



COMMISSION OF THE EUROPEAN COMMUNITIES

COMMISSION DECISION

of 7 April 2004

relating to a proceeding under Article 81 of the EC Treaty

(Case COMP/38.284/D2 Société Air France / Alitalia Linee Aeree Italiane S.p.A.)

(notified under document number C(2004) 1307 final)

(Only the English text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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,¹ and in particular Article 5 thereof,

Having regard to the application for negative clearance submitted by Société Air France and Alitalia Linee Aeree Italiane S.p.A. on 12 November 2001 pursuant to Article 3(2) of Regulation (EEC) No 3975/87 and the notification with a view to an exemption submitted by Société Air France and Alitalia Aeree Italiane S.p.A. on 12 November 2001 pursuant to Article 5 of that Regulation,

Having regard to the summary of the application and notification published pursuant to Article 5(2) of Regulation (EEC) No 3975/87²,

Having regard to the summary of the proposed commitments published pursuant to Article 16(3) of Regulation (EEC) No 3975/87³,

Having regard to the final report of the hearing officer in this case,

After consulting the Advisory Committee on Agreements and Dominant Positions in Air Transport,

Whereas:

1. INTRODUCTION

- (1) By letter of 12 November 2001, registered in DG Competition on 13 November 2001, Société Air France (Air France) and Alitalia Linee Aeree Italiane S.p.A. (Alitalia), hereinafter “the Parties”, notified to the Commission a number of cooperation agreements and applied for negative clearance under Article 3(2) of Regulation (EEC) No 3975/87 and/or exemption under Article 5 of that Regulation.
- (2) The agreements pursue the double aim of integrating Alitalia into the world-wide SkyTeam Alliance⁴ and of building a long-term strategic bilateral alliance based on close co-operation between the Parties. This case relates exclusively to the bilateral cooperation between Air France and Alitalia as far as air transport between Community airports is concerned.

¹ OJ L 374, 31.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p.1).

² OJ C 111, 8.05.2002, p. 7.

³ OJ C 297, 9.12.2003, p. 10.

⁴ Prior to the membership of Alitalia, the SkyTeam members were: Air France, Delta Airlines, AeroMéxico, Korean Air and CSA.

- (3) A summary of the application was published on 8 May 2002 in the Official Journal of the European Communities inviting interested third parties and the Member States to submit their comments to the Commission within 30 days in accordance with Article 5 (2) of Regulation (EEC) No 3975/87.
- (4) On 1 July 2002, the Commission notified the Parties pursuant to Article 5 (3) of Regulation (EEC) No 3975/87 that there were serious doubts as to the applicability of Article 81 (3) of the Treaty to the notified agreements.
- (5) The Parties replied to Commission's letter on 17 September 2002 and intensive discussions took place with a view to exploring adequate solutions for the problems identified in that letter.
- (6) Those discussions resulted in the Parties submitting a proposal for commitments. On 9 December 2003, the Commission published those proposed commitments in a notice in the Official Journal of the European Communities pursuant to Article 16(3) of Regulation (EEC) No 3975/87, inviting all interested third parties to submit their observations.

2. THE PARTIES

2.1. Air France

- (7) Air France (AF) is the parent company of the Air France group. Air France is the second largest airline in Europe (before British Airways and just after Lufthansa) in terms of total scheduled passengers transported⁵. The French State owns approximately 54% of Air France. Private and institutional investors own 33% and employees 13%. The consolidated world-wide turnover of the Air France group in 2002/2003 was EUR 12.7 billion.

2.2. Alitalia

- (8) Alitalia (AZ) is the ultimate parent company of the Alitalia group. Alitalia is the sixth largest airline in Europe in terms of total scheduled passengers transported. The Italian State owns approximately 62% of Alitalia and private investors own 35%. The consolidated world-wide turnover of the Alitalia group in 2002 was EUR 4.8 billion.

3. THE COOPERATION AGREEMENTS BETWEEN AIR FRANCE AND ALITALIA

- (9) Through their cooperation, the Parties seek to establish a far-reaching strategic bilateral alliance, the main elements of which are as follows :
 - (a) creation of a European multi-hub system based on Air France's hub at Paris Charles de Gaulle and Alitalia's hubs at Rome Fiumicino and Milan Malpensa, in order to interconnect their world-wide networks;
 - (b) coordination of the Parties' passenger service operations, including extensive use of code-sharing, coordination of their scheduled passenger network, sales,

⁵ Source: Yearbook 2003 of AEA, the Association of European Airlines.

- revenue management, mutual recognition of their respective Frequent Flyer Programmes, marketing coordination and share of lounge usage,
- (c) cooperation in other areas, such as cargo operations, passenger handling, maintenance, purchasing, catering, information technology, fleet development and purchase, crew training and revenue accounting.
- (10) The alliance is governed by [...] agreements signed on 27 July 2001 [...].
- (11) The Parties intend to enter into a long-term cooperation over an initial period of [...] years, extendable for subsequent periods of [...] years. The alliance can only be terminated under specific circumstances [...].
- (12) The Parties envisage that further integration may lead to a full merger if and when the circumstances are appropriate. Within the short-term, only a cross-shareholding is envisaged.
- (13) The cooperation is being implemented progressively. The main elements are already operational since the beginning of the 2002 IATA Summer Season, which started at the end of March 2002.
- (14) The cooperation is closer on the France-Italy "Bundle", which includes, according to the definition adopted by the Parties, all the routes between France and Italy operated by Air France and/or Alitalia, excluding beyond and behind flights, whether domestic or international. Section 3.1 below describes the "basic" cooperation that the Parties will implement as regards the air transport of passengers. The "enhanced" cooperation within the Bundle is described in section 3.2.

3.1. General cooperation regarding the transport of passengers

3.1.1. Code-sharing, network coordination and route cooperation

- (15) AF and AZ will make extensive use of code-sharing on scheduled services worldwide, everywhere relevant on their respective networks, except where there exist aeropolitical constraints⁶ or technical limitations. The code-sharing will be on a "free-flow" basis, which means that there is no pre-established limit on the number of seats that each Party can sell on the code-shared flights.
- (16) [...].
- (17) The Parties will use reasonable efforts to coordinate their flight schedules in order to minimise the waiting times of connecting passengers.

3.1.2. Coordination on pricing and sales

- (18) The Parties will coordinate their prices where possible. The key markets and the relevant city pairs for which common pricing will be developed will be identified by the Parties in due course, taking into account the common presence on the market, the market position and bilateral or Governmental issues (for example, third-country code sharing)

⁶ An example is the case of a bilateral agreement concluded by France with a third country that acts as an obstacle for AZ to add its code to the AF-operated flight between France and that third country.

- (19) The sales forces of the Parties will remain separate in their respective markets, but their policies will be coordinated. Each Party will keep its own reservation and ticketing system. Links will, however, be implemented between the different systems. [...]

3.1.3. Mutual recognition of the respective Frequent Flyer Programmes

- (20) For the time being, each Party will keep its own Frequent Flyer Programme (FFP). A progressive convergence to a Sky Team FFP could be envisaged later. The Parties have signed mutual recognition agreements for their respective FFPs which will allow the members of either Party's FFP to earn and redeem points when travelling with the other Party. Compensation payments will be established between the Parties in order to settle what the Parties owe each other in relation to the mutual recognition of FFPs.

3.2. Cooperation on the France-Italy Bundle as regards the transport of passengers

- (21) On the France-Italy Bundle, in addition to the Parties' overall cooperation described in section 3.1 above, the Parties also share their earnings and their capacities. The sharing of capacities also includes an agreement on the frequencies of the flights.

3.2.1. Sharing of earnings

- (22) Since April 2002, AF and AZ have been sharing the earnings derived from the France-Italy Bundle [...]. The convergence to a 50/50% sharing will be achieved progressively [...]. In order to facilitate the sharing of earnings, harmonised accounting criteria and procedures will be adopted.
- (23) The Parties will agree annually on the budget of the Bundle [...].

3.2.2. Sharing of capacities and agreement on the frequencies

- (24) The Parties plan to achieve a 50/50 % sharing of passenger capacity (measured as the number of offered seats per week) on the Bundle within a period of 4 years. [...].
- (25) Under the agreement, [*the parties also agree on frequencies*].

3.3. Cooperation on cargo operations

- (26) The Parties will also cooperate in the field of cargo transport world-wide. A short-term work plan has been agreed, and working groups have been set up in order to address the cooperation on the items identified in the plan.⁷
- (27) [...]. Ongoing negotiations between AF and AZ are defining that cargo partnership more precisely.

⁷ Schedule and capacity coordination and development of hub links aimed at improving the Parties' cargo load factors; joint pricing and sales, coordination of the revenue management where appropriate; feasibility and convenience of a common point of contact for customers; [...].

3.4. Cooperation as regards ground handling

- (28) On 28 March 2002, the Parties provided the Commission with a copy of the Ground Handling Business Agreement (GHBA), signed on 11 March 2002. Pursuant to that agreement, the Parties enter into a long term comprehensive partnership and will develop all possible synergies in the areas of reciprocal provision of services, station organization and airport co-location, and common purchasing.
- (29) The cooperation in the area of ground-handling will take place within the SkyTeam Alliance, which means that the Parties will also cooperate with the other member airlines of SkyTeam in this respect. SkyTeam members (including AF and AZ) will seek to place their ground handling services with the same provider and/or use a common area for passenger check-in.

3.5. Management of the AF/AZ Alliance

- (30) [...]
- (31) The operational management of the Alliance is entrusted to the AF/AZ Alliance Committee, which is composed of an equal number of board-level members [...].
- (32) [...]
- (33) [...]

4. APPLICABLE PROVISIONS

4.1. Affected activities

- (34) The activities affected by the cooperation agreements between Air France and Alitalia are scheduled air transport of passengers, air transport of goods and ground-handling services.
- (35) Air transport of cargo is excluded from the scope of this decision as the Parties are still negotiating the scope of their cooperation in that field (see Section 3.3. above). The decision does not address ground handling services either, which do not fall within the scope of Regulation (EEC) No 3975/87. This decision is therefore without prejudice to any further competition assessment under Article 81 of the Treaty of those aspects.

4.2. Cooperation regarding the air transport of passengers

- (36) The co-operation agreement regarding the transport of passengers between Air France and Alitalia is far-reaching. The most intensive co-operation between the Parties concerns the market for the transport of passengers on the France-Italy Bundle, where the Parties share earnings and capacities, agree on prices, frequencies, schedules and sales strategy and pool their frequent-flyer programmes.
- (37) The cooperation between the Parties does not fall within the scope of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of

concentrations between undertakings⁸ (“the Merger Regulation”). In particular, the alliance does not perform “all the functions of an autonomous entity” (Article 3(2) of the Merger Regulation). The alliance is not a separate legal entity with the resources necessary to operate as an autonomous economic unit on the market. It has no independent “access to the market” as referred to in the Commission Notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings⁹ as all dealings with customers will continue to take place through Air France and Alitalia. In addition, the Parties will share earnings [...] only on the France-Italy Bundle, which makes up a small proportion of their respective activities. The key elements of each Party’s commercial strategy will continue to be determined independently. Finally, the Bundle could hardly be considered as a stand-alone activity, being highly dependent on the rest of the Parties’ overall networks (and notably on connecting traffic).

- (38) On the basis of all the elements outlined in the two paragraphs above, the cooperation agreement between AF and AZ on the France-Italy bundle has the object and effect of co-ordinating the competitive conduct of the two undertakings which remain independent. It does not qualify as a full-function joint venture. It forms part of a wider cooperation agreement, as far as the transportation of passengers and cargo is concerned, which falls within the scope of Article 81 of the Treaty and must therefore be assessed under Regulation (EEC) No 3975/87, which lays down the procedure for applying Article 81 of the Treaty with regard to air transport between Community airports.

5. THE RELEVANT MARKETS AS REGARDS THE TRANSPORT OF PASSENGERS

5.1. The Commission’s general approach to market definition in air transport of passengers

- (39) To establish the relevant market in air transport, the Commission has developed the point-of-origin / point-of-destination pair (O&D pair, also called hereafter “city-pair”) approach, in a number of decisions.¹⁰ This approach has been supported by case law¹¹. According to that approach, every combination of point-of-origin and point-of-destination should be considered to be a separate market from the customer’s point of view. In order to establish whether there is competition on an O&D market, the Commission looks at the different transport possibilities in that market, comprising:
- (a) direct flights between the two airports concerned;
 - (b) direct flights between the airports whose respective catchment areas significantly overlap with the catchment areas of the airports concerned;

⁸ OJ L 395, 30.12.1989, p.1. Corrigendum in OJ L 257, 21.9.1990, p.13. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L180, 9.7.1997, p.1).

⁹ OJ C 66, 2.3.1998, p.1.

¹⁰ See for instance Commission Decision in Case No IV/JV.0019 - KLM/Alitalia (OJ C 096, 05.04.2000, p. 5).

¹¹ See Judgments of the Court of Justice in Case 66/86 Ahmed Saeed Flugreisen of 11.04.1989, [1989] ECR 803 and of the Court of First Instance in Case T-2/93 Air France/Commission (TAT) of 19.05.1994, [1994] ECR 323.

- (c) indirect flights between the airports concerned to the extent that these indirect flights are substitutable to the direct flights. Substitutability of direct routes with indirect routes depends on a number of factors such as the flight time or the frequencies (and schedules) of routes;
 - (d) other available transport means (car and/or train) to the extent that these are substitutable to direct or indirect flights in terms of journey time and frequencies, etc.
- (40) Whether those alternatives are substitutable amongst themselves depends on a multiplicity of factors, such as the travel time, the number of frequencies, service features and the price of the different alternatives.
- (41) In previous cases, the Commission further distinguished between “time-sensitive” and “non-time-sensitive” customers¹². The former wish to reach their destination in the shortest possible time, they are not flexible in terms of time of departure/arrival and they need to have the option of changing their reservation at short notice. Non-time-sensitive customers, on the other hand, are more price-sensitive and accept longer journey times. However, in practice, what enables airlines to separate these two groups is not so much the extent of their preference for short journey times as the extent of their preference for schedule flexibility. Time-sensitive passengers, using unrestricted tickets, are prepared to pay more to ensure they will always be able to travel on the most convenient flight.

5.2. The relevant markets as regards the transport of passengers in the present case

5.2.1. The affected routes

- (42) The Parties' cooperation as regards the transport of passengers between Community airports extends to three different categories of routes:

- 1) Seven overlap routes on which both Parties used to operate flights in competition before the alliance, all of which are routes that link France and Italy. These routes are Paris-Milan, Paris-Rome, Paris-Venice, Paris-Bologna, Paris-Naples, Milan-Lyon and Paris-Florence.

Paris-Florence was notified by the Parties as a non-overlap route because Alitalia was not operating the flights with its own means before the alliance. However, Alitalia used to have a code-share agreement with Meridiana on this route.¹³ Alitalia was therefore present on the Paris-Florence market, and was competing with Air France, even though it was not operating the flights by its own. This route will therefore be considered hereafter as an overlap route

- 2) Thirteen non-overlap routes linking France and Italy where only one of the Parties operated direct services before the alliance.

Paris-Turin	Rome-Nice	Milan-Marseille	Lyon-Bologna
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¹² See for example Commission Decision 2001/716/EC in Case COMP.D.2 37.444 - SAS Maersk Air and Case COMP.D.2 37.386 - Sun-Air versus SAS and Maersk Air (OJ L 265, 5.10.2001, p.15) and Commission's Decision 2002/746/EC in Case COMP/37.730 – AuA/LH (OJ L 242, 10.9.2002, p.25.)

¹³ Meridiana used to fly 12 frequencies per week on Paris-Florence in competition with Air France.

Paris-Genoa	Rome-Lyon	Milan-Toulouse	Lyon-Venice
Paris-Verona		Milan-Nice	
		Milan-Strasbourg	Turin - Clermont-Ferrand
		Milan -Clermont-Ferrand/Nantes ¹⁴	

- 3) Other intra-European routes where the Parties did not operate any competing direct service.

5.2.2. *The demand for air transport on the bundle of routes between France and Italy*

- (43) The Commission carried out an extensive market investigation to explore precisely the demand for air transport on the bundle of routes between France and Italy.

5.2.2.1. Time-sensitive and flexibility focused customers and price-sensitive customers

- (44) The investigation of the affected France-Italy routes has strongly confirmed the validity of the distinction between time-sensitive (flexibility focused) passengers and non-time sensitive (price-sensitive) passengers. The first category is primarily concerned with a maximum of travel flexibility and the main criteria on the basis of which they select a carrier are the number of offered daily flights, the convenience of departure/arrival times, the location of the airports the flights depart from and arrive at, and the possibility to change reservation at short notice. These criteria usually prevail over the ticket price, although this parameter is also becoming increasingly important for this category of customers. In contrast, non time-sensitive passengers are primarily price-focused and significantly less demanding in terms of overall travel time, reservation/travel flexibility and location of the airports.
- (45) Two customer groups with distinct product and service requirements therefore exist for the affected routes on the France-Italy bundle.
- (46) The distinction between business and leisure travellers does not always coincide with the difference between time-sensitive and flexibility-focused passengers and price-sensitive passengers. For example, leisure travellers going to their destination for a week-end or city trip will prefer not to spend a substantial part of their leisure time travelling in more time-consuming means of transport. Nevertheless, the distinction between time-sensitive and flexibility-focused passengers and price-sensitive passengers remains relevant in this case.

5.2.2.2. Airport substitution

- (47) Passengers who begin or end their journey in a catchment area of two or more airports can choose the airport from or to which they wish to fly. This increases competition if the choice between different airports also implies a wider choice between different airlines. There is a correlation between the extra time a traveller is willing to spend by travelling to an airport which is farther away and the overall travelling time. For flights within Europe, it can be assumed that the

¹⁴ The plane stops at Clermont-Ferrand and then continues to Nantes; the passengers boarding in Milan can continue on to Nantes.

radius of an individual airport's catchment area is small, given the short travelling time, while for long-distance flights the situation might be different. In this case, with reference to the international flights between France and Italy, the Commission has investigated possible substitution for the following airports:

Paris airports

- (48) Paris is served by two main airports: Charles de Gaulle (CDG) and Orly (ORY), both of which are “fully coordinated”¹⁵. The investigation on the France-Italy market has established that, from the demand side, for O&D passengers (both time-sensitive and flexibility-focused passengers and price-sensitive passengers), Paris-CDG and Paris-ORY are substitutable as they are located in the same catchment area and have comparable access facilities. From the supply side, the substitutability of the two airports may depend on the individual carrier's needs. For some airlines, they may not be substitutable depending on the markets they serve (connecting traffic/point to point traffic, domestic/international routes) and due to different airport costs.
- (49) A third airport in the Paris area is Beauvais-Tille (BVA), which is about 50 km away from Paris. Ryanair has initiated operations from this airport to Bergamo - Orio al Serio and to Rome-Ciampino. However, it appears from the market investigation that Beauvais is not substitutable to Paris-Orly or Charles de Gaulle airports for time sensitive and flexibility-focused passengers.

Milan airports

- (50) Milan is served by two main airports: Malpensa (MXP) and Linate (LIN), both of which are fully coordinated. It is apparent from the investigation on the France-Italy market that most corporate customers choose between the two airports according to their starting point and final destination, depending notably on where their offices or headquarters are located. Many recognise that LIN has the advantage of being closer to the city centre and easily accessible. Several customers, however, indicate that they have no preference for one or the other airport. Others state that they prefer MXP because it is closer to their starting point or final destination or that it has the advantage of offering more possibilities in terms of routes and frequencies. All in all, it appears from the investigation that around 46% of O&D time-sensitive passengers use MXP while 54% use LIN (traffic figures in IATA 2002). This goes to show that, for O&D passengers (both time-sensitive and flexibility-focused and price-sensitive), Milan-MXP and Milan-LIN are substitutable.
- (51) The Milan airport system also comprises Bergamo/Orio al Serio airport (BGY). It appears, however, from the investigation on the France-Italy market that this airport is not substitutable to the two main Milan airports for time-sensitive and flexibility-focused passengers. It is considered too far from Milan and not easily accessible.

¹⁵ In fully coordinated airports, slot coordination is necessary because, in principle, demand for slots exceeds supply at least at certain times during the day. See Article 2 (g) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14 , 22.1.1993, p.1). Regulation as last amended by Regulation (EC) No 1554/2003 of the European Parliament and of the Council (OJ L 221, 4.9.2003, p.1).

Rome airports

- (52) Rome is served by two airports, Fiumicino and Ciampino, both fully coordinated. Even if Fiumicino is the preferred option both for point to point and connecting traffic, it appears from the investigation on the France-Italy market that the two airports can be considered substitutable for O&D passengers (both time-sensitive and flexibility-focused, and price-sensitive).

Verona/Venice airports

- (53) The Parties argue that Venice falls into the catchment area of Verona's airport, 110 km west of Venice. It however results clearly from the investigation that flights operated on the Paris-Verona route cannot be considered an alternative to flights operated on the Paris-Venice route, even for price-sensitive passengers.

5.2.2.3. Low cost carriers

- (54) It appears from the investigation on the France-Italy market that, for most corporate customers, services currently operated by low cost airlines do not constitute a viable alternative to traditional full-service carriers, because they do not allow sufficient flexibility (that is to say, the number of flights operated daily is insufficient, the schedules are not convenient or there are only restricted tickets available) and they operate from secondary airports which are far from the final destination and not easily accessible.
- (55) All corporate customers clearly indicated that they do not consider the low-fare service between Beauvais and Bergamo al Serio operated by Ryanair as a convenient alternative to traditional services between Paris and Milan, both airports being too far from Paris and Milan cities. For the time being, flights offered by low cost airlines appear to be an alternative to traditional carriers only for price-sensitive, primarily leisure travellers.

5.2.2.4. Charter flights

- (56) Charter flights are operated on three O&D overlap city pairs (Paris-Rome, Paris-Naples and Paris-Venice) by Corsair. It results from the investigation that they clearly do not represent a convenient alternative to scheduled flights for time-sensitive and flexibility-focused travellers. It is also unlikely that they could represent a convenient substitute for price-sensitive passengers. Although they appear in computer reservation systems, the number of frequencies operated is insufficient to exercise competitive constraint on the Parties and only a minority of seats are sold in isolation of a package tour.

5.2.2.5. Indirect flights

- (57) Due to the relatively short flight-distance between France and Italy, indirect flights do not represent a genuine alternative to the convenience of the direct flights on the France-Italy Bundle. According to the information provided by the Parties for the period April 2000-March 2001, only 4.5% of all the passengers in the France-Italy Bundle travel indirectly. The investigation on the France-Italy market confirmed that, on such short haul routes, indirect flights are not a viable alternative to direct flights (even for price-sensitive passengers).

5.2.2.6. Alternative transport modes

- (58) The Commission traditionally considers that, besides qualitative factors, total travelling time rather than distance is the decisive factor for consumers¹⁶. In this respect, for time-sensitive passengers, alternative means of transport are substitutable for air transport only where the travel time is not significantly longer¹⁷. This is less important for price-sensitive passengers who are more interested in reducing travelling expenses. In a second step, a comparison between prices can be used to assess the degree of substitutability between the different transport modes.
- (59) After having assessed the distances and travel times involved, the Commission concluded that road transport is an alternative to the direct flight on the Milan-Nice city-pair (as regards both time-sensitive and flexibility-focused, and price-sensitive passengers) and, as regards price-sensitive passengers, in the Milan-Lyon, Milan-Marseille, Milan-Strasbourg and Turin - Clermont-Ferrand city-pairs.
- (60) In the light of the total travelling time involved, rail transport is not considered as an alternative on any of the routes of the Bundle. It is therefore not necessary to compare prices between air and rail transport.

5.2.3. The Parties' position on the relevant markets

5.2.3.1. The overlap routes in the France-Italy Bundle

- (61) Seven routes between France and Italy used to be operated by both carriers before the alliance. These are the trunk routes between the Parties' hubs (Paris-Rome and Paris-Milan) and the Paris-Venice, Paris-Florence, Paris-Bologna, Paris-Naples and Milan-Lyon routes.

Paris-Milan

- (62) Paris-Milan, which links the Parties' hubs, is one of the two most important (with Paris-Rome) of the Bundle of routes between France and Italy for its traffic. Paris-Milan has, however, a higher number and proportion of point to point traffic and time-sensitive passengers than Paris-Rome.

Paris-Milan			
IATA 2002*	Time-sensitive**	Price-sensitive***	Total
O&D	[300 000-350 000]	[300 000-350 000]	[650 000-700 000]
Connecting	[50 000-60 000]	[400 000-450 000]	[450 000-500 000]
Total	[350 000-400 000]	[750 000-800 000]	[1 100 000-1 200 000]

*IATA 2002 (April 2002-March 2003)

** excludes the traffic between Paris and Bergamo-Orio al Serio

*** includes the traffic between Paris and Bergamo-Orio al Serio

- (63) It results from section 5.2.2.1. that the provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and to price-

¹⁶ See for example the Commission's Decision in the *AuA/LH* case.

¹⁷ In order to compare the travel time by air to the travel time by alternative transport means, it is generally considered that one hour should be added to the flight duration at each end of the route (check-in and out, plus the travel time to/from the respective airports).

sensitive O&D passengers on the Paris-Milan city-pair constitutes two relevant markets in this case. The market for time-sensitive and flexibility-focused passengers comprises all direct flights between the Paris and Milan main airports (e.g. CDG/ORY and MXP/LIN). The market for price-sensitive passengers is broader and also includes direct flights operated between Bergamo-Orio al Serio and Beauvais.

- (64) Before the AF/AZ alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to time-sensitive & flexibility focused O&D passengers on the Paris-Milan city pair was as follows:

	MXP-CDG		LIN-CDG		Paris-Milan (total)	
Carrier	Frequencies per week	Market share*	Frequencies per week	Market share*	Frequencies per week	Market share*
AF	41/7	[65-75]%	14/7	[60-70]%	55/7	[60-70]%
AZ	35/7	[20-30]%	12/7	[30-40]%	47/7	[30-40]%
Gandalf ¹⁸			12/7	[0-10]%	12/7	[0-10]%
Eurofly ¹⁹			7/7	[0-10]]%	7/7	
Total	76/7	100%	45/7	100%	121/7	100%

* in terms of local time-sensitive passengers transported during the period January-June 2001

- (65) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Milan city pair was as follows:

	MXP-CDG		LIN-CDG		BGY-CDG		Paris-Milan (total)	
Carrier	Frequencies per week	Market share*	Frequencies per week	Market share*	Frequencies per week	Market share*	Frequencies per week	Market share*
AF	41/7	[50-60]%	14/7	[45-55]%		[60-70]%	55/7	[50-60]%
AZ	35/7	[40-50]%	12/7	[40-50]%			47/7	[40-50]%
Gandalf ²⁰			12/7	[0-10]%	24/7	[30-40]%	36/7	[0-10]%
Eurofly ²¹			7/7	[0-10]%			7/7	[0-10]%
Total	76/7	100%	45/7	100%	24/7	100%	145/7	100%

* in terms of local price-sensitive passengers transported during the period January-June 2001

- (66) Since the notification of the AF/AZ Alliance, certain carriers have initiated operations from Orly airport to Milan: Volare, 2 daily flights to Milan-Malpensa and EasyJet, 1 daily flight to Milan-Linate. As regards the market for price-sensitive passengers, Ryanair has also initiated operations between Beauvais and Bergamo - Orio al Serio since the notification (2 daily flights).

Paris-Rome

- (67) Paris-Rome, which links the Parties' hubs, is one of the two most important (with Paris-Milan) of the Bundle of routes between France and Italy for its traffic:

Paris-Rome			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[100 000-150 000]	[450 000-500 000]	[550 000-600 000]

¹⁸ Gandalf operates this route in code share with AF.

¹⁹ Eurofly: Italian charter airline. Subsidiary of Alitalia, operates this route in code share with AZ.

²⁰ Gandalf operated this route in code share with AF.

²¹ Eurofly : Italian charter airline. Subsidiary of Alitalia, operates this route in code share with AZ.

Connecting	[40 000-50 000]	[500 000-550 000]	[550 000-600 000]
Total	[140 000-200 000]	[950 000-1 050 000]	[1 100 000-1 200 000]

- (68) The provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and price-sensitive O&D passengers on the Paris-Rome city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused passengers comprises all direct flights between the Paris and Rome main airports (CDG/ORY and FCO). The market would also include direct flights operated to/from Rome-Ciampino. The market for price-sensitive passengers is broader and also includes direct flights operated between Beauvais and Rome-Ciampino.
- (69) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers on the Paris-Rome city pair was as follows:

Carrier	Frequencies per week (before the Alliance)	Market shares*
AF	56/7	[70-80]%
AZ	56/7	[20-30]%
Kuwait Airways	3/7	[0-10]%
Saudi Arabian Airways	2/7	[0-10]%

*in terms of local time-sensitive passengers transported over the period January 2001- June 2001

- (70) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Rome city pair was as follows:

Carrier	Frequencies per week (before the Alliance)	Market shares*
AF	56/7	[30-40]%
AZ	56/7	[45-55]%
Kuwait Airways	3/7	[0-10]%
Saudi Arabian Airways	2/7	[0-10]%

*in terms of local price-sensitive passengers transported over the period January 2001- June 2001

- (71) Since the notification of the Alliance, Volare has initiated operations from Orly airport to Rome-Fiumicino (2 daily flights). As regards the market for price-sensitive passengers, Ryanair has also initiated operations between Beauvais and Rome-Ciampino since the notification (1 daily flight since 28 January 2004).

Paris-Venice

- (72) All flights between Paris and Venice are at present between CDG and Venice Marco Polo Airport (VCE) which is fully coordinated. The Paris-Venice route is the 3rd route in terms of traffic between France and Italy:

Paris-Venice			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[40 000-50 000]	[150 000-200 000]	[200 000-250 000]
Connecting	[10 000-20 000]	[150 000-200 000]	[150 000-200 000]
Total	[50 000-60 000]	[350 000-400 000]	[400 000-450 000]

- (73) The provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and price-sensitive O&D passengers on the Paris-Venice city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused O&D passengers comprises all direct

flights between the Paris and Venice main airports (e.g. CDG/ORY and VCE). The market for price-sensitive O&D passengers is broader and would also include, for example, possible direct flights between Beauvais and Venice (VCE).

- (74) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers on the Paris-Venice city pair was as follows:

Carrier	Frequencies per week (before the alliance)	Market shares*
AF	42/7	[90-100]%
AZ	21/7	[0-10]%

* in terms of local time-sensitive passengers transported during the period January-June 2001

- (75) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Venice city pair was as follows:

Carrier	Frequencies per week (before the alliance)	Market shares*
AF	42/7	[50-60]%
AZ	21/7	[40-50]%

* in terms of local price-sensitive passengers transported during the period January-June 2001

- (76) Since the notification of the Alliance, Volare has initiated operations from Orly airport to Venice (2 daily flights).

Paris-Florence

- (77) Florence is served by Florence-Amerigo Vespucci airport (FLR), which is fully coordinated. The Paris-Florence route is the 4th route in terms of traffic between France and Italy:

Paris-Florence			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[40 000-50 000]	[100 000-150 000]	[140 000-200 000]
Connecting	[10 000-20 000]	[150 000-200 000]	[160 000-220 000]
Total	[50 000-70 000]	[250 000-350 000]	[300 000-420 000]

- (78) The provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and price-sensitive O&D passengers on the Paris-Florence city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused O&D passengers comprises all direct flights between the Paris and Florence main airports (CDG/ORY and FLR). The market for price-sensitive O&D passengers is broader and would also include, for example, possible direct flights between Beauvais and Florence (FLR).
- (79) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers on the Paris-Florence city pair was as follows.

Carrier	Frequencies per week (before the alliance)	Market shares*
---------	--	----------------

AF	42/7	[90-100]%
AZ		[0-10]%^22
Meridiana	12/7	[0-10]%

*in terms of local time-sensitive passengers transported over the period January-June 2001

- (80) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Florence city pair was as follows.

Carrier	Frequencies per week (before the alliance)	Market shares*
AF	42/7	[60-70]%
AZ		[10-20]%
Meridiana	12/7	[10-20]%

*in terms of local price-sensitive passengers transported over the period January-June 2001

- (81) Meridiana does not operate the Paris-Florence route any longer. There is presently no competition by third Parties on this route where the Parties have held a 100% market share since the notification of the alliance.

Paris-Bologna

- (82) All flights between Paris and Bologna are at present between CDG and Guglielmo Marconi airport (BLQ) which is fully coordinated. The Paris-Bologna route is the 5th route in terms of traffic between France and Italy:

Paris-Bologna			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[50 000-60 000]	[100 000-150 000]	[150 000-210 000]
Connecting	[10 000-20 000]	[100 000-150 000]	[110 000-170 000]
Total	[60 000-80 000]	[200 000-300 000]	[260 000-380 000]

- (83) The provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and price-sensitive O&D passengers on the Paris-Bologna city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused O&D passengers comprises all direct flights between the Paris and Bologna main airports (CDG/ORY and BLQ). The market for price-sensitive O&D passengers is broader and would also include, for example, possible direct flights between Beauvais and Bologna (BLQ).
- (84) The Paris-Bologna route has, in particular, a high number and proportion of time-sensitive O&D passengers (more than Paris-Venice, despite the fact that the total traffic on Paris-Bologna is 1.4 times lower). As can be seen from the tables below, the Parties were the only two carriers on the Paris-Bologna route before the alliance, and still are.

Carrier	Frequencies per week (before the alliance)	Market shares*
AF	35/7	[90-100]%
AZ	20/7	[0-10]%

*in terms of local time-sensitive passengers transported over the period January-June 2001

²²

AZ did not operate the route by its own means. The AZ data represented seats sold by AZ on Meridiana-operated flights under a code-share agreement that came to an end on 15 November 2001.

- (85) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Bologna city pair was as follows.

Carrier	Frequencies per week (before the alliance)	Market shares*
AF	35/7	[55-65]%
AZ	20/7	[30-40]%

*in terms of local price-sensitive passengers transported over the period January-June 2001

Paris-Naples

- (86) Naples is served by the Capodichino airport (NAP), which fully coordinated. The Paris-Naple route is the 6th route in terms of traffic between France and Italy:

Paris-Naples			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[10 000-20 000]	[200 000-250 000]	[210 000-270 000]
Connecting	[0-5 000]	[30 000-40 000]	[30 000-45 000]
Total	[10 000-20 000]	[250 000-300 000]	[260 000-320 000]

- (87) The provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and price-sensitive O&D passengers on the Paris-Naples city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused O&D passengers comprises all direct flights between the Paris and Naples main airports (CDG/ORY and NAP). The market for price-sensitive O&D passengers is broader and would also include, for example, possible direct flights between Beauvais and Naples (NAP).
- (88) The Paris-Naples route has, in particular, a low number (almost the lowest of all routes of the Bundle) and proportion (the lowest, [0-10]% of the total traffic) of time-sensitive O&D passengers. Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to time-sensitive and flexibility-focused passengers on the Paris-Naples city pair was as follows:

Carrier	Frequencies per week	Market shares*
AF	7/7 (from Orly)	[80-90]%
AZ	7/7 (from CDG)	[0-10]%
Alpi Eagles	7/7 (from CDG)	[0-10]%

*in terms of local time-sensitive passengers transported over the period January-June 2001.

- (89) Before the alliance, the position of the Parties and of their competitors on the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Paris-Naples city pair was as follows:

Carrier	Frequencies per week	Market shares*
AF	7/7 (from Orly)	[20-30]%
AZ	7/7 (from CDG)	[40-50]%
Alpi Eagles	7/7 (from CDG)	[20-30]%

*in terms of local price-sensitive passengers transported over the period January-June 2001.

- (90) Alpi Eagles does not operate the Paris-Naples overlap route any longer. However, the Italian airline Meridiana has been operating two of the four daily frequencies on the route since the beginning of the 2002 IATA season (end of March 2002).

The market shares in the tables above do not reflect this new entry. Meridiana transports 66% of the local traffic on this route²³.

Milan-Lyon

- (91) Lyon is served by St. Exupéry airport (LYS), which is fully coordinated. All flights to/from Lyon arrive at/depart from Milan's Malpensa airport. The traffic on the Milan-Lyon route is as follows:

Milan-Lyon			
IATA 2002	Time-sensitive	Price-sensitive	Total
O&D	[20 000-30 000]	[10 000-20 000]	[30 000-50 000]
Connecting	[20 000-30 000]	[80 000-90 000]	[100 000-120 000]
Total	[40 000-50 000]	[90 000-100 000]	[130 000-150 000]

- (92) The provision of direct scheduled air transport services to time-sensitive flexibility-focused O&D passengers and price-sensitive O&D passengers on the Milan-Lyon city pair constitute two relevant markets in this case. The market for time-sensitive and flexibility-focused O&D passengers comprises all direct flights between the Milan and Lyon main airports (MXP/LIN and LYS). The market for price-sensitive O&D passengers is broader and would also include, for example, possible direct flights between Bergamo-Orio al Serio and Lyon (LYS). This market is also broader than the direct air route and includes road transport.
- (93) As can be seen from the table below, the Parties were the only two carriers on the Milan-Lyon route before the alliance and still are. Before the alliance, the position of the Parties and of their competitors on the market for the provision of scheduled air transport services to time-sensitive and flexibility-focused O&D passengers on the Milan-Lyon city pair was as follows:

Carrier	Frequencies per week	Market shares*
AF	18/7	[10-20]%
AZ	21/7	[80-90]%

*in terms of local time-sensitive passengers transported over the period January-June 2001

- (94) On the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers on the Milan-Lyon city pair, the position of the Parties and of their competitors, before the alliance, was as follows:

Carrier	Frequencies per week	Market shares*
AF	18/7	[50-60]%
AZ	21/7	[40-50]%

*in terms of local price-sensitive passengers transported over the period January-June 2001

- (95) The market shares in the table above do not reflect the position of Air France and Alitalia on the relevant market which also includes road transport. Given the nature of road transport, it is difficult to calculate a market share for the two carriers on such a broader market, even if only road transport services (that is to say transportation by coach) were taken into account.

²³

In IATA 2002 (April 2002-March 2003), Meridiana transported 40% of the local time-sensitive passengers and 67% of the local price-sensitive passengers.

5.2.3.2. The "non-overlap" routes in the France-Italy Bundle

- (96) Thirteen routes between France and Italy were operated, before the alliance, either by Alitalia or by Air France. The table below indicates the number of passengers on these routes in IATA 2002 (April 2002-March 2003).

	Passengers (IATA 2002)		Passengers (IATA 2002)
Paris-Turin	[200 000-250 000]	Milan-Nice	[40 000-50 000]
Rome-Nice	[100 000-150 000]	Lyon-Venice	[20 000-30 000]
Milan-Marseille	[100 000-150 000]	Lyon-Bologna	[20 000-30 000]
Paris-Genoa	[100 000-150 000]	Milan - Clermont-Ferrand	[20 000-30 000]
Paris-Verona	[70 000-80 000]	Turin - Clermont-Ferrand	[10 000-20 000]
Rome-Lyon	[70 000-80 000]	Milan-Strasbourg	[2 000-3 000]
Milan-Toulouse	[50 000-60 000]		

- (97) The investigation of the affected France-Italy routes has clearly established that two relevant markets correspond to each of the above non-overlap city pairs : one is the market for the provision of direct scheduled air transport services to time-sensitive and flexibility-focused O&D passengers and, the other, the market for the provision of direct scheduled air transport services to price-sensitive O&D passengers. For each of these markets, the Commission examined whether road and rail transport could be considered as a convenient alternative to air transport (see section 5.2.2.6. above).
- (98) The Commission came to the conclusion that the Parties have high market shares in many of the non-overlap city pairs: they have a 100% market share for both time-sensitive and flexibility-focused and price-sensitive O&D passengers on the Rome-Lyon, Paris-Genoa, Milan-Toulouse, Lyon-Bologna, Lyon-Venice and Milan-Clermont Ferrand city-pairs and on the market for the transport of time-sensitive and flexibility-focused O&D passengers in the Milan-Marseille, Milan-Strasbourg and Turin-Clermont city-pairs. At the time of the notification, they had an [80-90]% share on the Paris-Turin O&D markets and now have a 100% share²⁴ on both markets (time-sensitive & flexibility focused and price-sensitive). Apart from those cases where the relevant market is broader than the direct air route²⁵, the only non-overlap relevant markets where the Parties do not enjoy

²⁴ Lufthansa used to operate the Paris-Turin route in code-share with Air Dolomiti with 18 frequencies per week. Lufthansa/Air Dolomiti do not operate this route any longer. There is presently no competition by third parties on this route where the parties hold a 100% market share.

²⁵ Milan-Nice as regards both time-sensitive and price-sensitive passengers; Milan-Marseille, Milan-Strasbourg and Turin-Clermont Ferrand as regards price-sensitive passengers.

high market shares are Rome-Nice (about [30-40]%) and Paris-Verona (about [10-20]%).

5.2.3.3. Other intra-European routes

- (99) The AF/AZ alliance cooperation also covers a number of routes outside the France-Italy Bundle, where the Parties do not operate any competing direct service²⁶.
- (100) There is no need to specify precise relevant markets nor to determine whether or not the relevant market is broader than the direct air route, nor to define the extent to which the size of the market varies depending on whether the passengers concerned are time-sensitive and flexibility-focused or price-sensitive because, as explained in section 8.4.4. below, even if competition were to be restricted to an appreciable extent on some or all of these relevant markets, the alliance is not likely to eliminate competition.

6. COMMENTS BY THIRD PARTIES

- (101) In response to the publication of the summary of the notified agreements in the Official Journal of the European Communities pursuant to Article 5(2) of Regulation (EEC) No 3975/87, several airlines expressed their interest in starting operations for the routes at issue, provided that barriers to entry be removed through adequate remedies.
- (102) In December 2003, the commitments proposed by the Parties to resolve the competition concerns identified by the Commission were published for comment in a notice pursuant to Article 16(3) of Regulation (EEC) No 3975/87. Several airlines and the United Kingdom Office of Fair Trading commented on the commitments. Their main concerns focused on four aspects of the commitments (see attached annex), namely the number of slots to be released by the Parties, the duration of the frequency freeze, the condition imposed by the Parties on the spread of slots at Paris-CDG and the slot releases at Paris airports (Orly/CDG) and Milan airports (Linate/Malpensa).

7. ARTICLE 81(1) OF THE TREATY

7.1. Agreements between undertakings

- (103) The agreements notified to the Commission by Air France and Alitalia are agreements which have as their **object** the co-ordination of the competitive activities of undertakings that remain independent of each other. They are

²⁶ The impact of the cooperation between Air France and Alitalia was taken into account in the assessment under regulation (EEC) No 4064/89 of the concentration between Air France and KLM notified to the Commission on 18 December 2003, notably on the Italy-The Netherlands routes (see Commission Decision of 11 February 2004 in Case NoIV/M.3280 Air France/KLM. That concentration does not however change the assessment of the competition problems resulting from the cooperation agreements between Air France and Alitalia, which concern routes between France and Italy on which KLM could not be considered as a competitor before its merger with Air France (KLM does not operate any direct service, and nor has it any significant market-share when taking into account indirect services on any of the France-Italy routes).

consequently agreements between undertakings within the meaning of Article 81(1) of the Treaty.

7.2. Effect on trade between Member States

- (104) The cooperation between the Parties affects trade within the Community and in particular, between France and Italy. The agreements relate to the provision of air transport services on such markets and alter the manner in which those services would have been provided in the absence of an agreement. As a consequence, the agreements affect trade between the Member States.

7.3. Restrictions of competition regarding the markets for the air transport of passengers between France and Italy

- (105) An agreement infringes Article 81(1) of the Treaty if it has as its object or effect the prevention, restriction or distortion of competition within the common market.

7.3.1. Cooperation on the France-Italy bundle as regards the scheduled transport of passengers

- (106) The Parties have agreed to coordinate prices and to share their earnings. They will also coordinate frequencies and schedules and share capacity. In addition, they will share sensitive information as regards their respective sales and yield management systems.
- (107) Consequently, the notified agreements have as **their object** a very close co-ordination and integration of various key competition parameters, such as scheduling, revenue-sharing, capacity co-ordination, marketing and pricing. As a matter of both fact and of law, all competition among the Parties will be eliminated.

7.3.2. The effects on the overlap O&D relevant markets in the France-Italy Bundle

- (108) On these overlap markets, the two companies behave in practice as one entity as regards the aspects that passengers take into account when choosing an airline, such as frequencies, price and quality of service. Recalling the very high market share of the Parties in each of the affected markets at the time of the notification, there cannot be any doubt that the alliance has an appreciable effect on the markets concerned.
- (109) The alliance therefore restricts to an appreciable extent actual competition on the markets for the scheduled air transport of O&D passengers (both time-sensitive and flexibility-focused passengers and price-sensitive passengers) on the Paris-Milan, Paris-Rome, Paris-Venice, Paris-Florence, Paris-Bologna, Paris-Naples and Milan-Lyon city pairs.

7.3.3. The effects on the non overlap O&D relevant markets in the France-Italy Bundle

- (110) The Commission also examined whether the co-operation between the Parties could restrict potential competition between them on the non-overlap O&D markets. Before the alliance, only one of the two airlines was active on each of these markets. It is therefore necessary to assess whether the non-operating Party

was considered as a potential entrant on these routes by the operating Party, therefore exercising a competition constraint on it. If that is the case, the alliance has the effect of eliminating potential competition between the Parties on these routes.

7.3.3.1. The Commission's methodology for the assessment of potential competition

- (111) In order to determine whether or not the non-operating Party was a potential entrant on a given non overlap route, an economic approach has been applied, based on a set of objective criteria which make it possible to determine whether entry on this route would be commercially realistic for the non-operating Party. According to this approach, an airline will, in principle, only be considered as a potential competitor on a specific route if that route is either directly linked to one of its hubs or is sufficiently large and frequented by local traffic to allow market entry on a point-to-point basis, while taking into account the operational requirements and benchmarks of the respective business strategy. As benchmarks, the Commission has notably examined whether the carrier in question operates routes of similar size/characteristics, whether it has already a local market presence and whether it operates appropriate aircraft.

7.3.3.2. The Commission's assessment of potential competition on the non-overlap routes

- (112) The Commission has examined the configuration of the Parties' networks (domestic and intra-European routes). For each non overlap route, it has considered whether the non-operating Party operates similar routes (that is to say, similar size and passenger mix and similar network configuration).
- (113) Three types of route configuration have been identified:
- (a) the non-overlap route is linked to the hub of the operating Party : this is the case for three routes operated by Air France (Paris-Turin, Paris-Genoa, Paris-Verona) and for three routes operated by Alitalia (Rome-Nice, Milan-Nice and Milan-Marseille);
 - (b) the non-overlap route is linked to the hub of the non-operating Party : this is the case for Rome-Lyon, Milan-Toulouse, Milan-Strasbourg and Milan-Clermont Ferrand which are operated by Air France or one of its regional carriers;
 - (c) the route links two airports which are not a main hub of either Party: this is the case for Lyon-Bologna, Lyon-Venice and Turin-Clermont Ferrand, three thin non-overlap routes operated by Air France²⁷.
- (114) On the basis of the potential competition assessment standards described in section 7.3.3.1. above, it is concluded that Alitalia operates similar routes in similar configuration to the Paris-Turin route. The same conclusion was not reached as regards any other non-overlap routes operated by Air France or Alitalia.
- (115) The issue of potential competition on the Paris-Turin route therefore needs to be examined more closely.

²⁷

Lyon and Clermont Ferrand are regional mini-hubs of Air France which on one hand, play the role of feeder of its main hub in CDG and on the other hand, meet demand for short-haul European traffic. 9 intra-Community destinations are thus served from Lyon and 3 from Clermont-Ferrand.

- (116) Paris-Turin is a relatively large route (the 7th route of the France-Italy Bundle) with [130 000-150 000] local passengers (IATA 2002). Air France operates on the route with 5 frequencies a day.

Paris-Turin			
CDG-TRN	Time-sensitive	Price-sensitive	Total
O&D	[70 000-80 000]	[60 000-70 000]	[130 000-150 000]
Connecting	[10 000-20 000]	[70 000-80 000]	[80 000-100 000]
Total	[80 000-100 000]	[130 000-150 000]	[210 000-250 000]

- (117) With [50-60]% of time-sensitive high-yield passengers (out of the total point to point traffic), the route is commercially very attractive (second to Milan-Lyon) and, in absolute terms, it has the third highest number of time-sensitive local passengers (after Paris-Milan and Paris-Rome). Alitalia has an established operation in Turin airport (domestic flights to Rome, Cagliari and Naples; no international destinations) and operates appropriate modern aircraft (A 321) out of this airport.
- (118) Alitalia serves non-hub overlap routes in competition with Air France, such as Paris-Naples and Paris-Bologna, which are comparable to Paris-Turin in terms of traffic (total, point-to-point and time-sensitive passengers). This is an indication that Alitalia may regard routes having such characteristics as commercially attractive, even when these are operated in competition with other airlines.
- (119) Moreover, Alitalia operates several international routes out of Milan-Linate airport, the total traffic of which is equivalent to or even lower than the point-to-point traffic on Paris-Turin ([150 000-200 000] passengers in IATA 2001: April 2001-March 2002), namely Linate-Amsterdam (total traffic = [150 000-200 000] passengers) operated in competition with KLM and Linate-Madrid (total traffic = [100 000-150 000] passengers) in competition with Iberia. These are routes not connected to Alitalia's hub, but routes connected to hubs of competitors and operated on a point-to-point basis (the local traffic transported by Alitalia on these routes ranges from [90-100]% to [90-100]% of the total traffic).
- (120) However, Alitalia contested that it would be a potential entrant on the Paris-Turin route and provided simulations showing, under several assumptions, that it would not be profitable. The validity of these results is however difficult to fully control and therefore to evaluate within the context of the overall business strategy of the airline carrier.
- (121) Alitalia operated this route in the past and was, for years, the only carrier competing with Air France, which is an indication that this route was attractive for Alitalia at that time. Alitalia did not operate the Paris-Turin route with its own means, but through subsidiaries or franchisees. Alitalia exited this route at the end of the 1998-1999 Winter Season. It explained that its performance on this route had always been poor (low load factors and profits) and was even declining before it stopped the operations.
- (122) As from 1997, Alitalia went through a major restructuring plan which included a complete reorganisation of its network and a rationalisation of its operating activities. Alitalia notably decided to shift from a network based on several regional bases (Milan-Linate, Venice, Turin, Bologna, Naples) to a dual hub-and-spoke system based on Milan-Malpensa and Rome-Fiumicino airports. The implementation of this new network forced Alitalia to concentrate to the

maximum extent possible on operations from its hub airports and to close most of the routes operated from regional airports and connected to a rival carrier's hub (in priority those which were not profitable).

- (123) This restructuring plan also included a recapitalization of Alitalia which was reviewed by the Commission under the Community state aid rules²⁸. In order for the recapitalisation to be approved, the Commission imposed several conditions on Alitalia, some of which had a direct impact on Alitalia's ability and incentive to maintain its operations out of regional airports. These conditions include (i) an overall 10% reduction of Alitalia's activities, corresponding to 27,000 flights per year from the beginning of 1997; (ii) a freeze of Alitalia's fleet size until the end of the restructuring plan; (iii) constraints on aircraft capacity²⁹ and pricing³⁰; and (iv) the sale of Alitalia's stakes in several Italian regional airports, including Turin.
- (124) As a consequence, Alitalia phased out all international operations and almost all point-to-point operations from Turin. Turin's relatively close proximity to the Milan-Malpensa hub also contributed, according to Alitalia, to its decision to scale back operations out of Turin airport.
- (125) It should be pointed out that this restructuring strategy was made public and was likely to be known by Alitalia's competitors, notably Air France.
- (126) In those circumstances, there is no strong indication that, before the alliance, Air France still had to take into account in its competitive behaviour a possible re-entry of Alitalia, in the short or medium term, on Paris-Turin and was therefore still competitively disciplined by this possibility. There is therefore not sufficient evidence to conclude that Alitalia should have been considered a potential entrant on this route operated by Air France before the alliance and that potential competition between the Parties has therefore been restricted by the alliance.

7.4. Restriction of competition regarding the markets for the air transport of passengers on other intra-European routes

- (127) The cooperation is looser on the other intra-European routes than on the routes of the France-Italy Bundle (see section 3.1. which concerns the general cooperation regarding the transport of passengers). Outside the France-Italy Bundle, AF and AZ will make extensive use of code-sharing on a "free-flow" basis. They have agreed to implement price coordination where possible and to use reasonable efforts to coordinate their flight schedules. These parameters are key elements on which airlines normally compete with each other. Moreover, the Parties will share sensitive information as regards their respective sales and yield management systems. The Parties will also exchange sensitive information through their cooperation regarding FFPs as each of them will be allowed to

²⁸ Commission Decision 97/789/EC concerning the recapitalization of the company Alitalia (OJ L 322, 25.11.1997, p.44).

²⁹ Until 31 December 2000 the available aircraft operated by Alitalia shall not exceed 28.985 seats. Furthermore the increase in seat-kilometers is indexed to the overall market growth on intra-Community routes.

³⁰ Until 31 December 2000 Alitalia shall refrain from offering fares lower than those offered by its competitors for an equivalent service supplied on the routes it operates.

obtain information about the FFP status of each individual customer of the other airline.

- (128) The notified agreements therefore have the object of co-ordinating and integrating various key competition parameters, such as scheduling, marketing and pricing. It follows that competition among the Parties is restricted on the intra-European routes where this cooperation is applied, to the extent that they were actual or potential competitors.

7.5. Conclusion

- (129) In the light of the above, the Commission considers that the Alliance restricts actual competition within the meaning of Article 81(1) of the Treaty on the markets for the scheduled air transport of passengers on seven O&D (overlap) pairs, namely Paris-Milan, Paris-Rome Paris-Venice, Paris-Florence, Paris-Bologna, Paris-Naples and Milan-Lyon.
- (130) The Alliance also restricts competition on intra-European routes where the conditions of the general cooperation set out in section 3.1 are applied.

8. ARTICLE 81(3) OF THE TREATY

- (131) Article 81(3) of the Treaty provides for the possibility for Article 81(1) to be declared inapplicable if the agreements or concerted practices 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. The restrictions of competition imposed by these agreements should however be indispensable to the attainment of these objectives and they should not lead to the elimination of competition in respect of a substantial part of the products in question.

8.1. Contribution to improving the production or distribution of goods or to promoting technical or economic progress

- (132) The Commission can accept that, overall, the Alliance contributes to improving the production and distribution of transport services and to promoting technical and economic progress. The co-operation agreement is likely to generate benefits in terms of creating a more extensive network which would offer customers better services in terms of an increased number of direct and indirect flights. While an increase in the airlines' size does not necessarily lead to a cost reduction because of constant economies of scale, savings may be realised due to an increase in traffic throughout the network, better planning of frequencies, a higher load factor, and so forth.

8.2. Allowing consumers a fair share of the resulting benefit

- (133) The Commission accepts that passengers, primarily connecting passengers, can enjoy the various types of benefits described by the Parties, which refer mostly to improved connectivity.
- (134) As a whole, on the France-Italy Bundle, the two carriers will add 65 frequencies per week, that is 9,5% more. The Parties will also operate two

new routes from Milan-Malpensa to Bordeaux and Nantes. They will also increase the total number of seats by [more than 25 000] seats per week, that is [15-25]%.

- (135) All consumers will, in principle, benefit from these additional seats and/or frequencies. They will, in particular, be offered more convenient scheduling and a better spread of flights during the day. On each route, the Parties jointly offer passengers more daily flights than each individual carrier did before the alliance (even in cases where the Parties cancel flights that otherwise would overlap unnecessarily).
- (136) As regards fares, the Parties explained that the alliance will bring a unit cost reduction resulting from their improved operating efficiency. They may be thus in a position to reduce fares as a result of efficiencies (cost savings and synergies) derived from their cooperation.
- (137) The Parties have not, however, shown how such cost savings and synergies would be passed on to the customer and were not able to identify precisely on which routes (trunk routes, other routes within the France-Italy bundle, other routes) price decreases would be applied as a result of the Alliance. If their co-operation results in the elimination of competition in certain markets, there will be no incentive for them to pass on these efficiencies to local passengers. Therefore, in the absence of sufficient competition on these markets, it is uncertain that these passengers will benefit from the overall cost efficiencies anticipated from the cooperation.

8.3. Indispensability

- (138) First, the Parties argue that the Alliance is necessary because neither Party would be able individually to compete effectively with other major carriers, many of which are already part of strong alliances. Second, the Parties believe that the growing demand for wider networks can only be met through the implementation of multi-hub systems, and this is not feasible without a high degree of cooperation between airlines. Third, the in-depth cooperation on the France-Italy Bundle is critical to the success of the Alliance, in order to maximise connecting traffic. To achieve this aim, the Parties need to increase capacity, offer enough frequencies and schedule flights at appropriate timings.
- (139) *Sharing profits.* According to the Parties, joint-pricing is an indispensable element of the alliance without which they would not be able to offer a seamless, unified service to their customers. However, price coordination alone is not enough as it would only limit customers' choice without generating any benefits for them. Sharing profits is the only way to achieve the cost savings and synergies expected from the Alliance and to transmit them to the consumers. Sharing the costs, not only the revenues, is the only manner to ensure that the Parties will equally share the burdens of the Alliance. If the Parties shared revenues but not costs, each would have an incentive to avoid the higher-cost activities of their common activities. Furthermore, the downward pressure on costs that existed in the previous competitive scenario would not be reduced. They explain that the vast majority of their operating costs for short/medium haul services (for example,

aircraft, pilots, cabin crews, insurance, maintenance...) are not related specifically to the France-Italy bundle. Accordingly, the incentive to reduce costs globally remains on the France-Italy bundle as it is on the entire network.

- (140) *Preventing either Party from operating any additional frequencies.* The Parties claim that the reduction of their freedom to individually add new routes or to operate additional frequencies unilaterally is necessary to attain the benefits of the cooperation. First, they explain that there is no absolute prohibition on either of the Parties proposing new routes or frequencies and agreeing to exploit such services in the interests of the alliance. They argue that these clauses are meant to ensure that all strategic decisions regarding operations on the Bundle are taken unanimously, given the direct impact on the joint operations and the profitability of each carrier. They also argue that the alliance would not be viable if each Party remained free to operate additional routes or additional frequencies.
- (141) In view of these arguments, it is concluded that the envisaged cost savings and benefits will only materialise if the Parties enter into a close co-operation on their respective business strategies.

8.4. Possibility of eliminating competition

8.4.1. General

- (142) In order to assess whether competition on air transport markets is likely to be eliminated, different factors must be taken into account. Particular attention should be paid to the market position of the Parties on the relevant markets, the degree of competition existing prior to the agreement, the degree of the remaining actual competition and the likelihood of potential competition (for example, existence of significant entry barriers and real possibility of new entry).
- (143) Where the Parties have a strong market position and there are significant market entry barriers, the Commission usually concludes that, in the absence of sufficient remedies, competition is likely to be eliminated on routes concerned. It is therefore necessary to analyse the extent to which significant entry barriers are present on the markets in the France-Italy bundle in which competition is affected.

8.4.2. Barriers to entry in the France-Italy bundle

- (144) The Parties' market position is strengthened by the existence of high entry barriers. Such barriers arise in particular because of the lack of availability of commercially usable slots at some of the airports concerned. Potential new entrants on the routes concerned have pointed out slot problems in the main airports, particularly at peak times. The data provided by the slots coordinators in Italy and France has confirmed that there are substantial problems in getting slots at Paris-Orly and Milan-Linate airports. In this regard, capacity at Paris-Orly airport is restricted to 250.000 annual slots by environmental regulations and, at Milan-Linate, the allocation of slots is strictly regulated by a government Act. There are also problems in obtaining commercially usable slots at peak times, notably at Paris-Charles de Gaulle

and Milan-Malpensa airports and to a lesser degree at Florence-Amerigo Vespucci and Rome-Fiumicino airports.

- (145) These barriers to entry are all the more significant as far as time-sensitive and flexibility-focused passengers are concerned. The Commission's investigation on the France-Italy market shows that a relatively high minimum number of daily flights are required for a service to be attractive for this category of passengers, in order to meet their needs in terms of schedules and flexibility. In addition, there is a clear correlation between the size of the route (notably in terms of time-sensitive and flexibility-focused passengers) and the number of frequencies expected by the customers.
- (146) This need for flexibility explains, in particular, why the current flights offered by low cost airlines on the France-Italy market do not appear to be a sufficient alternative to traditional carriers for this category of passengers (see section 5.2.2.3. above).
- (147) Additional barriers to entry result from the reinforcement of the Parties' position and market power on the relevant markets, due to the combination of several factors.
- (148) First, the Parties will co-ordinate networks, schedules and frequencies and create a larger European fleet. The creation of a joint network offering many connections to transfer passengers makes it more difficult for newcomers flying between France and Italy to attract these passengers. This means that their operations have to rely mostly on local passengers.
- (149) Second, the Parties together operate a relatively high number of frequencies on the routes concerned, which cannot be matched by their competitors. As explained above, this makes it more difficult for newcomers flying between France and Italy with fewer frequencies to attract time-sensitive and flexibility-focused passengers.
- (150) Finally, entry is made more difficult by the pooling of the Parties' frequent-flyer programmes (FFPs). Given that the AZ and AF passengers can earn and redeem miles on the combined network of the Parties, a member of one of the Parties' FFPs will prefer to fly with the other Party in order to benefit from an accrual of points, instead of flying with a competitor and being forced to share the points or miles earned between two or more programmes. A common frequent-flyer programme constitutes an important entry barrier for airlines which do not have comparable programmes.
- (151) In conclusion, a competitor will need to operate a sufficient number of frequencies in order to also attract high-yield time-sensitive and flexibility-focused passengers in a given market. A competitor will be only able to do so if commercially viable slots are easily available up to the minimum number of frequencies considered necessary by time-sensitive and flexibility-focused customers.

8.4.3. *The Commission's assessment as concerns the France-Italy overlap markets*

- (152) It has been established that the Alliance restricts competition on the markets for the scheduled air transport of passengers on seven O&D (overlap) pairs,

namely Paris-Milan, Paris-Rome, Paris-Venice, Paris-Florence, Paris-Bologna, Paris-Naples and Milan-Lyon.

- (153) Prior to the alliance, AF and AZ were the two main operators on those affected overlap markets, competing head-to-head. At the time of the notification, the Parties had very high market shares on these seven city pairs. This applies to time-sensitive and flexibility-focused passengers as well as to price-sensitive passengers. There is one exception for this second category of passengers on the Milan-Lyon city-pair, in view of the constraining effects of existing competition from other transport modes, in particular road transport.
- (154) This position is further strengthened by a second-to-none frequency advantage (ranging up to 16 daily frequencies on the trunk routes) which is very attractive to corporate customers.
- (155) Moreover, as explained in section 8.4.2., the Parties' overall strong market position is protected against potential entry by significant entry barriers.
- (156) In the light of the above, the Commission considers that the Alliance affords the Parties the possibility to eliminate competition within the meaning of Article 81(3) of the Treaty on the following 13 markets for the provision of scheduled air transport of passengers:

Overlap routes	Time sensitive & flexibility passengers	Price-sensitive passengers
Paris-Milan	X	X
Paris-Rome	X	X
Paris-Venice	X	X
Paris-Florence	X	X
Paris-Bologna	X	X
Paris-Naples	X	X
Milan-Lyon	X	

8.4.4. *The Commission's assessment as regards the other intra-European routes*

- (157) It has been established that the alliance might restrict competition between the Parties on the market for the scheduled air transport of passengers (both time-sensitive and price-sensitive) on other intra-European routes where the conditions of the general cooperation set out in section 3.1. above (including, in particular, scheduling, marketing and pricing coordination as well as exchange of sensitive information) are applied.
- (158) However, prior to the alliance, the Parties did not compete on any such route through direct services. Moreover, there are only 5 city pairs in Europe where the Parties' combined share of passengers, including indirect traffic, exceeded 50% in IATA 2001: Florence-Madrid ([45-55]%), Nice-Athens ([50-60]%), Toulouse-Athens ([45-55]%), Florence-Lisbon ([50-60]%) and Lyon-Athens ([45-55] %).
- (159) The Commission therefore considers that the alliance does not allow the Parties the possibility to eliminate competition on these markets within the meaning of Article 81(3) of the Treaty.

9. COMMITMENTS

- (160) In the light of the considerations in Section 8.4, there is a risk that the Alliance will eliminate competition on seven city pairs, namely Paris-Milan, Paris-Rome, Paris-Venice, Paris-Florence, Paris-Bologna, Paris-Naples and Milan-Lyon. An exemption can therefore only be granted in respect of the cooperation agreement on the basis of adequate remedies, the main purpose of which is to remove existing entry barriers for competitors and to ensure that affected consumers obtain a fair share of the benefits resulting from the cooperation.
- (161) On the basis of the reservations expressed by the Commission in its letter of 1 July 2002 expressing its serious doubts as regards the agreement, the Parties proposed commitments which were published in the Official Journal for comment on 9 December 2003. Several airlines and the United Kingdom Office of Fair Trading commented on them. In the light of these comments, the Parties accepted to improve further their commitments. In particular, the parties have agreed to remove the initial limitation on the number of slots to be surrendered at Orly airport and to amend substantially the conditions on the spread of slots at CDG set out in Section 2.3. of the proposed commitments as published in the Official Journal. The width of the peak-time periods has been reduced significantly, thereby addressing some of the comments made by third-parties in this regard. The remaining limited conditions regarding the spread of slots at CDG are aimed at avoiding a disproportionately detrimental effect on the Parties' hub operations at CDG and on the connectivity of their flights for the customers. They can be accepted as they do not call into question the effectiveness of the commitments. In practice, slots will also be released at Paris-Orly airport, where these conditions do not apply. In addition, even if all the slots were to be taken at CDG, the amended conditions on the spread of slots would not prevent competitors from obtaining the necessary valuable peak time slots.
- (162) The final set of commitments is set out in the Annex.
- (163) The main principles of these commitments are summarised below.

9.1. Number of slots to be surrendered

- (164) In order to remedy the slot shortage at congested airports, the Parties are required to make available to competitors a number of slots aimed at supporting new services on the seven routes where the Commission has identified competition concerns. The maximum number of slots to be released by the Parties is specified per route in the Annex.
- (165) On the basis of the Commission's extensive investigation on the France-Italy market and after the Commission assessed the comments made by third parties in response to the publication of the Commission's Notice pursuant to Article 16(3) of Regulation (EEC) No 3975/87, the number of slots that the Parties have accepted to release on each of the affected routes is considered sufficient to allow point-to-point carriers to compete effectively against the Parties on these routes. The commitments are targeted to allow competitors to transport point-to-point traffic and in particular, to compete with the Parties for the transport of O&D time-sensitive and flexibility-focused passengers.

- (166) Considering that it is more effective to add frequencies to an existing service than to start a new service from scratch and that time-sensitive and flexibility-focused passengers need a sufficient number of daily frequencies, the slots should be made available on a preferential basis to the competitor which will operate in total the highest number of frequencies on the route (including its existing services).

9.2. Slot releases at Paris and Milan airports

- (167) It results from the Commission's investigation on the France-Italy market that Paris Charles de Gaulle (CDG) and Orly (ORY) airports are substitutable from the point of view of the demand for transport services by O&D passengers on the routes in question. The same applies with respect to the Milan Linate and Malpensa airports.
- (168) The application of the principle of proportionality would normally imply that the Parties are allowed to choose at which airport to surrender slots, provided that this is sufficient to solve the competition concerns. However, in the present case, with respect to the Paris airports, in order to ensure the effectiveness of the remedies proposed, slots should also, under certain conditions, be surrendered at Orly to competitors which already offer services on the affected routes out of that airport, in order to allow them to increase their number of services. The commitments therefore provide that a competitor to the Parties is entitled to obtain slots at Orly if it already operates flights on an affected route out of Orly and if all its scheduled flights serving Paris operate out of that airport.
- (169) For the same reasons, the commitments provide that the Parties are required to release slots at Milan-Linate airport only to a competitor which already operates services on an affected route out of Linate and wishes to add additional frequencies on that route.

9.3. Other remedies

- (170) In addition to slots, other commitments are aimed at removing the additional entry barriers identified above in Section 8.4.2.
- (171) Some of them will enhance the inter-changeability from the customer point of view between the flights operated by the parties and the flights operated by competitors on the affected routes. They provide, in particular, that the Parties will have to allow new entrants to participate in their frequent flyer programmes, if they so wish. Another commitment relates to interlining –that is to say, the ability for passengers to fly with the parties and return with a competitor or vice versa on a given journey, based on a single ticket.
- (172) The Parties also committed to facilitate intermodal passenger agreements, whereby they provide air transport services as part of an itinerary that includes surface or sea transportation, in order to ensure greater choice and better multi-modal transport services for consumers.
- (173) Finally, the commitments impose on the Parties an obligation to refrain from increasing their offer of flights (frequency freeze) during a start-up period to

ensure that new entrants are not squeezed out of the market shortly after entry.

(174) The Commission has established that, on the basis of these commitments, there are several competitors who are seriously interested in entering the routes at issue. The alliance agreements may therefore benefit from an exemption under Article 81(3) of the Treaty.

(175) Given the various conditions relating to the exemption and the duration of the exemption, the Parties should provide the Commission with information on a regular basis to show that they are complying with their commitments.

HAS ADOPTED THIS DECISION:

Article 1

1. Pursuant to Article 81(3) of the Treaty, the provisions of Article 81(1) of the Treaty are declared inapplicable to the cooperation agreement between Société Air France and Alitalia Linee Aeree Italiane S.p.A. notified to the Commission on 12 November 2001, for the period from 12 November 2001 to 11 November 2007.
2. Paragraph 1 shall be subject to compliance with the commitments in the Annex.

Article 2

The commitments listed in the Annex shall be binding on the Parties, their subsidiaries, legal successors and authorised representatives. The Parties shall ensure that their subsidiaries, legal successors and authorised representatives comply with them.

Article 3

Société Air France and Alitalia Linee Aeree Italiane S.p.A. shall provide the Commission with a copy of all contracts and agreements that they enter into or have entered into with competitors relating to operations on the Paris-Milan, Paris-Rome, Paris-Venice, Paris-Bologna, Paris-Naples, Paris-Florence and Lyon-Milan routes with regard to slots, frequent flyer programmes, blocked space, interlining and inter-modal traffic until 11 November 2007.

Article 4

This Decision is addressed to:

Société Air France
45, rue de Paris
F-95747 Roissy CDG cedex
France

Alitalia Linee Aeree Italiane S.p.A
Viale Alessandro Marchetti, 111
00148 Rome
Italy

Done at Brussels,

For the Commission

Mario Monti

Member of the Commission

ANNEX: COMMITMENTS

1. Société Air France (“**Air France**” or “**AF**”) and Alitalia Linee Italiane S.p.A. (“**Alitalia**” or “**AZ**”), collectively the “**Parties**”, hereby offer the Commitments set out below to resolve the competition concerns identified by the European Commission in the course of proceedings in Case COMP/38.284 concerning the cooperation agreement between the Parties in particular in relation to air transport on certain routes between France and Italy.

1. GENERAL AND DEFINITIONS

2. These Commitments shall be annexed to and form an integral part of the Commission’s exemption decision.
3. These Commitments shall be binding on the Parties, their subsidiaries, successors and assigns and the Parties commit to cause their subsidiaries, successors and assigns to comply with these Commitments.
4. For the purposes of these Commitments, each of the following city pairs is considered to be an “**Affected Route**” :
 - Paris-Milan;
 - Paris-Rome;
 - Paris-Venice;
 - Paris-Bologna;
 - Lyon-Milan;
 - Paris-Naples;
 - Paris-Florence.
5. For the purpose of these Commitments, references to:
 - Paris shall cover Paris-Charles de Gaulle and Paris-Orly airports;
 - Milan shall cover Milan-Linate and Milan-Malpensa airports;
 - Rome shall cover Rome-Fiumicino and Rome-Ciampino airports.
6. For the purpose of these Commitments, the term “**New Entrant**” shall mean any airline independent of and unconnected to the Parties wishing to commence a new non-stop service on an Affected Route or to increase the number of frequencies it operates on an Affected Route after the exemption becomes effective.

A non-stop service includes a multi-stop service using a single aircraft that begins and/or terminates in France, Italy or a third country and has at least one non-stop segment between France and Italy.

7. For the purpose of these Commitments, an airline shall not be deemed to be independent of and unconnected to the Parties when, in particular:
- the effective control³¹ of the airline is held solely or in conjunction by the Parties; or
 - it is an associated carrier belonging to the same holding company as one of the Parties; or
 - it is a member of the SkyTeam alliance; or
 - the airline co-operates with the Parties on at least one of the Affected Routes in the provision of passenger air transport services, except if this co-operation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis.

2. TAKE-OFF AND LANDING SLOTS RELEASE

8. If a New Entrant wishes to commence a new non-stop service on one or more Affected Routes (each a “**New Entrant City Pair**”), the Parties shall make slots available subject to the conditions set out in this **Section 2**.

2.1. The maximum number of slots to be released

9. The Parties shall be obliged to make available to a New Entrant the number of take-off and landing slots needed to support:
- for flights between Paris and Milan: either (i) up to six (6) frequencies per day in case these frequencies are operated by more than one New Entrant, or (ii) up to five (5) frequencies per day in case these frequencies are operated by a single New Entrant;
 - for flights between Paris and Rome: up to five (5) frequencies per day;
 - for flights between Paris and Venice: up to three (3) frequencies per day;
 - for flights between Paris and Bologna: up to two (2) frequencies per day;
 - for flights between Paris and Naples: up to one (1) frequency per day;
 - for flights between Lyon and Milan: up to two (2) frequencies per day;
 - for flights between Paris and Florence: up to two (2) frequencies per day.

³¹ Within the meaning of Article 2 g) of Regulation n° 2407/92 of 23 July 1992 on licensing of air carriers

2.2. Conditions applicable to all Commitments in Section 2.1

10. The obligation to make slots available as described in **Section 2.1** shall only be triggered in the circumstances set out in this **Section 2.2**.
11. All slots made available pursuant to these Commitments set out in **Section 2.1** are to be used on the Affected Route for which the slots were made available.

2.2.1. Frequencies operated by competitors

12. All frequencies operated by airlines independent of and unconnected to the Parties on the Affected Routes (“**Competing Frequencies**”) shall be counted against the number of slots to be released by the Parties under **Section 2.1**.
13. The Commission may at any time examine whether the airline(s) operating on the Affected Routes is independent of and unconnected to the Parties. Any frequency operated on the affected routes by an airline which is not independent of and unconnected to the Parties shall not be counted against the number of slots to be released by the Parties under **Section 2.1**.
14. In case the number of Competing Frequencies on an Affected Route decreases (e.g., because a competitor (i) ceases operating the route, (ii) decreases the number of frequencies operated on the route or (iii) can no longer be considered as being independent of and unconnected to the Parties), the Parties’ potential slot surrender obligations shall increase by a corresponding number, subject to the limitations in **Section 2.1**.
15. In case the number of Competing Frequencies on an Affected Route increases as a result of new competing services (because a competitor (i) increases the number of frequencies it already operates on an Affected Route or (ii) enters the market), the Parties’ potential slot surrender obligations shall decrease by a corresponding number.
16. In case new Competing Frequencies are added on an Affected route by a competitor without using slots obtained from the Parties and if it leads to a situation where the total number of competing frequencies operated on the route exceeds the number of frequencies specified in **Section 2.1**:
 - (i) the Parties' slot surrender obligations shall decrease by a corresponding number; and
 - (ii) slots previously surrendered by the parties which exceed their potential slot surrender obligations shall only be withdrawn after the new Competing Frequencies have been operated for two IATA seasons.
17. Subject to the conditions above, the Parties shall not be required to make a slot available to the New Entrant for an Affected Route insofar that this would result in the Parties’ operating less than 60 % of the frequencies or capacity on that Affected Route as measured at the time of the New Entrant's request.
18. The New Entrant which has to return slots to the Parties as a consequence of the last two paragraphs, is entitled to choose which slots to return.

2.2.2. *No slots available via the Standard Slot Allocation Procedure*

19. At least six (6) weeks prior to the IATA slot conference for the traffic season in which the New Entrant intends to commence a new service or increase the number of services it currently operates, the New Entrant shall notify the Parties of its intention to request for slots pursuant to the Commitments. The notification must be addressed to:

Alitalia
To the attention of the Vice-President
Alliances & International Relations
Viale Alessandro Marchetti, 111
00148 Rome
Italy
Fax: +39.0665627640

Air France
To the attention of the Vice-President
International and Industry Affairs
45, rue de Paris
95747 Roissy CDG cedex
France
Fax: +33.141565969

20. A New Entrant shall be eligible to receive slots pursuant to the Commitments described in this **Section 2** only if it can demonstrate that all reasonable efforts to obtain slots for the New Entrant City Pair through the normal workings of the slot allocation procedure before the beginning of the concerned IATA traffic season (the “**Standard Slot Allocation Procedure**”) have failed. To this end, the New Entrant shall apply for these slots at the forthcoming IATA slot conference through the normal Slot Allocation Procedure and maintain an “open book” policy for the airports concerned during the entire period between the notification of its intention to apply for slots in order to operate services on an Affected Route and the end of the respective IATA scheduling period, including the final allocation of slots by the coordinator following the Slot Return Date³².
21. The New Entrant will be deemed not to have exhausted all reasonable efforts to obtain slots through the normal workings of the slot allocation procedure if (i) slots were obtained through the Standard Slot Allocation Procedure within forty-five (45) minutes of the times requested but not accepted by the New Entrant and/or (ii) slots were obtained through the Standard Slot Allocation Procedure more than forty-five (45) minutes from the times requested and the New Entrant did not give the Parties the opportunity to exchange those slots for slots within forty-five (45) minutes of the times requested.
22. The slots released by the Parties shall be within forty-five (45) minutes of the time requested by the New Entrant if the Parties have slots within this time-window. In the

³² The Slot Return Date shall be the deadline for returning unwanted slots, as defines in Appendix 2 of IATA’s Worldwide Scheduling Guidelines (7th Edition, effective 1 December 2002)

event that the Parties do not have slots within this time-window, they shall propose to the New Entrant to release the slots closest in time to its request.

2.2.3. Ongoing obligation to apply for slots every subsequent season

23. Requests for slots to the slot coordinator and to the parties shall be renewed by the New Entrant for each subsequent IATA scheduling season.
24. If the New Entrant has obtained slots from the Parties pursuant to these Commitments 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 slots granted in the preceding season, and in any event within 45 minutes of the time requested, provided that (i) the Parties are still required to surrender slots pursuant to **Sections 2.1 and 2.2.1** and hold slots within the relevant time period and, (ii) the New Entrant has complied with the conditions and procedure described above.

2.2.4. Minimum capacity

25. On the Paris-Milan and Paris-Rome city pairs, New Entrant slots shall be used exclusively to operate services with aircraft having a capacity of forty-six (46) or more seats. This condition shall not apply where a New Entrant has commenced service prior to the date on which the Commission's exemption decision becomes effective.

2.2.5. Efficient use of the New Entrant slots portfolio

26. Where a New Entrant already operates a service to, from or through one of the airports included in an Affected Route (a "**Prior Service**") and reduces frequencies on or ceases to operate the Prior Service, it shall be required to use the slots previously assigned to the Prior Service for service on a New Entrant City Pair if these slots are within forty five (45) minutes of the slots released by the Parties. It shall return to the Parties the corresponding New Entrant slots.

2.2.6. Non-use of slots released by the Parties

27. Where a New Entrant which has obtained slots pursuant to this **Section 2** decides not to commence services on the Affected Route, decides to operate a lower number of frequencies or to cease operating on an Affected Route, it shall inform the Parties in writing and return the unused slots to them immediately.
28. In such cases, the obligation of the Parties to make these slots or the same number of other slots available to New Entrants pursuant to **Section 2.1.** above continues, subject to the provisions of **Section 2.2.1.**
29. For the purposes of this **Section 2.2.6**, a New Entrant will be deemed to have ceased operating on an Affected Route where it has not used at least 80% of its slots during the scheduling season for which they had been allocated for the city pair in question, unless this non-use of the slots 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. Should the New Entrant be considered to have ceased operating the Affected Route pursuant to this paragraph, the Parties may refuse to surrender slots to the said New Entrant for the next IATA season on this Affected Route.

30. Should a New Entrant which has obtained slots pursuant to this section, decide not to commence services on an Affected Route in two (2) subsequent IATA seasons, the Parties may refuse to surrender slots to the said New Entrant for the next two (2) IATA seasons on this Affected Route.
31. Should the New Entrant 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, either 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 shall be entitled to require the New Entrant to transfer to the Parties a comparable slot as compensation in case the slot is lost. If, for any reason, the New Entrant is unable to transfer to the Parties a comparable slot, they may justify the non-use of the surrendered slot on the basis of Article 10(5) of Regulation (EEC) No 95/93 in order to recover and retain the unused slot.
32. To ensure that the slots provided by the Parties are used in a manner consistent with these conditions, a mechanism shall be agreed between the Parties and the New Entrant that will allow the Parties to monitor how the slots are being used. The Parties shall inform the Commission about the agreed mechanism.

2.2.7. Slot releases shall not be remunerated

33. Slots made available by the Parties under these Commitments shall be offered without any compensation.

2.2.8. Slot releases on a preferential basis

34. All slots made available pursuant to these Commitments shall be released by the Parties on a preferential basis to the New Entrant whose request would allow it to operate the highest number of frequencies compatible with the number of slots which can be obtained from the Parties on the Affected Route in question, pursuant to the Commitments³³.
35. Subject to the provisions of **Section 2.2.1**, if the number of slots surrendered is lower than the maximum number of slots to be surrendered pursuant to **Section 2.1.**, the remaining slots shall be allocated to other potential New Entrants on the same basis, until there are no slots left to be surrendered.
36. The slots shall be provided to the New Entrant selected by the Parties subject to the Commission's review as described in **Section 2.2.9** below.

2.2.9. Selection of New Entrants

37. A New Entrant wishing to obtain slots from the Parties pursuant to these Commitments shall notify the Parties of its intention to apply for these slots at the forthcoming IATA slot conference within the time period specified in **Section 2.2.2**.
38. A copy of this notification shall be sent at the same time by the New Entrant to the Commission, at the following address:

³³ Number of slots already operated by the New Entrant on the route in question + number of slots requested to the parties capped to the maximum number of slots which remain to be surrendered by the parties pursuant to Sections 2.1. and 2.2.1. above.

Commission of the European Communities
DG Competition
Antitrust Registry (Case COMP/A.38284/D2)
Rue de la Loi/Wetstraat 200
B-1049 Bruxelles/Brussel
Fax: +32 2 295.01.28

39. Should a potential New Entrant be unable to obtain all or part of the requested slots through the Standard Slot Allocation Procedure at the IATA slot conference for the traffic season in which services are intended to commence, it shall apply to the Parties for slot releases no more than two (2) weeks following the end of that slot conference. The application shall take into account the slots obtained at the slot conference within 45 minutes of the times requested and give the Parties the opportunity to exchange slots obtained beyond 45 minutes from the times requested, for slots of the Parties within 45 minutes of the times requested pursuant to **Section 2.2.2**.
40. A copy of this application shall be sent at the same time by the New Entrant to the Commission.
41. No more than four (4) weeks following the end of the IATA slot conference for the traffic season in which services are intended to commence, based on the current expectation as to the allocation of slots for the forthcoming season, the Parties shall submit to the Commission a proposal for the selection of the New Entrant on the Affected Route and a proposal for slot releases to be made to the New Entrant in question.
42. The Commission shall decide whether or not to approve the Parties' proposal for the selection of the New Entrant pursuant to the following criteria:
 - the New Entrant is independent of and unconnected to the Parties within the meaning of paragraph 7 above and;
 - the New Entrant is a viable existing or potential competitor, with the ability, resources and commitment to operate the Affected Route in the long term as a viable and active competitive force.
43. With this aim in view, the Commission might request the New Entrant to provide a detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The detailed business plan shall provide information on the projects of the company in terms of development of its network, fleet etc, and detailed information on its projects regarding the route on which it wants to operate. The latter should specify in detail the planned operations on the route over a period of 3 years (size of aircraft, number of frequencies operated, planned time-schedule of the flights) and the expected financial results (expected traffic, revenues, profits). The Commission might also request a copy of all co-operation agreements the New Entrant may have with other airlines. Business secrets and confidential information will remain in the Commission confidential file and will not become accessible to other undertakings or to the public.
44. The Parties' proposal for slot release to be made to the New Entrant and the Commission's approval thereof shall remain subject to adjustment in case of

subsequent changes in the anticipated allocation of slots by the slot coordinator that affect the Parties' slot surrender obligations.

45. In the event of any conflicting requests between New Entrants, the New Entrant offering the highest capacity on the affected route may be favoured.
46. If the Commission does not oppose the Parties' proposal within 6 weeks following the end of the IATA slot conference, this proposal will be deemed accepted.
47. In case the Commission does not approve the proposal submitted by the Parties, if other carriers have applied to the Parties for slots, the Parties shall propose without delay to the Commission other carriers to be selected as New Entrants.
48. Within one (1) week after the approval by the Commission of the selection of the New Entrant on the Affected Route, the Parties shall submit their written proposal for slot releases to this New Entrant.

2.3. Spread of slots at Paris CDG airport

49. To ensure that customers of the Parties enjoy the full benefits of flight connectivity, and without prejudice to **Section 2.1**, the slots released by the Parties at Paris CDG airport shall be spread as follows.
50. For the purposes of this paragraph, "**Morning Peak Time**" shall mean the period between 9h00 and 11h59 (Paris Time) and 'Evening peak Time' shall mean the period between 18h00 and 19h59 (Paris Time).
51. The number of slots released by the Parties at Paris CDG airport for all the Affected Routes shall not exceed eight (8) pairs of slots per 'Morning Peak Time' and six (6) pairs of slots per 'Evening Peak Time'. In the event that the request is made for the release of more than eight (8) pairs of slots during 'Morning peak Time' or six (6) pairs of slots during 'Evening Peak Time', the Parties shall offer to the New Entrant the next closest slot to the time requested in accordance with this Section 2.

2.4. Slot releases at Paris and Milan airports

2.4.1. Slot releases at Paris airports

52. Paris CDG and ORY airports being substitutable, any slots to be made available at Paris airports pursuant to these Commitments may be released from either CDG or ORY at the Parties' discretion.
53. However, the Parties shall be required, upon specific request from a New Entrant, to release slots at ORY airport for operations on an Affected Route in a situation where:
 - at the date of the exemption, there is no competing offer in CDG comparable to the one in ORY on this Affected Route;
 - such New Entrant already operates services on this Affected Route from ORY at the date of the exemption and wishes to add additional frequencies on this route from this airport;

- the New Entrant has all its scheduled flights serving Paris operated from or to ORY airport, and;
- the New Entrant cannot obtain slots at ORY airport through the Standard Slot Allocation Procedure.

54. If all conditions above are fulfilled except the third one, the New Entrant might consider transferring its services currently operated out of ORY on the Affected Route concerned to CDG. In this case, it might apply for slots in CDG pursuant to **Section 2.2.2**. Its request will then cover all the frequencies it wants to operate on the Affected Route out of CDG, including the frequencies transferred from ORY.

2.4.2. Slot releases at LIN airport

55. The Parties shall be required, upon specific request from a New Entrant, to release slots at LIN airport only if such New Entrant already operates services on an Affected Route from LIN and wishes to add additional frequencies on the route from LIN. In that case, upon fulfilment of the other conditions in these Commitments, the Parties will make slots available within the context of regulatory limits and constraints existing at LIN at the time of the request.

2.5. Slots made available prior to the exemption decision

56. The Parties are ready to anticipate the release of slots to a New Entrant on an Affected Route for the IATA Summer Season 2004 on a voluntary basis. In the event that the Parties have made slots available to a potential New Entrant in the period prior to the adoption of the Commission's exemption decision, those slots shall count towards the number of slots to be released pursuant to these Commitments.
57. A new entrant wishing to obtain slots from the Parties pursuant to this section shall notify its request to the Parties by January 15, 2004.
58. A copy of this request shall be sent at the same time by the New Entrant to the Commission.
59. The New Entrant shall be selected by the Parties according to the criteria set out in **Sections 2.2.8 and 2.2.9**. The Parties shall submit to the Commission their proposal for the selection of the New Entrant on the Affected Route.
60. If the Commission does not oppose the Parties' proposal within 2 weeks from receipt of the proposal, it will be deemed accepted.

3. INTERLINING COMMITMENT

3.1. Conclusion of Interlining agreements

61. At the request of a New Entrant, the Parties shall enter into an interline agreement concerning any New Entrant City Pair operated by the New Entrant (if it does not have an existing interline agreement with the Parties).
62. Any such interline agreement shall be subject to the following restrictions:

- it shall apply to the first class, business class and leisure travel categories only;
- it shall 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;
- it shall be limited to true origin and destination traffic operated by the New Entrant;
- it shall be subject to the MITA rules and/or normal commercial conditions;
- it shall include the possibility for the New Entrant, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the New Entrant.

63. 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 New Entrant or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the New Entrant. In cases where the New Entrant's 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 New Entrant. A New Entrant shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.
64. All interline agreements entered into pursuant to this **Section 3** for a particular New Entrant City Pair shall lapse automatically in the event that the New Entrant ceases to operate that city pair.

3.2. Special prorate agreements

65. At the request of a New Entrant, the Parties shall enter into a special prorate agreement with it for traffic with a true origin and destination in either France and/or Italy provided part of the journey involves one of the Affected Routes. The conditions shall be comparable to those entered into with third non-alliance/other alliance carriers in connection with such a route.

4. FREQUENT FLYER PROGRAMME (FFPs)

66. If a New Entrant 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 be hosted in their joint FFP for the New Entrant City Pairs operated by the New Entrant. The agreement with the New Entrant shall be concluded at market competitive rates for the route(s) it operates.
67. Any agreement relating to a particular New Entrant City Pair and entered into pursuant to this **Section 4** shall lapse automatically in the event that the New Entrant ceases to operate that city pair.

5. COMMITMENT TO FACILITATE INTERMODAL PASSENGER TRANSPORT SERVICES

68. At the request of a railway or other surface transport company or sea company operating between France and Italy (an “**Intermodal Partner**”), the Parties shall enter into an intermodal agreement whereby they provide passenger air transport on their services on any Affected Route as part of an itinerary that includes surface or sea transportation by the Intermodal Partner.
69. Any intermodal agreement entered into pursuant to this **Section 5** shall be based on the MITA principles (including the Intermodal Interline Traffic Agreement — Passenger and IATA Recommended Practice 1780e) and normal commercial conditions.
70. The Parties shall accept full pro-rating according to the terms applied by MITA members, including on routes where only rail services are provided. Where the Intermodal Partner requires notification of a sector mileage, a location identifier or an add-on fare, the Parties shall make such a request to IATA under normal IATA procedures.
71. At the request of a potential Intermodal Partner, the Parties shall make efforts in good faith to reach an agreement on conditions comparable to those granted to other Intermodal Partners, provided that the necessary requirements are met especially with regard to safety, quality of service, insurance coverage and liability limits. The conditions of such an agreement shall override the general obligations arising pursuant to this **Section 5**.

6. REGULATION OF FREQUENCY INCREASES

72. The Parties shall not add frequencies on an Affected Route, for a period starting when a New Entrant has received slots from the Parties for operations on this Affected Route and covering at least two full consecutive IATA seasons, save in the case of exceptional events requiring additional flights on short term basis.

7. DURATION OF EXEMPTION AND CONDITIONS

73. The Commitments offered by the Parties shall apply from the date on which the Commission has adopted an exemption decision under Article 5(4) of Regulation (EEC) No 3975/87.
74. The Commitments shall lapse on the date on which the Article 81(3) exemption no longer applies.
75. Should the Commission revoke the Article 81(3) exemption of the cooperation agreement pursuant to Article 6 of Regulation (EEC) No 3975/87 or an equivalent provision in any subsequent regulation, should the Article 81(3) exemption be annulled, or should the Parties terminate the notified cooperation 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 and to recover any slots provided under these Commitments to an airline which, at the time of the revocation, annulment or termination, is operating services on routes between France and Italy using those slots. The Parties shall also

have the right to terminate any interlining, special prorate, FFP or intermodal agreements entered into pursuant to these Commitments.

8. REVIEW CLAUSE

76. The Commission may in response to a request from the Parties showing good cause, waive, modify, or substitute any of the Parties' obligations under these Commitments.