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COMMISSION REGULATION (EEC) No 1617/93

of 25 June 1993

on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports

(OJ L 155, 26.6.1993, p. 18)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EC) No 1523/96 of 24 July 1996	L 190	11	31.7.1996
►**M2**	Commission Regulation (EC) No 1083/1999 of 26 May 1999	L 131	27	27.5.1999
►**M3**	Commission Regulation (EC) No 1324/2001 of 29 June 2001	L 177	56	30.6.2001
►**M4**	Commission Regulation (EC) No 1105/2002 of 25 June 2002	L 167	6	26.6.2002

Amended by:

►**A1**	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995
►**A2**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

►**C1** Corrigendum, OJ L 15, 18.1.1994, p. 20 (1617/93)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports

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]), as last amended by Regulation (EEC) No 2411/92 ([2]), and in particular Article 2 thereof,

Having published a draft of this Regulation ([3]),

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 Treaty by regulation to certain categories of agreements, decisions or concentrated practices relating directly or indirectly to the provision of air transport services.

(2) Agreements, decisions or concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on tariffs and slot allocation at airports are liable to restrict competition and affect trade between Member States.

(3) Joint planning and coordination of the schedule of an air service can help to ensure the maintenance of services at less busy times of the day, during less busy periods or on less busy routes, and to develop onward connections, thus benefiting air transport users. However, any clauses concerning extra flights must not require the approval of the other parties or involve financial penalties. The arrangements must also allow parties to withdraw from them at reasonably short notice.

(4) Arrangements whereby a smaller airline receives marketing and financial support from another airline may help that smaller airline to operate air services on new or less busy routes. However, in order to avoid restrictions which are not indispensable to the attainment of that aim, the duration of such joint operations must be limited to the time necessary to gain sufficient commercial standing. The block exemption must not be granted to joint operations where both parties could reasonably be expected to operate the air service independently. Those conditions are without prejudice to the possibility, in appropriate cases, of an application made under Article 5 of Council Regulation (EEC) No 3975/87 ([4]), as last amended by Regulation (EEC) No 2410/92 ([5]), with a view to obtaining an individual exemption where the conditions are not met or where the parties need to extend the duration of the joint operation. In particular where the parties wish to avail themselves ►C1 , through a joint operation, of the market access ◄ opportunities created by Council Regulation (EEC) No 2408/92 ([6]) on routes which are neither new nor less busy, but which otherwise fulfil the condi-

([1]) OJ No L 374, 31. 12. 1987, p. 9.
([2]) OJ No L 240, 24. 8. 1992, p. 19.
([3]) OJ No C 253, 30. 9. 1992, p. 5.
([4]) OJ No L 374, 31. 12. 1987, p. 1.
([5]) OJ No L 240, 24. 8. 1992, p. 18.
([6]) OJ No L 240, 24. 8. 1992, p. 8.

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tions set forth herein, an individual exemption may be warranted.

(5) Consultations on passenger and cargo tariffs may contribute to the generalized acceptance of interlinable fares and rates to the benefit of air carriers as well as air transport users. However, consultations must not exceed the aim of facilitating interlining. Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services [1], is based on the principle of free pricing and therefore increases the possibility of price competition in air transport. Hence, competition may not be eliminated thereby. Consultations between air carriers on passenger and cargo tariffs may therefore be permitted for the time being, provided that they are limited to fares and rates which give rise to actual interlining, that the participation in such consultations is optional, that they do not lead to an agreement in respect of fares, rates or related conditions, that in the interests of transparency the Commission and the Member States concerned can send observers to them, and that air carriers participating in the consultation mechanism are obliged to interline with all other carriers concerned, at the tariffs applied by the carrying airline for the tariff category under discussion.

The Commission will reassess the effects of tariff consultations on price competition in the light of the operation of Regulation (EEC) No 2409/92 and in the light of the development of the Community air transport industry, and may make appropriate changes to the exemption in the course of its lifetime;

(6) Arrangements on slot allocation at airports and airport scheduling can improve the utilization of airport capacity and airspace, facilitate air-traffic control and help to spread the supply of air transport services from the airport. However, ►C1 if competition is not to be eliminated ◄, entry to congested airports must remain possible. In order to provide a satisfactory degree of security and transparency, such arrangements can only be accepted if all air carriers concerned can participate in the negotiations, and if the allocation is made on a non-discriminatory and transparent basis.

(7) 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.

(8) In conformity with 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.

(9) No applications under Article 3 or 5 of Regulation (EEC) No 3975/87 need be made in respect of agreements automatically exempted by this Regulation. However, when real doubt exists, undertakings may request the Commission to declare whether their arrangements comply with this Regulation.

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

[1] OJ No L 240, 24. 8. 1992, p. 15.

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HAS ADOPTED THIS REGULATION:

TITLE I

EXEMPTIONS

Article 1

Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to agreements between undertakings in the air transport sector, decisions by associations of such undertakings and concerted practices between such undertakings which have as their purpose one or more of the following:

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— the holding of consultations on tariffs for the carriage of passengers, with their baggage, on scheduled air services between Community airports,

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— slot-allocation and airport scheduling in so far as they concern air services between airports in the Community.

TITLE II

SPECIAL PROVISIONS

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Article 4

▼M1

Special provisions for consultations on passenger tariffs

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1. ►M1 The exemption concerning the holding of consultations on passenger tariffs shall apply only if the following conditions are met: ◄

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(a) the participants only discuss air fares to be paid by air transport users directly to a participating air carrier or to its authorized agents, for carriage as passengers on a scheduled service, as well as the conditions relating to those fares and rates. The consultations shall not extend to the capacity for which such tariffs are to be available;

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(b) the consultations give rise to interlining, that is to say, air transport users must be able, in respect of the types of fares or rates and of the seasons which were the subject of the consultations:

(i) to combine on a single transportation document the service which was the subject of the consultations, with services on the same or on connecting routes operated by other air carriers, whereby the applicable fares, rates and conditions are set by the airline(s) effecting carriage; and

(ii) in so far as is permitted by the conditions governing the initial reservation, to change a reservation on a service which was the subject of the consultations onto a service on the same route operated by another air carrier at the fares, rates and conditions applied by that other carrier;

provided that an air carrier may refuse to allow such combinations and changes of reservation for objective and non-discriminatory reasons of a technical or commercial nature, in particular where the air carrier effecting carriage is concerned with the credi worthiness of the air carrier who would be collecting payment for this

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carriage; in such case the latter air carrier must be notified thereof in writing;

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(c) the passenger tariffs which are the subject of the consultations are applied by participating air carriers without discrimination on grounds of passenger nationality or place of residence;

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(d) participation in the consultations is voluntary and open to any air carrier who operates or intends to operate direct or indirect services on the route concerned;

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(e) the consultations are not binding on participants, that is to say, following the consultations the participants retain the right to act independently in respect of passenger tariffs;

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(f) the consultations do not entail agreement on agents' remuneration or other elements of the tariffs discussed;

(g) where filing of tariffs is required, each participant individually files each tariff which was not the subject of the consultations, with the competent authorities of the Member States concerned; in so doing it may act itself or through its filing agent or through its general sales agent.

2. (a) The Commission and the Member States concerned shall be entitled to send observers to tariff consultations. For this purpose, air carriers shall give the Member States concerned and the Commission the same notice as is given to participants, but not less than 10 days' notice, of the date, venue and subject matter of the consultations.

(b) Such notice shall be given:

(i) to the Member States concerned according to procedures to be established by the competent authorities of those Member States;

(ii) to the Commission according to procedures to be published in the *Official Journal of the European Communities*.

(c) A full report on these consultations shall be submitted to the Commission by or on behalf of the air carriers involved at the same time as it is submitted to participants, but not later than six weeks after those consultations were held.

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3. Air carriers participating in consultations on passenger tariffs shall collect data as from 1 September 2002 with regard to:

(a) the relative part of tariffs set in the consultations of all fare traffic within the EEA;

(b) the extent to which tickets at tariffs set in the consultations are actually used for interlining;

(c) the extent to which tickets which are not at tariffs set in the consultations are actually used for interlining.

The data collected shall be provided to the Commission by or on behalf of the air carriers involved at six-monthly intervals.

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Article 5

Special provisions for slot allocation and airport scheduling

1. The exemption concerning slot allocation and airport scheduling shall apply only if the following conditions are met:

(a) the consultations on slot allocation and airport scheduling are open to all air carriers having expressed an interest in the slots which are the subject of the consultations;

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(b) rules of priority are established and supplied without discrimination, that is to say that they neither directly nor indirectly relate to carrier identity or nationality or category of service, take into account constraints or air traffic distribution rules laid down by competent national or international authorities and give due consideration to the needs of the travelling publics and of the airport concerned. Subject to paragraph (d), such rules of priority may take account of rights acquired by air carriers through the use of particular slots in the previous corresponding season;

(c) the rules of priority, once established are made available on request to any interested party;

(d) new entrants as defined in Article 2 (b) of Council Regulation (EEC) No 95/93 ([1]) are allocated 50 % of newly created or unused slots and slots which have been given up by a carrier during or by the end of the season or which otherwise become available, to the extent that those new entrants have outstanding slot requests;

(e) air carriers participating in the consultations have access, at the time of the consultations at the latest, to information relating to:

— historical slots by airline, chronologically, for all air carriers at the airport,

— requested slots (initial submissions) by air carriers and chronologically for all air carriers,

— allocated slots, and outstanding slot requests listed individually in chronological order, by air carriers, for air carriers,

— remaining slots available,

— full details on the criteria being used in the allocation.

If a request for slots is not accepted, the air carrier concerned shall be entitled to a statement of the reasons therefor.

2. (a) The Commission and the Member States concerned shall be entitled to send observers to consultations on slot allocation and airport scheduling held in the context of a multilateral meeting in advance of each season. For this purpose, air carriers shall give the Member States concerned and the Commission the same notice as is given to participants, but not less than 10 days' notice, of the date, venue and subject matter of the consultations.

(b) Such notice shall be given:

(i) to the Member States concerned according to procedures to be established by the competent authorities of those Member States;

(ii) to the Commission according to procedures to be published in the *Official Journal of the European Communities*.

TITLE III

FINAL PROVISIONS

Article 6

Withdrawal of the block exemption

The Commission may withdraw the benefit of the block exemption under 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 by 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, and in particular where:

(i) there is no effective price competition on any route or group of routes which was the subject of tariff consultations. In such cases the benefit of this Regulation shall be withdrawn ►C1 in respect of the route or group of routes in question, and from the air

([1]) OJ No L 14, 22. 1. 1993, p. 1.

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carriers which participated ◄ in the tariff consultations concerning such routes;

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(iii) the operation of Article 5 has not enabled new entrants to obtain such slots as may be required at a congested airport in order to establish schedules which enable those carriers to compete effectively with established carriers on any route to and from that airport, and where competition on those routes is thereby substantially impaired. In such cases the withdrawal of the benefit of this Regulation shall be in respect of the slot allocation at the airport in question.

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Article 6a

The prohibition in Article 81(1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden or at the date of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and which, by reason of accession, fall within the scope of Article 81(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.

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Article 7

This Regulation shall enter into force on 1 July 1993.

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It shall apply until 30 June 2005.

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This Regulation shall apply with retroactive effect to agreements, decisions and concerted practices in existence when it enters into force, from the time when the conditions of application of this Regulation were fulfilled.

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