

*Case No IV/M.857 -
BRITISH AIRWAYS /
AIR LIBERTÉ*

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.02.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.857 BRITISH AIRWAYS/AIR LIBERTÉ
Notification of 29.01.97 pursuant to Article 4 of Council Regulation

1. On 29.01.97, the Commission received a notification related to the acquisition by British Airways Plc of a 70% interest in Air Liberté S.A.
2. After examination of the notification, the Commission has concluded that the notified concentration falls within the scope of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. British Airways Plc (BA) is a major British airline principally engaged in the carriage of passengers and freight. It also has interests in other activities connected with the air transport business, such as aircraft maintenance services, travel services and ground handling services. BA is one of the world's leading international airlines, with 36 million passengers carried, and a flight network serving more than 200 destinations in nearly 90 countries.

4. Air Liberté S.A. is a French company active primarily in the operation of air transport services within the French domestic market. Air Liberté also operates a small number of scheduled routes, as well charter routes to third countries.

II. OPERATION

5. In September 1996, Air Liberté was declared in judicial receivership pursuant to a judgement of the Commercial Tribunal of Créteil (France). Its management was handed over to court-appointed administrators pending a resolution of the problem either by liquidation or a take over by a third company. On 25 October 1996, BA, jointly with the French company Financière Moncey, submitted a bid, including a "*plan de continuation*", to acquire Air Liberté. On 09.01.97, the Commercial Tribunal of Créteil agreed to the bid proposed by BA.

III. CONCENTRATION

6. According to the notifying party, BA will have a participation in Air Liberté of at least 70% and the French company Financière Moncey will have the remaining shares. The voting rights and the number of the Administrative Board's members, will be related to the respective interests of each shareholder. Neither the participation of Financière Moncey nor any other agreement between it and BA, will give Financière Moncey the possibility to exercise control over or to manage the activities of Air Liberté. Consequently, BA will acquire sole control of Air Liberté.
7. The present transaction therefore constitutes a concentration within the meaning of Article 3 of Regulation 4064/89.

IV. COMMUNITY DIMENSION

8. In 1996, the combined aggregate world-wide turnover of BA and Air Liberté exceeded Ecu 5.000 million and each undertaking achieved a Community-wide turnover of more than Ecu 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.¹ The present operation therefore has a Community dimension within the meaning of Article 1(2) of the Regulation, but does not constitute a cooperation case under the EEA Agreement.

¹ The geographic allocation of turnover was made on the basis of the point of sales method as well as on the basis of the 50/50 method (see in particular case NIV/M.616-Swissair/Sabena) and by taking into account either the turnover of the closest financial year, or the "*plan de continuation*" submitted by the BA and Financière Moncey, on which the judgement of the Commercial Tribunal is founded, or the turnover attributable to the routes operated as well as the routes closed before January 1997 for which slots have been maintained for continuing operations.

V. FACTUAL BACKGROUND

9. The core business of both BA and Air Liberté is the scheduled air transport of passengers and freight. The other activities (engineering and maintenance, training, catering, etc) have been developed in connection with the air transport service as such. BA has a very extensive network in the British domestic market and in medium and long-haul routes mainly from the United Kingdom to the five continents. BA is also active in France through its subsidiary TAT. Air Liberté operates mainly in the French domestic market, as it currently serves about 10 destinations in France, including the route Paris-Toulouse. In addition Air Liberté currently operates a few routes to third countries.
10. The airports concerned by the operation are Gatwick (U.K.), Roissy and Orly (France), where British Airways and Air Liberté are both present, either directly or through subsidiaries.
11. According to the notifying party, the combined share of the British Airways Group and Air Liberté for all the slots allocated at Gatwick is 24%. The increase is not very significant since Air Liberté holds less than 3%, corresponding to four daily frequencies relating to past routes to Toulouse and Bordeaux., which are not operated any more.
12. At Roissy Charles de Gaulle, the impact of the proposed operation is marginal. For the 1996/1997 winter season, the combined holding of British Airways Group and Air Liberté of the slots allocated by the body in charge of attribution, "*l'Association pour la Coordination des Horaires*", was 8%, of which 3% were held by Air Liberté. For the 1997 summer season the combined share should be around 5%. The Air France Group remains the principal slot holder, having more than 40% of the total slots, including Air France Europe (AFE), i.e. ex Air Inter.
13. Orly is more important for domestic air traffic than Roissy. At Orly, possible new entries are to a large extent restricted, and the possibility for reallocation of existing slots is limited. Such a situation is due, above all, to the fact that the number of available slots, which is limited by a ministerial measure, has reached the stipulated ceiling. Moreover, in general, airlines which are currently present at Orly are careful to use their respective slot holdings and to avoid losing slots. Investigations by the Commission show that Air Liberté and the British Airways Group combine 19,2% (of which 8% held by Air Liberté). However, the Air France Group remains the principal slot holder, having 45% of the total slots.

VI. COMPATIBILITY WITH THE COMMON MARKET AND THE FUNCTIONING OF THE EEA AGREEMENT

14. The Court of Justice has stated² and the Court of First Instance has confirmed³ that in the air transport sector, the definition of the relevant market has to start from the route itself, or a bundle of routes, to the extent that there is substitutability between them according to the features of each case. 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. Furthermore, the structural conditions prevailing at airports and in respect of airport capacity must also be considered and an assessment made of their impact on a relevant route.

A. Routes

15. With regard to the routes, according to the information provided, there is no overlap other than on the Paris-Toulouse route, where the overlap is between Air Liberté and TAT European Airlines, a company controlled by BA. This route, which is one of the major French domestic trunk routes, can be considered as a distinct air transport market. Although there are several forms of transport available between Paris and Toulouse for a consumer, in particular scheduled air travel or rail transport, these alternative modes of transport are still too different for concluding to a sufficient substitutability, because of factors such as the longer duration of the rail journey and the lower number of direct and speed frequencies on the rail way Paris-Toulouse. The Commission also notes that there exists a route Paris-Bordeaux, but given the duration of the journey or the distance between the two airports (Toulouse Blagnac and Bordeaux Mérignac), there is no significant incentive for consumers to replace one of both routes by the other, with the possible exception of a marginal number of consumers located in the geographic region between the catchment area of each airport.

On the route Paris-Toulouse, Air Liberté and TAT are using only the airport of Orly, whereas the other competitor, which is Air France Europe (AFE), i.e. ex Air Inter, is using both Orly and Roissy, the vast majority of its flights using Orly. It is however not necessary to determine whether flights from Orly and Roissy have to be considered as different markets, since the operation does not raise any doubts even on the basis of the narrowest market definition.

On the Paris (Roissy)-Toulouse route, Air Liberté and TAT are not present.

² See judgment in Case 66/86-Ahmed Saeed Flugreisen and Other v/Zentrale zur Bekämpfung unlauteren Wettbewerbs (1989) ECR 803.

³ See judgment in Case 2/93-Air France v/Commission (TAT)(1994) ECR 323.

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.

Following the operation, the competitive situation on the Paris(Orly)-Toulouse route will be as follows:

16. Competition has existed on this route only since January 1995. Prior to this date Air France Europe (AFE), i.e. ex Air Inter, was the only company operating on the route. Air Liberté began serving the route in January 1995 and TAT from October 1995. During the summer of 1996, there was a minimum of 131 weekly frequencies, of which 71 were operated by AFE, 29 by TAT and 31 by Air Liberté. In 1996, and in terms of passengers transported, AFE had a market share of 60%; and Air Liberté and TAT shares of 27% and 13% respectively. The Paris-Toulouse route, which until 1995 was operated by a single operator, has since been characterised by effective competition, evidenced by the fact that the market share of AFE has lost, over that period, up to 49% of the total market share, with Air Liberté and TAT benefiting correspondingly.
17. It has to be acknowledged that the competitive position, which has prevailed for the past two years with three operators, is being modified. However, the present operation does not create a situation of dominance for the following reasons:

Since the end of October 1996, the launch of shuttles on the route by AFE, in order to attract additional passengers as well as to search better profitability, has led to an increase in AFE's weekly frequencies from 71 in summer 1996 (or 94 during the peak period of August) to 164 in winter 1996/1997. The increase of frequencies during peak hours, as well as the increase in capacity during non peak hours, combined with the reduction of the number of passengers transported by Air Liberté, have had an immediate impact on AFE's market share in terms of the number of passengers transported. During the last two months of 1996, in which AFE has started to use shuttles, TAT and Air Liberté combined a market share of 30% (15% respectively) in terms of passengers transported (26% in December), while AFE held more than two-thirds of the market (74% in December).

18. Against the background of this intense competition, the acquisition of Air Liberté by British Airways does not give rise to serious doubts as to a creation of a dominant position on the Paris-Toulouse route, on which a significant competitor is present.

B. Network effects

19. As concerns air transport within France, it is clear that the acquisition of Air Liberté increases the route network of British Airways, as well as developing its position against the principal competitor, the Air France Group. According to information available to the Commission, the routes of the British Airways Group and Air Liberté would together account for less than 15% of passenger traffic within France (on the basis of the 1996 summer season). The Air France Group would carry in 1996 more than 50% of the total number of passengers transported. Under these circumstances, any possible network effect does not give rise to objections due to the small scale of the operation.

VII CONCLUSION

20. Taking into account the level of the combined market share resulting from the concentration, the conditions of competition currently prevailing in France and the presence of a significant competitor on the market, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatibility with the common market and the functioning of the EEA agreement. This decision is adopted in application of Article 6(1)b of Council Regulation N° 4064/89.

For the Commission,