Concerning the revision and possible prorogation of Commission Regulation 1617/93 on the application of Article 81(3) to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports

The views expressed in the present document are purely those of Directorate General for Competition at the time of writing and may not in any circumstances be regarded as stating an official position of the European Commission.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>1.1</td>
<td>The consultation paper</td>
<td>5</td>
</tr>
<tr>
<td>1.2</td>
<td>Purpose of the discussion paper</td>
<td>5</td>
</tr>
<tr>
<td>2.</td>
<td>Developments in the airline industry</td>
<td>6</td>
</tr>
<tr>
<td>2.1</td>
<td>Hub and Spoke airline operations and bilateral air carrier cooperation</td>
<td>6</td>
</tr>
<tr>
<td>2.2</td>
<td>Effects for the airline industry of the enlargement of the EU</td>
<td>9</td>
</tr>
<tr>
<td>2.2.1</td>
<td>Density of air transport networks</td>
<td>9</td>
</tr>
<tr>
<td>2.2.2</td>
<td>Cooperation agreements entered into by the main carriers of the new Member States</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Discussion and review of the available data</td>
<td>11</td>
</tr>
<tr>
<td>3.1</td>
<td>Data reported by IATA pursuant to Article 4(3) of Regulation 1617/93</td>
<td>11</td>
</tr>
<tr>
<td>3.1.1</td>
<td>The distinction between “billed” and “flown” coupons</td>
<td>12</td>
</tr>
<tr>
<td>3.1.2</td>
<td>The distinction between IATA and non-IATA fares</td>
<td>13</td>
</tr>
<tr>
<td>3.1.3</td>
<td>“Normal” fares</td>
<td>13</td>
</tr>
<tr>
<td>3.1.4</td>
<td>Passenger journeys versus flight coupons</td>
<td>14</td>
</tr>
<tr>
<td>3.1.5</td>
<td>Findings on the basis of the IATA reporting</td>
<td>14</td>
</tr>
<tr>
<td>3.2</td>
<td>Other sources of data</td>
<td>15</td>
</tr>
<tr>
<td>3.2.1</td>
<td>Network density</td>
<td>15</td>
</tr>
<tr>
<td>3.2.2</td>
<td>Corporate Travel Action Group</td>
<td>15</td>
</tr>
<tr>
<td>3.2.3</td>
<td>Travel agencies</td>
<td>15</td>
</tr>
<tr>
<td>3.3</td>
<td>Overview of the available data</td>
<td>16</td>
</tr>
<tr>
<td>4.</td>
<td>Market definition</td>
<td>17</td>
</tr>
<tr>
<td>4.1</td>
<td>Nature of the airline product - Interlining</td>
<td>17</td>
</tr>
<tr>
<td>4.2</td>
<td>Airline marketing and pricing practices</td>
<td>20</td>
</tr>
<tr>
<td>4.3</td>
<td>Relevant markets</td>
<td>21</td>
</tr>
<tr>
<td>4.4</td>
<td>Market homogeneity – Similarity between IATA and carrier/alliance specific tickets</td>
<td>22</td>
</tr>
<tr>
<td>5.</td>
<td>Discussion under Article 81(1) EC – Intra EU passenger air services</td>
<td>24</td>
</tr>
<tr>
<td>5.1</td>
<td>Routes where IATA and carrier/alliance specific fares overlap</td>
<td>26</td>
</tr>
<tr>
<td>5.1.1</td>
<td>The “joint service” argument</td>
<td>26</td>
</tr>
</tbody>
</table>
5.1.2 The restriction of competition ................................................................. 26

5.2 Routes which no single carrier/alliance serve in their entirety .................. 29

5.2.1 The “joint service” argument ................................................................. 29

5.2.2 The restriction of competition ................................................................. 31

5.3 The restrictive potential of IATA Tariff Conferences – Example – The route from Frankfurt to Paris ................................................................. 31

5.4 Preliminary conclusion .............................................................................. 33

6. Discussion under Article 81(3) EC – Intra EU passenger air services ........ 33

6.1 Fair share for consumers ........................................................................... 34

6.1.1 Eligible Consumer benefits ..................................................................... 34

6.1.2 Preliminary analysis by type of market ................................................... 36

6.1.3 The consumer’s share in the efficiencies generated by IATA Tariff Conferences: consumer submissions in response to the consultation paper .. 39

6.1.4 Preliminary assessment .......................................................................... 40

6.2 Indispensability .......................................................................................... 40

7. Possible differences between the regulatory regimes applicable to intra EU routes and to routes to third countries – Passenger air services ......................... 42

7.1 Are there objective differences between intra EU routes and routes to third countries? ......................................................................................... 42

7.1.1 Operational differences ........................................................................... 42

7.1.2 Regulatory differences ............................................................................ 43

7.2 How do the differences existing between intra EU routes and routes to third countries relate to the assessment of IATA Tariff Conferences under Article 81 EC for intra EU traffic? ........................................ 44

7.3 Are there any material impossibility and/or adverse effects in having a separate regime? ......................................................................................... 45

8. Next steps in view of the revision of Commission Regulation 1617/93 ............. 46

Annex 1: Cooperation agreements entered into by the some of the main carriers in the new Member States ........................................................................... 48

Annex 2: Data reports received from IATA pursuant to Article 4(3) of Commission regulation 1617/93 ................................................................................. 51

Annex 3: Description of the IATA reporting By IATA ...................................... 53

Annex 4: Short typology of airline fares ............................................................. 54

Annex 5: Review of the report by CRA on the restrictive effects of IATA Tariff Consultations 56
Annex 6: IATA fare categories used for air travel within the EEA & Switzerland area .......... 58
Concerning the revision and possible prorogation of Commission Regulation 1617/93 on the application of Article 81(3) to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports

1. INTRODUCTION

1.1 The consultation paper


2. On 30 June 2004, DG Competition published on its website a consultation paper concerning the revision and possible prorogation of Commission Regulation 1617/93 on the application of Article 81(3) to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports.

3. In response to this paper, DG Competition has received some 55 submissions from various stakeholders and public authorities, including authorities from third countries. With the agreement from respondents, submissions have been published on the Commission’s website for transparency purposes. In some instances, respondents asked for a non-confidential version of their submission to be published.

4. Public submissions are available at the following Internet address:
http://europa.eu.int/comm/competition/antitrust/others/1617/contributions.html

1.2 Purpose of the discussion paper

5. On the basis of the submissions, there are some key areas of substance where further discussion is necessary before the Commission makes a proposal on the revision of Regulation 1617/93.

6. These areas relate in particular to the possible exemption under Article 81(3) EC of IATA Passenger Tariff Conferences where a high number of diverging responses have been received.

7. Accordingly, this paper will discuss the available data and evidence regarding IATA Passenger Tariff Conferences, as well as the views taken by some respondents to the consultation paper. Where appropriate, the services of DG Competition will share their preliminary assessment on some questions.
Interested parties and public authorities are invited to submit comments in response to this discussion paper by 2 April 2005 with a view to better enable the Commission to make a proposal on the revision of Regulation 1617/93.

2. DEVELOPMENTS IN THE AIRLINE INDUSTRY

2.1 Hub and Spoke airline operations and bilateral air carrier cooperation

The following discussion refers in particular to section “1.3 Background – developments in the airline industry” in the consultation paper and to comments received in relation thereto.

On the whole, respondents to the consultation paper do not appear to question that a hub and spoke airline model has emerged in the EU and that this will likely remain so in the foreseeable future. Moreover, respondents tend to agree there has been a proliferation of cooperation agreements between air carriers in the form not only of global alliance agreements but also of code share agreements that have been concluded outside the scope of such alliances.

On the whole, it is also acknowledged that the above developments result in a significant increase in alternative offers to traditional IATA interlining.

However, respondents have expressed diverging views in particular in the following areas:

- The extent to which the schematic description of main air traffic flows within the EU as presented in Exhibit 1, and the route categorisation presented in Exhibit 2 in the consultation paper appropriately reflects the main traffic flows and diversity of intra EU air transportation markets,

- The extent to which the development of alliances and code share agreements may be important and far reaching enough to represent a viable alternative to the existing IATA interlining system for intra EU traffic. This question is raised in particular with respect to intra EU air transportation to/from the 10 new Member States of the EU.

Section 2.2 below discusses whether some specific elements ought to be taken into consideration with respect to intra EU air transportation to/from the 10 “new Member States” of the EU.

Hence, setting aside any question specifically relating to the 10 Member States who joined the EU on 1 May 2004, the following general comments can be made:

The airline industry developments referred to in the consultation paper have been described and analysed in numerous studies, academic and policy papers published over the past decade, which underline the actual importance of these developments. Moreover, these papers and studies confirm that these developments result in wide ranging alternatives to IATA Interlining¹.

¹ For example, see:
14. It appears that the density of air transport networks and availability of direct flights in the EU is very high (some 85%)\(^2\). The graphics of Exhibit 1 in the consultation paper may not account perfectly for this reality in graphical terms. In particular, these graphics may give the impression that the proportion of the travelling public actually connecting on intra EU air journeys is larger than in reality.

However, this finding should not invalidate the conclusion that traditional EU carriers now generally operate according to a hub and spoke model. Direct flights simply form part of and fit into such operations.

If anything, this finding may in fact reinforce the theoretical conclusions drawn on the basis of exhibits 1 and 2 in the consultation paper concerning the decrease in the benefits generated for passengers by the IATA Interlining System.

15. Some respondents have argued that the geographical scope of airline alliances is insufficient to cater for the needs of interlining passengers. For example, IATA argues\(^3\) that “a high proportion (40%) of airports in the EEA are not served by an alliance carrier” and that “only 3.3% of the 95,000 potential city-pairs links in the EEA receive direct service. Travelling between the remaining 92,000 is therefore dependent upon on-line or interline connections”.

Yet it appears that the overwhelming majority of tickets issued for travel within the EU, some 85%, are for direct flights\(^4\) and may therefore involve no or little interlining.

Since the travelling public appears to have a material preference for direct flights on short to medium haul journeys, it seems logical for carriers to enter new markets and propose a direct flight as soon as there exists sufficient demand for a profitable operation of such direct services. Accordingly, the high availability of direct services may simply illustrate in the EU internal air transport market the principle generally applicable to liberalised markets that supply adapts with a view to match demand.

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\(^2\) See section 2.2.1 below.


\(^4\) See section 2.2.1 below.
A similar reasoning may apply to routes where a connection is required. Some routes may be too thin for airlines to operate a direct service. However, the economies of scope and scale allowed by hub and spoke airline operations, combined as the case may be with airline cooperation agreements (bilateral interline, “naked” or “standalone” code share agreement or full fledged alliance), may provide for the viable operation of such routes on an indirect basis. By virtue of the same generally applicable principle that supply normally adapts to match demand, it is reasonable to assume that the thicker routes within this subset of thin routes are served on an indirect basis by individual carriers and/or alliances. It may therefore be presumed that a substantial proportion of the remaining 15% of the public actually travelling on connecting flights actually reach their final destination using solely carrier/alliance specific services. These passengers do not require IATA interlinable tickets.

The above suggests that only a very small proportion of the travelling public may actually require IATA Interlinable tickets to reach their final destination, which appears to undermine the argument whereby the geographical scope of airline cooperation agreements and alliances is so limited that consumers would suffer importantly if the existing block exemption was not prolonged.

16. Moreover, the above argument concerning the “insufficient” geographical scope and reach of airline alliances focuses on alliances. However, it is key to also take into consideration the network effects of code share agreements as may be concluded outside the scope of global alliances.

“Naked” or “Standalone” code share agreements between airlines have also been proliferating in the EU. These agreements appear to have particularly positive network effects on non-overlap routes, *inter alia* because they enable carriers who are not members of an alliance to interconnect all or part of the network they operate with all or part of that of a carrier who is a member of an alliance.

17. According to the responses received, big corporate customers who are heavy air transport consumers appear to purchase only a small fraction (some 5% of their airline tickets) at IATA rates. This is feasible only if some existing offer in the market matches independent from the IATA Interlining system some 95% of these customers’ needs.

The above suggests that air transport networks in the European Union, at least in the former EU15, are now of such density and interconnected in such a way by means of various bilateral cooperation agreements between carriers that the market provides for viable alternatives to the IATA Interlining System as regards intra EU air services.

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5 This proliferation appears to be a direct consequence of market access liberalisation following enactment of the so called third package (Council Regulations 2407, 2408 and 2409/92). Section 6.1.2 below explains how differences between the regulatory frameworks applicable to intra Community routes and routes to third countries may impair the ability of carriers to code share on the latter routes.

6 See in annex 1 to this paper a brief description of existing code share agreements for some of the main carriers in the 10 Member States who have joined the EU on 1 May 2004.

7 See also paragraphs 43 and 44 below.
2.2 Effects for the airline industry of the enlargement of the EU

18. The following discussion is with particular reference to the submissions made by the International Air Transport Association\(^8\) (IATA) and the European Regional Airline Association\(^9\) (ERAA) regarding some of the consequences of the recent EU enlargement for the air transport industry.

2.2.1 Density of air transport networks

19. The main benefits of the IATA Interlining System for consumers appear to relate to the ability to travel seamlessly (through check in of baggage, through fare, …) from their point of origin to their final destination\(^10\).

20. Where they exist, direct flights provide consumers with the ability to travel seamlessly to their final destination. Without prejudice to other specific benefits\(^10\) some consumers may enjoy when purchasing tickets issued at the more flexible IATA fares, it appears that where the availability of direct flights is high, the overall benefits of interlining may be expected to be lower.

21. The following data on the availability of direct flights may therefore be of interest:

### 2003 % Direct v Indirect Itineraries by ticket type and final destination

<table>
<thead>
<tr>
<th>Ticket Itinerary</th>
<th>Former EU 15</th>
<th>10 &quot;new&quot; EU Members</th>
<th>EU 25</th>
<th>Third Countries</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Business</td>
<td>96%</td>
<td>97%</td>
<td>96%</td>
<td>70%</td>
<td>92%</td>
</tr>
<tr>
<td>First Discounted Eco</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>30%</td>
<td>9%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>90%</td>
<td>69%</td>
<td>89%</td>
<td>62%</td>
<td>85%</td>
</tr>
<tr>
<td>First Full Eco</td>
<td>10%</td>
<td>31%</td>
<td>11%</td>
<td>38%</td>
<td>15%</td>
</tr>
<tr>
<td>Discounted Eco</td>
<td>90%</td>
<td>70%</td>
<td>89%</td>
<td>66%</td>
<td>85%</td>
</tr>
<tr>
<td>First Discounted</td>
<td>10%</td>
<td>30%</td>
<td>11%</td>
<td>34%</td>
<td>15%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>90%</td>
<td>70%</td>
<td>89%</td>
<td>66%</td>
<td>85%</td>
</tr>
<tr>
<td>First Discounted Eco</td>
<td>10%</td>
<td>30%</td>
<td>11%</td>
<td>34%</td>
<td>15%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>90%</td>
<td>70%</td>
<td>89%</td>
<td>66%</td>
<td>85%</td>
</tr>
<tr>
<td>First Discounted</td>
<td>10%</td>
<td>30%</td>
<td>11%</td>
<td>34%</td>
<td>15%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>85%</td>
<td>74%</td>
<td>84%</td>
<td>52%</td>
<td>74%</td>
</tr>
<tr>
<td>First Discounted Eco</td>
<td>15%</td>
<td>26%</td>
<td>16%</td>
<td>48%</td>
<td>26%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>88%</td>
<td>73%</td>
<td>87%</td>
<td>56%</td>
<td>80%</td>
</tr>
<tr>
<td>First Discounted</td>
<td>12%</td>
<td>27%</td>
<td>13%</td>
<td>44%</td>
<td>20%</td>
</tr>
</tbody>
</table>

Source: IATA BSP Data for tickets issued in Belgium, Luxembourg, France, Germany, Netherlands and UK

The percentage of direct flights within the EU appears to be very high. This finding may provide a further explanation and confirmation why, due to the density of intra EU air transport networks, IATA Interlinable fares are not as needed any more as they used to be.

As regards the questions raised by IATA and ERAA with specific respect to the new Member States, the above data shows that the differences existing between the former EU 15, the 10 new Member States and the average EU 25 do not appear to be so substantial. Existing offer in the market and availability of direct flights appears today already to be high in all three instances.

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\(^8\) See [http://europa.eu.int/comm/competition/antitrust/others/1617/iata.pdf](http://europa.eu.int/comm/competition/antitrust/others/1617/iata.pdf)


\(^10\) See section “2.2.2 … while allowing consumers a fair share of the resulting benefit …” in the consultation paper and section 4 below.
Moreover, the further densification of air transport networks in/to the new Member States appears to be on going already as may be judged from the following data series:

**2001 - 2004 % Direct v Indirect Itineraries (Domestic traffic included)**

<table>
<thead>
<tr>
<th>Ticket itinerary</th>
<th>2001 - full year</th>
<th>2002 - full year</th>
<th>2003 - full year</th>
<th>2004 - Q1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% Direct</td>
<td>71.1%</td>
<td>71.4%</td>
<td>73.0%</td>
<td>76.0%</td>
</tr>
<tr>
<td>% Indirect</td>
<td>28.9%</td>
<td>28.6%</td>
<td>27.0%</td>
<td>24.0%</td>
</tr>
</tbody>
</table>

Source: IATA BSP Data for tickets issued in Belgium, Luxembourg, France, Germany, Netherlands and UK

22. IATA Tariff Conferences do not deal with air fares for domestic journeys. The same data, from which domestic traffic has been excluded, is therefore also of interest:

**2003 % Direct v Indirect Itineraries by ticket type and final destination (Domestic traffic excluded)**

<table>
<thead>
<tr>
<th>Ticket Itinerary</th>
<th>Former EU 15</th>
<th>10 &quot;new&quot; EU Members</th>
<th>EU 25</th>
<th>Third Countries</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Direct</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>85%</td>
<td>97%</td>
<td>86%</td>
<td>66%</td>
<td>76%</td>
</tr>
<tr>
<td>Business</td>
<td>83%</td>
<td>69%</td>
<td>82%</td>
<td>61%</td>
<td>76%</td>
</tr>
<tr>
<td>Full Eco</td>
<td>83%</td>
<td>70%</td>
<td>82%</td>
<td>62%</td>
<td>76%</td>
</tr>
<tr>
<td>Discounted Eco</td>
<td>79%</td>
<td>74%</td>
<td>78%</td>
<td>80%</td>
<td>68%</td>
</tr>
<tr>
<td>Total</td>
<td>80%</td>
<td>73%</td>
<td>80%</td>
<td>54%</td>
<td>71%</td>
</tr>
</tbody>
</table>

When the data is restricted to international intra EU traffic, the availability of direct flights remains very high. On the whole, the orders of magnitude and patterns showed by the data are very similar.

23. The data presented in the above series of table is not exhaustive. For instance, it provides no insight on air journeys within the geographical area formed by the combined territories of the Member States having recently joined the EU.

However, it may give a fair idea of the main patterns of air traffic within the former EU 15 area, between that area and the new Member States, and at the level of the present EU 25.

24. It appears not to suggest that there exists such a dividing line within the internal market for air transport services, that the possible non prolongation of the existing block exemption for IATA Passenger Tariff Conferences may have a particularly adverse effect on either airlines or consumers in the new Member States.

2.2.2 *Cooperation agreements entered into by the main carriers of the new Member States*

25. The objections raised by IATA and ERAA regarding airlines in the new Member States would also be justified in the event that these carriers would not have been able so far to enter into such bilateral cooperation agreements (bilateral interline, “naked” or “standalone” code share agreement or full fledged alliance) as may result in alternatives to the IATA Interlining System.
26. The services of DG Competition have therefore tried to identify whether air carriers in the new Member States had entered into such agreements. The results of this research\textsuperscript{11} are presented in Annex 1 to this paper and appear to show that carriers in the new Member States have already interconnected their network with that of other EU carriers to a substantial degree.

27. Moreover, there is no indication that the trend towards greater interconnection of carriers’ networks by means of alliance and/or code share agreements should stop or slow down. To the contrary, recent developments may in fact suggest that this trend remains strong, in particular for Central European carriers\textsuperscript{12}.

28. Accordingly, the evidence available regarding airline cooperation agreements does not suggest either that the possible non prolongation of the existing block exemption for IATA Passenger Tariff Conferences may have a particularly adverse effect on either airlines or consumers in the new Member States.

3. DISCUSSION AND REVIEW OF THE AVAILABLE DATA

29. This section discusses the data available in view of the revision of Commission Regulation 1617/93. This is made \textit{inter alia} with reference to the questions raised by the Belgian, German and UK authorities regarding the mandatory reporting scheme introduced under Article 4(3) in Regulation 1617/93.

As expressly provided in Recital 5 of Commission Regulation 1105/2002\textsuperscript{13}, a mandatory reporting scheme was introduced in Regulation 1617/93 in order to facilitate the Commission's re-examination whether the block exemption should be further extended after 30 June 2005.

3.1 Data reported by IATA pursuant to Article 4(3) of Regulation 1617/93

30. The services of DG Competition and IATA have discussed how the new provisions regarding data reporting may be applied in practice. IATA has transmitted reports at regular 6 months intervals with a view to comply with its obligations under Article 4(3) of Regulation 1617/93.

31. At the time of drafting of the present discussion paper, four reports had been transmitted by IATA to the Commission on behalf of its Member airlines pursuant to Article 4(3) of Regulation 1617/93 (The IATA reporting). Copies of these reports have been transmitted to the competition authorities of the Member States.

\textsuperscript{11} The short research presented in annex 1 is provided on a purely factual basis as regards the existence of such agreements. It is without prejudice to the compatibility with Article 81 EC of the agreements at stake.

\textsuperscript{12} During the time within which this paper was drafted, four carriers from the new Member States announced new agreements, either code share or alliance.

Copies of the “consolidated table” of all reports received from IATA are reproduced in Annex 2 to this paper. The “consolidated table” of the July – December 2003 report is reproduced below for explanatory purposes:

### Reporting Period: July - December 2003

#### Procedure Paragraph:

<table>
<thead>
<tr>
<th>All Markets</th>
<th>Flown Normal Fare Coupons</th>
<th>Flown IATA Normal Fare Coupons</th>
<th>Billed Normal Fare Coupons</th>
<th>Billed IATA Normal Fare Coupons</th>
<th>Total Passenger Trips</th>
<th>at IATA Fares</th>
<th>at non-IATA Fares which were interlined</th>
</tr>
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<tr>
<td></td>
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</tbody>
</table>

#### Specific Markets

<table>
<thead>
<tr>
<th>Between And</th>
<th>Flown Normal Fare Coupons</th>
<th>Flown IATA Normal Fare Coupons</th>
<th>Billed Normal Fare Coupons</th>
<th>Billed IATA Normal Fare Coupons</th>
<th>Total Passenger Trips</th>
<th>at IATA Fares</th>
<th>at non-IATA Fares which were interlined</th>
</tr>
</thead>
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### Procedure Paragraph:

3.1.1 The distinction between “billed” and “flown” coupons

33. The IATA reporting is articulated according to a distinction between “flown” and “billed” coupons. The purpose of this distinction is as follows:

34. When a carrier issues an interlinable ticket, whether at an IATA or carrier specific fare, the said carrier, i.e. the “issuing carrier”, collects the corresponding revenue from the customer. In the event that a customer holding such a ticket flies for all or part of his journey with a carrier other than the one who has issued the ticket, that other carrier effects carriage without having actually collected any revenue from the passenger. Accordingly, the carrier effecting carriage would normally collect at check in at the airport a flight coupon from the passenger’s ticket and bill it to the issuing carrier in order to seek compensation for the effected carriage.

35. Hence, where a passenger actually interlines, i.e. flies across the network of more than one carrier using a single airline ticket, some flight coupons billing between airlines normally takes place.

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14 Further to this consolidated table, a series of tables presenting the exact same data but for 15 individual carriers are included in the IATA reporting. These individual tables cannot be published as they contain business secrets. The consolidated table is the sum of the individual tables.

15 See also a description by IATA of the IATA reporting in annex 3 to this paper.

16 This is the reason why the IATA Clearing House may be considered one of the main pillars of the IATA Interlining System. See section 1.2.1.2 describing the IATA Interlining System in the Consultation Paper.
Conversely, where a passenger flies with the airline who has issued his ticket, no inter carrier billing takes place and the coupon is deemed to be “flown”.

Accordingly, monitoring the proportion of “flown” and “billed” flight coupons gives an insight into the proportion of tickets which were actually interlined, and thereby an insight into the actual usage rate by consumers of the “interlining feature” attached to the airline tickets they purchase.

Billed coupons account for interlined journeys whilst flown coupons account for online, i.e. not interlined, journeys.

3.1.2 The distinction between IATA and non-IATA fares

Data in the IATA reporting concerning “flown” and “billed” coupons is available for all tickets issued at so-called “normal fares” (See section 3.1.3 below), whether the said normal fares are “IATA normal fares”, i.e. agreed by carriers in the relevant IATA Passenger Tariff Conference for the purpose of interlining, or whether the said normal fares are specific to one individual carrier and decided upon unilaterally by the carrier concerned.

Passengers holding a ticket issued at an IATA fare may in principle fly with any carrier who is a signatory of the Multilateral Interline Traffic Agreement (MITA). Similarly, passengers holding a ticket issued at a carrier specific fare can in principle fly only with the carrier who has issued the ticket.

Information about the number of passenger trips made at carrier specific (i.e. non-IATA) normal fares is obtained in the IATA reporting by subtracting the number of IATA normal fare coupons from the total number of normal fare coupons.

3.1.3 “Normal” fares

The scope of the IATA reporting is limited to so-called “normal fares”. “Normal fares” are unrestricted fares in so far as no advance purchase or minimum/maximum stay requirements are attached to these fares, as they allow passengers for unlimited stopovers and transfers (no penalties for rebooking and/or rerouting) and as they may be freely combined with other types of fares.

Hence, normal fares are the type of fare commonly referred to as “fully flexible” fares, whether economy or business class. Normal fares are also among the more expensive air fares in the market.

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17 As the case may be, it appears that there may also exist alliance specific fares. Such alliance specific fares are Non IATA fares. Where later in this paper it is referred to carrier specific fares, that will mean unless specified otherwise carrier and alliance specific fares.
18 See section 1.2.1.2 in the consultation paper. It appears that some 66 EEA carriers participate in the MITA agreements.
19 See in annex 4 a short typology of airline fares.
3.1.4  Passenger journeys versus flight coupons

According to IATA, one passenger trip is on average 2.2 coupons\(^20\). This average encompasses one way and round trip journeys. In the overwhelming majority of instances however, issued tickets are for a round trip.

It should be borne in mind therefore that the figures reported by IATA may have to be divided by slightly more than two, to obtain an estimate number of roundtrip journeys.

3.1.5  Findings on the basis of the IATA reporting

Some key findings on the basis of the IATA reporting are summarised below:

- A substantial proportion (some 37% for the year 2003) of tickets issued at a normal fare (\(i.e.\) unrestricted, or fully flexible tickets) for travel within the EEA & Switzerland area are issued at an IATA normal fare;

- Some 22% (for the year 2003) of the said IATA normal fare tickets were effectively interlined, representing some 770,000 passenger journeys\(^20\);

- Given the strong seasonality factor in air transport, variations over time should preferably be considered on a year basis. On the basis of the four reports available, a comparison may therefore be drawn on a rolling twelve months basis between the 1\(^{\text{st}}\) July 2002 to 30\(^{\text{th}}\) June 2003 period and the 1\(^{\text{st}}\) July 2003 to 30\(^{\text{th}}\) June 2004 periods.

This comparison shows that the proportion of tickets issued at an IATA normal fare in the total number of tickets issued at a normal fare (\(i.e.\) carrier specific + IATA normal fares) for travel within the EEA & Switzerland has declined from 41% to 36% and the proportion of effectively interlined IATA normal fare tickets has declined from 24% to 23%.

- On the basis of the sample of 24 specific routes for which data is reported, there does not appear to exist a clear dividing line between thinner and thicker routes in terms of the proportion of passengers travelling with IATA or carrier/alliance specific unrestricted (“normal fare”) tickets;

- On the basis of the sample of 24 specific routes for which data is reported, it appears on the whole that the proportion of passengers flying with an IATA unrestricted ticket who actually interline is lower on the thicker and/or hub to hub routes\(^21\).

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\(^21\) See paragraph 104 below.
3.2 Other sources of data

3.2.1 Network density

Data on network density and findings related thereto are presented in section 2.2.1 above.

3.2.2 Corporate Travel Action Group

The response\(^{22}\) by the Corporate Travel Action Group\(^{23}\) (CTAG) to the consultation paper reflects the views of two corporate travel professional associations, namely the Association of Corporate Travel Executives\(^{24}\) and Paragon\(^{25}\).

Judging by the submissions received from individual corporations in response to the consultation, it appears that the CTAG response is in general representative of the views of corporate customers.

Figures mentioned in the CTAG submission should not be considered to have accounting precision. Rather, they may be considered reliable orders of magnitude, which a group of professional corporate travel buyers are comfortable with.

3.2.3 Travel agencies

ECTAA and GEBTA are respectively the Group of National Travel Agents and Tour Operators Associations within the EU and the Guild of European Business Travel Agents.

The services of DG Competition understand that these two organisations represent the views of travel agencies in the EU\(^{27}\). This is important in so far as 65% to 80% (depending on the estimates) of all air tickets issued in the EU appear to be issued through travel agents.

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\(^{23}\) CTAG is a point of contact used by the services of DG Competition for the purpose of market testing related to corporate travel.

\(^{24}\) The Association of Corporate Travel Executives (ACTE) gathers some 2500 corporate travel buyers worldwide, buying some USD 150 billion of corporate travel services. For more information on ACTE, [http://www.acte.org/](http://www.acte.org/)

\(^{25}\) Paragon is an international alliance of business travel associations. Its members are the National Business Travel Association’s (NBTA, a US based business travel association), the Institute of Travel Management (ITM), the Business Travel Association of the United Kingdom and Ireland, the Canadian Business Travel Association (CBTA), Verband Deutsches Reismanagement (VDR), the German Business Travel Association, and the Australasian Business Travel Association.

\(^{26}\) Moreover, the CTAG submission also contains material evidence of the restrictive spill-over effects of IATA Tariff Conferences (See section 4.2.2 below)

\(^{27}\) For further information, see [www.ectaa.org](http://www.ectaa.org) and [www.gebta.org](http://www.gebta.org).
Figures and comments in the response\textsuperscript{28} by ECTAA and GEBTA to the consultation paper show that the interest of corporate customers in IATA interlinable fares has declined substantially, partly due to an overall shift in corporate travel policies.

However, according to the overall estimate given by travel agents IATA fares account for some 15\% of the total number of tickets issued in the EU. This is somewhat higher than the estimate given by CTAG and individual corporations who have responded to the consultation paper.

Since both the submission by CTAG and by the individual corporations who have responded may represent the situation of bigger undertakings who apply a corporate travel policy, the above suggests that smaller customers, SME’s and/or final consumers, who do not have a corporate travel policy, purchase a higher proportion of IATA interlinable tickets.

3.3 Overview of the available data

Judging only from the data submitted by IATA, it appears that the IATA Interlining System remains used by an important proportion of the travelling public.

At first sight, this conclusion may contradict the indications given by other sources of available data namely:

- The data on network density\textsuperscript{29}, as may be complemented by academic papers and research\textsuperscript{30} on the benefits for passengers stemming from alliances operating according to a hub and spoke model, which suggest that the scope for IATA interlining has reduced very substantially; and

- The data available from corporate customers and travel agents.

As indicated in section 3.1.3 above, the IATA reporting is limited in scope to “normal fares”, \textit{i.e.} the more expensive fully flexible fares. This appears \textit{a posteriori} to be a rather severe limitation in scope. In particular:

The IATA reporting accounts for a total of 20.7 million flight coupons issued at a normal fare (\textit{i.e.} carrier specific + IATA normal fares) on intra EEA & Switzerland journeys for the year 2003, representing some 9.3 million passenger journeys. The latter should be put in a balance with a conservative estimate of some 65 to 70 million passenger roundtrip journeys for the year 2003, on international scheduled air services within the EEA & Switzerland area\textsuperscript{31}.

When turning to the actual number of tickets issued at an IATA normal fare for an intra EEA & Switzerland journey, the figures provided in the IATA reporting appear rather modest in comparison with the above mentioned 65 to 70 million passenger journeys.

\textsuperscript{28} See http://www.europa.eu.int/comm/competition/antitrust/others/1617/ectaa_gebta.pdf
\textsuperscript{29} See section 2.2.1 above.
\textsuperscript{30} See footnote 1 above.
\textsuperscript{31} This estimate was calculated on the basis of the interim Origin & Destination air transport figures computed by Eurostat for the year 2003, from which a (very) conservative 40\% was deducted to take into consideration non scheduled air services.
journeys: a mere 3.5 million journeys were flown in 2003 on the basis of IATA normal fare tickets, out of which some 770,000 only were effectively interlined.

51. In fact, it appears that the IATA reporting accounts for more or less 1 passenger out of 7 on international intra EEA & Switzerland scheduled air services journeys. This finding attenuates strongly the apparent contradiction mentioned above.

4. MARKET DEFINITION

4.1 Nature of the airline product - Interlining

52. As regards passenger transportation, the services airlines offer is to allow passengers to travel by air from a point of origin to a point of destination.

53. In order to do that, airlines issue tickets and sell them to passengers.

There are two main types of air tickets: restricted tickets and unrestricted (also called fully flexible) tickets. In the case of the former, once the reservation is made and the ticket is issued, it is in principle either not allowed to modify them, or then only at a surcharge or penalty. In the case of the latter, modifications are possible even after the reservation is made and the ticket is issued.

54. There are situations in which no single airline provides air service between the particular points of origin and destination a passenger wants to fly between. In such cases, passengers have to combine the services of more than one carrier. In a simple two leg journey:

In order to reach their final destination, passengers may purchase two separate tickets with airlines 1 and 2. If they do so, they may have to collect their luggage at the intermediate point where they have a connection and check in again at this point for their flight with airline 2. This is usually perceived as not very convenient.

55. This is why "interlining" was thought of. By definition, interlining is the combination on a single ticket of the services of more than one carrier\(^{32}\). Such a combination necessitates a number of practical arrangements between the carriers

\(^{32}\) See also sections 1.2.1 and 1.3 in the consultation paper.
concerned, for example on how to share revenues generated by such tickets or to make sure that passengers’ luggage follows through to their final destination.

Thus interlining avoids passengers a significant hassle which should be considered a consumer benefit for the purposes of an Article 81 discussion. Benefits are discussed in section 6 below.

56. As explained in the consultation paper and in section 2 above, there has been a proliferation of cooperation agreements between air carriers, sometimes in the form of plain code share agreements, sometimes in the form of so-called global alliances. These cooperation agreements have considerably increased the possibilities for passengers to combine onto a single ticket the services of more than one airline and reach their destination seamlessly. This was referred to in the consultation paper as “intra alliance interlining”.

57. Next to “intra alliance interlining”, and actually pre-existing the latter time-wise, is the system devised by IATA to allow for interlining on an industry wide basis. The IATA interlining system is a particularly elaborate system which relies on four main pillars. IATA Passenger Tariff Conferences are one of these pillars. No less than 34 Community carriers participate in Tariff Conferences. Key specificities of IATA interlinable tickets include:

- Choice of carrier,
- Choice of routing between given points of origin and destination (up to 120% of the shortest operated mileage),
- Addition/deletion of intermediate points in a given journey (up to 120% of the shortest operated mileage) – this flexibility however is limited to unrestricted (fully flexible) tickets.

Another characteristic of the IATA Interlining System is its universality in terms of routes for which IATA tickets are available. The full spectrum of possible routes, from very thin routes between two regional/remote airports to busy hub to hub routes, are covered by the system.

58. Before the relevant markets may be defined and characterised in view of the forthcoming Article 81(EC) discussion, it remains necessary to compare the key features of air tickets on offer in the market by airlines and/or alliances on one hand and IATA interlinable tickets on the other hand.

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33 See in particular section 1.3 in the consultation paper.
34 See section 1.2.1.2 in the consultation paper.
35 See also Consultation paper, annex 1 where there is a description by IATA of the IATA Interlining System.
36 Where IATA tickets represent the sole service offering in the market, such a comparison makes little sense. Accordingly, it is conducted in respect of routes where, next to IATA tickets, carrier/alliance specific tickets are also on offer in the market. This is discussed below separately for restricted and unrestricted tickets.
In the case of unrestricted tickets. Whether offered by a particular carrier or alliance, or according to IATA conditions, the purchase of an unrestricted ticket essentially entitles a passenger to use air travel service from a given point of origin to a given point of destination with flexible rebooking/modification possibilities included.

It appears that IATA interlinable unrestricted tickets provide passengers with more possibilities and flexibility than carrier/alliance tickets. This is in particular the case because IATA tickets allow passengers not only to modify their reservation (and for example take an earlier or later flight) but also to freely change carriers and add/change intermediate points in their journey.

A carrier/alliance specific unrestricted ticket will in principle only allow the passenger to take an earlier or later plane operated by that carrier/alliance. In contrast, an IATA ticket will allow the passenger to take any earlier or later plane operated by an IATA member carrier participating in the interlining system. Similarly, even if carrier/alliance specific fully flexible tickets would also allow the addition of intermediate points, these points would in principle have to be served by the carrier/alliance in question. Because the number of points served by IATA member carriers is significantly greater than that of any sole carrier or alliance, IATA tickets provide for additional flexibility.

In the case of restricted tickets. A restricted ticket issued by a particular carrier, alliance or according to IATA conditions provides for the same use of an air service from a given point of origin to a given point of destination.

It follows from the very nature of restricted tickets that, once the reservation is made and the ticket is issued, it is either not allowed to modify them, or then only at a surcharge or penalty. The main specificity of IATA restricted tickets appears to be that they allow passengers the possibility to choose their preferred carrier(s), and to choose their routing up to 120% of the shortest operated mileage. Because of the restrictions regarding rebooking and rerouting however, consumers’ choice of preferred carrier or routing is in principle limited in time up to the moment where the ticket is purchased and issued.

However, it could be argued that consumers enjoy similar possibilities with carrier/alliance specific tickets. This is because until they have purchased their ticket, consumers enjoy similar possibilities in terms of choosing their preferred carrier/alliance specific services and/or routes.

Therefore, the main difference between IATA and carrier/alliance specific restricted tickets appears to be that the possible combinations of all IATA member carriers’ services (within the limit of the 120% of the shortest operated mileage rule) results in greater choice than the offers available from individual carriers or alliances for a given O&D pair.

37 See in annex 6 a summary of the characteristics of common IATA fares available on intra EU routes. Note in particular the restrictions regarding rebooking and rerouting for IATA restricted fares.

38 See paragraph 57 above.
4.2 Airline marketing and pricing practices

61. Air carriers participating in the IATA Interlining System can issue tickets at IATA fares or at carrier specific fares alike. This is done either directly or through a travel agent.

There appears to be no clear cut distinction either in the downstream distribution chain. In general, travel agents have at their disposal through Computerised Reservation Systems the full array of available fares (both IATA and carrier/alliance specific) for the purpose of issuing airline tickets at the request of their customers.

Therefore, it appears that IATA tickets are integrated in air carriers’ service offering.

62. It also appears that airline price setting is based on a number of factors such as current economic conditions, cost-related factors, level of competition, distribution channel variances... A carrier would typically have a multitude of fares for any market.

Indeed, it is not uncommon to find that passengers on board the same plane flying between the same two points have paid 10 to 20 different prices, which correspond in as many different “booking classes”, as may be schematically represented in the following exhibit:

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<th>Booking Class No</th>
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63. In managing these numerous booking classes, airlines engage in sophisticated Yield/Revenue management techniques. These techniques consist in particular in monitoring and where necessary in modifying over time the number of seats available for sale per booking class on a given flight.

This is done with a view to adapt over time to short term demand variations and maximise revenues. As CRA explains, these techniques allow carriers to offer competitive pricing while at the same time limiting a particular booking class if it is deemed to be diluting the overall revenue generation on a particular flight segment.

As explained in paragraph 61 above, IATA tickets form part of the airlines’ service offering in the market. In other words, one or more booking classes in the above exhibit may correspond to a particular IATA fare, as schematically represented below:

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In principle, it is therefore possible that a carrier, through its Yield/Revenue management techniques, reduces the proportion of seats at carrier/alliance specific booking classes, which has the automatic effect of increasing the proportion of seats sold at IATA fares and conditions.

4.3 Relevant markets

64. When defining a relevant product market, the Commission first considers demand substitution. In the air transport sector, the Commission has found that the relevant product market for passenger air transport services should be defined on the basis of “point of origin / point of destination” (O&D) pair approach\(^\text{41}\). The Commission has also found that passengers travelling for the same journey on unrestricted tickets \((\text{time sensitive passengers})\) may be in a different market from passengers with restricted tickets \((\text{non time sensitive})\), who are more interested in the price than in flexibility and accept longer journey times\(^\text{42}\). Market tests undertaken by the Commission in recent airline merger and alliance cases have confirmed the importance for certain travellers (mainly business passengers) to have in particular the possibility to modify their tickets and return to their point of origin earlier or later than initially planned.

65. In the light of the Commission’s existing practice as well as the above description of airline services and interlining, it is necessary to assess how the various alternatives available to consumers relate to market definition. In other words, where carrier/alliance specific tickets are available for consumers next to IATA tickets, do the one and the other belong to the same or to distinct product markets?

IATA tickets fall into two categories of tickets: unrestricted vs. restricted fares that usually cater for the needs of time sensitive and non-time sensitive passengers.

Unrestricted IATA fares share many similar features to unrestricted carrier/alliance fares. In fact, the only major difference between these two types of ticket is the ability of combining the service of IATA members. Such a difference may be more or less appreciable depending on the specific market characteristics. In a competitive environment, on routes where IATA and carrier/alliance tickets are both available, it would be highly unlikely that a permanent but significant fare increase on unrestricted IATA would be profitable. In response to such a fare increase, a sufficient number of time sensitive passengers would certainly purchase unrestricted non-IATA fares, making the fare increase unprofitable in the first place.

A similar reasoning applies to restricted IATA tickets. In conclusion, when IATA fares coexist with non-IATA fares, they are likely to belong to the same product market.

This suggests that, where for a given O&D pair IATA and carrier/specific tickets are concurrently on offer for the consumer to choose between them, these tickets form part of the same product market. This would conform to existing Commission


practice regarding market definition in the air transport sector in as much as the Commission has so far not recognised that there may exist a separate market for IATA tickets.

Respondents to the consultation paper provide useful market information in this matter. The responses by ECTAA/GEBTA\(^{43}\) and CTAG\(^{44}\) show evidence that, where they exist next to each other, there is from the standpoint of corporate customers a high degree of substitutability between IATA and carrier/alliance specific tickets. This evidence is further confirmed by the submissions received from three individual multinational corporations\(^{45}\) who have responded to the consultation paper.

In their response to the consultation paper, the UK consumer organisation Air Transport User Council\(^{46}\) explain that the increase in available carrier/alliance alternatives to traditional IATA Interlining may result in fewer passengers requiring IATA tickets. Such a statement implies that, for private consumers too, carrier/alliance specific tickets may be deemed reasonable substitutes to IATA tickets.

Therefore, where they exist next to each other, it appears that IATA and carrier/alliance specific tickets belong to the same product markets, namely the provision of air transport services on a given O&D pair.

Where such O&D markets should be further delimited according to the distinction between *time sensitive* and *non time sensitive* passengers, it appears that IATA and carrier/specific unrestricted (fully flexible) tickets belong to the same product market (Air transport services for *time sensitive* passengers on a given O&D pair) and that IATA and carrier/specific restricted tickets belong to the same product market (Air transport services for *non time sensitive* passengers on a given O&D pair).

### 4.4 Market homogeneity – Similarity between IATA and carrier/alliance specific tickets

Section 4.3 above suggests that IATA and carrier/alliance tickets are, from the demand’s side, very similar.

This can be illustrated by the example of a busy hub to hub route like Paris (PAR) – Frankfurt (FRA). The very nature of this route provides that the overwhelming majority of the travelling public would fly direct.

In principle however, interlining on this route remains possible. It is possible for instance if a passenger flies direct, outbound with one carrier and return with another carrier. It is also possible if a passenger flies indirect and thereby combines the services of two distinct airlines. This is shown in the exhibit below:

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\(^{43}\) See section 3.2.3 above.

\(^{44}\) See section 3.2.2 above.

\(^{45}\) See responses at:  

\(^{46}\) See paragraph 133 below.
In principle, allowing passengers to fly outbound and return on different carriers doubles the number of flights available to them.

On PAR-FRA however, carriers already fly at a high frequency. Therefore, passengers willing to take an earlier or later flight with the carrier with whom he has made his initial reservation would normally find a flight that suits his needs. This would in principle be the case unless the plane he wants to catch is already full, in which case an IATA ticket would also allow him to look if there remain spare seats on other carriers’ flights.

Judging by the operated capacity and frequencies, it appears prima facie that this possibility which is specific to IATA tickets may not be of overarching importance and may not truly differentiate IATA from carrier/alliance specific tickets on the PAR-FRA route.

Another specificity of IATA tickets is that they allow free rerouting within a limit of 120% of the shortest flown distance. Accordingly, a PAR-FRA segment may for example be transformed into a PAR-Lyons-FRA.

Such open rerouting possibilities appear rather unique. However, their significance would in principle depend on the proportion of tickets where these possibilities are actually used.

The data reported by IATA on the PAR-FRA route are useful in that they allow to verify to what extent the specific “interlining features” attached to IATA tickets are used by consumers. The July-December 2003 report is reproduced below for explanatory purposes:
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July - December 2003

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### Specific Markets

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#### Specific Markets

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| Flown IATA A         | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   |
| Billed IATA A        | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   |
| Total Passenger Trips|     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
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| at IATA Fares which  |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| were interlined       |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| at non-IATA Fares    |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| which were interlined |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |

73. The data shows that fewer than 5% of passengers flying with an IATA unrestricted ticket actually interline. This is a low rate, which suggests that the advantages specific to IATA tickets are in the particular instance of the PAR-FRA route of no great use.

74. Clearly, not all intra EU routes are busy hub to hub routes like Paris – Frankfurt. The above report, however, suggests that, on average across the entire EEA & Switzerland area, less than 1 out of 4 passengers flying with IATA tickets actually interline. It appears that this is the case on some 17 routes out of the 24 specific markets reported for where the actual interlining rate (column 3,5) is below 25%.

75. Accordingly, the above data appear to confirm statements by consumers in response to the consultation paper that differences between IATA and carrier/alliance specific fares are not so significant in the majority of instances, particularly less so it seems on the thicker intra EU hub to hub routes.

### 5. Discussion under Article 81(1) EC – Intra EU Passenger Air Services

76. The consultation paper assumed without entering into details that IATA Tariff Conferences were actually caught by Article 81(1) EC. Since IATA takes the view that Tariff Conferences are not caught by Article 81(1) EC, it is necessary to discuss this issue before the Commission makes a proposal for the Revision of Regulation 1617/93.

77. IATA Tariff Conferences do not deal with domestic traffic. This discussion is therefore limited to international intra EU routes. Wherever hereafter it is referred to intra EU routes, this shall mean international intra EU routes.

78. The assessment of whether an agreement is restrictive of competition must be made within the actual context in which competition would occur in the absence of the
agreement with its alleged restrictions. In making this assessment, it is necessary to take into account the likely impact of the agreement on inter and intra brand competition.

79. For the purpose of this discussion, the markets which may be affected are those of international intra EU air transport services, as may be further delimited into the markets for *time sensitive* and for *non time sensitive* passengers\(^47\).

Accordingly, the core objective of the following discussion will try to shed light onto the question whether the agreements entered into by carriers under the auspices of IATA restrict actual or potential competition in the markets concerned.

The discussion distinguishes between O&D markets (routes) served by one or more carrier/alliance in their entirety, and routes which no single carrier/alliance serves in their entirety. In principle, in the former case, both IATA and carrier/alliance fares would together constitute the service offering in the market, whereas in the latter case, IATA fares would be the sole offer available in the market.

80. As explained in the consultation paper, routes can be divided in various categories as shown in Exhibits 1 and 2 below.

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47 See section 4.1.2 above.
81. Routes where IATA and carrier/alliance specific fares will in principle overlap are routes in all categories identified in Exhibit 2 above except for route category No 11. Routes where IATA fares will in principle be the sole offer available in the market belong to route category 11.

### 5.1 Routes where IATA and carrier/alliance specific fares overlap

#### 5.1.1 The “joint service” argument

82. IATA argues\(^\text{48}\) that “IATA fare consultations do not have the ‘object’ of restricting competition for the purposes of Article 81(1) [in particular] because IATA fare consultations are limited to determining the price of a joint product that individual airlines cannot offer on their own [i.e.] it does not involve the ‘fixing’ of the price of individual airline’s own products that they market in competition with each other”. The above argument is made \textit{inter alia} with reference to the Article 81(3) EC\(^\text{49}\) and Horizontal Cooperation Agreements\(^\text{50}\) Guidelines.

83. This is the “joint service” argument by IATA. It rests on the assumption that IATA tickets are a “product that individual airlines cannot offer on their own”.

84. However, as explained in sections 4.3 and 4.4 above, for certain routes on which IATA and carrier/alliance specific fares coexist, it remains unclear whether the difference between these two types of tickets is really appreciable. In particular, in dense hub-to-hub markets where operating carriers already offer a substantial number of frequencies at regular interval and spanning the entire day, the added value of the IATA ticket appears doubtful. On such markets both IATA and carrier/alliance specific fares seem to be close substitute.\(^\text{51}\)

#### 5.1.2 The restriction of competition

85. As explained in section 4.2 above regarding airline marketing and pricing practices, it appears that IATA and carrier/alliance specific tickets are offered in the market by the same undertakings, \textit{i.e.} by the airlines themselves, through the same distribution

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\(^{48}\) See Annex 1 of the submission made by IATA, \textit{The Legal Context for Assessing IATA Tariff Conferences}, page 1, first bullet point.

\(^{49}\) Communication from the Commission, Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101 of 27.04.2004


\(^{51}\) It should be borne in mind that combination of frequency from different carriers could also achieved by other means, such as a code sharing agreement.
channels. In addition, it appears that carriers who have integrated IATA fares in their product offering have the ability to exert some control over their product mix (proportion of seats sold in different booking classes).

86. Further, it must be recalled that since the enactment of the third package\(^{52}\), the market for intra EU international air transportation is open for competition. In this market, carriers should for all intents and purposes be considered as competing undertakings, whether actual or potential.

87. It is in this context that IATA Tariff Conferences take place. The stated purpose of these Conferences is to facilitate interlining by creating/amending industry fares and rates as well as the rules or conditions associated with these fares. On the whole, Conferences appear to be organised as follows:

- IATA provides for the organisation and secretariat of the Conference;
- Carriers make proposals for the creation/amendment of industry fares and rates; these proposals are circulated by IATA among participants ahead of the Conference;
- Carrier proposals are made on the basis of various elements such as cost (internal or external) variations, macro economic conditions, exchange rate fluctuations, demand fluctuations, competition, …
- In the plenary session, proposals are reviewed and voted upon; each carrier has a veto right\(^{53}\);
- Most proposals would not be immediately adopted in the plenary session but would be referred to so-called country-by-country discussions (CBC); in CBC discussions, carriers discuss the proposals on a bilateral basis; these discussions may result in amended proposals or in proposals being withdrawn altogether; IATA Secretariat or employees appear not to be present during CBC discussions;
- After CBC discussions, proposals are reviewed in the plenary session again where they may be adopted.

88. The organisation of Tariff Conferences appears to extend over approximately one week’s time. During this period, airline pricing experts who are duly mandated by their carrier exchange views on all subject matters relevant for the purpose of defining air transport pricing policies and agree on the level of interlinable fares. This process appears to be institutionalised through a succession of multilateral and bilateral meetings between carriers.

\(^{52}\) Council Regulations 2407, 2408 and 2409/92.

\(^{53}\) It is therefore possible for the least efficient carrier in a conference to veto a proposed tariff until it is sufficiently high for that carrier to cover its costs. This does not foster economic efficiency. In contrast, economic/academic literature suggests that price co-ordination in relation to the offering of complementary products on a bilateral basis such as in airline alliances does not have such adverse effects. See footnote 1 above.
In 2003, the IATA Conference covering Europe-Africa-Middle East met twice to address intra EEA tariffs\(^{54}\).

It is questionable whether IATA Tariff Conferences can be considered truly transparent. “Full reports” of IATA Passenger Tariff Conferences meetings, as provided by IATA to the European Commission pursuant to Article 4(2)(c) of Regulation 1617/93, contain the minutes of plenary sessions. These minutes refer to the existence of CBC discussions. But they do not include a transcript of CBC discussions.

89. In the light of the above, it appears that:

- IATA Tariff Conferences constitute a forum that enables actual and potential competitors to routinely exchange sensitive information;

- In conferences, carriers discuss and agree on the level of fares for IATA tickets, \(i.e.\) for products very similar to their own, which all belong to the same product markets in which they compete, and which they have integrated to their own product offering;

- IATA Tariff Conferences give rise to bilateral discussions between direct competitors on a route by route basis which are not entirely transparent.

90. IATA Tariff conferences discuss not only the level of interlinable fares but also the conditions related to such fares\(^{55}\). Annex 6 sets out in some detail the specific conditions attached to common IATA fares\(^{56}\).

It appears that conditions attached to carrier/specific fares offered by traditional network carriers are rather closely inspired from conditions agreed in IATA with respect to interlinable fares. For example, the “Saturday Night Rule” or “Maximum Stay or Stop-Over Rules”\(^{57}\) remain frequently encountered in individual airlines’ pricing structure\(^{58}\).

IATA lists on its Web site the potential benefits of tariff co-ordination for participants, among which access to market knowledge: “participation in tariff co-ordination opens the door to sharing with other participants, market and other types of intelligence required to price passenger and cargo tariff products”\(^{59}\).

\(^{54}\) However, that same conference also held other meetings in relation to routes between Europe and the Middle East and between Europe and Africa.

\(^{55}\) Excerpt from the terms of references of IATA Tariff Conferences: “Each Passenger Tariff Coordination Conference shall concern itself with the analysis of relevant operating costs and take action to develop passenger fares and related conditions in respect of the area of authority of such Conference” (emphasis added).

\(^{56}\) See also in annex 4 a brief typology of airline fares.

\(^{57}\) See in Annex 6 “cannot return before first Sunday” and “maximum stay” conditions attached to various types of IATA fares.

\(^{58}\) Such rules appear to be a convenient and efficient means for carriers to separate their customers in different groups (for example travelling for business of for leisure), to differentiate their products accordingly and adjust their prices for each such differentiated product in accordance with the price sensitivity specific to the corresponding customer groups.

\(^{59}\) See IATA’s website at: [http://www.iata.org/whatwedo/tariffs/benefits_airlines.htm](http://www.iata.org/whatwedo/tariffs/benefits_airlines.htm).
In fact, agreeing on such conditions has the effect of reinforcing market transparency for carriers. By adopting similar terms and conditions, IATA member develop similar tariff structures. This makes it easier for competing carriers to monitor each other’s fares. Detection on deviation from agreed upon conduct is quicker. This reinforces the stability of possible collusive agreements between competing airlines, whether tacit or explicit.

91. The standardisation of pricing rules is suspicious because it remains unclear how this benefits consumers.

92. This finding appears to be valid in the markets for time sensitive passengers as well as in the markets for non time sensitive passengers. To conclude, the organisation of IATA Tariff Conferences as described above provides an opportunity for competing undertakings to regularly communicate on commercially sensitive information, in particular pricing and sale conditions. Such regular communication helps to eliminate strategic uncertainty and thereby raises significantly the risk of collusion between airlines. Airlines can agree on future conduct and generally coordinate tacitly or explicitly their behaviour. IATA Passenger Tariff Conferences therefore appear to present a major risk to restrict competition. This is illustrated by an example in section 5.3 below

5.2 Routes which no single carrier/alliance serve in their entirety

5.2.1 The “joint service” argument

93. IATA argues that “IATA fare consultations do not have the ‘object’ of restricting competition for the purposes of Article 81(1) [in particular] because IATA fare consultations are limited to determining the price of a joint product that individual airlines cannot offer on their own [i.e.] it does not involve the ‘fixing’ of the price of individual airline’s own products that they market in competition with each other”. The above argument is made inter alia with reference to the Article 81(3) EC and Horizontal Cooperation Agreements Guidelines.

94. In contrast with section 5.1 above, the “joint service” argument appears prima facie to be valid in the case of routes which no single carrier/alliance serve in their entirety. On such routes, IATA tickets appear to constitute a product that individual airlines cannot offer on their own.

Following this line of reasoning therefore, an argument may in principle be constructed that IATA Tariff Conferences are not caught at all by Article 81(1) EC as regards routes which no single carrier/alliance serve in their entirety.

95. However, as provided in the Horizontal Cooperation Agreements Guidelines, it is necessary for a joint production not to fall under Article 81(1) EC, that there is no coordination of the competitive behaviour of the undertakings who participate in this joint production.

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60 See Annex 1 of the submission made by IATA, The Legal Context for Assessing IATA Tariff Conferences, page 1, first bullet point.

For the reasons set out below, it is doubtful that this condition is fulfilled in the present case.

96. It is acknowledged in the consultation paper that neither individual air carriers nor individual airline alliances are in a position to fulfil consumer demand for all potential interlinable air services. In particular:

Passengers on a journey for example from Remote Airport A3 (RA A3 in the above exhibit) to Remote Airport B2 (RA B2 here above) would in principle have to interline across the networks of more than one carrier/alliance since no carrier/alliance may be in a position to offer on its own an air service between the two points in question. On such routes, it appears that IATA tickets provide a service that would not exist otherwise.

97. However, it appears that the provision of “joint services” on such routes has the potential to restrict competition on one or more related routes.

This is because carriers do not agree on fares between each and every “small” airport in IATA Conferences. Rather, fares for services to/from smaller airports are often agreed on the basis of so called add-on tariffs, i.e. of a supplement to be paid on top of the applicable fare to the nearest medium/bigger well serviced airport. Add-ons are in principle not available for separate sale.

Add-on tariffs appear to enable IATA to greatly expand the number of city pairs for which interlinable fares are available and be of major importance: at present, there appears to be some 114 cities in the EEA & Switzerland area from which specific IATA fares are agreed to a city in another State in that area, whilst no less than a further 301 cities in that same area appear to be “served” by means of add-on tariffs.
For example, on the above mentioned route between Remote Airport A3 (RA A3) and remote airport B2 (RA B2), assuming that IATA fares to/from RA A3 and RA B2 may be available by means of add-on tariffs through respectively the hubs of Alliance A and B, the applicable IATA fare for the entire journey between RA A3 and RA B2 would in principle equate the sum of the applicable IATA fare between the hubs of Alliance A and B, the add-on tariff to RA A3, and the add-on tariff to RA B2.

98. It appears therefore that carriers may agree in IATA Tariff Conferences on fares for thinner routes between two regional/remote airports (e.g. RA A3 and RA B2) and that the agreements they thereby enter into:

- may not constitute a restriction of competition by object in the meaning of Article 81(1) in respect of the thinner services concerned on grounds that the said agreements may constitute joint services which no airline/alliance may be in a position to offer on its own; but that

- the said agreements may at the same time pose a risk to competition on other routes, where undertakings are actual or potential rivals, as it maybe the case in the above example. The organisation of Tariff Conferences as described in section 5.1.2 is likely to result in some coordination of the airline’s competitive behaviour on one or more markets.

5.2.2 The restriction of competition

99. It appears that even if the scope of these Conferences was in theory limited to routes which no single carrier/alliance serve in their entirety, the competition concerns identified in section 5.1.2 above would in principle still arise.

This is because Tariff Conferences facilitate collusive behaviour, whether tacit or explicit, regarding prices or other matters.

5.3 The restrictive potential of IATA Tariff Conferences – Example – The route from Frankfurt to Paris

100. In their response to the Consultation Paper, the UK authorities are concerned that where a carrier specific fully flexible fare is introduced, its level may be influenced by the level of the fully flexible IATA fare and, if this is the case, changes in the level are likely to mirror those of the IATA fare, - the so-called “coat-hanger effect”. A 1998 publication by the UK’s Civil Aviation Authority illustrated a coat hanger effect63 on intra EU routes. Similar patterns could now be identified by the UK CAA on the basis of preliminary work carried out on a sample of routes with a view to update the analysis published in 199864. For example, it appears in this 2004 update

63 Civil Aviation Authority The Single European Aviation Market: The First Five Years CAP685 (June 1998) (See appendix I, pages 244-245)
that certain Air France flexible economy fares on routes from Paris appeared to show a distinct pattern by country of destination (some fares to Germany and Italy appeared to be set at 90% of the IATA level, and fares to Scandinavia and Eastern Europe appeared to be set at 85%).

101. More importantly, a detailed examination over time of these fares from Paris showed that some fares appear to have increased in step with increases agreed at IATA conferences.

Such a parallelism merits to be highlighted against the background of the restriction of competition identified in section 5.1.2 above.

102. On the basis of another report by Charles River Associates (CRA), IATA challenges that the submission made by the UK authorities may show evidence of appreciable restriction of competition on intra EU air transport markets. In fact, CRA argues, the UK CAA’s findings do not show evidence of tacit or explicit collusion. Rather, they would merely highlight unilateral pricing actions by only three EU carriers.

103. Since this new report by CRA, the UK CAA have conducted additional research on airline fares. In some instances this new research shows, airlines not only set the level of their own carrier/alliance specific fares with reference to IATA fares, but they also match the level of their respective carrier specific fares and replicate the conditions attached thereto. More importantly, the level of carrier specific fares is sometimes modified over time to maintain the price differential with IATA fares.

104. This comes of top of the fact that, as shown in IATA’s data report reproduced in paragraph 72 above, some 40 plus % of unrestricted tickets on the route between Frankfurt and Paris are sold at an IATA fare, i.e. at an agreed price and at a premium although the services concerned appear to be very similar. However, only a very small proportion (less than 5%) of those passengers travelling with IATA ticket use the advantages and flexibility specific to such tickets by way of actually interlining.

105. Several busy hub to hub route show a similar pattern in terms of the low proportion of IATA tickets actually giving rise to interlining. This finding is difficult to explain given that IATA tickets are in principle available only at a price premium. This could mean that consumers value the IATA product, in particular its specific advantages in terms of flexibility, i.e. consumers would be ready to pay a price premium in order to be able to interline without necessarily doing so in the end. Alternatively, it could mean that consumers are induced into purchasing a product which is more flexible than what they actually need, and are thereby induced in

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66 See at http://europa.eu.int/comm/competition/antitrust/others/1617/appendix_3_uk.xls
67 See Column 3,3 in the IATA report: 44% of unrestricted tickets (the scope of the IATA reporting is limited to “normal” fares, i.e. to unrestricted fares) are sold at an IATA fare on this route during the reporting period under consideration.
68 See IATA report in paragraph 72 above, column 3,5.
paying a price premium for this “unnecessary” flexibility. This would be the case if, by way of yield management, on such routes carriers do not make a sufficient number of (cheaper) flexible carrier/alliance fares available. Responses to the Consultation paper received from corporate customers tend to give more credit to the latter than to the former explanation. However, before drawing conclusions on how best to interpret the data, further views and information from consumers would be particularly welcome.

106. Finally, it must be recalled that access to hub to hub routes like Paris – Frankfurt is restricted because there exist access to airport infrastructure constraints at either if not both ends of the route. Potential competition from new entrants is therefore very unlikely.

107. In the light of the above evidence and description of the market concerned, it is not evident that there remains appreciable competition on the basis of published fares between carriers operating the route between Paris and Frankfurt for time sensitive passengers.

108. In the light of this example, DG Competition considers that IATA Tariff Conferences, in particular CBC discussions, are a great risk to competition in intra EU air transport markets.

5.4 Preliminary conclusion

109. In the light of the above discussion, IATA Passenger Tariff Conferences, i.e. the Conferences themselves, the way in which they are organised as well as the subject matters under discussion and/or for agreement such as described in paragraph 89 above, appear to be by their very nature a restriction of competition in the meaning of Article 81(1) with a very high potential for negative effects in the air transport markets.

6. Discussion under Article 81(3) EC – Intra EU Passenger Air Services

110. IATA argues that Tariff Conferences are clearly not caught by Article 81(1)\(^{70}\). In the event that IATA Tariff Conferences should not be caught by Article 81(1) EC, there would as a matter of law be no need for a block exemption regulation. Accordingly, the services of DG Competition note that there is a contradiction between IATA’s arguments regarding the application of Article 81(1) and its submission in favour of the prolongation and extension in scope of the existing block exemption.

111. As is shown above however, it appears that IATA Tariff Conferences are liable to severely restrict competition for the purposes of Article 81(1), which raises the question whether the Conferences fulfil the four conditions laid down in the exception rule of Article 81(3).

112. Article 81(3) can be applied either to individual agreements or to categories of agreements by way of a block exemption regulation. The application of Article 81(3)\(^{70}\) See Annex 1 of the submission made by IATA, The Legal Context for Assessing IATA Tariff Conferences, available at http://europa.eu.int/comm/competition/antitrust/others/1617/iata.pdf
to categories of agreements by means of a block exemption regulation is based on the presumption that restrictive agreements that fall within their scope fulfil each of the four conditions laid down in Article 81(3). This means that a block exemption can only cover agreements that – if they were assessed individually – would satisfy all four conditions of Article 81(3) in the vast majority of cases. Once covered by a block exemption the arrangements created by IATA can only be challenged for the future upon adoption of a Commission decision withdrawing the benefit of the block exemption. It is therefore appropriate to take a cautious approach and carefully consider whether in light of prevailing market circumstances there is a solid basis for assuming that the conditions of Article 81(3) are satisfied. If on a number of individual relevant O&D markets it is likely that the IATA Tariff Conferences will have restrictive effects on competition which are not fully compensated by efficiencies satisfying the four tests of Article 81(3), there is legally no basis for adopting a new block exemption.

113. In the light of the above, the present section discusses whether IATA Passenger Tariff Conferences may satisfy the conditions of Article 81(3) EC as regards of intra EU air services.

This discussion is made with particular reference to section “2.2 the four conditions of Article 81(3) EC” in the consultation paper and to the submission made by IATA in response thereto.

114. It is necessary for an agreement or concerted practice caught under Article 81(1) EC not to be prohibited that it fulfils the four cumulative conditions laid down in Article 81(3). The following discussion will focus on the second (Fair share for consumers) and third (Indispensability) conditions as regards IATA Tariff Conferences.

6.1 Fair share for consumers

6.1.1 Eligible Consumer benefits

115. A general distinction should be made between potential benefits for the consumer arising from interlining as such and possible benefits from the system of Tariff conferences. With regard to the latter, such benefits are difficult to see, as the tariff conferences mainly lead to private communication between competing carriers in a non-transparent structure. Unlike public price announcements, such private communication about future conduct between carriers is neither informative for consumers nor does it constitute a commitment towards them.

116. With regard to interlining, IATA Commissioned a report by Charles River Associates (CRA) to assess economic benefits deriving from the IATA Interlining system.

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The report identifies three principal categories of benefits for consumers:

1. More convenient and lower cost services for connecting passengers […]
2. Flexibility, particularly for time-sensitive passengers […] and
3. Reduced transaction costs.

The CRA Report “roughly” quantifies the consumers’ share in the economic benefits generated by the IATA Interlining system at an estimate amount of some USD 754 million per year for intra EEA traffic.

117. The principal consumer benefits identified in the CRA report seem to relate closely to the benefits that were identified in the consultation paper\(^{73}\). In particular:

1. “baggage transfer” and “through fare” benefits as were identified in the consultation paper appear to relate closely to the ability to travel seamlessly as described under the first category of principal benefits identified in the CRA report; and
2. “liberal interlining practices” benefits, as were identified in the consultation paper appear to relate closely to the second category of benefits identified in the CRA report.

118. As regards the third and final category of benefits identified in the CRA report in relation to “reduced transaction costs”, it appears that any such possible efficiencies may benefit the airline industry rather than consumers. This may be recognised in the CRA report itself where it reads in this matter:

“Another key benefit of the IATA interline system in its current form is that it generates the benefits identified above using a unique joint product at a very low transaction cost for the participating airlines, […]”\(^{74}\) (emphasis added)

119. As regards the quantification by CRA of the benefits of the IATA Interlining System for consumers:

- The benefits are calculated with reference to the study commissioned by IATA with Economic-Plus and GRA which was released in October 2000. The main source of data underlying this study was a US Department of Transportation database containing a 10% sample of all tickets sold by US carriers for the year ended December 1998. The value of the economic efficiencies computed on that basis was already referred to at the time as “rough” in the Economic-Plus/GRA study itself.

Without prejudice to any discussion on the reasoning exposed in the Economic Plus/GRA study itself, because this study refers to data from the United States

\(^{73}\) See section 2.2.2 “…while allowing consumers a fair share of the resulting benefit …” in the consultation paper.

dating back to 1998, it is not evident that its conclusions remain valid today, and may be relied upon for the purpose of a policy decision having possibly meaningful consequences in the EU for some time after the year 2005. No explanation is provided in this regard in the CRA paper.

- The CRA paper nevertheless assumes that the results of the Economic-Plus/GRA study remain valid. On that basis therefore, a “rough” estimate is calculated with a view to assess the share which consumers receive of the overall efficiencies generated by the IATA system.

120. Accordingly, it seems that the consumer benefits as may demonstrably qualify under the second condition of Article 81(3) appear to be limited to the benefits and efficiencies which are identified on the website 75 of IATA and were described in the consultation paper 76, namely:

(1) The ability for consumers to travel seamlessly, from purchase (availability of through fares, through fares at a lower than the sum of sector rate) to actual travel (through check, single contract, …), hereafter referred to as “seamless travel” benefits; and

(2) Flexibility, as may derive by the more liberal interlining practices allowed for in the IATA system, hereafter referred to as “liberal interlining practices” benefits.

6.1.2 Preliminary analysis by type of market

121. The efficiencies identified above are qualitative in that they take the form of improved passenger air transport services, which may be valuable to consumers and compensate them for the restrictions of competition stemming from the Tariff Conferences.

It follows from the very nature of qualitative efficiencies that it is difficult to assign them precise values. However, the potential importance which the availability of such improved products has in the eyes of consumers may possibly be assessed in an analytical way, going through the various types of markets concerned.

6.1.2.1 “Seamless Travel” benefits

122. As a matter of overall welfare, the “seamless travel” benefits may be considered of prime importance in as much these benefits relate to essential transport policy considerations, such as simply ensuring that the travelling public has the means and possibility to reach their final destination in reasonably efficient, comfortable and competitive conditions.

However, there exist many alternatives in the market which enable consumers, independent from IATA Interlinable fares, to reach their final destination in reasonably efficient, comfortable and competitive conditions. For example, there is every reason to believe that a passenger boarding a direct flight with a ticket

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76 See paragraph 117 above.
restricted to the airline operating this flight will reach his final destination reasonably seamlessly. Similarly, a passenger on a connecting flight within the network of a sole carrier or alliance will in principle reach his final destination in a reasonably seamless way even if he does not have an IATA interlinable ticket.

123. As was recalled in the consultation paper, in assessing consumer benefits generated by the IATA interlining system, it is important to identify and focus on those benefits which may be specifically attributed to it. Identical or similar consumer benefits which are otherwise readily available to consumers must be disregarded since the concerned practice could not then be regarded as “indispensable” to the delivery of those benefits.

124. In principle, a journey within the network of a sole carrier or alliance can be considered seamless with respect to the “baggage transfer” and “through fare” benefits, i.e. with respect to the “seamless travel” benefits.

It follows that, where carrier and/or alliance specific offers exist in the market next to IATA interlinable offers, the “seamless travel” benefit will not be considered specific to IATA. Therefore, it is questionable whether such benefits qualify under the second condition of Article 81(3). On the basis of the amended route categorisation presented in exhibit 2 above\(^\text{77}\), this finding leads to the following recapitulative table:

<table>
<thead>
<tr>
<th>Type of route</th>
<th>From/to Origin - to/from Destination</th>
<th>One or more Carriers/Alliances serving the entire route</th>
<th>Specificity to IATA of the &quot;seamless travel&quot; benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hub A - Hub A</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>2</td>
<td>Hub A - RA Ax</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>3</td>
<td>Hub B - RA Bx</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>4</td>
<td>Hub A - RA Bx</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>5</td>
<td>Hub B - RA Ax</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>6</td>
<td>RA Ax - RA AB</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>7</td>
<td>RA By - RA AB</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>8</td>
<td>Hub A - RA ABy</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>9</td>
<td>Hub B - RA ABy</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>10</td>
<td>RA ABy - RA ABy</td>
<td>YES</td>
<td>?</td>
</tr>
<tr>
<td>11</td>
<td>RA Ax - RA By</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>12</td>
<td>Hub A - Hub B</td>
<td>YES</td>
<td>?</td>
</tr>
</tbody>
</table>

Exhibit 4

This theoretical analysis suggests that only a small proportion of the travelling public actually enjoys specific benefits out of IATA Tariff Conferences in respect of the “seamless travel” benefit.

125. The above “theoretical” finding is corroborated by the available data concerning the density of air transport networks in the EU. This data and the conclusions which may drawn out of it suggest that only a very small proportion of the public travelling on intra EU air routes may actually require IATA Interlinable tickets to travel in reasonably seamless conditions\(^\text{78}\).

\(^{77}\) See paragraph 80 above.

\(^{78}\) See paragraph 15 and section 2.2.1 above.
Accordingly, it appears that the actual importance of specific efficiency pass-on to consumers as regards the “seamless travel” benefits may be much lower than expected. It fact, such efficiency pass-on may have been demonstrated only for the very small proportion of passengers travelling on thinner routes between two remote/regional airports for which no carrier/alliance specific services exist.

In as much as the “seamless travel” benefits may be considered especially important in terms of overall welfare and consumer benefits in the Community, this finding may be of particular significance.

6.1.2.2 “Liberal Interlining Practices” Benefits

An analysis according to the dividing line between air transport markets for time sensitive and non time sensitive passengers may shed some light on the value to consumers of the “Liberal Interlining Practices” Benefits.

The “liberal interlining practices” benefits amount in particular to the following practical possibilities for passengers:

- Change the date and time of their ticket;
- Cancel their ticket to obtain a full cash refund;
- Depart without a return reservation;
- Change carriers;
- Change routes (subject to certain distance limits); and
- Add/delete stopping points.

In the description given by IATA of the IATA Interlining System\(^9\) for the consultation paper, such benefits are referred to as “flexibility for time sensitive passengers”.

The CTAG submission\(^8\) is of particular interest in this matter where, further to the estimate that no more than 5% of purchased tickets are IATA tickets, it states that:

“ [...] In general, corporate purchasing managers look for the most flexible fare, at the lowest cost, in line with travel policy. They are happy to accept airline-only restrictions in return for substantial discounts. [...] Carrier specific and alliance fares have replaced the traditional interlining fare. In today’s commercial world the airlines make their offers so attractive that purchasing full fares is no longer a financially viable option. [...]”

Accordingly there appears to be evidence that the price to be paid in order to enjoy the IATA specific “liberal interlining” benefits is too high compared to the value of

\(^9\) See Annex 1 of the consultation paper, IATA Tariff Consultations’ description provided by IATA, paragraph xviii, regarding time sensitive passengers.

these benefits for corporate customers. If confirmed, this may imply that benefits actually passed on to time sensitive passengers under the “liberal interlining practices” may be rather low.

6.1.3 The consumer’s share in the efficiencies generated by IATA Tariff Conferences: consumer submissions in response to the consultation paper

132. The feedback given by consumers or undertakings close to consumers on consumer benefits generated by the IATA system also provides particularly valuable indications with respect to an assessment under the 2nd condition of Article 81(3).

6.1.3.1 Air Transport Users Council

133. The Air Transport Users Council (AUC) is the UK's consumer council for air travellers. It receives funding from the Civil Aviation Authority (CAA), as an Auxiliary Group within the CAA corporate structure. AUC acts as an independent representative of air passengers with a view to further their reasonable interests. Accordingly, AUC represents the interests of British passengers travelling either for leisure and/or private purposes or for business.

134. Whilst recognising that there may be a risk of an inflationary effect on ticket prices, AUC appears to believe that the IATA Interlining System continues to benefit consumers.

AUC also takes the view that, although airline alliances mirror to a certain extent the benefits of the IATA Interlining System, intra-alliance interlining does not represent sufficiently a growing phenomenon in the EU to replace the benefits consumers gain from the IATA system.

6.1.3.2 Corporate Travel Action Group (CTAG)

135. CTAG members have indicated in their response to the consultation paper that:

- Benefits enjoyed by the air carriers’ Corporate Customers with respect to the IATA Interlining System appear to have declined in direct relation to the rising importance of airline alliances and code share agreements;

- All indicators appear to suggest that, with the changes in business models and the desire by airlines to dramatically reduce costs and deal directly with corporations, the decline of IATA fares over the last 10 years has been dramatic;

- At the present moment in time, full Interlinable IATA tickets may account for less than 5% of purchased corporate tickets.

- They fail to see that Corporate Customers would face adverse consequences in the event that IATA Tariff Conferences would stop.

81 See also the Terms of Reference of the AUC at http://www.caa.co.uk/auc/default.asp?page=2201
82 See paragraph 43 and footnotes 24 and 25 above.
6.1.3.2 Travel Agents

ECTAA\textsuperscript{83} and GEBTA\textsuperscript{83} have filed a joint submission in response to the consultation paper wherein:

- It is questioned whether the above mentioned “seamless benefits” (as may be composed in particular of the “baggage transfer” and “through fares” benefits) may be deemed specific to the IATA Interlining System or whether these benefits may rather depend on bilateral agreements between carriers;

- It is argued that the price surcharge associated with fully flexible tickets are “less and less attractive to customers, which are prepared to accept flight restrictions to benefit of substantially lower fares”.

6.1.4 Preliminary assessment

There appears to exist evidence showing that:

- IATA specific consumer benefits, i.e. consumer benefits which are not otherwise readily available for consumers in the market, have substantially decreased;

- only a small proportion of the travelling public enjoys the “seamless travel” and “liberal interlining practices” benefits from the IATA system.

For a concerted practise or agreement to fulfil the second condition of Article 81(3), it is necessary to establish clearly that sufficient efficiencies are actually passed on to consumers to compensate them for the restrictions of competition stemming from the concerned practise or agreement. In other words, it is necessary to demonstrate that the net effect on consumers is at least neutral.

In the light of the above evidence and data, as may be backed by economic theory and reasoning, it seems not yet to be clearly established that the net effect on consumers is at least neutral.

6.2 Indispensability

The Consultation Paper put forward the question whether there existed less restrictive alternatives to the IATA Interlining system\textsuperscript{84}. A simplistic posted price system was described in Annex 2 to the Consultation Paper.

In fact, posted prices systems would in principle extend the possibilities airlines have to issue carrier/alliance specific tickets beyond the network(s) they actually operate on their own or in the framework of alliance/code-share cooperation agreements.

Competition authorities\textsuperscript{85} who have responded to the Consultation Paper have in general indicated that they think there exist alternatives that are less restrictive than

\textsuperscript{83} See section 3.2.3 above.
\textsuperscript{84} See in particular section “2.2.3 [without] imposing on the undertakings concerned restrictions which are not indispensable…”
\textsuperscript{85} See in particular the submission by the German Bundeskartellamt at http://europa.eu.int/comm/competition/antitrust/others/1617/german_t_e_ministeries_de.pdf, by the
the current IATA system, and/or that posted prices systems are likely to constitute such a less restrictive alternative, and/or that they were not convinced by IATA’s arguments that a posted prices system would not constitute a credible or less restrictive alternative.

141. It appears at this stage to the Services of DG Competition that posted prices systems would not have the very high restrictive potential which the present IATA Tariff Conferences seem to have.

This is in particular so because, under a posted prices system, competing air carriers do not discuss prices or any elements which are relevant for the purposes of airline pricing. In fact, under a posted prices system, air carriers would in principle not need to meet, or if so then possibly at less frequent or less regular intervals.

142. Since then, IATA has issued a paper focusing especially on posted prices systems. In this new paper, IATA explains why a posted prices system cannot fully replicate the consumer benefits enjoyed out of the current IATA system. In particular IATA argues that:

- In a posted price system, the flexibility inherent in IATA tickets would be lost;
- In a posted price system, there is no ceiling on point to point fares.

143. On the first argument raised by IATA. The specific flexibility IATA appears to refer to is the extensive flexibility allowed by IATA tickets in terms of choice of routing and carrier.

Differences between IATA and carrier/alliance specific tickets in this particular regard are discussed at length in section 4 above. It appears that these differences are not truly appreciable. In particular, it should be recalled that, for consumers, IATA and carrier/alliance specific tickets are by and large substitutes.

144. On the second argument raised by IATA. This appears to relate closely to the “sum of sector” argument which has been invoked by IATA on various occasions throughout the history and successive revisions of Regulation 1617/93.

However, as recalled by several respondents to the consultation paper, IATA fares are in general more expensive than non-IATA fares. It may be therefore that an IATA through fare is lower than a sum of sector fares calculated on the basis of

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86 See at http://europa.eu.int/comm/competition/antitrust/others/1617/iata_comments.pdf
87 See paragraph 66 above.
88 See for example the submissions made by UK Authorities, the Norwegian Competition Authority or the Travel Agents’ organisations ECTAA and GEBTA.
IATA (or carrier full price) fares for the successive sectors in a journey but that the IATA through fare would be appreciably higher than a sum of sector fare calculated on the basis of “competitive fares” for each sector in that same journey.

145. Accordingly, it remains unclear whether the replacement of the current IATA Interlining System by posted prices systems could have truly adverse consequences for consumers. Should some consumer benefits be lost, it remains unclear whether this loss would be so substantial that posted prices systems could not be considered a less restrictive alternative for the purposes of the indispensability test under Article 81(3) EC.

146. At present Tariff Conferences form part of the IATA Interlining System and, IATA argues, they constitute one in four pillars of the system. Although Tariff Conferences may be an important feature of the present IATA system, it is not evident that they are indispensable to achieve interlining. Interlining may materialise in ways other than the present IATA system. It is unclear what the specific benefits of multilateral price co-ordination are for the purposes of interlining. Indeed, it remains unclear whether the benefits of interlining under a different system would be substantially different from the benefits achieved under the current system.

147. The services of DG Competition would particularly welcome views on the above, including on the latest paper by IATA on posted prices systems, and intend to pursue their discussions with the industry in this matter.

7. **Possible differences between the regulatory regimes applicable to intra EU routes and to routes to third countries – Passenger air services**

148. Discussion in the present section is made with particular respect to the submissions filed by respondents to the consultation paper who have questioned and/or argued against the possibility that a separate regime may be organised for intra EU routes and routes to third countries.

Such submissions sometimes only questioned whether that may feasible whilst others argued it may not be feasible and/or desirable. In the latter case, opposite conclusions were sometimes drawn by respondents departing from the same initial assumption.

7.1 Are there objective differences between intra EU routes and routes to third countries?

In principle the concerns raised with regard to IATA tariff conferences apply to intra-EU as well as routes between EU Member States and third countries. However, given a very different regulatory environment, at this stage also other considerations have to be taken into account with regard to third country traffic.

7.1.1 **Operational differences**

149. On average, it appears that intra EU airline operations amount to short and medium haul operations, whereas operations with third countries often amount to medium and long haul operations.
On average therefore, flight stages to third countries are longer than intra EU flight stages.

150. However basic this introductory remark may seem, the difference identified may be of actual importance in terms of network density\(^ {89}\). This is because economically efficient airline operations for long haul flights appear to have so far developed almost exclusively along a hub and spoke model, where as many connecting passengers as possible are fed into a gateway from which they depart for a long haul flight.

For medium to long haul services therefore, it may be rare to find a direct service between two small/medium sized cities since such cities would, for the purpose of long haul services, rather be a spoke city (\(i.e.\) a Remote/Regional airport in Exhibit 1) to one or more nearby hubs. Accordingly, the density of air transport services as may be measured in terms of the availability of direct flights may likely be substantially lower on routes to third countries than within the EU.

This finding is confirmed by the available data concerning the proportion of tickets issued for direct and indirect journeys: for intra EU flights some 85% of air tickets issued are for direct flights whilst that proportion drops to some 55% in the case of flights to third countries.

151. Moreover and as recalled in the consultation paper\(^ {90}\), although airline alliances may like to say for commercial reasons that their reach is global and worldwide, the situation is not necessarily so.

152. Hence, the above elements suggest that the scope for interlining may be substantially greater in the case of routes between the EU and third countries than in the case of intra EU routes.

7.1.2 Regulatory differences

153. Moreover, there exist significant differences in terms of the regulatory framework applicable to intra EU air services on one hand and to air services to third countries on the other.

154. As explained in the consultation paper\(^ {91}\), air services to third countries remain governed by a myriad of bilateral air services agreements, which often restrict market access and/or the pricing policy of carriers.

This is a fundamental difference with the intra EU air transport market where, in principle and pursuant to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes,\(^ {92}\) market access is free and where, in principle and pursuant to Council Regulation (EEC) No 2409/92

\(^{89}\) See section 2.2.1 above.

\(^{90}\) See section 3.4.2 \( \ldots \) while allowing consumers a fair share of the resulting benefit \( \ldots \) \) in the consultation paper.

\(^{91}\) See section 3.1 The multifaceted regulatory framework applicable to such routes: bilateral air services agreements.

\(^{92}\) OJ L 240, 24/08/1992 P. 0008 - 0014
of 23 July 1992 on fares and rates for air services, Community air carriers may freely set air fares.

This difference has important consequences. For example, it is reasonable to assume in respect of intra EU air transport services that supply will normally adapt to try and match demand. However, it is too simplistic to assume that the same principle applies to international air services to third countries. Market access on these routes is often regulated, which may prevent supply from adapting to demand. Short term price variations may also be impeded.

155. Moreover, the restrictive and diverse regulatory frameworks governing international aviation markets may impede the ability of carriers to enter into bilateral cooperation agreements such as code-share agreements.

This is because a carrier wanting to add its code on a route operated by a partner carrier under a bilateral air services agreement would in principle require, before being allowed to do so, the necessary authorisations in terms of market access to the route concerned under the bilateral agreement concerned.

For example, SAS and Air Baltic have concluded a wide ranging code share agreement. This agreement provides inter alia for SAS to add its code on all the flights operated by Air Baltic, except flights to Minsk, Kiev, Moscow and Saint Petersburg. To the exception of flights to these four destinations, all Air Baltic’s flights are within the EEA & Switzerland area within which market access is in principle free for Community carriers. Conversely, flights operated by Air Baltic to Minsk, Kiev, Moscow and Saint Petersburg are in principle governed by the bilateral air services agreements which Latvia has with Belarus, Ukraine and Russia. It may therefore be presumed that the scope of the code share agreement has not been extended to these four destinations due to regulatory restrictions stemming from the bilateral air services agreements under which Air Baltic operates its flights.

Accordingly, it appears that the regulatory restrictions stemming from bilateral air services agreements may impede the conclusion of bilateral cooperation agreements between airlines, the very type of which has been found to result in alternatives to the IATA system for passengers to interline.

7.2 How do the differences existing between intra EU routes and routes to third countries relate to the assessment of IATA Tariff Conferences under Article 81 EC for intra EU traffic?

156. In view of the main differences identified above between air transport within the EU and to third countries, several key findings of the Article 81 discussion regarding intra EU air services may not be applicable to air services to/from third countries. In particular:

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93 OJ L 240, 24/08/1992 P. 0015 - 0017
94 See in annex 1 to this paper a brief description of existing code share agreements for some of the main carriers in the 10 Member States who have joined the EU on 1 May 2004.
95 See section 5 above.
• The greater proportion of indirect journeys and the reduced reach of airlines/alliances when considered on a worldwide scale may provide for significantly greater consumer benefits which may be deemed specific to the IATA system;

• This finding may be reinforced by the regulatory impediments, which appear to restrict the ability of carriers to enter into the kind of bilateral cooperation agreements which provide alternatives to the IATA system; accordingly, it may not be established that airline/alliance specific alternatives may at this time have developed to a point where they may satisfactorily take over from the IATA system;

• Moreover, the fact that there appears to remain a myriad of diverse and often restrictive bilateral air services agreements between Member States and third countries may in itself contribute to the complexity of the airline industry and result in certain economic inefficiencies. It may also mitigate the restrictive effects, which may be specifically attributed to IATA Tariff Conferences.

157. Less data is available concerning air transport services to third countries than regarding intra EU traffic. Moreover, EU Member States’ public authorities who have responded to the consultation paper have expressed particularly diverging views as to whether or not to block exempt IATA Tariff Conferences for air services between the EU and third countries.

158. Furthermore and as recalled in the consultation paper, it appears not only that numerous bilateral air services agreements entered into by EU Member States refer directly to IATA Tariff Conferences but also that the multilateral worldwide interlining system set up by IATA was recognised some merits in the 5th Worldwide Air Transport Conference held recently by ICAO.

7.3 Are there any material impossibility and/or adverse effects in having a separate regime?

159. Some of the responses received following the consultation paper indicate that it may be useful to clarify what in practice a separate regime may result in.

96 In fact and as recognised in the consultation paper (see paragraph 102), a global and pragmatic approach to competition policy in international aviation may lead to the preliminary conclusion that the most important barriers to increased competition stem from the applicable regulatory framework, namely the hundreds if not thousands of bilateral air services agreements containing explicit restrictions on capacity and/or pricing (some of which may be infringing Community law) rather than the IATA Interlining System.

97 It should be noted however that the present discussion paper does not address the question of the conformity with Community law, and with articles 10 & 81 of the Treaty in particular, of bilateral air services agreements concluded by Member States with third countries. The present discussion paper is limited in scope to discussing whether, in respect of routes between the Community and third countries, the IATA Interlining System and IATA Tariff Conferences in particular may qualify for a block exemption. As the case may be, it is the understanding of the services of DG Competition that such an exemption would have to be conditional upon enabling/facilitating interlining as is presently the case for the exemption applicable in respect of intra Community routes.

98 See section “3.2 ICAO ATConf/5 – ‘Challenges and Opportunities of Liberalisation’ ” in the consultation paper.
The easiest in this respect may probably be to refer to the present situation in the EU on the assumption that all interested parties and regulatory authorities may be familiar with it.

IATA Tariff Conferences do not deal with domestic tariffs, i.e. tariffs for air travel entirely within the territory of one Member State. However, under the existing exemption under Regulation 1617/93, air carriers are not prevented according to the present IATA Interlining System from combining one or more domestic segments with one or more intra EU international segments to form an interlinable journey.

By analogy therefore and in the event that IATA Passenger Tariff Conferences may be exemptable only in respect of air services to third countries, it can be assumed that air carriers may combine one or more intra EU segments (alike from an EU wide perspective domestic segments) with one or more international segments to points located in third countries.

Accordingly, there should for example be no particular difficulty in offering an IATA Interline journey from Krakow in Poland to Sioux Falls in South Dakota, even though such a journey may involve one or more intra EU segments and one or more domestic segments within the territory of the United States of America.

160. Moreover, there appears to exist markets and services for which IATA Tariff Conferences are not (any more) allowed, without this having created any compelling and/or disproportionate difficulty for either the airlines or their customers. In particular:

- As regards the EU and cargo services: following the discontinuation of the previously existing exemption in respect of intra EU Cargo Tariff Conferences\(^99\), it appears that the scope of these conferences was reduced so as to cover only routes between the EU and third countries.

- As regards passenger services to and from the United States: as recalled above IATA Tariff Conferences do not deal with domestic tariffs, and therefore do not deal with tariffs on journeys within the United States, whilst IATA Interlinable tickets to/from the United States for international journeys are available\(^100\).

8. **NEXT STEPS IN VIEW OF THE REVISION OF COMMISSION REGULATION 1617/93**

161. Public authorities and interested parties are invited to submit a final round of comments in response to this paper by 2 April 2005.

Comments and answers to the following paper should be sent to:

European Commission
Directorate General for Competition


\(^100\) However, US carriers may not participate in IATA Tariff Conferences in respect of international routes for which they have obtained anti-trust immunity from the US Department of Transportation.
162. The Commission will assess all submissions received by that date. On that basis, the Commission will make a proposal with respect to the possible prorogation and/or amendment of Regulation 1617/93, which will then be subject to the procedure laid down in Article 6 of Council Regulation 3976/87.

163. In the event that a new Block Exemption Regulation could not be enacted by 1 July 2005, this should not have adverse consequences since enabling Regulation 3976/87 provides that block exemption Regulations in the air transport may apply retroactively to existing agreements. As the case may be, DG Competition would propose such retroactive mechanisms.

164. In the event that one or more existing exemptions should be discontinued in a new Block Exemption Regulation, it may be envisaged, where appropriate and to the extent necessary, to provide for a transitional period allowing existing agreements and concerted practices to be adapted.

Where appropriate, DG Competition is committed to discussing with IATA and the airline industry any alternative solutions proposed in replacement of one or more existing agreements and concerted practices existing under the present IATA Interlining System.
ANNEX 1: COOPERATION AGREEMENTS\textsuperscript{101} ENTERED INTO BY THE SOME OF THE MAIN CARRIERS IN THE NEW MEMBER STATES

The following research was conducted during the months of September and October 2004 by DG Competition staff on the basis of information available from carriers’ and Computer Reservation Systems’ web sites.

Cyprus – Cyprus Airways:

Cyprus Airways has been operating code-share flights with KLM since 1991 (Larnaca-Amsterdam route), Alitalia\textsuperscript{102} since 2000 (Larnaca-Rome and Larnaca-Milan routes), SN Brussels Airlines since 2003 (Larnaca-Brussels and Paphos-Brussels route), Olympic since 2004 (Larnaca-Athens and Larnaca-Thessaloniki routes) and LOT since 2002 (Warsaw-Larnaca route)

Czech Republic – CSA:

CSA has been a Skyteam alliance partner since 2001 (Further to code sharing agreements, cooperation in the alliance appears to encompass joint marketing, yield management co-ordination, revenue, joint inventory and procurement with other members in the alliance). Current Community carrier members of the Skyteam alliance include KLM, Alitalia and Air France.

CSA has also concluded several cooperation agreements with other European airlines. In particular:

Under these agreements, CSA has operated code-share flights with Lufthansa since 1999 (Prague-Berlin, Prague-Munich, Prague-Frankfurt, Prague-Stuttgart, Prague-Düsseldorf, Prague-Hamburg and Prague-Hanover routes), Iberia since 2002 (Prague-Madrid and Prague-Barcelona routes), SN Brussels Airlines since 2002 (Prague-Brussels and Brussels-Strasbourg routes), Malev since 2001 (Prague-Budapest route), Olympic Airlines since 2001 (Prague-Athens and Prague-Thessaloniki routes), Lithuanian Airlines since 2002 (Prague-Vilnius route), Finnair since 2002 (Prague-Helsinki route) and Tarom since 2003 (Prague-Bucharest route).

Estonia – Estonian Air:

\textsuperscript{101}“Standalone” bilateral interlining agreements without code share are difficult to find information about. Accordingly, all the agreements enumerated below are either code-share or alliance agreements.

\textsuperscript{102}The agreement with Alitalia also provides blocked-space arrangements on Larnaca-Milan route.
Since 1999, Estonian Air has been operating code-sharing flights with SAS\(^\text{103}\) (Tallinn-Copenhagen, Tallinn-Oslo and Tallinn-Stockholm routes).

Hungary - Malev:

Malev has concluded code-share agreements with Air France\(^\text{104}\) since 2004 (Budapest-Paris and Budapest-Lyon routes), Alitalia\(^\text{105}\) since 1998 (Budapest-Rome, Budapest-Milan, Budapest-Bologna and Budapest-Venice routes), KLM since 2001 (Budapest-Amsterdam route), CSA since 2001 (Budapest-Prague route), Air Europa (Budapest-Madrid route), Finnair since 2001 (Budapest-Helsinki route), LOT since 2002 (Budapest-Warsaw route), SN Brussels Airlines since 2004 (Budapest-Brussels route), TAP since 2004 (Budapest-Lisbon route) and Tarom since 2001 (Budapest-Bucharest route).

Latvia – Air Baltic:

Air Baltic has been operating code-shared flights with SAS\(^\text{106}\) since 1996 (Riga-Stockholm, Riga-Copenhagen, Riga-Oslo routes). On 26 October 2004, it was announced\(^\text{107}\) that all Air Baltic would code-share with SAS all of its flights, whether from Riga in Latvia or from Vilnius in Lithuania effective October 31, except for its flights to Moscow, Kiev and Minsk\(^\text{108}\).

Lithuania – Lithuanian Airlines:

Lithuanian Airlines has concluded code-sharing agreements with KLM since 2000 (Vilnius-Amsterdam-Paris route\(^\text{109}\)), SN Brussels Airlines since 2003 (Vilnius-Brussels route), LOT since 1998 (Vilnius-Warsaw route), Finnair since 1996 (Vilnius-Helsinki route) and CSA since 2002 (Vilnius-Prague route).

Malta – Air Malta:

Air Malta has operated code-shared flights with Alitalia since 2003 (Malta-Rome route), with Olympic since 2001 (Malta-Athens route) and with SN Brussels Airlines since 2004 (Malta-Brussels route)

Poland – LOT:

LOT is a member of the Star alliance since 2003 (developing since then a strategic cooperation with other Community carriers such as Lufthansa, SAS, Austrian Airlines, British Midlands, Lauda Air, Spanair, and TAP Air Portugal).

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\(^{103}\) Estonian Air has become a partner-airline as well of the SAS Eurobonus frequent flyer program

\(^{104}\) This agreement also provides for block seat arrangements between Air France and Malev

\(^{105}\) A frequent flyer program agreement has also been concluded between Alitalia and Malev

\(^{106}\) Air Baltic has become a partner-airline of the SAS Eurobonus frequent flyer program


\(^{108}\) The three routes in question appear to form an exception, which may be related to differences between the regulatory frameworks applicable to intra Community routes and routes to third countries. Section 6 below discusses in some detail how and why such differences may impair the ability of carriers to code share on the latter routes (See paragraph 155)

\(^{109}\) The first segment being operated by Air Lithuania and the second by KLM
LOT has also entered into code-sharing agreements with Malev since 2002 (Warsaw-Budapest route), Lithuanian Air since 1998 (Warsaw-Vilnius route), Cyprus Airways since 2002 (Warsaw-Larnaca route).

Slovakia\textsuperscript{110} – Slovak airlines:

Slovak airlines has co-operated with Austrian Airlines Group\textsuperscript{111} on the basis of code-sharing since 2004 (Bratislava-Paris, Bratislava-Brussels, Bratislava-London routes).

Slovenia – Adria Airways:

It was announced early September 2004 that Adria Airways would join the Star alliance as a “regional member”, which may further deepen pre-existing cooperation in the form of code share agreements with Lufthansa since 1995 (Ljubljana-Frankfurt and Ljubljana-Munich routes), with Austrian Airlines since 2001 (Ljubljana-Vienna route) and with LOT since 2004 (Ljubljana-via Vienna-Warsaw route).

Moreover, Adria Airways has entered into a code-share agreement with Air France (Ljubljana-Paris route).

\textsuperscript{110} The situation in Slovakia may be somewhat particular in that the catchment areas of Bratislava and Vienna airport overlap to a significant degree due to geographical proximity. Moreover, it appears that the biggest (for example in terms of fleet size or number of transported passengers) air carrier licensed in Slovakia is not the “flag” carrier Slovak Airlines but the no frills carrier Sky Europe.

\textsuperscript{111} Sharing approximately 30\% in the Slovak air traffic market (October 2004 figures), Austrian Airlines is currently showing a great interest in the possible future privatisation of Slovakian Airlines.
ANNEX 2: DATA REPORTS RECEIVED FROM IATA PURSUANT TO ARTICLE 4(3) OF COMMISSION REGULATION 1617/93

1st Report

<table>
<thead>
<tr>
<th>Reporting Period:</th>
<th>July - December 2002</th>
<th>Procedure Paragraph:</th>
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</thead>
<tbody>
<tr>
<td>All Markets</td>
<td>Flower Fares</td>
<td>Normal Fares</td>
</tr>
<tr>
<td>Flow IATA</td>
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<tr>
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<td>Passenger Trips</td>
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<td>at non-IATA Fares</td>
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| Specific Markets  | Flower Fares        | Normal Fares         |花| 有 | 2002 | 2002 |
|-------------------|----------------------|----------------------|花| 有 | 2002 | 2002 |
|                  | Passenger Trips     | at IATA Fares        |花| 有 | 2002 | 2002 |
|                  | at non-IATA Fares   |                      |花| 有 | 2002 | 2002 |
|                  |                      |                      |花| 有 | 2002 | 2002 |

2nd Report

<table>
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<td>Normal Fares</td>
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<tr>
<td>Flow IATA</td>
<td>Normal Fares</td>
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| Specific Markets  | Flower Fares        | Normal Fares         |花| 有 | 2003 | 2003 |
|-------------------|----------------------|----------------------|花| 有 | 2003 | 2003 |
|                  | Passenger Trips     | at IATA Fares        |花| 有 | 2003 | 2003 |
|                  | at non-IATA Fares   |                      |花| 有 | 2003 | 2003 |
|                  |                      |                      |花| 有 | 2003 | 2003 |
### 3rd Report

**Reporting Period:** July - December 2003

**Procedure Paragraph:**

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<th>Total at IATA Fares</th>
<th>Passenger Trips at IATA Fares</th>
<th>at non-IATA Fares which were interlined</th>
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**Specific Markets**

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<th>Billed at IATA Fares</th>
<th>Total at IATA Fares</th>
<th>Passenger Trips at IATA Fares</th>
<th>at non-IATA Fares which were interlined</th>
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**Reporting Period:** January - June 2004

**Procedure Paragraph:**

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ANNEX 3: DESCRIPTION OF THE IATA REPORTING BY IATA
ANNEX 4: SHORT TYPOLOGY OF AIRLINE FARES

There exists a wide variety of airline fares and fares may belong to various and sometimes overlapping categories. The main distinctions appear to be among the following:

- Published fares versus non-published fares: the difference between the two may be compared with that which exists between a price at price list and a negotiated, “tailor made” price. Published fares would normally be available to the general public through Computer Reservation Systems\(^\text{112}\) whilst the access to non-published fares would normally be restricted to certain customer groups and/or travel agents.

- Net fares versus commission inclusive fares: by definition, it appears that commission inclusive fares should include the commission which carriers award travel agents who issue tickets at such fares\(^\text{113}\). A contrario, net fares appear to be fares, which a carrier makes available to a customer and/or travel agent, exclusive of any travel agency commission.

Where net fares are being offered to a travel agent, the said agent may have to add a mark up on the net fare when issuing a ticket on the basis of that net fare if he wants to cash in any revenue for the issuance of the ticket. Where a net fare is being offered to airline customers, for example a corporate customer who may have such a travel budget that he may be able to negotiate preferential rates with air carriers, travel agents may derive revenues from charging service fees to the said customers for making bookings and issuing tickets.

It appears that the vast majority of net fares would normally be negotiated between airlines and their agents or customers, and would normally be non-published fares.

- IATA fares versus carrier fares: IATA fares are fares agreed between member carriers of an IATA Tariff, whilst carrier fares are normally set and decided upon by individual carriers.

The services of DG Competition are not aware that there may exist IATA net fares.

- Normal fares versus Special fares\(^\text{114}\): It appears that so called “normal fares” are unrestricted fares in so far as no advance purchase or minimum/maximum stay

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\(^{112}\) Computer Reservation Systems are referred to as Global Distribution Systems. These companies act as a technological interface between airlines and travel agents for the purpose of allowing the latter to check the availability of flights, make bookings and issue tickets.

\(^{113}\) In principle, published fares are commission inclusive fares.

\(^{114}\) The services of DG Competition understand that “normal” and “special” fares belong to IATA terminology.

In fact, according to common understanding of normality and in as much as “normal fares” may account for less than 10% of tickets issued for travel within the EEA & Switzerland area, “normal fares” may not be so normal any more.
requirements are attached to these fares, as they allow passengers for unlimited stopovers and transfers (no penalties for rebooking and/or rerouting) and as they may normally be combined with other types of fares.

Hence, normal fares appear to be so called “fully flexible” fares, whether economy or business class. Normal fares also appear to be among the most expensive air fares in the market.

A contrario, special fares appear to be fares which are not “normal” and may therefore be restricted in or more of the ways identified here above.
ANNEX 5: REVIEW OF THE REPORT BY CRA ON THE RESTRICTIVE EFFECTS OF IATA TARIFF CONSULTATIONS

The paper submitted by Charles River Associates reviews some basic economic principles and set to apply these principles to explain why the IATA Tariff Conference System does not restrict competition. Much of the exposition on economic theory appears to be correct. However, on many occasion, it is unclear how the theories exposed in the paper apply to the facts. The paper neither substantiates important assumptions that underline certain theories, nor tackle important elements of the IATA conference system. A quick review of the paper shows that many questions are simply not addressed.

Product differentiation and airline pricing

The paper sets to the IATA conference fares and other fares sets by airlines carriers’ concern different products. Then the paper goes at length to explain the basic of product differentiation and pricing.

Although the analysis is coherent, it just simply fails to tackle one major question, which is at the heart of the competition problem, why do airline meet to jointly set IATA fares? In fact, the basic economic analysis offered by CRA does not even take into account that basic but crucial element. As a result, one can only speculate on the conclusions reached by CRA.

Without doubts, price discrimination may serve the purpose of covering common costs on any given “platform”, and Ramsey-Boiteux pricing has well-known efficiencies properties. However, the point is not whether price discrimination is an efficient way of allocating resources, but to which extent jointly selecting IATA fare does restrict competition. It is reasonable to consider that based on this agreed-upon IATA fare airlines set the fares of inferior products (less frills/more restrictions) to maximise their profits. But CRA fails to address this important consideration.

In addition, CRA offers the so-called “waterbed” theory. In a nutshell because perfect competition occurs on all segments, higher margins for some groups of customers are offset by lower mark-ups on more price elastic segment. All in all, in the long run economic rents are washed off. The theory to hold builds on a critical assumption: perfect competition. The only supporting evidence put forward by CRA is a claim by Giovanni Bisignani, IATA director general, that the industry has recovered on aggregate since 2004. And because of this change in profitability, CRA infers that the airline industry is a “highly competitive business”. This is meagre evidence, and further, it is far from clear that one can infer anything from such a claim.

Information exchange and collusion

The paper sets out the market conditions that would facilitate collusion, and neatly reviews the conditions in turn. It is important to establish the terms of coordination, understand the conditions for monitoring and the punishment mechanism. There is no disagreement on this well-accepted framework that is also largely review in the
horizontal merger guidelines. Maybe more troubling is how CRA applies this theoretical framework to the IATA conference system.

Regarding establishing the terms of coordination it is undisputed that the IATA conference system allows airlines to agree to the IATA fully flexible fare. And that this fare could serve as a focal point is not discussed at all by CRA. Further CRA put emphasis on the fact that the industry mostly offers differentiated products, and as a result collusion is unlikely. By and large, the airlines offer different products on any given route, but the number of products offered should not be overblown. The restrictions applied to each fare serve to price discriminate between clusters of passengers; but this does not rule out that explicit or tacit collusion could not take place.

CRA also writes that transparency exists to some degree, but IATA is not responsible for it. For example, the CRS system allows airlines to monitor each other published fares on a daily basis. But such transparency clearly favours monitoring conditions.

Although it is clear that yield management based on load factors make pricing not as transparent, rival airlines observe the type of aircraft competitors used on any given route, as well as the number of frequencies operated.

Another troubling aspect of CRA’s cursory analysis concerns its handling (or lack thereof) of punishment mechanism. It seems relatively reasonable to consider that a capacity increase by rivals (frequency and/or size of aircrafts) would lead any maverick to incur immediate losses, and therefore be severely punished. Because most alleged predatory episodes in the airline industry are concerned with frequency increase to “punish” the entrant, such a punishment mechanism is not far-fetched.

**Empirical analysis of carriers published fares and IATA fares**

CRA also attempt to show that there is no empirical relationship between IATA fares and published business fares. One major difficulty with this analysis is the lack of data. Although, CRA may not have had access to a complete set of data, its conclusion should be more cautious, as it is difficult to draw too many inferences from such a coarse dataset.

For each of the 44 routes examined, CRA has only two data points on business fares, one in May 2001 and one in May 2004. Based on these two data points, CRA undertakes to compare changes in fares between these two dates for IATA fare and carrier business fares. Needless to say, one can hardly draw much on fare variability with so few data points.
## ANNEX 6: IATA FARE CATEGORIES USED FOR AIR TRAVEL WITHIN THE EEA & SWITZERLAND AREA

Summary of key features/conditions for common intra EU IATA fares

<table>
<thead>
<tr>
<th>Fare Type</th>
<th>Short description of the conditions/restrictions/possibilities specific to each type of IATA fare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, valid for one year, no advance purchase or minimum/maximum stay, unlimited stopovers, unlimited transfers, combinable with carrier specific fares.</td>
</tr>
<tr>
<td>Excursion Fares</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, cannot return until first Sunday following departure (some exceptions), maximum permitted stay 6 months (some exceptions), change of reservations permitted.</td>
</tr>
<tr>
<td>PEX</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, must purchase ticket within 72 hours of booking (24 hours if book within 72 hours before departure), cannot return until first Sunday following departure (some exceptions), maximum stay 3 months (some exceptions), rebooking/rerouting at a charge (some exceptions)</td>
</tr>
<tr>
<td>APEX</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, must book at least 7 days before departure, ticket must be purchased when reservation is made, cannot return until first Sunday following departure (some exceptions), maximum stay 1 month (some exceptions), rebooking/rerouting not permitted (some exceptions)</td>
</tr>
<tr>
<td>Super PEX</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, must purchase ticket within 72 hours of booking (24 hours if book within 72 hours before departure), cannot return until first Sunday following departure (some exceptions), maximum stay 1 month (some exceptions), rebooking at a charges (some exceptions), rebooking/rerouting not permitted (some exceptions)</td>
</tr>
<tr>
<td>Budget Fares</td>
<td>Choice of carriers, choice of routing up to 120% of the shortest operated mileage without surcharge, purchase any time before departure, no minimum stay restriction, 12 month maximum stay, rebooking/rerouting not permitted (some exceptions)</td>
</tr>
</tbody>
</table>
Conditions applicable to an IATA unrestricted business ticket (Example on busy intra EU hub to hub route – full text of conditions)

** RULES DISPLAY ** TAX MAY APPLY
SURCHG MAY APPLY-CK RULE
31JAN05*01FEB05/LONFRA/NLX;EH/TPM 396/MPM 475
LN FARE BASIS OW GBP RT PEN DATES DAYS AP MIN MAX AL R
97 C 321 - M28FEB - - - - YY M
FCL: C TRF:2021 RULE: A000 BK: C
PTC: ADT-ADULT FTC: BU -BUSINESS UNRESTRICTED
RU.RULE APPLICATION
NORMAL FARES -FOR FURTHER INFORMATION SEE RULE N999-
WITHIN EUROPE
APPLICATION
CLASS OF SERVICE
FARES APPLY FOR FIRST/BUSINESS/ECONOMY CLASS OF SERVICE.
TYPES OF JOURNEY
MAY BE USED TO CREATE OW/ RT/ CT/ OJ JOURNEYS.
NOTE -
FARES
INTERMEDIATE CLASS-
EXCEPTION- UNLESS OTHERWISE SPECIFIED FARES
SHALL BE EQUAL TO ECONOMY CLASS FARES WITHIN
EUROPE AND NOT LESS THAN THE SPECIFIED ECONOMY
CLASS FARES
FARES
DOMESTIC FARES TO BE USED FOR FARE CONSTRUCTION
CHECK PURPOSES ONLY
A. FROM GIBRALTAR TO UK
B. FROM UK TO GIBRALTAR
SE.SEASONS
** THE FARE APPLIES ON/AFTER THE 01DEC04
CD.CHILD DISCOUNTS
CHILD(CH, CNN) 2-11 YEARS OF AGE - CHARGE 67 PERCENT OF THE
FARE.
TICKETING CODE - BASE FARE CODE PLUS -CH.
MUST BE ACCOMPANIED ON ALL SECTORS IN THE SAME COMPARTMENT.
OR
INFANT NOT OCCUPYING A SEAT(IN, INF) UNDER 02 YEARS OF AGE -
CHARGE 10 PERCENT OF THE FARE.
TICKETING CODE - BASE FARE CODE PLUS -IN.
MUST BE ACCOMPANIED ON ALL SECTORS IN THE SAME COMPARTMENT
BY A(AN) ADULT(ADT) PASSENGER.
OR
INFANT WITH SEAT(INS) UNDER 02 YEARS OF AGE - CHARGE 67
PERCENT OF THE FARE.
TICKETING CODE - BASE FARE CODE PLUS -IN.
MUST BE ACCOMPANIED ON ALL SECTORS IN THE SAME COMPARTMENT
BY A(AN) ADULT(ADT) PASSENGER.
NOTE -
UNACCOMPANIED INFANT.
NOT PERMITTED.
OR
UNACCOMPANIED CHILD(UNN) 8-11 YEARS OF AGE - CHARGE 100
PERCENT OF THE FARE.
TC.TOUR CONDUCTOR
NONE UNLESS OTHERWISE SPECIFIED
AD.AGTS DISCOUNTS
NOTE PERMITTED.
OD. OTHER DISCOUNTS
NOTE PERMITTED.
SO. STOPOVERS
UNLIMITED FREE STOPOVERS PERMITTED.
TF. TRANSFERS/RTGS
UNLIMITED FREE TRANSFERS PERMITTED.
CO. COMBINABILITY
ROUND TRIPS/ CIRCLE TRIPS PERMITTED. ROUND TRIP MIRROR IMAGE PERMITTED.
END-ON-END PERMITTED. VALIDATE ALL FARE COMPONENTS. TRAVEL MUST BE VIA THE POINT OF COMBINATION.
ADD-ONS PERMITTED.
SINGLE/ DOUBLE OPEN JAWS ARE PERMITTED PROVIDED THE OPEN JAW COMPRISSES NO MORE THAN TWO INTERNATIONAL FARE COMPONENTS AND THE OPEN SEGMENT IS WITHIN THE SAME COUNTRY.