

***Case No COMP/M.2008 -  
AOM / AIR LIBERTE /  
AIR LITTORAL***

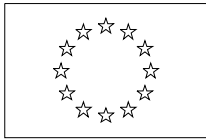
Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 27/07/2000

*Also available in the CELEX database  
Document No 300M2008*



EUROPEAN COMMISSION

Brussels, 27. 07. 2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No COMP/M.2008 – AOM / AIR LIBERTE / AIR LITTORAL**

Notification of 23.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 June, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which AOM Participations SA (“AOM”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Participations Aéronautiques (“PAé”), by way of purchase of shares.
2. On 29.06.2000, the Commission granted a derogation from the suspensive effect imposed by Article 7(1) of the Merger Regulation, pursuant to Article 7(4) of the said Regulation.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

**I. THE PARTIES AND THE OPERATION**

4. AOM is a French company, primarily active in the domain of air transport out of the Paris Orly airport and in the provision of related services (such as catering and ground handling services). AOM is jointly controlled<sup>1</sup> by Marine-Wendel (a holding company also controlling PAé and having joint control in Air Littoral, another French airline)

---

<sup>1</sup> See case IV/M.1494-SAIR GROUP/AOM

and SAirGroup (the ultimate parent company of Swissair, Crossair and Balair, with controlling stakes in a number of airlines including Sabena, LTU, AOM, and LOT).

5. PAé is the holding company of a group comprising Air Liberté and TAT European Airlines (“TAT”). It is active in air transport (through Air Liberté, which also operates TAT’s airline activities) and the provision of the related services (such as maintenance). Until 4 May 2000, PAé was controlled by British Airways, but since then it has been acquired by Taitbout Antibes BV (“Taitbout”, controlled by Marine-Wendel).
6. The notified operation concerns AOM’s acquisition of sole control over PAé, following the signature of an agreement between Taitbout and AOM leading to the acquisition by AOM of the 100% stake held by Taitbout in PAé.

## **II. CONCENTRATION**

### *Two distinct transactions*

7. Given that the notified operation transaction closely follows Taitbout’s acquisition of PAé from British Airways, it is necessary to examine whether the two transactions constitute one concentration, or instead whether each of them constitutes a different operation.
8. On the basis of the information provided by the notifying parties, it appears that the two transactions have no legal link with each other, and in particular that the first transaction (leading to Taitbout’s acquisition of PAé) is not conditional on the second operation (leading to AOM’s acquisition of PAé). It follows that each of the two transactions should be examined separately for the purposes of the Merger Regulation.
9. In the light of the above, it is concluded that the present decision will only concern AOM’s acquisition of PAé from Taitbout, since Taitbout’s prior acquisition of PAé from British Airways Plc constitutes a distinct transaction. In addition, it should be noted that the first transaction did not meet the turnover thresholds as defined in Article 1 of the Merger Regulation, and therefore is not notifiable pursuant to the said regulation.

### *Joint control*

10. The operation will lead to a change of control in PAé, from sole control by Marine-Wendel (through Taitbout) to joint control by Marine-Wendel and SAirGroup (via their joint controlling interests in AOM). Since PAé clearly performs all the functions of an autonomous economic entity, it is concluded that the notified transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

11. The combined aggregate world-wide turnover of the parties to the concentration exceeded EUR 5,000 million in 1998 and each of the undertakings concerned had a Community-wide turnover of more than EUR 250 million. The undertakings concerned did each not achieve more than two-thirds of their aggregate turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement.

#### IV. COMPATIBILITY WITH THE COMMON MARKET

12. Given that AOM and PAé were already controlled by Marine-Wendel as a result of Taitbout's acquisition of PAé from British Airways, the only change caused by the present operation is the acquisition of joint control of PAé by SAirGroup.

##### A. AIR TRANSPORT SERVICES

13. PAé and SAirGroup's main activities are in air transport, where they provide scheduled and air transport services for passengers, as well air transport services for freight.

##### *Relevant markets*

14. In previous decisions, the Commission has distinguished air transport services for passengers from air transport services for freight. Within air transport services for passengers, the Commission has also distinguished the supply of airline seats to tour operators for incorporation into package tours, from sales to individuals<sup>2</sup>.
15. For scheduled flights a further distinction has to be made according to routes. The definition of the relevant market in air transport is generally made on the basis of a route or a bundle of routes.<sup>3</sup> 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 route.
16. For the sale of seats to tour operators, i.e. charter flights in present case, a wider geographic dimension appears to be appropriate. The offer of a transport service to a tour operator is not necessarily linked to a specific destinations and therefore all charter services out of France or out of a given city could be regarded as belonging to the same market.
17. Finally, for air transport for freight, an even wider geographic dimension seems to be justified, insofar as freight may be routed with a higher number of stop-overs so that indirect routes are usually substitutable with direct routes<sup>4</sup>.
18. However, it is not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

##### *Competitive assessment*

19. It appears that the operation will not create any affected markets in air transport : first, if one excepts AOM's activities, there are no overlaps between SAirGroup' and Air Liberté's scheduled routes or charter flight routes; and SAirGroup and Air Liberté's combined shares of sales in air transport services for freight do not exceed [5 - 15%] in the EEA. And secondly, it appears that the operation will not substantially affect the

---

<sup>2</sup> See case no. IV/M 1354, SAirGroup/LTU

<sup>3</sup> See, e.g., case IV/M. 1354 SAirGroup/LTU, and case IV/M.1494 Marine-Wendel/SAirGroup/AOM.

<sup>4</sup> See case M/JV-19 KLM-Alitalia

conditions of competition between AOM and Air Liberté, since AOM and Air Liberté were already jointly controlled by Marine Wendel as a result of Taitbout's acquisition of PAé from British Airways. Consequently, it is concluded that the notified operation does not create or strengthen a dominant position in air transport as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **B. CATERING SERVICES AND GROUND HANDLING SERVICES**

20. The operation could also lead to a vertical integration between (i) Air Liberté's air transport activities and (ii) SAirGroup's upstream businesses of in-flight catering and ground handling services.
21. However, as far as in-flight catering is concerned, it appears that there is only one airport (namely the Basle Mulhouse airport) where both SAirGroup offers and Air Liberté purchases those services. In addition, the operation will only have *de minimis* effects at that airport, since Air Liberté already purchases all of its in-flight catering services from SAirGroup's subsidiary Gate Gourmet, and since Air Liberté's purchases represent [below 5 %] of Gate Gourmet's turnover at the Basle Mulhouse airport.
22. With respect to ground handling services, the operation will create an affected market at the Montpellier airport, where SAirGroup's share of sales is [35 - 45 %] and where Air Liberté currently procures ground handling services. However, in that airport, it appears that the operation will not substantially affect the conditions of competition for ground handling, since Air Liberté already purchases all of its ground handling services from SAirGroup's subsidiary Swissport. Furthermore, in any event, Swissport will remain subject to the effective competition by Air France ([50 - 60 %] of sales at the Montpellier airport).
23. In the light of the above, it is concluded that the notified operation 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**

24. 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,