COMMISSION DECISION

of 30 July 1991

relating to a proceeding pursuant to Article 85 of the EEC Treaty (Case No IV/32.792 — IATA cargo agency programme)

(91/481/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 7 July 1988, 2 October 1989 and 17 April 1990, concerning certain resolutions of IATA regarding cargo 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 to the following IATA resolutions dealing with cargo agencies:

— resolution 805: IATA cargo agency distribution system rules, Europe,

— resolution 805d: agency commissioner,

— resolution 805e: Conduct of review by agency commissioner,

('the Resolution 805 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 Cargo Agency Conference (Caconf). 35 IATA associate member airlines [3] do not offer international scheduled services nor participate in the Caconf. The arrangements, however, affect them because they comply with them.

C. The product: air freight agency services

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

D. The Market

(6) According to IATA the global operating revenues for scheduled international cargo services of all IATA member airlines in 1989, were approximately US $ 12 500 million, out of total revenues for all services (passenger, cargo, mail and other) of about US $ 70 700 million. The individual members' total turnovers (passenger, cargo, mail and other) range from US $ 1,5 million to US $ 9 960 million.

According to the Association of European Airlines (AEA) Yearbook Statistical Appendices for 1988, the total revenues of AEA airlines based in the Community [4] coming from international cargo traffic amounted to US $ 4 899 million.

(7) All IATA member airlines use the cargo agency programme for their sales. IATA accredited cargo agents, which number approximately 1 000 in the

---

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 320, 20. 12. 1990, p. 4.

(3) See Annex for IATA Active and Associate Members.
(4) Community Carriers in AEA comprise Aer Lingus, Air France, Alitalia, British Airways, Iberia, KLM, Lufthansa, Luxair, Olympic, Sabena, SAS, TAP and UTA.

Community, of a total of some 3 000 IATA agents registered worldwide, are in the majority independent businesses. (It is estimated that in the Community there are approximately 300 to 400 professional intermediaries handling international cargo not registered as IATA cargo agents.) However, they may sometimes be part of a group of companies. In a few instances, they are controlled by transport enterprises such as railways and shipping lines and even by member airlines of IATA.

(8) Sales are made by means of a contract for carriage (air waybill) issued 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 outlets in their biggest markets, but make, according to estimates, approximately 70 % of their sales in Europe through IATA cargo agents, the remainder being handled through airlines' own sales offices, or through their general sales agents.

E. The agreements

THE IATA CARGO AGENCY PROGRAMME

General

(9) The cargo agency programme, which has been established by the Caconf and is the IATA's system for appointing intermediaries, in the field of cargo carriage, is one of its basic institutions. It is argued that the main objective of the programme is to ensure that cargo agency outlets selling on behalf of IATA members are professional, provide dependable service to shippers and appointing airlines, and handle shippers' goods and airlines' monies with integrity.

(10) The programme incorporates three main features:

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

(b) cargo accounts settlement systems (CASS), 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 to airlines.

(c) vocational training programmes, helping intermediaries, both IATA agents and others which may seek IATA accreditation, to achieve and maintain in a cost-effective manner the standards required to help the customer to make his choice of the airline products offered; this is particularly important in developing competence in handling of dangerous goods, to ensure safety of passengers, of crew and of aircraft on which these shipments are loaded.

(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 cargo agent

(12) Any person in possession of the appropriate official licences, where required, may become an IATA cargo agent by making an application in the form prescribed to the IATA agency administrator 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 IATA cargo agent. For this purpose the term 'applicant' when used below shall be understood to include an already accredited agent.

(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 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 reviewed, if the agent is unable to meet the financial criteria, normal business fluctuations shall be taken into account and the agent will be provide with a reasonable period of time to meet those criteria.

(14) The applicant is required to employ at all places where it makes air cargo for carriage full-time staff competent and qualified to provide the services and handling functions set by IATA. The applicant must supply evidence that:

---

(1) Unless otherwise specified the provisions above are contained in Resolution 805.

(a) two such persons hold an adequate basic diploma having completed an acceptable course;

(b) two such persons, at the time of application and at all time subsequent to registration;

(i) hold an IATA/FIATA (Fédération internationale des associations de transitaires et assimilés — International Federation of Air Freight Forwarders Associations) advanced diploma including training in handling of dangerous goods, obtained within the previous two years; or

(ii) have completed, within the previous two years, an equivalent dangerous goods course of training given by an IATA member, or another training course in handling dangerous goods recognized by IATA and offered by another entity.

(15) The applicant must in the country concerned:

(a) maintain and operate at least one office (or a department of such an office) engaged in the promotion or sale of international air cargo transportation over the lines of IATA members, and the handling of consignments therein;

(b) have adequate insurance to cover its liability for loss of or damage to shippers' cargo.

(16) The applicant must have premises, staff and equipment for the performance of the following functions as a minimum:

(a) quoting airlines' rates and charges and conditions pertaining to such rates and charges;

(b) assisting customers in completing the required formalities for the transportation of cargo by air, including reservation services;

(c) delivering (or arranging for delivery of) consignments to an airline at any airport designated by the airline for general acceptance of all consignments ready for carriage;

(d) accepting restricted articles for carriage and delivery (or arranging for delivery) to an airline in accordance with the applicable dangerous goods regulations;

(e) collecting charges from customers, and remitting monies due to carriers.

(17) Where officially required, the applicant must be in possession of a valid licence to trade. Suspension or withdrawal of this licence constitute grounds to initiate a review of the agent.

(18) The applicant must not have a name which is:

(i) the same as or misleadingly similar to that of an IATA member;

or

(ii) the same as that of another IATA cargo agent in the same country; this prohibition does not apply to persons entered on the cargo agency list prior to 1 April 1984.

The place of business must not be identified as an office of an IATA member.

(19) The applicant, its managerial staff, its principal shareholders (and persons for whom they act as nominees), directors, officers and managers shall not have been found guilty of wilful violations of fiduciary obligations incurred in the course of business nor be undischarged bankrupts.

Procedures for accreditation

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

(21) The administrator will publish a listing of the applications received in order that the IATA members may within 30 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.

(22) A decision must be taken within 45 days of the date of publication of the listing. The applicant is to be notified promptiy in writing and, in the event of rejection, must be given clear reasons why the application failed.

(23) A rejected applicant may, within 30 calendar days of the agency administrator's notice request reconsideration of his decision, and where still aggrieved, subsequently invoke the procedures for review by the agency commissioner referred to in resolution 805d (see recital 32 below).

(24) Successful applicants will be entered on the IATA cargo agency list and the IATA Director General will execute a cargo agency agreement with each person registered as an agent. The agency administrator must promptly notify all airlines of the names of parties executing cargo agency agreements and the dates of

such agreements. The agency administrator is required to maintain, publish and circulate from time to time a cargo agency list of all persons with whom the Director General has entered into a cargo agency agreement.

(25) An IATA member may appoint an agent which is on the cargo agency list:

(i) by depositing with the agency administrator a statement of general agreement for the appointment of all agents. IATA shall from time to time publish a list of members having deposited such a statement of general agreement;

(ii) alternatively, a member may inform the agent, in writing with copy to the agency administrator, that the member specifically agrees in its appointment as an agent.

(26) The member airline having appointed an agent may cancel such appointment by so notifying the agent in writing with a copy to the agency administrator.

(27) The provision of air waybills shall be at the option of the member. The member may, also at its opinion, authorize the agent to issue neutral air waybills on the member's behalf.

Payment of Commission

(28) Agents duly appointed by IATA members are paid commission for the sale of international air cargo transportation, at such rates as may be authorized from time to time by individual member airlines. The resolution 805 contains rules as to how to calculate commission, and rules related to interline sales, payment of commission to applicants, duties of agents in order to be paid commission (acceptance and delivery of goods, provision of air waybills and collection of payment), agents in country of destination, charter transportation, government transportation and refunds. There is no ban on splitting commissions with the shipper.

Administrative rules

(29) Resolution 805 also contains technical and administrative rules on how to collect funds and remit payments through CASS or directly to airlines, rules on change of ownership, legal status, name or address.

Dispute procedures

(30) If at any time after receipt of a declaration of default from a member the agency administrator becomes aware that there exists between that member and the the agent a commercial dispute in respect of the period for which the notice of irregularity was sent and/or in respect of previous periods, the agency administrator is required to withhold or to withdraw, as the case may be, the declaration of default. If such declaration is withdrawn, the agency administrator must terminate actions against the agent and notify all members and, where applicable, the CASS management accordingly. Upon receipt of such notification, members must pay any commission withheld from the agent. The notice of irregularity giving rise to the withheld or withdrawn declaration of default must be removed by the agency administrator. If a declaration of default was the result of an error and the declaring member so notifies the agency administrator and submits details in writing, the agency administrator must withdraw the declaration of default and the procedures above also apply in such a case.

Measures affecting agents' standing

(31) Agents may relinquish accreditation or may be removed by IATA for the reasons specified in resolution 805 (e. g. not meeting the qualifications for retention, because of default or irregularities, losing the licence to trade in the countries where this is required, etc.). They may also be suspended or reprimanded. The procedures and the effects of the various situations are specified.

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

(32) 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 805d, who will also deal with the review of the agents' status when some grievance against him has been raised by the IATA agency administrator. The decisions of the commissioner are, for their part, subject to review by arbitration. Procedures for review by the commissioner are contained in resolution 805e. Procedures for review by arbitration are contained in resolution 805.

Review of a member's individual decisions

(33) Resolution 805 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) to refuse to:

(i) supply the agent with stock of its air waybills;

or

(ii) authorize the agent to issue neutral air waybills on its behalf;

or

(d) to withdraw:

(i) its air waybill stock from the agent;

or

(ii) its authorization to the agent to issue neutral air waybills on its behalf,

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 for the reasons for the refusal or withdrawal. 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, the agent has the right to have the member's decision reviewed by the agency commissioner. Where the member's decision to withdraw its appointment, stock of air waybills or authorization to issue neutral air waybills from the agent was made in application of the collective provisions of resolution 805 the agent's right for review is not to be exercised against the member individually but as set forth in the particular provisions concerned and in resolution 805e.

Implementation

(34) Resolutions 805, 805d and 805e will be implemented in all Member States by not later than 1 July 1991.

At the same time the regimes set forth by IATA resolutions series 801 and 803 will no longer apply to agents whose places of business are within the Community.

F. *The resolution 805 series as compared to the previous regimes*

(35) In its first application of 7 July 1988, IATA notified several resolutions concerning the IATA cargo agency programme, whose core consisted in the resolution 801 series, namely:

— resolution 801: cargo agency administration rules,

— resolution 801: cargo agency agreement.

(36) Subsequent to this application the IATA Caconf adopted a new resolution 803 series replacing resolution 801 series and introducing material changes to IATA's arrangements concerning cargo agencies. The new resolutions were notified on 2 October 1989. According to IATA they were developed with a view to the changing regulatory environment and took into account, inter alia, the Commission's concerns regarding cargo agents.

(37) By letter of 17 April 1990 IATA further notified resolution 805 series substituting resolution 803 as the basic applicable regime in the European Community. These resolutions contain a number of changes in comparison to the provisions of the earlier resolutions. Many of these changes were introduced following the Commission's intervention.

(38) As compared to resolution 801 series and resolution 803 series the resolution 805 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 adapted as required to offer a reliable service to customers. The Commission accepted IATA's arguments that at locations where cargo agents perform activities related to handling of dangerous goods, two staff are necessary. International cargo transportation involves many participants, complex documentation and handling of dangerous cargo. For that reason agents should not only be successful in selling transportation but also reliable in handling consignments while accurate in preparing documents,

— 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),

— procedures for accreditation have been shortened,

— rules on premises have been relaxed in order to permit in—house air freight departments of commercial firms to obtain IATA accreditation. In particular, the requirement included in Resolution 801 that, in order to obtain IATA accreditation an

applicant must be 'open to the general public' has been dropped from resolution 805,

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

— limitations to the possibility of selling charter air freight transport by agents have been dropped,

— 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.

(39) Another major step forward has been the elimination of exclusivity arrangements from the cargo agency programme. Accordingly, IATA agents are entitled to work for non-IATA airlines or charter companies, 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

(40) The Commission received comments from several freight forwarders' association, namely the Bundesverband Spedition und Lagerei e.V. (BSL), (letter of 14 January 1991), the Belgian Air Freight Industry, (BAFI), (letter of 15 January 1991), the International Federation of Freight Forwarders Associations, (FIATA), (letter of 17 January 1991), and the European Liaison Committee of Common Market Forwarders, (CLECAT), (letter of 17 January 1991).

Forwarders, while globally supporting the Commission's intentions as expressed in its notice pursuant to Article 19 (3) of Regulation No 17, criticized the omission of the requirement that in order to get accreditation an applicant should be 'open to the general public'. They argued that access to the IATA programme should not be open to in-house agents.

Furthermore, in their view the supression of such a requirement could entail a restriction of commerce, shipper discrimination and hazards to aircraft safety.

Forwarders also submit that IATA airlines make not only 70 % but up to 95 % of their sales in Europe through IATA cargo agents, and that they do not benefit from CASS, the IATA clearing houses for air freight sales (see recital 10), as benefits are confined to airlines. Forwarders are not opposed to CASS, however, because such systems do no damage.

The Commission has considered the freight forwarders' comments on the suppression by IATA in resolution 805 of the requirement included in resolution 801 that, in order to obtain IATA accreditation an applicant must be 'open to the general public'. Neither IATA carriers nor shippers were against the suppression of this requirement. In the Commission's opinion, such a requirement could be used to withold accreditation from companies fulfilling the other objective requirements, which would not be legitimate.

Experience has shown that once in the air freight agency business, commercial and industrial companies have developed and opened to the general public their own agencies, thus increasing the number of sales outlets to the benefit of other shippers.

The Commission, accordingly, does not concur with the freight forwarders' views in this respect. As to CASS, the Commission has taken into account the freight forwarders' comments in its decision.

II. LEGAL ASSESSMENT

(41) 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)*

(42) IATA member airlines are undertakings within the meaning of Article 85 (1), and the arrangements made between them and formalized in the IATA resolution 805 series constitute agreements and decisions of an association of undertakings falling within the scope of that Article.

(a) *Object and effect of restricting competition*

(43) The abovementioned agreements and decisions restrict competition between individual IATA member airlines at the level of distribution of their air freight 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.

(44) 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.

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

(46) Thirdly, competition between agents will be affected, even though sharing commissions with customers (shippers) 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.

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

(b) *Effect on trade between Member States*

(48) The IATA resolutions under examination concern services in which there is a substantial trade within the Community, as evidenced in paragraphs 6 to 8.

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)

(49) 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

(50) The resolutions permit central administration of IATA agents and 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 air waybills on behalf of any appointing member. The system promotes worldwide standards in selling the airlines' products and upholds the financial integrity of marketing outlets. Through its safety aspect, it also protects the travelling public who not infrequently travel on aircraft transporting air cargo.

(51) The IATA resolution 805 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,

— standardizing 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 and reporting,

— access to professional 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.

Advantages for customers

(52) The IATA system as put forward by resolution 805 series allows customers a fair share of the resulting benefits through:

(a) technical/operational standards required of agents to demonstrate reliability (financial viability, staff qualifications and experience including competence in the handling of dangerous goods, suitability of premises and handling equipment);

(b) wide choice of IATA agents (approximately 1 000 throughout the Community that will increase, following the application of resolution 805's criteria);

(c) access to agents representing a large number of airlines serving the widest range of destinations;

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

Indispensability of the restrictions

(53) 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.

Elimination of competition

(54) Competition among airlines at distribution level is not eliminated by the IATA resolution 805 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.

(55) As stated in recital 54, 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. Agents are allowed, in particular, to sell transportation in non-IATA airlines and in air charter companies.

(56) 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 them. They will also compete with non-IATA agents. 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.

(57) Concerning this point, in conclusion, the Commission considers that competition not eliminated by the IATA system because, together with it, actual and future methods of distribution based on different types of policies 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

(58) The regime set up by IATA resolutions 805, 805d and 805e 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.

(59) As a result of all these changes, the relationship between agents and IATA airlines becomes more balanced and entry into the air freight agency business on behalf of IATA members is easier, without any loss as to the agents' 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.

(60) In the opinion of the Commission, the resolution 805 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.

(61) In a time of air freight transport expansion and increasing liberalization in European air transportation, the cargo programme as set forth in resolution 805 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

(62) 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.

(63) The Commission does not deem necessary to impose any conditions or obligations. 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.

(64) 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 6 July 1998,

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 7 July 1988 to 6 July 1998 to IATA resolutions 805, 805d and 805e.

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 AD (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