

***Case No COMP/M.2672 -
SAS / SPANAIR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/03/2002

*Also available in the CELEX database
Document No 302M2672*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/03/2002

SG (2002) D/228776

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.2672 - SAS/Spanair

Notification of 4.2.2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4.2.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ ("The Merger Regulation) by which the undertaking Scandanavian Airlines Systems Denmark-Norway-Sweden (SAS) proposes to acquire sole control of Spanair Holding S.L (Spanair) within the meaning of article 3 (1) (b) of the aforementioned Council Regulation, through a purchase of shares.
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.

¹ OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p. 13, last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p.1, corrigendum OJ L 40, 13.2.1998, p.17).

THE PARTIES

3. SAS is the eighth largest passenger airline in Europe. It is the leading Scandinavian international airline, with bases at Stockholm, Copenhagen and Oslo airports. It is a consortium of three national airlines SAS Danmark A/S, SAS Norge ASA and SAS Sverige AB. SAS operates scheduled flights carrying passengers and cargo, serving a wide range of European and intercontinental destinations with a fleet of over 187 aircraft. SAS's airline interests include scheduled airlines Air Botnia (100% subsidiary) an airline specialising in traffic to and from Finland, Cimber Air (26%) a regional airline serving mainly Danish but also some German routes and Air Baltic. SAS also has a minority interest in Bmi British Midland (20%) and Gronlandsfly (37.5%), an air transport company based in Greenland.
4. Spanair is Spain's second largest airline transporting some 5 million passengers annually with a fleet of some 50 aircraft. It is presently jointly controlled by SAS and Teinver S.A. (Teinver). It operates regular passenger services to a range of destinations mainly within Spain and the Canary Islands but also between Spain and other European destinations and Central America. It also operates charter flights mainly between Finland and Spain. Spanair has shareholdings in Aerolíneas de Baleares (17%), in Newco Airports Services (10%), in Club de Vacaciones (99.79%) and in Fuerza de Ventas (80%).

THE OPERATION

5. SAS currently owns 49% of Spanair, while Teinver owns 51%. Teinver is a Spanish-based company, whose purpose, according to the notification, is to "invest in the shares of domestic and foreign private companies which are active in the tourism sector". It is a holding company and does not have any commercial activities itself.
6. SAS and Teinver have agreed that SAS will increase its shareholding in Spanair to 73.99% [...].

COMMUNITY DIMENSION

7. The aggregate world-wide turnover of SAS and Spanair (collectively referred to as "the parties") for the fiscal year 2000 was in excess of EUR 5 billion. (SAS 5,626 million EUR; and Spanair, 759 million EUR). Each of them has a Community-wide turnover in excess of EUR 250 million (SAS, EUR [...] million; and Spanair EUR [...] million) and they collectively do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

RELEVANT MARKETS

8. Both SAS and Spanair are active in the provision of scheduled air transport of passengers between Spain and Scandinavia.

Distinction between sales to individuals and sales to tour operators

9. The Commission has previously distinguished the supply of airline seats to tour operators for incorporation into package tours from sales to individuals. The provision of these services is not substitutable as prices and conditions are different. Individual passengers

purchase tickets directly from the airline, whereas tour operators combine the air transport service with other services into a package holiday tour². In this case, such a distinction is not necessary, because the vast majority of the seats on the scheduled flights in question are sold to individual customers.

Segmentation by route

10. 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 routes³. The service of the transport to a certain destination can not be substituted by a transport to a different destination. 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. More specifically, in the *KLM/Alitalia*⁵ decision, the Commission concluded that each point-of-origin/point-of-destination pair constitutes a relevant market, and that such market includes a route or a bundle of routes comprising:
 - the non-stop flights between the two airports concerned;
 - non-stop flights between the airports whose respective catchment areas significantly overlap with the catchment area of the airports concerned;
 - indirect flights between the airports concerned to the extent that these flights are substitutable for the non-stop flight. Substitutability of direct routes with indirect routes depends on a number of factors such as the flight time or the frequencies (and schedules of the routes).

Inclusion of non-stop and indirect flights

12. As indicated above, the relevant market includes indirect flights between the airports concerned, to the extent that these flights are substitutable for the non-stop flights. Substitutability of direct routes with indirect routes depends on a number of factors such as the flight time or the frequencies (and schedules of the routes).
13. Given that indirect flights imply the presence of a stop or even a change of aircraft, they are obviously longer and less convenient for passengers than non-stop operations. It follows that, other things being equal, indirect flights are considered less attractive than

² Case no. IV/M 1354, SAir Group/LTU, p.14.

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 Decision of 18.07.2001 SAS/Maersk Air point 28; 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 in case COMP M/2041 United-US Airways.

⁵ See case M/.JV-19-KLM/Alitalia

non-stop services. This is further reflected by the fact that non-stop services usually account for a much larger share of total O&D⁶ traffic than their share of frequencies.

14. However, in the present case, results of the Commission's investigation indicate that, of the four city-pairs considered (see paragraph 17 below), those drawbacks may be mitigated by a number of countervailing elements. In particular, it appears that, on medium-haul flights such as Spain-Scandinavia, indirect flights are at a lower disadvantage than on short-haul services, because, on the one hand, intermediate stops have a lower relative impact on total elapsed time as the total trip duration increases and, on the other hand, the number of daily direct frequencies in the city-pairs considered is very reduced (3 or less). In that context, factors other than total flight duration may have a more decisive influence on the passenger's decision to choose a given flight. In particular, (i) convenience of departure/arrival times, (ii) number of frequencies (and therefore flexibility), (iii) frequent flyer programmes or corporate schemes and (iv) price all play a role in the passenger's choice.
15. It follows that indirect flight operators may take advantage of those other selection criteria to differentiate their services from those offered on the non-stop flights, and therefore to mitigate the inconvenience of additional elapsed time and possibly of a change of aircraft. Certain indirect flights therefore may appear to effectively compete with the non-stop services, on all four city-pairs considered, indirect services were chosen, depending on the route, by at least 15% and up to 73% of the O&D passengers concerned. As regards time-sensitive passengers, and in cases where there is only one or less direct frequency per day, the market shares of the indirect flight operators were higher than market shares for direct flight operators.
16. This does not imply that all indirect routings constitute competitive alternatives to the non-stop services. Only those alternatives which (i) are marketed as connecting flights on the city-pair concerned (and therefore appear on the Computerised Reservation Systems used by travel agents), and (ii) only cause a limited extension of the trip duration, really appear to exert a sufficient competitive constraint on non-stop flights.
17. In the present case the parties submit that there are four routes affected by the transaction as follows:
 - i) Copenhagen – Madrid where SAS and Spanair operate a non-stop service each with one daily frequency and on a code-shared basis;
 - ii) Copenhagen – Malaga where SAS operates a twice-weekly non-stop service and Spanair operates a once weekly indirect service via Madrid with a waiting time of 55 minutes.
 - iii) Copenhagen – Alicante where SAS operates a non-stop, twice weekly service (during the Summer season only) and Spanair operates an indirect, six times weekly service via Madrid (waiting time at Madrid of 75 minutes); and

⁶ Origin to destination or point to point

- iv) Copenhagen – Palma de Mallorca where SAS operates one non-stop weekly service (during the Summer season only) and Spanair operates a six times weekly service via Barcelona (waiting time at Barcelona of 50 minutes).
18. For the purposes of the assessment of the present transaction the question of whether there are indirect routings which are substitutable for the one direct route (Copenhagen – Madrid) which is affected by this operation will be left open since the operation does not raise serious doubts in regard to this route even where indirect routes are excluded from the market definition. For the same reason the question of the extent to which the indirect routes offered by Spanair (between Copenhagen – Malaga, Alicante and Palma de Mallorca via Barcelona) are substitutable for the direct service offered by SAS (between Copenhagen- Malaga, Alicante and Palma de Mallorca) will be left open.
19. As concerns a possible distinction between (i) time-sensitive passengers (i.e. passengers whose main concern is to reach their destination in the shortest possible time, who are not flexible in terms of time of departure/arrival, and who require that the airline offers them the possibility to change their reservation at short notice), and (ii) non-time sensitive passengers (or price-sensitive passengers, who accept longer journey times), since this distinction is not decisive for the Commission’s assessment in this case, the question of whether there is a distinct market for time-sensitive passengers can also be left open.
20. As indicated above, the relevant market also includes flights originating at the airports whose respective catchment areas significantly overlap with the catchment area of the airports concerned. In the present case, it is not necessary to determine whether flights from the airports concerned are subject to a significant competitive pressure from flights from other airports.

ASSESSMENT

Overlaps on non-stop services

21. Presently, the only overlap between city pairs operated on a non-stop basis by SAS and Spanair is the route *Madrid-Copenhagen*. For the year to October 2001⁷ in terms of O&D passengers, the parties' market share was [40-50%] (SAS [20-30%] Spanair [10-20%]). Iberia⁸ operates one daily frequency with a market share of [50-60%].
22. If indirect flights are included, the combined market share of the parties for the year to October 2001 was [30-40%] (SAS [20-30%], Spanair [10-20%])⁹. The shares of other competitors were as follows: Iberia ([40-50%]), Swissair ([0-10%]) and Air France ([0-10%]). Total travel time for direct flights is around 3 hours 20 minutes. Prices for return indirect flights are similar for direct and indirect flights but some airlines offer lower prices for one way indirect flights. Other competitors which are offering indirect flights

⁷ All market share figures are for the year to October 2001 unless otherwise stated. All figures are for actual passengers flown between origin and destination.

⁸ This relatively higher market share for Iberia which only operates one frequency per day is due to the fact that most passengers using SAS and Spanair on this route are connecting passengers.

⁹ Figures are based on actual passengers flown in the case of SAS, Spanair and Iberia and are estimated on the basis of MIDT in the case of competitors .

with a total travel time of 5 hours or less include Iberia (in combination with DAT and KLM), DAT, Air France, KLM, Lufthansa and British Airways.

23. Spanair is already jointly controlled by SAS and for the following reasons, the acquisition of sole control of Spanair will not have any competitive impact on the route in question. Iberia already has a strong position on this route as is evidenced by its high market share. In addition Spanair entered this route only after SAS had gained joint control which means that Spanair entered the route in co-operation and in partnership with SAS. Also the service is operated by each airline on a code-shared basis and with schedules and frequencies which complement each other. Consequently, it is considered that the operation does not raise serious doubts as to the creation or strengthening of a dominant position on the route Copenhagen-Madrid.

Direct routes overlapping with indirect routes

24. On the *Málaga-Copenhagen* route there is an affected market only if it is considered that Spanair's indirect service via Madrid (and some 40 other indirect services) competes with SAS' non-stop service. As stated above this question will be left open as it is not necessary for the purposes of the assessment of this case to decide the issue.
25. In the event that all such indirect services were included in the relevant market the combined market share¹⁰ of the parties in 2001 was [20-30%] (SAS [20-30%], Spanair [0-10%]). Sterling Airways will also commence direct operations in the 2002 Spring-Summer season. In addition there are numerous large competitors offering alternative indirect routings between Malaga and Copenhagen such as Crossair (via Zurich), Iberia (via Madrid) and Air France (via Paris Charles de Gaulle). In view of the small addition to the combined entity's share, the existence of strong competition via indirect routings and the commencement of a new direct service it is considered that the operation does not raise serious doubts as to the creation or strengthening of a dominant position on the route Copenhagen –Malaga.
26. As regards the *Alicante-Copenhagen* route there is an affected market only if it is considered that Spanair's indirect service via Madrid (and some 40 other indirect services) competes with SAS' non-stop service. As stated above this question will be left open as it is not necessary for the purposes of the assessment of this case to decide the issue.
27. In the event that all such indirect services were included in the relevant market, SAS' market share for the year to December 2000 was [30-40%]. Spanair's market share for the same period was [0-10%]. Other competitors on this route have considerable market shares - Iberia ([40-50%]), Crossair ([10-20%]) and KLM ([0-10%]). In the light of these factors it is considered that the operation does not raise serious doubts as to the creation or strengthening of a dominant position on the route Copenhagen- Alicante
28. Finally on the *Palma de Mallorca-Copenhagen* route there is an affected market only if it is considered that Spanair's indirect service via Barcelona (and some 40 other indirect

¹⁰ market shares in relation to O&D passengers have been calculated on the basis of the MIDT data base (Market Information Data Transfer)

services) competes with SAS' non-stop service. As stated above this question will be left open as it is not necessary for the purposes of the assessment of this case to decide the issue.

29. In the event that all such indirect services were included in the relevant market SAS' market share for the year to December 2001 was [50-60%] while that of Spanair was [0-10%]. The next largest competitors have considerable market shares - Crossair ([10-20%]), Iberia ([0-10%]) and KLM ([0-10%]). Sterling Airways will also commence direct operations in the Spring-Summer season 2002. Moreover the services of SAS and Spanair are operated on a code-shared basis and schedules and frequencies complement each other. In view of these factors it is considered that the transaction does not raise serious doubts as to the creation or strengthening of a dominant position on the route Palma de Mallorca-Copenhagen.

Co-operation between SAS and other airlines of the Star Alliance

30. As indicated above, SAS is part of the Star Alliance, which includes a number of other airlines such as Lufthansa, United Airlines, Air Canada, bmi British Midland, Singapore Airlines, etc. The carriers within this alliance co-operate in various manners in areas such as codesharing, co-operation in the provision of airport lounges and frequent flyer programmes (FFPs) and co-operation in ground-handling services, etc.
31. In particular SAS has concluded various co-operation agreements with respectively Lufthansa¹¹, Austrian Airlines and bmi British Midland. The cooperation between these members of the Star Alliance has no bearing on the SAS/Spanair merger. Neither Lufthansa nor Austrian or bmi British Midland would be potential entrants on the only route presently operated with direct flights by both SAS and Spanair, given the presence of Iberia and SAS/Spanair, the limited number of passengers per year [...] and the absence of hubs in Copenhagen or Madrid. As regards indirect flights, Lufthansa, Austrian and bmi British Midland provide connecting service between the routes where both SAS and Spanair operate and they compete with them.
32. In the light of the above, it appears that competition between Spanair and SAS' partners will not be reduced as the result of the transaction.

Network Effects

33. Members of the Star Alliance have large long-haul activities, while Spanair is primarily a regional operator on the Spanish market with limited activities in some European routes and central America. In that context, Spanair may offer interlining services to third operators so as to provide them with sufficient feeder/de-feeder traffic for their long-haul (including transatlantic) operations.
34. It is therefore necessary to examine whether, after the proposed transaction, Spanair could stop providing those services to third parties which are not members of the Star alliance, and whether the resulting weakening of those competitors could create or strengthen a dominant position by the Star alliance on certain routes. However, there is no indication

¹¹ Lufthansa/SAS Decision of 16 January 1996 (Case IV/35 545), OJ L 54 of 5.3.1996, p.28

that this could be the case, primarily because of the possibility for other competitors to interline with companies other than Spanair.

35. It therefore appears that the network effects arising from the proposed concentration do not raise serious doubts as to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

CONCLUSION

36. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and 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 by Mario MONTI,
Member of the Commission