EN

Case No IV/M.616 -
Swissair / Sabena

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REGULATION (EEC)No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.07.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.616 - Swissair/Sabena
Notification of 23.06.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. The present notification concerns a Shareholders' and Master Agreement (SMA) between the Belgian State and Swissair signed on 4 May 1994 and a Cooperation Agreement between Sabena and Swissair (CA) which forms an integral part of the SMA. The SMA provides in particular for the acquisition by Swissair of a 49.5% stake in Sabena. The remainder of Sabena's shares amounting to 50.5% of the equity capital and voting rights will be held by the Belgian State, directly or indirectly though SFI (Société Fédérale d'Investissement/Federale Investeringsmaatschappij) and Belgian institutional investors.

2. An original concentration plan concerning the acquisition of joint control by Swissair and the Belgian State over Sabena was notified to the Commission on 12 May 1995. The initial notification was withdrawn on 20.06.1995, and a new notification was made on 23.06.1995, following a modification of the original concentration.

3. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. The parties

4. Swissair and Sabena are respectively the major Swiss and the major Belgian airline. They are principally engaged in the carriage of passengers and freight. In addition, they are active in sectors related to the air transport business, such as airport services (ground handling,

Rue de la Loi 200 - B-1049 Brussels - Belgium
Telephone: exchange (+32-2)299.11.11
Telex: COMEU B 21877 - Telegraphic address: COMEUR Brussels

catering and maintenance of aircraft and engines) and the hotel trade sector. Sabena is currently jointly controlled by the Belgian State, which owns 62.5% of the voting rights, and by Air France, which owns the remaining 37.5%, through the holding company Finacta S.A.[(1)]

5. The Belgian State is active in the air transport sector only through Sabena.

II. <u>The operation</u>

6. Sabena and the Belgian State will terminate their agreements with Air France, and the Belgian State will transfer 49.5% of Sabena's shares to Swissair on the basis of the above-mentioned SMA. The remaining 50.5% of Sabena's shares will be held by the Belgian State and by Belgian institutional investors on the basis of arrangements ensuring that in all major voting matters, the views of the Belgian State and SFI will always prevail. The SMA will govern the corporate structure as well as the management organisation of Sabena. It will include a CA setting out the main principles upon which the combination of the Swissair and Sabena operations will be achieved.

III. <u>Concentrative joint venture</u>

<u>Joint venture</u>

7. According to [ ][(1)] the SMA, all key policy and strategic issues, including the business plan, the annual budget, material fleet investments and material changes to network will be decided by Sabena's Board of Directors acting by simple majority [ ][(2)]. The Board will consist of 12 members, 6 of which will be appointed by the Belgian State and 5 by Swissair. The twelfth member will be jointly proposed by Swissair and the Belgian State -although, in case of disagreement, Swissair's proposal will be deemed to be the joint proposal- and the Shareholder's meeting where the Belgian State has the majority of votes will be free to accept or reject him[(1)]. Consequently, only the Belgian State will be in a position to veto the decisions of the Board without the need for any further support from other Board members. By contrast, Swissair will only be able to veto such decisions, if it secures the support of the twelfth member.

8. It follows from the above that, at the level of the Board, the Belgian State appears to have a stronger influence than Swissair. However, in the light of a number of elements described below, it can be concluded that each of the two parents will have the possibility to exercise a decisive influence on Sabena's commercial policy within the meaning of Article 3(1)(b) of the Merger Regulation.

9. First, it appears that the Belgian State and Swissair have a strong common interest to run Sabena in active cooperation. Although the Belgian State will be the larger shareholder, Swissair, being a major airline with considerable expertise, is expected to play an active role in Sabena's management and operations.

10. Second, the Chief Executive Officer (CEO), who will be responsible for the daily management of Sabena, cannot be appointed by the Board of Directors without the joint

(1) See Commission Decision of 05.10.1992 in Case IV/M.157 - Air France/Sabena.

(2) Deleted - business secret.

(3) The twelfth member will also be the Chairman of the Board. The Belgian State can at all times require his resignation.

proposal of both parties [ ][(1)]. The other members of the executive management of Sabena cannot be appointed and dismissed by the Board of Directors without the recommendation of the Chief Executive Officer [ ][(4)]. Sabena's second-tier management will be appointed by the Chief Executive Officer [ ][(4)]. Consequently, already the SMA contains some institutional mechanisms ensuring that Swissair can exercise, jointly with the Belgian State, decisive influence within the meaning of Article 3 (1) b of the Merger Regulation.

11. Finally, the provisions of the CA between Swissair and Sabena also give expression to the decisive influence within the meaning of Article 3 (1) b of the Merger Regulation that the two parent companies will exercise over Sabena. The purpose of the CA is to achieve operational synergies between Swissair and Sabena in areas of great strategic and commercial importance, including fleet plannning, strategic network development, financial planning, route management, yield management, sales and marketing. [ ][(4)]

12. In the light of the above-mentioned elements taken as a whole, the Commission therefore concludes that the Belgian State and Swissair have joint control over Sabena within the meaning of Article 3 (1) b of the Merger Regulation.

Autonomous economic entity

13. Sabena is an existing undertaking with all the financial resources, staff, assets and other means necessary for it to operate as an independent entity on the market. As regards the duration of the joint venture, the duration of the SMA is [ ][(1)] years, while the CA will be in force for an initial term of approximately [ ][(5)] years and tacitly renewable for successive periods of [ ][(1)] years thereafter. As a result, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination of competitive behaviour

14. All activities of the Belgian State in the field of air transport are included in the joint venture. The Belgian State does not control any other air carrier or undertaking active in the markets of the joint venture. There is, therefore, no scope for coordination between the parents of the joint venture.

IV. Community dimension

15. The present operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation. In 1994, the combined aggregate worldwide turnover of Swissair and Sabena amounted to 5 337 million Ecu and each undertaking achieved a Community-wide turnover of more than 250 million Ecu. The two undertakings did not achieve more than two-thirds of their respective Community-wide turnover within one and the same Member State[(1)(1)].

(4) Deleted - business secret.

(5) Deleted - business secret. The period of time is long.

(6) Deleted - business secret.

(7) The geographic allocation of turnover was made on the basis of the point of sales method. In any event, the operation will also have a Community dimension on the basis of the 50/50 method - See case No IV/M.130 - Delta Air Lines/Pan Am and case No IV/M.157 - Air France/Sabena, point 19.

(8) There is no need in the present case to calculate the turnover of the Belgian State, even though it is an undertaking concerned within the meaning of Article 1 of the Merger Regulation (see also paras. 41-45 of the Commission notice on the notion of the undertakings concerned, OJ C 385/12, of 31.12.94).

V. Compatibility with the common market

16. The concentration involves three main sectors of activities:
   a) air transport, which is the core business of both Sabena and Swissair;
   b) airport services, such as ground handling, catering and maintenance of aircraft and engines;
   c) the hotel trade sector.

17. As regards catering, maintenance of aircraft and engines and the hotel trade sector, the competitive impact of the transaction is non-existent or insignificant, either because there is no overlap between the activities of the parties or because the combined market share of the parties is very small. As a result, the following analysis will focus on the effects of the operation on the rest of the above-mentioned sectors.

Air transport

A. Introduction

18. The Court of Justice has stated[(1)] and the Court of First Instance has recently confirmed[(1)] that 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. Furthermore, the structural conditions prevailing at airports and airport capacity must also be considered both in connection with the routes and separately. Finally the impact of an extensive or high volume network in a given geographical area[(1)] must be analysed, because competition in the air transport sector also takes place at the level of major airports as well as between networks.

19. 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 route[(1)].

B. African destinations

20. With respect to African destinations, the parties have argued that the relevant market is the bundle of routes between all departure points in the EU and EFTA countries, including Switzerland, on the one hand, and each of the individual African destinations on the other hand. The parties have mentioned a number of factors supporting this conclusion, such as the long duration of flights, the limited number of frequencies, the good possibilities for intra-European connections on the European side and the absence of substitutability on the African

(9) See judgment in Case 66/86 - Ahmed Saeed Flugreisen and Other v/Zentrale zur Bekänntfung unlauteren Wettbewerb [1989] ECR 803.

(10) See judgment in Case 2/93 - Air France v/Commission (TAT) [1994] ECR 823.

(11) See also Commission Decisions of 13.09.1991 (Delta Air Lines/Pan Am), 01.10.1992 (Air France/Sabena), 27.11.1992 (British Airways/TAT), 17.02.1993 (British Airways/Dan Air).

(12) Commission Decision 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.

side. This definition, which was also used in the Air France/Sabena decision[1], appears to be correct.

21. In this context, there is an overlap between Swissair and Sabena on the bundles of routes between the EEA (including Switzerland) on the one hand and each of the following destinations on the other hand: Abidjan, Banjul, Brazzaville, Dakar, Douala, Johannesburg, Kinshasa, Lagos, Libreville, Nairobi and Yaounde. For each of these destinations, the combined market share of the parties after the operation will not exceed 20% - except for Brazzaville [ ][1] and Kinshasa [ ][14] - in terms of passengers carried. The new entity will face at least one competitor on each of these markets, including major European carriers like Air France and/or the African flag carriers. With regard to certain destinations constituting mainly tourist destinations, such as Banjul and Nairobi, there is also competition from charter flights. As regards Brazzaville, the new entity will face competition from Air France, which has a market share of [ ][1]. Finally, as regards Kinshasa, the new entity will compete against two airlines, namely Air Zaire [ ][1] market share) and SCIBE ([ ][1] market share). No dominance is therefore expected to arise at the level of the bundle of routes between Europe and each of the above-mentioned African destinations.

22. As regards the network consisting of all the routes between the EEA (including Switzerland) and Africa, the new entity will serve 25 African destinations. Nevertheless, no dominant position will be strengthened or created, given Air France's existing network which is of a similar size to that of Swissair and Sabena.

C. <u>North-American destinations</u>

23. In view of the volume of traffic on the North-Atlantic routes and the distance between Brussels and Zürich or Geneva, the parties do not consider that there is sufficient substitutability between the routes having a departure point from Brussels and those having a departure point from Zürich or Geneva. Were this definition to be adopted, there would be no overlap between Swissair and Sabena. In any case, even if a broader market definition were to be adopted, there would still be no creation or strengthening of dominance, since all major EEA and US or Canadian carriers operate between North America and Europe, and Swissair and Sabena represent together [ ][1] of the all passengers carried in this area.

D. <u>Destinations in the Far East</u>

24. Sabena only operates on the Brussels-Tokyo route. Swissair is not active on this route but flies to Tokyo from Zürick and Geneva. If the Brussels-Tokyo route on one side, the Zürick-Tokyo and Geneva-Tokyo routes on the other side are considered to be separate markets, there is no overlap between the operations of the two parties. If, as the parties argue, there is, because of the long distance, a sufficient degree of substitutability between the major international airports in Europe, there would still be no dominance, because the new entity will have a market share of only [ ][18] in terms of passengers carried and will face

(13) See point 39 of the decision.

(14) Deleted business secret - Between 25 and 50%.

(15) Deleted business secret - Between 50 and 75%.

(16) Deleted business secret- Between 10 and 25%.

(17) Deleted business secret - Between 25 and 50%.

(18) Deleted business secret - Less than 5%.

competition by the major EU airlines (British Airways, Air France, Lufthansa, KLM) as well as by All Nippon Airways.

E. Routes between Switzerland and Belgium

25. There are four routes between the two countries: Brussels/Bern, Brussels/Basle, Brussels/Geneva and Brussels/Zürich. In 1993, the total traffic on each of these routes was: (i) for passengers 9,731, 50,203, 183,175 and 166,294 respectively; (ii) for freight (in tonnes) 2, 133, 1,537 and 3,028 respectively.

26. According to the parties, each of the four routes between Switzerland and Belgium constitutes a distinct market, given in particular the duration of the journey, the distance between the different Belgian and Swiss airports and the number of frequencies available on each route. As to the substitutability between direct and indirect flights between Belgium and Switzerland, it appears to be quite unlikely that a passenger would in this case consider doing the journey through an intermediate point, in view of the short distance between Brussels and each of the four Swiss destinations, as well as the sufficient number of frequencies available on each route. Finally, although there may be a limited degree of substitutability beween scheduled air travel and other forms of transport, such as rail transport, available on these routes, this substitutability is too imperfect to be taken into account, in view a number of factors, such as price differences or the considerably longer duration of the journey.

27. Following the operation, the competitive situation on each of these routes will be as follows:

(i) On each of Brussels/Basle, Brussels/Geneva and Brussels/Zürich the combined market share of the parties, both for passengers and for freight, will amount to 100%. Following the proposed operation, a monopoly situation will therefore be created on these routes. In 1993, the individual market shares of the parties on each of these routes were:

Passengers			
	Brussels/Basle	Brussels/Geneva	Brussels/Zürich
Swissair	[ ]%	[ ]%	[ ]%
Sabena	[ ]%	[ ]%	[ ]%
Total	100%	100%	100%

Freight			
	Brussels/Basle	Brussels/Geneva	Brussels/Zürich
Swissair	[ ]%	[ ]%	[ ]%
Sabena	[ ]%	[ ]%	[ ]%
Total	100%	100%	100%

[ ] Deleted business secret

(ii) On Brussels/Bern, there is no overlap between the parties, because the only operator on the route, both for passengers and for freight, is Crossair, a Swissair subsidiary. Nevertheless, the proposed operation is also likely to lead to a monopoly situation on this route by eliminating competition from the most likely and significant potential entrant, namely Sabena.

28. The Commission considers that, in the absence of the modifications to the initial concentration plan set out under section H. below, the monopoly situation resulting from the proposed operation on the routes between Belgium and Switzerland is likely to persist in the foreseeable future. This is due to a number of regulatory and other barriers to entry which would significantly impede effective competition.

29. First, the terms and conditions of entry into the routes between Belgium and Switzerland are governed by the bilateral air services transport agreement of 24 March 1960. This agreement provides that each Government at the end of the route is allowed to designate only one carrier owned and controlled by its own nationals (mono-designation). The only airlines designated to fly on these routes are Swissair, Sabena or airlines belonging to the Swissair or Sabena groups (e.g. Crossair).

30. In this context, it must be noted that on 14 March 1995, the Council of Ministers adopted a decision authorising the Commission to negotiate a comprehensive air transport agreement between the Community and Switzerland. The Council decision envisages that, subject to certain exceptions, the rules governing the Community's air transport market should be extended to Switzerland. However, the negotiations between the Commission and Switzerland have not yet led to the conclusion of an agreement, and the above-mentioned regulatory regime governing access to the routes between Belgium and Switzerland is, as result, still in place. For the reasons explained above, the Commission considers that this regime prevents effective new entry into the routes betweeen Belgium and Switzerland and thus perpetuates the monopoly situation resulting from the proposed operation.

31. In addition, the following factors can be mentioned. First Swissair and Sabena are the major carriers of the two States involved and are both well-established in the airports concerned. More importantly, as set out below, the situation regarding slot availability at some of the airports concerned is of a nature to prevent or deter effective new entry into the routes between Belgium and Switzerland.

F. Airports

32. In assessing the proposed operation, the Commission must consider the structural conditions prevailing at airports both as a factor influencing entry into the routes between Belgium and Switzerland and separately, as essential facilities affecting competition between airlines on a larger scale.

33. The airports directly affected by the present operation are Brussels, Zürich, Geneva, Basle and Bern.

34 As far as ground handling is concerned, on all airports concerned self-handling is in principle allowed, and neither Swissair nor Sabena enjoy monopoly rights with regard to third-party handling. It does not therefore appear that the situation with regard to ground handling will constitute an additional barrier to entry into the market.

35. The Commission has also examined the situation in terms of slots at the airports concerned. Availability of slots is an essential condition for the creation of a stable regular service and thus effective new entry into the routes between Switzerland and Belgium. This is particularly important on those routes -Brussels/Zürich and Brussels/Geneva- where, in view of the large number of frequencies offered by the incumbent carriers, a newcomer can compete effectively only with a sufficient number of return flights reasonably spread throughout the day.

36. Slot availability appears to be an issue at three of the airports concerned, namely Zürich, Brussels and Geneva. In particular, according to the present time schedules for the 1995 summer season, the airport at Zürich appears to be congested at peak hours. Although the slot situation at Brussels and Geneva appears to be better than at Zürich, these airports are close to congestion at some peak hours. As a result, the Commission considers that the situation with regard to slots at all three airports is likely to affect effective new entry and thus reinforce the parties' position on the routes between Belgium and Switzerland.

37. As stated above, slot availability must be viewed not only in connection with specific routes, but also separately, as an essential facility to operate from a given airport. Swissair and Sabena's combined share of all slots allocated at the three main airports is as follows (figures for the 1995 summer season): Zürich about [ ][(1)], Brussels about [ ][(1)], Geneva about [ ][(20)]. The overlap of Swissair and Sabena at each of these airports is not very significant: [ ][(1)] at Zürich, [ ][(21)] at each of Brussels and Geneva. Moreover, it is not expected that the combined operations of the parties from these airports to the EEA and *vice versa*, following the concentration, will increase demand for slots to such an extent that the ability of competitors of the Swissair and Sabena groups to offer new services will be significantly impeded.

G. Network effects

38. It is clear from the above that the combination of the parties' networks will lead to a monopoly with regard to air transport between Switzerland and Belgium. As to the effect of the combination of the parties' network at a wider European level, out of the total number of passengers transported within W. Europe, the combined share of Swissair and Sabena alone is relatively small (about [ ][(1)] in 1993). Nevertheless, the impact of the proposed operation becomes much more significant when Swissair's participation in the European Quality Alliance (EQA) is also taken into account.

39. Three airlines, Swissair, SAS and Austrian Airlines, are currently participating in the EQA arrangements which consist of bilateral Cooperation Frame Agreements (CFA) and implementing agreements. Swissair is a party to two CFAs: the CFA between Swissair and SAS of June 6, 1990 and the CFA between Swissair and Austrian Airlines of July 17, 1992. The EQA involves extensive cooperation among its partner airlines, *inter alia* through the coordination of their route network and scheduling, in a manner allowing the specialisation of their hubs.

(19) Deleted business secret - between 50 and 60%.

(20) Deleted business secret - between 40 and 50%.

(21) Deleted business secret - less than 5%.

(22) Deleted business secret - less than 15%.

40. One of the parties to the EQA, SAS has entered into a cooperation agreement with Lufthansa the purpose of which will be to integrate the parties' respective air transport services between Germany and Scandinavia. This agreement has been notified to the Commission and is the subject of examination under Article 85 of the EC Treaty.

41. The co-existence of the three alliances, namely the proposed concentration, the EQA and the Lufthansa/SAS cooperation agreement, will enable the participating airlines to establish an extensive integrated European network. According to the information available to the Commission, together these airlines would account for approximately 35% of passenger traffic within Europe and would carry in Europe more than twice as many passengers as the next largest carrier.

H. The modifications to the original concentration

42. On the basis of the above, the Commision has come to the conclusion that the proposed operation will raise serious doubts as to its compatibility with the common market, because it will lead to the creation of a dominant position as a result of which effective competition will be significantly impeded in the common market. However, Swissair and Sabena[1] have entered into commitments and the Swiss and Belgian governments have made a declaration which remove the serious doubts in the manner described below.

43. First, the Belgian and Swiss governments have declared that they will take the steps necessary to change, before 31 July 1995, the existing regulatory situation regarding the terms and conditions of access by air carriers to the routes between Belgium and Switzerland in the following respects:
- the present system of monodesignation will be changed into a regime of multiple designation;
- any capacity restriction will be abolished;
- as far as pricing is concerned, the country of origin principle will apply; and
- four EEA carriers will be admitted on the routes concerned (on the basis of the "first come, first serve" principle) for fifth freedom operations[1].

44. The Commission has taken the declaration of the Belgian and Swiss governments into account in its final assessment of the effects of the proposed concentration. The Commission considers that the implementation of this declaration will lead to the lessening of the existing regulatory barriers to entry into the routes to the extent required to generate sufficient competition to Swissair and Sabena. It constitutes, therefore, an important element in the analysis of the case enabling the Commission to conclude that there are no serious doubts as to the compatibility of the concentration with the common market.

45. Second, the companies entered into a number of commitments vis à vis the Commission relating to slot availability at the airports concerned, interlining and participation into Frequent Flyer Programmes (FFPs). The text of these commitments is annexed to the present decision and forms an integral part thereof.

46. More specifically, in order to facilitate new entry into the routes between Belgium and Switzerland, Swissair and Sabena have entered into the following

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(23) Swissair and the Belgian State, as Sabena's shareholders, have guaranteed the implementation of all committments given by Sabena.

(24) [Details regarding the operation of 5th freedom rights].

cumulative commitments which will remain valid until the end of the Winter 1999/2000 traffic period:

(i) In respect of the routes Brussels-Zürich and Brussels-Geneva, if a carrier wishing to start or increase a scheduled service on these routes cannot obtain the necessary slots through the normal allocation precedure, Swissair will make available per season a maximum of 12 daily slots at Zürich and 12 daily slots at Geneva, in order to enable the operation of a number of frequencies equal to the aggregate number of frequencies operated by Swissair and Sabena on each route.

(ii) In respect of the routes Brussels-Zürich, Brussels-Geneva, Brussels-Berne and Brussels-Basle, if a carrier wishing to start or increase a scehduled service on these routes cannot obtain the necessary slots through the normal allocation precedure, Sabena will make available per season a maximum of 18 daily slots at Brussels, in order to enable the operation of a number of frequencies equal to the aggregate number of frequencies operated by Swissair and Sabena on each route.

(iii) Provided that a new entrant has requested to service these routes, Swissair and Sabena will be prevented from increasing, without prior approval, the aggregate number of frequencies on each route beyond 25% above the present level.

(iv) Swissair and Sabena will enter into interline agreements with new entrants for a period of five years from the date of new entry.

(v) Swissair and Sabena will offer to new entrants who do not already participate in a FFP the possibility to participate in their FFP.

The respective coordinators at Brussels and at the Swiss airports have taken note of these commitments and have indicated to the Commission that they will bring them into effect to the extent that they fall within their areas of responsibility under applicable legislation.

47. The Commission considers that all these commitments taken together create the conditions required for effective new entry into the routes between Belgium and Switzerland. Given the importance of the routes involved in terms of traffic and/or facility of combination with other routes in the context of the networks of other European airliines, new entry is expected to occur with a sufficient degree of probability. These commitments, therefore, enable the Commission to conclude that the proposed concentration will not create or strengthen a dominant position both at the level of individual routes and at the level of the entire air transport network between the two countries.

48. Third, Swissair has undertaken vis à vis the Commission to terminate all effective cooperation with SAS under the EQA as from [ ][1] and [ ][25]. The implementation of this commitment will ensure that there is the potential for inter-network competition between Lufthansa/SAS and their associated airlines on the one hand and Swissair/Sabena and their associated airlines on the other hand. The Commission, therefore, considers that it is of a nature to eliminate any serious doubts as to the compatibility of the concentration with the common market arising from Swissair's participation in the EQA.

(25) Deleted business secret.

VI. Conclusion

49. For the above-mentioned reasons, and especially in light of the declaration made by the Swiss and Belgian governments and the commitments given by Swissair and Sabena, the Commission has concluded that the notified operation does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

<u>Undertaking by Swissair and Sabena</u>

1. Market access

Swissair and Sabena will not oppose the measures taken by the Swiss and Belgian governments allowing for multi-designation and competition in respect of any route between Belgium and Switzerland, without capacity limitations or price restraints.

2. Interline agreement

SWISSAIR and SABENA will enter into an interline agreement in respect of the routes concerned with any new entrant on the routes Brussels-Zurich, Brussels-Geneva, Brussels-Basel and Brussels-Berne for a period of five years from the date of such new entry. Such agreements shall be on reasonable terms and in accordance with the conditions which are normal in the industry (in particular as to credit-worthiness and reciprocity) without prejudice to community law rules with respect to interline agreements.

3. Frequent Flyer Programme

SWISSAIR and SABENA will offer to those competitors on Brussels- Zurich, Brussels-Geneva, Brussels-Basel and Brussels-Berne 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 prejudge the position of SWISSAIR and SABENA in this field. It is also understood that such a commitment will terminate when a European Union regulation concerning FFP has come into force.

4. Slots and frequencies

4.1. In respect of the routes between either Zurich or Geneva and Brussels airport, SWISSAIR will make available to carriers. not part of the SWISSAIR, or SABENA groups, which wish to commence or to increase a scheduled service on these routes, such slots at Geneva or Zurich as may be necessary to enable the aggregate of those carriers to operate a number of frequencies equal to the aggregate number of frequencies operated by SWISSAIR and SABENA on the relevant route. 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 sixty minutes (either way) of the time requested. SWISSAIR will make available slots to the carriers concerned within sixty minutes (either way) of the requested times, provided that SWISSAIR holds such slots and save that SWISSAIR will not be obliged to make available two similar slots for the same carrier less than two hours apart nor to make available a slot within two hours of a similar slot already held by a carrier for use on the route.

4.2. In respect of the routes between Brussels and either Zurich, Geneva, Basel or Berne, SABENA will make available to carriers, not part of the SWISSAIR or SABENA groups, which wish to commence or to increase a scheduled service on these routes. such slots at Brussels as may be necessary to enable the aggregate of those carriers to operate a number of frequencies equal to the aggregate number of frequencies operated by SWISSAIR and SABENA on each relevant route. 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 sixty minutes (either way) of the time requested. SABENA will make available slots to the carriers concerned within sixty minutes (either way) of the requested times, provided that SABENA holds such slots and save that SABENA will not be obliged to make available two similar slots for the same carrier less than two hours apart nor to make available a slot within two hours of a similar slot already held by a carrier for use on the route.

4.3. Swissair and Sabena shall abstain from scheduling flights for the sole purpose of obstructing new entries while they expect similar fair behaviour of such new entrants, as well as from the other carriers.

If SWISSAIR and SABENA increase the aggregate number of frequencies by 25 % (to be rounded upwards to the nearest integral number) above the present level on each of the routes Brussels-Zurich, Brussels-Geneva, Brussels-Basel and Brussels-Berne (i.e. six on each of the routes Brussels-Zurich and Brussels-Geneva, and seven on the route Brussels-Basel of which 3 fly on to Berne) and provided a new entrant has requested to service each or either of these routes, the parties shall seek the prior approval of the Director-General for competition for any further increase of frequencies. Frequencies related to long-haul routes (stop-over on long-haul flights with same aircraft) are not counted with regard to the above-mentioned level of frequencies.

4.4. In respect of each the above undertakings:

(i) the obligation in respect of slots and frequencies available shall expire at the end of Winter 1999 / 2000 traffic period;

(ii) the number of slots to be made available per season shall not exceed 12 daily slots at Zurich airport, 12 daily slots at Geneva airport and 18 daily slots at Brussels airport;

(iii) it shall be a condition that the slots made available by SWISSAIR and/or SABENA 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 SWISSAIR and/or SABENA so to use them on that route for a period of two consecutive seasons, unless the carrier withdraws from the route;

(iv) the undertaking to SWISSAIR and/or SABENA expected from the receiving carrier will not prevent it from exchanging those slots for others closer to the times it originally requested but that undertaking shall apply instead to the slots so obtained;

(v) 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 SWISSAIR or SABENA as the case may be in accordance with applicable regulations;

(vi) SWISSAIR and SABENA shall not be obliged to make slots available during any traffic period 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 Winter 1995 / 96 traffic period SWISSAIR and SABENA will make slots available if required by these undertakings provided a valid request is made within one month after publication of the Commission's decision in the Official Journal;

(vii) for the purpose of these undertakings the SWISSAIR group or SABENA group shall comprise SWISSAIR or SABENA and any air carrier over which either company can exercise a decisive influence in the meaning of Article 3 of Regulation 4064/89;

(viii) 'similar slots' mean slots to be used for the same purpose (i.e. to take-off or to land);

(ix) SWISSAIR and/or SABENA will make available to a carrier to which it has made available slots in accordance with these undertakings in one traffic period the same slots, or as near to the same slots as it is able, in the following traffic period, 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

(x) SWISSAIR and/or SABENA 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 SWISSAIR and/or SABENA recognise the desirability of meeting any requirement that turn-around times be kept within a period of 90 minutes on routes such as these;

(xi) reference to carriers who can avail themselves of these undertakings is to EEA licensed carriers or Swiss carriers designated on a route between Switzerland and Belgium.

4.5. These undertakings will be given effect as follows:

A carrier wishing to avail itself of the benefits of these undertakings shall write to SWISSAIR or SABENA respectively 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 every normal effort to obtain the slots necessary for its planned operation on the route which save in respect of the Winter 1995 / 96 traffic period, must include an application to the coordinator for slots by the due date prior to the slot meeting for the season concerned; then SWISSAIR and/or SABENA 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 SWISSAIR or SABENA is making available in accordance with its undertakings, then SWISSAIR or SABENA 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 no agreement is reached within a reasonable time, SWISSAIR or SABENA 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 undertakings set out in (iii) to (v) of paragraph 4.4.

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

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

SWISSAIR,
Swiss Air Transport Company Ltd.,

Signed at Zurich, on June 21, 1995

SABENA S.A. / N.V.,

Signed at Brussels on June 22, 1995