COMMISSION REGULATION (EEC) No 2673/88

of 26 July 1988

on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings decisions of associations of undertakings and concerned practices concerning ground handling 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 Article 2 thereof,

Having published a draft of this Regulation [2],

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

Whereas :

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

(2) Agreements, decisions or concerted practices concerning ground handling services provided either by air carriers or specialized undertakings, such as technical and operational ground handling, handling of passengers, mail, freight and baggage, and services for the provision of in-flight catering, are liable in certain circumstances to restrict competition and effect trade between Member States. It is appropriate, in the interests of legal certainty for the undertakings concerned, to define a category of agreements which, although not generally restrictive of competition, may benefit from an exemption in the event that, because of particular economic or legal circumstances, they should fall within the scope of Article 85 (1).

(3) Such agreements, decisions or concerted practices may produce economic benefits, in so far as they help to ensure that services of a high standard are provided with continuity and at reasonable cost, and both air carriers and air transport users share in those benefits.

(4) However, it is necessary to attach conditions to the exemption of such agreements, decisions and concerted practices to ensure that they do not contain restrictions that are not indispensable for the optimal provision of the services, and that they do not lead to the elimination of competition with respect fo those services.

(5) The exemption granted by the Regulation must therefore be subject to the condition that the agreements do not oblige air carriers to obtain services exclusively from a particular supplier, that the supply of the services is not tied to the conclusion of contracts for other goods or services, that each airline is free to choose from the range of services offered to it those which best meet its needs, that the rates charged are reasonable for the services actually provided and that air carriers are free to withdraw from the agreements without penalty upon simple notice of not more than three months to that effect.

(6) In accordance with Article 4 of Regulation (EEC) No 3976/87, this Regulation should apply with retroactive effect to agreements, decisions and concerted practices in existence 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, decisions and concerted practices that 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.

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

HAS ADOPTED THIS REGULATION :

Article 1

Pursuant to Article 85 (3) of the Treaty and subject to the provisions of Article 3 of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to agreements, decisions or concerted practices to which

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

only two undertakings are party and which deal only with the supply by one party of services referred to in Article 2 to an air carrier at an airport in the Community open to international air traffic.

Article 2

The exemption granted under Article 85 (3) of the Treaty shall apply to the following services:

1. all technical and operational services generally provided on the ground at airports, such as the provision of the necessary flight documents and information to crews, apron services, including loading and unloading, safety, aircraft servicing and refueilling, and operations before take-off;
2. all services connected with the handling of passengers, mail, freight and mail in conjunction with the postal services;
3. all services for the provision of in-flight catering, including the preparation, storage and delivery of meals and supplies to aircraft and the maintenance of catering equipment.

Article 3

The exemption shall apply only if:

1. the agreements, decisions or concerted practices do not oblige an air carrier to obtain any or all of the ground handling services referred to in Article 2 exclusively from a particular supplier;
2. the supply of the ground handling services referred to in Article 2 is not tied to the conclusion of contracts for or acceptance of other goods or services which, by their nature or according to commercial usage, have no connection with the services referred to in Article 2 or to the conclusion of a similar contract for the supply of services at another airport;
3. the agreements, decisions or concerted practices do not prevent an air carrier from choosing from the range of ground handling services offered by a particular supplier those it wants to take from that supplier and do not denx it the right to procure similar or other services from another supplier or to provide them itself;
4. the supplier of the ground handling services does not impose, directly of indirectly, prices or other conditions which are unreasonable and which, in particular, bear no reasonable relation to the cost of the services provided;
5. the supplier of the ground handling services does not apply dissimilar conditions to equivalent transactions with different customers;
6. any air carrier is able to withdraw from the agreement with the supplier without penalty, on giving notice of not more then three months to that effect.

Article 4

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

Article 5

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

It shall apply with retroactive effect to agreements, decisions and concerted practices 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