Agreement between the European Community and the Swiss Confederation on Air Transport - Final Act - Joint Declarations - Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological co-operation, mutual recognition in relation to conformity assessment, and trade in agricultural products

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THE SWISS CONFEDERATION
hereinafter referred to as "Switzerland",
and

THE EUROPEAN COMMUNITY,
hereinafter referred to as "the Community",
hereinafter referred to as "the Contracting Parties",

RECOGNISING the integrated character of international civil aviation and desiring that regulations for intra-European air transport be harmonised;

DESIRING to set out rules for civil aviation within the area covered by the Community and Switzerland, rules which are without prejudice to those contained in the Treaty establishing the European Community (hereinafter referred to as the "EC Treaty") and in particular to existing Community competences under Articles 81 and 82 of the EC Treaty and the competition rules derived therefrom;

AGREEING that it is appropriate to base these rules on the legislation which is in force within the Community at the time of signature of this Agreement;

DESIRING to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of this Agreement and the corresponding provisions of Community law which are substantially reproduced in this Agreement,

HAVE AGREED AS FOLLOWS:

CHAPTER 1
Objectives
Article 1
1. This Agreement sets out rules for the Contracting Parties in the field of civil aviation. These provisions are without prejudice to those contained in the EC Treaty and in particular to existing Community competences under the competition rules and the regulations of application of such rules, as well as under all relevant Community legislation listed in the Annex to this Agreement.

[...]

Article 8
1. The following shall be prohibited as incompatible with this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   - any agreement or category of agreements between undertakings,
   - any decision or category of decisions by associations of undertakings,
   - any concerted practice or category of concerted practices,
which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
   (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 9
Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with this Agreement insofar as it may affect trade between the Contracting Parties.
Such abuse may, in particular, consist in:
   (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
   (b) limiting production, markets or technical development to the prejudice of consumers;
   (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 10
All agreements, decisions and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition, as well as abuses of a dominant position, which may only affect trade within Switzerland, shall be subject to Swiss law and remain under the competence of the Swiss authorities.

Article 11
1. The provisions of Articles 8 and 9 shall be applied and concentrations between undertakings shall be controlled by the Community institutions in accordance with Community legislation as set out in the Annex to this Agreement, taking into account the need for close cooperation between the Community institutions and the Swiss authorities.
2. The Swiss authorities shall rule, in accordance with the provisions of Articles 8 and 9, on the admissibility of all agreements, decisions and concerted practices as well as abuses of a dominant position concerning routes between Switzerland and third countries.
Article 12
1. In the case of public undertakings and undertakings to which EC Member States or Switzerland grant special or exclusive rights, the Contracting Parties shall ensure that there is neither enacted nor maintained in force any measure contrary to the rules contained in this Agreement.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, shall be subject to the rules contained in this Agreement, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.

Article 13
1. Save as otherwise provided in this Agreement, any aid granted by Switzerland or by an EC Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Contracting Parties, be incompatible with this Agreement.

2. The following shall be compatible with this Agreement:
   (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
   (b) aid to make good the damage caused by natural disasters or exceptional occurrences.

3. The following may be considered to be compatible with this Agreement:
   (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment;
   (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Contracting Party;
   (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Article 14
The Commission and the Swiss authorities shall keep under constant review matters to which reference is made in Article 12 and all systems of aid existing respectively in the EC Member States and in Switzerland. Each Contracting Party shall ensure that the other Contracting Party is informed of any procedure initiated to guarantee respect of the rules of Articles 12 and 13 and, if necessary, may submit observations before any final decision is taken. Upon request by one Contracting Party, the Joint Committee shall discuss any appropriate measures required by the purpose and functioning of this Agreement.

ANNEX

For the purposes of this Agreement:

[...]

No 141/62
Council Regulation of 26 November 1962 exempting transport from the application of Regulation No 17, as amended by Regulations Nos 165/65/EEC and 1002/67/EEC.

No 2988/74
Council Regulation of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the EEC relating to transport and competition.

No 1284/91

No 2410/92

No 3976/87
Council Regulation of 14 December 1987 on the application of Article 81(3) of the Treaty to certain categories of agreement and concerted practices in the air transport sector, as amended by Regulations (EEC) No 2344/90 and (EEC) No 2411/92 (see below).

No 2344/90
Council Regulation of 24 July 1990 amending Regulation (EEC) No 3976/87 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

No 2411/92
Council Regulation of 23 July 1992 amending Regulation (EEC) No 3976/87 on the
application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

(Article 1)
No 3652/93

Commission Regulation of 22 December 1993 on the application of Article 81(3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air transport services.

(Articles 1-15)
No 1617/93

Commission Regulation of 25 June 1993 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports.

(Articles 1-7)
No 1523/96

Commission Regulation of 24 July 1996 amending Regulation (EEC) No 1617/93 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports.

(Articles 1, 2)
No 4261/88


(Articles 1-14)
No 4064/89

Council Regulation of 21 December 1989 on the control of concentrations between undertakings.

(Articles 1-8, 9(1)-(8), 10-18, 19(1)-(2), 20-23)
No 1310/97


(Articles 1, 2)
No 3384/94


(Articles 1-23)
80/723


(Articles 1-9)
85/413


(Articles 1-3)
JOINT DECLARATION
on Further Negotiations

The European Community and the Swiss Confederation declare their intention of undertaking negotiations to conclude agreements in areas of common interest such as the updating of Protocol 2 to the 1972 Free Trade Agreement and Swiss participation in certain Community training, youth, media, statistical and environmental programmes. Preparatory work for these negotiations should proceed rapidly once the current bilateral negotiations have been concluded.

DECLARATION
on Swiss Attendance of Committees

The Council agrees that Switzerland's representatives may, insofar as the items concern them, attend meetings of the following committees and expert working parties as observers:
- Committees of research programmes, including the Scientific and Technical Research Committee (CREST)
- Administrative Commission on Social Security for Migrant Workers
- Coordinating Group on the mutual recognition of higher-education diplomas
- Advisory committees on air routes and the application of competition rules in the field of air transport.

Switzerland's representatives shall not be present when these committees vote.

In the case of other committees dealing with areas covered by these agreements in which Switzerland has adopted either the acquis communautaire or equivalent measures, the Commission will consult Swiss experts by the method specified in Article 100 of the EEA Agreement.

DECLARATION BY SWITZERLAND

on a Possible Amendment to the Statute of the Court of Justice of the European Communities

The Swiss Government indicates its expectation that, if the Statute and Rules of Procedure of the Court of Justice of the European Communities were to be amended in order to permit lawyers entitled to plead before the courts of States parties to a similar agreement as the present to plead before the Court of Justice of the European Communities, such amendment would also include the possibility for Swiss lawyers practising before the Swiss courts to plead before the Court of Justice of the European Communities in relation to the questions referred to that Court pursuant to this Agreement.

Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products
The final notification of completion of the procedures necessary for the entry into force of the seven Agreements in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products between the European Community and its Member States, on the one hand, and the Swiss Confederation on the other hand, signed in Luxembourg on 21 June 1999, having taken place on 17 April 2002, these agreements will enter into force, simultaneously, on 1 June 2002.