

*Case No IV/M.806 -  
British Airways / TAT  
(II)*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/08/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.08.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

**To the notifying parties**

Dear Sirs,

**Subject: Case No.IV/M.806 - BRITISH AIRWAYS/TAT  
Notification of 22 July 1996 pursuant to Council Regulation (EC) No. 4064/89**

1. On 22 July 1996 British Airways plc (United Kingdom) (BA) notified to the Commission an intended operation whereby it will acquire 50.5 per cent of TAT European Airlines (France) (TAT EA). BA currently owns 49.5 per cent of the shares of TAT EA.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 but does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I THE PARTIES**

3. British Airways plc is principally active in the carriage by air of passengers and freight.
4. TAT EA is a joint venture between BA and TAT SA (France). It is engaged primarily in the operation of air transport services within the French domestic market.

## II THE OPERATION

5. Until 1992 TAT SA had sole control of TAT EA. In 1992 BA acquired from TAT SA 49.5 per cent of the shares and joint control with TAT SA of TAT EA. The Commission declared that operation compatible with the common market (case IV/M.259 - British Airways/TAT, 27 November 1992)<sup>(1)</sup>. The 1992 agreement conferred upon BA an option, exercisable until 1997, to acquire the balance of the shares. BA now proposes to exercise that option.

## III CONCENTRATION

6. The present operation will confer upon BA sole control of TAT EA. It therefore constitutes a concentration within the meaning of article 3(1)b of the Regulation.<sup>(2)</sup>

## IV COMMUNITY DIMENSION

7. The undertakings concerned in the present operation are BA and TAT EA.
8. For the financial year 1 April 1995 - 31 March 1996 BA had a global turnover of ECU 9,363 million and a Community-wide turnover in excess of ECU 250 million. It thus satisfies both the worldwide and the Community-wide thresholds set out in article 1(2) of the Regulation.
9. For the financial year 1 April 1995 - 31 March 1996 TAT EA itself (ie excluding any group turnover within article 5(4) of the Regulation) had a global turnover of ECU 263,741,440, generated entirely within the European Union. The question arises whether any turnover derived from the sale of products or the provision of services by TAT EA to BA, TAT SA or their subsidiaries should be deducted from the turnover of TAT EA in accordance with article 5(1) of the Regulation.
10. In principle the turnover of the parents of an undertaking concerned by an operation is attributed to that undertaking for the purpose of calculating its turnover in accordance with article 5(4)(c) of the Regulation<sup>(3)</sup>. However the turnover of a parent which sells its interest in a company must not be attributed to the target company, since to do so would exaggerate the economic importance of the transaction by which the seller relinquishes all links with the target company. Similarly the attribution to a joint venture company of the turnover of a parent selling the joint venture company to the other parent would artificially inflate the turnover of the joint venture company. For the same reasons the seller in an operation is not considered to be an undertaking concerned<sup>(4)</sup>.

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<sup>(1)</sup> Decision upheld by the judgment of the Court of First Instance (19 May 1994) in case T-2/93- Air France v Commission

<sup>(2)</sup> See Commission notice on the notion of a concentration (94/C 385/02), point 40

<sup>(3)</sup> See also the Commission's notice on calculation of turnover (94/C 385/04) point 38 remark (3).

<sup>(4)</sup> See the Commission's notice on the notion of undertakings concerned, point 8

11. Equally the turnover of the buyer which is also the other parent of the target company should not be attributed to the joint venture company. The buyer is an undertaking concerned<sup>(5)</sup>, and such attribution would therefore result in double counting of its turnover in assessing the Community dimension of the operation.. The consequence would be that an operation whereby one parent of a joint venture company acquires sole control of that company would automatically have a Community dimension if the buyer satisfied the worldwide and Community-wide thresholds irrespective of the turnover of the target company.
12. In accordance with these principles in the present case neither the turnover of TAT SA nor the turnover of BA has been attributed to TAT EA.
13. From these principles it follows that no deduction should be made under article 5(1) of the Regulation for the turnover of the joint venture company derived from the sale of products or the provision of services to its parents or to companies connected with its parents within article 5(4) of the Regulation. In this way the parents and the joint venture company are treated consistently for both the attribution and the deduction of turnover.
14. Accordingly turnover derived from the sale of products or the provision of services by TAT EA to BA, TAT SA or their subsidiaries should not be deducted from the turnover of TAT EA in accordance with article 5(1) of the Regulation.
15. The operation therefore has a Community dimension within the meaning of article 1(1) of the Regulation.

## **V COMPATIBILITY WITH THE COMMON MARKET AND THE EEA AGREEMENT**

16. In its decision IV/M.259 - British Airways/TAT the Commission recognised that, although BA and TAT SA would exercise joint control over TAT EA, BA would have a substantial and growing influence over the way in which the joint venture would be run and developed as a result of its wide experience in the air transport sector and that BA would play a leading role in the management of the joint venture. TAT SA retained no airline interests after 1992.
17. Since 1992, TAT EA has been using the BA code, BA tickets and (with slight variation) the BA livery on its international routes. BA markets, sets the price of and sells TAT's tickets. BA has also given to TAT EA financial assistance indispensable for its survival, because TAT EA continues despite heavy losses to provide its international services in order in order to provide BA with connecting passengers. As a result, BA and TAT SA have operated the international routes of TAT EA in coordination with the equivalent BA services and as a single economic unit under the direction of BA.
18. In its decision IV/M.259 - British Airways/TAT, the Commission authorised the operation on the basis of commitments given by the parties which provided that if another carrier could not obtain from the airport coordinator the necessary slots on the Gatwick-Paris and Gatwick-Lyon routes British Airways would make available a

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<sup>(5)</sup> See the Commission's notice on the notion of undertakings concerned, point 7

specified maximum number of slots at Gatwick. According to the commitments, BA's obligation to make slots available continues until 1 April 1997.

19. Since 1992 several changes have occurred on the London-Paris routes, including (1994, following the Commission decision VII/AMA/II/93 - TAT - Paris (Orly)-London) the switch by TAT EA of its Gatwick-Charles de Gaulle service to Heathrow-Orly and the introduction of the Eurostar high-speed train service between London and Paris (2.5 million passengers carried in 1995-1996),
20. The second of these developments has led to a sharp decline (by over 19% between 1994/95 and 1995/96) of the overall air traffic on this route. The number of passengers on BA/TAT flights between London and Paris decreased in 1995/96 by over 14% and even larger declines have been suffered in the same period by other carriers (Air France 24%, British Midland 22%). Although British Midland continues to operate on the Heathrow-Charles de Gaulle route, it has recently withdrawn from the Heathrow-Orly route. With the increasing expansion of the Eurostar service and the reduced journey times which will result from the creation of high-speed tracks in the United Kingdom, and in view of the short distance of the London-Paris routes, Eurostar, which is operating at about 50% per cent capacity, is expected to exert considerable competitive pressure on the airlines operating on these routes, at least in respect of point-to-point traffic.
21. On the London-Paris routes, there is an overlap between the operations of BA and TAT on the Heathrow-Orly route and in terms of the London-Paris overall traffic. Depending on whether the traffic between London and Paris is taken as a whole or by airport, the share of BA/TAT in 1995/1996 was as follows:

<u>London (overall traffic) - Paris</u>		<u>Gatwick - Charles de Gaulle</u>	<u>Heathrow - Charles de Gaulle</u>
British Airways (including Dan Air and Brymon)	44.3%	No overlap	No overlap
Air France	27%		
British Midland	17.5%		
Air UK	4.5%		
TAT	4.4%		
Others	2.3%		
BA/TAT	48.7%		
		<u>Heathrow - Orly</u>	
		British Airways	26.4%
		Air France	33.9%
		TAT	21.1%
		British Midland <sup>(6)</sup>	18.6%
		BA/TAT	47.5%

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<sup>(6)</sup> As stated above, British Midland withdrew from this route at the end of the Winter 1995/1996 season. This withdrawal is likely to have only a small impact on airline shares in terms of London-Paris overall traffic, passengers carried on the Heathrow-Orly route amounting to about 20% of the London-Paris overall traffic.

22. If the passengers carried by Eurostar are included in the calculation Eurostar has currently by far the largest share of the London-Paris traffic (over 45 per cent in 1995/96), followed by BA/TAT (26.4 per cent), Air France (14.6 per cent) and British Midland (9.5 per cent).
23. In view of the nature of the notified operation as described above, the presence of well-established air carriers competing with BA-TAT on the London-Paris routes and the competitive pressure exerted by Eurostar in respect of point to point traffic, the operation does not create or strengthen a dominant position on these routes.
24. In view of the nature of the notified operation as described above, the presence of well-established air carriers competing with BA-TAT on the London-Paris routes and the competitive pressure exerted by Eurostar in respect of point to point traffic, the operation does not create or strengthen a dominant position on these routes as a result of which effective competition will be significantly impeded in the EEA or a substantial part of it.
25. Similarly, on the London-Lyon routes, the operation does not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the EEA or a substantial part of it, in view of its nature and the following facts. BA operates only from Heathrow and TAT only from Gatwick. There is an overlap between the parties for overall traffic, of which they will have about 70 per cent. Air France is also present on these routes - it operates only the Heathrow-Lyon route, which carries 85 per cent of the overall traffic- and carries about 30 per cent of the overall traffic. Under the third air transport package the operation of international services within the Community has been liberalised since 1993, with the result that there are now no longer any regulatory barriers to access to the London-Lyon routes.
26. The Commission also notes that, in the letters which are annexed to this decision, the parties have continued until 1 April 2000 the existing commitment<sup>(7)</sup> to make available slots at Gatwick, subject to minor modification<sup>(8)</sup>. Continuation of this commitment will facilitate market entry on the London-Lyon routes.

## **VI CONCLUSION**

27. For the above reason, the Commission has decided that the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
28. The Commission has therefore decided not to oppose the notified operation and to declare it compatible 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,

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<sup>(7)</sup> See IV/M.259 - British Airways/TAT, point 25

<sup>(8)</sup> The principal change is that if the new entrant to which the slots are transferred does not use them the slots revert to BA