

***Case No COMP/M.1855 -
SINGAPORE AIRLINES
/ VIRGIN ATLANTIC***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/03/2000

*Also available in the CELEX database
Document No 300M1855*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.03.2000
SG (2000) D/ 102581

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.1855 – SINGAPORE AIRLINES / VIRGIN ATLANTIC

Notification of 23.02.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 23.02.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Singapore Airlines Limited (“SIA”) and Virgin Travel Limited (“VTL”) acquire joint control within the meaning of Article 3(1)(b) of the Council Regulation of Barford Services Limited, the holding company of Virgin Atlantic Airways Limited (“Virgin”), by way of purchase of shares [...].
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. SIA is Singapore's national air carrier and principally active in passenger and cargo transport, engineering services related to air transportation and airport terminal services.
4. VTL is the holding company of a group of companies active in a wide range of services and products such as entertainment and transport. The airline interest of VTL include Virgin and Virgin Express. Virgin is a UK based air carrier which focuses primarily on scheduled long-haul international flights from London's Heathrow and Gatwick airports. Virgin Express operates from Brussels scheduled flights to a total of ten destinations within Europe and charter services to Mediterranean destinations.

5. Virgin was previously 100 % owned by VTL. SIA will acquire a 49 % stake in [Barford Services Limited]. VTL will maintain a shareholding of 51 %. The parties have concluded a Shareholders' Agreement which contains provisions on the appointment of key personnel, on the approval of the budget and of unbudgeted borrowings and a Commercial Partnership Agreement.

II. THE CONCENTRATION

6. SIA and VTL will exercise joint control of Virgin in the meaning of the Merger Regulation. Although VTL controls a majority of shares in Virgin and nominates the majority of the members on the board, SIA has joint control of Virgin through its veto rights and the arbitration procedure which is provided for the case of disagreement in certain strategic business decisions.
7. Virgin's board is composed of seven directors, four nominated by [...] and three nominated by [...]. Further there will be two Executive Directors. In principle the quorum for decisions of the board shall comprise two VTL directors and one SIA director. Decisions are taken by simple majority. As an exception to this rule, the following decisions need the consent of at least one VTL and one SIA director: The employment of key personnel, the appointment of any person as an Executive Director of the Company and the licensing or the disposal by the company of any brand or trade mark. Therefore, both parties have a veto right on these decisions.
8. Furthermore, the Shareholders Agreement provides the following procedure for the adoption of the annual budget and certain unbudgeted borrowings: A committee of the Board ("Review Committee") in which both SIA and VTL may nominate up to two directors each has to approve unanimously the annual budget and unbudgeted borrowing in excess of £ [...] million in any financial year as well as unbudgeted capital expenditure in excess of £ [...] million per item or an aggregate £ [...] million in any financial year. If the Review Committee is unable to approve unanimously, an independent firm of internationally recognised chartered accountants will be appointed to report on the merits and demerits of the proposal. The report of the firm shall be delivered to the board. The proposal will then be subject to the approval by the board, acting by simple majority. Although VTL holds the majority of the board and can therefore exercise a casting vote, this procedure obliges the parties to cooperate de facto. In order to run Virgin in an efficient manner the parties are obliged by this procedure to cooperate.¹
9. [...]
10. Taken these rights as a whole, SIA has the power to exercise decisive influence on decisions which are essential for the strategic commercial behaviour of Virgin. Therefore, SIA and VTL will exercise joint control over Virgin Atlantic.
11. Furthermore, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

¹ See also para. 37 of the Commission Notice on the concept of a concentration

III. COMMUNITY DIMENSION

12. SIA and Virgin have a combined aggregate worldwide turnover in excess of EUR 5,000 million (SIA, EUR [...] million; and Virgin EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (SIA, above EUR 250 million; and Virgin, above EUR 250 million), 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. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

13. Virgin and SIA are both active in air transport (passenger and cargo) and carry out related services such as ground handling, catering, engineering and aircraft maintenance. Furthermore, both parties are active as tour operators.

Passenger transport

14. Both parties provide air transport services, but operate principally out of different geographical areas. Virgin mainly focuses on long-haul international flights from London's Heathrow (LHR) and Gatwick (LGW) airports. Virgin flies with 29 aircraft to 18 destinations world-wide, including major destinations in the United States, Asia, South Africa and the Caribbean. In addition, it places its code on codeshare trunk routes to a further three destinations in Asia and Australia (with Malaysian Airlines System (MAS)) as well as on one route to the United States (with Continental). Virgin also has a marketing agreement with Ansett Australia for through-ticketing of passengers between London and Sydney using Virgin's London-Hong Kong services and Ansett's Hong Kong-Sydney services.
15. SIA, together with its wholly-owned subsidiary Silk Air (a regional airline operating only in South East Asia), operates a fleet of 97 aircraft and flies to 118 worldwide destinations (including its destinations served via codeshares) mainly from Singapore. SIA places its code on domestic flights within Australia operated by Ansett Australia, within New Zealand with Air New Zealand and within Germany and on the routes from Frankfurt to Vienna, Brussels and Geneva with Lufthansa.
16. The definition of the relevant market in air transport is generally made on the basis of a route or a bundle of routes.² 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

² Court of Justice, judgement in Case 66/86-Ahmed Saeed Flugreisen and Other v/Zentrale zur Bekämpfung unlauteren Wettbewerbs (1989) ECR 803; Court of First Instance, judgement in Case 2/93-Air France v/Commission (TAT)(1994) ECR 323; Commission Decision of 5.10.1992, case IV/M. 157 Air France/Sabena, point 25; Commission Decision of 20.7.1995, case IV/M. 616 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, Commission Decision of 3.08.1999 case IV/M.1494 Marine-Wendel/SAirGroup/AOM.

distance between the different airports situated on each side of the route and the number of frequencies available on each route³.

17. Both parties operate scheduled flights from Europe to New York; Virgin from London and SIA from Frankfurt and Amsterdam. It is not necessary to further delineate if the bundle of routes between New York and London, Frankfurt or Amsterdam or individual routes have to be considered as the relevant market. The material competition assessment will not change whether individual routes or a bundle of routes are considered.
18. The routes London-Hong-Kong and London-Tokyo are directly served by Virgin and indirectly by SIA via Singapore. It is not necessary to further delineate if direct and indirect flights on these routes have to be considered as belonging to the same market as in neither market definition competition problems will arise.
19. The London - Kuala Lumpur route is offered by Virgin only through codesharing. Virgin's participation is limited to the marketing of a block of seats of the services operated by Malaysian Airlines System (MAS). SIA flies from London to Kuala Lumpur only via Singapore. To Australia Virgin offers services via Kuala Lumpur through codeshare with MAS and via Hong Kong through a marketing arrangement with Ansett Australia. SIA flies from London to Australia indirectly via Singapore. As Virgin does not operate these routes itself, it is not active on the market so that the relevant market has not to be delineated any further.
20. A further distinction between "price sensitive" and "time sensitive" passengers is not necessary as there is only an overlap between the parties' activities if indirect flights are taken into account. For direct flights preferred by "time sensitive" passengers there is no overlap.

Cargo

21. Virgin provides cargo services by using the hold capacity of its scheduled airline services. SIA operates a global scheduled air freight service, organised as a separate cargo division, centred on Changi Airport in Singapore. The parties suggest that as regards point-of-origin/point-of-destination pairs where at least one of these points is located outside Europe, the corresponding catchment areas can correspond to areas as wide as continents, at least within those continents where local transport infrastructure is sufficient.⁴ On the basis of this market definition the following routes would need to be considered : EEA-Japan, EEA-Hong Kong, EEA-China, EEA-USA. However, it is not necessary to further delineate the relevant market as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Tour operator services

³ 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.

⁴ See also Commission Decision of 11.08.1999 (KLM/Alitalia), point 25.

22. Virgin has tour operator activities through its subsidiary Virgin Holidays. It offers package holidays to the Caribbean and the USA. It also sells long-haul holidays to China, Hong Kong, Japan, Malaysia and South Africa. Last year Virgin Holidays started to offer short-haul holidays from London and Manchester to the Mediterranean under the “Virgin Sun” brand. SIA is not active in the EEA, it has only tour operator activities in South East Asia.

Airport services, such as catering, ground handling, maintenance of aircraft and engineering

23. It is not necessary to delineate the relevant markets for the services of ground handling, catering, maintenance of aircraft and engineering because, as will be shown below, SIA’s and Virgin’s activities either do not overlap at all or only to an insignificant degree.

B. Assessment

24. The activities of SIA and Virgin are to a large extent complementary. Virgin operates from the UK and SIA mainly from South East Asia. Within the European Union there is no overlap. Virgin Express has its main hub in Brussels, it operates only scheduled and charter flights within Europe.
25. As concerns the flights to New York there is no overlap on the basis of direct flights. If the bundle of routes from London, Frankfurt and Amsterdam to New York were considered as belonging to the same market, the combined market share of the parties would still be significantly lower than 15 %.
26. On the London - Hong Kong route and the London-Tokyo route there is only an overlap if SIA’s indirect routes are taken into account. SIA’s share of passengers amounts only to less than 1 %. The combined market share on the route London-Hong Kong will be about [...] % and on the route London-Tokyo of less than 15 %. The parties face competition on all of these routes by strong competitors such as British Airways and Cathay Pacific (to Hong Kong) and British Airways, Japan Airlines and All Nippon Airways (to Tokyo).
27. In view of the relatively low market shares of the parties on these routes and the insignificant market additions, the notified operation will have no impact on competition in the EEA.
28. Both parties do not serve the same cargo routes. Virgin does not have special cargo operations, its cargo is transported on its scheduled passenger flights. Of all cargo transported between the EEA and Japan the parties will only reach a market share of [...] %, they will have [...] % between the EEA-USA and [...] % on the route EEA-Hong Kong. Between the EEA and China, SIA’s share of [...] % will be raised to a combined market share of [...] %. On these markets the competitive behaviour of the parties will be constrained by strong competitors as British Airways, Air France and KLM/Alitalia. Therefore, there will be no impact on competition in the EEA.
29. As regards tour operating, catering and ground handling, there is no competitive impact of the transaction, because there is no overlap between the activities of the parties. On all of these fields, SIA is not active in the EEA. Therefore, there will be no impact on competition in the EEA.
30. As far as the market of maintenance and engineering is concerned there would be a slight overlap on the basis of a world-wide market. An addition of the parties’ market shares

would lead to a combined market share far below 5 %. Therefore there will be no impact on competition in the EEA.

31. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

32. The Shareholders' Agreement contains a non-competition clause [...]. This non-competition clause is directly related and necessary to the implementation of the concentration. In light of Virgin's present function, as part of the VTL group, the non-competition clause reflects the need to utilise fully the joint venture's assets and to enable Virgin to assimilate the know-how and goodwill developed by Virgin as part of VTL. The duration of the non-competition clause of [...] years is necessary in light of the fact that other Virgin products and services will remain in the marketplace and visible to customers and that customer loyalty will likely persist during this period.

VI. CONCLUSION

33. The present decision is adopted without prejudice to any further action by the Commission and/or the Member States in application of the rules of the Treaty and the relevant secondary air transport legislation.
34. For the above reasons, the Commission has decided 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,
signed Mario MONTI
Member of the Commission