

COMMISSION

COMMISSION DECISION

of 20 July 1999

on a procedure relating to the application of Council Regulation (EEC) No 2299/89

(Electronic ticketing)

(notified under document number C(1999) 2068)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/618/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2299/89 of 24 July 1989 on the code of conduct for computerised reservation systems⁽¹⁾, as last amended by Regulation (EC) No 323/1999⁽²⁾, and in particular Article 16(2) thereof,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission, pursuant to Article 19(1) of Regulation (EEC) No 2299/89,

Whereas:

on 20 January 1997 requesting it to submit its observations within one month. Lufthansa submitted its observations on 19 February 1997.

- (2) SABRE complained that Lufthansa had failed to provide SABRE with the necessary information and technical specifications to be able to issue electronic tickets for Lufthansa which severely undermines SABRE's ability to attract and retain subscriber accounts in Germany. SABRE has developed its own electronic ticketing function that operates in accordance with industry standards agreed by all airline members of IATA (International Air Transport Association). SABRE considered that the effect of the above actions by Lufthansa is to prevent effective competition in the German CRS market.

I. BACKGROUND, FACTS AND PROCEDURE

1. The complaint

- (1) In a letter of 9 January 1997, the system vendor SABRE Travel Information Network ('SABRE') complained that Deutsche Lufthansa AG ('Lufthansa') is infringing Regulation (EEC) No 2299/89 (code of conduct) in that it offers incentives to corporate clients using electronic tickets for domestic travel on Lufthansa flights. This, it alleged, results in corporate clients only dealing with travel agents using the computerised reservation system (CRS) START Amadeus, of which Lufthansa is part owner, since it is the only system that can issue electronic tickets. A copy of the complaint was sent to Lufthansa

- (3) After a preliminary assessment of the complaint the Commission issued a Statement of Objections against Lufthansa dated 16 December 1997. Lufthansa replied on 3 March 1998. Lufthansa's principal arguments were that the incentives were intended to encourage consumer and subscriber acceptance of the electronic ticket rather than to prejudice competing CRSs and that a new technological product requires a transition period before it could be offered to all other CRSs. Furthermore, the airline made a distinction between a ticket and an air transport product for the purposes of the code, arguing that tickets did not come under the scope of Article 8(1) which prohibits incentives. Lufthansa also raised issues concerning its rights of defence and requested an oral hearing.

⁽¹⁾ OJ L 220, 29.7.1989, p. 1.

⁽²⁾ OJ L 40, 13.2.1999, p. 1.

- (4) By letter of 21 April 1999, SABRE informed the Commission that the issues forming the basis of the original complaint had been satisfactorily overcome by way of a new commercial agreement with Lufthansa.

2. The parties

- (5) The CRS known as 'SABRE' is owned and operated by SABRE Travel Information Network of Dallas, Texas, United States of America. SABRE Travel Information Network is itself 80 % owned by AMR Corporation which is also owner of American Airlines. Its share of the world CRS market is estimated to be 26,1 % (by number of travel agency locations). Its share of the German CRS market is estimated to be 5,1 %.
- (6) Lufthansa is based in Cologne in Germany and is the largest airline in the Community. In 1997 its turnover was DEM 23 149 million.
- (7) Lufthansa owns 29,2 % of the capital of Amadeus Global Travel Distribution SA ('AGTD') which owns and operates the CRS commonly known as 'Amadeus'. Lufthansa also owns 50 % of the capital of START Holding GmbH. START Holding GmbH in turn owns 95 % of START Amadeus Vertrieb GmbH ('START Amadeus') which is solely responsible for marketing the Amadeus CRS in Germany. The remaining 5 % of START Amadeus is owned by members of the AGTD group. The Amadeus share of the world CRS market is estimated to be 33,8 % (by number of travel agency locations). The START Amadeus share of the German CRS market is estimated to be 88,6 %.

3. The code of conduct

- (8) The code of conduct was adopted by the Council to regulate a sector that plays an essential role in the distribution of air transport products. The code ensures that the operation of CRSs does not discriminate between carriers participating in their facilities both in terms of the technical functions offered to carriers and the fees for those services. It also prevents owner carriers from refusing to distribute their products through competing CRSs thereby limiting the attractiveness of the latter in the market place.

4. The facts

a) Electronic ticketing

- (9) Electronic ticketing is a recent development in the air transport industry designed to eliminate the need for paper based ticketing and to facilitate the check-in procedures at airports. Electronic tickets are effectively travel documents that only exist in a carrier's internal reservation system. On check-in at the airport counter

upon identification, the passenger is issued a boarding pass by reference to the record in the carrier's system and not by reference to a conventional paper-based ticket. IATA estimates that the cost of the conventional paper ticket is typically USD 8 whereas an electronic ticket costs between USD 1 and USD 2. The economies arising from the adoption of electronic ticketing have led to the rapid growth of its use. The largest US carrier, United Airlines, used electronic tickets for 40 % of its domestic services in 1996.

b) CRSs

- (10) A CRS is a computer system containing information about, *inter alia*, air carriers' schedules, availability, fares, and related services, with or without facilities through which reservations may be made, or tickets may be issued, to the extent that some or all of these services are made available to subscribers. It is estimated that over 85 % of all IATA travel agency sales of scheduled air services are made through CRSs. Therefore, a CRS is an essential tool for the travel agent.

- (11) Unlike the other CRSs operating in the Community (Galileo, SABRE and Worldspan) Amadeus does not have its own ticketing function, and therefore ticketing is carried out on its behalf by its local distribution company, which in Germany is START Amadeus. START Amadeus provides the interface between travel agents in Germany and the Amadeus CRS. When dealing with a customer, a travel agent logs on to START Amadeus to obtain information on schedules, availabilities and fares from the Amadeus central core. It then enters the booking data through the START Amadeus interface to Amadeus, which then returns certain elements of the data to a separate function in START Amadeus to enable it to generate a ticket and carry out the associated accounting operations.

c) Development of electronic ticketing by Lufthansa

- (12) In response to the SABRE complaint, Lufthansa stated in its letter of 19 February 1997 that the introduction of electronic ticketing (ETIX) is a very complex project and therefore Lufthansa decided to implement it in three phases: phase 1 as from 1 March 1996 for the German market, including for START Amadeus the most widely used ticketing system in Germany ('ETIX für den deutschen Markt... ETIX über das am meisten verbreitete Ticketing-System in Deutschland (START Amadeus)'); phase 2 as from 1 November 1996 for international on-line flights; phase 3 as from 1997, expansion to computer reservation systems. Lufthansa stated that the first two phases were necessary to maximise the volume of ETIX in order to amortise the relatively large development costs.

- (13) Lufthansa went further in its letter to the Commission of 14 May 1997 where it stated that 'Temporary focusing on extending the existing Lufthansa/START Amadeus interface was the only technical and economically justifiable way of expanding the pilot phase.'
- (14) Lufthansa developed its electronic ticketing functionality from its existing airport check-in programme. As a pilot phase during the period May to December 1995 ETIX was initially offered to a limited group of 600 travel agents in Germany. In order to extend the number of agents in as short a time as possible, in March 1996 it then transferred the functionality to START Amadeus (phase 1).
- (15) In its letter of 14 May 1997, Lufthansa stated that 'Lufthansa is currently in the last phase of introducing the product. Once the technical conditions for the international use of ETIX are established Lufthansa will operate ETIX via other CRS systems.'
- (16) In July 1996, Lufthansa announced that it would reduce its commission to travel agents in Germany for sales of tickets for travel wholly within the German domestic market. However, in its letter to the Commission dated 14 May 1997, Lufthansa contradicts SABRE's assertion that travel agents are being offered incentives to use ETIX when it states that '... so far there has been no agency promotion. To date agencies have merely been promised an ETIX incentive, this being due to start as from July 1997.'
- (17) At a meeting held with Commission representatives on 25 July 1997, representatives of Lufthansa confirmed that commission payments of 0,5 % of the price of each electronic ticket sold for travel within Germany and to London and Paris have been made to travel agents in Germany since 1 July 1997. In its letter of 27 August 1997, Lufthansa stated that a corporate client incentive scheme was implemented on 1 January 1997. The incentive was 1 % of gross ETIX revenue on amounts exceeding DEM 50 000; 1,5 % for revenues greater than DEM 2,5 million and 2 % for revenues exceeding DEM 5 million.
- (18) In the absence of the ETIX facility being available to SABRE and any other CRS operating in Germany, only those travel agents subscribing to the START Amadeus service were able to benefit from the additional commission payments.
- (19) At a subsequent meeting with Commission representatives, in June 1998, the issue of the incentives was discussed again. Lufthansa now explained that, with effect from May 1998, six months after the Statement of Objections was issued, commission payments to travel agents had actually been increased from 0,5 % to 1 %. Furthermore, for internal German flights, a discount of DEM 10 had been offered to any passenger purchasing an electronic ticket since January 1998, although the corporate client scheme was ended in the same month. These increases in incentives had been made to encourage higher levels of ETIX sales which to date, according to Lufthansa, had been substantially less than their potential.
- d) *IATA industry standards*
- (20) Independently of the development of electronic ticketing by Lufthansa, and in response to a recognised need for an industry-wide standard for electronic ticketing, IATA has published an industry standard method of interfacing CRSs and airline systems for issuing electronic tickets. The standards were developed by IATA working groups over a two-year period. The airlines present at the IATA Passenger Services Conference in Los Angeles in October 1996 unanimously (including Lufthansa) adopted the Electronic Ticketing Resolutions Nos 722f and 722g ⁽¹⁾. A fundamental component in creating an industry standard was to establish the Electronic Data Interchange for Administration Commerce and Transport ('EDIFACT') message standard for the transmission of ETIX data elements. The resolutions were scheduled to become effective on 1 January 1997. In its letter of 14 May 1997, Lufthansa accepted that the standards 'have been valid as from 1 January 1997'.
- (21) Even before the IATA resolutions were adopted, SABRE's system used the 'EDIFACT' message standard which was in accordance with the domestic US ATA standard. It was an enhanced version of this EDIFACT standard which was subsequently incorporated into the ETIX standard by the IATA resolutions. By contrast, Lufthansa's ETIX standard through START Amadeus was purely an in-house system which did not use the EDIFACT standard at all.
- (22) In its letter of 14 May 1997, Lufthansa stated that 'Lufthansa had at no time abolished or ignored IATA standards.... At the time of developing ETIX Lufthansa could not have circumvented any standards since none existed.' It considers that the solution it developed for electronic ticketing was chosen because it was a high quality product. Lufthansa also states in its letter of 14 May 1997 that 'Lufthansa has at no time refused to adapt the system to the IATA standards.... Lufthansa is still interested in cooperation. Experience gained in the interim will make this easier.' In its reply to the Statement of Objections, Lufthansa claimed: 'Once it emerged that an IATA standard for Electronic ticketing would be adopted, Lufthansa began to implement this standard on the basis of the experience of its own ETIX system.'
- (23) Yet on the first day (1 January 1997) that the IATA ETIX resolutions were accepted by Lufthansa as having come into force, it introduced the first of the incentives, linked to an internal ETIX system exclusive to START Amadeus.

⁽¹⁾ IATA Resolution 722f: *Electronic Ticketing/Electronic Miscellaneous Documents — Airline*. IATA Resolution 722g: *Electronic Ticket/Electronic Miscellaneous Documents — Neutral*.

- e) *Contacts between Lufthansa and SABRE and other system vendors*
- (24) SABRE asserts that it has attempted to reach agreement with Lufthansa on the possibility of its subscribers issuing electronic tickets on Lufthansa flights. Meetings took place in June 1995, in April 1996 and on two subsequent occasions, to discuss the SABRE electronic ticketing product. In September of 1996 Lufthansa indicated its willingness to start discussions on the subject at the beginning of 1997. The first meeting took place on 13 January 1997 (see below).
- (25) Lufthansa further states that, at the meeting held on 13 January 1997, SABRE acknowledged its understanding of the approach adopted by Lufthansa in defining its priorities for the development of electronic ticketing. It also considers that electronic ticketing is only a ticketing functionality and thus independent from the usual CRSs.
- (26) In its observations dated 21 March 1997 on the Lufthansa response, SABRE restated the arguments set out in its original complaint. SABRE also added, at the meeting of 13 January 1997, that it fully understood the prioritisation process adopted by Lufthansa but it did not indicate its acceptance of it. Furthermore, during the course of the same meeting it reminded Lufthansa that it had been ready to initiate ETIX development with Lufthansa for more than a year, but that cooperation was not forthcoming.
- (27) In November 1997, SABRE and Lufthansa reached agreement for the implementation of electronic ticketing. Under this agreement, Lufthansa was to ensure that all the necessary work to be carried out on its part would be done to ensure implementation could be completed by 30 September 1998 at the latest. However if SABRE informed Lufthansa in writing that implementation could be completed by 30 June 1998, Lufthansa would dedicate the resource necessary to meet this earlier date. As SABRE did not issue such a notice, Lufthansa therefore completed its part of the work on 14 September 1998.
- (28) SABRE then proceeded to carry out the necessary testing after which, on 8 December 1998, the ETIX function became operational in the SABRE CRS.
- (29) As regards other CRSs, Lufthansa reached agreement on a timetable for installation with one system vendor in September 1997 and testing was expected to begin in March 1998. As yet implementation has still not been completed however. In November 1997 it had written to the other two system vendors requesting them to implement the ETIX function into their systems. Agreements were reached during 1998 and implementation is foreseen to be completed during the course of this year.
- (30) In a letter dated 2 November 1998, Lufthansa informed the Commission that it would cease all incentives linked to electronic tickets at the end of 1998.
- (31) Subsequently, by letter of 21 April 1999, SABRE informed the Commission explaining that a new commercial agreement with Lufthansa, designed to resolve all the issues that SABRE had raised in the original complaint, had been signed on 2 April 1999.

II. LEGAL ASSESSMENT

- (32) In the reply to the Statement of Objections, Lufthansa claimed that the same procedural guarantees and defence rights as are acknowledged in competition law procedures and enshrined in Council Regulations (EEC) No 17/62 ⁽¹⁾, (EEC) No 1017/68 ⁽²⁾ and (EEC) No 3975/87 ⁽³⁾ apply to the code of conduct. In seeking to apply these provisions the airline requested an oral hearing in the form laid down for procedures pursuant to Regulation No 99/63/EEC ⁽⁴⁾.
- (33) This case has not been addressed pursuant to Articles 81 and 82 of the Treaty, the procedure for which is set out by the abovementioned Regulations, but under the code of conduct. The code does not provide for the same procedures but the Commission has taken care to ensure an equivalent level of protection for the rights of defence.
- (34) In accordance with Article 19(1) of the code of conduct Lufthansa was served notice of the Commission's objections. In February 1998 Lufthansa was given access to the Commission's file in order to prepare its reply to the Statement of Objections. After its reply to the Statement of Objections, the Commission, by letter of 4 May 1998, offered Lufthansa the opportunity to amplify its views orally but the airline did not take up this offer.

Application of the code of conduct for CRSs

a) *The code of conduct for CRSs*

- (35) Article 11 of the code provides that the Commission, acting on receipt of a complaint or on its own initiative, shall initiate procedures to terminate infringement of the provisions of the Regulation. Accordingly it has examined the SABRE complaint against Lufthansa concerning alleged infringements of Article 8 of the code in accordance with Article 11.

⁽¹⁾ OJ 13, 21.2.1962, pp. 204/62.

⁽²⁾ OJ L 175, 23.7.1968, p. 1.

⁽³⁾ OJ L 274, 31.12.1987, p. 1.

⁽⁴⁾ OJ 127, 20.8.1963, pp. 2268/63.

b) *The scope of the code of conduct for CRSs*

i) START Amadeus

- (36) At the outset it is necessary to determine whether the ticket issuing facility in question here forms part of the 'computer reservation system' (CRS) for the purposes of the code and the position of START Amadeus under the code.

Article 2(f) of the code defines a CRS as:

'a computerised system containing information about, *inter alia*, air carriers'

- schedules,
- availability,
- fares, and
- related services,

with or without facilities through which:

- reservations may be made, or
- tickets may be issued,

to the extent that some or all of these services are made available to subscribers.'

Article 2(g) provides that 'distribution facilities' means facilities provided by a system vendor for the provision of information about air carriers' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services.

Pursuant to Article 2(h), 'System vendor' means any entity and its affiliates which is or are responsible for the operation or marketing of a CRS.

And lastly, pursuant to Article 2(1), 'Subscriber' means a person or an undertaking, other than a participating carrier, using the distribution facilities for air transport products of a CRS under contract or other arrangement with a system vendor.

- (37) START Amadeus is solely responsible for the marketing in Germany of the Amadeus CRS and is thus a system vendor within the meaning of Article 2(h). The distribution facilities offered by START Amadeus to subscribers include not only information on schedules, availability and fares (obtained from the Amadeus central core operated by AGTD) but also facilities for issuing tickets. In so far as these latter facilities are 'made available to subscribers', in the words of the last line of Article 2(f), they also form part of the computer reservation system as defined by the code.

- (38) Furthermore, on 18 July 1995, the Commission wrote to START Amadeus informing it that as it acted as a ticket issuer on behalf of the CRS Amadeus, it fell within the scope of the code, and informing it that it was under the obligation to submit its ticketing activities to annual audit as required by Article 21a of the code which requires a system vendor to ensure the 'technical compliance of its CRS' with certain articles of the code. In its letter of 29 November 1995, START Amadeus informed the Commission of the name of the auditor it had appointed to ensure compliance of its system with the code. For the purposes of the assessment of the complaint, the CRS in question is that distributed in the German market by the system vendor START Amadeus.

ii) Lufthansa

- (39) Article 2(i) defines a parent carrier as 'any air carrier which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls'. Since Lufthansa owns 50 % of Start Holding GmbH which in turn owns 95 % of START Amadeus, it indirectly, and jointly with others, owns START Amadeus and is therefore a parent carrier.

iii) Article 2(a), (b) and (c) — air transport product

- (40) Article 2(c) defines air transport product as 'both unbundled and bundled air transport products'.

- (41) Article 2(a) defines an unbundled air transport product as 'the carriage by air of a passenger between two airports including any related ancillary services and additional benefits offered for sale and/or sold as an integral part of that product'.

- (42) Article 2(b) defines a bundled air transport product as 'a pre-arranged combination of an unbundled air transport product with other services not ancillary to air transport, offered for sale and/or sold at an inclusive price'.

c) Article 8(1)

- (43) The relevant Article states that:

'A parent carrier shall neither directly nor indirectly link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive or disincentive for the sale of air transport products available on its flights.'

- (44) One of the Commission's conclusions in the Statement of Objections was that incentives operating through electronic tickets, when the functionality was only available to START Amadeus subscribers, constituted an infringement of Article 8(1).
- (45) In its reply Lufthansa contested that an airline ticket, electronic or otherwise, was an 'air transport product' as defined under Article 2 and hence did not fall within the scope of Article 8(1). Reference was made to the original article 8(1), before the code revision in 1993 ⁽¹⁾, which had also referred to tickets as well as air transport products and thus concluded that this did indeed constitute a distinction.
- (46) However, Article 8(1) refers to the sale of an air transport product, i.e. the fact that a service provider (the carrier) concludes (directly or through a travel agent) a transport contract with a customer by which the carrier commits itself to transport the passenger and the customer accepts to pay a price. The conclusion of this contract between the parties is usually materialised by the act of issuing a ticket, regardless of the format of that ticket (paper format or electronic). Therefore, the act of issuing a ticket, even if not part of the performance of the air transport service, is an integral part of the act of selling this transport service and accordingly falls under the scope of Article 8(1).
- (47) Furthermore, any interpretation of the term 'products' to exclude the electronic ticketing would deprive Article 8(1) of a large part of its intended effect. In addition, the Commission is of the view that it is paradoxical that Lufthansa, in order to support its argument, pleads in aid the text of the former Article 8(1), which text has clearly been replaced in 1993 by the new text which drops any distinction between air transport products and ticketing.
- (48) Article 8(1) of the code is aimed at preventing a parent carrier of a system vendor from distorting competition between CRSs by the granting of incentives to subscribers (travel agents) to use its own system.
- (49) The action of Lufthansa in only collaborating, in its role as parent carrier, with START Amadeus for the introduction of electronic ticketing clearly disadvantages all other CRSs in the German CRS market and means that the commissions and incentives offered by Lufthansa for the use of electronic ticketing could only be earned by those using the services of START Amadeus. Lufthansa believed that the incentives were not linked to the use of START Amadeus because sales of its air transport products through other (i.e. conventional) tickets in START Amadeus would not give rise to these incentives. Moreover, it took the view that these incentives were not inducements to use START Amadeus since they were offered to all travel agents regardless of the CRS used. However, Lufthansa was fully aware that its announcement to offer incentives to subscribers to issue electronic tickets could only have been taken up by subscribers to the system of which it was a parent carrier. All the subscribers to other CRSs operating in Germany would not have been able to benefit from this incentive scheme.
- (50) Lufthansa claimed that the incentives were needed for ensuring a successful introduction of the ETIX, that cooperation was necessary both from a technical perspective and also for travel agents to encourage customers to use electronic tickets and that the same argument applies to corporate clients and passengers in general. Lufthansa added that, despite these incentives, the take up of ETIX sales was very low. However, whether an inducement was required to launch electronic ticketing or not (which may be questioned), the code of conduct in any event simply prohibits linking the use of a specific CRS with the receipt of incentives for whatever reason they were allegedly introduced. Whether these incentives constituted an expense or simply passed on a cost saving, Lufthansa was under a duty not to limit their availability to its own CRS START Amadeus. There is thus no need for any teleological interpretation of Article 8 by reference to Article 3 of the Treaty as Lufthansa alleged.
- (51) Therefore Lufthansa has infringed Article 8(1) of the code by directly or indirectly linking the use of the CRS START Amadeus by a subscriber with the receipt of a commission or other incentive for the sale of air transport products available on its German domestic flights and those between Germany and London and Paris.
- (52) The corporate client incentive scheme ran from 1 January 1997 until 31 December 1997, the travel agent incentive scheme ran from 1 July 1997 until 31 December 1998 and the passenger discount scheme ran from 1 January 1998 until 31 December 1998. However, Lufthansa had given SABRE the possibility to offer electronic ticketing by 30 June 1998, in consequence after this date SABRE could have offered electronic tickets on Lufthansa flights and therefore Lufthansa was no longer linking the use of the specific CRS START Amadeus to the receipt of an incentive. The period encompassing the infringement was thus from 1 January 1997 until 30 June 1998.

⁽¹⁾ OJ L 278, 11.11.1993, p. 1.

III. CONCLUSION

- (53) Lufthansa has offered incentives when selling air transport products through the use of electronic tickets. The beneficiaries of these have been travel agents in Germany in the case of German domestic flights and services to London and Paris and corporate clients for German domestic flights. There has also been an incentive to all passengers for internal German flights in the form of a specific discount of DEM 10.
- (54) Lufthansa has developed an electronic ticketing functionality that has until 30 June 1998 been only available to START Amadeus and not to competing CRSs. Therefore, the possibility to offer electronic tickets was only available to those travel agents that subscribe to START Amadeus, of which Lufthansa is a parent carrier. In these circumstances, the Commission considers that Lufthansa is in breach of Article 8(1) of the code by indirectly linking the use of START Amadeus with the receipt of a commission or other incentive.

and passengers and thus bring about technical progress and that all incentives ceased at the end of 1998.

- (57) Therefore the Commission concludes that the infringement is relatively minor. The Commission also acknowledges that this is the first case in which the code of conduct has led to a formal decision.
- (58) On the other hand, the Commission also notes that Lufthansa actually increased the incentives in respect of electronic tickets both in value and in number since the Statement of Objections was issued.
- (59) As to the duration of the infringement, this was relatively short composed of 12 months of corporate incentives, 12 months of travel agents' incentives and six months of passenger discounts.
- (60) The Commission considers that this infringement justifies the imposition of a token fine upon Lufthansa under Article 16(2) of the code,

HAS ADOPTED THIS DECISION:

Article 16(2) of the code

- (55) Pursuant to Article 16(2) of the code the Commission may impose a fine on system vendors, parent carriers and participating carriers and/or subscribers of up to 10 % of the annual turnover for the relevant activity⁽¹⁾ of the undertaking concerned. In fixing the amount of the fine, regard shall be given to both the seriousness and duration of the infringement.
- (56) In assessing the gravity of the infringement, account must be taken of its nature and its actual impact on the market. The nature of the infringement was the creation of an indirect, not direct, link between receipt of a commission and the use of a specific CRS. Although such action has been to the exclusion and therefore disadvantage of the other CRSs, as to the impact on the actual market, the Commission does not consider that the disadvantage towards the other CRSs was such as to create an insurmountable handicap on their commercial activities in the market concerned. Nor have some other system vendors clearly demonstrated an overall urgency to implement the electronic ticketing function into their systems as early and as quickly as possible. Furthermore, the Commission also notes Lufthansa's opinion that the incentives were necessary in order to encourage market acceptance of this new type of ticket by both subscribers

Article 1

Lufthansa AG has infringed Article 8(1) of the code of conduct for CRSs by indirectly linking the use of START Amadeus with the receipt of a commission or other incentive.

The period of the infringement is from 1 January 1997 until 31 December 1997, as far as incentives to corporate clients are concerned, and, as far as travel agents more generally are concerned, from 1 July 1997 until 30 June 1998. In the case of the passenger discount, the period ran from 1 January 1998 until 30 June 1998.

Article 2

1. A fine of EUR 10 000 Euro is hereby imposed against Lufthansa AG for the infringement referred to in Article 1.

2. This fine shall be paid, in euro, within three months of the date of notification of this Decision into bank account No 310-0933000-43 of the European Commission, Banque Bruxelles Lambert, Agence Européenne, Rond-Point Schuman 5, B-1040 Brussels.

After expiry of that period, interest shall be automatically payable on the fine at the rate charged by the European Central Bank to its repo operations on the first working day of the month in which this Decision is adopted, plus 3,5 percentage points, namely 6 %.

⁽¹⁾ In a letter dated 27 August 1997, Lufthansa explained that 'included in the incentive scheme (for electronic tickets) is travel within Germany and travel to London and Paris'. This is taken as being the relevant activity in this case.

Article 3

This Decision is addressed to Deutsche Lufthansa AG, Von-Gablenz-Strasse 2-6, D-50679 Cologne, Germany.

Done at Brussels, 20 July 1999.

For the Commission

Neil KINNOCK

Member of the Commission
