

***Case No COMP/M.1626 -
SAIR GROUP / SAA***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/11/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.11.1999 – SG (99) D/9133

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To notifying parties

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Dear Sirs,

Subject: Case No IV/M.1626 - SAirgroup /SAA

Notification of 08.10.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 08.10.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking(s) SAirGroup and Transnet Limited (Transnet), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of South African Airways (Proprietary) Limited (SAA).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. SAA is active in air transport and related activities. SAirGroup is the holding of a group of companies (among others Swissair) which are active in air transport and related activities. Transnet is a financial holding company controlled by the Republic of South Africa. Transnet presently owns 100 % of SAA; its other interest include ground handling, catering, rail transport, port ownership, harbour management and operation, high pressure pipeline operations, parcel and distribution services.
4. Transnet will keep 80 % of the shares in SAA and SAirGroup will acquire 20 % of the shares. Transnet and SAirGroup concluded a Shareholders' Agreement which contains provisions on the strategic commercial behaviour of SAA and the appointment of the chief executive of SAA.

II. CONCENTRATION

5. SAirGroup and Transnet will exercise joint control of SAA. According to the Shareholders' Agreement the approval of the business plan and the operating budget, the appointment of the chief executive officer and any material changes to routes or frequency of slots need to be approved by Transnet and SAirGroup. Therefore, on a number of strategic business decisions cooperation between the parties is necessary and consequently, both parties will exercise decisive influence over SAA which leads to a situation of joint control in the meaning of the Merger Regulation.
6. SAA operated as an autonomous economic entity prior to the notified operation and will continue to do so (Article 3 (2) of the Merger Regulation).

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5,000 million¹ (SAirGroup EUR 6.956 million; Transnet EUR 3.500 million). Each of them has a Community-wide² turnover in excess of EUR 250 million (SAirGroup EUR [...] and Transnet [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

- (1) The parties' activities
8. SAirGroup and SAA both provide air transport (passenger and cargo) and aeroplane maintenance. SAirGroup and Transnet are also active in catering and ground handling.
9. SAA offers domestic flights inside South Africa and international flights to African and worldwide destinations. The principal air transport activity of the SAirGroup is Swissair, which operates mainly scheduled flights from Switzerland to destinations all over the world. Other subsidiaries are CrossAir which operates short and medium-haul scheduled and charter flights from Switzerland and Balair/CTA which operates long-haul charter for tour operators. SAirGroup has shareholdings in several other airlines. It has joint control with other shareholders of the Belgian airline Sabena, the German airline LTU, the Italian airline Air Europe and the French airline AOM. Sabena operates scheduled flights from Belgium to European and world-wide destinations, its subsidiary Sobelair provides charter flights to holiday destinations. LTU operates so-called scheduled leisure flights from Germany mainly to holiday destinations. Air Europe operates long-haul charter and scheduled flights from Italy to holiday destinations and AOM operates scheduled flights in France, to European destinations and to the French overseas departments.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

² The geographic allocation for the turnover achieved by air transport activities has been made according to the "point of sales method" where the turnover is allocated to the country where the ticket sale occurred.

(2) Relevant markets

10. The definition of the relevant market in air transport is generally made on the basis of a route or a bundle of routes.³ The substitutability between routes depends on a number of factors, such as the distance between the point of origin and the point of destination, the distance between the different airports situated on each side of the route and the number of frequencies available on each route⁴.
11. SAA operates scheduled flights from Capetown via Johannesburg to Zürich, Paris, London and Frankfurt. Swissair is flying on the routes Zürich - Johannesburg and Zürich - Cape Town. Sabena is flying from Brussels to Johannesburg and LTU is flying from Munich to Cape Town.
12. In the present case it can be left open whether the relevant market consists of individual routes operated by the parties in form of direct flights or of a bundle of routes between departure points in Europe and the destinations in South Africa which also includes indirect flights. The material competition assessment will not change whether individual routes or a bundle of routes are considered.
13. A further distinction between "price sensitive" and "time sensitive" passengers is not of importance as it would not lead to a different assessment.
14. The parties submit that for cargo the relevant market is the transport of cargo between South Africa and Europe.
15. It is not necessary to delineate the relevant markets for groundhandling services, catering services, aircraft maintenance services for these services because, as will be shown below, the SAirGroup's and SAA's activities either do not overlap at all or only to an insignificant degree.

B. Assessment

16. The activities of SAirGroup and of SAA are to a large extent complementary. On the routes between the European Union and South Africa there is only an overlap if indirect flights are taken into account. Swissair and SAA are both operating flights on the routes Zürich - Johannesburg and Zürich - Cape Town. However, these routes are outside the European Union. None of the other airlines controlled by the Swissair group (Sabena, LTU, AOM, Air Europe) is flying on routes to South Africa which are also served by SAA. SAA is flying from Capetown via Johannesburg to Paris, London and Frankfurt.

³ Court of Justice, judgement in Case 66/86-Ahmed Saeed Flugreisen and Other v/Zentrale zur Bekämpfung unlauteren Wettbewerbs (1989) ECR 803; Court of First Instance, judgement in Case 2/93-Air France v/Commission (TAT)(1994) ECR 323; Commission Decision of 5.10.1992, case IV/M. 157 Air France/Sabena, point 25; Commission Decision of 20.7.1995, case IV/M. 616 Swissair/Sabena, point 19; Commission Decision of 28.2.1997 case IV/M.857, British Airways/Air Liberté, point 15, Commission Decision of 21.12.1998 case IV/M. 1354 SAirGroup/LTU, Commission Decision of 3.08.1999 case IV/M.1494 Marine-Wendel/SAirGroup/AOM.

⁴ See in particular Commission Decisions of 05.10.1992 (Air France/Sabena), point 25; of 27.11.1992 (British Airways/TAT), point 19; of 17.02.1993 (British Airways/Dan Air), point 10; of 20.07.1995 (Swissair/Sabena) point 19; Commission Decision of 28.2.1997 case IV/M.857, British Airways/Air Liberté, point 15; Commission Decision of 21.12.1998 case IV/M. 1354 SAirGroup/LTU.

Sabena is flying from Brussels to Johannesburg and LTU is flying from Munich to Cape Town.

17. The majority of the passengers on the Swissair flights to South Africa are transit passengers which originate in the EU. If the market were defined as the bundle of routes between departure points in the EEA and the destinations Johannesburg and Cape Town in South Africa the operation will lead to an overlap. The combined entity would become the leader in flights between Europe and South Africa. SAA has a market share of appr. [25-35%] to which a market share of appr. [5-10%] by the Swissair Group had to be added (market shares of the routes to Johannesburg and Cape Town differ only slightly).
18. A further distinction between "price sensitive" and "time sensitive" passengers is not necessary as there is only an overlap between the parties' activities if indirect flights are taken into account. For direct flights preferred by "time sensitive" passengers there is no overlap.
19. Although the parties will have a considerable market share their competitive behaviour will be constrained by several other strong competitors. British Airways, Lufthansa, Air France, KLM/Alitalia, Virgin Atlantic all fly to Johannesburg and Cape Town (Virgin Atlantic only Johannesburg) and offer connecting flights to their respective hubs in Europe.
20. The same considerations apply to the cargo business of the parties between South Africa and Europe. SAA has approximately a market share of [25-35%] to which a market share of [5-10%] by Swisscargo has to be added. The competitive behaviour of the parties will again be constrained by strong competitors as British Airways, Lufthansa, Air France, KLM/Alitalia.
21. As regards catering services and groundhandling there is no overlap in the EC as Transnet's activities are exclusively performed in South Africa SAirGroup and SAA also supply aircraft maintenance services to third parties. Again, the turnover achieved by SAA is small, in particular if compared to other competitors. In conclusion, as far as the parties' activities overlap at all in these areas, such overlaps are insignificant.
22. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

23. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,
(signed : Mario MONTI)