COMMISSION DECISION

of 30 July 1991

relating to a proceeding pursuant to Article 85 of the EEC Treaty (case No IV/32.659 IATA Passenger Agency Programme)

(91/480/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Spain and Portugal, and in particular, Articles 6 and 8 thereof,

Having regard to the application for negative clearance and the notifications for exemption, submitted pursuant to Articles 2 and 4 of Regulation No 17 on 21 March 1988 and 6 November 1989, concerning certain Resolutions of IATA regarding passenger agencies.

Having regard to the summary of the application and notification published (2) pursuant to Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee for Restrictive Practices and Dominant Positions,

WHEREAS

I. THE FACTS

A. Subject of the Decision

(1) This Decision relates to the following IATA Resolutions dealing with travel agencies:

— Resolution 814: IATA sales agency distribution rules

— Resolution 814d: Travel agency commissioner

— Resolution 814e: Conduct of review by travel agency commissioner

('the Resolution 814 series').

B. The undertakings: IATA and its membership

(2) IATA is an association of enterprises composed of 189 member air carriers. It was founded at the international Air Transport Operators Conference at Havana, Cuba, in April 1945.

(3) Members of IATA are classified as active or associate. Any air transport enterprise operating an air service between the territories of two or more States is eligible for membership as an active member.

(4) The undertakings are the 154 active member airlines participating in the IATA passenger agency conference (Paconf). 35 IATA associate member airlines (3) do not offer international scheduled services nor participate in the Paconf. The arrangements, however, affect them because they comply with them.

C. The product: air travel agency services

(5) The IATA resolutions, subject of this Decision, concern air travel agency services, or the sale of air transportation for passengers through intermediaries.

D. The Market

(6) The global operating revenues for scheduled international passenger services of IATA member airlines in 1986, according to IATA financial statistical reporting forms, were US $ 37 250 million. The individual member's total turnovers ranged in 1986 from US $ 1,4 to 6 688 million. Revenues from international scheduled passenger traffic of IATA airlines based in the Community and members of the Association of European Airlines (AEA) amounted in the same year, according to the AEA Yearbook 1986, to US $ 14 995 million.

(7) All IATA member airlines use the passenger agency programme for their sales. The programme embraces over 26 000 sales outlets (agencies) in 165 countries, of which outlets 10 151 (1987 figures) are located in the Community. According to IATA the estimated 1987 sales volume of scheduled international air

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 267, 23. 10. 1990, p. 2.
(3) Annex for IATA Active and Associate Member.

transportation by IATA agents in the Community amounted to approximately US $ 14 914 million.

(8) Sales are made by means of a contract for carriage (ticket) issued to the passenger by the airline or, within the terms of the arrangements, by the airlines' appointed agent on the airlines' behalf. The airlines have their own sales shops in their biggest markets, but effect, according to IATA estimates, 70 % of their sales in Europe through travel agencies.

E. The agreements

THE IATA PASSENGER AGENCY PROGRAMME

General

(9) The passenger agency programme, which has been established by the PACONF and is the IATA's system for appointing intermediaries, is one of its basic institutions. It is argued that the main objective of the programme is to ensure that travel agency outlets selling on behalf of IATA members are competent and professional, provide dependable and impartial service to the public and appointing airlines, and handle the airline's monies and documents with integrity.

(10) The programme incorporates three main features:

(a) accreditation, whereby any person may seek approval to promote and sell international air transport for remuneration by IATA members, by satisfying specified basic criteria and entering into contractual relations with those airlines;

(b) bank settlement plans (BSPs), clearing houses which provide to both airlines and agents economies of scale and the benefits of standardization and automation in the collection and distribution of monies due from IATA agents to airlines. BSPs exist in all the Member States;

(c) training programmes, helping agents, both those already accredited and those which may seek IATA accreditation, to achieve and maintain in a cost-effective manner the standards required to help the customer to choose among the airline products offered.

(11) The management of the programme is assigned to the Agency Administration Division, within the IATA Secretariat.

The IATA resolutions under examination [1]

Qualifications for accreditation and retention as an IATA passenger agent

(12) Any person in possession of the appropriate official licences, where required, may become an accredited agent by making an application in the form prescribed to the IATA agency services manager in the country where such person carries on business, and by meeting the qualifications set out below. Such qualifications must continue to be met in order to ensure retention as an accredited agent. For this purpose the term 'applicant' when used below shall be understood to include an already accredited agent. In this context 'person' means an individual, partnership, firm, association, company or corporation whose activities, upon accreditation, include those of a travel agent serving the general public.

(13) The applicant shall submit independently produced financial statements prepared in accordance with local accounting practices as specified and published by the IATA body entrusted with accreditation; such statements shall be evaluated and found satisfactory pursuant to the methodology and standards established from time to time by the same body. To obtain a satisfactory evaluation, the applicant may be required to provide additional financial support in the form of recapitalization or of a bank or insurance guarantee. When the financial position of an agent is subject to review and the agent is unable to meet the financial criteria, normal business fluctuations shall be taken into account and the agent will be provided with a reasonable period of time to meet those criteria.

(14) Each place of business requiring a separate application, the applicant must wholly own and fully manage the business for which approval is sought as a branch office location.

(15) The applicant must have in its employment at least one staff member present at the place of business under application during the working hours of such place of business, who meets the necessary criteria of competence and experience in respect of the country where such place of business is located.

(16) The place of business under application shall be open for business on a regular basis, be identified and trade as a travel agency; provided that a place of business which does not meet the aforementioned conditions

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(1) Unless otherwise specified the provisions above are contained in Resolution 814.

may neverthelsess be approved if it meets all other qualifications and is:

(i) solely devoted to the organizing of inclusive tours and performs the issuance of traffic documents related to such inclusive tours only;

or

(ii) a branch office location situated on the premises of an organization, plant or commercial firm and dedicated substantially to the travel requirements of that organization, plant or commercial firm;

or

(iii) a satellite ticket printer location (see below).

IATA has provided an undertaking that the term 'substantially' under (ii) has no restrictive meaning and that any commercial firm wishing to run its travel department as a branch in-plant location can apply for accreditation according to the IATA rules.

The place of business shall not be located in office space jointly occupied with another travel agency, an accredited agent or an air carrier. There is no restriction on location at an airport.

(17) The applicant shall not have a name which is:

(i) the same as that of IATA or of one its members,

or

(ii) similar to the name of a member; provided that this shall not preclude approval of such applicant by the agency services manager if no protest is received from any member.

The place of business must not be identified as an office of an IATA member or of a group of IATA members.

(18) The applicant, its managerial staff or its principal shareholders, directors or officers or managers shall not have been found guilty of wilful violations of fiduciary obligations incurred in the course of business nor be undischarged bankrupts.

(19) No person who is a director of, or who holds a financial interest or a position of management in, the applicant shall have been a director of, or had a financial interest or held a position of management in, an agent which has been removed from the agency list, or is under notice of default, and still has outstanding commercial debts, or in such an agent whose commercial debts where met solely or in part by recourse to a financial bond or guarantee; provided that the applicant may nevertheless be approved if such person did not participate in the acts or omissions that caused such removal or default.

(20) The applicant is not a general agent in the country (whether or not for the whole of the country) or any air carrier; provided that this shall not preclude approval of such an applicant by the agency services manager if the application contains evidence to his satisfaction that the applicant will have ceased to be such a general sales agent before the date of effectiveness of the agency services manager's decision to accredit the applicant.

(21) The premises in respect of which approval is sought shall meet the security standards set out in the resolution and the applicant undertakes to implement the security precautions prescribed. (This because unwritten airline tickets are valuable).

(22) In respect of the issue of tickets and other traffic documents after approval, an agent shall comply with the relevant provisions in the programme.

(23) Where officially required, the applicant must be in possession of a valid licence to trade.

(24) All material statements made in the application shall be accurate and complete. Various fees have to be paid by the applicant in order to become an accredited agent.

(25) In case that the applicant applies for a satellite ticket printer (STP) location, i.e. a place of business in which a device which is capable of printing documents is set, under control of an IATA agent, the qualifications refer mainly to security standards in order to avoid that unauthorized parties print tickets. At least one qualified person must be in charge of the STP. Such person need not necessarily be employed by the agent.

Procedures for accreditation

(26) The applicant is required to complete an application form and submit it to the competent IATA agency services manager, accompanied by the necessary documents and financial statements and by fees, including application, entry and first annual agency fees. The manager must ask the applicant to provide additional information.

(27) The manager will publish a listing of the applications received in order that the IATA members may within 45 days file evidence and indicate the grounds why, in their opinion, the applicant does not meet the qualifications. In this case the applicant is informed and invited to respond.

(28) A decision must be taken within 60 days of the date of publication of the listing. The applicant is to be notified promptly in writing and, in the event of rejection, must be given clear reasons why the application failed.

(29) A rejected applicant may, within 30 calendar days of the manager's notice, request reconsideration of his decision, or otherwise invoke the procedures for review by the travel agency commissioner (the commissioner).

IATA members having opposed a successful accreditation may also request reconsideration or review of the manager's decision.

(30) Successful applicants will be entered on the IATA agency list and the IATA Director General will execute a sales agency agreement on behalf of such IATA members as may appoint agents.

(31) Accredited agents included in the agency list may be appointed by individual IATA airlines:

— either by means of a statement of general concurrence appointing all accredited agents delivered by the airlines and deposited with IATA,

— or by the airline delivering to such agent a certificate of appointment.

IATA members are entitled to cancel an agent's appointment.

Custody and issue of tickets and other traffic documents

(32) The issuance of tickets is made by IATA agents on behalf of the member airlines which have appointed them, either by using the individual members' tickets or traffic documents, or by using standard IATA tickets to be validated with the individual carriers' identification plates which, accordingly, have to be handed to the agents.

(33) Resolution 814 provides in section D, first paragraph, that no airline or IATA member participating in a BSP may deposit or maintain stocks of its own traffic documents with any IATA agent. This is to convey ticket sales clearing toward BSPs. IATA has submitted that a number of BSPs are only marginally viable and that their viability could be jeopardized by allowing the placing of carriers' own tickets with agents, since these tickets are not handled through the BSPs. IATA has undertaken to take the action required, such as action towards consolidation of BSPs, so that this restriction could be eliminated within a maximum of three years.

Payment of Commission

(34) Agents duly appointed by IATA members are paid commission for the sale of international air passenger transportation, at such rate as may be authorized from time to time by individual member airlines. The resolution contains rules as to how to calculate commission, and rules related to refunds and to sales to governments. There is no ban on splitting commissions with the customer.

Administrative rules

(35) Resolution 814 also contains technical and administrative rules on how to report and remit payments through the BSP or directly to airlines, rules on agents' indebtedness and default, and rules on change of ownership, legal status, name or business place.

Measures affecting agents' standing

(36) Agents may relinquish accreditation or may be removed by IATA, for the reasons specified in resolution 814 (e.g. not meeting the qualifications for retention, because of default or delinquency, etc.). They may also be suspended or reprimanded. The procedures and the effects of the various situations are specified, also.

Review of IATA agency administration decisions affecting applicants and agents, and review of agents' status

(37) Decisions affecting applicants and agents, issued by the competent IATA bodies may be reviewed at first instance by an IATA commissioner appointed for that purpose, referred to in resolution 814d, who will also deal with the review of the agents' status when some grievance against him has been raised by the IATA agency administration. The decisions of the commissioner are, for their part, subject to review by arbitration. Procedures for review by the commissioner are contained in resolution 814e. Procedures for review by arbitration are contained in resolution 814.

Review of a member's individual decisions

(38) Resolution 814 provides for the right of review of IATA members' individual decisions affecting agents. Accordingly, an agent which considers itself aggrieved by the decision of a member:

(a) to refuse to appoint such agent;

or

(b) to withdraw its appointment of such agent;

or

(c) in the case of a Member participating in the BSP:

(i) to refuse to supply its carrier identification plate to,

or

(ii) to withdraw its carrier identification plate from any such agent's locations;

or

(d) in the case of a member not participating in the BSP:

(i) to refuse to supply its traffic documents to,

or

(ii) to remove its traffic documents from any of such agent's locations,

with the result that such agent's commercial interests are adversely affected to the point of placing its business in jeopardy, has the right to obtain such member's criteria for appointing agents or reasons for refusal, withdrawal or removal. If the agent believes such justification is unreasonable then the agent is required in the first instance to seek clarification and satisfaction from the member. If the issue is not thereby resolved, then the agent has the right to have the member's decision reviewed. When the member's decision was made in application of the collective provisions, the agent's right for review is not to be exercised against the member individually but according to the general rules on resolution 814e.

(39) IATA has adopted resolution 814e in order to deal with individual member's decisions review procedures. These rules treat both agents and airlines on an equal footing.

Implementation

(40) IATA undertook that resolutions 814, 814d and 814e would be implemented in all Member States not later than 31 December 1990.

At the same time the regimes set forth by IATA resolutions series 800, 808 and 802 would no longer apply to agents whose places of business are within the Community.

F. The resolutions 814 series as compared to the previous regimes

(41) On 15 June 1989, following IATA's notification of 21 March 1988 the Commission sent IATA a statement of objections based on Article 19 (1) of Regulation No 17 concerning the following IATA resolutions:

— resolution 800: Passenger sales agency administration rules, (as amended);

— resolution 800a: Application form for approval as an IATA Passenger Sales Agent;

— resolution 800b: Passenger sales agency agreement;

— resolution 808: Passenger sales agency rules — Europe, (as amended);

— resolution 808e: Conduct of review by travel agency commissioner;

— resolution 802: IATA agency distribution system — Europe, (as amended).

(42) Following this statement of objections, IATA informed the Commission that a new resolution to be applied within the European Community would be prepared. This new Resolution would replace resolutions series 800, 802 and 808. On 6 November 1989 resolution 814 series were notified.

(43) As compared to resolutions 800, 808 and 802 the resolution 814 series have eliminated a number of restrictions on agents:

— there is no 'productivity criterion', i.e. the need that applicants attain a minimum turnover in order to get IATA accreditation;

— staffing requirements have been lowered to the minimum levels necessary to offer a reliable service to customers;

— there is no prohibition of granting rebates to the benefit of the customer by commission splitting;

— there is no prohibition of non-cash payments to agents (beneficial services);

— there is no veto right for flag carriers when implementing Resolution 814 in their own country;

— procedures for accreditation have been shortened;

— there is no ban on locating agencies at airports;

— rules on premises and branch offices have been relaxed in order to permit in-house travel departments of commercial firms to get the IATA accreditation;

— any person, and not only already established travel agents, may obtain the IATA accreditation by fulfilling the criteria therefor;

— a neutral review and arbitration procedure has been established that will permit agents to contest decisions that might hamper their commercial activities. This is especially important in case of dominant carriers' individual decisions.

(44) Another major step forward has been the elimination of exclusivity arrangements from the passenger agency programme. Accordingly, IATA agents are entitled to work for non-IATA airlines, or for IATA airlines on a bilateral basis, while airlines are entitled to enter into agreements with non-IATA agents.

G. Comments of interested parties

(45) A letter with comments was received by the Commission from Mr E. Theophanopoulos, Director of Marines TRV Services Ltd, a travel agency in Athens, also member of the board of the Greek Travel Agents Association and of the IATA Agency Programme Joint Council in Greece. While proposing possible changes in the text of IATA resolutions 814, 814d and 814e, Mr Theophanopoulos criticizes the provisions in paragraph 33 of this Decision and the way IATA resolutions are approved by the Greek authorities. He suggests that greater transparency should exist concerning the general terms of the airlines' business relationship with travel agents, too. He does not oppose the exemption, however. The Commission has taken into consideration Mr Theophanopoulos' comments for the drafting of this decision.

No comments opposing the present exemption for the IATA resolution 814 series were received from interested third parties in response to the Commission's notice pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

(46) The agreements among member airlines of IATA referred to in paragraph 1 fall within Article 85 (1) since they restrict competition and affect trade between Member States. They cannot therefore be given negative clearance as the IATA requests. They can, however, be exempted pursuant to Article 85 (3).

A. Article 85 (1)

(47) IATA member airlines are undertakings within the meaning of Article 85 (1), and the arrangements made between them and formalized in the IATA resolution 814 series constitute agreements and decisions of an association of undertakings falling within the scope of that Article.

(a) *Object and effect of restricting competition*

(48) The abovementioned agreements and decisions restrict competition between individual IATA member airlines at the level of distribution of their passenger air transport services, from the moment they agree to apply collectively an identical distribution scheme for a very important part of their sales. Although the selective system is not exclusive for agents or for carriers and there is no territorial limitation imposed on agents, the IATA programme is in fact the favourite distribution channel for most airlines.

Distribution policies are thus aligned to a certain degree with most other airlines for an important part of their business.

(49) The distribution and sales system agreed by IATA member airlines leaves little room for other forms of distribution based on a different type of policy that could be adopted by individual IATA airlines, and results in a rather rigid sales structure. Should the IATA system not exist, each airline would have its own network of agents, normally different from those of its competitors. This would produce greater competition both between agents and between airlines.

(50) The resolutions have also the greatest impact in the travel agency business community in the Community and create a more rigid structure than bilateral systems, which would introduce stronger elements of competition in distribution.

(51) Thirdly, competition between agents will be affected, even though sharing commissions with customers is allowed. Some limitation in competition is inherent in any collective distribution system in which criteria for selection are homogeneous. Thus competition for sales between specialist agents like IATA's will necessarily remain more limited than could be expected otherwise.

Furthermore competition with non-IATA agents or with other participants in the distribution market outside the IATA framework will be distorted because membership of the collective IATA agency system gives some agents an artificial advantage over distributors who remain outside the system.

(52) From the above there can be little doubt that the relevant IATA resolutions affect the structure of competition on the European Community market as a whole at the three levels just mentioned.

(53) As for the restriction referred to in paragraph 33, it is a disincentive for most of the IATA airlines to enter into bilateral distribution deals with IATA accredited

agents outside the IATA framework. Competition is restricted in that IATA agents are not able to freely operate parallel distribution channels with individual members of IATA on a bilateral basis.

(b) *Effect on trade between Member States*

(54) The IATA resolutions under examination concern services in which there is a substantial trade within the Community, as evidenced in recitals 7 to 9. The programme, permitting sales of air transportation all over the world affects all IATA members' distribution policies in the Community.

Therefore, the agreements have an effect on intra-Community trade, as they produce a substantial impact in the whole structure of competition.

B. Article 85 (3)

(55) The IATA resolutions under examination meet the conditions for exemption laid down in Article 85 (3). They contribute to improving the production and distribution of goods and to promoting technical and economic progress, while allowing customers a fair share of the resulting benefit. They neither impose, on the undertakings concerned, restrictions which are not indispensable to the attainment of these objectives nor do they afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Improvement in production and distribution, promotion of technical and economic progress

(56) The resolutions permit central administration of IATA agents can afford a reduction in airlines' costs of administering their retail agents; many airlines could not afford to administer a large chain of agents of their own, and in particular small/medium sized airlines regard the IATA agency system as an irreplaceable essential. The advantages are particularly attractive for airlines with extensive international operations, providing market access which would be otherwise difficult and expensive to achieve. Through a single standard agreement executed with IATA, an agent whose authorization to represent IATA members is recognized after appropriate appraisal may issue tickets on behalf of any appointing member. The system promotes worldwide standards in selling the airlines' products and upholds the financial integrity of marketing outlets.

(57) The IATA resolution 814 system contributes to improving the distribution of the air transport product by:

(a) offering each member airline the benefits of economies of scale by:

— identifying and accrediting suitable sales outlets,

— standardising contractual relationships with Agents,

— promoting higher standards of competence and reliability in the distribution industry;

(b) providing agents with:

— a shortened accreditation procedure on non-discriminatory grounds,

— a simplified contractual relationship with all IATA member airlines,

— immediate ability to sell the services of most airlines,

— simplified administration, reporting and staff training,

— a built-in procedure for the even-handed treatment of disputes with airlines, through reference of such disputes to a neutral arbitration body,

— the professional back-up of the IATA secretariat (publications, advice, training programmes etc.),

— the professional standing which accompanies IATA accreditation.

(58) The provisions of resolution 814 referred to in recital 33 will permit marginally viable BSPs to consolidate during a reasonable period in which ticket sales clearing will be performed mainly via established BSPs. BSPs are regarded by airlines and agents alike as a very cost-effective way of clearing their own accounts by greatly reducing administrative costs through standardization.

Advantages for customers

(59) The IATA system as put forward by resolution 814 series allows customers a fair share of the resulting benefits through:

(a) reliability standards required of agents (financial viability, staff qualifications and experience, security of premises and ticket stock);

(b) wide choice of IATA agents (10 000 throughout the Community and increasing, following resolution 814's criteria);

(c) access to agents representing a large number of major airlines;

(d) increased competition between IATA agents by permitting them to grant rebates out of their commission.

(60) Preserving the BSP clearing system will allow agents to avoid costly paperwork. Economies thereof will be passed on to customers via, *inter alia,* commission splitting.

Indispensability for the restrictions

(61) The standardization and the economies of scale achieved by the system set forth by the resolutions could not be obtained without a uniform international system. In effect, the IATA system is based on the high number of airlines and the high number of agents involved therein. Its restrictive features, but also its beneficial effects stem from this fact. Those and the others are inseparable.

(62) As for the provisions referred to in recital 33, being temporary, they are indispensable for preserving certain marginally viable small Member States' BSPs. Directing ticket sales clearance to them will make costs per ticket decrease, so that airlines and agents will continue to find it economical to patronise these marginal BSPs. In this way the BSP system will keep on covering the whole Community.

Elimination of competition

(63) Competition among airlines at distribution level is not eliminated by the IATA resolution 814 series system. Airlines are free to offer agents the remuneration, via commission or otherwise, they consider appropriate. They are also free to make their own sales and to establish their own distribution network on a bilateral basis, on conditions different from those agreed in IATA.

(64) As stated in recital 63, airlines are allowed to and in fact effect part of their sales by parallel competing channels. Competition is not eliminated by the resolutions, which in no case impose exclusivity on the interested parties.

(65) A substantial competition among agents, IATA or non-IATA, and whether appointed on a multilateral basis or on a bilateral basis, will remain. In effect, IATA agents will compete not only by offering better service to their customers, but also by sharing commissions with the customer. They will also compete with non-IATA agents. Although limited in number at present, there is also the possibility that some IATA-accredited agents may enter into bilateral deals with IATA airlines and compete on a non-IATA basis with other fellow IATA-accredited agents.

(66) Regarding recital 33, apart from the competitive elements referred to above, this restriction is limited to the placing of individual airlines' ticket stocks in IATA agents' premises in certain cases. It does not actually prohibit bilateral deals outside the IATA framework, although it is a disincentive for doing so. Only the airlines participating in a given BSP are subject to this provision which, in any event, permits bilateral case-by-case deals between IATA agents and IATA airlines on a non-IATA basis, provided that stocks are not kept by the agent.

(67) Concerning this point, in conclusion, the Commission considers that competition is not eliminated by the IATA system because, together with it, actual and future methods of distribution based on different types of polices co-exist and will further develop in a progressively liberalized European market for services in general and agencies and air transportation in particular.

Economic and structural impact of the resolutions under examination

(68) The regime set up by IATA resolutions 814, 814d and 814e goes in the sense of liberalization, is more responsive to market realities than the previous resolutions, and was prompted by the Commission's intervention following IATA's notifications.

(69) As a result of the changes introduced into the system, the relationship between agents and IATA airlines becomes more balanced and entry into the air travel sales business on behalf of IATA members is easier, without any loss as to agent's competence or reliability. As a result of this, sales outlets are likely to increase in number, to the benefit of the customer, who will also benefit from the increased competition among agents.

(70) In the opinion of the Commission the resolution 814 system should avoid the risk of abuse or discriminatory application of the procedure set forth.

In this sense it is noteworthy that any refusal of approval to someone satisfying the criteria would be discriminatory, and that local implementation should not deviate from those criteria.

(71) In a time of air travel expansion and increasing liberalization in European air transportation, the passenger programme as set forth in resolution 814 series may play an important role in making the market more fluid to the benefit of airlines, agents and customers alike.

Duration of the exemption

(72) Article 8 (1) of Regulation No 17 provides that exemptions under Article 85 (3) may be granted only for a specific period and that conditions and obligations may be attached to them.

(73) In view of the nature of the agreements and decisions under examination, the appropriate duration of the exemption, which serves the objectives listed in Article 85 (3), is considered to be 10 years from the date of the first notification, that is until 20 March 1998.

(74) As regards the specific provision of resolution 814 referred to in recital 34, the appropriate duration is considered to be until 31 December 1992.

(75) The Commission does not deem it necessary to impose any conditions or obligations, and relies as to the interpretation of certain clauses of the resolutions on the undertakings provided by IATA on 25 January 1990. They concern in particular the interpretation of the term 'substantially' referred to in recital 16, the duration of the provision in recital 33 and the adoption of an adequate procedure for review of individual members' decisions referred to in recital 39. However, the Commission will closely monitor the working of the system before this exemption expires, in order to assess whether a renewal could be granted, if it were requested,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3), the provisions of Article 85 (1) of the EEC Treaty are hereby declared inapplicable for the period 21 March 1988 to 20 March 1998 to IATA resolutions 814, 814d and 814e, except the provisions of resolution 814, section D, first paragraph, referred to in recital 33 of this Decision, in which case the period will be 6 November 1989 until 31 December 1992.

Article 2

This Decision is addressed to the International Air Transport Association and to the undertakings listed in the Annex to this Decision.

Done at Brussels, 30 July 1991.

For the Commission

Leon BRITTAN

Vice president

ANNEX

International Air Transport Association — membership

189 Members (154 Active and 35 Associate) on 15th February 1990

Active members

Adria Airways
Aer Lingus plc
Aeroflot Soviet Airlines
Aerolíneas Argentinas
Aerolineas Nicaraguenses SA (AERONICA)
Aerovias de México SA de CV (AEROMEXICO)
Aerovias Nacionales de Colombia SA (AVIANCA)
Affretair (PVT) Ltd
Air Afrique
Air Algérie
Air Botswana
Air Bremen GmbH & Co.
Air Bridge Carriers Ltd
Air Canada
Air Europe Ltd
Air France
Air Gabon
Air Guinée
Air Jamaica Ltd
Air Littoral
Air Madagascar
Air Malawi Ltd
Air Malta Company Ltd
Air Martinique
Air Mauritius
Air New Zealand Ltd
Air Niugini
Air Pacific Ltd
Air Seychelles Ltd
Air Tanzania Corporation
Air Tungaru Corporation
Air UK
Air Zaïre
Air Zimbabwe Corporation
Air India
Airline of the Marshall Islands
Alaska Airlines Inc.
Alisarda SpA
Alitalia — Linee Aeree Italiane SpA
All Nippon Airways Co., Ltd
American Airlines Inc.
America West Airlines, Inc.
Ariana Afghan Airlines Co. Ltd
Austrian Airlines
Balkan Bulgarian Airlines
Berlin European UK Ltd
Birmingham European Airways plc
Braathens SAFE
British Airways plc
British Midland Airways Ltd
Brymon Airways
Cameroon Airlines
Canadian Airlines International Ltd
Caribbean Air Cargo Company Ltd
Ceskoslovenske Aerolinie (CSA)
Compañía Mexicana de Aviación SA de CV (MEXICANA)
Continental Airlines Inc.
Cook Islands International Airlines Ltd
Crossair
Cruzeiro do Sul SA — Servicos Aéreos
Cyprus Airways Ltd
Dan-Air Services Ltd
Delta Air Regionalflugverkehr GmbH
Democratic Yemen Airlines (ALYEMOA)
Deutsche Lufthansa AG (LUFTHANSA)
Eastern Air Lines Inc.
Egyptair
El Al Israel Airlines Ltd
Emirates
Empresa Consolidada Cubana de Aviación (CUBANA)
Empresa de Transporte Aéreo del Perú (AEROPERU)
Empresa Ecuatoriana de Aviación SA (ECUATORIANA)
Ethiopian Airlines Corporation
Federal Express Corporation
Finnair Oy
Friendly Islands Airways Ltd
Gambia Air Shuttle Ltd
Garuda Indonesia
German Wings Luftfahrtunternehmen GmbH
Ghana Airways Corporation
Gulf Air Company GSC
Hong Kong Dragon Airlines Ltd (DRAGONAIR)
IBERIA, Líneas Aéreas de España SA
Icelandair
Indian Airlines
Iran Air, The Airline of the Islamic Republic of Iran
Iraqi Airways
Jamahiriya Libyan Arab Airlines
Japan Airlines Co. Ltd
Japan Air System Co. Ltd
Jugoslovenski Aerotransport (JAT)
Kenya Airways Ltd
KLM Royal Dutch Airlines
Korean Air
Kuwait Airways Corporation
LAM — Linhas Aéreas de Moçambique

Lauda Air Luftfahrt AG
Lesotho Airways Corporation
Línea Aérea del Cobre SA (LADECO)
Línea Aérea Nacional — Chile SA (LAN-CHILE)
Líneas Aéreas Costarricenses SA (LACSA)
Líneas Aéreas Paraguayas — LAP
Lloyd Aéreo Boliviano SA (LAB)
Loganair Ltd
London City Airways
MALEV — Hungarian Airlines
Manx Airlines Ltd
Middle East Airlines Airliban (MEA)
Nationair Canada
NFD Luftverkehrs AG
Nigeria Airways Ltd
Nippon Cargo Airlines (NCA)
Olympic Airways, SA
Pakistan International Airlines Corp. (PIA)
Pan American World Airways, Inc.
Philippine Airlines Inc.
PLUNA — Primeras Líneas Uruguayas de Navegación Aérea
Polskie Linie Lotnicze (LOT)
Polynesian Airlines Ltd
Qantas Airways Ltd
Royal Air Maroc
Royal Jordanian (ALIA — The Royal Jordanian Airline)
Royal Swazi National Airways Corp. Ltd
Ryanair Ltd
SABENA (Société anonyme belge d'exploitation de la navigation aérienne)
Saudi Arabian Airlines Corp. (SAUDIA)
Scandinavian Airlines System (SAS)
Scottish European Airways
Solomon Airlines
Somali Airlines
South African Airways (SAA)
Sudan Airways Company Ltd
Swedair AB
Swiss Air Transport Co. Ltd (SWISSAIR)
Syrian Arab Airlines
TAGG — Linhas Aéreas de Angola (ANGOLA AIRLINES)
TAP — Air Portugal
Tempelhof Airways USA Inc.
Tower Air Inc.
Trans-Mediterranean Airways SAL (TMA)
Transavia Holland BV d/b/a Transavia Airlines
Trans World Airlines Inc. (TWA)
Trinidad & Tobago (BWIA International) Airways Corp.
Tunis Air
Turk Hava Yollari AO (TURKISH AIRLINES)
United Airlines
USAir, Inc.
UTA (*Union de Transports Aériens*)
VARIG SA (Viaçao Aérea Rio-Grandense)
Venezolana Internacional de Aviación SA (VIASA)
Virgin Atlantic Airways
YEMENIA Yemen Airways
Zambia Airways Corporation Ltd
ZAS Airline of Egypt

Associate members

Aero Lloyd Flugreisen GmbH & Co. Luftverkehrs-KG
Air America (Air Specialities Corp. d/b/a Air America)
Air Écosse Ltd
Air Inter (Lignes Aériennes Intérieures)
Air Réunion
Air Tahiti
Aloha Airlines, Inc.
Ansett Airlines of Australia
Ansett New Zealand
Austral Líneas Aéreas SA
Australian Airlines Ltd
Aviación y Comercio, SA (AVIACO)
Commercial Airways (Pty) Ltd
DLT Deutsche Luftverkehrsgesellschaft mbH
Douglas Airways Pty Ltd
East-West Airlines
Falcon Cargo AB
Flight West Airlines Ltd
INTAIR
IPEC Aviation
Kendell Airlines
LAR Transregional (Linhas Regionais SA)
Mount Cook Airlines
Namib Air (Pty) Ltd
Salair AB
Sunflower Airlines Ltd
Sunstate Airlines
TALAIR Pty Ltd
Transbrasil SA Linhas Aéreas (Trans Brasil)
Trans-Jamaican Airlines Ltd
Transport Aérien Transregional (TAT)
Vayudoot Ltd
Viaçao Aérea Sao Paulo SA (VASP)
Wairarapa Airlines Ltd
Wideroe Flyveselskap A/S