Commission brings air transport in line with other industries by phasing out the block exemptions that have existed in this sector since 1988

Hubert BEUVE-MÉRY and MICHAL STRUK (1)

On 28 September 2006, the Commission adopted Regulation (EC) No 1459/2006 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports (2). This Regulation is noteworthy in three particular respects. First, it brings an end to a continuum of block exemption regulations that have existed in the airline industry since 1988, i.e. since the Commission has enjoyed the power to implement the competition rules in this sector. Second, it is the first block exemption Regulation in this industry that concerns air services between points in the Community and points in third countries. Finally, the reasons why the short block exemptions in the Regulation are not prolonged are worth noting.

Regulation (EC) No 1459/2006 concerns two categories of agreements:

- consultations on passenger tariffs for scheduled air services to/from/within the Community,
- consultations on slot allocation and airport scheduling in so far as they concern air services to/from/within the Community.

In practice, the exemption for passenger tariff consultations applies to the activities of just one organisation, the passenger tariff conferences organised by the International Air Transport Association (IATA). The stated aim of these conferences is to facilitate interlining. Interlining occurs when a passenger flies using just one ticket with two or more carriers. Interlining allows consumers to combine the services of different airlines and makes multi-carrier journeys seamless: at a transit airport, passengers do not have to collect their luggage and check in again and their baggage will automatically follow through to their final destination. The consultations on slot allocation and airport scheduling are also organised by IATA in the form of Schedule Coordination Conferences.

The main purpose of these conferences is to manage the increasing difficulties posed by airport congestion.

In early 2004, DG Competition started preparatory work to determine whether the then existing block exemption (3) should be prolonged or not. In addition to questions that had already arisen in previous reviews of this block exemption, the question arose for the first time whether IATA’s activities should be block exempted in respect of air services between the EU and third countries. This came as the result of Regulation (EC) No 411/2004 becoming applicable on 1 May 2004, with the effect that the Commission enjoyed from that date the powers to implement the competition rules in the air transport sector not only within the EU, as was previously the case, but also between the EU and third countries.

In June 2004, DG Competition published a consultation paper (4) to explore these issues. Responses to this paper were received from industry, trade and consumer organisations as well as national authorities. This was followed by a discussion paper (5) which drew preliminary orientations from the first round of consultation and invited interested stakeholders and public authorities to submit a second round of comments (6). Altogether, this public consultation phase lasted almost a year.

In a similar time frame, the competent authorities in Australia and the United States were also revising the antitrust immunities granted to IATA under their respective laws. DG Competition

(1) Directorate-General for Competition, unit F-1. The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the authors.


(6) All submissions made during the consultation are available from the Commission’s website: http://ec.europa.eu/competition/antitrust/others/air_transport.html
therefore co-operated closely with the Australian Competition and Consumer Commission and the United States’ Department of Transportation between 2004 and 2007.

The consultation phase allowed DG Competition to determine that:

- the interlining system that depends on IATA tariff conferences is one of four types of interlining systems that exist, the others being global airline alliances, code-share agreements, and bilateral interlining agreements. IATA interlining operates at prices agreed by all airlines together in the IATA tariff conferences,

- interlining benefits consumers, but the importance of IATA interlining as part of overall interlining in the EU is relatively small, and there are several alternative forms of interlining. As a result, there is insufficient assurance for routes within the EU that the benefits to consumers continue to outweigh the risks of the restriction of competition arising from the prices being agreed within the IATA conferences,

- on routes between the EU and third countries interlining is more important and so are the potential benefits of IATA interlining for consumers. Compared to air services within the EU however, less data and evidence was available to ascertain these benefits for consumers,

- the consultations organised by IATA on airport slots and scheduling are clearly compatible with the competition rules.

Against this background, the Commission opted to phase out the exemption for passenger tariff conferences for air services within the EU and the exemption for slots and scheduling conferences. Both exemptions were granted for a very short period, i.e. from the entry into force of the Regulation until 31 December 2006 only. However, the reasons for phasing out the exemption differ in the one and the other case. The exemption for tariff conferences for intra EU passenger air services was phased out because the Commission had insufficient assurances that these conferences would continue to meet the conditions of Article 81(3). In contrast, it appeared that the slots and scheduling conferences were compatible with the competition rules. This, however, was also a reason for discontinuing the exemption in so far as it appeared that these conferences did not need a safe harbour from the competition rules in the form of a block exemption.

As regards the exemption for passenger tariff conferences for routes between the EU and third countries, the Commission opted for granting a short block exemption: until 30 June 2007 for routes between the EU and the United States or Australia and until 31 October 2007 for routes between the EU and other third countries (7). At the moment of adoption of the Regulation, the Commission stated its readiness to prolong this exemption on condition that air carriers provide further evidence that passenger tariff conferences for these routes are beneficial to consumers. Reporting provisions were included in the block exemption Regulation to this effect. However, the data provided by IATA and its member airlines after the entry into force of Regulation (EC) No 1459/2006 did not give the Commission sufficient assurances that the conditions of Article 81(3) would continue to be fulfilled. The block exemptions for passenger tariff conferences for routes between the EU and third countries were not therefore renewed. The resulting regulatory situation is fully compatible with the outcome of the reviews of IATA’s antitrust immunities in the United States and Australia.

As a result of the concerns expressed by several competition authorities around the world, IATA started developing a new system to set interline fares in replacement of tariff conferences. DG competition supports the objectives pursued by this initiative, i.e. to preserve the benefits of IATA interlining for consumers whilst addressing its competition concerns.

(7) The difference in the expiry dates of the exemptions for services to the US and Australia or to other third countries was to take account of the then on-going antitrust reviews by the competent American and Australian authorities. First instance decisions from the Australian Competition and Consumer Commission and from the US Department of Transportation were expected by June 2007. It was therefore appropriate for the Commission to review the situation within the same timeframe.