

## COUNCIL REGULATION (EEC) No 3976/87

of 14 December 1987

on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 87 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinions of the European Parliament <sup>(2)</sup>,

Having regard to the opinions of the Economic and Social Committee <sup>(3)</sup>,

Whereas Council Regulation (EEC) No 3975/87 <sup>(4)</sup> lays down the procedure for the application of the rules on competition to undertakings in the air transport sector; whereas Regulation No 17 of the Council <sup>(5)</sup> lays down the procedure for the application of these rules to agreements, decisions and concerted practices other than those directly relating to the provision of air transport services;

Whereas Article 85 (1) of the Treaty may be declared inapplicable to certain categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85 (3);

Whereas common provisions for the application of Article 85 (3) should be adopted by way of Regulation pursuant to Article 87; whereas, according to Article 87 (2) (b), such a Regulation must lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent, on the other; whereas, according to Article 87 (2) (d), such a Regulation is required to define the respective functions of the Commission and of the Court of Justice;

Whereas the air transport sector has to date been governed by a network of international agreements, bilateral agreement between States and bilateral and multilateral

agreements between air carriers; whereas the changes required to this international regulatory system to ensure increased competition should be effected gradually so as to provide time for the air-transport sector to adapt;

Whereas the Commission should be enabled for this reason to declare by way of Regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas it should be laid down under what specific conditions and in what circumstances the Commission may exercise such powers in close and constant liaison with the competent authorities of the Member States;

Whereas it is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices; whereas these exemptions should be granted for a limited period during which air carriers can adapt to a more competitive environment; whereas the Commission, in close liaison with the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them;

Whereas there can be no exemption if the conditions set out in Article 85 (3) are not satisfied; whereas the Commission should therefore have power to take the appropriate measures where an agreement proves to have effects incompatible with Article 85 (3); whereas the Commission should consequently be able first to address recommendations to the parties and then to take decisions;

Whereas this Regulation does not prejudice the application of Article 90 of the Treaty;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 in pursuance of Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Regulation, together with those of Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States <sup>(6)</sup> and those of Council Decision 87/602/EEC of 14 December 1987

<sup>(1)</sup> OJ No C 182, 9. 7. 1984, p. 3.

<sup>(2)</sup> OJ No C 262, 14. 10. 1985, p. 44;  
OJ No C 190, 20. 7. 1987, p. 182 and OJ No C 345,  
21. 12. 1987.

<sup>(3)</sup> OJ No C 303, 25. 11. 1985, p. 31 and  
OJ No C 333, 29. 12. 1986, p. 27.

<sup>(4)</sup> See page 1 of this Official Journal.

<sup>(5)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(6)</sup> See p. 12 of this Official Journal.

on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States <sup>(1)</sup>, are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization at the end of a three year initial period,

HAS ADOPTED THIS REGULATION:

*Article 1*

This Regulation shall apply to international air transport between Community airports.

*Article 2*

1. Without prejudice to the application of Regulation (EEC) No 3975/87 and in accordance with Article 85 (3) of the Treaty, the Commission may by regulation declare that Article 85 (1) shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices.

2. The Commission may, in particular adopt such regulations in respect of agreements, decisions or concerted practices which have as their object any of the following:

- joint planning and coordination of the capacity to be provided on scheduled air services, insofar as it helps to ensure a spread of services at the less busy times of the day or during less busy periods or on less busy routes, so long as any partner may withdraw without penalty from such agreements, decisions or concerted practices, and is not required to give more than three months' notice of its intention not to participate in such joint planning and coordination for future seasons,
- sharing of revenue from scheduled air services, so long as the transfer does not exceed 1 % of the poolable revenue earned on a particular route by the transferring partner, no cost are shared or accepted by the transferring partner and the transfer is made in compensation for the loss incurred by the receiving partner in scheduling flights at less busy times of the day or during less busy periods,

- consultations for common preparation of proposals on tariffs, fares and conditions for the carriage of passengers and baggage on scheduled services, on condition that consultations on this matter are voluntary, that air carriers will not be bound by their results and that the Commission and the Member States whose air carriers are concerned may participate as observers in any such consultations,
  - slot allocation at airports and airport scheduling, on condition that the air carriers concerned shall be entitled to participate in such arrangements, that the national and multilateral procedures for such arrangements are transparent and that they take into account any constraints and distribution rules defined by national or international authorities and any rights which air carriers may have historically acquired,
  - common purchase, development and operation of computer reservation systems relating to timetabling, reservations and ticketing by air transport undertakings, on condition that air carriers of Member States have access to such systems on equal terms, that participating carriers have their services listed on a non-discriminatory basis and also that any participant may withdraw from the system on giving reasonable notice,
  - technical and operational ground handling at airports, such as aircraft push back, refuelling, cleaning and security,
  - handling of passengers, mail, freight and baggage at airports,
  - services for the provision of in-flight catering.
3. Without prejudice to paragraph 2, such Commission regulations shall define the categories of agreements, decisions or concerted practices to which they apply and shall specify in particular:
- (a) the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices;
  - (b) the clauses which must be contained in the agreements, decisions and concerted practices, or any other conditions which must be satisfied.

*Article 3*

Any regulation adopted by the Commission pursuant to Article 2 shall expire on 31 January 1991.

<sup>(1)</sup> See p. 19 of this Official Journal.

*Article 4*

Regulations adopted pursuant to Article 2 shall include a provision that they apply with retroactive effect to agreements, decisions and concerted practices which were in existence at the date of the entry into force of such Regulations.

*Article 5*

Before adopting a regulation, the Commission shall publish a draft thereof and invite all persons and organizations concerned to submit their comments within such reasonable time limit, being not less than one month, as the Commission shall fix.

*Article 6*

The Commission shall consult the Advisory Committee on Agreements and Dominant Positions in Air Transport established by Article 8 (3) of Regulation (EEC) No 3975/87 before publishing a draft Regulation and before adopting a Regulation.

*Article 7*

1. Where the persons concerned are in breach of a condition or obligation which attaches to an exemption granted by a Regulation adopted pursuant to Article 2, the Commission may, in order to put an end to such a breach:

- address recommendations to the persons concerned, and
- in the event of failure by such persons to observe those recommendations, and depending on the gravity of the

breach concerned, adopt a decision that either prohibits them from carrying out, or requires them to perform, specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption in accordance with Article 4 (2) of Regulation (EEC) No 3975/87 or withdraws the benefit of the block exemption which they enjoyed.

2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case an agreement, decision or concerted practice to which a block exemption granted by a regulation adopted pursuant to Article 2 (2) applies, nevertheless has effects which are incompatible with Article 85 (3) or are prohibited by Article 86, it may withdraw the benefit of the block exemption from those agreements, decisions or concerted practices and take, pursuant to Article 13 of Regulation (EEC) No 3975/87, all appropriate measures for the purpose of bringing these infringements to an end.

3. Before taking a decision under paragraph 2, the Commission may address recommendations for termination of the infringement to the persons concerned.

*Article 8*

The Council shall decide on the revision of this Regulation by 30 June 1990 on the basis of a Commission proposal to be submitted by 1 November 1989.

*Article 9*

This Regulation shall enter into force on 1 January 1988.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 December 1987

*For the Council*

*The President*

U. ELLEMANN-JENSEN