

Press and Information Division

**PRESS RELEASE No 116/03**

17 December 2003

Judgment of the Court of First Instance in Case T-219/99

*British Airways plc v Commission of the European Communities*

**THE COURT OF FIRST INSTANCE UPHOLDS THE RULING AGAINST BRITISH  
AIRWAYS FOR ABUSE OF A DOMINANT POSITION**

*The performance reward schemes used by British Airways to calculate travel agents' commissions constitutes an abuse of the dominant position held by British Airways on the United Kingdom market for air travel agency services.*

British Airways (BA), the largest United Kingdom airline company, concluded agreements with travel agents accredited by the International Air Transport Association (IATA) established in the United Kingdom, in order to sell its air tickets to travellers. Under those agreements, travel agents receive a basic commission for BA tickets sold and benefit from other additional financial incentives; in particular a performance bonus calculated by reference to the growth of sales of BA tickets from one financial year to another.

On 9 July 1993, Virgin Atlantic Airways, a rival airline company, lodged a complaint with the Commission against those agreements.

Following the Commission's enquiry and investigation procedure, BA adopted a new system of performance bonuses applicable from 1998. Over and above the new basic commission rate of 7%, each agent was able to obtain an extra commission of up to 3% on international tickets and 1% on domestic tickets. For each percentage point improvement in results in relation to the reference rate of 95% of the tickets sold the previous month, the agent was granted, in addition to the basic commission, an additional commission of 0.1%, applicable not only to additional revenue generated but also to all sales of BA tickets during the reference period in question.

On 9 January 1998, Virgin lodged a second complaint with the Commission against that new system of financial incentives.

By decision of 14 July 1999, the Commission ruled against the agreements and incentive schemes established by BA as constituting an abuse of its dominant position on the United Kingdom market for air travel agency services and fined BA 6.8 million euros. According to the Commission, the effect of the performance reward schemes is to encourage United Kingdom travel agents to maintain or increase their sales of BA tickets, in preference to sales of tickets of rival airlines.

BA brought an action against that decision before the Court of First Instance.

### **The Court of First Instance dismisses BA's action.**

BA first challenged the competence of the Commission to take the decision of 14 July 1999, by reason of the collective resignation of its members on 16 March 1999, whereas the new Commissioners were not appointed until 15 September 1999. The Court of First Instance holds that the Commissioners who resigned remained in office during that period and that they retained their full powers until they were replaced.

To the argument that BA suffered discrimination through being the only airline proceeded against, whereas other carriers applied the same systems of financial incentives, the Court of First Instance replies that the fact that the Commission has made no finding of infringement against those other carriers does not warrant lifting the finding of an infringement established against BA. Where the Commission is faced with conduct reputedly contrary to competition law on the part of several large undertakings in the same economic sector, it is entitled to concentrate its efforts against one of the undertakings in question. If BA considers that other air carriers apply systems of financial incentives similar to its own, it can always challenge the decision of the Commission to take no action on the complaints which BA itself lodged against its competitors.

The Court of First Instance holds that, in establishing the dominant position of BA, the Commission was right to regard the United Kingdom market for the air ticket distribution services supplied by agencies to airlines as the relevant market. Travel agencies constitute an indispensable distribution channel for airlines and therefore represent a distinct market for services. **It is therefore in its capacity of buyer of services for distributing its tickets to travellers that, in the United Kingdom, BA holds a dominant position on that sectoral market.**

BA has also challenged the existence of a dominant position and the existence of an abuse. The Court, on the other hand, considers it to be established that BA holds a dominant position on the United Kingdom market for air travel agency services, taking account of the number of seats offered by BA, the number of its flights, the quantity of BA tickets sold by United Kingdom agents, and the number of passenger-kilometres flown on BA flights.

As for the existence of an abuse, the Court of First Instance points out that abuse of a dominant position may consist in applying dissimilar conditions to equivalent transactions with other trading parties. It considers that that applies to BA's performance reward scheme because the latter could entail, in relation to United Kingdom air travel agencies, the application of different commission rates to an identical amount of revenue, by reason of a rate of increase in sales of

BA tickets which would differ from one agency to another. In addition, the Court of First Instance finds that this performance reward scheme has the effect of restricting the freedom of United Kingdom agencies to supply their services to the airlines of their choice, and thus of limiting access by BA's competitor airlines to routes to and from United Kingdom airports, without that system being based on any economically justified consideration. The Commission therefore correctly concluded that BA had abused its dominant position.

Finally, the Court of First Instance confirms the amount of the fine imposed on BA.

**Note: an appeal, limited to questions of law, may be brought before the Court of Justice of the European Communities against the decision of the Court of First Instance, within two months from the date of its notification.**

*Unofficial document, for media use only, which does not bind the Court of First Instance.*

*Available languages: All.*

*The full text of the judgment can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int))  
In principle they will be available from midday CET on the day of delivery.*

*For additional information please contact Christopher Fretwell  
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*