Notice pursuant to Article 5(2) of Council Regulation (EEC) No 3975/87 concerning case IV/36.563 — IATA Cargo Tariff Conference
(98/C 77/04)
(Text with EEA relevance)

I. Application lodged by IATA

On 30 June 1997, the International Air Transport Association (IATA) submitted an application for a negative clearance and for a decision pursuant to Article 85(3) of the EC Treaty and/or Article 53 of the EEA Agreement in case the Commission does not grant a negative clearance. This application refers to resolutions and provisions providing the framework for cargo tariff consultations amongst IATA members, and between IATA and non-IATA carriers that choose to participate in these consultations in respect of cargo tariffs within the EEA.

II. Main provisions of the agreement

The resolution package notified to the Commission contains both the rules for the conduct of conferences, and the currently applicable cargo rates and their conditions. Where the airlines attending a conference agree on a change, that change is reflected in a resolution passed by the conference. The effect of such a resolution is to amend the rate structure which is itself the cumulative effect of previous resolutions adopted by IATA cargo conferences.

According to IATA, amongst other things, in order to reduce the difference between market and official IATA consulted rates, in January 1997, IATA amended the applicable cargo rates for transport between points in the EEA by introducing a single per kilogram rate reflecting existing market conditions. This system applies for all categories of transport.

Nevertheless, IATA said that it is willing to consider a limitation, for example a 250 kg weight cap, beyond which no tariff consultations will take place. According to IATA, these shipments account for more than 80% of the shipments currently interlined.

In any event, all consultations on rates charged to the shippers within the EEA are expressly specified as non-binding.

III. Reasons for negative clearance put forward by IATA

IATA considers that the agreement on tariff consultations does not have the object or effect of restricting competition.

According to IATA, the purpose of the tariff consultations is only to provide the economic basis for an effective multilateral interlining system. As regards Article 85, IATA considers that the crucial test does not relate to the purpose of the resolutions in question but only to whether they have a restrictive effect. In this context, it should be noted that although the IATA resolutions set out the terms and conditions for providing an interline product, these terms and conditions do not restrict competition between individual airlines in providing such products, since by definition an interline product is one that no single airline can provide on its own.

Moreover according to IATA, the lack of correlation between market prices and the IATA cargo tariffs can be explained by the very competitive nature of the EEA cargo market and the fact that the IATA cargo tariffs only relate to those interlined segments of a given route, leaving the contracting carrier free in its pricing decisions relating to the route as a whole and its pricing decisions for on-line services in general. IATA multilateral cargo tariff consultations have also an inherent net positive effect on competition by enabling carriers, especially smaller, regional and peripheral ones, to compete in the market for cargo services and by facilitating market entry.

Consequently, IATA considers that cargo tariff consultations cannot be regarded as restrictive for purposes of Article 85.

IV. Reasons for exemption put forward by IATA

IATA considers that multilateral cargo tariff consultations contribute to improving distribution and promoting economic progress, because they provide
the best and most efficient basis for transporting air cargo through the use of interlining.

According to IATA, tariff consultations make possible the provision of an efficient and speedy interlining service because the agreed tariff provides the bases against which the prorated amount paid by the contracting carrier to the receiving carrier providing the transport services on subsequent or prior segments is calculated.

The IATA cargo resolutions also reduce the transaction costs that would otherwise be associated with interlining on either an ad hoc or bilateral airline to airline basis and thus make possible the provision of interlined services at a lower cost to consumers.

These resolutions make it possible to preserve a more competitive structure of supply by enabling smaller airlines and peripheral airlines that cannot match the on-line system of the large airlines to offer a cargo product to destinations on an interline basis.

Consumers benefit from lower prices made possible by the avoidance of transaction costs, and from a greater choice of suppliers and the competition between them. Consumers also benefit from the provision of a comprehensive service that would not be possible on a bilateral basis.

According to IATA, these benefits of tariff consultations, in allowing an efficient interline system, outweigh any theoretical restrictive effects of the arrangements. Moreover, IATA is willing to consider limiting tariff consultations to relatively small shipments.

IATA considers that the multilateral consultations on interlineable cargo tariffs are indispensable, because without these consultations, shippers, smaller carriers and consumers will not obtain the full extent of the above mentioned benefits. The abolition of multilateral consultations would eliminate the first available-carrier rule, raise transaction costs for carriers by requiring individual negotiations and rate setting with each bilateral partner, and make interlining impossible on routes where no bilateral arrangements apply.

According to IATA, the EEA air cargo market is highly competitive and tariff consultations have no adverse impact on competitive conditions in the EEA air cargo market since actual tariffs charged to customers have tended to be considerably lower than interlineable tariffs.

Consequently, the Arrangements would not eliminate competition in respect of a substantial part of the services concerned. By facilitating interlining, the Arrangements would enable carriers, especially smaller, regional and peripheral ones to play a role on the market, thus making that market more competitive.

Conclusion

This notice is published pursuant to the procedure established by Article 5(2) of Council Regulation No 3975/87.

The Commission has not, at this stage, taken a position as to the applicability of Article 85(3).

The Commission invites all Member States and interested third parties to submit any comments they may have within 30 days from the date of publication of this notice quoting reference IV/36.563 to the following address:

European Commission, DG IV/D/2, Rue de la Loi/Wetstraat 200, B-1049 Brussels.