COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 299 final

Brussels, 30 August 1991

Proposal for a

COUNCIL DECISION

concerning an Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By its decision of 18-19 June 1990 the Council authorized the Commission to open negotiations with Norway and Sweden using as a basis the negotiating directives drafted for the purpose of the negotiations between the Community and the EFTA States.

2. The Commission has in coordination and close consultation with Member States conducted negotiations with a joint delegation from Norway and Sweden. Agreement could be reached on a text which will make all Community legislation affecting the air transport sector applicable in Norway and Sweden.

3. The draft Agreement which is annexed to the attached proposal for a Council Decision is structured in six chapters, an Annex and three Protocols.

Chapter I : deals with the scope of the Agreement. It establishes that the "acquis communautaire" and interpretations of the Court of Justice of the European Communities and of the Commission shall be applicable.

Chapter II : contains a transcription of the competition articles of the Treaty.

Chapter III : creates the rights for the Commission to implement the competition articles and the Regulations and Directives which form part of the "acquis" directly in Norway and Sweden.

Chapter IV : establishes a Joint Committee and spells out its tasks. It contains provisions for consultations and a procedure to ensure that future Community legislation concerning air transport will also become part of the agreement.

Chapter V : contains provisions for consultation and a procedure to deal with relations with third countries and with international organisations.

Chapter VI : deals with provisions regarding entry into force and review of the Agreement. This chapter also contains the provision that the Agreement shall cease to be in force from the date an agreement between EEC and the EFTA countries on the European Economic Area enters into force.

Annex : lists the relevant "acquis communautaire" and extends the scope of the Regulations and Directives to Norway and Sweden.

Protocol 1 : deals with future legislation by the Community. Parties agree that relevant Regulations and Directives which will be developed by the Community shall be considered for inclusion in the Agreement.

Protocol 2 : transcribes declarations from the Council and from the Commission concerning the implementation of specific articles of various Council Regulations and Directives so as to ensure that the Agreement will be implemented in the same way in all Contracting Parties.

Protocol 3 : describes the position taken by the Council with regard to the problems of air traffic congestion in Europe.

4. The Commission believes that this Agreement meets the negotiating directives as established by the Council and proposes that the Council adopts the attached proposal for a decision.

PROPOSAL FOR A COUNCIL DECISION

concerning the conclusion of an Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular article 113 thereof,

Having regard to the proposal from the Commission(1)

Whereas the Council has decided at its meeting of 18-19 June 1990 that negotiations with Norway and Sweden should not be further delayed and has authorized the Commission to open negotiations with these two countries, using as a basis the negotiating directives drafted for the purpose of the negotiations between the Community and the EFTA States;

Whereas the Commission has conducted the negotiations in close coordination and consultation with the Member States throughout the negotiating process;

Whereas the Agreement permits the creation, in the area covered by the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden, of a set of rules applicable to civil aviation, thus permitting the establishment of a uniform system of rules concerning market access, airline capacity as well as price fixing in that field;

Whereas, as a consequence, the conclusion of the agreement is part of the common commercial policy and should therefore be based on article 113 of the EEC Treaty, requirements of a technical nature would be considered as supplementary to the above mentioned provisions;

(1)

Whereas finally the agreed text resulting from the negotiations meets the negotiating directives for the conclusion of an agreement between the EEC and EFTA States on air transport.

HAS DECIDED AS FOLLOWS :

Article 1

The Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall carry out the necessary formalities as provided for in Article 23 of the Agreement.

Article 3

The Commission, assisted by with representatives of the Member States, shall represent the Community in the Joint Committee set up by Article 13 of the Agreement.

Article 4

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

Done at .....

For the Council
The President

AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY, THE KINGDOM OF NORWAY AND THE KINGDOM OF SWEDEN ON CIVIL AVIATION

The Contracting Parties;

Desiring to set out rules for civil aviation within the area covered by the EEC, the Kingdom of Norway and the Kingdom of Sweden, rules which are without prejudice to those contained in the EEC Treaty and in particular to existing Community competences under Articles 85 and 86 of the EEC Treaty and the competition rules derived therefrom;

Agreeing that it is appropriate to base these rules on the legislation in force within the European Economic Community;

Desiring to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of this Agreement and those provisions of Community legislation which are substantially reproduced in this Agreement;

Whereas this Agreement shall not prejudge the outcome of the negotiations between EEC and the EFTA countries on the European Economic Area and in particular in respect of the rules of competition and state aid and shall be terminated on the date on which an agreement between the EEC and the EFTA countries on the said European Economic Area enters into force ;

Have agreed as follows:

CHAPTER 1

Article 1

1. This Agreement sets out rules for the Contracting Parties in the field of civil aviation. These rules are without prejudice to those contained in the EEC Treaty and in particular to existing Community competences under Articles 85 and 86 of the EEC Treaty and the competition rules derived therefrom.

2. For this purpose the provisions laid down by the Regulations and Directives specified at any time in the Annex shall apply under the conditions set out hereafter. The interpretations of the said provisions shall be in accordance with the interpretations provided

by the Court of Justice of the European Communities or the EEC Commission (hereafter called the Commission) applicable to articles 4 to 6, to the corresponding articles of the EEC Treaty and to those Regulations and Directives. Such interpretations handed down after the signature of the agreement shall be communicated to Norway and Sweden.

On request by a Contracting Party the Joint Committee shall exchange views pursuant to Article 13 on the implications of such interpretations for the proper functioning of the Agreement.

3. The Parties to this Agreement shall take all appropriate measures whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement and shall refrain from any measure which would jeopardize attainment of the objectives of this Agreement.

Article 2

Any service covered by this Agreement, operated by the Scandinavian Airlines System (SAS) between one of the States in which the parent companies are registered and another State within the Community is considered as a third or fourth freedom service.

CHAPTER 2

Article 3

The provisions in Articles 4 to 6 and the Annex shall apply to the extent that they concern air transport or an associated matter mentioned in the Annex.

Article 4

1. The following shall be prohibited as incompatible with this Agreement : all agreements between undertakings, decision by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which :

    a) directly or indirectly fix purchase or selling prices or any other trading conditions;
    b) limit or control production, markets, technical development, or investment;

c) share markets or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of :

- any agreement or category of agreements between undertakings;

- any decision or category of decisions by associations of undertakings;

- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not :

a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 5

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in :

a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b) limiting production, markets or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 6

1. Save as otherwise provided in this Agreement, any aid granted by Norway or Sweden or by a Member State of the EEC or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with this Agreement.

2. The following shall be compatible with this Agreement :

   a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

   b) aid to make good the damage caused by natural disasters or exceptional occurrences.

3. The following may be considered to be compatible with this Agreement :

a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment;

b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Contracting Party;

c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Article 7

1. The rules laid down in Article 6 shall be enforced:

- as regards Norway and Sweden, by application of the provisions of paras. 2 to 6 and the appropriate national rules and regulations of those States;

- as regards the EEC, under the Treaty of Rome.

2. With regard to aids granted by Norway and Sweden the Commission shall, in cooperation with Norway and Sweden, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of this Agreement.

3. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by one of those States or through State resources is not compatible with this Agreement having regard to Article 6, or that such aid is being misused, it shall inform the State concerned and shall request that such aid be abolished or altered within a period of time to be determined by the Commission.

4. Unless the State concerned notifies the other Contracting Parties that it is not in agreement with the action requested, it shall take the necessary measures and inform the Commission thereof.

5. If the State concerned is not in agreement with the action requested by the Commission the matter shall within 21 days be submitted to the Joint Committee, which shall meet within 14 days of the date of submission.

6. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with this Agreement having regard to Article 6, it shall without delay initiate the procedure provided for in paragraph 3. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

CHAPTER 3

Article 8

1. Norway and Sweden shall ensure that the Commission is given the information foreseen in the Annex in respect of the application of the rules in Articles 4-5 and the Annex .

2. In instances where the Commission may obtain information directly from undertakings as provided for in the Annex to this Agreement Norway and Sweden shall upon request provide the Commission with such information and/or arrange if requested for a direct visit on a specified date and invite the Commission to participate, while respecting the relevant procedural guarantees laid down by national law.

Article 9

1. Norway and Sweden shall ensure that Articles 4, 5 and 6 and the provisions of the Regulations and Directives specified in the Annex are applied in their territories and enforced with the same effect as in the EEC.

2. The Contracting Parties shall ensure that the rights which devolve from Articles 4, 5, 6, 7 and the above-mentioned Regulations and Directives may be invoked before the national courts.

Article 10

All questions concerning the validity of decisions of the institutions of the Community, pursuant to Articles 4, 5, 6, 7 and the Regulations and Directives specified in the Annex to this Agreement shall be of the exclusive competence of the Court of Justice of the European Communities.

Article 11

1. Whenever a decision contains a request for action to be taken by Norway and/or Sweden pursuant to the Regulations and Directives specified in the Annex then, unless the State concerned notifies the other Contracting Parties that it is not in agreement with the action requested, it shall take the necessary measures and inform the Commission thereof.

2. If the State concerned is not in agreement with the action requested by the Commission the matter shall within 21 days be submitted to the Joint Committee referred to in Article 13 which shall meet within 14 days of the date of submission.

CHAPTER 4

Article 12

1. The Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non discrimination and the provisions of this Article and of Article 13 paragraph 2, unilaterally to amend its domestic legislation on a point regulated by this Agreement.

2. As soon as a Contracting Party has adopted an amendment of its domestic legislation it shall inform the other Contracting Parties via the Joint Committee referred to in Article 13, eight days after adoption at the latest. The Joint Committee shall within 14 days thereafter hold an exchange of views on the implications of such an amendment for the proper functioning of the Agreement.

3. The Joint Committee shall :

   - either adopt a decision revising the provisions of the Agreement so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question;

   - or adopt a decision to the effect that the amendments to the legislation in question shall be regarded as in accordance with the Agreement;

   - or decide any other measure to safeguard the proper functioning of the Agreement.

Article 13

1. A Joint Committee is hereby established which shall be responsible for the administration of the Agreement and shall ensure its proper implementation. For this purpose it shall make recommendations and take decisions by unanimity. The decisions of the Joint Committee shall be put into effect by the Contracting Parties in accordance with their own rules.

2. For the purpose of the proper implementation of this Agreement, the Contracting Parties shall exchange information and, at the request of either party, shall hold consultations within the Joint Committee.

3. The Joint Committee shall adopt its own rules of procedure at the latest 21 days after the entry into force of this Agreement.

4. The Joint Committee shall consist of one representative each of Norway and Sweden on the one hand and the EEC on the other hand.

5. Norway or Sweden and the EEC shall preside in turn over the Joint Committee in accordance with the arrangements to be laid down in its rules of procedure.

6. The chairman shall convene meetings of the Joint Committee at least once a year in order to review the general functioning of the Agreement and whenever special circumstances so require, at the request of either Contracting Party.

7. The Joint Committee shall, in addition, meet in conformity with articles 1, 7, 11 and 12. In the case of disagreement the decision shall be referred to a subsequent meeting of the Joint Committee to be held within two months from the date of referral in accordance with the conditions to be laid down in its rules of procedure.

8. The Joint Committee may decide to set up any working party that can assist it in carrying out its duties.

Article 14

1. A Decision of the Joint Committee shall be binding upon the Contracting Parties.

2. If,in the view of one of the Contracting Parties, a decision of the Joint Committee is not properly implemented by another Contracting Party concerned, the former may request that the issue shall be discussed by the Joint Committee. If the Joint Committee cannot resolve the issue within two months of its referral, the Agreement shall cease to be in force.

3. The decision of the Joint Committee shall be published in the Official Journal of the European Communities. Each decision shall state the date of its implementation in the three Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted if necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.

4. The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of a period of twelve months after adoption of a decision by the Joint Committee such notification has not taken place, paragraph 5 shall apply mutatis mutandis.

5. If the Joint Committee does not take the decisions pursuant to articles 1.2, 7.5, 9.1, 11.2 and 12.3 within six months of the date of referral , this Agreement shall cease to be in force.

6. As regards legislation covered by article 12 between the signature of the Agreement and its entry into force of which the other Contracting Parties have been informed the date of referral in paragraph 5 shall be taken as the date on which the information was received. The date on which the Joint Committee shall reach a decision can not be earlier than 2 months after the date of entry into force of the Agreement.

Chapter 5

Article 15

The Contracting Parties shall consult each other, at the request of either party, in accordance with the procedures laid down in Articles 16, 17 and 18

(a) on air transport questions dealt with in international organizations ; and

(b) on the various aspects of developments which have taken place in relations between Contracting Parties and third countries in air transport, and on the functioning of the significant elements of bilateral or multilateral agreements concluded in this field.

The consultations shall be held within one month of the request or as soon as possible in urgent cases.

Article 16

1. The main aims of the consultations provided for in Article 15(a) shall be :

   (a) to determine jointly whether the questions raise problems of common interest; and

   (b) depending upon the nature of such problems :

   - to consider jointly whether Contracting Parties' action within the international organizations concerned should be coordinated, or

   - to consider jointly any other approach which might be appropriate.

2. The Contracting Parties shall as soon as possible exchange any information of relevance to the aims described in paragraph 1.

Article 17

1. The main aims of the consultations provided for in Article 15(b) shall be to examine the relevant issues and to consider any approach which might be appropriate.

2. For the purposes of the consultations referred to in paragraph 1, each Contracting Party shall inform the other Contracting Parties of developments which have taken place in the field of air transport and of the operation of bilateral or multilateral agreements concluded in that field, if it considers this likely to contribute to the identification of problems of common interest.

Article 18

1. The consultations provided for in articles 15, 16 and 17 shall take place within the framework of the Joint Committee.

2. The information and consultations provided for in articles 15, 16 and 17 shall be covered by professional secrecy.

CHAPTER 6

Article 19

1. This Agreement shall remain in force unless denounced by one of the Contracting Parties.

2. Each Contracting Party may denounce the Agreement by notifying the other Contracting Parties. The Agreement shall cease to be in force 1 year after the day of notification.

3. This Agreement shall cease to be in force from the date an agreement between EEC and the EFTA countries on the European Economic Area enters into force.

Article 20

This Agreement shall be reviewed after request by any Contracting Party and at any event after one year of its entry into force.

Article 21

Norway and Sweden shall bring their legislative and administrative provisions into conformity with this Agreement before the entry into force of the Agreement.

Article 22

This Agreement shall supersede the relevant provisions of bilateral arrangements in force between Norway and/or Sweden on the one hand and Community Member States on the other hand.

Article 23

1. This Agreement shall be subject to approval or ratification in accordance with the Contracting Parties own procedures and the Parties shall notify each other of the completion of the procedures necessary for that purpose.

2. This Agreement shall enter into force on the date on which the last instrument of ratification has been deposited.

3. This Agreement and the instruments of ratification shall be deposited in the archives of the Secretariat of the Council of the European Communities, which shall deliver a certified copy thereof to each Contracting Party.

Article 24

This Agreement is drawn up in all official languages (Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish) of the Community as well as in the Norwegian and Swedish languages, all these texts being equally authentic.

ANNEX

For the purposes of this Agreement Norway and Sweden shall be considered as falling within the terms "Member States" and "Community" referrred to in the following EEC Directives and Regulations.

1. 90/2343/EEC

   Council Regulation of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between member States

   Articles 1, 2, 3 para I, 4-10, 11 with the exception of para 2, 12-14, 17

2. 90/2342/EEC

   Council Regulation of 24 July 1990 on fares for scheduled air services

   Articles 1-11, 14

3. 91/294/EEC

Council Regulation of 4 February 1991 on the operation of air cargo services between Member States

Articles 1, 2, 3 para 1, 4-11

4. 62/17/EEC

Council Regulation of 6 February 1962 implementing Articles 85 and 86 of the Treaty, as amended by Regulation 59, by Regulation 118/63/EEC and by Regulation 2822/71/EEC

Articles 1-9, 10 para 1 and 2, 11-14, 15 with the exception of para 3, 16 para 1 and 2, 17-24

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

5. 87/3975/EEC

Council Regulation of 14 December 1987 laying down the procedures for the application of the rules of competition to undertakings in the air transport sector.

Articles 1-7, 8 para 1 and 2, 9, 10, 11, 12 with the exception of para 3, 13 with the exception of para 3, 14-20

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

6. 87/3976/EEC

Council Regulation of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

Articles 1-5, 7, 9

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

7. 90/2344/EEC

Council Regulation of 24 July 1990 amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

Articles 1, 2

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

8. 91/82/EEC

Commission Regulation of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning ground handling services

Articles 1-5

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

9. 91/83/EEC

Commission Regulation of 5 December 1990 on the application of Article 85(3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air transport services

Articles 1-13

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

10. 91/84/EEC

Commission Regulation of 5 December 1990 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of capacity, consultations on passenger and cargo tariffs rates on scheduled air services and slot allocations at airports

Articles 1-6.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

11. 91/295/EEC

Council Regulation of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport

Articles 1-10

12. 89/2299/EEC

Council Regulation of 24 July 1989 introducing a code of conduct for the use of computer reservation systems.

Articles 1-22

13. 80/1266/EEC

Council Directive of 16 December 1980 on future cooperation and mutual assistance between the Member States in the field of air accident investigation

Articles 1-2

14. 80/51/EEC

Council Directive of 20 December 1979 on the limitation of noise emissions from subsonic aircraft as amended by Council Directive 83/206/EEC of 21 April 1983

Articles 1-8

15. 89/629/EEC

Council Directive of 4 December 1989 on the limitation of noise emission from civil subsonic jet aeroplanes

Articles 1-7

16. 90/314/EEC

Council Directive on package travel, package holidays and package tours

Articles 1-9

17. 89/4064/EEC

Council Regulation of 21 December 1989 on the control of concentrations between undertakings

Articles 1-8, 9 para 1-8, 10-18, 19 para 1 and 2, 20-23, 25

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

18. 80/723/EEC

Commission Directive of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, as amended by Commission Directive 85/413/EEC of 24 July 1985.

Articles 1-8

19. 90/2367/EEC

Commission Regulation of 25 July 1990 on the notifications, time limits and and hearings provided for in Council Regulation 4064/89

Articles 1-20

20. 88/4261/EEC

Commission Regulation of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation 3975/87

Articles 1-15

PROTOCOL 1

THE CONTRACTING PARTIES

considering that whereas the Agreement envisages the incorporation of future legislation in civil aviation;

whereas the EEC has already announced legislative action in a number of areas;

whereas such action should not lead to future difficulties.

are agreed that action i.a. in the following areas :

- Consultation between airports and users
- Mutual acceptance of Licences and harmonisation
- Slot allocation
- Licensing of air carrier and allocation of route rights
- Common specifications for ATC equipment
- Cabotage
- Value added tax
- Abolition of tax free sales between the Contracting Parties
- Relations with third countries
- Predatory practices

shall be considered under Article 12 for inclusion in the Agreement.

PROTOCOL 2

THE CONTRACTING PARTIES

considering that the agreements must be implemented in the same way for all the Contracting Parties;

whereas the Council and the Commission of the EEC have already pronounced indications of importance for implementation of specific articles

are agreed that :

1. In applying the matching provisions of Article 3(5) in point 2 of the Annex in respect of non-scheduled air fares it is the product which is in the market which must be equivalent in terms of quality and conditions. Elements of importance for the assessment would be the inclusion or not of additional services such as accommodation and also whether the non-scheduled product is legally on the market in a regular way according to the definition in Article 2(b)(iii)(2) while the Commission may need to assess matching of fares with respect to the rules concerning predatory behaviour.

2. Member States which benefit from the special conditions under paragraph 3 of Article 10 in point 1 of the Annex will not, on pain of losing such special conditions which they have, grant new rights regarding the airports concerned, on terms which would put their Community partners at a disadvantage by comparison with carriers from third countries outside the Community.

and that

3. In a situation where Article 12(2) in point 1 of the Annex is invoked, the Commission will examine, in addition to capacity utilization, the marketing efforts and the products of air carriers from the Member State with the lower market share and will consider whether a higher market share should normally be expected. If this is the case, the Commission will further consider whether the possibilities of the air carriers concerned of competing in the market are reduce by virtue, in particular of difficulties experienced by congestion at airports, market structure and/or the direct impact of the large presence of non-scheduled traffic.

   In arriving at a decision to reduce the 7.5 percentage points, the Commission will be guided by the following relationships :

Market share	Reduced growth rate
between 30 and 25%	5
less than 25%	4

PROTOCOL 3

THE CONTRACTING PARTIES

- affirm the need for continuation and intensification of the work in Eurocontrol to tackle and resolve the problems of air traffic congestion in Europe ;

- note that accession to the Eurocontrol Convention of all Member States should be seriously considered ;

- invite Member States to co-operate to ensure that more airspace is made available for civil traffic and that it is used more flexibly and rationally ;

- welcome the efforts made in the relevant fora to make progress in establishing compatible technical and performance specifications for air traffic control systems and equipments.

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