alliances in July 1996, it also looked at the planned link between British Airways and American Airlines and an alliance between Swissair, Austrian Airlines and Delta. The first was abandoned (twice) by the parties, most recently at the beginning of this year, after the US Department of Transportation requested the divestiture of 224 slots to address the competition concerns. Consequently the Commission's case was closed without the need to take any further action. The alliance between Swissair/AuA and Delta, in which the Commission opened a proceeding in 1996, no longer exists in that form. The Commission is, however, currently investigating the Skyteam Alliance, between Air France, Alitalia, Delta, CSA, Korean Air and AerMexico, which was officially launched in July 2000. ■