

CASE COMP/D2/38.479: British Airways / Iberia / GB Airways

On 10 December 2003, the Commission decided not to raise serious doubts against the alliance between British Airways, Iberia and GB Airways. As a consequence, these agreements are automatically exempted for six years. A summary of the Commission's assessment of the alliance is set out below.¹

1. PROCEDURE

1. On 22 July 2002, British Airways (BA), Iberia and GB Airways notified to the Commission a number of co-operation agreements, applying for an exemption under Article 5 of Regulation N° 3975/87².
2. The Commission services consulted a large number of European airlines, travel agents' organisations and corporate customers on this case. After having established its preliminary analysis of the case, the Commission services entered into detailed discussions with the parties to see whether the latter could accept to offer suitable remedies to alleviate competition concerns. A "market test" was carried out with a view to find out whether the proposed commitments, in the form of slots to be made available, would be taken up by (potential) competitors.
3. On 12 September 2003, pursuant to Article 5 (2) of Council Regulation No 3975/87³, the Commission published a Notice in the Official Journal⁴ summarising the main elements of the co-operation agreement and giving full account of the commitments proposed by the parties. Under Article 5 (2) of the Regulation, interested parties had 30 days to comment. According to Article 5 (3) of the Regulation, if the Commission does not notify the Parties within 90 days of the date of this publication that there are serious doubts as to the applicability of Article 81 (3) of the EC Treaty, the co-operation agreement shall be deemed exempt from the prohibition under Article 81 (1) EC for a maximum of six years from the date of publication. Four comments from third parties have been received.

2. THE PARTIES

4. BA is a public limited company registered under the laws of England and Wales. Its principal activities are the operation of international and domestic scheduled and charter air services for the carriage of passengers and cargo. BA also provides ancillary services to the air transport business, such as ground handling services and aircraft maintenance and engineering. The consolidated world-wide turnover of the

¹ This assessment is based on the information made available to the Commission in the course of its investigation and does not reflect subsequent market changes.

² OJ L 374, 31.12. 1987, p.1.

³ OJ L 374, 31.12. 1987, p. 1.

⁴ OJ C 217, 12.09.2003, p. 2. A corrigendum notice in Spanish, Italian, Danish and German was published on 25 September 2003 (OJ C 229, 25.09.2003).

BA group amounted to 12,329 million Euro in 2001/02. BA is part of the Oneworld alliance. BA has its hubs at London Heathrow and Gatwick.

5. Iberia is a fully privatised company engaged in passenger and freight air transportation. In 2001 its turnover amounted to 4,735.9 million Euro. Iberia's current shareholders include BA (9%). Like BA, Iberia is a member of the Oneworld alliance. Iberia has its hubs at Madrid and Barcelona.
6. GB Airways is a privately-owned limited company based at London Gatwick airport, the main activity is the operation of international scheduled air services. The company focuses on the short-haul leisure market and has a franchise agreement with BA. It operates aircraft under the BA brand and used the BA flight prefix primarily to Spain. GB's consolidated turnover amounted to 215 million Euro (2000/01).

3. THE NOTIFIED AGREEMENTS

7. According to the notification BA, Iberia and GB Airways ("the parties") seek setting up a fully-fledged tripartite alliance. Their intention is to co-ordinate and eventually integrate their commercial and marketing strategies, distribution methods and practices world-wide and in particular on routes between the UK and Spain. Although the parties remain independent carriers and retain their own corporate identity, the co-operation is intended to achieve the benefits associated with a merger.
8. The parties intend to co-operate "to the maximum extent that is commercially feasible and permitted by applicable law", including:
 - (1) extension of code-sharing services (that is placing the code of one carrier on certain of the others' service), in particular on routes between the UK and Spain and vice versa⁵;
 - (2) co-ordination of pricing and commission policy, with respect to those services they deem relevant;
 - (3) common network planning, in order to better adapt capacity to customer demand;
 - (4) common approach towards cargo activities, including co-operation in planning, pricing, capacity management, sales and handling activities⁶;
 - (5) revenue and profit sharing (passenger and cargo);
 - (6) customer service; the parties intend to provide each other with data relating to customer service performance and customer satisfaction;

⁵ For example, from the start of the winter schedule on 27 October 2002 BA and Iberia have expanded their current code-sharing agreements to all flights from London Heathrow to Madrid and Barcelona. (press release of BA and Iberia of 8 October 2002).

⁶ As regards freight transport according to the parties their combined market shares are of no material significance. Freight transport is not considered in the present decision.

- (7) inventory and yield management;
- (8) other joint activities to be agreed between the parties.

9. In addition BA and Iberia plan to co-operate in the following areas:

- (1) development of Frequent Flyer Programmes ("FFPs"); the parties wish to explore possible ways of improving co-operation on FFPs and services in particular for customers resident in the EU;
- (2) co-ordination of sales and marketing; the parties intend to converge their sales, e.g. through the combination of retail outlets, joint advertising, but the parties will maintain their individual brands;
- (3) ground-handling; the parties intend to use common handling agents and consider opportunities of shared facilities⁷;
- (4) joint contracting with travel agencies, distributors, general sales agents and other organisations and individuals;
- (5) harmonisation of service and product standards in order to provide a seamless product to passengers travelling on code share flights;
- (6) joint purchasing initiatives;
- (7) information technology.

10. According to the parties their fundamental goal is to improve their network service and overall efficiency in order to serve a wider range of destinations more effectively. They stress that their networks are complementary, with BA having extensive schedules to the Middle and Far East and Iberia serving all major destinations in Latin America. The logic of their transaction is according to the parties therefore not to improve their position on UK-Spain point-to-point routes, although their capacities and frequencies on trunk routes are the indispensable requisite for the transaction.

11. BA and Iberia have signed on 19 July 2002 an Alliance Agreement (notified 22 July 2002), which forms the basis for their intended close global co-operation and which became effective immediately. In addition, on 20 December 2002 BA and Iberia signed a Trilateral Alliance Agreement with GB Airways. Both agreements have been notified to the Commission. The detailed terms and conditions of the co-operation will be laid down in further implementing agreements.

⁷ Ground-handling does not fall within the scope of Regulation 3975/87 and is not dealt with in this decision.

4. THE RELEVANT MARKETS

4.1. The Commission's approach to market definition in air transport

12. To establish the relevant market in air transport cases, the Commission applies a so-called "point of origin/point of destination" (O&D) pair approach. According to this approach, every combination of a point of origin and a point of destination should be considered to be a separate market from the customer's viewpoint. To establish whether there is competition on an O&D market, the Commission looks at the different transport possibilities in that market, that is, not only at the direct flights between the two airports concerned, but also, to the extent that they are substitutable to these direct flights, at other alternatives. These alternatives may in particular be direct flights between the airports whose respective catchment areas significantly overlap with the catchment areas of the airports concerned at each end, indirect flights between the airports concerned, or other means of transport such as road, train or sea.
13. Whether one of those alternatives is substitutable to the direct route depends on a multiplicity of factors, such as the travel time, frequency and the price of the different alternatives.
14. Depending on their different requirements, the Commission distinguishes between "time-sensitive" (business) and "non time-sensitive" (leisure) customers.⁸ For the first group, time is essential, either as regards the need to ensure a minimum travel time or the need to travel at a precise time of the day and not at any other given moment, or both. Also, certain time-sensitive passengers may need to book a flight at short notice or require flexibility (the possibility to miss one flight and book onto the next). Time-sensitive passengers are willing to pay a premium to have their requirements satisfied. On the contrary, for non-time sensitive passengers, savings on the price of the trip have priority over time constraints.
15. The distinction between business and leisure travellers does not necessarily coincide with the difference between time-sensitive and non-time-sensitive passengers. For example, leisure travellers going to their destination for a week-end of city trip will prefer not to spend a substantial part of their leisure time travelling in more time-consuming means of transport. The distinction can nevertheless be used as a proxy.

4.2. The affected markets in the present case

16. The parties' co-operation as regards the transport of passengers is world-wide in scope but focuses on routes between the UK and Spain. As far as the transport of passengers is concerned two different types of affected routes between the UK and Spain can be distinguished:
 - the "overlap" routes, where at least two of the parties operated services before the co-operation; and

⁸ See for example paragraph 30 of the Commission's Decision of 18 July 2001 in the *SAS/Maersk Air* case (OJ L265 of 5.10.2001, p.15).

- the "*non-overlap*" routes, where only one of the parties operated services prior to the co-operation but where any of the other parties could be considered as a potential competitor.

4.2.1. *The overlap routes*

17. In their application the parties have identified seven non-stop point-to-point overlap routes, served by at least two of them. On the first three routes Iberia and BA have overlapping services; on the remaining four routes Iberia and GB Airways overlap:

- London - Madrid
- London - Barcelona
- London - Bilbao
- London - Malaga
- London - Alicante
- London - Valencia
- London - Seville

4.2.2. *The non-overlap routes*

18. The parties have also provided information on 11 routes between the UK and Spain on which only one of the parties operated direct services prior to the co-operation:

- Birmingham-Barcelona (operated by BA)
- Birmingham-Madrid (operated by BA)
- Manchester-Madrid (operated by BA)
- Manchester-Barcelona (operated by Iberia)
- London- Santiago de Compostela (operated by Iberia, i.e. Aviaco)
- London-Asturias (operated by Iberia, i.e. Air Nostrum)
- London-Palma, Mallorca (operated by GB -as BA franchise)
- London-Tenerife (operated by GB - as BA franchise)
- London-Lanzarote (operated by GB - as BA franchise)
- London-Gran Canaria (operated by GB - as BA franchise)
- London-Almeria (operated by GB - as BA franchise)

4.3. **Substitutability**

19. Each above identified O&D pair constitutes a separate relevant market for the scheduled air transport of passengers. In the present case *indirect services* or *other transport modes* do not provide for suitable alternatives on the (short to medium haul) routes in question. However, for each of the route concerned the arguments by the parties on a) *airport catchment area overlap* and b) substitutable services by *low cost carriers* have been examined. Moreover, with regard to two routes (London-Malaga and London-Alicante) the argument of the parties that *charter services* provide for viable alternatives has been considered.

20. On the basis of the information provided by the parties as well as further market investigations carried out by the Commission with competitors and customers of the parties, the Commission has come to the following preliminary conclusions in this regard.

4.3.1. Catchment area overlap

4.3.1.1. London airports

21. The parties provide services to the destinations concerned in Spain from London Heathrow ("LHR") and from London Gatwick ("LGW") and argue that *all London airports* are sufficiently substitutable for services from the UK to Spain, both for leisure and for business passengers. Consequently services provided by competitors such as *EasyJet* and *Go* from e.g. London Luton ("LTN") and London Stansted ("STD") respectively would provide for viable alternatives.
22. At present services on five of the seven overlap routes are (apart from out of LHR and LGW) also operated from out of LTN and/or STD.⁹
23. The parties have provided figures showing that the number of passengers flying from LTN and STD to Spain compared to those flying from LHR and LGW are substantial, both for time-sensitive and non-time sensitive passengers and that the catchment areas of LHR, LGW, LTN and STD overlap to a significant degree. The parties also provided data showing that both LTN and STD are fast growing airports with increasing scheduled services and that both airports have good connections to central London.
24. The results of the market test carried out by the Commission confirms that all London airports concerned are indeed sufficiently substitutable for *non-time sensitive* passengers flying to the Spanish destinations at stake. However, as concerns *time-sensitive* passengers the conclusions are less clear-cut. Although UK organisations of travel agents as well as part of the parties' main corporate customers on the overlap routes indicate at a certain degree of substitutability of both London airports to services from LHR and LGW, practically all competitors of the parties, the Spanish travel agents organisations and a majority of the parties' main corporate customers that replied to the market test do not accept that LTN and STD are sufficiently substitutable for time-sensitive passengers. Therefore, the parties' view that all London airports provide for viable alternatives also for time-sensitive passengers cannot be *prima facie* accepted.

4.3.1.2. Spanish airports

25. The parties' argument on catchment area overlap of Spanish airports is relevant only for two of the affected overlap routes, that is London-Seville and London-Valencia. On both routes the parties are the only service providers. The parties argue that there is catchment overlap between the airports of Seville and Jerez on the one hand and between the airports of Valencia and Alicante on the other hand.
26. Airport catchment area overlap between Seville/Jerez and Valencia/Alicante can be accepted for *non-time sensitive* passengers. For *time sensitive* passengers the

⁹ These five routes are the routes between London and Madrid, Barcelona, Bilbao, Alicante and Malaga respectively. The remaining two routes, London-Valencia and London-Seville, are only served by Heathrow and Gatwick.

Commission based on the results of its' market inquiry does not accept substitutability between the respective airports.

4.3.2. *Low cost carriers*

27. According to the parties, apart from scheduled services by traditional carriers such as *bmi*, also the services provided by low cost carriers, such as *EasyJet/Go*, provide for viable alternatives for the flights operated by the parties from London to the Spanish destinations concerned. EasyJet in particular operates on the overlap routes London-Madrid, London-Barcelona, London-Bilbao, London-Málaga and London-Alicante. According to the parties services provided by no-frills carriers are sufficiently substitutable to those provided by scheduled airlines, also for business traffic at least for short flights in Europe.
28. In light of the data provided by the parties, the responses of competitors and main corporate customers to the market test, substitutability between services of traditional carriers and low cost carriers can be accepted for non-time sensitive passengers. In principle, from the results of the market test it can also be concluded that low cost carriers are sufficiently substitutable for a not unsubstantial percentage of time-sensitive passengers on the routes between London and the Spanish destinations concerned.

4.3.3. *Charter flights*

29. The argument of the parties on substitutability between scheduled services and charter flights is relevant for two (overlap) routes only: London-Alicante and London-Málaga. According to the parties both routes are charter dominated routes, in particular in the summer season, when charter flights carry 46% and 52% of all passengers respectively. On the other affected routes between the UK and Spain charter traffic is not substantial.
30. The Commission has so far not accepted that charter flights are sufficiently substitutable to scheduled flights, either for non-time sensitive or for time-sensitive passengers, in light of their different characteristics compared to scheduled services.
31. Given the relative importance of charter flights, the rather substantial percentage of seat-only charters and the apparent all year round availability on some of the routes between the UK and Spain, notably London-Málaga and London-Alicante, it cannot be excluded that there is a sufficient degree of substitutability between scheduled services and charter flights for *non-time sensitive* passengers on these routes. However, even if charter flights are not taken into account the combined market shares of the parties on the two routes concerned are still below 40% for non-time sensitive passengers. Therefore, for the purposes of the present decision the question whether charter flights are sufficiently substitutable to scheduled services for non-time sensitive passengers could be left open.
32. For *time-sensitive* passengers it is very unlikely that charter flights are sufficiently substitutable to scheduled services, given remaining differences in daily frequencies and flexibility provided by charter services and the low level of availability of charter

seat-only tickets. Practically all competitors and customers have also indicated that charter flights are not a sufficiently substitutable option for time-sensitive passengers. Therefore, the argument by the parties that charter flights provide for a viable alternative for business passengers has to be rejected.

4.4. The parties' combined market shares on the affected overlap markets

33. The combined market shares of the parties on the overlap routes are high, with the exception of the London-Malaga and London-Alicante routes, as follows from the table below (for W01/S02).

Table 1:

Overlap routes (W01/S02)	Total O&D passengers	Total O&D pax share	Business O&D pax share (LHR/LGW only)	Frequency share	Frequency share (LHR/LGW only)
London-Madrid	[...]	[60-70% / 50-60%]	[90-100%/70-80%]	70%/69%	78%/76%
London-Barcelona	[...]	[40-50%/30-40%]	[90-100%/60-70%]	65%/55%	94%/79%
London-Bilbao	[...]	[40-50%/ 30-40%]	[90-100%]	67%/74%	100%
London-Malaga	[...]	[20-30%/30-40%]	[90-100%/70-80%]	37%/36%	85%/71%
London-Alicante	[...]	[30-40%/20-30%]	[90-100%]	43%/34%	93%/91%
London-Valencia	[...]	[90-100%]	[90-100%]	100%	100%
London-Seville	[...]	[90-100%]	[90-100%]	100%	100%

Source: CAA/IPS

5. ARTICLE 81(1) OF THE TREATY

34. Article 81 (1) prohibits all agreements between undertakings 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.

5.1. Agreements between undertakings

35. The (envisaged) co-operation arrangements concluded by BA, Iberia and GB Airways are bilateral and/or tripartite agreements between undertakings within the meaning of Article 81(1) of the Treaty.

5.2. Effect on trade between Member States

36. All the routes which constitute the relevant markets link two Member States. The agreements relate to the provision of air transport services and alter the manner in which those services would have been provided on these routes in the absence of an

agreement. As a consequence, the agreements affect trade between the Member States.

5.3. Restrictions of competition between the parties

5.3.1. Restriction of actual competition on the overlap routes

37. The parties envisage an enhanced and comprehensive co-operation, including *inter alia* co-ordination on prices, marketing and sales, sharing of revenues and costs, co-ordination of frequencies, schedules and sharing of capacity; in other words all key parameters on which airlines normally compete. Hence, there is no doubt that the arrangements restrict competition on the seven identified routes where at least two of the parties were, prior to the co-operation, actual competitors (the overlap routes). The co-operation will, as a result, end all competition between the alliance partners.
38. According to the parties three of the identified overlap routes, London-Bilbao, London-Valencia and London-Seville have such low passenger volumes that the alliance would not have any appreciable effects on these routes and thus not warrant scrutiny under Article 81(1) of the Treaty¹⁰.
39. The Commission has so far not set definitive minimum O&D traffic thresholds below which competition restrictions on certain routes could be considered as falling outside the scope of Article 81(1) of the Treaty for *de minimis* reasons. However, the Commission has so far never challenged any route where the relevant O&D traffic was lower than 30,000 O&D passengers/year. Moreover, routes between 30,000 to 125,000 O&D passengers have been considered as rather "thin routes"¹¹. However, even if the overlap routes London-Valencia and London-Seville were considered as "rather" thin routes, this does not imply that the argument of the parties that the alliance would not raise any competition concerns under Article 81(1) EC on these routes can be accepted. Even on a relatively thin route the parties' co-operation could

¹⁰ According to CAA (Civil Aviation Authority) estimates routes served by one or two carriers would need approximately 250,000 passengers per year to support new entry. According to the parties London-Bilbao (212,000 pax/year), London-Valencia (115,000 pax/year) and London-Seville (100,000 pax/year) would all be below this margin. Furthermore, according to the parties the three routes would be of minor commercial interest since they are pre-dominantly leisure oriented and carry only minor volumes of business passengers ([...]for London-Bilbao, [...]for London-Valencia, [...] for London-Seville).

¹¹ In its *LH/SAS* decision of 1996 the Commission, referring to Regulation (EEC) No 2408/92, considered routes where capacity did not exceed "30,000 seats per year" as thin routes. The 30,000 figure referred apparently to the total number of passengers on the O&D routes concerned, including connecting passengers. As a result no remedies were required with regard to these routes. In the *KLM/Alitalia* merger decision of 1999 the Commission considered routes between 37,000 and 74,000 passengers per year as thin routes. It was not specified which types of passengers were included. As a consequence the Commission considered that on these markets, on which KLM was the only operator providing a direct flight, Alitalia could not be considered as a potential entrant since it "would not be in Alitalia's interest to operate such small routes that do not fit in its hub-and-spokes strategy". Subsequently these markets were not examined any further. In the *United Airlines/US Airways* merger decision of 2001 overlap routes with a total O&D traffic of more than 30,000 passengers per year were considered to be "significant". However, in the same decision routes with total annual O&D traffic below 125,000 passengers were qualified as thin routes.

restrict competition in an appreciable way, depending on the market position of the parties. On all three alleged thin routes the parties have high market shares (London-Bilbao [40-50%/70-80%], the other two overlap routes [90-100%]) and the near-merger like co-operation will end all competition between the parties which previously existed on these routes. Therefore, there is no doubt that the restriction of competition on all overlap routes has an appreciable effect.

5.3.2. *Restriction of potential competition on the non-overlap routes*

40. As concerns the non-overlap routes the parties also argue that these are mostly thin routes (apart from some primarily leisure oriented ‘holiday’ routes¹² where there is rather a lot of charter traffic), but have not specifically raised the appreciability issue.
41. The density of the non-overlap routes plays a role in particular as one of the factors when determining whether the non-operating party has a real commercial interest to enter the route and therefore whether (potential) competition is restricted in the first place.
42. On the basis of the facts in the possession of the Commission services, it appears that on most of these routes the non-operating party could not be said to be a potential competitor. The reason for this is that the routes have relatively low O&D traffic volume¹³ (routes have less than 90.000 passengers per year, with exception of the ‘typical holiday routes’). Moreover, the Commission’s investigation has not resulted in sufficient empirical and economic evidence that the non-operating party would have a real commercial possibility to enter these routes. Hence it is unlikely that the agreements appreciably restrict competition on the non-overlap routes.

6. ARTICLE 81(3) OF THE TREATY

43. Article 81(3) of the EC Treaty provides for the possibility that Article 81(1) be declared inapplicable if the agreements concerned contribute 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, provided that those agreements do not:
 - impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

¹² The ‘typical holiday routes’ are: London-Palma, London-Tenerife, London-Lanzarote and London-Gran Canaria.

¹³ The parties provided data on total on board passengers (i.e. direct O&D pax and connecting pax, excluding charter) based on CAA data (W01+S02) on all eleven non-overlap routes: Birmingham-Barcelona 47.619, Birmingham-Madrid 46.330, Manchester - Madrid 67.476, Manchester - Barcelona 74.402, London – Santiago 63.746 (incl. charter 67.404), London – Asturias 8.791, London – Palma 517.572 (incl. charter 1,4 million), London – Tenerife 184.553 (incl. charter 1,1 million), London – Lanzarote 72.126 (incl. charter 624.832), London – Gran Canaria 14.278 (incl. charter 488.730), London – Almeria 7303 only summer (incl. charter 96.509).

6.1. First condition: contribution to improving the production or distribution of goods or to promoting technical or economic progress to the benefit of consumers

44. According to the parties the envisaged co-operation will result in important efficiencies, such as cost savings, more efficient use of resources, improved connectivity, new on-line connections, better support and coverage on thin routes, development of new products and promotions etc, leading to lower fares and better quality of services. Joint working groups will explore the full range of cost savings available to underpin future price reductions and service enhancements to improve customer proposition.
45. The envisaged fully fledged alliance between the parties, which have largely complementary networks, is indeed likely to lead to efficiency gains both in terms of cost savings as in terms of benefits in the form of new or improved airline services. So far in particular, new services have been and will be created by the parties. Moreover, given the fact that the number of connecting passengers concerned by the transaction is quite high on the more important routes London-Barcelona and London-Madrid,¹⁴ the alliance is likely to bring concrete benefits in terms of improved connectivity.

6.2. Second condition: allowing consumers a fair share of the resulting benefits

46. According to the parties the envisaged improved pricing and customer service offerings will directly benefit the consumer. In particular, customers will benefit from lower fares, expanded and improved quality of services, better flight schedules and timing, better airport facilities, new fare products and promotions, greater opportunities for frequent flyers, extended code-sharing services, ticket interchangeability and seamless baggage handling for interline journeys.
47. Although there are at this stage only a few concrete indications that the above identified benefits of the co-operation have indeed been passed on to consumers (e.g. increased code sharing, new services) there is as such no reason to believe that they would not on those routes where the parties are subject to sufficient competitive constraints from actual and/or potential competitors.

6.3. Third condition: indispensability

48. According to the parties the implementation of the transaction is indispensable for achieving the identified benefits. The envisaged high frequency and closely co-

¹⁴ [50-60%]of the passengers carried by BA and Iberia on the London-Madrid route are connecting passengers. On the London-Barcelona route this is [40-50%]Connecting traffic carried by the parties on the other affected overlap routes is lower but still substantial: [20-30%] (London-Bilbao), [20-30%] (London-Malaga), [10-20%]London-Alicante), [10-20%]London-Valencia and [10-20%] (London-Seville) respectively.

ordinated service is held to be inconceivable in the absence of a close and stable co-operation. The synergies and cost savings could only be achieved through the envisaged degree of integration.

49. It can be acknowledged that, to the extent that the benefits of the envisaged co-operation will extend beyond those already achieved through membership of BA and Iberia in the global alliance “oneworld”, further co-operation between the parties must be required. The benefits outlined by the parties are dependent on the full integration of the parties' networks and services, including joint revenue sharing, scheduling and fare setting and the restrictions in the co-operation agreement are necessary to attain those benefits. The Commission has accepted in similar air alliance cases that these benefits are not likely to be achieved by less restrictive forms of co-operation.

6.4. Fourth condition: possibility of elimination of competition

50. The parties hold the view that the transaction will not eliminate competition. They emphasise that they compete directly only on a limited number of routes. The overlap routes between Iberia and BA are all considered being subject to intensive competition and London-Bilbao is moreover held to be a relatively thin route of minimal importance in the context of the transaction. The Iberia and GB Airways overlap routes are all considered being principally leisure destinations, with high competitive pressure from both scheduled airlines and charter operators.

6.4.1. General

51. Given the scope of the co-operation there will clearly no longer be any competition between the parties (inter-party competition). The question is then how much competitive constraints from third parties remain (third-party competition). To that end first the combined market share of the parties and the number and strength of remaining actual competitors is considered. Secondly, the possibilities of potential competition (entry barriers) are analysed. Although airline alliances often lead, in particular on the overlap routes to high market shares, these are as such not sufficient to conclude that competition is likely to be eliminated. This appears in the airline industry to be much more evident where high market shares come together with significant entry barriers. In case of the existence of a strong market position and significant market entry barriers, which are likely to prevent new direct and indirect market entry, the Commission usually concludes that, absent sufficient remedies, competition is likely to be eliminated on routes concerned. The assessment as to whether the co-operation agreement affords the parties the possibility of eliminating competition in respect of a substantial part of the services in question must be made by reference to the relevant markets where the Commission has identified restrictions of competition.

6.4.2. London-Madrid

52. As a result of the co-operation BA and Iberia, the main operators on the hub-to-hub route London-Madrid will cease to compete with each other.
53. Currently the parties operate 15 daily frequencies out of Heathrow and Gatwick (frequency share [70-80%]) and face three competitors on the route: Bmi (2 daily

frequencies out of Heathrow), Easyjet (one daily frequency out of Gatwick) and Air Europa (near to two daily frequencies out of LGW). With regard to non-time sensitive passengers the parties encounter additional competition from Easyjet out of Luton (two daily frequencies).

54. Although three competitors operate on the route, the parties have a very high combined market share as regards time-sensitive passengers and a high market share for non-time sensitive passengers (see table 1). Moreover, none of the competitors actually offers a high frequency service. This is in particular an important factor with respect to time-sensitive passengers. In fact the Commission's market inquiry revealed that corporate customers on average require at least four daily frequencies out of Heathrow or Gatwick.
55. Although in itself high market shares are not sufficient to assume that the alliance creates a risk of elimination of competition of a substantial part of the market, in addition there are important barriers to entry for potential competitors on the route concerned. In particular, there appears to be slot-shortage on both ends at Madrid and London (Heathrow and Gatwick). Therefore, without appropriate remedies there is a risk that the parties' co-operation will eliminate competition on a substantial part of the London – Madrid market for time-sensitive passengers. Even though all London airports are sufficiently substitutable for non-time sensitive passengers, there is also a risk that the arrangements will eliminate competition on the route for non-time sensitive passengers since the airport of Madrid is slot constraint and renders new entry difficult.

6.4.3. London-Barcelona

56. At present the parties operate 11.5 daily frequencies out of LGW and LHR (frequency share [70-80%]). The parties' only competitor on the route EasyJet is operating since summer 2002 three daily scheduled flights out of London Gatwick that are also suited to time-sensitive passengers. EasyJet also offers additional services out Luton and Stansted (two and four daily frequencies respectively), attractive to non-time sensitive passengers only.
57. As regards non-time sensitive passengers the parties' combined market shares are relatively low (W01 [40-50%], S02 [30-40%]). Since there remains sufficient actual competition on the market, the co-operation agreement is not eliminating competition for non-time sensitive passengers on the route.
58. In summer 2002, the parties hold a relatively high combined market share for time-sensitive passengers and frequencies on the narrow market, i.e. Barcelona-Heathrow/Gatwick ([60-70%][70-79], see table 1). One year later, in summer 2003, EasyJet increased its services to four daily services, thereby increasing its frequency share to 25%. Until now the effect of this increase on time-sensitive passengers cannot be verified, since passenger data are not yet available for this season. Nevertheless, following the passenger trend of EasyJet on this route it appears very likely that EasyJet has significantly increased its' market share of time-sensitive passengers (up to 40%).
59. Similar to London-Madrid the Commission considers a daily service with four frequencies for time-sensitive passengers to be sufficient to restraint the parties'

behaviour on the route. Easyjet already offers such service out of Gatwick. Therefore, if an appropriate remedy can preserve the present competitive situation for a certain time span, it is unlikely that the agreement eliminates competition on a substantial part of the market for scheduled air services for time-sensitive passengers on the London-Barcelona route.

6.4.4. London-Bilbao

60. The parties hold high combined market shares on this route, in particular in terms of frequencies and time-sensitive passengers ([70-80%][90-100%]see table 1). The parties offer one daily frequency out of Heathrow and Gatwick. EasyJet is the only actual competitor on the route (two daily frequencies out of Stansted). For time-sensitive passengers this service is however not a sufficiently substitutable alternative to the services of the parties. In the winter 2003/04 season, EasyJet introduced one additional daily frequency at mid-day out of Gatwick, which corresponds to a frequency share of 33% on the route Bilbao-Gatwick/Heathrow.
61. Although the parties hold high combined market shares, there appear to be no substantial entry barriers on the Spanish side of the London-Bilbao route. However, slot constraints at the London side (LHR and LGW) might be an entry barrier with regard to time-sensitive passengers. The recent entry of Easyjet on Gatwick-Bilbao might indicate that the entry barriers at Gatwick are not insuperable, though only at mid-day off-peak times. The results of the market test show that the parties' corporate customers would not consider one daily frequency at mid-day to be a sufficiently substitutable alternative for time-sensitive passengers to the parties' daily offer of one morning and one evening departure. In addition, after EasyJet's entry on Gatwick-Bilbao the parties still hold [60-70%]of the frequencies on Gatwick/Heathrow-Bilbao. Therefore, there is a risk that without appropriate remedies the agreement eliminates competition in regard of a substantial share of the market for time-sensitive passengers.

6.4.5. London-Malaga

62. The parties are subject to important competitive constraints, especially as regards non-time sensitive passengers, from a number of actual competitors providing scheduled services on this route with relative high market shares.
63. As regards time-sensitive passengers the parties, until summer 2002, did not face any competitor on the route out of Gatwick or Heathrow. In summer 2002, EasyJet entered the route out of Gatwick with two daily frequencies and attracted already in its first season 30% of the time-sensitive passengers on Malaga-Gatwick/Heathrow. One year later Monarch Airlines followed with one daily frequency out of Gatwick. The parties' frequency share thereupon dropped first to [70-80%] (S02) and finally to [60-70%] in summer 2003. Following the passenger trend, it is very likely that the two competitors' combined market share for time-sensitive passengers on Malaga-Gatwick/Heathrow has almost reached [40-50%]in summer 2003. In view of these recent market entries on Malaga-London it can be concluded that the parties' agreement does not eliminate competition in respect of a significant part of the market for time-sensitive and non-time sensitive passengers.

6.4.6. *London-Alicante*

64. Iberia stopped operating its one daily frequency on the route in March 2003. GB Airways has not increased its frequencies since the withdrawal of Iberia and has no intention to do so. The parties' market share for non-time sensitive passengers is about [30-40%] and a number of actual competitors restrain the parties' behaviour on the route. Hence, there is no risk that the arrangement would eliminate competition as regards non-time sensitive passengers.
65. Until winter 2002 the parties did not face a competitor with respect to time-sensitive passengers. Since that time three actual competitors entered the route Heathrow/Gatwick-Alicante offering scheduled services: EasyJet (two daily frequencies, Gatwick), bmi (one daily frequency, Heathrow) and Monarch Airlines (one daily frequency, Gatwick). In summer 2003, the parties' frequency share has dropped to only [10-20%] on the overall London-Alicante market and to [30-40%] on the route Heathrow/Gatwick-Alicante. Even though passenger data are not yet available, it can be expected that these three competitors operating out of Heathrow and Gatwick with a frequency share of [60-70%] have attracted a considerable part of time-sensitive passengers on the route. Taking into consideration these recent entries it is very unlikely that the co-operation agreements eliminate competition on a substantial part of the market.

6.4.7. *London-Valencia*

66. The parties are the only operators on the route (one daily frequency out Heathrow and almost two out of Gatwick). Since catchment area overlap of Valencia and Alicante airport are accepted for non-time sensitive passengers, the parties are exposed to competitive constraints by services operated out of Alicante (see 4.3.1.2). With respect to time-sensitive passengers the parties argue that the route is rather thin with a low number of time-sensitive (business) passengers (W01+S02: [...]).
67. At the Spanish side there are no significant market entry barriers for potential competitors. Slot constraints at LHR and LGW however constitute serious entry barriers for competitors to offer services to time-sensitive passengers. On the other hand it can be doubted given the relatively small number of business passengers on the route whether the market would be large enough for an additional carrier. However since the parties operated this route independently from each other before the alliance there is a need for an appropriate remedy. The remedy should take into account the low number of time-sensitive passengers while guaranteeing that competition is not eliminated on a substantial part of the market.

6.4.8. *London-Seville*

68. Only the parties are operating services on the route London-Seville (one daily frequency out Heathrow and Gatwick respectively). The airport of Jerez provides for a sufficiently substitutable alternative for non-time sensitive passengers. However, at the moment only Buzz/Ryanair is serving London-Jerez with one weekly frequency that is not sufficient to constrain the parties' behaviour on the route. The parties claim that London-Seville is a "rather thin" route with low level business O&D traffic (W01+S02 [...]).

69. Potential competitors face serious entry barriers since Heathrow and Gatwick are slot-constrained. In contrast, no market entry barriers have been detected at Seville airport. Since Luton and Stansted are not slot-constrained and provide for viable, i.e. sufficiently substitutable alternatives for non-time sensitive passengers to Heathrow and Gatwick there is no risk that the alliance agreements will eliminate competition on the route as regards non-time sensitive passengers.
70. With regard to time-sensitive passengers it could be argued, since the route has a low volume of business passengers, whether the route is large enough to accommodate two carriers. However given that it has been an overlap route, i.e. the parties competed on the route before the alliance, there appears to be a need for an appropriate remedy. The remedy should take into consideration the low level of business traffic while ensuring that competition is not eliminated on a substantial part of the market.

7. PROPOSED COMMITMENTS

71. Following the notification of their co-operation arrangements notified on 19 July 2002, the Commission services have been in discussions with the Parties. As a result of these discussions, with a view to obtaining an Article 81(3) EC exemption pursuant to Article 5(3) of Council Regulation (EEC) 3975/87, the Parties have submitted proposed commitments in order to remedy any competition concerns in particular with regard to point-to-point time sensitive passengers on the routes: London-Madrid, London-Bilbao, London-Valencia and London-Seville.
72. These commitments shall be binding on the Parties, their subsidiaries, successors and assigns and the Parties commit to cause subsidiaries, successors and assigns to comply with these commitments.

7.1. Commitments pertaining to slots

73. The commitments pertaining to slots relate to the following routes (the “Routes”):
- London Heathrow/Gatwick-Madrid
 - London Heathrow/Gatwick-Bilbao
 - London Heathrow/Gatwick-Valencia
 - London Heathrow/Gatwick-Seville
74. The Parties shall provide to an airline independent of the Parties, wishing to commence or increase services on one or more of the Routes after the exemption becomes effective (the “Competitor”), slots as set out below (the “Slot Conditions”), subject to the provisions contained in these commitments:

- London Heathrow/Gatwick-Madrid: up to a maximum of four daily slot pairs at London Gatwick and at Madrid Barajas for one single Competitor. The maximum of four daily slot pairs to be provided shall be reduced by the number of services already operated by such Competitor on this Route.
- London Heathrow/Gatwick-Bilbao: a maximum one daily slot pair at London Gatwick.
- London Heathrow/Gatwick-Valencia: a maximum one daily slot pair at London Gatwick, but only after an average of at least forty point-to-point passengers can be shown to be travelling daily one way between London Heathrow/Gatwick and Valencia at unrestricted fares (*i.e.*, business and unrestricted economy) in any two consecutive IATA traffic seasons.¹⁵
- London Heathrow/Gatwick-Seville: a maximum one daily slot pair at London Gatwick, but only after an average of at least forty point-to-point passengers can be shown to be travelling daily one way between London Heathrow/Gatwick and Seville at unrestricted fares in any two consecutive IATA traffic seasons.

75. If more than one Competitor applies for the slots on the Route(s), the slots shall be provided to the Competitor chosen by the Parties subject to the Commission's approval. The Commission shall favour the Competitor that could viably operate the greatest number of services on the Route(s).
76. The Parties shall answer any enquiry by the Competitor concerning the applicability of the Slot Conditions on London-Heathrow/Gatwick-Valencia or London Heathrow/Gatwick-Seville by providing the Commission or, if appropriate an independent third party approved by the Commission, within two weeks from the date of the enquiry with all relevant internal data permitting the Commission to verify whether the Slot Conditions can be triggered on the Route(s) in question.
77. Slots obtained from the Parties under these Conditions shall be used only to operate services on the Route for which the Competitor requests them.
78. The Parties shall not be required to make a slot available to the Competitor for a Route insofar as this would result in the Parties' operating less than 60% of the frequencies or capacity on that Route at the time of the Competitor's request.
79. The Competitor shall make a clear written request to the Parties concerning its intended service(s) on the Route(s) and required slots at least six weeks prior to the IATA slot conference for the traffic season in which the Competitor intends to

¹⁵ The figure of 40 unrestricted fare-paying passengers on these Routes has been calculated taking into account that (i) a 130 to 156-seater aircraft (B737/A320) could be expected to be used on each of these Routes, and that (ii) IB, GB and a third party would expect each to carry at least 13 unrestricted fare passengers (8%-10% of capacity offered) one way on their respective once daily services to achieve sufficient revenue to justify services on each of these Routes.

commence service, the earliest such conference following the grant of the exemption, and for purposes of these commitments, being scheduled for June 2004.

80. The Competitor shall be eligible to receive or keep slots under the Slot Conditions only if it can demonstrate failure of all reasonable efforts to obtain slots for the Route(s) in question through the normal workings of the slot allocation procedure at the slot conference following the Competitor's written request, including the final allocation of slots by the co-ordinator following the Slot Return Date. The Slot Return Date shall be the deadline for returning unwanted slots, as defined in Appendix 2 of IATA's Worldwide Scheduling Guidelines (7th Edition, effective 1 December 2002).
81. The Competitor will not be deemed to have exhausted all reasonable efforts if slots were offered through the regular slot allocation procedure within 45 minutes of the times requested but not accepted by the Competitor and/or slots were offered through the regular slot allocation procedure more than 45 minutes from the times requested and the Competitor did not give the Parties the opportunity to exchange those slots for slots within 45 minutes of the times requested.
82. The Parties shall identify the exact time of the slots to be made available pursuant to the Competitor's written request, within two weeks after the end of the IATA slot conference identified in 80. above, and shall make the identified slots available to the Competitor, within two weeks after the final allocation of slots by the co-ordinator following the Slot Return Date. The identification and provision of slots shall be subject to the Parties holding slots within the relevant time period and the Competitor having complied with the above conditions and procedures in 80. to 82. above.
83. If the Competitor has obtained slots pursuant to the Slot Conditions for a particular IATA season and requests some or all of the slots at the same times for the following season, the Parties shall make slots available as close as possible to the slot granted in the preceding season, and in any event within 45 minutes of, the time requested, provided the Parties hold slots within the relevant time period and the Competitor has complied with the conditions and procedure in 77. to 79. above.
84. During the period between the Parties' receipt of the written request and the end of the respective IATA scheduling period the Competitor shall maintain an 'open book' policy for the respective airports. A slot obtained by the Competitor through the regular slot allocation procedure within 45 minutes of a slot made available by the Parties shall count towards the total number of slots the Competitor is entitled to receive under the Slot Conditions.
85. If the Competitor has obtained slots pursuant to the Slot Conditions, but decides not to use some or all such slots, it shall inform the Parties immediately and return the unused slots to the Parties. If the Competitor has begun using slots obtained pursuant to the Slot Conditions, slots shall be deemed unused if the Competitor and its subsidiaries have not used such slots for at least 80% of the scheduling season for which they had been allocated for the Route(s) in question, unless this non-use is justified on one of the grounds referred to in Article 10(5) of Regulation (EEC) No 95/93 or in any other regulation that amends or supersedes it.
86. If the Competitor returns to the Parties some or all slots obtained pursuant to the Slot Conditions, the Parties shall make such unused slots immediately available to another

Competitor, which had applied for the slots for the season in which the slot return takes place in compliance with the conditions and procedure in 77. to 79. above. If this offer is not taken up within one month, the Parties may use the unused slots or return them to the slot pool. This shall extinguish any obligation on the Parties to make the unused slots available to another Competitor.

87. Should the Competitor notify the Parties too late in a scheduling season for them to use the returned slots pursuant to Article 10(3) of Regulation (EEC) No 95/93 with immediate effect or after the deadline provided for in Article 10(4) of that Regulation and before the effective start of the scheduling season, the Parties may require that the Competitor transfer them a comparable slot. If the Competitor is unable to do so for any reason, they may seek to justify the non-use of the surrendered slot on the basis of Article 10(5) of Regulation (EEC) No 95/93.
88. A mechanism shall be agreed between the Parties and the Competitor allowing the Parties to monitor how the slots are being used to ensure that the slots provided by the Parties are used, and returned pursuant to 97. below, in a manner consistent with these conditions. The Parties shall inform the Commission about the agreed mechanism.
89. Slots provided under the Slot Conditions shall be offered without compensation.

7.2. Frequency freeze

90. The Parties shall not add frequencies on London Heathrow/Gatwick-Barcelona until the end of the 2004/2005 Winter season and on the Route(s) on which the Competitor uses slots obtained under the Slot Conditions during the first IATA season for which the Competitor obtains slots under the Slot Conditions and the following IATA season, save in the case of exceptional events (*e.g.* international football matches) requiring additional flights on a particular day. Concerning GB's operations, GB shall retain the right to operate up to two daily services on London Gatwick-Valencia and up to one daily service on London Gatwick-Seville.

7.3. Interlining

91. At the Competitor's request, the Parties shall conclude one interline agreement concerning the Route(s) operated by it if it does not have an existing interline agreement with the Parties. Such an interline agreement shall:
- (a) apply to the first class, business class and leisure travel categories only;
 - (b) provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued;
 - (c) be limited to true origin and destination traffic operated by the Competitor;
 - (d) be subject to the MITA rules and/or normal commercial conditions; and
 - (e) include the possibility for the Competitor, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the new entrant.

92. Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a new entrant for travel on a new entrant city pair. However, to avoid abuse, the Parties may require that the Competitor or the passenger, where appropriate, pay the positive difference between the fare charged by the Parties and the fare charged by the Competitor. In cases where the Competitor fare is lower than the value of the coupon issued by them, the Parties may endorse their coupon only up to the value of the fare charged by the Competitor. The Competitor shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.
93. All interline agreements entered into pursuant to this section for a particular Route shall lapse as soon as the Competitor ceases to operate that Route.

7.4. Frequent flyer programmes (FFPs)

94. If the Competitor does not participate in one of the Parties' FFPs or does not have its own comparable FFP, the Parties shall allow it, on request, to participate in their joint FFP at market competitive rates for the Route(s) it operates. Any agreement relating to a particular Route and concluded pursuant to this section shall lapse if the new entrant ceases to operate the Route.

7.5. Duration of exemption and conditions

95. The conditions shall apply from the date on which the exemption becomes effective and shall lapse as soon as the exemption expires.
96. Should the exemption be revoked, annulled, or expire, or should the Parties terminate the notified co-operation agreements, the conditions shall be null and void as from the date of revocation, the date of the annulment or the date of termination. In such a case, the Parties shall have the right to demand the return of any slots provided under these commitments to an airline which, at the time of the revocation, annulment or termination, is operating services on the Routes. They shall also have the right to terminate any interlining or FFP agreements concluded pursuant to these commitments.
97. The Parties may apply to the Commission for these commitments to be amended or revoked, if appropriate.

8. THIRD PARTY COMMENTS ON THE PROPOSED COMMITMENTS

98. With regard to the proposed commitments comments have been received from four competing airlines.
99. While the comments reflect the particular interests of the respective carriers, they do not necessarily take into account competition policy objectives. All carriers imply that the airports London Heathrow and Gatwick are not sufficiently substitutable for point-to-point passengers, in particular time-sensitive passengers, for flights between UK and Spain.

100. However, on the five routes where remedies are proposed, a large share of time-sensitive passengers embarks at Gatwick airport.¹⁶ The majority of corporate customers that replied to the Commission's market inquiry clearly state that Heathrow and Gatwick are sufficiently substitutable. Only three corporate customers indicate a preference of Heathrow over Gatwick, but even these customers are still using the airport of Gatwick for a significant part of their business travels. Finally, EasyJet's market entry on several London (Standsted, Luton and Gatwick) - Spain routes has considerably reduced the parties' market share out of Gatwick/Heathrow on the respective routes demonstrating a certain degree of substitutability between London airports, in particular between Heathrow and Gatwick.
101. The Commission's market investigation showed that the airports of Valencia and Alicante and of Seville and Jerez are not sufficiently substitutable for time-sensitive passengers, however substitutability with respect to non-time sensitive passengers can be accepted.

9. CONCLUSIONS

102. Given the far reaching scope of the co-operation and the strong market position of the parties on most of the affected routes there is no doubt that the co-operation falls within the scope of Article 81(1) of the Treaty. There are seven point-to-point routes between the UK and Spain on which two of the parties provide currently non-stop services (the overlap routes) and where the co-operation will consequently restrict actual competition between the parties.
103. As concerns the possibility of an exemption under Article 81(3) of the Treaty, while the arguments of the parties that the co-operation leads to efficiency gains to the direct benefit of the overall consumers can be accepted, there is a risk that, without appropriate remedies on a number of the affected routes competition will be eliminated. On these routes O&D traffic is substantial, the parties hold high combined market shares and the existence of entry barriers, notably in terms of slot shortage at one or both ends, render potential competition difficult.
104. The overlap route for which remedies are necessary is in the first place the hub-to-hub route London-Madrid, for both time-sensitive and non-time sensitive passengers. Moreover, for time-sensitive passengers remedies are necessary on the routes London-Barcelona, London-Bilbao, London-Seville and London-Valencia.
105. The remedies which the parties have proposed are sufficient for the agreements to comply with the conditions for exemption under Article 81 (3) EC Treaty.
106. London-Madrid: The parties commit to surrender a maximum of four daily slot pairs at LGW and Madrid. The slots will be provided to one competitor taking into account of the frequencies already operated by this competitor. Taking into account the competitive situation on the route and the results of the market inquiry, the Commission considers the parties' proposed remedy that enables one competitor to

¹⁶ Considering for the five routes concerned a narrow market definition comprising only Heathrow and Gatwick, Gatwick has a share of time-sensitive passengers between 20-50%.

offer four daily frequencies out of LGW to be sufficient to restrain the parties' services on the route with respect to both time-sensitive and non-time sensitive passengers.

107. London-Bilbao: The parties offer to provide a maximum of one daily slot pair at London Gatwick to a competitor. The Commission regards the commitment to provide one daily slot pair as sufficient to guarantee that competition is not eliminated on the route since the parties already face actual competition on Gatwick-Bilbao and themselves only offer one daily frequency out of Heathrow and Gatwick respectively.
108. London-Valencia: The parties offer to provide a maximum of one daily slot pair at London Gatwick to a competitor under the condition that on average at least 40 passengers are travelling daily one way on unrestricted tickets. A competitor entering on one daily slot pair would gain a frequency share of 27%. Given the relatively low volume of time-sensitive passengers at present on the route, the remedy, that only becomes effective when the level of time-sensitive passengers allows for new entry, suffices to ensure that competition is not eliminated in respect of a substantial part of the London-Valencia market.
109. London-Seville: The parties offer to provide a maximum of one daily slot pair at London Gatwick under the condition that on average at least 40 passengers are travelling daily one way on unrestricted tickets. A new entrant with one daily slot pair would gain a frequency share of 35% and would compete with the parties on equal terms for time-sensitive passengers out of Gatwick. Given the relatively low volume of business passengers on the route that is lowest on the overlap routes, the slot remedy that becomes effective in case the number of time-sensitive passengers allows for new entry on the route is appropriate to guarantee that competition is not eliminated with regard to a substantial part of the London-Seville market.
110. Frequency Freeze: The parties will not increase their frequencies on the above-mentioned four overlap routes and London-Barcelona for a minimum period of two IATA seasons. Such commitment should prevent the parties from predatory behaviour, for instance a massive capacity increase on a given route with the aim of driving new entrants out of the market before they have been established on the market. In the Commission's view a limited frequency freeze is an indispensable additional commitment for the slot remedies to be effective.
111. London-Barcelona: The parties do not offer a slot remedy. Taking into account the results of the market test and EasyJet's current offer of four daily frequencies out of Gatwick, the Commission considers the frequency freeze commitment of the parties to be sufficient to ensure that competition is not eliminated on this route. Hence, the Commission believes that no commitments pertaining to slots are required.
112. Frequent Flyer program and interlining: Commitments relating to frequent flyer programs and interlining aim at reducing potential entry barriers for new entrants that the Commission considers necessary to ensure that market entry is feasible for all carriers and hence competition is not eliminated on the respective markets.
113. While the above assessment raises concerns with regard to certain markets for the transport of passengers between the UK and Spain, the Commission reserves its

position as to other elements of the agreement, notably as regards routes between EU and third countries or the co-operation in the area of ground-handling, which both do not fall with the scope of Regulation 3975/87.

114. On the basis of the above facts, assessment and in particular the commitments proposed by the parties, the Commission therefore has decided not raise serious doubts within the meaning of Article 5(3) of Regulation 3975/87 as to the applicability of Article 81(3) of the EC Treaty to the notified agreements. As a result, these agreements shall be deemed exempt for the time already elapsed and for six years from the date of publication, i.e. until 12 September 2009.