

COUNCIL REGULATION (EEC) No 1284/91

of 14 May 1991

amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings 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 ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services ⁽⁴⁾ and Regulation (EEC) No 2343/90 ⁽⁵⁾ concerning access to the market and the sharing of passenger capacity provide for further liberalization of the tariff system within the Community;

Whereas, while the Community air transport policy will enable carriers to compete on their merits and will thus contribute to a more dynamic industry in the interests of the air transport user, the Commission should be able to take prompt action in cases where air carriers engage in practices which are contrary to the competition rules and which may threaten the viability of services operated by a competitor or even the existence of an airline company and thus cause irreversible damage to the competitive structure;

Whereas it is appropriate to provide for a specific procedure according to which the Commission may apply the competition rules more promptly in cases where there is an urgent need to prevent, or act against, such anti-competitive practices;

Whereas this procedure should provide the undertakings concerned with the opportunity to comment in writing on the matters to which objection is taken;

Whereas it is therefore necessary to amend Regulation (EEC) No 3975/87 ⁽⁶⁾,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3975/87 is hereby amended as follows :

1. The following Article shall be inserted :

Article 4a

Interim measures against anti-competitive practices

1. Without prejudice to the application of Article 4 (1), where the Commission has clear *prima facie* evidence that certain practices are contrary to Article 85 or 86 of the Treaty and have the object or effect of directly jeopardizing the existence of an air service, and where recourse to normal procedures may not be sufficient to protect the air service or the airline company concerned, it may by decision take interim measures to ensure that these practices are not implemented or cease to be implemented and give such instructions as are necessary to prevent the occurrence of these practices until a decision under Article 4 (1) is taken.

2. A decision taken pursuant to paragraph 1 shall apply for a period not exceeding six months. Article 8 (5) shall not apply.

The Commission may renew the initial decision, with or without modification, for a period not exceeding three months. In such case, Article 8 (5) shall apply.

2. The following shall be added to Article 13 (1) :

'(e) to comply with any measure imposed by decision taken under Article 4a.'

3. In Article 16 (1) '4a,' shall be inserted after '4,'

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ No C 155, 26. 6. 1990, p. 7; and OJ No C 101, 18. 4. 1991, p. 19.

⁽²⁾ OJ No C 48, 25. 2. 1991, p. 166.

⁽³⁾ OJ No C 41, 18. 2. 1991, p. 44.

⁽⁴⁾ OJ No L 217, 11. 8. 1990, p. 1.

⁽⁵⁾ OJ No L 217, 11. 8. 1990, p. 8.

⁽⁶⁾ OJ No L 374, 31. 12. 1987, p. 1.

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

Done at Brussels, 14 May 1991.

For the Council

The President

J. F. POOS
