

*Case No IV/M.259 -
BRITISH AIRWAYS /
TAT*

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

Article 6(1)(b) NON-OPPOSITION
Date: 27.11.1992

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Brussels, 27.11.1992

PUBLIC VERSION

MERGER PROCEDURE -
ARTICLE 6(1)B DECISION

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1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case N° IV/M259 - BRITISH AIRWAYS/TAT
Notification of 23.10.1992 pursuant to Article 4 of Council
Regulation N° 4064/89.

1. The above mentioned operation concerns the acquisition by British Airways Plc of a 49,9% interest in TAT European Airlines, currently wholly owned by TAT S.A.
2. After examination of the notification, the Commission has concluded that the notified concentration falls within the scope of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. British Airways Plc (BA) is a major British airline principally engaged in the carriage of passengers and freight. It also has interests in other activities connected with the air transport business such as engineering and maintenance services, training services, ground handling services, etc.
4. TAT S.A. (TAT) is a French company active in aircraft maintenance operations, express services and dry leasing operations (i.e. provision of aircraft without crew). At present it also controls TAT European Airlines (TAT E.A.), the activities of which comprise principally the operation of air transport services from France or within the French domestic market both on its own behalf and on behalf of other carriers under wet-lease agreements (i.e. provision of aircraft with crew) and training services.

II. JOINT VENTURE

5. BA will acquire a 49.9% interest in TAT E.A., the remaining 50.1% will continue to be held by TAT. By virtue of the Acquisition Agreement BA is also granted an option to purchase the outstanding shares at any time up to 1st April 1997 and TAT is granted an option to require BA to do so on 1st April 1997. Since it is not certain whether these options will be exercised, the possible second transaction will not be taken into account for the assessment of the operation that is currently taking place.
6. According to the Shareholders' Agreement, the Board of TAT E.A. will have nine members, of whom five will be nominated by TAT and four by BA. The President and the Director General of TAT E.A. (who currently hold the same positions in TAT) have been confirmed in their functions for an initial term of two years with the consent of BA. The President shall not have a casting vote.
7. The Shareholders' Agreement also provides that major decisions can only be taken by the Board if at least one TAT director and one BA director vote in favour. These are i.a. proposals affecting the company capital, proposals to amend the statutes of the company, the election or removal of the President or Director General, any changes to the agreed Business Plan and any material commitments or contracts not provided for in, or consistent with, the Business Plans.
8. The Business Plan, which regulates in detail the commercial policy of TAT E.A. between 1993 and 1996, has been agreed between TAT and BA. It sets forth, inter alia:
 - i) the routes TAT E.A. will serve and the planes and timetables with which it will operate;
 - ii) the fleet plan;
 - iii) projections for the number of passengers to be carried and the yield to be achieved;
 - iv) the strategy on international routes.
9. As a result of the above mentioned elements, it can be concluded that TAT E.A. will be jointly controlled between BA and TAT.

III. CONCENTRATION

10. TAT E.A. will perform on a lasting basis all the functions of an autonomous economic entity. In this respect, all TAT's activities related to air transport services, wet-lease operations and training services have been transferred to it, together with the necessary assets and personnel. With respect to the use of certain premises and the dry-lease of an aircraft that belong in both cases to TAT, these relationships have been regulated by specific contracts in order to guarantee the independence of TAT E.A..

Regarding the duration of the joint venture, if BA does not acquire the remaining 50.1% of TAT before 1st April 1997, the agreement will cease on 1st April 1999. In this case therefore, the joint venture will exist for approximately six and a half years. Such a period can be considered to be sufficiently long to bring about a lasting change in the structure of the undertakings concerned, in particular in a sector such as air transport which faces at present rapid and important legal and economic changes.

11. As far as the competitive relationships between TAT and BA and between TAT and TAT E.A. are concerned, with the transfer of TAT's air transport activities to TAT E.A. the former has withdrawn from this market and retained only its operations in the field of dry-lease of aircraft, aircraft maintenance and express services:

i) Dry-leasing consists of providing aircraft to companies that are authorised to act as airlines and that have the other necessary elements to operate them, such as their own crew. This activity is thus different from the wet-leasing service offered by TAT E.A., i.e. the carriage of passengers or goods on behalf of the lessee.

ii) In order to provide a repair and maintenance service, a company must be licensed by the authorities in relation to each type of aircraft and to each type of repair and maintenance that it wishes to undertake. In this respect, the repair and maintenance of aircraft for which TAT (through its subsidiary LAB) is licensed relates mainly to those of a capacity below 120 seats. In contrast to this, BA's maintenance activities concern aircraft of a different type and of a much higher capacity.

iii) TAT's express services are carried out mainly by road, and to a lesser extent by air and they are usually confined to the French territory. BA is principally active in providing such services to the long-haul markets and is not present in the French domestic market.

It can therefore be concluded that the operations retained by TAT are not only distinct from the provision of air transport services as such, but also from the other activities carried on by BA and TAT E.A.. Furthermore, it does not seem economically reasonable that after having transferred the air transport operations including traffic rights and substantial assets such as planes - to the joint venture, TAT would try to re-enter this market on its own. The consequence is thus that TAT cannot be regarded as an actual or potential competitor of either TAT E.A. or BA.

12. With respect to the competitive relationship between BA and TAT E.A., the parties have agreed that BA will have a substantial and growing influence over the way in which the joint venture will be run and developed. As a matter of fact, the need for TAT E.A. to become part of a larger international transport operation played a decisive role in TAT's decision to enter into this arrangement.

BA's input has already been reflected in the Business Plan, which regulates in detail the strategy to be followed by TAT E.A. until 1996 (see point 8). The reason for such influence derives from BA's wide experience in the air transport sector, which will be very useful in developing TAT E.A., and at the same time will enable both airlines to attain synergies by integrating certain activities.

This is confirmed by the fact that a Commercial Director will be seconded from BA with the specific responsibility of achieving the cost and revenue synergies targeted in the plan, as well as the full range of commercial, marketing and sales objectives.

As a result, BA, which is the only party that remains active in the market of TAT E.A., will play a leading role in the management of this joint venture.

13. The acquisition by BA of joint control of TAT E.A. does not therefore have as its object or effect the coordination of the competitive behaviour of undertakings which remain independent. This conclusion however does not alter the powers conferred on TAT by virtue of the Agreements with respect of its joint-control of TAT E.A..

The present transaction therefore constitutes a concentration in the sense of Article 3 of Regulation 4064/89.

IV. COMMUNITY DIMENSION

14. The present operation has a Community dimension within the meaning of Article 1(2) of the Regulation. The combined aggregate worldwide turnover of BA and TAT exceeded 8.000 million Ecu in 1991.

Regarding the Community-wide turnover of the parties, three methods of allocation of turnover in the case of airlines have been proposed by the Commission in previous decisions¹. In the case of TAT, since all the air transport services it operated in 1991 - in addition to most of its other activities - were carried out within the Community, the results for the EC with all methods remain basically the same. Under the three of them both BA and TAT attained a Community-wide turnover of more than 250 million Ecu in 1991, of which they did not achieve more than two-thirds within one and the same Member State.

V. COMPATIBILITY WITH THE COMMON MARKET

15. The core business of BA and TAT E.A. is scheduled air transport of passengers and freight. The other activities (engineering and maintenance, training, catering, etc) have been developed in connection with the air transport service as such. BA has a very extensive network in the British domestic market and in medium and long-haul routes usually

¹ See case N° IV/M130 - Delta Air Lines/Pan Am and Case N° IV/M157 Air France/Sabena.

from the United Kingdom to the five continents. TAT E.A. is principally a French domestic carrier, as it serves 32 destinations in France and 10 other destinations in Europe.

16. The long standing international legal framework of air transport has traditionally prevented air carriers from offering domestic air transport in other countries but their own. This situation is expected to change in the Community with the third package of liberalisation measures that enters into force on 1st January 1993, in particular once the access to cabotage rights comes fully into effect on 1st April 1997.
17. However, as a result of the traffic patterns derived from the legislation in force so far, BA is not present at all on the French domestic routes, where TAT accounts for 3,8% of the overall scheduled traffic (in terms of total number of passengers carried in 1991). It does not seem necessary, therefore, to describe in detail the relevant market(s) and the routes it comprises. The main airline operating in this market is by far Air France (directly or through Air Inter) with an 84,9% share of the overall number of passengers transported on domestic routes.

Consequently, the present transaction does not lead to any overlap with respect to TAT E.A.'s domestic routes, its effect being that BA will have a limited access to the French domestic network and certain possibilities to feed its international operations from France.

18. With respect to TAT E.A.'s international services, as they all have France as point of departure (or destination), there is no overlap in any of them with those offered by BA, except for two routes between France and the United Kingdom. These are: Paris-London and Lyon-London.
19. In the air transport sector, the definition of the relevant market has to start from the route itself, or a bundle of routes to the extent that there is substitutability between them according to the features of each case. Other factors that could prove to be relevant are the structural conditions prevailing at airports and their capacity, as well as the impact of an extensive or high volume network in a given geographical area. 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 or the number of frequencies available on each route². In the case under examination, the short distance between Paris and London and the number of frequencies available show that it is quite unlikely that a passenger would consider doing the journey through some intermediate point. In the case of Lyon-London, it is conceivable that a passenger would consider going through Paris for reasons such as time schedule, but this seems to be the exception. As a general rule each city-pair could be considered as a market.

² See Decision N° IV/M157 - Air France/Sabena, point 25.

20. In the present transaction the question of substitutability between airports is of considerable importance. On the Paris-London route all airlines present operate from Charles-de-Gaulle in Paris but on the London side a variety of airports are used: Heathrow (2.7 million passengers per year), Gatwick (0.5), City (0.1) and Stansted (0.2).

British Airways is mainly operating the Paris-London route from Heathrow, but after the acquisition of Dan Air it now also operates from Gatwick. TAT serves this route only from Gatwick. None of their main competitors are present at Gatwick: Air France (Heathrow), British Midland (Heathrow) and Air UK (Stansted).

Depending on whether the traffic between London and Paris is taken as a whole or by airport, the impact of the transaction would be the following:

LONDON-PARIS³

<u>London (overall traffic) - Paris</u>		<u>Gatwick - Paris</u>		<u>Heathrow - Paris</u>
British Airways (including Dan Air)	49.5%	Dan Air (BA) TAT	81.6% 17%	No increase of market share
Air France	32.9%			
British Midland	9.4%			
Air UK	3.7%			
TAT	2.7%			
Brymon	1.1%			
Others	0.6%			
BA/TAT	52.2%	BA/TAT	98.6%	

As to London-Lyon, two airports are used on the London side: Heathrow (186 thousand passengers per year) and Gatwick (28 thousand). BA and AF are only operating from Heathrow, whereas TAT is only present at Gatwick. There is no other competitor. Depending on whether the traffic is considered as a whole or by airport, the effect of the transaction would be the following:

LONDON-LYON³

<u>London (overall traffic) - Lyon</u>		<u>Gatwick - Lyon</u>		<u>Heathrow - Lyon</u>
British Airways	45.3%	TAT	100%	No increase of market share
Air France	41.4%			
TAT	13.3%			
BA/TAT	58.6%	BA/TAT	100%	

21. In order to decide on the possible substitutability between

³ Market shares calculated on the basis of the 1992-93 projection provided in the notification. These figures are consistent with the data provided by competitors.

Heathrow and Gatwick - the two relevant airports in this transaction - the following facts have to be considered:

- i) Although they have a different geographical situation in London, the access facilities could be regarded as comparable.
- ii) Interlining agreements exist between all the companies operating Paris-London or Lyon-London services - regardless of the airport.
- iii) The passenger patterns are different: a higher proportion of business travellers go to Heathrow.
- iv) Yields at Gatwick are lower because of the higher level of tourist class passengers.
- v) Due to its bigger size and the higher level of incoming and outgoing flights, Heathrow offers better possibilities for connections.

For the routes concerned, a certain degree of substitutability, in particular for passengers whose final destination is London, can be considered to exist. Therefore, although an overall analysis of the London market would seem to be more appropriate, the fact that both airports are congested because of the absence of slots shows that this substitutability does not necessarily play. Therefore, in the present case, the analysis of both routes will take account of the structural conditions prevailing at Gatwick and Heathrow and the capacity of these airports. In this respect, it is important to note that BA holds a substantial part of the total slots at Gatwick on average - which can amount up to 28.5% in peak weeks - and at the same time 38% of the total slots at Heathrow. Furthermore, it will be the only airline which will be able to operate both routes from both airports.

22. When examining the two routes in question, the following elements should be taken into account:

- i) The presence of AF on both routes and of other competitors, such as British Midland, on the London-Paris route reflects a certain degree of competition.
- ii) Demand is expected to increase in the future at least by some 5% p.a. on the Paris-London route⁴, whereas a substantially higher growth rate is expected for the London-Lyon route.
- iii) With the Third Package of liberalisation measures, any Community carrier could in principle start a new service from Paris or Lyon to London.

23. However, other factors indicate that the position of BA and TAT as a result of the transaction may significantly impede competition and that the above mentioned elements will not play a decisive role if the service cannot be increased

⁴ Despite the opening of the Channel tunnel.

because of the absence of slots. This constitutes a necessary prerequisite for competition because new entry requires a sufficient number of slots. Therefore, the Commission has examined in detail the situation in terms of slots at the airports concerned.

24. On the French side there are available slots at Charles-de-Gaulle in Paris and at Lyon airport.

On the London side, the airport directly affected by the present transaction is Gatwick⁵, which, according to the present time-schedules, is already congested during peak times for the next summer season and therefore there remain very few slots available. This constitutes a barrier to entry to the London market as a whole, since Heathrow is totally saturated and the second choice, Gatwick, would not be open to a newcomer. The fact that it is congested at peak weeks prevents an increase of the frequencies or the creation of a stable regular service for the whole season. The two remaining airports (City and Stansted) are clearly much less relevant for developing a large scale service.

The effect of the absence of slots as a barrier to entry is particularly true for the Gatwick-Paris route, since the overall number of passengers from this airport (550.000) together with the extensive service offered by BA and TAT implies that a new entrant needs to compete with a sufficient number of return flights reasonably spread throughout the day.

The current situation on Gatwick-Lyon is substantially different, since this service did not exist until TAT created it in April 1992. Although the projection of the traffic for the first complete year (1992-1993) is only 28.000 passengers, this is due to the fact that this service is very new but a considerable potential for expansion is foreseen. Should a substantial part of the increase of traffic on the overall London-Lyon route be attracted to Gatwick, the interest and likelihood of entry to this airport would increase. At that moment, a problem of availability of slots could constitute a major barrier to entry.

25. In order to meet this concern, and in particular to facilitate new entry, the parties have entered into a commitment vis-a-vis the Commission and the airport coordinator (Airport Coordination Ltd), which regulates the allocation of slots at Gatwick. According to this commitment which will be valid until 1st April 1997:

- i) As far as the route Gatwick-Paris is concerned, when a carrier(s) wishing to start or increase this service does not obtain the necessary slots from the airport coordinator, BA will make a maximum of 12 slots available in order to enable the operation of six additional daily frequencies (return flights) reasonably spread during the day.

⁵ TAT does not operate these routes from Heathrow.

- ii) As far as the route Gatwick-Lyon is concerned, should traffic reach a threshold of 40.000 passengers transported, when a carrier(s) wishing to start or increase this service does not obtain the necessary slots from the airport coordinator, BA will make up to 4 slots available in order to enable the operation of two additional daily frequencies, one in the morning and one in the afternoon.

The full text of the above mentioned commitment is annexed to the present decision and constitutes an integral part of it. The Commission considers that these commitments eliminate the problem of market entry.

26. On the basis of the above, and taking into account the commitment described on point 25, the proposed transaction does not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

VI. ANCILLARY RESTRAINTS

27. Non competition clause

For the period of 5 years following the completion date, TAT and its affiliates shall not engage directly or indirectly, in France or in any other destination where TAT E.A. operates, in any business that competes with TAT E.A.'s business without the agreement of BA. This clause reflects the withdrawal of TAT from the market and can therefore be seen as a restriction directly related and necessary to the implementation of the concentration.

28. Maintenance services

TAT E.A. will give priority for its maintenance services to TAT's subsidiary LAB for a period of 10 years. In addition, TAT E.A. undertakes not to create another maintenance facility for the services which are subject to the agreement.

As LAB currently achieves more than half of its annual repair and maintenance turnover in connection with aircraft belonging to TAT E.A., the continuation of its current activity has to be regarded as an economic necessity. Therefore, this clause is considered to be directly related and necessary to the implementation of the concentration. However, its duration must be limited to the life of the joint venture which is the subject of the present decision (see point 10, second paragraph), i.e. 1st of April 1999.

29. Use of common computer and other services, and certain premises.

As all TAT's computer services have been transferred to TAT E.A., TAT and its subsidiaries will continue to use them at cost price for 3 years tacitly renewed for an undetermined period. At the same time, various agreements have been entered into between TAT E.A. and TAT's subsidiaries which

provide for the common use of vehicles, the secondment of employees, etc. They will remain in force for two years. In addition, a part of certain premises transferred to TAT E.A. will be sublet to TAT's subsidiaries and vice versa for a period of 3 years that will be tacitly renewed for a similar period. Finally, TAT E.A. will use 5 Boeing 737 belonging to TAT in order to provide a wet-lease service, to Société d'Exploitation de l'Aéropostale for an initial period of two years.

The above mentioned agreements, intended to ensure the independence of TAT E.A., are directly related and necessary to the implementation of the concentration. However, their duration must be limited for the same reason as indicated in point 28, to the 1st April 1999.

30. Licence to use the TAT name

TAT has granted to TAT E.A. a 20 year royalty-free licence to use the TAT name. Such a clause, limited to 1st April 1999, is in line with Commission notice of 14.10.1990 and can therefore be accepted.

VII FINAL ASSESSMENT

Based on the above findings, and taking into account in particular the commitments entered into by the parties, the Commission has come to the conclusion that the proposed operation does not raise serious doubts as to its compatibility with the common market.

This decision is adopted in application of Article 6(1)b of Council Regulation N° 4064/89.

For the Commission,

tatfin/cme

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David Holmes CB
Director of Government
& Industry Affairs

Mr C D Ehlermann
Director General
Competition Directorate
Commission of the European Communities
200 rue de la Loi
1049 Brussels
Belgium

27 November 1992

Dear Mr Ehlermann

CASE NUMBER IV/M.259 - BRITISH AIRWAYS/TAT

Although British Airways Plc ("BA") considers that there is no competition issue raised by its acquisition of a share-holding in TAT European Airlines S.A. ("TAT"), without prejudice to its position. BA will make arrangements to provide certain slots at Gatwick should they be necessary in order for new entry to take place or for the frequency to be increased on those routes which are currently served out of Gatwick by TAT and hereby gives the undertakings, with respect to those routes, set out in the attachment to this letter and in the letter to the Managing Director of ACL, the company responsible for co-ordination of Gatwick, setting out the slot arrangements, a copy of which accompanies this letter. I also attach a copy of the letter from the ACL confirming its willingness to act as envisaged in our letter.

These undertakings will take effect from the date of the Commission's decision under Article 6(1)(b) of the EC Merger Regulation.

Yours sincerely,

David Holmes

Attachment to letter dated
27 November 1992
to The Director General for Competition
from British Airways Plc

**Undertakings given by BA and TAT in connection with the acquisition of a
shareholding in TAT by BA**

BA and TAT will enter into an interline agreement in respect of the route concerned with any new entrant on the routes Gatwick -Paris (CDG) and Gatwick - Lyon for a period of five years from the date of such new entry. Such agreements shall be on reasonable terms in accordance with the conditions which are normal in the industry (in particular as to credit-worthiness and reciprocity).

If, prior to 1 April 1997, a new entrant commences services on each or either of Gatwick - Paris (CDG) and Gatwick - Lyon routes, BA and TAT will ensure that the aggregate number of frequencies operated on the relevant route or routes by BA, any of its subsidiaries and TAT will not be increased above the base level, save that the frequency may be increased if and to the extent that the new entrant or any other airline on the route in question operates a higher frequency or if the total frequency of all carriers combined on the route has grown by a percentage that is lower than the percentage growth in the number of passengers carried on the route over the period since the new entrant commenced services. The base level shall be the level of frequencies currently planned by BA and TAT for Summer 1993 or the frequency operated at any time in the twelve months prior to the new entrant's commencing services on the route, whichever is the higher. This undertaking shall apply for a period of four years from the date a new entrant commences services on the relevant route.

BA and TAT will offer to those competitors on the Gatwick - Paris (CDG) route who so request, and who do not directly or indirectly participate in a Frequent Flyer Programme, the opportunity to participate in Their FFP under reasonable and non-discriminatory financial conditions. This engagement is strictly limited to the present operation and does not prejudice the position of BA and TAT in this field. It is also understood that such a commitment will terminate when a Community regulation concerning FFP is adopted.

Should circumstances or conditions change from those now pertaining so that BA or TAT wishes to depart from the undertakings set out in this letter or in the letter to the Gatwick co-ordinator which is attached, BA and TAT, whichever is relevant, shall be free to discuss the matter with the Commission. BA and TAT will not depart from any of these undertakings except to the extent that the Commission confirms acceptable.

BRITISH AIRWAYS

TATFIN/cme

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Mr P Morrisroe
Managing Director
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27 November 1992

Dear Mr Morrisroe

BRITISH AIRWAYS INVESTMENT IN TAT EUROPEAN AIRLINES

Arrangements for Slot Transfers

British Airway understand that concern has been expressed by a number of airlines as a consequence of the investment by BA in TAT about BA's position on the London - Paris (CDG) and London - Lyon routes. Without accepting the validity of thus concern BA is willing, nevertheless, to take certain steps to facilitate the introduction of services by another airline on each of these routes.

The purpose of this letter is to set out how BA proposes to give effect to this and to ask you to confirm your willingness to take the action necessary.

Set out below are what I have described as undertakings. They set out the commitment which BA is giving to help to facilitate the introduction of new competition on the routes. BA will be bound by this commitment until 1 April 1997 unless the investment currently envisaged in TAT doe nos proceed or if it does proceed unless and until the Commission shall confirm that it is acceptable for BA to amend or withdraw the commitment.

The undertakings are as follows.

1. In respect of the route Gatwick - Paris (CDG), BA will make available to carriers, not part of the BA group, which wish to commence or to increase a scheduled service on the route, such slots at Gatwick as may be necessary to enable those carriers to provide that service throughout the year. BA shall only be obliged to make available slots in accordance with this undertaking to the extent of an aggregate six round trips in any day. Each carrier will be limited to the number of slots needed to bring that carrier's frequency up to six round trip in a day. Slots will be made available only if the carriers concerned have made all reasonable efforts to obtain slots for their services through the normal workings of the slot allocation procedures and have failed to obtain them within thirty minutes (either way) of the time requested. BA will make available slots to the carriers concerned within thirty minutes (either way) of the requested times, provided that BA holds such slots and save that BA will not be obliged to make available a slot within one and one half hours of a similar slot already held by a carrier for use on the route.
2. In respect of the route Gatwick - Lyon. BA will make available to a carrier, not part of the BA group which wishes to commence or to increase service on the route, slots at Gatwick as may be necessary to enable that carrier to provide, throughout the year, up to two round trips in any day. BA shall not be obliged to make available slots unless:
 - (i) the number of passengers carried on scheduled services by all airlines serving the route equals or exceeds 40,000 in the twelve month period preceding the request; and
 - (ii) the carrier concerned has made all reasonable efforts to obtain slots for its service through the normal workings of the slot allocation procedures and has failed to obtain them within ninety minutes (either way) of the time requested. To the extent that this is the case and to the limit of slots necessary to bring the carrier's frequency up to two round trips in any day. BA will make available slots to the carrier concerned within ninety minutes (either way) of the requested times, provided that BA holds such slots and save that BA will not be obliged to make available two similar slots less than five hours apart.

3. In respect of each the above undertakings:
- (i) the obligation to make slots available shall expire at the end of Winter 1996/97 season;
 - (ii) it shall be a condition that the slots made available by BA shall be used only for the purpose of operating on the route in respect of which they were made available and the receiving carrier will be expected to give an undertaking to BA so to use them until the end of the Winter 1996/97 season or for two years after receiving them, whichever is the later, unless the carrier withdraws from the route;
 - (iii) the undertaking to BA expected from the receiving carrier will not prevent it from exchanging those slots for others closer tot the times it originally requested but that undertaking shall apply instead to the slots so obtained;
 - (iv) the undertaking given by the receiving carrier will require it, if it ceases to operate on the route in question during the period of its undertaking, to take such steps as it can in order that the slots made available to it can be returned to the Coordinator who will if possible transfer them to a replacement carrier, not part of the BA group, on the route and to avoid, so far as possible, any action which would prevent this;
 - (v) BA shall not be obliged to make slots available during any season unless a request has been made by an airline entitled to benefit from these undertakings within 1 month after the closing of the IATA scheduling meeting at which the co-ordination of slots for that season has been undertaken, save that for Summer 1993 season BA will make slots available if required by these undertakings provided a valid request is made within 1 month after these undertakings have been made public;
 - (vi) for the purpose of these undertakings the BA group shall comprise BA and all airlines in which BA has a 5 % or greater share-holding, either directly or indirectly;
 - (vii) 'similar slots' mean slots to be used for the same purpose (i.e. to take-off or to land);
 - (viii) BA will make available to a carrier to which it has made available slots in accordance with these undertakings in one season the same slots, or as near to the same slots as it is able, in the following season, if it is necessary for the carrier to be able to continue its service (the slot shall be defined in local time for the purpose of this subparagraph); and

- (ix) BA will take account of the operational needs of any carrier to which slots are given, in view of the purpose of these undertakings being to facilitate the operation of a viable commercial service; in this context BA recognises the desirability of meeting any requirement that turn-round times be kept within a period of 90 minutes on routes such as these.

These undertakings will be given effect as follows:

A carrier wishing to avail itself of the benefits of these undertakings shall write to BA requesting it to make slots available in accordance with the undertakings. Providing: the undertaking in respect of the route in question has not already been fulfilled; the request has been made within the time required; the carrier making the request has made very normal effort to obtain the slots necessary for its planned operation on the route which, save in respect of the season Summer 1993, must include a application to the coordinator for slots by the due date prior to the slot meeting for the season concerned; and, if the request is in respect of Gatwick - Lyon, the number of passengers carried by scheduled services on the route in the most recent twelve month period for which data is available was at least 40,000; then BA will make slots available as necessary. Should there be two or more requests made during the same period which could not all be met within the limits of the slots which BA will enter into discussions with the carriers with a view to reaching agreement as to how the available slots shall be distributed. Should it be impossible to reach agreement, then the issue shall be resolved by an independent arbitrator, whose appointment will be agreed by the parties concerned. In the event that o agreement is reached within a reasonable time. BA will nominate an arbitrator, whose appointment will fall to be confirmed by or on behalf of the Director General for Competition of the European Commission. The carrier receiving the slots shall give in writing the undertaking set out in (ii) to (iv) above.

Having reached agreement with the receiving carrier BA will then ask the coordinator to transfer of the slots.

I should be grateful if you would confirm that you would be able and willing to approve a slot transfer agreed between carriers as set out above.

Yours sincerely,

C M Allen
Manager Competition Policy and Licensing

AIRPORT COORDINATION

Our ref.: PM/cjv/pm4107

23rd November 1992

Mr. Chris Allen
Manager, Policy Competition and Licensing
British Airways
Room X236
Speedbird House S234

Dear Chris,

Thank you for a copy of the (proposed?) arrangement which sets out BA's undertakings regarding the transfer of slots from BA to another carrier on the Paris and/or Lyon routes.

The transfer of slots described in the letter from one carrier to another is within the IATA guidelines and, I believe, within the terms of the emerging Code of Conduct and Block Exemption regulations.

We will take the responsibility of bringing the aspects of this agreement within our control into effect so long as it is within our normal coordination parameters eg. Terminal capacity. We are also prepared to monitor the use of and changes to such slots.

I am sure you are aware however that having transferred the slots to another carrier we would be unable to enforce any restrictions on their future use as long as this was within coordination parameters.

I can also confirm that, to the extent consistent with the regulations and guidelines under which we carry out the coordination at Gatwick, we would be willing to hold, for a reasonable period, slots in abeyance for reallocation to a successor carrier which have been transferred by you in accordance with your undertakings and subsequently released by the recipient airline.

It has not been possible within the time available to brief either the Scheduling Committee or the Airport Operator on the proposal. We shall endeavour to do as quickly as possible.

Best wishes,

Peter Morrisroe
Managing Director
Airport Coordination Limited