Aviation: Commission raises competition concerns about co-operation agreement between Air France and Alitalia

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In November 2001, Air France and Alitalia notified to the Commission a number of co-operation agreements and requested an exemption under Regulation 3975/87, the regulation which lays down the procedure for the application of the European Union’s antitrust rules to the air transport sector.

The agreements pursue the double aim of integrating Alitalia into the world-wide SkyTeam alliance created by Air France and Delta Air Lines, the United States’s third largest airline, and of building a far-reaching, long-term strategic bilateral alliance based on close co-operation between the parties. The agreements would also interconnect the two airlines’ respective hubs at Paris-Charles de Gaulle, Rome Fiumicino and Milan Malpensa.

On 8 May 2002, the Commission published a summary of the co-operation agreements in the EU’s Official Journal, giving third parties the opportunity to submit their views.

Under Regulation 3975/87, publication of the summary triggers a 90-day period within which the Commission must decide whether to raise serious doubts or not. If it does not raise serious doubts, the agreement is automatically exempted for a period of six years from the date of publication.

The current co-operation agreement risks to restrict significantly competition between Air France and Alitalia, because the parties will agree on passenger capacity, flight frequencies and prices to be charged on flights between France and Italy. The agreements also includes code-sharing, sharing of earnings and the pooling of frequent flyer programmes.

Air France and Alitalia put together will control the quasi-totality of the traffic on a number of routes between the two countries, including Paris-Rome, Paris-Milan and Paris-Venice, where the two airlines have very high market shares. The pooling of forces between the two flag carriers will also make it difficult for third parties to enter the routes concerned in the future or, where third airlines operate, to maintain their operations. This is the case as regards both the ‘overlap’ routes (where the two parties operated independently prior to the conclusion of the agreement) and the non-overlap routes, where the non-operating party will now sell seats on the planes operated by its partner.

While the Commission services are satisfied that the alliance contributes to technical and economic progress, given the improvements in connectivity and the cost savings and synergies achieved by the parties, the agreement would significantly reduce competition on key routes between France and Italy, which would be against the interest of passengers on these routes. The Commission therefore decided to send the parties a letter of serious doubts before the expiry of the 90-day deadline, informing them that there are indeed competition concerns and that an antitrust exemption cannot be granted at this stage of the procedure. This does not prejudge the outcome of the procedure nor does it prejudge of the companies’ right to defend themselves.

As illustrated by the recent Lufhansa/Austria case, reported above, the Commission’s practice in this field shows that such restrictive agreements can only be allowed if conditions are created to preserve competition and therefore consumer choice. The Commission has therefore encouraged the parties to come forward with remedies that would allow it to consider that the problems identified have been solved.