

***Case No IV/M.1494 -
SAIR GROUP / AOM***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/08/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.08.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam/Sir,

Subject: Case No IV/M.1494 - Marine-Wendel/SAirGroup/AOM

Notification of 30.6.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 30.6.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation) by which the undertakings SAirLines, controlled by SAirGroup, and Taitbout Antibes B.V., a vehicle company controlled by Marine-Wendel S.A., acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking AOM Participations S.A. (AOM) by way of purchase of shares.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

2. AOM is an airline based in France. SAirGroup is the holding of a group of airlines (including Swissair) and related companies. Marine-Wendel is a financial holding company which has interests in numerous sectors, including abrasives, real estate and energy, technical assistance, biotechnology, information technology and automobile parts.
3. Marine-Wendel will acquire 51 % of the shares in AOM and SAirGroup will acquire 49 % of the shares. Marine-Wendel and SAirGroup concluded a shareholders agreement on 17 May 1999 which contains provisions on the composition of the Conseil d'Administration (board) of AOM and those management decisions for which the approval of the board is necessary.

II. CONCENTRATION

4. SAirGroup and Marine-Wendel will exercise joint control of AOM in the meaning of the Merger Regulation. According to the shareholders agreement, all strategic business decisions are taken by AOM's board. These decisions include the annual budget, the business plan, major investments, decisions on the conclusion or termination of cooperation agreements with other airlines and material changes to the network. The board has seven members, the president shall be appointed on the proposal of SAirGroup with the approval of Marine Wendel, three members are appointed by Marine Wendel, two members by SAirGroup and one member with the approval of both shareholders. As the board decides with a simple majority, the support of at least one of those members that are jointly approved by both parties is necessary. Therefore, both parties will exercise decisive influence over AOM which leads to a situation of joint control in the meaning of the Merger Regulation.
5. The present decision does not affect the application of the rules of the Treaty establishing the European Community to the shareholders agreement, in particular the rules relating to the principle of non-discrimination on grounds of nationality and to air transport. The present decision is adopted without prejudice to any further action by the Commission in this respect.
6. AOM operated as an autonomous economic entity prior to the notified operation and will continue to do so (Article 3 (2) of the Merger Regulation).

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover in excess of EUR 5,000 million¹ (SAirGroup - EUR 6.956 million; Marine-Wendel - EUR 395 million; AOM – EUR 442 million). Each of them has a Community-wide turnover in excess of EUR 250 million (SAirGroup - EUR 2.145 million², Marine-Wendel - EUR 395 million and AOM – EUR 442 million). 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.

III. RELEVANT MARKETS

8. SAirGroup and AOM both provide air transport (passenger and cargo) and carry out related activities such as catering, ground handling and aeroplane maintenance. Marine-Wendel is not active in any of these sectors.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

² The geographic allocation has been made according to the "point of sales method" where the turnover is allocated to the country where the ticket has been sold. However, even if turnover were allocated on a 50:50 basis between the point of departure and the destination the thresholds would be met. (see also Commission Decision of 28.2.1997 case IV/M.857 British Airways/Air Liberté and Commission Decision of 21.12.1998 case IV/M. 1354 SAirGroup/LTU).

A. Passenger transport

(1) The parties' activities

9. AOM operates scheduled flights from Paris-Orly to the South of France (Nice, Marseille, Toulon, Perpignan), to Zürich, to Lisbon, to the French overseas departments and territories (French Polynesia, New Caledonia, French Guyana, West Indies) and to several Caribbean destinations. AOM also operates charter flights to Mediterranean destinations and a small number of long-haul charter flights.
10. The principal air transport activity of the SAirGroup is Swissair, which operates mainly scheduled flights from Switzerland to destinations all over the world. Other subsidiaries are Crossair which operates short and medium-haul scheduled and charter flights from Switzerland and Balair/CTA which operates long-haul charter flights for tour operators. SAirGroup has shareholdings in several other airlines. It has joint control with other shareholders of the Belgian airline Sabena, the German airline LTU and the Italian airline Air Europe. Sabena operates scheduled flights from Belgium to European and world-wide destinations, its subsidiary Sobelair provides charter flights to holiday destinations. LTU operates so-called scheduled leisure flights from Germany mainly to holiday destinations. Air Europe operates long-haul charter and scheduled flights from Italy to holiday destinations and some scheduled flights inside Italy and scheduled flights from Venice and Bologna to Zürich.

(2) Relevant markets

11. The notifying parties state that, with respect to the air transport of passengers, a distinction should be made between a market for tickets sold to individual passengers ("seat only") and a market for seats sold to tour operators.
12. Individual passengers purchase tickets directly from the airline, whereas tour operators combine the air transport service with other services into a package holiday.³ The majority of seats in scheduled flights are sold to individual passengers whereas seats in charter flights are sold largely or exclusively to tour operators. However, seats on so-called "scheduled leisure" flights to holiday destinations are also sold to a large extent to tour operators. From a demand-side point of view, the services provided to individual travellers and tour operators are hardly interchangeable, given that these customers have different requirements and that prices and contract conditions are different. The degree of supply-side substitutability can be left open because the competitive assessment is not materially different whether a comprehensive market for passenger air transport or distinct markets for sales to individual passengers and tour operators are considered.
13. In the present case, the Commission can also leave open whether a distinction has to be made between "time-sensitive" and "price-sensitive" passengers, because such a distinction would not lead to a different assessment of the operation's impact on any of the markets considered.

³ Commission Decision of 21.12.1998 case IV/M. 1354 - SAirGroup/LTU.

14. The Court of Justice⁴ and the Court of First Instance⁵ have stated that in the air transport sector, the definition of the relevant market has to start with the route itself, or a bundle of routes, to the extent that there is substitutability between them according to the features of each case. The substitutability between routes depends on a number of factors, such as the distance between the point of origin and the point of destination, the distance between the different airports situated on each side of the route and the number of frequencies available on each route⁶. Furthermore, the structural conditions prevailing at airports and in respect of airport capacity must also be considered and an assessment made of their impact on a relevant route.

Paris–Zürich routes

15. Swissair operates scheduled flights between Charles de Gaulle (CDG) and Zürich (ZRH) whereas AOM operates scheduled flights between Orly (ORY) and Zürich (ZRH). These flights are operated as code share flights. Whether these routes form part of the same market depends on whether CDG and ORY are substitutable from a passenger point of view. Likewise, the route Charles de Gaulle-Basel (CDG-BSL) would belong to the same market if ZRH and BSL are substitutable for passengers.
16. There are indications that BSL and ZRH are largely substitutable as are CDG and ORY. The travel time between BSL and ZRH (by car - appr. 1 h; by public transport – appr. 1 h 40') is similar to that between CDG and ORY (by car – 40' to 1 h 30', depending on traffic conditions; by public transport – 1 h 10'). BSL/ZRH serve a large joint passenger catchment area (Aargau, Bern, Solothurn, South-Western Germany), as do CDG and ORY. Passengers in these catchment areas can access the airports concerned with the same convenience by car or public transport. All airports concerned offer passengers similar facilities. On the other hand, certain price differences exist on the Zürich-Paris and Basel-Paris routes.
17. In the present case, the Commission can leave open which routes or bundle of routes form the reference market. The material competition assessment will not change whether individual routes, the bundle of routes CDG-ZRH-CDG/ORY-ZRH-ORY, or the bundle of routes CDG-ZRH-CDG/ORY-ZRH-ORY/CDG-BSL-CDG are considered.

Long-haul routes

18. With respect to the *medium-haul and long-haul routes* served by both SAirGroup and AOM, the parties argue that the provision of air transport services retains essentially national characteristics. Whereas for Mediterranean destinations flights originating from neighbouring countries cannot normally be considered as substitutes, a certain substitutability with flights originating in other countries might exist, however, on long-

⁴ See judgment in Case 66/86-Ahmed Saeed Flugreisen and Other v/Zentrale zur Bekämpfung unlauteren Wettbewerbs (1989) ECR 803.

⁵ See judgment in Case 2/93-Air France v/Commission (TAT)(1994) ECR 323.

⁶ See in particular Commission Decisions of 05.10.1992 (Air France/Sabena), point 25; of 27.11.1992 (British Airways/TAT), point 19; of 17.02.1993 (British Airways/Dan Air), point 10; of 20.07.1995 (Swissair/Sabena) point 19; Commission Decision of 28.2.1997 case IV/M.857, British Airways/Air Liberté, point 15; Commission Decision of 21.12.1998 case IV/M. 1354 SAirGroup/LTU.

haul routes, with respect to sales to individual passengers as well as sales to tour operators. In the present case, it can be left open if indirect flights via other countries or foreign charter flight providers have to be taken into account because even on the basis of a more comprehensive market definition the operation does not raise competition concerns.

19. It can also be left open whether, for the long-haul destinations in question, a route-based approach (individual destination), a country-based approach (Cuba, Dominican Republic) or an area based approach (Caribbean) should be applied, as such a distinction would not alter the assessment of this concentration.

B. Cargo transport, groundhandling services, catering services, aircraft maintenance services

20. It is not necessary to delineate the relevant markets for these services because, as will be shown below, the SAirGroup's and AOM's activities either do not overlap at all or only to an insignificant degree.

IV. COMPETITIVE ASSESSMENT

A. Passenger transport

(1) Overlap

21. The activities of SAirGroup and AOM are to a large extent complementary. The member airlines of the SAirGroup do not operate flights in France. Within the European Union, there is an overlap only if the routes CDG-ZRH-CDG (operated by Swissair) and ORY-ZRH-ORY (operated by AOM) are considered substitutable. If the markets for long-haul routes are considered to be wider than national, the parties activities also overlap with respect to the destinations Los Angeles (USA), Varadero, Havana (both Cuba), Punta Cana, Puerto Plata (both Dominican Republic) and Colombo (Sri Lanka).

(2) Paris-Zürich routes

Market shares

22. If all routes between the Zürich region and the Paris region are considered as constituting one reference market, including flights to ZRH and BSL on the Zürich side and to CDG and ORY on the Paris side, Air France's market share (in terms of passenger numbers) can be estimated as [60-70%] Swissair's as [20-30%] and AOM's as below [10%]. If only the routes between ZRH and CDG/ORY are considered as the relevant market, the airlines operating on this bundle of routes have the following market shares⁷:

⁷ Source: MIDT Analysis, figures for 1998.

Route	Airline	Point-to-point passengers	Transit passengers	Total passengers	Point-to-point market share	Weekly frequencies
CDG-ZRH-CDG	Swissair	[...]	[...]	[...]	[45-55%]	[...]
CDG-ZRH-CDG	Swissair ⁸	[...]	[...]	[...]	[below 5%]	[...]
ORY-ZRH-ORY	AOM	[...]	[...]	[...]	[below 5%]	[...]
ORY-ZRH-ORY	AOM ⁹	[...]	[...]	[...]	[below 10%]	[...]
CDG-ZRH-CDG	Air France	[...]	[...]	[...]	[35-45%]	[...]
Paris region-ZRH-Paris region		[...]	[...]	[...]	[...]	[...]

23. The notified concentration will only lead to a significant addition of market shares if a reference market comprising the routes between the Paris region (CDG and ORY) and Zürich city alone (ZRH) is assumed. If individual routes are considered, there will be no overlap, and on a market covering all routes between the Paris region and the Zürich region (including BSL) the operation's impact will be less significant. Therefore, the following analysis will concentrate on the competitive situation on the routes between the Paris region (CDG and ORY) and Zürich city (ZRH).

Competitive position of AOM

24. AOM's flights on the route ORY-ZRH-ORY were operated as a code share operation with Swissair from the beginning. The notifying parties submit that AOM would not have entered this route without such cooperation with Swissair. Therefore, the parties consider that the concentration does not significantly change the competitive situation on the routes concerned.
25. The fact that more than 60% of AOM's ticket sales on the ORY-ZRH-ORY route are actually marketed by Swissair lends some support to this argument. The Commission estimates that AOM operates its current flights on that route with a low load factor of appr. [15-25%]. Without the existing code share arrangement, on the basis of its stand-alone sales, AOM would operate even less profitably and would not probably have the competitive strength to remain viable on that route.

Conditions of competition on the market

26. Demand is growing on the Zürich-Paris routes where passenger numbers have risen by more than 25% since 1995. The growth can be attributed mainly to economy class passengers. For instance, the number of Swissair's economy class passengers on the CDG-ZRH-CDG route has risen by more than [25-35%] since 1995, the number of business class passengers by less than [10-30%] during the same period. Economy class passengers accounted for more than [70-80%] in 1998. Therefore, competition focuses increasingly on price-sensitive passengers. Price data provided by the notifying parties for the Zürich-Paris routes show no significant price increases during the last three years (economy full fares were reduced by 5% since 1996).

⁸ Code share with AOM, Swissair operating carrier, AOM marketing carrier.

⁹ Code share with Swissair, AOM operating carrier, Swissair marketing carrier.

27. Based on the above figures for 1998, the Commission estimates that the main competitors on the Zürich-Paris routes, Swissair and Air France, have average load factors of appr. [60-70%] and below [45-55%] respectively. Figures for past years suggest that Swissair's load factor has increased whereas Air France's has decreased since 1995.
28. The routes between Zürich and Paris are used not only by point-to-point passengers but also by transit passengers. In particular, the CDG-ZRH-CDG route, which accounts for the main traffic, is important for feeding Air France's and Swissair's respective hubs. An analysis of the passenger flows on this route shows that almost [45-55%] of all passengers (Air France – [40-50%]; Swissair – [50-60%]) transfer to connecting flights at the respective hubs.
29. For long-haul destinations, price competition is determined by the availability of alternative carriers and routes. Competitors strive to maximise the number of passengers connecting to long-haul destinations via their own hub by offering flights at the same or even a lower price than a direct flight out of another hub. This, in turn, constitutes an incentive to keep the prices for feeder flights towards their own hubs at a competitive level. Moreover, in order to make flights via their own hubs more attractive, airlines have to coordinate feeding flights well with the departure waves at the hub, necessitating an at least equivalent number of feeder flights. Therefore, on routes that feed an airline's hub, airlines often operate an excess capacity.
30. On the CDG-ZRH-CDG route, the number of connecting passengers is not sufficient to attain a satisfactory load factor. This constitutes an economic incentive for Swissair and Air France to compete for point-to-point passengers in order to use their capacity efficiently.

Single dominance

31. It can be assumed that Air France will remain a sufficiently strong competitor to constrain Swissair's market position. Even if the bundle of routes CGD-ZRH-CGD and ORY-ZRH-ORY is considered as one relevant market, Air France retains a market share of appr. [35-45%] in terms of passenger numbers. Moreover, Air France has a commercial interest in offering a sufficient number of flights on the CDG-ZRH-CDG route, as evidenced by the fact that it has hitherto operated the same number of weekly frequencies (35) as Swissair, although its average load factor was significantly lower than Swissair's. Air France's commercial incentive to maintain this frequency will continue to be strong, because it uses the ZRH-CDG route to a significant degree to feed connecting flights from its Paris hub (in 1998, 43% of Air France's passengers on that route were transit passengers). The structural significance of the ZRH-CDG route for Air France's Paris hub is illustrated by the fact that the majority (appr. 65%) of Air France's long-haul flights departing from Paris are west-bound and south-bound (flights to destinations in North, Central and South America and Africa), allowing transit passengers coming from the Zürich region to continue their journey in the same direction.
32. Therefore, it is unlikely that the increment in Swissair's market share will affect Air France's competitive position and alter the market structure in such a way as to create or strengthen a single dominant position and consequently impede effective competition.

Collective dominance

33. The Commission has also considered whether the notified concentration gives rise to concerns about collective dominance by the combined entity (Swissair and AOM) and Air France.
34. The Commission's inquiries have not revealed that price transparency or other elements constituting market transparency currently exist to a degree that would favour anti-competitive parallel behaviour. Firstly, although Swissair's and Air France's standard fares on the routes concerned are published, this is not the case with respect to tickets sold through company incentive programmes, agency incentive programmes or similar schemes. The use of such incentive schemes limits price transparency. Secondly, at least with respect to time sensitive passengers, i.e. those purchasing fully flexible tickets, pricing alone does not determine the outcome of competition. Other parameters are important, such as punctuality, reliability, quality of service, general airline reputation and accompanying benefits schemes. This means that the 'product' offered on this route is more differentiated than mere transport, a factor that tends to favour competition. Thirdly, the competing airlines' costs on the routes concerned are relatively intransparent, given that such costs are not determined by the load factor alone but also by expenditure on staff, infrastructure, maintenance etc.
35. Moreover, other market conditions would not evidently seem to provide incentives for parallel behaviour. Demand is growing considerably, in particular demand by price-sensitive passengers. This development, in combination with Swissair's and Air France's existing excess capacity, can be considered to provide an incentive to compete for passengers. Also, shifts in the market shares of Swissair and Air France, and the fact that Swissair's load factor is increasing whereas Air France's is decreasing (based on estimates for the CDG-ZRH-CDG route), suggest that competition is taking place.
36. However, for the purpose of assessing the present concentration's compatibility with the common market, it is not necessary to draw a definite conclusion as to whether Swissair and Air France currently hold a collective dominant position on the market in question. As set out below, there are no indications that the notified concentration will change the existing market conditions in such a way as to facilitate anti-competitive parallel behaviour or make such behaviour more likely.
37. Firstly, the operation will not eliminate a viable competitor that would have the competitive strength to challenge any possible parallel behaviour by Swissair and Air France. As shown above (paragraph 25), AOM's operations would not have been viable on the basis of its stand-alone sales, without the existing code share arrangement with Swissair. Secondly, the merger will not noticeably increase market transparency or other incentives for parallel behaviour. The fact that Swissair can now offer passengers an alternative departure point in the Paris region, thereby diversifying its service on the Paris-Zürich route, may even be seen as reducing the risk of coordination with Air France. Thirdly, the concentration will not affect an important factor driving competition on the Zürich-Paris route, i.e. the function as a feeder route for Swissair's and Air France's respective hub operations (see paragraphs 28-30 above). The extent to which hub competition fuels competition for point-to-point passengers will not be affected. Swissair and Air France will continue to operate with excess capacity on that route which they will need to fill.

38. For these reasons, the operation will neither create nor strengthen a collective dominant position.

(3) Long-haul destinations

39. As regards the long-haul destinations served by companies of the SAirGroup and by AOM there is an overlap only if indirect flights via other airports or different departure airports in Europe are included in the same market.

40. With respect to scheduled flights to *Los Angeles*, the parties' market share was calculated on the basis of all passengers transported by European carriers from Europe to LAX and vice versa. On that basis, the combined market share of Swissair, LTU and AOM [does not exceed 10%].

41. With respect to *other long-haul destinations*, AOM mainly sells seats to tour operators (Havana – [50-60%]; Varadero – [80-90%]; Punta Cana – [75-85%]; Puerto Plata – [65-75%] and Colombo – [10-20%]); the remainder is seats-only sales. For each of these destinations, the parties face competition by a number of significant competitors from other countries, both with respect to charter and seats-only sales. The competitive situation for flights between Europe and these destinations is exemplified by the following overview (the overview is indicative in that only a selected number of competitors has been included)¹⁰:

Destination	Weekly frequencies offered by SAirGroup/AOM	Weekly frequencies offered by selected competitors	Number of competitors selected for this overview
Havana	9	27	7
Varadero	11	10	5
Punta Cana	17	21	9
Puerto Plata	7	64	7
Colombo	7-9	17	2

42. On this basis, the Commission does not consider that the notified operation will create or strengthen a dominant position with respect to any of the above long-haul destinations, as a result of which effective competition would be impeded.

(4) Cargo transport, groundhandling services, catering services, aircraft maintenance services

43. SAirGroup has a world-wide cargo business, AOM's cargo business is insignificant. Any addition of the insignificant market share of AOM's cargo activities to the cargo activities of the SAirGroup operation will have no impact on competition. Both parties also provide groundhandling services to third parties, however, the turnover achieved by AOM with the supply to third parties is very small. AOM offers ground handling to third parties only at Cayenne and Point-à-Pitre. The provision of groundhandling services is restricted to the respective airport; neither SAirGroup nor AOM offer ground handling services at the same airport. The SAirGroup offers catering services all over Europe through its subsidiary Gate Gourmet, AOM's catering activities are confined to the airports ORY and CDG. The turnover achieved with the supply to third parties is very small. In any case the parties'

¹⁰ Figures provided by the notifying parties based on Summer 1999 timetables.

catering activities do not overlap as the SAirGroup is neither active in ORY nor in CDG. Both parties also supply aircraft maintenance services to third parties. Again, the turnover achieved by AOM is small, in particular if compared to other competitors. In conclusion, as far as the parties' activities overlap at all in these areas, such overlaps are insignificant.

IV. CONCLUSION

44. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,