

EN

*Case No IV/M.130 -
DELTA AIR LINES /
PAN AM*

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

Article 6(1)(b) NON-OPPOSITION
Date: 13.09.1991

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MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

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To : names of the parties

Dear Sir,

Subject : Case No. IV/M.130 - Delta Air Lines / Pan Am
Your notification pursuant to Article 4 of Council
Regulation No. 4064/89

1. The above mentioned operation, notified on 9th August 1991, concerns the asset purchase agreement entered into by Delta Air Lines Inc. (Delta) with Pan Am Corporation Co. and its subsidiaries Pan American World Airways Inc. and Pan Am Shuttle Inc. (Pan Am) by virtue of which Delta will acquire the North Atlantic air transport business of Pan Am and related interests.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 4064/89 and that it is compatible with the common market.

I. THE AGREEMENT

3. According to the purchase agreement, the acquisition will comprise:

- Pan Am's route authorities to provide air services between the United States and Europe and beyond, including mainly routes from New York to different European destinations, as well as the Miami/London, Detroit/London and Washington/Frankfurt authorities.
- Pan Am's Frankfurt hub operation.

- Pan Am's Boston - New York - Washington shuttle operations.
 - Corresponding national and international slots, leaseholds and equities in a certain number of aircrafts, as well as related interests.
4. The purchase agreement is part of a wider transaction concluded between the parties in the context of a Chapter 11 US Bankruptcy Code Procedure, under which Pan Am filed for the purpose of reorganisation at the beginning of January 1991. Delta will in addition assume part of Pan Am's existing liabilities and acquire a 45% share in the remaining reorganised Pan Am company that will operate the Latin American division and its Miami operation base.

The deal was approved by the US Bankruptcy Judge on August 12, 1991 and cleared under the Hart-Scott-Rodino Act on August 9, 1991.

II. THE PARTIES

5. Delta Air Lines is one of the major American air carriers providing scheduled air transport mainly in the US (86% of its traffic distribution) but also on international routes. At the end of the financial year 1990/91 Delta served 158 cities in the US and 34 international destinations.

Delta's transatlantic air transport business presently has a relatively limited scope. It operates 13 routes to destinations in the EC, from four hubs in the United States, these being Atlanta, Cincinnati, Dallas/Fort Worth and Orlando. Delta is furthermore one of the largest shareholders in Worldspan, a computer reservation system (CRS) based in the US.

6. Pan Am's air transport activities are mainly in international scheduled passenger transport (76% of its traffic distribution). In 1991 Pan Am and its subsidiaries served 41 cities in the US and 75 international destinations, amongst them 15 destinations in the EC. Pan Am's flight operations are based mainly in New York and Miami in the US and Frankfurt in Europe.

III. CONCENTRATION

7. The transfer of a number of assets related to the transatlantic business of the Pan Am group of companies as described under I to the ownership and control of Delta constitutes a concentration within the meaning of Article 3(1)b of Regulation EC 4064/89.

IV. COMMUNITY DIMENSION

8. The concentration has a Community dimension within the meaning of Article 1(2) of the Regulation. The aggregate worldwide turnover of Delta and the turnover relating to the parts of Pan Am which are the subject of the present transaction exceeded 8 billion ECU in the financial year 1990/91.
9. As to the aggregate Community-wide turnover of the parties, Article 5(1) subparagraph (2) of the Regulation states that turnover in the Community or in a Member State shall comprise

services provided to clients in the Community or in this Member State. In applying this provision to the air transport services here concerned, the following three methods of allocating turnover could reasonably be considered: one possibility would be to attribute the operating revenues deriving from transatlantic air transportation services to the country of destination, this being the final destination point outside the home country of the airline (for example, in the case of a flight New York/Paris/New York by a US carrier the turnover would be allocated to France). A second option could be to allocate the revenues in a 50%/50% ratio to the country of origin and the country of final destination, so as to take into account the cross border character of the service provided. A third alternative would be to attribute the air transport revenues to the Member State where the ticket sale occurred.

In the present case the choice of the appropriate method can be left open since in each of the three alternatives Delta and the part of Pan Am that is being purchased achieve a Community-wide turnover that exceeds 250m ECU. The parties do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State.

V. COMPATIBILITY WITH THE COMMON MARKET

The relevant market

10. The main impact of the transaction which is relevant in the context of the present appraisal will be in the scheduled air transportation services for passengers between the US and the Community. These scheduled air transportation services comprise the different services between the various departure points in the US on the one hand and in Europe on the other hand (city pairs).
11. International air transportation in the North Atlantic is carried on through a certain number of points of departure and destination between the two continents (gateways). In the US there are 25 gateway cities to Europe, of which New York is by far the most important (generating traffic of 12 million passengers in the North Atlantic in 1990), followed by Chicago, Los Angeles, Boston, Miami, Atlanta, Washington (ranging from 2 to 1 million passengers).

In Europe there are more than 40 gateways, of which London is the one that generated the most traffic to the US (8.7 million passengers in 1990), followed by Frankfurt, Paris and Amsterdam (ranging from 3.6 to 1.5 million) and then Zurich, Rome, Madrid, Brussels, Shannon, Copenhagen and Milan (between 1 million and 500.000 passengers).

The vast majority of the city pair combinations are channelled through the abovementioned main gateways. The result is thus the existence of a bundle of routes between those gateways that have the common feature of carrying on transatlantic air transportation services.

12. Under these circumstances, the relevant market could be defined in a number of different ways :
 - each route connecting the gateways might be regarded as a distinct market,

- a bundle of such routes might be considered as a relevant market to the extent that there is demand-side substitutability between certain routes. For example, a flight London/New York may be substituted by Paris/New York or Amsterdam/New York and vice-versa. In this sense, the most important gateways with a certain degree of substitutability between them (London, Frankfurt, Paris, Amsterdam, Brussels, Zurich and Copenhagen) account for about 75% of all the scheduled air transport services between the US and Western Europe. This degree of substitutability may vary depending on the city pairs in question.

The correct delimitation of the relevant market would require considerable study as to the actual demand-side substitutability, particularly in the light of the continued existence of regulatory barriers and route limitations.

13. In the present case the precise definition of the relevant market can be left open since, in neither of the above alternatives, would the operation create or strengthen a dominant position as a result of which competition would be significantly impeded within the common market.

Assessment

14. Presently a number of carriers compete in the transatlantic air transportation services. In July 1991 some 38 carriers operated scheduled flights between the US and Western Europe, 28 of which offered a daily transatlantic service.
15. The acquisition comprises : 30 route authorities between New York and different European destinations, the routes Detroit/London, Miami/London and Washington/Frankfurt, as well as 14 routes from the Frankfurt hub to several destinations in Europe and beyond. Pan Am no longer had any presence in the important New York/London route, after its acquisition by United Airlines prior to this transaction.
16. On the basis of the narrow definition as described above, as a result of the transaction there will be no overlap between the parties on individual city pairs and consequently, no addition of market shares, since Delta only operates 13 routes to European destinations from its four gateways in the US (Atlanta, Cincinnati, Dallas-Fort Worth and Orlando).
17. All market share data provided by the parties in their notification relate to capacity. This takes account of the fact that international air transport is subject to various restrictions in market entry and capacity depending on the bilateral agreements existing between the different states. In addition, the number of flights and seats that each airline offers are directly related to demand. Therefore, these figures would not change significantly if market shares were calculated on the basis of the revenue derived from the number of passengers carried and miles travelled, as most carriers have similar load factors. Under these circumstances capacity can be considered to be an adequate indicator to describe the market position of the parties and their competitors.

18. Regarding a wider definition of the market, after the concentration the parties will account for about 16% of the overall US/ Western Europe scheduled air transportation traffic (according to the figures of July 1991). The bundle of routes - described in point 12 - which may be regarded as substitutable in relation to the routes concerned by the present transaction constitutes about 75% of this traffic. Considering only the routes comprised in this bundle, the combined market share of the parties after the concentration would not exceed 25%.
19. Although after the concentration Delta will be the carrier with the highest market share, it will be exposed to a large number of strong competitors with significant presence in the overall transatlantic air traffic, namely American Airlines, British Airways and TWA (with around 10% each), followed by Lufthansa, United Airlines, Air France and KLM (ranging between 7 and 4%).
20. There is a certain degree of complementarity between the routes that Delta and Pan Am operate. Therefore, an important effect of the acquisition is that Delta will be able to link its extensive domestic network system with the new transatlantic routes, thus providing a much higher number of online services to the transatlantic passengers than those Pan Am could offer. In addition, the New York and Frankfurt hub will give Delta, besides its four gateways in the US, an important base to develop new online services between the US and Frankfurt and beyond.

Therefore, Delta will have the competitive advantage of being able to attract many passengers in need of those online services within the US, which cannot be provided by the European carriers.

21. This competitive advantage is not however limited to Delta, but common to all the large American carriers over their European competitors. Given the present market structure, it cannot be considered that this increase in competitive potential which Delta will achieve through the transaction is sufficient to conclude that it amounts to the creation of a dominant position of this company.

Furthermore, air transport patterns are changing with the liberalisation process, which is expected to result in new possibilities of linkage between the different gateways in Europe and further destinations, thus giving new market opportunities to the European carriers.

22. Regarding the access that Delta will have to the important New York hub, it will be competing there with more than 30 carriers, among them British Airways and American Airlines.
23. As to the possible vertical effects that could result from the takeover in relation to Delta's interest in the CRS Worldspan, in the light of the above facts it can reasonably be excluded that they would lead to the creation or strengthening of a dominant position of this company.
24. Certain competitors have complained to the Commission that certain practices concerning the operation of the Worldspan CRS system in the US, combined with the use of code sharing and frequent flyer programmes, create imbalances between US and European airlines on the transatlantic routes. Even

though these questions may be relevant under Articles 85 and 86 of the EEC Treaty, in so far as they amount to a restriction of competition or an abuse of a dominant position within the meaning of these provisions, they are not pertinent in the context of the present decision.

Conclusion

25. Taking into account the low level of the combined market share resulting from the concentration and the importance of the other competitors in the market, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

For the Commission,