

NATIONAL SKIES IN EUROPEAN DISGUISE:
AIR-TRANSPORT POLITICS AND POLICY IN THE
EUROPEAN COMMUNITY: 1987-1993

by

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To my parents Yianni and Eleni

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ABSTRACT

This thesis is an examination of the failure of the European Community and subsequently of the European Union to develop a full common air-transport policy. The main issues on which the present study focuses are the reciprocal influences, interactions and confrontations of national and EC air-transport policy interests. It is demonstrated that they obstructed the process of the air-transport market liberalization and inhibited the development of an integrated EC air-transport policy. The years covered by the doctorate are 1987 to 1993.

The thesis explains how the interests of member-states and major corporations in a period of major structural adjustment blocked the creation of a common air-transport policy; instead EC institutions were subordinated to the powerful national air-transport interests of the member-states and of their champion carriers.

The thesis is based on an extensive examination of primary sources and interview materials. This not only comprises new empirical information about the specific characteristics and nature of EC air-transport politics and policy, but also takes into account the broader politico-economic characteristics of the member-states air-transport policies and systems.

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LIST OF ACRONYMS

AACC	Airport Associations Council Committee
AACI	Airports Association Council International
ABC	Advanced Booking Charter
ABPNL	Association of Cockpit Crews and Flight Engineers of Belgium
ACA	Affiliated Charter Airlines
ACCA	Air-Charter Carriers Association
ADA	Airline Deregulation Act (USA)
AEROPA	Intelligence Service for Air Transport in the EC
AEA	Association of European Airlines
AEU	Amalgamated Engineers Union (UK)
AFUTA	Air-Transport Users' Association (France)
AGDP	Aggregate Gross Domestic Product
AL	Alitalia
AOC	Air Operators Certificate
AOCI	Airport Operators Council International
ASTMS	Association of Scientific, Technical and Managerial Staff (UK)
ATAC	Air-Transport Advisory Council (UK)
ATGWU	Amalgamated Transport and General Workers Union (Ireland)
ATLB	Air-Transport Licensing Board (UK)
ATUC	Air-Transport Users Committee (UK)
BA	British Airways
BAA	British Airports Authority
BALPA	British Airlines Pilots Association
BASA	Bilateral Air Services Agreements
BATA	British Air-Transport Association
BCal	British Caledonian
BEA	British European Airways
BEUC	European Bureau of Consumers Union
BOAC	British Overseas Airways Corporation
CAA	Civil Aeronautics Act, (USA)
CAA	Civil Aviation Administration Authority
CAB	Civil Aeronautics Board
CCC	Consumer Consultative Committee of the EC Commission
CCU	Cabin Crew Union (Denmark)

CECG	Consumers in the EC Group (UK)
CFDT	French Democratic Confederation of Labour
CGIL	General Confederation of Labour (Italy)
CGSLB	General Confederation of Liberal Trade Unions (Belgium)
CGSP	General Central of Public Services (Belgium)
CGT	General Confederation of Labour (France)
CGT-L	General Confederation of Labour (Luxembourg)
CISL	Confederation of Workers' Unions (Italy)
CNV	Christian-Protestant National Federation of Trade Unions (Netherlands)
CRS	Computer Reservation Systems
CSA	Czechoslovakian Airlines
CSC	Confederation of Christian Trade Unions (Belgium)
CSI	Confederation of Independent Civil Service Union (Spain)
CTWU	Committee of Transport Workers' Unions to the EC
CVD	Transport and Diamond Workers' Union (Belgium)
DG	Directorate General
DGB	Federation of Trade Unions (FRG)
DGFT	Directorate General of Fair Trading (UK)
DMWU	Danish Metal Workers' Union
DOJ	Department of Justice (USA)
DOT	Department of Transportation (USA)
DsGCA	Directorates General of Civil Aviation
EBAA	European Business Aviation Association
EC	European Community
ECA	Economic Competition Act
ECAC	European Civil Aviation Conference
ECJ	European Court of Justice
ECU	European Currency Union
EFTA	European Free Trade Association
EISF or FAU	Flight Stewards and Stewardesses Union (Greece)
ELA-STV	Federation of Transport-Solidarity of the Basque Workers (Spain)
EP	European Parliament
EQA	European Quality Alliance
ERA	European Regional Airlines Association

ESC or ECOSOC	Economic and Social Committee in the EC
ESOP	Employee Stock Ownership Plan
ETEM&P	Licensed Airline Technicians' Union (Greece)
ETUC	European Trade Union Congress
EU	European Union
EUROPILOTE	European Airlines Pilots' Association
FCO	Federal Cartel Office (FRG)
FATU	Federal Air Transport Union (France)
FATUREC	Federation of Air Transport User Representatives in the EC
FETCOMAR-CCOO	National Federation of Transport Communications and Sea (Spain)
FETS-FO	Federation of the Transport and Services Staff Work Force (France)
FETTC-UGT	National Federation of Transport and Telecommunications (Spain)
FDTL	Flight and Duty Time Limitations
FFP	Frequent Flyer Programs
FGTB	Belgian General Federation of Labour
FGTE	General Federation of Transport and Equipment (France)
FILT	Transport Workers' Federation (Italy)
FIT	Federation of Transport (Italy)
FNCTTFEL	National Federation of Railway and Transport Officials and Salaried Employees (Luxembourg)
FNV	Netherlands' Trade Union Confederation
FRG	Federal Republic of West Germany
FT	Financial Times
FWUI-CAB	Federal Workers' Union-Civil Aviation Branch (Ireland)
GATT	General Agreement for Trade and Tariffs
GDP	Gross Domestic Product
GMWU	General Municipal Workers'Union (UK)
GNP	Gross National Product
GSEE	General Confederation of Greek Workers
HALPA	Hellenic Airline Pilots' Association
HFEU	Hellenic Flight Engineers' Union
IAHA	Independent Aircraft Handling Association
IATA	International Air-Transport Association

ICAA	International Civil Airports Association
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce
IFALPA	International Federation of Airline Pilots' Association
IOCU	International Organization for Consumer Unions
IPMS	Institution of Professionals, Managers and Specialists (UK)
IT	Inclusive Tours
ITA	Institute of Air Transport
ITF	International Transport Workers' Federation
ITGWU	Irish Transport and General Workers Union
JAA	Joint Airworthiness Authority/Joint Aviation Authorities
JAA-OPS	Joint Aviation Authorities-Operations Committee
JARs	Joint Air Worthiness Requirements
JCCA	Joint Committee of Civil Aviation in the EC
KLM	Koninklijke Luchvaart Mij
LH	Luft Hansa or Deutsche Luft Hansa
MFN	Most-Favoured-Nation (GATT)
MMC	Monopolies and Mergers Commission (UK)
MOU	Memorandum of Understanding
MSF	Manufacturing Science Finance (UK)
NALGO	National and Local Government Officers' Association (UK)
NCASC	National Commercial Aviation Superior Council (France)
NJCCAT	National Joint Council for Civil Air Transport (UK)
NT	National Treatment (GATT)
NURMT	National Union of Rail, Maritime and Transport Workers' (UK)
OA	Olympic Airways
OCSU	Officers' and Civil Servants' Union (Denmark)
OECD	Organization of Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
OSPA	Federation of Civil Aviation Unions (Greece)
OTV	Public Service and Transport Workers' Union (FRG)
PASOK	Pan Hellenic Socialist Movement
QMV	Qualified Majority Voting
RVA	Régie des Voies Aériennes (Air-Routes Board) (Belgium)
SABENA	Societe Belge d' Exploitation de la Navigation Aerienne
SAS	Scandinavian Air Line Systems

SCO	Show Cause Order (USA)
SEA	Single European Act
SEEA	South East European Airlines
SEM	Single European Market
SID	Special Workers' Union (Denmark)
SINVOO	Civil Aviation Staff Union (Portugal)
SIPTU	Services, Industrial, Professional, and Technical Union (Ireland)
SITAVA	Syndicate of Aviation and Airport Workers (Portugal)
SITEMA	Syndicate of Aircraft Maintenance Technicians (Portugal)
SNOMAC	National Syndicate of the Flight Engineers (France)
SNPL	National Syndicate of Airline Pilots (France)
SNPNC	National Syndicate of Commercial Air Transport Personnel (France)
SNPVAC	National Syndicate of Flight Attendants and Personnel of Civil Aviation (Portugal)
SWA	SABENA World Airways
TAP	Transport Air Portugal
TAT	Transport Aerien Transregional
TWA	Transport World Airways
TGWU	Transport and General Workers' Union (UK)
UIL-T	Transport Section of the Labour Union of Italy
UK	United Kingdom
UNICE	Union of Industry in the EC
UPL	Luxembourg Aviation Pilots Union
US	United States
USA	United States of America
USCRAF	United States Civil Reserve Air Fleet
UTA	Union des Transports Aerien
VC	Vereinigung Cockpit-Airline Pilots' Union (FRG)
VKC	The Union of Netherlands Cabin Personnel
YMS	Yield Management System
YPA	Greek Civil Aviation Authority

INTRODUCTION

" In every region of the world, countries large and small depend on their aviation industry to fuel their economic growth and their financial strength" IATA 1992

Air transport is an international economic activity of considerable magnitude and prime importance. Viewed from a worldwide perspective it benefits technological progress by manufacturing aircraft, engines and other related equipment; it promotes trade by mobilizing freight and imported goods, but most importantly it operates services for travel and tourism - at a total value of output of \$ 250 trillion it is the world's largest single industry after petroleum. In 1989 air transport provided more than twenty-one million jobs for the world's workforce and US \$ 700 billion in annual gross output. The number of passengers approximated the one fifth of the world's population, and almost a quarter (by value) of world international trade in manufactured goods was transported by air. The total yearly value of all scheduled and non-scheduled airlines' revenues approached \$200 billion - equivalent to about 1.5 per cent of world Gross National Product (GNP). The international air-transport's revenues amounted to \$100 billion, close to one half of the total value of international tourist receipts or about 7 per cent of world export in manufactured goods¹. The Table below compares the proportional percentages of the world's population with their proportional percentages in the world's total international scheduled air services. It is evident that there is a disproportional development of population and scheduled air services in different parts of the world.

Despite its international character, air transport is largely associated with national identity: national airlines are often seen as a national virility

¹International Air-Transport Association (IATA) Report, 1992; International Civil Aviation Organization (ICAO) Bulletin, 1989; International Transport Workers' Federation (ITF) Report, 1992: 9-10; Lipman, 1990; Zylicz, 1991: xv-xvi.

Parts of the world	Proportion in % of world population	Proportion in % of world air services
North America	5.2	21.5
Europe	15.2	35.5
Asia and the Pacific	55.7	29.0
Africa, the Middle East, Latin America and the Caribbean	23.9	14.0

Sources: ICAO Bulletin 1989; Zylisch, 1991: xvi

symbol facilitating political influence on other countries - as flag carriers. Moreover, governments have traditionally recognized civil aviation as critical to their defense in association with their military aviation strategy and their foreign policy².

Compared to the other modes of transport, air transport is a most vital aspect of the public policy serving national, economic and social goals. Air transport as a direct and indirect earner of foreign exchange, is a major contributor to a country's Gross Domestic Product (GDP): as a direct earner it provides foreign exchange by operating in foreign countries; indirectly, tourism as a major source of foreign exchange in part depends on it. In addition, air transport is a provider of employment at very high skill levels (e.g. pilots and flight engineers), as well as of air-traffic controllers, personnel in airport infrastructures and security. Finally, it also helps to keep communications open to a country's remoter parts.

In 1989 the total value of output of the European Community (EC) air-transport industry was ECU 42 billion or one per cent of the Aggregate Gross Domestic Product (AGDP) of the EC. In 1984 the sector was employing 320,000 personnel, excluding another 200,000 employed at airports such as

² Corbet, 1965; Davies, 1964; Dempsey, 1987; Dobson, 1991; Gidwitz, 1980; Lissitzyn, 1942; Mendes, 1991; Sampson, 1984; Sochor, 1991; Thayer, 1965; Thornton, 1970; Zylisch, 1992: 3-57.

air-traffic controllers, Civil Aviation Administrations/Authorities (CAA) employees, ground handling and other services outside the over one hundred and sixty EC airlines themselves.³

As a result, the desire of governments to protect their own airlines as instruments serving their politico-economic interests has been and continues to be of paramount influence, while the demise of national airlines, or their acquisition and control by a foreign-owned carrier, remains anathema. Given these circumstances, ever since its inception, air transport has been the one of the most thoroughly regulated industry in the world⁴. In this context, the ineffectiveness, in the last three decades, in the implementation of the EC competition rules for air transport has been no coincidence.

In 1987, the EC was obliged to liberalize its air transport, mainly because of radical reforms within the international air-transport arena. However, although unavoidable, the liberalization process was not in the best interests of most of the EC member-states and their national airlines. Since the EC was unable to draw up a transitional policy except by relying wholly on the co-operation of its member-states, it is not so very surprising that the process of air-transport liberalization failed to become a common EC air-transport policy.

Purpose of the thesis.

The complete absence of any detailed and comprehensive analysis explaining the failure of the EC liberalization strategy to become a common EC air-transport policy was the major motivation for the present thesis. An analysis of this kind can now be undertaken given that before 1993 it was too early to draw conclusions about success or failure concerning liberalization as

³ Association of European Airlines (AEA), 1989; Commission of the EC, 15 Mar. 1984: 57; Financial Times, 1 August 1991.

⁴ Caves, 1962; Davies, 1964; Doganis, 1985, 1986, 1991; Murias, 1989; Pryke, 1987; Raben, 1984; Richmond, 1961; Zyllich, 1991.

a common public policy in the EC air-transport industry. The fact that until 1986 air transport remained a dormant service-subsector of the EC policy and decision-making process does not, however, justify the lack until today of any serious academic comparative analysis of the twelve national air-transport policies.

There are hundreds of publications on airline-industry regulation and deregulation, which focus on the USA and to a lesser extent on Canada and Australia, but no quantitatively equivalent literature for Europe, still less for the EC. (The effect of the deliberations by experts on US-airline regulation and deregulation policies between the late 1960's and the early 1990's is discussed in chapter I). Although there is ample evidence in the literature on the general EC policy-making and decision-making processes, very little is available on the policy for transport generally⁵ and still less on air transport in particular. Moreover, most of the EC literature on air transport undertaken before or during the liberalization process of the EC air-transport market largely took the form of policy advocacy or a preoccupation concerned with legal, economic or overall European dimensions.⁶

This thesis explores failures in the common implementation of liberalization policy in the EC air-transport sector. It has to be judged primarily by its empirical investigations and its politico-economic interpretation of the reasons why liberalization has failed to become a common EC air-transport policy. Two main arguments sustain the above major premise of this thesis. One suggests that within the EC institutional structures and functions only national, and especially strong, air-transport interests for and against the liberalization of the EC air-transport policy instead of common EC ones; and the second shows the effect of existing corporatist interests within the

⁵ Banister and Button, 1991; Bayliss, 1979; Bromhead, 1974, 1979; Button and Pitfield, 1991; Clinton, 1988; Despicht, 1964; also 1969 and 1972; Erdmerger, 1983; Greaves, 1991; Munby, 1962; Whitelegg, 1988; Wistrich, 1983.

⁶ Abbott and Thompson, 1989; Barrett, 1987; Button and Swann, 1989, 1991; Doganis, 1985, 1989, 1991, 1994; Dempsey, 1988; Haanappel, 1990; McGowan and Trengove, 1986; McGowan and Seabright, 1989; Peikmans, 1986, 1991; Pryke, 1988; Raben, 1984; Sawers, 1987; Slot and Dagtoglou, 1989; Trettheway, 1991; Wheatcroft, 1956; Wheatcroft and Lipman, 1986, 1990.

member-states which precluded and prevented liberalization from becoming a successful common EC air-transport policy. Thus it has been my objective to examine how the above organized vested interests have employed various policy networks and strategies to obstruct the liberalization process of the EC air-transport industry to become a common EC air-transport policy.

Methods employed

A large part of my research consisted of approximately eighty unstructured interviews, which have provided a great deal of interesting evidence. The information obtained came from both formal interviews and informal discussions, conducted face-to-face, taped, and transferred to transcripts. Certain parts of these interviews or discussions with anonymous sources are kept in a private file.

I originally intended to use EC files and archives, but it was impossible to obtain even general statements about specific attempts at mergers or other proposals, because such information is commercially very sensitive and EC officials are extremely strict and discrete⁷. It was my personal impression that they were strongly advised and even obliged to treat outsiders, and particularly researchers, with great circumspection especially when questioned about their personal relationships with their colleagues, the Commissioners and/or intra-Community activities.

Despite these difficulties I was able to interview many prominent EC officials from the European Commission and the Council of Ministers, responsible for various EC air-transport policy proposals from their draft stage until their adoption. In addition I interviewed member-states officials residing permanently in Brussels such as transport attachés and counsellors, as well as

⁷ The office of Mrs. Vasso Papandreou, Commissioner of Directorate General V for EC Social Affairs, sent me a letter specifying to me: "Your access to the archives of the EC is difficult - we would say impossible- because they have a confidential character" Brussels, 29 June 1990 - D/90/463 A/90/6649.

officials from major organizations representing airlines, trade unions and consumers within the EC. Therefore part of my thesis is both attitudinal and behavioural because it is based on responses to questions posed by me to interviewees, and it provides a collection of reactions and overt actions of witnesses to the predominant characteristics of the air- transport interests' processes from a variety of different perspectives.

Thus I consider interviewees as supportive of my argument which is both inductive and deductive in that it is partly abstracted from the EC air-transport policy communities' behaviour and attitudes and partly deduced from the overall EC air-transport policy-making procedures.

Bibliography

I have consulted the primary and secondary material listed in the bibliography. For a detailed chronological examination of specific air-transport policy issues and events during the period of research (1986-1993), I made use of the Financial Times, and of monthly and bimonthly magazines and journals such as Air Transport World, Airline Business, Institute of Air Transport (ITA), Journal of Air Law and Commerce, Common Market Law Review, Transportation Journal, Journal of Transport Economics and Policy etc. To familiarize myself with the major concerns and issues of the air-transport trade unions I studied the International Transport Workers' Federation's (ITF) monthly ITF News for the same period of time. I also read through annual statistical reports and bulletins of major international, regional and leading air-transport organizations such as the International Air-transport Association (IATA), International Civil Aviation Organization (ICAO), the European Civil Aviation Conference (ECAC), and the Association of European Airlines (AEA). The bibliography lists all works consulted in the process of writing this thesis.

The outline of the thesis

The present thesis is divided into nine chapters.

Chapter I presents a brief historical account of the period when it was mainly US and UK air-transport politics and policies which regulated international air-transport. The chapter explains why US airline deregulation has been, and remains, a deeply controversial public-policy issue in international air transport.

Chapter II deals exclusively with the overall historical and policy development of EC primary and secondary air-transport legislation until 1986. Its main contribution is a detailed analysis of the twelve member-states' national air-transport regulatory arrangements as they existed before EC secondary air-transport competition policy began to affect them. The chapter provides a brief description of the formal institutional structure of the EC air-transport policy and decision-making process.

Chapter III outlines the EC's secondary air-transport legislation, and explains the pressures for reform between 1979 and 1993. It also briefly examines the impact of implementing the policy on competition within the overall EC air-transport policy. Finally, it introduces the EC actors and their structures.

Chapter IV provides a detailed understanding of EC air-transport politics. It focuses (i) on the power struggles between Commissioners and Eurocrats, as well as their efforts on behalf of their respective national concerns in the EC's air-transport policy; and (ii) the member countries' intricate manoeuvering to accommodate their strictly national interests in the overall EC air-transport policy. It shows to what extent they acted individually or co-jointly, and identifies their air-transport policy and decision-making networks in the air-transport sector.

Chapter V concentrates on four cases presenting significant empirical evidence of what has been said in ch.IV. It outlines the controversial role of

specific Commissioners and Eurocrats in air transport, and their acrimonious controversies in the pursuit of national air-transport objectives.

Chapters VI and VII focus on responses from both employers/ airlines and employees to the EC liberalization process, and to what extent these have influenced the EC's air-transport policy. Chapter VI looks at the interrelationships of leading EC airline associations and the central and controversial role of the AEA's champion airlines and the strategies used by them and the smaller EC national airlines during the EC air-transport liberalization process. Chapter VII provides a rational and systematic exegesis of the twelve EC members' labour-union attitudes and their reactions to a process that ran directly counter their interests.

Chapter VIII discusses the interesting micro-corporatist alliance between the AEA and the ITF. Their common EC front and the creation of the Joint Committee of Civil Aviation (JCCA) are explained as part of a plan to slow down the liberalization process after the Gulf War crisis.

Chapter IX is a final summary. A systematic comparison of pre-1987 and post-1993 air-transport regimes is used as the basis for an assessment of why, by the end of 1993, the EC air-transport liberalization policy had not succeeded in becoming a common EC air-transport policy.

CHAPTER I

INTERNATIONAL AND US AIR-TRANSPORT POLITICS AND POLICY IN RETROSPECT

" The drastic deregulation in the USA has been the beginning of a worldwide movement towards diminished government control and increased competition... This movement may be reluctant, it may not be as drastic as in the USA, but it is there. The effects are noticeable around the world" Karel Van Miert, 1991¹

This introductory chapter provides an historical background to the regulatory development of the international air-transport industry. It emphasizes the constant US and UK interactions and conflicts that have determined the character and nature of the international aviation system for passenger transport, and maps out the experiences of the US domestic-airline deregulation policy² and its spillover effects in the international air-transport industry.

1. International Air-Transport Policy 1919-1978

It was the USA and the UK, the two major air-transport world leaders, that initiated and have been shaping the regulatory development of international and EC air-transport policies until today. There is a long history of both disputes and agreements over access to the North Atlantic Region, still a major bone of contention between European and US airlines, and therefore of European and US politics.³ This region has always dominated international air-transport traffic, and in 1985 accounted for just under one-third (28 per cent) of international air-passenger kilometers as illustrated in Figure 1.1. A correct understanding of the American and British roles in the EC air-transport policy and decision-making process depends, therefore, on appreciating their historic politico-economic interests in the international arena.⁴

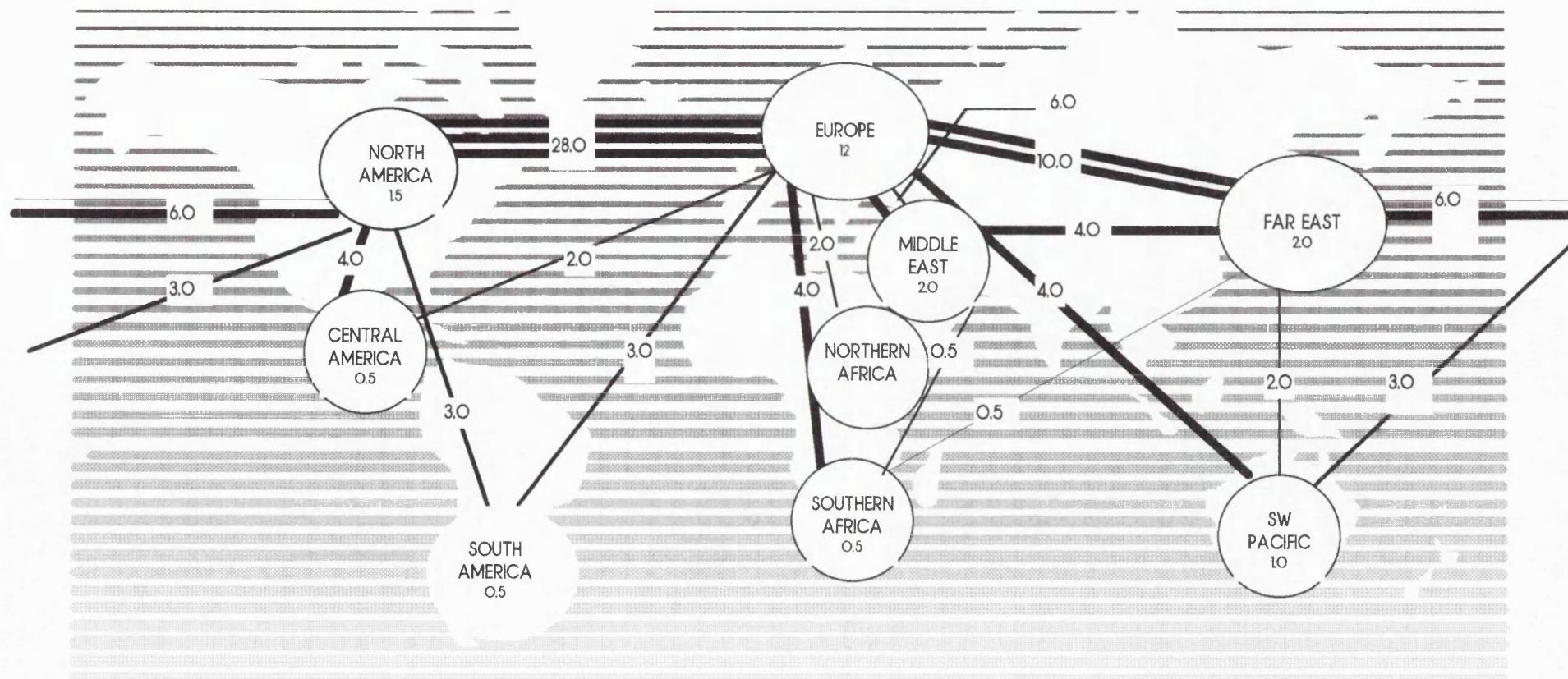
¹ITF Report, 1992: 19.

²Deregulation is the abolition of direct governmental intervention in the economic affairs of the airline industry. It can involve the termination of a specific method of control, or the removal of restrictions, or both. Golich, 1990: 157.

³Salacuse, 1980; Sampson, 1984: 54.

⁴For a thorough analysis of the US-UK politics and diplomacy in international aviation see Dobson, 1991.

Figure 1.1: Major International Passenger Traffic Flows, 1985 (% of Total International Pax-Km in Circles are International Flows Within the Region).



Sources: IATA World Air-Transport Statistics, 1985; Wheatcroft and Lipman 1986:19.

International aviation history has gone through three different phases. The first was the inter-war period from 1919 to 1939. In 1919 the Paris International Convention based its international air-transport policy on the principle of a state's unrestricted sovereign control over its airspace. This was reaffirmed by the Havana Convention in 1928. Between the wars it was the USA and the UK who dominated international air-transport and, since they had no irreconcilable differences, their negotiations led to a consensus regime. Broadly speaking, in the aftermath of World War I all states believed the primary objectives of international airlines to be political⁵ and military⁶ rather than commercial and social.⁷

In 1929 the Warsaw Convention set up the rules for private (commercial) international air-transport legislation. The Warsaw system, in which 123 states participated, was universally accepted as the basic treaty document uniformly regulating conditions for international air-transport in respect of documentation as well as rights and obligations affecting the airlines and individual passengers. The Warsaw Convention results were further developed and/or amended by the Hague Protocol of 1955, the Guadalajara Convention of 1961, the Montreal Interim Agreement of 1966, the Guatemala City Protocol of 1971, and the four Montreal Protocols of 1975.⁸

The second phase was the period after World War II (1945-1978), and was covered by the Chicago-Bermuda I and Bermuda II agreements. In 1944, fifty-two governments got together in Chicago to discuss the future of international aviation and laid down the ground rules for public international air-transport legislation. This was based on bilateral agreements concerning

⁵State and corporate airlines were and still are closely linked with international politics. They have, therefore, been used as competitive weapons in international negotiations, often in ways totally unrelated to the airline industry. For example, an air right may be conceded in bargaining for some coveted point in an agricultural agreement.

⁶The importance of military aviation during the two World Wars resulted in the development of civil aviation. Bockstiegel, 1985.

⁷Gidwitz, 1980: 135-58; Doganis, 1991: 46-48; Jonsson, 1987: 6-8, 27-31, 45; Murias, 1989: 17-43; Kasper, 1988: 45-47, 70-71; Lissitzyn, 1942: 38-93; Strange, 1988: 152; Thornton, 1970: 70, 1971: 192-97; Weisman, 1990: 12; Wheatcroft, 1964: 46-57.

⁸Zylich, 1991: 89-104.

primarily air-transport privileges, i.e. the seven traffic rights⁹ which are listed in Appendix I.1. They also cover (i) the exchange of commercial or "hard" rights (e.g. frequencies, capacities, and access to air routes); (ii) substantive economic rights (e.g. air fares, currency conversion, and profit repatriation); (iii) certain technical safety and security issues (e.g. recognition of licenses); and (iv) ancillary services or "soft" rights deemed essential to both serving passengers and airport traffic, such as maintenance, ground handling, and so forth). On the other hand the Chicago Convention failed in the matter of basic multilateral agreements covering legal and economic issues affecting the operation of civil aircraft in international air transport (e.g. over flight rights, nationality of aircraft, technical and facilitation matters, trade association activities and pricing agreements).¹⁰

As a consequence of the Chicago Conference two regulatory bodies were established for international aviation: the International Air-Transport Association (IATA),¹¹ a non-governmental organization for the promotion of economic air transport and co-operation between airlines;¹² and the International Civil Aviation Organization (ICAO), assisting the development and maintenance of operational, technical, and safety standards and practices.¹³

During that period the USA, as the dominant air transport power, was pressing for a liberalized aviation policy worldwide. It regarded European air-transport regulation¹⁴ as cartelism.¹⁵ Unlike Britain with its global empire, the

⁹Traffic rights were subsumed under the notion of "freedoms of the air".

¹⁰Haanappel, 1984: 9-33; Jonsson, 1987: 33-4, 45; Kasper, 1988: 45-72; Naveau, 1989: 91-104, 128-31; Thornton, 1970: 70; Weisman, 1990: 12-14; Zyllich, 1991: 47-81, 135-54.

¹¹In Havana, Cuba, in April 1945.

¹²In allowing IATA to be the forum for negotiating air fares, governments avoided domestic criticism for fare increases.

¹³Barett, 1987: 8-9; Brancker, 1977; Eggers, 1991: 113; Golich, 1990: 160, 173; Haanappel, 1989: 61-77, 89-116, 167-76, 183-88; Kotsaite, 1991: 89-99; Kasper, 1988: 49; Murias, 1989: 44-51; Naveau, 1989: 25-35, 51-66, 126-28; Strange, 1988: 153; Wheatcroft and Lipman, 1986: 36-38; Zyllich, 1991: 82-88, 155-67.

¹⁴Regulation is a process of governmental intervention consisting primarily of intentional economic restrictions. For a detailed analysis for the philosophy behind such regulation see Reagan, 1987.

¹⁵Cartelism (or trust) in air transport refers a collusive association of usually state-owned airlines formed to monopolize the production and distribution of air services.

USA had lacked routes and landing rights at bases located strategically along trunk routes. On the other hand the UK, apprehensive of the emergence of an American monopoly against which it could not profitably compete, was arguing for controlled development rather than unlimited competition. In consequence the UK emerged as the countervailing power to US air-transport domination - a result which, it has been argued, was actually a political defeat.¹⁶

More specifically, international operations were too vital to British and European airlines to be left in the hands of the US, especially since most European air traffic was international rather than domestic. Hence, Britain and the European countries saw IATA as a means for restraining what they feared as the unbridled ambition of the USA to overrun the North Atlantic with increased airline capacity and lower fares. The UK and other European countries, inevitably felt a certain animus against the USA, both because they had to turn to US manufacturers to obtain turbo-jet aircraft, and because the US airlines were able to finance and could obtain aircraft before their European competitors.¹⁷

The growth of US airline manufacture had three important consequences. The first was commercial: the US aircraft industry was the only market where foreign airlines could buy aircraft. Secondly, the fact that the other countries had no alternative supplier was used by Washington as a means for politico-economic pressure in all kinds of negotiations. Finally, the US government realized the importance of airline manufacture for its national defense and military operations.¹⁸ C. C. Cundiff, special negotiator for transportation affairs of the US Department of State said in 1992

¹⁶ Jonsson, 1987: 48,101, 117; Sampson, 1984: 179-90; Strange, 1988: 153; Taneja, 1980: 11; Thornton, 1970: 26, 117.

¹⁷ Haanapel, 1984: 78-86; Jonsson, 1987: 4-9; Murias, 1989: 115.

¹⁸ The US Civil Reserve Air Fleet (USCRAF) was set up in the 1950s and has been in existence with varying degrees of participation ever since. It is an arrangement whereby participating airlines agree to modify their fleets to make them available to the US military for use in the event of national mobilization. A recent example was the transport of US troops to Kuwait during the Gulf War.

" There are national security concerns that must be satisfied before any large scale opening to foreign investors is permitted. The US Civil Reserve Air Fleets (CRAF) program played a vital role in Desert Shield/Storm operations"¹⁹

The widespread apprehension in the UK and other countries was, therefore, based on the recognition that the US persistent preaching of *laissez-faire*, which squared so well with America's self-interests, really meant *laissez-nous faire*. In air transport *laissez-faire* is the doctrine of unrestricted freedom to operate air services. Not surprisingly the USA has been repeatedly accused of aero-imperialism, chiefly because of its lack of enthusiasm for deregulating others of its industries where it was competitively weaker, such as shipping.²⁰

The clash between the divergent US and UK air-transport interests resulted in acrimonious bargaining and negotiations processes (horse trading), over landing rights, gateways²¹ and freedoms. In 1946, they reached the Bermuda I Agreement, which was essentially, a US-UK compromise. It enabled these two states to impose their air-transport bargaining power²² on third countries, notwithstanding their own fundamental disagreement over the underlying international air policy.²³

However, American pressure for the creation of a competitive international air-transport market kept increasing, and reached its climax in the early 1970s. In spite of US pressures for international competition, the UK Labour government thirty years later, on the 22 June 1976, denounced the Bermuda I agreement, alleging that it benefited US air carriers much more than those of the UK. After protracted and heated discussions the two states eventually reached another agreement, on 23 July 1977, known as Bermuda

¹⁹ITF Report, 1992: 9.

²⁰Jonsson, 1987: 53, 147; Murias, 1989: 19-43; Strange, 1988: 154, 157; Taneja, 1980: 11.

²¹Gateway is a means, and in air-transport an airport, of entry or access to a domestic or a foreign air transport market.

²²Power here is the ability of any country to influence and even enforce its air transport will on other states.

²³Doganis, 1991: 57-58; Golich, 1990: 160-61; Haanappel, 1984: 27-39; Jonsson, 1987: 99, 114-15; Murias, 1989: 52-72, 106; Naveau, 1989: 36-50; Salacuse, 1980; Thornton, 1970: 26, 117; Weisman, 1990: 12.

II.²⁴ The above UK-US dispute ushered in the third period, which ran from 1978 until 1993, and brought the gradual deregulation of air transport internationally.

Not surprisingly, after Britain's change in air-transport policy, America's persistent and continuous pressure for a liberalized global regime took a new dynamic turn, arising out of two very important US considerations in the international air-transport arena. First, in June 1978, the US view, that IATA should concern itself with technical matters, such as navigation and safety and should have no jurisdiction over economic issues, led the USA to propose the so called Show Cause Order (SCO) as shown in Appendix I.2.²⁵ This required IATA and other interested parties to show the reasons for supporting an anti-competitive trust that decided international airline prices. The USA suspended all operating and commercial rights granted to international airlines within the USA, and prohibited membership and participation in IATA activities to all US airlines. By doing so, Washington expressed its politico-economic dismissal of and threat to the air-transport policies followed by the UK and the rest of the world. However, this attempt to question the legitimacy of the most important international air-transport organization failed. The USA was not able to divide the international community, and obtained no support from other countries. Instead it found itself faced with a worldwide coalition of opponents. In consequence, the USA had to withdraw its Show Cause Order.²⁶

The second US action, following hard on the heels of the SCO fiasco, was the deregulation of its domestic airline industry in October 1978. This had marked repercussions and created a great deal of controversy in the political economy of international and particularly EC air-transport policy-making.²⁷

²⁴Doganis, 1985: 56-60; Gallacher, 1990; Golich, 1990: 161; Haanappel, 1984: 40-41; Murias, 1989: 141-146; McGowan and Trengove, 1986: 149; Naveau, 1989: 134-38; Weisman, 1990: 26.

²⁵Civil Aeronautics Board (CAB) Order 78-6-78.

²⁶Fort, 1991: 102; Haanappel, 1984: 157-64; Jonsson, 1987: 37-8, 127-51; Naveau, 1989: 152-54.

²⁷Wassenberg, 1988: 3-8.

Observers have pointed out that the US airline deregulation had an important effect on the relationship between regulation and deregulation. They noted that regulation reforms had usually called for greater regulatory or incremental²⁸ policy, or at least for a flexible regulatory or decremental²⁹ policy, so as to allow the airline industry to respond to market forces. In other words, reformers usually focus on means. The new US deregulation movement, on the other hand, focused largely on ends, that is, on the political process of a statutory termination of the regulatory airline policy. Unlike previous reform efforts, therefore, US airline industry deregulation was considered as a radical policy alternative that contradicted conventional wisdom about the dynamics of regulatory politics. The academics concluded that, although regulatory reform and deregulation were not the same thing, the political move in favor of the former probably served as a catalyst for the creation of the latter, but did not result in its major transformation. Given that this directs attention to several features of the politico-economic process, behaviour and conditions associated with developing such a radical policy change, it is necessary to examine the evolution of the politico-economic process in the US that led to deregulation, and which eventually brought about a new and radically different air-transport policy all over the world.³⁰

2. The Development of Airline Deregulation in the USA

In 1938 the US Congress passed the country's first airline industry regulatory legislation, the Civil Aeronautics Act (CAA)³¹, in response to pressures from the larger airlines that were hit by the recession of 1937.³²

²⁸ *Incrementalism* prescribes increased and expanded procedural and organizational solutions for remedying regulatory problems.

²⁹ *Decrementalism* moves in the direction of deregulation by introducing non-regulatory forms of intervention, but does not terminate regulation.

³⁰ Brown, A., 1987: xii; Dempsey, 1992: 13. For a thorough analysis of the theoretical and empirical premises of the international and US aviation regime changes see Jonsson, 1987 and Brown, A., 1987. For a general analysis of the role of interest groups in the regulatory and deregulatory processes see Noll and Owen, 1983.

³¹ Publ. L. No. 706, 52 Stat. 973, 1938.

³² Economic regulation was initiated by the Kelly Act in 1925.

They were convinced that the hitherto unregulated air-transport market was vulnerable to destructive competition. The CAA established the Civil Aeronautics Board (CAB), to regulate and administer the US airline sector. Its powers were augmented by the Federal Aviation Act (FAA), of 1958.³³ Thereafter US air transport remained heavily regulated until the US government deregulated it in 1978. The abolition of extensive economic regulation in large US transport industries was prompted by a political and academic consensus that had gradually grown up over the years.³⁴

In the late 1960s and early 1970s the change in US politico-economic attitudes was chiefly due to the influence of academic think-tanks, especially the Chicago School of Economics, which embraced the tenets of New Right neo-liberalism³⁵ and social conservatism. They advocated a political economy that sought a minimum of governmental intervention, deunionization, and deregulation, as a way of reducing social costs, a move which in their view would benefit the consumers. In other words, they basically rejected two doctrines which were frequently invoked to explain government involvement in certain industries: public utility regulation and oligopoly/monopoly doctrines.³⁶

It has been noted that

" The changes in the international position of the USA that had exhausted its capacity to act as a benevolent hegemon had gradually given rise in the 1970s to a domestic move away from the New Deal compromise to a political economy that sought competitiveness through deregulation, deunionization and abandoned the social-democratic principle that wages and social conditions were to be taken out of competition" (Streeck and Schmitter, 1991: 145).

³³Publ. L. No. 85-625, 72 Stat. 568, 1958. For a thorough study of early US aviation history see Lewis and Trimble 1988. ³⁴Altshuler and Teal, 1979; Button and Morisson, 1988: 37-40; Dempsey and Goetz, 1992: 159-77; Golich, 1990: 159-60; Haanappel, 1984: 50-56; Hawk, 1989: 255; Murias, 1989: 242; Naveau, 1989: 142-47; Reynolds-Feighan, 1992: 1-5; Sawers, 1987:16; Weisman, 1990: 18. For a recent and detailed study of the historical and political background, the politico-economic developments and the end results of US airline-deregulation policy, see Dempsey and Goetz, 1992 and Williams, 1993.

³⁵ The New Right philosophy is based on the traditions of Western liberal and conservative philosophy whose adherents added novelty and rigour by mounting a developed social science-based critique of pluralism which recognizes the existence of diversity in social, institutional and ideological values and practices. Liberals share a free market philosophy with Conservatives, although their justifications for the market approach are somewhat different. Liberals put heavy emphasis on individual autonomy while Conservatives believe that individuals are lost without the stable authority structure in society which is provided by the state, the church, the family, and so forth.

³⁶They fought "interest-group liberalism" which in their view, deprived the government of legitimacy, turning the state into a vehicle for the expression of private interests. Brown, 1987: 32; Dempsey and Goetz, 1992: 179-92; Dunleavy and O'Leary, 1987: 4-8, 13-135; Dunleavy, 1991: 4-7; Levine, 1981, 1987; Linowes, 81-87; Steiner, 1986: 27-33; Streeck and Schmitter, 1991: 145; Wessberge, 1984: 24; Williams, 1993: 11; Wilson, 1982: 219-36.

Ever since US airline deregulation was first proposed it has been the cause of controversy among economists. New-Right economists argued that economic regulation had created airline monopolies that kept air fares and costs artificially high, produced excessive capacity, and prevented new airlines from entering the market. They persuaded the public that the CAB was deriving sectional gains at its expense - a procedure known as ^{regulatory} capture theory, postulating that a regulatory agency acts as the protector of the interests of the regulated parties (i.e. is captured by vested interests) rather than serving the public interest. They therefore drew public attention to the contestability of the US airline industry through free market forces mechanisms. According to the contestability theory, there were always potential competitors capable of entering the air-transport markets that must satisfy certain conditions, such as no barriers to entry, no sunk costs (no barriers to exit)³⁷ and prevent any possibility of hit and run entry.³⁸ Their doing so (i) would prevent prices from exceeding the cost of services and lower all fixed costs, (especially labour costs); (ii) would generate more business by attracting more ¹travelers; (iii) would increase load factors;³⁹ (iv) would safeguard any possible concentration and collusive behavior; and (v) would prevent predatory practices (e.g. selling fares below costs and abuse of dominant position).⁴⁰

There were howls of protest however, from opponents of airline deregulation, with dire predictions of chaos and disaster, and warnings against the risks inherent in a competitive air-transport market as experienced in the pre-1938 period.⁴¹ Notwithstanding the controversial nature of the issue,

³⁷ Sunk costs consist partly of marketing expenditure, scheduling barriers, congestion problems, and uncertainty.

³⁸ It is also called "fly by night" or "free rider" competition where operators move onto a route to take a quick profit and depart.

³⁹ Load factor is the percentage of capacity, measured either in seat-miles or ton-miles (freight), sold by airlines.

⁴⁰ Bailey, 1979; Bailey and Panzar, 1981, 1984; Barber, 1962; Baumol et al., 1982; Boyer, 1986: 317-18, 338-40; Call and Keeler, 1985; Cooper and Maynard, 1972; Douglas and Miller, 1974; Douglas, 1971; Eads, 1975; Friedman, 1976; Fruhan, 1972; Hector, 1960; Herman, 1976; Jordan, 1970, 1972; 1978; Joskow, 1988: 110; Kahn, 1970, 1971, 1976, 1978; Keeler, 1971a, 1971b, 1972, 1978, 1991: 132-34; Levine, 1965, 1975, 1981: 191, 1987: 444; Lloyd-Jones, 1975; McGowan and Trengove, 1986: 111-13; Martin and Schwartz, 1977; Phillips, 1975; Stigler, 1971; Taneja, 1968, 1976. For a detailed analysis on US airline industry economics prior to deregulation see Stratford, 1973.

⁴¹ Brenner, 1975; Callison, 1975; Caves, 1977; Kaus, 1979; Loving, 1977.

proponents of US airline deregulation succeeded in making it politically prominent. The view that air-transport regulatory politics were based on special (private) economic interests and only symbolically on the public interest (symbolic politics), resulted in some rather cynical conclusions not only concerning regulatory policy-making, but also the overall role of the US government.⁴²

The Senate Judiciary Subcommittee on Administrative Practices and Procedures,⁴³ chaired by Edward Kennedy, initiated deregulatory reform in hearings conducted during 1974-75. At that time the US economy was suffering from considerable inflation, being hit by the worst recession since the late 1930s. After President Nixon's resignation, his successors Ford and Carter embraced deregulation in their presidential campaigns. While in office Carter strongly adopted the deregulation of airlines, of trucking and of railroads as his main transport priorities. He signed the Air Cargo Deregulation Act of 1977, the Airline Deregulation Act (ADA), of October 1978, and the International Air-Transportation Competition Act of 1979. The new law stipulated the elimination of all entry, frequency, capacity, and fare control and regulations. The Civil Aeronautics Board (CAB) under the chairmanship of Alfred Kahn, the father of US deregulation, not only supported but actively prompted deregulation and prepared CAB's own abolition in 1985.⁴⁴ The remaining responsibilities were transferred to the US Department of Transportation (DOT), until 1989 when the US Department of Justice (DOJ), took over the anti-trust after public criticism of the DOT's approval of massive mergers.⁴⁵

⁴²For more details on Symbolic Politics see Dunleavy, 1990: 49.

⁴³Report on the US Civil Aeronautics Board Practices and Procedures. 94th Congress, 1st Session 189, 1975.

⁴⁴The US Civil Aeronautics Board Sunset Act of 1984, PL 98-443, 98 Stat. 1703, 4 October 1984.

⁴⁵ Breyer, 1986: 4; Brown, 1987: 125-126; Button and Morrison, 1988: 39-41; Dempsey and Goetz, 1992: 179-215; Derthick and Quirk, 1985: 36-37, 162-64; Dobson, 1991: 270; Feldman, 1989; Hawk, 1989: 257-62; Harrigan and Kasper, 1978; Hall, 1968; Jennings, 1990; Rule, 1990. For a thorough analysis of US airline and general deregulation politics see Derthick and Quirk, 1985 and Brown, 1987.

3. The Results of US Airline Deregulation

Ever since the early 1980s when US airline deregulation was first implemented, theorists have been debating the ensuing adverse politico-economic results. They, and the press as well as regional and international organizations, have argued that, generally speaking, US airline deregulation initially resulted in fierce competition. It then entered a consolidating phase, during which a large number of old airlines were swallowed up in mergers and buy-outs.⁴⁶ The final globalization phase ultimately produced the mega-carriers.⁴⁷

Some recent studies view US airline deregulation as a success,⁴⁸ while others regard it as a failure;⁴⁹ still others are more cautious, but restrainedly optimistic about its end results.⁵⁰ The chief argument concerning US airline deregulation has been whether it inhibited greater concentration in the pre-deregulation period for certain airlines, or just rearranged a greater market concentration for them in the post-deregulation period, focusing on an evidently dramatic concentration of their power on their hub-airports.⁵¹

The more recent studies and press reports have shown that US airlines, which are responsible for nearly half of the world's air transport output, have achieved a dramatic concentration of their market shares: the share of top five airlines has grown from 63.5 in 1978 to 71.7 per cent in 1987 and the eight largest airlines accounted for 95 per cent of the domestic passenger market in 1992.⁵²

⁴⁶Chicago School economists, unlike those of the Harvard School, insist that concentrated market power is necessary, and mergers that may create monopolies are allowable for protecting the profits of innovators, despite the high price costs to the consumers. Burke et al, 1991: 63, 67-68.

⁴⁷AEA, 1989: 84-85; Biederman, 1982; Bonneau, 1990: 729; Dempsey and Goetz, 1992: 281-95; Haannapel, 1985: 93-97; ICAO, 1988: 38-53; IATA, 1984: 21-24; Flint, 1990: 30-37, 129-32; Gialloreto, 1988a; 1988b: 9-18 and 1989: 68-9; Graham and Kaplan, 1982; Jemiolo and Oster, 1987; Keeler, and Abrahams, 1981; Meyer et al, 1981; Meyer and Oster, 1984, 1987; Morrison and Winston, 1986. Lipman, 1985: 3-5; Marshall, 1988: 19-20; Molloy, 1985; Organization of Economic Co-Operation and Development (OECD), 1988: 22; Whitaker, 1989: 32.

⁴⁸Button, 1991; Keeler 1991.

⁴⁹Dempsey, 1989, 1990; Dempsey and Goetz, 1992.

⁵⁰Keeler, 1991: 155-57; Williams, 1993.

⁵¹Hub airport is the central base airport for an airline.

⁵²Golich, 1990: 161; Financial Times of 17 Jul 1989: 21, and of 1 Feb 1991: 14; Dempsey and Goetz, 1992: 13, 355; Joskow, 1988: 119-25; Williams G., 1993: 2.

As shown in Table 1.1 on market shares of domestic US airlines, Northwest Airlines, for example, increased its share more than 250 per cent (from 2.6 to 9.4 per cent) between 1978 and 1991; Continental Airlines during the same time span grew more than 100 per cent; and American and Delta Airlines expanded by 44 per cent, (from 13.5 to 19.3 per cent, and 12.0 to 17.2 per cent respectively). By contrast, United Airlines lost 20 per cent of its market share, and TWA almost forty per cent. Finally six airlines, which had accounted for 50 per cent of the first twelve airlines before deregulation, were no longer among the leading twelve airlines in the post-deregulation period.

The given data on concentration leave considerable scope for argument as to whether a small increase in concentration percentages really proves claims and arguments for a dramatic post-deregulation concentration in comparison to the pre-deregulation one. A close examination of Table 1.1 shows that in fact there has been no major increase in concentration in the US airline industry. The top three airlines increased their shares by only 15 per cent, and the top four, six and twelve airlines by roughly 11 per cent each. The fact that these were the results of having no economic restraints, seems to indicate that the predictions for a dramatic increase in the overall pattern of airline concentration in the US were exaggerated. What the above figures show is that there has certainly been a dramatic shake-up of pretty well all carriers during the post-deregulation period, some having improved their standing while other have gone out of business.

Table 1.2 shows a comparison of domestic airlines at US airports before and after deregulation. So between 1989 and 1991, American Airlines controlled 65 per cent of slots at Dallas; United Airlines 68 per cent at Washington DC., and 48 per cent at Chicago; and Delta Airlines 70 per cent at Atlanta. Currently there are major hub airports where one airline holds an effective monopoly of slots, as Table 1.2 demonstrates. Those hubs account

**Table 1.1: Comparison of US Airlines Market Shares in 1978 and 1991
(in Percentages of Domestic Air-Traffic)**

	1991 (position in 1978 in brackets)	1978	+/-
American (2)	19.3	13.5	43
United (1)	17.3	21.1	-20
Delta (3)	17.2	12.0	44
U.S.Air*	10.1	-	-
Northwest (10)	9.4	2.6	360
Continental (7)	9.3	4.5	103
TWA (5)	5.6	9.4	-37
American West*	3.9	-	-
South West*	3.5	-	-
Pan Am*	1.7	-	-
Alaska*	1.5	-	-
Aloha*	0.2	-	-
Leading three	53.8	46.6	15
Leading four	63.9	57.7	11
Leading six	82.6	72.1	11.5
Leading twelve	99.0	90.8	10.9

* Not included in the leading 12 US airlines in 1978. The following companies figured in the top twelve in 1978 were Eastern (4) with 11.1 per cent, Western (6) with 5.0, Braniff (8) with 3.8, National (9) with 3.6, Allegheny (11) with 2.2, and Frontier (12) with 2.0 per cent.

Source: Williams, G., 1993: 61.

Table 1.2: Comparative Percentages of US Airline Concentration at Major Airports-Pre and Post Deregulation

Airline	Airport	1977	1990
American	Dallas	19	63
Delta	Atlanta	35	57
	Cincinnati	35	88
United	Denver	32	49
Continental	Houston	37	80
TWA	St. Louis	39	79
Northwest	Minneapolis	46	80
	Detroit	13	73
U.S.Air	Pittsburgh	46	87
	Philadelphia	22	46

Sources: Dempsey and Goetz, 1992: 229; Williams, G., 1993: 24-26.

for 70 per cent of domestic air services in the USA.⁵³ Before deregulation, not a single US airport was dominated by any one airline.⁵⁴

The considerable shake-up in US airlines and their dramatic airport concentration were due to the proliferation of effective control through marketing tactics and mechanisms such as Computer Reservation Systems (CRS),⁵⁵ and Code Sharing,⁵⁶ Yield-Management strategy,⁵⁷ and Frequent Flyers arrangements rewards.⁵⁸ As airline-industry experts have pointed out, the major US airlines have invested heavily in huge CRS, using them as one of the most critical weapons in competition.⁵⁹ Chairman B. Attali, of Air France, mentioned in his speech at the IATA symposium in Paris on 3 September 1992

"Certain competitor CRS systems are used like war machines."⁶⁰

As a matter of fact it has been argued that the US transatlantic airline marketing agreements were politically more appealing and much easier to implement than transnational mergers. The former did not alter the nationality or share holding of either carrier in the partnership as the latter could possibly do.⁶¹

Negative social results have been pointed out as well by the most authoritative recent studies. They assessed that, on the whole, deregulation as a public policy has indeed failed to benefit either the public or the industry as a

⁵³The "Structuralist School", the modern offspring of the "Harvard School", argued that large oligopolistic firms use so-called exclusionary practices, the most important of these being the ability to erect high entry barriers. See Burke et al., 1991: 63.

⁵⁴Abbey, 1989; Doganis and Dennis, 1989; ITF Report, 1992: 26; Kanafani and Ghobrial, 1984; Kanafani and Hansen, 1985; Kanafani, 1981, 1985; Phillips, 1985, 1987.

⁵⁵CRS are used for a wide range of internal airline functions, such as scheduled planning, crew rostering, price listing, statistics, and aircraft inventories and maintenance records, but most importantly link airlines with travel agents.

⁵⁶This has been an effective strategy for smaller airlines to survive US deregulation. It involves joint marketing agreements between US and foreign airline/s or between US ones in which both airlines share equal "billing" on CRSs, continue to inter-line baggage, and provide other joint services for the traveller.

⁵⁷This is a sophisticated marketing strategy manipulating the number of seats for which restricted discount fares are offered in order to fill them with passengers paying the maximum possible fare. See Desgranges, 1988.

⁵⁸These are free mileage bonuses offered by airlines to frequent customers. For a detailed analysis of all marketing strategies see Dempsey and Goetz, 1992: 315-16; Golich, 1990: 168, 176; Keeler, 1991: 153; Williams, 1993: 18-39.

⁵⁹ITF Report, 1992, 27, 35-38; Hawk, 1989: 263-265; Joskow, 1988: 114-15; Katz, 1988: 87-101; Keeler, 1991: 151-52; Lyle, 1988.

⁶⁰ITF Report, 1992: 36.

⁶¹Golich, 1990: 168.

whole. They argue that it is highly misleading to say consumers are better off, where prices are well below costs on many routes (predatory prices), since obviously such unrealistic prices can not be sustained and are at best temporary. They emphasize that while most travellers fly discounted tickets, the full fare has risen sharply, more than double the rate of inflation.⁶²

Moreover, since deregulation the entire US air-transport system has become more susceptible to delays from air-traffic⁶³ and airport congestion, and by the airlines' emphasizing their so-called hub-and-spoke operations⁶⁴ which, however, have actually decreased air services to small communities.⁶⁵

Figure 1.2 demonstrates the leverage of US hub connections and compares the number of city pairs served, and Figure 1.3 depicts hub and networks routes and its overall routes connections. Essentially, both Figures demonstrate that deregulation by means of hub and spoke operations, in order to serve as many air-routes as possible at the least cost, attempted to ensure economies of scale on each spoke, as well as economies of scope between the spokes. Economies of scale are economies of high utilization because they both reduce costs per seat/mile by offering more efficient utilization of their aircraft size and personnel and achieve higher average passenger load factors.⁶⁶ The possibility of economies of scope arises in combining economies of density on individual routes and their stage length.⁶⁷ Don Carty, Executive vice-president of American Airlines said in 1992

⁶²Boyer, 1986: 330-33; Keeler, 1991: 150; Malin, 1990; Moore, 1986: 1-13;

⁶³Air-traffic congestion may cause near misses or even collisions, when two aircraft approach each other in violation of the proper separation distance and/or separation time.

⁶⁴*Hub and spoke* is a pattern of air services that link outlying communities to a central hub-airport. Hub-and-spoke flights are arranged to match the collection/distribution of passengers from a number of spoke airports (small airports located between a connection and a hub) so that connections to cities beyond the hub are facilitated. See Ellison, 1982; Flint, 1990a, 1990b; Ghobrial and Kanafani, 1985; Levine, June/July 1986: 3-8; OECD, 1988: 65; Pavaux, Mar/April 1989: 7-8; Reynolds, 1992: 18-19; Toh and Higgins, 1985.

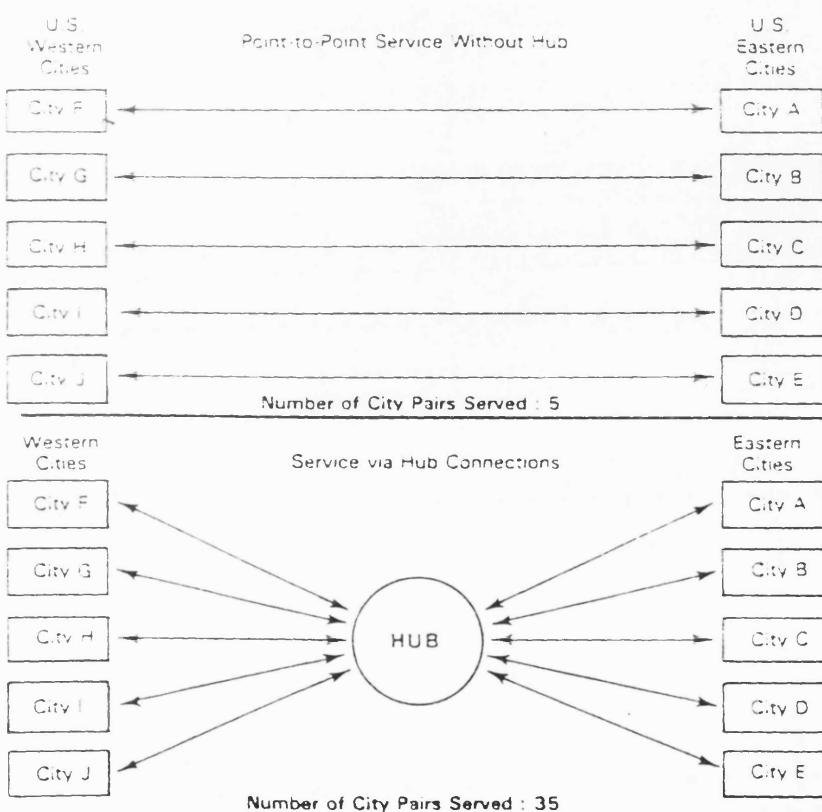
⁶⁵Keeler, 1991: 135-41, 152-55.

⁶⁶Higher load factors means lower-per-passenger costs since the fixed costs of a flight can be spread over more passengers.

⁶⁷*Economies of scope* are achieved when the output growth is within a network of fixed size. See Caves et al, 1984; Ellison, 1982; Viton, 1986.

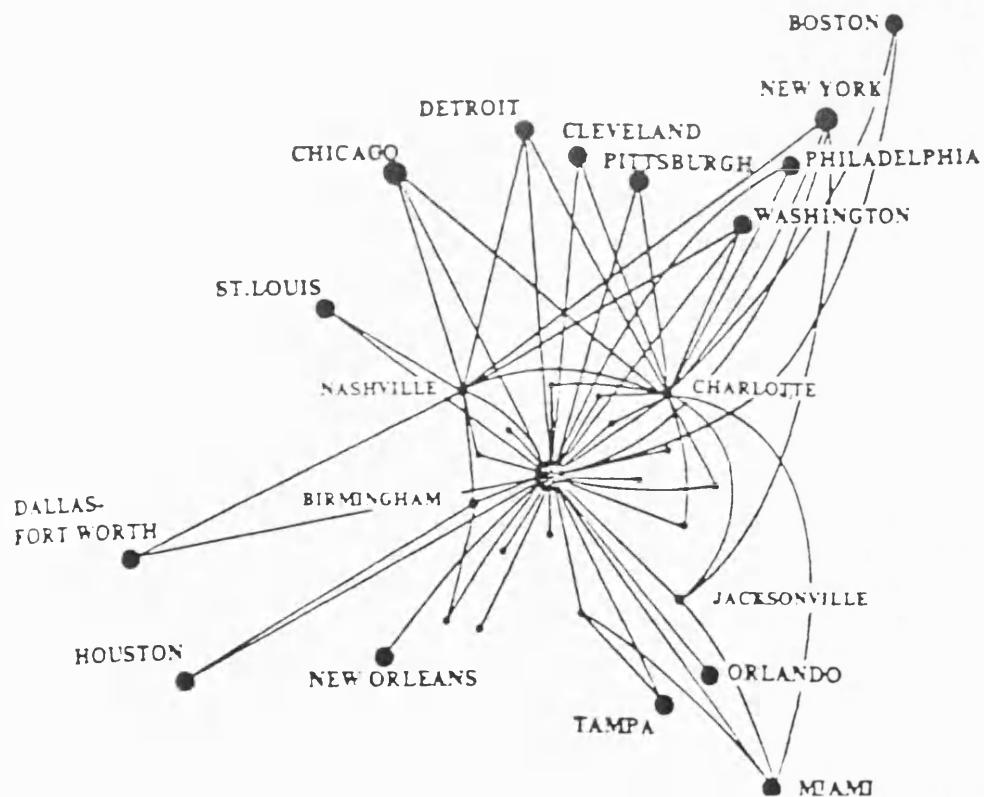
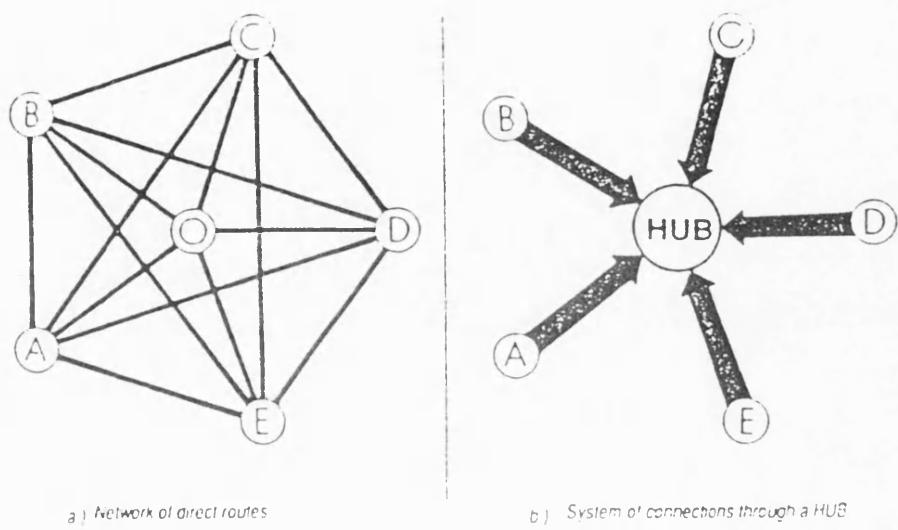
"Fourteen years of deregulation have driven home the importance of strong networks and economies of scale"⁶⁸

Figure 1.2: Demonstration of Leverage of Hub and of City Pairs Served Connections



Source: Levine, June/July 1986: 3-8

Figure 1.3: Hub and Spoke Networks and Routes Connections



Source: Pavaux Mar/April 1989 7-8

In addition, the continuous disputes between airline management and employees have worsened labour-management relations. In particular, the post-deregulation period has seen changing work rules and lower labour costs, achieved by a reduction in the amount of work required and wages/salaries paid. Many US airlines have reduced their labour costs by negotiating two-tier agreements with the unions (less pay for newly hired employees), by taking on more part-time and temporary employees, by more flexible work rules, by introducing a cross-utilization of staff, multi-skilling, multiple-tasking, and by contracting out a number of air services.⁶⁹ The major casualty in all this has been job security, because of job reductions and layoffs. According to Frank Borman, former Eastern Airlines' Chairman of the Board, deregulation has been the greatest anti-labour act ever passed by the US Congress.⁷⁰ As has been remarked

" After the final defeat of the Labour Law Reform Act in 1978, ...causing a further, probably irreversible, decline in union organization ...the destruction of American trade unions paid off handsomely in that it gave the USA the "flexible" markets and the "confidence" of financial investors required to underwrite an expansionist fiscal policy that has been ironically characterized as "Keynesianism in one country" (Streeck and Schmitter, 1991: 145).

Moreover, the continuing deterioration of the airlines' financial performance dramatically reduced profits, and therefore did not advance the equity goals of deregulation. As a matter of fact, in 1991 the US bankruptcy legislation (Chapter 11) artificially protected from bankruptcy 30 per cent of the domestic airlines. The above mentioned results obliged US airlines to fly the oldest and most repainted aircraft to save costs on maintenance and personnel,⁷¹ and this inevitably affected their safety margin and safety risk.⁷²

⁶⁹The airlines divested themselves of non-airline businesses to core airlines, concentrating strictly on commercial aviation operations. A whole range of private sub-contractors bid against each other to gain contracts for services in areas such as maintenance, cleaning of airports and aircraft, loading and baggage handling, catering supplies, and airport security.

⁷⁰Boyer, 1986: 333-37; Capelli, 1985; Donoghue, 1987; Gallacher, 1989, 1991; Gil, 1990; ITF Report, 1992: 39-46, 55, 67; Martindale, 1989; Moore, 1986: 22-27; Peoples, 1987.

⁷¹ Boyer, 1986: 333; Michel and Skaked, 1984; Moore, 1987: 13-22.

⁷²The term safety margin refers to the difference between sticking strictly to minimum legal safety standards and the application of every reasonable safety check; safety risk is the danger level of accidents to which air passengers are exposed. Button and Morrisson, 1988: 47-48; Cavarra et al, 1981; Cohan, 1990; Crum, 1987; Dempsey and Goetz, 1992: xiv; ITF Report, 1992: 47-50; Feldman, 1990; Flint, 1989; Gomez et al, 1983; Golich, 1990: 164; Pavaux, 1989; Reed, 4/1992: 54, 56; Thayer, 1982; Woolsey, 1988.

The overall adverse effects of deregulation for safety have been debated amongst academics at length. Some have argued that although fatality statistics have not reflected it, deregulation has inevitably decreased the safety margin because it has lowered safety standards and increased the safety-risk factor.⁷³ Captain Y. Enderle, president of Belgian airlines cockpit crew association (ABPNL) has pointed

"Airline deregulation has definitely reduced the safety margins and this has been recognized by all airline management" (interview 7 Dec. 1990).

Others have argued that, on the contrary, safety standards have actually improved both because airlines do not want to damage their reputation, but most importantly because their employees who fly the aircraft had incentives to ensure a high safety factor for their lives.⁷⁴

Table 1.3 depicts the number of fatal accidents and passenger deaths in the pre-deregulation (1971-1978) and post-deregulation (1979-1986) periods. The data do not indicate any upsurge in passenger deaths, but rather a decrease over the two periods, which does seem to suggest that there has been no increase in the safety risk.

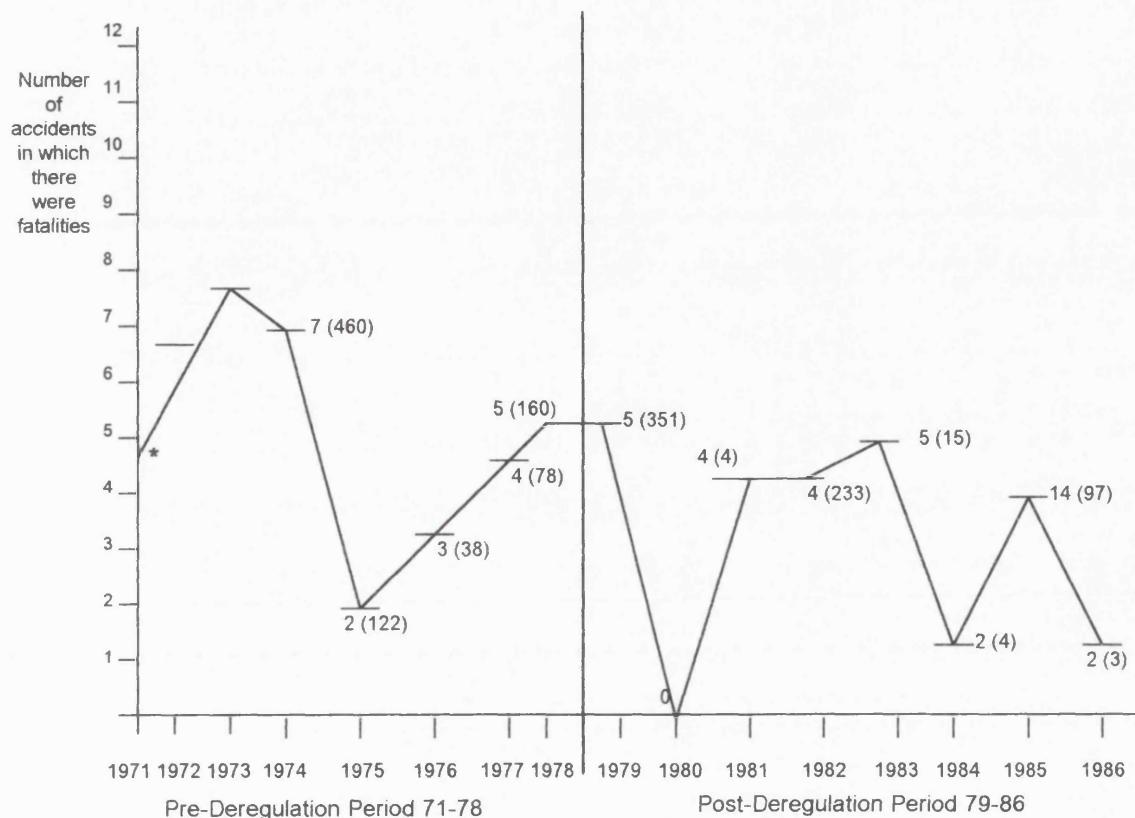
However, since the safety-risk factor is a matter of prevention rather than of accident and death figures, it has been argued that accidents are not the proper parameters for assessing and evaluating whether deregulation has brought a change in this respect. In other words, there can be an increase in safety-risk even without accidents.⁷⁵ President J. P. Meheust, international affairs adviser, O. Jullien, and safety advisor G. Gomez of the National Syndicate of Commercial Air-Transport Personnel (SNPNC), are agreed that it is unacceptable to assess the level (decrease/increase) of passenger safety-

⁷³Adams, 1989; Alamaniotis, 1988: 7; Bailey and Kirstein, 1989: 153; Golich, 1990: 164; ITF Report, 1992: 47-50; Main, 1986; Nance, 1986, 1989.

⁷⁴Button and Morrison, 1988: 43-44; Carizon, 1987; Joskow, 1988: 113; Jordan, 1986; Kanafani and Keeler, 1989; Keeler, 1991: 135; Moore, 1989; Moses and Savage, 1989: 308-15; OECD, 1988: 65-67; Oster and Zorn, 1989: 151-52; Panzar and Savage, 1989; Sawers, 1987: 27-29.

⁷⁵Adams, 1985; Douglas, 1986; Douglas and Wildavsky, 1982: 1-15; Fischhoff, 1983; Hadden and Hazelton, 1980; Panzar and Savage, 1989: 40; Perrow, 1984: 304-52; Wilson, 1991.

Table 1.3: Accidents on Scheduled US Services in Numbers of Fatal Accidents and Fatalities (1974-1986)



* Disaggregated figures only available from 1974

Note: numbers in brackets = actual casualties from accidents

Sources: Sawers, 1987: 28; US National Transportation Safety Board 1987-1988

risk exposure in terms of accidents and fatalities, rather than in measures taken to avoid them. They stated

"Consumers should know that cheaper fares means cheaper safety" (interview 23 Nov. 1990)

The conclusion seems to be that although air safety is not incompatible with competition between airlines, it can not be left to free-market mechanisms or proved by fatality and accident statistics which in any case are a negation of the very definition of safety.

What remains to be examined is why US airline deregulation has not

been successful as a public policy. Air-transport theorists and analysts have argued that the overall deregulation outcome was adversely affected by the failure of the contestability theory, and by the lack of anti-trust laws. The main argument of the contestability theory - that price competition becomes significant only when there are five or more airlines- never applied to the US air-transport market. Academics argued that the greater the choice and the tougher the competition, the greater the industry's losses, and that the absence of regulation had a more negative effect than its shortcomings and drawbacks. The conclusion was that US airline deregulation instead of terminating a regulated oligopoly, created a deregulated oligopoly⁷⁶ or rather a polypoly.⁷⁷ In other words, deregulation meant the elimination of competition, and so the negation of itself - which, as some academics argued was the chief aim of deregulation in general economic terms.⁷⁸

John Kenneth Galbraith (as cited by Wheatcroft 1964: 55) pointed out in his book *American Capitalism* that oligopoly, and not competition, was of crucial importance in all Western economies. Similarly G. Kolko (as cited by Levine 1981: 184) said that in fact capitalists find competition unprofitable and consumer sovereignty unattractive, and attempt to find ways and mechanisms supposedly to satisfy popular demand, but in fact to eliminate the market forces, that are operating to reduce their profits, and to preserve monopoly positions. This applies equally to international air transport. Indeed, it has been said that the US airline deregulation's primary promotion of US airline interests was proof of producerism rather than consumerism.⁷⁹ As was suggested

⁷⁶Oligopoly defines a very small number of suppliers.

⁷⁷Polypoly defines a great number of suppliers.

⁷⁸Bailey and Panzar, 1981, 1984; Beane, 1980; Burke et al, 1991: 50-62; Hammarskjold, 1987: 75; Haanappel, 1985: 92; Golich, 1990: 170-71; Keeler, 1991: 150-51; Kahn, 1988: 316-22; Levine, 1991: 7-8, 15; McLachlan and Swann, 1967; Ordover and Saloner, 1989; Pavaux, 1986: 17; Rule, 1990: 99-126; Shepherd, 1982 1984; Sochor, 1991: 201-07; Villiers, 1989: 5-23; Zyllich, 1992: 29, 32-33.

⁷⁹Consumerism, which here may be seen as the collective interests of air-transport consumers, was another force with a widespread influence on governmental attitudes towards aviation regulation. Wassenberg, 1988: 47; Williams, G., 1993: 124. As we shall see in later chapters, the same was true also for EC airlines.

" ...whenever an airline starts a new route the incumbent will say it 'welcomes competition'. No one is expected to believe this: it is one of the proverbial great lies. It is like a piece of medieval theology, trotted out because everyone expects it, but which has no meaning beyond the ritual. The truth is very different. The main purpose of successful business strategy is to avoid competition" (T. Bass, 1991:21).

Since the early 1980s the results of US airline deregulation have brought numerous calls for a partial re-regulation.⁸⁰ Yet notwithstanding the controversy and the unfortunate results, many studies still insist that competition, for all its imperfections,⁸¹ is still superior to regulation as a means of serving the public interest.⁸² As has been argued

" The deregulation movement earned a special place in history. Not since the Bolshevik Revolution has the discipline of economics embraced an ideology with such a passion" (Dempsey and Goetz, 1992: xv).

Recent studies have questioned the very reason for implementing airline deregulation in the US air transport. They pointed out that in terms of passenger satisfaction the US airline industry had had for years, one of the highest ratings among all major US industries, so that there was no reason why US bureaucrats and economists arrogated to themselves the task of consumer protection.⁸³ Why then such persistence in the implementation of US air-transport deregulation? The answer is that historically, in terms of overall US policy and the pursuit of its interests within international air transport, it is evident that the motivation behind the persistent and powerful US support for domestic airline deregulation was largely the global expansion of US air-transport interests.

4. International Repercussions

It was a fixed ambition of the USA to impose airline deregulation on air transport all over the globe. Behind the wish in 1978 to see worldwide

⁸⁰Brummer, 1989: 19; Cohan, 1990: 8; Donoghue, 1990: 2; French, 1990: 18, 62-66; Feldman, 1989: 34-42; Flint, 1988: 34-37; Gialloreno, 1989: 15-20; Jennings, Sept/1992: 129; Labich, 1989; Leonard, 1983; Pavaux, 1986a 1986b: 15-20; Pickrell, 1991: 17; Pilling, 1991; Premo, 1987: 10-11; Rolfe, 1990: 18-22; Wijk, 1991: 38.

⁸¹*Imperfect competition may lead to oligopoly or monopoly.*

⁸²Donoghue, 1990: 6; Hawk, 1989: 274-77; Golich, 1990: 156; Kahn, 1983, 1988a, 1988b; Kahn and Thorne 1982; Keeler, 1984; Levine, 1981, 1986a: 9-14, 1986b, 1987, 1988: 3-7; Sawers, 1987: 74; Wilkins, 1984.

⁸³Dempsey and Goetz, 1992: 357; Williams G., 1993: 59.

competition in air transport lay another major concern: the once dominant US position was being eroded, especially in the North Atlantic Region between the USA and Europe. US airlines had to become more powerful and expansive to compete on the international air routes, in response to both the regulatory international aviation and the Bermuda II agreement with Britain.⁸⁴ As has been noted

" The USA may have opened Pandora's box when it began liberalizing international air transport. ..several US airlines have targeted successful international expansion as critical to providing the passenger feed they need to survive" (V. Golich, 1990: 168).

As a result the USA began to put pressure on the international community to open up foreign markets for exploitation by US airlines. Those pressures manifested themselves in two ways: One was direct diplomatic leverage, the other employed the carrot-and-stick. Small countries with non-economic air-transport industries opposed to air deregulation were threatened with a diversion of US traffic to their neighbors. At the same time the USA pursued access to large, economically profitable countries, which were attracted by the prospect of associating with a large lucrative air transport industry and advanced their interest in air transport deregulation.⁸⁵ As has been commented

" The use of such carrot and stick tactics to wean an industry away from a comfortable regulatory pattern was to provoke incentives which will counter balance the cost of leaving the dirigiste market for a competitive market" (D. Kasper, 1988: 89).

However US airline deregulation went beyond the simple wish to promote competition. It was hoped to promote and export to other countries politico-economic models or systems already in use at home or representing basic features of institutional polity functions. In other words, the USA was

⁸⁴Ash, 1987; Derthick and Quirk, 1985: 39; Doganis, 1991: 53; Fort, 1991: 103; Golich, 1990: 162; Hammarskjold, 1987; IATA, 1984; Murias, 1989: 176-93, 197.

⁸⁵Kasper, 1988: 41-42; Pelkmans, 1986: 357; Sampson, 1984: 144.

trading its policies in order to intervene in other countries' politico-economic systems. This kind of progressive promotion has been dubbed "the calculus of concern", which refers to weighting the different considerations that have to be accommodated in any negotiating position.⁸⁶ Bernard Attali, chairman of Air France declared at the IATA symposium in Paris on 3 Sept. 1992

" ...seen from this side of the Atlantic, open skies are rather like an American vision of Pax Americana."⁸⁷

As it turned out, most countries supported increased liberalization⁸⁸ (gradual relaxation of regulatory control of, for example, air fares, capacity, and access to market), not necessarily because they believed in its virtues, but because they viewed liberalization as essential to the viability of their own airlines in a globally increasingly competitive situation. The USA, therefore, succeeded in re-negotiating bilaterally with other countries. Gradually, airline deregulation spread to Chile, Thailand, New Zealand (1983), Canada (1987),⁸⁹ Australia (1990),⁹⁰ Argentina (1990),⁹¹ and the People's Republic of China, with results similar to those in the USA or worse.⁹² For all that, the US diplomatic capitalization of the pressures created by airline deregulation as a key element for building a competitive international air-transport industry, were something of a testing ground for similar developments regarding the EC air transport in the mid 1980s.⁹³ As has been declared

" US airline deregulation was just the beginning of what promised to be truly ruthless fight for a global market share" (D. Kasper, 1988: 142).

⁸⁶Aviation Daily, 23 Sept. 1983: 125; Haanappel, 1984: 57-60; Murias, 1989: 189; Pelkmans, 1980: 337, 1986: 57; Shane, 1990: 2; Weisman, 1990: 25.

⁸⁷ITF Report, 1992: 22; International Transport Workers' Federation News (ITF News), Oct. 1992: 10.

⁸⁸The chief aim of liberalization is opening up of an industry to competitive pressures via the removal of government regulations. Golich, 1990: 157; Preben, 1986: 7; Swaw, 1993: 166-67.

⁸⁹For a thorough analysis of Canada's airline industry deregulation see Barone, 1986; Button, 1989; Heaver, 1991; Gillen et al, 1985; Gillen et al, 1988; ITF News of Sept. 1992: 14, and of Oct. 1992: 11; Lazar, 1984; Malglaive, 1985; Oum et al, 1991; Roman, 1989; Stevenson, 1987.

⁹⁰For detailed works on Australian airline deregulation see Docwra, 1991; Findlay, 1985; Forsyth, 1987, 1991; Kirby, 1981.

⁹¹ITF News, Sept. 1992: 13.

⁹²Ash, 1987; Williams, 1993: 93-103.

⁹³Aviation Daily of 26 June 1985: 219, of 16 Jan. 1985: 85, of 19 Feb. 1986: 271, and of 3 July 1986: 22; Button and Swan, 1991: 112-18; Hanapel, 139-56, 189-90; Kasper, 1988: 1, 75-81.

As a matter of fact, in the late 1980s the USA approached the General Agreement for Trade and Tariffs (GATT), Uruguay Round, from its position of power in international air transport. The GATT round was an obvious means for the USA to reach some type of multilateral agreement, although applying key GATT principles - such as unconditional Most-Favoured-Nation rules (MFN)⁹⁴, and National Treatment (NT)⁹⁵ - was certain to present problems. Such principles would affect the extent to which the USA could single-mindedly pursue the interests of the powerful US airlines. When disputes required resolving, US bargaining would be vulnerable to manipulation by protectionist governments, and might require sacrificing certain US-airlines interests, so diminishing their strength (and at the same time US attractiveness as a "carrot") by making it possible to balance concessions on economic rights and restraints in some other areas. Besides US airlines would be obliged to compete with foreign airlines over direct access to the US air transport, especially with EC airlines that wished to negotiate air services across the North Atlantic Region. Ironically, it was the USA, the erstwhile driving force in worldwide air-transport deregulation, that proved in the end to be a strong opponent of air-transport negotiations within GATT - in contrast to the EC, which was a strong advocate of their inclusion. Nevertheless as a first step to the above negotiations in the end of 1992 an agreement was signed between the EC and the USA concerning the application of the GATT agreement on trade in civil aircraft.⁹⁶

As a result of the above negotiations and agreement USA succeeded in establishing air-agreements between it and EC member-countries in the front line of the bitter competitive struggles being waged in the process of airline

⁹⁴Unconditional MFN generalizes air-transport concessions without requiring beneficiaries to accept liberalizing conditions. Conditional MFN requires countries to adhere to conditions designed to ensure liberalized air services.

⁹⁵National Treatment for air services would require that foreign airlines receive the same treatment as comparable domestic airlines.

⁹⁶A 1017 (01), Official Journal of the EC (OJ) L 301, 17 Oct. 1992: 32. See Bulmer, 1986: 147-49; Creedy, 1990; GATT, 1990; Golich, 1990: 169; Kasper, 1988: 93-112; Lipman, 1990.

industry globalization which threatened air-transport labourers' jobs and therefore were strongly opposed by them. For example, in 1992 the Irish national Shannon airport' workers started to defend the airport's designated status as Ireland's international getaway to the USA and Canada, the so called "Shannon Stopover". In other words all transatlantic flights in and out of Ireland had to call at Shannon under a US-Ireland agreement dating back to the 1960's. The airport was considered as part of a regional development in an impoverished part of Ireland which organized many of the workers not only in the airport, but in the surrounding manufacturing plants. Any attempts to overfly Shannon would wipe out half a century of work and investment and it was claimed, 100,000 jobs. Therefore the Services, Industrial, Professional, and Technical Union of Ireland (SIPTU) had organized repeated rallies in defense of the airport's stopover rights. Against a German-US air-agreement were also all German air-transport workers who had constantly held meetings with the German government in order to press for the scrapping of the German-American air-traffic treaty, but in vain. In 1993 Germany (preceded by the Netherlands in Sept. 1992) signed a new Air-Treaty with the US while Ireland and UK were still negotiating. EC officials perceived the American strategy, understandably, as one of 'divide and rule'.⁹⁷

The battle for open skies agreement between the USA and the rest of the countries of the world, and in particular with EC member-states, continued with a report issued in January 1994 by the US Department of Transportation promoting a strong and competitive international aviation industry. The Clinton Administration's initiative pledged itself to head a "global coalition of free market oriented nations" in a concerted campaign to tear up the 1944 Chicago convention and to replace it with global "open skies". The report suggested (i) the pursuit of multilateral agreements; (ii) pressures to other countries to liberalize existing rigid bilateral agreements; (iii) a global coalition to dismantle

⁹⁷ Financial Times of 22 Oct. 1992: 3; ITF News of Aug. 1992: 10, and of Oct. 1992: 10.

the above agreements; and (iv) the liberalization of the rules on the foreign ownership of US airlines.⁹⁸

5. Conclusion

The conflicts and interactions of US and UK air-transport interests in the pursuit of international air power shaped the political economy of international air-transport during the pre-deregulation period (1919-1978). Two main features characterized the two countries' international air-transport politics. First, until the Bermuda II agreement was signed, both states' policies, consisted of specific actions based on certain and constant elements, which divided them into two opposite camps: the USA was attempting to liberalize the international airline industry, and the UK was trying to counterbalance US air-transport power and protect its North Atlantic and European air-transport interests. Second, the domination of US air-transport policy made the USA more willing to show a conciliatory attitude towards the international air-transport arena. In this the USA had to balance two objectives: satisfying its own national air-transport interests, and remaining in the game as the indisputable global air-transport power.

In the post-deregulation era (1978-1993) it became evident that US airline-deregulation policy had two main objectives: to keep its domestic airlines competitive, and to liberalize international air transport by manoeuvering its own carriers, through bilateral pressures, into other countries.

The advocates of political and economical deregulation of the domestic US air transport rested their argument on the fact that regulation was costly and ineffective. Meanwhile strong politico-economic forces coupled with US air-transport politics, obliged foreign governments, to accept deregulation as

⁹⁸ ITF News, Jan./Feb. 1994: 16.

essential to the viability of their own airlines in an increasingly competitive global arena. GATT negotiations made it quite clear that the international air-transport policy of the USA was solely to the satisfaction of its own air-transport interests.

The gradual worldwide spread of the US policy of airline deregulation inevitably had a profound impact on the policy-making of EC airline industry. It forced the liberalization of EC air transport through pressures that were both international and more specifically British. As a member-state of the EC and a worldwide leading air power, the UK played a decisive role in EC air transport by promoting US deregulation measures. This meant that the US airline-deregulation policy had considerable ramifications for air transport in the EC. How and to what extent it influenced EC air-transport policy towards liberalization will be discussed in Chapter III.

CHAPTER II

NATIONAL AND EC AIR-TRANSPORT POLICIES AND STRUCTURES PRIOR TO 1987

" State-owned airlines are subject to considerable economic handicaps..that range from having to serve destinations for political instead of commercial reasons to obligations in performing essential air services or cross subsidising money-losing markets"

Uli Baur, Vice President of SH&E 1992.¹

This chapter will make a thorough examination of the main public policies and regulatory structures of the EC members' national air-transport as they existed before the liberalization of EC air transport in 1987. It will then present a brief historical and legislative review of transport and air-transport policy in the EC until 1979, when the pressures for reforms increased. The institutional structure of the policy and decision-making process will also be described.

To begin with, in attempting to elucidate the channels and strategies that brought the liberalization of the EC countries' air transports it is crucial to examine the member-states' air-transport policy-formulation and regulatory structures.

1. Overall Corporatist Arrangements and Structures

It has been argued that within the EC, at that time, the individual member-states' overall public policy took the form of corporatist structures.² Corporatism implies that the EC member-states incorporated into their policy formulation a social partnership that took all organized producer interests into account through mediated and concerted action. So it basically implies a great degree of economic bargaining and political stability. Corporatism can be divided into macro, meso and micro, and corporatist arrangements into strong,

¹SH&E is a consultancy company which advises governments on airline privatization. ITF Report, 1992: 11.

²Fulbright, 1989: 20.

medium and weak. Macro, meso and micro corporatism imply transectoral,³ sectoral,⁴ and sub-sectoral⁵ tripartite bargaining respectively, although it is arguable whether the last of these represents true corporatism. Strong corporatist arrangements imply that organized interest groups - labour unions⁶ and employers associations, otherwise called social corporations - are strongly centralized and also monopolize governmental corporatist politics (social corporatism). Weak corporatism is also known as state corporatism. Medium corporatism is a residual phase which may combine the above two elements to some degree or another. In their broader sense all three forms constitute what is known as neo-corporatism or liberal corporatism.⁷

The overall neo-corporatist arrangements between the twelve EC member-states have varied. Although scaling countries according to their degree of neo-corporatism has been criticized for producing somewhat contradictory results, I shall attempt to do just that.⁸ Table 2.1 depicts the variations between the two basic components (monopoly and centralization) of interest-group organizations in their national policy. In the Netherlands and Belgium the neo-corporatism was medium to strong;⁹ in Denmark,¹⁰ Germany,¹¹ and Luxembourg medium;¹² in Britain weak to medium;¹³ and in France,¹⁴ Italy,¹⁵ Ireland,¹⁶ Greece,¹⁷ Spain and Portugal¹⁸ weak.

³Where the focus is on the overall national level.

⁴Where individual industries interact collectively with government.

⁵Where the focus is on an individual industry such as the air-transport.

⁶Offe 1981: 153-4 argued that trade unions gain a political status and enhance the working class's power in their involvement in policy-making.

⁷Berger, 1981: 13; Bonnet, 1985: 100-04; Cawson, 1982: 38; 1985: 2-18, 221-223; Crouch and Dore, 1990: 2-3; Dunleavy, 1982: 189; Dunleavy and O' Leary, 1987: 193-97; 201-02; Gobeyn, 1993: 3-4; Grant, 1985: 7-14, 21; Lehmbruch, 1977: 94, 1979a: 147-84, 1979b, 53-62, 1982: 1-28; Panitch, 1977; Scholten, 1987: 1-38; Schmidt, 1982: 237-58; Schmitter, 1974: 93-96, 1977: 9, 1979: 6-52, 63-94; 1982: 259-79, 1985: 32-62; Steiner, 1986: 219-21; Wassenberg, 1982: 85-108; Wilson, L., 1983: 105-23; Wilson, G., 1990: 1-38, 109-133.

⁸Lehmbruch, 1982: 17-23; Peters, 1991: 173; Schmidt, 1982: 245; Steiner, 1986: 225; Wilson, G., 1990: 112.

⁹ While organized interest associations monopolized these countries' corporatist politics, during the period under review, the centralization of organizations (and particularly of trade unions) was not strong and their powers weakened (especially in Belgium) by ideological divergences. Nevertheless their participation in governmental committees and business meetings was widespread and important. Especially in Belgium there was a compromise between the different cultural traditions and the method of policy-making was counterbalanced. See Keating, 1993: 19, 110, 112; Scholten, 1987: 120-52; Siedentopf and Ziller, 1988: 66-67; Van den Brande, 1987: 95-119.

¹⁰There was a reciprocal support and good relationship between interest groups and governmental politico-administrative culture in policy formulation. The weak centralization of Danish associations derived primarily from the organizational pluralism of its traditional craft unionism. See Johansen and Kristensen, 1982: 189-218; Siedentopf and Ziller, 1988: 41-42; Wilson, 1990: 19, 112.

¹¹West Germany's organized interests had no statutory claim to being consulted, and centralization of organizations was unevenly developed and fragmented. However industrial relations were integrated and highly regulated by law and practice. Policy-making and negotiations were characterized above all by consensus rather than confrontation. Their

Table 2.1: General Pattern of Interest Intermediation of the Twelve EC Member-States in 1986-Graded from 1 (Maximum) to 15 (Minimum)

	Monopoly of associations	Centralization of organizations	Degree of neo-corporatism
Netherlands	2	9	medium to strong
Belgium	3	9	medium to strong
Denmark	8	1.5	medium
W. Germany	9	6	medium
Luxembourg	4	10 *	medium
UK	13	12	weak to medium
France	10	14	weak
Italy	13	14	weak
Ireland	13	12 **	weak
Greece	13	14 ***	weak
Spain	13	14 ***	weak
Portugal	14	15 ***	weak

* No figures available, but guessed on the basis of the other two Benelux member-states, the Netherlands and Belgium.

** Not available, guessed in relation to the UK figure.

*** Not available, guessed according to other member-states' weak corporatism.

Sources: Lehmbruch, 1982: 17-23; Peters, 1991: 173; Schmidt, 1982: 245; Steiner, 1986: 225.

basic formulae were based on the social market, which combined commitment to a market economy with an extensive social welfare system. This meant a dominant pattern of highly concentrated industrial unionism, and participation and co-determination (*Mitbestimmung*) in governmental committees and business meetings was widespread and important. It has been argued that the German co-determination leads workers and unions to identify too closely with their employers, and confuses the roles of co-operation and independent bargaining, so that firms can obtain concessions on working conditions, fringe benefits and so forth. For instance, strikes required the ballot support of 75 per cent of union members and were relatively rare. When they did occur, however, they were bitter and protracted. See Keating, 1993: 23, 296-300; Offe, 1981: 123-58; Siedentopf and Ziller, 1988: 3-4, 66-7; Streeck, 1982: 29-81; Wilson, 1990: 19, 110.

¹²Luxembourg's capitalist government used public labour-market politics backed by strong expansion of public-sector employment, reduction of working hours, and early retirements schemes in order to maintain low rates of employment. See Schmidt, 1982: 245-55.

¹³ Despite the strong linkages of the British trade unions with the Labour Party, there were no real corporatist arrangements, chiefly because of the lack of centralization in the unions' organizational structure, which blocked effective co-operation and concentration at leadership level. In the 1980's the Thatcher government explicitly rejected neo-corporatism in favour of privatization, (a shift from publicly to privately-owned goods and services via the sale of more than 50 per cent of public enterprises - in contrast to denationalization, which requires a less than 50 per cent sale), deregulation, and reliance on market forces and business leadership. Mrs. Thatcher reduced drastically the standing of both the Trades Union Congress and the Confederation of British industry, in policy-making. See Bonnet, 1985: 85-105; Boston, 1985: 65-84; Keating, 23, 101-06; Panitch, 1979: 140-41; Vickerstaff 1985: 45-64; Vickerstaff and Sheldrake, 1989; Wilson, G., 1990: 19, 36, 77-108, 110.

¹⁴Corporatist arrangements have traditionally been important in French political thinking. In general consultation between the government and organized interests never resulted in consensus on crucial controversial issues. The failure was due, above all, to ideological intransigence on the part of the labour unions and the attempts of French governments to safeguard their interdependence from interest groups by playing them against each other. Moreover the degree of centralization and monopoly of associations was low, and union leaders had only limited authority over their rank and file and therefore little real bargaining power. See Goetchy, 1987: 177-94; Keating, 1993: 23, 170-75; Siedentopf and Ziller, 1988: 41, 65; Wilson, G., 1990: 19, 125-26, 130.

¹⁵Italy's labour confederations were divided by ideological cleavages and played a mostly passive, non-dominant role. They usually confined themselves to demanding a larger share of the benefits produced by public administration of private interests (since the late 1970s) and by capital accumulation. See Keating, 1993: 23, 233-39; Regini, 1982: 109-32, 1987: 195-215; Wilson, G., 1990: 19.

¹⁶Hardiman, 1987: 153-76.

¹⁷The role of Greek labour unions has been much undermined by the ideological diversity of their leaderships. Moreover, the representatives of private capital have been able to exert strong influence on successive governments.

¹⁸Historically, both Spain and Portugal had undemocratic and authoritarian corporatist arrangements which, however did not include the network of organized interests within the state apparatus. This presented a very interesting feature of their socialist parties, particularly the Spanish one, which accounted for their liberalist ambitions through association with the dictatorial government. As a result they behaved differently from the socialist parties of Western Europe. See Keating, 1993: 23, 315-337-42; Perez-Diaz, 1987: 216-46; Roca 1987: 247-68.

Syndicalism too varied greatly among the twelve EC member-states, as becomes obvious from Table 2.2 below. It indicates two important features of the EC countries' respective corporatist arrangements. The first is that comparing the percentages of syndicalism with the twelve member-states' overall degree of neo-corporatism (Table 2.1) shows that the two were in no way related. The second is that, generally speaking, during the latter half of the 1980s syndicalism decreased.

Table 2.2: EC Member-States' Overall Rate of Trade Unionization in the 1970s and 1980s (Approximate Percentages)

	Decade of 1970	Decade of 1980
Denmark	70	75
Belgium	70 (late)	55
Ireland	*	54
Luxembourg	*	50
UK	30(early)-44.8(late)	50.7 (early)-41.5 (late)
Italy	36.3(early)-49.8(late)	49.3 (early)-39.6 (late)
W.Germany	33	37 (early)-33.8 (late)
France	22.3	19 (early)-12 (late)
Greece	33	25
Netherlands	*	27
Portugal	*	30
Spain	*	22 (early)-16 (late)

* Not available

Sources: Keating, 1993: 23, 170, 236, 297; OECD, 1988

With respect to the EC member-states' air-transport policies it has been argued that they not only applied corporatist arrangements, but were among the most persistently separatist branches in their respective economies.¹⁹ This was so because, in contrast to the variations in corporatism and syndicalism among

¹⁹Van Der Esch, 1989: 32.

the twelve countries, their air-transport sectors presented identical corporatist arrangements and the highest union membership, approaching sometimes the 99 per cent. The crucial determinants therefore, in identifying the twelve countries' corporatist arrangements and structures in air transport, is how locked into each other the actors were, and how interdependent and with what degree of institutionalization.

2. Overall Air-Transport Policy Formulation

Before 1987 EC member-states formulated their air-transport policies individually, pursuing, specific policy aims. Since all scheduled airlines were state-owned (with one national carrier per state—except for UK which in early 1970s had two) the role of the employer and the role of the state were identical.

This rather contradicted the conventional wisdom of corporatism, because it combined strong corporatist arrangements (true corporatism) with micro-corporatist structures (false corporatism). Nevertheless, this is quite characteristic of public utility monopolies and of the professionalized nature of the air transport sector in particular. In other words, the EC member-states air-transport structures were monopolistic, combining the contradictory elements of strong corporatist arrangements and micro corporatism.

Eventually all airline and airport workers and employees (trade unions²⁰ and flight crew associations²¹) came to monopolize the collective bargaining process, and wielded enormous and excessive politico-economic power vis-à-vis other service industries. They traditionally shared a number of characteristics such as high status, good job security, a large proportion of

²⁰Often called "capsule outsiders", those unions represent all ground staff and employees necessary both to prepare the aircraft and assist air passengers.

²¹ Often called "capsule insiders", and comprising the crews in the cockpit (pilots and flight engineers) and the cabins crew (flying attendants) necessary for in-flight operation of the aircraft.

skilled personnel (often involved in handling innovative technology), and a significant number of occupational categories (such as pilots, aircraft and flight engineers, and air traffic controllers) who required high and exacting standards of training.²²

Benefits granted to air transport personnel had become statutory and were considered fundamental entitlements. Negotiations concerning pay and working conditions operated through a centralized and legalized wage-fixing system overseen by the respective governments. Any radical counteraction, cutting of labour costs and/or changing of work rules, under the threat of strikes, were virtually impossible, because strikes were a very painful procedure for national and airline commerce. As a result, the average salary of an EC-members' airline employee was almost double the average salary of a regular EC worker, and an airline's labour bill sometimes accounted to as much as one-third of its overall operating costs. This was one of the main reasons why European air fares were the highest in the world.²³ Table 2.3 below depicts an overall typical structure of average airline operating costs before 1987, with labour costs alone accounting to 26 per cent. In addition, and as a result of the above entitlements, some member-state airlines were overstaffed and plagued by labour disputes, low productivity, financial deterioration and organizational problems. State-owned airlines such as Greece's Olympic Airways, Italy's Alitalia, Portugal's TAP, and Spain's Iberia, were the worst examples.²⁴

On the other hand, various governments indirectly exploited the privileged conditions enjoyed by their air-transport personnel and used the state-owned airlines for political patronage. It was a matter of common knowledge that in Greece the national carrier Olympic Airways (OA) was

²²Barrett, 1987: 54, 1991: 242; Corke, 1986: 73, 101, 127-29; ITF Report, 1992: 70; Sawers, 1986: 49, 69.

²³ Barrett, 1991: 242; Bass, 1991: 218-19; EC Commission, 1981; French, 1990: 35; Kark, 1989: 384; McGowan and Trengove, 1986: 60-69; Pelkmans, 1986: 355; Shaw, 1993: 172-74; Sorensen, 1984, 1988; Wheatcroft and Lipman, 1986: 33-35.

²⁴Doganis, 1989: 5/1-9/11.

Table 2.3: Structure of Typical Average Airline Operating Costs

Functions	% of total	Pay	Fuel	Sales commis- sion	Landing charges etc.	Depre- ciation	Matel- ials	Commun- ications	Other
Flight operations	27	4	13		8				2
Maintenence and overhaul	12	5					5		2
Depreciation / amortization	8					8			
Station costs	17	5							12
Passenger services	10	6					1		3
Ticketing, sales, reservations, promotion	18	2		9				3	4
General and administration	8	4						1	3
Total	10	26	13	9	8	8	6	4	26

Source: Wheatcroft S, and Lipman G, EIU European Liberalization and Word Air Transport, Special Report No 2015, May 1990.

heavily over-staffed. This was the result of employees being hired in response to pressure from politicians, who by these acts of patronage were buying their constituents' votes.

The air-transport personnel in all EC member-states were organized in separate unions and/or in transport federations, some excluding and some including flight and cabin crews. But no one country had the same trade-union structure as any other, and none had a single, national union to represent all its air-transport and service-related personnel. In consequence there was

some overlapping with other unions, even though formally membership was restricted to one union only.²⁵

S. Howard, head of the civil-aviation section of the International Transport Workers' Federation (ITF) and ex-researcher of civil air-transport of the Transport and General Workers' Union in UK, told the author in interviews (3 June 1991, and 4 April 1993), that even for ITF it was very hard to get a complete list of unions representing air-transport personnel. This was so primarily because of their structural and ideological differences. In particular, (i) not a few unions in some categories of aviation had only a small number of members; there was no sector-by-sector list in any specific union representing civil-aviation membership, only the main trade union federations or associations; and (ii), neither the large nor the small unions were all ITF members. For example in Britain, one of the most multi-unionized EC member-states, there were a number of airline and airport unions that either belonged to the Transport General and Workers' Union (TGWU), to the British Airports Authority (BAA), or to specific airlines (such as British Airways). Furthermore, the large Amalgamated Engineers Union (AEU), organized among others, also aircraft engineers; and members of the General Municipal Workers' Union (GMWU), included workers and employees from a large number of local airport authorities and airlines. None of these unions were ITF members. Neither - for obvious ideological reasons - was the French Communist General Confederation of Labour (CGT) ever an ITF member.

Flight crews particularly were often organized in separate associations which in name and character were not like traditional trade unions. In some cases flight crews did belong to separate associations which were trade unions in the normal sense, and others were organized in general unions. Some flight engineers were grouped together with pilots, and some were

²⁵Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991); R. Valladon (22 Nov. 1990).

separate. Cockpit crews in all countries of the world were licence holders, but cabin crews operated under non-uniform qualifications. Some worked without a licence, while others needed a licence issued on a safety standard basis.²⁶

The internal structures of the majority of unions depended on their ideological orientation. Furthermore, most unions in the EC countries were communist,²⁷ socialist,²⁸ christian-democrat,²⁹ or liberal,³⁰ in consequence of which they, and especially their leadership, were affected by party politics. Initially union leadership consisted of a national or general secretary, a treasurer etc. or, like that of the flight crews, a president, vice president(s), secretary, treasurers and so forth.³¹

Compared to airlines or trade unions which had direct vested interests in the pre-1987 period, most national consumers/users³² played a limited role in their country's air-transport policy formulation, despite the importance of air passengers for air transport *per se*. Consumer/user organizations lacked the two most fundamental means of influence: formal membership and financial resources.³³

Notwithstanding this lack of influence, Britain and France established and financed air-transport consumer structures that presented two important

²⁶For example licences for cabin crews were required for the cabin crews only in Denmark, France, Greece and Italy. Information from author's interviews with cpt. Y. Enderle (7 Dec.1990); H. Finstfein (5 June 1991); G. Koutsogiannos (18 Jan. 1991); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); T. Middleton (13 June 1991); J. Rokofilos (17 July 1990).

²⁷The communist philosophy of course advocates a classless society where private ownership is abolished and the means of production belong to the people as a whole.

²⁸The socialist philosophy is an economic theory in which the means of production, distribution, and exchange are owned by the people collectively, usually both through direct state nationalization or indirect state redistribution of income. It is not in principle against competition, on condition that economic growth is fairly distributed to all levels of society. In Marxist theory socialism is a transitional stage in social development from capitalism to communism, and characterized by the distribution of income according to work rather than need. See Dunleavy and O'Leary, 1987: 201-70; Steiner, 1986: 25-27.

²⁹The christian-democratic ethos is conservative and strongly supports the church. In Belgium Germany, Italy, and Netherlands the conservatives are called Christian Democrats. Not all christian-democratic parties have a conservative orientation, however. For example in Belgium and the Netherlands the christian-democrats pursue centrist rather than conservative policies. See Steiner, 1986: 30.

³⁰Traditionally liberals wished freedom from the state, demanding that some individual freedoms, or rights should be protected both from the state and from majority decisions. See Dunleavy and O'Leary, 1987: 4-6.

³¹Information from author's interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991); R. Valladon (22 Nov. 1990).

³²The difference between user and consumer is twofold: in legal terms the user is the consumer of the public service; in functional terms the dissatisfied consumer denounces a specific airline or changes to another, while the user fights from within the system in order to improve it. There are statutory user bodies (governmentally and legally established) and voluntary ones. See Shaw, 1993: 199-203, 207-09.

³³Information from author's interviews with S. Crampton (28 May 1991); P. Jeandrain (27 Nov. 1990); L. Mosca 7 Dec.1990); J. Parr (4 June 1991); D. Prentice (31 May 1991); J. Sabourin and C. Grenier (23 Nov. 1990).

cases of different but typical consumer organizations in their respective national structures.

In 1973 the UK Civil Aviation Authority (CAA) set up the Air-Transport Users Committee (ATUC), as a an autonomous body with the privilege of criticizing the CAA on behalf of British air-transport users. However, the chairman of the UK CAA was also the chairman of the twenty ATUC member committee and its Secretariat.³⁴

Moreover, a body called Consumers in the EC Group of the UK (CECG) was set up in Britain in 1978, funded by the Department of Trade and Industry to give evidence to select committees of both the House of Commons and the House of Lords on behalf of all kinds of consumerism in the EC. The CECG is a British umbrella group for 29 consumer unions totalling seven million members, including the Consumers' Association Ltd, the National, Scottish and Welsh Consumer Council, and the National Federation of Consumer Groups. The CECG chairman was a member of the EC Commission's Consultative Consumer Council (CCC).³⁵

The Consumers' Association Ltd, an independent consumer organization with no state funding, was the largest consumer organization in the UK, with over one million members. It had direct access to the International Organization for Consumer Unions (IOCU), and to most UN agencies including of course those dealing with air transport such as ICAO, IATA and European Civil Aviation Conference (ECAC).³⁶

In France, finally, the French Air-Transport Users' Association (AFUTA), founded in 1983, is part of the National Commercial Aviation Superior Council (NCASC), a member of the country's Regional Transport Committee, and

³⁴Interview with J. Parr (4 June 1991). See also Shaw, 1993: 204-06.

³⁵Interview with S. Crampton (28 May 1991). See also National Consumer Council (NCC), 1983 and 1986: 226-33, 242-51.

³⁶Interview with D. Prentice (31 May 1991).

closely co-operates with the ministers of Finance and Transport. It is entitled to approach consumers/users concerning claims, so as to give the information to the press for publication, and closely co-operates with the Commission. AFUTA belongs to the EC umbrella group of the Federation of User Representatives in the EC (FATUREC) which was created jointly by AFUTA and ATUC. In fact, in 1990 the AFUTA chairman was also the chairman of FATUREC.³⁷

3. Overall Air-Transport Regulatory Structures

The national air-transport systems of EC member-states were regulated and controlled by their Ministry of Transport and/or Communications, Public Works or Public Services, their Divisions or Directorates General of Civil Aviation (DsGCAs), and/or Civil Aviation Administrations or Authorities (CAAs). The DsGCAs or CAAs, frequently joined with the Ministries of Defence, were usually multi-purpose public service enterprises, and regulatory and consultative bodies with a wide range of responsibility for national air transport.³⁸ They were organized either centrally (entrusted with all regulatory tasks), dualistically (with separated responsibilities for technical and economic matters), or in a more complex way that was a combination of the two.³⁹

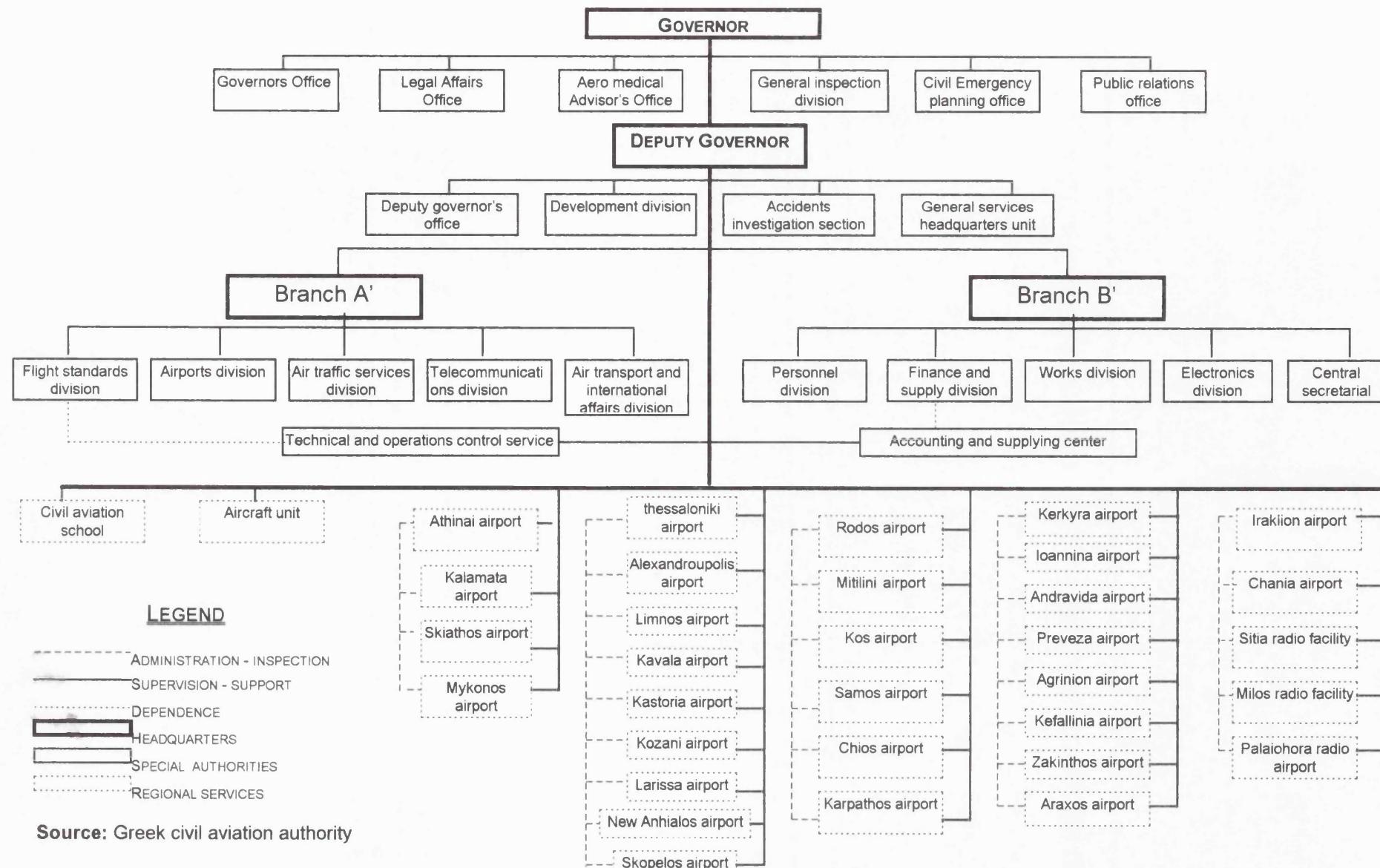
Figures 2.1a and 2.1b illustrate the structure of the Greek and West German CAAs respectively, and Figures 2.2a and 2.2b that of the Italian and Portuguese DsGCAs. Comparing the Figures below shows that although the four were somewhat differently organized, the functions were similar in all

³⁷Interviews with J. Sabourin and C. Grenier (23 Nov. 1990).

³⁸In all member-states the DsGCAs and CAAs competencies were specified as follows: co-operation with international organizations; agreements; aircraft accident-investigations; permission for entry, exit, and transit of aircraft; certification and supervision of airports, aircraft management, operating agencies, and flight operations; airworthiness certification of aircraft and other components; Supervision of aircraft maintenance; general planning, approval and licensing of air navigation facilities; licensing and control of aeronautical personnel; airspace regulation, navigation and air-traffic services and procedures supervision; approval and supervision of aeronautical training establishments; aeronautical information and telecommunications services; and authority of appeal in matters of civil aviation.

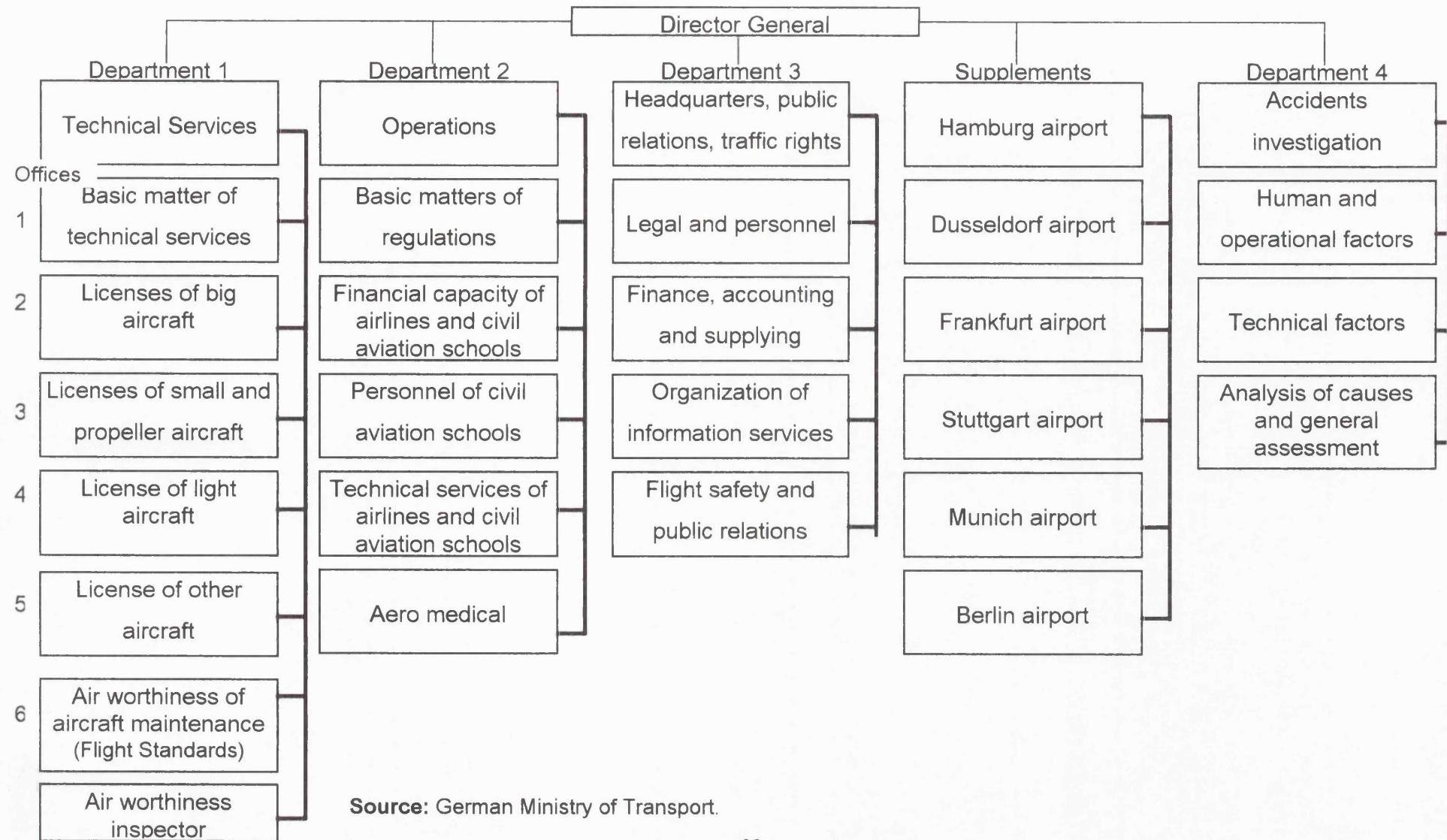
³⁹Naveau, 1989: 81-3.

Figure 2.1.a: Structure of the Greek Civil Aviation Authority



Source: Greek civil aviation authority

Figure 2.1.b: Structure of the West German Civil Aviation Authority



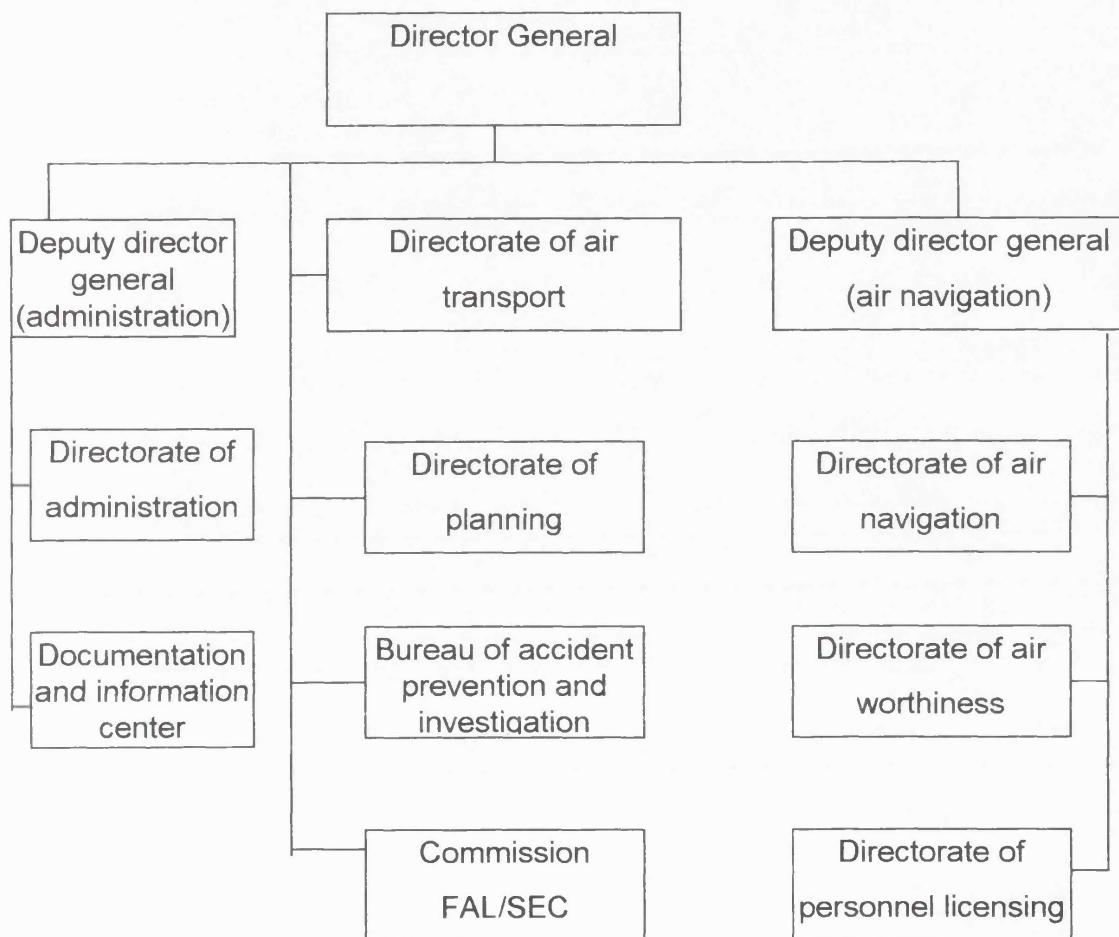
Source: German Ministry of Transport.

Figure 2.2.a: Directorate General of Italy's Civil Aviation



Source: Italian ministry of transport

Figure 2.2.b: Directorate General of Portugal's Civil Aviation



Source: Portugal ministry of public services, transport and communications

cases, whether the technical, economical, and regulatory responsibilities were assigned to divisions, departments or directorates. The West German CAA and the Italian and Portuguese DsGCAs appear to have been more centrally organized (as civil servants they were answerable to their Ministries of Transport, not to the Ministers), and were headed by Director Generals. The Greek CAA was a body administratively autonomous from the Ministry, and had a politically appointed Governor and Deputy Governor, accountable only to the Minister and not to the Ministry's civil-service bureaucrats - as were the other three above.

The key to the structure of the EC states' scheduled air transport, as for that of the international one, was the Chicago Convention of 1944 and its bilateral inter-governmental air services agreements (BASAs) based on the principle of reciprocity. BASAs were a uniform system of stringent clauses covering the collusive terms and conditions for the national air-transport policies of the signatories. They were strictly duopolistic,⁴⁰ and concerned only with publicly- owned national airlines operating licensed and scheduled⁴¹ air services within a framework of pooling inter-airline revenue-costs and revenue-sharing.⁴² No national legislation was therefore required for granting traffic rights to all the signatories' scheduled air services.⁴³

The various EC members' air-transport networks had a unique structure that was essentially a two-fold regulatory system: it referred (i) to the scheduled air services, and (ii) to a charter and independent airlines air services.⁴⁴

⁴⁰ *Duopoly* is the collusion of two airlines (suppliers) monopolizing the air services of a certain air route, e.g. the supply of air services on the Athens-London-Athens route by British Airways and Olympic Airways.

⁴¹ Scheduled air services have regular timetables for departures and arrivals, and listed prices.

⁴² Cost and revenue sharing was on a fifty-fifty basis in proportion to the capacity they offered on the route, and compensated the airline that carried fewer passengers.

⁴³ McGowan and Trengove, 1986: 5-6, 67-68, 95-109; Shaw, 1993: 123-24; Slot, 1989: 6-7.

⁴⁴ Slot, 1989: 9; Villiers, 1989: 4.

For scheduled airlines, air-transport legislation applied to the granting of licences, access to the market, capacity and air fares. Unless stipulated otherwise, airlines were required to obtain a license. In accordance with the ECAC's International Agreement for the Procedure for the Setting of Tariffs for Scheduled Services of 10 July 1967,⁴⁵ EC governments reserved the absolute right to approve or disapprove airline licenses, bearing in mind safety requirements and liabilities. Criteria and procedures for issuing licences varied from one member state to another. In some countries market access was restricted to licensed airlines, and required registered ownership and control by nationals, while the others applied similar *de facto* criteria. It was usually required that at least two-thirds of the capital was owned by their own nationals and the chairman, and that at least two-thirds of their directors, including the managing director and the general manager, also had to be nationals. Finally, it was only in the Netherlands, the UK and Ireland that the normal procedures of administrative law applied. In Belgium, Greece and the other member-states there was practically no possibility for administrative review.⁴⁶

It has been argued that the very fact that the EC member-states with the exception of Britain and of West Germany, did not have adequate licencing criteria and no provisions for an administrative review, was the result of one prime restrictive element in their regulatory structures: their refusal to permit competition between their national airline and other airlines - known as cabotage. For example in Greece, Portugal, and Spain the national airlines had a monopoly of both domestic and international air services. In France and Italy domestic services were operated monopolistically, but by airlines other than those flying internationally. Even air transport between member-states

⁴⁵Crans and Biesheuvel, 1989: 223.

⁴⁶Slot, 1989: 6-8.

and their colonies was, in principle, reserved for the national carrier and known as grand cabotage. This applied for example, to the routes from the Netherlands to the Antilles and from Britain to Hong Kong.⁴⁷

Some EC member-states even took the established air-transport regulations far too far. So for example in Belgium, under a Royal Degree of 30 June 1966, the authorization of an air-transport licence was *inter alia* subject to certain conditions concerning the employment of travel agents. Moreover, a Royal Degree of 1965 obliged licence-holders to adhere to the prices and tariffs agreed upon or legally imposed.⁴⁸

Configuration and quantity standards such as the control of air-fare levels and related air-transport conditions, if not explicit criteria for obtaining licences, were implied in the overall national and regulatory framework. They basically reproduced IATA directives whereby, according to a British law, airport operators and user-airlines adhered to a fixed-clause contract in respect of the package of services offered. Finally, regulations on cargo tariffs were usually absent.⁴⁹

The legal status, type of management, financial structure, and degree of financial autonomy of EC airports varied considerably from one member-state to another. This diversity has been attributed, at least in part, to differences between the institutional structures of airport authorities, their relations vis-a-vis their governments, their overall objectives, the scope of activities undertaken by each authority, their financing sources and arrangements, and their accounting policies.⁵⁰

EC airports were either under direct state or regional or local-government control, or operated by autonomous specialized bodies as

⁴⁷ Slot, 1989: 6-8.

⁴⁸ Slot, 1989: 8.

⁴⁹ Slot, 1989: 8-9.

⁵⁰ EC Commission, 22 May 1990: 4.

concessions, or operated as private companies. Some were the proprietors of their own assets and tried to be self-financing, and others were operated on proprietor's behalf. For example, in West Germany only the Frankfurt airport was owned by a joint-stock company; all other major commercial airports were the property of private limited-liability companies. Athens airport, owned by the Greek state, was administered as an agent contributing to the fixed national assets. The airport-operating authorities for Rome, and those of provincial airports in France, operated as private companies on a concession basis, with some of the fixed assets owned, or loaned to them, by the state or the local/regional government and/or private shareholders. Finally in the UK, the British Airports Authority (BAA) operated airport services and facilities independently of the central government, and was run as a state corporation. All activities were conducted within the framework of a quasi-judicial system, which provided for public examination and special consultation. The Airports Act of 1986 dissolved BAA's control and in July 1987 privatized airport-control with a successor company, the BAA plc.⁵¹

In most EC member-states, however, national airports were run solely by the CAAs responsible among others for airport infrastructures,⁵² and usually favoured a single centralized and state-owned airport (hub), due mainly to military air restrictions.⁵³ Secondary airports were used for the operations of national and foreign charter and independent airlines. EC member-states also allowed their national airlines⁵⁴ to operate ancillary airport services, such as handling and catering. Most member-states had different systems for the allocation of airport slots⁵⁵ and air-traffic control.⁵⁶ Variations between national

⁵¹Checkley, 1990: 4, 95-101; EC Commission, 22 May 1990: 3-4; Toms, 1988; Tritton, 1989: 164-66.

⁵²An *airport infrastructure* is an airport's basic installatory framework, which includes the airspace traffic-control, both *en route* and within the terminal; air-side surface systems such as runways, holding pads, taxiways, and apron-gate; land-side systems such as terminal buildings, vehicle parking; and airport ground access systems such as aircraft maintenance, technical and baggage-handling facilities.

⁵³Civil aviation shares national airspace with military aviation. Specifically some flight levels and some airspace areas are reserved for operations and exercises by military aircraft.

⁵⁴National airlines established a system of "grandfather rights", which consisted of particular slot rights (departure times) operated solely by them.

⁵⁵Slots are regulated by a fixed departure-timetable.

⁵⁶In general, the air-traffic rules and procedures in force, and the organization of scheduled and non-scheduled air traffic services conformed to ICAO standards, recommended practices and procedures.

and international rules and procedures were listed in each member-country's Aeronautical Information Publications (AIPs).⁵⁷

Finally, most EC states pursued social and regional air-transport policies based on the "public-policy" rationale. Certain members - for example Greece and Ireland, Italy, Spain and Portugal - were geographically separated from others member-states and depended on air transport as a prime means moving passengers and freight to and from other EC countries. Such traffic was crucial for their economic and social development and ensured linkages between the geographic centre and the periphery. Since most of the domestic routes were heavy losers (except for Ireland), they were directly subsidized by their respective governments or cross-subsidized through international air-services operations.⁵⁸

Air-services by charter and independent airlines⁵⁹ air services were based on the ECAC's Multilateral Convention on Commercial Rights for Non-Scheduled Services in Europe, signed in Paris on 30 April 1956.⁶⁰ They operated within a looser regulatory framework concerning tariffs, routes, capacity, and frequency based on quotas and product definition. Their scope to compete with the scheduled airlines was restricted even though they provided more than half of the EC air-transport flights. Their services were usually sold to a tour-operating company,⁶¹ rather than direct to the consumers. However, all member-states published special decrees, orders or regulations setting out the conditions and obligations relevant to the various special and different categories of non-scheduled (charter) airline services -

⁵⁷ Abbott and Thompson, 1989: 3; Airport Support, June 1989: 8-9; Ambrose, 1990: 26; Checkley, 1990; Dunham, 1990: 13; Levine, 1991: 11-12; O'Donovan and Beety, 1990: 43; Pelkmans, 1986: 354-55; Slot, 1989: 10-11; Sutton, 1990: 379.

⁵⁸ For example, in 1919, France was the first to subsidize its airlines; Germany subsidized them during the interwar years more than any other country; and the UK began to subsidize its airlines in 1921. See Barnes, 1959; Barrett, 1987: 6-7, 9-11; Golich, 1990: 171; Slot, 1989: 11.

⁵⁹ Independent airlines are the regional and business-aviation airlines. All charter and independent airlines operate on demand (seasonal, leisure) air services otherwise called "non-scheduled air transport". According to ICAO, 47 per cent of ECAC-European passenger-kilometers were flown by charter and independent airlines in 1986.

⁶⁰ Crans and Biesheuvel, 1989: 223.

⁶¹ It leases the aircraft of a charter airline and sells the air-tickets to air-passengers as a package holiday.

such as humanitarian, emergency and taxi flights, inclusive tours (IT), advanced booking (ABC), special events, affinity groups, closed groups (transport of students and migrant workers) and cargo charter flights. In Britain, for example, the Air Transport Licensing Board (ATLB) stipulated that the minimum price for inclusive tours could not be less than the full scheduled airline fare to the same destination.⁶²

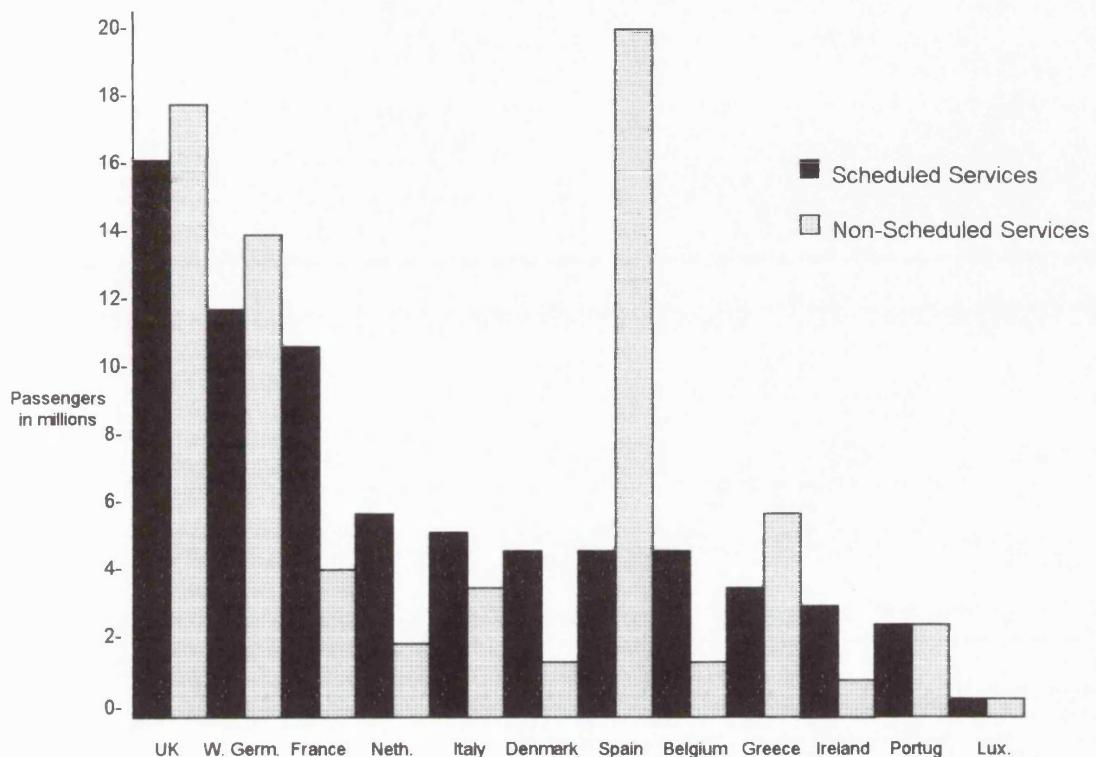
By the end of 1986, Air France, British Airways, and Lufthansa already controlled 40 per cent of scheduled flights in the EC. Added to them the national airline of Netherlands KLM Dutch Royal Airlines, of Spain Iberia and of Denmark SAS Scandinavian Airlines controlled roughly 70 percent of EC scheduled air-traffic and 60 per cent of the European market share. British Airways alone carried nearly 22 percent of all revenue passenger-miles served by EC airlines.⁶³

Figure 2.3 below depicts the scheduled and non-scheduled intra-European passenger traffic of EC member-states for 1984. It is quite striking that in terms of scheduled services, the UK, West Germany and France, with a combined total of 36 m. passengers, flew approximately 7 m. more than all the remaining nine EC countries together, most of which transported fewer than 5 million. The picture is rather different in respect of non scheduled services, where Spain prodigiously came first with 20 m. pass., the UK second with 17.5, and West Germany third with 14 m., followed by Greece in fourth place, well behind with only 4 m. passengers. What is surprising is that France's non-scheduled services accounted for a mere 4 million.

⁶²Member-states' AIP documentation; Abbott and Thompson, 1989: 2-3; Button and Swan, 1989: 268-69; 1991: 93-94; Doganis, 1989: 5/1-9/1, 1991: 27-36; OECD, 1988: 26-37; McGowan and Trengrove, 1986: 60-69, 99-119; Naveau, 1989: 107-09; 128-31; Poole, 1986: 9-13; Wassenbergh, 1983: 272-4; Wheatcroft and Lipman, 1986: 9-11, 26, 36-38, 114-24; Pryke, 1991: 231-35; Sawers, 1986: 49, 69; Slot, 1989: 9; Van der Esch, 1989: 31-61; Van de Voorde, 1992: 514-16; Williams, 1993: 72.

⁶³Dempsey, 1988: 683-84; Doganis, 1994: 23; Financial Times, 23 July 1987: 44; Golich, 1990: 167; Williams, 1993: 88.

Figure 2.3: Scheduled and Non-Scheduled intra-European Passenger Traffic of EC Member-States in 1984.



Source: Wheatcroft and Lipman, 1986: 8

Table 2.4 lists the pre-1987 international (including intra-European) passenger/aircraft kilometers provided by the EC-members' state-owned (scheduled) and charter (non-scheduled) airlines in terms of passenger-kilometers and EC air routes served. It demonstrates that with 65.5 pass/kms internationally, the UK was very far ahead, by itself amounting to just below the combined total of France (39.5 pass/kms) and West Germany (26.6). The Netherlands, Spain, and Italy lagged well behind (with 19.8, 19.1, 16.9 respectively). In terms of non-scheduled pass/kms the UK led again, with 25.9 pass/kms, which is equivalent to triple the pass/kms of all the remaining 11 EC countries combined. These totalled a mere 8.8 pass/kms, with Spain responsible for 3.7 pass/kms and, unexpectedly, the Netherlands for 2.0 (the Antilles attracting international tourism). Denmark came in fourth place with 1.4 pass/kms. Disappointingly, France and West Germany could account for only 0.1 pass/kms each.

Table 2.4: Scheduled and Non-Scheduled International Air-Traffic Operated by Members' Airlines in 1986

	Scheduled Passenger/kms-Aircraft/kms (in bill.)	(in mill.)	Non-scheduled Passenger/kms (in bill.)	Community routes
UK	65.5	440	25.9	178
France	39.5	290	0.1	153
FR of Germany	26.6	254	0.1	173
Netherlands	19.8	130	2.0	65
Spain	19.1	160	3.7	108
Italy	16.9	140	0.7	99
Greece	6.4	49	0.2	39
Belgium	5.6	53	0.0	45
Portugal	4.5	40	0.0	33
Denmark	3.5	42	1.4	37
Ireland	2.5	21	0.6	43
Luxembourg	0.1	4	0.0	15

Sources: Button and Swann, 1989: 269, 1991: 100.

Over and above the aforementioned regulations, EC member-states or others wishing to operate air services to, from, or via any EC country had to observe its specific national air-transport rulings.

4. Individual EC Member-States Air-Transport Structures

The discussion of the various EC countries will follow the order of Table 2.1 which illustrates them according to their general pattern of interest intermediation.

4.1 The Netherlands

In the Netherlands, the Air-Transport Act *Luchtvaartwet* established by Royal Decree of 29 January 1970, forms the basis of Dutch air-transport legislation. The Tariff Order for Scheduled Air Transport of 16 March 1977, No.163 *Tarievenbesluit Geregeld Luchtvervoer*, regulates tariffs and other conditions of scheduled air transport. Licensing policy was the subject of a quite number of administrative legal decisions. Ministerial special and specific conditions (additional criteria) applied *inter alia* to issuing licenses for certain flights necessary for economic reasons or for stimulating competition (such as "no creation of excess capacity"); and in the case of charters sought to ensure that they would not disrupt the regular services or distort competition. Charter and independent flights were regulated by the Non-scheduled Air-Transport Order of May 1977⁶⁴ (*Besluit Ongeregeld Luchtvervoer*). The Netherlands had a somewhat more relaxed approach to tariff regulations than other EC member-states.⁶⁵

Several provisions in the Dutch legislation related to ancillary services. Permission for take off or landing at certain favourable times being much sought after, slot allocation was an important policy instrument in regulating access to the Dutch air-transport system.⁶⁶

While the Economic Competition Act (ECA) applied also to air-transport, agreements relating to international air transport were exempted from notification.⁶⁷

The Dutch state held a majority interest in the country's largest national airline, Royal Dutch Airlines (*Koninklijke Luchtvaart Mij, KLM*), founded on 7 October 1919.⁶⁸

⁶⁴Bulletin of Acts, Orders and Decrees 1975: 227.

⁶⁵Crans and Biesheuvel, 1989: 224-28, 230-31; Directorate General of Air Transport and Infrastructure policy Documentation, 25 Mar.1994: 002602; Slot, 1989: 7, 9.

⁶⁶Crans and Biesheuvel, 1989: 231-33.

⁶⁷Slot, 1989: 12.

⁶⁸Button and Swann, 1989: 266; Crans and Biesheuvel, 1989: 233-34; Golich, 1990: 172; Hunter, 1993: 997-98; OECD, 1988: 45; Wheatcroft and Lipman, 1986: 189-90.

The Netherlands' Trade Union Confederation (FNV)⁶⁹ and the Christian-Protestant National Federation of Trade Unions (CNV),⁷⁰ were the exclusive representative organizations of all workers in the Netherlands. The FNV-affiliated Transport Workers' Union (*Vervoersbond-FNV*), with a membership of around 58,000 workers, included 4,100 air-transport and airlines personnel. The CNV-affiliated Transport Union had a membership of 14,500 including air-transport workers. The Union of Netherlands Cabin Personnel (VKC) was the main union of cabin attendants for all airlines in the Netherlands, with a membership of 5,100.⁷¹

4.2 Belgium

In Belgium, the Air-Transport Act of 20 November 1946, as amended by the Air-Transport Act of 15 March 1954 (Royal Decree), regulated the country's Civil Aviation and established two regulatory and administrative bodies. The Air Routes Board (*Regie des Voies Aeriennes RVA*), was a legal entity in charge of constructing, fitting up, maintaining and running the airports, as well as ensuring the security of aviation; and the Aviation Security Committee, which had unrestricted freedom to control and supervise the strict observance of laws and regulations in the field of aviation. There was no Belgian system of tariff approval but a "special operation conditions" system. In respect of market entry the Royal Decree made no distinction between national and international traffic but between types flights: non-commercial, scheduled commercial and non-scheduled commercial. Furthermore Belgian law had no ~~any~~ specific regulations on ancillary services. The Act of 27 May 1960 *On Protection Against the Abuse of Economic Power*, applied to, but

⁶⁹*Federatie Nederlandse Vakbeweging* with 900,000 members. It was formed in January 1976 by the pre-World War II Netherlands Federation of Trade Unions (NVV), and the Netherlands Roman Catholic Federation of Labour (NKV).

⁷⁰*The Christelijk Nationaal Vakverbond* with 320,000 members was the third pre-World War II federation which did not join the other two.

⁷¹Harper, 1987: 294-98; *ITF News*, Archives and Notes 1986 -1993.

never overrode, the stringent national stringent regulatory arrangements in the air-transport sector. After the Second World War, the largely state-owned airline was SABENA (Societe Belge d' Exploitation de la Navigation Aerienne).⁷²

The Belgian General Federation of Labour (FGTB),⁷³ through its affiliated union General Central of Public Services (CGSP),⁷⁴ organized 500 workers (cabin crews included) from its civil aviation sector. The Confederation of Christian Trade Unions (CSC),⁷⁵ through its affiliated Christian Transport and Diamond Workers' Union (CVD),⁷⁶ comprised both air-transport workers and cabin crews. The General Confederation of Liberal Trade Unions of Belgium (CGSLB),⁷⁷ represented a small number of air-transport personnel. The above three air-transport union federations incorporated around 70 per cent of the air-transport labour force in the national carrier Sabena. The Metal Industry Workers' Union⁷⁸ numbered 2270 air-transport personnel among its members. Another inter-occupational federation in Belgium is the Cartel of Independent Trade Unions,⁷⁹ which had only a very small number of air-transport workers. It had two sections: the Cartel of Independent Public Services Trade Unions,⁸⁰ and the Cartel of Independent Private-Sector Trade Unions.⁸¹ Finally, the Association of Cockpit Crews and Flight Engineers of Belgium (ABPNL),⁸² represented approximately 75-80 percent of the commercial airline pilots and flight engineers in Belgium.⁸³

⁷²Button and Swann, 1989: 266; Delsaux and Stuyck, 1989: 203-10; Golich, 1990: 172; Hunter, 1993: 201; Wheatcroft and Lipman, 1986: 190.

⁷³*Federation Generale du Travail de Belgique*, with a membership of 1,200,000.

⁷⁴*Centrale Generale des Services Publics, Secteur Aviation Civile*.

⁷⁵*Confederation des Syndicats Chretiens* with a membership of 1,400,000.

⁷⁶*Centrale Chretienne des Ouvriers du Transport et des Ouvriers Diamantaires*.

⁷⁷*Centrale Generale des Syndicats Liberaux de Belgique*, with a membership over 200,000.

⁷⁸*Centrale de l'Industrie du Metal de Belgique*.

⁷⁹*Cartel des Syndicats Independant de Belgique*.

⁸⁰*Cartel des Syndicats Independants de Services Publics*.

⁸¹*Cartel des Syndicats Independants de Travailleurs du Prive*.

⁸²*Association Belge des Pilotes et Navigants-Techniciens de Ligne*.

⁸³ Interviews with cpt. Y. Enderle (7 Dec. 1990), F. Tack (14.Nov. 1990), and A. Gosselin (14 Nov.1990); Harper, 1987: 39-45; ITF News, Archives and Notes 1986-1993.

4.3 Denmark

In Denmark, air transport was regulated by the Danish Aviation Act No. 252 of 10 June 1960. Section 2 (2) of the Monopolies and Restrictive Practices Supervision Act of 1955, as amended by the Monopolies Act, did not apply to air transport, but there was very little difference between scheduled and charter air-traffic regulations.⁸⁴

Along with Norway and Sweden, Denmark exploited the jointly-owned Scandinavian Airline System (SAS), formed in 1951 as a multi-state venture in order to concentrate the three Scandinavian countries' international and domestic air traffic. The multinational air carrier was owned three-sevenths by the Swedish airline (ABA), two-sevenths by Denmark's one DDL, and two-sevenths by Norway's DNL. Each of the three national airlines was owned equally by private and government interests. The jurisdictional arrangements included joint national concessions applicable to SAS as a whole, and permission for the national parent companies to operate commercial air-traffic ventures under their respective national laws. Although the three countries carried out their politico-economic negotiations with other countries jointly, they signed separate bilateral agreements with the others, in which it was the national parent company, and not SAS, that was the designated party - disregarding the Chicago Convention regulations against such agreements.⁸⁵ SAS owned 50 per cent of Linjeflyg airline, 25 per cent of Greenlandair, 22 per cent of Wideroe, and the majority of shares in Scanair airline.⁸⁶

There were four main Danish unions to represent air-transport personnel. The Special Workers' Union (SID),⁸⁷ which includes the Transport Workers' Union, organized 4,500 air-transport employees and the Danish Metal

⁸⁴OECD, 1988: 41-42; Sundstrom and Stahle, 1989: 288-90.

⁸⁵Interviews with T. Gjertsen (29 Nov.1990); B. Stahle (4 Dec. 1990). See also Sundstrom and Stahle, 1989: 291.

⁸⁶Button and Swann, 1989: 266; Wheatcroft and Lipman, 1986: 191-92.

⁸⁷Special for bundet i Danmark, with a membership of 318,000 unskilled and semi-skilled workers.

Workers' Union (DMWU)⁸⁸ 1,400 air transport workers. The Officers' and Civil Servants' Union (OCSU)⁸⁹ that had approximately 1,000 air transport members. Finally, the main Cabin Crew Union of Denmark (CCU)⁹⁰ represented 1,300 members of cabin crews in Denmark.⁹¹

4.4 West Germany

In the Federal Republic of West Germany (FRG), the air-transport licencing system was regulated by the Air-Traffic Act (*Luftverkehrsgesetz, Luft VG*), and the Air-Traffic Licensing Ordinance (*Luftverkehrs Zulassung Ordnung*). Scheduled air-transport licenses were obtained through diplomatic channels ("Diplo Clearance"), but the Act required additional criteria for granting a license depending on routes, tariffs and other conditions. These regulations did not, however, apply to flights to or from the Berlin Air Corridor, and for this special permission was required. Exceptions were made for Britain, France, and the USA.⁹² Thus the Federal Cartel Act (competition law), Section 99 (1) did not, in principle, apply to air transport.⁹³

However Section 23 of the merger-control of the Federal Cartel Office (FCO) prohibited the concentration of German air transport. More specifically, Sections 24 and 26 (2), of the Act against Restraints of Competition (ARC), banned discrimination and prohibited the national airline from abusing its dominant position.⁹⁴

Lufthansa (Deutsche Luft Hansa-LH) was set up in 1926 as a result of the consolidation of various German airlines and in 1953 it became the

⁸⁸Dansk Metalarbejderforbund, with a membership around 140,000.

⁸⁹Dansk Funktionsærforbund-Serviceforbundet.

⁹⁰Kabinepersonale Foreningen AF 1966.

⁹¹Harper, 1987: 114-15; *ITF News* Archives and Notes, 1986-1993.

⁹²They were three of the four World War II allies responsible for West Germany, the other fourth being the ex-Soviet Union.

⁹³German AIP Documentation, *Nachrichten fur Luftfahrer* publications 5 May 1988; Strathaus, 1986: 19-22; Slot, 1989: 6, 12.

⁹⁴OECD, 1988: 43-44.

principal state-owned airline. Other airlines operating domestic and charter air services were few and majority-owned by LH, although German charter airlines accounted for 50 per cent of Germany's outbound air traffic.⁹⁵

There was only one transport union in Germany, the Public Service and Transport Workers' Union (OTV).⁹⁶ It was one of the seventeen affiliated industrial unions of the German Federation of Trade Unions (*Deutscher Gewerkschaftsbund, DGB*) accounting for more than 15 percent of its membership.⁹⁷ The OTV covered around 30,000 West German air-transport personnel. The German Airline Pilots Association (*Vereinigung Cockpit-VC*) represented most of the country's pilots.⁹⁸

4.5 The Grand Duchy of Luxembourg

In Luxembourg the first air-transport law to regulate civil aviation was promulgated on 31 January 1948. On 10 January 1948 the Luxembourg Airline's Company (*Societe Anonyme Luxembourgeoise de Navigation Aerienne*) had been founded, 40 percent of which was owned by Luxembourg and 60 percent by Britain's Scottish Aviation Ltd,⁹⁹ which brought the planes, pilot crews, and technical advisers from Scotland. The air-crew licences had to comply with the standards demanded by the British Ministry of Civil Aviation. In fact, the airline represented UK rather than Luxembourg interests. It had no monopoly within or financial dependency on the Grand Duchy, although it was entitled to state subsidies (subject to strict governmental control). In October 1961 the Luxembourg airlines were renamed Luxair. The freight-airline CargoLux was created in March 1970; it was again mostly privately owned,

⁹⁵Button and Swann, 1989: 266; Golich, 1990: 171; Hunter, 1993: 614; Wheatcroft and Lipman, 1986: 190-91.

⁹⁶*Gewerkschaft Offentliche Dienste, Transport und Verkehr.* After the unification of the West and East Germany OTV's total membership numbered over two million, 800,000 new members from Eastern Germany having signed up with the union. *ITF News*, Feb. 1991.

⁹⁷DGB's membership is around 7,700,000 workers.

⁹⁸Harper, 1987: 165-70; Hunter, 1993: 613; *ITF News* Archives and Notes, 1986-1993.

⁹⁹Scottish Airlines flying charter flights was its major branch.

Luxair holding only 33 percent. The regional Luxair Commuter SA was state-owned, however.¹⁰⁰

The Luxembourg General Confederation of Labour (CGT-L),¹⁰¹ affiliated with the National Federation of Railway and Transport Officials and Salaried Employees (FNCTTFEL),¹⁰² represented all air-transport personnel including cabin crew employees. The Luxembourg Aviation Pilots' Union (UPL)¹⁰³ represented all Luxembourg's pilots.¹⁰⁴

4.6 The United Kingdom

In Britain the regulation of air transport constituted the loosest regulatory system within the EC. After World War II the Labour government and the Minister of Civil Aviation nationalized UK air transport by the Civil Aviation Act (CAA) of 1946. The CAA set up the Air-Transport Advisory Council (ATAC), mainly a consumer council, and established the National Joint Council for Civil Air Transport (NJCCAT), an organization which negotiated employment conditions under the auspices of the Ministry of Labour. The Minister of Civil Aviation had powers of a general political character. The Civil Aviation (Licensing) Act of 1960 created much improved opportunities for private airlines and altered the licensing of scheduled air services by setting up an Air-Transport Licensing Board (ATLB).¹⁰⁵

The Civil Aviation Act of 1971 established the Civil Aviation Authority and a more liberal national regulatory framework, although international airline services, other than charter flights, were excluded from the monopoly provisions of the Fair Trading Act of 1973 and the Competition Act of 1980.

¹⁰⁰Button and Swann, 1989: 266; Hamer, 1978: 143-60, 264-69, 312-15; Hunter, 1993: 901.

¹⁰¹*Confederation Generale du Travail du Luxembourg*, with a membership of around 44,000 workers and employees.

¹⁰² *Federation Nationale des Cheminots, Travailleurs du Transport, Fonctionnaires et Employes Luxembourgeois*. here were also the Luxembourg Confederation of Christian Trade Unions (*Letzebuerger Chreschtliche Gewerkschafts-Bond-LCGB*), with a membership of 15,000, and the Confederation of Independent Trade Unions (*Onofhangege Gewerkschaftsvond Letzebuerg- OGB-L*), a Confederation within the CGT-L, with a membership of 33,000 workers.

¹⁰³ *Union des Pilotes d' Aviation Luxembourgoise*.

¹⁰⁴ Hamer, 1978: 408; Harper, 1987: 264-65.

¹⁰⁵ Barrett, 1987: 30; Wheatcroft, 1964: 22-45, 129-97; Wheatcroft and Lipman, 1986: 25-26.

The Monopolies and Mergers Commission (MMC), the Directorate General of Fair Trading (DGFT), and the CAA intervened only in instances of predatory pricing or in cases of possible detrimental effects deriving from airline mergers (such as an airline acquiring a dominant position on a particular air route), although they recognized that there were potential benefits from the national airlines competing with foreign ones.¹⁰⁶

The chairman and board of the CAA were appointed by the Secretary of State for Trade, but CAA was constitutionally and financially¹⁰⁷ independent of government, and its 7,400 employees were not civil servants. When the air transport was deemed to be public transport, the CAA required not only an air-transport license but also an air-operator's certificate (AOC). The Civil Aviation Acts of May 1980 and 1982, and the licensing White Paper On Airline Competition Policy of 1984 introduced looser controls over domestic fares.¹⁰⁸

In 1921 the UK operated three major airlines and in 1924 four which merged to form Imperial Airways Ltd. After the Second World War the Civil Aviation Act (CAA) of 1946 set up three state air corporations. They were British European Airways (BEA), the British Overseas Airways Corporation (BOAC), and British South American Airways which merged with BOAC in 1949. In April 1974 the two remaining state-owned airlines merged and became today's British Airways (BA), the UK's only national, state owned and scheduled airline which accounted for just over 66 per cent of total UK air-transport. In 1987 BA was fully privatized and merged with British Caledonian (BCal), an independent airline that had been operating since 1971. There were many charter airlines within the UK air transport such as Dan Air, Britannia, Air UK, and so forth.¹⁰⁹

¹⁰⁶OECD, 1988: 47-48.

¹⁰⁷Ordinary taxpayers (the general public) do not subsidize air transport, but solely the users of air transport.

¹⁰⁸Interview with R. Cotterill (31 May 1991). See also Button, 1991: 19; Button and Swann, 1989: 261, 1991: 97; UK-CAA, 1979: 5, 18-27, 1982, 1984; Naveau, 1989: 156-57; Shaw, 1993: 131-32; Toms, 1988: 24-26; Tritton, 1989: 153-64 166-67, 185-86; Wheatcroft and Lipman, 1986: 189.

¹⁰⁹Button and Swann, 1989: 266; Corke, 1986: 31-77; Golich, 1990: 172; Wheatcroft, 1964: 24, 79.

The Transport and General Workers' Union (TGWU)¹¹⁰ in its civil aviation section represented all UK airline workers, as well as air-traffic controllers, ground handling staff, and a substantial number of CAA employees, although it was not the main CAA union. It also organized cabin crews but not cockpit crews. Its membership was around 24,000 air-transport workers and airline employees. The Association of Scientific, Technical and Managerial Staff (ASTMS), included air-transport employees most of whom were members of the BA unions. The National and Local Government Officers' Association (NALGO) organized among others 2,500 air-transport employees, and the Institution of Professionals, Managers and Specialists (IPMS) 3,100. The union of Manufacturing Science Finance (MSF), was responsible for 4,500 air-transport personnel, while the National Union of Rail, Maritime and Transport Workers (NURMT) had around 5,500 members from air transport. The British Airline Pilots Association (BALPA) unionized all UK pilots. Finally, the British Air-Transport Association (BATA), grouped together virtually all British airlines.¹¹¹

4.7 France

France has traditionally had a highly regulated air-transport environment. Decree No.76-711/76 concerned the basic law in respect of approval of air fares. The rules of competition (Ordinance of 30 June 1945, amended by Ordinance of 1 December 1986) applied also to air transport.¹¹²

Since the end of World War II France has had two international airlines: Air France (AF), the state-owned national airline founded in 1933, and the Union des Transportes Aériennes (UTA), a privately-owned airline. The country's

¹¹⁰It has a membership of 1,130,000 workers and employees.

¹¹¹Information from author's interviews with D. Cockcroft (19 June 1991); H. Finstfein (5 June 1991); S. Howard (3 June 1991 and 4 April 1993); G. Ryde (5 June 1991). See also Harper, 1987: 418-29; Hunter, 1993: 1346-353; *ITF News* Archives and Notes, 1986-1993. See also *Financial Times*, 5 Oct. 1990: 27.

¹¹²Information requested but not sent from the French Ministry of Housing, Transport and Tourism (documentation 28 April 1994: 001603; Doganis, 1989: 7/1-7/31; OECD, 1988: 43; Rapp, 1984: 17; Villiers, 1989: 311).

domestic air-transport services were dominated 90 percent by Air Inter; several regionally based third-level carriers,¹¹³ such as Transport Aerien Transregional, (TAT), and Air Littoral covered the remaining 10 per cent.¹¹⁴

France had five main transport federations and syndicates for pilots, cabin attendants and flight engineers divided between Catholic, Socialist and Communist organizations. The General Federation of Transport and Equipment of the French Democratic Confederation of Labour (FGTE-CFDT),¹¹⁵ which included the Federal Air Transport Union (FATU), represented air-transport unions with around 1,500 members. It incorporated cabin crews from all French and foreign air carriers (including charters and regionals) as well as airport staff, the DGAC and the French meteorological services. The Federation of the Transport and Services Staff-Work Force (FETS-FO)¹¹⁶ had approximately 12,500 members from French airlines and airports, such as cabin crews, mechanics, and ground handlers. The National Syndicate of Airline Pilots (SNPL),¹¹⁷ represented all French airline pilots and the National Syndicate of Commercial Air-Transport Personnel (SNPNC)¹¹⁸ represented around 7,000 cabin attendants members out of the approximately 10,000 employed by 30 airlines, French and foreign. Finally the National Syndicate of the Flight Engineers (SNOMAC)¹¹⁹ had around 1,300 members employed by all the French airlines.¹²⁰

¹¹³These are airlines operating intra-regional air-transport services.

¹¹⁴Button and Swann, 1989: 266; Golich, 1990: 172; Wheatcroft and Lipman, 1986: 191.

¹¹⁵The Socialist Confederation Francaise Democratique du Travail (CFDT), was formed in 1964 by the majority faction of the French Confederation of Christian Labourers (Confederation Francaise des Travailleurs Chretiens (CFTC) The CFDT had a general membership of around 7,000 transport workers.

¹¹⁶The Federation Force Ouvriere (F.O) de l' Equipment, des Transport et des Services belongs to the General Confederation of Labour-Workers' Force (Generale Confederation du Travail-Force Ouvriere, CGT-FO) which broke away from the largest of the unions and communist dominated General Confederation of Labour (Confederation Generale du Travail, CGT) in 1948, as a protest against communist influence therein. Force Ouvriers (FO) was a formerly Catholic and now independent small union organization.

¹¹⁷Syndicat National des Pilots de Ligne.

¹¹⁸Syndicat National du Personnel Navigant Commercial.

¹¹⁹Union Syndicale du Personnel Navigant Technique Nationale (USPNT-N).

¹²⁰Information from author's interviews with C. Deslandes (21 Nov.1990), P. Laprevote (21 Nov.1990), J. P. Meheust, D. Jullien and G. Gomez (23 Nov.90), and R. Valladon (22 Nov.1990); Harper, 1987: 141-54; Hunter, 1993: 570; ITF News Archives and Notes 1986-1993; Keating, 1993: 170-71; Wilson, 1990: 125, 130, 132

4.8 Italy

In Italy the regulation of air transport was one of the strictest in the EC. Under Article 776 of 30 March 1942, Air Navigation Code 342, as amended by Air Navigation Law 862 on 11 December 1980, scheduled air services might only be instituted and operated under government concession, issued by Presidential Decree. Those concessions had the dual function of (i) "instituting air-transport services", and (ii) "entrusting them under concession to air-transport companies". The process was very rigid and it could take up to three or even four years for a licence to be approved. This exclusivity given to scheduled air services was consistent with the principles of the Italian Constitution, which *ab initio* gave the state the right to take under its wing public services which were of paramount public interest. Italian air transport was, therefore, governed neither by civil nor commercial law, but basically subject to administrative law.¹²¹

For non-scheduled carriers the authorization process for obtaining rights on new routes (without concessions) was less formal and less rigid. Non-scheduled air services were regulated by a Decree issued on 18 June 1981, partially modified and integrated by another promulgated on 30 July 1984.¹²²

Alitalia (AL) was the national carrier, and was totally state-owned until 1985, when it sold off some of its shares. Alisandra, the largest private airline, and ATI, a wholly state-owned subsidiary of Alitalia, were virtually the only airlines enjoying rights in the domestic air space. Regional airlines - such as Air Sardinia, Aliblu, Alinord, Avianova and Transavio - were very minor concerns, and some of them were partially owned by the three main Italian carriers.¹²³

¹²¹Boffito and Martinelli, 1993: 185-87; Giardina, 1989: 244-46; Siedentopf and Ziller, 1988: 46.

¹²²Italian AIP Documentation, 12 Nov.1988, Ministry of Transport, 6 April 1994: 334502.

¹²³Button and Swan, 1989: 266; Doganis, 1989: 8/1-8/14; Giardina, 1989: 244-46; Wheatcroft and Lipman, 1986: 192-93.

Two major transport federations and a section of a transport union have represented Italy's air-transport workers and employees. The Italian Transport Workers' Federation of the Italian General Confederation of Labour (FILT-CGIL),¹²⁴ dominated by communists, represented roughly 6,700 civil aviation personnel, including cabin crews. The Transport Federation of the Italian Confederation of Workers' Unions (FIT-CISL),¹²⁵ mostly under christian-democrat and some lesser socialist influence, represented 4,250 air-transport workers and employees, including ATI, the cabin attendants union. Finally, the Transport section of the Italian Labour Union (UIL-TRASPORTI),¹²⁶ which broke away from the CISL and, was led by social-democrats and republicans, represented around 500 airline workers in its affiliated union UIGEA.¹²⁷

4.9 The Republic of Ireland

In Ireland it was the Air Navigation and Transport Bill of 10 May 1936, amended in May 1961, that laid down legal regulations for air traffic. Aer Lingus, consisting of Aer Lingus plc, Aerlinte Eireann plc, and Aer Rianta, was the state-owned airline. Plenty of charter and independent airlines, with Ryanair the largest of them, operated air services on a number of international routes as well.¹²⁸

Legislation on domestic competition did not apply to air transport, but this exemption was removed in late 1987.¹²⁹

Three main unions organised air-transport workers and employees. The Irish Transport and General Workers' Union (ITGWU) included the Services,

¹²⁴ *Federazione Italiana Lavoratori Trasporti-Confederazione Generale Italiana del Lavoro*-with 4,500,000 members.

¹²⁵ *Federazione Italiano Trasporti-Confederazione Italiana dei Sindacati Lavoratori* with a membership of around three million workers and employees.

¹²⁶ *Unione Italiana del Lavoro Trasporti*, with roughly 1,400,000 members.

¹²⁷ Harper, 1987: 222-27; *ITF News* Archives and Notes, 1986-1993; Keating, 1993: 235-36.

¹²⁸ More detailed information requested but not received. Button and Swan, 266; Hunter, 1993: 798; Share, 1986: 1-56; Wheatcroft and Lipman, 1986: 190.

¹²⁹ OECD, 1988: 45.

Industrial, Professional and Technical Union (SIPTU) organizing air-transport personnel. The Federated Workers' Union of Ireland, Civil Aviation Branch (FWUI-CAB), was concerned mainly with cabin crews but also some other air-transport categories of workers and employees. Finally the Amalgamated Transport and General Workers' Union (ATGWU) also represented air-transport personnel. With headquarters in the UK, it was closely affiliated with Britain's TWGU.¹³⁰

4.10 Greece

In Greece, Governmental Decree 714/1970 laid down the rules for the functions of the Greek CAA (YPA), the legal status of which was regulated by maritime laws. The first Civil Aviation Decree (No.1815) was promulgated in 1988. Since 1956, the national, then privately-owned airline Olympic Airways (OA), under governmental Decree 3560/1956, was granted complete monopoly of domestic scheduled and non-scheduled airlines. In 1975 the state bought the airline, setting up a subsidiary company, Olympic Aviation, to operate third-level domestic services serving mainly the islands.¹³¹

The Federation of Civil Aviation Unions (OSPA), represented 14,500 workers of Olympic Airways and its affiliated companies. The Hellenic Airline Pilots' Association (HALPA), organized the OA pilots, and the Hellenic Flight Engineers Union HFEU) all flight engineers. The Flight Stewards and Stewardesses' Union (EISF or FAU) grouped around a thousand OA flight attendants, and the Licensed Airline Technicians' Union (ETEM&P) 700 OA aircraft-maintenance workers.¹³²

¹³⁰ Harper, 1987: 212-14; ITF News Archives and Notes, 1986-1993

¹³¹ Doganis, 1989: 9/1-9/31; Shaw, 1993: 172-74; Wheatcroft and Lipman, 1986: 193-94.

¹³² Information from author's interviews with G. Koutsogiannos (18 Jan. 1991); J. Rokolilos (22 Feb. 1990).

4.11 Spain

In Spain, the state-owned airline Iberia exercised total control over the domestic airline Aviaco.¹³³ There were three main national federations of unions which represented air-transport labourers as well. The National Federation of Transport, Communications and Sea (FETCOMAR-CCOO)¹³⁴ numbered 4,000 air-transport personnel, including cabin crews. The National Federation of Transport and Telecommunications (FETTC-UGT),¹³⁵ represented around 3,500 members, including the cabin crew union (STCP-UGT). The Federation of Transport of ELA-STV¹³⁶ had only around 15 air-transport members, and the Confederation of Independent Civil-Service Union (CSI)¹³⁷, organized the civil servants working in Spain's air-transport industry.¹³⁸

4.12 Portugal

Portugal had no Civil Aviation Act as such, and instead promulgated air-transport legislation. The country's non-scheduled international air transport was regulated under Law (*Decreto-Lei*) No. 274/77 of 14 July 1977, and *Portaria* No. 129/79 of 22 March 1979.¹³⁹ Transport Air Portugal (TAP), Portugal's state-owned airline was set up in 1945 as a government department. It was privatized in 1953, and re-nationalized in April 1975.¹⁴⁰

¹³³Information requested from the Spanish Ministry of Transport but not respond received. Buton and Swan, 1989: 266; Wheatcroft and Lipman, 1986: 193.

¹³⁴*Federacion Estatal de Transportes Comunicaciones y Mar de CCOO*. The Workers' Commissions *Confederacion Sindical de Comisiones Obreras*, (CCOO) is close to the Communist Party of Spain (PCE), which had a membership of 1,600,000.

¹³⁵*The Federacion Estatal de Transportes y Telecomunicaciones de UGT*. The General Union of Workers (*Union General de Trabajadores*- UGT) was associated with the Spanish Socialist Workers' Party (PSOE), which had seven hundred thousand workers.

¹³⁶*Federacion del Transporte de Euzko Langileen Alkartsuna/Solidaridad de Trabajadores Vascos* (ELA-STV) which is the Basque Workers' Solidarity was close to the Basque nationalist Party (PNV), and had a total membership of 110,000 workers.

¹³⁷*Confederacion Sindical Independiente de Funcionarios*

¹³⁸Harper, 1987: 369-73; *ITF News* Archives and Notes 1986-1993; Keating, 1993: 337-339.

¹³⁹Portuguese Directorate General of Civil Aviation documentation, 004757, 26 May 1994.

¹⁴⁰Button and Swann, 1989: 266; Doganis, 1989: 6/1-6/13; Fernandez, 1986: 18; Wheatcroft and Lipman, 1986: 193.

The country had four main air-transport unions. The Syndicate of Aviation and Airport Workers (SITAVA)¹⁴¹ organized 5,200 air-transport members, the National Syndicate of Flight Attendants of Civil Aviation (SNPVAC)¹⁴² around 1,600 cabin crews members, the Civil Aviation Staff Union (SINVOO)¹⁴³ roughly a thousand air-transport workers and employees, and the Syndicate of Aircraft Maintenance Technicians (SITEMA)¹⁴⁴ roughly a thousand maintenance technicians.¹⁴⁵

Table 2.5 below shows the ownership of the individual EC members' most important national airline and their trade union structures in the pre-1987 period.

Turning to the level of the EC a brief description of this body's institutional structures, performance, and pre-1979 transport and air-transport developments is indispensable.

5. EC Institutional and Air-transport Structures

The Commission and the Council of Ministers are the institutions in the EC with the dominant role in shaping policy, and they utilize an intensive bargaining system to carry through the implementation of their decisions. Briefly: the Commission initiates and proposes and the Council of Ministers disposes. The EC has also, a consultative system (which is not a law-making body) in the European Parliament (EP)¹⁴⁶ and its Economic and Social Committee (ESC or ECOSOC), and a judicial system in the European Court of

¹⁴¹ *Sindicato dos Trabalhadores da Aviacao e Aeroportos.*

¹⁴² *Sindicato Nacional do Pessoal de Voo da Aviacao Civil.*

¹⁴³ *Sindicato dos Quadros de Aviacao Comercial.*

¹⁴⁴ *Sindicato dos Technicos de Manutencao de Aeronaves.*

¹⁴⁵ Harper, 1987: 339-41; ITF News Archives and Notes, 1986-1993.

¹⁴⁶ The EP was comprised of 518 members directly elected in the twelve EC member-states and appointed proportionally to the member-states population. In 1994 (post-Maastricht) the elected EP members increased to 567. It has 18 specialist committees on different matters such as the Transport and Tourism committee.

Table 2.5: EC Members' National Airline Ownership, Participation in Other Airlines, and Main Trade-Union Fragmentation

	Airline	Stake (in %)	Participation in other airlines (in %)	Trade Unions
Belgium	SN private	54.7 45.3	Sobelair 71.1	GTB-CGSP, CSC-CVD, CGSLB, ABNLP
Denmark	SAS private	50* 50	Linjeflyg 50 Greenlandair 25 Wideroe 22 Scanaire (maj.)	SID, DMWU, OCSU, CCU
France	AF	99.4	Air Charter 80 Air Inter 36 Air Guadeloupe 45 Euskal Air 29	FGTE-CFDT incl. FATU, FETS-FO, SNPL,SNPNC, USPNTN
Greece	OA	100	Olympic Aviation 100	OSPA, HALPA FAU, ETEM&P, HFEU
Ireland	AER LINGUS	100	Aer Turas Teoranta 100 Aer Lingus Commut. 100	ITGWU, SIPTU, FWUI-CAB, ATGWU
Italy	AL 100 (1985) 67.00 (1986) private 33.00		ATI 100	FILT-CGIL, FIT-CISL UIL-TRASPORTI
Luxembourg	Luxair private	20.9 79.1	Luxair Comm. SA 100 Cargolux 33	CGT-FNCTTFEL UPL
Netherlands	KLM private	36.9 63.1	Martinair 25 Transavia 40 NLM Cityhopper 100 Netherlands 100	FNV-CNV, VKC
Spain	IB	100	Aviaco 100	FETCOMAR- CCOO, FETTC- UGT, STCP- UGT, ELA-STV
TAP	Air Portugal	100	Air Atlantis 100	SITAVA, SINVOO, SNPVAC, SITEMA, SQUAC.
UK	BA	majority	British Air Tours 100 Cal Air Inter. 100 British Caled. 100	TGWU, ASTMS, NALGO, IPMS, MSF, NURMT BALPA
W.Germany	LH public private	74.3 7.8 17.8	Condor 100 DLT 40 LH-Cityline 100 Aero-Lloyd (maj.) Cargolux 24.5	OTV, CV

*Including the other Scandinavian governments.

Sources: Button and Swann, 1991: 98; Harper, 1987; ITF News, archives and documentation (1986-1993)

Justice (ECJ) at the Hague.¹⁴⁷ Figure 2.4 illustrates the legislative process (consultation procedure) of the pre-1987 (SEA) period.

The Commission itself comprises 17 commissioners, appointed for four-year terms by the member-states' governments. Germany, the UK, France, Italy, and Spain, have two commissioners each. The European Council¹⁴⁸ chooses the president of the Commission for a renewable two-year term. The commissions' bureaucratic structure has 23 directorates-general (DGs), each with a specific functional task. All DGs have similar policy-making and hierarchical structures, presided over by a Commissioner (the analogue of a minister in a national government) and his or her private office staff or *cabinet*. It consists of a *chef* and four to five people selected by the Commissioner from the EC institutions (especially the Commission itself) or from outside (often from national government service), and hold temporary appointments. The general director, the director and the heads of divisions are a typical instance of the hierarchical proliferation of EC bureaucratic structure under the commissioner's leadership.¹⁴⁹

The Council of Ministers, one per member state, functions through its secretariat, which has working groups staffed by national experts, and the committee of permanent representatives (Corepers), who are Ambassadors of the member-states to the EC. They not only serve as the link between their governments and the Commission but also prepare the work of the Council of Ministers before the appropriate ministers (their competencies depending on

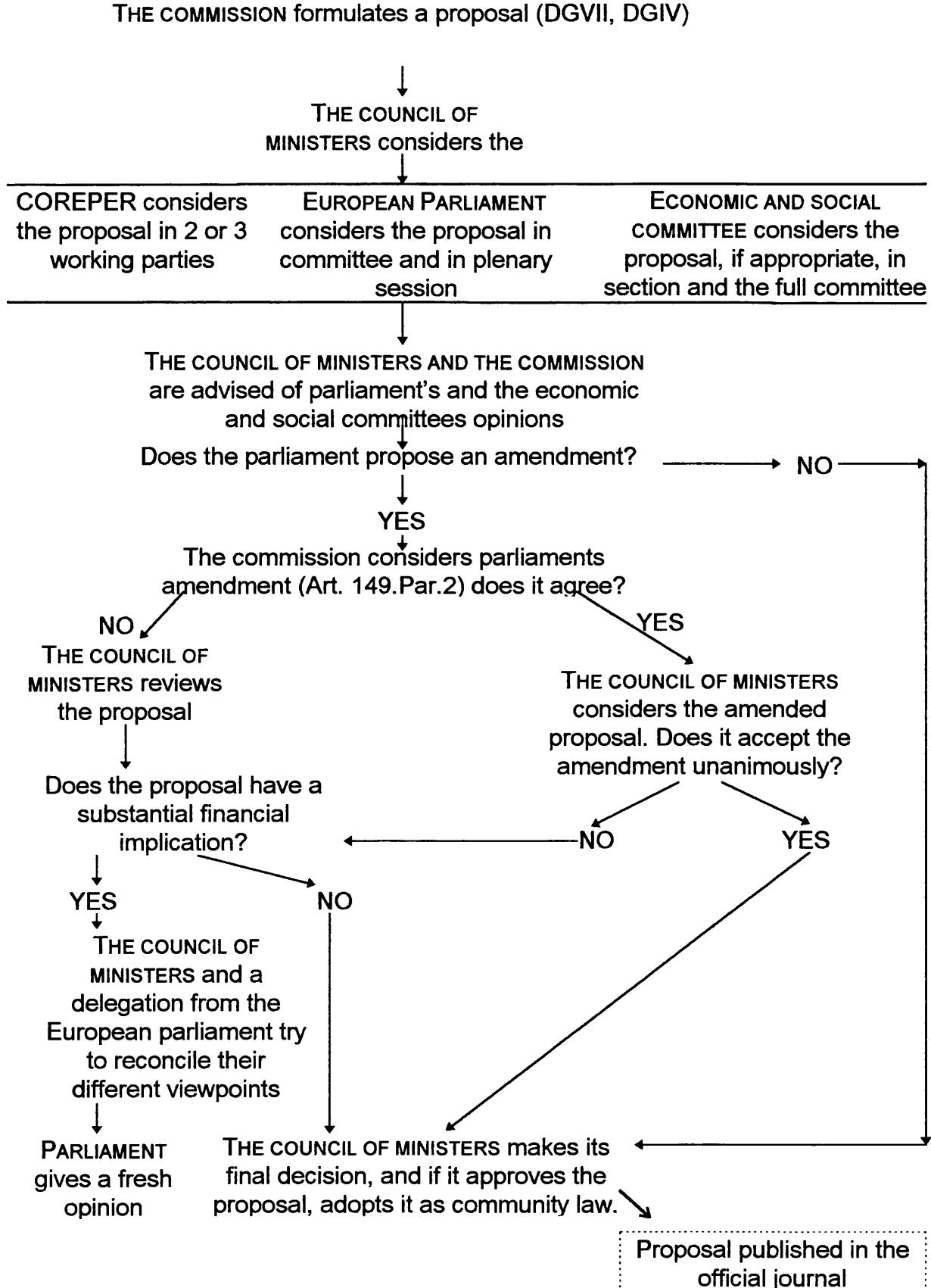
¹⁴⁷ The ECJ interprets and applies EC laws, arbitrates disputes between member-states and judges complaints from individuals or corporations about the effects of EC legislation.

Interview with N. Burlough (6 Dec.1990); Groeben, 1987: 8; Owen and Dynes, 1989: 30. For a thorough study of the EC institutional structures and functions see Barnes and Preston, 1988: 9-12; Brealey and Quigley, 1989: xxiii-xxv; Brown, N., 1989; Henig, 1980; Grahl and Teague, 1990: 339-41; Hitzler, 1991: 21-23, 33-38, 125-27, 247-49; Hufbauer, 1990: 54; Jackson and Fitzmaurice, 1979; Keating, 1993: 373-79, 382-83; Lodge, 1983, 1989: 26-79, 1993: 21-34; Molle, 1990: 55-79; Morris et al, 1981; Nicoll and Salmon, 1994: 61-74, 79-113; Nugent, 1991: 161-39; Peters, 1991: 75-122; Shapiro, 1991: 123-50; Sasse et al, 1977; Steiner, 1986: 174-80; Wallace, 1983: 403-36; Webb, 1983: 1-41.

¹⁴⁸ The European Council comprises the heads of member-states or governments, their foreign ministers, and the EC president and the vice-president on foreign relations. It meets triannually and sets broad guidelines for the EC on issues of prime importance, such as the accession of new member-states, the common monetary system, or foreign policy. Bulmer and Wessels, 1987; Hufbauer, 1990: 54; Nicoll and Salmon, 1994: 74-76; Steiner, 1986: 173-74.

¹⁴⁹ Interview with N. Burlough (9 Nov. and 6 Dec. 1990). See also Brealey and Quigley, 1989: xxiii; Hufbauer, 1990: 53; Lodge, 1993: 6-12, 13-15; Nicoll and Salmon, 1994: 62-67; Nugent, 1989: 60-61; Peters, 1991: 85-87.

Figure 2.4: Consultative Procedures Pre-1987 (SEA). The Legislative Process



Sources: Barnes and Preston, 1988:14, Hitzler, 1991:14, Nicol and Salmon, 1994:81.

the subject for consideration) meet for discussion. Prior to the provisions of the Single European Act voting rules required unanimity on all legislation adopted by the Council of Ministers.¹⁵⁰ The presidency of the Council rotates among the member-states in alphabetical order, each president serving a six-month term.¹⁵¹

EC laws take the form of either primary legislation, which derives from the EC Treaties, or secondary legislation, which is designed to implement the policy guidelines laid down by the Treaties.¹⁵² Secondary legislation can take the form of regulations, directives, decisions, recommendations, and opinions. *Regulations* are legally binding on member-states and apply directly. *Directives* are equally binding as regards the aim to be achieved but leave the national authorities to decide upon the best method of implementation. *Decisions* are binding in every respect upon those whom they apply, whether member-states, firms or individuals. *Recommendations* and *Opinions* have no binding force. Needless to say, secondary legislation varies in importance from member-state to member-state, depending on its political, economic, and legal significance.¹⁵³

Secondary legislation can be further divided into Council-of-Ministers laws and Commission laws. Commission laws differ from Council laws in that they do not require to be approved by other institutions, and deal basically with the implementation of legislation adopted by the Council of Ministers. While there is usually a time limit for the implementation of EC laws, there is none concerning the time a proposal should take to pass through the four stages before it is adopted. These are: the introduction of the legislation to and its

¹⁵⁰ After 30 June 1965, when France boycotted the EC meetings, the Luxembourg Compromise stated that no EC member-state could overrule another opposing to a piece of legislation, on the grounds that a vital national interest being at stake.

¹⁵¹ Interview with N. Burlough (6 Dec.1990). See also Andersen and Eliassen, 1991: 179-81; Barnes and Preston, 1988: 10; Brealey and Quigley, 1989: xxi-xxii; Butler, 1986: 137-38; Hitzler, 1991: 16, 22; Hufbauer, 1990: 51-54; Lodge, 1993: 15-21; Lintner and Mazey, 1991: 12-24; Nicoll and Salmon, 1994: 67-74, 76-78; Peters, 1991: 78-85.

¹⁵² The overall EC consists of three separate bodies: the European Coal and Steel Community, the European Atomic Energy Community (EURATOM), and the European Economic Community (EEC). By 1966 the three communities had merged to become the EC but nevertheless they retained their separate identities.

¹⁵³ Brealey and Quigley, 1989: xxv-xxix; Emerson, 1989: 470-72; Hitzler, 1991: 12-13; Keating, 1993: 380-81; Lodge, 1993: 12; Siedentorf and Ziller, 1988: 14.

drafting by the Commission, formal consultations, and its final adoption and implementation, which are the province of the Council of Ministers.¹⁵⁴

Any EC legislation involves interdependence as well as co-ordination, and combines the competences of strictly national and EC policy and decision-making. There are cases where (i) the degree of participation and co-ordination depends, solely, on the member-state; cases which (ii) national policy is supplemented by EC policy, but the co-ordination is based on national instruments; cases which (iii) emerge as a cause of common concern (both national and EC institutions are involved in the process) but co-ordination is confined to EC competence; or where (iv) responsibilities have been clearly transferred from the national governments to the EC.¹⁵⁵

Concerning now specifically air transport, this is the responsibility of two directorates general: the DG VII for Transport, which deals with overall air-transport policies, such as technicalities and fares, market access, capacity and so forth; and the DG IV for Competition. Both DGs are of course greatly interdependent. The DG VII includes Directorate C for Air transport, transport infrastructure, social and ecological aspects of transport, Division 1 for Air transport; and the DG IV has the Directorate D on Restrictive practices, abuse of dominant positions and other distortions of competition III, Division 3 for Transport and Tourist industries. In some cases, three or more DGs may be involved: DG I for External relations, DG III for Internal Market and Industrial Affairs, and DG V for Employment, social affairs and education.

6. EC Transport and Air-Transport Primary and Secondary Legislation Until 1979

The Constitution of the EC was provided under the Treaty of Rome,

¹⁵⁴Information from author's interviews with N. Burlough (9 Nov. and 6 Dec. 1990); C. Di Cremoni (5 Nov. 1990); N. Kontou (26 Oct. 1990); J. Miart (23 Oct. 1990); G. Radice (26 Oct. 1990).

¹⁵⁵Barnes and Preston, 1988: 12-13; Jackson and Fitzmaurice, 1979: 31-34.

signed on 25 March 1957.¹⁵⁶ A joint transport policy was one of the three common policies specifically mentioned in Article 3(e) of the Treaty, the other being foreign trade and agriculture. In Part 2, Title IV, the Transport Articles 74-84 set out specific rules and empowered the Commission to make proposals for a common policy. One major obstacle was Article 84(1) which limited the scope of this policy to transport by rail, road, and inland waterways, and laid down (in 84(2) that the Council itself should decide (unanimously) whether and to what extent to act for sea and air transport. This failure to include air transport within the scope of a broader transport policy was mirrored in the exclusion of air transport from Part 3, Title I (Chapter I), Articles 85-94, on competition policy.¹⁵⁷ The basic Treaty competition and anti-cartel Articles 85 (anti-competitive practices, collusion and block-exemptions), and 86 (abuse of dominant position whether with mergers or joint ventures), were directly sustained and developed by Articles 87-90, and indirectly by Articles 91-94 (anti-dumping or predatory behaviour and state aids). The most prominent objective of EC competition laws was integration,¹⁵⁸ the other two being efficiency and fairness in equity.¹⁵⁹

Like all EC deliberations, the Communities' transport policy was an arena for conflict as each member-state strove to ensure its maximum self-interest. The main dispute was over reconciling the conditions and degree of

¹⁵⁶The Treaty was signed by Belgium, France, West Germany, Italy, Luxembourg and the Netherlands, and went into force on 1 January 1958. Hitzler, 1991: 3-11; Nicoll and Salmon, 1994: 1-19.

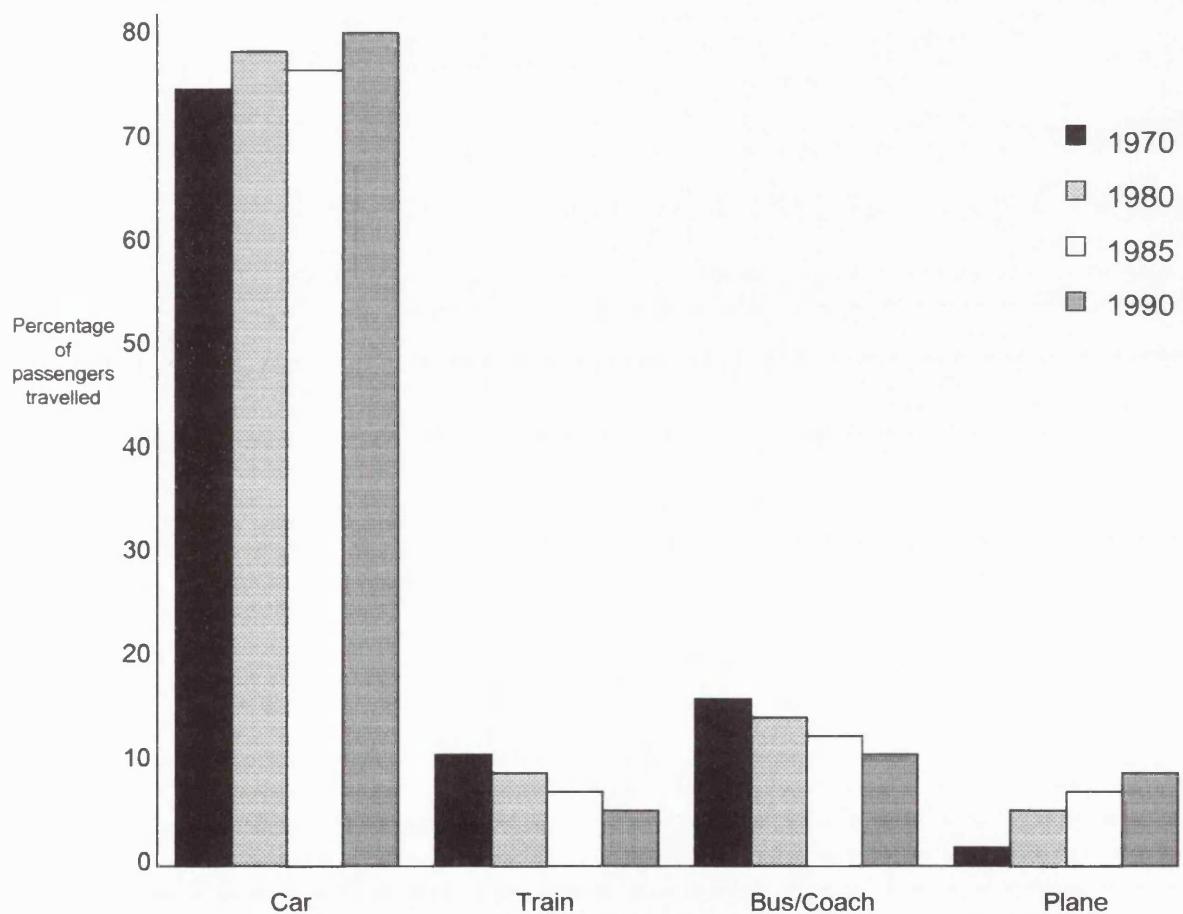
¹⁵⁷The Treaty does not define competition as such.

¹⁵⁸Its known ultimate aim is a fusion of the member-states' governments, achieved by the removal of barriers to free trade. The goal is a supranational entity, with the EC institutions as controllers of members' policy decisions. Keating, 1993: 367-73; McLachlan and Swann, 1967: 3, 443; Preben, 1986: 7-8. For the development and prominence of neo-functionalism theory within the EC integration process see Haas, 1958 and 1964; Harrison 1974; Hu, 1981; Lindberg, 1963; Lindberg and Scheingold, 1970; Puchala, 1972; and Wallace 1990. For a general analysis of the problems and developments of the EC integration process see Busch and Puchala, 1976; Harrop, 1989; Green et al, 1991: 200-02; Ionescu, 1972; Mendes, J., 1987; Molle, 1990; Nicoll and Salmon, 1994: 20-57, 213-75, 289-96; Taylor, 1975, 1983, 1989; Wallace, W., 1983: 403-36, 1990; Webb, 1983: 3-43; Willis, 1975.

¹⁵⁹AEA, 1989: 10-16, 78-84; Argyris, 1989: 8-11; Balfour, 1990: 19-34; Beseler and Williams, 1986; Bienayme, 1993: 13-25; Brealey and Quigley, 1989: xvii-xxi, 159-160; 164-165; Bromhead, 122-123; Burke et al., 1991: 131-147; Button and Swann, 1989: 260, 269-271; EC Commission, 1990; Cook and Kerse, 1991: 67; Doganis, 1991: 83-84; El-Agraa, 1980: 125-127; Greaves, 1991: 1-22; Green et. al, 1991: 197-204, 206-306; Haanappel, 1984: 86; Jacobs and Clark, 1991: 18-142; Kark, 1989: 388; Lenz, 1990: 45-7; Maniet, 1989: 3-4; Mayes, 1993: 202-204; McGowan and Trengove, 1986: 81-82; McLachlan and Swann, 1967: 50-51; Naveau, 1989: 184; Nicoll and Salmon, 1994: 148; Nugent, 1989: 41; Rawlinson et al., 1990: 197-199, 200-213; Rosenthal, 1990: 294-298; Schina, 1987; Van Der Esch, 1988: 34-36, 77-85; Verstrynghe, 1988: 1-13 and 1989: 85-92; Winter, 1990; Witlox, 1988: 63-5; Whitelegg, 1988: 8-9. Appendix II.1 refers to articles of the Treaty of Rome most relevant to air-transport policy.

liberalization and the objectives of harmonization. This required adaptation of the various national transport policies to the broader EC transport legislation, and co-operation¹⁶⁰ for joint economic benefits from a common transport policy - along side the differences in use of the various modes of transport¹⁶¹ as set out in Figure 2.5 below - by road (cars, coaches), rail, or air.

Figure 2.5: Passenger Transport in the European Community 1970-90 (%)



Source: Official Publication of EC European File Series, "Transport in the 1990's" 1993

As is immediately obvious, most travellers in the EC this period went by private car (between 76 and 79 per cent). Bus and coach transport was used

¹⁶⁰ Co-operation is one of the three principles underlying the EC's economic legislation, the other two being liberalization and anti-competitive behaviour.

¹⁶¹ All forms of public transport are concessionary activities. In other words market access is not the result of individual initiatives alone, but heavily depends on right of access granted by the state.

by between 8.9 and 11.7 per cent, and trains took from 6.6 to 10.0 per cent. Even in 1990 planes served only 5.6 per cent, up from 2.2 in 1970, but of course these figures are for travel within the confines of EC and Europe. The question of whether the competition rules should apply also to EC air transport and maritime policies brought further controversy, and the dispute remained unresolved for twenty years in respect of shipping, and thirty years for air transport. During all this time no common policy could be developed in either of these areas.¹⁶²

Concerning specifically EC air transport, four main events marked the period 1958-1979. The first was in 1958/1959, when four airlines of the then six EC member-states - Air France, Alitalia, Lufthansa and Sabena - decided to set up a joint organization called Air Union.¹⁶³ Strong US interests, and the abrasive negotiations over conflicting interests by the above airlines' governments, doomed Air Union to failure, however.¹⁶⁴ The second event came in 1961-1962, when the Transport Ministers' Council adopted Regulation 141, which for an indefinite period exempted air and sea transport from Regulation 17 on competition, pending development of a common EC air-transport policy.¹⁶⁵ The third notable date fell in 1973, when the accession of three new member-states - Britain, the Republic of Ireland, and Denmark - brought a new liberalization trend. This had a decisive influence on the Commission, which proceeded to redefine the objectives of the EC's air-

¹⁶² Abatti, 1987: 15, 61-64; AEA, 1989: 48-53; Bayliss, 1979: 29-32; Bromhead, 1979: 124-40; Burke et al, 1991: 49, 151; Commission of the EC, 1990: 231-51; Dagtogiou, 1981; De Jonge, 1988: 45-8, 56-9; El-Agraa, 1980: 123, 160, 165-82; Empel, 1988: 17; Erdmenger, 1983: 31-32; Feldman, 1990: 47-48; Folsom, 1978; Hurwitz, 1983; Gardiner, 1988: 135-38; Greaves, 1991: 28-31; Groeben, 1987; Hopkins, 1981; Korah, 1987: 14-18; Levine and Mecham, 1991; McLachlan and Swann, 1967: 285-97, 301-02; Molle, 1990: 344, 339-40; Munby, 1962: 68-77; Neumann, 1989: 467-69; Nicoll and Salmon, 1994: 138; Nugent, 1989: 213; Preben, 1986: 8-10; Van der Esch, 1989: 40; Vestryng, 1989: 80; Weber, 1990: 54-58; Whitelegg, 1988: 1-16.

¹⁶³ Air Union was based on different projects and reports proposed by France on 20 April 1951, by Italy (for the unification of European air transport) on 3 May 1951, and by a consultative assembly in Strasbourg on the co-ordination of intra-european air transport on 5 May 1951.

¹⁶⁴ Two more airline unions were created in 1967. The first group (KSSU) comprised KLM, the Dutch Royal Airlines; SAS the Scandinavian Airlines; Swissair; and UTA (*Union Transport Aerienne*), independent French airlines. The second group (ATLAS) was formed by Air France, Alitalia, Lufthansa, Sabena and Iberia. The Irish state-owned airline Aer Lingus and the UK's airline BOAC joined the above two groups, and formed the Montparnasse Committee in 1969, which led to the creation of the Association of European Airlines (AEA) in 1973.

¹⁶⁵ Regulation 17 was the mechanism for instituting the EC competition policy.

transport policy.¹⁶⁶ Finally in 1974, the ECJ ruled¹⁶⁷ that the general transport provisions of the Treaty of Rome applied also to sea and air transport.¹⁶⁸

7. Conclusion

Comparative analysis of the EC member-states' domestic air-transport structures prior to 1987 shows substantial similarities. All member-countries applied strict and well developed regulatory and corporatist practices, with goals that were partly functional, partly national, part-bureaucratic, idealistic, geopolitical. Bilateral agreements among them and their airlines went hand in hand with national regulations. In consequence it was not surprising that until 1979 a common EC air-transport sector did not develop, given that the member-states did not wish to destabilize the national air-transport systems they had developed to serve their national interests. It was not until after 1979 that widespread deregulatory trends in the USA and worldwide began to exert pressure for liberalizing the EC air transport system. The developments between 1979 and 1987 will be discussed in detail in the next chapter.

¹⁶⁶Communication paper to the Council "On the development of the Common Transport Policy", Com (73) Commission of EC, 1973.

¹⁶⁷Commission of the EC v. the French Republic Judgement of the Court of 4 April 1974, Case 167/73, also known as the "French Seamen's case. Third report on Competition policy (Commission of EC 1974).

¹⁶⁸Amirault, 1987; Baret, 1987: 14; Button and Swan, 1991: 111; Goedhuis, 1957: 273-85; Haanappel, 1984: 87; Hamer, 1978: 307-12; McGowan and Trengove, 1986: 82-85; Naveau, 1989: 183, 185-86; Nicoll and Salmon, 1994: 138; Rapp, 1989: 21-23; Wheatcroft and Lipman, 1986: 49; Whitelegg, 1988: 145-47.

CHAPTER III

LEGISLATION, IMPLICATIONS, AND KEY NETWORKS IN EC AIR-TRANSPORT LIBERALIZATION

" The political momentum of a free air transport market will spread around the world and...create fertile ground for the growth of true global airlines with multinational ownership and international strategic hubs. Frankly there is not going to be much difference between deregulation in the USA and liberalization in Europe."

Sir Colin Marshall, British Airways, 1989.¹

After first comparing the US air-transport system with that of the EC this chapter will examine the pressures for reform inside EC air transport up to 1986, and outline the evolution of the relevant post-1986 EC legislation that introduced competition into EC air transport. It also briefly examines the implications of the EC liberalization process for EC air transport generally, and assesses its failure to become common EC air-transport policy. Furthermore it introduces the key networks in EC policy-making during the period 1987-1993.

1. US/EC Comparison of Air-Transport Markets

Ever since deregulation was first introduced in the USA domestically and internationally, its proponents have suggested that the same policy should apply in Europe. However, most member-states in the Commission did not accept that deregulation was feasible for the EC economy. Member-states were unwilling to follow in US footsteps because this would have meant their losing direct control of their air transport and national airlines.²

A comparison of the domestic and international air services in the two regions shows that historically the EC's air transport was very different indeed from that of the US. To begin with, US air transport was chiefly domestic, whereas the European airlines served predominantly international routes.

¹ITF Report, 1992: 30, 32.

²Golich, 1990: 163-4; Keeler, 1991: 155; Kay and Thompson, 1991: 39; Marsh, 1982: 419-20; Pelkmans, 1986: 356; Williams, 1993: 67.

Eighty percent of the cross-border European air traffic (ECAC) was equal to all of America's domestic flights (in passenger/kilometers). The ratio was 76 billion for all Europe to 330 billion inside the USA or 1:4. As shown in Figure 3.1 below, the US air-transport system, being the biggest in the world, was almost double the size of that of the European countries, which amounted to 52 percent of America's.³

Secondly, the internal structure of Europe's air transport also differed significantly from that of the USA. Europe had a substantial system of charter and independent air transport,⁴ which in the USA (before deregulation) was of no account (five per cent) and non-existent after it. Another difference was the average route length: 750 km in Europe against 1,300 km in the US. The substantially smaller volume of Europe's air traffic is due not only to geographical factors, but also, at least in part, to the existence of highly competitive surface traffic modes inside and across national borders (with average distances being under 700km), especially by high-speed trains⁵ and motorized highway services. In the USA the railway network is not very extensive and relatively little used for passenger transport.⁶ Figure 3.2 below illustrates the competitive possibilities of transport across Europe, comparing also that of US air transport. It shows that while in 1989 the market share of car traffic was largest for distances below 500 km, that of EC air services rose steeply over and above 1,500 km. Train services covered between approximately 10 to 30 per cent of the market on journeys up to 800 km or so, and thereafter became negligible. In contrast US air services rose steeply for distances just below 500 and roughly equalled that of EC airlines around 1,700 km.

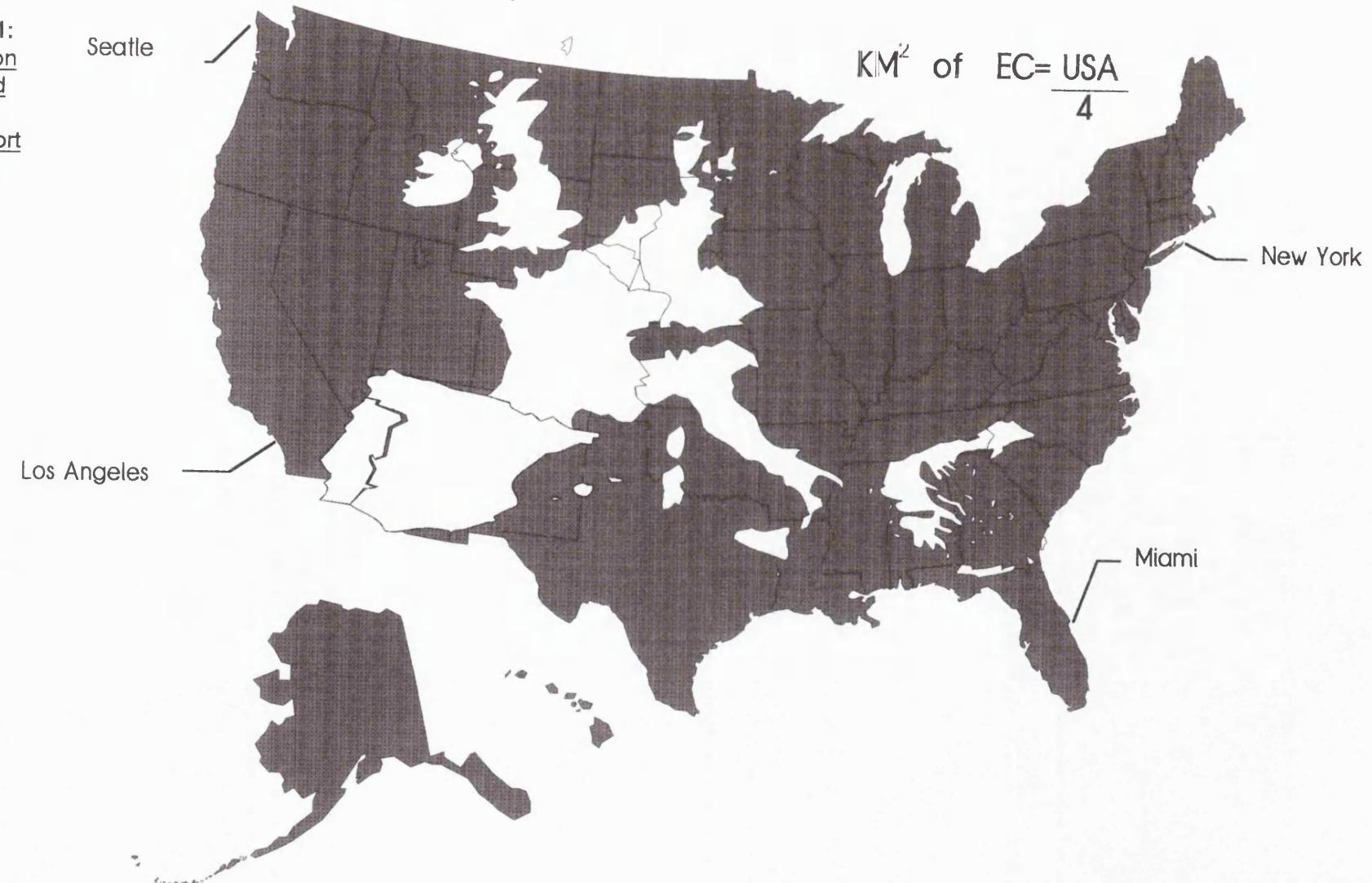
³Pelkmans, 1986: 348.

⁴In the European Civil Aviation Conference (ECAC) member-states, more than half of all passengers use charter services, and generate some two-thirds of RPKs (revenue passenger/ kilometers).

⁵High speed rail services - like the French Train *a grande vitesse* (TGV-Atlantique), the Spanish AVE, the German ICE, the Italian ETR 500, and the Danish IC, which reached speeds up to 500 km/h - have greatly affected EC airlines trying to feed their central hubs by short air routes distances of around 500-700 km.

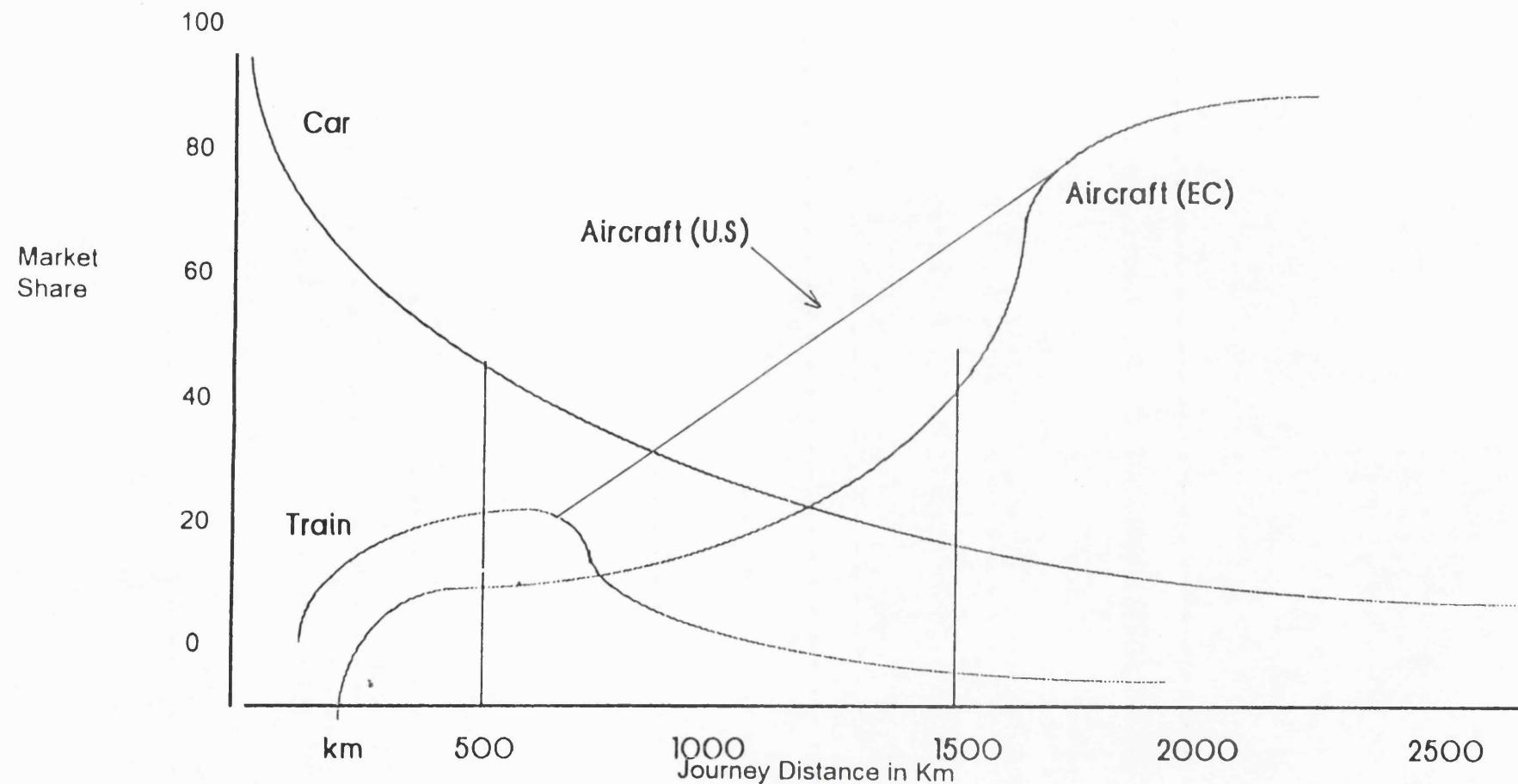
⁶McGowan and Trengove, 1986: 60-67; Pelkmans, 1986: 349-51; Pryke, 1991: 235-38; Sowers, 1987: 63.

Figure 3.1:
Comparison
of US and
EC
Air-Transport
Systems



Source: Levine-May 1986: 13

Figure 3.2: Comparative Models of Transport in Europe, Including US Aircraft in 1989 Market Share



Source: Euroscope-Study commissioned by the Association of European Airlines, November 1989
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Thirdly, air-transport costs and fares were very much cheaper in the USA than in Europe, although their detailed comparison is highly complicated because of different politico-economic and social factors. Broadly speaking however, the shorter distances in Europe increase operating costs (which consist of fixed and production costs such as administrative overheads, labour, ticketing and ground-handling, and so forth), while their spread over long distances decreased them in the USA. For example, over the years in Europe labour and fuel costs were 20-70 per cent and 20-30 respectively higher than in the USA. This obviously had a substantial effect on the general amount of costs of scheduled airlines, and consequently, to the air fares.⁷ Fourthly, even prior to 1987 European national airlines already had established strong national hub-airports, rather than the geographical hubs that were established by US airlines after deregulation. Fifthly, while the US aviation industry was all privately-owned, the European one was substantially state-owned⁸ and airlines enjoyed state subsidies. Sixthly, protection of employees was and is rather less respected in the USA Europe than in Europe, where unions have been powerful and unionization is generally high.⁹

Table 3.1 below shows the international and domestic passenger/kilometers traffic of the EC member-states and the percentage share of their domestic flights, as well as, the total ones of the EC, its member-states and the USA in 1989. The Table demonstrates that UK airlines flew almost twice as many kms as their nearest competitor (92.3 m. against France's 51.5 m.), followed by West Germany (36.3 m.), the Netherlands, Spain, and Italy (between 26 and 21.5 m. respectively); the figures for the remaining EC countries were mostly well below 8 m./kms. Britain also led the international

⁷Barett, 1991: 242; UK-CAA, 1977, 1983; Doganis, 1986; Dempsey, 1988: 621; McGowan and Trengove, 1986: 11-13, 19-58, 70-79; Pelkmans, 1986: 350, 354; Sawers, 1987: 17-22, 24-27, 45-57; Villiers, 1989: 14-15.

⁸Button and Swann, 1991: 105-07; Pelkmans, 1991: 197; Pryke, 1991: 235-38; Kark, 1989: 383-84; Mc Gowan and Seabright 1989: 301; Shaw, 1993: 130; Villiers, 1989: 4; Williams, 1993: 67-68.

⁹Pelkmans, 1986: 355.

flight-kilometers (87.7 m.), with the other eleven countries in much the same order as for their total figures. The picture is rather different in respect of domestic flights, where Spain (35.5%) and France (33%) led comfortably, followed by Italy (26.5%), Denmark, Greece, and Portugal (18.6, 16.3, and 15.9% respectively). West Germany's scheduled internal air services amounted to a mere 8% of its total flights. Finally the overall figures for the EC countries compared with those of US air traffic shows a great difference of air traffic between them (280.1 against 693.3 m./kms total, of which 14.9 and 75.5% were on domestic flights).

Table 3.1: Scheduled Air-Traffic Passenger-Kilometers Performed in 1989

Country	Total (000,000s/km)	International (000,000s/km)	Domestic (000,000s/km)	Domestic/ Total (%)
UK	92.3	87.7	4.6	5.0
France	51.5	34.4	17.1	33.0
West Germany	36.3	33.4	2.9	8.0
Netherlands	25.9	25.8	0.1	0.0
Spain	22.8	14.8	8.0	35.5
Italy	21.5	15.8	5.7	26.5
Greece	8.0	6.7	1.3	16.3
Belgium	6.8	6.8	0.0	0.0
Portugal	6.3	5.3	1.0	15.9
Denmark	4.3	3.5	0.8	18.6
Ireland	4.3	4.2	0.1	2.0
Luxembourg	0.1	0.1	0.0	0.0
Total EC	280.1	238.5	41.6	14.9
USA	693.3	169.6	523.7	75.5

Source: Van De Voorde, 1992: 511.

2. Pressures for Reform in Air-Transport Regulation 1979-1986

In 1979 two main events stepped up the pressure for changes in the EC air-transport policy. The first was the implementation by the US of deregulation of its domestic and international flights. The second was the election of right-wing governments first in UK (May 1979) and then in West Germany which, along with the Netherlands and Ireland, were thereafter committed to neo-liberal politics and more vigorous competition. At that time the US and UK air-transport policies were in agreement with respect to their politico-economic ideology in general and their international and EC air-transport interests in particular. Both countries were determined to deregulate the air transport of the EC member-states (including, basically, the dismantling of structures of collective bargaining and domestic compromise), and stimulated a debate on whether the pre-1979 EC air-transport regime really served the best interests of the member countries. From the very beginning the USA and Britain endeavored to outflank the opposition by signing bilateral agreements which, they hoped, would eventually compel the Commission to propose the application of competition in EC air transport.¹⁰

So in 1978 the USA concluded liberal agreements with the Netherlands (March) and Belgium (December). The US-Netherlands agreement was to become the trendsetter for subsequent American and British renegotiations with EC member-states. The US concluded liberal bilateral agreements with West Germany (1 November 1978) and Luxembourg, and attempted to establish a special regime for multilateral agreements with Europe on North Atlantic routes. Thus, in May 1982, and after intensive negotiations at the European Civil Aviation Conference (ECAC), the first US-ECAC Memorandum of Understanding (MOU) was signed and went into force on 1 August 1982. For the ECAC this strategy represented an attempt to induce the USA to moderate its position. Other Memoranda were signed between the USA and

¹⁰Streeck and Schmitter, 1991: 148

ECAC in October 1984¹¹ and February 1987.¹² These constituted a negotiated political consensus, seeing that they combined elements of opposed marketing and pricing systems. Meanwhile the UK government concluded liberal bilateral agreements with the Netherlands (20 June 1984-the most liberal),¹³ West Germany (December 1984), Luxembourg (March 1985), France (September 1985-the least liberal), Ireland (December 1985), Italy (March 1986), and Belgium (October 1986), and kept negotiating with Denmark, Greece, Italy, Portugal and Spain.¹⁴ It was certainly not coincidental that during the same period there was a proliferation of academic proposals, studies and press reports from European and EC institutions, concerning major changes in the regulation of intra-Community air services. Their aim was a more competitive and flexible air-transport policy so as to increase airline efficiency and improve consumer services.¹⁵

In 1979 the Commission issued Memorandum No.1, entitled "*Contribution of the EC to the Development of Air-Transport Services*", which stated the priorities in the field of air transport.¹⁶ In 1982 and 1985 the ECAC published two reports one on *Competition in intra-European air-services* (COMPAS), and *A policy statement on intra-European Air Transport*, and the ESC an opinion entitled *Community competition policy*'. In 1983 the European Parliament, under the chairmanship of Britain's Lord Bethell, prepared to take the Council of Transport Ministers to the Court of Justice under Article 175 of the Treaty of Rome, given that they had failed to adopt common air-transport measures to liberalize the EC's air transport.¹⁷ In July 1983 an inter-regional

¹¹This ended on 30 April 1987.

¹²This came into effect on 1 April 1987.

¹³A second agreement was signed in June 1985.

¹⁴ Barrett, 1991: 6-7, 21-22; Button and Swann, 1991: 93; Dempsey, 1988: 626-27, 629-37; Doganis, 1991: 79-81; Eggers, 1991: 113; Haanappel, 1984: 42-43, 166-67, 189-200; Hawk, 1989: 274; Golich, 1990: 166; *ITF News*, April 1987: 13; Kasper, 1988: 81; Mc Gowan and Seabright 1989: 297-98; McGowan and Trengove, 1986: 135-47; Naveau, 1989: 150-52; Murias, 1989: 194-02; Pelkmans, 1986: 357-58, 369-79; Sochor, 1991: 155; Wheatcroft and Lipman, 1986: 18, 26-29, 39-40, 65-69, 107-10.

¹⁵CAA, 1984; 1986; EC, 1981; Sorensen, 1984, 1985; Standbrook, 1985.

¹⁶EC, *Air Transport: A Community Approach*, 1979: 13-20; COM (79) 311; EC Bull. Suppl. No. 5/79.

¹⁷The ECJ (the EC's judiciary body) upheld Case 13/83, European Parliament v. Council (1985), ECR, 1513 on the grounds that Lord Bethell had no *locus standi* and that therefore his complaint was inadmissible.

air-services directive was issued by the Council of Transport Ministers, introducing the liberalization of air services between regional airports so as to contribute to regional development.¹⁸ In 1984 the Commission proposed its Memorandum II: Progress towards the development of an EC Air-Transport Policy.¹⁹ On the basis of the above legislative developments, the Commission in 1985 issued both *the European Competition Policy*²⁰ and the *European Commission's Powers of Investigation in the Enforcement of Competition Law*.²¹ Moreover, the Association of the European Airlines' *European Air-Transport Policy report* of September 1985 introduced some improvements to the European air-transport system, and proposed a gradual evolution of the existing system through enhanced competition, taking under consideration, however, all major elements of the member-states' regulatory structures.²²

The agreements between America, Britain, ECAC and individual EC member-states along with the Commission proposals, academic studies and press reports, exerted considerable pressure in favour of liberalization. By 1986 the subject of EC air-transport liberalization had become a full-fledged and thorny political issue, being furiously debated in the EC. The three-cornered debate involved the protectionist or dirigiste states of Italy, Greece, Spain and Portugal; the moderates Belgium Denmark France, and Germany, who advocated regulated competition and flirted with protectionism, and the free marketers or deregulators represented by the UK, Ireland, the Netherlands and Luxembourg.²³

¹⁸Council Directive (EC) 83/416/EC 25.7.1983, (OJ L237 26.8.83: 19), amended by Council Directives (EC) 86/216, (OJ L152 6.6.86: 47), and 89/463 (OJ L226 3.8.89: 4), revoked and replaced by Council Regulation (EC) 2343/90, (OJ L217 11.8.90: 8).

¹⁹Commission Communication COM (84) 72.

²⁰EC Commission, 1985: European File no. 6, Brussels.

²¹EC Commission, 1985: European Documentation, Luxembourg.

²²AEA, 1985; Marsh, 1982: 420-21; McGowan and Trengove, 1986: 84-94, 110-26; Naveau, 1989: 187-89; Pelkmans, 1986: 361-62, 368-69; Williams, 1993: 76-79.

²³Barett, 1987: 14-16, 68-72, 89-90, 1991a: 3-5, 1991b: 242; Button and Swann, 1991: 112; Dempsey, 1988: 628-29; Doganis, 1985: 72, 1991: 82-83, 1993: 79; Garland, 1986: 196-198, 218-32; Greaves, 1991: 168-69; Kark, 1989: 389-94; McGowan and Seabright, 1989: 293-94; Parr, 1990: 53; Pelkmans, 1986: 362-68; Standbrook, 1985: 52-55; Wheatcroft and Lipman, 1986: 40, 45-64, 105-07, 110-13, 127-28, 130-37; Williams, G., 1993: 80-81.

3. EC Secondary Legislation on Air Transport and Competition

In 1986, the competitive pressures on the EC industries as a whole, led to the adoption of the Single European Act (SEA),²⁴ considered a major UK achievement reflecting UK interests in a "nuanced and comprehensive way".²⁵ The SEA, which amended the EEC Treaty by the introduction of functional and institutional provisions, was signed on 17 February 1986 and came into force on 1 July 1987.²⁶ Among other things the SEA (i) it increased the legislative powers of the European Parliament through the "Co-operation Procedure" shown in Figure 3.3;²⁷ (ii) it enhanced the rule-making and implementation powers of the Commission through Article 13 which was inserted into Article 8A of the original Treaty; (iii) it activated Article 84 (2) of the Treaty of Rome through Article 16 (5) and changed the Council of Ministers' unanimity rule to a qualified majority voting (QMV);²⁸ and (iv) its Article 100A (supplementing Article 100 of the EC Treaty, harmonization of standards) set 1 January 1993 as the deadline for completing the negotiations for a Single European Market (SEM). The SEA ruling leading to a single and competitive EC air-transport system,²⁹ along with an ECJ verdict that the competition articles were compulsorily applicable to EC air transport,³⁰ were the basic evolutionary ingredients of the EC air-transport integration process.³¹

²⁴Official Journal, (OJ) L169 29 June, 1987: 1.

²⁵The Thatcher government's emphasis on deregulation, privatization and market forces reflected a British preference for measures of negative integration, that is, the removal of discrimination against the economic agents of the member countries, as distinct from positive integration, namely the formation and application of co-ordinated and positive policies on a sufficient scale to ensure that major economic and welfare objectives are fulfilled. See Moravcsik, 1991; Simon and Taylor, 1994: 256-57; Taylor, 1989: 14.

²⁶EC Official Journal, (OJ) L169, 29.6.87: 1.

²⁷The SEA requires that the European Parliament approve all accession and association agreements with other states before the agreements are considered by the Council of Ministers. The act also requires two parliamentary readings of some EC legislation.

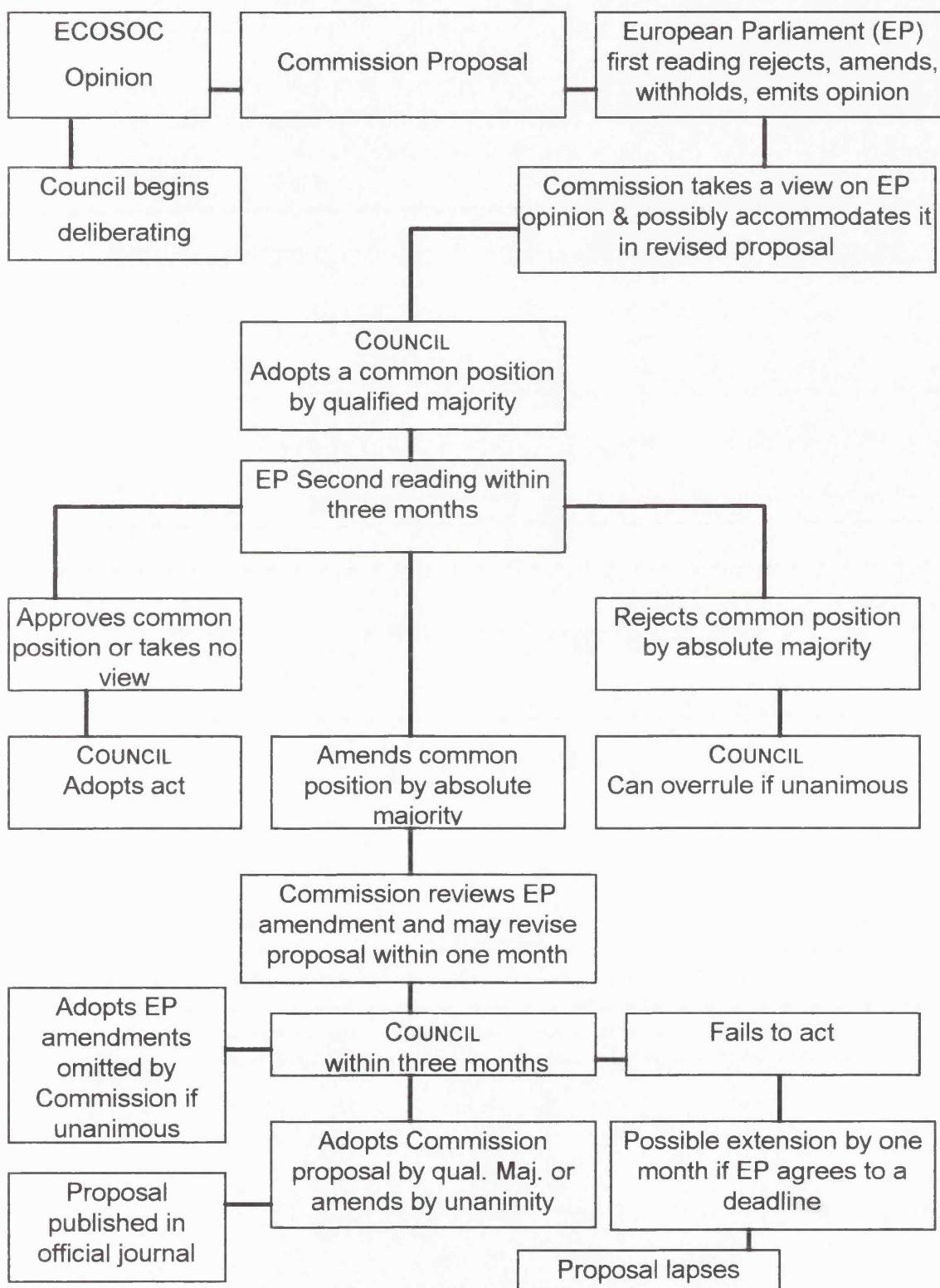
²⁸Unanimity is still mandatory for decisions on the alignment of national turnover, excise and direct taxes, as well as employees' rights and interests, and the free movement of people.

²⁹Often called the "relevant air transport market", meaning that it takes into account the relations between the EC and the national air-transport policies. See AEA, 1989; Van Houtte, 1990.

³⁰Nouvelles Frontières Judgement of 30. 4. 86, cases 209-213/84 (1986), ECR, 1425, Minist'ere Public v. Lucas Asjes et al, EV (1986) 3 CMLR 173.

³¹Basedow, 1988: 342-53; Brealey and Quigley, 1989: xi; Buhart and Burton, 1989; Butler, 1986: 158-61; Cecchini, 1988; Corbett, 1989: 359-72; Dagtoglou, 1989: 115-38; EC Commission, 1987; Gardiner, 1988: 135-38; Goedhuis, 1957; Grah and Teague, 1990: 341-46; Green et al, 1991; Kark, 1989: 395-98; Lenz, 1990: 33-48; Maniet, 1989: 5-21, 37; Marshall, 1989; McGowan and Trengove, 1986: 126-28; Naveau, 1989: 190-197; Nicoll and Salmon, 1994: 48-52; Nugent, 1989: 45; Lintner and Mazey, 1991: 24-27; Parr, 1990: 53; Price, 1988; Peikmans, 1991: 198-99; Rosenthal, 1990: 304; Siedentopf and Ziller, 1988: 12-13, 30; Steel, 1988; Sundberg, 1990: 168-69; Whitelegg, 1988: 15, 151; Williams, 1990: 10-13, 1993: 81-85; Young, 1990.

Figure 3.3: The Co-Operation Procedure (Post - SEA Legislative Procedures)



Sources: Grahn and Teague, 1990: 340; Hitzler, 1991: 16; Hufbauer, 1990: 59; Lintner and Mazey, 1991: 25; Lodge, 1989: 71 and 1993: 29; Nicoll and Salmon, 1994: 82; Nugent, 1989: 247

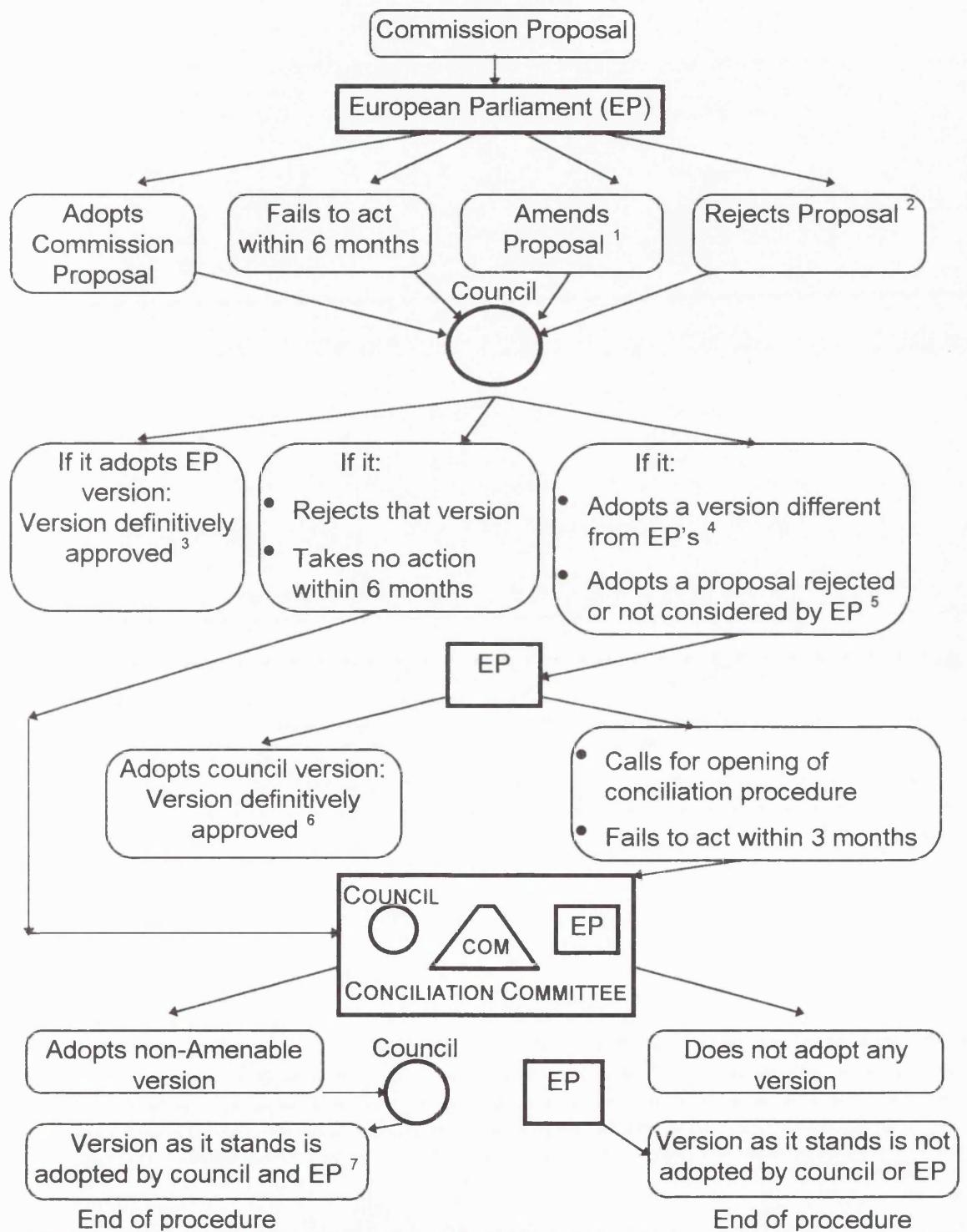
As a result, between 1987 and 1992 the Council of Transport Ministers adopted three air-transport packages. *Package 1* (of 14 Dec. 1987 and effective from 1 Jan. 1988 to 30 June 1990), legalized two Regulations (No 3975/87 and 3976/87), one Council Directive (EC 87/601), and one Council Decision (EC 87/ 602). It thereby formally implemented the Treaty of Rome competition rules in the EC's air transport. In 1989 the Council of Transport Ministers adopted a merger-control Regulation 4064/89 (effective from 21 Sept. 1990), providing the Commission with jurisdiction in all EC mergers, air transport included. *Package 2* (of 24 July 1990, effective from 1 Nov. 1990 to 31 Dec. 1992), consisted of three Regulations (2342/90, 2343/90 and 2344/90). They replaced package's 1 Council Regulation (3976/87), Directive and Decision, and legalized the gradual removal of capacity-sharing arrangements and the acceptance of the principle of double disapproval for fares,³² in an attempt to combine liberalization with harmonization in the EC's air-transport policy. Moreover *Package 3* (of 23 July 1992, effective from 1 Jan. 1993) included five Council Regulations (2407/92, 2408/92, 2409/92, 2410/92, and 2411/92, amending Regulations 3975/87 and 3976/87), which established the abolition of licensing rights, capacity sharing, fare control, market access and cabotage rights (by 1997), in the EC air transport. Under the above three packages' adopted legislation the Commission passed air-transport legislation between the period 1987-1993. In the meantime, the Maastricht Treaty on European Union,³³ signed on 7 February 1992 and effective from 1 Nov. 1992, planned an economic and monetary union (EMU) and expanded the European Parliament's authority through the introduction of the co-decision procedure with the Council of Ministers on all EC legislation, air transport included, as it is shown in Figure 3.4 below.³⁴

³²Double disapproval means that an air-fare proposal can only be refused if both member-states involved object to it.

³³By the Maastricht Treaty the European Community (EC) was transformed into a European Union (EU). It represented a compromise among different views of EC's future and proved extremely controversial in several member states.

³⁴All three air-transport packages legislation, the Council Regulation 4064/89, and four Commission Regulations (2671/88, 2672/88, 2673/88 and 3652/93) are given in Appendix III.1, and all the EC air-transport legislation adopted between the period 1987-1993 is shown in Appendix III.2. Argyris, 1989: 11-32; Balfour, 1990: 84-109, 128-47; Buhart and Burton, 1989: 47; Button and Swann, 1991: 113; Cholmeley, 1990: 5-12; Cherson, 1990: 147-57; Commission of the EC, 1990: 289-300, 319-23; Cook and Kerse, 1991: 157-75; Greaves, 1991: 169-83; Doganis, 1991: 86-89; Feldman, Feb. 1990: 48, April 1990: 30-2; Fort, 1991: 106-07; French, Jan. 1990: 36; Keating, 1993: 372-73; Levine, 1991: 24, 1991: 15;

Figure 3.4: The Co-Decision Procedure (Article 189b) of the Treaty of European Union (Post-Maastricht)



1. Amendments opposed by commission must be adopted by majority of MEPs. 2. By a majority of its members.

3. Qualified majority. 4. Qualified majority - Unanimously if commission opposes amendments tabled. 5. Unanimously.

6. Simple majority. 7. Parliament: Simple majority; Council: Qualified majority.

Sources: Lodge, 1993:30, Nicoll and Salmon, 1994:83

Lewis, 1990: 383; McGowan and Seabright, 1989: 295-96; McGowan and Trengrove, 155; Nicoll and Salmon, 1994: 140-2, 276-89; Reed, April 1992: 52-56; Rosenthal, 1990: 343; Rouam, 1993: 28-29; Sorensen, 1991: 177-85; Tritton, 1989: 172-76; Slot and Dagtoglou, 1989: 315-62; Stasinopoulos, 1992: 83-87; Vincent and Stasinopoulos, 1990: 95-100; Van De Voorde, 1992: 516-23; Verloop, 1988; Wassenbergh, 1988: 3-8; Williams, C., 1990: 20-24; Williams, G., 1993: 81-85; Zyllich, 1992: 38-40.

In consequence, in the period from 1987 to 1993 the above mentioned continuing evolutionary process of EC legislation on member-states' airlines left them little choice but to formally liberalize their restrictive regulatory and corporatist air-transport policies. They were free, however, to control the pace and scope of this development.

4. The Impact of Air-Transport Liberalization and its Failure to become Common EC Policy

It has to be emphasized that the changes in the EC air-transport system between 1987 and 1993 were due far less to the willingness of the member-states to increase competition than to the international repercussions from the US implementing its deregulation policy domestically and abroad.

It was the threat from a proliferation of large US, and Asian and Pacific Rim airlines, the internationalization of capital³⁵ and labour, as well as the pressures from worldwide competition that drove EC member-states to joint and individual legislation concerning their air transport, and made them adjust the corporatist and regulatory structures of their airlines accordingly. The latter were obliged to review the ways they operated, and to co-operate³⁶ more with each other, in order to stabilize their position within and outside the EC air-transport markets.³⁷

Streeck and Schmitter (1991: 142, 149) argued in general, that the EC market integration, without the proportionate growth of regulatory institutions, brought a growing interdependence between EC member-states' national economies, and consequently, integration and deregulation became identical. For EC air transport in particular, academics argued that the adoption of a joint

³⁵This acts as a structural constraint on the EC governments' domestic air transport decision making.

³⁶Co-operation may be offensive or defensive, depending on the degree of competition and the airlines' market share.

³⁷Interviews with D. Stasinopoulos (28 Oct. 1990); K. Veenstra (29 Oct. 1990). See also Ballantyne, Sept. 1992: 20; ITF Report, 1992: 61-66; Levine, 1991: 15; Marshall, 1988: 19; Nordio, 1988: 21-23; Streeck and Schmitter, 1991: 149; Tretheway, 1991; Williams, 1993: 67, 69; Willoughby, 1985.

EC air-transport policy was considered by the member-states as a major step towards an EC air-transport deregulation, especially if it was to be decided that the transport competition rules of the Treaty of Rome were applicable also to the EC and the member-states' national air-transport systems. It was not surprising, therefore, that, instead of allowing the application of the transport competition rules in the EC air transport unaltered, the EC states sought to formulate an EC air-transport competition policy in such a way as to retain control over the liberalization process in the EC as a whole, and to allow them to re-regulate their national air-transport and to re-structure their own airlines according to their best national interests. Their chief objective was to deal with the competitive pressures in the international arena, which they believed they could achieve by keeping a monopoly of their domestic market and, for strong member-states (like Britain, Germany, France, Italy and Spain) or with strong airlines (Denmark and the Netherlands), by dominating that of the EC, rather than by co-operative action within the EC air-transport system. This in effect, was the policy that had pursued in the pre-1987 period, having created what in their view was a very well-developed and stable bilateral system which in air transport had remained viable for more than forty years.³⁸

Speaking generally therefore, during the EC air-transport legislative period (1987-1993), individual member-states were anxious to protect, preserve, and dictate their national interests, rather than willing to be directed by the Commission's increasing powers or by its liberalization legislation that tried to impose a common air-transport policy on the EC as a whole. They employed numerous delaying and/or accelerating tactics during the process of protracted deliberations on liberalization, depending on whether they perceived their national air transport interests as likely or unlikely to benefit. This was due to the continuing conflict among the individual countries' air-transport interests, and therefore, the lack of incentives for a common EC

³⁸Gardiner, 1988: 135-38; Gialloreto, 1989; Pelkmans 1986: 360, 1991: 200; Van De Voorde, 1992: 509.

air-transport policy, which made them regard the EC and one another much as they had done before 1987.³⁹ The process is described in greater detail in chapter IV.

Especially member-states refused to entertain the idea of merging their state-owned carriers (champions) to create a supra-national mega airline. Either because of EC bureaucracy or politico-economic manipulations, attempts at co-operation (such between Lufthansa and Air France) did not amount to much, and projected mergers (such as British Airways with KLM and Sabena, and of British Airways and KLM, or the European Quality Alliance (EQA), consisting of KLM, SAS, Swissair, Austrian Airlines and Finnair) simply failed.⁴⁰ It was precisely because they had no common EC air-transport interests, but only national ones, that they did all they could to strengthen their domestic and international air-transport systems, areas where they had the absolute jurisdiction and any airlines' transactions were up to their primary determination.

The differing national interests, their unwillingness to break up their established air-transport patterns, and above all their refusal to risk compromising their airlines' national identity, required those with strong politico-economic powers and airlines, and those with strong airlines, in particular, to strengthen further their domestic monopolies by pursuing internal take-overs and mergers.⁴¹ At the same time they attempted to achieve domination of the EC and of international air transport through a nucleus of EC multi-national mega-airlines, which enjoyed international airline management and marketing alliances, and equity minority or majority share holdings especially with US mega-airlines, their major international competitors. Unlike

³⁹ Athens News Agency, 1989; Doganis, 1991: 187; Financial Times of 27 Aug. 1988, of 8 Dec. 1989, of 22 Jan. 1990, of 3 May 1990, of 20 June 1990, of 5 Oct. 1990, of 24 June 1992, of 28 Sept. 1993, of 8 Oct. 1993, and of 8 Dec. 1992: 2; Williams, G., 1993: 72, 75, 87-88.

⁴⁰ Burger, 1993; Greaves, 1991: 185; ITF News, Jan./Feb. 1993: 30; Pavaux, 1988; Tigner, 1990; Van De Voorde, 1992: 524-525.

⁴¹A merger in the air-transport industry is the acquisition of another airline also called a horizontal merger. See Rosenthal, 1990: 310-40.

the North-American states, therefore, EC countries were unwilling to compete against each other, and proceeded directly to concentrate their own national and EC air-transport markets (see chapter VI).⁴²

Member-countries also obstructed a common EC liberalization process, by deliberately exploiting the uncertainty regarding both the applicability of the EC Treaty competition laws (as concerning their content and structure), and the co-operation procedure available to implement a joint competition policy (legislation).⁴³ Primarily this was the result of the EC air-transport competition laws (based on Articles 85 and 86) which, instead of offering scope for merger control beforehand, operated basically *ex post facto*, permitting EC airlines to dominate domestically, rather than prohibiting them from abusing their advantageous position. In other words, there was no clear line between legitimately competitive actions and those that were anti-competitive (e.g. predatory pricing, or unfair inducements to travel agents).⁴⁴

One result of all this was that, although from the outset the Commission had unequivocally declared merger control to be just as important for EC air transport⁴⁵ as in the USA, strong overt and covert political manipulations (horse-trading and back door manoeuvrings) by member-states pressured it into accepting it as inevitable; and therefore, forced it to regard the merger effect as a market effect. It considered every merger on its individual merits - a policy explicitly based on a US market theory concept that had strongly influenced British and West German Neo-liberal attitudes. The core concepts of this theory were a combination of competition, co-operation, and control of aims and means, applied by firms to strengthen their relative positions in markets in which they operated.⁴⁶

⁴²Doganis 1991a: 193; Feldman, April 1990: 4 and Oct. 1990: 44; Gialloreto, Sept. 1992: 52-58; ITF Report, 1992: 25, 32; Katz, 1990; Pugh, 1989; Reed, 1990; Sochor, 1991: 72-85, 187, 201; Wijk, 1991: 38-42; Woolley, 1990: 16-21.

⁴³De Jong, 1988: 45-46, 48-60; Erdmenger, 1983: 29; Slot, 1989: 17-21; Van Empel, 1988: 15-29; Verstrynghe, 1989: 63-113.

⁴⁴De Jong, 1988: 46-48; Doganis, 1991: 193; Lipman, 1988; McLachlan and Swann, 1967: 71-87, 195-96; Maniet, 1989: 32-36; Witlox, 1988: 61-76; Esch, 1988: 77-84; Williams, 1993: 126-31.

⁴⁵Brittan, 1989: 89-90, 1989a: 13-15; Vincent, 1987.

⁴⁶Dobson, 1991: 279-83; Doganis, 1991: 193; Pelkmans, 1986: 376; Siedentopf and Ziller, 1988: 11-12; Whitelegg, 1988: 152; Williams, 1993: 123-24.

In fact even within the Commission the leading policy-making officials were divided for and against the merger of EC airlines. For example F. Sorensen, head of the air-transport division of DG VII for Transport, argued

"Alliances and mergers were indispensable and inevitable because to some extent airlines needed to have a certain size to be able to compete" (interview 12 Nov. 1990).

On the other hand N. Argyris, head of the transport and tourism industries of DG IV for Competition said

"The arguments in favour of mergers and alliances as the answer to the implementation of air transport competition policy, did not convince me" (interview 7 Dec. 1990).

Certainly this was not the main reason why the Commission as a supranational institution *per se* failed to draw up a cohesive common liberalization policy. The principal reason was that the strong member-states (Germany, France and UK) in reinforcing the Commission with air transport policy and decision-making powers, made sure that they controlled it through their governmental appointees (Commissioners) or even their national Eurocrats as it is shown in chapter V.

The Commission, therefore, instead of holding its supranational (non-governmental) identity, became an intergovernmental institution controlled by the strong member-states' air-transport interests. The Commissioners, responsible for air transport were caught between their transitional tasks and the exigencies of their governments' politics (This I call supra-national governmentalism as distinct from intergovernmentalism ⁴⁷). The strategic response from the strong member-states' airlines was, therefore, the continued pursuit of dominance over their internal, the EC, and international air-transport systems (see ch. V).

⁴⁷ Intergovernmentalists, although cognizant of the role played by supranational institutions, through their least common denominator theory - which suggests the level of integration to be attained by member governments will be the highest level of agreement that still maintains consensus - believe further integration will result only from the agreement of member countries. See Taylor, 1989; Streeck and Schmitter, 1991: 142-43.

Domestically, airlines such as AF, BA, LH, AL, IB, KLM and SAS proceeded to eliminate and/or neutralize any potentially strong rivals, such as the pre-1987 charter and independent airlines. They did this by buying up airlines or engineering mergers with airlines that posed a potential threat, and by preventing foreign countries airlines from acquiring airlines based on their own territory. For example in the UK, BA merged with British Caledonian (BCal) in 1987, and in France AF acquired UTA and Air Inter in 1990. Both of these independent airlines had been serious rivals domestically, and therefore both take-overs have been regarded as clear examples of mergers that should never have been allowed.⁴⁸ In fact the domination of BA's international scheduled services increased from 82 to 93 percent. Finally LH, after the unification of the two Germanies, absorbed the formerly East German national airline Interflug.⁴⁹

Given their single hub airport, the infrastructural constraints (such as airport and air-traffic congestion,⁵⁰ access to take off and landing slots, scarcity of additional airports and runway capacity, and possession of the CRSs) provided state-owned airlines with compelling means for establishing effective barriers against competitive operations by charter and independent or new airlines. As noted already, in addition to intra-modal rivalry the charter and independent airlines had to contend with strong competition from surface traffic over medium distances, especially from high-speed trains, (state-owned and subsidized) and motorized road-services. They were obliged therefore, to accept either merging with state-owned airlines, or seeing the transfer of passengers to high traffic EC hub airports as essentially contributing to their

⁴⁸Both cases will be discussed in details in ch. V.

⁴⁹Doganis, 1991: 95-106; Golich, 1990: 166; Greaves, 1991: 183; ITF Report, 1992: 32; Keating, 1993: 105; Pryke, 1991: 239; Tigner, 1990; Williams, S., 1990: 30; Williams, G., 1993: 70, 85-87, 115-22.

⁵⁰Air-space was already heavily congested and Europe's air-traffic control was fragmented into 22 different control systems with 42 control centres linked only by a primitive communications network. Therefore air-traffic control was another area where harmonization and technological standards had to be set up. This task was entrusted to Eurocontrol Permanent Commission or Eurocontrol, the European Organization for the Safety of Air Navigation. It was primarily responsible to develop a central air-traffic control unit (CACU) and a central air-traffic flow management unit (CFMU) out of the 22 national air-traffic control systems in Europe.

own survival.⁵¹ In any case, almost no new airline was able to challenge the dominance of national state-owned carriers, which in some ways were virtually immune to pressures from competition.

Another development, which took place in parallel with the above, both within the EC and internationally, was that leading EC airlines attempted to control and/or acquire a stake in weaker EC or non-EC countries, and even in powerful US airlines for the purpose of creating a nuclei for EC multi-national mega airlines. For example, AF came to own 37.5 per cent of the Belgian airline Sabena; Iberia bought minority shares in most of the Latin American airlines, i.e. 30 per cent in Aerolineas Argentinas, 45 per cent in Venezuela's Viasa, and 37 per cent in Chile's Ladeco; BA acquired 25 per cent of the French regional airline Transport TAT, and 25 per cent of Australia's Quantas; KLM held a 49 per cent stake in North West Airlines of the USA, and so forth.⁵² As B. Stahle, SAS vice-president for the EC and governmental relations in Brussels supported

⁵¹ Especially AF, BA, LH and KLM called for competition while they were blocking the EC air-transport market for themselves" (interview 4 Dec. 1990).

Table 3.2 below shows the international and Community sales, passenger shares, and ranking in sales in 1991, worldwide revenue passengers/kilometers (RPK), and revenue passenger load factors in 1991, as well as the EC revenue passenger carried, passenger revenue, and available seat/kilometers (ASK) in 1989, of the three largest EC airlines Air France, British Airways and Lufthansa. As detailed study shows, Air France was first only in respect of worldwide sales with 10,196 m. US\$ (4.85 per cent), in EC

⁵² Interview with A. Frohnmeier (22 Oct. 1990). See also AEA, 1989: 54-60; Air and Cosmos, 1989: 23; Airport Support, 1989: 8-9; Button and Swann, 1991: 105-10; Doganis and Dennis, 1989: 42-47; Ellett-Tazewell and Donahue, 1990; Fernandez, 1986; Greece and International Transport, Nov. 1992: 12; ICAO, 1989; ITF News, Sept. 1989: 21; Jennings, Jan. 1991: 11; Julien, 1991; Katz, 1991; Katz, 1991; Mc Gowan and Seabright, 1989: 311-13; Neumeister, 1990; O'Donovan and Beety, 1990; OECD, 1988: 22-23; Ott, 1990; Pelkmans, 1991: 201-05; Pilling and Harrington, Mar. 1991: 24-25; Reed, 1992: 53; Shaw, 1993: 128-29; Thompson, 1991: 33; Van De Voorde, 1992: 508-09; Williams, G., 1993: 70, 115, 121; Woolley, 1988: 12-16, 1990: 28-29; Woolsey, 1990: 41

⁵² ITF Report, 1992: 31-34, 99-105.

Table 3.2: The International and EC Operations, Passenger Revenues, Load Factors, and Services of the Three Largest EC Airlines AF, BA, and LH in 1989 and 1991

Strong Member States (TROIKA) Airlines	Worldwide Sales (in millions, US \$ and percentage) and of 1991 (1)	EC Sales (in percentage) (end of 1991) (2)	Worldwide Passenger Shares (in mill.) end of 1991	EC Passenger Shares (in Percentage) end of 1991	Worldwide Revenue Passengers Kilometers (RPK) (3) (in mill.) end of 1991	EC Revenue Passengers (RPK) (in mill.) end of 1989 (4)	Worldwide Revenue Passenger Load Factor (5) (in Percentage) end of 1989	EC Revenue Load Factor (in percentage) end of 1989	EC Revenue Passengers carried (in 000) end of 1989	EC Passenger Revenue (6) (in mill.) end of 1989	EC Available Seat (7) Kilometers ASK (in mill) end of 1989	Worldwide Ranking (sales) end of 1991	EC Ranking (sales) and of 1991
AIR FRANCE	10,196 (4.85)	19.5	31.6	10	53,376	5,974.9	66.8	61.4	7,738.1	1,291.5	9,731.4	3	1
LUFTHANSA	9,746 (4.63)	18.6	29.5	12	52,344	6,864.7	64.0	60.3	8,529.2	1,715.8	11,386.3	5	2
BRITISH AIRWAYS	9,090 (4.32)	17.5	25.4	15	65,896	9,248.1	70.2	66.0	11,296.1	1,703.1	14,013.	6	3

(1) The total worldwide sales of international airline industry was 210,344 millions US \$.

(2) The total EC sales of EC airlines was 52,239 millions US \$ or the 25 percent of the worldwide sales.

(3) One fare paying passenger transported one kilometer; computed by multiplying the number of revenue passengers by the kilometers they are flown.

(4) 1989 was the most profitable year for the international airline industry.

(5) The percentage of seating capacity which is actually sold and utilized: computing by dividing the revenue passengers kilometer (RPK) by the Available Seat Kilometers (ASK) on revenue passenger services.

(6) All passengers counted on a point-to-point basis, carried at a 25 percent of normal applicable fare for the journey.

(7) The total number of seats available for the transportation of revenue passengers multiplying by the number of kilometers those seats are flown.

Sources: Association of European Airlines (AEA), May 1990; Airline Business, Sept. 1992: 98; Gialloretto, Sept. 1992: 55.

sales (19.5 per cent), and worldwide passenger shares (31.6 per cent in 1991). The airline declined largely to third place as far as the other operations were concerned. By contrast, in the remaining international and EC services, British Airways took the lead, except for EC passenger revenue, where it was surpassed by Lufthansa. For the most part Lufthansa remained in the second position.

The above rearrangement in national, EC and international air transport naturally brought changes in the structures, ownership, labour relations and the employment conditions of the EC countries' airlines. Privatization⁵³ and/or denationalization⁵⁴ were prevalent in many EC countries, especially where the government was in favour of air-transport deregulation (Britain, Ireland, the Netherlands, and Luxembourg). The need for privatization/denationalization arose out of the airlines requiring management re-organization, a more commercial character, and cuts in public spending. For example AF and LH, while still largely state-owned, increasingly had to operate following commercial rather than public criteria. BA was fully privatized in 1987; more than half of KLM passed into private ownership; and the privatization of other national airlines was proposed for SAS, Iberia, Air Portugal, Alitalia, and Olympic Airways.⁵⁵

Following the US example, it was the air-transport personnel and their unions that have paid most dearly for these changes, with massive loss of jobs, wage cuts, worsening working conditions, and attacks on trade-union rights, although after the mid-1980's the above results were a general phenomenon implied in all industries worldwide.⁵⁶

⁵³It refers to the increase of private capital or asset ownership activities which surpass/es the 50 per cent of the total airline ownership. It is possible to liberalize without privatizing by introducing competition into the public sector, or privatize without subjecting industry to competitive forces. For theoretical arguments on privatization and its diverse forms, such as divestiture, contracting out and privatization by attrition see Andic, 1990: 37-9; Gayle and Goodrich, 1990: 438; Golich, 1990: 157, 171. For a thorough study of privatization politics within the EC member-states see Vickers and Wright, 1989.

⁵⁴It refers to the increase of private capital or asset ownership activities which are less than the 50 per cent of the total airline ownership.

⁵⁵ITF Report, 1992: 10-12.

⁵⁶ITF Report, 1992: 7.

To keep down costs, the EC countries' national carriers introduced "flag of convenience" airlines through "wet leasing". This meant the use of low cost aircraft, part-time or temporary crews and employees, and the contracting out of a number of ancillary services. Besides reducing their work forces, airlines also instituted two-tier wages, deferred pay increases, demanded longer hours and reduced fringe benefits. For example, the 13,000 airline personnel of the Association of European Airlines-member airlines laid off in 1991, represented a three per cent cut in the above airlines' work force, of which 7,600 were laid off by BA (4,600) and AF (3,000).⁵⁷ (See Table 6.11).

The above policies by the leading EC member-states and their airlines had four main consequences. The most important of these was that the attempts to liberalize, solely through the introduction of competitive practices in the EC air transport, in fact, undermined the liberalization process itself. J. Miart a French expert in DG IV for Competition was certain that

"Air-transport competition policy destroyed what it was intending to achieve in the EC air transport" (interview 23 Oct. 1990).

The second consequence was that although the mergers between US and EC airlines, and especially with British ones, gave the US mega-carriers direct access to the EC and the European air transport market, the opposite was not the case.⁵⁸ This jeopardized the position of the EC airlines in both the EC and the international arena. As R. Valladon, general secretary of the French Federation of the Transport and Services Staff-Work Force (FETS-FO) commented

"The alliances between the UK and other EC member-states with major US airlines were the Trojan horse by means of which the latter achieved access to the EC air-transport market" (interview 22 Nov. 1990).

The third major consequence was that small member-states and their airlines, although they retained overall domestic control, lost control over the

⁵⁷ITF report, 1992: 41-45, 55-59, 66; *ITF News*, June/July 1992: 22.

⁵⁸Feldman, 1991a: 19-24, 1991b: 33-35; Frankel, 1989; Jennings, 1992; Keating, 1993: 367; Moore, 1991; Reed, Feb. and Mar. 1990; Scocozza, 1990; Tretheway, 1991.

EC air-transport policy. They were incapable of advancing their national air-transport interests and were more or less reduced to spectators as far as EC air-transport developments were concerned. Greece was a typical example.

Finally the fourth consequence was the weakening of corporatist arrangements, from member-countries whether against (e.g. France and Germany), or for liberalization (e.g. Britain, Ireland and the Netherlands). All labour unions' representatives, whom I interviewed, agreed that there was a great shake up of corporatist interest intermediation, as well as, a frustration of labour unions following the EC air-transport liberalization.⁵⁹

In the years 1991-1993 the opinion was gaining ground that the response to liberalization by the various governments, Commission politicians, and airlines was a strategic game played by the strongest in both mercantile and decision-making terms. It was suggested that these countries' main objective was to avoid competition, both domestically and in the EC air space. For example in Britain, the most liberalized EC member-state, and supposedly a proponent of the US deregulation policy being extended to EC air transport, continued regulation and the absence of any anti-trust policy enhanced the privatization value of BA, and its dominance of air transport at home and in the EC. During 1991 a significant part of BA's air services operated in markets where competition was largely absent, and by the end of 1993 BA controlled more than 70 per cent of Britain's scheduled domestic and international passenger traffic.⁶⁰ As it has been generally argued

"While mutual recognition and the resulting inter-regime competition devalue nationally institutionalized power resources, they leave property rights untouched or even increase their value" (Streeck and Schmitter, 1991: 150).

⁵⁹Information from author's interviews with D.Cockcroft (19 June 1991); C. Deslandes 21 Nov. 1990); Y. Enderle (7 Dec. 1990); A. Gosselin (14 Nov.1990); S. Howard (3 June. 1991 and 4 April 1993); C. Iddon (30 Oct. 1990); G. Koutsogiannos (18 Jan. 1991); P. Laprevote (21 Nov.1990); J. P. Meheust, D. Jullien, and G. Gomez (joint, 23 Nov.1990); G. Ryde (5 June 1991); F. Tack 14 Nov. 1990); R. Valladon (22 Nov. 1990).

⁶⁰ AEA, 1989: 7-8, 40; *Air and Cosmos*, July/Aug. 1990: 44; Balfour, 1990: 20; Bass, 1991: 216-17; Beng, 1991: 24; Brittan, 1989a: 13-15; 1989b: 98-105; Butterworth-Hayes, Dec. 1990: 1099-102 and Mar. 1991: 72; Doganis, 1991: 193; Feldman, April 1990: 30; Gialloreto, 1989: 68-69, Sept. 1992: 52-58; ITF Report, 1992: 30; Keating, 1993: 104-05; Kay and Thompson, 1991: 29; Lang, Sept. 1989: 60- 62; Lewis, 1990: 385; Lipman, Sept. 1988: 38; OECD, 1988: 19-20; Pelkmans, 1980: 337 and 1991: 195-215; Pryke, 1991: 239-40; Shane, 1990: 2; Swann, 1991: 46-47; Sutherland 1988; Sutton, 1990; Williams, 1990: 30; Woolley, 1990: 16-18; Zylicz, 1992: 1922.

During 1992 and 1993, a number of EC countries - Belgium, France, Greece, Ireland, Spain and Portugal - and their airlines asked for financial help (already sought after the Gulf crisis) which was considered sympathetically and approved (or to be approved) by the Commission. Some cautioned against the destabilization likely to be caused by too rapid total liberalization if the commission was to proceed with its 1993 plan. Belgium and France went so far as to ask the commission to reintroduce passenger capacity quotas, which had been abolished only one year earlier.⁶¹ As cited by Golich, (1990: 166), H. Ruhnau, the former chairman of Lufthansa and secretary-general of IATA, explained

"The truth is that no government has an aviation policy based on altruistic concerns for the consumer."

In the meantime, at the beginning of 1993 the British neo-liberal Commissioner for Competition Sir Leon Brittan was succeeded by Belgium's Socialist Commissioner for Transport Karel Van Miert, described by his detractors as an "old-fashioned socialist". In fact Van Miert's appointment represented an about-turn by the EC in respect of its competition policy, and general acceptance of state monopolies and state aid for the EC's air-transport industry, suffering from recession after the Gulf War.⁶² Immediately after Karel Van Miert took office he announced

"I do not share the view that the only credo should be less and less state intervention, but if there is still state intervention it needs to be efficient."⁶³

By the end of 1993 no common EC air-transport liberalization policy could be applied, at least theoretically, to the individual member-states'

⁶¹Bass, 1991: 216; Doganis, 1991: 193; Financial Times of 28 Sept. 1993, of 27 March 1992, and of 22 Sept. 1993. See also Hilbrecht, 1992.

⁶²Brummer, 1990: 34.

⁶³Financial Times, 13 Jan. 1993: 1.

regulatory and corporatist arrangements. The chief factor missing was a harmonization policy, a basic element of integration theory, which required a minimum regulation tailored as a *sine qua non* to meet consensual socio-economic goals effectively.

In the EC air-transport policy-making there was a multiplicity of actors and interest groups who interacted with and within the Community institutions and with one another via different channels. These I shall now elaborate.

5. Key Actors, Interest Groups, and Policy Networks in EC Air Transport

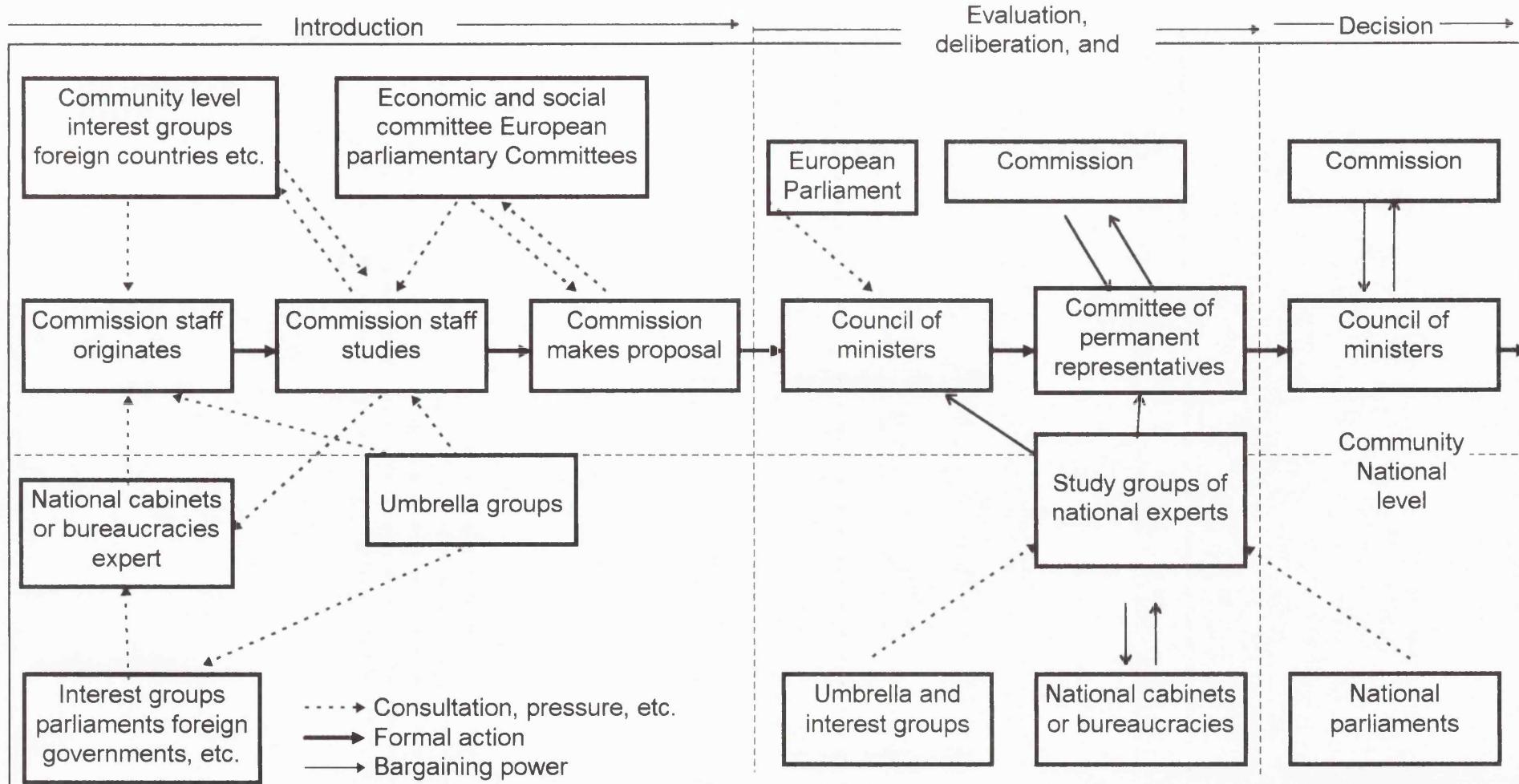
Theorists have argued that the concepts of *policy networks* and *policy communities* have acquired primary importance for an analysis of the EC's policy-making process in terms of policy innovation and change. In the air-transport sector policy communities comprise all actors and interest groups⁶⁴ who share common interests and influences with a view to benefiting from the EC air-transport policy beyond politico-bureaucratic relationships. The policy networks (channels) describe the links of their functional interdependence and interacting relationship which integrated all tangible and intangible variables in the EC air-transport policy-making, as illustrated in Figure 3.5 below.⁶⁵

These factors were institutional interests, member-states, airlines (employers), trade unions and flight-crew associations (employees), consumers and voluntary organizations, and airport policy communities and policy networks.

⁶⁴For a brief analysis on interest groups theories, their structural and functional differences (types, attitude, degree of membership, unity or fragmentation and tactics used), and the mobilization of their interests see Nugent, 1989: 194-206; Wilson, 1990: 1-37.

⁶⁵For a general analysis on "policy networks" and "policy communities" see Atkinson and Coleman, 1992; Beer, 1973, 1978; Dunleavy, 1981; Hecl, 1978, 1981; Jordan, 1981; Rhodes, 1986, 1988; Sharpe, 1985; Smith, 1989, 1991; Wright, 1988.

Figure 3.5: Actors and Interest Groups Interactions in the EC Legislative Process (Policy and Decision Making)



Sources: Busch and Puchala, 1976:239; Nicoll and Salmon, 1994:80.

5.1. Institutional

The EC institutional interests were represented by key actors making and shaping the EC air-transport policy. They were the commission officials or eurocrats (the permanent Commission officials) and the Commissioners (the temporary governmental and Commission appointees).

In the period under discussion (1987-1993) the President of the Commission was the Frenchman Jacques Delors, a Socialist, who was the French Minister of Finance before he was appointed to the Presidency in 1985.

In the period between 1985 and 1988 the Briton Lord Clinton Davis was appointed by the Commission as the Commissioner of DG VII for Transport. He was appointed by the UK Conservative government and he was an opposition spokesman for Transport in the House of Lords. The Spaniard E. Pena Abizanda was the Director-General, the Frenchman D. Vincent was the director of Directorate C (air transport, transport infrastructure, social and ecological aspects of transport) and the Dane F. Sorensen was the head of the air transport division. At the same period, the Irishman P. Sutherland, a neo-liberal former Attorney General, was appointed by the Commission as the Commissioner of DG IV for Competition. The Italian M. Caspari was the Director-General, the Irishman J. K. Temple Lang was the director of Directorate D (restrictive practices, abuse of dominant positions and other distortions of competition III) and the German H. Kreis was the head of the transport and tourist industries division till the end of 1987, replaced by the Briton N. Argyris. The official responsible for air transport was the Dutch administrator of the Directorate D B. Van Houtte.

In the period between 1989 to 1992 the Belgian (Flemish) Karel Van Miert, a Socialist former Minister, was appointed by the Commission as the Commissioner of DG VII for Transport. The Spaniard E. Pena Abizanda was

the Director-General till 1991, replaced by the Briton R. Coleman, the Frenchman D. Vincent and the Dane F. Sorensen were again the director of Directorate C and the head of the air-transport division. At the same period, the Briton Sir Leon Brittan - a neo-liberal who was a Minister of Trade and Industry of the Conservative government in 1986 - was appointed by the Commission Commissioner of DG IV for Competition. The German C. D. Ehlermann was the Director-General, the Irishman J. K. Temple Lang was again the director of Directorate D and the Briton N. Argyris was the head of the transport and tourist industries division till the end of 1990, replaced by the German H. Kreis. The official responsible for air transport was again the Dutch administrator of the Directorate D B. Van Houtte.

5.2. Member-states

In this thesis member-states' interests are regarded simply as another interest-group (political actor), although academics are skeptical of such an arrangement because of the complicated nature of the state's functions and its role.⁶⁶ In the EC institutional framework, the member-states' air-transport interests were represented by their national representatives in the European Parliament, their national transport cabinets or bureaucracies, the study groups of their national air-transport experts, their permanent representatives in the EC (Corepers), and their Ministers of Transport in the Council of Transport Ministers.⁶⁷

At the EC level their major representatives were the regional organization of the European Civil Aviation Conference (ECAC), and the Joint Airworthiness Authority (JAA), which later was called Joint Aviation Authorities, primarily responsible for directing technical issues connected with EC air transport.

⁶⁶ Nedelmann and Meier, 1979: 98-99; Schmitter, 1985: 40-44; Steiner, 1986: 82-85.

⁶⁷ Their functions and interactions will be discussed in detail in ch IV.

ECAC is a European inter-governmental organization, established in 1955 at the initiative of the Council of Europe and with the active support of the ICAO. In 1990 ECAC had 25 member-states: the EC twelve, the non-EC European Free Trade Association (EFTA) members, and Cyprus, Hungary, Malta, Monaco, Poland, Turkey and Yugoslavia.⁶⁸ ECAC's objective is to promote the safe and orderly development of civil-aviation routes within, as well as to and from Europe. It closely co-operates with the EC in order to harmonize civil-aviation policies and practices among its European member-states, and to promote an understanding on policy matters between them and other parts of the world. The ECAC meets annually in Plenary Session. Directors General of Civil Aviation convene at more frequent intervals for decisions on urgent policy matters, which can also, when the need arises, be handled at the level of Ministers of Transport. The ECAC's work program, established triannually, covers economic policy, technical matters and questions related to facilitation and security. The work is carried out on a continual basis by four standing committees, each of which is assisted by working groups staffed by government experts, and by a wide circle of observers representing consumer opinion and sectors of the civil-aviation industry. The work is steered by a co-ordinating committee made up of the ECAC President, its three vice-presidents, and the chairmen of the standing committees.⁶⁹

The Joint Airworthiness Authority is an institution created in 1986 by the four largest air-transport and aircraft-manufacturing EC member-states - Britain, France, West Germany and the Netherlands. While the JAA has a

⁶⁸EFTA was set up in January 1960 as a rival organization to the EC, and originally consisted of UK, Denmark, Iceland, Norway, Sweden, Switzerland, Austria, Portugal and Lichtenstein. Finland was associated but did not become a full member until 1986. The aim of EFTA was to eliminate trade tariffs on industrial products in Europe, but did not extend to common external tariffs or economic or political integration. In December 1960 the Organisation for Economic Co-operation and Development (OECD), was founded in Paris as an instrument of international co-operation in economic affairs. It comprises 24 mostly industrialized Western countries, the EC and EFTA members, the USA, Canada, Japan, New Zealand, Turkey and Yugoslavia (under special status). See Hitzler, 1991: 353-55; Nugent, 1989: 335; Williams, G., 1993: 88.

⁶⁹ Information from author's interviews with L. Barbin (23 Nov. 1990); E. Hudson (20 Nov. 1990). See also ECAC, 1990; Naveau, 1989: 68-72.

director and secretariat, it is actually a body of director-generals of the civil aviation's authorities of the EC and two EFTA countries, but in the beginning its sole interest was on EC air transport. The JAA staff consists entirely of professional civil-aviation experts. The JAA endeavoured to go beyond EC legislation and jurisdictions, and to develop regulations on the certification of air worthiness and proper utilization of air-transport personnel, such as crew licensing, and flying and duty time limitations (FDTL),⁷⁰ under the auspices of the JAA Operations Committee (JAA-OPS). The original JAA decisions were called Joint Air worthiness Requirements (JARs), but then expanded to include aircraft maintenance and operations; they are now known as Joint Aviation Requirements or Regulations (JARs). The central JAA and the secretariat were located at Gatwick airport UK and was an associated body of ECAC.⁷¹

5.3. Airlines

The Association of European Airlines (AEA), established in 1973,⁷² is the main policy network for all EC state-owned airline policy communities. In 1990 It had a membership of 25 scheduled airlines and some of their affiliated charter airlines.⁷³ The AEA is a flexible and small in structure regional organization. The general secretariat consists of a general secretary, his deputy, and four general managers heading four committees: aero political, commercial, research and planning, and technical. Each state-owned airline has one representative on each committee. The structure of the AEA is depicted in Figure 3.6 Although strong EC member-states and big airlines obviously carry more weight, AEA members always attempt to reach a consensus, so as to present a firm air-transport strategy in the EC. The

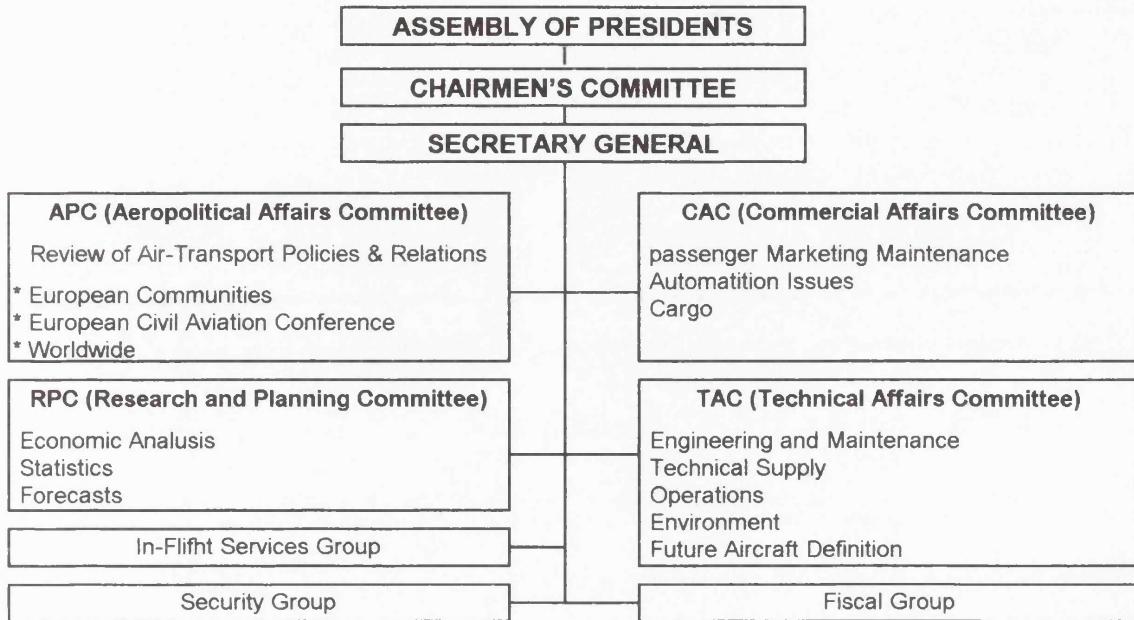
⁷⁰ To be discussed in detail in ch. VIII.

⁷¹ In the end of 1991 JAA moved from Gatwick to Hoofddorp Netherlands. Interview with T. Middleton (13 June 1991). See also ITF News, Aug. 1991: 8-9; Sutton, 1989: 783-85.

⁷² Formerly the European Air Research Bureau, (EARB).

⁷³ It also includes EFTA-member airlines: Finnair, Icelandair, Swissair, Austrian Airlines and British Caledonian, (merged with BA in 1988), Turkish Airlines (THY), the French privately-owned airline UTA (merged with AF in 1989), Air Malta, the Yugoslav airlines (JAT), and the Hungarian airlines Malev.

Figure 3.6: Structure of the Association of European Airlines



Source: AEA Yearbook, May 1990

general secretariat works in close liaison with governmental and administrative bodies, and reports to the heads of the member airlines. While offering advice and services, it has no authority to intervene in any member airline, or in the commercial agreements between them and other airlines such as alliances, buy-outs etc. AEA-member airlines accounted for around 92 per cent of the scheduled international passenger traffic in Europe in 1990 (in terms of passenger/kilometers).¹

In addition there are two regional and one main EC policy networks in the form of associations of independent charter, regional and business airlines. They are the Independent Airlines Association to the EC (ACE);¹ the European Regional Airlines Association (ERA); and the European Business Aviation Association (EBAA). They welcomed any steps towards a fast and far EC air-transport market liberalization and hoped that, through the opportunities it would create, the dominance of the EC's state-owned airlines could be challenged.

ACE evolved in 1979 as a private organization out of the European Air Carrier Assembly (EURACA)⁷⁴, and the Air Charter Carriers Association (ACCA)⁷⁵ in 1979, specifically to represent the interests of certain independent EC airlines in the EC. Some of them (Dan Air, Air Europe and Britannia) operated scheduled services as well. ACE is therefore a bimodal association. Its 21 airlines from six member-states have 400 aircraft, and carry around 37 million passengers per year. The ACCA, EURACA and ACE all work under a president, vice-president, director general, and a board of directors.⁷⁶

ERA was founded in 1980. Affiliated to either the big or independent regional airlines, it serves the so-called secondary or third level air transport markets for intra-regional flights. In 1987 it had 14 member airlines, which by 1991 had increased to 46. Its administrative secretariat is under a director general.⁷⁷

The European Business Aviation Association (EBAA)⁷⁸ represents the proprietors of professionally flown multi-engined aircraft owned either by business corporations or by air taxi enterprises. The company-owned aircraft usually carry company staff and guests and as so-called corporate aircraft are part of general aviation which covers all kinds of flying operations from microlights and hot-air balloons to air ambulances, commuter airlines, aerial photography, agricultural aviation, pilot-training and helicopters, as well as private and corporate jets. The air-taxi planes are owned by operators who charter them out to exactly the same kind of business passengers. Although they operate the same services as corporate aircraft, legally speaking, they do not belong to general aviation but are part of the commercial air transport. The EBAA consists of full and associate members, with only full members being entitled to vote. Associate members may be individuals or firms providing

⁷⁴EURACA was formed in 1977 and has 47 airlines from 14 European countries, EFTA countries included.

⁷⁵IACA was formed in 1971 by ICAO and had a total of 53 airlines from 17 countries worldwide.

⁷⁶Interview with R. Hollubowicz (15 Nov. 1990). See also Naveau, 1989: 79.

⁷⁷Interview with M. Ambrose (30 May 1991). See also Naveau, 1989: 79; Wheatcroft and Lipman, 1986: 124-27.

⁷⁸EBAA is under the worldwide umbrella of the International Business Aviation Council Ltd (IBAC), which represents the international business aviation community and is located in the UK; it meets once every nine months.

products and services to business aviation (e.g. handling agents, aircraft manufacturers, etc.). The EBAA has a president, a board of governors, a chairman, treasurer, and chief-executive.⁷⁹

The above EC airline industry umbrella groups have had constantly issued information papers, yearbooks and statistical appendices as well as newsletters and news bulletins in order to inform their member airlines for their positions on Commissions' proposals and Council of Transport Ministers EC air-transport legislation.

5.4. Trade unions and flight crew associations

The International Transport Workers' Federation (ITF) has for decades been the chief umbrella group for all main trade unions of all modes of transport throughout the world. It covers over 400 transport unions in a hundred countries, including those of Eastern Europe, and its total membership is around 6 million workers. Today it also represents all EC air-transport unions, and most cockpit and cabin crews. In 1975 the ITF established the Committee of Transport Workers' Unions in the EC (the Brussels Committee CTWU), as a link-office between the ITF and the EC specifically charged with lobbying EC institutions, and promoting the dialogue with other transport policy partners including air-transport ones.⁸⁰

The International Federation of Airline Pilots Associations (IFALPA), numbers a total membership of roughly 75,000 pilots, and is the main international umbrella organization for the European Airlines Pilots' Association (*Europilote*), which itself represented all West-European countries'

⁷⁹Busy executives from industrial corporations and major commercial firms have operated their own aircrafts or have had regular contracts with private air charter operators because they found them very cost-effective. Especially to busy executives whose time is money and whose earnings reached the 50/60,000 pounds a year the 350 pounds an hour of flying seemed very cheap to spend in order to travel comfortably and to accomplish a business deal. For example scheduled flights used some 200 airports in Europe in 1990. An executive jet or air taxi could use some 200 licensed airfields in the UK alone and more than 2,000 in Europe. Thus although business aviation represents a very small part of general and commercial air transport, is not a luxury but a "tool to make money". Interview with J.F. Mac Farlane Obe (29 Nov. 1990). See also Checkley, 1990: 91-94.

⁸⁰Interviews with D. Cockcroft (19 June 1991); C. Iddon (30 Oct. 1990). See also Chomeley, 1990: 119-120; *ITF News*, Sept. 1989: 21; Wheatcroft and Lipman, 1986: 43.

national-airline pilot associations. IFALPA, with headquarters in the UK, has different committees for industrial, technical and operational matters. All pilots are members of IFALPA, most of them of ITF, and all EC ones of Europilote.⁸¹

5.5. Consumers, voluntary organizations and airports

The European Bureau of Consumers' Union (BEUC) is the umbrella group looking after the interests of all production and service consumers in the EC, including those in air transport. The latter are represented by the Federation of Air-Transport User Representatives in the EC (FATUREC), created in 1983 by the Air-Users' Committee (AUC) of the EC, and the French Association of Air-Transport Users (AFUTA).⁸²

A body called Intelligence Service for Air Transport in the EC (AEROPA) was set up in 1985 as an informal working-party trying to define and voice positions held in common by various organizations supporting the liberalization of EC air-transport. It is a non-profit making, loosely affiliated voluntary EC-aviation pressure group of 15 totally different organizations. Some of them are: airport authorities, the independent and regional airline-consumers associations, regional bodies and chambers of commerce such as BEUC, ACE, ERA, the Independent Aircraft Handling Association (IAHA), associations of cities and towns, Europilote, the Association of European Chambers of Commerce and Industry (Eurochambers), the International Chamber of Commerce (ICC), the International Organization of Consumer Unions (IOCU), as well as airport authorities. Although most of them already belonged to their respective associations, they created AEROPA because their interests were very specific and restricted, and they were too small to be able to lobby and influence the EC air-transport policy.⁸³

⁸¹Information from author's interviews with D. Cockroft (19 June 1991); Y. Enderle (7 Dec. 1990); T. Middleton (13 June 1991); J. Rokofilos (17 July 1990).

⁸²Wheatcroft and Lipman, 1986: 43-44, 70-78.

⁸³Interview with P. Jeandrain (27 Nov. 1990). See also Ryan, 1991: 67-69; Shaw, 1993: 199-209.

As P. Jeandrain, general director of AEROPA, pointed out

"AEROPA is a watchdog organization which ensured that their interests were known and taken into account within the EC institutions" (interview 27 Nov. 1990).

Consumer/user organizations are concerned neither with unrestrained nor with controlled competition, but only in free and fair competition. They held that airlines should be run in the best interest of their passengers - not those of the trade unions or parties in government. They tend to think that member-state governments should intervene in normal consumer protection only to ensure a safe air-transport system and to prevent anti-competitive (predatory and monopolistic) behaviour.⁸⁴

However, Eurocrats and the Commission have questioned the existence of the consumer/user organizations and the role of their representatives as concerning the authenticity of their real membership and purposes. As L. Van Hasselt, air-transport division administrator of DG IV for Transport indicated

" Those organizations have a trivial membership and they are not in touch with the air transport users per se. Thus I am not sure whether they actually represent the consumers' air-transport interests or their special interests" (interview 8 Nov. 1990)

Therefore, in the EC, the Commission has created the Consumer Consultative Committee (CCC), a political body which allows consumer organizations to formally support their interests in the Commission's proposals. The CCC is divided into production and service committees, one of them being the Air-Users committee of the EC. In addition, in 1990 the Euro parliament developed its All-Party Inter-Group on Consumer Affairs, which is chaired by one of its members.

⁸⁴Information from author's interviews with S. Crampton (28 May 1991); P. Jeandrain (27 Nov. 1990); L. Mosca (7 Dec. 1990); J. Parr (4 June 1991); D. Prentice (31 May 1991); and J. Sabourin and C. Grenier (23 Nov. 1990). See also NCC, 1983: 1-2, 1986: 27-47; Villiers, 1989: 13-14.

Finally the International Civil Airports Association (ICAA),⁸⁵ and the Airport Operators' Council International (AOCI), which is part of the Airport Associations Council (AACC), co-ordinate airport interests all over the world. Because of the new collective structure of the international airline industry, ICAA and AOCl were integrated to become the Airports Association Council International (AACI). Its European region covers over 200 airports, and its EC bureau alone over 160.⁸⁶

All the above EC air-transport interests and actors - which were organized at supranational level (i) within the Commission; (ii) maintained their own offices in Brussels; or (iii) were in constant contact with their EC counterparts representing them in Brussels - created a certain pattern of entrenched expectations and demands for and against regulation and liberalization of the EC air-transport policy, which is set out in Table 3.3 below.

Table 3.3: EC Air-Transport Interests

	Free Marketeers (for deregulation)	Moderate (for regulated competition)	Dirigistes (Against competition)
EC Members (individual)	UK, Netherlands Ireland, Luxembourg	France, Germany Belgium, Denmark ECAC, JAA	Italy, Spain Greece Portugal
Industry (individual state -owned and independent airlines)	BA, KLM, Aer Lingus LUXAIR ACE, ERA, EBAA	AF, LH, SN, SAS AEA	AL,IB OA, TAP
Unions, consumers and Airports	BEUC, FATUREC. ICAA, AACC, AOCI, AACI		ITF, CTWU

⁸⁵Based on Paris, ICAA interest is strongly concentrated on Europe.

⁸⁶ICAA-AEA Report, 1990: 1.

Because consumer/user, airport interest groups and business aviation, like before 1987, had a minimal participation in the EC air transport decision-making - compared to airline and trade union which had direct vested interests in the 1987-1993 period - they were not researched separately but in combination with their interlinking relationships and behaviour in the EC air-transport policy.

6. Conclusion

During the period between 1987 and 1993 the Commission solely attempted to shape a common air-transport liberalization policy through the implementation of a competition policy in the EC air transport. This not only was no panacea for bringing about greater competitiveness, but in practice provided the airlines of strong member-states with the motivation to monopolize their domestic air-transport systems as well as to try to dominate that of the EC and even the international one.

In fact it led to the destabilization of national politico-economic and social structures. This accentuated the existing nationalist, mercantilist and regulatory trends in the individual member-countries, and so militated against a joint air-transport liberalization policy being adopted by the EC. Such EC legislation, as did come into being, grew out of ideology and the need to survive external (international) competitive pressures, rather than out of the willingness, let alone the evaluation of the best interests of individual EC states.

State-owned airlines in the EC countries avoided co-operation or competition among each other at EC level. The airlines in fact, increasingly believed that their EC and international survival required not only a dominant position in their own air transport systems, but had to be buttressed by

mergers and alliances with airlines in other blocs if their own continued access to international routes was to be assured.

The only two potent countervailing influences for the liberalization of the various regulatory structures of the EC member-countries were (i) the major deregulation of the US international air transport, and (ii) the pursuit by some EC-states (primarily Britain, Ireland, and the Netherlands) of a similar policy within the EC. The US example led to rearrangements for the EC members' airlines; the European support of deregulation led to monopoly practices in EC air transport instead of free competition.

The EC countries' strong reluctance to adopt a common EC air-transport policy stood fully revealed in 1993. Although the Commission's legislative work from 1987 to 1992 had been directed by neo-liberal Commissioners for Competition such as Ireland's R. Sutherland and Britain's Sir Leon Brittan, the implementation was left to the Belgium's Socialist Karl Van Miert who reconsidered the question of EC air-transport liberalization.

The above EC air-transport interests created an interest-group network of EC member-nations, of airlines in their capacity as employers, and trade unions representing the employees, with each group putting forward and defend its own point of view as a means of blocking the EC's air-transport competition-policy objectives. The existence of this spectrum of conflicting positions explains why there has been such marked resistance to changing the national arrangements, and why the EC liberalization policy has failed to become the common EC air-transport policy.

The remainder of this thesis will explore the influences and interactions of the above interest groups in an attempt to show in detail how and why they precluded liberalization of the EC air-transport policy, and related decision-making.

CHAPTER IV

EC POLITICS IN AIR-TRANSPORT DECISION-MAKING AND POLICY

" No matter how expert you are in air transport when you get to Brussels you can't control your own product and you get very frustrated" (from the author's interview with R. M. Cotteril, head of the economic policy division of the UK's Civil Aviation Authority, 31 May 1991).

This chapter concentrates on the formal and informal intricate relationships and political manipulations of factions and interests in the EC air-transport institutions. It describes the ways and means of lobbying and negotiating between Commissioners, Eurocrats, and member-states for accommodating their national and personal air-transport interests in the EC air-transport policy and decision. Specifically it delineates (i) how the attitudes of the Commissioners and Eurocrats translated into direct or indirect political power games, managed to override any supranational guarantee for neutrality; and (ii) how the member-states exerted pressures and influences that actually became incorporated in EC air-transport politics as an integral part of it.

1. The Attitudes and Policy Styles of Air-Transport Eurocrats

In attempting to identify the general characteristics of a Eurocrat scholars have relied on a hybrid¹ model of civil servant, the super-bureaucrat. This "Eurocrat" represents a new breed of policy-maker and, though closely related to the "European polity model", far more resembles the national politician-bureaucrat. According to this academic model Eurocrats are highly competent and politically skilled, and therefore enjoy full recognition and legitimacy in the conflicting politics of the EC's supra-national interests.²

¹Hybridization defines the amalgamation of the political and administrative/bureaucratic roles of the civil service, in contrast to the bifurcation of politics and bureaucracy, or the artificial dichotomy between politics and administration, which have been observed in national bureaucracies and have been dubbed "politicized bureaucracy" or "bureaucratized politics" respectively.

²Aberbach et al, 1981: 18-19; Campbell and Peters, 1988: 79-82; Gregory, 1991: 307-10, 325; Dogan, 1975: 89-98; Dunleavy, 1991: 148-50; Mayntz and Derlien, 1989: 393; Nugent, 1991: 96-98; Page, 1992: 53; Peters, 1991: 77, 90-91; Self, 1976: 140.

Like other EC officials air-transport Eurocrats were basically recruited as a rule from a careful balance of nationalities according to the power and size of the member-states, and not in technocratic terms as air-transport specialists.³ Therefore, although acknowledged by all air-transport interest groups and experts as highly intelligent and competent super-bureaucrats, they were also considered as rank amateurs in air-transport matters and unfitted for regulating it with the exception of F. Sorensen, the air-transport head of the EC's Directorate General (DG VII) for Transport.⁴ As R. Tsimbiropoulou, OA's senior superintendent of EC aeropolitical affairs stated

" Unfortunately the Eurocrats came in to regulate the EC's air transport, which for them was a *terra incognita*" (interview 24 Jan. 1991).

Air-transport Eurocrats were at the receiving end of the highest-rated and professional air-transport lobbying and bargaining.⁵ Although as an "adolescent bureaucracy" they were susceptible to external evidence⁶ - drawn into a quasi-clientelistic dependency relationship with the interest groups' policy communities - they claimed full authority by virtue of their supposed competence in specific air-transport activities, and appeared in EC air-transport as knowledgeable professionals. They also constantly projected the status and prestige of their sophisticated self-image. As a result, the air-transport officials in the EC, like those in the national governments, maintained and manipulated a small and cohesive transnational, politico-administrative elite network. For all that, the power of the air-transport Eurocrats was not unlimited and frequently conflicted with the invidious political pressures from

³Technocracy rests upon specialized knowledge, science and rationality which I called "issue community expertise" in ch.2 and is usually employed for the purpose of obtaining power. Bureaucratic expertise is one of a number of factors that contribute to the power of the bureaucracy. See Eisner, 1993: 130; Putnam, 1976: 383-412.

⁴Information taken from author's interviews with D. Cockcroft (19 June 1991), R. P. Holubowicz (15 Nov. 1990), A. Corcodilas (18 Jan. 1991); P. Laprevote (21 Nov. 1990); R. Tsimbiropoulou (24 Jan. 1991); K. Veenstra (29 Oct. 1990). For a detail discussion on their culturally fragmented ascriptive attitudes (race, language, and religion), and achieved attitudes (occupation and education) see Steiner, 1986: 202.

⁵Especially from private consultants who, as in national bureaucracies, acted as quasi-interest groups practicing "cryptopolitics".

⁶For a general discussion see Hull, 1993: 86; and Mazey and Richardson, 1993: 10, 21.

Commissioners and member-states - all part of the political elite model of policy and decision-making in the EC⁷ - who dictated to them their own code of conduct and deadlines.⁸

" Policy-making in the EC can be conceived as a process of bargaining among national and Commission elites who attempt to maximize certain interests inherent in their roles" Busch and Puchala (1976: 246).

Arguably, from top down one could identify a central problem in the air-transport Eurocrats' use of their discretion. As a matter of fact, many interviewees have complained that, although it was part of Eurocrats' duties to be accessible to, as well as consult with, designated air-transport interest groups, they insistently refused to share with them any power in EC air-transport policy-making, which they considered as a waste of time.⁹

Nevertheless, involved as they were in EC air-transport politics they did what they could to assert their air-transport priorities by influencing the EC air-transport policy in politico-economic terms. As a result, unlike national bureaucracies (where bureaucrats are often budget-maximizers and/or bureau-shapers)¹⁰, air-transport Eurocrats were power-maximizers often involved in struggles and clashes among themselves and vis-à-vis their Commissioners who, in their turn, frequently competed for power and the promotion of their own national air-transport interests in the EC's two Directorate General (DG VII) for Transport and (DG IV) for Competition. This being so, the common assumption by outside observers of the EC that conflicts exist only between the supra-national aims of the Commission and the national ones of the member-states needs to be corrected. It should be

⁷This model focus on their considerable concentration of power at all EC levels. See Nugent, 1989: 254.

⁸Information from author's interviews with M. Ambrose (30 May 1991); D. Cockcroft (19 June 1991); J. F. MacFarlane Obe (29 Nov. 1990); J.P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); G. Ryde (5 June 1991). For a general theoretical background on elite theory see Dunleavy and O'Leary, 1989: 136-202; Page, 1992: 80; Peters, 1989: 39-69; Putnam, 1977: 383-412 and for the EC specifically see Busch and Puchala, 1976: 237-42; Grant, 1985: 15; Sargent, 1985: 236-44; Steiner, 1986: 181.

⁹ Information from author's interviews with M. Ambrose (30 May 1991); D. Cockcroft (19 June 1991); J. F. MacFarlane Obe (29 Nov. 1990); J.P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); G. Ryde (5 June 1991).

¹⁰Dunleavy and O'Leary, 1989: 114-19; Dunleavy, 1991: 200.

given a broader perspective in EC air-transport politics, where the Commission members (Commissioners and some Eurocrats) were competing for power among themselves as well as serving their national air-transport interests.

2. Competences and Conflicts between and among Eurocrats and Commissioners

Just as in the overall eurocracy, in the EC air-transport sector there was a clear delineation of competences and a hierarchical relationship between Commissioners and Eurocrats. The Commissioners' chief aim was to assure full compliance with their wishes and to prevent any usurpation of their power in the Eurocratic air-transport policy communities. As R. Tsimbiropoulou, OA's senior superintendent of EC aeropolitical affairs, has said

"The first thing Eurocrats learn when they enter the EC is whom and how to obey. Otherwise they know that their positions are immediately jeopardized" (interview 24 Jan. 1991).

The EC air-transport Commissioners were owed the highest loyalty and political patronage by their chief of *cabinet* and air-transport advisors - who formed the staff of the high secretariats where air-transport politics and EC practices coincided. Commissioners were often so busy with lectures, public relations and other meetings, that they totally relied on their *cabinet* chief and staff and delegated tremendous power to them. This meant that air-transport issues that would normally go to divisional officials might gravitate instead to more strictly political actors whose activities counterbalanced the abilities of veteran officials. F. Sorensen, for instance head of the air-transport division of DG VII (Transport), could not adopt considerable strategies of obfuscation, delay, and the use of political and bureaucratic rules and practices.¹¹ As E. Seeböhm, air-transport administrator of DG VII (Transport) revealed

¹¹Information from author's interviews with N. Argyris (5 Dec. 1990); J. M. De Bastos (8 Nov. 1990); and L. Van Hasselt (8 Nov. 1990); E. Seeböhm (6 Nov. 1990).

" The Commissioner's level is purely political...we do not have a full transparency ...sometimes we get back some instructions that we cannot explain but only speculate on, and maybe some months later, and more or less by accident, we get to know what really happened" (interview 6 Nov. 1990).

The lack of greater latitude for exercising their own independent power, left air-transport Eurocrats with only discretionary policy-making powers, which depended on the importance of the air-transport issue, and whether their draft proposals happened to coincide with the Commissioners' national air-transport interests. If an air-transport issue was of very great importance, even heads and principal administrators of the air-transport divisions were ignored and it was the high-ranking officials, such as the Directors, the General Directors, and the Commissioners, who shaped the final policy.¹²

On the other hand, like their national bureaucratic counterparts,¹³ air-transport Eurocrats knowing their Commissioners' predisposition and politico-economic and social constraints, were likely to anticipate the latter' reactions. Eurocrats were not, therefore, loyal followers, but collaborators who complied more or less with their Commissioners' explicit air-transport goals. For example F. Sorensen of DG VII (Transport) had direct policy problems with both his Commissioner Lord Stanley Clinton Davis and Karel Van Miert, due to politico-economic differences: he wanted to proceed further and faster with the liberalization of the EC air-transport than his Commissioners. On the other hand N. Argyris, of DG IV (Competition) collided with his Commissioner Sir Leon Brittan and his Director J. Temple Lang, as well as with his air-transport subordinate because he was readier to reconcile DG IV proposals with the Commission's rules than they were. Taking into consideration the broader circumstances of the EC air-transport system, he was against massive mergers and alliances of EC airlines in the interests of liberalization, because

¹²Information from author's interviews with N. Argyris (5 Dec. 1990); J. M. De Bastos (8 Nov. 1990); and L. Van Hasselt (8 Nov. 1990); E. Paganelli (7 Nov. 1990); E. Seeböhm (9 Nov. 1990); D. Stasinopoulos (28 Oct. 1990).

¹³Jackson, 1982: 116; Mayntz and Derlien, 1989: 384; Page, 1992: 2, 63; Peters, 1989: 28-30, 51-53, 207-08.

he felt this was bound to affect the EC air-transport policy negatively, especially in the case of BA and AF. So he too clashed with his Commissioners' and the airlines' particularistic air-transport interests.¹⁴ As E. Paganelli, a lower-grade official in DG VII stated

" The Commissioner is the uppermost policy-maker. Very many are involved in, but very few actually shape the air-transport policy in the Commission" (interview 7 Nov. 1990).

The above-mentioned heads of the two EC air-transport divisions have had many and obvious power conflicts with their subordinates as well as their super ordinates, although for opposite reasons: F. Sorensen because of power-maximization, and N. Argyris for power-minimization.¹⁵

The conflicts and struggles for power between Commissioners and Eurocrats were most frequent and obvious concerning DG VII (Transport) and DG IV (Competition). The main problem was that DG IV had been assigned a status and legally defined powers and obligations very parallel to those of DG VII which was basically responsible for the making of the EC air-transport policy. For example, as regards the legal procedure in anti-competitive practices (EC Regulation 3975/87), responsibility for overseeing the interpretation and the implementation of the Treaty of Rome competition rules lies with DG IV (Competition).¹⁶ As N. Argyris, head of transport and tourism devision of DG IV (Competition), has explained

" We interpret how the Treaty competition rules are to be applied, and we are authorized by the Council regulations to implement them in the EC air-transport market. We have legal constraints and powers which, inevitably limit our activities, but strengthen decision power" (interview 6 Dec. 1990).

¹⁴Information from author's interviews with S. Crampton (28 May 1991); L. Van Hasselt (8 Nov. 1990).

¹⁵Both cases will be elaborated in detail in ch. V.

¹⁶DG IV (Competition) acts as a quasi-court for member-states' activities, and especially their airlines' obligations, since it scrutinizes and authorizes all their agreements. For example, under Regulation 17 (Articles 1-25) the Commission during its information-gathering for a case is empowered to search premises and take away copies or extracts of records, but it is obliged to keep all information confidential. See Appendix IV. 1 for a Commission press report on action against anti-competitive airline agreements. Information from author's interviews with N. Argyris (7 Dec.1990); N.Kontou (26 Oct. 1990); G. Radice (26 Oct. 1990); B. Van Houtte (9 Nov.1990). See also Jacobs and Stewart-Clark, 1990: 119-34.

The eventually enhanced air-transport decision-making powers of DG IV, and the interdependencies and overlaps of DG IV and DG VII inevitably resulted in serious conflicts.¹⁷ E. Paganelli, a lower grade official of DG VII told the author

" DG VII and DG IV are in a situation of black and white" (interview 7 Nov. 1990).

As a result air-transport Eurocrats¹⁸ in the two DGs accuse each other of trying to undermine the role of the other in their power struggle. So Eurocrats of DG VII charged that others in DG IV had tried to impose their views because it would make them look more competent than their DG VII colleagues. DG VII officials alleged that the formal daily formulation of new conditions for competition in the EC air-transport industry was promoting a logical and consistent EC air-transport policy, not merely a competitive system that might destroy the EC air-transport market which in fact was working very well. On the other hand, DG IV Eurocrats accused those of the DG VII of discriminating against smaller and new airlines in favour of big and well established ones. Although according to some Eurocrats, the two DGs contributed jointly to the EC air-transport policy - and in the end they had one policy - and one position, which seemed to prove that the two DGs complemented rather than rivaled each other - in fact they were serving totally different air-transport goals and aims.¹⁹

As a matter of fact DG VII regarded EC air-transport issues politico-economically, while DG IV was seeing them in legal terms. In other words, DG IV Eurocrats adopted a litigation-minded, normative and idealistic (what should

¹⁷Wallace, H., (1983: 60) argues that individual Commissioners have found it difficult to operate outside the vertical relationship with the DGs for which they are responsible.

¹⁸Although it was impossible to reach and interview the two Commissioners responsible for air-transport the interviews with the Eurocrats gave the impression that relations at the top of the hierarchy were as bad and even worse than at eurocrat level.

¹⁹Information from author's interviews with N. Argyris (5 Dec. 1990); C. Chene (5 Dec. 1990; L. Van Hasselt (8 Nov. 1990); B. Van Houtte (9 Nov. 1990); F. Sorensen (12 Nov. 1990); D. Vincent (6 Dec. 1990).

happen) EC air-transport policy; while DG VII Eurocrats adopted one that was efficiency-minded, positive, and realistic (what was happening). As a result, although the proposals from DG VII were indispensable for the overall EC air-transport policy, DG IV considered them illegitimate in terms of the EC air-transport competition rules. This obliged all national and EC air-transport interest group networks to circumvent DG IV, when attempting to deal with the Commission. Instead, they went straight to DG VII, leaving it to negotiate the overall politico-economic issues of EC air-transport policy with DG IV - a fact which further aggravated the relations between the two Directorates General.²⁰

As a matter of fact when F. Sorensen of DG VII (Transport), was called to the UK House of Commons Transport Committee hearings, on the development of EC air-transport policy, and asked to testify on the two DG's formal relations, he answered

"You are asking me to wash our dirty linen in public."²¹

During the period 1987-1993, the Commissioners of DG IV, (Competition) Sir Leon Brittan and Karel Van Miert of DG VII, (Transport) as well as Commission president Jacques Delors along with certain Eurocrats responsible for air transport, were accused by the press, air-transport interest groups and experts of serving only their own countries' national air-transport interests instead of the common ones of the EC. This in fact had been the basic element in the Commissioners' struggles and clashes. It not only negated the formal role and goals of their officials, it also, at least as in EC air transport was concerned, gave the lie to the broader conviction that Commissioners and Eurocrats served only supra-national and collective goals.

²⁰Information from author's interviews with J. Brown (16 Nov. 1990); Y. Castro (16 Nov. 1990); A. Corcondilas (18 Jan. 1991); N. Remmer (9 Nov. 1990); B. Stahle (4 Dec. 1990); R. Tsimbropoulou (24 Jan. 1991); K. Veenstra (29 Oct. 1990).

²¹As described by J. Parr, director general of Air Transport Users Committee and ex-director of the air-transport and shipping division of the Council secretariat, and S. Crampton, secretary of Consumers in the EC group of UK. Interviews with the author on 4 June and 28 May 1991 respectively.

Not surprisingly, the true situation was well-known and sometimes accepted as inevitable among all EC air-transport interest group networks.²² As Director General J. Parr, of the UK Air-Transport Users Committee and ex-director of air-transport and shipping division of the Council secretariat noted

" Eurocrats were genuinely motivated by their Commissioners and their member-states to be pragmatic - not in terms of the EC 'supra-national' ideal, but by the standards of EC 'national' politics" (interview 4 June 1991).

Four instances that look briefly at the behaviour of two officials and, more important, at that of the Commissioners, are set out in ch. V. In these cases the Commissioners and Eurocrats concerned served their own national air-transport interests, or were caught up in such activities.

3. Member-states' Pressures and Influences on Air-Transport Legislation

An air-transport proposal passes basically through two legislative channels in the EC air-transport policy and decision-making process. The first is the Commission, where the proposal is introduced, drafted, and adopted; the second is formal consultation by the working groups of member-states' air-transport experts (issue communities), the Permanent Representatives Committee (Coreper), and the Council of Transport Ministers final decision.

3.1. Preparations at the Commission

During the *introductory* stage, the appropriate air-transport division estimates a timetable for how long it will take for the Commission to discuss, negotiate and adopt a specific air-transport proposal. Since the Commission

²² Information from author's interviews with J. Brown (16 Nov. 1990); Y. O. Castro (16 Nov. 1990); Y. Enderle (7 Dec. 1990); R. P. Holubowicz (15 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); T. Middleton (13 June 1991); E. Paganelli (7 Nov. 1990); J. Parr (4 June 1991); M. Pisters 12 Nov. 1990); F. Sorensen 12 Nov. 1990); B. Stahle (4 Dec. 1990); D. Stasinopoulos 28 Oct. 1990); D. Vincent (6 Dec. 1990); S. Yuksel (31 Oct. 1990).

does not have the means or the expertise to conduct investigations for an air-transport proposal, it closely co-operates with the European Civil Aviation Conference (ECAC), hires air-transport specialists and academic groups, and/or asks private companies and interest organizations to conduct research on its behalf.²³ A specific budget covers such specialized studies, and invitations for tenders are sent to a list of consultants and the lowest bid is approved.²⁴

Since 1987 it has been mostly ECAC that has carried out the EC's air-transport policy research, although the EC Commission has been given the credit for it. Unlike the Commission, ECAC has the time, the facilities, the technocratic and financial resources,²⁵ to ensure efficient, rapid, and flexible working methods from its national Civil Aviation Authorities (CAAs) experts who do the job on a day-to-day basis. Between 1987 and 1993 ECAC's leading European air-transport policy-making role changed from a formal to an informal and a complementary one, because the national CAAs were obliged to report on their own respective air-transport interests to the Commission instead of to ECAC.²⁶ Although ECAC was considered less political than the Commission, D. Stasinopoulos, principal administrator of DG VII (Transport), believed it to be largely controlled by France and Germany.²⁷

The introductory stage ends with the preparation of a discussion document or a preliminary draft proposal. No member-state representatives are involved at this stage although preparations for negotiations with, and influential pressures on the Commission take place at a national level.²⁸

²³For instance the Transport Studies Group of the Polytechnic of Central London; Euroscope; the Bureau of EC Consumers' Union (BEUC); AEA, or ACE. See Keating, 1993: 379-80.

²⁴Information from author's interviews with N. R. Burlough (9 Nov. 1990 and 6 Dec. 1990); E. Seeböhm (6 Nov. 1990); P. Webber (5 Dec. 1990).

²⁵ECAC had assets of a \$ 1.4. billion in 1990.

²⁶Information from authors' interviews with S. Barbin (23 Nov. 1990); R. M. Cotterill (31 May 1991); E. Hudson (20 Nov. 1990); R. P. Holubowicz (15 Nov. 1990); G. Ryde (5 June 1991); K. Veenstra (29 Oct. 1990); S. Yuksel (31 Oct. 1990).

²⁷Interview 28 Oct. 1990.

²⁸Information from author's interviews with N. R. Burlough (9 Nov. 1990 and 6 Dec. 1990); E. Seeböhm (6 Nov. 1990); P. Webber (5 Dec. 1990).

The *drafting* stage forms an institutionalized pattern of an oral or written Commission consultation and a series of pre-arranged and/or ad hoc joint advisory committees meetings, the so called "arm's length" Euro-quangos (quang ECs).²⁹ The main participants at those meetings are experts from member-states, other air-transport institutions, EC airline and trade union associations, and consumer organizations, and their purpose is to collect information and acquire detailed knowledge to facilitate further analytical communication and debate. In parallel there is a continuous flow of consultation between the responsible Directorates General, the European Parliament (EP) and the Council. The Economic and Social Committee (ECOSOC) may, at its discretion, draw up a formal Opinion on the suggested proposal. The EP Transport and Tourism Committee appoints a *rapporteur*, to discuss and negotiate the proposal with the Commission, and to propose it to the EP plenary session at Strasbourg, sometimes with and sometimes without amendments. On the basis of the above consultations the air-transport division assesses the feasibility of the proposal in technical and politico-economic terms, and revises its drafts, sometimes quite radically.³⁰

It is at this stage that Eurocrats have been charged with unwillingness to co-operate with EP politicians (MEPs) because they considered the MEPs as their main legislative power adversaries who, moreover, function on strictly national and party political/economic criteria, promoting exclusively national air-transport interests.³¹ As K. Tsimas, a Greek MEP has noted

²⁹Quangos stands for "quasi non-governmental organizations". For a general theoretical description see Lewis, 1990: 67, Nugent, 1991: 108-11, 283-87; Sargent, 1985: 240-42.

³⁰Information from author's interviews with N. Alexopoulos (7 Nov. 1990); R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); N. R. Burlough (9 Nov. and 6 Dec. 1990); Y. O. Castro (16 Nov. 1990); N. Denton (12 Nov. 1990); L. Van Hasselt (8 Nov. 1990); C. Ibarz Del Olmo (31 Oct. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990); E. Seeböhm (6 Nov. 1990); M. Stoquart (5 Nov. 1990). Appendix IV.2 is an example of formal communication between the commission (Commissioner of DG IV for Competition, Sir Leon Brittan) and the EP (B. Visser rapporteur on the second air-transport package in 1989 and 1990) and Appendix IV.3 presents an example of a questionnaire and three drafting versions on the common rules for the slot-allocation proposal at EC airports all through 1990.

³¹Information from author's interviews with the MEPs G. Anastasopoulos (19 Jan. 1989); J. Stamoulis (7 Dec. 1990); K. Tsimas (17 Oct. 1990).

"Eurocrats hate and boycott us because they are afraid of losing legislative power and that their politico- bureaucratic survival is at stake" (interview 17 Oct. 1990).

It is here that the Eurocratic policy-networks have the greatest negotiating strength vis-à-vis the member-countries' air-transport policy-networks and issue communities consisting of transport counsellors and national experts. At this stage they do not negotiate among themselves very much but each of them separately tries to influence chiefly the Commission. By contrast, at the Council of Transport Ministers' level, they chiefly negotiate among each other to obtain the best result for their member states. However, at the drafting stage they prepare a clearly defined strategy for the proposals' air-transport articles which they use all through their negotiations with the Commission and the formal consultations among themselves in the Council of Ministers.³²

Assessing the proposal's importance in terms of their own as well as other countries' national interests they take into consideration (i) the politico-economic status of the EC country and its air-transport industry; (ii) the nationality of the Commissioners responsible for air-transport policy; (iii) the competence and personal prestige of their own national air-transport experts³³; (iv) the other countries' probable arguments and counter-arguments to specific articles in order to avoid isolation in their group alliances-making in the Council's formal consultation level; and (v) which of the articles of the proposal have the greatest importance for them, on which of them they take a neutral stand, and which do not interest them at all. In practice the last two categories of the articles are used for putting pressure on the other member-countries, represent a kind of artificial blackmail, and are used as negotiating ammunition in the debates in order to assure themselves a good position for

³² Interview with N. R. Burlough (6 Dec. 1990).

³³ In practice air-transport experts were few and well-known worldwide, and usually high-ranking officials, very close to their Commissioners as well as to their national Transport Ministers. For a general discussion see Sargent, 1993: 214-216.

defending the articles really important to them. Since each member-states' game represents only one-twelfth of the overall argument, two conditions have to be satisfied: to find out whether the articles used for bargaining hold the same or greater/lesser importance for the other countries, and to persuade the others to the very end of the negotiations that these two kinds of article are actually very important to one's own country and that relinquishing them should result in the others also relinquishing articles in which they are greatly interested. In other words, member-states pretend that some air-transport articles have greater importance than they do, in order to bargain with them for those that really are important to them.³⁴

In particular, because national experts do not permanently represent their member state on the Commission and, like transport Ministers, have to travel to and from the EC every time the proposal comes up for debate, only EC transport counsellors (diplomats) are part of the main lobbying and negotiating procedures. A constant exchange with their national government of documentation, information and instructions, underlines their role as messengers and communication channels between their country's capital and Brussels. The more limited their knowledge concerning the air-transport proposal, the closer the instructions from their national government; and the clearer their country's air-transport strategy, the rarer their government's intervention.³⁵ As N. Remmer, Denmark's transport counsellor to the EC explained

" I tell Copenhagen what is the climate, and how to best approach specific air-transport issues according to other member-states' commitments and interests. Meanwhile, I always suggest ways of manoeuvrings, for example whether we should withdraw, be reserved or go ahead" (interview 9 Nov. 1990).

³⁴ Information from author's interviews with S. Barbin (23 Nov. 1990); A. C. Mota (13 Nov. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990); R. Tsimbiropoulou (24 Jan. 1991).

³⁵Information from author's interviews with R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); Y. O. Castro (16 Nov. 1990); N. Denton (12 Nov. 1990); C. Ibarz Del Olmo (31 Oct. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990); M. Stoquart (5 Nov. 1990).

At this stage member-countries do not believe that the Commission could draw up a proposal to which all twelve have agreed, no matter how protracted the consultations. Nevertheless, their transport counsellors and national air-transport experts approach the air-transport Commissioners and Eurocrats informally in all kinds of ways: through their respective national Commissioners and Eurocrats; by telephone calls to their offices and homes; with invitations for dinner or an evening out; as well as indirectly via other individuals or nationals who might know them better. The main purpose of these approaches is, of course, to discover the Eurocrats' intentions on specific air-transport issues, and to lobby them to act more in the interests of the interlocutor's member-state.³⁶ As R. M. Cotteril, UK head of the Economic Policy Division of CAA, frankly acknowledged

"We tried to persuade the Commission to put forward the proposals that we wished, in other words closer to the UK's air-transport interests, just as any other member-state would attempt to do" (interview 31 May 1991).

In particular, national representatives tell the individual Eurocrat(s) or the heads of divisions responsible for drafting the air-transport proposal, about their main concerns and suggest alternative solutions. Whether at the Commission or at the Council, they always make it quite clear to the Eurocrats, the presidency and each other, which articles of the air-transport proposal are negotiable and which they will not permit to pass. When they were adamantly opposed to some specific points, it has always been because it has concerned genuine air-transport problems or interest of their country.³⁷

However, the political game does not permit letting one's country's air-transport interests be known in advance. National representatives always

³⁶ Interviews with F. Sorensen, 12 Nov. 1990; Y. O. Castro (16 Nov. 1990); J. Brown (16 Nov. 1990).

³⁷ Information from author's interviews with R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); Y. Castro (16 Nov. 1990); N. Denton (12 Nov. 1990); A. Van Der Noordt (12 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); N. Remmer (9 Nov. 1990); M. Stoquart (5 Nov. 1990).

avoid giving the Eurocrats any written commitment that would indicate their intentions and cramp their manoeuvering for a specific air-transport issue.³⁸ As N. Remmer, Denmark's transport counsellor to the EC, admitted

" We do not even trust our own nationals such as F. Sorensen. It is better to leave things in the air than to be committed beforehand" (interview 9 Nov. 1990).

Most EC member-states tried to co-operate with the Commission consensually, whereas other, especially the Netherlands and the UK, were more bellicose. Although all countries went along with or opposed the Commission's air-transport proposals more or less on the grounds of their national air-transport interests, those countries always reacted dynamically to the pace of liberalization in the Commission's air-transport proposals, even obliging the Commission - after a long period of bargaining, lobbying, and pressuring - to change its proposals. The UK especially developed a peculiar way of promoting its air-transport interests: it seemed to object on principle, and always had a counter-argument to any air-transport proposal, even if there was full consensus among the other eleven. In the end it always managed to further its own air-transport interests or if it did compromise, it still found ways of demonstrating that the UK was the real winner in any confrontation.³⁹

When the above discussions and negotiating procedures of the air-transport proposal have been concluded and agreed to by the Commissioner's chief of cabinet, it is sent to the Secretariat General of the Commission, which communicates the proposal to all *cabinet* chiefs of the seventeen Commissioners. Once the Commission passes the proposal it goes to the plenary session of the Commission, where the responsible Commissioner presents it to his colleagues, and all of them together decide on its adoption

³⁸Interview with N. Remmer (9 Nov. 1990).

³⁹Information from author's interviews with G. Radice (26 Oct. 1990); N. Remmer (9 Nov. 1990); F. Sorensen (12 Nov. 1990); R. Tsimbiropoulou (24 Jan. 1991).

and allocate its legislative form (Regulation, Decision, and so forth). Then the proposal is forwarded to the Secretariat General of the Council of Ministers - General Direction D: Research, Energy, Transport, Environment and Consumer protection, division of Air transport and Shipping - and is always addressed to the presidency of the Council. In the case of an air-transport proposal for Commission law only, approval by the college of Commissioners means that the proposal then passes directly to the implementation stage.⁴⁰

3.2. Formal Consultations by the Council of Ministers

At this level, whichever country holds the presidency of the Council of Transport Ministers must make out a case of agreeing with the air-transport proposal submitted to it, which most of the time has been drawn up entirely by either DG IV (Competition) or DG VII (Transport), but is officially known as the presidency's compromise proposal. The purpose of this is to create a negotiating environment with the minimum of uncertainty, risks, conflicts, and competition, and the maximum possibility of compromises and concessions.⁴¹ The task of achieving this falls chiefly to the Council's transport working group which consists of the Eurocrats who had drafted the air-transport proposal, national experts, transport counsellors, and the director of air-transport and shipping division and principal administrator of air-transport of the Council of Ministers' Secretariat, and is chaired by a transport expert of the member-state in the presidency, which along with Council Secretariat's officials, attempts a synthesis of the twelve divergent air-transport interests by negotiating each article of the proposal. The presidency's formal role is supranational and very important to the weaker member-states. This transport working group is the only stage where they are able to promote their own air-transport interests,

⁴⁰ Interviews with N. R. Burlough (9 Nov. 1990 and 6 Dec. 1990); E. Seebohn (6 Nov. 1990).

⁴¹ When a presidency is planning its activities may decide to take initiatives on certain subjects or introduce matters it considers of special importance and which it prefers not to leave to the Commission to initiate. The final outcome in every case is always a blend of national and EC interests. See Nicoll and Salmon, 1994: 76-77.

because if no compromise can be reached there, the proposal is going forward to the Council of Transport Ministers where strong members can always do better, given their weightier votes.⁴² It is here therefore that the member-countries' policy networks have the greatest negotiating strength vis-a-vis the eurocratic ones whose job is to defend and forward the air-transport proposal adopted by the Commission, and also to amend thorny articles so they will meet the objections of the delegations.⁴³

As mentioned already the negotiations are not usually based on any firm deal between member countries but employ constant trade-off arrangements, using as their main negotiating strategy "log-rolling" or "side payments" procedures. Every country's air-transport experts (issue communities) endeavour to sacrifice the minimum and profit the maximum while negotiating an air-transport legislation as close as possible to its national air-transport interests. This is the bottom line of the transport working groups.⁴⁴

In attempting to elaborate their own positions, member-states remain in constant contact with their governments and among themselves, in order to form alliances with others in the defense of some specific articles. Such bargaining and political manipulation - whether in the transport working groups or in the Council of Transport Ministers *per se* - takes place in private or in the corridors, and without witnesses, because the formality and collective nature of meetings restrains them from expressing openly their views and from understanding each other.⁴⁵

⁴² In the EC the weight of a member-country's vote depends on that country's politico-economic status and size. So Germany, France, Italy, and UK rate 10 points each for their vote, Spain 8 points, Belgium, Greece, the Netherlands, and Portugal 5 points, Denmark and Ireland 3 points, and Luxembourg 2 points. Total of 76 points. A qualified majority is made up of 70 per cent or 54 points. Conversely the blocking minority is 23 points. See also Hufbauer, 1990: 53; Lodge, 1993: 16; Nicoll and Salmon, 1994: 68; Sbragia, 1991: 82-83.

⁴³ Information from author's interviews with J. M. De Bastos (8 Nov. 1990); L. Van Hasselt (8 Nov. 1990); J. Parr (4 June 1991); N. Remmer (9 Nov. 1990); E. Seebohm (6 Nov. 1990); M. Stoquart (5 Nov. 1990). See also Nugent, 1991: 74-77, 289-98.

⁴⁴ On the general application of group negotiating strategies or distorted input politics see Dunleavy and O'Leary, 1989: 103-06 and Dunleavy, 1991: 39-40.

⁴⁵ Information from author's interviews with J. Brown (16 Nov. 1990); Y. O. Castro (16 Nov. 1990); N. Denton (12 Nov. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990).

After the working groups exhaust their ability to reach a compromise, the presidency sends the proposal to Coreper where political manipulation for the greatest possible compromises or concessions prior to the Council of Transport Ministers is usually extremely high. If Corepers reach agreement in specific air-transport articles or the overall proposal, they forward them/it to the Council of Transport Ministers as an "A" point, to be adopted without a debate. In case of controversy they either label the air-transport issues still being disputed as a "B" point and send them to the Council of Transport Ministers, or they refer them back to the transport working groups. However, the Coreper role in air-transport has been minimal because of the special technicalities involved, and therefore the final decision has always been taken at the Council of Transport Ministers.⁴⁶

At the meetings of the Council of Transport Ministers, all member-states attempt to increase their piece of the EC and international aviation pie as much as possible. Every country has always one or two air-transport issues on which it feels very strongly, and is willing to concede others in return for having its demands met. Therefore at this stage group alliances are very important for every member-state, big or small, but especially for the latter that alone or without the support of other member-countries have no influence if they wish to make sure that an air-transport proposal should not be accepted.⁴⁷ Member-states' group alliances themselves approach and are approached by others in an attempt to gradually reach a common platform for the voting at the Council of Transport Ministers. If small member-states promote air-transport issues that are opposed by large and strong ones, the

⁴⁶Information from author's interviews with M. De Bastos (8 Nov. 1990); N. Remmer (9 Nov. 1990); C. I. Del Olmo (31 Oct. 1990).

⁴⁷Greece is an example of an EC member state that most of the time remained isolated, has always been a follower, and is a passive party in the Council of Transport Ministers. Greece has constantly disregarded EC air-transport working groups and group alliances, a fact which has been interpreted as apathy and lack of concrete plans and positions. As a result, Greece has contributed almost nothing to the EC air-transport policy.

small countries come to a dead end due to their limited voting power.⁴⁸ As the Danish transport counsellor N. Remmer pointed out

" The Council's 'big boys' are primarily France, UK, Germany and secondarily Spain and Italy. They are the member-states that in the end decides on any air-transport issue left to be concluded by the Council of Transport Ministers" (interview 9 Nov. 1990).

There are, four basic and overlapping groupings at the Council of Transport Ministers stage. The first grouping involves the northern or central countries of Belgium, Denmark, France, Germany, Luxembourg, the Netherlands and the UK.⁴⁹ The second grouping takes in the southern or peripheral ones of Greece, Ireland, Italy, Portugal and Spain. The third grouping consisted of Ireland, Luxembourg, the Netherlands and the UK which believed that fast liberalization and even total deregulation should be the basic principle of the common air-transport market. The fourth grouping teams up Belgium, Denmark, France, Germany, Greece, Italy, Portugal and Spain, which have claimed that, on the contrary, it is liberalization through harmonizing the various national air-transport policies and the conditions of competition at EC level that is really the principle underlining a common air-transport policy.⁵⁰

So during 1989-1990, when the Council of Transport Ministers was discussing an air-transport proposal on slot allocation, northern member-states, whose aviation operations are for the most part scheduled, created a group alliance against those whose operations are chartered. For example in

⁴⁸Information from author's interviews with R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); D. Cockcroft (19 June 1991); A. Corcodilas (18 Jan. 1991); A. Van Der Noordt (12 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); N. Remmer (9 Nov. 1990); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); R. Tsimbiropoulou, (24 Jan. 1991); S. B. Yuksel, (31 Oct. 1990). See also *Vima Greek Journal*, 1993: 23.

⁴⁹Northern and southern are not simply geographical terms, but inextricably bound with the huge regional problems derived from historical, political as well as social causes in the whole of Europe since the Industrial Revolution.

⁵⁰The countries in group 4 were reluctant to accept liberalization without a "safety net", meaning that at least the national airlines should have a minimum share of the EC air-transport market. If an air-carrier went below that minimum, the EC should have an "air transport crisis mechanism" or a regulatory "safeguard clause". Therefore they wanted a longer transition period than the ardent supporters of EC air-transport liberalization, arguing that both the above requests ultimately undermined the liberalization policy of the EC air-transport market. Information from author's interviews with M. A. Ambrose (30 May 1991); J. Brown (16 Nov. 1990); Y. O. Castro (12 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990). See also *Financial Times* of 8 Dec. 1992: 2, of 24 June 1992: 18, of 23 June 1992: 1, and of 27 Mar. 1992: 2.

Spain, 80 per cent of aviation operations are non-scheduled, while in Germany 80 per cent are scheduled. By contrast when member-states debated EC air-transport competition proposals, it was the two groupings for and against liberalization that were the adversaries. For example the Irish Presidency (1 Jan. - 30 June 90), which was keen on fast liberalization, had full co-operation with those whose national and EC air-transport interests converged, and none at all with the rest. The opposite happened during the Italian Presidency (1 July - 31 Dec. 90), which wanted to delay the liberalization of the EC air-transport policy.⁵¹

With respect to individual member-states, Ireland - a peripheral and northern country - had conflicting air-transport interests with other northern as well as with other peripheral states. Denmark was much allied with Germany⁵² as well as with Ireland and the Netherlands, (which had strong ties with the UK, Ireland, and frequently with France). Moreover, some member-state alliances were strongly supported by France, Greece, Italy, Portugal and Spain, all of them Mediterranean countries with points in common regarding their air-transport. One of the best-known allied grouping with strong geo-political (northern or central) and cultural ties is that of the three Benelux countries (Belgium, the Netherlands and Luxembourg), whose strong and stable alliance has been a stable collective entity in EC air-transport decision-making. Although small and with few votes in the Council of Transport Ministers, they were always heard precisely because they did not stand alone but each had the backing of the others in support of its air-transport interests. The Benelux grouping was a good alliance to join for any other small or large member-state in isolation or with convergent air-transport interests, and in fact

⁵¹Information from author's interviews with R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); D. Cockcroft (19 June 1991); A. Corcodilas (18 Jan. 1991); C. I. Del Olmo (31 Oct. 1990); N. Remmer (9 Nov. 1990); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); R. Tsimbiropoulou, (24 Jan. 1991). A. Van Der Noordt (12 Nov. 1990); S. B. Yuksel, (31 Oct. 1990).

⁵²Denmark considered Germany to be its most reliable partner, and France the least reliable.

formed the base for "blocking minorities or majorities" in the Council of Transport Ministers.⁵³

There are other regular, if less well-accepted alliances. So for instance there have been many accusations by the majority of small member-states against the "troika" - politico-economically strongest countries of France, Germany and the UK - and against the alliance in favour of fast liberalization, consisting of Ireland, the Netherlands and the UK. The three "troika" countries were accused of blatantly intervening in EC air-transport decision-making to boost their own interests against the collective EC ones. They have very large air-transport industries, and so major air-transport interests in the EC. They therefore created their own dynamo of lobbying to influence what in the end was regarded not as the air-transport legislation of the EC, but as that of the EC troika. The fast-liberalization group, on the other hand, was charged of attempting to shape the EC air-transport policy and market according to the US industry deregulation standards. They believed that their respective airlines were already strong enough to survive against a competitive EC and international air transport, and they were unwilling to let the other member-states stabilize their national air-transport and to create mechanisms to protect their weaker and smaller airlines. Since their vital national air-transport interests happened to be vital to the Commission as well, they were able to occupy a strong negotiation position. Every time the Commission prepared proposals for liberalization they were right there to accelerate their adoption in the Council of Transport Ministers.⁵⁴

However academics and interviewees have argued that, in particular, the UK enthusiasm for liberalization of the EC air transport market was largely

⁵³Information from author's interviews with R. De Borger (5 Nov. 1990); J. Brown (16 Nov. 1990); D. Cockcroft (19 June 1991); A. Corcodilas (18 Jan. 1991); C. I. Del Olmo (31 Oct. 1990); N. Remmer (9 Nov. 1990); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); R. Tsimbiropoulou, (24 Jan. 1991). A. Van Der Noordt (12 Nov. 1990); S. B. Yuksel, (31 Oct. 1990).

⁵⁴Information from author's interviews with N. Remmer (9 Nov. 1990); G. Ryde (5 June 1991); D. Stasinopoulos (28 Oct. 1990); R. Tsimbiropoulou (24 Jan. 1991).

due to its traditional mercantilist objectives. Aiming to gain maximum advantage for its national airline BA, the UK declared itself ready to implement competition within the EC air-transport market, but its real objective seems to have been, however, to usurp it, by means of unfair competition. Ireland and the Netherlands on the other hand, as small member-states with strong outgoing air-transport markets and small incoming ones, were in quite an advantageous position: they had much to gain and nothing to lose from a fast liberalized and competitive EC air-transport market. In reality they, as well as the UK, were posing competitive threats not only to the EC but to the US air-transport market as well. Ireland especially had a considerable interest in the EC air-transport industry, because for it aviation was a means to advance its national trade and not solely its national air-transport industry. It needed a low cost and therefore competitive EC air-transport market, given that it had to transport practically everything by air.⁵⁵

As a result of the above EC member-countries' group alliances, tactics, maneuverings and accusations, most of the time nobody knew until the very last minute what the outcome of any particular air-transport debate might be, but there was much speculation, creating a climate of uncertainty and unpredictability in the Council of Transport Ministers. In such circumstances any member-state could suddenly change its position and isolate its allies on a particular issue or article.⁵⁶ For example, in the June 1990 Council of Transport Ministers, Spain successfully seceded from its alliance with the UK⁵⁷

⁵⁵ Information from author's interviews with M. A. Ambrose (30 May 1991); J. Brown (16 Nov. 1990); Y. O. Castro (12 Nov. 1990); A. Corcodilas (18 Jan. 1991); T. Middleton (13 June 1991); A. Van Der Noordt (12 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); N. Remmer (9 Nov. 1990); G. Ryde (5 June 1991); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); R. Tsimbiropoulou (24 Jan. 1991); S. B. Yuksel (31 Oct. 1990). See also McGowan and Trengove, 1986: 148; Pelkmans, 1986: 367.

⁵⁶ For a general discussion on politics of uncertainty see Mazey and Richardson 1993: 17.

⁵⁷ Spain had vetoed the first air-transport package in July 1987 because of the inclusion of the Gibraltar airport in the list of regional airports covered by it and became involved in a row with UK over the national status of Gibraltar's airport in the EC air-transport market. After long negotiations between the Commission and government ministers they finally reached an unanimous conclusion on the first package at the end of 1987 with an agreement between Spain and Britain over Gibraltar airport. The final compromise agreed between the two member-states was to exclude Gibraltar from the first air-transport package agreement. See *Financial Times*, 2 July 1987: 3; *ITF News*, Jan. 1988: 9.

and Germany, thereby isolating those two countries, and eventually achieved that a specific air-transport issue on slot-allocation went through.⁵⁸ Its adoption was purely a matter of high diplomacy and last-minute manoeuvering by Spain. During the intermissions of that Council session all national representatives were huddling in corners, feverishly trying to find out what exactly was happening. Like much else of the legislation passed by meetings of the Council of Transport Ministers, air-transport legislation on a specific slot allocation issue was passed thanks to sheer exhaustion at two o' clock in the morning. By then nobody cared much about anything except to finish and go home. This is reason a lot of air-transport compromises have come very late. Even when the air-transport issues were very important but the negotiators were tired they sometimes all gave up and agreed to an issue over which they had dug their heels in earlier. Another instance of the instability of alliances occurred at the December 1990 meeting of the Council of Transport Ministers. Although Denmark and France had agreed to support each other whatever direction the negotiations might take, at the last minute France reneged and left Denmark exposed and isolated. The reason was that France already had another air-transport issue in mind, and pulled away from Denmark before it was too late, realizing that it could promote its national air-transport interests better without that country.⁵⁹

In view of the above it may appear surprising, but is nevertheless true, that with respect to air-transport the EC member-states have always adopted

⁵⁸In fact the thorniest issue for Spain was that the shortage of slots at airports such as London Heathrow and Frankfurt was hindering the development of new services by its national airline Iberia. Therefore it insisted on the right of member-states to slow down the disbandment of capacity-sharing agreements if charter traffic was unduly hindering the ability of their scheduled airlines to compete. See *Financial Times*, 20 June 1990: 2.

⁵⁹In fact Denmark had air-transport problems with the EC as a whole, because it had to negotiate a mandate taken from Sweden and Norway (its air-transport partners in the jointly-owned Scandinavian airline SAS), which required that all three had equal rights in EC air transport. In other words, with Denmark, their gateway to the EC air-transport, they attempted to become EC member-states as far as aviation was concerned. After protracted negotiations in 1992 an agreement was signed between the EC and the Kingdoms of Norway and Sweden on civil aviation (A 0718 (01) OJ L 200 18 July 1992 p. 20-21). Information from author's interviews with J. Brown (16 Nov. 1990); N. Denton (12 Nov. 1990); C. I. Del Olmo (31 Oct. 1990); A. D. Lothe (13 Nov. 1990); A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990); B. Stahle (4 Dec. 1990); R. Tsimbiropoulou (24 Jan. 1991). See also *Financial Times*, 8 Oct. 1991: 2; *Official Journal of the EC*, 18 July 1992: 20-21.

proposals unanimously. This is explained by the fact that votes cast today can be bargained for future air-transport issues that may be more important. If on occasion two or more member-states felt strongly opposed to a particular issue, the Council of Transport Ministers would always try to formulate alternative suggestions or rephrase the offending passage, and so smooth over the anxieties and move towards a consensus-based arrangement that actually relied on political bargaining. So if, for example, one country wanted a deadline for an air-transport issue to be implemented in the national air-transport markets, and another/others did not the Transport Ministers' Council might suggest changing the words "must be met" in the text of the decision to "the best efforts will be made to meet this date". This ironed out the difficulty and both sides were satisfied.⁶⁰ According to J. Parr, Director General of ATUC and ex-director of the air-transport and shipping division of the Council secretariat

" No one wanted to leave a member state in disagreement today, because no one wanted to be in such a situation tomorrow" (interview 4 June 1991).

One is left with some important questions: has the Council of Transport Ministers ever collectively accepted as rational⁶¹ an individual member-state's air-transport proposal? and have individual member-states pursued their own national air-transport interests as though they were rational, knowing them to be collectively irrational? Since each individual member-state has always considered as rational the implementation of their own national air-transport interests in the EC air-transport decision-making only, even their rational arguments in this respect could hardly convince the Council of Transport

⁶⁰Interviews with A. Van Der Noordt (12 Nov. 1990); N. Remmer (9 Nov. 1990); R. Tsimbropoulou (24 Jan. 1991).

⁶¹Rational decision-making (Rational model) implies objective procedures for identifying problems, setting goals, evaluating all possible alternatives, and adopting the best for the common interest. In EC air-transport decision-making it was rather political interests (Political Interests model) and the organizational procedures (Organizational Process model) that ruled the process: the interaction of competing interests, the variable power exerted by these interests, how the rules and understandings shaped the nature of the decisions and the bargaining and self-interested compromises (frequently reached through a lowest common denominator approach), underlay the decisional outcome. See Nugent, 1989: 253-254.

Ministers collectively of their rationally being in favour of the EC air-transport market in general. As A. Van Der Noordt, Transport Counsellor of the Netherlands to the EC told the author

" If an air-transport issue was rational for a member state because it promoted its national air-transport interests, it was irrational for the Council's collectively per se. So what was rational for us was irrational for the others and vice versa" (interview 12 Nov. 1990).

In other words given the rule that the only rational air-transport argument for each individual member-country is to impose, by one means or another, its national air-transport interests on the others in the Council of Transport Ministers it does not matter whether its argument is rational or not; the other countries consider the proposal *a priori* as irrational. As a result, in the long run this attitude has advanced only the strong member-states (the troika's) national air-transport interests within the EC.

4. Conclusion

During the period 1987-1993, EC Commissioners, Eurocrats and member-states played what should have been mutually supportive roles in policy and decision-making. Based on exerting continual influence on the decision-making apparatus, the process functioned in such a way that the performance of every role depended upon the complementary performance of all others. In practice, Commissioners and Eurocrats initiated huge and obvious conflicts either by promoting their own country's air-transport interests instead of the common EC ones, or by endeavoring to increase their political power and personal prestige in EC air-transport policy-making. The EC member-states on the other hand, which gave priority to their national air-transport interests, as the chief actors in the negotiating, bargaining, and

decision-making, were obliged to find a common denominator for their divergent interests through reliable coalitions, political-economic compromises and pay-offs, tactical maneuverings, and procrastination.

In the end, although the EC adjusted its air-transport liberalization policy to fit the conflicting reality of the strong member-countries (the troika of France, Germany and the UK) divergent air-transport interests, as well as of the rest member-countries following them, it did not finally reach a joint EC air-transport policy, since its deliberations were not those of rational decision-making. There was a perversion and/or distortion of the EC air-transport policy and decision-making process that obviated any prospect for an EC air-transport policy common to all member-states. The four cases of chapter V will substantiate the above.

CHAPTER V

FOUR CASES: EMPIRICAL EVIDENCE

" Commissioners shall neither seek nor take instructions from any government or from any other body....Each member-state undertakesnot to seek to influence the members of the Commission in the performance of their tasks".¹

The four cases which follow are presented to put to the proof the assumption that air-transport policy making by the EC Commission is supra-national. Some examples have already been given in the preceding two chapters of the Commissioners' and Eurocrats' attitudes and actions and their interacting roles and the political manipulations they engaged in, to accommodate their personal and national air-transport interests. However, I have not systematically examined all the participants, or the specific situation and conditions in which they occurred.

Whilst admittedly cases as such confirm nothing, the four that are given below are absolutely typical and representative of the situation in the EC air-transport sector, and therefore can be used to disprove at any rate the assumption that the Commission played a supra-national role. This assessment is further substantiated by the fact that two Commissioners and two Eurocrats concerned were the main actors in EC air-transport legislation. Now defining the criteria for selecting EC cases is like walking headlong into a layer of a quicksand. A promising individual case may prove unsuitable from the EC point of view or from the perspective of individual member-states and specific Commissioners and Eurocrats; or the nature of the air-transport policy issue may be too specialized as an illustration of EC policy-making generally, and more of a research project in air transport itself. On the other hand, if a particular aspect of a case is quite clear-cut in political terms, does this not indicate some element of typicality of the case as a whole?

¹ The conditions governing the appointment of EC Commissioners. Vincent, 1987: 14.

A main point of consideration concerns the question of the similarity of a set of cases. This is apposite here, given that in all four cases a bias emerged favouring the relevant countries' national air-transport against the joint EC air-transport interests. In defense of my case selection I will say that the two cases concerned with the Commissioners' air-transport politics are wholly relevant and related to the issue raised earlier, concerning how particularistic national air-transport interests may appear far more vital to the member-country than common EC ones. Why otherwise would the protagonists of EC air-transport liberalization and fighters for the supra-national role of the Commission - people like P. Sutherland and Sir Leon Brittan, Commissioners of DG IV (Competition); Lord Stanley Clinton Davis and Karel Van Miert, Commissioners of DG VII (Transport); and Jacques Delors as president of the Commission - in practice obstruct the process of liberalization of the EC air-transport market becoming a common EC air-transport policy, and betray the supra-nationality of the Commission?

The two cases of Eurocrats show contrasting roles, yet both of which again totally related to national air-transport interests. The important point is the paradox of the *denouement*. One Eurocrat F. Sorensen, head of the air-transport division of DG VII for Transport), who was engaged in power politics and domestic air-transport priorities, was not so badly hurt when his activities were seen too blatantly to contradict his supposedly supra-national role. The other Eurocrat (N. Argyris head of the transport and tourist industries of DG IV for Competition), while serving the common EC air-transport interests for liberalization, was caught between his subordinate's power politics and his super ordinates' national air-transport interests and was replaced from his post. This is a case where a supra-national actor lost his position because his colleagues behaved unscrupulously.

Finally, it should be noted that elements from actual case studies are indispensable to research on policy-making in order to put across its dynamic nature and evolution -in this instance of EC air-transport politics. None of the static models usually employed have captured the flavour of the EC political environment. While keeping in mind the caution concerning typicality and the representatives of these four instances for the EC as a whole, each case will now be examined in brief. I regret I can not give the more detailed account I had planned, but I was considerably restricted in access to key sources. While certain facts could be gleaned from the press and, of course, from interviews, my interviewees were rather reluctant to say very much on these highly controversial matters.

1. F. Sorensen

In 1987, Denmark's F. Sorensen, head of air-transport division of DG VII, had already served 10 years in it. This meant that in the period 1987-1990, when the main EC air-transport legislation was promulgated, he was the most powerful Eurocrat involved and eventually the chief EC air-transport legislator. While keeping a low profile, F. Sorensen was undoubtedly an independent EC air-transport policy-maker and he enjoyed high esteem and respect from all air-transport policy communities in the EC, as well as from worldwide air-transport networks.² As J. Brown and Y. Castro transport counsellors of Ireland and Portugal respectively agreed

"When F. Sorensen was not present at the meetings no one knew what to do"
(interviews 16 Nov. 1990).

His status was such that most of the time he had a completely free hand vis-à-vis his Commissioners, their cabinets, the director general and the

²Information from author's interviews with J. Brown (16 Nov. 1990); Y. Castro (16 Nov. 1990); R. P. Holubowicz (15 Nov. 1990); T. Middleton (13 June 1991); J. Parr (4 June 1991); R. Tsimbiroupolou (24 Jan. 1991); L. Van Hasselt (8 Nov. 1990); S. Yuksel (31 Dec. 1990).

director.³ As R. P. Holubowicz director general of the Association of Independent Airlines in the EC (ACE) commented

" Sorensen was a valuable assistant for the Commissioner. This power derived to a large extent from his air-transport expertise, but equaled the Commissioners' political power" (interview with the 15 Nov. 1990).

On the debit side F. Sorensen has been charged at one time or another by most EC air-transport communities with having amassed his power in air-transport by (i) his personal interest in monopolizing the EC air-transport policy making process and succeeding in drawing much political support in the EC and worldwide; (ii) of serving the strong member-states and their airlines' air-transport interests; and (iii) of manipulating the EC air-transport market for solving the problems of his national airline SAS. As a result there was much silent hostility from his subordinates, super ordinates, and the representatives of other member-states.⁴

Some of his colleagues below him in the EC hierarchy alleged that his enormous influence in EC air-transport policy-making was due to his having a monopoly of access to information, which he then selectively withheld from both his super ordinates and subordinates. They said he was reluctant to delegate power and kept important papers and special cases for himself. If he eschewed as far as possible the intervention of his colleagues in the air-transport division, it was because he was to a large extent protecting himself and his strong position from them. Nevertheless on the other hand, by concentrating as much power as possible in his own hands, he had become so extremely busy that he was obliged to delegate part of his work to his colleagues in the air-transport division, who therefore found the opportunity to use their power to partly control and influence specific air-transport proposals

³Interviews with L. Van Hasselt (8 Nov. 1990); R. P. Holubowicz (15 Nov. 1990).

⁴Confidential information given to the author in various interviews with EC officials and member-states representatives wishing to remain anonymous.

such as the slot-allocation one. Finally they alleged that, by handling all the US-EC air-transport negotiations himself, he had laid himself open to easy manipulation by different air-transport interests, and that this had made him the pawn of his colleagues.⁵

My interviews with his colleagues of all levels revealed further contradictory views on him. While F. Sorensen in fact had strongly supported his subordinates' air-transport competences and expert roles in his division, most of them overtly or covertly disregarded his authority in air transport.⁶ His French director D. Vincent, on the other hand, expressed the highest respect for him and his very considerable competence in air-transport matters, may be because he was totally depended on him as concerning the air-transport policy in Directorate C of DG VII (Transport).⁷

As mentioned in ch. IV, F. Sorensen had intra-DG VII problems with his socialist Belgian Commissioner Karel Van Miert and his Spanish director general E. Pena Abizanda, because he wanted to proceed with the liberalization of the EC air-transport market faster than they wished, and without special regard for their respective national air-transport interests. He felt frustrated because these two men's attitudes and motivation in the matter ran directly counter his own air-transport philosophy. Highly skilled in political manipulation and manoeuvering, and in order to assure himself of the necessary backing for his attempts to use his position to satisfy Denmark's national interests, he was able to selectively deal with and eventually serve the "troika" (France, Germany, the UK) and their airlines in matters such as AF, BA, LH take-overs, alliances and mergers.⁸ As C. I. Del Olmo, Spain's Counsellor of Transport in the EC expressed it

⁵Confidential information given to the author in various interviews with colleagues of his division who wished to remain anonymous.

⁶The author reached this conclusion from various interviews he had with EC officials who wished to remain anonymous.

⁷ Interview with D. Vincent (6 Dec. 1990).

⁸Confidential information given to the author in various interviews with EC officials and member-states representatives who wished to remain anonymous.

" The dossier of SAS, Denmark's national airline, was Sorensen's main priority" (interview 31 Oct. 1990).

This was no secret, the interest-representatives of the SAS contended. As the SAS representative in the EC, Denmark had very specific air-transport problems and, as might be expected, tried to use its national F. Sorensen to influence EC air-transport policy on behalf of its SAS partner-countries and its own national air-transport interests. They alleged that other EC member-states did likewise with their nationals, an example being Spain with E. Pena Abizanda, director general of DG VII (Transport), who was F. Sorensen's superordinate, who came into conflict with F. Sorensen because he himself was trying to serve Spain's national air-transport interests.⁹ As N. Remmer, Danish transport counsellor to the EC explicitly stated

" In March 1990 I went to C. Chene, transport adviser of Commissioner Karel Van Miert, and explained to him that in order to solve Denmark's air-transport interests, Copenhagen and I should stay in close contact and co-operate with Sorensen" (interview 9 Nov. 1990).

In January 1991, as a result of all the above allegations against F. Sorensen, Commissioner Karel Van Miert and director general E. Pena Abizanda of DG VII (Transport) decided to relieve him of the full extend of his air-transport responsibilities by decentralizing his sphere of authority in EC air-transport policy-making: Directorate C on Air-transport was split into four divisions instead of three, with Sorensen continuing as head of air-transport division with slightly reduced power.¹⁰

However, even though F. Sorensen had discriminated in favour of Denmark's particularistic national and EC air-transport interests, his ability to

⁹Information from author's interviews with A. D. Lothe (13 Nov. 1990); N. Remmer (9 Nov. 1990); B. Stahle (4 Dec. 1990).

¹⁰Information from author's interviews with E. Paganelli (7 Nov. 1990); J. Parr (4 June 1991); D. Stasinopoulos (28 Oct. 1990). To my knowledge the real reasons behind the change were not mentioned in the press

be the center of power politics with the "troika" interests and his expertise in air transport kept him in another powerful post in the EC air-transport division. This was why, despite the usual flexibility in the appointment and deployment of Eurocratic posts, F. Sorensen, who by the end of 1990 had already served for thirteen years in the EC air-transport division, continued to do so and does so still. This is particularly interesting in contrast to the Argyris case below.

2. N. Argyris

N. Argyris' case was totally different from that of Sorensen. As mentioned in ch. II, in 1989 the British national N. Argyris replaced the German H. Kreis as head of the transport and tourist industries division when Sir Leon Brittan became Commissioner of DG IV (Competition). To my knowledge it was his nationality and his neo-liberal beliefs that were the two determinant factors in his appointment. He was neither an expert in air transport nor a lawyer, however (two crucial qualifications in this division), and therefore was *a priori* outside EC air-transport power politics.

As a result, he fell foul of politics of his Commissioner Sir Leon Brittan, Irish Director J. Temple Lang, and his Dutch subordinate B. Van Houtte, all of whom wanted to promote their national air-transport interests, and were in favour of the speedy and extensive liberalization of the EC air-transport market. In other words he had acted in accordance with EC rules, while his superiors wished to proceed particularistically in favour of their national air-transport interests. Moreover, as discussed in ch. IV, N. Argyris was accused by his superiors of having conciliated more of the DG VII politic-economic directions than the latter wished.¹¹

More specifically N. Argyris, who was in the center of the political manipulations of the Commissioners, disagreed with and in due course

¹¹Interview with L. Van Hasselt (8 Nov. 1990).

clashed with his own DG IV Commissioner Sir Leon Brittan, because he was against the latter's non-competitive practices in EC airline industry alliances, mergers, and buy-outs, (particularly those between strong member-states' airlines such as AF, BA, and LH, which are further discussed below). This attitude earned him the displeasure of France and Germany as well, aside from the UK's. He was caught in the middle. On the one side were the Commissioner, his own Irish director general, and his Dutch subordinate, all interested in pushing for fast and extensive liberalization. On the other was the DG VII for transport which was chiefly interested in arriving at a common policy for more gradual liberalization through steady negotiation. Argyris' main objective was to achieve a compromise between these two sides, DG IV (competition) and DG VII (transport), specifically as concerning a more restrained pace of liberalization.¹²

In consequence, both his Irish Director and his subordinate B. Van Houtte, interfered almost daily in the EC air-transport competition policy. In fact N. Argyris was stopped from time to time by his director from what he was doing, while some other times he felt that his actions did not have his director's backing. B. Van Houtte on the other hand, who as the main air-transport policy-maker of DG IV (Competition) had been in charge of both air-transport competition legislation packages adopted by the Council of Transport Ministers, during my interview with him did not in any way acknowledge the existence let alone the role of N. Argyris in any EC air-transport competition policy-making process (though Argyris was the main negotiator for legislation on competition). Gradually therefore N. Argyris was losing ground and had less and less authority in the air-transport policy-making of DG IV, and not a day passed without power struggles and strong disagreements between the three men over EC air-transport competition policy. In the end N. Argyris, endeavouring to apply the Commission rules but also to adapt them slowly to

¹² Interview with L. Van Hasselt (8 Nov. 1990).

the EC air-transport market by reconciling them with DG VII proposals, was made the scapegoat for his Commissioner's, director's, and subordinate's unscrupulous pursuit of their air-transport interest. At the beginning of 1991 his position was taken over *de facto* by the German H. Kreis (whom he had himself succeeded originally in 1989), but even in 1992 Kreis name did not appear on the official personnel list as head of the division, merely as deputy head.¹³

3. Commissioners Serving UK interests

As mentioned in ch. II, in 1987-1988, the UK effectively had two Commissioners to look after its national air-transport interests. One was the UK's own Lord Stanley Clinton Davis of the opposition Labour Party, who was head of DG VII (Transport). The other was Irish Commissioner Peter Sutherland of DG IV (Competition). Sutherland was a neo-liberal who saw competition as essential for serving the best interests of Ireland which depended largely on transporting exports/imports by air. Since this ideology happened to agree with Britain's, Sutherland was willing to support the conservative new point of the UK in certain matters, if this indirectly helped his own country.¹⁴

The important purchase in December 1987 by the UK's privately-owned airline British Airways (BA) of the country's second largest airline British Caledonian (BCal) was both the starting point of controversial mergers in EC air-transport, and an illustration of the UK's air-transport strategy in the domestic, EC, and global air-transport markets.¹⁵

¹³ All the information on the Argyris case stems from my interview with L. Van Hasselt (8 Nov. 1990). To my knowledge there were no press reports on the case. I was also unable to get other people to confirm or deny the facts as here set out. Argyris himself, after first refusing for two months to see me at all, in the end was extremely guarded in his comments. During our long interview (approximately 1 h. 45') he never mentioned anything about his situation although he was well aware of his near future replacement.

¹⁴ Financial Times, 20 June 1990: 2; Gialloreto, 1989: 9-10; Golich, 1990: 166; Whitaker, 1989: 31.

¹⁵ Daily Telegraph of 23 Oct. 1992: 24, and 2 Oct. 1992: 24-25; Marshall, 1988: 19; McCowan, 1987: 58-63; Tritton, 1989: 160-62; Woolley, July 1988: 13-14.

As reported by G. William (1987: 7-19), BCal's creator Sir Adam Thomson clarified in his autobiography *High Risk*, that it was the British conservative government that forced the BCal merger with BA at a higher price than BA would have liked, and Irish DG IV Commissioner P. Sutherland accepted that merger in the absence of any regulations to the contrary, and despite the fact that this merger did not serve Ireland's best interest. In particular it was both the UK's Monopolies and Mergers Commission (MMC) and the Civil Aviation Authority (CAA) that actually controlled, planned and imposed the proposal for the BA-BCal merger on the Commission on which Sutherland was then serving. The latter, in an attempt to conceal the limited extent of its powers,¹⁶ through Sutherland investigated the merger on British Midland's complaint, but did not actually issue a ruling. On the contrary, the Commissioner approved the BA-BCal merger the selfsame year it had refused it to SAS, justifying its decision by saying that BCal had to stay in British hands. In fact P. Sutherland pretended he was very concerned about the effects the merger would have on EC air-transport competition but at the same time he declared that it was not anti-competitive on grounds of size. This caused considerable controversy within the Commission and the EC air-transport sector, the upshot of which was that in March 1988, Sutherland's DG IV (Competition) announced that as a condition for accepting the takeover, BA had to allow other airlines fair access to the UK air-transport market. These fair access conditions were actually no different from those already in force in the form of domestic concessions between the UK government and BA's management (which, it is worth noting, represents entrenched private air-transport interests as well as the UK's national ones).¹⁷

¹⁶The first package, giving powers to the DG IV for Competition, was not yet in effect.

¹⁷Balfour, 1990: 31; Brummer, June 1990: 26; *Financial Times*, of 24 July 1987: 2, of 23 Dec. 1987: 1, and of 23 July 1987; *ITF News*, Jan. 1988: 10; Kasper, 1988: 41; Pilling, March 1991: 12; Sochor, 1991: 203; Tritton, 1989: 160-62; *Vima*, Greek Newspaper, 1992: 61; Woolley, July 1988:14. See also MMC: BA and BCal: Report on the proposed merger (1988) and House of Commons Transport Committee, 1990: 7.

From 1989 to 1992 the UK government had its neo-liberal political appointee, Sir Leon Brittan as Commissioner of DG IV (Competition), whose major tasks were: (i) to further secure the UK's national air-transport interests; (ii) to guarantee BA a superficial competition scrutiny in the EC air-transport market; (iii) to promote New-Right politico-economic practices in the EC air-transport competition policy; and (iv) to balance the powers and restrictive influences of the socialist French Commission President Jacques Delors and the socialist Belgian Commissioner of DG VII (Transport) Karel Van Miert.¹⁸

After Sir Leon Brittan took office and all through the period 1989-1992, under his and the UK government's blessings BA, by means of non-competitive practices, ousted most of the domestic independent and charter airlines from the UK air-transport market.¹⁹ The Commission's acceptance that these BA acts were not incompatible with the EC air-transport competition policy, caused anxiety and confusion in the EC air-transport industry, and accusations against Sir Leon Brittan for back-stage manoeuvering of political manipulation jointly with President Jacques Delors and Commissioner Karel Van Miert of DG VII (Transport) were a frequent phenomenon in EC air-transport policy communities and the press.²⁰ As R. P. Holubowicz, director-general of the Association of Independent Airlines in the EC (ACE), stated

"Sir Leon Brittan started as a tough fighter for air- transport competition but he gave up as soon as BA's interests were accommodated within the EC" (interview 15 Nov. 1990).

4. Commissioners Serving French Interests

In the same period (1987-1993) the interest of France and its airline AF national and their anti-competitive and restrictive practices had the support of

¹⁸Information from author's interviews with J. Brown (16 Nov. 1990); Y. Castro (16 Nov. 1990); D. Cockcroft (19 June 1991); J. M. De Bastos (8 Nov. 1990); R. P. Holubowicz 15 Nov. 1990); J.P. Meheust and D. Jullien (23 Nov. 1990); C. Ibarz del Olmo (31 Oct. 1990); J. Parr (4 June 1991); M. Pisters (12 Nov. 1990); E. Paganelli (7 Nov. 1990); G. Ryde (5 June 1991); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); D. Vincent (6 Dec. 1990).

¹⁹All BA's domestic anti-competitive practices will be discussed in detail in ch. VI.

²⁰ITF News, March 1992: 11; Lewis, May 1990: 38-56; Vima, Greek newspaper, 8 March 1992: 22; Woolley, July 1988: 14.

the socialist French Commission President Jacques Delors,²¹ and after 1989 that of Commissioner Karel Van Miert of DG VII (Transport), also a socialist. They were both involved in attempts to satisfy their own national and their airlines' interests. Van Miert in particular was a close collaborator of President Delors, given that they had similar political ties and identical air-transport interests.²²

In fact, after the BA-BCal merger, under their blessings, AF imitated BA's domestic air-transport strategy and purchased both its domestic rivals: the privately-owned airline *Union des Transportes Aériennes* (UTA), and the partially-private airline Air Inter. As in the BA and Sir Leon Brittan case, the Commission's finding that AF's actions were acceptable in the framework of the EC air-transport competition policy, sowed apprehension and doubt in the EC air-transport policy communities and the press. Jacques Delors and Karel Van Miert were charged with unfair discrimination, of entrenching AF's and national air-transport interests, and with horse trading and political bartering with Sir Leon Brittan who as head of DG IV (Competition) was responsible for the mergers.²³ As R. M. Cotterill, head of economic policy division of UK/CAA underlined

" If one knows the nationality of influence [Delors] in the Commission, one can draw one's own conclusions about the AF case" (interview 31 May 1991).

In the section that follows, the two above cases are combined to illustrate in detail these political bartering, power struggles, and national air-transport machinations engaged in by the three Commissioners serving their own national and domestic airline's air-transport interests in the Commission.

²¹AF chairman Bernard Attali's brother Jacques was a close adviser of the French President F. Mitterand, who had a very close collaboration with the Commission President Jacques Delors.

²²Information from author's interviews with J. Brown (16 Nov. 1990); Y. Castro (16 Nov. 1990); D. Cockroft (19 June 1991); J. M. De Bastos (8 Nov. 1990); R. P. Holubowicz (15 Nov. 1990); J.P. Meheust and D. Jullien (23 Nov. 1990); C. Ibarz del Olmo (31 Oct. 1990); J. Parr (4 June 1991); M. Pisters (12 Nov. 1990); E. Paganelli (7 Nov. 1990); G. Ryde (5 June 1991); F. Sorensen (12 Nov. 1990); D. Stasinopoulos (28 Oct. 1990); D. Vincent (6 Dec. 1990).

²³Interview with S. Webb (4 June 1991). See also Cameron, 1990: 13; *Financial Times*, 26 June 1990; Miert, 1990; Pilling, March 1991: 12.

AF's purchase of UTA and Air Inter especially revealed a mass of under-the-table political agreements between the three men. This case, as well as two more BA cases, are examined below.

5. Political Manipulations

In December 1988, UTA filed a complaint with DG IV (Competition) against the French government for refusing it EC transatlantic routes in competition with AF. Not surprisingly, the DG IV delayed a decision in UTA's favor for thirteen months, until the beginning of 1990, that is. The reasons for the delay were that (i) at the beginning of 1989 DG IV (Competition) had finalized drafting the second air-transport package (due to be presented to the Council of Transport Ministers by September of the same year and to be adopted by it in December) which put forward the main liberalization legislation of the EC air-transport market through a number of air-transport competition regulations; and (ii) in the second half of 1989 France, one of the stronger and more restrictive member-states, held the EC presidency, and touchy internal politics and vigorous lobbying and negotiations took place between the Commission and the strong "troika" member-countries, and therefore also between Jacques Delors, Sir Leon Brittan and Karel Van Miert.²⁴ As M. Kanganis, UTA's head of multilateral affairs, verified

"Our complaint was delayed due to AF and Delors' political pressures and consequent DG IV back door manoeuvering" (interview 22 Nov. 1990).

At the beginning of 1989 France, as well as Germany, were against a fast moving pace of liberalization, and had opposed the second air-transport package proposed by British Commissioner Sir Leon Brittan of DG IV

²⁴Interviews with M. Kanganis (22 Nov. 1990); R. Valladon (22 Nov. 1990). See also Brummer, June 1990: 26; Feldman, April 1990: 31; ITF News of Nov. 1991: 31, and April 1992: 19; Pilling, March 1991: 12; Whitaker, Jan. 1989: 30; Woolley, July 1988: 14-15.

(Competition). While in the presidency (1 July - 31 Dec. 1989), France became very tough in opposing the whole air-transport package, and threatened that it would not allow it to pass in the Council of Transport Ministers. On the other hand, the member-states in favor of liberalization, and especially the UK and Commissioner Sir Leon Brittan, having urgent and entrenched national air-transport interests to serve, started complex and highly political negotiations and bartering to ensure that the second air-transport package would be certain to be adopted by the Council of Transport Ministers by the end of 1989. As a result of internal German-French lobbying and pressures, mainly from President Delors and the German President of AEA H. Neumeister, Sir Leon Brittan consented to AF's anti-competitive practices in the domestic and EC air-transport market. France and AF were given assurances by the Commission President Delors and the DG VII (Transport) Commissioner Karel Van Miert that AF would be allowed to purchase UTA and Air Inter. In parallel in September 1989, on the basis of the Commission's political machinations and politico-economic re-arrangements in the EC airline industry, and in order for France and Germany to show their irrevocable decision to accept an equally important role for BA within the EC air-transport market, the French state-owned airline AF and the German state-owned Lufthansa announced a marketing co-operation agreement on 15 September 1989. Presumably this strategic alliance met with considerable skepticism in the DG IV which investigated the case, but it issued no decision. Once France had served its national air-transport interests, and had secured AF alliances, mergers, and other profitable ventures in the domestic and EC air-transport market, it became gradually more amenable to increased liberalization and further compromise with the second EC air-transport package proposed by DG IV. So two months later, in November 1989, the French Transport Minister M.

Delabarre accepted the second air-transport package, and in December its proposals were unanimously accepted on principle by the Council of Transport Ministers. In fact the French presidency, along with French-German politico-economic machinations in the Council of Transport Ministers as well as the European Parliament, had set the harmonization of all member-states' different economic, operational, and technical regulations as a primary precondition of the liberalization of EC air-transport market.²⁵ As D. Vincent, head of directorate C of DG VII (Transport), has commented

"Although at one point the second package had been totally opposed by France and Germany, three months later they accepted it, due to a lot of trilateral compromises" (interview 6 Dec. 1990).

It was not coincidental that at the beginning of 1990 Chargeurs, the owner of UTA sold 54.58 per cent of his 82 per cent shares in UTA to AF. This meant that AF automatically acquired also UTA's charter subsidiary Aeromaritime, plus UTA's 35.8 per cent share in Air Inter. Jacques Delors and Karel Van Miert publicly approved. They had palmed off the AF deal on the Commission so that AF would be able to acquire Air Inter indirectly, in this way circumventing a previously negative Commission decision concerning the deal. In doing so they characteristically ignored Sir Leon Brittan who was known to oppose it as being against BA's air-transport interests. His displeasure sparked an angry controversy within the Commission's policy communities. Sir Leon Brittan saw the AF affair as a case of the political bosses elbowing him aside in a publicly insulting fashion and, despite the inevitability of the matter, he insisted on opening an investigation into AF's take-over of UTA and Air

²⁵ In fact the Intelligence Service for Air Transport in the European Community (AEROPA) had vigorously and openly accused with newsletters the French government and presidency, the Council of Transport Ministers as well the European Parliament and its *rapporteur* Dutch Socialist B. Visser of nationalism and of vehemently opposing a single EC air-transport market and common EC air-transport policy. Interviews with R. P. Holubowicz (15 Nov. 1990); C. I. Del Olmo (31 Oct. 1990). See also *Aeropa newsletters* Sept. 1989-Feb. 1990; Cameron, 1990: 13; Campbell, Feb. 1990: 106-09; Feldman, Feb. 1990: 48, April 1990: 34, and Oct. 1990: 51; *Financial Times*, 8 Dec. 1989: 3; *House of Commons Transport Committee*, 1990: 6; *ITF News*, Sept. 1989: 22; Lewis, May 1990: 384-85; Pilling, 1991: 52-53; Sutton, May 1990: 378-79; Tigner, Jan. 1990: 10.

Inter in mid-February. The French government and AF retaliated by reminding him that they had informed him prior to the purchase, and that DG IV (Competition) had approved BA's acquisition of BCal after some face-saving conditions had facilitated BA to make the combination more palatable politically. For the same reason Sir Leon Brittan was obliged to announce that AF would permit new non-French or secondary French airlines to extensively compete with it on eight internal and fifty international routes, on condition that AF would relinquish its 35 per cent stake in Transport Aerien Transregional (TAT), France's fourth largest airline. These "conditions", like those in the BA-BCal case, were taken simply as formalities, although, as is discussed below, BA's chief priority was the acquisition of a stake on TAT, as concerning its pursuit to put a foothold in the French domestic market.²⁶

Meanwhile other negotiations and political barterings were taking place at the beginning of 1990, involving the three Commissioners and Belgium, the Netherlands and the UK, and concerning mainly BA's attempt at an intra-community alliance with the Dutch national airline KLM and Belgium's SABENA, to create a new company called SABENA World Airways (SWA). For this BA and KLM would acquire a 20 per cent stake each in SABENA. Because BA's sole wish was to dominate the Brussels hub-airport, Sir Leon Brittan was willing to make concessions, although such a big cross-border alliance risked upsetting the delicate politico-economic balance of the EC air-transport market. The deal and its implications were well understood by Jacques Delors and Karel Van Miert who therefore put forward their own proposal. Although there was a great deal of back-door manoeuvering between BA and DG IV in the Commission, in the end no satisfactory agreement was reached and the proposed alliance was dropped. The main

²⁶Interview with G. Ryde (5 June 1991). Feldman, April 1990: 31-32; *Financial Times*, 1 Feb. 1991: 14; *ITF News* of Mar. 1990: 14, of Nov. 1991: 31, and of April 1992: 19; Pilling, March 1991: 12; Whitaker, Jan. 1989: 30; Woolley, July 1988: 14-15.

reason for this failure was said to be DG IV's (Competition) opposition to it after vigorous lobbying by independent airlines' private interests, and especially that of Belgium's charter airline Trans-European (TEA). Although BA during that time had indeed made overtures for a controlling stake in TEA, which was on the verge of bankruptcy, the real reasons behind the abortive BA-KLM-SABENA alliance were, one, that Sir Leon Brittan and Karel Van Miert respectively did not consider BA's and SABENA's interests satisfied; two, that Jacques Delors was asking for major concessions in the wake of AF's merger with UTA and Air Inter, and for other alliances like the AF-LH marketing co-operation agreement, which would have damaged BA's air-transport interests; and third, that the BA/KLM/SABENA merger - bringing together the two private-sector heavyweights (BA and KLM) - caused considerable hostility from German and French lobbies, which ultimately blocked it.²⁷

Concomitantly with Jacques Delors and Karel Van Miert's successful promotion of AF's interests, BA embraced an attempt to hit AF in its own domestic air-transport market: it opened negotiations with the privately-owned Transport Aerien Transregional (TAT) to redeem more than the 35 per cent stake conceded by AF in connection with its UTA-Air Inter merger. Sir Leon Brittan did not discuss the buy-out with Delor and Van Miert because he knew them both to be absolutely against it, and neither did he need to: he had the power under the EC air-transport legislation to approve the redemption, whether they consented or not. After long and difficult negotiations, the two airlines reached agreement in October 1992, and Sir Leon Brittan approved the redemption of 49 per cent of the TAT French airline by BA. In February 1991 Sir Leon Brittan, in his attempts to further promote BA interests and to

²⁷ *Air and Cosmos*, Jul./Aug. 1990: 44; Cameron, 1990: 13; Feldman, April 1990: 31-32 and Oct. 1990: 50-51; *Financial Times* of 1 Feb. 1991: 14, and of 10 Jan. 1992; *ITF News*, Nov. 1991: 31; Lewis, May 1992: 384; Pilling, March 1991: 12; Reed, Feb. 1990: 95-6; *Vima* Greek newspaper, 8 Mar. 1992: 22; Williams, 1990: 30.

soften the attacks on him by the UK independent airline British Midland Airways for favouring BA's interests, had fined the Irish national airline Aer Lingus, their major competitor on the London-Dublin route, with 750,000 ECU (US \$ 890,000) after a complaint by British Midland for refusing it to grant reciprocal ticketing rights. Finally, at the end of November 1992 he also approved the merger between BA and the bankrupted UK charter airline Dan Air. Inevitably, further serious controversy and long-term political machinations between Sir Leon Brittan on the one hand, and Jacque Delors and Karel Van Miert on the other, were the result.²⁸

The DG IV (Competition) decision on the BA-TAT deal was indeed a provocative one, given that AF owned 33 per cent of TAT, and TAT was France's foremost independent airline. AF accused Sir Leon Brittan of discriminating against AF in favour of (i) BA's national and private interests and (ii) TAT's private ones, and of using a double standard. In fact, in mid-November 1992, AF president Bernand Attali had threatened legal action against the Commission and especially against Sir Lion Brittan because the latter, in deciding the take-over of Dan-Air was contravening Brussels jurisdiction. Also, Sir Lion Brittan should have prevented the purchase of TAT from going ahead during the four-week investigation into BA's attempt to acquire the 49 per cent stake in TAT. The conflicts between the two camps throughout 1987-1992 were a major causes for Sir Leon Brittan's replacement by Karel Van Miert as DG IV (Competition) Commissioner in 1993. In fact Karel Van Miert retaliated against UK's and Sir Leon Brittan's machinations and EC private air-transport interests by approving, among other state-owned airlines, a governmental financial aid to the Irish national airline Aer Lingus which was the most important air-transport competitor of UK airlines and especially BA and British Midland.²⁹

²⁸ Campbell, Feb. 1990: 108; Greece and International Transport, Dec. 1992: 41; ITF News, April 1992: 20; Vima Greek newspaper, of 6 Dec. 1992: 37, and 21 Feb. 1993: 34.

²⁹ Financial Times of 28 Sept. 1993: 19, of 22 Sept. 1993: 30, of 28 Nov. 1992: 2, and of 15 Jan. 1993: 12; ITF News,

6. CONCLUSION

The four cases above show how and why key air-transport actors gave priority to serving their own countries' air-transport interests as well as those of strong EC member-states, instead of the joint EC ones. They also show how and why a certain Eurocrat not willing to participate in political manipulation and power struggles was obliged to resign, while another who did so participate remained in his post (although with less power). This is yet one more proof that the Commissioners, breaking their oaths and acting against the constitutional ethos of the EC, manipulated national air-transport interests. It was the machinations of their power politics that prevented the liberalization policy in the EC air-transport market from becoming common EC air-transport policy.

There was quite clearly a definite hiatus between what these key air-transport actors had officially professed and how they actually behaved in the pursuit of their daily duties. Serving personal and national interests - from whatever motive - was, of course, a deviation from their supposedly supra-national roles, and essentially repudiated the Commission's supra-national character and the spirit of the EC generally.

CHAPTER VI

COLLECTIVE EC AIRLINE INDUSTRY STRENGTHS AND CONFLICTS, AND STRATEGIC RESPONSES TO LIBERALIZATION

" We are likely to see further attempts by big airlines and their governments to slow down the liberalization process." Sir Michael Bishop chairman of the UK independent airline British Midland.¹

" Let the market go-if tomorrow LH and AF want to merge, I strongly recommend to allow that, to face the day after tomorrow's competition from US airlines." Pierre Godfroid, chairman of SABENA.²

This chapter examines why and how the EC national airlines, and especially those of the strong member-states, accommodated their air-transport interests in the domestic, EC, and international markets during the course of the liberalization process. The focus is (i) on the strength of their diverse positions and on the continuing conflicts of national and private interests in the policy communities attempting to influence the EC air-transport policy and decision-making process; and (ii), on the strategies employed by the EC national airlines, led by the champions, for monopolizing their domestic markets and dominating both in the EC and internationally at the expense of the independent and smaller state-owned airlines.

As mentioned in ch. III European airline industry interests are represented in the EC by their umbrella groups' policy communities, such as the Association of European Airlines (AEA), the Association of the Independent Airlines in the EC (ACE) and the European Regional Airlines Association (ERA). Their relative lobbying strengths in the EC differed mainly because the AEA was the main body representing the twelve national airlines' interests which (as shown in previous chapters) had come to dictate their members' attitude and decision-making in air-transport policy as a whole. The above three policy communities did not, however, share a uniform policy. Their

¹Financial Times, 24 June 1992: 18.

²Cited by ITF Report 1992: 32 as quoted in J. Gallacher, "Searching Times", Airline Business, June 1991.

marked and strong collisions were due above all to their irreconcilable national and private air-transport interests in both their domestic and the EC air-transport markets during liberalization.³

1. Group Strengths

Between 1987 and 1993 the role of the champion national airlines in the AEA - i.e. Air France (AF), British Airways, Germany's Lufthansa - was centrally laid down by AEA and consequently EC policy. The smaller national airlines - i.e. the Netherlands' KLM, Scandinavia's SAS, Italy's Alitalia, Ireland's Aer Lingus (AE), Spain's Iberia (IB), and Belgium's SABENA (SN) - played a secondary role and followed the champion airlines' collective and individual strategies. Greece's Olympic Airways, Luxembourg's Luxair, and TAP Air Portugal had no effective say in EC airline policy networks. Usually only the champion airlines and KLM and SAS participated in the AEA working groups dealing with the Commission's draft proposals. Although most of the smaller national airlines were well aware that the collective interests in the AEA were manipulated by the champions, they nevertheless considered them their representatives on AEA's working groups, especially since most of the time they themselves had more or less the same national and EC interests. In any case smaller national airlines lacked the facilities to engage in commercial and aeropolitical matters themselves or, like the Greek national airline Olympic Airways, had no inclination to do so.⁴

The AEA was the best organized and most influential of the policy communities,⁵ and managed to become a vested institution in the cohesive policy networks at EC level. The Commission invariably consulted it, almost as a matter of right, in both formal and *ad hoc* meetings, and the AEA frequently

³Information from author's interviews with D. Cockcroft (19 June 1991); Y. Enderle (7 Dec. 1990); G. Ryde, (5 June 1991); R. Tsimbiropoulou (24 Jan. 1991).

⁴Information from author's interviews with M. Pisters (12 Nov. 1990); R. Tsimbiropoulou (24 Jan. 1991); S. Webb (4 June 1991). See also *Financial Times*, 8 Dec. 1989: 3.

⁵AEA member airlines count around 92 per cent of the international scheduled passenger traffic (passenger/ kilometers) in Europe in 1990. AEA *Yearbook*, 1991.

itself initiated EC air-transport policy. This position was mainly the result of this group being the heart and hub of all of its members' interactions whether co-operative or antagonistic.⁶

For example, in 1991 the AEA was engaged in heated controversy with the Commission which - under pressure from independent airlines (scheduled, charter, and regional) and the strong and influential lobbying of private interests they represented - had introduced a draft proposal on slot allocation for rationing take-off and landing at over-crowded airports as essential for developing genuine liberalization.⁷ All the AEA member airlines were upset, and objected that the slot allocation proposal had deliberately been drafted at a time of uncertainty caused by the Gulf War. They felt they were being coerced into handing over slot-hours⁸ at congested airports to smaller and even new airlines, which would then develop niche markets to compete with them. They demonstrated that in no other industry were large and well-established companies forced to surrender hard-won assets (such as airport slots) with such dogmatic insistence on co-operation instead of free competition.⁹ As M. Pisters, AEA deputy secretary general and responsible for social affairs argued

"Imagine how a big department store with a prime site on a big street would feel if someone suddenly came along and told it he was taking away 3,000 sq.ft. in order to increase competition with smaller stores" (interview 12 Nov. 1990).

⁶Information from author's interviews with J. M. de Bastos (8 Nov. 1990); Y. O. Castro (16 Nov. 1990); A. Corcondias (18 Jan. 1991); T. Middleton, (13 June 1991); C.I. del Olmo (31 Oct. 1990); R. Tsimbropoulou (24 Jan. 1991); M. Vanderlinden (24 Oct. 1990); K. Veenstra (29 Oct. 1990); D. Vincent 6 Dec. 1990); S. Yuksel, 31 Oct. 1990). See also McGowan and Trengove, 1986: 110-32.

⁷ Since 1987 the number of flight delays in EC had almost doubled. Alarmed by this trend and following up an earlier work commissioning a study on the costs and benefits of a single European air traffic control system, the AEA had carried out a study *Air Traffic Control in Europe*, which had appeared in February 1989. The AEA white paper *Towards a Single System for Air Traffic Control in Europe* was published in August 1989. It had concluded that the inefficiency of European air traffic control was mainly due to the fragmentation of the EC and European air-traffic control system, as mentioned in ch. III. It had showed that the inefficiency of air traffic control had cost air travellers, airlines and the European economy as a whole US \$ 4.2 billion in 1988. In other words, about 8 per cent of the average intra-European ticket price was wastefully spent. In 1989 23.8 per cent of all AEA international short and medium haul flights were delayed by more than 15 minutes, an increase of 11.3 per cent on the 1986 figure. A single European air traffic control authority, the Eurocontrol, was estimated that it would save up to US \$ 500 million, approximately 30 per cent of the yearly operating costs of the present fragmented system. In April 1990 the Transport Ministers of the 23 ECAC states had approved a report on *The Integration of European Air Traffic Control Systems*. Neumeister, 1990: 79; O'Donovan and Beety, 1990: 42-43.

⁸Slot hours are specific times (such as 13.10 or 22.17) when airlines must take off from a certain runway on a certain airport.

⁹Interview with M. Pisters (12 Nov. 1990). See also *Financial Times* of 5 Oct. 1990, of 23 June 1992: 1, of 24 June 1992: 20, and of 8 Dec. 1992: 2.

A market based approach for a slot-allocation proposal might involve four main options: one was to auction off slots to the highest bidder which, however, was considered disruptive as well as politically problematical. A more practical solution was to let the incumbents hold on to their present slots while giving new entrants preference in bidding for space capacity. The third would create a "slot pool" by distributing a proportion of both newly created slots and any surrendered voluntarily by incumbent airlines. A last possibility was a combination of allocating new slots and clawing back existing ones from the big airlines. All of the above options were, however, considered a new bureaucratic and legal mechanism which would complicate rather than ease the problem of scarce airport space.¹⁰

In consequence the Commission's attempt in the EC Council of Transport Ministers to obtain better access to landing and take-off slots at major EC airports for independent airlines was abandoned under the burdensome pressures of AEA national airlines. Even in the 1992 third air-transport package the issue of slot allocation was still not addressed collectively; it remained the subject of separate negotiations until the beginning of 1993 when the Council of Transport Ministers adopted a Regulation (No 95/93 of 18 Jan. 1993) on common rules for the allocation of slots at EC airports.¹¹ By that time, however, the champions had totally monopolized their domestic air-transport markets.¹² Two examples especially show the AEA champions' strength and their practices in the matter of slot concentration at EC airports.

In 1987, at national level, and after BA's take-over of BCal, BA accounted for 43.2 per cent of the total scheduled passenger/ kilometers traffic through UK airports, or for 19.5 million out of 44.2 m. passengers on

¹⁰Brummer, 1989b: 17; *Financial Times* of 5 Oct. 1990, and 24 Jan. 1991: 20.

¹¹Official Journal L 014 22 Jan. 1993: 1.

¹²*Financial Times* of 5 Oct. 1990, of 23 June 1992: 1, of 24 June 1992: 20, and of 8 Dec. 1992: 2.

scheduled flights. At Gatwick alone it controlled 60 per cent of scheduled slots in 1988; and 40 per cent of take-off and landing slots at Heathrow in 1991. In 1992, after the bankruptcy of Air Europe in 1990 and BA's acquisition of Dan-Air in October 1992,¹³ BA controlled more than 70 per cent of all the scheduled UK traffic.¹⁴

At the EC level at the end of 1992 after the take-overs of France's UTA by AF, and TAT by BA and AF, BA controlled 98.6 per cent of all flights between Gatwick and all Paris airports, and had a monopoly on flights between Gatwick and Lyons. In terms of all of London's airports together, BA had increased its share of the London-Paris air-traffic from 49 to 52 per cent, and from 45 to 58 per cent on the London-Lyons routes; AF, the second airline in both markets, had 33 per cent and 41.5 per cent respectively. This meant a much tighter duopoly between the UK and French airports than had obtained in the pre-1987 EC air-transport market.¹⁵

Another major issue indicating the AEA lobbying strength in the EC was the Commission's approval of state subsidies to state-owned airlines because of the Gulf Crisis (Aug. 1990 to Jan. 1991). According to IATA, the crisis lost the world airlines US \$ 2.7 billion on international scheduled services in 1990, the worst financial disaster in the 46 year history of post-war civil aviation. The AEA members collectively lost more than \$ 100 million in the first week of the Gulf War alone, and more than \$ 2.5 billion in the first six months of 1991. For the period 1990-1993, the EC's state-owned airlines alone were expecting to lose about \$ 10 billion. In consequence the AEA met with the Commissioner of DG VII (Transport) Karel Van Miert on 30 January 1991 to request suspension

¹³Dan-Air was UK's oldest charter airline founded in 1953 and owned by the conglomerate Davies and Newman. In 1988 Air Europe and Dan Air began systematically to develop an extensive scheduled network strategy as low-cost and low-fare airlines, aiming at massive and rapid expansion. Having overreached themselves, they collapsed and went out of the UK and EC air-transport markets altogether.

¹⁴Financial Times of 23 Dec. 1987: 1, and of 1 Feb. 1991; ITF News, Nov. 1992: 13; Pilling, March 1991: 13; Vima Greek newspaper, 21 Feb. 1993: 34.

¹⁵Financial Times, 28 Nov. 1992: 2; ITF News, Nov. 1992: 13; ITF Report, 1992: 30; Pilling and Harrington, Sep. 1991: 24-25.

of all EC liberalization measures, and to pressure the Commission to approve EC governments aid grants to the airlines to help them sustain their disastrous losses.¹⁶

Table 6.1 below lists the actual 1992 profits and losses of the twelve EC state airlines as they resulted from the Gulf crisis. All but BA and Luxair were affected negatively. BA's comparatively healthy position in 1992 nevertheless represented a considerable drop from its 1990-91 profit of 345 m. pounds as discussed in greater detail in section 3.1 below.

Table 6.1: Profits and Losses of the Twelve EC National Airlines at the End of 1992 (in 000 of US \$)

Airline	Airline
Aer Lingus	-195,600
Air France	-617,000
Alitalia	-11,900
British Airways	+297,700
Iberia Airways	-339,800
KLM Dutch Airlines	-319,000
Lufthansa	-250,000
Luxair	+600
Olympic Airways	-224,000
SABENA	-11,700
SAS	-127,000
TAP Air Portugal	-199,800

Source: ICAO 1993

The Commission announced that to approve state-aids it would evaluate the situation of any specific airline under the criteria of an internal charter which conditioned that the companies had to restructure, and governments could not inject additional subsidies. On 20 Feb. 1991 a package of state-aid was approved to the state-owned airlines Iberia of Spain, (with 120 billion peseta), to SABENA of Belgium (with BFr 30 billion), and Air France (FFr 3 billion).¹⁷

¹⁶Brummer, 1990: 34; Financial Times of 21 Feb. 1991: 4, of 1 Aug. 1991, and of 8 Dec. 1992: 2; ITF News of Feb. 1991: 2, and of Dec. 1991: 9; Pilling, Mar. 1991: 13.

¹⁷Doganis, 1994: 19; Financial Times of 21 Feb. 1991: 4, of 28 Mar. 1991: 2, of 27 Mar. 1992: 2, and of 18 Jul. 1991: 2; ITF News of July 1993: 24, of Dec. 1991: 9, and of Aug. 1992: 12; Vima Greek newspaper, of 13 June 1992: 23, of 29 Nov. 1992: 37, of 28 Feb. 1993: 24, and of 21 Mar. 1993: 34.

Meanwhile the AEA's privately-owned airlines BA and KLM, and the ACE independent airlines, and ERA regional ones, had accused the state-owned airlines vigorously but in vain of anti-competitive behaviour and of fatally obstructing the liberalization process of EC air-transport. They alleged that state subsidies further prolonged the transitional period in EC air-transport, and so inhibited the development of an environment of genuine competition between privately and state-owned airlines, quite apart from making the existence of independent airlines more hazardous.¹⁸

The above accusations were seen in 1993 to have been well-founded when Karel Van Miert took office as Commissioner of DG IV (Competition). He took off the pressure on EC state-owned airlines by declaring that state aids would continue because the airlines needed more time to grow stronger in a liberalized internal EC market before that market could be fully opened to internal and external competition, especially to US airlines. He suggested that the airlines themselves should be allowed to decide how they wished to deal with objections from the Commission and with mergers among themselves. He announced that although the existing competition rules would remain unchanged, there might be a different philosophical attitude on how to apply them while trying to broaden competition among EC state-owned airlines on the model of the German and Japanese approaches - also taking into account other influences, such as industrial, environmental, regional and social pressures.¹⁹

Contrary to the AEA umbrella group's high political status, the independent airlines in the EC (ACE)²⁰ and the European regional ones (ERA)²¹ were rather less integrated as umbrella-group policy communities in

¹⁸Information from author's interviews with M. Ambrose (30 May 1991); R. P. Holubowicz (15 Nov. 1990); S. Webb (4 June 1991).

¹⁹Financial Times of 13 Jan. 1993: 1, of 15 Jan. 1993: 12, and of 8 Oct. 1993: 6; Vima Greek newspaper, of 13 June 1992: 23, of 29 Nov. 1992: 37, and of 28 Feb. 1993: 24.

²⁰ACE member airlines carried 37 million passengers per year in 1988, 1989, and 1990.

²¹ERA had grown at an average rate of 23 per cent a year, nearly four times the total average European traffic growth. In terms of the total number of flights per annum in Europe alone, it doubled those of LH, the biggest European airline operator. Many ERA member airlines - such as DLT, KLM-CITY HOPPER etc.-were daughter carriers of major companies.

the EC air-transport network.²² The main reason for this was that they did not have the backing of their governments. However, as was seen above with the Commission's slot allocation proposal, they had developed considerable clout in the EC due to the private interests they represented. They commanded a very powerful and influential domestic and EC lobby, and their air-transport objectives coincided with the Community's for liberalizing the EC air-transport market. Independent charter and regional airlines - like the UK's Air Europe and Dan Air, France's UTA, Air Inter, and TAT, Ireland's Ryanair,²³ and the Netherlands' Transavia among others - were regarded by the Commission as challenging the dominance of the EC state-owned airlines, and used by it as a countervailing power to AEA pressures and counter-proposals - always in vain, however. As a matter of fact certain Eurocrats and members of AEA secretariat frankly unveiled to the author that they did not see independent airlines as having any future in the liberalized EC air-transport, and would most certainly be the losers instead of being the winners, as they expected before 1987.²⁴

2. Group Conflicts

The major aeropolitical conflict among EC national airlines in the AEA exactly reflected the wider differences between the member-states.²⁵ On the one side were the more efficient privately-owned airlines - i.e. BA and KLM - whose labour costs were lower, and whose productivity was increasing, and who wanted the liberalization process in the EC air-transport market to be

²²The 34 per cent of the world's passenger/kilometer in Europe, and 65 per cent of international passenger/kilometer in ECAC (1977-1988) were covered by charter airlines, according to ICAO 1989.

²³Created in 1986 by the three Ryan brothers.

²⁴Information from author's interviews with M. Ambrose (30 May 1991); R. P. Holubowicz (15 Nov. 1990); B. Stahle (4 Dec. 1990); F. Sorensen (12 Nov. 1990); R. Tsimbiropoulou (24 Jan. 1991); D. Vincent (6 Dec. 1990); K. Veenstra (29 Oct. 1990); S. Yuksel, 31 Oct. 1990). See also Financial Times, 28 Nov. 1992: 2; Gallacher, Sept. 1990: 72; Katz, Feb. 1991: 32-41; Vima Greek Newspaper, 1 Nov. 1992.

²⁵There was also a North-South gap within the AEA, but it was less intense than the overall politico-economic power struggle of the member-states in the EC air-transport market. The northern countries' airline industries and airlines were more efficient than those of the southern ones.

accelerated. On the other side (i) airlines with higher costs and less efficiency - i.e. Aer Lingus, AF, LH, Luxair SABENA and SAS - which seized the opportunity to radically transform their cost bases and productivity levels; and (ii) the airlines with the highest costs and lowest efficiency - i.e. Alitalia, Iberia, Olympic Airways, and TAP Air Portugal - which, while trying to improve their productivity and reducing costs, were reluctant to invite a confrontation with their employees through large-scale lay-offs. All these airlines demanded a slower and more gradual liberalization in step with the harmonization process. They were worried about liberalization rendering them highly vulnerable in competition with the first group's private airlines. Therefore, although in overall AEA terms the EC airline industry was regarded as falling somewhere between a public utility and a commodity service, most national airlines still considered their operations as purely public utilities.²⁶

This split of the major AEA air-transport interests divided its four champion airlines and their follower ones into two groups - BA and KLM, and AF and LH - which kept accusing each other of delaying or accelerating the pace of EC air-transport liberalization. So for example BA charged the AEA's German secretary general Karl-Heinz Neumeister (a former employee of LH with responsibilities for market research and worldwide route planning, and since 1983 AEA secretary general) with having tried to slow down the pace of air-transport liberalization in favour of LH and AF air-transport interests and at BA's expense. BA alleged that the reason LH, although a committed AEA member, only rarely participated in the ordinary AEA working groups was that it could advance its own interests better in direct consultation with the AEA secretary general.²⁷

²⁶Information from author's interviews with A. Corcondilas (18 Jan. 1991); K. Veenstra (29 Oct. 1990); F. Sorensen (12 Nov. 1990).

²⁷Interview with S. Webb (4 June 1991). See also Beng, 1991: 24; *Financial Times*, 22 Oct. 1992: 3; *ITF News*, July 1993: 23; Lewis, 1990: 385; Nederkoorn, 1991: 151.

As a result BA and KLM, and especially the former, were isolated from the other state-owned national airlines. They relied on the AEA less and less, judging their collaboration with it to be detrimental to their best interests. Both airlines found it very difficult to moderate or occasionally suppress altogether their air-transport views and strategies to allow the AEA to present a more or less united front. On the other hand, neither of these two airlines could afford to leave the Association, not even BA, a multinational company with well-developed lobbying and negotiation strategies of its own in the EC. Active participation in the AEA umbrella group offered even the champions the possibility of highly influential collective lobbying and the opportunity of modifying or preventing altogether the AEA's pursuit of unwelcome air-transport policies.²⁸

In addition, the practices and strategies of the champion airlines concerning EC air-transport liberalization brought them into conflict with the independent and smaller state-owned airlines. Similar conflicts developed between the latter themselves and state-owned and private airlines interests.

Overall, small state-owned and independent airlines protested that the champion airlines' anti-competitive mergers and alliances (blessed by the Commission as a triumph of competition) were a means for keeping their national and EC air-transport markets to themselves, and so undermined the efforts at liberalizing EC air transport. They maintained that while the letter of the liberalization process had changed, the spirit of it had not, and that the avowed policy of giving smaller national and independent airlines greater access to the market and preventing the champions from forming cartels remained null and void.²⁹ C. Mullan, chief executive of the Irish airline Aer

²⁸Information from author's interviews with D. Cockfort (19 June 1991); R. P. Holubowicz, (15 Nov. 1990).

²⁹Information from author's interviews with M. Ambrose 30 May 1991); R.P. Holubowicz (15 Nov. 1990); B. Stahle (4 Dec. 1990). See also Financial Times, 22 Jan. 1990: 2.

Lingus speaking about the marketing co-operation by Air France and Lufthansa, said

"They are like two Roman soldiers who have tied themselves back to back to fend off the invading Huns".³⁰

One objection raised by the independent airlines was that the new EC air-transport legislation was neutralizing EC air-transport competition so as to enable state owned airlines (particularly the weaker ones likely to be driven out of the EC market as a result of genuine competition) to adapt to the liberalized market by means of state-aids and consolidation. They argued that the main consideration should be not whether the whole harmonization process could be achieved in parallel with liberalization by the end of 1992, but rather whether harmonization was desirable at all. Competition should be the result of existing as well as new airlines having proper access to routes and airport facilities. It should not simply be a matter of removing the general restrictions that since 1987 had done nothing to bar such access nor helped new or existing independent airlines in matters such as the very high start-up and marketing costs, lack of adequate feeder services, and especially the shortage of suitable landing and take-off slots to link regional airports with the many large airports that prevented the independent airlines from taking proper advantage of the terms and provisions of the liberalization policy.³¹

With respect to such conflicts it has been pointed out repeatedly that refusing to allow an independent airline to be set up or to enter the market was not a case of protecting national air-transport interests *per se*, but the result of a struggle between private domestic air-transport interests. In Italy, for example, where the national airline Alitalia's political manipulations firmly prevented the creation and survival of an independent airline, this was a

³⁰Financial Times, 22 Jan. 1990: 2.

³¹Information from the authro's interviews with M. Ambrose 30 May 1991; R.P. Holubowicz (15 Nov. 1990). See also Doganis, 1994: 23; Financial Times of 17 Jul. 1989: 21, of 5 Oct. 1990, and of 24 June 1992: 18; ITF News, March 1992: 12; Gallacher, Sept. 1990: 72; Katz, Feb. 1991: 32-41; Pilling and Harrington Sept. 1991: 24-25; Pilling, March 1991: 13.

matter of conflicting private interests, since 15 per cent of Alitalia was privately owned. When the charter airline Air Europe s.p.a. was set up, foreign private capital (coming from the "European consortium of airlines", founded by the UK's independent airline Air Europe) was channeled into Italy through private interests: a prominent Italian industrialist held the majority of the shares and members of his family were on the board of directors to make the airline look Italian. Similarly foreign private capital might set up a charter airline in Germany and make it look German. However, private domestic capital (Italian, German, and so forth) always insisted on a low profile for the airline in the domestic air-transport market³² because, as ACE director general R. P. Holubowicz, explained

" You do not bring an airline into Italy or Germany by publicly invoking your right to do so. Never. You buy it you make it look like an Italian or German airline and you apply for traffic rights" (interview 15 Nov. 1990).

Finally, the small member-states were divided over the question of whether the concentration of EC national airlines was desirable at all. So SAS was in favour of and itself pursued mergers and alliances, as long as they aimed at strengthening the airlines' position in the international arena. Aer Lingus on the other hand, was against the creation of big groupings of EC airlines and did not wish to participate in a leading capacity, but believed it could play a major role as an individual airline.³³

In the next section I shall examine the strategic tactics that were pursued by the EC champions, whether state or privately owned, as well as by certain smaller national airlines, in response to international air-transport competition, the globalization of airlines, and the consequent move by the EC in 1987 towards liberalization of its air-transport market.

³²Interviews with R. P. Holubowicz (15 Nov. 1990); and R. Tsimbiropoulou (24 Jan. 1991).

³³Interviews with T. Gjertsen (29 Nov. 1990); B. Stahle (4 Dec. 1990). See also Financial Times of 22 Jan. 1990: 2, and of 16 Jan. 1993: 3.

3. National Airline Responses and Key Strategies

All airlines, whether large or small and state or privately owned, aside from their obvious sensitivities about their future as national airlines, were fully aware that competition between them would make them more vulnerable to the growing commercial threat from US mega-carriers and fast growing Asian/Pacific airlines. This was a threat that could be satisfactorily met only by consolidation and reasonably strong groupings. They therefore eschewed competition among themselves, and instead pursued concentration tactics in their domestic, EC, and international air-transport markets.³⁴

Making the most of their considerable size (benefits of large scale) the champion airlines AF, BA, and LH above all, but also Alitalia, Iberia, KLM Dutch Royal, and SAS Scandinavian Airlines, pursued three main strategies: (i) to reinforce their already dominant position and ensure the total monopolization of their domestic air-transport; (ii) to secure a dominant position in the EC and other European air-transport markets; and (iii) to strengthen their presence in the international air-transport arena.³⁵

The first strategy involved the elimination of existing national competitors by means of mergers and buy-outs or their control through major shareholding and alliances, or to force them to operate in a manner that did not create competition in the domestic markets. Other tactics were the dissuasion of potential rivals coming into the national market, setting up barriers in the form of landing and take-off slots, and preventing other EC member airlines from acquiring small or medium independent airlines in one's own country, especially any that were operating scheduled international services. In particular any domestic charter airline attempting to operate

³⁴Interview with H. Finstfein (5 June 1991). See also Financial Times, 24 June 1992: 18; ITF Report 1992: 25.

³⁵Doganis, 1994: 17; Williams, G., 1993: 86.

scheduled flights (which was essential for its survival) was straightaway bought from larger domestic scheduled national airlines and especially the national champions. In some instances airlines, while not operationally dependent on their country's national airline, simply recognized the futility of locking horns with such overwhelmingly powerful adversaries and kept their heads down.³⁶ However, in 1991 the Financial Times noted

"It remains to be seen how far the EC itself will permit such concentrations at a time when its overall air-transport policy is dedicated to increasing competition" (1 Aug. 1991).

Table 6.2 below lists the ownership by EC national airlines of small and medium independent carriers in their domestic markets at the end of 1993.

The second strategy, involved co-operative alliances and the buying of shares of other EC national airlines; shareholding in independent airlines already established; creating new low cost subsidiary ones; as well as mergers, alliances and share acquisition in the domestic markets of other EC or non-EC European countries, especially in France, Germany, and the UK.³⁷

In practice, except for the AF-LH marketing co-operation, most of the attempts to create alliances with other EC or non-EC European airlines or to acquire shares in them did not succeed. A whole battery of thorny politico-economic problems, including historical ties, labour union objections, and the difficulties of choosing a specific US airline-partner hopelessly complicated the issue with respect to both the domestic and EC air-transport markets. Rather more successful were the airlines' attempts at cross-border share acquisition from smaller state-owned and independent airlines in the EC and the rest of Europe.³⁸

³⁶ITF Report, 1992: 30; Vima Greek newspaper, of 7 Feb. 1993: 24, of 1 Nov. 1992, of 6 Dec. 1992: 37, and of 21 Feb. 1993: 34; Williams, G., 1993: 87, 115, 123.

³⁷Interviews with A. Corcondilas (18 Jan. 1991); D. Stasinopoulos (28 Oct. 1990). See also Doganis, 1994: 17; ITF, 1992: 32; Williams, G., 1993: 87.

³⁸Information from author's interviews with H. Johannes (23 Oct. 1990); R. Tsimbiroupolou (24 Jan. 1991); S. Webb (4 June 1991). See also Burger, 25 April 1993: 53; Doganis, 1994: 24-25; Financial Times of 12 Nov. 1990: 2, of 1 Feb. 1991, and of 10 Jan. 1992: 14; ITF News of Jan./Feb. 1993: 30, of Aug. 1992: 12, and of Nov. 1992: 16; Nea Greek newspaper, 27 Mar. 1993: 21; Vima Greek newspaper, of 12 Sept. 1993: 26, of 28 Nov. 1993; and of 26 July 1992: 37.

Table 6.2: EC National Airline Ownership of Independent Carriers (end of 1993)

Airline	Acquired Airlines since 1987	Ownership (%)
Air France ³⁹	Air Inter	72
	UTA	100
	Air Littoral	Operates on behalf of AF
	Brit Air	Operates on behalf of AF
	TAT	35
	Aeromaritime	49
	Air Charter	49
	Euro Berlin France	51
	Air Guadeloupe	45
	Air Madagascar	3.5
Alitalia	Avianova	
	(jointly owned with Meridiana)	50
	Eurofly	45
British Airways ⁴⁰	British Caledonian	100
	Dan Air(1992)	100
	Birmingham European	40
	Brymon	40
Iberia	Aviaco	33
	Binter Canarias	100
	Binter Mediterranean	100
	Viva Air	96
KLM	Transavia	80
	Martinair	35
	Air Holland went into liquidation in 1989.	
Lufthansa ⁴¹	NFD	Operates on behalf of LH
	RFG	Operates on behalf of LH
	Interflug ⁴²	Absorbed
SABENA	Delta Air Transport	49
	TEA went into liquidation Oct. 1991	
SAS	SAS commuter	100
	Scanair	100
TAP Air Portugal	LAR	100

Sources: Airline Business, Dec. 1990: 11; Doganis, 1994: 17-19; Financial Times, 26 June 1990; ITF News, 1992: 13; ITF Report, 1992: 30, 34, 99-105; Williams, G., 1993: 116-17, 159-83.

³⁹AF's share of the French air-transport market in terms of passengers/kilometers went up from 78 per cent to 97 per cent.

⁴⁰BA and its associated airlines carried nearly 100 m. passengers, produced about 20 billion revenue per tonne-kilometer and generated more than US\$ 20 billion in sales.

⁴¹ LH operated 99.8 per cent of all German air-transport traffic (pass./km).

⁴²In 1990 LH had announced its intention to acquire a 26 per cent stake in Interflug but was opposed by the Federal Cartel Office and the former East-German airline shut down. ITF News of April 1990: 9, of Jan. 1991, and of Mar. 1991: 8.

Table 6.3 shows unsuccessful cross-border alliances and Mergers between EC national and/or with non-EC airlines during the period 1987-1993. Table 6.4 provides the detailed cross-border share acquisition by EC national airlines; and Table 6.5 shows the distribution of the seven largest EC airline groupings that generated 76.2 per cent of the scheduled domestic and intra-European pass./km traffic and carried 77.7 per cent of the total passengers. The low figure for the KLM grouping reflects the fact that KLM itself chiefly served destinations outside Europe.

Table 6.3: Unsuccessful Alliances and Mergers Between EC National and Other European Airlines (end of 1993).

Airlines	Type
BA/KLM/SABENA(1990-91)	stake acquisition ⁴³
BA/SABENA (1991)	stake acquisition
BA/KLM (1991) ⁴⁴	merger
European Quality Alliance (EQA) ⁴⁵ (1990-1993)	co-operation/merger
Alcazar ⁴⁶ (1993)	co-operation/merger

Sources: Doganis, 1994: 24-25; Financial Times, 24 June 1992: 18

⁴³Discussed in ch. V.

⁴⁴This merger was called off on 27 February 1991, although there was a joint British and Dutch union agreement on it. See ITF News of Jan./Feb. 1992: 21, and March 1992: 11.

⁴⁵Consisting of SAS, Swissair, Finnair and Austrian Airlines.

⁴⁶Consisting of the EQA airlines plus KLM Dutch Royal Airlines. One of the main problems was Austrian Airlines having to decide between an LH offer for alliance, and the alliance and creation of a totally new airline. The Austrian airlines' trade unions were in favour of the LH/Austrian alliance because they believed that it could create fewer lay offs than the creation of the new airline. The country's Conservative party also wanted the alliance with LH, and insisted that Austrian airlines should keep its name, national identity, flag, and business tradition. The Social Democratic party on the other hand, was in favour of the creation of a new airline to help the Austrian carrier survive. In the end it was the alliance with LH that carried the day.

Table 6.4: Cross-Border Share Acquisition by EC National Airlines in Europe (end of 1993).

Airline	Acquired Airline	Country of Origin	Ownership (%)
Aer Lingus	Futura Int.	Spain	25.0
Air France	Austrian	Austria	1.5
	CSA (1992)	Czechoslovakia	40.0
	SABENA (1992)	Belgium	37.5
Alitalia	Malev (1992)	Hungary	35.0
British Airways	GB AW	Gibraltar	49.0
	Deutsche BA (1992)*	Germany	49.0
	Air Russia(1992)	Russia	31.0
	TAT (1992)	France	49.9
KLM Royal	Air Littoral	France	35.0
Dutch Airlines	Air UK	UK	15.0
	Delta AT	Belgium	29.0
Lufthansa	Austrian	Austria	10.0
	Lauda Air	Austria	26.5
	Luxair	Luxembourg	38.0
	Cargolux	Luxembourg	24.5
	Sun express	unknown	40.0
	DHL Corporation	unknown	5.0
SAS	British Midland	UK	40.0

* Ex-German airline Delta Air, serving nineteen destinations within Germany and Europe.

Sources: Airline Business, Dec. 1990: 11; Doganis, 1994: 18, 21, 24; ITF News of May 1992: 14, of Nov. 1992: 16, and of Jan./Feb. 1993: 30; ITF Report, 1992: 30-34, 99-105; Vima Greek newspaper, 7 Feb. 1993: 24; Williams, G., 1993: 110-17.

Table 6.5: Percentage of EC Airline Groupings in Scheduled Intra-European and Domestic Passenger/Kilometers (end of 1993).

Airline grouping	Pass./km (%)	Passengers (pax) (%)
(1) AF, UTA, Air Inter TAT, SABENA and CSA*	19.6	17.1
(2) BA, BCal, Dan Air, BEA, ⁴⁷ Deutsche BA, TAT**	14.0	12.0
(3) IB, Aviaco, Viva.	11.6	11.5
(4) LH, Lauda Air**, Luxair,	11.1	13.3
(5) SAS, BMA, Linjeflug, Loganair	9.8	13.3
(6) AZ, Malev	6.7	6.7
(7) KLM, Air UK, Transavia, Martinair**	3.4	3.8
Total intra-European/domestic	76.2	77.7

* CSA was the then Czechoslovak national airline.

** No data available for Deutsche BA, Transavia, Martinair, Lauda Air nor pax numbers for TAT.

Sources: Doganis, 1994: 23; ITF News, Nov. 1992: 13.

Finally the third strategy was to forge partnerships and seek equity investments with international airlines. The purpose of this was to create blocs, especially in the two rival markets where the EC airline industry was not well represented and preferred to collaborate rather than compete - i.e. with the US airlines, particularly if they could offer air-service feed for transatlantic traffic, and the East Asian/Pacific ones. Where such attempts did not succeed it was due to reasons similar to those given above (for the second strategy).⁴⁸ Table 6.6 below shows the actual and attempted EC national airlines cross-border share acquisition and co-operative alliances with international airlines for the period 1987-1993.

⁴⁷ Brymon European Airways was formed on 25 October 1992 from the merger of two other UK regional airlines (Brymon and Birmingham European Airways), in which BA and Maersk Air, a Danish charter airline, were each holding 40 per cent of the shares.

⁴⁸ Interviews with A. Corcondilas (18 Jan. 1991); D. Stasinopoulos (28 Oct. 1990). See also Doganis, 1994: 17; Financial Times, 24 June 1992: 18; ITF Report 1992: 32-33; Williams, G., 1993: 123.

Table 6.6: EC Airlines' Cross-Border Ownership, and Co-Operative Alliances with non-European Airlines (1987-1993)

Airline	Acquired Airline (actual/attempted)	Country of Origin	Ownership(%)	Type/Result
Air France	Air Canada attempted 1992	Canada	% N.A*	failed
	Canadian Airlines (through Air Canada) attempted 1992	Canada	% N.A	failed
	Air Mauritius	St. Mauritius	12.8	
	Cameroon Airlines	Cameroon	25.0	
	Air Djibouti	Djibouti	32.3	
	Middle East Airlines	Lebanon	28.5	
	Royal Air Maroc	Marocco	3.9	
	Tunis Air	Tunis	5.6	
	Vietnam Airlines (attempted)	Vietnam	R.U**	
	Aeromexico	Mexico	C.A***	
Alitalia	Canadian Airlines	Canada	C.A	
	United Airlines	USA	C.A	
	US Air	USA	C.A	
British Airways ⁴⁹	Quantas 1992	Australia	25.0	
	Air New Zealand 1992 (through Quantas)	New Zealand	20.0	
	US Air/attempted 1991-1992 ⁵⁰	USA	15.0	
	Royal Jordanian	Jordan	C.A	
	LIAT	Carribean	C.A	
	Ansett	Australia	C.A	
Iberia ⁵¹	Aerolineas Argentinas/ Austral 1991	Argentina	30.0	
	Viasa 1992	Venezuela	45.0	
	Ladeco 1992	Chile	37.0	
	Pluna/attempted 1993	Uruguay****	51.0	R.U
KLM Royal Dutch	Northwest Airlines	USA*****	49.0	
	Garuda Airlines	Indonesia	C.A	
	Mexicana	Mexico	C.A	
	Japan Airlines (JAL)	Japan	C.A	
	Air Nippon Cargo	Japan	C.A	
Lufthansa	American Airlines attempted 1993	USA	C.A	
	United Airlines attempted 1993	USA	failed	
	Air New Zealand	New Zealand	C.A	
	Cathay Pacific	Hong-Kong	C.A	
	Japan Airlines	Japan	C.A	
	Canadian Airlines	Canada	C.A	
	Garuda Airlines	Indonesia	C.A	
	Aeromexico	Mexico	C.A	
SABENA	All Nippon Airways	Japan	C.A	
	Air Canada	Canada	C.A	
	Garuda Airlines	Indonesia	C.A	
	Thai Airways	Thailand	C.A	
	United Airlines	USA	C.A	
SAS	Continental Airlines	USA	18.4	
	Ladeco	Chile	35.0	
	Thai Airways	Thailand	C.A	
	Canadian Airways	Canada	C.A	
	Air New Zealand	New Zealand	C.A	
	All Nippon Airways	Japan	C.A	
TAP Air Portugal ⁵²	Varig	Colombia	C.A	
	TAAG	Angola	C.A	

* Not available. ** Result unknown. *** Co-operative Alliance. **** Uruguayan government had privatized its national airline
***** With only 25 per cent voting stock

Sources: Doganis, 1994: 17, 18, 21, 24; Financial Times, 12 Nov. 1990: 2; ITF News of Nov. 1991: 31, of Jan./Feb. 1993: 30, and of Nov. 1992: 14, 16; ITF Report, 1992: 30-34, 99-105; *Vima* Greek newspaper, of 7 Feb. 1993: 24, and of 12 Sept. 1993: 26; Williams, G., 1993: 110-117, 144.

⁴⁹ BA was the dominant UK and European airline in transatlantic traffic, flying to 10 American gateways or hubs from four UK airports.

⁵⁰ This was the biggest attempted equity deal of all, the combined operations of which were to link the world's biggest international air-network with the third biggest US domestic one. However on 24 December 1992 Clinton's presidential victory put paid to it. US airlines had exerted intense pressure on the US government and made it a main feature in the election campaign that the UK would not concede an "open skies" air treaty with the US/UK talks. The deal would have given BA access to the US market, while US airlines were barred from the European one. As a matter of fact both sides were guilty of excesses. Bob Crandall, the president of American Airlines, went as far as to threaten that he would put his airline up for sale if the deal went through, while BA and USAir had threatened the loss of hundreds of US aircraft-manufacturing jobs by switching their aircraft purchases away from American Boeing to the UK/German/French/Spanish Air Bus, if the deal should be blocked.

⁵¹ Iberia also bid for stakes in the Dominican airline Dominicana de Aviacion, and in Paraguay's Lineas Aereas Paraguayas (LAP).

⁵² TAP Air Portugal also attempted to build links with the Brazilian airlines VASP and Trans-Brazil.

Table 6.7 below ranks the twelve national airlines in the EC and the international air-transport markets in terms of revenue between 1989 and 1991 (at 1991 prices). It shows that the various strategies to cut costs, create groupings etc. bore fruit especially for AF, which improved its position from ninth place to third between 1989 and 1991. BA fared much less well, and actually deteriorated steadily over this period despite its concerted practices to the contrary. The ratings of these EC airlines, of course, depend also on factors extraneous to their individual performances, and in addition are affected by e.g. US and Asiatic/Pacific carriers, their operations, their bankruptcies and so forth.

Table 6.7: International and EC Ranking of the Twelve Member-States National Airlines in Terms of Revenue (1989-1991, at 1991 steady prices)

Airline	International Ranking		
	1991	1990	1989
Air France	3 ⁵³	3	9
Lufthansa	5	4	6
British Airways	6	5	4
SAS	12	12	13
Alitalia	14	15	15
KLM	15	19	18
Iberia	19	18	19
SABENA	35	44	35
Aer Lingus	39	39	40
Olympic Airways	51	47	47
TAP Air Portugal	47	50	n.a.*
Luxair	89	95	86

* Not available

Sources: Airline Business Sept. 1990: 54-57, Dec. 1990: 11, and 1992: 98-101; Doganis, 1994: 17; Financial Times, 26 June 1990; ITF Report, 1992: 30.

⁵³First and second place went to the US airlines United and American.

Some EC airlines, and especially the champions, while attempting to achieve air-transport marketing benefits from large-scale operations, also saw the need to operate on commercial rather than public-service criteria, and to use cost-cutting strategies and new marketing tools.

The first objective of the EC's commercial air transport as a whole was the partial or entire privatization of state-owned airlines. On the one hand this would relieve the member-countries' governments of the heavy financial burden their airlines represented, as well as free them of unpalatable political choices; on the other it would allow the airlines to cut costs and increase profits by adopting tougher labour policies and tackling union rules and actions that were protecting inefficient labour practices. Nevertheless, although most of the EC's national airlines had drawn up plans for privatization they were not prepared to implement them, because selling the airline to private interests would have meant selling it at far below its actual value. Besides, privatization was obviously no panacea for the industry's ills. EC champions like AF and LH, which retained majority state-ownership after having been re-organized, acted like private companies; the other two champions, BA and KLM, having been privatized or largely so prior to 1987, still behaved as if they were state-owned and constantly required government protection of one kind or another.⁵⁴ G. Ryde, national secretary of the UK's Transport and General Workers Union, expressed his opinion

" Capital and politics were always interdependent but not in air-transport. It is not a politico-economic conspiracy between capitalists and politicians, but today I believe that it is not politics that control the EC air transport any more but capital" (interview 5 June 1991).

Table 6.8 depicts the state shares in the ownership of the twelve EC members' national airlines (end of 1993). It shows that most of the EC national

⁵⁴Information from author's interviews with D. Cockcroft (19 June 1991); A. Corcondilas (18 Jan. 1991); J. P. Meheust (23 Nov. 1990); G. Ryde (5 June 1991). See also ITF Report, 1992: 9-13.

Table 6.8: State-Ownership of the Twelve EC National Airlines (1993).

Airline	Ownership (%)	Airline	Ownership (%)
Aer Lingus	100.0	Luxair	69.0
Iberia	100.0	SABENA	54.7
Olympic Airways	100.0	Lufthansa	51.0
TAP Air Portugal	100.0	SAS	50.0
Air France	99.0	KLM	38.2
Alitalia	89.6	British Airways	0.0

Sources: ITF Report, 1992: 99-105; Williams, G., 1993: 159-83.

airlines remained state owned. Only KLM has a majority of private interest and BA is fully privately owned.

Of all of the EC national airlines, it was especially those privately-owned (BA and partly KLM) that were doing all they could to bypass the air-transport unions. They endeavoured to break restrictive labour rules and policies in concerted efforts to reduce both the numbers of their personnel and the unit cost of labour - the chief items in their operating cost⁵⁵ - and did so even more determinedly from early 1991 and all through 1993 as a result of the Gulf crisis. Meanwhile the champions AF and LH and all other smaller national airlines, although they did not rule out lay-offs, had done everything possible to avoid lay-offs through natural wastage - mainly early retirement and non-renewal of fixed-term contracts - and the renegotiation of pay packets and conditions of employment (reduction in wages, two-tier wages, flexible and more intensive working practices and increased use of part-time and temporary employees, especially among cabin crew and maintenance staff). So LH had negotiated a two-tier wage system and introduced a new system for calculating shift-pay; Aer Lingus introduced multi-skilling and almost total

⁵⁵All other major operating costs are mentioned in Table 2.3.

integration of craft skills; and SAS imported a "lean production" method from the Japanese auto industry, which involved a radical overhaul of traditional working practices to end strict demarcation of work duties, and asked ground staff to cut down turn-around times from 25 to 15 minutes. AF recruited students as seasonal cabin crews and maintenance staff, while TAP Air Portugal hired cabin crews on six month temporary contracts which it then constantly renew. KLM obliged its employees to forego its contributions to their pension scheme, British Airways in 1993 was planning to cut holiday-pay supplements, and in the same year, SABENA negotiated wage cuts with its workforce ranging from 2.5 to 17 per cent. In 1991 alone the AEA member airlines reduced their total workforce by 3 per cent (19,000 employees), the largest reduction on record in any one year.⁵⁶

Table 6.9 below depicts the capital to labour utilization ratio of selected EC airlines in 1990. It demonstrates that BA with 4.34 per cent had the highest utilization ratio, which however, was well below from the figure of 7.61 of an average low-cost airline. On the other hand, KLM in second place with 3.27, SAS with 3.26, and TAP Air-Portugal with 3.09 are around the utilization ratio of the high cost average (3.10). Finally, Iberia with 2.89 and Alitalia with 2.19 are far below the high-cost average, meaning that those carriers could not operate efficiently or effectively because their labour costs amounted to approximately a third and a half of their respective operating revenues.

Table 6.10 below illustrates the relationship between airline labour costs and productivity, and the percentage of labour costs in the total operating costs of selected EC airlines in 1990. The most productive employee is the one from LH with 258,000 available tonne/km (ATK) per employee. Second comes KLM with 256,000 ATK, and third BA with 247,000 ATK.

⁵⁶Information from author's interviews with D. Cockroft (19 June 1991); Y. Enderle (7 Dec. 1990); S. Howard (3 June 1991); G. Ryde (5 June 1991). See also AEA Yearbook, 1992; Doganis, 1994: 18-19; Gallacher, April 1991: 25; ITF Report, 1992: 41-44; ITF News of Jan./Feb. 1993: 30, and July 1993: 19-23; Transport and General Workers' Union, 1990. Ch. VII will examine in detail the labour unions' responses to such EC airline actions.

Table 6.9: 1990 Capital to Labour Utilization Ratios (in 000 of US \$)

Airline	Operating revenues	Labour costs	Utilization ratio
BA	6,856,700	1,576,934	4.34
SAS	3,180,600	974,581	3.26
Alitalia	2,064,100	939,143	2.19
KLM	2,798,600	855,778	3.27
Iberia	2,840,400	980,640	2.89
TAP	729,000	235,811	3.09
Average high-cost airline			3.10
Average low-cost airline			7.61

Source: Interavia Aerospace Review, Sept. 1990: 711.

Table 6.10: 1990 EC Airlines' Labour Costs and their Percentage of Total Operating Costs (productivity measurement: available tonne/km (ATK) per employee)

Airlines	ATK per employee (000)	Wage costs per employee (in 000 \$)	Labour cost per 000 ATK costs	Total operating costs %
AL	198	62.1	314	35.9
BA	247	40.0	162	24.6
KLM	256	38.8	152	32.5
LH	258	51.7	200	30.3
SAS	143	48.6	340	31.9

Source: Airline Business, April 1991:25.

Surprisingly, SAS with 143,000 ATK is the lowest, next to AL with 198,000. Moreover, the LH employees, as the most productive, are much better paid (\$ 51,700) than BA's employees with \$ 40,000 who, however, are comparatively far below paid as concerning their productivity. The lowest wage cost per employee were those of KLM (\$ 38,800), although its employees were the second highest in productivity. By contrast AL, with the second lowest ATK, had the highest wage cost per employee (\$ 62,100). As a result, LH is the third-lowest airline in terms of labour cost (200,000 ATK per employee), second to BA (162,000), with KLM in first place with 152,000 ATK labour cost. Increasingly enough, while AL had the highest wage cost per employee, its labour cost per 000 ATK amounted to only 314, coming in second place after SAS with 340. Naturally SAS with the least productive employees, had the highest labour cost per 000 ATK. Finally we see that BA, the only wholly privatized airline, had the lowest percentage of total operating costs (24.6), well below that of the second-place LH (30.3 percent); the wholly-state own AL, operating within a very strict regulatory environment, had the highest total operating cost of all (35.9 per cent).

Table 6.11 depicts planned and actual lay-offs for the twelve national EC airlines from 1987 to 1993. The list is headed by BA, for reasons discussed below. The next highest lay-offs were SAS, with 9,500 total and AF with 5,400.

Another way of getting around existing labour agreements was for national airlines to set up or operate low-cost subsidiaries in their domestic and other EC country markets for short-haul EC and international air transport. This measure also allowed more decentralized bargaining units, and resulted in more flexible terms of employment. For example, after serious labour disputes BA formed Deutsche BA in 1992 in Germany as well as British Airways Regional operating transatlantic routes from Birmingham and

Table 6.11: Actual and Planned Job Cuts Between 1987 and 1993.

Airline	Actual lay-offs	Planned lay-offs
British Airways	15,000 ⁵⁷ 4,600 (1991) ⁵⁸ 1,600 (1992)	Yes
Scandinavian Airline (SAS)	3,500 6,000(1992)	Yes
Air France	5,400 ⁵⁹ (1990-1993)	4,000
SABENA	3,200 (1992) ⁶⁰	None
Iberia	3,000 (1992)	Yes
Lufthansa	1,800 (1992) (end of 1994)	3-6,000
Aer Lingus	1,500	Yes
Alitalia	None	None
KLM Dutch Airlines	None	None
Luxair	None	None
Olympic Airways	None	None
TAP Air Portugal	None	1,500

Sources: Doganis, 1994: 18; Gallacher, April 1991: 25; *ITF News*, Jan./Feb. 1993: 30; ITF Report, 1992: 45, 91.

⁵⁷During the private-ownership period (1986-1987) lay-offs were part of the redundancy process.

⁵⁸Equivalent to 12 per cent.

⁵⁹3,000 of them after the AF merger with UTA in January 1991.

⁶⁰Planned as part of a two-year restructuring programme resulting from the Air France/Sabena merger.

Manchester; Aer Lingus created Aer Lingus Express; LH set up Lufthansa Express in 1993; and AF maintained a multitude of air links with small airlines such as TAT and Crossair, and KLM did likewise with Air Littoral. Finally LH, KLM, and Iberia used their low-cost subsidiary charter airlines (Condor, Transavia and Viva Air respectively) to operate scheduled services in leisure markets.⁶¹

Furthermore, EC national airlines in high-wage economies such as those of Germany, France, and Italy started to move certain activities from their domestic air-transport markets to other countries where wages were rather lower. For example LH set up Shannon Aerospace to provide major aircraft-overhaul and maintenance facilities, taking advantage of much reduced labour costs in Ireland. AF subcontracted some of its Boeing 737 maintenance to its cheap-labour partner, the Czech airline CSA in Prague. Alitalia, in attempting to expand into the US air-transport market and to build up a commanding position on transatlantic routes between the USA and Italy, has ignored certain basic requirements of US labour law and abused its US workers in a way that would be illegal in Italy (by exploiting the US labour-law flexibility against trade unionism).⁶²

The champion airlines in the EC, finally, trying to maintain commercial operations while coping with the increasingly complex tariffs resulting from greater pricing freedom, introduced management-marketing techniques such as the computerized yield-management system (YMS), "frequent flyer programmes" (FFP),⁶³ code sharing⁶⁴, leasing,⁶⁵ and franchising.⁶⁶ They even

⁶¹ Interview with M. Ambrose (30 May 1991). See also Doganis, 1994: 19; ITF Report, 1992: 58-59; ITF News of Jan./Feb. 1993: 30, and July 1993: 20-23; Gallacher, Sept. 1990: 72; Katz, Feb. 1991: 32-41.

⁶² Doganis, 1994: 19; ITF News, April 1993: 14.

⁶³ Both identical to those used by US airlines discussed in ch.I.

⁶⁴ While code-sharing was not a new phenomenon in Europe, it had usually involved a smaller airline using a larger airline's flight code as a way of increasing its markets profile and attracting feeder traffic. The smaller airline might or might not be part-owned by the larger one.

⁶⁵ Leasing reduces an airline's heavy capital costs, and enables the legal responsibility for the aircraft to be transferred from the state of registry to the operator. Ireland supplies one of the world's largest leasing fleets of aircraft through the GPA Group, a worldwide major leasing company. See Booth, Dec. 1989: 54; Sochor, 1991: 207-12.

⁶⁶ This involves the franchised use of a larger and well known airline's name, aircraft livery, flight codes, and brand image by a new smaller and unknown feeder airline, which pays a fee. One consequence of such a franchise is that the newer airline no longer poses a potential threat to the larger carrier. Doganis, 1994: 21.

hired professional management consultants such as Mackinsey of the USA and Indevo of Sweden.⁶⁷

Examples of the above practices are BA's introduction in 1990 of a frequent-flyers air-miles scheme in Europe, which allots air miles to passengers not only for actually flying but also for using certain shops, banks, hotels or gas stations. In October 1993, following signature of a new USA-Germany air services agreement, LH and the US airline United promptly announced a new code-sharing agreement. In the summer of 1993 KLM developed code-sharing on transatlantic routes with the US airline Northwest; and AF created a leasing company on some islands belonging to the Netherlands and in the Caribbean. Early in 1993 BA agreed a franchise with its Gatwick-based airline City Flyer Express which since then is operating as British Airways Express. A similar agreement was made between BA and the Danish airline Maersk to operate services from Birmingham, and between the independent UK airline Virgin Atlantic⁶⁸ and the new Greek entrant airline South-East European Airlines (SEEA) to operate between Athens and London (Gatwick) in June 1993.⁶⁹

Below, the specific strategies in the domestic, EC, and international air-transport markets of two national airlines will be examined - one a winner and the other a loser. Both were strong proponents of quick and far-reaching liberalization of the EC air-transport market. They are the EC champion and privately-owned BA of the UK, and the smaller and state-owned Aer Lingus of Ireland. These two cases are a good illustration of the fact that a small airline without access to EC politiking has no chance of survival in such a competitive market unless subsidized by state funding. BA, on the other hand, while operating entirely on private funding, could go from strength to strength by

⁶⁷ITF Report, 1992: 70.

⁶⁸Virgin Atlantic was established in 1984 by Richard Branson as a cargo airline and then became a passenger carrier. Today it is the second biggest airline in the UK and operates as a scheduled airline.

⁶⁹Interview with J. P. Meheust (23 Nov. 1990). See also Doganis, 1994: 20-21; Vima Greek newspaper of 11 April 1993: 44, and 17 Oct. 1993: 47.

relying on unethical practices, not excluding blackmail, as well as on the indirect backing of its government. The comparison also shows that liberalization itself was not enough to result in a commonly adopted policy for EC air transport as a whole.

3.1. British Airways

BA, the airline vociferously canvassing and issuing declarations for fair competition and multi-designation of airlines in the EC air-transport market, nevertheless acquired a rather controversial reputation for itself with its unprecedented moves for consolidation against both its domestic and EC competitors, as well as its anti-labour practices.

Having transformed itself from a sluggishly bureaucratic national airline into a productive and profitable private one, BA was the most successful at the EC level, not only in acquiring airlines from other member-countries but especially in penetrating the other two largest EC air-transport markets - those of France and Germany. The slow pace of air-transport liberalization in the Community was in fact highly beneficial to BA, in that it allowed the company ample time for adaptation, a process that differed completely from the tenor of BA's public pronouncements on the issue and the speed it urged at the EC meetings.⁷⁰

After its privatization in 1986 BA changed its consensual industrial-relations style of public-sector services for the more aggressive profit-gearred style of private sector business. Its new structure of corporate management imposed new working conditions following minimal consultation with the unions. BA had frozen all recruitments, cut capital expenditures, halted overtime, and offered its staff unpaid leave or shorter working hours. The new

⁷⁰Interview with S. Webb (4 June 1991). See also Doganis, 1994: 18; ITF News, Oct. 1992: 8; and British Airways Manifesto for air-transport in Europe, May 1991.

method of management (originally introduced in the US airline industry during the deregulation process) also included massive lay-offs, the creation of counter-union employment, and the contracting-out to private tenders of activities such as catering, aircraft cleaning, maintenance, loading and baggage handling and security. It made BA into what is known as a "core airline", one which considers as truly indispensable for an airline only its aircraft and the cockpit and cabin crews.⁷¹

On 4 June 1993, however, the first ever and biggest national strike in the history of the airline forced the company to recognize that its days of cavalier management were over. BA was forced to agree that every major company policy, whether it was contracting out, overseas-based cabin crews, or the set up of a subsidiary, had to be negotiated and required the approval of the unions. In the end BA had to draw up and sign a staff charter. No other company in the UK had ever been obliged to accept such directives for its future decision-making.⁷²

On the home front, and consonant with its treatment of personnel, BA set about quite systematically to eliminate or buy out the other UK airlines. It was ready to pay any price, and frequently threatened and even blackmailed the UK government when it baulked at the company's ruthless activities. In 1990, for instance, BA rigorously opposed the slot allocation proposal by the Commission and the UK government's wishes that there should be slot-sharing at UK airports with competitors of BA such as Air UK, Britannia,⁷³ British Midland, and Virgin Atlantic. It should be mentioned that the above-listed UK airlines were flying relatively small aircraft, operated at high costs, were expanding very slowly, and had a rather limited impact in the UK market.

⁷¹Information from author's interviews with D. Cockroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993); G. Ryde (5 June 1991). See also Doganis, 1994: 18-19; Gallacher, April 1991: 25; Financial Times of 18 Jul. 1991: 2, and 1 Feb. 1991; ITF Report, 1992: 55-57; ITF News of April 1991: 13, and July 1993: 19; Pilling, Dec. 1990: 710-14; Vima Greek newspaper, 29 Nov. 1992: 37.

⁷²ITF News, July 1993: 19.

⁷³Britannia was the largest UK charter carrier which later became a scheduled airline.

Nevertheless BA succeeded in keeping them out of the country's airports, arguing that to let them in it would be detrimental not only to its own domestic operations, but above all because it would allow other EC airlines to penetrate the UK airports while remaining protected in their own. BA more than once considered the actions of its domestic competitors as a *casus belli*. It alleged that they were constantly scheming to take away bits from BA in order to expand, and it denounced the government's slot-sharing policy as not at all a move to promote expansion or competition, but an attempt to curtail BA's interests in favour of the other UK airlines. All complaints by BA's rivals concerning its unethical behaviour and allegations of predatory practices, whether addressed to the UK government or the EC Commission, were in vain.⁷⁴ Lord King, the then chairman of BA, publicly disclosed that in its agreement with Britain's conservative government

" BA had been given assurances at the time of privatization that there would be no arbitrary changes in its routes and in regulatory policies." ⁷⁵

Another instance of BA's ruthlessness was the warning that the company would drop its planned purchase of Dan-Air, so causing a great many more unemployed, if the UK government should refer the proposed take-over to its Monopolies and Mergers Commission.⁷⁶

Eventually as a result of its unfair dealings with its competitors and specifically a smear campaign against UK's Virgin Atlantic Airlines, BA was taken to court by the latter and in January 1993 ordered to pay damages of 3.5 million pounds (approximately the amount it had saved in its cost-cutting programme). BA's president Lord King retired shortly after the court finding, and was succeeded by Sir Colin Marshal, until then BA's vice-president.⁷⁷

⁷⁴Doganis, 1994: 18, 22; Financial Times of 3 May 1990: 26, of 5 Oct. 1990, of 24 Jan. 1991: 20, of 1 Feb. 1991, and of 8 Dec. 1992: 2; ITF News, Nov. 1992: 16.

⁷⁵Financial Times, 1 Feb. 1991.

⁷⁶ITF News, Nov. 1992: 16.

⁷⁷ITF News, Jan./Feb. 1993: 30; Vima Greek newspaper, 22 Nov. 1992: 36.

Although badly hit by the national and worldwide economic recession and the Gulf War, purely on the business side, BA in 1990-91 in Europe only (including UK domestic operations) reported revenues of over Pounds 1.9 bn. It nevertheless had a deficit of Pounds 34 m., but the revenues of the BA group as a whole, amounting to over Pounds 4.9 bn, produced a final surplus of Pounds 167 m. Also, BA was one of the most profitable airlines in the entire world. It reported a 345 million pounds net profit, and forecast a 230 million pounds profit for the next twelve months - while its competitors were predicting losses which indeed became a reality in 1992, as shown in Table 6.1 above.⁷⁸

3.2. Aer Lingus

Aer Lingus was a state-owned airline in the forefront of the movement to liberalize EC air transport. Already in 1986 it had introduced a greater pricing freedom on the Dublin-London (Luton airport) route, along with the new independent Irish airline Ryanair and BA. During the financial year 1987-1988 it recorded a profit of 15.2 Irish pounds. It was also the first to take full advantage of the "fifth freedom" provisions by developing first Manchester airport and then Birmingham as new EC hubs and key components of its strategy. When its services between Birmingham and the main EC hubs, especially Brussels, did not prove successful, the airline decided to concentrate on Manchester. From 28 March 1988 onwards Aer Lingus flew to several European destinations from Manchester (Dublin-Manchester), including Amsterdam, Brussels, Copenhagen, Hamburg, Paris, and Zurich, representing a catchment area of some 20 m. to 22 m. people - a huge market compared to the domestic Irish one.⁷⁹

⁷⁸Financial Times of 1 Feb. 1991, and of 1 Aug. 1991; Transport and General Workers' Union (TGWU) News Bulletin, 1990.

⁷⁹Financial Times of 26 May 1988, and of 22 Jan. 1990: 2.

At the beginning of 1991 Aer Lingus realized that big flag carriers were going to capture the EC and European market for themselves by engaging in a series of non-aggression pacts or absorbing smaller airlines before the 1993 deadline, when the liberalization policy was to go into full force. C. Mullan, the airline's chief executive, commented somewhat bitterly that

"A major problem with airline deregulation in Europe is that everybody currently pays lip-service to the idea of liberalization, but everybody has a tendency to cheat."⁸⁰

In these circumstances the airline's management decided it could not wait until the end of 1992 to further liberalize its air transport and attempted to dynamically claim its own share from the European market. It accordingly started on a campaign for an EC air-transport policy that would give the smaller airlines greater access to the market and prevent the champions from setting up cartels prior to 1993. Since Aer Lingus was a very small airline in a country of 3.5 m. people located on the periphery of Europe, a key part of its strategy for the 1990s was to move beyond dependence on business in and out of Ireland. In 1990 air transport to Ireland was double that of 1987 and had risen to 3.6 m. people, while it accounted for about 60 per cent of Irish-UK travel business. Another factor boosting air-travel had been the continuing emigration of about 30,000 people a year from Ireland to the UK, many of them of the younger generation.⁸¹

Furthermore, in 1990 Aer Lingus believed that expansion of its services to Europe would be a major factor in its talks with other airlines seeking partners to boost their competitiveness. The airline did not seem particularly eager to play a leading role in one or other of the big European airline groupings taking place in the period 1987-1993. Neither was it willing to be drawn into a broad alliance of airlines from various peripheral European

⁸⁰Financial Times of 22 Jan. 1990: 2.

⁸¹Financial Times of 22 Jan. 1990: 2.

countries, but while this was a project that looked attractive on paper, it was never realized in practice. In fact, as noted earlier, Aer Lingus seemed more anxious to expand its European and North American services than enter into any new grouping. It should not go unmentioned that while seeking new openings to expand its airline services, Aer Lingus was one of the first airlines to consider the cyclical nature of aviation profits by seeking other activities to underpin its airline core business.⁸²

In 1990 however, Virgin Atlantic and British Midland came into the Dublin-London market, and altogether six airlines were involved in a cut-throat price-cutting war on fares, eventually offering unrestricted fares that were less than half the normal economy price. Aer Lingus could not hold out such frenzied competition, especially in the climate of the Gulf-crisis recession, and by the end of 1992, had accumulated losses exceeding 90 million Irish pounds, plus debts of over 600 million Irish pounds. The same general economic environment had caused BA in 1990 to discontinue all its flights to the Republic of Ireland after 44 years of uninterrupted service.⁸³

As a result, early in 1993 the Irish government, a determinedly liberalizing force in the EC air-transport market, was obliged to seek the EC Commission's approval of a 400 million Irish pound grant to its state-owned airline in financial aid. Somewhat later it requested permission to provide additional funds of 175 million as part of a package deal involving extensive job cuts to reduce operating costs by 10 per cent or (Ipounds 50 m. annually), so as to staunch the losses that were running at Ipounds 1.2 m. a week. State investment in Aer Lingus became a quite major issue in the 1992 general election, and the results in a number of Dublin constituencies were decisively affected by debates on whether Aer Lingus should be sold off or not. The Commission's policy on state-aid to Aer Lingus was also being challenged by

⁸²Financial Times of 22 Jan. 1990: 2.

⁸³Doganis, 1994: 19; Financial Times of 22 Jan. 1990: 2, and 1 Feb. 1991; Reed, Oct. 1989: 37; The Sunday Times, 14 June 1987.

British Midland, Aer Lingus' main rival on the Dublin-London route. British Midland's management argued that Aer Lingus' financial problems were partly caused by exaggeratedly low fares on the above route, and partly because the Irish airline (although roughly the same size as British Midland) in 1987 employed 8,000 people compared with British Midland's 2,500. On 31 March 1993 the Aer Lingus net debt stood at of £ 540 million.⁸⁴

At the same time the carrier's financial problems brought conflicts between the airline management and the trade unions, as well as party-political disputes at national level. B. Cahill, as the new Aer Lingus president charged by the Irish government unconditionally to restore Aer Lingus' financial and market position, ordered the lay-off of 500 airline employees from the airline's 5,500 workforce, raising the spectre of compulsory redundancies which the trade unions pledged themselves to fight. In the end the airline management and unions agreed on a complex three-phase conciliation and arbitration procedure through Ireland's Labour Relations Commission, to be concluded before the deadline on 31 October 1993. Then, halfway through 1993, senior figures within the Labour Party, the junior partners in the coalition government, saying they would not support compulsory redundancies, threatened a dangerous split in the coalition and a possible government crisis. Finally, there was a serious warning from the banks that the financial taps to the carrier would be turned off if a rescue plan was not in place by late summer.⁸⁵ As far as I know, neither of these dire possibilities was realized. Meanwhile, Aer Lingus continues to operate normally.

4. Conclusion

The EC airline industry was not a collectively homogeneous policy community in the EC's policy networks. On the contrary: there were serious

⁸⁴Financial Times of 22 Sept. 1993: 30, and of 28 Sept. 1993: 19; Vima Greek newspaper, 21 Mar. 1993: 34.

⁸⁵Financial Times of 22 Sept. 1993: 30, and of 28 Sept. 1993: 19; ITF News, Jan./Feb. 1993: 30.

and irreconcilable divergences between national and private air-transport interests that brought all EC airlines into serious conflicts with each other. The AEA umbrella group, which represented among others the twelve EC member-countries' national airlines, played a central role in shaping the Community's air-transport policy and decision-making process, and in slowing down the pace of air-transport liberalization.

From 1987 onwards it was not air-transport liberalization as such that had the major impact on the EC airline industry, but the inevitability of international competition in air-transport and the threat of the US and the growing Asian/Pacific mega-airlines to dominate the international and EC markets. This meant that the main consideration and tactics were concerned with sheer survival. In consequence the EC's national airlines, and especially the champions, opted not for competing among themselves, but to pursue a strategy of concentration involving offensive and defensive alliances and mergers with foreign and domestic airlines, so as to prevent independent or new airlines from emerging as rivals in the EC air-transport market. Most of those latter airlines collapsed quickly and disappeared as separate companies through merging with or being partly acquired by one of the national airlines.

In effect the major airlines deliberately delayed liberalization of the EC air-transport market, and did not adhere to the economic programme of the EC liberalization policy. On the contrary, EC air-transport was becoming increasingly oligopolistic, with the big airlines forming *de facto* cartels, suggesting that national airlines would eventually disappear as independent units and became parts of conglomerates. At the same time, however, certain national airlines that were strong advocates of liberalization or even complete deregulation, were nearly bankrupted while others went from strength to strength, although they were accused of predatory and consolidation practices. So Aer Lingus, while starting out promisingly with fair competition on

specific air-routes, was then obliged to engage in price reductions and a fare-war with other airlines, and very nearly collapsed. On the other hand BA is an example of a definite winner. Contrary to its official pronouncements, the actual policy of its private interests was growth at all costs. This, of course, ran exactly counter the common EC liberalization policy, which envisaged an air-transport market in which smaller state-owned and independent airlines had a chance of expanding. To begin with, the latter would have required amicable co-operation for harmonizing the divergent domestic and EC air-transport interests, which would have meant joint operational measures and conditions. Instead they were faced by out-and-out competition by their co-national companies.

CHAPTER VII

1987-1990: UNIONS RENDERED PASSIVE SPECTATORS IN EC AIR-TRANSPORT LIBERALIZATION

"As a major cost item that is under direct management control and of which significant savings can be achieved relatively quickly, labour costs have come under pressure from airline managements needing to improve their competitive positions." (International Labour Organization (ILO), 1988)¹

This chapter investigates the internal and external factors that between 1987 and 1990 impeded the air-transport unions and pilot associations, on both the national and the EC level, from influencing the Community's air-transport policy. The focus is on conflicts among themselves, which were the result of divergent national, ideological, and economic interests, and on the negative attitudes to them of their countries' airlines and the Commission.

A better understanding of the obstacles in the way of EC air-transport unions and pilot associations having a say in EC policy-making may be helped by a brief resume of the EC's overall labour policy and the general trade union problems and conflicts in the member-countries and in the EC prior to the introduction of the air-transport competition policy in 1987.

1. EC Labour Policy and Unions General Problems and Conflicts

In the course of the 1970's the Commission attempted to rectify a certain imbalance in industrial relations by encouraging the trade unions to organize more coherently at the EC level, and so act as a counterbalance to the power of the individual member-countries and the employers, as well as to organized capital. For all that the Commission's attitude to the unions was ambivalent. While on the one hand it encouraged employers and unions to

¹ITF Report, 1992: 39.

participate in its negotiations, on the other it maintained a certain distance because, since member governments would always have the final say, the Commission could not in fact guarantee the terms actually negotiated. Besides the Commission considered that there was a limit to how far EC employers and their unions could be expected to intelligently co-ordinate views at EC level. They were, after all, sectional organizations for the protection of their members' interests. In the end, the Commission proposals for establishing special committees or work councils in certain production and service sectors failed utterly.²

In 1980 the Commission introduced its two most ambitious labour market projects: the Vredeling directive, which concerned the right of employees to information and consultation in multinational companies; and the Fifth Company Law directive on employees' participation at board-level. Both of them failed to apply because of pragmatic imperatives of global competitive pressures, if not an ideological shift among EC governments towards politico-economic market priorities in the early 1980s.³

In any case they prevented the Commission from fulfilling its self-imposed task of balancing the respective power of member-states, employers, and employees. In the final instance this meant that the EC trade unions have not aspired to set a 'political role' at the EC, and have thus not produced one, defying the forecasts of the early functionalists that social policies would slowly coalesce and that the Commission would be the 'motor' of integration.⁴

At that time (early 1980's) the member-countries and employers were generally opposed to tripartite meetings, when employers and trade unions (on a formal and regular basis at EC level) would report directly to the Commission, without channeling their information through the national

²Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991 and 4 April 1993); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991); R. Valladon (22 Nov. 1990).

³Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991 and 4 April 1993); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991).

⁴Rhodes, 1991: 245.

ministries. They preferred to keep labour negotiations a national concern and to bargain face to face. In defense of their position they argued that the time had not yet come for tripartite meetings at the EC level. Existing structural rigidities of labour unions, and the huge gap between wages and labour costs dividing the richer EC member-states (e.g. Denmark and Germany) and the poorer ones (e.g. Greece and Portugal), which was of the order of four or five to one, needed to be overcome first. Positive economic integration in the form of the adoption of common policies would have to be achieved first if the labour market was to become fully mobile. They suggested that until the labour market had adjusted to the internationalization of EC industries, it was only sensible to substitute capital for labour in bargaining processes with the Commission. It was quite obvious that especially the employers were much more successful both in co-ordinating their EC/national policies, and in lobbying the crucial centers of power at national and EC level, when they were not subjected to the unions' restraints and demands.⁵

The above consideration gave rise to a debate in the EC countries on the precise connection between industrial relations and economic performance, which questioned the wisdom of corporatism at national level. It was pointed out that there had been an overall decline in the efficacy of macro-corporatist arrangements in favour of more conflictual forms of micro-corporatist arrangements that were emulations of the pluralistic and more sectorally-based (decentralized) model of US industrial relations.⁶

All of the above, plus the unions' traditional mistrust of the EC institutions, and the apparent ease with which employers had made successful representations to the Commission over the years, made the unions more suspicious of the Commission's motives for proposing the participation of trade unions in companies structures at the EC level. They alleged that such a proposal was almost certainly a matter of political expediency, and a device to

⁵Gobeyn, 1993: 3-4; Grant 1985: 15, 27; Rhodes, 1991: 247-49, 273-75.

⁶ Gobeyn, 1993: 3-4; Rhodes, 1991: 249.

integrate the unions into the market system. The upshot was that the unions felt frustrated and alienated, and no longer sought to forge closer links with the Commission. They were all too bitterly aware of their weak role and position throughout the EC, given that there was no labour legislation at EC level to harmonize their rigid national structures and working conditions, and the fact that unlike the employers, they had no alternative channels of representation at the EC level.⁷

Specific issues aside at the overall EC level, the trade unions in the various EC countries differed considerably in their historical development and ideological attitude to the role of workers in the EC. For example unions such as the French *Confederation Generale du Travail* (CGT), and its Spanish counterpart the *Comisiones Obreras*, due to their communist Party links were basically hostile to the notion of a united Europe. They refused to join the European Trade Union Congress (ETUC), the confederation of all European workers, opposed other ETUC members, and took a strong stand against worker participation in companies. While the socialist unions were less radical and supported parity representation with employers on the board, none of the more strongly political groupings were firmly committed one way or another, and in fact often divided internally. On the other hand the Christian-democrat white-collar unions (in member-states such as Belgium, Denmark, Luxembourg and the Netherlands) supported one third representation.⁸

The ideological differences of trade unions were particularly marked between France and Germany over the interpretation of objectives such as "the control of working conditions" or the "aim to achieve work-force control". The latter was understood by the German unions to mean statutory co-determination on company boards, while the former was perceived by the French socialist unions (such as the French Confederation of Workers CFDT, and the Belgian General Federation of Workers, FGTB), as aiming to achieve

⁷Information from author's interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991 and 4 April 1993); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991).

⁸Rhodes, 1991: 271.

the control of the factors of production. The latter declared that trade unions did not seek the institutionalization of relations between the two sides of industry(which in their opinion, was favouring the work of employers and not that of the workers), because this would curtail their freedom to present employers with tough demands. They did not believe that it was possible to democratize a company structure unless the market economy was utterly transformed in respect of ownership of the means of production. They considered progress possible only through contractual bargaining from relative power positions that were in a constant state of flux. The Dutch, Danish, and Luxembourg unionists supported the German approach for the most part; the British, Greek, Italian, and Irish unionists were in favour of the French and Belgian positions.⁹ This disparate range of views did not make the task of the EC umbrella groups any easier.¹⁰

The EC umbrella groups in individual industries and the ETUC remained just reasonable interlocutors concentrated at least for the dissemination of information from the Commission to the national unions, and for producing research papers and proposals to the Commission, but they failed to shape a co-ordinated view by all the EC member-state trade unions into a coherent lobby. So the unions' role was distributive with regard to information, rather than aggregative with regard to interests.¹¹

Until the mid 1980s the EC as a whole had largely abdicated responsibility for any labour input and planning at EC level, and combined weak corporatist arrangements (with capital only) and weak pluralist and parliamentary arrangements. As a result, the EC was not likely to boost the spread of any corporatist arrangements in the way it was applied in its member-states political systems.¹²

⁹Portugal and Spain were not yet members of the EC.

¹⁰Rhodes, 1991: 272.

¹¹Information from author's interviews with D. Cockcroft 19 (June 1991); S. Howard (3 June 1991); G. Ryde (5 June 1991). See also ITF Report, 1992: 79, 84.

¹²Grant, 1985: 15, 27; Sargent, 1985: 229-53; Scholten, 1987: 140-42; Wallace et al, 1983: 46.

Adoption in 1986 of the Single European Act (SEA) legalized the global competitive pressures EC by introducing the philosophy of the Treaty of Rome, basically constructed on US politico-economic lines.¹³ Among other things it decided to implement competition policy in the EC air-transport sector. However, as in the case of the EC's pre-1986 legislation on production and service sectors, there was no provision for harmonizing the member-countries' social measures to protect minimum working conditions during the air-transport liberalization. As a result the SEA implied a threat to existing air-transport workers' rights both at a national and EC level.¹⁴

From 1987 onwards serious internal and external problems in their home country and in the EC impeded trade unions and pilot associations from gaining access to and participating as equals in the liberalization policy for the EC air-transport market. Kept outside the process in terms of actual airline practices, their own country, and the EC as a whole, they were reduced to a merely passively reactive¹⁵ role.¹⁶

The internal factors that stood in the way of EC air-transport trade unions and pilots associations taking an active attitude towards EC liberalization were due to a large number of insoluble difficulties that stemmed from their being specific interest-group organizations dependent on their airlines' strategies and interests, as well as suffering from ideological, organizational, and elitist cleavages of their own.

¹³It has been argued that direct US pressure for integration was exerted on Western Europe for the purpose of keeping the West European anti-communist governments united against the Soviet threat. On the other hand the USA had a vision of a United Europe with politico-economic policies identical to its own and certainly conforming to its own structure of a federal system of government. The Truman government's Marshall Plan aid, to the countries of Western Europe, initiated in 1948 had been viewed by academics as the path to European Union and the Common Market. Preben, 1986: 5-7.

¹⁴ITF Report, 1992: 41, 74. For a general consideration on EC policies see Rhodes, 1991: 253.

¹⁵It is an incremental and gradual adjustment with marginal change policy which however indicates a conservative behaviour.

¹⁶Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); Y. Enderle (7 Dec. 1990); H. Finstein (5 June 1991); S. Howard (3 June 1991); A. Gosselin (14 Nov. 1990); G. Koutsogiannos (18 Jan. 1991); P. Laprevote (21 Nov. 1990); J. P. Meheust, D. Julien, and G. Gomez (23 Nov. 1990) T. Middleton (13 June 1991); G. Ryde (5 June 1991); F. Tack (14 Nov. 1990); R. Valladon (22 Nov. 1990).

2. Internal Problems of Unions and Pilot Associations

There were a great many reasons for the air-transport labour unions and pilot associations failing to play a more assertive role at both national and EC level between 1987 and 1990. To take the home front first, the air-transport personnel enjoyed a very stable, well-paid and glamorous employment, and excellent working conditions in an environment without a very high degree of emancipation, but a very high level of trade unionism. This was because the politico-economic ideology of certain EC member-governments had readily met their air-transport unions and pilot associations demands. Moreover, the more powerful the EC member-state, the higher the social status of its air-transport personnel, and the more prestigious the air-transport unions, and vice versa. Also, the smaller the air-carrier, the more energetic its unions' policy tended to be. For example the Belgian, French, and German air-transport unions owed much of their considerable strength to their countries' pro-union legislation. Also the dynamic unions of the Greek airline Olympic Airways did not enjoy as high a social status as did those of Air France, but had a much more coherent policy towards their employer. As a result there had been little friction between the unions and employers and generally not much trade-union agitation at all.¹⁷

These factors tended to lead the trade unions and pilot associations to become moderate organizations, problem-solvers rather than strategy-planners. Besides on the one hand they had seen no reason to allocate their resources and plot their future policy in the way best suited to counter any possible anti-labour practices of their airlines and to deal with vehement changes in the EC airline industry. On the other hand the liberalization of the EC air-transport market was the second best solution for them and it was only

¹⁷Information from author's interviews with N. R. Burrough (9 Nov. 1990); Kanganis (22 Nov. 1990); F. Tack (14. Nov. 1990); G. Ryde (19 June 1991).

natural that they should try to defend the *status-quo* of the pre-1987 corporatist and more rigid national air-transport systems in which their own entrenched interests were very well accommodated.¹⁸

Secondly, although trade-union membership in the EC airline industry was virtually 100 per cent, there was a notable lack of militancy. Most of the responsibility for this lay with the union officials who did not provide any kind of active leadership in terms of discussing issues which affected members and what strategies the unions should adopt. The reason for this was that many of them were dependent on party politics. The president of the Greek Federation of Civil Aviation Unions (OSPA), for instance, was a member of the Pan-Hellenic Socialist Movement (PASOK) and after he became head of General Confederation of Greek Workers (GSEE) he was elected as a PASOK member of parliament in the 1993 national elections. On the other hand G. Ryde, secretary of Transport and General Workers' Union (TGWU), said however, that the EC air-transport liberalization process had created a totally new situation and it was advocating an air-transport system different to that which the air-transport workers and their unions were used to in their national environment. This meant a lot of difficulties, especially with regard to effecting a drastic change in many of the basic views and habits held in the aviation industry for four decades.¹⁹

Another reason for the unions' lack of dynamic action was the absence of any joint policy in their own national environment. Finding themselves faced with zero-sum choices some of trade unions and pilot associations, especially those closer to a more conservative ideology, sympathized with the liberalization of the EC air-transport market, while others saw it as inevitable and irreversible. There was much debate in the air-transport unions over whether they should oppose liberalization at all costs, or whether they should

¹⁸ Interview with G. Ryde (19 June 1991).

¹⁹ Information from author's interviews with S. Howard (3 June 1991); G. Koutsogiannos (18 Jan. 1991); G. Ryde (5 June 1991).

simply opt for the better deal. In other words, although the air-transport unions considered liberalization as anathema they said they were obliged by the EC to accept it. For example the Belgian Christian-democratic air-transport union stated that while the liberalization of the EC air-transport market was welcome, the anti-labour practices of the EC airlines were not. Other unions and pilot associations however went further and argued that labour-cost reduction was a mistaken airline strategy, because it was not the highly paid employees who were at the root of fare increases, but the price fixing by the airlines, which was a result of the control over air access exercised by each of the EC countries. As long as this situation continued, EC air-transport liberalization was nothing other than slashing wages to increase productivity. Finally, other unions and pilot associations declared that the Employee Stock Ownership Plan (ESOP) policy was excellent for the airlines as well as the unions and pilot associations, because it provided incentives for the employees to invest in the company's capital, and to increase their own interests in its profitability, in addition to facilitating possible promotion into the airlines' management.²⁰

There was, of course, a considerable overlap and interdependence between the interest of the trade unions and their airlines, a circumstance that made their confrontations much less intense in the air-transport sector than elsewhere. While the unions and pilot associations might be fighting their airlines to protect their own interests, they would equally fight for these same airlines to have the best possible position in Europe and internationally. All of the Air France unions - which are very numerous and constantly at loggerheads - in the final instance would do anything to ensure that AF profited to the utmost in the EC and international air-transport markets.²¹

²⁰Information from author's interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); Y. Enderle (7 Dec. 1990); H. Firstein (5 June 1991); S. Howard (3 June 1991 and 4 April 1993); A. Gosselin (14 Nov. 1990); G. Koutsogiannos (18 Jan. 1991); P. Laprevote (21 Nov. 1990); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990) T. Middleton (13 June 1991); G. Ryde (5 June 1991); F. Tack (14 Nov. 1990); R. Valladon (22 Nov. 1990). See also Wallace et al, 1983: 46.

²¹Interviews with D. Cockcroft (19 June 1991); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990).

Not surprisingly, the most energetic unions were those that had the closest relationship with their national airline and its management. Obvious examples were the German air-transport unions which understood the LH strategy very well and participated in the airline's management. After the failure of the December 1989 Strasbourg summit to adopt the Social Charter for instance, the Federation of German Industry and the German Trade Unions issued a joint policy statement on the charter which met with majority approval in the European Parliament even from the non-socialist parties. Furthermore in July 1992 president M. W. Mathies of the German transport union of Public Service and Transport Workers' Union (OTV), representing among others all air-transport workers, met with German Foreign Minister Klaus Kinkel to press for scrapping the German-American Air-Traffic Treaty. At the end of August the same union reached agreement with LH on a wide range of productivity issues and for reducing redundancy measures, as well as on the extent of active participation by the employees in the future shaping and monitoring of developments within LH.²²

However, close links between a country's air-transport unions and members' employers did not rule out occasional conflicts concerning the extent of the unions' support of the airlines' strategies. So the close collaboration between LH and its trade union and pilot association, and the latter's acceptance of a two-tier wage system, threatened other airline unions. Especially affected were those of AF, which were apprehensive that, due to the AF/LH marketing co-operation, they might find themselves in a similar situation to their German counterparts. According to the French trade unions if AF was to imitate LH by negotiating a two-tier wage system with them, they would take it not only as an anti-labour move, but they would consider it as an indirect way of deregulating, instead of liberalizing, the French air-transport

²²Interviews with D. Cockcroft (19 June 1991); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); See also *Europe* 1993: 119; *ITF News*, Oct. 1992: 10.

market. On the other hand, according to ITF, BA set up a cabin crew union, as a "break away union", which in fact it was ideologically affiliated with the conservative UK government, and related to BA's anti-labour strategy.²³

Last but not least the air-transport unions and pilot associations were beset by major contentions over the latter's elitist attitude towards the former because pilot associations never collaborated and had always negotiated separately with the airlines. The unions conceded that undoubtedly the pilots were extremely important in their airline's operations and deserved the respect accorded to them by airline management. However, if their specialization and competency was compared to that of other airline and airport jobs, it had to be admitted that all aviation jobs required an equally high level of training and just as much experience, and were all equally necessary to get a plane into the air. They recalled the occasion of the Australian pilots' strike, which did not have the support of the other unions and ended with them all being laid off - demonstrating that pilots were no more and no less important than any other air-transport employees. The only difference was that although pilots accounted for three per cent of an airline's personnel, the fact that their salaries represented 35 per cent of the total wage bill made them feel superior towards their fellow employees. Aeropa accused the pilot organizations of playing a disreputable game, because their elitist attitudes found expression in economic demands that they did not feel other employees to be entitled to.²⁴

It was not only pilots who were accused of showing this kind of elitist attitude in the national air-transport systems. The pyramid of relative worth of the various kinds of airline personnel had the pilots at the top, flight engineers in the second layer, then the flight crews, ground hostesses in the fourth layer, administrative employees in the fifth layer, and so on. This elitism gradually

²³Information from author's interviews with C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991 and 4 April 1993); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); P. Laprevote (21 Nov. 1990); R. Valladon (22 Nov. 1990).

²⁴Information from author's interviews with D. Cockroft (19 June 1991); P. Jeandrain (27 Nov. 1990); T. Middleton (13 June 1991).

diminished in time as the job became less demanding in terms of technical or administrative knowledge. In any case, neither the attitude nor the more or less rigid hierarchy were equally strong in all EC member countries. In Denmark, for instance, the pilots always had a good relationship and close collaboration with the unions, and there was no obvious hierarchical ranking in the Scandinavian airline SAS.²⁵

Partly because of the various internal rights and problems outlined above, the EC air-transport unions and pilot associations failed to establish any concrete lobbying, or a bargaining body, to deal specifically with air-transport matters and/or proposals they were vital for them at EC level. This paucity of bodies to defend their interests was due to a number of further reasons.²⁶

First the only formal EC body, that of the Economic and Social Committee (ECOSOC or ESC) (created under Articles 193-196 of the Treaty of Rome) for discussions between employers and the unions, had advisory status only, and wielded no power. It was the umbrella groups of the International Transport Workers' Union (ITF) and the International Federation of Airline Pilot Association (IFALPA) that had for decades represented the interest of unions in all main types of transport throughout the world. The Committee of the Transport Workers' Unions in the EC (CTWU) (a link-office between the ITF and the EC), and the European Airlines Pilots' Association (Europilote), did the same at the EC level and for all European airline pilots. All these groups were operating with quite insufficient financial and human resources, and the demands imposed on them by the international nature of civil aviation were inevitably much greater than those in other modes of transport, and could not be funded by their revenue from the aviation unions'

²⁵ Information from author's interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991); P. Jeandrain (27 Nov. 1990); G. Koutsogiannos (18 Jan. 1991); P. Laprevote (21 Nov. 1990); J. P. Meheust, D. Jullien, and G. Gomez (23 Nov. 1990); T. Middleton (13 June 1991); G. Ryde (5 June 1991); F. Tack (14 Nov. 1990); R. Valladon (22 Nov. 1990).

²⁶ Information from author's interviews with N. Alexopoulos (7 Nov. 1990); D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); P. Laprevote (21 Nov. 1990); J. Miart (23 Oct. 1990); G. Ryde (5 June 1991); F. Sorensen (12 Nov. 1990).

contribution. It was not until December 1988 that the ITF launched a worldwide Civil Aviation Week campaign (with leaflets handed out to passengers at all airports, press conferences and so forth), which strongly opposed deregulation of the international air-transport market. Thereafter, however, and until 1990, the ITF Civil Aviation Section met generally only once between annual congresses with occasional meetings of the technical committees.²⁷

Another reason for the lack of dynamic union involvement was that co-ordinating actors such as the EC air-transport unions to do something actively constructive at EC level is very different from co-ordinating actors to prevent something from happening (the latter, even though was much more difficult to be achieved, was the ITF's view). However, not only did the EC air-transport unions evince little interest in active initiatives, but were not really able to act for the reasons enumerated above - especially prior to 1987, when the EC air-transport system was not yet being hit. An example from the labour union congress in Luxembourg in 1986 is characteristic. The ITF's opening address on the harmonization of working conditions and qualifications, along with the protection of employees' jobs and incomes in a liberalized EC air-transport market sparked a massive debate - with the air-transport unions charging the ITF leadership with proposing the deregulation of the EC and European air-transport industry.²⁸ As ITF secretary D. Cockcroft noted

"I do not think that if five years ago the ITF had put forward a well-thought-out air transport strategy on how air-transport unions should restructure their approach to their national and EC aviation industry, any trade union whatsoever would have shown the slightest interest in it because then they were actually very happy with the status quo" (interview 19 June 1991).

It must also be remembered that the air-transport unions did not as a rule seek ties with other unions in the EC. Even in their national environment,

²⁷Interviews with N. Alexopoulos (7 Nov. 1990); D. Cockcroft (19 June 1991). See also AEROPA, Bulletin News, Jan. 1990; ITF News of Mar./April 1988: 7, of Oct. 1988: 6-7, and of Jan. 1989: 12-13.

²⁸Interview with D. Cockcroft (19 June 1991).

air-transport unions and pilot associations tended to co-operate haphazardly, rather than through formal affiliation or other more permanent arrangements for jointly voicing their demands or protests. The EC was both newfangled and remote. An example of this attitude is the complete apathy shown by the Greek air-transport unions, not only with regard to collaborating with other EC unions, but even to becoming members of the ITF and participating in its activities. Greece is the only member state the majority of whose civil aviation unions do not participate in any ITF meetings. The only unions that did take part regularly were ground technicians (ETEM&P) and flight engineers (HFEU) - truly minuscule bodies. This almost zero input from the Greek air-transport trade unions as a whole has been justified by them as due to their lack of personnel and financial resources.²⁹

A final point concerning the apathy of air-transport unions in the EC is that they did not at first realize the inability, let alone unwillingness, of the EC Commission, to support or satisfy their demands. Even where certain trade unions did try to approach Eurocrats of their own nationality, they were unable to contact and influence them for varying reasons. As R. Valladon, secretary general of the Federation of Transport and Service Workers (FETS-FO), remarked

"It is difficult to contact and influence French employees in the Commission because they are divided according to their politico-economic ideologies" (interview 22 Nov. 1990).

In addition to the internal factors that prevented air-transport unions and pilot associations from playing a more active part in the EC's air-transport liberalization, there were a number of external ones.

²⁹Information from author's interviews with D. Cockcroft (5 June 1991); S. Howard (3 June 1991 and 4 April 1993); C. Iddon (30 Oct. 1990); G. Koutsogiannos (18 Jan. 1991); J. Miart (23 Oct. 1990); G. Ryde (19 June 1991); F. Sorensen 12 Nov. 1990); F. Tack (14 Nov. 1990).

3. External Problems of Unions and Pilot Associations

As it was pointed in ch. VI, in 1987 the national and EC environment of the air-transport workers became unsympathetic. It was heavily influenced by neo-liberal ideologies, and the national airlines' response to the exigencies of international deregulatory policies that Europeanized/globalized the EC champion airlines through transnational coalitions. Although the unions and pilot associations were interested in the liberalization of the EC air-transport so as to avoid the union-busting³⁰ and social-dumping³¹ that had accompanied the domestic air-transport deregulatory policy in the USA, they nevertheless suffered lay-offs and wage concessions.³² Did the EC member-states, their airlines, and organized capital, as well as the consumer interest groups (the main representatives of social interests) actually initiate the break down of their national micro-corporatist arrangements, in a wish to prevent their air-transport labour force from acquiring an advantageous position at the EC level?

The answer has to be in the affirmative, although these developments were not a matter of any planned strategy, but an inevitable consequence of implementing the competition policy in EC air transport, in the wake of worldwide deregulatory pressures that favoured private capital. In these circumstances, private capital interests in the independent and national EC airlines manipulated their governments, whatever their politico-economic ideology, into supporting the specific air-transport interests; and often the first priority of private capital was to neutralize organized air-transport unionism.³³

³⁰Union busting is direct competition on air-routes by non-union airlines and underpay of air-transport personnel.

³¹Social dumping is a consequence of union busting, and affects the trade unions' social terms and collective bargaining rights. More specifically it means that disparate levels of social-security and labour protection will tempt companies to divert their investments to the lower labour regions and less robustly regulated labour markets which arise as the result of divide-and-rule policies in the labour market. See Molle, 1990: 16; Rhodes, 1991: 246, 251.

³²Information from author's interviews with N. Alexopoulos (7 Nov. 1990); D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); S. Howard (3 June 1991 and 4 April 1993); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991). For a general analysis of EC labour problems see Rhodes, 1991: 252.

³³Information from authors interviews with D. Cockcroft (19 June 1991; S. Howard (3 June 1991 and 4 April 1993); G. Ryde (5 June 1991).

On the other hand there was strong opposition against corporatist arrangements at any level from consumer interest groups, which in fact themselves represented private-capital interests. They denounced corporatism as fascist and elitist, since by definition it is against general social well-being and promotes the vested interests of a very small group of people - that between the state, the employers, and the employees in the civil-aviation sector. They accused the EC air-transport unions of being the most extreme and conservative forces in the EC, and without any legitimate right to pass on the rising cost of inefficient airline operations to the air passengers.³⁴

In this prevailing climate the EC member-countries and their state-owned airlines were strongly inclined to rid themselves of the financial burden involved, and to break up the existing consensus-based micro-corporatism at home in favour of more conflictual arrangements at EC level. In fact the Association of European Airlines (AEA) quite clearly voiced its opposition to collective EC agreements. It regarded them as "unrealistic" because they could be costly and were liable to have a disruptive effect on EC state-owned airlines attempting to survive international competition. The AEA urged trade unions to radically change their tactics vis-à-vis their governments and airlines, and stop being so overbearing and to start co-operating with the airlines to support their efforts in a liberalized EC air-transport market. They pointed out that it was no longer the job of the unions to decide which strategy private or public airlines should follow in the EC, and that their social endeavours must necessarily take second place to improving productivity and increasing profitability.³⁵

When the International of Transport Workers' Federation (ITF), which had lobbied for years for a transnational EC committee on civil aviation,

³⁴Information from author's interviews with S. Crampton (28 May 1991); R. P. Holubowicz (15 Nov. 1990); P. Jeandrain (27 Nov. 1990); M. Kanganis (22 Nov. 1990); L. Mosca (7 Dec. 1990); D. Prentice (31 May 1991); J. Sabourin and C. Grenier (23 Nov. 1990).

³⁵Information from author's interviews with K. Veenstra (29 Oct. 1990); M. Pisters (12 Nov. 1990); S. Yuksel (31 Oct. 1990).

demanded formal status to bargain with the employers and the Commission on Commission proposals, the air-transport unions and pilot associations found themselves in a power-sharing conflict with Eurocrats. As D. Vincent, head of the Directorate C in the DG VII (Transport), stated quite bluntly

" Air-transport policy-making is the job of neither the airlines nor their workers, it is the job of the Commission" (interview 7 Dec. 1990).

In fact Eurocrats in the DG IV (Competition), using the delegated powers given them by the Council of Transport Ministers for liberalizing the EC air-transport market, developed a very single-minded and robust attitude towards the civil-aviation unions, and treated their interest groups with haughty arrogance. For example, no such union was ever able to gain access to DG IV (Competition) Eurocrats.³⁶

On the other hand, socialist Commissioners, like the French Commission president Jacques Delors and Karel Van Miert or Lord Clinton Davis of UK's Labour Party, as well as heads of member-state presidencies with ideological labour affinities, made the unions ambivalent and unrealistic promises that had no likelihood of ever being fulfilled. The EC air-transport unions denounced the marked hypocrisy of both member-states and the Commissioners. As F. Tack, the national secretary of the General Central Public Services of Telecommunication and Aviation of the General Federation of Belgian Workers (FGTB-CGSP), stated

" The Commissioners and some member-states with close labour ties always talked with big words which never gave us the impression that they ever took our real needs into consideration" (interview 14 Nov. 1990).

However, C. Chene, adviser to Commissioner Karel Van Miert of DG VII (Transport), counterargued that his boss was always ready to fight for air-

³⁶Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); P. Laprevote (21 Nov. 1990); J. P. Meheust (23 Nov. 1990); G. Ryde (5 June 1991).

transport union interests, but added

" It is not enough to put on the table of the Council of Transport Ministers an air-transport proposal perfect in social terms, if there is no chance of it being adopted. If the air-transport unions insist on pursuing such totally useless practices I wish them good luck" (interview 5 Dec. 1990).

In fact there was a constant official rhetoric encouraging the unions to bring their problems to the Commission officials and/or members of European Parliament (MEPs), whether individually or collectively, but it was only during the pro-union presidencies (Belgian, French, German and so forth) and with socialist/left MEPs that the unions succeeded in having regular formal and informal contact with them; under the neo-liberal and monetarist presidencies (British, Irish, Dutch and so forth) and with the respective MEPs the unions soon realized there was no point in even trying to approach them.³⁷

When the European Council (consisting of the leaders of the twelve EC member-states) at the Strasbourg summit on 9 December 1989 failed towards the end of the French presidency to adopt the social charter (mainly because of the sole dissenting voice of the UK), this caused further disillusionment among the air-transport unions and pilot associations, as well as throughout the EC labour movement. Originally proposed by the Commission president Jacques Delors and DG V (Social Affairs) Commissioner V. Papandreu, the charter was designed to legalize the fundamental social rights of workers throughout the EC.³⁸ It meant to introduce a set of EC regulations to counteract the potentially destabilizing consequences of the Single European Market (SEM) with respect to the basic social rights of all EC workers, and to harmonize all wages and labour costs between the richer and poorer member-states. The demand for this had been put forward by the European Trade

³⁷ Information from author's interviews with D. Cockroft (19 June 1991); C. Deslandes (21 Nov. 1990); Y. Enderle (7 Dec. 1990); S. Howard (3 June 1991 and 4 April 1993); J. P. Meheust (23 Nov. 1990); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991); F. Tack (14 Nov. 1990); R. Valladon (22 Nov. 1990).

³⁸The preliminary draft of the social charter, based on the "opinion" of the Economic and Social Committee (ECOSOC or ESC), covered the following areas: (1) freedom of movement; (2) employment and pay; (3) working-time and improving conditions; (4) social protection; (5) freedom of association; (6) vocational training; (7) equal treatment; (8) information, consultation, participation; (9) health and safety; (10) young workers; (11) the elderly; and (12) the disabled.

Union Confederation (ETUC), and the social-democrats, socialists, Christian-democrats, and the European People's Party in the Strasbourg parliament.³⁹

At the December 1989 summit J. Delors declared that

"...strengthening the economic power and the social unity of the twelve is the essence of the union of the social market economy which both sustains an equilibrium of productivity and solidarity and unites the rich and poorer member-states" (Bohle, 1990: 120).

The socialist French government, was the most active proponent of socially viable Community. It appeared anxious to enshrine its own principles of "solidarity" in EC legislation, in part perhaps to protect its home innovations in this area against antagonistic French employers and future governments of the Right. The period of the French presidency of the EC was of the utmost importance for the French government because its negotiations preparing the second air-transport package gave it the opportunity for much back-stage manoeuvering with the other two strong members of the troika, (especially the UK, as mentioned in ch. V) and helped it solve all its major concerns. It is interesting to note that the German government, although neo-liberal, under pressure from the powerful German unions called for the charter to make stronger demands of labour in the EC. Margaret Thatcher of the conservative British government, however, described the social charter as "inspired by the values of Marxism and the class struggle". Under strong pressure from the other eleven countries regarding adoption of the charter, and while partaking in the political haggling with France and Germany to solve the troika's overall problems in EC air-transport liberalization (see ch. V), the UK remained resolutely opposed to any attempts to counter its own deregulatory policies via Brussels. Together with Ireland, and to some extent Portugal and Spain, Britain expressed itself apprehensive that harmonization of labour-market

³⁹Bohle, 1990: 119; ITF News, Oct. 1989: 3; Keating, 1993: 370; Rhodes, 1991: 254-65, 275-76.

rules would increase labour costs, and discourage foreign investment. However, as mentioned already, there were two other reasons for its stiff-necked obstinacy. One was that Britain did not wish to appear as having given in to the pressure of France and Germany over issues it was well known to oppose; the other was pique that the French presidency had in fact achieved its overall demands and had emerged from all those political wrangles as the winner and the politically most astute of the EC's member-states.⁴⁰

On the EC level, the employers' lobby of the Union of Industry (UNICE) was implacably opposed both to a new set of transnational regulation, and to demands for a pan-EC system of industrial relations in which Euro-bargaining between EC unions and employers would become an increasingly important. The Commission itself had wavered between an interventionist stance (when implicitly advocating a detailed set of EC laws on labour issues) and a minimalist one (when pledging itself to the principle of "subsidiarity", which limits EC law to those matters that cannot be dealt with effectively by the member-countries themselves). The emphasis on "subsidiarity" in the social charter was reflected in the Commission's social action programme, designed to implement the charter principles. This was a package of 45 social measures in 13 main areas, to be presented to the EC Council of Social Policy Ministers by the end of 1992.⁴¹ However, even by the end of 1993 no real action had been taken, and only a very few proposals had been tentatively implemented, given the absence of harmonization of working conditions for air-transport personnel.⁴²

Although the EC member-countries did not adopt the social charter, the French presidency had clearly indicated the future demands of the EC civil-

⁴⁰ITF News, Oct. 1989: 3; Rhodes, 1991: 246.

⁴¹The major new measures proposed by it were (1) labour market information and documentation; (2) employment and remuneration; (3) improvement of living and working conditions; (4) freedom of movement; (5) social protection; (6) association and collective bargaining; (7) information, consultation and participation; (8) equal treatment for men and women; (9) vocational training; (10) health protection and safety at the workplace; (11) protection of children and adolescents; (12) the elderly; and (13) the disabled. See Europe 1993: 119-20; Rhodes, 1991: 264-65, 273-76.

⁴²Information from author's interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); Y. Enderle (7 Dec. 1990); S. Howard (3 June 1991 and 4 April 1993); J. P. Meheust (23 Nov. 1990); P. Laprevote (21 Nov. 1990); G. Ryde (5 June 1991); F. Tack (14 Nov. 1990); R. Valladon (22 Nov. 1990).

aviation unions and pilot associations. In fact, earlier than the European Council summit in December 1989, the French ideological and social perspectives, as well as Germany's friendly attitude towards labour, motivated Transport Minister M. Delabarre and six EC air-transport unions to call a meeting in Paris on 6 October 1989, at which the twelve transport ministers and DG VII (Transport) Commissioner Karel Van Miert were invited to present their views in an attempt to reach a social agreement. At this meeting the air-transport unions and pilot associations received promises that a body would be set up at EC level within the following year (after a decade's opposition) to express and negotiate their interests. It would specifically take care of the harmonization of their pay and working conditions, particularly in the field of personnel licensing, as well as concerning and flight, duty, and rest times (FDL). Ostensibly this was part of a general agreement between the French presidency and all member governments, the Commission, and the European Parliament, to give the EC a socially "human face" in the 1990's. However, the real and major reasons for this change, at least as far as EC air transport was concerned were (i) to impart a fast pace to the liberalization project, and (ii) to help deal with the problems expected to arise for the twelve countries and their national airlines during the period 1990-1993, after the adoption of the second air-transport package in the end of 1989.⁴³

4. Conclusion

During 1987-1990, the EC air-transport unions and pilot associations were understandably on the defensive, given that the projected liberalization of the EC air-transport market definitely ran counter their interests. Their opposition had, however, a very different result from that which they were pursuing, and resulted in the break-up of their national micro-corporatist

⁴³Information from authors interviews with D. Cockcroft (19 June 1991); C. Deslandes (21 Nov. 1990); C. Iddon (30 Oct. 1990); P. Laprevote (21 Nov. 1990); J. P. Meheust (23 Nov. 1990); G. Ryde (5 June 1991). See also ITF News of Sept. 1989: 21, of Oct. 1989: 1-2, and of Nov./Dec. 1989: 20.

structures from consensus-based (strong) arrangements to conflictual (weak) ones, reflecting their inability to organize transnationally, and complete failure to negotiate at EC level. Not only were the EC civil-aviation employees at that time taking no interest in the EC liberalization project, they accepted developments entirely passively - which reduced their role to that of a spectator. Given that they were also impeded by the Commission, their own governments, their airlines, and by problems among themselves, they exerted no influence at all on the EC air-transport policy in this period - in the course of which the EC legislated two basic air-transport packages to introduce its competition policy. In other words, their passivity and all around impediments lost them the opportunity for effective participation in the shaping of EC air-transport policy.

The major reason, however, behind the failure of the Community's air-transport unions and pilot associations to oppose and perhaps thwart the EC liberalization process between 1987 and 1990 was the paradox that, while the EC and its member-countries did not have a common air-transport liberalization policy, they had maintained a relatively joint labour policy at both national and EC levels.

CHAPTER VIII

1990-1993: ACTIVE REPRESENTATION OF AIR-TRANSPORT PERSONNEL

" No carrier can declare war on its workers and successfully re-organize". W. L. Scheri, airline co-ordinator, International Association of Machinists and Aerospace Workers, Denver, Colorado, 29 May, 1992.¹

This chapter examines how in the early 1990s the majority of the EC countries and most national carriers in the Association of European Airlines (which had reservations about the pace and implication of EC air-transport liberalization), set up a representative body for EC air-transport personnel at Community level. The purpose of this body was to prevent the interests of private capital from further proliferating in the EC air-transport market, and to slow down the EC liberalization process during the period 1990-1993. It is shown how the creation of loose micro-corporatist arrangements at EC level, for the harmonization of working conditions resulted in further conflicts among the EC airlines, on the one hand, and the EC air-transport work force on the other, as well as between the two. Despite these difficulties, the civil-aviation unions and pilot associations agreed to make common cause, and to collaborate more closely with their national airlines against the planned liberalization of the EC air-transport market.

As mentioned in greater detail in the preceding chapters, during the French presidency (1 July - 31 Dec. 1989), France and Germany, their national airlines Air France and Lufthansa, and their respective national Commissioners were involved in a great deal of political haggling concerning the second air-transport package and the pace of liberalization. As a consequence of all these back-stage manoeuvres, it was widely felt desirable to slow down liberalization for the time being. Among those wishing for a more moderate pace were most of the member-airlines in the Association of

¹ITF Report, 1992: 69.

European Airlines (AEA) and especially so AF and LH; the German AEA general secretary K.-H. Neumeister; specific Commissioners on behalf of particular national airlines, such as the French president of the Commission J. Delors for AF, DG VII (Transport) Commissioner Karel Van Miert for SABENA, and DG V (Social Affairs) Commissioner V. Papandreou for Olympic Airways. Their specific reasons, and the means used to achieve the slow down, are discussed below.²

1. Reasons for Setting up a Transnational Representation

On 1 August 1990 the EC, by decision of the EC Commission, established a Joint Committee for Civil Aviation (JCCA). This was an advisory body formed by the DG V for Social Affairs,³ to stimulate the social dialogue and bargaining process between employers, employees, and the Commission, in order to obtain a certain basic level of harmonization in working conditions and qualifications of air-transport personnel.⁴

The JCCA consisted of 54 members representing airlines, airport associations, trade unions, and pilot associations, 27 of them employers' and 27 employees' representatives. The employers' seats were allocated to AEA member-airlines (14), to the Independent and Charter Airlines' Association in the EC (ACE), the European Regional Association (ERA), the Charter Airline Association (ACA),⁵ and International Civil Airports Association (IACA). The employee's seats were taken by representatives from ITF-affiliated national trade unions and the International Federation of Airline Pilots' Associations (IFALPA).⁶ The chairmanship rotated between the two groups every two years, and JCCA was planned to meet twice a year.⁷

²Information from author's interviews with D. Cockcroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993).

³ DG V (Social Affairs) was one of the weaker DGs in the EC.

⁴Commission Decision (EC) 90/449 (OJ L 230, 24 Aug. 1990: 22). See Appendix VIII.1.

⁵Charter carriers affiliated with AEA such as Condor, Balair and so forth).

⁶Pilots had three seats in the JCCA.

⁷Information from author's interviews with D. Cockcroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993); G. Rude (5 June 1991). See also Chomeley, 1990: 117-123; *ITF News*, Oct. 1990: 7.

The JCCA's first joint assembly meeting on 13 September 1990 set up four working groups. They were to work on the regulation of "flight, duty, and rest time for the cockpit crews" (FDTL);⁸ and on directives (i) for the standardization of working conditions of air-transport workers; (ii) for the representation of air-transport employees on airline subsidiaries in the EC; and (iii) for the protection and working conditions of air-transport personnel required to work in an EC country not their own. The working groups consisted of eight members each, four of them trade unionists and four employers' representatives. Further meetings were scheduled for 3 October and 6 November.⁹

Why did the Commission, the EC member-countries, and their airlines establish a representative body to negotiate the harmonization of working conditions and qualifications in the air-transport unions and pilot associations that had so strongly opposed them in the late 1980s?

First, the establishment of the JCCA is said to have been a kind of overdue debt paid by the AEA, and especially its secretary general K.-H. Neumeister and Lufthansa, to the EC air-transport unions as the result of a secret deal going back to 1984.¹⁰ The circumstances were as follows.

Prior to 1987 all twelve of the AEA national airlines were state-owned and opposed to any liberalization measures then being suggested by the Commission (see ch. III). Since the early 1980's, Germany's LH, the only EC airline with a single trade union, had been under particularly strong pressure by it to push the Commission to set up a body like the future JCCA. In 1984, the German socialist MEP M. Klinkenbourg, rapporteur of the Transport and Tourism Committee of the European Parliament at the time, had to present a

⁸Flight-time limitation put a ceiling on the number of hours cockpit and cabin crews could work.

⁹Information from author's interviews with D. Cockcroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993); G. Rude (5 June 1991). See also ITF News, Oct. 1990: 7.

¹⁰Interview with R. P. Holubowicz, 15 Nov. 1990.

report on the Memorandum on Civil Aviation No. 2, which was expected to propose radical EC air-transport measures. Because LH and its trade union did not want these Commission proposals to be adopted by the Council of Transport Ministers such as it was, its ex-employee and future AEA secretary general K.-H. Neumeister was asked by LH and its labour union to make a deal with the other EC air-transport unions. He was empowered to promise them that he would make sure that the AEA and LH would push for the creation within the EC of a body to represent the interests of air-transport personnel, in turn for the unions supporting the Klinkenbourg report by sending a report position on air-transport market liberalization to the socialist and communist parties in the European Parliament (EP). LH and H.-K. Neumeister knew that the socialist-communist MEP's held the majority in the EP, and out of ideological affinity always supported trade-unions interests.¹¹

Why were the AEA secretary general and LH so interested in the Klinkenbourg report? It appears that LH had invited Herr Klinkenbourg to its headquarters and persuaded him to present to the EP as *his own* a report already drawn up by LH and AEA. He agreed, and the EP adopted without changes what became known as the Klinkenbourg report. The report was in favour of the EC air-transport liberalization but expressed considerable misgivings about the pace of its implementation, due particularly to the social implications. This in fact implied a further delay of the EC air-transport market liberalization. In consequence, despite the member airlines' opposition to a body like the JCCA the AEA secretariat and LH never stopped pushing for it. The relentless pressure, erupting at times into bitter animosity between the German secretariat and LH and the other member airlines, lasted more than six years before the AEA secretary general and LH could redeem its promise to its national and EC air-transport unions for having supported the AEA/LH

¹¹Interview with R. P. Holubowicz (15 Nov. 1990), who is my only source of this information.

authored Klinkembourg report. At the beginning of 1990 the AEA secretariat and LH finally persuaded the other AEA member airlines to consent to ask the Commission to go ahead with the creation of the JCCA.¹²

Second, the Flight and Duty Time Limitations (FDTL) issue - which had last been regulated in the 1960s when pilots were still flying propeller-driven planes - had been of major importance for all crews cockpit and cabin crews ever since 1987, when a whole series of disputes began between them and the EC airlines, which had obliged them to work more hours at the expense of their rest time. In 1988 for example, BA, after its privatization, had reduced its cockpit personnel (which led to extended animosity), and at TAP Air Portugal relations with the cabin crews were also strained because of the airline contravening regulations on rest periods. As a result, the unions and pilot associations had urged the Commission to establish a joint committee to draw up legislation for FDTL, as well as personnel licenses in civil aviation for both pilots and cabin crews.¹³

Third, as noted already, in the beginning of 1990 the primary reason for setting up the JCCA was that France, Germany and most AEA airlines had decided that EC air-transport liberalization had proceeded too far too fast, and they wanted some means to delay it. As D. Cockroft, secretary of the International Transport Workers' Federation (ITF) summed up

"The AEA airlines' participation in the JCCA had a very important aim: to approximate to social legislation as closely as possible to the EC air-transport liberalization policy, in order to slow down the EC air-liberalization process. As a result, the main objectives of the ITF and the AEA coincided. Both the AEA and the ITF had thrown a great many harmonization proposals into the EC's institutional pot, and the first and foremost point was the FDLT proposal to be discussed in the JCCA" (interview 19 June 1991).

The fourth and final reason for the setting up of JCCA was that in the middle of 1990 the socialist Commissioners (president J. Delors, DG VII

¹²Interview with R. P. Holubowicz (15 Nov. 1990), who is my only source of this information.

¹³Information from author's interviews with D. Cockroft (19 June 1991); Y. Enderle (7 Dec. 1990); T. Middleton (13 June 1991). See also ITF News of June 1987: 7, of Feb. 1988: 8, and of Sept. 1989: 21.

(Transport) Karel Van Miert, and DG V (Social Affairs) V. Papandreou) as well as the socialist/left majority in the European Parliament were exerting pressure on the EC to accommodate certain social rights for air-transport personnel. For example, the European Parliament's socialist groups held a conference on air transport in Brussels on 10 and 11 May 1990, where the committee of the Transport Workers Union to the EC and the ITF issued a statement entitled *Social Aspects of Civil-Aviation Liberalization*. Among other things it concerned the issues of liberalization versus social harmonization, social dumping, union busting, operational safety, and infrastructure.¹⁴

When the Commission, under the pressure of AEA airlines and the pilot associations, finally decided to address itself to social matters in its air-transport policy, and especially to the question of flying hours (FDTL), the Commissioners of DG VII (Transport) Karel Van Miert, and of DG V (Social Affairs) V. Papandreou presented a draft FDTL regulation for airlines pilots, which resulted in a major fracas between all EC airlines and the Commission.¹⁵

In particular R. Frommer, German head of the social and ecological aspects division of DG VII (Transport), presented the draft proposal to regulate the FDTL, and a draft directive on the mutual provision of personnel licenses in the civil aviation that did not, however, include cabin crews, but were regarded as being too far closer to the position suggested by the pilot organizations. This was so because the FDTL draft regulation proposed that, for reasons of safety, the maximum working day should not exceed eight hours, which meant 700 hours a year. R. Frommer wishing to support the pilots (especially German ones), had consulted the pilots only on technical matters concerning their job in the cockpit, and had based her proposal largely on the information obtained. There was vehement opposition against her and

¹⁴Information from author's interviews with C. Iddon (30 Oct. 1990); J. Stamoulis (7 Dec. 1990); G. Ryde (5 June 1991).
¹⁵ Interview with G. Ryde (since 1991).

DG VII (Transport) from all the EC airlines, protesting especially the independent and regional airlines, that neither the Commission nor R. Frommer knew anything about how the pilots earned their pay. They claimed that the DG VII safety arguments had no basis at all in reality, since the EC had acknowledged that the EC airlines were complying with EC safety rules and regulations, even when the flight time of pilots in the independent charter and regional airlines had always been well over a thousand hours per annum. They also declared that if the FDTL proposal was adopted, it would mean very severe economic repercussions for the EC airlines. According to their calculations, the cost of the cockpit crews would increase by 30 per cent because more pilots would have to be engaged - with deleterious effect on the EC airlines' competitiveness vis-à-vis non-EC carriers.¹⁶ In fact R. P. Holubowicz, secretary general of ACE noted

"Frommer's support for the pilots resulted in the Commission putting forward the worst ever proposal on FDTL" (interview 15 Nov. 1990).

As concerning AEA all its national airlines, whether privately or state-owned, and especially strong carriers like AF, BA, KLM and LH, found the draft proposal completely unrealistic if they were to survive international competition. They had asked the Commission that the proposal should provide FDTL harmonization for national and independent airlines, and giving the maximum number of hours. They had alleged that were unable to compete with independent airlines (charter or regional), because their pilots were flying 16 hours a day¹⁷ or about 1,500 hours per annum, while the AEA airlines ranged between maximum 10 to 14 hours a day or 1,000 a year. Besides,

¹⁶Information from author's interviews with M. Ambrose (30 May 1991); D. Cockcroft (19 June 1991); Y. Enderle (7 Dec. 1990); R. P. Holubowicz (15 Nov. 1990); M. Pisters (12 Nov. 1990); K. Veenstra (29 Oct. 1990).

¹⁷ More than half the pilots in EC and non-EC countries flew independent airlines and were paid the basic salary plus premiums for additional hours of flight. They therefore had an incentive to fly more hours than pilots of state-owned airlines. Interview with R. P. Holubowicz (15 Nov. 1990).

pilots on independent airlines were much less expensive than those on national and scheduled airlines.¹⁸

The independent airlines retaliated by charging the AEA airlines but especially the two Commissioners Karel Van Miert and V. Papandreou, with making a great show about presenting an FDTL proposal, purely for the purpose of demonstrating to the civil-aviation unions and pilot associations that the Commission was actively concerned with legislation to prepare the air-transport personnel for the implications of liberalizing civil-aviation in the EC.¹⁹

In fact ACE secretary general R. P. Holubowicz stated

" We have been at daggers drawn with the Commissioner of DG V for EC Social Affairs, V. Papandreou. Her social aspirations were fundamentally wrong and dangerous. She both ignored our views and our request for an appointment" (interview 15 Nov. 1990).

The air-transport unions too were dissatisfied, because the draft directive on personnel licenses for civil aviation did not extend to cabin crews. They alleged that the suggestions from the ITF and other air-transport unions had not at all been taken into consideration by R. Frommer and the Commission, and that licensing standards should be introduced for all groups responsible for in-flight safety. The unions, nevertheless, praised Frommer's honestly concerning the proposal for the pilots, which remained uninfluenced by private or national air-transport interests. But since Frommer allowed herself to be caught in the middle of the clashing interests of the pilots and their airlines, she became *persona non grata* with all of them,²⁰ and as the scapegoat Eurocrat of the Commission's DG VII she was replaced in her position at the beginning of 1991.²¹

¹⁸Interviews with M. Pisters (12 Nov. 1990); K. Veenstra (29 Oct. 1990).

¹⁹Interview with M. Ambrose (30 May 1991); R. P. Holubowicz (15 Nov. 1990).

²⁰Her case recalls that of N. Argyris, discussed in ch. V.

²¹Interviews with D. Cockroft (19 June 1991); Y. Enderle (7 Dec. 1990). See also ITF News, Feb. 1990: 10.

As ITF secretary general D. Cockroft remarked

" R. Frommer approached the FDTL issue like a bull in a china shop, and did not care who was hurt in the process" (interview 19 June 1991).

Given the FDTL proposal's unfavourable reception by the airlines (and their member-countries) DG VII (Transport) Commissioner Karel Van Miert, expert at political obfuscation, managed to rescind it by putting the blame on R. Frommer. The Commission then prepared a second draft on FDTL which, according to the unions and pilot associations resembled the UK's regulations, proposing a maximum 14 hour day, or approximately 1,000 hours a year. The pilot organizations themselves, originally being against the JCCA, when they realized that the FDTL regulation proposal was hurting their interests immediately required from the Commission the establishment of the JCCA and the co-operation of the other air-transport unions as it was available in the JCCA where they all took part in air-transport debates. The other trade unions kept their distance and were willing to support the pilots' interests only if the pilots were willing to support theirs. Political manoeuverings finally achieved that the FDTL issue would be regulated separately by the JCCA and the Joint Aviation Authorities (JAA)²² operations committee.²³

When the pilots had reluctantly decided to join the EC air-transport debate the AEA airlines in turn realized they too needed the JCCA if they were both to exert any influence on the union and pilot associations input and to confront a concrete and solid EC air-transport labour front. They were perfectly well aware that the JCCA's micro-corporatist structure could make only weak arrangements (further debilitated by the JCCA having a purely

²²As mentioned in ch III, the JAA grouped together the aviation authorities of EC and non-EC European countries, and dealt with all aspects of aircraft operations as well as airworthiness and maintenance. Its rules were planned to replace those of the existing authorities by 1993. In 1991 JAA was in the process of transforming itself into an international organization.

²³Information from author's interviews with D. Cockroft (19 June 1991); Y. Enderle (7 Dec. 1990); S. Howard (3 June 1991 and 4 April 1993); T. Middleton (13 June 1991); G. Ryde (5 June 1991). See also ITF News, May 1991: 8.

advisory role), and that the major ideological and hierarchical (elitist) cleavages among the civil-aviation unions themselves and between the latter and the pilot associations (see ch. VII) would render the work of the JCCA all but impossible. This would certainly delay the liberalization process of the EC air-transport market, an aim desperately pursued by most AEA airlines.²⁴ In the course of the proceedings R. P. Holubowicz, ACE secretary general and JCCA member, called the JCCA "a *petit fleur* presented by the Commission to the unions to show them its good will."²⁵

Since the set up of the JCCA there were a number of clashes of interests between the airlines, the trade unions and pilot associations.

2. The JCCA Conflicts

The inaugural JCCA meeting was a veritable Tower of Babel, with all the participants persistently at cross-purposes. The representatives of the independent airlines initially reserved their right to take legal action against the Commission for establishing the JCCA at all, but eventually agreed with the national and scheduled airlines to elect Dr. M. Bischoff, secretary general of AEA affiliated charter airlines (ACA) as JCCA chairman; the unions elected M. Holzel of the German OTV as vice-chairman.²⁶

The discussion - if it can be called that - was at sixes and sevens. The independent (charter and regional) airlines had very different views from national and scheduled airlines. Airport representatives for their part also had an altogether different perspective from any airline operators. In effect, much of the argument at the meeting was conducted between the different employer organizations, rather than between the airlines and the unions, and this gave

²⁴Information from author's interviews with D. Cockcroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993); T. Middleton (13 June 1991).

²⁵Interview, 15 Nov. 1990.

²⁶ITF News, Oct. 1990: 7.

the impression to the unions and pilot associations that because the EC airlines had no common official line to present, they were opposing and even boycotting the dialogue. The unions also protested that the airline side was represented by secretaries of airline associations who had never dealt with air-transport unions before, while their side was represented by people familiar with air-transport negotiations in their own countries. They also felt that the JCCA should not be limited to an advisory role but be a policy-making committee able to convert an agreement into a resolution legally binding for all parties.²⁷

In addition, the EC airlines alleged that they were prevented from discussing air-transport issues, seeing that the chairman and vice-chairman were arrogating airline-employee relations to themselves as the representatives of the two sides. It soon became apparent that airlines and employees decidedly did not see eye to eye, particularly concerning the question of whether the JCCA should deal only with social aspects of the EC air-transport issues (the purpose for which it was created), or unilaterally with all the air-transport questions, without reference to the air-transport market reality the unions and pilot associations pursued.²⁸

The JCCA meeting brought to general notice the problems and conflicts of the civil-aviation unions themselves, and between them and pilot associations in different countries as well as in the EC. Before long the discussion degenerated into exchanges between different kinds of trade union and/or pilot associations from different or even the same countries, concerning what demands they had or had not achieved. With regard to the Commission's proposal on pilots' FDTL the other airline-union representatives were generally

²⁷Interviews with D. Cockroft (19 June 1991); S. Howard (3 June 1991 and 4 April 1993); A. Gosselin (14 Nov. 1990). See also ITF News, Oct. 1990: 7.

²⁸Information from author's interviews with M. A. Ambrose (30 May 1991); M. Kanganis (22 Nov. 1990); M. Pisters (12 Nov. 1990); B. Stahle, 4 Dec. 1990; K. Veenstra (29 Oct. 1990).

unsympathetic to the pilots' views because they considered pilots too highly paid to be very sensitive to trade unions' interests.²⁹

At that first JCCA meeting there were also major internal conflicts among the pilot associations over their JCCA delegations' internal organizational powers. This was due to the different pilot interests between EC and EFTA countries.

In particular since the Frankfurt meeting on 16 June 1989, the two major pilot associations - the British Airlines' Pilots Association (BALPA) and its German counterpart Vereinigung Cockpit (VC) - being concerned about the EC airlines' globalization were worried about the possibility of a member-state using lower-paid pilots to avoid employing pilots from countries with higher labour costs. They alleged that an airline using pilots from three different countries would have a tremendous advantage in manoeuvering the relations between employers and employees. Since, however, three different countries' pilot organizations would have to get together for joint union representation the EC pilots had decided not to allow their airline management to manipulate one pilot organization to the disadvantage of another, and agreed not to accept to work for another country, whether in a member of the EC or not. At the beginning of 1990, therefore they had taken the initiative for creating an effective bargaining structure in the EC. At first glance the two pilot associations had seen little point in setting up a new machinery of this kind, because they could more easily ask their European umbrella group (the European Airlines Pilots' Association, Europilote) to re-orientate itself to serve the EC pilots' purposes. After careful reflection, however, they concluded that this was not really feasible, since the aims and requirements of the these pilot organizations were too different. Europilote tended to deal with matters of general air-transport interest, and could not be expected to confine itself to

²⁹Interviews with C. Iddon (30 Oct. 1990); M. Pisters (12 Nov. 1990).

controversial issues in EC air-transport industrial relations. So BALPA and VC decided to create a new negotiating body, the European Cockpit Association (ECA)³⁰, which had around 13,000 EC pilots and flight engineers. The creation of ECA came as a total surprise to the EC pilots' policy communities, since it was set up without any consultation with the other pilot organizations, which were understandably angry.³¹

This meant that as soon as the JCCA was set up ECA found itself involved in a power conflict both with its international umbrella group ((the International Federation of Airline Pilots' Association, IFALPA), and its European one (Europilote). It clashed with the ITF as well, because ten years earlier the ITF and IFALPA had agreed that some of the labour-union seats in the new body should go to IFALPA, which at the time was the only organization representing the majority of EC member-state pilots. A substantial number of EC pilots were not, however members of either the ITF or Europilote (created much later). So when the JCCA came into being, the ITF had invited IFALPA to nominate its representatives, something which did not please the ECA pilots at all. Although the pilot unions in ECA, Europilote, and IFALPA were exactly the same, the representatives nominated by IFALPA were not the people whom ECA wished to have as its JCCA representatives. The ECA pilots therefore denounced the ITF for sabotaging their representation in the JCCA.³²

After the JCCA's inaugural meeting, the pilots managed to procure an agreement first between Europilote and IFALPA, and then between Europilote and ECA, which obliged ECA to change its name from European Cockpit Association to Europilote Cockpit Association. It was a new negotiating body set up in November 1990 along trade union lines, specifically so that the ITF could recognize ECA as the IFALPA representative in the EC and the JCCA.³³

³⁰ECA had a steering group of four pilots each from BALPA and VC.

³¹Interview with D. Cockcroft (19 June 1991).

³²Interview with D. Cockcroft (19 June 1991).

³³Interview with D. Cockcroft (19 June 1991).

In the JCCA the FDTL regulation for aircraft crews was the most contentious and controversial issue discussed between the Commission, the airlines and the trade unions in the JCCA, and between the Commission and the trade unions and the JAA in the EC as whole. In part this was so because meanwhile the Joint Aviation Authorities (JAA) Operations Committee (JAR-OPS), which had also been attempting to regulate on FDTL, had succeeded in suspending any JCCA and Commission decisions until the results of the JAA work were known. This was so because the JAA proposals were designed to supersede all existing national FDTL regulations throughout the EC and EFTA countries. The other major reason for the imbroglio over the FDTL regulation were a number of clashes of interests in the JCCA debates between the Commission, the airlines, the trade unions and pilot associations. The discussions dragged on for three years (1991-1993) and eventually resulted in eighteen different drafts, meanwhile throwing the EC air-transport harmonization policy into confusion - and concomitantly delaying the liberalization of the EC air-transport market.³⁴

3. The FDTL Debate

In January 1991 the Gulf crisis created further problems for the EC airline industry. At the JCCA meeting the EC airlines, but especially the national carriers in the AEA, by invoking the Gulf War economic recession managed to avoid discussing the FDTL proposal because of the further serious financial losses it could imply to them, and expressed their anxiety about the pace of the EC air-transport liberalization. At the 28 Feb. 1991 JCCA meeting therefore the AEA airlines and unions joined forces to call on the Commission to halt the liberalization measures, which were doing further

³⁴ITF News of Jan./Feb. 1992: 22, of April 1992: 18, and of July 1993: 21.

damage to the EC airline industry, already weakened by the effects of the Gulf War, as well as by economic recession in a number of member-countries. They issued a joint statement on the collaboration of airlines and trade unions so as to mitigate the effects of the crisis. They stressed the desirability of not declaring redundancies but protecting and promoting employment and urged the Commission to provide the airlines and their unions with ample opportunities to discuss initiatives for the harmonization of social, safety, and technical measures. The Gulf crisis had brought the two sides in the JCCA closer together.³⁵

When the ITF Civil Aviation Section Committee met on 10-11 April 1991 in London, it recognized the urgent need for a clear FDTL policy in view of developments at the JAA and in the EC. At that point the EC was in the process of introducing two pieces of FDTL legislation, each with different working hours for the flight crews, and so quite incompatible. One was a Commission regulation for implementing the JCCA recommendations on FDTL, and the other a Commission draft directive, called the *Harmonization of technical requirements of civil aviation*, for implementing the JAA's recommendations on FDTL. Moreover, although a Commission observer always attended JAA meetings, the JAA had shown no interest whatsoever in the EC or the Commission. It was most extraordinary that there was no dialogue at all between the JAA experts and DG VII officials. The unresolved politico-technical competence problem between the Commission and the JAA made it unlikely that the incompatibility of the two pieces of EC air transport legislation would be resolved. In consequence the air-transport unions, pilot associations in the JCCA and the Commission took the initiative of sending a joint paper to the JAA to present their views on its proposal.³⁶

³⁵ Interview with D. Cockcroft (19 June 1991). See also *ITF News* of Feb. 1990: 10, of Mar. 1991: 7-9, and of April 1991: 14.

³⁶ Interview with D. Cockcroft (19 June 1991). See also *ITF News* of Mar. 1991: 7-9, and April 1991: 14.

In a parallel development, the unions of licensed aircraft-maintenance engineers met in London on 21 May the same year, to formulate a response to a JAA regulation concerning them, which was known as JAR 65 of the JAA's Joint Maintenance Committee. It was discussed whether all personnel who worked on aircraft should be licensed, or only those responsible for signing the release to service. This was a controversial point, since current practices varied enormously from country to country.³⁷

The effects of the Gulf crisis, the conflicts between the Commission, the JCCA, and the JAA, and the inclination of certain Commissioners to give a social character to the EC air-transport policy, turned the JCCA activities concerning FDTL regulation into something of a game. Although all parties pretended to wish for a common platform on the FDTL regulation, none were willing to pursue a minimalistic attitude so that a compromise solution could be obtained. Instead, their arguments and requirements expressed a persistently maximalistic stance, which only added to the difficulties between all groups concerned and achieved nothing but the delay of the EC air-transport liberalization.³⁸

The airlines, especially the national ones that enjoyed the full support of their governments and therefore of the JAA, continued to denounce the maximum possible flight hours, and were not willing to even discuss the possibility of fewer hours. They argued that the FDTL regulation would cost them millions of pounds, which was not acceptable in a period of general economic recession, the airlines' loss of billions of pounds due to the Gulf War, and the planned job cuts.³⁹

The air-transport unions and pilot associations equally stubbornly required the minimum of hours and had countered that without harmonization in respect of the EC air-transport labour force the exploitation of air-transport

³⁷ITF News, May 1991: 8.

³⁸Interview with D. Cockcroft (19 June 1991). See also ITF News, Aug. 1991: 5.

³⁹Interviews with D. Cockcroft (19 June 1991); G. Ryde, (5 June 1991). See also ITF News of Feb. 1991: 1, of March 1991: 7, and of Dec. 1991: 9.

personnel paying and working conditions would continue - something that was unacceptable. Meanwhile the ITF attempted to include in the FDTL discussions the cabin crews as well, not only pilots who were certain to conform anyway with the decision of the majority in order to acquire an organized voice in the JCCA.⁴⁰

The Commission on its part had objected that not all EC air-transport interests were collectively represented by the proposal, that some point raised by one side or the other was a breach of the Treaty of Rome, and so on. As a result tempers ran high, accusations were flung right and left, and everyone else was a scheming villain and utterly in the wrong. At the end of the day, therefore, matters had not progressed one iota.⁴¹ As D. Cockcroft, of the ITF commented

" Fortunately for us they made such a mess of it [FDTL], because after years of work they scratched out everything they had done and started their study all over again. On the other hand the trade unions' input to the Commission and the JAA had luckily been carried out all the way by the same group of experts" (interview 19 June 1991).

In the course of the discussions between the JCCA and JAA on the FDTL draft proposal, the unions and pilot associations had already demonstrated considerable flexibility and willingness to compromise in the interests of a jointly agreed position, but in vain. They met with a total rebuff at a meeting of the JAA Operations Committee (JAA-OPS), because many of the national authorities, under severe political pressure from their national airlines, had made each new draft proposal more favourable for the airlines and less acceptable to the air-transport unions on both safety and social grounds. Unions and pilot associations called a meeting in London on 19 December 1991, therefore, to discuss the Commission's stand that in matters of purely "technical" issues it would agree, more or less without change, to the new JAA draft proposal on FDTL which was expected to be adopted by the JAA in

⁴⁰Interviews with D. Cockcroft (19 June 1991); G. Ryde, (5 June 1991). See also ITF News of Feb. 1991: 2, of Mar. 1991: 8, and of Dec. 1991: 9.

⁴¹Interview with D. Cockcroft (19 June 1991).

Copenhagen on 29-30 January 1992. This stand the unions opposed unanimously. They therefore called an urgent meeting in Brussels.⁴²

When thirteen European air-transport unions met in Brussels on 18 and 19 February 1992, they acknowledged that there was an urgent need for the civil-aviation unions to co-ordinate their collective-bargaining activities in the light of the liberalization of the EC air-transport industry and the growing international links between airlines. They were agreed that neither the individual EC countries nor the airlines had shown any flexibility, or at least desire for a jointly agreed compromise concerning FDTL which only the previous month the airlines had described as "too left wing". The unions, on the other hand, were utterly against accepting a draft proposal on FDTL from the JAA and declared that they would attempt to lobby their national governments in the hope of influencing the decision-making process in the JAA.⁴³

In March 1992 all ITF flight-crew unions planned a protest campaign for June, in order to denounce the entire process and to prevent the adoption of the JAA's Operations Committee (JAA-OPS) draft proposal on FDTL, unless serious improvements were made to it. They asserted that the proposal was so totally unacceptable that its adoption would mean danger to aviation safety. Meanwhile the Commission had announced that it was still waiting for a joint JCCA/JAA opinion on the FDTL regulation, but added that its patience was running out. It would put a regulation proposal forward by the summer 1992, with or without that joint opinion, which remained outstanding because of the airlines' opposition, on the one hand, and that of the JAA on the other.⁴⁴

Although the JAA had announced that it was determined to reach agreement on a final FDTL package by the beginning of April 1992, a number of points, including some which the unions found particularly objectionable,

⁴² ITF News, Jan./Feb. 1992: 22.

⁴³ ITF News, March 1992: 12.

⁴⁴ ITF News, April 1992: 18.

had been sent back to the JAA's study group for further work. The representatives of both the airlines and unions were excluded from this phase of work. Meanwhile, the first exchange of views between unions and airlines on the question of European cabin-crew licensing took place in the JCCA on 22 April 1992. The airlines, while accepting the importance of safety-training for cabin crew, were divided on whether a license was needed to ensure high standards. Following a long debate on the principles of licensing, both sides agreed to hold a second meeting in July 1992.⁴⁵

An ITF worldwide cabin-crew meeting (Cabin Crew Technical Committee), held in Washington on 19-20 May 1992, pointed out that the EC air-transport unions were part of a global industry, and that international co-operation was an absolute necessity for their survival. A growing challenge to unions was posed by both transnational airline mergers and cross-border employment. Cabin-crews alleged that the FDTL and cabin crew licensing were key international regulatory issues with a great importance for them.⁴⁶

When representatives of EC flight-deck and cabin crew unions met in Brussels on 20 July 1992 with the Commissioner of DG VII (Transport) Karel Van Miert they expressed their total opposition to the draft regulations produced by the JAA and due to be formally adopted by the JAA Operations Committee in early September. They strongly requested the Commissioner to ensure that any EC rules would take full account of both safety and social factors, so as to ensure fair competition in a liberalized EC air transport market. The Commissioner indicated he was still hoping to achieve a balanced solution to the problem, and that he was under no legal obligation to accept the work done by the JAA. He would, however, greatly prefer if a joint airlines-union opinion could be reached in the JCCA on the changes that were needed

⁴⁵ITF News of April 1992: 18, and May 1992: 10-11.

⁴⁶ITF News, June/July 1992: 20.

to make the JAA draft acceptable, since this could be used to influence the JAA during the consultations set for early 1993.⁴⁷

Meanwhile, according to the trade unions' view, the EC's third air-transport package was proceeding fast in the matter of liberalizing the EC air-transport market, but mooring at a snail's pace on social measures, and still a very slow (even invisible) track on social measures. Therefore late in 1992 at the ITF Civil Aviation Section Conference, the unions challenged airline deregulation and globalisation. The ITF produced a 90-page report on *The globalization of the Civil Aviation Industry and its Impact on Aviation Workers*, and an *International Survey of Working Conditions in Civil Aviation*. One of the main conference features was the decision that unions in different countries could organize in the same airline, or airline groupings of international union councils, for the purpose of devising (i) common collective bargaining strategies, and (ii) minimizing the exposure of unions to legal attacks by the airlines. Another point on the conference agenda was the unions' urgent need to plan a more effective solidarity. It had at least been realized that a globalized industry required a global union response, something the EC civil-aviation unions had never sufficiently considered. It was underlined that air-transport unions had only two choices: to be either spectators or actors. If they were to act, however, they had to forge stronger global links with each other.⁴⁸

At this meeting the Commission issued a White Paper, *The Future Development of the Common Transport Policy*. Its references to the social dialogue, collective bargaining, improvement of working conditions, and protection and promotion of employment in the transport sector were discussed as well. However the social measures the Commission intended to take were still to be determined, and there was still no timetable for the

⁴⁷ITF News, August 1992: 11.

⁴⁸ITF News, Dec. 1992: 10-11, 14.

implementation of such measures. R. Valladon, chairing the JCCA for the unions, in his speech pointed out that the wide variations in union rights, living standards, and labour costs in the EC member-states would not make it easy to agree to a bargaining strategy for all of the Community. If it could not be achieved, it would mean a new threat for EC airline employees because unions in other member-states might react by competing with each other over their particular interests as well as for jobs. On the other hand, ITF secretary general D. Cockroft emphasized that without strikes, badges, pickets and so forth at the EC level, the air-transport unions were themselves signing the death warrant for unionism.⁴⁹

At the beginning of 1993, the issues of FDTL and personnel licensing continued to dominate the JCCA, while the licensing of pilots and flight-operation officers had been agreed. Work was due to begin on training-standards and certification for various categories of ground staff. Notably the union side had failed to reach a consensus concerning the changes to the JAA draft that had been proposed by some of its members at the JCCA plenary meeting on 18 December 1992. The unions expected that the JAA proposals would be reviewed in the light of the Commission's proposed Working Time Directive.⁵⁰

In March 1993, however, R. Coleman, the director general of DG VII (Transport), wrote to the JAA that the Commission was not obliged to adopt or harmonize all JAA rules at EC level. The JAA therefore reduced the number of areas to come under harmonized regulations, drawing up a tentative list of measures to be harmonized by the JAA and leaving the rest to national regulations. The measures it proposed to leave out of JAA harmonization all imposed restrictions on airlines covering areas vital to air-transport personnel, such as split duty, night duty, and stand-by. Thus, flight deck and cabin crew

⁴⁹ITF News, Jan./Feb. 1993: 26; ITF Report, 1992: 72, 93-94, 96.

⁵⁰ITF News, Jan/Feb. 1993: 26.

unions would certainly prefer to keep their existing national arrangements, rather than be forced to accept harmonized EC rules that made them work more hours and cut their rest periods. After consulting with airlines, aviation authorities, and unions the JAA concluded that it could not reconcile its need to produce harmonized safety regulations with the Commission's requirement for subsidiarity.⁵¹

In fact, although the IFALPA, Europilote and ECA pilot associations had participated in the JAA's working group, their endeavours to ensure proper aviation safety were entirely ignored. The EC-countries' civil aviation authorities simply adopted the JAA rules replacing the existing national ones, and accepted that those rules should be proposed in the Commission's legislative process and be adopted as binding EC law.⁵²

After a plenary meeting of JCCA, in Brussels on 21 June 1993, the EC air-transport unions warned EC member-states and their airlines to stop acting against their interests by dumping the social dialogue. They said they would not tolerate any more attempts by governments or airlines to impose changes without negotiation and consultation with the unions, and criticized the EC for lack of progress on social harmonization. However, they declared they were committed to continue working with EC institutions and airlines to get through the EC air-transport crisis. The Transport and General Workers' Union (TGWU) noted that even private airlines, such as BA, had been forced by the unions to realize that it was not possible to run an airline without social dialogue. The unions reiterated their request to the Commission to set up a "social observatory", which would monitor and analyse the social impact of EC air-transport market liberalization.⁵³ In fact, at this meeting José Bras, president of the ITF-affiliated Portuguese union National Syndicate of Civil Aviation Personnel (SNPVAC) revealed

⁵¹ITF News, July 1993: 21.

⁵²ITF News, July 1993: 21.

⁵³ITF News, July 1993: 19-20.

" In its attempt to arbitrarily push through privatization and restructuring of the national carrier TAP, the current Portuguese government has abrogated labour agreements which even the old Salazar dictatorship regime of the sixties and seventies had been forced to accept."⁵⁴

In June 1993 DG VII (Transport and Energy) Commissioner A. Matutes set up a "committee of wise men" also called *comité des Sages* (a kind of think-tank), to look at the current situation in the EC civil-aviation industry, and to make recommendations on its future development. In particular the committee was to discuss problems such as the industry's financial difficulties, airport infrastructure and congestion, and to propose short-term measures as well as a long-term strategy. Among those appointed to serve on it was the unionist R. Valladon, who was the employees' chairman in the JCCA. The committee appeared to have goals similar to the US National Commission for ensuring a strong competitive airline industry, which had seen that US deregulation created serious problems in the airline industry and that some strategic intervention was required. However, the unions considered that the first report of the *comité des sages* (at the end of 1993) reflected the ultra-liberal views of most of its members, and completely ignored all trade-union recommendations. They alleged that the report in fact suggested the airlines' exploitation of aviation workers, and more or less the loss of at least 100,000 more jobs by European Union (EU) airlines.⁵⁵

The 1993 ITF Civil Aviation Section Committee meeting in London (8-10 November) sent a message to airlines and the EC that the trade unions were fighting back against the tide of aviation liberalism and globalization that had affected working conditions and collective-bargaining rights ever since 1987. Therefore, the ITF, although it had significantly extended its collaboration with the airlines in the JCCA and the member-countries in the JAA, called on unions to renew their efforts to provide effective solidarity with unions engaged in disputes. In fact, in late 1993, the ITF was participating in a

⁵⁴ITF News, July 1993: 20.

⁵⁵ITF News of July 1993: 23, and Jan./Feb. 1994: 19.

JAA working group for the first time in four years, although consultation with and participation of unions was still extremely limited, because usually only national aviation authorities were allowed to take part in JAA working groups.⁵⁶

In parallel to the FDTL debate, and having seen that the EC air-transport liberalization process only meant massive job losses, worse pay and working conditions, and attacks on collective-bargaining rights, the EC air-transport unions and pilot associations went on massive strikes and protest rallies against their airline managements as well as against the Commission during the 1991-1993 period. For example, Air Inter pilots and flight engineers went on strike on 23 October 1991 as part of a union fight against job cuts. The announcement in October 1992 by Belgium's national airline SABENA, of up to 1,000 new redundancies, along with the immediate arbitrary dismissal of 250 workers, brought spontaneous strikes and worker protests at the Zaventem Airport of Brussels. On 23 November and 15 and 23 December 1992 Air France was hit by an unprecedented wave of industrial action, including strikes and mass rallies in protest against restructuring-plans which would involve the loss of 5,000 jobs and compulsory redundancies. Five thousand aviation workers employed by the national LH and other German airlines gathered in Bonn on 20 March 1993 for a mass protest against the government's failed aviation policies, including a new air-traffic treaty between Germany and the USA, which threatened thousands of jobs. On 9 and 10 October 1993 all Air France unions went on strike to show their opposition to its announcement that the airlines' restructuring plan would bring a loss of 4,000 jobs. Finally in December 1993 the ITF proposed an "Unfair Flyers" campaign which would target anti-union carriers with bad publicity, while explaining the link between unionized employees and good and safe services.⁵⁷

⁵⁶ITF News, Dec. 1993: 9-10.

⁵⁷ITF News of Nov. 1991: 30, of Nov. 1992: 13, of Jan./Feb. 1993: 27, of April 1993: 14, of Aug. 1993: 5, of Nov. 1993: 1, 12-14, and of Dec. 1993: 10.

4. Conclusion

In the early 1990s, in a climate of worldwide economic uncertainties, the prevailing politico-economic ideologies of certain EC member-states (especially France and Germany) and their affinity with labour policies, as well as most of the AEA national airlines, made it possible for the air-transport unions and pilot associations to participate more actively at the EC through the creation of the JCCA and its tripartite committees. In fact it was the French presidency (1 July - 31 Dec. 1989) that heralded the future of the EC air-transport personnel, and from spectators made them into actors, while the role of Germany and its national airline LH, a member of AEA, were determinant factors in the creation of the JCCA. EC governments supporting neo-liberal (monetarist) policies were no longer predominant and the place of labour in the EC was less threatened, yet not as an equal social partner with the employer.

At the same period, most of the EC member-states and AEA member airlines wished the slow-down of the pace of liberalization, while the Commission and certain Commissioners were willing to give EC air-transport a "human face". In fact, after the Gulf War, the main objectives of the AEA national airlines and the air-transport unions and pilot associations coincided into slowing-down the liberalization of the EC air-transport market. This was achieved through (i) the JCCA's major conflicts among the airlines, among the unions, among pilot associations, and among and between all these groups; and (ii) the FDTL regulation which was the most controversial and much debated issue in JCCA, the JAA and the Commission.

The JCCA was, however, only a very loose micro-corporatist and advisory body which wielded little power, while the JAA body, operating outside the EC context but still imposing its proposals on the Commission, was against the air-transport unions and partly supported the pilots' demands. This

to some extent increased the unions' militancy but, having been left without alternative channels to seek representation, were ready to compromise as long as they did not lose all possibility of action. They, as well as the pilot associations, were well aware of their weak position in the EC.

CHAPTER IX

CONCLUSION

The Spaak Committee deliberating on the Treaty of Rome stressed that, if the EC wished to achieve its economic integration it also had to have a joint transport policy. The Treaty did not, however, express a specific commitment to the formulation of a common EC air-transport policy, and left it to the Council of Transport Ministers to decide whether the general competition laws should apply to air transport also. In effect, in the first 30 years of the EC's existence they did not, and no common air-transport policy was developed by the EC member-states.

When in 1987 the EC was obliged to apply its overall competition policy also to its air-transport market, this was mainly a repercussion of radical reforms in the international arena. However, while it had now become unavoidable, the so-called liberalization process was still not in the perceived best interests of most of the EC members and their national airlines. Since drawing up a viable transnational policy depended wholly on the EC countries being ready to co-operate wholeheartedly, it is not very surprising that by the end of 1993 the process of air-transport liberalisation had not succeeded in becoming common EC air-transport policy.

This thesis has explored the reciprocal influences and interactions of national and EC air-transport policy communities, to show in detail how and why they precluded a jointly agreed liberalization of the Community's air transport and the related decision-making.

Two main arguments underlie the major premise of this study. One is that, within the EC institutional structures and functions, it was only national interests, and especially those of the strongest members that actively concerned themselves with the liberalization of the EC air-transport policy (either for or against), rather than EC forces collectively. The second is that

persisting corporatist interests in the member-countries resisted any change in the national arrangements. The spectrum of conflicting positions, rivalry, and discord that bedeviled relations among members, airlines *per se* and in their capacity as employers, and among and between the trade unions and pilot associations as representing the air-transport employees has also been displayed. Each of these groups put forward its own point of view, and used it to exert the maximum amount of pressure on the others, so as to procure solely its own advantage in the EC. The preceding pages have examined how those organized vested interests employed various national and Community policy networks and strategies to abort liberalization of the EC air-transport industry becoming joint Community policy.

The present and final chapter is in three sections: the first is a brief summary of relevant events between 1987 and 1993; the second compares the pre-1987 and post-1993 air-transport regimes; and the third section provides some general conclusions on the success or failure of the EC air-transport liberalization process as a public policy as well as its definite failure to become a common policy.

1. The period 1987-1993

The gradual worldwide spread of the US policy and practice of airline deregulation and the growing neo-liberal ideology, at least as regards EC air transport, in certain EC member-states (Britain, Ireland, and the Netherlands) inevitably had a profound impact on EC air-transport policy and decision-making and so on all of the EC airline industry. The UK especially, in its capacity as an EC member and one of the world's leading air powers, played a decisive role in strongly promoting the US deregulation measures.

As a result, the EC members empowered the Commission to legislate and implement a joint air-transport competition policy, the so-called

liberalization policy. In practice, this led to the destabilization of the various countries' politico-economic and social air-transport structures, which for thirty years had worked well to the perceived benefit of all producer interests. This in turn accentuated existing nationalistic, commercial, and legislative trends in the individual countries, and so obviated the EC members making common cause with respect to air-transport liberalization.

The EC member-states were obliged by international circumstances to engage in what may be called politics of necessity or circumstantial politics: it was basically external factors that imposed competition in the EC air-transport market, rather than the EC members' wish to integrate the Community's air-transport market. In these circumstances the three strongest countries, the "troika" (Britain, France, Germany) were engaged in what may be called opportunistic politics: ensuring that their own air-transport interests were imposed over the heads of their smaller and (in political, economic, and air-transport terms weaker) EC fellow-members.

In general the EC air-transport policy and decision-making process involved fierce competition between the divergent and fragmented EC air-transport policy interests of major functional elites from the stronger member-states, private capital, and EC institutions; and the correlation of their air-transport interests by the politico-economically strong member-states of the troika. This was fully understood and accepted by both the Commission and the EC Council of Transport Ministers.

In purely institutional terms, the EC Commissioners, Eurocrats, and member-states played mutually supportive roles to reach the above result. In particular, the Commissioners and certain Eurocrats initiated severe conflicts by continuously interfering in the policy-making process, either to promote their own country's air-transport interests to the detriment of the EC as a whole, or by endeavouring to increase their position in the EC. Four cases have been cited where key air-transport actors in the Commission, engaged in

questionable machinations and power politics to serve their own countries' air-transport interests and the troika's air-transport interests rather than those of the Community.

The EC member-states for their part, as the chief actors in negotiating, bargaining, and decision-making, set about reaching a joint EC air-transport policy by trying to reconcile their divergent interests through reliable coalitions, political and economic compromises, pay-offs, string-pulling, tactical manoeuvres, as well as plain procrastination. They always gave first and foremost priority to their own national air-transport interests. Their deliberations, were not a matter of rational decision-making, but of every country trying to impose on the others its own purposes and demands. This being so, the EC as a whole was forced in the end to modify its air-transport liberalization policy to accommodate the conflictual reality of the interests of the troika members and those of the countries following them. This resulted in a distortion and perversion of EC air-transport policy that obviated any prospect of consensus.

The strong EC countries' obstinate refusal to relinquish control of what for decades had been important instruments of air-space sovereignty and public policy stood fully revealed in 1993. Although the Commission's legislative work from 1987 to 1992 had been directed by neo-liberal Commissioners for Competition such as Ireland's Peter Sutherland and Britain's Sir Leon Brittan, its practical implementation fell to socialist Karel Van Miert of Belgium, who took it upon himself to reconsider the whole question of liberalization.

Like their governments, the national airlines did not embrace air-transport liberalization as a policy in its own right, but only because international air-transport competition had become inevitable if the threat was to be averted of the US and the growing Asian/Pacific mega-airlines dominating both the international and EC markets. Whether they liked it or not,

the national airlines in the EC were obliged "by necessity" to follow an air-transport liberalization strategy the main considerations and tactics of which concerned their sheer survival in the EC and internationally.

The national, independent and regional airline employers did not comprise a collectively homogeneous policy-community. On the contrary, irreconcilable divergences of national and private air-transport interests brought them into serious conflict between and among themselves as well as their umbrella groups.

The umbrella group of the Association of European Airlines (AEA), among whose members were the EC's twelve national airlines, was itself internally hit by serious disputes about the pace of the liberalization policy. It nevertheless, played a central role in shaping the Community's policy, chiefly by forcing a much slower pace on air-transport liberalization. The twelve national airlines, and especially those of the troika (AF, BA, and LH), were protected not only by their umbrella groups policy-communities, but also by alternative policy-networks in their own countries, and by their national Commissioners and Eurocrats.

Most of the EC national airlines, whether owned privately or by the state (and especially the champions like AF, BA, KLM and LH), decided not to compete among themselves but to pursue a strategy of consolidation instead. They engaged in both offensive and defensive alliances and mergers with other airlines domestically and national and domestic European (non-EC) airlines, with a view to preventing rival operations from independent or new airlines taking hold. They became increasingly convinced that their EC and international survival required not only a dominant position in their own and the EC's air-transport systems, but had to be buttressed by mergers and alliances with airlines in other blocs (especially US carriers), if their own continued access to international routes was to be assured.

As a result of the above practices by the national airlines, most of the

independent ones, which were strong advocates of liberalization or even complete deregulation of the EC air-transport market, collapsed or disappeared as separate companies by merging with, or being partly acquired by one of the national airlines.

At the same time, certain national airlines with views on EC air transport similar to those of the independent airlines (like the UK's privately-owned BA, and Ireland's state-owned Aer Lingus), when coming up against out-and-out competition in their national air-transport markets ended up facing the other way. So for example BA, the national airline of a strong EC member-country, also representing private air-transport interests, became an unquestionable winner. The company went from strength to strength, although accused of predatory and consolidatory practices at national and EC level, of political manipulations in concert with the conservative government in London, and above all with Britain's EC Commissioners. BA's policy was growth at all costs which of course ran exactly counter the EC's liberalization policy, which envisaged an air-transport market in which smaller state-owned and independent airlines had a chance of expanding. The Irish carrier Aer Lingus, on the other hand, was a definite loser. The airline went from fair competition on specific air-routes to cut-throat price reductions and a fare-war with other airlines, very nearly collapsed, and had to be rescued in an emergency package agreed by the Commission.

Between 1987 and 1990, while the EC legislated two basic air-transport packages to introduce its competition policy, the Community's air-transport unions and pilot associations were so impeded in their work by the Commission, their own governments, their airlines, and by problems among themselves, that they exerted no influence at all on EC air-transport policy. Quite incapable of organizing themselves transnationally, they were unable to negotiate at EC level. In their national arenas they were on the defensive, given that the projected liberalization of the EC air-transport market definitely

opposed their own interests and resulted in the break-up of their national micro-corporatist structures, exchanging consensus-based (strong) arrangements for conflictual (weak) ones. Finally, not only were the civil-aviation employees in the EC at that time more or less against the liberalization project, but they accepted its developments entirely passively and considered it irreversible, since the EC had already legislated on it and implemented its competition laws. All of the above reduced the role of the unions and the air-transport employees to that of mere spectators.

A major reason behind the failure of the Community's air-transport unions and pilot associations to oppose and possibly thwart the EC liberalization process between 1987 and 1990 was the paradox that, although the EC and its member-countries disagreed about the pace and/or benefits of EC air-transport liberalization, they had maintained a relatively uniform labour policy at both national and EC level. The passivity of the air-transport unions and pilot associations came to an end after 1990. In a climate of worldwide economic uncertainty caused principally by the Gulf War, and given the prevailing politico-economic ideologies of certain EC member-states (especially France and Germany) and their affinity with pro-labour policies, the creation of the Joint Committee of Civil Aviation (JCCA), and its tripartite committees, made possible the unions' and pilot associations' more active participation. (In fact at the end of 1989 the French EC presidency heralded a more purposive period for EC air-transport personnel, while Germany and its national airline LH, a member of the AEA, were decisive factors in the creation of the JCCA in 1990). EC governments supporting neo-liberal monetarist policies were less predominant and labour in the EC was less threatened, although not yet an equal social partner with the employers (member-states and/or airlines).

At this point most of the EC member-states and AEA member-airlines had agreed to slow down the pace of liberalization, and in social terms the

Commission and certain Commissioners were ready to give EC air-transport a "human face". After the Gulf War, the AEA's national airlines', air-transport unions', and pilot associations' major objectives coincided in desiring to decelerate the EC air-transport liberalization. They achieved their objective as a result of major conflicts between the JCCA airlines, the unions, pilot associations, and among and between all these groups; and because of the Flight and Duty Time Limitations (FDTL) regulation, which was the most controversial issue debated in the JCCA, the Joint Aviation Authorities (JAA), and the Commission.

The JCCA was only a very loose micro-corporatist and advisory body, however, and wielded little power; while the JAA, which operated outside the EC context but managed to impose its proposals on the Commission, was against the air-transport unions and partly supported the pilots' demands. This to some extent helped to increase the unions' militancy but, having been left without alternative channels to seek representation, they were ready to compromise as long as they retained some possibility of action. Like the pilot associations, they were well aware of their continuing weak position in the EC.

2. The Pre-1987 versus the Post-1993 Regime

As mentioned in ch. II, the EC member-states' air-transport structures before 1987 were based on strict and well developed regulatory and micro-corporatist practices, with consensus-based (strong) arrangements, and goals that were partly functional, partly national, partly-bureaucratic, idealistic, and geopolitical. In those national structures the countries played the dual role of government and employer since (except for the British Airways) all national airlines were state-owned and dominated their country's air-transport system. As a result, the unions and pilot associations were monopolizing the industry's corporatist arrangements, and enjoyed well-paid and glamorous employment.

At the EC level, bilateral agreements among member-countries and their airlines went hand in hand with national legislation in well-stabilized national and EC air-transport systems.

After 1993 the European Union (EU) air-transport environment was still administered by bilateral agreements between member-states, but now under the auspices of the Commission and in accordance with EU rules and regulations. All twelve national airlines remained intact and not only dominated but further monopolized their national markets. Air-transport unions and pilot associations, although under pressure concerning working conditions and subject to considerable lay-offs, had a reduced but still considerable say in their airlines' practices and financial arrangements. No national airline went private between 1987 and 1993, with the exception of the Netherlands' KLM, which sold the majority of its shares to private capital, the state owning the rest. BA was privatized in 1986.

Similar to conditions in the US air transport under deregulation, and as in the period between 1987 and 1993, the post-1993 air-transport liberalization policy of the EU still did not manifest the economic characteristics believed necessary for a truly competitive environment. The legislative, economic, and infrastructural barriers to market entry for intra-Community services have not been removed to ensure that the EU air-transport market is contestable. In other words, the implementation of the competition policy in EU air transport did not, in fact, result in greater internal competition.

On the contrary, the EU's national airlines, whether state or privately owned, still continued to collude instead of competing on intra-EU services, and to concentrate and consolidate through mergers and share purchases in order to be protected and further prevent EU air-transport market competition. The industry became more oligopolistic at the EC level (between member-states) than it had ever been before 1987, and totally monopolistic at national

level. For example, any flight between Britain and France is a duopoly, while in the three biggest national air-transport markets - the British, French, and German - the national airlines concerned (BA, AF, and LH) operated nearly 100 per cent (94.7, 97.4 and 99.8 per cent respectively). Finally, at EU level the national airlines continued to compete only against smaller airlines and not among themselves.

When competition, which was not in the interests of the existing globally aligned EU mega-carrier consortia, became minimal, it was difficult for the Commission to establish conclusively that the airlines' behaviour was predatory and collusive, and in fact contravened the EU air-transport liberalization policy and its laws on competition.

Yet during that same time there was a much more competitive environment on long-haul extra-EU markets, both because of the greater impact of non-EU airlines (especially those of the USA), and because long-haul destinations are usually reached via several routes connecting hubs between competing EU (especially UK) and US airlines. However, besides the airlines with well-established roles in the EU and international markets, there were also the others who found ways of obstructing the implementation of the air-transport competition policy in the EU market, especially in their own domestic environment, where EU-policy implementation was up to them. An example of the latter is the Greek national airline Olympic Airways which, with the blessing of the Greek government, as late as 1994 and even early 1995, refused to relinquish its monopoly of handling services and continued to bargain the issue with the Commission.

Despite the apparent and increasing involvement of the Commission during this time, individual countries' vested air-transport interests continued to be the primary driving force in EU air transport, and in practice dictated,

delayed, and even prevented liberalization. In these circumstances member-states, whether large or small, were unlikely to allow their national carrier to be adversely affected by some undesirable aspect of the Community's air-transport policy. In consequence liberalization was retarded further and now proceeds at a snail's pace. Each member-state continues to use the EU air-transport market for its own national objectives, rather than common EU ones, so the climate now is not very different from what it was prior to 1987. In effect, by early 1994 the defenses set up by each country to safeguard its national air-transport interests were stronger and tougher than ever, in preparation for the complete opening-up of the EU air-transport market in 1997.

Delaying tactics are employed whenever an individual member-country perceives that its interests are not likely to be served - as in the above example of the Greek government refusing to abolish the handling monopoly at Greek airports. One of the means by which the EU member-states managed to restrain and block air-transport competition is to prolong their financial aid to their national airlines for as long as possible before the EC applies its open skies policy in 1997. Meanwhile the member-states and their airlines hope that by then they will have found some other excuse to protect their national air-transport interests and their airlines. The fact that the EU member-states have continued to subsidize their national airlines since 1993, and with the approval of the Commission, not only demonstrates the failure of the EU to implement its liberalization of the air-transport market but, even more fundamentally, shows a deplorable lack of collaboration by the twelve EU members (not to mention the fifteen EU members in 1995) to reach a common EU air-transport policy at least up until 1997. What changes of an ideological or geopolitical nature may have come about by 1997 or 2000 within the EU and/or global air transport to prevent the open skies policy indefinitely?

Most of the people interviewed in the course of this study have predicted that by 1994 the three champions AF, BA, LH, as well as probably KLM, Iberia, and SAS, will be monopolizing the EU market. Other observers have estimated that by 1997 the EU air-transport market will be so oligopolistic that the top six EU airlines will control close to 85 per cent of the intra-EU market, with the vast majority of the busiest routes having become stricter duopolies than they were in the pre-1987 period.¹

This will mean a *de facto* cartel by 2000, which according to the EC competition laws would be illegal. One of the consequences of searching to avoid legal 'trust-busting' would be that national airlines would eventually disappear as independent units to become parts of conglomerates, especially of European and US airlines. These might lead the EU air-transport market to be administered by an organization of EU member-states and the USA providing air-transport services, or perhaps along the lines of the Organization of Petroleum-Exporting Countries (OPEC). In conglomerates of this kind nobody knows with whom he is dealing and who is really in charge, and different businesses are traded on a day-to-day basis like commodities. As is the case for maritime transport, such an organization of conglomerates would make more money by speculating and selling individual airlines or their aircraft for as much as five years ahead. Conglomerates of this kind are expected to be organized primarily by UK and US airlines, either separately or jointly.²

Whatever the exact developments, it seems likely that at the end of this millennium the USA and Britain will still be and remain the world's leading air-transport powers - continuing as they have done throughout the twentieth century.

¹Doganis, 1994: 25.

²Interview with C. Iddon (30 Oct. 1990).

3. Air-Transport Liberalization versus Common EC Policy

Prior to 1987, air transport in the European countries was without any competition, and totally regulated by each country for itself. It was the US airline deregulation, and the consequences of the ensuing international competition, that obliged the EC states to apply a competition policy within the EC air transport (as also specified by the Treaty of Rome). This whole process was called liberalization. In the course of implementing its objectives, however, every country was above all concerned with its own advantage, and all interest groups -states, airlines, trade unions, pilot associations etc. - were at loggerheads with each other and within themselves. Liberalization as such could have been a common policy, whether it was a success or a failure, but in fact, while it constituted the motive for finding a common policy, it did not succeed in bringing about such a policy.

With respect to liberalization itself, this could be considered a success or a failure, depending on one's viewpoint. Some might say it was successful because it did create the larger EU airlines that are indispensable for competing against US/Asiatic carriers. The loosening of strong corporatist arrangements that liberalization brought in its wake may, also be considered as either a positive outcome (where it applies to the national airlines), or negative (for the trade unions). In any case, the strong corporatist structures continue to exist, most especially at the national level. The consumers, for their part, may well regard liberalization as negative, since the oligopolization of air transport meant less competition and therefore higher than ever fares. Public interest can not be served in the absence of some regulations that eventually dispense with the mechanism of competition as the antithesis of consensus. In other words, competition runs counter to a common policy. What is required is co-operation among the EC member-states concerned, and such co-operation then spells a common policy.

It must be understood perfectly clearly that the outcome of the air-transport liberalization measures in the EC is not identical with the achievement or otherwise of an overall joint policy for all Community member-countries. Liberalization as one aspect of the air-transport sector simply acted as the impetus for searching for an answer why there has not been more general consensus in this area. In any event, my thesis is not concerned with the success or failure of liberalization as such, but whether it has become a common EC policy. Whether or not and to what extent liberalization succeeded, must remain the topic of further research.

Now the EC/EU as a whole does not have very many successes to record in this respect. Perhaps the free market it has created could be counted a success, but in fact it really applies to only trivial sectors, and certainly not to air transport. Moreover, agricultural policy and monetary union (so far) are not notably successful. Since air transport is an area *par excellence* where continental and global considerations apply, it is astonishing that no consensus could be arrived at in seven years of continued negotiations. The adoption of a common EC policy for civil aviation during the period between 1987 and 1993 was, however, equally fraught with difficulties as the thirty years preceding 1987, given that civil aviation is an area in which powerful politico-economic interests were intertwined. Still, failure to achieve real agreement in this sector suggests a series of severe limitations to prospects of successful European integration.

When the EC was first set up, nobody could have imagined that it would so greatly disappoint its founders' hopes and objectives. Nobody could have foreseen that transforming countries' national air-transport systems into a joint free air-transport market would be beset with such difficulties, nor that a supranational European Community would turn out to be impossible in terms of transcending both national sovereignty and chauvinist nationalism on the European continent. The countries particularly notable in this respect have

been, Britain, France and Germany, at least as far as the air-transport sector is concerned. They insisted on solving their EC and international politico-economic air-transport differences and satisfying them individualistically in opposition both to the poorer and weaker countries in the North-South conflict, and to the Treaty of Rome for a common transport policy. In a European Community with centripetal and centrifugal forces among its member-states, their machinations to that end have ruthlessly employed factions and alliances with the smaller member-countries, political manipulation, back-door manoeuvrings, and more or less shortlived and purely expedient reconciliations among themselves in order to solve their internal contradictions, and smouldering discrepancies in the EC. In other words, the EC became a vehicle for its three most powerful countries promoting solely their own politico-economic interests, totally indifferent to the well-being of other members in the EC.

Among the troika states, Britain has all along been the mouthpiece of US interests whenever they served its own, either directly, or for one reason or another not permitting EC opposition to UK wishes. Although Britain has managed to undermine the supranational identity of the EC, it has at the same time succeeded in promoting its own interests to the maximum. Being more than an equal partner with the other members in the Community, it has acquired for itself pivotal and strong roles in some EC arenas, that of air transport being a case in point.

By contrast the other two strong EC states, France and Germany, and with them the Benelux countries, have attempted to minimize the inequalities and differences between the South-West member-countries (for protectionism) and North-East ones (for the globalization of the EC air-transport market), in order to avoid the uneven rate of progress. This Franco-German politico-economic alliance has been strong enough to offset that of UK-USA interests in the EC.

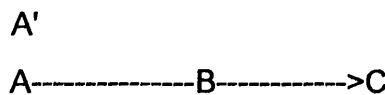
The above, by supporting my argument about the failure of the EC/EU to establish a commonly agreed air-transport policy, also demonstrates that national air-transport politics and policies were disguised at a European level in straight contravention of the Treaty of Rome.

APPENDICES

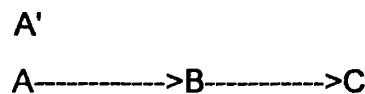
APPENDIX I.1
THE FREEDOMS OF THE AIR

There are seven freedoms, which in reality are privileges, acknowledged in the scheduled international air transport:

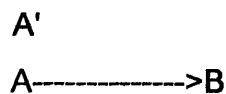
(1) The right of airline A' to overfly (without landing) the country B to get to country C.



(2) The right of airline A' to land in B for purely technical reasons, including refuelling, while going to country C.



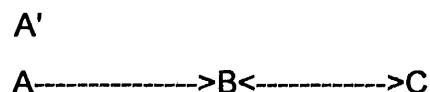
(3) The right of airline A' to set down passengers and/or freight in country B.



(4) The right of airline A' to pick up passengers and/or freight from country B.



(5) The right of airline A' to drop off or take aboard passengers and/or freight between country B and country C as long as the flight originates or terminates in its own country of registry.



Fifth freedom rights are sometimes called "Beyond Rights" or "Fill-up Traffic".

(6) The right of airline A' to drop off or take aboard passengers from both countries B and C. Thus airline A' can carry traffic from country B to country A and then carry it from country A to country C. The traffic taken from country B to country C in this manner is referred to as sixth freedom traffic.

A'
A<----->B<----->C
A<----->C

(7) The right of airline A' to conduct air-traffic services (dropping off and taking aboard passengers) between two points within country B. The prohibition of this freedom is called "cabotage".

A'
BX<----->BY

The first and second freedoms are technical privileges; the third, fourth and fifth freedoms concern commercial (traffic) rights. The first four and the seventh freedoms are negotiated on a bilateral basis; the fifth and sixth are negotiated multilaterally. The third and fourth freedoms are the most important commercial traffic rights; the fifth and sixth consist of a combination of freedoms three and four.

Appendix I.2

The US Show Cause Order (SCO)



INTERNATIONAL AIR TRANSPORT ASSOCIATION

P.O. Box 160, 1216 Cointrin, Geneva, Switzerland

P.O. Box 550, Montreal, Quebec, Canada H3A 2R4

Public Relations Department
Background Information Document

Geneva, March 2, 1979

US CAB ORDER TO SHOW CAUSE ("SCO") - A SITUATION REPORT

On June 9, 1978, the US Civil Aeronautics Board (CAB) issued Order 78-6-78 requiring IATA and other interested parties to show cause why the Board should not withdraw its approval of, and consequently the anti-trust exemption for, the Traffic Conferences and other related agreements of IATA under Sections 412 and 414 of the US Federal Aviation Act.

The IATA agreements referred to under the SCO range from typical fares and cargo rates coordination (e.g. establishing integrated public fares and rates patterns in various geographic markets) to the essential international trade association type functions (e.g. standardized traffic documentation, procedures and systems). The IATA agreements are developed by the scheduled airlines within a multi-national Traffic Conference forum, under the terms of over 1,000 formal bilateral air transport agreements between the world's governments.

As at February 20, 1979 over 40 national governments had made protest submissions against the CAB proposal through the US Department of State, and 42 international airlines had made submissions direct to the CAB. In addition, the 35 member countries of the European Civil Aviation Conference (ECAC), the Arab Civil Aviation Council (ACAC) indirectly expressed their concern through submissions made by these regional organizations.

The member airlines of the Arab Air Carriers Organization (AACO), the Association of European Airlines (AEA), the African Airlines Association (AFRAA), the Air Transport Association of America (ATA), and the Orient Airlines Association (OAA), have also submitted joint responses to the CAB. Over a dozen other "interested parties" have also submitted comments for CAB consideration (see Attachment A).

The three US Federal Agencies with the greatest influence on US International Aviation Policy have now also taken positions. The Department of Justice - on the basis of traditional anti-trust doctrine - strongly supports the CAB's tentative decision. The Department of State - largely citing foreign government protests - calls for moderation. The Department of Transportation - arguing that no record has been established to support confirmation of the tentative findings - urges the CAB not to take action without further proceedings, and this position has also now been supported by the Department of State (see Attachment B for amplified details).

As at March 2, the CAB was still studying the various submissions and had not established any decision or recommendations to resolve this outstanding and important question.

SUMMARY OF SHOW CAUSE ORDER SUBMISSIONS AND REPLIES AS AT 20 FEBRUARY 1979

Countries where ministries of Foreign Affairs are known to have made formal submissions to the U.S. Dept. of State :

Argentina	Ghana	Saudi Arabia
Australia	Ireland	Sudan
Austria	Israel	Sweden
Belgium	Italy	Switzerland
Benin	Ivory Coast	Taiwan
Cameroon	Japan	Tanzania
Canada	Kenya	Togo
Chile *	Mauritania	Tunisia
Columbia	Mexico	United Kingdom
Denmark	New Zealand	Upper Volta
Ethiopia	Norway	Yugoslavia
Finland	Pakistan	Zambia
France	Philippines	
Germany F.R.	Portugal	

* Comments supporting CAB's tentative SCO findings.

Note also list of regional government organizations that have made submissions.

Countries where Civil Aviation Authorities have made submissions to the U.S. Department of State or the CAB directly :

Argentina	Kuwait	Switzerland
Egypt	Lebanon	
Iraq	Malta	

Air Carriers that made submissions to the CAB or have submitted statements of support for the IATA submission :

Aer Lingus	Egyptair	Middle East Airlines
Aerolineas Argentinas	El Al	Nigerian Airways
Air Afrique	Ethiopian Airlines	Pan American
Air Canada	Finnair	Philippine Airlines
Air India	Flying Tiger	Qantas
Air Malta	Ghana Airways	Sabena
Air New Zealand	Iberia	SAS
Alitalia	Iran Air	Saudia
Braniff	Iraqi Airways	South African Airways
British Airways	JAL	Swissair
British Caledonian	JAT	Trans World Airlines
Cameroon Airlines	Kuwait Airways	United Airlines
CP Air	LOT	UTA
Cruzeiro	Mexicana	Varig

Note also list of regional airline associations that have made submissions.

Attachment A

Page 2

Geneva, March 2, 1979

Submissions have also been received from :

Regional Government Organizations

- Arab Civil Aviation Council (14)*
- European Civil Aviation Conference (21)*

Regional Airline Associations

- African Airlines Association (22)*
- Air Transport Association of America (26)*
- Arab Air Carriers Organization (18)*
- Association of European Airlines (19)*
- Orient Airlines Association (12)*

Other "Interested Parties"

- Air Freight Forwarders of America
- American Automobile Association
- American Society of Travel Agents
- Association of Bank Travel Bureaux
- Aviation Consumer Action Project (ACAP) **
- Electronics Shippers **
- Emery Air Freight Corporation
- International Airforwarder and Agents Association **
- National Passenger Traffic Association, Inc. **

* Number of members.

** Comments supporting CAB's tentative SCO findings.

Geneva, March 2, 1979

SHOW CAUSE ORDER POSITION OF U.S. FEDERAL AGENCIES

DEPARTMENT OF STATE

While stating its full support for Board policies that will maximise competition in the international aviation system, the DoS questions whether United States' objectives will best be served by the full course of the action contemplated in the Order. It argues that the CAB's proposed action against the IATA traffic conferences may cause foreign governments to be less willing to negotiate bilateral agreements that would permit individual airline pricing and free market entry. For this reason DoS believes that the Board should consider moderating steps that would allow the US policy objectives to be achieved, and yet alleviate some of the concerns of foreign governments who perceive that the US is acting precipitously or in an unnecessary unilateral manner.

The DoS then outlines possible ways of moderating the procedure for the Board to consider :

- 1) Delay the effective date of any withdrawal of anti-trust immunity so that airlines receive an opportunity to adjust their pricing practices to the new requirements and so that ample time would be available for refiling the "legitimate and desirable" facilitation agreements and avoiding unnecessary disruption or uncertainty for the airlines.
- 2) Limit the scope of the Order so that it applies only to US airlines, thus alleviating some of the Board's concerns about inter-carrier pricing agreements while reducing foreign government concerns regarding implications of US anti-trust law on their carriers.
- 3) Withdrawal of US anti-trust immunity only in those markets directly serving the United States and possible participation by US carriers in those foreign rate conferences in which they have fifth freedom rights.
- 4) Limit the thrust of the Order to IATA's price co-ordination function and leave intact the Association's facilitation services.
- 5) Provide interested foreign governments with an opportunity to consult with the United States on any actions which would adversely affect the IATA conference mechanism.

Geneva, March 2, 1979

DEPARTMENT OF JUSTICE

- DOJ strongly supports the Board's tentative decision that IATA should not continue to be immunized from US anti-trust laws; carriers should, nonetheless, be given a reasonable time to adjust to any changes required by the Board and to refile any agreements considered not to be anti-competitive.
- The DOJ finds that IATA has failed to justify its anti-competitive aspects, has wrongly interpreted the anti-trust laws, and has made exaggerated claims of the legal and policy consequences of withdrawal of anti-trust immunity.

Specifically the DOJ finds that ;

- a) Competition has a preferred status in the public interest balancing process and that the Board can determine the appropriate weighting to be given. The DOJ finds the Local Cartage test necessary and appropriate to a full and careful evaluation, that the burden of proof lies with proponents of IATA, and that an evidentiary hearing is not required by due process of law;
- b) The recent bilateral agreements to which the US is a party contemplate and guarantee a system in which fares are set individually by the airlines in a competitive market. Government intervention is limited to instances where predation, monopoly or subsidies threaten to undercut the free market. The abolition of IATA rate fixing is not contrary to US foreign policy obligations in respect of these countries. Indeed, even under the old bilateral agreements, the Board may withdraw approval of IATA rate making without adverse foreign policy consequences;
- c) The applicability of the Noerr-Pennington doctrine to IATA rate activities is questionable. Whilst IATA have a Noerr-Pennington right to petition the CAB, once that petition is denied they have exhausted those rights and may not continue to fix rates under the guise of the Noerr-Pennington doctrine;
- d) As an "unregulated industry" the International Air Transport Industry does not require special exemption from US anti-trust laws, rather, it can compete in the same way as other unregulated industries. The best way for IATA and its members to protect themselves in a non-immunized environment is "to avoid scrupulously involvement in any activities which smack of conspiratorial conduct"; and

e) The Board should not, as the DoS suggests, review each related agreement or withdraw its approval only in respect of US carriers. Such a procedure is not necessary, nor consistent with United States' national interests.

DEPARTMENT OF TRANSPORTATION

The DoT basic position is that the CAB should conduct further proceedings before taking a decision on whether or not to confirm its tentative findings.

With respect to IATA's role in negotiating fares and rates, the DoT states :

- 1) That the six questions raised in the Order must be answered before a final decision can be made.
- 2) That the record to date is not adequate to remove the uncertainty about the impact which confirming the Order would have on the achievement of the US's policy objectives.
- 3) That the Board should conduct a careful analysis of whether or not disapproval of all pricing agreements advances US interests in establishing a competitive international air transportation system.

With respect to "facilitation" agreements, the DoT suggests that the CAB should conduct evidentiary hearings to determine whether these agreements meet the public interest standards of section 412 of the Federal Aviation Act and whether anti-trust immunity is required for such agreements. The DoT's use of the term facilitation refers to IATA's trade association function and specifically mentions baggage, conditions of service, agency and interline/standardisation resolutions as candidates for the hearing process.

In this context, it is also worth noting that in a footnote related to a comment on IATA's motion for consolidation of the SCO and the amended IATA traffic conference provisions the DoT stated : "DoT does believe that the division of IATA on trade association and tariff conference lines is desirable".

Appendix II. 1
Articles of the Treaty of Rome
Most Relevant to Air-Transport Policy

Article 1

By this Treaty, the High Contracting Parties establish among themselves a European Economic Community.

Article 2

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the states belonging to it.

Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

- a. the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- b. the establishment of a common customs tariff and of a common commercial policy towards third countries;
- c. the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;
- d. the adoption of a common policy in the sphere of agriculture;
- e. the adoption of a common policy in the sphere of transport;
- f. the institution of a system ensuring that competition in the common market is not distorted;
- g. the application of procedures by which the economic policies of Member States can be coordinated and disequilibria in their balances of payments remedied;
- h. the approximation of the laws of Member States to the extent required for the proper functioning of the common market;
- i. the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;

- j. the establishment of a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;
- k. the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development.

RIGHT OF ESTABLISHMENT

Article 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

Article 53

Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States, save as otherwise provided in this Treaty.

Article 54

1. Before the end of the first stage, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly, draw up a general programme for the abolition of existing restrictions on freedom of establishment within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained.

2. In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in attaining freedom of establishment as regards a particular activity, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly, issue directives, acting unanimously until the end of the first stage and by a qualified majority thereafter.

3. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

- a. by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
- b. by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;
- c. by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreement previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- d. by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that state at the time when they intended to take up such activities;
- e. by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39 (2);
- f. by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions of setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- g. by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community;
- h. by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 55

The provision of this chapter shall not apply, so far as any given Member State is concerned, to activities which in that state are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this chapter shall not apply to certain activities.

Article 56

1. The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. Before the end of the transitional period, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, issue directives for the coordination of the aforementioned provisions laid down by law, regulation or administrative action. After the end of the second stage, however, the Council shall, acting by a qualified majority on a proposal from the Commission, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.

Article 57

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and after consulting the Assembly, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the Assembly, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required on matters which are the subject of legislation in at least one Member State and measures concerned with the protection of savings, in particular the granting of credit and the exercise of the banking profession, and with the conditions governing the exercise of the medical and allied, and pharmaceutical professions in the various Member States. In other cases, the Council shall act unanimously during the first stage and by a qualified majority thereafter.
3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 58

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this chapter, be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making.

TRANSPORT

Article 74

The objectives of this Treaty shall, in matters governed by this title, be pursued by Member States within the framework of a common transport policy.

Article 75 REFERS TO THE SPECIAL ASPECTS OF TRANSPORT.

1. For the purpose of implementing Article 74, and taking into account the distinctive features of transport, the Council shall, acting unanimously until the end of the second stage and by a qualified majority thereafter, lay down, on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly:

- a. common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- b. the conditions under which non-resident carriers may operate transport services within a Member State;
- c. any other appropriate provisions.

2. The provisions referred to in (a) and (b) of paragraph 1 shall be laid down during the transitional period.

3. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market.

Article 76

Until the provisions referred to in Article 75 (1) have been laid down, no Member State may, without the unanimous approval of the Council, make the various provisions governing the subject when this Treaty enters into force less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that state.

Article 77

Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 78

Any measures taken within the framework of this Treaty in respect of

transport rates and conditions shall take account of the economic circumstances of carriers.

Article 79

1. In the case of transport within the Community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question, shall be abolished, at the latest, before the end of the second stage.

2. Paragraph 1 shall not prevent the Council from adopting other measures in pursuance of Article 75 (1).

3. Within two years of the entry into force of this Treaty, the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

Article 80

1. The imposition by a Member State, in respect of transport operations carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited as from the beginning of the second stage, unless authorised by the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article 81

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this article.

Article 82

The provisions of this title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

Article 83

An Advisory Committee consisting of experts designated by the governments of Member States, shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters without prejudice to the powers of the transport section of the Economic and Social Committee.

Article 84

1. The provisions of this title shall apply to transport by rail, road and inland waterway.
2. The Council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

RULES ON COMPETITION

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decision by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- a. directly or indirectly fix purchase or selling prices or any other trading conditions;
- b. limit or control production, markets, technical development, or investment;
- c. share markets or sources of supply;
- d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no

connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- o any agreement or category of agreements between undertakings;
- o any decision or category of decisions by associations of undertakings;
- o any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b. limiting production, markets or technical development to the prejudice of consumers;
- c. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 87

1. Within three years of the entry into force of this Treaty the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, adopt any appropriate regulations or directives to give effect to the principles set out in Articles 85 and 86.

If such provisions have not been adopted within the period mentioned, they shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the Assembly.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:

- a. to ensure compliance with the prohibitions laid down in Article 85 (1) and in Article 86 by making provision for fines and periodic penalty payments;
- b. to lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- c. to define, if need be, in the various branches of the economy, the scope of the provision of Articles 85 and 86;
- d. to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- e. to determine the relationship between national laws and the provisions contained in this section or adopted pursuant to this article.

Article 88

Until the entry into force of the provisions adopted in pursuance of Article 87, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the common market in accordance with the law of their country and with the provisions of Article 85, in particular paragraph 3, and of Article 86.

Article 89

1. Without prejudice to Article 88, the Commission shall, as soon as it takes up its duties, ensure the application of the principles laid down in Articles 85 and 86. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

Article 90

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained

in this Treaty, in particular to those rules provided for in Article 7 and Articles 85 to 94.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this article and shall, where necessary, address appropriate directives or decisions to Member States.

DUMPING

Article 91

1. If, during the transitional period, the Commission, on application by a Member State or by any other interested party, finds that dumping is being practised within the common market, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them.

Should the practices continue, the Commission shall authorise the injured Member State to take protective measures, the conditions and details of which the Commission shall determine.

2. As soon as this Treaty enters into force, products which originate in or are in free circulation in one Member State and which have been exported to another Member State shall, on reimportation, be admitted into the territory of the first mentioned state free of all customs duties, quantitative restrictions or measures having equivalent effect. The Commission shall lay down appropriate rules for the application of this paragraph.

STATE AIDS

Article 92

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

- a. aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

- b. aid to make good the damage caused by natural disasters or exceptional occurrences;
- c. aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

- a. aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- b. aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- c. aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. However, the aids granted to shipbuilding as of January 1, 1957 shall, in so far as they serve only to compensate for the absence of customs protection, be progressively reduced under the same conditions as apply to the elimination of customs duties, subject to the provisions of this Treaty concerning common commercial policy towards third countries;
- d. such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 93

1. The Commission shall, in cooperating with Member States, keep under constant review all systems of aid existing in those states. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a state or through state resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the state concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the state concerned does not comply with this decision within the prescribed time, the Commission or any other interested state may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that state is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances.

If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the state concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 94

The Council may, acting by a qualified majority on a proposal from the Commission, make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93 (3) shall apply and the categories of aid exempted from this procedure.

Appendix III. 1

**Three Air-Transport Packages, Council Regulation
4064/89, and Four Commission Regulations**

Package One

I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 3975/87****of 14 December 1987**

laying down the procedure for the application of the rules on competition to undertakings in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinions of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the rules on competition form part of the Treaty's general provisions which also apply to air transport; whereas the rules for applying these provisions are either specified in the Chapter on competition or fall to be determined by the procedures laid down therein;

Whereas, according to Council Regulation No 141 (4), Council Regulation No 17 (5) does not apply to transport services; whereas Council Regulation (EEC) No 1017/68 (6) applies only to inland transport; whereas Council Regulation (EEC) No 4056/86 (7) applies only to maritime transport; whereas consequently the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 of the Treaty in air transport; whereas moreover the Commission lacks such powers of its own to take decisions or impose

penalties as are necessary for it to bring to an end infringements established by it;

Whereas air transport is characterized by features which are specific to this sector; whereas, furthermore, international air transport is regulated by a network of bilateral agreements between States which define the conditions under which air carriers designated by the parties to the agreements may operate routes between their territories;

Whereas practices which affect competition relating to air transport between Member States may have a substantial effect on trade between Member States; whereas it is therefore desirable that rules should be laid down under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the requisite measures for the application of Articles 85 and 86 of the Treaty to international air transport between Community airports;

Whereas such a regulation should provide for appropriate procedures, decision-making powers and penalties to ensure compliance with the prohibitions laid down in Articles 85 (1) and 86 of the Treaty; whereas account should be taken in this respect of the procedural provisions of Regulation (EEC) No 1017/68 applicable to inland transport operations, which takes account of certain distinctive features of transport operations viewed as a whole;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity of submitting their comments beforehand and it must be ensured that wide publicity is given to decisions taken;

Whereas all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice under the conditions specified in the Treaty; whereas it is moreover desirable, pursuant to Article 172 of the Treaty,

(1) OJ No C 182, 9. 7. 1984, p. 2.

(2) OJ No C 182, 19. 7. 1982, p. 120 and OJ No C 345 21. 12. 1987.

(3) OJ No C 77, 21. 3. 1983, p. 20.

(4) OJ No 124, 28. 11. 1962, p. 2751/62.

(5) OJ No 13, 21. 2. 1962, p. 204/62.

(6) OJ No L 175, 23. 7. 1968, p. 1.

(7) OJ No L 378, 31. 12. 1986, p. 4.

to confer upon the Court of Justice unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas it is appropriate to except certain agreements, decisions and concerted practices from the prohibition laid down in Article 85 (1) of the Treaty, insofar as their sole object and effect is to achieve technical improvements or cooperation;

Whereas, given the specific features of air transport, it will in the first instance be for undertakings themselves to see that their agreements, decisions and concerted practices conform to the competition rules, and notification to the Commission need not be compulsory;

Whereas undertakings may wish to apply to the Commission in certain cases for confirmation that their agreements, decisions and concerted practices conform to the law, and a simplified procedure should be laid down for such cases;

Whereas this Regulation does not prejudge the application of Article 90 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation lays down detailed rules for the application of Articles 85 and 86 of the Treaty to air transport services.
2. This Regulation shall apply only to international air transport between Community airports.

Article 2

Exceptions for certain technical agreements

1. The prohibition laid down in Article 85 (1) of the Treaty shall not apply to the agreements, decisions and concerted practices listed in the Annex, in so far as their sole object and effect is to achieve technical improvements or cooperation. This list is not exhaustive.
2. If necessary, the Commission shall submit proposals to the Council for the amendment of the list in the Annex.

Article 3

Procedures on complaint or on the Commission's own initiative

1. Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate any infringement of the provisions of Articles 85 (1) or 86 of the Treaty.

Complaints may be submitted by:

- (a) Member States;
- (b) natural or legal persons who claim a legitimate interest.

2. Upon application by the undertakings or associations of undertakings concerned, the Commission may certify that, on the basis of the facts in its possession, there are no grounds under Article 85 (1) or Article 86 of the Treaty for action on its part in respect of an agreement, decision or concerted practice.

Article 4

Result of procedures on complaint or on the Commission's own initiative

1. Where the Commission finds that there has been an infringement of Articles 85 (1) or 86 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such an infringement to an end.

Without prejudice to the other provisions of this Regulation, the Commission may address recommendations for termination of the infringement to the undertakings or associations of undertakings concerned before taking a decision under the preceding subparagraph.

2. If the Commission, acting on a complaint received, concludes that, on the evidence before it, there are no grounds for intervention under Articles 85 (1) or 86 of the Treaty in respect of any agreement, decision or concerted practice, it shall take a decision rejecting the complaint as unfounded.

3. If the Commission, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted practice satisfies the provisions of both Article 85 (1) and 85 (3) of the Treaty, it shall take a decision applying paragraph 3 of the said Article. Such a decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

*Article 5***Application of Article 85 (3) of the Treaty****Objections**

1. Undertakings and associations of undertakings which wish to seek application of Article 85 (3) of the Treaty in respect of agreements, decisions and concerted practices falling within the provisions of paragraph 1 of the said Article to which they are parties shall submit applications to the Commission.

2. If the Commission judges an application admissible and is in possession of all the available evidence and no action under article 3 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the *Official Journal of the European Communities* a summary of the application and invite all interested third parties and the Member States to submit their comments to the Commission within 30 days. Such publications shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the Commission notifies applicants, within 90 days of the date of such publication in the *Official Journal of the European Communities*, that there are serious doubts as to the applicability of Article 85 (3) of the Treaty, the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of six years from the date of publication in the *Official Journal of the European Communities*.

If the Commission finds, after expiry of the 90-day time limit, but before expiry of the six-year period, that the conditions for applying Article 85 (3) of the Treaty are not satisfied, it shall issue a decision declaring that the prohibition in Article 85 (1) applies. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse an exemption from the provisions of Article 85 (1) or have contravened Article 86.

4. The Commission may notify applicants as referred to in the first subparagraph of paragraph 3; it shall do so if requested by a Member State within 45 days of the forwarding to the Member State of the application in accordance with Article 8 (2). This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

If it finds that the conditions of Article 85 (1) and (3) of the Treaty are satisfied, the Commission shall issue a decision applying Article 85 (3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

*Article 6***Duration and revocation of decisions applying Article 85 (3)**

1. Any decision applying Article 85 (3) of the Treaty adopted under Articles 4 or 5 of this Regulation shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.

2. The decision may be renewed if the conditions for applying Article 85 (3) of the Treaty continue to be satisfied.

3. The Commission may revoke or amend its decision or prohibit specific acts by the parties:

- (a) where there has been a change in any of the facts which were basic to the making of the decision; or
- (b) where the parties commit a breach of any obligation attached to the decision; or
- (c) where the decision is based on incorrect information or was induced by deceit; or
- (d) where the parties abuse the exemption from the provisions of Article 85 (1) of the Treaty granted to them by the decision.

In cases falling under subparagraphs (b), (c) or (d), the decision may be revoked with retroactive effect.

*Article 7***Powers**

Subject to review of its decision by the Court of Justice, the Commission shall have sole power to issue decisions pursuant to Article 85 (3) of the Treaty.

The authorities of the Member States shall retain the power to decide whether any case falls under the provisions of Article 85 (1) or Article 86 of the Treaty, until such time as the Commission has initiated a procedure with a view to formulating a decision on the case in question or has sent notification as provided by the first subparagraph of Article 5 (3) of this Regulation.

*Article 8***Liaison with the authorities of the Member States**

1. The Commission shall carry out the procedures provided for in this Regulation in close and constant liaison with the competent authorities of the Member States; these

authorities shall have the right to express their views on such procedures.

2. The Commission shall immediately forward to the competent authorities of the Member States copies of the complaints and applications and of the most important documents sent to it or which it sends out in the course of such procedures.

3. An Advisory Committee on Agreements and Dominant Positions in Air Transport shall be consulted prior to the taking of any decision following upon a procedure under Article 3 or of any decision under the second subparagraph of Article 5 (3), or under the second subparagraph of paragraph 4 of the same Article or under Article 6. The Advisory Committee shall also be consulted prior to adoption of the implementing provisions provided for in Article 19.

4. The Advisory Committee shall be composed of officials competent in the sphere of air transport and agreements and dominant positions. Each Member State shall nominate two officials to represent it, each of whom may be replaced, in the event of his being prevented from attending, by another official.

5. Consultation shall take place at a joint meeting convened by the Commission; such a meeting shall be held not earlier than 14 days after dispatch of the notice convening it. In respect of each case to be examined, this notice shall be accompanied by a summary of the case, together with an indication of the most important documents, and a preliminary draft decision.

6. The advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 9

Requests for information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the Commission shall forward a copy of the request at the same time to the competent authority of the Member State in whose territory the head office of the undertaking or association of undertakings is situated.

3. In its request, the Commission shall state the legal basis and purpose of the request and also the penalties for supplying incorrect information provided for in Article 12 (1) (b).

4. The owners of the undertakings or their representatives and, in the case of legal persons or of companies, firms or associations having no legal personality, the person authorized to represent them by law or by their rules shall be bound to supply the information requested.

5. When an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 12 (1) (b) and Article 13 (1) (c), as well as the right to have the decision reviewed by the Court of Justice.

6. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in whose territory the head office of the undertaking or association of undertakings is situated.

Article 10

Investigations by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 11 (1) or which it has ordered by decision adopted pursuant to Article 11 (3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, Commission officials of the competent authority in carrying out their duties.

Article 11

Investigating powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of

undertakings. To this end the officials authorized by the Commission shall be empowered:

- (a) to examine the books and other business records;
- (b) to take copies of, or extracts from, the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles used by undertakings or associations of undertakings.

2. The authorized officials of the Commission shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 12 (1) (c) in cases where production of the required books or other business records is incomplete. In good time, before the investigation, the Commission shall inform the competent authority of the Member State, in whose territory the same is to be made, of the investigation and the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Articles 12 (1) (c) and 13 (1) (d) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall take the decisions mentioned in paragraph 3 after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made may assist the Commission officials in carrying out their duties, at the request of such authority or of the Commission.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation. To this end, Member States shall take the necessary measures after consultation of the Commission by 31 July 1989.

Article 12

Fines

1. The Commission may, by decision, impose fines on undertakings or associations of undertakings of from 100 to 5 000 ECU where, intentionally or negligently:

- (a) they supply incorrect or misleading information in connection with an application pursuant to Article 3 (2) or Article 5; or
- (b) they supply incorrect information in response to a request made pursuant to Article 9 (3) or (5), or do not supply information within the time limit fixed by a decision adopted under Article 9 (5); or
- (c) they produce the required books or other business records in complete form during investigations under Article 10 or Article 11, or refuse to submit to an investigation ordered by decision taken pursuant to Article 11 (3).

2. The Commission may, by decision, impose fines on undertakings or associations of undertakings of from 1 000 to 1 000 000 ECU, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of the undertakings participating in the infringement, where either intentionally or negligently they:

- (a) infringe Article 85 (1) or Article 86 of the Treaty; or
- (b) commit a breach of any obligation imposed pursuant to Article 6 (1) of this Regulation.

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 8 shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a penal nature.

5. The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place after notification to the Commission and before its decision in application of Article 85 (3) of the Treaty, provided they fall within the limits of the activity described in the notification.

However, this provision shall not have effect where the Commission has informed the undertakings or associations of undertakings concerned that, after preliminary examination, it is of the opinion that Article 85 (1) of the Treaty applies and that application of Article 85 (3) is not justified.

*Article 13***Periodic penalty payments**

1. By decision, the Commission may impose periodic penalty payments on undertakings or associations of undertakings of from 50 ECU to 1 000 ECU per day, calculated from the date appointed by the decision, in order to compel them:

- (a) to put an end to an infringement of Article 85 (1) or Article 86 of the Treaty, the termination of which has been ordered pursuant to Article 4 of this Regulation;
- (b) to refrain from any act prohibited under Article 6 (3);
- (c) to supply complete and correct information which has been requested by decision, taken pursuant to Article 9 (5);
- (d) to submit to an investigation which has been ordered by decision taken pursuant to Article 11 (3).

2. When the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may fix the total amount of the periodic penalty payment at a lower figure than that which would result from the original decision.

3. Article 8 shall apply.

*Article 14***Review by the Court of Justice**

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

*Article 15***Unit of account**

For the purpose of applying Articles 12 to 14, the ECU shall be adopted in drawing up the budget of the Community in accordance with Articles 207 and 209 of the Treaty.

*Article 16***Hearing of the parties and of third persons**

1. Before refusing the certificate mentioned in Article 3 (2), or taking decisions as provided for in Articles 4, 5 (3)

second subparagraph and 5 (4), 6 (3), 12 and 13, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission takes, or has taken, objection.

2. If the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications by such persons to be heard shall be granted when they show sufficient interest.

3. When the Commission intends to take a decision pursuant to Article 85 (3) of the Treaty, it shall publish a summary of the relevant agreement, decision or concerted practice in the *Official Journal of the European Communities* and invite all interested third parties to submit their observations within a period, not being less than one month, which it shall fix. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

*Article 17***Professional secrecy**

1. Information acquired as a result of the application of Articles 9 to 11 shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 16 and 18, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy and which has been acquired by them as a result of the application of this Regulation.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

*Article 18***Publication of decisions**

1. The Commission shall publish the decisions which it adopts pursuant to Articles 3 (2), 4, 5 (3) second subparagraph, 5 (4) and 6 (3).

2. The publication shall state the names of the parties and the main contents of the decision; it shall have regard to the

legitimate interest of undertakings in the protection of their business secrets.

other details of complaints pursuant to Article 3, applications pursuant to Articles 3 (2) and 5 and the hearings provided for in Article 16 (1) and (2).

Article 19

Implementing provisions

The Commission shall have the power to adopt implementing provisions concerning the form, content and

Article 20

Entry into force

This Regulation shall enter into force on 1 January 1988.

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

Done at Brussels, 14 December 1987.

For the Council

The President

U. ELLEMANN-JENSEN

ANNEX

List referred to in Article 2

- (a) The introduction or uniform application of mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organisation normally accorded international recognition, or by an aircraft or equipment manufacturer;
- (b) the introduction or uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organisation normally accorded international recognition;
- (c) the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment or fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis;
- (d) the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis;
- (e) the exchange, pooling or training of personnel for technical or operational purposes;
- (f) the organisation and execution of substitute transport operations for passengers, mail and baggage, in the event of breakdown/delay of aircraft, either under charter or by provision of substitute aircraft under contractual arrangements;
- (g) the organisation and execution of successive or supplementary air transport operations, and the fixing and application of inclusive rates and conditions for such operations;
- (h) the consolidation of individual consignments;
- (i) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs, provided that such rules do not directly or indirectly fix transport fares and conditions;
- (j) arrangements as to the sale, endorsement and acceptance of tickets between air carriers (interlining) as well as the refund, pro-rating and accounting schemes established for such purposes;
- (k) the clearing and settling of accounts between air carriers by means of a clearing house, including such services as may be necessary or incidental thereto; the clearing and settling of accounts between air carriers and their appointed agents by means of a centralised and automated settlement plan or system, including such services as may be necessary or incidental thereto.

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 87 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinions of the European Parliament (2),

Having regard to the opinions of the Economic and Social Committee (3),

Whereas Council Regulation (EEC) No 3975/87 (4) lays down the procedure for the application of the rules on competition to undertakings in the air transport sector; whereas Regulation No 17 of the Council (5) lays down the procedure for the application of these rules to agreements, decisions and concerted practices other than those directly relating to the provision of air transport services;

Whereas Article 85 (1) of the Treaty may be declared inapplicable to certain categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85 (3);

Whereas common provisions for the application of Article 85 (3) should be adopted by way of Regulation pursuant to Article 87; whereas, according to Article 87 (2) (b), such a Regulation must lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent, on the other; whereas, according to Article 87 (2) (d), such a Regulation is required to define the respective functions of the Commission and of the Court of Justice;

Whereas the air transport sector has to date been governed by a network of international agreements, bilateral agreement between States and bilateral and multilateral

(1) OJ No C 182, 9. 7. 1984, p. 3.

(2) OJ No C 262, 14. 10. 1985, p. 44;

OJ No C 190, 20. 7. 1987, p. 182 and OJ No C 345, 21. 12. 1987.

(3) OJ No C 303, 25. 11. 1985, p. 31 and OJ No C 333, 29. 12. 1986, p. 27.

(4) See page 1 of this Official Journal.

(5) OJ No 13, 21. 2. 1962, p. 204/62.

agreements between air carriers; whereas the changes required to this international regulatory system to ensure increased competition should be effected gradually so as to provide time for the air-transport sector to adapt;

Whereas the Commission should be enabled for this reason to declare by way of Regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas it should be laid down under what specific conditions and in what circumstances the Commission may exercise such powers in close and constant liaison with the competent authorities of the Member States;

Whereas it is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices; whereas these exemptions should be granted for a limited period during which air carriers can adapt to a more competitive environment; whereas the Commission, in close liaison with the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them;

Whereas there can be no exemption if the conditions set out in Article 85 (3) are not satisfied; whereas the Commission should therefore have power to take the appropriate measures where an agreement proves to have effects incompatible with Article 85 (3); whereas the Commission should consequently be able first to address recommendations to the parties and then to take decisions;

Whereas this Regulation does not prejudge the application of Article 90 of the Treaty;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 in pursuance of Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Regulation, together with those of Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States (6) and those of Council Decision 87/602/EEC of 14 December 1987

(6) See p. 12 of this Official Journal.

on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States (1), are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization at the end of a three year initial period,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to international air transport between Community airports.

Article 2

1. Without prejudice to the application of Regulation (EEC) No 3975/87 and in accordance with Article 85 (3) of the Treaty, the Commission may by regulation declare that Article 85 (1) shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices.

2. The Commission may, in particular adopt such regulations in respect of agreements, decisions or concerted practices which have as their object any of the following:

- joint planning and coordination of the capacity to be provided on scheduled air services, insofar as it helps to ensure a spread of services at the less busy times of the day or during less busy periods or on less busy routes, so long as any partner may withdraw without penalty from such agreements, decisions or concerted practices, and is not required to give more than three months' notice of its intention not to participate in such joint planning and coordination for future seasons,
- sharing of revenue from scheduled air services, so long as the transfer does not exceed 1 % of the poolable revenue earned on a particular route by the transferring partner, no cost are shared or accepted by the transferring partner and the transfer is made in compensation for the loss incurred by the receiving partner in scheduling flights at less busy times of the day or during less busy periods,

— consultations for common preparation of proposals on tariffs, fares and conditions for the carriage of passengers and baggage on scheduled services, on condition that consultations on this matter are voluntary, that air carriers will not be bound by their results and that the Commission and the Member State whose air carriers are concerned may participate as observers in any such consultations,

— slot allocation at airports and airport scheduling, on condition that the air carriers concerned shall be entitled to participate in such arrangements, that the national and multilateral procedures for such arrangements are transparent and that they take into account any constraints and distribution rules defined by national or international authorities and any rights which air carriers may have historically acquired,

— common purchase, development and operation of computer reservation systems relating to timetabling, reservations and ticketing by air transport undertakings, on condition that air carriers of Member States have access to such systems on equal terms, that participating carriers have their services listed on non-discriminatory basis and also that any participant may withdraw from the system on giving reasonable notice,

— technical and operational ground handling at airports such as aircraft push back, refuelling, cleaning and security,

— handling of passengers, mail, freight and baggage at airports,

— services for the provision of in-flight catering.

3. Without prejudice to paragraph 2, such Commission regulations shall define the categories of agreements, decisions or concerted practices to which they apply and shall specify in particular:

- (a) the restrictions or clauses which may, or may not appear in the agreements, decisions and concerted practices;
- (b) the clauses which must be contained in the agreements, decisions and concerted practices, or any other conditions which must be satisfied.

Article 3

Any regulation adopted by the Commission pursuant to Article 2 shall expire on 31 January 1991.

(1) See p. 19 of this Official Journal.

Article 4

Regulations adopted pursuant to Article 2 shall include a provision that they apply with retroactive effect to agreements, decisions and concerted practices which were in existence at the date of the entry into force of such Regulations.

Article 5

Before adopting a regulation, the Commission shall publish a draft thereof and invite all persons and organizations concerned to submit their comments within such reasonable time limit, being not less than one month, as the Commission shall fix.

Article 6

The Commission shall consult the Advisory Committee on Agreements and Dominant Positions in Air Transport established by Article 8 (3) of Regulation (EEC) No 3975/87 before publishing a draft Regulation and before adopting a Regulation.

Article 7

1. Where the persons concerned are in breach of a condition or obligation which attaches to an exemption granted by a Regulation adopted pursuant to Article 2, the Commission may, in order to put an end to such a breach:

- address recommendations to the persons concerned, and
- in the event of failure by such persons to observe those recommendations, and depending on the gravity of the

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

Done at Brussels, 14 December 1987

For the Council

The President

U. ELLEMANN-JENSEN

breach concerned, adopt a decision that either prohibits them from carrying out, or requires them to perform, specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption in accordance with Article 4 (2) of Regulation (EEC) No 3975/87 or withdraws the benefit of the block exemption which they enjoyed.

2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case an agreement, decision or concerted practice to which a block exemption granted by a regulation adopted pursuant to Article 2 (2) applies, nevertheless has effects which are incompatible with Article 85 (3) or are prohibited by Article 86, it may withdraw the benefit of the block exemption from those agreements, decisions or concerted practices and take, pursuant to Article 13 of Regulation (EEC) No 3975/87, all appropriate measures for the purpose of bringing these infringements to an end.

3. Before taking a decision under paragraph 2, the Commission may address recommendations for termination of the infringement to the persons concerned.

Article 8

The Council shall decide on the revision of this Regulation by 30 June 1990 on the basis of a Commission proposal to be submitted by 1 November 1989.

Article 9

This Regulation shall enter into force on 1 January 1988.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 14 December 1987

on fares for scheduled air services between Member States

(87/601/87)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84 (2) and 227 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinions of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas more flexible procedures for approving scheduled passenger air fares for air services between Member States will give air carriers greater scope to develop markets and better meet consumer needs;

Whereas air carriers should be encouraged to control their costs, increase productivity and provide efficient and attractively priced air services;

Whereas common rules should be established laying down criteria for the approval of air fares;

Whereas, by virtue of Article 189 of the Treaty, Member States may choose the most appropriate means of implementing the provisions of the Directive, and in particular may apply the criteria laid down in Article 3 more precisely;

Whereas procedures should be established for the submission by air carriers of proposed air fares and their express of automatic approval by the Member States concerned; whereas air carriers should be free to propose air fares individually or after consultation with other air carriers for the purpose, in particular, of fixing the terms of interlining agreements, given the important benefits which they confer;

Whereas provision should be made for rapid consultation between Member States in the case of any disagreement and for procedures for settling such disagreements regarding approval of fares as are not resolved by consultations;

Whereas provision should be made for the regular consultation of consumer groups on matters relating to air fares;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 in pursuance of Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Directive on fares are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization in respect of air fares at the end of a three year initial period,

(1) OJ No C 78, 30. 3. 1982, p. 6.

(2) OJ No C 322, 28. 11. 1983, p. 10 and OJ No C 345, 21. 12. 1987.

(3) OJ No C 77, 21. 3. 1983, p. 26.

HAS ADOPTED THIS DIRECTIVE:

Scope and definitions

Article 1

This Directive shall apply to criteria and procedures to be applied with respect to the establishment of scheduled air fares charged on any route between an airport in one Member State and an airport in another Member State.

This Directive shall not apply to the overseas departments referred to in Article 227 (2) of the Treaty.

Article 2

For the purposes of this Directive:

- (a) scheduled air fares means the prices to be paid in the applicable national currency for the carriage of passengers and baggage on scheduled air services and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (b) zone of flexibility means a pricing zone as referred to in Article 5, within which air fares meeting the conditions in Annex II qualify for automatic approval by the aeronautical authorities of the Member States. The limits of a zone are expressed as percentages of the reference fare;
- (c) reference fare means the normal economy air fare charged by a third- or fourth-freedom air carrier on the routes in question; if more than one such fare exists, the average level shall be taken unless otherwise bilaterally agreed; where there is no normal economy fare, the lowest fully flexible fare shall be taken;
- (d) air carrier means an air transport enterprise with a valid operating licence to operate scheduled air services;
- (e) a third freedom air carrier means an air carrier having the right to put down, in the territory of another State, passengers, freight and mail taken up in the State in which it is registered;
- a fourth-freedom air carrier means an air carrier having the right to take on, in another State, passengers, freight and mail for off-loading in its State of registration;
- a fifth-freedom air carrier means an air carrier having the right to undertake the commercial air transport of passengers, freight and mail between two States other than its State of registration;
- (f) Community air carrier means:
 - (i) an air carrier which has its central administration and principal place of business in the Community,

the majority of whose shares are owned by nationals of Member States and/or Member States and which is effectively controlled by such persons or States, or

- (ii) an air carrier which, although it does not meet the definition set out in (i), at the time of adoption of this Directive:
 - A. either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air services in the Community during the 12 months prior to adoption of this Directive;
 - B. or has been providing scheduled services between Member States on the basis of the third- and fourth-freedoms of the air during the 12 months prior to adoption of this Directive.

The enterprises which meet the above criteria are listed in Annex I;

- (g) States concerned mean the Member States between which the scheduled air service in question is operated;
- (h) scheduled air service means a series of flights each possessing all the following characteristics:
 - (i) it passes through the air space over the territory of more than one Member State;
 - (ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for purchase by members of the public (either directly from the air carrier or from its authorized agents);
 - (iii) it is operated so as to serve traffic between the same two or more points, either:
 - (1) according to a published timetable, or
 - (2) with flights so regular or frequent that they constitute a recognisably systematic series;
 - (i) flight means a departure from a specified airport towards a specified destination.

Criteria

Article 3

Without prejudice to Article 5 (2), Member States shall approve air fares if they are reasonably related to the long-term fully allocated costs of the applicant air carrier, while taking into account other relevant factors. In this connection, they shall consider the needs of consumers, the

need for a satisfactory return on capital, the competitive market situation, including the fares of the other air carriers operating on the route, and the need to prevent dumping. However, the fact that a proposed air fare is lower than that offered by another air carrier operating on the route shall not be sufficient reason for withholding approval.

Procedures

Article 4

1. Air fares shall be subject to approval by the aeronautical authorities of the States concerned. To this end, an air carrier shall submit its fares in the forms prescribed by those authorities.

This shall be done either:

(a) individually,

or

(b) following consultations with other air carriers, provided that such consultations comply with the requirements of regulations issued pursuant 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)

Aeronautical authorities shall not require air carriers to submit their fares for approval more than 60 days before they come into effect.

2. Subject to Article 5, and without prejudice to Article 6, fares shall require approval by both the States concerned. If neither of the aeronautical authorities has expressed disapproval within 30 days of the date of submission of a fare, it shall be considered as approved.

3. An air fare, once approved, shall remain in force until it expires or is replaced. It may however be prolonged after its original date of expiry for a period not exceeding 12 months.

4. A Member State shall permit an air carrier of another Member State operating a direct or indirect scheduled air service, on giving due notice, to match an air fare already approved between the same city pairs. This provision shall not apply to indirect services which exceed the length of the shortest direct service by more than 20 %.

(1) See p. 9 of this Official Journal.

5. Only third- and fourth-freedom air carriers shall be permitted to act as price leaders.

Article 5

1. There shall be two zones of flexibility on any scheduled air service as follows:

- a discount zone which shall extend from 90 % to more than 65 % of the reference fare;
- a deep-discount zone which shall extend from 65 % to 45 % of the reference fare.

2. Within zones of flexibility, the States concerned shall permit third- or fourth-freedom air carriers to charge discount and deep-discount air fares of their own choice subject to the respective conditions set out in Annex II and provided those air fares have been filed with the States concerned at least 21 days prior to the proposed date for their entry into force.

3. If a fare which has been, or is, approved under the bilateral approval regime and which, as far as its conditions are concerned, qualifies for automatic approval in the deep-discount zone, is below the floor of that zone, there shall be additional flexibility as to the level of that fare. Such additional flexibility shall extend from 10 % below the bilaterally approved level of that fare to the ceiling of the deep-discount zone.

A fare which is entitled to additional flexibility in accordance with this paragraph shall be renewed in successive fare seasons at the request of the air carrier concerned at a level not lower than the percentage of the reference fare at which it stood at the end of the previous fare season, any change in level of the reference fare being duly taken into account. For the purpose of this paragraph, summer and winter fare seasons shall be treated separately.

Article 6

This Directive shall not prevent Member States from concluding arrangements which are more flexible than the provisions of Articles 4 and 5 or from maintaining such arrangements in force.

Article 7

1. When a State concerned (the first State) decides, in conformity with the above Articles, not to approve a scheduled air fare, it shall inform the other State concerned (the second State) in writing within 21 days of the fare being filed, stating its reasons.

2. If the second State disagrees with the decision of the first State, it shall so notify the first State within seven days

of being informed, providing the information on which its decision is based, and request consultations. Each State shall supply all relevant information requested by the other. Either of the States concerned may request that the Commission be represented at the consultations.

3. If the first State has insufficient information to reach a decision on the fare, it may request the second State to enter into consultations before the expiry of the 21-day period prescribed in paragraph 1.

4. Consultations shall be completed within 21 days of being requested. If disagreement still persists at the end of this period, the matter shall be put to arbitration at the request of either of the States concerned. The two States concerned may agree to prolong the consultations or to proceed directly to arbitration without consultations.

5. Arbitration shall be carried out by a panel of three arbitrators unless the States concerned agree on a single arbitrator. The States concerned shall each nominate one member of the panel and seek to agree on the third member (who shall be a national of a third Member State and act as panel chairman). Alternatively they may nominate a single arbitrator. The appointment of the panel shall be completed within seven days. A panel's decisions shall be reached by a majority of votes.

6. In the event of failure by either State concerned to nominate a member of the panel or to agree on the appointment of a third member, the Council shall be informed forthwith and its President shall complete the panel within three days. In the event of the Presidency being held by a Member State which is party to the dispute, the President of the Council shall invite the Government of the next Member State due to hold the presidency and not party to the dispute to complete the panel.

7. The arbitration shall be completed within a period of 21 days of completion of the panel or nomination of the single arbitrator. The States concerned may, however, agree to extend this period. The Commission shall have the right to attend as an observer. The arbitrators shall make clear the extent to which the award is based on the criteria in Article 3.

8. The arbitration award shall be notified immediately to the Commission.

Within a period of 10 days, the Commission shall confirm the award, unless the arbitrators have not respected the criteria set out in Article 3 or the procedure laid down by

the Directive or the award does not comply with Community law in other respects.

In the absence of any decision within this period, the award shall be regarded as confirmed by the Commission. A award confirmed by the Commission shall become binding on the States concerned.

9. During the consultation and arbitration procedure, the relevant existing air fares shall be continued in force until the procedure has expired and any new fare has entered into force.

General provisions

Article 8

At least once a year, the Commission shall consult on air fares and related matters with representatives of air-transport user organizations in the Community, for which purpose the Commission shall supply appropriate information to the participants.

Article 9

1. By 1 November 1989, the Commission shall publish a report on the application of this Directive, which shall include statistical information on the cases in which Article 7 has been invoked.

2. Member States and the Commission shall cooperate in the application of this Directive, particularly as regards the collection of the information referred to in paragraph 1.

3. Confidential information obtained in application of this Directive shall be covered by professional secrecy.

Article 10

Where a Member State has concluded an agreement with one or more non-member countries which gives fifth-freedom rights for a route between Member States to an air carrier of a non-member country, and in this respect contains provisions which are incompatible with this Directive, the Member State shall, at the first opportunity take all appropriate steps to eliminate such incompatibilities. Until such time as the incompatibilities have been eliminated, this Directive shall not affect the rights and obligations *vis-à-vis* non-member countries arising from such an agreement.

Article 11

1. After consultation with the Commission, the Member States shall take the necessary steps to comply with this Directive by 31 December 1987.

2. Member States shall communicate to the Commission all the laws, regulations and administrative provisions which they adopt for the application of this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1987

Article 12

The Council shall decide on the revision of this Directive by 30 June 1990, on the basis of a Commission proposal to be submitted by 1 November 1989.

For the Council

The President

U. ELLEMANN-JENSEN

ANNEX I

Airlines referred to in Article 2 (f) (ii)

The following airlines meet the criteria referred to in Article 2 (f) (ii) as long as they are recognized as a national carrier by the Member State which so recognizes them at the time of the adoption of this Directive:

- Scandinavian Airlines System,
- Britannia Airways,
- Monarch Airlines.

ANNEX II

Conditions for discount and deep-discount fares

DISCOUNT ZONE

1. To qualify for the discount zone all of the following conditions must be met:
 - (a) round or circle trip;
 - (b) maximum stay of six months;

and either

 - (c) minimum stay of not less than Saturday night or six nights

or

 - (d) if off-peak (as defined in the Appendix) advance purchase of not fewer than 14 days; reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only available prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket.

DEEP-DISCOUNT ZONE

2. To qualify for the deep-discount zone, a fare must meet:
 - either conditions 1 (a), (b) and (c) and one of the following conditions:
 - (a) reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only available prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket;
 - (b) mandatory advance purchase of not fewer than 14 days; reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only available prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket;
 - (c) purchase of the ticket only permitted on the day prior to departure of outbound travel; reservation to be made separately for both the outbound and inbound journeys and only in the country of departure on the day prior to travel on the respective journeys;
 - (d) passenger to be aged not more than 25 years or not less than 60 years;
 - or, if off-peak (as defined in the Appendix), conditions 1 (a) and (b) together with:
 - either condition 2 (b) and one of the following conditions:
 - (e) passenger to be aged not more than 25 years or not less than 60 years;
 - (f) father and/or mother with children aged not more than 25 years travelling together (minimum three persons);
 - (g) six or more persons travelling together with cross-referenced tickets;
 - or
 - (h) mandatory advance purchase of not fewer than 28 days; reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only available:
 - if more than 28 days before outbound travel, at a fee of at least 20 % of the price of the ticket, or
 - if fewer than 28 days before outbound travel, at a fee of at least 50 % of the price of the ticket.

*Appendix***Definition of 'off-peak'**

An air carrier may designate certain flights as 'off-peak' on the basis of commercial considerations.

When an air carrier wishes to use condition 1 (d) or any of conditions 2 (e) to (h), identification of the off-peak flights for each route shall be agreed between the aeronautical authorities of the Member States concerned on the basis of the proposal made by that air carrier.

On each route where the total activity of third- and fourth-freedom air carriers reaches a weekly average of 18 return flights, the air carrier concerned shall be allowed as a minimum to apply conditions 1 (d) or 2 (e) to (h) on up to 50 % of its total daily flights, provided that the flights to which these conditions may be applied depart between 10.00 and 16.00 or between 21.00 and 06.00.

COUNCIL DECISION

of 14 December 1987

on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air-service routes between Member States

(87/602/87)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Whereas it is necessary to ensure that such limitations do not give an unfair advantage to any one air carrier;

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84 (2) and 227 (2) thereof,

Having regard to the proposal from the Commission (1),

Whereas it is necessary, in order to achieve a balanced set of opportunities, and taking account of the provisions of the measures as a whole, to redress the economic disadvantages of air carriers established in the peripheral Member States of the Community;

Having regard to the opinions of the European Parliament (2),

Whereas it is necessary, in particular, not to apply the opening of routes between hub airports of one State and regional airports of another State to a certain number of airports for reasons relating to airport infrastructure and in order to secure a gradual development of the Community policy of liberalization avoiding negative effects on the Community air transport system;

Whereas flexibility and competition in the Community air-transport system should be increased;

Whereas the artificial constraints imposed on the capacity which air carriers may provide and on their access to the market should therefore be relaxed;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers; whereas Member States should accordingly be able to intervene if the capacity share of their carriers in a bilateral relationship would otherwise fall below a given percentage;

Whereas increased market access will stimulate the development of the Community air transport sector and give rise to improved services for users; whereas, however, in order to prevent undue disturbance of existing air traffic systems and to allow time for adaptation, it is appropriate to provide for some limitations on market access;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas air carriers should be free from any State obligation to enter into agreements with other air carriers in respects of capacity and market access;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 pursuant to Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Decision on capacity sharing and market access are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization in respect of capacity sharing and market access including new fifth-freedom traffic rights between Community airports at the end of a three-year initial period,

(1) OJ No C 182, 9. 7. 1984, p. 1.

(2) OJ No C 262, 14. 10. 1985, p. 44 and OJ No C 345, 21. 12. 1987.

(3) OJ No C 303, 25. 11. 1985, p. 31.

HAS ADOPTED THIS DECISION:

Scope and definitions

Article 1

1. This Decision concerns:

- (a) the sharing of passenger capacity between the air carrier(s) of one Member State and the air carrier(s) of another Member State on scheduled air services between these States;
- (b) access for Community air carrier(s) to certain routes between Member States which they do not already operate.

2. This Decision shall not affect the relationship between a Member State and its own air carriers respecting capacity sharing and market access.

3. This Decision shall not apply to the overseas departments referred to in Article 227 (2) of the Treaty.

4. Articles 3 and 4 shall not apply to those services subject to Council Directive 83/416/EEC of 25 July 1983 concerning the authorization of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States⁽¹⁾, as amended by Directive 86/216/EEC⁽²⁾.

5. The application of this Decision to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

6. Application of the provisions of this Decision to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

Article 2

For the purpose of this Decision:

- (a) capacity shall be expressed as the number of seats offered to the general public on a scheduled air service over a given period;

(b) capacity share means the share of the air carrier(s) of a Member State expressed as a percentage of the total capacity in a bilateral relationship with another Member State, excluding any capacity provided under the provisions of Article 6 (3) or under the terms of Directive 83/416/EEC and also any capacity provided by a fifth-freedom air carrier;

(c) air carrier means an air transport enterprise with a valid operating licence to operate scheduled air services;

(d) a third-freedom air carrier means an air carrier having the right to put down, in the territory of another State, passengers, freight and mail taken up in the State in which it is registered;

a fourth-freedom air carrier means an air carrier having the right to take on, in another State, passengers, freight and mail, for off-loading in its State of registration;

a fifth-freedom air carrier means an air carrier having the right to undertake the commercial air transport of passengers, freight and mail between two States other than its State of registration;

(e) States concerned mean the Member States between which the scheduled air service in question is operated;

(f) Community air carrier means:

(i) an air carrier which has its central administration and principal place of business in the Community, the majority of whose shares are owned by nationals of Member States and/or Member States and which is effectively controlled by such persons or States, or

(ii) an air carrier which, although it does not meet the definition set out in (i) at the time of adoption of this Decision:

A. either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air services in the Community during the 12 months prior to adoption of this Decision,

B. or has been providing scheduled services between Member States on the basis of the third- and fourth-freedoms of the air during the 12 months prior to adoption of this Decision.

The enterprises which meet the above criteria are listed in Annex I.

(g) scheduled air service means a series of flights each possessing all the following characteristics:

(i) it passes through the air space over the territory of more than one Member State;

⁽¹⁾ OJ No L 237, 26. 8. 1983, p. 19.

⁽²⁾ OJ No L 152, 6. 6. 1986, p. 47.

- (ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for purchase by members of the public (either directly from the air carrier or from its authorized agents);
- (iii) it is operated so as to serve traffic between the same two or more points, either:
 - (1) according to a published timetable, or
 - (2) with flights so regular or frequent that they constitute a recognizably systematic series;

(h) flight means a departure from a specified airport towards a specified destination;

- (i) multiple designation on a country-pair basis means the designation by one Member State of two or more of its air carriers to operate scheduled air services between its territory and that of another Member State;
- (j) multiple designation on a city-pair basis means the designation by one Member State of two or more of its air carriers to operate a scheduled air service between an airport or airport system in its territory and an airport or airport system in the territory of another Member State;

(k) hub airport means an airport included in the list in Annex II as a category 1 airport;

regional airport means a category 2 or 3 airport as listed in Annex II;

(l) airport system means two or more airports grouped together as serving the same city.

Shares of capacity

Article 3

1. In the period between 1 January 1988 and 30 September 1989, a Member State shall allow any third- and fourth-freedom air carrier(s) authorized by the States concerned under the arrangements in force between them to operate routes between their territories to adjust capacity provided that the resulting capacity shares are not outside the range 55 % : 45 %.

2. Unless a different decision is taken under Article 4, the range within which a Member State shall allow the air

carrier(s) of another Member State to increase its (their) capacity share shall be extended to 60 % : 40 % from 1 October 1989.

3. In applying the provisions of paragraphs 1 and 2, unilateral cut-backs in capacity shall not be taken into account. In such cases, the basis for the calculation of capacity shares shall be the capacity offered in the previous corresponding seasons by the air carrier(s) of the Member State which has (have) reduced its (their) capacity.

4. Adjustments within the 55 % : 45 % range or the 60 % : 40 % range, as appropriate, shall be permissible in any given season, under the following conditions:

- (a) after the first automatic approval, the air carrier(s) of the Member State offering less capacity shall be authorized to increase its (their) own capacity up to the limit of the capacity approved for the air carrier(s) of the Member State offering the larger capacity;
- (b) if the latter air carrier(s) choose(s) to react to the above mentioned increase, it (they) shall receive automatic approval for one further increase, up the level of its (their) first capacity filing(s) for that season, within the applicable range;
- (c) the carrier(s) of the Member State offering less capacity will then receive automatic approval for one increase up to the matching level;
- (d) any further increases during that season shall be subject to the applicable bilateral provisions between the two Member States concerned.

Article 4

1. At the request of any Member State for which the application of Article 3 (1) has led to serious financial damage for its air carrier(s), the Commission will carry out a review before 1 August 1989 and, on the basis of all relevant factors, including the market situation, the financial position of the carrier(s) and the capacity utilisation achieved, will take a decision on whether the provisions of Article 3 (2) should be applied in full or not.

2. The Commission shall communicate its decision to the Council which, acting by unanimity, may take a different decision within a period of two months of this communication.

Multiple designation*Article 5*

1. A Member State shall accept multiple designation on a country-pair basis by another Member State but, subject to paragraph 2, shall not be obliged to accept the designation of more than one air carrier on any one route.

2. A Member State shall also accept multiple designation on a city-pair basis by another Member State:

- in the first year after the notification of this Decision, on routes on which more than 250 000 passengers were carried in the preceding year,
- in the second year, on routes on which more than 200 000 passengers were carried in the preceding year or on which there are more than 1 200 return flights per annum,
- in the third year, on routes on which more than 180 000 passengers were carried in the preceding year or on which there are more than 1 000 return flights per annum.

3. The provisions of this Article are subject to those in Articles 3 and 4.

— the following airports or airport systems which at the time of the notification of this Decision meet the criteria set out in Article 9:

Barcelona,
Malaga,
Milan — Linate/Malpensa.

(ii) In addition, in order to prevent major disturbance of existing air traffic systems and to allow time for adaptation, the following airports shall also be excluded from the provisions of paragraph 1 for the duration of this Decision:

Alicante, Salónica — Micra,
Athens, Turin,
Bilbao, Valencia,
Genoa, Venice.

3. Article 3 and 4 shall not apply to services between an airport in category 1 and a regional airport which are provided by aircraft with not more than 70 passenger seats.

4. Where an air carrier of one Member State has been authorized in accordance with this Article to operate a scheduled air service, the State of registration of that air carrier shall raise no objection to an application for the introduction of a scheduled air service on the same route by an air carrier of the other State concerned.

5. The provisions of this Article shall not affect a Member State's right to regulate the distribution of traffic between the airports within an airport system.

Routes between hub and regional airports*Article 6*

1. Subject to the provisions of Articles 3, 4 and 5, Community air carriers shall be permitted to introduce third- or fourth-freedom scheduled air services between category 1 airports or airport systems in the territory of one Member State and regional airports in the territory of another Member State. Airport categories are listed in Annex II.

2. (i) The provisions of paragraph 1 shall not apply:

(a) to regional airports exempted from the provisions of Directive 83/416/EEC;

(b) for the duration of this Decision to:

— the following airports which, at the time of notification of this Decision, handle fewer than 100 000 passengers per annum on international scheduled air services:

Aalborg, Seville,
Bergamo, Skrydstrup,
Billund, Sønderborg,
Bologna, Stauning,
Esbjerg, Thisted,
Karup, Tistrup,
Odense,

Combination of points*Article 7*

1. In operating scheduled air services to or from two or more points in another Member State or States, a third- or fourth-freedom Community air carrier shall, subject to the provisions of Articles 3, 4 and 5, be permitted to combine scheduled air services, provided that no traffic rights are exercised between the combined points.

2. The provisions of paragraph 1 shall not apply within Spanish territory during the period of validity of this Decision. Similarly, air carriers registered in Spain may not avail themselves of those provisions during that period.

Fifth-freedom rights*Article 8*

1. Without prejudice to Article 6 (2), a Community air carrier shall be permitted to operate a fifth-freedom

scheduled air service where third- or fourth-freedom traffic rights exist, provided that the service meets the following conditions:

- (a) it is authorized by the State of registration of the Community air carrier concerned;
- (b) it is operated as an extension of a service from, or as a preliminary of a service to, its State of registration;
- (c) without prejudice to paragraph 2 it is operated between two airports at least one of which is not a category 1 airport;
- and
- (d) not more than 30 % of the carrier's annual capacity on the route concerned may be used for the carriage of fifth-freedom passengers.

2. Subject to paragraphs 1 (a), (b) and (d), Ireland and Portugal may each select one category 1, airport in each of the other Member States and may each designate an air carrier to carry fifth-freedom traffic on services between those airports, provided that neither of the air carriers so designated may exercise such rights at any one airport on more than one such route. The Member States concerned need not designate the same carrier for all routes but may for this purpose designate only one carrier to each other Member State.

3. This Article shall not apply during the period of validity of this Decision to routes to or from Spanish territory. Similarly, during the same period air carriers registered in Spain may not claim fifth-freedom rights on the basis of the provisions in this Article.

General provisions

Article 9

Notwithstanding Articles 5 to 8, a Member State shall not be obliged to authorize a scheduled air service in cases where:

- (a) the airport concerned in that State has insufficient facilities to accommodate the service;
- (b) navigational aids are insufficient to accommodate the service.

Article 10

1. This Decision shall not prevent Member States from concluding arrangements which are more flexible than the provisions of this Decision or from maintaining such arrangements in force.

2. The provisions of this Decision shall not be used to make existing capacity or market access arrangements more restrictive.

Article 11

Member States shall not require air carriers to enter into agreements or arrangements with other air carriers relating to any of the provisions of this Decision, nor shall they forbid them to do so.

Article 12

- 1. After consultation with the Commission, Member States shall take the necessary steps to comply with this Decision not later than 31 December 1987.
- 2. Member States shall communicate to the Commission all the laws, regulations and administrative provisions which they adopt for the application of this Decision.

Article 13

- 1. Before 1 November 1989, and every two years thereafter, the Commission shall publish a report on the implementation of this Decision.
- 2. Member States and the Commission shall cooperate in implementing this Decision, particularly as regards collection of information for the report referred to in paragraph 1.
- 3. Confidential information obtained within the framework of the implementation of this Decision shall be covered by professional secrecy.

Article 14

The Council shall decide on the revision of this Decision by 30 June 1990 at the latest, on the basis of a Commission proposal to be submitted by 1 November 1989.

Article 15

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1987

For the Council

The President

U. ELLEMANN-JENSEN

Package Two

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2342/90
 of 24 July 1990
 on fares for scheduled air services

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States (4) made a first step towards the liberalization in respect of air fares, necessary to achieve the internal market in air transport; whereas the Council agreed to take further measures of liberalization;

Whereas it is appropriate to establish clear criteria according to which the Member States' authorities have to evaluate proposed air fares;

Whereas a system of double disapproval of air fares remains an objective to be achieved by 1 January 1993 whereas an important element in achieving further liberalization consists in gaining experience of this system during the interim period;

Whereas it is desirable to introduce a more flexible, simpler and more efficient system of zones within which air fares meeting particular conditions qualify for automatic approval by the aeronautical authorities of the States concerned;

Whereas, in the case of double approval and double disapproval of air fares, it is appropriate to provide for a procedure according to which Member States may ask the Commission to examine and decide on whether a proposed air fare conforms with the criteria laid down; whereas in case of excessively high or low air fares, the Commission must be able to suspend the application of an air fare during its examination;

Whereas, in the case of double approval of air fares, provision should be made for rapid consultation between Member States in the case of any disagreement and for procedures for settling such disagreements that are not resolved by consultations;

Whereas this Regulation replaces Directive 87/601/EEC; whereas it is therefore necessary to revoke that Directive;

Whereas it is desirable that the Council adopts further measures of liberalization in respect of air fares by 30 June 1992,

HAS ADOPTED THIS REGULATION:

SCOPE AND DEFINITIONS

Article 1

This Regulation shall apply to criteria and procedures to be applied with respect to the establishment of scheduled air fares charged on routes between Member States.

Article 2

For the purposes of this Regulation:

- (a) scheduled air fares means the prices to be paid in the applicable national currency for the carriage of passengers and baggage on scheduled air services and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

(1) OJ No C 258, 11.10.1989, p. 3;
 and OJ No C 164, 5.7.1990, p. 7.

(2) OJ No C 96, 17.4.1990, p. 59.

(3) OJ No C 112, 7.5.1990, p. 17.

(4) OJ No L 374, 31.12.1987, p. 12.

- (b) scheduled air service means a series of flights each possessing all the following characteristics:
 - (i) it passes through the air space over the territory of more than one Member State;
 - (ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents);
 - (iii) it is operated so as to serve traffic between the same two or more points, either:
 - 1. according to a published timetable; or
 - 2. with flights so regular or frequent that they constitute a recognizably systematic series;
- (c) flight means a departure from a specified airport towards a specified destination airport;
- (d) air carrier means an air transport enterprise with a valid operating licence from a Member State to operate scheduled air services;

(e) Community air carrier means:

- (i) an air carrier which has and continues to have its central administration and principal place of business in the Community, the majority of whose shares are and continue to be owned by Member States and/or nationals of Member States and which is and continues to be effectively controlled by such States or persons; or
- (ii) an air carrier which, at the time of adoption of this Regulation, although it does not meet the definition set out in (i):
 - 1. either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air services in the Community during the 12 months prior to adoption of this Regulation;
 - 2. or has been providing scheduled air services between Member States on the basis of third- and fourth-freedom traffic rights during the 12 months prior to adoption of this Regulation.

The air carriers which meet the criteria set out in this point (ii) are listed in Annex 1;

- (f) a third-freedom traffic right means the right of an air carrier licensed in one State to put down, in the territory of another State, passengers, freight and mail taken up in the State in which it is licensed;

a fourth-freedom traffic right means the right of an air carrier licensed in one State to take on, in the territory

- of another State, passengers, freight and mail for off-loading in the State in which it is licensed;
- a fifth-freedom traffic right means the right of an air carrier to undertake the air transport of passengers, freight and mail between two States other than the State in which it is licensed;
- (g) States concerned means the Member States between which a scheduled air service is operated;
- (h) zone of flexibility means a pricing zone as referred to in Article 4, within which air fares meeting the conditions in Annex II qualify for automatic approval by the aeronautical authorities of the States concerned. The limits of a zone are expressed as percentages of the reference fare;
- (i) reference fare means the normal one way or return, as appropriate, economy air fare charged by a third- or fourth-freedom air carrier on the route in question; if more than one such fare exists, the arithmetic average of all such fares shall be taken unless otherwise bilaterally agreed; where there is no normal economy fare, the lowest fully flexible fare shall be taken.

CRITERIA

Article 3

1. Member States shall approve scheduled air fares of Community air carriers if they are reasonably related to the applicant air carrier's long-term fully-allocated relevant costs, while taking into account the need for a satisfactory return on capital and for an adequate cost margin to ensure a satisfactory safety standard.
2. In approving air fares pursuant to paragraph 1, Member States shall also take into account other relevant factors, the needs of consumers and the competitive market situation, including the fares of the other air carriers operating on the route and the need to prevent dumping.
3. Notwithstanding Article 4 (4) and (5), Member States shall disapprove any fare that does not meet the terms of Article 4 (3) and that is, in relation to the criteria defined in Article 3 (1), excessively high to the disadvantage of users or unjustifiably low in view of the competitive market situation.
4. The fact that a proposed air fare is lower than that offered by another air carrier operating on the route shall not be sufficient reason for withholding approval.

5. A Member State shall permit a Community air carrier of another Member State operating a direct or indirect scheduled air service within the Community, having given due notice to the States concerned, to match an air fare already approved for scheduled services between the same city-pairs on the basis that this provision shall not apply to indirect air services which exceed the length of the shortest direct service by more than 20 %. Member States may also permit a Community air carrier of another Member State operating a direct scheduled air service to match prices already accepted or published for a non-scheduled air service operated on the same route provided that both products are equivalent in terms of quality and conditions.

6. Only Community air carriers shall be entitled to introduce lower fares than the existing ones when they operate on the basis of third- and fourth-freedom traffic rights and, in the case of fifth-freedom traffic rights to introduce such lower fares only where they comply with Article 4 (3).

PROCEDURES

Article 4

1. Scheduled air fares shall be subject to approval by the Member States concerned. To this end, an air carrier shall submit its proposed air fares in the form prescribed by the aeronautical authorities of such Member States.

2. Aeronautical authorities shall not require air carriers to submit their fares in respect of routes within the Community more than 45 days before they come into effect.

3. (a) Until 31 December 1992, Member States shall, within zones of flexibility, permit third- and/or fourth-freedom and/or fifth-freedom air carriers to charge air fares of their own choice, subject to the respective conditions set out in Annex II and provided those air fares have been filed with the States concerned at least 21 days prior to the proposed date for their entry into force.

(b) There shall be three zones of flexibility on any scheduled air services as follows:

- a normal economy fare zone which shall extend from 95 to 105 % of the reference fare,
- a discount zone which shall extend from 94 to 80 % of the reference fare,
- a deep-discount zone which shall extend from 79 to 30 % of the reference fare.

4. A fully flexible fare above 105 % of the reference fare for a route within the Community shall be considered as

approved unless, within 30 days of the date of its submission, both Member States have notified in writing their disapproval to the applicant air carrier, stating their reasons. The Member States shall also inform each other. At the request of either Member State, consultations shall take place between the States concerned within the 30-day period.

5. Until 31 December 1992, fares not complying with the terms of paragraphs 3 and 4 shall require approval by both States concerned. If neither of the Member States has expressed disapproval within 21 days of the date of submission of a fare, it shall be considered as approved.

6. A fare for a route within the Community, once approved, shall remain in force until it expires or is replaced. It may, however, be prolonged after its original date of expiry for a period not exceeding 12 months.

Article 5

1. A Member State which claims a legitimate interest in the route concerned may request the Commission to examine whether an air fare which does not meet the terms of Article 4 (3) complies with Article 3 (1) or whether a Member State has fulfilled its obligations under Article 3 (3). The Commission shall forthwith inform the other Member State(s) involved and the air carrier concerned and give them the opportunity to submit their observations.

2. The Commission shall, within 14 days of receipt of a request under paragraph 1, decide whether the air fare shall remain in force during its examination.

3. The Commission shall give a decision on whether the air fare complies with Article 3 (1) as soon as possible and in any event not later than two months after having received the request. This period may be prolonged to the extent necessary in order to obtain sufficient further information from the Member State concerned.

4. The Commission shall communicate its decision to the Member States and to the air carrier concerned.

5. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

CONSULTATION AND ARBITRATION SCHEME

Article 6

1. When a State concerned (the first State) decides, in accordance with Article 4 (5), not to approve a scheduled air fare, it shall inform the other State concerned (the second

State) in writing within 21 days of the fare being filed, stating its reasons.

2. If the second State disagrees with the decision of the first State, it shall so notify the first State within seven days of being informed, providing the information on which its decision is based, and request consultations. Each State shall supply all relevant information requested by the other. Either of the States concerned may request that the Commission be represented at the consultations.

3. If the first State has insufficient information to reach a decision on the fare, it may request the second State to enter into consultations before the expiry of the 21-day period prescribed in paragraph 1.

4. Consultations shall be completed within 21 days of being requested. If disagreement still persists at the end of this period, the matter shall be put to arbitration at the request of either of the States concerned. The two States concerned may agree to prolong the consultations or to proceed directly to arbitration without consultations.

5. Arbitration shall be carried out by a panel of three arbitrators unless the States concerned agree on a single arbitrator. The States concerned shall each nominate one member of the panel and seek to agree on the third member (who shall be a national of a third Member State and act as panel chairman). Alternatively they may nominate a single arbitrator. The appointment of the panel shall be completed within seven days. A panel's decisions shall be reached by a majority of votes.

6. In the event of failure by either State concerned to nominate a member of the panel or to agree on the appointment of a third member, the Council shall be informed forthwith and its President shall complete the panel within three days. In the event of the Presidency being held by a Member State which is party to the dispute, the President of the Council shall invite the Government of the next Member State due to hold the presidency and not party to the dispute to complete the panel.

7. The arbitration shall be completed within a period of 21 days of completion of the panel or nomination of the single arbitrator. The States concerned may, however, agree to extend this period. The Commission shall have the right to attend as an observer. The arbitrators shall make clear the extent to which the award is based on the criteria in Article 3.

8. The arbitration award shall be notified immediately to the Commission.

Within a period of 10 days, the Commission shall confirm the award, unless the arbitrators have not respected the criteria set out in Article 3 or the procedure laid down by the

Regulation or the award does not comply with Community law in other respects.

In the absence of any decision within this period, the award shall be regarded as confirmed by the Commission. An award confirmed by the Commission shall become binding on the States concerned.

9. During the consultation and arbitration procedure, the relevant existing air fares shall be continued in force until the procedure has expired and any new fare has entered into force.

GENERAL PROVISIONS

Article 7

This Regulation shall not prevent Member States from concluding arrangements which are more flexible than the provisions of Article 4 or from maintaining such arrangements in force.

Article 8

At least once a year, the Commission shall consult on scheduled air fares and related matters with representatives of air transport user organizations in the Community, for which purpose the Commission shall supply appropriate information to the participants.

Article 9

In carrying out the duties assigned to it under this Regulation, the Commission may obtain all necessary information from the Member States and air carriers concerned.

Article 10

1. The Commission shall publish a report on the application of this Regulation by 31 May 1992 and every second year thereafter.
2. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in paragraph 1.
3. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 11

Where a Member State has concluded an agreement with one or more non-member countries which gives fifth-freedom rights for a route between Member States to an air carrier of a

non-member country, and in this respect contains provisions which are incompatible with this Regulation, the Member State shall, at the first opportunity, take all appropriate steps to eliminate such incompatibilities. Until such time as the incompatibilities have been eliminated, this Regulation shall not affect the rights and obligations *vis-à-vis* non-member countries arising from such an agreement.

shall decide on the revision of this Regulation by 30 June 1992 at the latest, on the basis of a Commission proposal to be submitted by 31 May 1991.

Article 13

Directive 87/601/EEC is hereby revoked.

Article 12

With a view to achieving the objective of a double-disapproval system for fares by 1 January 1993, the Council

Article 14

This Regulation shall enter into force on 1 November 1990.

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

Done at Brussels, 24 July 1990.

For the Council

The President

C. MANNINO

ANNEX I

Air carriers referred to in Article 2 (e) (ii)

The following air carriers meet the criteria referred to in Article 2 (e) (ii) as long as they are recognized as a national carrier by the Member State which so recognizes them at the time of the adoption of this Regulation:

- Scandinavian Airlines System,
- Britannia Airways,
- Monarch Airlines.

ANNEX II

Conditions for discount and deep-discount fares

Discount zone

1. To qualify for the discount zone, a fare must meet the two following conditions:

- round or circle trip travel,
and
- reservation for the entire trip, ticketing and payment to be made at the same time, except that reservation for the return trip may be made at a later time; cancellation only permissible prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket; change of reservation only permissible at a fee equal to the difference between the fare paid and the next higher applicable fare.

Deep-discount zone

2. To qualify for the deep-discount zone, fares must meet the following conditions:

1. round or circle trip travel; and
2. any two of the following:
 - (a) minimum stay of not less than the 'Sunday rule' or six days;
 - (b) (i) reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only permissible prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket;
or
(ii) mandatory advance purchase of not less than 14 days; reservation for the entire trip, ticketing and payment to be made at the same time; cancellation or change of reservation only permissible prior to departure of outbound travel and at a fee of at least 20 % of the price of the ticket;
or
(iii) purchase of the ticket only permitted on the day prior to departure of outbound travel; reservation to be made separately for both the outbound and inbound journeys and only in the country of departure on the day prior to travel on the respective journeys;
 - (c) passenger to be aged not more than 25 years or not less than 60 years or father and/or mother with children aged not more than 25 years travelling together (minimum three persons);
 - (d) off-peak;

provided that:

1. the condition at (c) may not be combined with the condition at (d) alone; and
2. where the condition at (b) (i) is combined only with the conditions at (c) or (d), the zone of flexibility shall not extend below 40 % of the reference fare.

*Appendix to Annex II***1. Notes on the zonal scheme referred to in Article 4 (3) (b) and (4)****(i) Reference fare for 1990/91**

the reference fare referred to in Article 2 (i) applicable on 1 September 1990.

(ii) Reference fare for 1991/92

the reference fare referred to in Article 2 (i) applicable on 1 September 1991.

2. Definition of 'off-peak'

An air carrier may designate certain flights as 'off-peak' on the basis of commercial considerations.

When an air carrier wishes to use condition 2 (2) (d), identification of the off-peak flights for each route shall be agreed between the aeronautical authorities of the Member States concerned on the basis of the proposal made by that air carrier.

On each route where the total activity of third- and fourth-freedom air carriers reaches a weekly average of 18 return flights, the air carrier concerned shall be allowed as a minimum to apply condition 2 (2) (d) of annex II on up to 50 % of its total daily flights, provided that the flights to which these conditions may be applied depart between 10.00 and 16.00 or between 21.00 and 06.00.

COUNCIL REGULATION (EEC) No 2343/90

of 24 July 1990

on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Decision 87/602/EEC (4) made a first step towards the liberalization in respect of sharing of passenger capacity and access to the market, necessary to achieve the internal market in air transport; whereas the Council agreed to take further measures of liberalization at the end of a three-year initial period;

Whereas it is necessary to implement principles governing relations between States of registration and air carriers licensed in their territory by 1 July 1992 on the basis of common specifications and criteria;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas the development of the air traffic system in the Greek Islands and in the Atlantic Islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

(1) OJ No C 258, 11.10.1989, p. 6; and
OJ No C 164, 5.7.1990, p. 11.

(2) OJ No C 96, 17.4.1990, p. 65.

(3) OJ No C 112, 7.5.1990, p. 17.

(4) OJ No L 374, 31.12.1987, p. 19.

Whereas the infrastructure at Porto airport is still being expanded to enable it to cope with the growth in scheduled services; whereas, consequently, that airport should be exempted temporarily from the application of this Regulation until the expansion of this infrastructure is completed;

Whereas it is necessary to make special provision, under limited circumstances, for air services on new routes between regional airports and for public service obligations necessary for the maintenance of services to certain regional airports;

Whereas increased market access will stimulate the development of the Community air transport sector and give rise to improved services for users; whereas as a consequence it is necessary to introduce more liberal provisions concerning multiple designation, third-, fourth- and fifth-freedom traffic rights;

Whereas, taking into account problems relating to airport infrastructure, navigational aids and availability of slots, it is necessary to include certain limitations concerning the use of traffic rights;

Whereas the exercise of traffic rights has to be consistent with rules relating to safety, protection of the environment, allocation of slots and conditions concerning airport access and has to be treated without discrimination on grounds of nationality;

Whereas bilateral rules concerning capacity shares are not compatible with the principles of the internal market which should be completed by 1993 in the air transport sector; whereas therefore the bilateral restrictions must be diminished gradually;

Whereas it is especially important to encourage the development of inter-regional services in order to develop the Community network and to contribute to a solution of the problem of congestion at certain large airports; whereas, therefore, it is appropriate to have more liberal rules with respect to capacity sharing these services;

Whereas in view of the relative importance for some Member States of non-scheduled traffic *vis-à-vis* scheduled traffic, it is necessary to take measures to alleviate its impact on the opportunities of carriers of Member States receiving such traffic; whereas the measures to be taken should not be aimed at limiting non-scheduled traffic or subjecting it to regulation;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

Whereas this Regulation replaces Directive 83/416/EEC⁽¹⁾, as last amended by Directive 89/463/EEC⁽²⁾, and Decision 87/602/EEC; whereas it is therefore necessary to revoke that Directive and that Decision;

Whereas it is desirable that the Council adopt further measures of liberalization including cobotage in respect of market access and capacity sharing by 30 June 1992,

HAS ADOPTED THIS REGULATION:

Scope and definitions

Article 1

1. This Regulation concerns:

- (a) access to the market for Community air carriers;
- (b) the sharing of passenger capacity between the air carrier(s) licensed in one Member State and the air carrier(s) licensed in another Member State on scheduled air services between these States.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

4. Airports in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores shall be exempted from the application of this Regulation until 30 June 1993. Unless otherwise decided by the Council, on a proposal of the Commission, this exemption shall apply for a further period of five years and may be continued for five years thereafter.

The airport of Porto shall be exempted from the application of this Regulation until 31 December 1992. This derogation shall be rescinded as soon as the Portuguese Republic judges that the economic conditions of the airport have improved.

⁽¹⁾ OJ No L 237, 26. 8. 1983, p. 19.

⁽²⁾ OJ No L 226, 3. 8. 1989, p. 14.

To this end, the Portuguese Republic shall inform the Commission. The Commission shall communicate this information to the other Member States.

Article 2

For the purposes of this Regulation:

- (a) air carrier means an air transport enterprise with a valid operating licence from a Member State to operate scheduled air services;
- (b) a third-freedom traffic right means the right of an air carrier licensed in one State to put down, in the territory of another State, passengers, freight and mail taken up in the State in which it is licensed;
- (c) a fourth-freedom traffic right means the right of an air carrier licensed in one State to take on, in the territory of another State, passengers, freight and mail for off-loading in the State in which it is licensed;
- (d) a fifth-freedom traffic right means the right of an air carrier to undertake the air transport of passengers, freight and mail between two States other than the State in which it is licensed;
- (e) States concerned means the Member States between which a scheduled air service is operated;
- (f) State of registration means the Member State in which the licence mentioned in paragraph (a) is issued;
- (g) Community air carrier means:
 - (i) an air carrier which has and continues to have its central administration and principal place of business in the Community, the majority of whose shares are and continue to be owned by Member States and/or nationals of Member States and which is and continues to be effectively controlled by such States or persons, or
 - (ii) an air carrier which, at the time of adoption of this Regulation, although it does not meet the definition set out in (i):
 1. either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air services in the Community during the 12 months prior to adoption of this Regulation;
 2. or has been providing scheduled air services between Member States on the basis of third- and fourth-freedom traffic rights during the 12 months prior to adoption of this Regulation.

The air carriers which meet the criteria set out in this point (ii) are listed in Annex I;

(f) **scheduled air service** means a series of flights each possessing all the following characteristics:

- (i) it passes through the air space over the territory of more than one Member State;
- (ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents);
- (iii) it is operated so as to serve traffic between the same two or more points, either:
 - 1. according to a published timetable; or
 - 2. with flights so regular or frequent that they constitute a recognizably systematic series;

(g) **flight** means a departure from a specified airport towards a specified destination airport;

(h) **multiple designation on a country-pair basis** means the designation by a State of registration of two or more of the air carriers licensed by it to operate scheduled air services between its territory and that of another Member State;

(i) **multiple designation on a city-pair basis** means the designation by a State of registration of two or more of the air carriers licensed by it to operate a scheduled air service between an airport or airport system in its territory and an airport or airport system in the territory of another Member State;

(j) **regional airport** means any airport other than one listed in Annex II as a category 1 airport;

(k) **airport system** means two or more airports grouped together as serving the same city, as indicated in Annex II;

(l) **capacity** shall be expressed as the number of seats offered to the general public on a scheduled air service over a given period;

(m) **capacity share** means the share of a Member State expressed as a percentage of the total capacity calculated according to Article 11 in a bilateral relationship with another Member State excluding any capacity provided by fifth-freedom services;

(n) **public service obligation** means any obligation imposed upon an air carrier to take, in respect of any route which it is licensed to operate by a Member State, all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity and capacity which standards the carrier would not assume if it were solely considering its commercial interest.

Relations between the States of registration and their air carriers

Article 3

1. This Regulation shall not affect the relationship between a Member State and air carriers licensed by that State regarding market access and capacity sharing.

2. The Council shall adopt, for implementation not later than 1 July 1992 on the basis of a Commission proposal concerning common specifications and criteria, to be submitted not later than 31 May 1991, rules governing the licensing of air carriers and route licensing.

Third- and fourth-freedom traffic rights

Article 4

Subject to this Regulation, Community air carriers shall be permitted to exercise third- and fourth-freedom air services between airports or airport systems in one Member State and airports or airport systems in another Member State when these airports or airport systems are open for traffic between Member States or for international services.

Relations between a Member State and air carriers of other Member States

Article 5

1. Subject to Article 6, a Member State shall authorize air carriers licensed in another Member State, which have been authorized by their State of registration, to

- exercise third- and fourth-freedom traffic rights as provided for in Article 4,
- use, within the Community, the same flight number for combined third- and fourth-freedom services.

2. Where an air carrier of one Member State has been licensed in accordance with this Article to operate a scheduled air service, the State of registration of that air carrier shall raise no objection to an application for the introduction of a scheduled air service on the same route by an air carrier of the other State concerned.

3. (a) A Member State, following consultations with other States concerned, may impose a public service obligation in respect of air services to a regional

airport in its territory on a route which is considered vital for the economic development of the region in which the airport is located, to the extent necessary to ensure on that route the adequate provision of air services satisfying fixed standards of continuity, regularity, capacity and pricing which standards carriers would not assume if they were solely considering their commercial interest.

(b) The adequacy of air transport services shall be assessed having regard to:

- (i) the public interest;
- (ii) the possibility of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;
- (iii) the air fares and conditions which can be quoted to users.

(c) Notwithstanding paragraph 2, a Member State is not obliged to authorize more than one carrier to serve a route to which a public service obligation applies, provided the right to operate that service is offered by public tender for a period of up to three years to any air carrier with an operating licence issued in the States concerned and to any Community air carrier which, in accordance with Article 8, is entitled to exercise fifth-freedom traffic rights on the route. The submissions made by air carriers shall be communicated to the other States concerned and to the Commission.

(d) Subparagraph (c) shall not apply in any case in which the other Member State concerned proposes a satisfactory alternative means of fulfilling the same public service obligation.

(e) This paragraph shall not apply to routes with capacity of more than 30 000 seats per year.

4. Notwithstanding paragraph 2, a Member State, which has authorized one of the air carriers licensed by it to operate a passenger service on a new route between regional airports with aircraft of no more than 80 seats, is not obliged to authorize a reciprocal air service for a period of two years, unless it is operated with aircraft of no more than 80 seats, or it is part of a service operated under the terms of Article 7 in which not more than 80 seats are available for sale between the two regional airports in question, on each flight.

5. At the request of any Member State which considers that the development of a route is being unduly restricted by

the terms of paragraph 3 or 4, or on its own initiative or where disagreement arises regarding the application of paragraph 3, the Commission shall carry out an investigation and, on the basis of all relevant factors, shall take a decision within two months of commencing its investigation on whether paragraph 3 or 4 should continue to apply in respect of the route concerned.

6. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Multiple designation

Article 6

1. A Member State shall accept multiple designation on a country-pair basis by another Member State.

2. It shall also accept multiple designation on a city-pair basis:

- from 1 January 1991, on routes on which more than 140 000 passengers were carried in the preceding year, or on which there are more than 800 return flights per annum,
- from 1 January 1992, on routes on which more than 100 000 passengers were carried in the preceding year or on which there are more than 600 return flights per annum.

Combination of points

Article 7

In operating scheduled air services to or from two or more points in another Member State or States other than its State of registration, a Community air carrier shall be permitted by the States concerned to combine scheduled air services and use the same flight number. Traffic rights between the combined points may be exercised according to Article 8.

Fifth-freedom rights

Article 8

1. Community air carriers shall, in accordance with this Article, be permitted to exercise fifth-freedom traffic rights between combined points in two different Member States on the following conditions:

- (a) the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as a preliminary of a service to, their State of registration;
- (b) the air carrier cannot use, for the fifth-freedom service more than 50 % of its seasonal seat capacity on the same third- and fourth-freedom service of which the fifth-freedom service constitutes the extension or the preliminary.

2. (a) The air carrier may, for a fifth-freedom service, use an aircraft which is different to but not larger than the aircraft which it uses for the third- and fourth-freedom service of which the fifth-freedom service is an extension or a preliminary.

- (b) When more than one fifth-freedom service is operated as an extension of or as a preliminary to a third- or fourth-freedom service, the capacity provision in paragraph 1 (b) shall represent the aggregate seat capacity available for the carriage of fifth-freedom passengers on those fifth-freedom services.

3. An air carrier operating a fifth-freedom service in accordance with this Article shall furnish on request to the Member States involved all relevant information concerning:

- (a) the seasonal seat capacity on the third- and fourth-freedom service of which the fifth-freedom service constitutes the extension or the preliminary; and
- (b) in the case of fifth-freedom services to which Article 8 (2) (b) applies, the seasonal capacity utilized on each service.

Conditions for the exercise of traffic rights

Article 9

This Regulation shall not affect a Member States' right to regulate without discrimination on grounds of nationality, the distribution of traffic between the airports within an airport system.

Article 10

1. Notwithstanding Article 5 (2), the exercise of traffic rights is subject to published Community, national, regional or local rules relating to safety, the protection of the environment and the allocation of slots, and to the following conditions:

- (a) the airport or airport system concerned must have sufficient facilities to accommodate the service;
- (b) navigational aids must be sufficient to accommodate the service.

2. When the conditions in paragraph 1 are not met, a Member State may, without discrimination on grounds of nationality, impose conditions on, limit or refuse the exercise of those traffic rights. Before taking such a measure, a Member State shall inform the Commission and provide it with all the necessary elements of information.

3. Without prejudice to Article 9 and except with the agreement of the other Member State(s) concerned, a Member State shall not authorize an air carrier:

- (a) to establish a new service; or
- (b) to increase the frequency of an existing service

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of paragraphs 1 and 2, to establish a new service or to increase frequencies on an existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality.

4. At the request of any Member State, the Commission shall examine the application of paragraph 2 and/or paragraph 3 in any particular case and within one month decide whether the Member State may continue to apply the measure.

5. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Shares of capacity

Article 11

1. From 1 November 1990, a Member State shall permit another Member State to increase its capacity share for any season by 7,5 percentage points compared to the situation during the previous corresponding season, it being understood that each Member State may in any event claim a capacity share of 60 %.

2. The Council shall adopt, for implementation not later than 1 January 1993, on the basis of a Commission proposal

to be submitted by 31 December 1991, provisions to abolish capacity sharing restrictions between Member States.

3. Capacity sharing limitations shall not apply to a service between regional airports irrespective of aircraft capacity.

4. In applying paragraph 1, unilateral cut-backs in capacity shall not be taken into account. In such cases, the basis for the calculation of capacity shares shall be the capacity offered in the previous corresponding seasons by the air carrier(s) of the Member State which has (have) reduced its (their) capacity.

Article 12

1. At the request of any Member State for which the application of Article 11 has led to serious financial damage for the air carrier(s) licensed by that Member State, the Commission shall carry out a review and, on the basis of all relevant factors, including the market situation, the financial position of the air carrier(s) concerned and the capacity utilization achieved, shall take a decision on whether the capacity sharing on the routes to or from that State should be stabilized for a limited period.

2. At the request of a Member State whose scheduled air services are exposed to substantial competition from non-scheduled services and where a situation exists whereby the opportunities of carriers of that Member State to effectively compete in the market are unduly affected, the Commission, having examined all relevant factors, including the market situation and the capacity utilization achieved, and having consulted the other Member States concerned shall, within two months of having received the request, decide whether the 7,5 percentage points referred to in Article 11 (1) shall be reduced for that bilateral relationship.

3. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by qualified majority, may take a different decision within a period of one month.

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

Done at Brussels, 24 July 1990.

General provisions

Article 13

1. This Regulation shall not prevent Member States from concluding between them arrangements which are more flexible than the provisions of Articles 6, 8 and 11 or from maintaining such arrangements in force.

2. The provisions of this Regulation shall not be used to make existing market access or capacity arrangements more restrictive.

Article 14

1. The Commission shall publish a report on the implementation of this Regulation every two years and for the first time not later than 31 May 1992.

2. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in paragraph 1.

3. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 15

The Council shall decide on the revision of this Regulation by 30 June 1992 at the latest, on the basis of a Commission proposal to be submitted by 31 May 1991.

Article 16

Decision 87/602/EEC and Directive 83/416/EEC are hereby revoked.

Article 17

This Regulation shall enter into force on 1 November 1990.

For the Council

The President

C. MANNINO

ANNEX I

Air carriers referred to in Article 2 (e) (ii)

The following air carriers meet the criteria referred to in Article 2 (e) (ii) as long as they are recognized as national carriers by the Member State which so recognizes them at the time of the adoption of this Regulation:

- Scandinavian Airlines System,
- Britannia Airways,
- Monarch Airlines.

ANNEX II

List of category 1 airports

BELGIUM:	Brussels-Zaventem
DENMARK:	Copenhagen-Kastrup/Roskilde
FEDERAL REPUBLIC OF GERMANY:	Frankfurt-Rhein-Main, Düsseldorf-Lohausen, Munich-Riem
SPAIN:	Palma-Mallorca, Madrid-Barajas, Malaga, Las Palmas
GREECE:	Athens-Hellenikon, Salonica-Micra
FRANCE:	Paris-Charles De Gaulle/Orly
IRELAND:	Dublin
ITALY:	Rome-Fiumicino/Ciampino, Milan-Linate/Malpensa
NETHERLANDS:	Amsterdam-Schiphol
PORTUGAL:	Lisbon, Faro
UNITED KINGDOM:	London-Heathrow/Gatwick/Stansted, Luton

COUNCIL REGULATION (EEC) No 2344/90

of 24 July 1990

amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission (¹),

Having regard to the opinion of the European Parliament (²),

Having regard to the opinion of the Economic and Social Committee (³),

Whereas Regulation (EEC) No 3976/87 (⁴) empowers the Commission to declare by way of regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas these block exemptions were granted for a limited period, expiring on 31 January 1991, during which air carriers could adapt to the more competitive environment introduced by changes in the regulatory system applicable to intra-Community international air transport;

Whereas after that date there will still be a need for block exemptions for a further transitional period,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3976/87 is hereby amended as follows:

1. in Article 2 (2) a new indent is added reading as follows:
‘— consultations on cargo rates,’;
2. in Article 3, ‘31 January 1991’ is replaced by ‘31 December 1992’;
3. in Article 8, ‘30 June 1990’ and ‘1 November 1989’ are replaced by ‘31 December 1992’ and ‘1 July 1992’ respectively.

Article 2

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

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

Done at Brussels, 24 July 1990.

For the Council

The President

C. MANNINO

(¹) OJ No C 258, 11. 10. 1989, p. 3.

(²) OJ No C 149, 18. 6. 1990.

(³) OJ No C 112, 7. 5. 1990, p. 17.

(⁴) OJ No L 374, 31. 12. 1987, p. 9.

Communication from the Government of the Federal Republic of Germany

The Council has received the following communication from the Government of the Federal Republic of Germany:

When depositing its instruments of ratification of the Treaties establishing the European Communities, the Federal Republic of Germany declared that these Treaties applied equally to Land Berlin. It declared at the same time that the rights and responsibilities of France, the United Kingdom and the United States in respect of Berlin were unaffected. In view of the fact that civil aviation is one of the areas in which the said States have specifically reserved powers for themselves in Berlin, and following consultations with the Governments of these States, the Federal Republic of Germany states that the following Regulations are not applicable in Land Berlin:

- Council Regulation on fares for scheduled air services,
- Council Regulation on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States,
- Council Regulation amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

Package Three

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2407/92
 of 23 July 1992
 on licensing of air carriers

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the application in the air transport sector of the principle of the freedom to provide services needs to take into account the specific characteristics of that sector;

Whereas in Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States (4) the Council decided to adopt for implementation not later than 1 July 1992 common rules governing the licensing of air carriers;

Whereas, however, it is necessary to allow Member States a reasonable period, until 1 January 1993, for the application of this Regulation;

Whereas it is important to define non-discriminatory requirements in relation to the location and control of an undertaking applying for a licence;

Whereas in order to ensure dependable and adequate service it is necessary to ensure that an air carrier is at all times operating at sound economic and high safety levels;

Whereas for the protection of users and other parties concerned it is important to ensure that air carriers are sufficiently insured in respect of liability risks;

Whereas within the internal market air carriers should be able to use aircraft owned anywhere in the Community, without prejudice to the responsibilities of the licensing Member State with respect to the technical fitness of the carrier;

Whereas it should also be possible to lease aircraft registered outside the Community for a short term or in exceptional circumstances, providing safety standards are equivalent to those applicable within the Community;

Whereas procedures for the granting of licences to air carriers should be transparent and non-discriminatory,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns requirements for the granting and maintenance of operating licences by Member States in relation to air carriers established in the Community.

(1) OJ No C 258, 4. 10. 1991, p. 2.

(2) OJ No C 125, 18. 5. 1992, p. 140.

(3) OJ No C 169, 6. 7. 1992, p. 15.

(4) OJ No L 217, 11. 8. 1990, p. 8.

2. The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, as well as local flights not involving carriage between different airports, are not subject to this Regulation. In respect of these operations, national law concerning operating licences, if any, and Community and national law concerning the air operator's certificate (AOC) shall apply.

Article 2

For the purposes of this Regulation:

- (a) 'undertaking' means any natural person, any legal person, whether profit-making or not, or any official body whether having its own legal personality or not;
- (b) 'air carrier' means an air transport undertaking with a valid operating licence;
- (c) 'operating licence' means an authorization granted by the Member State responsible to an undertaking, permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating licence, for remuneration and/or hire;
- (d) 'air operator's certificate (AOC)' means a document issued to an undertaking or a group of undertakings by the competent authorities of the Member States which affirms that the operator in question has the professional ability and organization to secure the safe operation of aircraft for the aviation activities specified in the certificate;
- (e) 'business plan' means a detailed description of the air carrier's intended commercial activities for the period in question, in particular in relation to the market development and investments to be carried out, including the financial and economic implications of these activities;
- (f) 'management account' means a detailed statement of income and costs for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;
- (g) 'effective control' means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
 - (a) the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking.

Article 3

- 1. Without prejudice to Article 5 (5), Member States shall not grant operating licences or maintain them in force where the requirements of this Regulation are not complied with.
- 2. An undertaking meeting the requirements of this Regulation shall be entitled to receive an operating licence. Such licence does not confer in itself any rights of access to specific routes or markets.

- 3. Without prejudice to Article 1 (2), no undertaking established in the Community shall be permitted within the territory of the Community to carry by air passengers, mail and/or cargo for remuneration and/or hire unless the undertaking has been granted the appropriate operating licence.

Operating licence

Article 4

- 1. No undertaking shall be granted an operating licence by a Member State unless:
 - (a) its principal place of business and, if any, its registered office are located in that Member State; and
 - (b) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft.
- 2. Without prejudice to agreements and conventions to which the Community is a contracting party, the undertaking shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals.
- 3. (a) Notwithstanding paragraphs 2 and 4, air carriers which have already been recognized in Annex I to Council Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States ⁽¹⁾ shall retain their rights under this and associated Regulations as long as they meet the other obligations in this Regulation and they continue to be controlled directly or indirectly by the same third countries and/or by nationals of the same third country as those exercising such control at the time of adoption of this Regulation. Such control may, however, be transferred to Member States and/or to Member State nationals at any time.

⁽¹⁾ OJ No L 36, 8. 2. 1991, p. 1.

(b) The possibility of buying and selling shares under subparagraph (a) does not cover nationals who have a significant interest in an air carrier of a third country.

4. Any undertaking which directly or indirectly participates in a controlling shareholding in an air carrier shall meet the requirements of paragraph 2.

5. An air carrier shall at all times be able on request to demonstrate to the Member State responsible for the operating licence that it meets the requirements of this Article. The Commission acting at the request of a Member State shall examine compliance with the requirements of this Article and take a decision if necessary.

Article 5

1. An applicant air transport undertaking to which an operating licence is granted for the first time must be able to demonstrate to the reasonable satisfaction of the competent authorities of the licensing Member State that:

- (a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
- (b) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

2. For the purpose of paragraph 1, each applicant shall submit a business plan for, at least, the first two years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data referred to in part A of the Annex.

3. An air carrier shall notify in advance to its licensing authority plans for: operation of a new scheduled service or a non-scheduled service to a continent or world region not previously served, changes in the type or number of aircraft used or a substantial change in the scale of its activities. It shall also notify in advance any intended mergers or acquisitions and shall notify its licensing authority within fourteen days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the air carrier or of its parent or ultimate holding company. The submission of a 12-month business

plan two months in advance of the period to which it refers shall constitute sufficient notice under this paragraph for the purpose of changes to current operations and/or circumstances which are included in that business plan.

4. If the licensing authority deems the changes notified under paragraph 3 to have a significant bearing on the finances of the air carrier, it shall require the submission of a revised business plan incorporating the changes in question and covering, at least, a period of 12 months from its date of implementation, as well as all the relevant information, including the data referred to in part B of the Annex, to assess whether the air carrier can meet its existing and potential obligations during that period of 12 months. The licensing authority shall take a decision on the revised business plan not later than three months after all the necessary information has been submitted to it.

5. Licensing authorities may, at any time and in any event whenever there are clear indications that financial problems exist with an air carrier licensed by them, assess its financial performance and may suspend or revoke the licence if they are no longer satisfied that the air carrier can meet its actual and potential obligations for a 12-month period. Licensing authorities may also grant a temporary licence pending financial reorganization of the air carrier provided safety is not at risk.

6. An air carrier shall provide to its licensing authority every financial year without undue delay the audited accounts relating to the previous financial year. At any time upon request of the licensing authority an air carrier shall provide the information relevant for the purposes of paragraph 5 and, in particular, the data referred to in part C of the Annex.

7. (a) Paragraphs 1, 2, 3, 4 and 6 of this Article shall not apply to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes mto w (maximum take off weight) and/or less than 20 seats. Such air carriers shall at all times be able to demonstrate that their net capital is at least ECU 80 000 or to provide when required by the licensing authority the information relevant for the purposes of paragraph 5. A Member State may nevertheless apply paragraphs 1, 2, 3, 4 and 6 to air carriers licensed by it that operate scheduled services or whose turnover exceeds ECU 3 million per year.

b. The Commission may, after consulting the Member States, increase as appropriate the values referred to in subparagraph (a) if economic developments indicate the necessity of such a decision. Such change shall be published in the *Official Journal of the European Communities*.

(c) Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 6

1. Where the competent authorities of a Member State require, for the purpose of issuing an operating licence, proof that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, or suspend or revoke the licence in the event of serious professional misconduct or a criminal offence, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath — or, in Member States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

2. The competent authorities of Member States may require that the documents and certificates referred to in paragraph 1 be presented no more than three months after their date of issue.

Article 7

An air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.

Article 8

1. Ownership of aircraft shall not be a condition for granting or maintaining an operating licence but a Member State shall require, in relation to air carriers licensed by it that they have one or more aircraft at their disposal, through ownership or any form of lease agreement.

2. (a) Without prejudice to paragraph 3, aircraft used by an air carrier shall be registered, at the option of the Member State issuing the operating licence, in its national register or within the Community.

(b) If a lease agreement for an aircraft registered within the Community has been deemed acceptable under Article 10, a Member State shall not require the registration of that aircraft on its own register if this would require structural changes to the aircraft.

3. In the case of short-term lease agreements to meet temporary needs of the air carrier or otherwise in exceptional circumstances, a Member State may grant waivers to the requirement of paragraph 2 (a).

4. When applying paragraph 2 (a) a Member State shall, subject to applicable laws and regulations, including those relating to airworthiness certification, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of other Member States. No fee shall be applied to transfer of aircraft in addition to the normal registration fee.

Air operator's certificates (AOC)

Article 9

1. The granting and validity at any time of an operating licence shall be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence and complying with the criteria established in the relevant Council Regulation.

2. Until such time as the Council Regulation referred to in paragraph 1 is applicable, national regulations concerning the AOC, or equivalent title concerning the certification of air transport operators, shall apply.

Article 10

1. For the purposes of ensuring safety and liability standards an air carrier using an aircraft from another undertaking or providing it to another undertaking shall obtain prior approval for the operation from the appropriate licensing authority. The conditions of the approval shall be part of the lease agreement between the parties.

2. A Member State shall not approve agreements leasing aircraft with crew to an air carrier to which it has granted an operating licence unless safety standards equivalent to those imposed under Article 9 are met.

General provisions

Article 11

1. An operating licence shall be valid as long as the air carrier meets the obligations of this Regulation. However, a Member State may make provision for a review one year after a new operating licence has been granted and every five years thereafter.
2. When an air carrier has ceased operations for six months or has not started operations for six months after the granting of an operating licence, the Member State responsible shall decide whether the operating licence shall be resubmitted for approval.

3. In relation to air carriers licensed by them, Member States shall decide whether the operating licence shall be resubmitted for approval in case of change in one or more elements affecting the legal situation of the undertaking and, in particular, in the case of mergers or takeovers. The air carrier(s) in question may continue its (their) operations unless the licensing authority decides that safety is at risk, stating the reasons.

Article 12

An air carrier against which insolvency or similar proceedings are opened shall not be permitted by a Member State to retain its operating licence if the competent body in that Member State is convinced that there is no realistic prospect of a satisfactory financial reconstruction within a reasonable time.

Article 13

1. Procedures for the granting of operating licences shall be made public by the Member State concerned and the Commission shall be informed.
2. The Member State concerned shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant air transport undertaking. A refusal shall indicate the reasons therefor.

3. An undertaking whose application for an operating licence has been refused may refer the question to the Commission. If the Commission finds that the requirements of this Regulation have not been fulfilled it shall state its views on the correct interpretation of the Regulation without prejudice to Article 169 of the Treaty.

4. Decisions by Member States to grant or revoke operating licences shall be published in the *Official Journal of the European Communities*.

Article 14

1. In order to carry out its duties under Article 4 the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.
2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.
3. If the information required under paragraph 2 is not provided by the time limit set or the air carrier has not otherwise demonstrated that it meets the requirements of Article 4, the Commission shall, except where special circumstances exist, forthwith inform all Member States of the situation. Member States may, until notified by the Commission that documentation has been provided to demonstrate the fulfilment of the requirements in question, suspend any market access rights to which the air carrier is entitled under Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽¹⁾.

Article 15

In addition to the rules of this Regulation the air carrier shall also respect the requirements of national law compatible with Community law.

Article 16

Notwithstanding Article 3 (1), operating licences in force in a Member State at the date of entry into force of the Regulation shall remain valid, subject to the laws on the basis of which they were granted, for a maximum period of one year except in the case of Article 4 (1) (b) for which a maximum period of three years shall apply, during which periods the air carriers holding such licences shall make the necessary arrangements to conform with all the requirements of this Regulation. For the purposes of this Article, carriers holding operating licences shall be deemed

⁽¹⁾ See page 8 of this Official Journal.

to include carriers legitimately operating with a valid AOC at the date of entry into force of this Regulation but without holding such licences.

This Article shall be without prejudice to Article 4 (2) (3) (4) and (5) and Article 9, except that air carriers which operated by virtue of exemptions prior to the entry into force of this Regulation may continue to do so, for a period not exceeding the maximum periods specified above, pending enquiries by Member States as to their compliance with Article 4.

Article 17

Member States shall consult the Commission before adopting laws, regulations or administrative provisions in implementation of this Regulation. They shall

communicate any such measures to the Commission when adopted.

Article 18

1. Member States and the Commission shall cooperate in implementing this Regulation.
2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 19

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE

ANNEX

Information for use in association with Article 5 of financial fitness of air carriers

A. Information to be provided by a first-time applicant from a financial fitness point of view

1. The most recent internal management accounts and, if available, audited accounts for the previous financial year.
2. A projected balance sheet, including profit and loss account, for the following two years.
3. The basis for projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
4. Details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposes to finance these costs.
5. Details of existing and projected sources of finance.
6. Details of shareholders, including nationality and type of shares to be held, and the Articles of Association. If part of a group of undertakings, information on the relationship between them.
7. Projected cash-flow statements and liquidity plans for the first two years of operation.
8. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

B. Information to be provided for assessment of the continuing financial fitness of existing licence holders planning a change in their structures or in their activities with a significant bearing on their finances

1. If necessary, the most recent internal management balance sheet and audited accounts for the previous financial year.
2. Precise details of all proposed changes e.g. change of type of service, proposed takeover or merger, modifications in share capital, changes in shareholders, etc.
3. A projected balance sheet, with a profit and loss account, for the current financial year, including all proposed changes in structure or activities with a significant bearing on finances.
4. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
5. Cash-flow statements and liquidity plans for the following year, including all proposed changes in structure or activities with a significant bearing on finances.
6. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

C. Information to be provided for assessment of the continuing financial fitness of existing licence holders

1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.
2. A projected balance sheet, including profit and loss account, for the forthcoming year.
3. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
4. Cash-flow statements and liquidity plans for the following year.

COUNCIL REGULATION (EEC) No 2408/92

of 23 July 1992

on access for Community air carriers to intra-Community air routes

THE COUNCIL OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Decision 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States (4) and Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States (5) constitute the first steps towards achieving the internal market in respect of access for Community air carriers to schedules intra-Community air routes;

Whereas Regulation (EEC) No 2343/90 provides that the Council shall decide on the revision of that Regulation by 30 June 1992 at the latest;

Whereas in Regulation (EEC) No 2343/90 the Council decided to adopt rules governing route licensing for implementation not later than 1 July 1992;

Whereas in Regulation (EEC) No 2343/90 the Council decided to abolish capacity restrictions between Member States by 1 January 1993;

Whereas in Regulation (EEC) No 2343/90 the Council confirmed that cabotage traffic rights are an integral part of the internal market;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas the development of the air traffic system in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

Whereas it is necessary to abolish restrictions concerning multiple designation and fifth-freedom traffic rights and phase in cabotage rights in order to stimulate the development of the Community air transport sector and improve services for users;

Whereas it is necessary to make special provision, under limited circumstances, for public service obligations necessary for the maintenance of adequate air services to national regions;

Whereas it is necessary to make special provision for new air services between regional airports;

Whereas for air transport planning purposes it is necessary to give Member States the right to establish non-discriminatory rules for the distribution of air traffic between airports within the same airport system;

Whereas the exercise of traffic rights has to be consistent with operational rules relating to safety, protection of the environment and conditions concerning airport access and has to be treated without discrimination;

Whereas, taking into account problems of congestion or environmental problems, it is necessary to include the possibility of imposing certain limitations on the exercise of traffic rights;

(1) OJ No C 258, 4. 10. 1991, p. 2.

(2) OJ No C 125, 18. 5. 1992, p. 146.

(3) OJ No C 169, 6. 7. 1992, p. 15.

(4) OJ No L 374, 31. 12. 1987, p. 19.

(5) OJ No L 217, 11. 8. 1990, p. 8.

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

Whereas it is necessary to specify the duties of Member States and air carriers for the purposes of providing necessary information;

Whereas it is appropriate to ensure identical assessment and evaluation of market access for the same types of air services;

Whereas it is appropriate to deal with all matters of market access in the same Regulation;

Whereas this Regulation partially replaces Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns access to routes within the Community for scheduled and non-scheduled air services.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

4. Airports in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores shall be exempted from the application of this Regulation until 30 June 1993. Unless otherwise decided by the Council, on a proposal from the Commission, this exemption shall apply for a further period of five years and may be continued for five years thereafter.

Article 2

For the purposes of this Regulation:

(a) 'air carrier' means an air transport undertaking with a valid operating licence;

(b) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 of licensing of air carriers⁽²⁾;

(c) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;

(d) 'scheduled air service' means a series of flights possessing all the following characteristics:

(i) it is performed by aircraft for the transport of passengers, cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents);

(ii) it is operated so as to serve traffic between the same two or more airports, either:

1. according to a published timetable; or
2. with flights so regular or frequent that they constitute a recognizably systematic series;

(e) 'flight' means a departure from a specified airport towards a specified destination airport;

(f) 'traffic right' means the right of an air carrier to carry passengers, cargo and/or mail on an air service between two Community airports;

(g) 'seat-only sales' means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorized agent or a charterer;

(h) 'Member State(s) concerned' means the Member State(s) between or within which an air service is operated;

(i) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;

(j) 'State of registration' means the Member State in which the licence referred to in (b) is granted;

(k) 'airport' means any area in a Member State which is open for commercial air transport operations;

(l) 'regional airport' means any airport other than one listed in Annex I as a category 1 airport;

(m) 'airport system' means two or more airports grouped together as serving the same city or conurbation, as indicated in Annex II;

⁽¹⁾ OJ No L 36, 8. 2. 1991, p. 1.

⁽²⁾ See page 1 of this Official Journal.

(n) 'capacity' means the number of seats offered to the general public on a scheduled air service over a given period;

(o) 'public service obligation' means any obligation imposed upon an air carrier to take, in respect of any route which it is licensed to operate by a Member State, all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the air carrier would not assume if it were solely considering its commercial interest.

Article 3

1. Subject to this Regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community.

2. Notwithstanding paragraph 1, before 1 April 1997 a Member State shall not be required to authorize cabotage traffic rights within its territory by Community air carriers licensed by another Member State, unless:

- (i) the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as a preliminary of a service to, the State of registration of the carrier;
- (ii) the air carrier does not use, for the cabotage service, more than 50 % of its seasonal capacity on the same service of which the cabotage service constitutes the extension or the preliminary.

3. An air carrier operating cabotage services in accordance with paragraph 2 shall furnish on request to the Member State(s) involved all information necessary for the implementation of the provisions of that paragraph.

4. Notwithstanding paragraph 1, before 1 April 1997 a Member State may, without discrimination on grounds of nationality of ownership and air carrier identity, whether incumbent or applicant on the routes concerned, regulate access to routes within its territory for air carriers licensed by it in accordance with Regulation (EEC) No 2407/92 while otherwise not prejudging Community law and, in particular, competition rules.

Article 4

1. (a) A Member State, following consultations with the other Member States concerned and after having informed the Commission and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport

in its territory, any such route being considered vital for the economic development of the region in which the airport is located, to the extent necessary to ensure on that route the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing, which standards air carriers would not assume if they were solely considering their commercial interest. The Commission shall publish the existence of this public service obligation in the *Official Journal of the European Communities*.

(b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:

- (i) the public interest;
- (ii) the possibility, in particular for island regions, of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;
- (iii) the air fares and conditions which can be quoted to users;
- (iv) the combined effect of all air carriers operating or intending to operate on the route.

(c) In instances where other forms of transport cannot ensure an adequate and uninterrupted service, the Member States concerned may include in the public service obligation the requirement that any air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.

(d) If no air carrier has commenced or is about the commence scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, then the Member State may limit access to that route to only one air carrier for a period of up to three years, after which the situation shall be reviewed. The right to operate such services shall be offered by public tender either singly or for a group of such routes to any Community air carrier entitled to operate such air services. The invitation to tender shall be published in the *Official Journal of the European Communities* and the deadline for submission of tenders not be earlier than one month after the day of publication. The submissions made by air carriers shall forthwith be communicated to the other Member States concerned and to the Commission.

- (e) The invitation to tender and subsequent contract shall cover, *inter alia*, the following points:
 - (i) the standards required by the public service obligation;
 - (ii) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;
 - (iii) the period of validity of the contract;
 - (iv) penalties in the event of failure to comply with the contract.
- (f) The selection among the submissions shall be made as soon as possible taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required from the Member State(s) concerned, if any.
- (g) Notwithstanding subparagraph (f), a period of two months shall elapse after the deadline for submission of tenders before any selection is made, in order to permit other Member States to submit comments.
- (h) A Member State may reimburse an air carrier, which has been selected under subparagraph (f), for satisfying standards required by a public service obligation imposed under this paragraph; such reimbursement shall take into account the costs and revenue generated by the service.
- (i) Member States shall take the measures necessary to ensure that any decision taken under this Article can be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing that law.
- (j) When a public service obligation has been imposed in accordance with subparagraphs (a) and (c) then air carriers shall be able to offer seat-only sales only if the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.
- (k) Subparagraph (d) shall not apply in any case in which another Member State concerned proposes a satisfactory alternative means of fulfilling the same public service obligation.

2. Paragraph 1 (d) shall not apply to routes where other forms of transport can ensure an adequate and uninterrupted service when the capacity offered exceeds 30 000 seats per year.

3. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of paragraph 1, or on its own initiative, the

Commission shall carry out an investigation and within two months of receipt of the request shall take a decision on the basis of all relevant factors on whether paragraph 1 shall continue to apply in respect of the route concerned.

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Article 5

On domestic routes for which at the time of entry into force of this Regulation an exclusive concession has been granted by law or contract, and where other forms of transport cannot ensure an adequate and uninterrupted service, such a concession may continue until its expiry date or for three years, whichever deadline comes first.

Article 6

1. Notwithstanding Article 3, a Member State may, where one of the air carriers licensed by it has started to operate a scheduled passenger air service with aircraft of no more than 80 seats on a new route between regional airports where the capacity does not exceed 30 000 seats per year, refuse a scheduled air service by another air carrier for a period of two years, unless it is operated with aircraft of not more than 80 seats, or it is operated in such a way that not more than 80 seats are available for sale between the two airports in question on each flight.

2. Article 4 (3) and (4) shall apply in relation to paragraph 1 of this Article.

Article 7

In operating air services, a Community air carrier shall be permitted by the Member State(s) concerned to combine air services and use the same flight number.

Article 8

1. This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.

2. The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots.

3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

4. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

5. When a Member State decides to constitute a new airport system or modify an existing one it shall inform the other Member States and the Commission. After having verified that the airports are grouped together as serving the same city or conurbation the Commission shall publish a revised Annex II in the *Official Journal of the European Communities*.

Article 9

1. When serious congestion and/or environmental problems exist the Member State responsible may, subject to this Article, impose conditions on, limit or refuse the exercise of traffic rights, in particular when other modes of transport can provide satisfactory levels of service.

2. Action taken by a Member State in accordance with paragraph 1 shall:

- be non-discriminatory on grounds of nationality or identity of air carriers,
- have a limited period of validity, not exceeding three years, after which it shall be reviewed,
- not unduly affect the objectives of this Regulation,
- not unduly distort competition between air carriers,
- not be more restrictive than necessary in order to relieve the problems.

3. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 4, takes it up for further examination.

4. At the request of a Member State or on its own initiative the Commission shall examine action referred to in paragraph 1. When the Commission, within one month of having been informed under paragraph 3, takes the action up for examination it shall at the same time indicate

whether the action may be implemented, wholly or partially, during the examination taking into account in particular the possibility of irreversible effects. After consulting the Committee referred to in Article 11 the Commission shall, one month after having received all necessary information, decide whether the action is appropriate and in conformity with this Regulation and not in any other way contrary to Community law. The Commission shall communicate its decision to the Council and the Member States. Pending such decision the Commission may decide on interim measures including the suspension, in whole or in part, of the action, taking into account in particular the possibility of irreversible effects.

5. Notwithstanding paragraphs 3 and 4, a Member State may take the necessary action to deal with sudden problems of short duration provided that such action is consistent with paragraph 2. The Commission and the Member State(s) shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days. At the request of the Member State(s) involved or on its own initiative the Commission may suspend this action if it does not meet the requirements of paragraphs 1 and 2 or is otherwise contrary to Community law.

6. Any Member State may refer the Commission's decision under paragraph 4 or 5 to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

7. When a decision taken by a Member State in accordance with this Article limits the activity of a Community air carrier on an intra-Community route, the same conditions or limitation shall apply to all Community air carriers on the same route. When the decision involves the refusal of new or additional services, the same treatment shall be given to all requests by Community air carriers for new or additional services on that route.

8. Without prejudice to Article 8 (1) and except with the agreement of the Member State(s) involved, a Member State shall not authorize an air carrier:

(a) to establish a new service, or

(b) to increase the frequency of an existing service,

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of slot-allocation rules as provided for in Article 8 (2), to establish a new service or to increase frequencies on an

existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality.

3. Furthermore, the Committee may be consulted by the Commission on any other question concerning the application of this Regulation.

4. The Committee shall draw up its rules of procedure.

Article 10

1. Capacity limitations shall not apply to air services covered by this Regulation except as set out in Articles 8 and 9 and in this Article.

2. Where the application of paragraph 1 has led to serious financial damage for the scheduled air carrier(s) licensed by a Member State, the Commission shall carry out a review at the request of that Member State and, on the basis of all relevant factors, including the market situation and in particular whether a situation exists whereby the opportunities of air carriers of that Member State to effectively compete in the market are unduly affected, the financial position of the air carrier(s) concerned and the capacity utilization achieved, shall take a decision on whether the capacity for scheduled air services to and from that State should be stabilized for a limited period.

3. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 12

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.

2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be applied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

Article 13

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

Article 14

1. Member States and the Commission shall cooperate in implementing this Regulation.

2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 15

Regulation (EEC) No 2343/90 and 294/91 are hereby replaced with the exceptions of Article 2 (e) (ii) and of Annex I to Regulation (EEC) No 2343/90, as interpreted by Annex II to this Regulation, and Article 2 (b) of and the Annex to Regulation (EEC) No 294/91.

Article 16

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE

ANNEX I

List of category 1 airports

BELGIUM:	Brussels-Zaventem
DENMARK:	Copenhagen airport system
GERMANY:	Frankfurt-Rhein/Main Düsseldorf-Lohausen Munich Berlin airport system
SPAIN:	Palma-Mallorca Madrid-Barajas Malaga Las Palmas
GREECE:	Athens-Hellinikon Thessalonika-Macedonia
FRANCE:	Paris airport system
IRELAND:	Dublin
ITALY:	Rome airport system Milan airport system
NETHERLANDS:	Amsterdam-Schiphol
PORTUGAL:	Lisbon Faro
UNITED KINGDOM:	London airport system Luton

ANNEX II

List of airport systems

DENMARK:	Copenhagen-Kastrup/Roskilde
GERMANY:	Berlin-Tegel/Schönefeld/Tempelhof
FRANCE:	Paris-Charles De Gaulle/Orly/Le Bourget Lyon-Bron-Satolas
ITALY:	Rome-Fiumicino/Ciampino Milan-Linate/Malpensa/Bergamo (Orio al Serio) Venice-Tessera/Treviso
UNITED KINGDOM:	London-Heathrow/Gatwick/Stansted

ANNEX III

Interpretation referred to in Article 15

Under the terms of Annex I to Regulation (EEC) No 2343/90 the air carrier Scanair, which is structured and organized exactly as Scandinavian Airlines System, is to be considered in the same way as the air carrier Scandinavian Airlines System.

COUNCIL REGULATION (EEC) No 2409/92
of 23 July 1992
on fares and rates for air services

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Decision 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States (4) and Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services (5) constitute the first steps towards achieving the internal market in respect of air fares;

Whereas air fares should normally be determined freely by market forces;

Whereas it is appropriate to complement price freedom with adequate safeguards for the interests of consumers and industry;

Whereas it is appropriate to deal with all matters of pricing in the same Regulation;

Whereas this Regulation replaces Regulation (EEC) No 2342/90 and partially replaces Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States (6),

Article 1

1. This Regulation concerns the criteria and procedures to be applied for the establishment of fares and rates on air services for carriage wholly within the Community.

2. Without prejudice to paragraph 3, this Regulation shall not apply:

(a) to fares and rates charged by air carriers other than Community air carriers;

(b) to fares and rates established by public service obligation, in accordance with Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (7).

3. Only Community air carriers shall be entitled to introduce new products or lower fares than the ones existing for identical products.

Article 2

For the purposes of this Regulation:

(a) 'air fares' means the prices expressed in ecus or in local currency to be paid by passengers to air carriers or their agents for the carriage of them and for the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

(b) 'seat rates' means the prices expressed in ecus or in local currency to be paid by charterers to air carriers for the carriage on air services of the charterer or its customers and their baggage and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

(c) 'charter fares' means the prices expressed in ecus or in local currency to be paid by passengers to charterers for services which constitute or include their carriage and the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency or other auxiliary services;

(1) OJ No C 258, 4. 10. 1991, p. 2.

(2) OJ No C 125, 18. 5. 1992, p. 150.

(3) OJ No C 169, 6. 7. 1992, p. 15.

(4) OJ No L 374, 31. 12. 1987, p. 12.

(5) OJ No L 217, 11. 8. 1990, p. 1.

(6) OJ No L 36, 8. 2. 1991, p. 1.

(7) See page 8 of this Official Journal.

- (d) 'cargo rates' means the prices expressed in ecus or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (e) 'standard cargo rates' means the rates which the air carrier would normally quote including the availability of normal discounts;
- (f) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (g) 'air carrier' means an air transport undertaking with a valid operating licence.
- (h) 'Community air carrier' means an air carrier with a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽¹⁾;
- (i) 'Member State(s) concerned' means the Member State(s) between or within which the fare or rate is applied;
- (j) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
- (k) 'basic fare' means the lowest fully flexible fare, available on a one way and return basis, which is offered for sale at least to the same extent as that of any other fully flexible fare offered on the same air service.

Article 3

Charter fares and seat and cargo rates charged by Community air carriers shall be set by free agreement between the parties to the contract of carriage.

Article 4

Air carriers operating within the Community shall inform the general public, on request, of all air fares and standard cargo rates.

Article 5

1. Without prejudice to this Regulation, Community air carriers shall freely set air fares.
2. Member State(s) concerned may, without discrimination on grounds of nationality or identity of air carriers, require air fares to be filed with them in the form prescribed by them. Such filing shall not be required to be submitted more than 24 hours (including a working day)

⁽¹⁾ See page 1 of this Official Journal.

before the air fares come into effect, except in the case of matching of an existent fare for which no more than prior notification is required.

3. Before 1 April 1997, a Member State may require that air fares on domestic routes where no more than one carrier licensed by it, or two carriers licensed by it under a joint operation, operate have to be filed more than one working day but no more than one month before the air fares come into effect.

4. An air fare may be available for sale and carriage as long as it is not withdrawn in accordance with Article 6 or Article 7.

Article 6

1. Subject to the procedures of this Article, a Member State concerned may decide, at any moment:

- (a) to withdraw a basic fare which, taking into account the whole fare structure for the route in question and other relevant factors including the competitive market situation, is excessively high to the disadvantage of users in relation to the long term fully-allocated relevant costs of the air carrier including a satisfactory return on capital;
- (b) to stop, in a non-discriminatory way, further fare decreases in a market, whether on a route or a group of routes, when market forces have led to sustained downward development of air fares deviating significantly from ordinary seasonal pricing movements and resulting in widespread losses among all air carriers concerned for the air services concerned, taking into account the long term fully-allocated relevant costs of the air carriers.

2. A decision taken pursuant to paragraph 1 shall be notified with reasons to the Commission and to all other Member State(s) involved, as well as to the air carrier(s) concerned.

3. If within fourteen days of the date of receiving notification no other Member State concerned or the Commission has notified disagreement stating its reasons on the basis of paragraph 1, the Member State which has taken the decision pursuant to paragraph 1 may instruct the air carrier(s) concerned to withdraw the basic fare or to abstain from further fare decreases, as appropriate.

4. In the case of disagreement, any Member State involved may require consultations to review the situation. The consultations shall take place within 14 days of being requested, unless otherwise agreed.

Article 7

1. At the request of a Member State involved the Commission shall examine whether a decision to act or not to act pursuant to Article 6 complies with the criteria of Article 6 (1). The Member State shall at the same time inform the other Member State(s) concerned and the air carrier(s) concerned. The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

2. Notwithstanding paragraph 1, the Commission may, on the basis of a complaint made by a party with a legitimate interest, investigate whether air fares comply with the criteria of Article 6 (1). The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

3. An air fare in force at the time of its submission for examination in accordance with paragraph 1 shall remain in force during the examination. However, where the Commission, or the Council in accordance with paragraph 8, has decided within the previous six months that a similar or lower level of the basic fare on the city-pair concerned does not comply with the criteria of Article 6 (1) (a), the air fare shall not remain in force during the examination.

Furthermore, where paragraph 6 has been applied, the air carrier concerned may not, during the examination by the Commission, apply a higher basic fare than the one which was applicable immediately before the basic fare under examination.

4. Following consultations with the Member States concerned, the Commission shall take a decision as soon as possible and in any event not later than twenty working days after having received sufficient information from the air carrier(s) concerned. The Commission shall take into account all information received from interested parties.

5. When an air carrier does not supply the information requested within the time limit fixed by the Commission, or supplies it in incomplete form, the Commission shall be decision require the information to be supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

6. The Commission may, by decision, decide that an air fare in force shall be withdrawn pending its final

determination where an air carrier supplies incorrect information or produces it in incomplete form or does not supply it within the time limit fixed by decision under paragraph 5.

7. The Commission shall without delay communicate its reasoned decision under paragraphs 4 and 6 to the Member State(s) concerned and to the air carrier(s) concerned.

8. A Member State concerned may refer the Commission's decision under paragraph 4 to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

9. The Member States concerned shall ensure that the Commission's decision is enforced, unless the decision is under examination by the Council or the Council has taken a different decision in accordance with paragraph 8.

Article 8

At least once a year the Commission shall consult on air fares and related matters with representatives of air transport user organizations in the Community, for which purpose the Commission shall supply appropriate information to participants.

Article 9

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

Article 10

1. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in Article 9.

2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 11

Regulation (EEC) No 2342/90 is hereby repealed.

Article 12

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE

COUNCIL REGULATION (EEC) No 2410/92

of 23 July 1992

amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Regulation (EEC) No 3975/87 (4) formed part of a package of interrelated measures adopted by the Council as a first step towards completing the internal market in transport; whereas its scope was accordingly limited to international air transport between Community airports;

Whereas, therefore, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 of the Treaty and lacks the powers to take decisions or impose such penalties as are necessary for it to authorize agreements under Article 85 (3) and to bring to an end infringements established by it in relation to transport within a Member State;

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

Done at Brussels, 23 July 1992

Whereas air transport entirely within a Member State is now also subject to Community liberalization measures; whereas it is therefore desirable for rules to be laid down under which the Commission, action in close and constant liaison with the competent authorities of the Member States, may take the requisite measures for the application of Articles 85 and 86 of the Treaty to this area of air transport, in situations where trade between Member States may be affected;

Whereas there is a need to establish a secure and clear legal framework for air transport within a Member State, while ensuring consistent application of the competition rules; whereas, therefore, the scope of Regulation (EEC) No 2975/87 should be extended to this area of air transport,

HAS ADOPTED THIS REGULATION:

Article 1

The word 'international' is hereby deleted from Article 1 (2) of Regulation (EEC) No 3975/87.

Article 2

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

For the Council

The President

J. COPE

(1) OJ No C 255, 30.8.1991, p. 9.

(2) OJ No C 125, 18.5.1992, p. 130.

(3) OJ No C 169, 6.7.1992, p. 13.

(4) OJ No L 374, 31.12.1987, p. 1.

COUNCIL REGULATION (EEC) No 2411/92
of 23 July 1992

amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty
to certain categories of agreements and concerted practices in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, in accordance with Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules of competition to undertakings in the air transport sector (4), the Commission now has power to implement the competition rules in respect of air transport within a Member State; whereas it is therefore desirable to provide for the possibility of adopting block exemptions applicable to that area of transport;

Whereas Regulation (EEC) No 3976/87 (5) empowers the Commission to declare by way of Regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas the power to adopt these block exemptions was granted for a limited period, expiring on 31 December 1992, to allow air carriers to adapt to the more competitive environment resulting from changes in the regulatory systems applicable to intra-Community international air transport;

Whereas a continuation of block exemptions after that date is justified by the further measures to liberalize the air transport sector adopted by the Community; whereas the

scope of these block exemptions and the conditions attached to them should be defined by the Commission, close liaison with the Member States, taking into account changes to the competitive environment achieved since the entry into force of Regulation (EEC) No 3976/87,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3976/87 is hereby amended as follows:

1. The word 'international' shall be deleted in Article 1.
2. Article 2 (2) shall be replaced by the following:
'2. The Commission may, in particular, adopt such Regulations in respect of agreements, decisions and concerted practices which have as their object any of the following:
 - joint planning and coordination of air transport schedules,
 - consultations on tariffs for the carriage of passengers and baggage and of freight on scheduled air services,
 - joint operations on new less busy scheduled air services,
 - slot allocation at airports and airport scheduling, the Commission shall take care to ensure consistency with the Code of Conduct adopted by the Council,
 - common purchase, development and operation of computer reservation systems relating to timetabling, reservations and ticketing by air transport undertakings; the Commission shall take care to ensure consistency with the Code of Conduct adopted by the Council.'

3. Article 3 shall be replaced by the following:

Article 3

Any Regulation adopted pursuant to Article 2 shall be for a specified period.

(1) OJ No C 255, 30. 8. 1991, p. 10.

(2) Opinion delivered on 10 July 1992 (not yet published in the Official Journal).

(3) OJ No C 169, 6. 7. 1992, p. 13.

(4) OJ No L 374, 31. 12. 1987, p. 1. Last amended by Regulation (EEC) No 2410/92 (See page 18 of this Official Journal).

(5) OJ No L 374, 31. 12. 1987, p. 9. Amended by Regulation (EEC) No 2344/90 (OJ No L 217, 11. 8. 1990, p. 15).

It may be repealed or amended where circumstances have changed with respect to any of the factors which prompted its adoption; in such case, a period shall be fixed for amendment of the agreements and concerted practices to which the earlier Regulation applied before repeal or amendment.'

4. Article 8 shall be deleted.

Article 2

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

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

Done at Brussels, 23 July 1992.

For the Council

The President

J. COPE

Council Regulation 4064/89

COUNCIL REGULATION (EEC) No 4064/89
of 21 December 1989
on the control of concentrations between undertakings

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 87 and 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

- (1) Whereas, for the achievement of the aims of the Treaty establishing the European Economic Community, Article 3 (f) gives the Community the objective of instituting 'a system ensuring that competition in the common market is not distorted' ;
- (2) Whereas this system is essential for the achievement of the internal market by 1992 and its further development ;
- (3) Whereas the dismantling of internal frontiers is resulting and will continue to result in major corporate reorganizations in the Community, particularly in the form of concentrations ;
- Whereas such a development must be welcomed as being in line with the requirements of dynamic competition and capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the Community ;
- (5) Whereas, however, it must be ensured that the process of reorganization does not result in lasting damage to competition ; whereas Community law must therefore include provisions governing those concentrations which may significantly impede effective competition in the common market or in a substantial part of it ;
- 6) Whereas Articles 85 and 86, while applicable, according to the case-law of the Court of Justice, to certain concentrations, are not, however, sufficient to control all operations which may prove to be

incompatible with the system of undistorted competition envisaged in the Treaty ;

- (7) Whereas a new legal instrument should therefore be created in the form of a Regulation to permit effective control of all concentrations from the point of view of their effect on the structure of competition in the Community and to be the only instrument applicable to such concentrations ;
- (8) Whereas this Regulation should therefore be based not only on Article 87 but, principally, on Article 235 of the Treaty, under which the Community may give itself the additional powers of action necessary for the attainment of its objectives, including with regard to concentrations on the markets for agricultural products listed in Annex II to the Treaty ;
- (9) Whereas the provisions to be adopted in this Regulation should apply to significant structural changes the impact of which on the market goes beyond the national borders of any one Member State ;
- (10) Whereas the scope of application of this Regulation should therefore be defined according to the geographical area of activity of the undertakings concerned and be limited by quantitative thresholds in order to cover those concentrations which have a Community dimension ; whereas, at the end of an initial phase of the application of this Regulation, these thresholds should be reviewed in the light of the experience gained ;
- (11) Whereas a concentration with a Community dimension exists where the combined aggregate turnover of the undertakings concerned exceeds given levels worldwide and within the Community and where at least two of the undertakings concerned have their sole or main fields of activities in different Member States or where, although the undertakings in question act mainly in one and the same Member State, at least one of them has substantial operations in at least one other Member State ; whereas that is also the case where the concentrations are effected by undertakings which do not have their principal fields of activities in the Community but which have substantial operations there ;
- (12) Whereas the arrangements to be introduced for the control of concentrations should, without prejudice to Article 90 (2) of the Treaty, respect the principle of non-discrimination between the public and the

¹⁾ OJ No C 130, 19. 5. 1988, p. 4.

²⁾ OJ No C 309, 5. 12. 1988, p. 55.

³⁾ OJ No C 208, 8. 8. 1988, p. 11.

private sectors ; whereas, in the public sector, calculation of the turnover of an undertaking concerned in a concentration needs, therefore, to take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them ;

(13) Whereas it is necessary to establish whether concentrations with a Community dimension are compatible or not with the common market from the point of view of the need to maintain and develop effective competition in the common market ; whereas, in so doing, the Commission must place its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2 of the Treaty, including that of strengthening the Community's economic and social cohesion, referred to in Article 130a ;

(14) Whereas this Regulation should establish the principle that a concentration with a Community dimension which creates or strengthens a position as a result of which effective competition in the common market or in a substantial part of it is significantly impeded is to be declared incompatible with the common market ;

(15) Whereas concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market ; whereas, without prejudice to Articles 85 and 86 of the Treaty, an indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25 % either in the common market or in a substantial part of it ;

(16) Whereas the Commission should have the task of taking all the decisions necessary to establish whether or not concentrations with a Community dimension are compatible with the common market, as well as decisions designed to restore effective competition ;

(17) Whereas to ensure effective control undertakings should be obliged to give prior notification of concentrations with a Community dimension and provision should be made for the suspension of concentrations for a limited period, and for the possibility of extending or waiving a suspension where necessary ; whereas in the interests of legal certainty the validity of transactions must nevertheless be protected as much as necessary ;

(18) Whereas a period within which the Commission must initiate proceedings in respect of a notified concentration and periods within which it must give a final decision on the compatibility or incompatibility with the common market of a notified concentration should be laid down ;

(19) Whereas the undertakings concerned must be afforded the right to be heard by the Commission when proceedings have been initiated ; whereas the members of the management and supervisory bodies and the recognized representatives of the employees of the undertakings concerned, and third parties showing a legitimate interest, must also be given the opportunity to be heard ;

(20) Whereas the Commission should act in close and constant liaison with the competent authorities of the Member States from which it obtains comments and information ;

(21) Whereas, for the purposes of this Regulation, and in accordance with the case-law of the Court of Justice, the Commission must be afforded the assistance of the Member States and must also be empowered to require information to be given and to carry out the necessary investigations in order to appraise concentrations ;

(22) Whereas compliance with this Regulation must be enforceable by means of fines and periodic penalty payments ; whereas the Court of Justice should be given unlimited jurisdiction in that regard pursuant to Article 172 of the Treaty ;

(23) Whereas it is appropriate to define the concept of concentration in such a manner as to cover only operations bringing about a lasting change in the structure of the undertakings concerned ; whereas it is therefore necessary to exclude from the scope of this Regulation those operations which have as their object or effect the coordination of the competitive behaviour of undertakings which remain independent, since such operations fall to be examined under the appropriate provisions of the Regulations implementing Articles 85 and 86 of the Treaty ; whereas it is appropriate to make this distinction specifically in the case of the creation of joint ventures ;

(24) Whereas there is no coordination of competitive behaviour within the meaning of this Regulation where two or more undertakings agree to acquire jointly control of one or more other undertakings with the object and effect of sharing amongst themselves such undertakings or their assets ;

(25) Whereas this Regulation should still apply where the undertakings concerned accept restrictions directly related and necessary to the implementation of the concentration;

(26) Whereas the Commission should be given exclusive competence to apply this Regulation, subject to review by the Court of Justice;

(27) Whereas the Member States may not apply their national legislation on competition to concentrations with a Community dimension, unless this Regulation makes provision therefor; whereas the relevant powers of national authorities should be limited to cases where, failing intervention by the Commission, effective competition is likely to be significantly impeded within the territory of a Member State and where the competition interests of that Member State cannot be sufficiently protected otherwise by this Regulation; whereas the Member States concerned must act promptly in such cases; whereas this Regulation cannot, because of the diversity of national law, fix a single deadline for the adoption of remedies;

(28) Whereas, furthermore, the exclusive application of this Regulation to concentrations with a Community dimension is without prejudice to Article 223 of the Treaty, and does not prevent the Member States from taking appropriate measures to protect legitimate interests other than those pursued by this Regulation, provided that such measures are compatible with the general principles and other provisions of Community law;

(29) Whereas concentrations not covered by this Regulation come, in principle, within the jurisdiction of the Member States; whereas, however, the Commission should have the power to act, at the request of a Member State concerned, in cases where effective competition could be significantly impeded within that Member State's territory;

(30) Whereas the conditions in which concentrations involving Community undertakings are carried out in non-member countries should be observed, and provision should be made for the possibility of the Council giving the Commission an appropriate mandate for negotiation with a view to obtaining non-discriminatory treatment for Community undertakings;

(31) Whereas this Regulation in no way detracts from the collective rights of employees as recognized in the undertakings concerned;

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Without prejudice to Article 22 this Regulation shall apply to all concentrations with a Community dimension as defined in paragraph 2.

2. For the purposes of this Regulation, a concentration has a Community dimension where:

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than ECU 5 000 million; and

(b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

3. The thresholds laid down in paragraph 2 will be reviewed before the end of the fourth year following that of the adoption of this Regulation by the Council acting by a qualified majority on a proposal from the Commission.

Article 2

Appraisal of concentrations

1. Concentrations within the scope of this Regulation shall be appraised in accordance with the following provisions with a view to establishing whether or not they are compatible with the common market.

In making this appraisal, the Commission shall take into account:

(a) the need to maintain and develop effective competition within the common market in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outside the Community;

(b) the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

2. A concentration which does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared compatible with the common market.

3. A concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market.

Article 3

Definition of concentration

1. A concentration shall be deemed to arise where:

- (a) two or more previously independent undertakings merge, or
- (b) — one or more persons already controlling at least one undertaking, or
- one or more undertakings

acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings.

2. An operation, including the creation of a joint venture, which has as its object or effect the coordination of the competitive behaviour of undertakings which remain independent shall not constitute a concentration within the meaning of paragraph 1 (b).

The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, which does not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture, shall constitute a concentration within the meaning of paragraph 1 (b).

3. For the purposes of this Regulation, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking;
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

4. Control is acquired by persons or undertakings which:

- (a) are holders of the rights or entitled to rights under the contracts concerned; or

(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

5. A concentration shall not be deemed to arise where:

- (a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;
- (b) control is acquired by an office-holder according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;
- (c) the operations referred to in paragraph 1 (b) are carried out by the financial holding companies referred to in Article 5 (3) of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies⁽¹⁾, as last amended by Directive 84/569/EEC⁽²⁾, provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

Article 4

Prior notification of concentrations

1. Concentrations with a Community dimension defined in this Regulation shall be notified to the Commission not more than one week after the conclusion of the agreement, or the announcement of the public bid, or the acquisition of a controlling interest. That week shall begin when the first of those events occurs.

2. A concentration which consists of a merger within the meaning of Article 3 (1) (a) or in the acquisition of joint control within the meaning of Article 3 (1) (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽²⁾ OJ No L 314, 4. 12. 1984, p. 28.

3. Where the Commission finds that a notified concentration falls within the scope of this Regulation, it shall publish the fact of the notification, at the same time indicating the names of the parties, the nature of the concentration and the economic sectors involved. The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets.

Article 5

Calculation of turnover

1. Aggregate turnover within the meaning of Article 1 (2) shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.

Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.

2. By way of derogation from paragraph 1, where the concentration consists in the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the transaction shall be taken into account with regard to the seller or sellers.

However, two or more transactions within the meaning of the first subparagraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.

3. In place of turnover the following shall be used:

(a) for credit institutions and other financial institutions, as regards Article 1 (2) (a), one-tenth of their total assets.

As regards Article 1 (2) (b) and the final part of Article 1 (2), total Community-wide turnover shall be replaced by one-tenth of total assets multiplied by the ratio between loans and advances to credit institutions and customers in transactions with Community residents and the total sum of those loans and advances.

As regards the final part of Article 1 (2), total turnover within one Member State shall be replaced by one-tenth of total assets multiplied by the ratio between loans and advances to credit institutions and custo-

mers in transactions with residents of that Member State and the total sum of those loans and advances;

(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums; as regards Article 1 (2) (b) and the final part of Article 1 (2), gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account.

4. Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) shall be calculated by adding together the respective turnovers of the following:

- (a) the undertaking concerned;
- (b) those undertakings in which the undertaking concerned, directly or indirectly:
 - owns more than half the capital or business assets, or
 - has the power to exercise more than half the voting rights, or
 - has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
 - has the right to manage the undertakings' affairs;
- (c) those undertakings which have in the undertaking concerned the rights or powers listed in (b);
- (d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);
- (e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).

5. Where undertakings concerned by the concentration jointly have the rights or powers listed in paragraph 4 (b), in calculating the aggregate turnover of the undertakings concerned for the purposes of Article 1 (2):

- (a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4 (b) to (e);
- (b) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings. This turnover shall be apportioned equally amongst the undertakings concerned.

Article 6**Examination of the notification and initiation of proceedings**

1. The Commission shall examine the notification as soon as it is received.

(a) Where it concludes that the concentration notified does not fall within the scope of this Regulation, it shall record that finding by means of a decision.

(b) Where it finds that the concentration notified, although falling within the scope of this Regulation, does not raise serious doubts as to its compatibility with the common market, it shall decide not to oppose it and shall declare that it is compatible with the common market.

(c) If, on the other hand, it finds that the concentration notified falls within the scope of this Regulation and raises serious doubts as to its compatibility with the common market, it shall decide to initiate proceedings.

2. The Commission shall notify its decision to the undertakings concerned and the competent authorities of the Member States without delay.

Article 7**Suspension of concentrations**

1. For the purposes of paragraph 2 a concentration as defined in Article 1 shall not be put into effect either before its notification or within the first three weeks following its notification.

2. Where the Commission, following a preliminary examination of the notification within the period provided for in paragraph 1, finds it necessary in order to ensure the full effectiveness of any decision taken later pursuant to Article 8 (3) and (4), it may decide on its own initiative to continue the suspension of a concentration in whole or in part until it takes a final decision, or to take other interim measures to that effect.

3. Paragraphs 1 and 2 shall not prevent the implementation of a public bid which has been notified to the Commission in accordance with Article 4 (1), provided that the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the Commission under paragraph 4.

4. The Commission may, on request, grant a derogation from the obligations imposed in paragraphs 1, 2 or 3

in order to prevent serious damage to one or more undertakings concerned by a concentration or to a third party. That derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, even before notification or after the transaction.

5. The validity of any transaction carried out in contravention of paragraph 1 or 2 shall be dependent on a decision pursuant to Article 6 (1) (b) or Article 8 (2) or (3) or on a presumption pursuant to Article 10 (6).

This Article shall, however, have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market which is regulated and supervised by authorities recognized by public bodies, operates regularly and is accessible directly or indirectly to the public, unless the buyer and seller knew or ought to have known that the transaction was carried out in contravention of paragraph 1 or 2.

Article 8**Powers of decision of the Commission**

1. Without prejudice to Article 9, all proceedings initiated pursuant to Article 6 (1) (c) shall be closed by means of a decision as provided for in paragraphs 2 to 5.

2. Where the Commission finds that, following modification by the undertakings concerned if necessary, a notified concentration fulfils the criterion laid down in Article 2 (2), it shall issue a decision declaring the concentration compatible with the common market.

It may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to modifying the original concentration plan. The decision declaring the concentration compatible shall also cover restrictions directly related and necessary to the implementation of the concentration.

3. Where the Commission finds that a concentration fulfils the criterion laid down in Article 2 (3), it shall issue a decision declaring that the concentration is incompatible with the common market.

4. Where a concentration has already been implemented, the Commission may, in a decision pursuant to paragraph 3 or by separate decision, require the undertakings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore conditions of effective competition.

5. The Commission may revoke the decision it has taken pursuant to paragraph 2 where:

- (a) the declaration of compatibility is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit; or
- (b) the undertakings concerned commit a breach of an obligation attached to the decision.

6. In the cases referred to in paragraph 5, the Commission may take a decision under paragraph 3, without being bound by the deadline referred to in Article 10 (3).

Article 9

Referral to the competent authorities of the Member States

1. The Commission may, by means of a decision notified without delay to the undertakings concerned and the competent authorities of the other Member States, refer a notified concentration to the competent authorities of the Member State concerned in the following circumstances.

2. Within three weeks of the date of receipt of the copy of the notification a Member State may inform the Commission, which shall inform the undertakings concerned, that a concentration threatens to create or to strengthen a dominant position as a result of which effective competition would be significantly impeded on a market, within that Member State, which presents all the characteristics of a distinct market, be it a substantial part of the common market or not.

3. If the Commission considers that, having regard to the market for the products or services in question and the geographical reference market within the meaning of paragraph 7, there is such a distinct market and that such a threat exists, either:

- (a) it shall itself deal with the case in order to maintain or restore effective competition on the market concerned; or
- (b) it shall refer the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law.

If, however, the Commission considers that such a distinct market or threat does not exist it shall adopt a decision to that effect which it shall address to the Member State concerned.

4. A decision to refer or not to refer pursuant to paragraph 3 shall be taken:

- (a) as a general rule within the six-week period provided for in Article 10 (1), second subparagraph, where the Commission, pursuant to Article 6 (1) (b), has not initiated proceedings; or
- (b) within three months at most of the notification of the concentration concerned where the Commission has initiated proceedings under Article 6 (1) (c), without

taking the preparatory steps in order to adopt the necessary measures under Article 8 (2), second subparagraph, (3) or (4) to maintain or restore effective competition on the market concerned.

5. If within the three months referred to in paragraph 4 (b) the Commission, despite a reminder from the Member State concerned, has not taken a decision on referral in accordance with paragraph 3 nor has taken the preparatory steps referred to in paragraph 4 (b), it shall be deemed to have taken a decision to refer the case to the Member State concerned in accordance with paragraph 3 (b).

6. The publication of any report or the announcement of the findings of the examination of the concentration by the competent authority of the Member State concerned shall be effected not more than four months after the Commission's referral.

7. The geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

8. In applying the provisions of this Article, the Member State concerned may take only the measures strictly necessary to safeguard or restore effective competition on the market concerned.

9. In accordance with the relevant provisions of the Treaty, any Member State may appeal to the Court of Justice, and in particular request the application of Article 186, for the purpose of applying its national competition law.

10. This Article will be reviewed before the end of the fourth year following that of the adoption of this Regulation.

Article 10

Time limits for initiating proceedings and for decisions

1. The decisions referred to in Article 6 (1) must be taken within one month at most. That period shall begin on the day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the day following that of the receipt of the complete information.

That period shall be increased to six weeks if the Commission receives a request from a Member State in accordance with Article 9 (2).

2. Decisions taken pursuant to Article 8 (2) concerning notified concentrations must be taken as soon as it appears that the serious doubts referred to in Article 6 (1) (c) have been removed, particularly as a result of modifications made by the undertakings concerned, and at the latest by the deadline laid down in paragraph 3.

3. Without prejudice to Article 8 (6), decisions taken pursuant to Article 8 (3) concerning notified concentrations must be taken within not more than four months of the date on which proceedings are initiated.

4. The period set by paragraph 3 shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an investigation by decision pursuant to Article 13.

5. Where the Court of Justice gives a judgement which annuls the whole or part of a Commission decision taken under this Regulation, the periods laid down in this Regulation shall start again from the date of the judgement.

6. Where the Commission has not taken a decision in accordance with Article 6 (1) (b) or (c) or Article 8 (2) or (3) within the deadlines set in paragraphs 1 and 3 respectively, the concentration shall be deemed to have been declared compatible with the common market, without prejudice to Article 9.

Article 11

Requests for information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States, from the persons referred to in Article 3 (1) (b), and from undertakings and associations of undertakings.

2. When sending a request for information to a person, an undertaking or an association of undertakings, the Commission shall at the same time send a copy of the request to the competent authority of the Member State within the territory of which the residence of the person or the seat of the undertaking or association of undertakings is situated.

3. In its request the Commission shall state the legal basis and the purpose of the request and also the penalties provided for in Article 14 (1) (c) for supplying incorrect information.

4. The information requested shall be provided, in the case of undertakings, by their owners or their representatives and, in the case of legal persons, companies or firms,

or of associations having no legal personality, by the persons authorized to represent them by law or by their statutes.

5. Where a person, an undertaking or an association of undertakings does not provide the information requested within the period fixed by the Commission or provides incomplete information, the Commission shall by decision require the information to be provided. The decision shall specify what information is required, fix an appropriate period within which it is to be supplied and state the penalties provided for in Articles 14 (1) (c) and 15 (1) (a) and the right to have the decision reviewed by the Court of Justice.

6. The Commission shall at the same time send a copy of its decision to the competent authority of the Member State within the territory of which the residence of the person or the seat of the undertaking or association of undertakings is situated.

Article 12

Investigations by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 13 (1), or which it has ordered by decision pursuant to Article 13 (3). The officials of the competent authorities of the Member States responsible for conducting those investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State within the territory of which the investigation is to be carried out. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State within the territory of which the investigation is to be carried out, officials of the Commission may assist the officials of that authority in carrying out their duties.

Article 13

Investigative powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings.

To that end the officials authorized by the Commission shall be empowered:

- (a) to examine the books and other business records;
- (b) to take or demand copies of or extracts from the books and business records;

- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and means of transport of undertakings.

2. The officials of the Commission authorized to carry out the investigations shall exercise their powers on production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 14 (1) (d) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform, in writing, the competent authority of the Member State within the territory of which the investigation is to be carried out of the investigation and of the identities of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it shall begin and state the penalties provided for in Articles 14 (1) (d) and 15 (1) (b) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall in good time and in writing inform the competent authority of the Member State within the territory of which the investigation is to be carried out of its intention of taking a decision pursuant to paragraph 3. It shall hear the competent authority before taking its decision.

5. Officials of the competent authority of the Member State within the territory of which the investigation is to be carried out may, at the request of that authority or of the Commission, assist the officials of the Commission in carrying out their duties.

6. Where an undertaking or association of undertakings opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to carry out their investigation. To this end the Member States shall, after consulting the Commission, take the necessary measures within one year of the entry into force of this Regulation.

Article 14

Fines

1. The Commission may by decision impose on the persons referred to in Article 3 (1) (b), undertakings or associations of undertakings fines of from ECU 1 000 to 50 000 where intentionally or negligently:

- (a) they fail to notify a concentration in accordance with Article 4;
- (b) they supply incorrect or misleading information in a notification pursuant to Article 4;
- (c) they supply incorrect information in response to a request made pursuant to Article 11 or fail to supply information within the period fixed by a decision taken pursuant to Article 11;
- (d) they produce the required books or other business records in incomplete form during investigations under Article 12 or 13, or refuse to submit to an investigation ordered by decision taken pursuant to Article 13.

2. The Commission may by decision impose fines not exceeding 10 % of the aggregate turnover of the undertakings concerned within the meaning of Article 5 on the persons or undertakings concerned where, either intentionally or negligently, they:

- (a) fail to comply with an obligation imposed by decision pursuant to Article 7 (4) or 8 (2), second subparagraph;
- (b) put into effect a concentration in breach of Article 7 (1) or disregard a decision taken pursuant to Article 7 (2);
- (c) put into effect a concentration declared incompatible with the common market by decision pursuant to Article 8 (3) or do not take the measures ordered by decision pursuant to Article 8 (4).

3. In setting the amount of a fine, regard shall be had to the nature and gravity of the infringement.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of criminal law nature.

Article 15

Periodic penalty payments

1. The Commission may by decision impose on the persons referred to in Article 3 (1) (b), undertakings or associations of undertakings concerned periodic penalty payments of up to ECU 25 000 for each day of delay calculated from the date set in the decision, in order to compel them:

- (a) to supply complete and correct information which it has requested by decision pursuant to Article 11;
- (b) to submit to an investigation which it has ordered by decision pursuant to Article 13.

2. The Commission may be decision impose on the persons referred to in Article 3 (1) (b) or on undertakings periodic penalty payments of up to ECU 100 000 for each day of delay calculated from the date set in the decision, in order to compel them :

- (a) to comply with an obligation imposed by decision pursuant to Article 7 (4) or Article 8 (2), second subparagraph, or
- (b) to apply the measures ordered by decision pursuant to Article 8 (4).

3. Where the persons referred to in Article 3 (1) (b), undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may set the total amount of the periodic penalty payments at a lower figure than that which would arise under the original decision.

Article 16

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payments ; it may cancel, reduce or increase the fine or periodic penalty payments imposed.

Article 17

Professional secrecy

1. Information acquired as a result of the application of Article 11, 12, 13 and 18 shall be used only for the purposes of the relevant request, investigation or hearing.
2. Without prejudice to Articles 4 (3), 18 and 20, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information they have acquired through the application of this Regulation of the kind covered by the obligation of professional secrecy.
3. Paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 18

Hearing of the parties and of third persons

1. Before taking any decision provided for in Articles 7 (2) and (4), Article 8 (2), second subparagraph, and (3) to (5) and Articles 14 and 15, the Commission shall give the persons, undertakings and associations of undertakings concerned the opportunity, at every stage of the procedure up to the consultation of the Advisory Committee, of

making known their views on the objections against them.

2. By way of derogation from paragraph 1, a decision to continue the suspension of a concentration or to grant a derogation from suspension as referred to in Article 7 (2) or (4) may be taken provisionally, without the persons, undertakings or associations of undertakings concerned being given the opportunity to make known their views beforehand, provided that the Commission gives them that opportunity as soon as possible after having taken its decision.

3. The Commission shall base its decision only on objections on which the parties have been able to submit their observations. The rights of the defence shall be fully respected in the proceedings. Access to the file shall be open at least to the parties directly involved, subject to the legitimate interest of undertakings in the protection of their business secrets.

4. In so far as the Commission or the competent authorities of the Member States deem it necessary, they may also hear other natural or legal persons. Natural or legal persons showing a sufficient interest and especially members of the administrative or management bodies of the undertakings concerned or the recognized representatives of their employees shall be entitled, upon application, to be heard.

Article 19

Liaison with the authorities of the Member States

1. The Commission shall transmit to the competent authorities of the Member States copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the Commission pursuant to this Regulation.
2. The Commission shall carry out the procedures set out in this Regulation in close and constant liaison with the competent authorities of the Member States, which may express their views upon those procedures. For the purposes of Article 9 it shall obtain information from the competent authority of the Member State as referred to in paragraph 2 of that Article and give it the opportunity to make known its views at every stage of the procedure up to the adoption of a decision pursuant to paragraph 3 of that Article ; to that end it shall give it access to the file.
3. An Advisory Committee on concentrations shall be consulted before any decision is taken pursuant to Article 8 (2) to (5), 14 or 15, or any provisions are adopted pursuant to Article 23.
4. The Advisory Committee shall consist of representatives of the authorities of the Member States. Each Member State shall appoint one or two representatives ; if unable to attend, they may be replaced by other representatives. At least one of the representatives of a Member State shall be competent in matters of restrictive practices and dominant positions.

5. Consultation shall take place at a joint meeting convened at the invitation of and chaired by the Commission. A summary of the case, together with an indication of the most important documents and a preliminary draft of the decision to be taken for each case considered, shall be sent with the invitation. The meeting shall take place not less than 14 days after the invitation has been sent. The Commission may in exceptional cases shorten that period as appropriate in order to avoid serious harm to one or more of the undertakings concerned by a concentration.

6. The Advisory Committee shall deliver an opinion on the Commission's draft decision, if necessary by taking a vote. The Advisory Committee may deliver an opinion even if some members are absent and unrepresented. The opinion shall be delivered in writing and appended to the draft decision. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

7. The Advisory Committee may recommend publication of the opinion. The Commission may carry out such publication. The decision to publish shall take due account of the legitimate interest of undertakings in the protection of their business secrets and of the interest of the undertakings concerned in such publication's taking place.

Article 20

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Article 8 (2) to (5) in the *Official Journal of the European Communities*.

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 21

Jurisdiction

1. Subject to review by the Court of Justice, the Commission shall have sole jurisdiction to take the decisions provided for in this Regulation.

2. No Member State shall apply its national legislation on competition to any consideration that has a Community dimension.

The first subparagraph shall be without prejudice to any Member State's power to carry out any enquiries necessary for the application of Article 9 (2) or after referral, pursuant to Article 9 (3), first subparagraph, indent (b), or (5), to take the measures strictly necessary for the application of Article 9 (8).

3. Notwithstanding paragraphs 1 and 2, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law.

Public security, plurality of the media and prudential rules shall be regarded as legitimate interests within the meaning of the first subparagraph.

Any other public interest must be communicated to the Commission by the Member State concerned and shall be recognized by the Commission after an assessment of its compatibility with the general principles and other provisions of Community law before the measures referred to above may be taken. The Commission shall inform the Member State concerned of its decision within one month of that communication.

Article 22

Application of the Regulation

1. This Regulation alone shall apply to concentrations as defined in Article 3.

2. Regulations No 17 (1), (EEC) No 1017/68 (2), (EEC) No 4056/86 (3) and (EEC) No 3975/87 (4) shall not apply to concentrations as defined in Article 3.

3. If the Commission finds, at the request of a Member State, that a concentration as defined in Article 3 that has no Community dimension within the meaning of Article 1 creates or strengthens a dominant position as a result of which effective competition would be significantly impeded within the territory of the Member State concerned it may, in so far as the concentration affects trade between Member States, adopt the decisions provided for in Article 8 (2), second subparagraph, (3) and (4).

4. Articles 2 (1) (a) and (b), 5, 6, 8 and 10 to 20 shall apply. The period within which proceedings may be initiated pursuant to Article 10 (1) shall begin on the date of the receipt of the request from the Member State. The request must be made within one month at most of the date on which the concentration was made known to the Member State or effected. This period shall begin on the date of the first of those events.

5. Pursuant to paragraph 3 the Commission shall take only the measures strictly necessary to maintain or restore effective competition within the territory of the Member State at the request of which it intervenes.

6. Paragraphs 3 to 5 shall continue to apply until the thresholds referred to in Article 1 (2) have been reviewed.

(1) OJ No 13, 21. 2. 1962, p. 204/62.

(2) OJ No L 175, 23. 7. 1968, p. 1.

(3) OJ No L 378, 31. 12. 1986, p. 4.

(4) OJ No L 374, 31. 12. 1987, p. 1.

*Article 23***Implementing provisions**

The Commission shall have the power to adopt implementing provisions concerning the form, content and other details of notifications pursuant to Article 4, time limits pursuant to Article 10, and hearings pursuant to Article 18.

*Article 24***Relations with non-member countries**

1. The Member States shall inform the Commission of any general difficulties encountered by their undertakings with concentrations as defined in Article 3 in a non-member country.
2. Initially not more than one year after the entry into force of this Regulation and thereafter periodically the Commission shall draw up a report examining the treatment accorded to Community undertakings, in the terms referred to in paragraphs 3 and 4, as regards concentrations in non-member countries. The Commission shall submit those reports to the Council, together with any recommendations.
3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on

the basis of other information, that a non-member country does not grant Community undertakings treatment comparable to that granted by the Community to undertakings from that non-member country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable treatment for Community undertakings.

4. Measures taken under this Article shall comply with the obligations of the Community or of the Member States, without prejudice to Article 234 of the Treaty, under international agreements, whether bilateral or multilateral.

*Article 25***Entry into force**

1. This Regulation shall enter into force on 21 September 1990.
2. This Regulation shall not apply to any concentration which was the subject of an agreement or announcement or where control was acquired within the meaning of Article 4 (1) before the date of this Regulation's entry into force and it shall not in any circumstances apply to any concentration in respect of which proceedings were initiated before that date by a Member State's authority with responsibility for competition.

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

Done at Brussels, 21 December 1989.

For the Council

The President

E. CRESSON

**Commission Regulations
(2671-2672-2673/88 and 3652/93)**

COMMISSION REGULATION (EEC) No 2671/88

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 concerted practices concerning joint planning and coordination of capacity, sharing of revenue and consultations on 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), 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 Treaty by regulation to certain categories of agreements, decisions or concerted practices relating directly or indirectly to the provision of air transport services.

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

(3) Agreements concerning joint planning and coordination of capacity can help ensure the maintenance of services at less busy times of the day, during less busy periods or on less busy routes, thus benefiting air transport users. However, no air carrier should be bound by each agreement or concerted practices but must be free to change its planned services unilaterally. Nor must they prevent carriers deploying extra capacity. Any clauses concerning

extra flights must not require prior approval in the event of deviation or involve financial penalties. Agreements must also allow parties to withdraw from them at reasonably short notice.

(4) Agreements on the sharing of revenue may encourage airlines to provide a service on a route during less busy periods, thereby improving the service to air transport users. To be eligible for exemption under Article 85 (3), however, revenue sharing must be kept within limits such that it does not affect the competitiveness of more efficient carriers. It must also be clearly related — route by route, and not merely in aggregate, because each route has its specific features — to improvements in the services covered by the agreement.

(5) Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States (3) has laid down a new procedure for the establishment of air fares, which is a step towards an increase in price competition in air transport. The procedure restricts the possibility of innovative and competitive fare proposals by air carriers being blocked. Hence, competition may not be eliminated under these arrangements and consumers will benefit from them. Consultations on tariffs between air carriers may therefore be permitted, provided that participation in such consultations is optional, that they do not lead to an agreement in respect of tariffs or related conditions and that in the interests of transparency the Commission and the Member States concerned can send observers to them.

(6) Agreements on slot allocation at airports and airport scheduling can improve the utilization of airport capacity and airspace, facilitate air traffic control and help spread out the supply of air transport services from the airport. However, to provide a satisfactory degree of security and

(1) OJ No L 374, 31. 12. 1987, p. 9.
(2) OJ No C 138, 28. 5. 1988, p. 3.

transparency, such arrangements can only be accepted if all the 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) 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.
- (9) No applications under Articles 3 or 5 of Council Regulation (EEC) No 3975/87 (¹) 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 agreements comply with this Regulation.
- (10) The Regulation is without prejudice to the application of Article 86 of the Treaty.

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 :

- joint planning and coordination of the capacity to be provided on scheduled international air services between Community airports,
- sharing of revenue from scheduled international air services between Community airports,
- the holding of consultations for the joint preparation of proposals on tariffs for the carriage of passengers and baggage on scheduled international air services between Community airports,

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

TITLE II

SPECIAL PROVISIONS

Article 2

Special provisions for agreements on joint planning and coordination of capacity

The exemption concerning joint planning and coordination of the capacity to be provided on scheduled air services shall apply only if :

- (a) the agreements, decisions and concerted practices do not bind air carriers to the results of the planning and coordination ;
- (b) the planning and coordination are intended to ensure a satisfactory supply of services at less busy times of the day, during less busy periods or on less busy routes ;
- (c) the agreements, decisions and concerted practices do not include arrangements such as to limit in advance, directly or indirectly, the capacity to be provided by the participants or to share capacity ;
- (d) the agreements, decisions and concerted practices do not prevent carriers taking part in the planning and coordination from changing their planned services, both with respect to capacity and schedules, without incurring penalties and without being required to obtain the prior approval of the other participants ;
- (e) the arrangements, decisions and concerted practices do not prevent carriers from withdrawing from the planning and coordination for future seasons without penalty, on giving notice of not more than three months to that effect ;
- (f) the agreements, decisions and concerted practices do not seek to influence the capacity provided or schedules adopted by carriers not participating in them.

Article 3

Special provisions for agreements for the sharing of revenue from scheduled air services

1. The exemption concerning the sharing of revenue from scheduled air services shall apply only if :

- (a) the transfer of revenue is made in compensation for the loss incurred by the receiving partner in scheduling flights at less busy times of the day, or during less busy periods in a particular traffic season ;
- (b) the transfer can be made in only one direction, which is to be determined in advance when the agreement is concluded for the season in question ;

(¹) OJ No L 374, 31. 12. 1987, p. 1.

(c) the transfer does not exceed 1 % of the revenue earned by the transferring partner on the route concerned, after deducting 20 % of that revenue as a contribution to costs;

(d) neither partner bears any of the costs incurred by the other partner;

(e) the agreement contains no provision which would impede either carrier from providing additional capacity, whether such impediment is financial or through a procedure for allocating such capacity.

2. Where the agreement covers several routes, the transfer of revenue shall be determined route by route and all the conditions referred to in paragraph 1 shall be satisfied individually for each route (city pair or, where points are combined, group of cities).

Airports serving the same city shall be considered as the same point.

Article 4

Special provisions for agreements on consultations on tariffs

1. The exemption concerning the holding of consultations on tariffs shall apply only if:

(a) the consultations are solely intended to prepare jointly tariff proposals covering scheduled air fares to be paid by members of the public directly to a participating air carrier or to its authorized agents for carriage as passengers with their accompanying baggage on a scheduled service and the conditions under which those fares apply, in application of Article 4 of Directive 87/601/EEC;

(b) the consultations only concern tariffs subject to approval by the aeronautical authorities of the Member States concerned, and do not extend to the capacity for which such tariffs are to be available;

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

(d) participation in the consultations is voluntary and open to any air carrier who operates or has applied to operate on the route concerned;

(e) any draft tariff proposals which may result from the consultations are not binding on participants, that is to say, following the consultations the participants retain the right to act independently, both in putting forward tariff proposals for approval independently of the other participants and in freely applying such tariffs after they have been approved;

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

(g) in respect of each tariff which was the subject of the consultations, each participant informs the Commission without delay of its submission to the aeronautical authorities of the Member States concerned.

2. (a) The Commission and the Member States concerned shall be entitled to send observers to tariff consultations, whether bilateral or multilateral. 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 from time to time in the *Official Journal of the European Communities*.

(c) A full report on the 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 the consultations were held.

Article 5

Special provisions for agreements on slot allocation and airport scheduling

1. The exemption concerning slot allocation and airport scheduling shall apply only if:

(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;

(b) Any rules of priority established are neither directly nor indirectly related to carrier identity or nationality or category of service and take into account constraints or air traffic distribution rules laid down by competent national or international authorities. 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 established shall be made available on request to any interested party;

(d) The rules of priority shall be applied without discrimination, that is to say that the rules shall not prevent each carrier having an equal right to slots for its services.

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 from time to time in the *Official Journal of the European Communities*.

Article 6

Any air carrier claiming the benefit of this Regulation must be able at all times to demonstrate to the Commission, on request, that the conditions of Articles 2 to 5 are fulfilled.

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

Done at Brussels, 26 July 1988.

TITLE III

MISCELLANEOUS PROVISIONS

Article 7

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 a agreement, decision or concerted practice exempted under this Regulation nevertheless has certain effects which are incompatible with the conditions laid down in Article 85 (3) or are prohibited by Article 86 of the Treat

Article 8

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 agreement 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.

For the Commission

Peter SUTHERLAND

Member of the Commission

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,

schedules and fare displays must be as complete and unbiased as possible.

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 concerted practices relating directly or indirectly to the provision of air transport services.

(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.

(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.

(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.

(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 reservations 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

(6) In accordance with Article 4 of Regulation (EEC) No 3976/87 this Regulation should apply with retroactive effect to agreements 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 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 undertaking 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 indirectly, 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, fare 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 it 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

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),

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 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 affect 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 to 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 fit 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 refuelling, 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;

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

Done at Brussels, 26 July 1988.

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 deny 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 or 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 than 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.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION REGULATION (EC) No 3652/93
of 22 December 1993

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

ticketing are liable to restrict competition and affect trade between Member States.

Having regard to the Treaty establishing the European 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 and concerted practices relating directly or indirectly to the provision of air transport services.
- (2) Commission Regulation (EEC) No 83/91⁽⁴⁾, as last amended by Regulation (EEC) No 1618/93⁽⁵⁾, grants a block exemption to certain agreements establishing computerized reservation systems, providing they satisfy the conditions imposed by that Regulation. The block exemption expires on 31 December 1993.
- (3) Agreements for the common purchase, development and operation of computerized reservation systems relating to timetabling, reservations and

(4) Computerized reservation systems (CRS) 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 reservations 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 schedules and fares displays must be as complete and unbiased as possible.

(5) 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.

(6) In accordance with Council Regulation (EEC) No 2299/89⁽⁶⁾, as amended by Regulation (EEC) No 3089/93⁽⁷⁾, concerning the code of conduct for computerized reservation systems, 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

⁽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. 11.

⁽⁴⁾ OJ No L 10, 15. 1. 1991, p. 9.

⁽⁵⁾ OJ No L 155, 26. 6. 1993, p. 23.

⁽⁶⁾ OJ No L 220, 29. 7. 1989, p. 1.

⁽⁷⁾ OJ No L 278, 11. 11. 1993, p. 1.

without penalty, and system vendors and air carriers must not act in ways which would restrict competition between systems.

HAS ADOPTED THIS REGULATION :

Article 1

(7) In order to maintain effective competition between CRSs, it is necessary to ensure that system vendors do not refrain from competing with each other.

Exemptions

(8) Refusal on the part of parent carriers to provide the same information on schedules, fares and availability to competing CRSs and to accept bookings made by those systems can seriously distort competition between CRSs. Parent carriers should not be obliged to incur costs in this connection except for reproduction of the information to be provided and for accepted bookings; parent carriers must not seek reimbursement of costs that cannot be fully justified.

(9) Billing information should be sufficiently detailed to allow participating carriers and subscribers to control their costs. A parent carrier should accept or reject any bookings/transactions made through a competing CRS on the same terms or conditions as it applies for bookings/transactions made through its own CRS.

(10) In accordance with Article 4 of Regulation (EEC) No 3976/87, this Regulation should apply with retroactive effect to agreements 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.

(11) For the purposes of 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.

(12) The agreements which are exempted automatically by this Regulation need not be notified under Council Regulation No 17⁽¹⁾ as last amended by the Act of Accession of Spain and Portugal. However when real doubt exists, undertakings may request the Commission to declare whether their agreements comply with this Regulation,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

Pursuant to Article 82 (3) of the Treaty and subject to the conditions set out in Articles 2 to 14 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;
- or
- (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 purpose of this Regulation:

- (a) 'air transport product' means the carriage by air of a passenger between two airports, including any related ancillary services and additional benefits offered for sale and/or sold as an integral part of that product;

(b) 'scheduled air service' means a series of flights each possessing all the following characteristics :

- it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by consumers (either directly from the air carrier or from its authorized agents),
- it is operated so as to serve traffic between the same two or more points, either :
 1. according to a published timetable ; or
 2. with flights so regular or frequent that they constitute a recognizably systematic series ;

(c) 'fare' means the price to be paid for air transport products and the conditions under which this price applies ;

(d) 'computerized reservation system' (CRS) means a computerized system containing information about, *inter alia*, air carriers' :

- schedules,
- availability,
- fares, and
- related services,

with or without facilities through which

- reservations can be made or
- tickets may be issued,

to the extent that some or all of these services are made available to subscribers ;

(e) 'distribution facilities' means facilities provided by a system vendor for the provision of information about air carriers' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services ;

(f) 'system vendor' means any entity and its affiliated which is or are responsible for the operation or marketing of a CRS ;

(g) 'parent carrier' means any air carrier which directly or indirectly, jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls ;

(h) 'effective control' means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by :

— the right to use all or part of the assets of an undertaking,

— rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking ;

(i) 'participating carrier' means an air carrier which has an agreement with a system vendor for the distribution of air transport products through a CRS. To the extent that a parent carrier uses the facilities of its own CRS which are covered by this Regulation it shall be considered a participating carrier ;

(j) 'subscriber' means a person or an undertaking, other than a participating carrier, using the distribution facilities for air transport products of a CRS under contract or other arrangement with a system vendor ;

(k) 'consumer' means any person seeking information about and/or intending to purchase an air transport product ;

(l) 'principal display' means a comprehensive neutral display of data concerning air services between city-pairs, within a specified time period ;

(m) 'elapsed journey time' means the time difference between scheduled departure and arrival time ;

(n) 'service enhancement' means any product or service offered by a system vendor on its own behalf to subscribers in conjunction with a CRS, other than distribution facilities ;

(o) 'distributor' means an undertaking which is authorized by the system vendor to provide distribution facilities to subscribers.

Article 3

Access

1. A system vendor shall allow any air carrier the opportunity to participate, on an equal and non-discriminatory basis, in its distribution facilities within the available capacity of the system concerned and subject to any technical constraints outside the control of the system vendor.

2. (a) A system vendor shall not :

- attach unreasonable conditions to any contract with a participating carrier,
- require the acceptance of supplementary conditions which, by their nature or according to commercial usage, have no connection with participation in its CRS and shall apply the same conditions for the same level of service.

(b) A system vendor shall not make it a condition of participation in its CRS that a participating carrier may not at the same time be a participant in another system.

(c) A participating carrier may terminate its contract with a system vendor on giving notice which need not exceed six months, to expire no earlier than the end of the first year.

In such a case a system vendor shall not be entitled to recover more than the costs directly related to the termination of the contract.

3. If a system vendor has decided to add any improvement to the distribution facilities provided or the equipment used in the provision of the facilities, it shall provide information on these improvements and offer them to all participating carriers, including parent carriers, with equal timeliness and on the same terms and conditions, subject to any technical constraints outside the control of the system vendor and in such a way that there will be no difference in leadtime for the implementation of the new improvements between parent and participating carriers.

*Article 4***Participation**

1. (a) A parent carrier may not discriminate against a competing CRS by refusing to provide the latter, on request and with equal timeliness, the same information on schedules, fares and availability relating to its own air services as that which it provides to its own CRS or to distribute its air transport products through another CRS, or by refusing to accept or to confirm with equal timeliness a reservation made through a competing CRS or any of its air transport products which are distributed

through its own CRS. The parent carrier shall be obliged to accept and to confirm only those bookings which are in conformity with its fares and conditions.

- (b) The parent carrier shall not be obliged to accept any costs in this connection except for reproduction of the information to be provided and for accepted bookings.
- (c) The parent carrier shall be entitled to carry out checks to ensure that Article 7 (1) is complied with by the competing CRS.

2. The obligation imposed by paragraph 1 shall not apply in favour of a competing CRS when, in accordance with the procedures of Article 6 (5), Article 7 (3) or Article 7 (4) of Regulation (EEC) No 2299/89, it has been decided that the CRS is in breach of Article 4a of that Regulation or that a system vendor cannot give sufficient guarantees that obligations under Article 6 of that Regulation concerning unauthorized access of parent carriers to information are complied with.

*Article 5***Information loading**

1. Participating carriers and other providers of air transport products shall ensure that the data they decide to submit to a CRS are accurate, nonmisleading, transparent and no less comprehensive than for any other CRS.

The data shall, *inter alia*, enable a system vendor to meet the requirements of the ranking criteria as set out in the Annex to Regulation (EEC) No 2299/89.

Data submitted via intermediaries shall not be manipulated by them in a manner that would lead to inaccurate, misleading or discriminatory information.

2. A system vendor shall not manipulate the material referred to in paragraph 1 in a manner that would lead to the provision of inaccurate, misleading or discriminatory information.

3. A system vendor shall load and process data provided by participating carriers with equal care and timeliness, subject only to the constraints of the loading method selected by individual participating carriers and to the standard formats used by the said vendor.

*Article 6***Loading, processing and distribution**

1. Loading and/or processing facilities provided by a system vendor shall be offered to all parent and participating carriers without discrimination. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer facilities compatible with them.
2. A system vendor shall not reserve any specific loading and/or processing procedure or any other distribution facility for one or more of its parent carrier(s).
3. A system vendor shall ensure that its distribution facilities are separated, in a clear and verifiable manner, from any carrier's private inventory and management and marketing facilities. Separation may be established either logically by means of software or physically in such a way that any connection between the distribution facilities and the private facilities may be achieved only by means of an application-to-application interface. Irrespective of the method of separation adopted, any such interface shall be made available to all parent and participating carriers on a non-discriminatory basis and shall provide equality of treatment in respect of procedures, protocols, inputs and outputs. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer interfaces compatible with them.

particular as regards the order in which information is presented.

- (a) A consumer shall be entitled to have, on request, a principal display limited to scheduled or non-scheduled services only.
- (c) No discrimination on the basis of airports serving the same city shall be exercised in constructing and selecting flights for a given citypair for inclusion in a principal display.
- (d) Ranking of flight options in a principal display shall be as set out in the Annex to Regulation (EEC) No 2299/89.
- (e) The criteria to be used for ranking shall not be based on any factor directly or indirectly relating to carrier identity and shall be applied on a non-discriminatory basis to all participating carriers.
3. Where a system vendor provides information on fares the display shall be neutral and non-discriminatory and shall contain at least the fares provided for all flights of participating carriers shown in the principal display. The source of such information shall be acceptable to the participating carrier(s) concerned and the system vendor concerned.
4. A CRS shall not be considered in breach of this to the extent that it changes a display in order to meet the specific request(s) of a consumer.

*Article 7***Displays**

1. (a) Displays generated by a CRS shall be clear and non-discriminatory.
- (b) A system vendor shall not intentionally or negligently display in its CRS inaccurate or misleading information.
2. (a) A vendor shall provide through its CRS a principal display or displays for each individual transaction and shall include therein the data provided by participating carriers on flight schedules, fare types and seat availability in a clear and comprehensive manner and without discrimination or bias, in

Provision of information

1. The following provisions shall govern the availability of information, statistical or otherwise, from a system vendor's CRS:
 - (a) information concerning individual bookings shall be provided on an equal basis and only to the air carrier(s) participating in the service covered by the booking and to the subscriber(s) involved in the booking;
 - (b) any marketing, booking and sales data made available shall be on the basis that:
 - (i) such data are offered with equal timeliness and on a non-discriminatory basis to all participating carriers, including parent carriers;

(ii) such data may, and, on request, shall cover all participating carriers and/or subscribers, but shall not include any identification or personal information on a passenger or a corporate user;

(iii) all requests for such data are treated with equal care and timeliness subject to the transmission method selected by the individual carrier.

2. A system vendor shall not make available personal information concerning a passenger to others not involved in the transaction without the consent of the passenger.

3. A system vendor shall ensure that the provisions in paragraphs 1 and 2 are complied with, by technical means and/or appropriate safeguards regarding at least software, in such a way that information provided by or created for air carriers cannot be accessed by any means by one or more of the parent carriers except as permitted by paragraphs 1 and 2.

Article 9

Reciprocity

1. The obligations of a system vendor under Articles 3 and 5 to 8 shall not apply in respect of an air carrier of a third country, which controls a CRS either alone or jointly, to the extent that its CRS outside the territory of the Community does not offer Community air carriers equivalent treatment to that provided under this Regulation and under Regulation (EEC) No 2299/89.

2. The obligations of parent or participating carriers under Articles 4, 5 and 10 shall not apply in respect of a CRS controlled by (an) air carrier(s) of one or more third country (countries) to the extent that the parent or participating carrier(s) is (are) not accorded equivalent treatment outside the territory of the Community to that provided under this Regulation and under Regulation (EEC) No 2299/89.

3. A system vendor or an air carrier proposing to avail itself of the provisions of paragraphs 1 or 2 must notify the Commission of its intentions and the reasons therefor at least 14 days in advance of such action. In exceptional circumstances, the Commission may, at the request of the

vendor or the air carrier concerned, grant a waiver from the 14-day rule.

4. Upon receipt of a notification, the Commission shall without delay determine whether discrimination within the meaning of paragraphs 1 and 2 exists. If this is found to be the case, the Commission shall so inform all systems vendors or the air carriers concerned in the Community as well as Member States. If discrimination within the meaning of paragraph 1 or 2 does not exist, the Commission shall so inform the system vendor or air carriers concerned.

Article 10

Relations with subscribers

1. A parent carrier shall not, directly or indirectly, link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive or disincentive for the sale of air transport products available on its flights.

2. A parent carrier shall not, directly or indirectly, require use of any specific CRS by a subscriber for any sale or issue of tickets for any air transport products provided either directly or indirectly by itself.

3. Any condition which an air carrier may require of a travel agent when authorizing it to sell and issue tickets for its air transport products shall be without prejudice to paragraphs 1 and 2.

Article 11

Contracts with subscribers

1. A system vendor shall make any of the distribution facilities of a CRS available to any subscriber on a non-discriminatory basis.

2. A system vendor shall not require a subscriber to sign an exclusive contract, nor directly or indirectly prevent a subscriber from subscribing to, or using, any other system or systems.

3. A service enhancement offered to any other subscriber shall be offered by the system vendor to all subscribers on a non-discriminatory basis.

4. (a) A system vendor shall not attach unreasonable conditions to any subscriber contract allowing for the use of its CRS and, in particular, a subscriber may terminate its contract with a system vendor by giving notice which need not exceed three months to expire no earlier than the end of the first year.

In such a case a system vendor shall not be entitled to recover more than the costs directly related to the termination of the contract.

(b) Subject to paragraph 2, the supply of technical equipment is not subject to the conditions set out in (a).

5. A system vendor shall provide in each subscriber contract that :

- (a) the principal display, conforming to Article 7, is accessed for each individual transaction except where a consumer requests information for only one air carrier ;
- (b) the subscriber does not manipulate material supplied by CRSs in a manner that would lead to inaccurate, misleading or discriminatory presentation of information to consumers.

6. A system vendor shall not impose any obligation on a subscriber to accept an offer of technical equipment or software, but may require that equipment and software used are compatible with its own system.

Article 12

Fees

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

The billing for the services of a CRS shall be sufficiently detailed to allow the participating carriers and subscribers to see exactly which services have been used and the fees therefor.

As a minimum, booking fee bills must include the following information for each segment :

- type of CRS booking,
- passenger name,
- country,
- IATA/ARC agency identification code,
- city code,
- city pair or segment,

- booking date (transaction date),
- flight date,
- flight number,
- status code (booking status),
- service type (class of service),
- PNR record locator,
- booking/cancellation indicator.

The billing information shall be offered on magnetic media.

A participating air carrier shall be offered the facility of being informed at the time that any booking/transaction is made for which a booking fee will be charged. Where a carrier elects to be so informed it shall be offered the option to disallow such bookings/transactions, unless the booking/transaction has already been accepted.

2. A system vendor shall, on request, provide to interested parties details of current procedures, fees and system facilities, including interfaces, editing and display criteria used. However, this provision does not oblige a system vendor to disclose proprietary information such as software programmes.

3. Any changes to fee levels, conditions or facilities offered and the basis therefor shall be communicated to all participating carriers and subscribers on a non-discriminatory basis.

Article 13

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 of partitioning the market.

Article 14

Pursuant to Article 7 of Regulation (EEC) No 3976/87, the benefit of this Regulation may be withdrawn where it is found 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 CRSs ;

- (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 refuses to enter into a contract for the use of a CRS without an objective and non-discriminatory reason of a technical or commercial nature;
- (v) the system vendor denies participating carriers access to any facilities other than distribution facilities

without an objective and non-discriminatory reason of a technical or commercial nature.

Article 15

This Regulation shall enter into force on 1 January 1994 and expire on 30 June 1998.

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.

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

Done at Brussels, 22 December 1993.

For the Commission

Karel VAN MIERT

Member of the Commission

Appendix III. 2

**EC Air-Transport Legislation Adopted
Between the Period 1987- 1993**

Number	Date	Title and Description of Community Instrument	OJ Reference
1. 359/87-22	June 1987	COMMISSION DECISION concerning reductions in air and sea transport fares available only to Spanish nationals resident in the Canary Islands and the Balearic Islands.	L 194, 15 July 1987: 28.
2. 3975/87	14 Dec. 1987	COUNCIL REGULATION laying down the procedure for the application of the rules on competition to undertakings in the air-transport sector.	L 374, 31 Dec. 1987: 1-8
3. 3976/87	14 Dec. 1987	COUNCIL REGULATION on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air-transport sector.	L 374, 31 Dec. 1987: 9-11
4. 601/87	14 Dec. 1987	COUNCIL DIRECTIVE on fares for scheduled air services between Member States.	L 374, 31 Dec. 1987: 12-18
5. 602/87	14 Dec. 1987	COUNCIL DECISION on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air-service routes between Member States.	L 374, 31 Dec. 1987: 19-23.

6. 2671/88	26 July 1988	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices concerning joint planning and coordination of capacity, sharing of revenue and consultations on tariffs on scheduled air services and slot allocation at airports.	L 239, 30 Aug. 1988: 9-12
7. 2672/88	26 July 1988	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems (CRS) for air-transport services.	L 239, 30 Aug. 1988: 10-16
8. 2673/88	26 July 1988	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements between undertakings, decisions of associations of and concerted practices concerning ground handling services.	L 239, 30 Aug. 1988: 17-18.
9. 4261/88	16 Dec. 1988	COMMISSION REGULATION on the complaints, applications and hearings provided for in Council Regulation No. 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air-transport sector.	L 376, 31 Dec. 1988: 10.
10. 2299/89	24 July 1989	COUNCIL REGULATION introducing a Code of Conduct for the use of computer reservation systems (CRS).	L 220, 29 July 1989: 1

11. 4064/89	21 Dec. 1989	COUNCIL REGULATION on the control of concentrations between undertakings (Including air carriers).	L 257, 21 Sept. 1990: 14-25
12. 2342/90	24 July 1990	COUNCIL REGULATION on fares for scheduled air services. (Replaces Council Directive 601/87 above).	L 217, 11 Aug. 1990: 1-7
13. 2343/90	24 July 1990	COUNCIL REGULATION on access for air carriers to scheduled intra- air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States. (Repalces Council Directives 416/83, 216/86 and 463/9 - concerning the authorisation of scheduled inter-regional air services for the transport passengers, mail and cargo between Member States- and Council Directive 602/87 above).	L 217, 11 Aug. 1990: 8-16.
14. 449/90	30 July 1990	COMMISSION DECISION seting up a Joint Committee on Civil Aviation (JCCA).	L 230, 24 Aug. 1990: 22-24.
15. 83/91	5 Dec. 1990	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems (CRS) for air-transport services.	L 010, 15 Jan. 1991: 9-13.

16. 84/91	5 Dec. 1990	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of capacity, consultations on passenger and cargo tariff rates on scheduled air services and slot allocation at airports.	L 010, 15 Jan. 1991: 14.
17. 294/91	4 Feb. 1991	COUNCIL REGULATION on the operation of air cargo services between Member States.	L 036, 8 Feb. 1991: 1-4
18. 295/91	4 Feb. 1991	COUNCIL REGULATION establishing common rules for a denied-boarding compensation system in scheduled air transport.	L 036, 8 Feb. 1991: 5.
19. 8/92	27 Nov. 1991	COMMISSION DECISION on the compliance of certain air fares with the requirements of Article 3 (1) of Council Regulation No. 2342/90.	L 005, 10 Jan. 1992: 26.
20. 3922/91	16 Dec. 1991	COUNCIL REGULATION on the harmonization of technical requirements and administrative procedures in the field of civil aviation.	L 373, 31 Dec. 1991: 4
21. 670/91	16 Dec. 1991	COUNCIL DIRECTIVE on mutual acceptance of personnel licences for the exercise of functions in civil aviation.	L 373, 31 Dec. 1991: 21.

22. 3925/91	19 Dec. 1991	COUNCIL REGULATION concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing.	L 374, 31 Dec. 1991: 4.
23. 1823/92	3 July 1992	COMMISSION REGULATION laying down detailed rules for the application of Council Regulation No. 3925/91 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing.	L 185, 4 July 1992: 8
24. 2407/92	23 July 1992	COUNCIL REGULATION on licensing of air carriers.	L 240, 24 Aug. 1992: 1-7.
25. 2408/92	23 July 1992	COUNCIL REGULATION on access for Community air carriers to intra-Community air routes.	L 240, 24 Aug. 1992: 8-14
26. 2409/92	23 July 1992	COUNCIL REGULATION on fares and rates for air services.	L 240, 24 Aug. 1992: 15-17
27. 2410/92	23 July 1992	COUNCIL REGULATION amending Council Regulation No. 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air-transport sector.	L 240, 24 Aug. 1992: 18

28. 2411/92	23 July 1992	COUNCIL REGULATION amending Council Regulation No. 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air-transport sector.	L 240, 24 Aug. 1992: 19-20.
29. 552/92	21 Oct. 1992	COMMISSION DECISION examining by virtue of Article 10 (4) of Council Regulation No. 2343/90, the application of Article 10 (3) of the same Regulation to the increase of frequencies on existing services on the route London (Heathrow)- Brussels.	L 353, 3 Dec. 1992: 32
30. 95/93	18 Jan. 1993	COUNCIL REGULATION on common rules for the allocation of slots at Community airports.	L 014, 22 Jan. 1993: 1.
31. 245/93	26 April 1993	COMMISSION OPINION concerning the application of Article 4 (2) of Council Directive No. 670/91 on mutual acceptance of personnel licences for the exercise of functions in civil aviation Equivalence of French, Irish and Portuguese pilot licences.	L 111, 5 May 1993: 25
32. 3652/93	22 Dec. 1993	COMMISSION REGULATION on the application of Article 85 (3) exemptions of the Treaty to certain categories of agreements between undertakings relating to computerized reservation systems (CRS) for air-transport services.	L 333, 31 Dec. 1993: 37-44.

Appendix IV. 1

A Commission Press Report on Action Against Anti-Competitive Airline Agreement

PRESSE-MEDDELELSE • MITTEILUNG AN DIE PRESSE • PRESS-RELEASE • INFORMATION A LA PRESSE
 ANAKOINOSΗ ΓΙΑ ΤΟΝ ΤΥΠΟ • INFORMAZIONE ALLA STAMPA • MEDEDELING AAN DE PERS

Brussels, 31 July 1987

COMMISSION REINFORCES ITS ACTION AGAINST
 ANTI-COMPETITIVE AIRLINE AGREEMENTS

The Commission has reinforced the action which it began last year to bring to an end the restrictive practices engaged in by ten airlines (Aer Lingus, Air France, Alitalia, British Airways, British Caledonian, KLM, Lufthansa, Olympic Airways, Sabena and SAS).

The Commission has now written to these airlines to inform them that, until the Council formally adopts the package of civil aviation measures on which it reached agreement in June 1987, the Commission is obliged to pursue its proceedings under Article 89 of the EEC Treaty to the adoption of reasoned decisions recording the various infringements which have been committed. It has given the airlines until 14 September to supply any further information, including changes made to interairline agreements and practices, which they may wish it to take into account in the reasoned decisions which it intends to adopt.

The dialogue with these ten airlines began with the initiation by the Commission of Article 89 proceedings in July and November 1986. The Commission launched this dialogue with a view to defining the changes required in order to bring airline agreements and practices in the area of revenue pooling, capacity sharing and tariff consultations into conformity with Community law. These changes have been clearly spelt out in a series of meetings with and letters to each airline.

The Commission has at the same time extended the scope of its action by initiating proceedings under Article 89 in respect of the restrictive practices engaged in by three other airlines (Iberia, Luxair and TAP). This brings all the major Community airlines within the scope of the Commission's action to eliminate anti-competitive practices in the air transport sector.

Appendix IV. 2

**Example of Formal Communication Between
the Commissioner Sir Leon Brittan
and the EP Rapporteur (MEP) B. Visser**

SIR LEON BRITTAN, QC
VICE-PRESIDENT OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

RUE DE LA LOI 200
1049 BRUSSELS - TEL. 235 25 14
235 26 10

27-03-1990

27-03-1990

I am sorry not to have had a chance to speak with you about the air transport block exemption proposal, on which you are rapporteur, and which Parliament has referred back to Committee. I have been away in the United States, arriving back only this morning, and - as my Office has explained to you - I have to lead a complex and controversial debate in Commission tomorrow, on electricity privatisation.

I have however discussed at some length with Mr EHLMANN, Director-General for competition matters, the issues raised by your report, and the priorities you outlined to him last week.

I am optimistic that we shall be able to make progress on this matter, but it does merit careful attention, and cannot in my view be settled rapidly before your meeting with the presidency of Council on Wednesday afternoon.

It is unlikely that Council will take a final decision this week, and that permits us to have a fuller and more considered discussion in Strasbourg on 4 April, as arranged.

In the meantime, you may be interested in the attached non-paper, which outlines the Commission's thinking on what conditions would apply to future block exemptions. You will understand, I am sure, that I am passing on this document in a spirit of cooperation between Commission and Parliament rapporteurs; it is for your personal information only.

You will see that the paper suggests relatively limited changes to the conditions that apply at present, and that should remove any disquiet you may have. Nevertheless, the changes are worthwhile improvements over a continuation of the status quo. In addition, it is useful for the Commission to have the flexibility to respond to changing circumstances and the industry's changing needs rather than be constrained in a fixed framework.

No doubt we shall discuss these and other matters when we meet again in Strasbourg next week, and I look forward to that.

Mr Ben VISSER, MEP

Conditions for the grant of group exemptions
in air transport

Introduction

1. In its conclusions of 4 - 5 December 1989, the Council requested the Commission to specify the conditions on which it proposes to grant group exemptions in the air transport industry for the period from 1 February 1991 to 31 December 1992.
2. At the present time the competent Commission services are in the process of evaluating the experience under the group exemptions adopted in July 1988 and of collecting comments by various interested parties. While in some areas the thrust of future proposals is clear, in other areas there is still considerable scope for further fact-finding and reflection. The Commission however expects to be in a position to submit proposals to the Advisory Committee on Restrictive Practices and Dominant Positions in Air Transport in July of this year, that is as soon as possible after the Council has adopted the enabling Regulation. The Commission intends to take the next steps required by the enabling Regulation (publishing the draft for comments by industry, and another consultation of the Advisory Committee) in sufficient time to adopt the group exemption Regulations by the end of this year, thus avoiding any legal vacuum.
3. As indicated in the Explanatory Memorandum in COM (373) final, the Commission does not intend to modify the structure of the current group exemptions.

Regulation No. 2671/88

4. The exemption concerning joint planning and coordinating of capacity can essentially be reenacted without major changes. It is envisaged to extend the exemption to schedule coordinating.
5. There do not appear to be a large number of revenue sharing agreements in respect of intra-Community transport, which would require a group exemption. Consequently it is contemplated to delete this possibility from the empowering regulation. Revenue sharing agreements can be dealt with on an individual basis in the same manner as joint venture agreements: the Commission has been particularly receptive to agreements which are necessary to enable small new entrants to take up new services in economical conditions.
6. Notwithstanding the flexibility in respect of fares introduced by the 1987 liberalisation measures, airline fares have remained remarkably uniform. The possibility of continued tariff consultations has been criticised as one of the main causes for the apparent lack of price competition in the airline industry.

The Commission believes, however, that fare consultations can serve a useful purpose which need not necessarily conflict with the existence of price competition. Fare consultations have traditionally been part of the interline mechanism. Even though it is conceivable to continue that system without fare consultations, there is no doubt that these consultations greatly facilitate the administration of interline agreements. On the other hand, some airlines have refused to interline with certain other carriers even at their own fares, thus putting into question the justification for the consultations.

Consequently it is envisaged to reenact the exemption in favour of fare consultations, but to include a provision obliging air carriers which elect to participate in tariff consultations, to accept interlining with all other airlines at the fares discussed.

This obligation could be reflected in a condition that participants in consultations accept interlining with all financially sound airlines at the fare applied by each participant following the consultations.

This condition would in effect lead to the creation of (mostly uniform) generally interlinable fares, next to which there would exist (often carrier-specific) fares which would not necessarily be interlinable. It should be noted that some carrier-specific fares can nevertheless be made subject to a duty to interline, for instance where a refusal to interline at those fares by a dominant airline would have the effect of preventing new entrants to operate successfully. Such obligations may be imposed on a case-by-case basis and fall outside the scope of the group exemption.

In addition, experience has shown that reporting duties by airlines are not always well understood or respected. While for the industry-wide tariff consultations these appear to function satisfactorily, consultations in a more limited framework sometimes give rise to criticism. The Commission would make reporting duties more specific and would act to ensure complete compliance by airlines.

7. The exemption of slot allocation and airport scheduling should as soon as possible be extended to cover domestic air transport and air transport to third countries. This will require progress on the Commission's proposals on the application of the competition rules to those aspects of air transport (COM (89) 417 final).

Difficulties caused by slot allocation and airport scheduling are primarily the result of congestion at airports. If congestion problems are reduced, the problems - especially for new entrants - encountered when applying the existing systems of slot allocation and scheduling should be eased. On the other hand, if congestion problems do not seem likely to improve, more far-reaching solutions to slot problems may need to be considered in order to give new entrants a chance to operate economically.

As far as the conditions of this exemption are concerned, the Commission intends to provide for increased transparency of procedures and to reduce the difficulties of new entrants at congested airports. At the present stage a considerable number of options are under review, and it should be noted that additional information may result from discussions on the Code of Conduct which is currently being prepared. The following elements are at present being considered for introduction in the group exemption or in the Code of Conduct.

Greater transparency could be achieved by requiring the slot coordinator to provide more information about the present situation, for instance to indicate clearly and regularly which slots are available for allocation and which slots are not, and to whom they are allocated. In addition, it is contemplated to make slot coordinators more accountable by requiring them to give reasons for their decisions, to disclose these reasons to applicants, and to make their decisions subject to judicial review.

It may also be appropriate to reinforce the duty of coordinators not to discriminate between airlines.

It is a more complex matter to establish conditions which would improve conditions for access to slots for new entrants at congested airports or in respect of peak times. The most radical option, auctioning of slots, does not appear to be appropriate since allocation of slots by a market mechanism could give rise to distortions, especially if the related traffic rights are allocated by other mechanisms. Another method could be to airports limit existing "grandfather" rights in favour of the established airlines. Several means could be considered to introduce such limitation, including:

grandfather rights might be limited in time, i.e. a slot would have to be surrendered after X years of use;

- grandfather rights might be limited to a specific service, i.e. the beneficiary would have to reapply for a slot if it wanted to use it for a different destination;
- grandfather rights might be linked to the use of a particular aircraft type, or may be used for larger but not for smaller aircraft; or,
- the slot coordinator might require that all beneficiaries of slots surrender Y % of their slots during any hour if there are not Z % of "ungrandfathered" slots available during that period, or if they were requested to do so by a new entrant having less than a certain number of slots, or if there is a beneficiary holding over a certain proportion of slots during that period.

Any measures to limit grandfather rights may be linked to other measures to encourage the more efficient use of airport facilities, e.g. in the context of the Commission's proposal on airport charging principles.

Regulation No. 2672/88

8. The block exemption in respect of computer reservation systems would not be subject to changes of substance. However, in order to provide for more uniform application of Community law a number of provisions could be aligned on the corresponding rules of Council Regulation No. 2299/89 on a code of conduct for computerized reservation systems or refer to these rules.

Regulation No. 2673/88

9. Many interested parties have emphasized the need to introduce more competition in the field of ground handling. It would be possible to increase the choice for airport users by making the exemption in favour of ground handling agreements dependent on either the possibility to self-handle (individually or together with other

airport users) or on the existence of at least two independent providers of handling services (which should not be restricted in their marketing freedom in respect of any possible recipient of ground handling services at the airport at which they provide these services). The exemption would only operate in respect of those services for which either of these conditions is met.

Conclusion

10. The present document attempts to give a number of orientations which could usefully be followed for the next group exemptions. It does not purport to be exhaustive or final, and the Commission would expect to receive valuable suggestions by interested parties on subjects not yet covered by this document. A preliminary discussion of this document with Member States' representatives could not replace an extended debate in the framework of the Advisory Committee on the basis of a fully considered text, but a discussion at the present time may provide useful guidance on options not to be developed further when drafting the proposals.

THE RIGHT HONOURABLE
SIR LEON BRITTAN, QC
VICE-PRESIDENT OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

19-04-1990
RUE DE LA LOI, 200
1049 BRUSSELS - TEL. 235 25 14
235 26 10

To Mr Visser

As promised, I have been reflecting on the various amendments to the air transport group exemption Regulations set out in your report, and on the most helpful discussion we had in Strasbourg.

In particular, I undertook to examine whether it might be possible to consult Parliament formally on the group exemptions themselves. On consideration, and for reasons which extend beyond this particular proposal, I am not in a position to suggest such an approach to my colleagues.

Nevertheless, I do understand the depth of feeling of the Transport Committee on this issue, and I am therefore willing to propose that the Commission accept amendment 43, that is the continuation of the existing conditions contained in the Council's enabling Regulation.

Naturally, I regret that this one enabling Regulation alone contains restrictive conditions, a fact which does affect the Commission's ability to adapt the group exemption to changing circumstances, and which will fetter its ability to take full account of the results of the widespread consultation process which will take place once the enabling Regulation is adopted.

However, it is important that this proposal makes progress, and both to ensure that, and as a feature of cooperation towards Parliament, I can accept the re-insertion of the conditions in the enabling Regulation.

Mr. Visser, MEP
European Parliament
Rue Belliard
Brussels

I have already demonstrated the Commission's willingness to be open with regard to its intentions for the group exemption, and in that spirit I intend to keep Parliament informed and will take account of any views expressed.

In the light of the above, and of our discussion in Strasbourg, I believe that amendments 44 and 46 fall, and the date in amendment 45 is amended to 1 July 1990.

I look forward to explaining this to the Committee on Monday 23 April. I hope that we may now move forward quickly to secure approval of the air transport package. Further delay would disappoint the air transport industry and its consumers who are rightly expecting progress from the Community institutions.

Appendix IV. 3

**Example of a Questionnaire and Three Drafting
Versions on the Common Rules for the
Slot-Allocation Proposal at EC**

QUESTIONNAIRE SLOT ALLOCATIONMeeting with experts/coordinators - 20.2.1990

1. An EEC code of conduct should be based on the following principles:

- the slot allocation procedure should be transparent and non-discriminatory
- flexibility should be ensured, including the possibility for new entrants to enter the market
- slot allocation should not be used as a tool in the competition

To what extent are these principles reflected in the current slot allocation procedure?

2. Which of the following principles can be applied

- big over small
- passenger over freight
- scheduled over non-scheduled
- silent over noisy
- commercial over non-commercial
- international over domestic/Community
- stopping over non-stop
- frequency capping
- sectorization
- traffic distribution?

3. What are the advantages/disadvantages of auctioning/trading of slots?

4. What are the advantages/disadvantages of peak hour pricing?

5. What measures can be taken to stimulate the use of alternative modes of transport ?
6. What measures can be taken to avoid blocking of slots?
7. What measures have been taken to increase the number of available slots? What improvements/technical developments can be expected?
8. Is the existing Information technology an answer to meet the principles set out in question 1?
9. What measures have been taken to stimulate the use of alternative airports and alternative modes of transport?
10. What improvements are possible in the IATA scheduling procedure:
 - publication of a swap list
 - prohibit the acceptance of slots for outside the requested time only for exchange reasons
 - prohibit the reservation of slots/early announcement of unused slots
 - composition of Scheduling Procedures Committee
 - complaint procedure ?
11. What improvements have been taken to stimulate the use of alternative airports and alternative modes of transport?
12. How can new entrants be accommodated without seriously affecting the grandfather rights?
13. What role should be envisaged for airport representatives in the slot allocation procedure?
14. Advantages/disadvantages to involve consumer organisations in the slot allocation process.
15. Advantages/disadvantages of an EEC code of conduct for slot allocation. Are there any suggestions?

23.5.1990

LVH/mdi

VII/C/1 - 379/90

Discussion paper SLOT ALLOCATION

Introduction

The air transport system in Europe has expanded the last five years considerably ($\pm 8\%$ increase of passenger kilometers). This development has not always been accompanied by a comparable increase of the air transport infrastructure. Consequently, both the air traffic control systems and the airport capacity have in many instances now reached the limits of their absorbing capacity.

Many initiatives have been taken to increase the existing capacity. The ATC problems are high on the political agenda, airports are investing heavily to enlarge their terminal buildings and the number of gates. Handling capacity is being increased and efforts have been made to fasten passenger terminal throughput.

One of the most difficult problems, however, is the lack of runway capacity at some of Europe's main hub airports.

Environmental and political considerations, legal and procedural difficulties, safety aspects and the very long lead time for construction works make it very difficult to enlarge runway capacity in the foreseeable future.

Some airports presently only face congestion problems during some peak hours of the day, others, like Heathrow, Gatwick, Frankfurt and Düsseldorf, are completely full.

The consequence is that airlines are competing for the scarce slots at the larger and airports. The airline industry has reacted by setting up a machinery to coordinate demand and distribute slots among applicant carriers. These IATA scheduling procedures constitute a voluntary system of traffic distribution.

The IATA scheduling procedures (1)

The IATA procedures provide for bi-annual Conferences, which are open for attendance for all carriers (scheduled-charter, passenger-freight, IATA-non IATA).

On the basis of priority rules the airport slot-coordinator coordinates the schedules of airlines and decides on conflicting slot applications.

The Scheduling Procedures Committee is the steering group for the Conferences, it establishes the rules of coordination, it reviews the capacity limitations and assists in establishing them and provides for a review or mediation in case problems should arise.

The airport coordinators play a key role in the total process, not only during the Conferences, but throughout the year. They decide on the actual allocation of slots and they monitor the whole process of scheduling and use of slots allocated. The airport coordinators are usually employees of the national airline.

(1) IATA scheduling procedures guide, seventh edition: February 1990.

The priorities in the allocation of slots advised by IATA are based on the following factors:

- Historical precedence - a slot that has been operated by an airline should entitle that airline to claim the same slot in the next equivalent season

Effective period of movement - the schedule effective for a longer period of operation in the same season should have priority

- Emergencies
- Daylight saving time.

The IATA scheduling procedures further refine these basic rules.

Consultations

The Commission has undertaken a review of the present system of slot allocation on the basis of the following considerations:

1. Runway congestion is a problem that will not be solved on the short term. Therefore efforts to increase airport capacity have to be accompanied by an objective and non-discriminatory set of rules for the allocation of slots.
2. The economic value of slots will increase. Consequently the pressure put on coordinators to take into account political considerations will also increase. Legally binding rules may help them to keep a neutral position.
3. One of the aims to liberalize air transport in Europe is to increase competition and to lower the barriers for new entrants on a specific route. Slot allocation rules should reflect the need for flexibility and provide for access to routes for new entrants.

4. Transparency and non-discrimination has to be ensured. Only if airlines can monitor the work of the coordinators, negative decisions concerning their slot applications are acceptable.

5. Slot allocation should not be used as a tool for competition.

On the basis of a questionnaire, consultations have taken place with

- (a) the slot coordinators
- (b) ICAA (airports)
- (c) ACE (independant airlines)
- (d) EBAA (business aviation)
- (e) IATA and AEA
- (f) ERA (regional carriers) and
- (g) FATUREC (users) and
- (h) with the US authorities and airline industry.

The brief results of these consultations were as follows:

(a) The coordinators of the congested airports stressed the point that the present system gives the necessary flexibility resulting in the optimal use of available slots. Coordinators must be knowledgeable airline people to do a proper job. There might be a reason to give coordinators a more formal neutral and independant position, although there have never been complaints on this point. There are ways and means to create more slots at the congested airports. Slot allocation is a global issue, not just Europe, therefore IATA is a good forum.

(b) The airports have basically only stressed the point that they should be involved in the slot allocation process. They have not criticized the IATA system. The Commission proposal on airport consultations meets their wishes.

(c) The Independant airlines of ACE have also indicated that the present IATA system is an efficient way of dealing with the difficult subject of slot allocation. The equal treatment of charter and scheduled services was considered an important aspect.

On the question of grandfather rights and new entrants it was accepted that the present system makes it difficult, but not impossible to get slots.

(d) Business aviation is a different market segment because these companies do not participate in the slot allocation process, but try to get the necessary slots when needed on an ad-hoc basis. Flexibility is the key word for this type of aviation, generally the IATA system works well, although airports could play a more important role.

(e) IATA and AEA were strong supporters of the present system. It was stressed that the rules develop gradually and will be developed further. The fact that the system is created and carried out by the industry itself has lead to acceptance of the rules, even by those who face refusal of a slot. Community rules would create a massive amount of complaints and court procedures. IATA is willing to cooperate with the Commission and develop rules to better accommodate new entrants.

Commission participation in the SPC was welcomed.

(f) ERA repeated the arguments used by the other organisations. A Commission regulation is unnecessary and may disturb the system. New entrants, member of ERA, have been able to obtain slots at the very congested airports.

(g) FATURREC stressed three points: slot allocation should not present a further increase in competition in Europe; existing dominant positions of national carriers at airports should not be strengthened by the slot allocation rules; new entrants should have access to congested airports.

(h) The US authorities have shown a keen interest in the developments in Europe. They claim preferential treatment for US carriers, similar to the advantaged treatment international services have in the US. The US airline industry accepts the IATA procedure and they participate actively in the development of the rules.

The general view of the organisations consulted is that the existing IATA rules governing the slot allocation process work out satisfactorily. Although some minor modifications can be envisaged the basis of the schedule coordination should not be changed.

Problem areas

Individual airlines and airports have, in some instances, taken a view different from the organisations and they have pointed at some difficulties of the IATA rules.

- A carrier holding a slot can use the slot for different operations. It can switch, for example, its operation from one country to another thus adding capacity in a specific market whereas the competing carrier in that market cannot reciprocate because it is denied access to that airport due to a lack of slots.
- Not only is it possible for carriers holding slots to switch destinations, they can also switch from a charter operation into a scheduled operation. Also in these cases the scheduled carrier from the other Party cannot match these scheduled operations because it is denied access.
- It is difficult for new entrants to enter the profitable routes to and from the congested airports. The emphasis in the IATA procedure on grandfather rights gives the system a tendency to become inflexible and discourage new initiatives. Presently, even at the highly congested airports, a number of slots become available during the year. Slots are being given up or are not used. These slots are not automatically allocated among new entrants.
- Concerning transparency and neutrality some airlines have indicated to the Commission that coordinators do not always make available all the relevant information to the carriers involved. It is, in fact, sometimes difficult to know if the IATA rules are being applied. Only in few cases the coordinators offer alternative slots

or a swap list. The position of the coordinator has been questionned. It is widely recognized that the coordinator should have a vast experience in the airline industry, but the formal relation between the coordinator and his employer, the airline, could be changed so that his neutrality is also formally recognized.

Conclusion

On the basis of all the information obtained, the Commission suggests to put forward proposals on slot allocation. These proposals will not fundamentally change the present IATA system of slot allocation. The merits of that system are widely recognized, also by the Commission. There are, however, some elements which might be further improved. The Commission will ask IATA for an observer status in the S.P.C., so that it can participate more actively in the scheduling procedures and in the further development of the rules.

ELEMENTS FOR INCLUSION IN A CODE OF CONDUCT

SCOPE

Slot allocation and scheduling coordination involving air services to Community airports with a view to ensuring neutral procedures, transparency, continuity and possibilities for new entrants.

Definitions

SLOT ALLOCATION would cover both the question of whether an airline can get an initial slot at an airports and the question of being allocated a final slot at a specific time.

SCHEDULE COORDINATION would mean the coordination of flight programmes involving a multitude of airports; a process which would result in the final slot allocation.

NEW ENTRANT could mean an air carrier which has no presence at the airports (or less than X slots) - or - an air carrier which has no presence on a route (and has less than X slots).

Transparency

Obligation on air carriers to submit pertinent information for example: requested schedules for the following season to the authorities and/or airport coordinator. Submission to be made a certain time before the relevant scheduling coordination conference.

The information should contain certain information for example: type of aircraft, programme and requested timing of flights, etc..

This information shall be made available to all air carriers, which have submitted a slot request and to airport authorities. At coordinated airports this should be the responsibility of the coordinator.

At coordinated airports the coordinator shall also inform the air carriers of the possibilities to meet their requests or of any alternatives within a reasonable timespan.

Rules governing slot allocation and schedule coordination should be published.

Slot pool

A minimum of X % of slots should be released every [season] [year] and placed in a common pool.

These slots should be redistributed according to the following priorities:

1. New entrants (from a waiting list)
2. International services to the Community and intra-Community services in direct competition.

Undue blocking of slots should have consequence for priority rating.

Slots which are not used or which are released must go into the slot pool. Transfer of slots from one air carrier to another should not be allowed, exchange (swapping) at the same airport should be allowed.

Conflicting slot requests

Where slot requests cannot be accommodated in the normal way at scheduling coordination conferences priorities of choice may be established according to the following criteria:

1. Public service interests. In this context a Member State may for example reserve X % of slots for regional services.
2. Environmental concerns.
3. Capacity utilisation concerns for example by way of frequency capping per route unless a certain size aircraft is operated.

Where conflicts cannot be resolved IATA (SPC) arbitration should be used if air carriers agree. If not another speedy arbitration possibility must be provided.

Grandfather rights

Should be confirmed with following reservations:

Slots may be freely changed from one service to another except in cases where a significant unsatisfied demand for slots exists (waiting list) for a service to the airport [on the same route] [on a similar route from the Member State to which a new service or increase in frequency was intended] [within X hours from the requested time].

Change of use of slot from one type of service to another should be allowed without restriction to the same Member State.

Coordination

An airport should be coordinated when:

1. a certain utilisation is reached;
2. a certain number of air carriers demand it;
3. when the SPC demand it.

The coordinator shall be appointed by the Member State concerned. The costs shall be borne by that Member State.

Scheduling coordination

IATA scheduling coordination conferences should be confirmed as the right forum provided group exemption rules are respected.

Airport capacity

The maximum number of slots shall be established by Member States after consultation of the SPC, the airport authorities and any other party that may be directly involved in the operation of the airport.

Report

Report on application of code of conduct should be foreseen together with possibility of revision.

30.8.1990.

LVH/mdg

523/90

Discussion paper Slot Allocation II

Article 1 Scope of the regulation

This regulation shall apply to the allocation of slots and traffic distribution at Community airports.

Question and remarks for
consultation = QRC

This article will be modified
ultimately according to the
final content of the proposal.

Article 2 Definitions

For the purpose of this Regulation:

- (a) "Slot" means the operational authority to conduct one landing or take off operation at a specific time of a coordinated airport.
- (b) "Slot allocation" means the granting of a slot [by a slot coordinator] to an airline.
- (c) "Schedule coordination" means the coordination of flight programmes between airlines.
- (d) "New entrant" means an air carrier not holding more than four slots on a specific day at a coordinated airport, but having requested slots for that day during the previous corresponding season.

QRC

This Article at present only contains definitions for key terms. Additional definitions will be added as necessary.

Should new entrant be specified for the airport as such or per route?

Article 3 General rules

1. Air carriers which have obtained a route licence from the Home State and the State of Destination shall within the terms of the licence and subject to Article 4.8 be free to schedule their services at the airport concerned.
2. An air carrier shall as required by the States concerned file its flight programme for approval.
3. Air carriers shall be permitted to meet and coordinate schedules provided that the participation is open to all air carriers having a right to operate to the airport being the subject of coordination and provided the Competition rules of the Treaty are respected.
4. At an airport where congestion problems are experienced the Member State concerned shall consider setting up a scheduling committee. Participation in the scheduling committee shall at least include all air carriers having presented a flight programme, the airport concerned and [other parties]. The costs of the scheduling committee shall be covered by the airport concerned.

GRG

Should certain rules of procedure be specified?
Should "other parties" be specified?

5. Flight programmes shall be communicated to the scheduling committee before approval by the States concerned.

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Article 4. Airport Coordination

1. A Member State responsible for an airport experiencing serious congestion problems shall consider designating it as a coordinated airport for the periods where demand exceeds the number of slots available.
2. An airport for which no slots are available during a (4) hour period for the workdays of a week during (2) months of a season shall be designated as a coordinated airport.
3. Before taking such a step a thorough capacity analysis shall be carried out at the airport with the purpose of determining possibilities to increase the capacity in the short term through infrastructure or operational changes.
4. The national authorities shall publish a report of the study giving full information on the capacities of the critical sub-systems, means of expanding the capacities of limiting sub-systems and the time frame and costs envisaged, alternative solutions and any other relevant information.

the national authorities of that airport after consultations on the report of the study with the air carriers using the airport repeatedly and/or their representative organisations, the airport authorities and representative organisations of passengers using the airport, where such organisations exist.

6. The national authorities shall appoint after consultations with the air carriers using the airport repeatedly and the airport authorities, an airport coordinator responsible for the coordination process and for the allocation of slots. The airport concerned shall provide the coordinator with the necessary technical equipment and office facilities.
7. The coordinator shall be responsible for the allocation of slots at the airport by endeavouring to accommodate as closely as possible the flight programme, presented by the air carriers before and during the season while respecting the limits of the declared capacity.

QRC

Shall the tasks of the coordinator be set out more in detail?

8. At a coordinated airport priority of operation shall be given to air carriers which have received a slot allocation from the coordinator without, however, excluding the operation if the conditions so allow at the time in question.

Article 5 Airport capacity

The national authorities shall, for coordination purposes, declare twice yearly, after consultations with the air carriers using the airport repeatedly, IATA, and the airport authorities, the capacity at the coordinated airports.

Article 6 Information

1. Airlines requesting slots at a coordinated airport shall submit to the airport coordinator and - on request - to the national authorities concerned, all information requested by the airport coordinator and relevant for the slot coordination at least ... days in advance of [the schedule coordination conference] [the season], in the format specified by the airport coordinator.
2. The airport coordinator shall make available on request to all airlines requesting slots at a coordinated airport and to the airport authorities concerned the information available to him relevant for the coordination of schedules so as to enable the airlines and the airport authorities to analyse in detail allocated slots, remaining slots available and possibilities to meet slot requests.

QRC

Shall this be spelled out in more detail or is paragraph 4 sufficient?

3. If a slot cannot be allocated within 30 minutes before or after the requested time the slot coordinator shall inform the requesting airline of the reasons therefore.
4. The Commission shall establish, after consultations with IATA and with the airport coordinators, minimum requirements for the automated systems to be used by the airport coordinators.

1. Airport coordinators shall participate in the appropriate schedule coordination conferences and shall endeavour to accommodate within the procedures established for these meetings, the airlines requesting slots at their airport.
2. The rules of priority for the allocation of slots shall be established by the airlines and airports among themselves and shall enter into force after approval by the Commission. The Commission shall grant its approval within 21 days after receipt of the priority rules established by the airlines. Approval can be withheld if the Commission considers the rules [anti-competitive or] not in accordance with public interest.

QRC

Shall the airport's role be specified?

3. The airport coordinator shall allocate slots in accordance with the rules of priority established in the appropriate multilateral organisations. Any deviation from the general application of these priority rules shall be submitted for approval to the Commission.
4. The slot coordinator shall endeavour to accommodate ad hoc slot requests. To this end the slots available in the pool but not yet redistributed can be used. No commercial category of service may be excluded.

Article 8 Slot pool

1. At a coordinated airport newly created slots, unused slots and slots which have been given up by a carrier before or by the end of the season, shall be placed in a common pool.

A minimum of 50% of these slots shall be redistributed, in the initial coordination for a season and after the slots have been coordinated in accordance with historical precedence, to new entrants to a maximum of two slots per carrier per 4-hour period.

2. Any slot not utilized 65 percent of the time over a two-months period shall be placed in the common pool.

Article 9 Special new entrant status

1. In the case that a new entrant intends to commence a service on a route where only two air carriers are operating and can demonstrate that it has not been able to get the necessary slots during the previous corresponding season by the normal slot allocation rules or by the procedure of Article 8.1, such an air carrier will receive special new entrant status and shall if its request cannot be accommodated be placed on a waiting list by the coordinator.
2. The slot coordinator shall ensure that air carriers with special new entrant status shall receive as far as possible the necessary slots to introduce services on that particular route to a maximum of the number of services operated at that moment by any one carrier but not more than two slots per 4-hour period, [if need be by limiting proportionally the number of slots of the other air carriers holding more than eight slots per day at that airport].

QRC

Specific comments on this article is sought. Special attention should be given as to whether new entrant status should be given for individual routes (this approach is compatible with traffic distribution rules) or per airport (see article 2.d.).

Article 10 Change of use of slots

1. The coordinator shall permit slots to be freely exchanged by an air carrier from one route, or type of service, to another except in the following cases:
 - a. slots allocated in accordance with the procedure of Article 9;
 - b. slots to be used for the establishment of a new service or the increase of frequency on an existing service between a congested airport and another Member State for such time as an air carrier licenced by another Member State is not permitted, on the basis of insufficient airport capacity to establish a new service or to increase frequencies on an existing service to the airport in question, unless agreement exists between the Member States concerned.
2. At the request of any Member State, The Commission shall examine the application of paragraph 1. in any particular case and within one month decide whether the limitation in change of use of slots are well applied.
3. The Commission, after thorough examination of the situation, may impose any conditions to ensure the application of paragraph 1. It shall communicate its decision to the Council within a time limit of one month.
4. Council procedure.

Article 11 Reciprocity

The obligations of an airport coordinator under Articles 8.1 and 9 shall not apply in respect of an air carrier of a third country to the extent that Community air carriers are not accorded equivalent treatment in that country to that provided under this Regulation.

QRC

Shall this article be given a wider coverage?

Article 12 Revision

The Council shall decide on the revision of this Regulation by 31 December 1992, on the basis of a Commission proposal to be submitted by 31 March 1992 accompanied by a report on the application of this Regulation.

WORKING PAPER 623/90 bis
C-160 1/180

Bruxelles, 16.11.1990,

LYH/SC

DRAFT

Council Regulation on
common rules for the allocation
of slots at Community airports

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas there is an increasing number of congested airports in the Community;

Whereas the allocation of slots at congested airports should be based on neutral, transparent and non-discriminatory rules;

Whereas the decision to coordinate an airport should be taken by the Member State responsible for that airport on the basis of objective criteria;

Whereas the neutrality of the airport coordinator should be beyond any doubt and therefore the Member State responsible for the coordinated airport should appoint the coordinator;

Whereas transparency of information is an essential element for ensuring an objective procedure for slot allocation;

Whereas the principles governing the present system of slot allocations could be the basis of the Directive providing this system evolves in harmony with the evolution of the new transport developments in the EC;

Whereas the future evolution should allow for the entrance of new carriers into the market.

Whereas the present system, giving preference to grandfather rights does not always facilitate new entrants.

Whereas the objective to lower barriers for competition and entry in the market requires strong support for carriers who intend to start operations on Intra-Community routes with limited competition;

Whereas it is necessary to require Member States or their appointees to ensure that a limited number of slots are available for such operations even where an airport is held to be congested.

Whereas it is also necessary to avoid situations whereby one Community air carrier can introduce one service or increase frequency on an existing service and other Community air carriers cannot reciprocate these initiatives because of a lack of available slots. Whereas this could mean that the benefits of liberalization could be unevenly spread and competition could be impaired;

Whereas in those cases, air carriers which have been granted new slots, must use those slots for the purpose for which they were requested over a period of time considered to be sufficient.

Whereas it is not appropriate to oblige an airport coordinator and a Member State to allocate slots with preference to new entrants in respect of an air carriers of a third country which does not offer equivalent treatment to that provided under this code;

HAS ADOPTED THIS REGULATION;

Article 1 : Scope of the regulation.

This regulation shall apply to the allocation of slots at Community airports.

Article 2 : Definitions

For the purpose of this Regulation :

(a) "Slot" means the scheduled time of arrival and departure available or allocated to an aircraft movement on a specific date at an airport.

(b) "New entrant" means

i. an air carrier not holding more than three slots on any day at a coordinated airport and requesting further slots for services on intra-Community routes on that day.

ii. An air carrier not holding more than 25% of slots on a day at a coordinated airport and requesting further slots during that day to commence a third or fourth freedom service on an intra-Community route on which at most two other air carriers are exercising third or fourth freedom traffic rights between the airports concerned during that day.

(c) "Congested airport" means an airport where the capacity does not meet the demand or forecast demand for more than one hour on any day.

(d) "Scheduling period" means either the summer or winter season as used in the schedules of air carriers.

(e) "Community Air Carrier" means the air carriers defined in Article 2(6) of Council Regulation (EEC) N° 2343/90 of 24 July 1990.

Article 3 : General rules

- 1) Air carriers with a valid route licence shall be free to schedule and operate their services to and from Community airports which are not coordinated in accordance with article 4 of this Regulation.
- 2) Air carriers shall communicate their flight programs to national authorities in accordance with national rules and regulations.
- 3) a. In case it is decided to set up a scheduling committee, participation in this committee shall at least be open to the air carriers using the airport(s) repeatedly, the airport authorities concerned and representatives of the air traffic control.
b. The minimum tasks required of the scheduling committee shall be:
 - to consider possibilities to increase the capacity determined in accordance with Article 5
 - to suggest improvements to traffic conditions prevailing at the airport in question

to monitor the use of allocated slots.

Article 4 : Conditions for Airport Coordination

- 1) A Member State responsible for a congested airport shall consider to designate it as coordinated for the periods that congestion problems occur.
- 2) When the airport congestion results in operational delays to the airlines published operating schedules of more than one hour on any day, the Member State responsible for that airport shall designate that airport as coordinated.
- 3) The decision to designate an airport as coordinated shall be taken by the Member State responsible for that airport after consultations with the air carriers using the airport repeatedly and/or their representative organisations, the airport authorities and representative organisations of passengers using the airport, where such organisations exist. The analysis mentioned in paragraph 4 shall be thoroughly discussed with these parties.

- 4) When the decision to designate an airport as coordinated is taken, a thorough capacity analysis shall be carried out at the airport with the purpose of determining possibilities to increase the capacity in the short term through infrastructure or operational changes, and to determine the time frame envisaged to resolve the problems. The analysis shall be updated periodically and shall be made available to interested parties.
- 5) This regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality, the distribution of traffic between the airports within an airport system.

Article 4 : airport capacity

At a coordinated airport the airport authority in cooperation with air traffic control, and where applicable subject to the approval of the national authorities, shall determine the airport capacity twice yearly after consultation with customs and immigration authorities and the airlines using the airport and/or their representative associations following internationally established methods.

This information shall be provided to the airport coordinator in good time before coordination takes place.

Article 8 : The coordinator

- 1) The national authorities shall appoint, upon the advice of the air carriers using the airport repeatedly and/or their representative organisations and of the airport authorities an airport coordinator.
- 2) The coordinator shall be responsible for the allocation of slots at the coordinated airport(s) and shall act in accordance with this Regulation in a neutral, non-discriminatory and transparent way.
- 3) The coordinator shall participate in such international scheduling conferences of air carriers as are permitted by Community law.
- 4) The coordinator shall at any time have available the following information for review by all interested parties.
 - a) Historical slots by airline chronologically for all air carriers at the airport,
 - b) Requested slots (initial submissions) by air carriers and chronologically for all air carriers,
 - c) All allocated and outstanding slot requests if by airline and for all carriers,

- d) Remaining available slots,
- e) Full details on the criteria being used in the allocation.
- f) Subject to articles 8 and 9 the coordinator shall permit slots to be freely exchanged between air carriers or by an air carrier from one route, or type of service to another.

Article 7 : Process of coordination

- 1) Air carriers requesting slots at a coordinated airport shall submit to the airport coordinator all information requested by the airport coordinator.
- 2) a. The airport coordinator shall give a preference to commercial air services in a situation where all slot requests cannot be accommodated to the satisfaction to the air carriers concerned.
b. Any slot not utilised more than 66% of the allocated period can be withdrawn and placed in the slot pool referred to in Article 8 for reallocation, unless mitigating reasons can be found (grounding of an aircraft type, closure of an airport or airspace)
c. An airport coordinator shall also take into account the additional priority rules in the annex.

- 3) If a requested slot cannot be accommodated the airport coordinator shall inform the requesting airline of the reasons therefore and shall indicate the nearest alternative slot.
- 4) The airport coordinator shall endeavour to accommodate ad hoc slot requests. To this end the slots available in the pool referred to in Article 9 but not yet allocated can be used. No commercial category of service may be excluded.
- 5) The Commission shall establish, after consultations with air carriers, airport coordinators, and airports minimum requirements for the automated systems to be used by the airport coordinators.

Article 8 : Slot pool

- 1) At a coordinated airport newly created slots, unused slots and slots which have been given up by a carrier during or by the end of the season, shall be placed in a common pool.
- 2) Slot allocated to an air carrier but not used shall be placed in the common pool and cannot be reclaimed in the following scheduling period.
- 3) Slots placed in the common pool shall be reallocated among applicant carriers. 50% of these slots shall be allocated to new entrants with priority in the order of application.

- 4) When requests for slots by new entrants as defined in Article 2 b
it cannot be accommodated by the normal process or by the procedure
of paragraph 3, the Member State responsible for the airport shall
make available the necessary slots. For this purpose the Member
State shall in the first instance in a non discriminatory way
reclaim slots used by air carriers to the extent that these
carriers operate services with aircraft of less than 200 seats and
use more than 6 slots on the day in question.
- 5) The new entrants referred to in paragraph 4 are entitled to as many
slots as are needed in order to reciprocate the new service or the
increase of frequencies on the existing service of the other air
carrier to a maximum of 6 slots on any given day.
- 6) When the slots, made available in accordance with paragraphs (2)
and (4) of this article, are not used or are given up within a
period of 2 years, they shall be returned to their original
holder. Where this rule cannot be applied or where the original
holder does not wish to use the slot, it shall be placed in the
slot pool mentioned in Article 9.
- 7) At the request of any Member State or on its own initiative, the
Commission shall examine the application of this article in any
particular case and within two months decide whether it is
correctly applied. The Commission shall communicate its decision
to the Council and to the Member States.

8) Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Article 8: Special circumstances

- 1) Member States shall ensure the allocation of slots to a Community air carrier that cannot reciprocate a new service or an increase of frequencies on an existing service by another Community carrier of the Member States due to airport congestion, provided that the first carrier can demonstrate that it has not been able to get the necessary slots on the requested day(s) during the previous season by the normal slot allocation rules or by the procedure of Article 8.
- 2) The airlines referred to in paragraph 1 are entitled to as many slots as are needed in order to reciprocate the new service or the increase of frequencies on the existing service of the other Community carrier.
- 3) The slots referred to in paragraph 2 of this article cannot be freely exchanged by the air carrier receiving them from one route or type of service to another for a period of 2 years.

- 4) Member States shall make the necessary transparent, and non-discriminatory arrangements to ensure that the slots required to meet the provisions of this article shall be available for allocation to the relevant airlines at the beginning of the scheduling period, if need be by limiting proportionally the number of slots of the air carrier : intending to introduce a new service or to increase frequencies on an existing service.
- 5) When the slots, made available in accordance with paragraph (4) of this article, are not used or are given up within a period of 2 years, they shall be returned to their original holder. Where this rule cannot be applied or where the original holder does not wish to use the slot, it shall be placed in the slot pool mentioned in Article 9.
- 6) At the request of any Member State or on its own initiative, the Commission shall examine the application of paragraph 2 and 4 of this article in any particular case and within two months decide whether these paragraphs are correctly applied.
- 7) The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Article 10 : Reciprocity

The obligations of an airport coordinator and a Member State under Articles 7, 8 and 9 shall not apply in respect of an air carrier of a third country to the extent that Community air carriers are not accorded equivalent treatment in that country to that provided under this regulation.

Article 11

- 1) The Commission shall present a report to the Council on the operation of this Regulation within two years after its implementation.
- 2) Member States and the Commission shall co-operate in the application of this Regulation, particularly as regard the collection of the information for the report mentioned in paragraph 1 of this article.

Article 12

The Council shall review the operation of this Regulation before 1 July 1994 on the basis of the report furnished by the Commission.

Article 13

- 1) The Member States shall, after consultation of the Commission take the necessary steps to amend their laws and administrative provisions to bring them into conformity with this Regulation not later than 1 January 1992.
- 2) The Member States shall communicate to the Commission all laws and administrative provisions made in furtherance of this Regulation.

Article 14

This Regulation is addressed to the Member States.

VII-C-1/523-Annex

16.11.1990

LVH/sc/mgt

Priorities in Allocation of Airport Slots(1)

1. The overall aims of any Coordinator in administering the allocation of limited airport slots should always be :
 - a) to resolve problems arising from conflicting requirements in such a way as to avoid any necessity for government intervention ;
 - b) to make sure that all airlines have equitable opportunity to satisfy their schedule requirements within the constraints that exist ;
 - c) to seek agreement on schedule adjustments where necessary so that the airlines concerned suffer the least possible economic penalty ;
 - d) to minimise inconvenience to the travelling public and trading community ;
 - e) to arrange for regular review of the applied limits so as to ensure that all levels are justified.
2. Aviation is composed of several segments with different and often conflicting interests and needs. These may be broadly classified as :
 - a) scheduled public services ;
 - b) programmed charter services ;
 - c) irregular commercial services ;
 - d) general aviation ;
 - e) military operations.

(1) Scheduling procedure guide - eight edition - July 1990

In the event of conflict existing between the interests of any or all of these different categories, priority should be given to (a), (b) and (c) above, and consideration should be given to apportioning any remaining limited facility in an appropriate ratio, the manner to be decided by the responsible authority after consultation with representatives of the categories concerned.

3. The solution of problems involving conflicting demands for slots should be reached through discussions in an atmosphere of mutual cooperation and goodwill. Arbitrary decisions and the rigid application of rules should be avoided, and reasoned objective solutions sought.
4. The prime objective behind the allocation of specific slots should be to ensure that the economic penalties arising from any necessary rescheduling should be kept to a minimum in terms of the airline as a whole.
5. Against the background of the foregoing, the following factors should be utilised by the Coordinator as a means of developing an initial slot allocation plan for problem areas before Schedule Coordination Conferences.

A. Historical Precedence

Historical precedence applies only to services mentioned in paragraph 2.a) and b). A slot that has been operated by an airline as cleared by the Coordinator should entitle that airline to claim the same slot in the next equivalent season (e.g. Summer to Summer season) and is limited to the equivalent period and days of operation.

B. Effective Period of Movement

When two or more airlines compete for the same slot, the schedule effective for a longer period of operation in the same season should have priority.

C. Emergencies

In the short term, schedule dislocation caused by disturbances beyond airline control should be dealt with as if they were ad hoc variations. Long-term emergencies should normally invoke a rescheduling process. The future treatment of slots cleared, but not operated because of the emergency, should be discussed and agreed in advance between the Coordinator and the airline.

D. Daylight Saving Time

To improve flexibility for periods at the beginning and end of IATA scheduling seasons in which there are differences in the dates for introduction and withdrawal of daylight saving time

- (a) schedules for periods of up to 7 days should not be adjusted;
- (b) schedules for periods of 8 to 35 days should be given a higher priority than requests for new slots.

E. Other

Any circumstances not covered by Paragraph C should require negotiation for a new slot. However, if the schedule change results from a

- (a) larger aircraft
- (b) adjustments to block times in order to make them more realistic
- (c) the need of an airline to establish a year round operation

It should have priority over totally new demands for the same slot.

6. Those situations which cannot be resolved by application of the primary criteria, set out above, should be considered further in the context of the level of economic penalty implicit in the necessary degree of schedule change. Assessment of the economic impact requires consideration of the following factors:-

- A. Size and type of market - consideration should be given to the need for a mixture of long-haul and short-haul operations at major airports in order to satisfy public requirements. Domestic/regional/long-haul markets are part of a total pattern and the size and type of markets must, therefore, be considered.
- B. Competition - consideration should always be given to attempting to ensure that due account is taken of competitive requirements in the allocation of available slots.
- C. Curfews - in the event of a curfew at one airport creating a slot problem elsewhere, priority should be given to the airline whose schedule is constrained by the curfew.
- D. Requirements of the travelling public and other users - consideration should always be given to minimising public inconvenience (e.g. avoiding excessive airport transit time, losing connections etc.)

E. Frequency of operation - higher frequency should not, per se, imply higher priority - the principle of optimising economic benefit should be the main consideration.

F. Flexibility - to achieve optimum utilisation of the available capacity, Coordinators should apply a certain degree of flexibility when allocating slots. Airlines do not always operate exactly to the timings published in schedules. Weather, winds, variations in flight times, ATC or technical problems are some of the reasons for such deviations. Coordinators should take account of this by :

- I. applying runway restrictions in time intervals of at least 10 minutes ;
- II. measuring hourly movement rates at not less than 30 minutes intervals (e.g. 1200-1259 + 123-1329) ;
- III. using overbooking profiles based on past experience.

7. Slots may be requested by an airline for flights for which it does not yet hold all the required traffic rights. If available, the slots should be allocated by the Coordinator in accordance with the guidelines in paras 1 to 6. If an airline holding such provisional slots does not receive the required traffic rights then the slots should be released to the Coordinator immediately.

8. If a slot request cannot be met, the Coordinator should offer the closest earlier and later available timings for that specific flight and, if requested, provide information on other services within those timings, so that airlines needing slots can contact other airlines concerned.

9. it should constantly be borne in mind that whilst traffic growth continues to outstrip the rate of expansion of facilities, the resolution of congestion problems can be achieved only through discussions in an atmosphere of mutual cooperation and goodwill. In the event of an effective reduction or increase in available capacity over an equivalent previous season, a solution should be sought collectively from all involved airlines, taking into account the guidance already given.
10. Where a slot problem cannot be resolved by the means referred to above, the Coordinator should call a meeting of all involved airlines with a view to finding a mutually acceptable solution.

Appendix VIII. 1

Commission Proposal Setting Up a Joint Committee in Civil Aviation (JCCA)

COMMISSION DECISION
of 30 July 1990
setting up a Joint Committee on Civil Aviation

(90/449/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas the Heads of State or of Government stated in their declaration of 21 October 1972 that the first aim of economic expansion should be to enable disparities in living conditions to be reduced and that this aim should express itself in better quality of life and higher standard of living;

Whereas, in this connection, they considered it indispensable that both employers and employees should be increasingly involved in the economic and social decisions of the Community;

Whereas, amongst the priority actions contained in the Community's 'social action programme' the Commission has recommended that dialogue and cooperation between employers and employees be promoted at Community level;

Whereas the Council in its resolution of 21 January 1974 concerning a social action programme⁽¹⁾ named increased involvement of management and labour in the economic and social decisions of the Community as one of the priority measures to be taken;

Whereas the European Parliament in its resolution of 13 June 1972⁽²⁾ stated that the participation of employers and employees in the formulation of a Community social policy should be achieved during the first stage of economic and monetary union;

Whereas the Economic and Social Committee in its opinion of 24 November 1971 expressed a similar view;

Whereas the Council stressed in its conclusions of 22 June 1984 concerning a Community medium-term social action programme⁽³⁾, that the European social dialogue must be strengthened and its procedures adapted in order to involve the social partners more effectively in the economic and social decisions of the Community;

Whereas Article 118b of the Treaty states that the Commission shall endeavour to develop the dialogue between management and labour at European level which

could, if the two sides consider it desirable, lead to relations based on agreement;

Whereas full recognition should be given to the priority objectives for the air transport industry to achieve the levels of cost efficiency and productivity performances required to ensure its economic viability, not only within the context of EC liberalization measures but also in the worldwide competitive environment of international air transport;

Whereas full recognition should be given to the complexity of the civil air transport sector and to the activities necessary to deliver an economic and competitive product which are beyond the direct control of the operators;

Whereas it is necessary to take account of the social implications of economical policies in the field of civil aviation;

Whereas a Joint Committee attached to the Commission is an appropriate forum at the Community level for the socio-economic interest involved to address the economic and competitive objectives of civil aviation as well as the improvement of living and working conditions,

HAS DECIDED AS FOLLOWS:

Article 1

A Joint Committee on Civil Aviation hereinafter referred to as 'the Committee' is hereby established.

Article 2

The Committee shall assist the Commission in the formulation and implementation of Community policy aimed at:

- strengthening the economic and competitive position of the Community's civil aviation both within the Community and in the wider international context;
- thereby improving living and working conditions in the civil aviation sector within the context of the relevant articles of the Treaty.

⁽¹⁾ OJ No C 13, 12. 2. 1974, p. 1.
⁽²⁾ OJ No C 79, 1. 7. 1971, p. 1.
⁽³⁾ OJ No C 173, 4. 7. 1984, p. 1.

Article 3

1. In order to attain the objectives laid down in Article 2, the Committee shall:

(a) issue opinions and submit reports to the Commission either at the latter's request or on its own initiative;

and

(b) in respect of matters falling within the competence of the airlines, airports' organizations and employees' associations listed in Article 4 (3):

- promote dialogue and cooperation,
- arrange for studies to be carried out,
- participate in discussions and seminars.

2. The Committee shall ensure that all interested parties are informed of its activities.

3. Upon requesting an opinion or report from the Committee under the terms of paragraph 1 (a); the Commission may fix a time limit within which the opinion or report shall be given.

Article 4

1. The Committee shall consist of 50 members, nationals of the Member States.

2. Seats shall be allocated as follows:

(a) 27 to the representatives of airlines and airports' organizations;

(b) 27 to the representatives of the employees' associations.

3. The members of the Committee shall be appointed by the Commission as follows:

(a) 48 on proposals from the following employers and employees' organizations of airlines and airports:

(1) Airlines and airports associations:

- Association of European Airlines (AEA): 13 members,
- European Regional Airlines Organization (ERA): three members,
- European Communities Independent Airlines Association (ACE): three members,
- Air Chartered Carrier Association (ACCA): two members,
- International Civil Airports Association — Europe (ICAA): three members.

(2) Employees' associations:

- Committee of Transport Workers' Union of the European Community: 24 members.

(b) Six, directly by the Commission, after consultation of the bodies mentioned in (a), from the representative organizations of airlines and airports organizations and

employees' associations. If appropriate, these might be from bodies other than those mentioned in (2).

Article 5

1. An alternate shall be appointed for each member of the Committee under the same conditions as laid down in Article 4 (3).

2. Without prejudice to Article 9, an alternate shall not attend meetings of the Committee or a working group provided for in Article 9, or participate in its work, unless the member for whom he is the alternate is prevented from doing so.

Article 6

1. Committee members and their alternates shall hold office for a term of four years; appointments shall be renewable.

2. Members and their alternates whose term of office has expired shall remain in office until they have been replaced or their term of office has been renewed.

3. A member's or alternate's term of office shall cease before the expiry of the period of four years upon his resignation or death or if the organization or association which nominated him requests his replacement. The vacancy thereby caused shall be filled in the manner prescribed in Article 4 (3) by a person appointed for the remainder of the term of office.

4. There shall be no payment for duties performed.

Article 7

1. The Committee shall, by a two-thirds majority of members present, and a single majority in each group, elect from among its members a chairman and vice-chairman who shall hold office for a term of two years. The chairman and vice-chairman shall be chosen alternately from amongst the two groups of organizations and associations listed in Article 4 (3).

2. (a) The chairman or vice-chairman whose term of office has expired shall remain in office until he has been replaced.

(b) Should the chairman or vice-chairman cease to hold office before expiry of his term, he shall be replaced for the remainder of the term by a person appointed in the manner prescribed in paragraph 1 upon a proposal from the group to which his organization or association belongs.

Article 8

The Committee shall create a Bureau consisting of the chairman and vice-chairman together with four additional representatives of each of the two groups listed in Article 4 (3) (a) to plan and coordinate its work, each group selecting its own additional representatives.

Article 9

The Committee or its Bureau may:

- (a) set up working groups to facilitate its work. It may authorize a member to delegate another representative of his organization or association, who shall be named, to take his place in a working group; such delegate shall enjoy the same rights at meetings of the working group as the member he replaces;
- (b) ask the Commission to appoint experts to assist it in specific tasks.

Each group of members specified in Article 4 (3) may be accompanied by one or more experts, who are specially qualified in any particular subject on the agenda. The expert shall be present only for the discussion of the particular subject for which his attendance is required.

Article 10

The Committee shall be convened by its Secretariat at the request of the Commission after consultation of the chairman and vice-chairman. The Committee may also meet at the initiative of the bureau, in agreement with the Commission and convened by its secretariat. The agenda for its meetings will contain items for which the Commission requests an opinion of the Committee and items decided by unanimous agreement of the Bureau.

Meetings of the Bureau shall be convened by the secretariat after consultation of the chairman and the vice-chairman.

Article 11

- 1. No opinion of the Committee shall be valid unless two-thirds of the members are present.
- 2. The Committee shall submit its opinions or reports to the Commission. If an opinion or report is not unanimous, the Committee shall submit to the Commission the dissenting views delivered.

Article 12

- 1. The Commission shall provide a secretariat for the Committee, the Bureau and the working groups.

2. The Commission shall ensure the attendance at all meetings of the Committee, the Bureau and working groups of representatives of appropriate seniority from the relevant departments.

3. A representative of the Secretariat of each of the organizations or associations listed in Article 4 (3) (a) may attend the meetings of the Committee as observer.

4. The Commission, in agreement with the Bureau, may ask other organizations than those mentioned in Article 4 (3) to participate as observers in the Committee's work.

5. The organizations and associations mentioned in Article 4 (3) can indicate at maximum 2 observers from European countries other than the Member States of the European Communities.

Article 13

If the Commission has informed the Committee that an opinion requested relates to a matter of a confidential nature, members of the Committee shall be bound, without prejudice to the provisions of Article 214 of the EEC Treaty, not to disclose any information acquired at the meetings of the Committee, the working groups of the Bureau.

Article 14

After hearing the Committee's views, the Commission may review this statute in the light of experience.

This Decision shall take effect on 1 August 1990.

Done at Brussels, 30 July 1990.

For the Commission

Vasso PAPANDREOU

Member of the Commission

Appendix A

LIST OF INTERVIEWEES

This list contains the names of European Community officials and members of the European Parliament, as well as of representatives of individual member-states and of international organizations, of individual airlines and airline organizations, trade unions, pilot associations, consumer and other interest groups. All of them provided useful information on a wide range of issues concerning the EC air-transport politics and policy-making, as well as on specific issues in the areas of their concern. Special reference is made to most of them in certain parts of this study, but there are also a few who are mentioned only here, since their contribution to our better understanding and explanation of EC air-transport politics and policy-making was of a more general kind. Some of our anonymous sources are mentioned below, but others are not.

Alexopoulos, Nicolas, Greek, principal administrator of the Transport Section of Economic and Social Committee of the EC (ECOSOC), (interview, 7 Nov. 1990).

Ambrose, A., Mike, Briton, director general of European Regional Airlines Association (ERA) (interview, 30 May 1991).

Anastasopoulos, George, Greek MEP, president of the Committee of Transport and Tourism of the EP (interview, 19 Jan. 1989).

Argyris, Nicholas, Briton, Head of the division iii for Transport and Tourist industries of directorate D of DG IV for Competition (interview, 7 Dec. 1990).

Barbin, S., Air Transport expert officer of ECAC, ex-French CAA employee responsible for multilateral affairs, interview, 23 Nov. 1990).

Brown, John, Irishman, Transport Counsellor of the Permanent Representation of the Republic of Ireland (interview, 16 Nov. 1990).

Burlough, R. N., Briton, principal administrator of division iii for social aspects of transport of directorate C of DG VII for Transport (interviews, 9 Nov. 1990 and 6 Dec. 1990).

Castro, Yose Osorio, Transport Counsellor of the Permanent Representation of Portugal to the EC (interview, 16 Nov. 1990).

Chene, Claude, Frenchman, Transport advisor of the Commissioner Karel Van Miert of DG VII for Transport (interview, 5 Dec. 1990).

Cremoni (Di) Tosti, Carlo, Italian, principal administrator of division i for air transport of directorate C of DG VII for Transport (interview, 5 Nov. 1990).

Cockroft, David, Briton, secretary general of International Transport Workers' Federation (ITF) (interview, 19 June 1991).

Cotterill, M., R., head of economic policy division of UK CAA (interview, 31 May 1991).

Crampton, Stephen, Secretary of Consumers in the EC Group in UK (CECG) (interview, 28 May 1991).

De Bastos, Marinho J., Portuguese, principal administrator of air transport of directorate C of Transport Policy of DG D of the Council Secretariat for Research, Energy, Transport, Environment, and Consumer Protection (interview, 8 Nov. 1990).

De Borger, R., Transport Counsellor of the Permanent Representation of Belgium to the EC (interview, 5 Nov. 1990).

Denton, Nicholas, Transport and Tourism Counsellor of the Permanent Representation of UK to the EC (interview, 12 Nov. 1990).

Deslandes, Christian, secretary general of the French Union General Federation of Transport and Equipment Workers (FGTE) (interview, 21 Nov. 1990).

Devellenes, Yves, Frenchman, principal administrator of air transport in Division iii for Transport and Tourism of directorate D of DG IV for Competition (interview, 29 Nov. 1990).

Enderle, Yves, president of the Belgian Airlines Cockpit Crew Association (ABPNL), (interview, 7 Dec. 1990).

Finstfein, Helena, administrative employee of the British Airlines' Pilots Association (BALPA) (interview, 5 June 1991).

Frohnmeier, Albrecht, German, head of division ii for transport infrastructure of directorate C of DG VII for Transport (interview, 22 Oct. 1990).

Gjertsen, Trygve, Norwegian, general manager of SAS to Belgium and Luxembourg (interview, 29 Nov. 1990).

Gomez, Gerard, safety advisor of the French Union National Syndicate of Commercial Aviation Personnel (SNPNC) (interview, 23 Nov. 1990).

Grenier, Corina, research executive of the French Consumer Association of the Air Transport Users (AFUTA), (interview, 23 Nov. 1990).

Gosselin, Alfred, Belgian, secretary general of the International Federation of Trade Unions of Transport Workers/World Confederation of Labour (FIOS-T-WCL) (interview, 14 Nov. 1990).

Hasselt, (Van) Ludolf, Belgian, administrator of division i for air transport of directorate C of the DG VII for Transport, (interview, 8 Nov. 1990).

Hennon, Joe, Irishman, air-transport *rapporteur* of the division iii of directorate D of DG IV for Competition (interview, 30 Oct. 1990).

Holubowicz, P. R., Belgian, director general of the European Community's Independent Airline Association (ACE) and member of the Joint Committee of Civil Aviation (JCCA) (interview, 15 Nov. 1990).

Houtte, Ben Van, Dutchman, administrator of division iii for Transport and Tourism of Directorate D of DG IV for Competition (interview, 9 Nov. 1990).

Hudson, Edward, Briton, secretary general of the European Civil Aviation Conference (ECAC), (interview, 20 Nov. 1990).

Johannes, Hartmut, German, hearing officer of DG IV for Competition (interview, 23 Oct. 1990).

Howard, Stuart, ex-researcher of civil air-transport group of Transport and General Workers' Union (TGWU) and currently head of ITF's civil aviation section (interviews, 3 June 1991 and 4 April 1993).

Iddon, Clive, Briton, Secretary of Committee Transport of the Workers' Unions Committee in the EC (CTWV) (interview, 30 Oct. 1990).

Jeandrain, Pierre, Belgian, general manager of the Intelligence Service for Air Transport in the EC (AEROPA), (interview, 27 Nov. 1990).

Jullien, Danielle, international affairs officer of the French union National Syndicate of Commercial Aviation Personnel (SNPNC), and member of the Joint Committee of Civil Aviation (JCCA), (interview, 23 Nov. 1990).

Kanganis, Marina, Frenchwoman, secretary general and head of multilateral affairs of the French ex-independent airline UTA, (interview, 22 Nov. 1990).

Keramianakis, Manolis, head of the division for the aeropolitical affairs to the EC for the Greek CAA (interview, 22 April 1989).

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The bulk of the interviews, especially with EC officials, held in connection with this thesis fell into the period between 1 October and 15 December 1990.

The 75 personal interviews were conducted without a specific framework, in both formal and off-the-record discussions. Some interviewees were selected by myself, others I was referred to in the course of our conversations.

All information given was recorded and transcribed by the author, and is available for purposes of verification. The lengths of the interviews varied between 20 minutes and several hours.

I approached the majority of my interviewees by letter, introducing myself and asking for an appointment. Individuals were selected because they were members of the personnel of DG IV (Competition) and DG VII (Transport). One interviewee was an official in the Secretariat of the Council of Ministers. I also interviewed nine permanent Transport Counselors of the member-states, three Euro MPs who were members of the Transport and Tourism Committee of the European Parliament, and one member of the Economic and Social Committee of the EC (ECOSOC). Finally I interviewed representatives of EC, European, and international umbrella organizations and interest groups, as well as people from individual member-states, airlines, trade unions and pilot associations.

If I spoke with more people from one position or interest group than another, this was because they were more readily available, quite apart from

being of the greatest interest to me.

Generally speaking, the response from the EC officials was rather guarded, less so with respect to DG VII than DG IV. I was able to see the transport director of DG VII and even the directorate's transport advisor to the Commissioner. Access to DG IV in each majority was restricted to lower-ranking personnel. N. Argyris, the head of Transport and Tourism division of DG IV, needed the most patience and even pressure before I could reach him. Other higher officials in DG IV refused to see me altogether. Jonathan Faull, air-transport advisor and cabinet-staff member of Commissioner Sir Leon Brittan, angrily broke into a conversation I was having with his secretary who was telling me yet again that he was unavailable and could not be reached. He informed me that the EC is not a charitable organization and that he had better things to do than help researchers. He then hung up. I never saw him. Ruth Frommer also, head of the air transport social division in DG VII, consistently refused to see me, and when I went to her office to see her without appointment, she threw me out. In general, all EC officials seemed afraid to talk about their Commissioners, or to criticize anyone at the top of the hierarchy.

The nationalities and functions of my interviewees are set out to the Table below which is arranged in order of the number of interviews given.

NATIONALITIES AND FUNCTIONS OF INTERVIEWEES

FUNCTIONS	BELGIUM	DENMARK	GERMANY	GREECE	FRANCE	ITALY	IRELAND	LUXEMBOURG AND/OR OTHER COUNTRIES	NETHERLANDS	PORTUGAL	SPAIN	UK	TOTAL
1) TRADE UNIONS	2			1	6							4	13
2) AIRLINES	2		1	2	1		1	3 ¹				2	12
3) DG VII OFFICIALS	2	1	1	2	2 ²	1						2	11
4) DG IV OFFICIALS			1	1	2	1	1		1	1		1	9
5) TRANSPORT COUNSELLORS	2	1					1	1 ³	1	1	1	1	9
6) CONSUMERS	1				2						3		6
7) MEMBER-STATES	1			1	1 ⁴						2 ⁵		5
8) PILOTS	1			1							2		4
9) EUROPEAN PARLIAMENT MPs				3									3
10) COUNCIL OF TRANSPORT SECRETARIAT									1				1
11) ECONOMIC AND SOCIAL COMMITTEE				1									1
12) PLATFORM ORGANIZATIONS	1												1
TOTAL	12	2	3	12	14	2	3	4	2	3	1	17	75

¹ Includes individuals representing the Scandinavian airline SAS from Norway and Sweden, and a Turk representing Association of European Airlines AEA.

² Including the member of the staff of cabinet and transport advisor of the Commissioner of DG VII (transport) Karel Van Miert.

³ Transport Counsellor of Norway.

⁴ Serving in the European Civil Aviation Conference (ECAC).

⁵ One serving in the European Civil Aviation Conference (ECAC).

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