

***Case No COMP/JV.19 -
*/*** KLM / ALITALIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

to the notifying parties

Dear Sirs,

Subject: Case M/JV-19 KLM-Alitalia

Notification of 29 June 1999 pursuant to Article 4 of Regulation N°4064/89

1. On 29 June 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹ as last amended by Regulation (EC) No. 1310/97² (the Merger Regulation) by which the undertakings Koninklijke Luchtvaart Maatschappij N.V. (KLM) and Alitalia Linee Aeree Italiane S.p.A. (Alitalia) will constitute a Joint Venture under the meaning of Article 3 (2) of the Merger Regulation.
2. In the course of the proceedings, the parties submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. After examination of the notification and in the light of these modifications, the Commission has concluded that the operation

¹ OJ L 395, 30.12.1989, p.1; corrigendum OJ L 257, 21.9.1990, p.13

² OJ L 180, 9.7.1997, p.1; corrigendum OJ L 40, 13.2.1998, p.17

falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

1. THE PARTIES

3. The parties involved in this case are

- a) Koninklijke Luchtvaart Maatschappij N.V. (KLM). KLM is engaged in the business of operating national and international scheduled and charter airline services, as well as certain airline-related businesses. The Dutch State owns 25% of the shares in KLM. The remainder of the shares (75%) are held by private shareholders. KLM's shares are quoted on various stock exchanges.
- b) Alitalia Linee Aeree Italiane S.p.A. (Alitalia). Alitalia is engaged in the business of operating national and international scheduled and charter airline services, as well as certain airline-related businesses. Following the offerings of shares of Alitalia to the public and Alitalia's employees in May and June 1998, some 53% of Alitalia's shares are owned by the Istituto per la Ricostruzione Industriale S.p.A. ("IRI"). IRI is a holding company owned and controlled by the Italian State. The remainder of the shares are held by private shareholders and by Alitalia's employees.

2. THE OPERATION

- 4. The notified operation is a long-term alliance (the «Alliance») between KLM and Alitalia, as a result of which the parties will progressively integrate their scheduled passenger network, sales, revenue management and cargo business. The Alliance will include two separate ventures, based on the principle of sharing the corresponding costs and revenues, one for scheduled passenger services and one for cargo services. The two ventures are not separate corporate entities with legal personality. In this context, it is to be borne in mind that the bilateral air transport agreements between the individual Members States and third countries (e.g. the Italy/US agreement) set out restrictive requirements on control. In general, under the bilateral agreements the designated operating carriers must be controlled by nationals of the countries which are party to the agreements. Therefore, in legal terms, a corporate entity jointly controlled by KLM and Alitalia would risk not being entitled to operate on the international routes covered by the bilateral agreements.
- 5. The parties have agreed that KLM and Alitalia will keep operating as air carriers, but their operations will be jointly run and marketed by the Alliance. KLM and Alitalia will make available to the Alliance all the necessary assets and capacity (e.g. planes, crews, fuel and financing). The Alliance will process and market the capacity provided by the operating carriers, by defining schedules and timetables, managing the yield management system, fixing the tariffs, and promoting the Alliance.
- 6. The parties will share the profits (losses) generated by the Alliance according to an agreed sharing formula. Profits will be calculated as revenues minus costs; revenues

will be all the income deriving from the sale of the relevant transport services ; and costs will be those which are directly linked to the provision of the relevant transport services. For accounting reasons, certain costs [...] will be accounted in standard terms, some others in actual terms [...].

7. The Alliance will be responsible for maximising revenues within the given cost framework. [...]
8. KLM and Alitalia are not entitled to sell capacity to third carriers nor, with some limited exceptions, to operate on their own. The Alliance is obliged to make use of the whole capacity made available by the operating carriers.

3. CONCENTRATION

3.1. Joint control

9. The management of the Alliance will be entrusted to a team consisting of the CEOs' meeting (a meeting between Alitalia's and KLM's respective CEOs); and the Network organiser, who will co-ordinate the Alliance's operations with the support of a small team. The Network organiser will draft and implement the business plan of the Alliance and will be responsible for the day to day operations. [...] Only unanimous decisions may be taken and no procedures to arbitrate possible conflicts are foreseen. In the CEOs meeting the business plan of the Alliance proposed by the Network organiser is adopted, and in that context each CEO makes investment proposals to their respective boards.
10. The boards of Alitalia and KLM, respectively, have the ultimate word on any decisions and no decision may be imposed on them either by the other party or by the Alliance. However, the autonomy of each board, and in particular their investment policy, is limited, in practice, by the Alliance. [Main strategic and commercial decisions pertaining to the scheduled air transport markets must be implemented through the Alliance.] This is equivalent to a de facto reciprocal veto right enjoyed by each of the partner airlines.

3.2. Full function entity

11. The Alliance is a contractual joint venture which performs on a lasting basis all the functions of an autonomous economic entity, and therefore constitutes a concentration within the meaning of Art 3 (2) of the Merger Regulation. The Alliance will be jointly controlled by Alitalia and KLM, and will bring about a lasting change in the structure of KLM and Alitalia. The two airlines will withdraw from the air transport market and will cease to operate independently. KLM and Alitalia will lose their autonomy as operating carriers since the main strategic and commercial decisions pertaining to their scheduled passengers and cargo businesses will have to be adopted jointly.
12. The fact that some portions of KLM's and Alitalia's businesses are excluded from the Alliance does not disqualify it as a full function joint venture. The parties have

explained that the main activities which will be excluded from the scope of the Alliance are maintenance, ground handling and charter flights. The reason for this is that, in these sectors, the parties' businesses are substantially different and their combination is not expected to yield particular benefits to the Alliance.

In any event, it should be noted that

- maintenance and groundhandling are activities that are not core business to scheduled passengers or cargo air transport. These activities can easily be outsourced;
 - in respect of the charter business the parties consider that there are not appreciable synergies to be achieved between these markets given the fact that charter operations do not benefit from the hubbing effects which are the key element behind the Alliance's economic rationale;
 - as far as scheduled air transport is concerned, two subsidiaries of KLM, KLM-UK and Transavia are not part of the Alliance while Alitalia will continue to have operations outside of the Alliance by means of co-operation agreements such as code-share, blocked space and franchising.
13. The Alliance will have unconditional access to the aircraft provided by the parents and to all the necessary resources to carry out the business plan and operate on the market. This position would not be weakened by the fact that the joint venture will operate on the basis of production capacity supplied by the parents. Under the Merger Regulation, in order to qualify as a full function joint venture the new entity must have access to sufficient resources, including finance, staff and assets.
 14. In the present case, the parties will exercise joint decisive influence over all the key decisions of their scheduled air transport business. [...]
 15. Given the withdrawal of the parents from the scheduled air transport markets, there is no reason to believe that the Alliance will not be run in a profit maximising way by a dedicated management.
 16. As to the access to capacity, the Merger Regulation requires that the joint venture has access to all the necessary resources, but does not require that the joint venture be the owner of such resources. The parents may very well retain property ownership rights over the resources, which are made available to the joint venture.³ The fact that the joint venture operates on the basis of a given infrastructure (i.e. the capacity provided by the parents) does not undermine its full functionality⁴.
 17. Therefore, the Alliance will perform on a lasting basis all the functions of an autonomous economic entity.

³ E.g., in ENEL/FT/DT (case IV/JV.2), the Commission considered that the Italian telecommunications joint venture WIND was full function despite the fact that it would use the telecommunications network of ENEL, which would remain the owner of the network.

⁴ In ENEL/FT/DT, ante, WIND would use the pre-existing network of ENEL and did not have the power to use an alternative network.

4. COMMUNITY DIMENSION

18. KLM and Alitalia have a combined aggregate world-wide turnover in excess of €5,000 million (KLM, €6,047 million; and Alitalia €3,436 million). Each of them has a Community-wide turnover in excess of €250 million (KLM, [...] and Alitalia [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.
19. The operation is not a case for co-operation with the EFTA surveillance authority pursuant to article 57 of the EEA agreement.

5. RELEVANT MARKET

20. In the notification, the parties identify the following two relevant markets:

- Scheduled air transport of passengers
- Air cargo transport

5.1. Scheduled air transport of passengers

21. The Commission considers that, as regards passengers, air transport services are normally offered to two distinct clusters of customers.

On the one side time-sensitive passengers, i.e. passengers whose main concern is to reach their destination in the shortest possible time, who are not flexible in terms of time of departure/arrival, and who require that the airline offers them the possibility to change their reservation at short notice. In practice, these passengers opt for full flexible tickets booked on direct flights when such flights exist at the time required with limited consideration for the price requested.

On the other side non-time-sensitive passengers, i.e. passengers who are price-sensitive and accept longer journey times.

However this distinction has not proved decisive in the Commission assessment of this operation for the reasons discussed below.

22. The parties have contended that factors like the development of hub-and-spoke systems and deregulation have lead to significant evolutions in the air transport sector and in particular to the creation of a "global air transport market" where networks compete against each other.

The Commission does not deny this evolution that affects the supply side of the market. However, from the demand side, the consumer continues to ask for a

transport service between two points. In this respect, each point-of-origin / point-of-destination⁵ pair operated by either of the parties constitutes a relevant market (hereafter referred to as O&D pairs).

The Commission considers that each such market includes a route or a bundle of routes comprising:

- the direct flights between the two airports concerned;
- the direct flights between the airports whose respective catchment areas significantly overlap with the catchment areas of the airports concerned at each end;
- the indirect flights between the airports concerned to the extent that these indirect flights are substitutable to the direct flights. Substitutability of direct routes with indirect routes depends on a number of factors such as the flight time or the frequencies (and schedules) of the routes.

5.2. Air cargo transport

23. Also for cargo, the Commission considers that from the demand side the users of the service in question ask for transport of freight on a point of origin – point of destination basis. Each point-of-origin / point-of-destination pair operated by either of the parties therefore constitutes, in principle, a relevant market. However, the peculiarities of the cargo sector justify a wider definition of the relevant market.

24. Firstly, unlike passengers, freight may be routed with a higher number of stop-overs. This implies that, from the freighter point of view, any indirect route (including with multiple stop-overs) is substitutable to any direct route (provided the total travel time and the cost remain reasonable).

25. Secondly, as regards point-of-origin / point-of- destination pairs where at least one of these points is located outside Europe, the notifying parties have contended that the corresponding catchment areas broadly correspond to the continents. This is due to the fact that air transport of freight is often a part of multi-modal transport (e.g. by truck from the origin point to the air gateway, by air to the destination gateway and by truck from that gateway to the final destination). This is true even when the gateway is very distant from the point of origin. Gateways are therefore substitutable one with another within the same continent, at least within those continents where local transport infrastructure allow it.

The Commission inquiries have confirmed this assessment.

⁵ In this context "point of origin" and "point of destination" should be understood as "catchment area of an airport".

6. COMPETITIVE ASSESSMENT

6.1. Dominance

6.1.1. *Air transport of passengers*

6.1.1.1. The O&D pairs where both parties operate with direct flights (overlaps)

26. Four O&D pairs are concerned: Amsterdam-Milan, Amsterdam-Rome, London-Milan and London-Rome.

a) *The Amsterdam – Milan O&D pair*

27. The routes concerned are the direct routes between on the one side the airports of the Amsterdam region (Schiphol and Rotterdam) and on the other side the Milanese airports of Linate, Malpensa and Orio al Serio. No other direct routes or indirect routes belong to that market. This assessment is valid both for the time-sensitive passengers and the non-time-sensitive passengers.

28. The parties have contended that the airports of Brussels and of Dusseldorf are substitutable to Amsterdam-Schiphol and that the direct routes between these airports and the Milan area should also be taken into account.

The Commission recognises that the airports of Brussels, Dusseldorf and Amsterdam attract traffic originating from (or with a destination to) an area situated approximately in the South of the Netherlands. This is due to the fact that this area is almost equidistant from the three airports concerned. Nevertheless, the catchment areas of these three airports do not significantly overlap as far as a short haul flight like Amsterdam-Milan is concerned⁶.

Passengers will opt for the airports that are closer to their origin or destination point. For example, the Maastricht traffic seems to be caught by Dusseldorf ([90-100]% of the traffic); Breda's by Dusseldorf ([60-70]%), Venlo by Brussels and Dusseldorf ([50-60]% and [30-40]%). In this respect, the overlap of the catchment areas of the three airports concerned is not significant as it is limited to the areas of Nijmegen and Eindhoven.

The Commission therefore considers that, as far as direct routes are concerned, the relevant market comprises only the routes listed in the previous paragraph.

29. Indirect routes between Amsterdam and Milan are not substitutable to the direct routes: in practice, only [...] passengers out of a total of [...] (i.e. [<5]%) opted for

⁶ The size of an airport catchment area varies according to the flight time of the flights concerned: a passenger will accept to travel (e.g. to drive) a longer distance to the departure airport to catch a long haul flight than to catch a short haul flight, because of the minor impact of that travel by car on the total travel time.

an indirect flight, of which [...] out of a total of [...] non-time-sensitive passengers⁷ (i.e. [<5]%). These extremely low proportions are an indication of non-substitutability for both categories of passengers.⁸

30. The joint venture will create a single dominant position on the route concerned.

Before the concentration, KLM and Alitalia were the only operators on the route, with a market share (time-sensitive & non-time-sensitive passengers) of respectively [60-70]% and [30-40]%. After the concentration, the parties will have a market share of 100%.

This monopoly position is protected by the existence of barriers to entry and should therefore be interpreted as an evidence of a dominant position. The barriers in question are:

- First, the fact that the airports at both ends are congested (Schiphol and Malpensa). Although slots are available at secondary airports like Rotterdam or Orio al Serio, these airports are less attractive for new entry.
- Second the fact that the parties will operate a relatively high number of frequencies (10 daily frequencies planned) compared with the thinness of the market.
- Third, the relatively low average load factor on the route, which makes the route less attractive for a new entrant.

b) The Amsterdam-Rome O&D pair

31. The routes concerned are the direct routes between on the one side the airports of the Amsterdam region (Schiphol and Rotterdam) and on the other side the Roman airports of Fiumicino and Ciampino. No other direct routes or indirect routes belong to that market. This assessment is valid both for the time-sensitive passengers and the non-time-sensitive passengers.

32. The reasoning for this statement is the same than for the Amsterdam-Milan O&D pair.

The only difference that appears in the statistics is a slightly higher percentage of non-time sensitive passengers that fly between Amsterdam and Rome via indirect flights during the summer IATA season ([5-10]% of total). However, it should be noted that about one third of these passengers have flown with Alitalia via Milan (which is to be interpreted as a second best solution due to lack of seats on the direct flights). The fact that only [5-10]% (two thirds of [5-10]%) of the passengers have

⁷ In absence of any better estimate, non-time-sensitive passengers have been estimated with the number of economy tickets sold.

⁸ Source: Data provided by the parties, Summer 97 & Winter 97/98.

opted for an indirect flight is to be interpreted as a sign of non-substitutability of direct flights with indirect flights on the route concerned.

33. The joint venture will create a single dominant position on the route concerned.

Before the concentration, KLM and Alitalia were the only operators on the route, with a market share (time-sensitive & non-time-sensitive passengers) of respectively [40-50]% and [50-60]%⁹. After the concentration, the parties will have a market share of 97.1% (the other operators being Singapore Airlines and Kuwait Airways, who have withdrawn from the market in the meantime).

This high market share is protected by the same barriers to entry as for the Amsterdam-Milan O&D pair (except that, on the basis of the Commission investigation, the Rome airport does not seem to raise the same congestion problem) and should therefore be interpreted as evidence of a dominant position.

c) The London-Milan and the London-Rome O&D pairs

34. The routes concerned are:

- the direct routes between on the one side the London airports of Heathrow, Gatwick, Stansted, Luton and City) and on the other side the Milanese airports of Malpensa, Linate and Orio al Serio.
- the direct routes between on the one side the London airports of Heathrow, Gatwick, Stansted, Luton and City) and on the other side the Roman airports of Ciampino and Fiumicino.

This assessment is valid both for time-sensitive passengers and non-time-sensitive passengers (even if one could argue that the London airports are not substitutable with each other as regards time-sensitive passengers).

35. Both parties are present on these markets: Alitalia directly, KLM through its subsidiary KLM-UK.

36. However the parties will not create or strengthen a dominant position on these routes:

- On the London-Milan pair, in 1998/9, Alitalia had a market share of [30-40]% and KLM UK of [<10]%; so that after the concentration the parties will have a market share of [40-50]%.
- On the London-Rome pair, in 1998/9, Alitalia had a market share of [30-40]% and KLM UK of [<5]%; so that after the concentration the parties will have a market share of [30-40]%.

⁹ Source: Data provided by the parties, Summer 97 & Winter 97/98.

These significant market shares cannot be considered as an indication of dominant position given the respective market shares of the other players on these markets: British Airways ([30-40]% and [40-50]%)¹⁰, Air One, ([10-20]% and [<5]%), Debonair ([<5]% and [<10]%) and Go ([<10]% and [<10]%).

6.1.1.2. The other Italy-Netherlands O&D pairs served by a direct flight

37. The O&D pairs concerned are Amsterdam-Bologna, Amsterdam-Turin and Amsterdam-Venice.
38. KLM is the only operator that operates direct flights on these routes, where it holds very high market shares (ca [90-100]% on Amsterdam-Bologna, ca [90-100]% on Amsterdam-Turin and ca [90-100]% on Amsterdam-Venice)¹¹.
39. Due to the design of its network and the thinness of these routes (between 37,000 and 74,000 passengers per year), Alitalia cannot be considered as a potential entrant on these routes: it would not be in Alitalia's interest to operate such small routes that do not fit in its hub-and-spokes strategy.
40. Given the very low activities of Alitalia on these routes and the fact that Alitalia cannot be regarded as a potential competitor, these markets are not examined any further.

6.1.1.3. The other O&D pairs operated with a direct flight by one of the parties

41. In theory, any route operated with a direct flight by one of the parties could be affected by the concentration insofar as an indirect flight offered by the other party could be considered as an alternative to the existing direct flight.
42. In practice, however, indirect flights are not, as a general rule, substitutable to direct flights as far as time-sensitive passengers are concerned. This implies that the corresponding markets for air transport of time-sensitive passengers are not affected.
43. As regards non-time-sensitive passengers, where indirect flights may constitute valid alternatives to direct flights, the investigation has shown that in neither case the concentration will lead to a creation or a strengthening of a dominant position. The markets scrutinised were:

- other intra-European O&D pairs and more specifically those pairs where substitutability was more likely: the Danish-Italian O&D pairs where

¹⁰ Market shares on the London-Milan and London-Rome routes

¹¹ Data provided by the parties, Summer 97 and 97/98 IATA season. Other statistics show that KLM's market share is slightly lower and that indirect traffic represents 12%. However, only 1% of such traffic is attributable to Alitalia, so that in any case Alitalia's contribution would be marginal.

Alitalia operated a direct flight and the Iberian peninsula-Amsterdam O&D pairs where KLM operated a direct flight;

- the Europe-North America O&D pairs
- and other Europe-rest of the World O&D pairs.

6.1.2. Air Cargo transport

44. In neither of the relevant markets the parties' combined market shares exceed 15%. Therefore the concentration does not raise any competition concern in this respect.

6.1.3. Network effects

45. As to the effect of the combination of the parties' network at a wider European and world level, the concentration will not give rise to a dominant player.

In 1997, Alitalia is the 17th airline worldwide (7th in Europe) in terms of operating revenues. KLM is respectively the 14th and 5th airline. The concentration will give rise to the 7th world airline (3rd European, after British Airways and Lufthansa) in terms of operating revenues.

In terms of offered seats the concentration will represent [<10]% of the intra-European traffic, [<10]% of the Europe-North American traffic, [10-20]% of the Europe-South America traffic, [<10]% of the Europe-North Africa traffic, between [<10]% and [10-20]% of the Europe-Sub-Saharan Africa traffic, and between [<10]% and [<10]% of the Europe-Asia traffic.

46. This decision is without prejudice to any assessment of the Wings alliance, which is currently under scrutiny by the European Commission.

6.2. Co-ordination of competitive behaviour

47. Pursuant to Article 2(4) of the Merger Regulation a joint venture having as its object or effect the co-ordination of the competitive behaviour of its parent companies has to be appraised in accordance with the criteria of Article 81(1) and Article 81(3) of the EC Treaty. In order to establish a restriction of competition in the sense of Article 81(1) of the EC Treaty, it is necessary that the co-ordination of the parent companies' competitive behaviour is likely and appreciable and that it results from the creation of the joint venture, be it as its object or effect.

6.2.1. Definition of candidate markets for co-ordination

48. According to Article 2(4) of the Merger Regulation, the Commission shall, when making the said appraisal, take into account in particular whether two or more parent

companies retain to a significant extent activities in the same market as the joint venture, or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market.

6.2.1.1.Relevant markets

49. The joint venture will be active in the provision of scheduled air transport of passengers and air cargo transport as described in Section 5 above.
50. Besides their activities in the joint venture markets, the notifying parties KLM and Alitalia provide charter flights, maintenance service for aircraft and aircraft parts and ground handling services. The notifying parties have submitted that the joint venture would not lead to co-ordination in these markets nor in the joint venture's markets.

a) The joint venture's markets

Markets for scheduled air transport

51. As described in paragraph 12 above both parties to the joint venture will maintain certain activities on the markets for scheduled air transport. However there is no overlap between the scheduled air transport activities of KLM outside the joint venture and those of Alitalia outside the joint venture, as there is no route where both KLM and Alitalia have scheduled air transport operations outside the joint venture. The KLM activities outside the alliance are scheduled flights to and from the UK operated by KLM-UK and very limited scheduled flights operated by Transavia. The Alitalia scheduled air transport activities outside the joint venture are on a number of routes to and from destinations in Italy operated by franchisees of Alitalia or airlines with which Alitalia has a code sharing and block space agreement. These do not include any flights to the UK.

b) Closely related markets

Charter

52. Charter air transport is a distinct activity from scheduled air transport. In a typical charter arrangement the charterer, usually a tour operator, pays an operator to fly an aircraft between two points, a single time or a number of times over a holiday season, in return for a pre-set fee. Both KLM and Alitalia operate charter services.
53. KLM performs its charter activities through Martinair and Transavia. These charters operate between the Netherlands and a range of destinations in the Mediterranean area (Cyprus, Egypt, France, Greece, Israel, Italy, Malta, Morocco, Portugal, Spain, Tunisia, Turkey), Mexico, Venezuela and the Netherlands Antilles. In addition KLM operates charters from Austria, France, Italy and Germany to Greece and Spain. Alitalia operates charter flight within Italy and from Italy to a range of destinations in Europe (including Greece and Spain) and long haul destinations.
54. Therefore both KLM and Alitalia provide charter services from Italy to destinations in Greece and Spain. However it should be noted that the entire activity of KLM

between Italy and destinations in Spain and Greece consists of two aircraft owned and operated by Transavia. These aircraft are operated for an Italian tour operator who pays KLM on the basis of "seats produced" and undertakes pricing and selling of seats to passengers itself. KLM is paid a fixed amount for operating the aircraft regardless of how many passengers the tour operator obtains. KLMs activity is more akin to acting as a "wet lessor" of the aircraft than as a charter operator. The tour operator bears the risks and earns the rewards of operating charter flights. On closer examination, therefore, KLM and Alitalia do not compete to operate charter flights between Italy and destinations in Spain and Greece.

55. The charter services described above are provided by KLM to leisure travellers in the Netherlands, Austria, France and Italy. Alitalia provides its services to travellers in Italy.

Maintenance

56. As large airlines, both parties maintain their own aircraft and equipment. They also provide these maintenance services to third parties. The maintenance and checking of aircraft and aircraft equipment divides into numerous product markets for the maintenance of each type of aircraft and equipment. According to the parties the only types of maintenance that could potentially be performed by both parties, and hence the only product markets for maintenance services potentially affected by this joint venture, are the following:

- "C checks" for Boeing 747, 767 and 737 aircraft and on MD-11 aircraft. (C checks are 2 week medium level inspections with some repair work. They are distinguished from shorter, more frequent A and B checks and less frequent "Heavy Maintenance visits" referred to as D checks.)
- Maintenance of components for Boeing 747 and 767 aircraft
- Engineering services for Boeing 767 aircraft.

57. As aircraft are by definition mobile, and the cost of this essential maintenance is high compared to the cost of flying aircraft, users of this service can choose between suppliers in any different locations. The market for these services is therefore world-wide in scope.

Ground Handling Services

58. As part of their operations, airlines require ground handling services at the airports where they operate (e.g. parking, cleaning, refuelling etc. of aircraft). Ground handling services are required at every airport and can only be provided by a provider at a given airport. In addition to their "in-house" activities at their own hubs, the parties provide ground handling services to third parties at the following locations:

- Alitalia provides ground handling services to third parties at New York-JFK, Los Angeles-LAX and London-Heathrow.

- KLM provides third party ground handling services at London-Heathrow.

59. By their nature ground handling services performed at a given airport can only be provided to aircraft at that airport. The airports where the parties provide these services distinguish both the markets where the parties provide ground handling services.

6.2.2. *Assessment under Article 2(4)*

60. There are no indications that the creation of the joint venture has the object of co-ordinating the competition behaviour of the parents on any of the markets considered here. However, it may be the effect of the joint venture to give rise to co-ordination of competitive behaviour. This question has to be examined separately for the scheduled air transport markets, charter activities, maintenance activities and ground handling activities.

6.2.2.1. Scheduled Air Transport Activities

61. As described above, there is no overlap between those scheduled air transport activities of the parties remaining outside the joint venture. No further assessment of possible co-ordination of these activities is therefore necessary.

6.2.2.2. Charter

62. As described above, there is no real overlap between the charter activities of the parties. No further assessment of possible co-ordination of these activities is therefore necessary.

6.2.2.3. Maintenance

63. As described above, the maintenance sector splits into separate products depending on the type of aircraft or equipment involved. The only markets for maintenance services where the parties both have the technical capability to operate are, as discussed above: "C checks" for Boeing 747, 767 and 737 aircraft; "C checks" for MD-11 aircraft; Component maintenance for Boeing 747 and 767 aircraft and engineering services for Boeing 767 aircraft. The parties have pointed out that Alitalia is not active in the provision of third party maintenance work for Boeing 747 aircraft. KLM does not maintain Boeing 767 aircraft for third parties. Neither of the parties currently carries out any maintenance of Boeing 737 aircraft for third parties, although both have plans to do so in the future. Alitalia does not provide component maintenance for Boeing components to third parties. As a result of this the only markets where the parties compete to provide maintenance to third parties are:

- "C checks" for MD-11 aircraft
- Engineering services for Boeing 767 aircraft

64. The parties share in all of the markets for maintenance is extremely small. The parties have informed the Commission that the total turnover of the "Maintenance, Repair and Overhaul market was estimated at US\$ 29.3 bn (source: "Overhaul and Maintenance" April 1999) As against this the total value of all of KLM's maintenance work for third parties was US\$ [<5%] in the most recent financial year. The value of Alitalia's maintenance work for third parties was only US\$ [<5%]. The market is largely taken up by the larger airlines and major third party providers like FLS, GE and Allied Signal.
65. As any possible overlap is limited to two narrow types of maintenance activity and as the parties account for such a small part of overall maintenance activity it can be concluded that the parties have no incentive to co-ordinate so as to restrict competition on these markets and that if they did attempt any co-ordination the resulting restriction would not be appreciable.

6.2.2.4. Ground Handling Services

66. Taking a broad Greater London market for ground handling services the parties market share is between [<5]% and [<10]%. As set out above, both parties are only actual or potential competitors in the market for ground handling services at London Heathrow. Even if the parent companies were to co-ordinate their activities on this market, it would not amount to an appreciable restriction of competition

7. MODIFICATIONS TO THE ORIGINAL CONCENTRATION

67. On 10 August 1999 the parties submitted undertakings to the Commission in order to remove the competitive concerns raised by the operation. These undertakings are annexed to this decision and form an integral part thereof.
68. The undertakings submitted by the parties aim at removing the barriers to entry and facilitating the effective entry of a competitor into the markets in question. Therefore, the alliance would actually be constrained by the competitive threat of entry after the merger.

In the present case, the usual remedies accepted by the Commission to prevent the creation or reinforcement of a dominant position (i.e. the divestiture of assets) are not suitable. The divestiture of assets used to provide the transport service in the routes between Netherlands and Italy would not lead automatically to a reduction of the market share of the alliance. In addition, the mere divestiture of tangible and intangible assets would not guarantee that such assets would be used in competition with the alliance in the two markets in question. Planes and crews for instance, can be used to provide transport services on a wide number of routes.

69. The undertakings can be summarised as follows:

- The parties will surrender up to sixteen slots per day at Amsterdam-Schiphol and up to eight slots per day at each of Rome-Fiumicino and Milan-Malpensa, if any new entrant is unable to obtain the slots needed through normal procedures.

- For each city pair (Amsterdam-Milan and Amsterdam-Rome) the parties will surrender slots so as to allow any new entrant to operate two return flights a day between these city pairs at peak times.
 - For each carrier wishing to exercise these rights by operating a scheduled service from any third airport to Amsterdam-Schiphol with a stop-over at either Milan-Malpensa or Rome-Fiumicino, or from any third airport to either Milan-Malpensa or Rome-Fiumicino with a stop-over at Amsterdam-Schiphol, the parties will surrender up to eight slots at the stop-over airport to allow the service between that stop-over airport and the third airport. Slots will be surrendered as to allow the new entrant to complete the stop-over within 60 minutes.
 - For every daily return flight ("frequency") introduced by a new entrant, the parties will reduce their own frequencies by one, up to a maximum of 40% of the frequencies they actually operate and provided that they can maintain a minimum number of frequencies on the routes to allow effective connection of their two networks (6 frequencies on Amsterdam-Milan and 4 on Amsterdam-Rome).
 - On request the parties will enter into a blocked space agreement with any new entrant on services operated by the parties.
 - The reduction in frequencies and the availability of block space agreements will apply for two years after entry. (The parties' frequencies remain frozen at this lower level for four consecutive IATA seasons.)
 - On request, the parties will enter into an interline agreement with any new entrant.
 - On request, the parties will admit any new entrant into their Frequent Flyer Programme (FFP).
 - Limits are placed on the type of commission scheme that KLM and Alitalia can operate for travel agents and large corporate customers. (These limits are without prejudice to the application of Article 81 and 82 to such commission schemes.)
 - KLM and Alitalia will reduce the size of their display on Computerised Reservation System (CRS) systems if this is necessary to allow a new entrant to appear on the first page of the display. They will also inform passengers of any code share arrangements.
70. All of these provisions are to remain in force on each city pair until any new entrant or entrants have operated thirteen frequencies a week on that city pair for four consecutive IATA seasons.
71. These undertakings lower the entry barriers on the routes at issue to a sufficient degree to allow for entry to and a continued presence on these routes. In particular:
- Sufficient slots are available to remove airport congestion as a barrier to entry. In particular the parties have guaranteed that sufficient slots will be available to allow four daily frequencies (including two at peak times) on each of the routes, which is adequate for routes of this size. The parties have also guaranteed that slots will be available for those potential new entrants that are currently not

operating at either of the airports concerned and that wish to offer the service on the route(s) concerned by linking that(these) route(s) to their existing network.

In addition, slots will be available within 45 minutes of the time requested by a new entrant.

Furthermore, slots will be provided so as to allow a new entrant to turn around its aircraft within 60 minutes. This is particularly important for "low cost" carriers who must turn around aircraft quickly to reduce costs.

- Reduction in frequencies provides new entrants with access to a certain amount of business. This overcomes the barrier raised by the thinness of the routes in question in relation to the capacity offered on these routes. In particular, a new competitor will be able to have one daily frequency at each of the two peak times, so maximising the amount of business available to it.
 - The viability of a new entrant service is further enhanced by the fact that it will also be able to provide seats on the parties' frequencies under a block space agreement.
 - The two year "freeze" on frequencies in response to effective entry will allow the new entrant to consolidate its presence on the market.
 - The frequency reduction of up to 40% removes the overlap between the parties, i.e. where full use is made of this frequency reduction the distribution of market shares on these markets will be equivalent to what it was before the joint venture.
 - The duration of the undertakings is such that they will remain in force on each of the two markets concerned until at least one new entrant is well established on each of these markets.
72. Under the conditions established by the undertakings submitted by the parties, the barriers to entry are, if not exhaustively removed, certainly substantially reduced. The combined effect of all the undertakings is to remove the dominant position created by the notified operation, in so far as they remove the barriers to entry into the markets in question. The high market shares that the merged entity will hold initially will not allow the merged entity to behave independently of the competitive constraints imposed by the effective threat of entry arising from the conditions created by the undertakings.
73. Therefore the Commission concludes that these undertakings are sufficient to remove its serious doubts within the meaning of article 6 (1) c), rendering the concentration compatible with the common market.

8. ANCILLARY RESTRAINTS

74. The notifying parties have not identified any ancillary restrictions in their agreements which they consider to be directly related and necessary to the implementation of the concentration. It follows that any obligations in the concentration which are

restrictions cannot be considered to be directly related to and necessary to the implementation of the joint venture.

9. CONCLUSION

75. It follows from the above that, subject to full compliance with the commitments made by the parties and annexed to this Decision, the proposed concentration will not create or strengthen a dominant position as a result of which competition will be significantly impeded in the common market or in the EEA or in a substantial part of it.
76. The Commission therefore has decided, subject to full compliance with the commitments made by the parties, not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No. 4064/89 as amended by Council Regulation (EC) No. 1310/97 and Article 57 of the EEA Agreement.

For the Commission,