

COMMISSION REGULATION (EC) No 1523/96
of 24 July 1996

amending Regulation (EEC) No 1617/93 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 3 thereof,

Having consulted the Advisory Committee on Agreements and Dominant Positions in Air Transport,

Having published a draft of this Regulation⁽²⁾,

Whereas:

(1) Commission Regulation (EEC) No 1617/93⁽³⁾, as amended by the Act of Accession of Austria, Finland and Sweden, declares Article 85 (3) of the Treaty to be applicable to agreements between undertakings in the air transport sector, decisions by associations of such undertakings and concerted practices between such undertakings which have as their purpose, *inter alia*, the holding of consultations on tariffs for the carriage of passengers, with their baggage, and of freight on scheduled air services between Community airports.

(2) Two basic factors prompted the adoption of an exemption regulation as far as consultations on cargo tariffs were concerned:

- the need to allow the airlines time to adjust to the introduction of competition,
- the need to contribute to the general acceptance of interlining conditions, which benefit both carriers and users.

(3) In the case of the first factor, it should be noted that, since the adoption of Regulation (EEC) No 3976/87, airlines have had a period of eight years to adjust to a more competitive environment. Under Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁽⁴⁾, as amended by the Act of Accession of Austria, Finland and Sweden, market access is to be completely liberalized with effect from 1 April 1997.

(4) Such a period appears sufficient to allow adjustment to new market conditions, and there is no longer any justification for extending it.

(5) In the case of interlining the following aspects must be taken into consideration:

— according to information and documents provided by the airlines and by the International Air Transport Association, the rates resulting from tariff consultations are up to 70 % higher than market prices. The result is, in particular, that consignments covered by interlining agreements are carried at rates which are negotiated between the consignors and the carriers or their representatives and which have no real relationship with the rates resulting from the tariff consultations. It has thus been established that interlining operates in some cases with tariffs that are less than half those set during consultations,

— it has also been established that airlines which do not take part in the tariff consultations carry cargo under interlining agreements,

— according to information provided by the airlines, the proportion of intra-Community consignments covered by interlining agreements fell from 30 % in 1991 to 11 % at the end of 1994. In the case of some airlines, the relevant figure is less than 2 %,

⁽¹⁾ OJ No L 374, 31. 12. 1987, p. 9.

⁽²⁾ OJ No C 322, 2. 12. 1995, p. 15.

⁽³⁾ OJ No L 155, 26. 6. 1993, p. 18.

⁽⁴⁾ OJ No L 240, 24. 8. 1992, p. 8.

- in some cases, the very high tariffs set during tariff consultations are applied to consignors, even where there is no interlining,
- some airlines have attempted to reform the system for setting tariffs during tariff consultations and to introduce lower tariffs, but such attempts have failed.

- (6) In view of these aspects, tariff consultations are no longer necessary to contribute to the acceptance of the general terms and conditions for interlining. These consultations also result in high tariffs being set, at the expense of users, and are no longer essential for making interlining work, given the small number of agreements concerned and the fact that they are concluded essentially on a bilateral basis.
- (7) Consultations on cargo tariffs must therefore be excluded from the scope of Regulation (EEC) No 1617/93.
- (8) Time to amend the agreements and concerted practices in question should be allowed,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1617/93 is amended as follows:

1. In Article 1, the third indent is replaced by the following:

‘— the holding of consultations on tariffs for the carriage of passengers, with their baggage, on scheduled air services between Community airports.’

2. Article 4 is amended as follows:

- (a) the title is replaced by the following:
‘Special provisions for consultations on passenger tariffs’;

- (b) paragraph 1 is amended as follows:

- (i) the introductory words are replaced by the following:

‘The exemption concerning the holding of consultations on passenger tariffs shall apply only if the following conditions are met:’;

- (ii) point (a) is replaced by the following:

‘(a) the participants only discuss air fares to be paid by air transport users directly to a participating air carrier or to its authorized agents, for carriage as passengers on a scheduled service, as well as the conditions relating to those fares and rates. The consultations shall not extend to the capacity for which such tariffs are to be available.’

- (iii) point (c) is replaced by the following:

‘(c) the passenger tariffs which are the subject of the consultations are applied by participating air carriers without discrimination on grounds of passenger nationality or place of residence.’

- (iv) point (e) is replaced by the following:

‘(e) the consultations are not binding on participants, that is to say, following the consultations the participants retain the right to act independently in respect of passenger tariffs.’

Article 2

Existing agreements and concerted practices may be amended so as to comply with this Regulation by 30 June 1997.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 24 July 1996.

For the Commission

Karel VAN MIERT

Member of the Commission