

would however stress that it can only be a step towards a fuller and more ambitious measure. Efforts must in particular be pursued to ensure that the principle of the uniqueness and universality of insolvency is acknowledged.

4.2. The Committee therefore feels that at the very least, the emphasis of the text should be shifted to strengthening main rather than secondary proceedings. One way of doing this might be to reinforce the powers of the liquidator in the

main proceedings, and to provide broader opportunities for securing stay of secondary proceedings.

4.3. The Committee is pleased to note that an evaluation clause was added to the Brussels Convention shortly before it was finalised. Under this provision, the system as set up may be evaluated at the request of a contracting state and in any case ten years after its implementation (Article 53). A similar provision should be inserted into the proposed regulation. However, in the Committee's view, this evaluation should take place after five years.

Brussels, 26 January 2000.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — The European Airline Industry: from Single Market to Worldwide Challenges'

(2000/C 75/02)

On 20 May 1999 the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 December 1999. The rapporteur was Mr von Schwerin.

At its 369th plenary session of 26 and 27 January 2000 (meeting of 26 January) the Committee adopted the following opinion with 116 votes in favour and three abstentions.

1. Introduction

1.1. In its Communication *The European Airline Industry: From Single Market to Worldwide Challenges* the Commission looks at the current state of the European airline industry, the need for continuing improvement of the competitiveness of European airlines and the past ten years of liberalisation of air transport.

1.2. The aim of the communication is to assess the progress made and to identify the initiatives which can contribute to the competitiveness of the industry.

1.3. The Commission considers that European airlines have developed innovative strategies in order to adapt themselves to market growth and competition challenges. During the last decade they have achieved considerable productivity improvements, which now permits the sector to create new jobs. However, the sector still suffers from a high degree of fragmentation and financial fragility when compared to its main competitors, notably North American carriers.

1.4. Liberalisation and globalisation make the market increasingly competitive and require airlines to undertake large restructuring efforts.

1.5. The Commission authorised state aid as a one-off measure to help national carriers to restructure during the transition to the liberalised single market. This transition is now over, however.

1.6. To help the industry towards this strategy, the Commission has drawn up the following policy orientation:

'The Commission uses all the tools at its disposal to ensure integration of the European market. This includes the application of EC competition law to prevent attempts to re-fragment the market through public intervention or anti-competitive alliances or mergers. The monitoring of public and private behaviour, the transparency of Community legislation and the definition and dissemination of best practices on a number of issues such as Public Service Obligations, are important elements in this regard.

The elimination of technical obstacles to trade, in particular by faster and more efficient harmonisation of safety rules through the creation of a European Aviation Safety Authority and by giving impetus to ICAO activities in the environment field will help the industry.

The fragmentation of the internal market results also from the lack of an external dimension. Ownership rules and the bilateral agreements system create obstacles to industry restructuring at European level and to fair competition with the open skies countries. These economic consequences add to legal justifications for a genuine external dimension permitting to insert the alliances within a fair European framework.'

1.7. The Commission intends to set up a comprehensive database of the European airline industry. This will increase the quality and availability of data and analyses on capacity, traffic, financial performance, productivity, industry and route structure, airports and employment that are necessary to support a policy aiming at safeguarding the competitiveness of the industry. Information and analyses on industry trends will be available to the general public on the Commission's internet site. This tool will enable the Commission to monitor the evolution of the industry in general and of air fares in particular.

2. Gist of the Commission Communication

2.1. The Commission considers air transport to be a high-growth industry, but cyclical and with uncertain profitability. Economic growth is the main force driving demand for transport. In recent years air transport recorded a strong growth in the volume of output produced and sold. According to the latest market studies, world-wide demand for air travel will continue to grow strongly in the next two decades, at a rate of about 5 % per year, although account has to be taken of major unforeseen events such as the recent financial and economic crisis in south-east Asia.

2.2. The Commission looks at the competitiveness of the European airline industry in comparative international terms and comes to the conclusion that the largest European airlines are similar in size to the largest American ones but a typical characteristic of the European airline industry is the existence of a second layer of relatively small airlines with a global vocation. This may partly explain the limited profitability of the European industry, since in the global airline industry size is an important efficiency factor.

2.3. With regard to the structure of the industry, the Commission points out that the opening-up of a market previously protected from competition usually results in a first phase in which the number of participants in the industry increases. This is followed by a second phase of consolidation whereby the number of firms decreases and their size increases. Air transport seems to have followed this process in the USA. Europe still seems to be in the first phase. In 1993 Europe had 132 airlines performing commercially significant scheduled operations; in 1998 it had 164.

2.3.1. When comparing the air transport market in the EU and the USA one should be aware of some important structural differences. For instance in Europe average distances between cities are shorter and competition from alternative transport modes, notably road and railways, is much stronger than in the US. Of course these aspects explain to some extent the different structure, yet it is striking that Europe, whose domestic market is less than one third of North America's, has a far higher number of airlines operating large aircraft, 90 against 37. Conversely European carriers' average size is much smaller, both in terms of number of aircraft operated (average fleet of 27 against 111) and market shares. The Commission concludes that the European airline industry is fragmented.

2.4. A major aspect of structural change is the emergence of a new operating strategy for airlines, hub-and-spoke operations, now followed by major carriers. By reducing the number of direct routes, traffic flows are condensed, permitting the use of larger aircraft and operation at higher load factors. Some airlines pursue low-cost, no-frills strategies based on features such as no interlining, no pre-assigned seat selection, no in-flight food, single class of service, use of cheap, uncongested secondary airports and uniform fleets of new and fuel-efficient aircraft.

2.5. On the subject of productivity, the Commission states that in the period 1990 to 1996 the 10 largest European airlines recorded on average a 53 % increase in revenue tonne kilometre (RTK) per staff, while their cost available tonne kilometre (ATK) went down by 13 %. The productivity of the 10 largest American airlines is still higher, however, meaning that restructuring efforts need to be continued.

2.6. The Commission believes that airlines are facing increasingly complex situations. Notably, ongoing demand for improved products in terms of more destinations and more frequencies requires the ability to innovate and greater financial resources. If European airlines are to survive and flourish in this increasingly competitive environment, permanent restructuring, that is ongoing improvements in efficiency and competitiveness, is necessary. Much of the increase in competition has come from the EU liberalisation measures in the industry. However it should be noted that this process has not introduced competition on all markets. The Commission's own 1996 report on the impact of the third package of liberalisation measures noted that 64 % of EC routes were operated as monopolies, although many of these are new or thin routes, and that fares for business passengers had not decreased.

2.7. In its 1994 Communication *The way forward for civil aviation in Europe*⁽¹⁾ the Commission identified scarcity and cost of infrastructure as a main cause of the high costs incurred by European air travellers. To improve this situation, the Commission has, in recent years, been carrying out initiatives targeting infrastructure:

- The adoption of Directive 96/67 liberalising access to the ground handling market for third parties at Community airports.

- A new directive on airport charges is now in the process of being adopted.
- The fragmentation of the air traffic management systems is addressed through the strengthening of the Eurocontrol organisation.
- The Community is actively taking part in creating the European Air Safety Authority (EASA).
- The Commission will reflect on the issue of environmental protection and its interaction with aviation competitiveness in a future communication.

2.8. To ensure long term success in the increasingly globalised air transport market, the Commission believes that European airlines need to develop into globally competitive entities. The relationship between flag carriers and regional airlines is moving beyond the simple practice of commercial agreements towards more advanced forms of integration such as franchising or direct control through acquisition. Four global strategic alliances (Star Alliance, One World, Wings, Qualiflyer) have emerged with the participation of European airlines.

2.9. The Commission is critical of the fact that, because of existing bilateral agreements there is not yet freedom to provide service between the Member States and countries outside Europe. A particularly negative consequence of the bilateral system is that European airlines normally cannot fly to non-Member States from any point in the EU but only from the territory of their home Member State. This particularly disadvantages European airlines in comparison with American carriers who can fly from any airport in the USA to a wide range of airports in the EU. Therefore it is important to complete the single aviation market with a genuine external dimension. Common agreements between the European Union as a whole and third countries have to be negotiated, the Commission feels, both at multilateral and bilateral level. The Commission will continue its efforts to achieve the creation of a Common Aviation Area with the USA. Furthermore consideration must be given to the position of air transport in the new round of negotiations under the General Agreement on Trade in Services (GATS) of the WTO, which resumed in 1999.

2.10. The Commission looks at the last ten years of liberalisation of the air transport industry. The Commission assessed these developments in 1996 in its Communication entitled *Impact of the third package of air transport liberalisation measures*⁽²⁾ noting that the liberalisation process had mutated the economic environment for air transport by making it an increasingly competitive market. The first three years of liberalisation had resulted in gradually growing competition; in particular the number of carriers considerably increased. Liberalisation had brought clear benefits to consumers. However, some shortcomings might weaken the

⁽¹⁾ COM(94) 218 final — ESC Opinion OJ C 110, 5.2.1995, p. 22.

⁽²⁾ COM(96) 514 final, 22.10.1996.

liberalisation process' ability to deliver to the consumer better services at lower cost. The report highlighted the problem of capacity restrictions and high costs for infrastructure as well as the contradictory and unsatisfactory trend concerning fares. Promotional fares had become more widespread. There were still large differences in fares per kilometre across Europe, however. There had even been price rises on lucrative routes. Recent developments confirmed the trend.

2.11. The Commission argues that the proliferation of tariffs, over-booking, the availability of seats at the most publicised promotional fares, the growth in frequent flyer programmes (FFPs), code-sharing and airline alliances can all make it harder for consumers to compare competing offers. As competition increases, market transparency needs to be assured, if consumer confidence is to be maintained. The Commission has also commissioned a study to examine the information passengers need to make rational choices.

2.12. Leasing of aircraft registered outside the Community is another area of concern. The Commission has noticed that Member States follow different practices for the implementation of the provisions on the granting of operating licences. The Commission, in co-operation with the Member States, therefore intends to prepare guidelines to clarify its interpretation of the provisions on short-term leases of non-EU aircraft.

2.13. The Commission has carried out a study on the impact of regulation and certain commercial practices on the development of competition in the air transport market. A number of small and medium-sized airlines were interviewed and asked to assess the liberalisation process and its shortcomings. The study found that there is an overall consensus that the present regulatory regime is working well. There were concerns, inter alia, on the following points:

- There are insufficient slots enabling new applicants airlines to compete 'head-to-head' with established airlines.
- Only larger airlines are able to operate loyalty schemes. The key barriers reside in the fact that FFPs favour airlines with large networks, which offer travellers greater chances to accumulate and use FFP points. In contrast there is little scope for small and medium carriers to operate such schemes, because their networks are too small to make them attractive.

2.14. The Commission looks at the social impact of current trends and notes that following the restructuring measures adopted by airlines, between 1988 and 1996 the overall number of employees in civil aviation increased from 435 400 to 489 700 and that the outlook for employment in this sector remains positive.

2.14.1. One of the main features of the period under review is the spreading of new forms of employment aimed at increasing flexibility. Conditions of employment have been modified, particularly for newly hired employees. Many of them are now granted fixed term contracts and, in many cases, a two-tier pay system is applied. Performance related pay schemes tend to replace seniority pay schemes for some categories of employees. This trend is not specific to the air transport industry, however. And for longer service employees job security remains relatively good at flag carriers. Furthermore, the level of wages is still higher there than at smaller airlines for similar jobs.

3. The Committee's comments

3.1. The Committee welcomes the Commission's in-depth analysis of the problems of the airline industry. The assessments and analyses contained in the communication are to a great extent correct. The goal of strengthening the competitiveness of European airlines, particularly vis à vis their US competitors, and of eliminating their structural disadvantages deserves wholehearted support.

3.2. The Committee regrets that the Commission considers air transport in isolation from other modes of transport, and considers that the Commission should, as a matter of urgency, put the linking of the various modes of transport on the agenda. The Committee considers stronger links between air and rail transport to be particularly necessary for environmental reasons, as in this way short-haul flights could be considerably reduced. But intermodality could also bring considerable benefits for consumers if they were thus able to reach their destinations more quickly, comfortably and cheaply.

3.3. The Committee fails to see any greater emphasis being placed on passenger rights. The Commission unfortunately deals with this only in passing. Passenger rights need to be improved, particularly on code-sharing flights. In view of increasing over-booking and delays it is urgently recommended that the regulation providing for an improved system of compensation for denied boarding and other inconveniences in scheduled air transport finally enter into force. Passenger rights must be firmly enshrined in the law. It must be made possible to take action against the cause of denied boarding, delays or other inconveniences etc. It should also be borne in mind, however, that airlines are not exclusively to blame for delays. A main cause of delay is air traffic control bottlenecks in Europe.

3.4. The Committee notes that the Commission deals with charter/holiday traffic only in passing. The Commission appears to make no distinction between scheduled and charter traffic, although different conditions sometimes apply and although charter flights account for a major share of civil aviation. Particularly in view of the fact that with the liberalisation of air transport it has become increasingly difficult to draw a dividing line between scheduled and charter traffic, the Committee recommends that conditions applying to charter/holiday traffic which differ from those applying to scheduled traffic be studied in more detail.

3.5. The Committee feels that the Commission should have studied the future prospects of air transport and the problems consequently to be expected in greater detail.

3.6. The Commission at the same time deplores the high degree of fragmentation of the air transport sector and calls for more competition. There is a contradiction here. A large number of airlines is not necessarily a bad thing. It can in fact promote competition. Apparently the Commission considers the number of European airlines operating large aircraft to be too high and expects market consolidation. It is unclear, however, what the Commission considers to be the optimum structure for a viable and competitive European industry in terms of number of airlines, size of companies, size of fleet and market share.

3.7. The Commission's statement that the transitional period for the granting of state aid is now over and that these were one-off measures to help national carriers to restructure during the transition to the liberalised single market is welcomed. Over the years since liberalisation began the flag carriers have had sufficient opportunity to adapt to the new competitive situation. State aid should, therefore, no longer be granted, as it would distort competition, as indeed it already has.

3.8. The Commission's intention of setting up a comprehensive database of prices, safety conditions and staff skills in the European airline industry and of making this available to the general public via its internet site is welcomed. As the data required are presumably already held by the various air transport organisations (ICAO⁽¹⁾, ECAC⁽²⁾, IATA⁽³⁾, AEA⁽⁴⁾) and national bodies, it would make economic sense to use this data and to coordinate the building of the database with these organisations and the national bodies. The Committee feels that, in building a database, care must be taken to ensure that the public is provided with reliable data which makes it possible to compare air transport services on offer.

3.9. The Commission describes hub and spoke operation as a new operating pattern for airlines and a major aspect of structural change. By reducing the number of direct routes, traffic flows are condensed, permitting the use of larger aircraft and operation at higher load factors. But hub and spoke operation is not a new operating pattern. In Europe, unlike the USA, air transport always used to be handled by a single national airport, to ensure that international long-haul flights could be filled. To the Committee's knowledge there has been no significant reduction in Europe of existing direct links between secondary airports. In the interests of maintaining consumer mobility, the Committee considers it important that there be no deterioration in services to secondary airports which perform a useful function in relation to traffic.

3.10. The Commission is too uncritical of the competitive policy of some airlines. The external costs of airlines are comparable. For this reason stronger supervision must be introduced for all companies which deliberately set out to achieve a competitive edge via lower pay, the recruitment of unskilled staff, lower social standards and non-compliance with safety regulations, e.g. with regard to the frequency of maintenance. EU-wide minimum requirements for training, e.g. training of cabin staff meeting the JAR-OPS⁽⁵⁾ standard, inter alia should be laid down and enforced, in order to guarantee minimum quality and safety standards in air transport⁽⁶⁾. But all other air transport workers should also receive minimum basic training and on-going in-service training to ensure that the quality of air transport services is high. Some airlines still do not have new, fuel-efficient aircraft, but use old, cheaply purchased aircraft in order to minimise capital outlay. This means more noise pollution, higher fuel consumption, and thus more damage to the environment. At any event, the Committee feels that airlines should be prevented from making savings at the expense of the safety of aircraft and thus that of passengers and crews. The Committee believes that harmonised rules on crew working time are needed in the EU which should allow sufficient flexibility to accommodate operating requirements, without, however, prejudicing air transport safety.

3.11. The fact that before 1996 about 64 % of EU routes were operated as monopolies is mainly a result of low demand on those routes. There was simply not enough potential to justify the provision of services by another company. State intervention would therefore be wrong in market terms.

(1) International Civil Aviation Organisation [(ICAO)].

(2) European Civil Aviation Conference (ECAC).

(3) International Air Transport Association (IATA).

(4) Association of European Airlines (AEA).

(5) Joint Aviation Requirement Operation (JAR-OPS).

(6) Opinion of the Economic and Social Committee on the Proposal for a Council Directive on safety requirements and attestation of professional competence for cabin crews in civil aviation — OJ C 214, 10.7.1998, p. 37.

3.12. The Commission's statement that fares for business passengers have not decreased is untrue. A large number of fares have been introduced for business travellers too. The newly introduced flexible fares, cheaper than the normal full fare, make a choice available to business travellers too. In this way average fares in business class have also fallen. This is confirmed by a recent study drawn up for the Commission by the British Aerospace Consultancy.

3.13. The Commission's contention that scarcity and cost of infrastructure are a main cause of the relatively high costs of the European airline industry is entirely accurate, as confirmed by more recent comparative studies. The Commission could help here by putting forward suitable measures, e.g. with regard to the structuring of airport charges⁽¹⁾.

3.14. The Commission's intention of addressing the fragmentation of the air traffic management systems through the strengthening of Eurocontrol is wholeheartedly supported. The Committee considers that the negotiations for EU membership of Eurocontrol should be accelerated. When the EU becomes a member of Eurocontrol, Eurocontrol decisions taken with EU participation should be implemented in Community law.

3.15. In the Committee's view, the organisation of air traffic control on national lines and the plethora of air traffic control systems in Europe are no longer appropriate; a new decision-making procedure is needed. The various, uncoordinated air traffic control systems must be replaced by a single, pan-European system. The Committee proposes that Eurocontrol be given responsibility for setting uniform standards within the EU for air traffic control technology and laying down uniform procedures. The most important requirement for achieving rapid improvements in air traffic control is the introduction of uniform technology throughout the EU and improved cooperation between national air traffic control authorities. It must be possible to achieve short-term improvements in ATC-related flight delays without the introduction of a central, European air traffic control authority. The Committee considers a central authority of this kind to be a good idea, however, in the long term and supports its introduction. The Committee considers that the involvement of private-sector organisations should be considered, subject to quality guarantees, in order to ensure greater flexibility of national air traffic control.

3.15.1. The active involvement of the Community in the establishment of the European Aviation Safety Association (EASA) is welcomed, although it is not yet clear whether the EASA will also be responsible for air traffic control.

3.15.2. A Eurocontrol study reached the following conclusions on air traffic control problems: In 1998 28 % of all direct delays were attributable to air traffic control en route and 4 % to air traffic control ground problems, adding up to a total of 32 %. If the 37 % of consequent delays were assigned proportionally, this would add another 19 %. Thus 50-51 % of all delays had their origin in the air traffic control area, as compared to 13+8 % (=20-21 %) which were attributable to the airlines. Eurocontrol fears that the data for 1999 will be still less favourable.

3.16. The Commission's intention of focusing its attention on the noise and environmental pollution caused by air transport is also welcomed. The degree to which environmental responsibilities are fulfilled and public attitudes to air transport will depend on the efforts made in this area. Protection of the environment has long enjoyed high priority in air transport. Divergent local standards, e.g. on exhaust emissions, have, however, so far prevented a determined technological drive to develop new engines. The introduction of a kerosene tax is no solution, unless introduced worldwide in all the ICAO states in order to prevent distortions of competition.

3.17. The disadvantages of the fragmentation of the industry identified by the Commission can be countered by the synergy effects generated by the formation of international alliances.

3.18. The Committee does not share the Commission's views on air transport alliances in the context of competition law. Such alliances can make it easier to satisfy customer needs by making a larger, coordinated network of flight connections available. This is more advantageous to customers than the services offered by individual companies. From a competition point of view, therefore, alliances should be seen in a positive light. It should be ensured, however, that smaller airlines are not forced out of the market as a result of abuse of market dominance.

3.19. In investigating various alliances on the North Atlantic routes the Commission's competition DG has focused too much on individual routes, an approach which is out of step with current competitive conditions. By contrast, the US authorities increasingly look at the whole market. And indeed the majority of passengers on the routes which were the subject of the Commission's criticisms would have taken connecting flights. Harmonisation of the US and European competition policy is therefore needed.

3.20. As the Commission is working for an open skies agreement between the EU and the USA, the Committee considers that it would be appropriate to await the end of these negotiations before investigating the compatibility of the North Atlantic alliances with EU competition law.

3.21. The Committee endorses the Commission's reasons for seeking an open skies agreement with the USA. US airlines are placed at an unfair advantage by the existing bilateral treaties, as, in contrast to the European airlines, they are able to fly from any airport in the USA to almost any airport in Europe. On the basis of the existing bilateral agreements,

⁽¹⁾ Opinion of the Economic and Social Committee on the Proposal for a Council Directive on access to the groundhandling market at Community airports — OJ C 301, 13.11.1995, p. 28.

European airlines, on the other hand, can fly to the USA only from airports in their home country. This inequality of treatment should be eliminated as a matter of urgency in the course of the negotiations on an open skies agreement with the USA.

3.22. The opportunity offered by the new negotiating round within the framework of the General Agreement on Trade in Services (GATS) should be used to integrate air transport further into the discussions and to create a harmonised environment for air transport, e.g. overflying rights, slot allocation and airport services. Efforts should also be made to achieve the step-by-step liberalisation of air freight transport.

3.23. The air transport sector should not be more heavily regulated with a view to market transparency than other economic sectors. The competition between professional travel intermediaries in itself ensures sufficient market transparency.

3.24. For reasons of operating flexibility it is sometimes necessary to wet-lease aircraft from non-Community countries. The Committee advocates the adoption of an EU guideline requiring the wet-leasing of aircraft to be allowed only in exceptional cases and for a limited period, and then only on condition that the leased aircraft meet EU minimum safety and environmental requirements in order to prevent abuses. Thought would have to be given to a practicable authorisation procedure.

3.25. The slot problem at airports described by the Commission is a result of capacity problems at these airports. It is not only new applicants who suffer from this but also established airlines who have no opportunity to grow. This problem must be tackled by increasing airport capacity, although slot allocation mechanisms will of course always be needed. The Commission has announced its intention of producing a report on the slot problem and the Committee assumes that it will have an opportunity to express its views on this report. But the Committee would make it clear straight away that equality of opportunity for all airlines should be guaranteed.

3.26. European airlines too must be able to offer their customers frequent flyer programmes if they are to withstand global competition, as these are used by all major airlines and restricted use would amount to a competitive disadvantage.

4. Conclusions

4.1. The Committee considers that minimum basic training and on-going in-service training should be introduced and enforced as a matter of urgency throughout the EU for all air transport workers in order to guarantee the quality and safety of services.

4.2. The Committee considers it essential that air traffic control systems in Europe be harmonised and Eurocontrol strengthened. Eurocontrol should, the Committee feels, be given responsibility for setting standards for national air traffic control technology and binding procedures. National air traffic control should be assigned to the private sector. Only in this way can delays attributable to air traffic control problems be reduced.

4.3. The Committee feels that more emphasis should be placed on safety in air transport, as air transport is forecast to grow strongly over the next few years.

4.4. The Commission's intention of dealing with the environmental aspects of air transport in a Communication is also welcomed. The Commission should also look at ways of improving the link between different modes of transport in Europe, particularly air and rail transport. Intermodality could bring many benefits for consumers and the environment.

4.5. The Committee feels that passenger rights must be firmly enshrined in law. It must be made possible to take action against the cause of denied boarding, delays or other inconveniences to passengers. The regulation providing for improved compensation of passengers for inconveniences suffered must finally enter into force.

4.6. The Committee strongly supports an open skies agreement between the EU and the USA in order to end the disadvantages suffered by European airlines vis à vis their US competitors.

4.7. The Committee feels that this would further the Commission's objectives and also be in the interest of European consumers, employers and workers with a view to future social dialogue.

Brussels, 26 January 2000.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI