COMMISSION REGULATION (EEC) No 2672/88

of 26 July 1988

on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air transport services

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector [1], and in particular to Article 2 thereof,

Having published a draft of this Regulation [2],

Having consulted the Advisory Committee on Agreements and Dominant Position in Air Transport,

Whereas :

(1) Regulation (EEC) No 3976/87 empowers the Commission to apply Article 85 (3) of the Treaty by regulation to certain categories of agreements, decisions and concerned practices relating directly or indirectly to the provision of air transport services.

(2) Agreements for the common purchase, development and operation of computer reservation systems relating to time-tabling, reservations and ticketing are liable to restrict competition and affect trade between Member States.

(3) Computer reservation systems can render useful services to air carriers, travel agents and air travellers alike by giving ready access to up-to-date and detailed information in particular about flight possibilities, fare options and seat availability. They can also be used to make reservatons and in some cases to print tickets and issue boarding passes. They thus help the air traveller to exercise choice on the basis of fuller information in order to meet his travel needs in the optimal manner. However, in order for these benefits to be obtained, flight shedules and fare displays must be as complete and unbiased as possible.

(4) The CRS market is such that few individual European undertakings could on their own make the investment and achieve the economies of scale required to compete with the more advanced existing systems. Cooperation in this field should therefore be permitted. A block exemption should therefore be granted for such cooperation.

(5) The cooperation should not allow the parent carriers to create undue advantages for themselves and thereby distort competition. It is therefore necessary to ensure that no discrimination exists between parent carriers and participating carriers with regard in particular to access and neutrality of display. The block exemption should be subject to conditions which will ensure that all air carriers can participate in the systems on a non-discriminatory basis as regards access, display, information loading and fees. Moreover, in order to maintain competition in an oligopolistic market subscribers must be able to switch from one system to another at short notice and without penalty, and system vendors and air carriers must not act in ways which would restrict competition between systems.

(6) In accordance with Article 4 of Regulation (EEC) No 3976/87 this Regulation should apply with retroactive effect to agreements in existsence on the date of entry into force of this Regulation provided that they meet the conditions for exemption set out in this Regulation.

(7) Under Article 7 of Regulation (EEC) No 3976/87, this Regulation should also specify the circumstances in which the Commission may withdraw the block exemption in individual cases.

(8) Agreements which are exempted automatically by this Regulation need not be notified under Council Regulation No 17 [3]. However, when real doubt exists, undertakings may request the Commission to declare whether their agreements comply with this Regulation.

[1] OJ No L 374, 31. 12. 1987, p. 9.
[2] OJ No C 138, 28. 5. 1988, p. 6.
[3] OJ No 13, 21. 2. 1962, p. 204/62.

(9) This Regulation is without prejudice to the application of Article 86 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Exemptions

Pursuant to Article 85 (3) of the Treaty and subject to the conditions set out in Articles 3 to 10 of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to agreements between undertakings the purpose of which is one or more of the following:

(a) to purchase or develop a CRS in common:

(b) to create a system vendor to market and operate the CRS;

(c) to regulate the provision of distribution facilities by the system vendor or by distributors.

The exemption shall apply only to the following obligations:

(i) an obligation not to engage directly or indirectly in the development, marketing or operation of another CRS;

(ii) an obligation on the system vendor to appoint parent carriers or participating carriers as distributors in respect of all or certain subscribers in a defined area of the common market;

(iii) an obligation on the system vendor to grant a distributor exclusive rights to solicit all or certain subscribers in a defined area of the common market; or

(iv) an obligation on the system vendor not to allow distributors to sell distribution facilities provided by other system vendors.

Article 2

Definitions

For the purposes of this Regulation:

— 'Computer reservation system' or 'CRS' means a computerized system containing information about air carrier schedules, fares, seat availability and related services, through which reservations can be made or tickets issued or both.

— 'Distribution facilities' means facilities provided by a system vendor for the display of information to subscribers about air carrier schedules, fares, seat availability, for making reservations or issuing tickets or both, and for providing any other related services.

— 'Distributor' means an undsertaking which is authorized by the system vendor to provide distribution facilities to subscribers.

— 'Parent carrier' means an air carrier which is a system vendor or which directly or directly, alone or jointly with others owns or controls a system vendor.

— 'Participating carrier' means an air carrier which has an agreement with a system vendor for the display of its flight schedules, farer or seat availability or for reservations to be made or tickets to be issued through the CRS for the sale of air transport services to members of the public. To the extent that a parent carrier uses its own CRS distribution facilities it is considered a participating carrier.

— 'Subscriber' means an undertaking other than a participating carrier, using a CRS within the Community under contract or other arrangement with a system vendor or a distributor for the sale of air transport services to members of the public.

— 'System vendor' means an undertaking which operates a CRS.

Article 3

Access

1. The system vendor shall, within the available capacity, offer any air carrier the opportunity to become a participating carrier. The system vendor shall not require acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with participation in the CRS.

2. Distribution facilities provided by the system vendor shall be offered to all participating carriers without discrimination.

3. A participating carrier shall have the right to terminate his contract with the system vendor without penalty on giving notice which shall not exceed six months to expire no earlier than the end of the first year.

Article 4

Display

1. Participating carriers shall be entitled to have their schedules, fares and availability displayed in a neutral display identified as such. This display shall be without discrimination, in particular as regards the order in which information is presented, which shall not be based on any factor directly or indirectly relating to carrier identity.

2. The system vendor shall not intentionally or negligently display inaccurate or misleading information.

3. The methodologies used for the ranking and presentation of information displayed by the CRS shall be made available to interested parties on request.

Article 5

Information loading

The system vendor shall not discriminate between participating carriers in the care and timeliness of information loading.

Article 6

Fees

Any fee charged by the system vendor shall be non-discriminatory and reasonably related to the cost of the service provided and shall in particular be the same for the same level of service.

Article 7

Reciprocity

1. The conditions laid down in Articles 3 to 6 shall not apply to a system vendor in respect of an air carrier that is a parent carrier owning or controlling another CRS, to the extent that such other CRS does not offer equivalent treatment to parent carriers owning or controlling the CRS subject to this Regulation.

2. The system vendor proposing to avail itself of the provisions of paragraph 1 must notify the Commission of its intentions and the reasons therefore at least 14 days in advance of such action.

Article 8

Contracts with subscribers

1. A subscriber shall have a right to terminate his contract with the system vendor or distributor without penalty on giving notice which shall not exceed three months to expire no earlier than the end of the first year.

2. The system vendor or distributor shall not require a subscriber to sign an exclusive contract, nor directly or indirectly prevent a subscriber from subscribing to or using another CRS.

Article 9

Obligations of parent carriers

A parent carrier shall not link commissions or other incentives to subscribers for the sale of tickets on its air transport services to the utilization by the subscribers of the CRS of which it is a parent carrier.

Article 10

Competition between system vendors

The system vendor shall not enter into any agreement or engage in a concerted practice with other system vendors with the object or effect or partitioning the market.

Article 11

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation (EEC) No 3976/87, where is finds in a particular case that an agreement exempted by this Regulation nevertheless has certain effects which are incompatible with the conditions laid down by Article 85 (3) or which are prohibited by Article 86 of the Treaty, and in particular where;

(i) the agreement hinders the maintenance of effective competition in the market for computer reservation systems;

(ii) the agreement has the effect of restricting competition in the air transport or travel-related markets;

(iii) the system vendor directly or indirectly imposes unfair prices, fees or charges on subscribers or on participating carriers;

(iv) the system vendor or distributor refuses to enter into a contract with a subscriber for the use of a CRS without an objective and legitimate reason of a technical or commercial nature;

(v) a parent carrier who holds a dominant position within the common market or in a substantial part of it refuses to participate in the distribution facilities provided by a competing CRS without an objective and legitimate reason of a technical or commercial nature.

Article 12

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

It shall apply with retroactive effect to agreements which were in existence at the date of its entry into force, from the time when the conditions of application of this Regulation were fulfilled.

It shall expire on 31 January 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 July 1988.

For the Commission
Peter SUTHERLAND
Member of the Commission