

## Case T-260/94

Air Inter SA

v

Commission of the European Communities

(Air transport — Continuation of an exclusive concession on domestic routes — Regulation (EEC) No 2408/92 — Articles 5 and 8 — Rights of the defence — *Audi alteram partem* — Principle of good faith — Principle of proportionality — Article 90(2) of the EC Treaty)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 19 June 1997 ..... II - 1000

### Summary of the Judgment

1. *Transport — Air transport — Access of Community carriers to intra-Community routes — Examination by the Commission of the distribution of traffic between the airports within an airport system — Rights of the defence of Member States and carriers — Extent (Council Regulation No 2408/92, Art. 8)*

2. *Transport — Air transport — Access of Community carriers to intra-Community routes — Maintenance of exclusive concessions for domestic routes — Domestic routes — Meaning — Prohibition of discrimination — Whether applicable where no exclusivity has been granted (Council Regulation No 2408/92, Arts 5 and 8(1))*

1. Respect for the rights of the defence, in all proceedings which are initiated against a person and which are liable to culminate in a measure adversely affecting that person, is a fundamental principle of Community law which must be guaranteed even in the absence of any specific rules or where legislation exists which does not itself take account of that principle. When applied to the procedure by which the Commission examines the application of Article 8(1) and (2) of Regulation No 2408/92 on access for Community air carriers to intra-Community air routes — which provide that a Member State may regulate, without discrimination on grounds of nationality or identity of the carrier, the distribution of traffic between the airports within an airport system — that principle requires that, where the procedure was initiated not at the request of another Member State but by the Commission solely on its own initiative, the Commission must communicate to the Member State a full and precise statement of the reasons for which it initiated the procedure and a full and precise summary of any complaints which it has received from interested third parties.

named in the national instrument on which it relies for its claims has a right to be heard before the adoption of a decision which will refer expressly to it and whose economic consequences will directly affect it. Its right to be heard may be observed either directly in its dealings with the Commission or indirectly through dealings with the national authorities.

2. Article 5 of Regulation No 2408/92 on access for Community air carriers to intra-Community air routes, which provides that on domestic routes for which an exclusive concession has been granted and on which other forms of transport cannot ensure an adequate and uninterrupted service that concession may continue for a particular period, calls for an independent interpretation which takes into account its wording, general scheme and purpose. It is only on 'domestic routes', defined as traffic links between particular cities or regions, and not between airports, that an exclusive concession may possibly exist. It follows that, where a carrier enjoys exclusivity only from and to an airport but other carriers are authorized to operate on the

A carrier who is the direct beneficiary of the contested State measure and expressly

same routes from and to another airport in the same town or region, the refusal to grant a competing operator access to the first airport cannot be justified under

Article 5 but constitutes discrimination on grounds of nationality or identity of the carrier, which is prohibited by Article 8(1) of the regulation.