COMMISSION DECISION

of 22 July 1992

settling the dispute between Germany and Spain over the creation of a coach service

(Only the German and Spanish texts are authentic)

(92/405/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 517/72 of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States (1), as last amended by Regulation (EEC) No 1301/78 (2), and in particular Article 14 thereof,

Whereas Udo Bach of Reesendamm, 8, W — 2381 Busdorf, Germany (hereinafter referred to as 'Udo Bach'), submitted to the German authorities an application dated 14 July 1989 for authorization to introduce a special regular coach service between Norderstedt, Germany, and Alicante, Spain, carrying passengers whose cars would be taken by vehicle transporters to the passengers' destination;

Whereas by letter of 4 June 1991, the German authorities asked the Commission to decide this application, in accordance with Article 14 of Regulation (EEC) No 517/72, since they had failed to reach agreement with the Spanish authorities on it;

Whereas the Commission organized a meeting on 20 November 1991 with representatives of the German and Spanish governments to resolve the difficulties posed by the application introduced by Udo Bach;

Whereas the applicant, supported by the German authorities, argues that there is no direct motor-rail link between North Germany and Alicante, in so far as the present link extends only to Narbonne, France, and that is over-subscribed; that the proposed service would therefore reduce vehicle congestion and pollution by taking passengers and their cars off the roads on to the coach and accompanying vehicle transporter; and that this is a safer way to travel;

Whereas the Spanish authorities do not oppose the application in principle and are satisfied that the conditions set out in Article 8 (2) and (3) of Regulation (EEC) No 517/72 concerning supply and demand are fulfilled; whereas they consider that a Spanish operator should be allowed to participate, if interested;

Whereas there is a Spanish operator, Herederos de A. Tamame of Leopoldo Alas Clarin 16, Zamora, Spain (hereinafter referred to as 'Tamame'), who would be interested in running this service jointly with Udo Bach; and the Spanish authorities therefore consider that, if the proposed service is authorized for the German operator, it should also be authorized for the Spanish operator;

Whereas the German authorities consider that the aforementioned Article 8 (3) should only apply when another operator has submitted an application at the same time as the one which is under consideration by the Member States concerned;

Whereas Udo Bach and Tamame have been unable to reach agreement on the joint operation of the proposed coach service between Norderstedt and Alicante;

Whereas it can be considered that there is a demand for the coach service proposed by Udo Bach in that there is no direct motor-rail link from the Hamburg area in Germany to Alicante in Spain, which is a major tourist route;

Whereas the introduction of new coach services which take private cars off the roads should be encouraged, since this is a safer mode of transport and is also environmentally friendly;

Whereas the French authorities, as a transit Member State, informed the Commission by a letter of 3 September 1991 that they had no objections to the service provided that it did not pick up or set down passengers in France and was only for passengers whose cars were carried separately on vehicle transporters and that such carriage complied with the rules applicable to professional road haulage;

Whereas the minutes of the proceedings of the Mixed German-Spanish Committee which have been submitted by the Spanish authorities concern only a given service between Germany and a third country and do not contain a general agreement concerning the authorization of regular services and special regular services to be operated

(1) OJ No L 67, 20. 3. 1972, p. 19.
(2) OJ No L 158, 16. 6. 1978, p. 1.

between the two countries; whereas it is, therefore, not necessary to decide whether such an agreement between two Member States would be consistent with Regulation (EEC) No 517/72;

Whereas whilst the Commission appreciates that the interests of existing coach operators in participating in the running of a proposed service should be considered in accordance with Article 8 (3) of Regulation (EEC) No 517/72, the negotiations between Udo Bach and Tamame to operte this service jointly have not resulted in agreement;

Whereas the decision whether to run a coach service jointly is one which should be left to the commercial judgment of the operators concerned;

Whereas if Tamame wishes to run a similar service he may also apply for authorization to the appropriate authorities; whereas the Spanish authorities agree that they have not asked the German authorities to give their consent to an application made by Tamame,

HAS ADOPTED THIS DECISION:

Article 1

Udo Bach of Reesendamm, 8, W — 2381 Busdorf, Germany, shall be granted, by the competent authority, an authorization, valid for a two-year period, to operate a coach service between Norderstedt, Germany, and Alicante, Spain, exclusively for passengers whose cars are transported separately. Udo Bach may pick up and set down passengers en route at Hittfeld, Garbsen, Essen, Frechen, Rüsselsheim and Valencia. This authorization does not cover the picking-up of passengers in Valencia destinated for Alicante and in Alicante destinated for Valencia.

Article 2

This Decision is addressed to the Federal Republic of Germany and to the Kingdom of Spain.

Done at Brussels, 22 July 1992.

For the Commission

Karel VAN MIERT

Member of the Commission