

*Case No IV/M.278 -
BRITISH AIRWAYS /
DAN AIR*

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/02/1993

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.02.1993
D(98)

PUBLIC VERSION

MERGER REGULATION
ARTICLE 22 DECISION
IN CONJUNCTION WITH
ARTICLE 6(1)b

Registered with advice of delivery

British Airways

Dear Sirs,

Subject : Case No IV/M.278 - British Airways / Dan Air
Request from the Belgian Government of 30.11.1992 pursuant to Article 22
of Council Regulation No 4064/89

1. The above mentioned operation concerns the acquisition by British Airways Plc of the non-charter activities of Davies and Newman Holdings Plc.
2. After examination of the above-mentioned request and subsequent information, the Commission has concluded that this request is admissible within the meaning of Article 22 of Council Regulation No 4064/89 and that the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the territory of the Belgian state.

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. The activities of Davies and Newman Holdings Plc, subject to the acquisition, consist of scheduled air transport from the United Kingdom or within the United Kingdom domestic market, handling and related activities.

II. Concentration

5. The acquisition by British Airways of the non-charter operations of Davies and Newman Holdings Plc is a concentration within the meaning of Article 3(1)b of the Merger Regulation.

III. Non-Community Dimension

6. The present operation does not have a Community dimension within the meaning of Article 1(2) of the Regulation.

Regarding the Community-wide turnover of the parties, under Article 5(2) of the Merger Regulation only the turnover relating to the part of the undertaking being acquired should be taken into account. In this respect, the turnover related to the part of Davies and Newman Holdings subject to the acquisition, in the last financial year (to 31.12.1991), was 233 million ECU (scheduled services and related activities, such as handling).

Consequently, the turnover of the scheduled operations, together with the "other related activities" of the company is less than 250 million ECU. Since there are not therefore two undertakings with a Community-wide turnover of more than 250 million ECU, the thresholds of Article 1 of the Merger Regulation are not met.

IV. Affect on trade between Member States

7. According to Article 22(3), the Commission can only intervene "in so far as the concentration affects trade between Member States". The Commission considers that this condition is met since the operation has effects on air transport between Belgium and the United Kingdom.

V. Period within which the request has been received from the Belgian Government

8. According to Article 22(4) third and fourth sentences of the Merger Regulation "the request [from a Member State] must be made within one month at most of the date on which the concentration was made known to the Member State or effected. This period shall begin on the date of the first of those events". The request from

the Belgian Government was received by the Commission on 30.11.1992. The concentration was effected on 8.11.1992 and there had not been any direct communication from British Airways to the Belgian Government concerning this operation prior to it being effected. Therefore, the Belgian Government has made its request within the period specified by Article 22(4).

VI. Period during which proceedings may be initiated

9. After examining the request, the Commission concluded that it did not provide sufficient information to allow the Commission to proceed with an investigation. Therefore, on 21.12.1992 the Commission informed the Belgian authorities of the need to supply all the information at their disposal and indicated that, on the basis of Article 10(1) of the Merger Regulation, the period for initiating proceedings would only start on the date of receipt of a request providing the factual information necessary to proceed with the examination of the concentration.

On 19.01.1993 a reply from the Belgian authorities was received, enclosing the requested information. This enabled the Commission to begin its analysis of the case and therefore the time period for it to adopt a decision started to run on that date.

VII. Compatibility with the Common Market within the Belgian territory

10. Prior to the merger, the only route operated by Dan Air which affected Belgium was the Brussels/Gatwick route. BA operates on the Brussels/ Heathrow route and on the Brussels/Birmingham and Brussels/Manchester routes. The result of the merger is that BA will replace Dan Air on scheduled services between Brussels and Gatwick. There will be no change at Heathrow or either of the other two London airports.

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 or 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 route. In the case under examination, the short distance between Brussels 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 present case, the question of substitutability between the London airports has to be taken into account. If Heathrow and Gatwick are viewed as completely separate markets in relation to the Brussels route, then the merger does not bring about any change since the sole operator at Gatwick is simply replaced by another operator. The London/Brussels traffic is concentrated on Heathrow (83% of passengers on this route used Heathrow) where there are three principal carriers on the Brussels route: BA, Sabena and British Midland.

The impact of the transaction on market shares is as follows:

	<u>LONDON-BRUSSELS</u>		<u>Gatwick - Brussels</u>	<u>Heathrow - Brussels</u>
	<u>London (overall traffic) - Brussels (%)</u> 91/92	<u>Brussels (%)</u> 92/93(1)		
British Airways	50	40	No increase of market share	No increase of market share
Sabena	34	23		
British Midland	1	18		
Dan Air	9	9		
Air UK	6	6		
Brymon(2)	-	3		
United Airlines	<u>-</u>	<u>1</u>		
	100	100		
BA/Dan Air	59	49		

(1) Forecast consistent with the data provided by competitors.

(2) Joint service with Sabena.

These figures are the best estimates available of the carriers' current position and reflect the recent entry of British Midland. After the merger BA has just below 50% of the passenger traffic, taking the London airports as a whole.

The airlines' frequencies on this route are as follows:

	<u>Frequencies per day (as at 15.12.1992)</u>				
	<u>Heathrow</u>	<u>Gatwick</u>	<u>Stansted</u>	<u>City</u>	<u>All</u>
BA	7	4			11
Sabena	8				8
British Midland	8				8
Air UK			3		3
Brymon ⁽¹⁾				4	4

(1) Joint service with Sabena.

Sabena has obtained additional slots at Heathrow and has therefore increased its frequency to 9 as from 1 January 1993.

The question of whether Heathrow and Gatwick airports should be considered as separate markets, or whether an overall analysis of the London market would be more appropriate for the route in question, can be left open. If the airports are considered separately, no competition issues arise since there is no change in market shares and even if the London airports are considered as a whole, the merger does not create or strengthen a dominant position for the reasons given below.

In considering whether BA has a dominant position on the Brussels/ London route after the merger, the following factors, apart from its market share, should be taken into account. British Midland has succeeded in capturing a market share of 18% since it started operating this route in the Summer 1992 and now has as many frequencies as Sabena and one more per day than BA from Heathrow. British Midland appears to have taken traffic away from both Sabena and British Airways. The difficulty of obtaining slots in Heathrow was solved by British Midland by transferring slots from other routes. This course of action is only available to carriers who are already operating from Heathrow. However, it demonstrates that BA's market share is vulnerable to competition.

BA has an overall market share of less than 50% of the passengers carried on this route and its share has been falling as a result of the entry of British Midland. BA achieved this market share with fewer frequencies per day than Sabena or British Midland. There are three strong competitors on the route (all at the favoured airport, Heathrow) together with a number of smaller players. Traffic on the route has been increasing and is estimated to have grown at 4.5 % per annum between 1987 and 1992.

The closure of Dan Air's charter services and BA's discontinuance of some of Dan Air's scheduled services has resulted in more slots being made available at Gatwick. The slot problem is more acute at Heathrow but even there Sabena has recently gained two additional slots as of January 1993 for this route.

The above considerations lead to the conclusion that BA does not have a dominant position on the Brussels/London route following this merger. BA is not able to act independently of its competitors and customers but is constrained by other operators such as British Midland. As to the effect of the concentration on BA's network, this is also very limited and, taking into account the market position previously held by Dan Air, would not be such as to strengthen significantly the position of BA with respect to its competitors at a Community level.

VI. Final Assessment

11. On the basis of the above, the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the territory of the Belgian state.

This decision is adopted in application of Article 22 in conjunction with Article 6(1)b of Council Regulation No 4064/89.

For the Commission,