

# Article 101 TFEU Cases (Part I)

## CASE 1

There are three main types of elevators: i) hydraulic elevators, which are elevator systems which lift an elevator car using a hydraulic ram; ii) roped elevators which are geared; the elevator car is raised and lowered by traction steel ropes; and iii) roped elevators which are gearless; in gearless elevators the machine room is either much smaller or there is no need for a separate machine room at all (“machine-room-less” elevators). There are various and commonly known applications for elevators such as, for example, low-rise, mid-rise and high-rise buildings, residential or office, hospitals or services, transport or freight. There are different applications for escalators, either for commercial (shopping malls, office buildings, hotels) or transport purposes (airports, railway stations, subway systems). Elevators and escalators have a relatively long life span of 20 to 50 years.

Maintenance services are provided with varying content. Generally, undertakings provide monitoring and prevention services (for example, active information to elevator and escalator owners and building managers about upcoming maintenance requirements), as well as repair services and replacements of spare parts. Modernization services require more intervention and replacement of parts than maintenance, but substantially less than the installation of an entirely new product. While elevators are typically modernized, escalators are generally not. Services generate the majority of profits in the elevator and escalator sector. The vast majority of elevators and escalators installed in the Member States affected by the infringement are serviced by the undertaking responsible for the installation.

The market value was ca. € 250 million in Belgium, ca. € 580 million in Germany (excluding the services market), ca. € 32 million in Luxembourg and ca. € 41 0 million in the Netherlands in 2003.

all four cooperation displayed common elements such as:

— KONE, Otis, Schindler and ThyssenKrupp were all involved in the collusion in each of the four Member States;

- The activities covered the same products and services in each Member State at issue, with the exception of Germany where services were not part of the agreements;
- The managers responsible for the subsidiaries involved (and participants in the cartels) were sometimes simultaneously or successively responsible for several Member States;
- The periods of active collusions largely overlapped;
- The method for the allocation of projects concerning the sale and installation of elevators and escalators was similar, sometimes identical (regarding, for example, the principles governing market and customer sharing, the maintenance of “status quo” in market shares, the structure of the meetings, compensation schemes, use of project lists);
- The method for the allocation of projects concerning maintenance and modernization was similar, sometimes identical, in Belgium, Luxembourg and the Netherlands (for example, the principles governing customer sharing, establishment and maintenance of contacts, communication methods and compensation schemes).

## **CASE 2**

Vitamins are produced and purchased for both human and animal consumption. Each vitamin has a specific set of beneficial effects. When considering the cost of producing animal feed or human food, the incremental cost of the vitamin additives typically is small. Due to the significant nutritional impact of vitamin supplements, the demand for vitamins is highly inelastic. Although it is common to think of vitamins as a single entity such as Vitamin A or Vitamin E in fact, specific vitamin products are manufactured within each vitamin type. For example, in this section, we consider four different Vitamin A products: A Acetate 500 USP, A Palmitate 250 USP, A Palmitate 500 USP, and A Acetate 650 Feed Grade. Vitamins are largely produced through processes of chemical synthesis, although there have been recent advances in fermentation technologies for the production of some vitamins. The industry is highly concentrated, and the large capital investment, and especially the production experience, required for the manufacture of vitamins are a barrier to entry. Although the major producers have similar production technologies, the chemical synthesis processes

involve substantial learning by doing. Each producer becomes better, through time, at debottlenecking the chemical synthesis process at any given plant. A given vitamin product made by one firm is chemically identical to the same product made by another firm.

Choline chloride is a part of the chemical family Quaternary Ammonium Salt. Its chemical formula is  $(\text{CH}_3)_3\text{N}(\text{C}_1)(\text{CH}_2\text{CH}_2\text{OH})$ . Choline chloride is made by reacting trimethylamine with ethylene oxide and hydrochloric acid.

Choline chloride is a member of the B-complex group of water-soluble vitamins (vitamin B4). Choline chloride is mainly used in the animal feed industry as a traditional feed additive, especially for poultry and swine, to increase growth, reduce mortality rates, increase feed efficiency, increase egg production and improve meat quality.

Choline chloride is marketed in either an aqueous solution of 70% choline chloride or is sprayed on a dry cereal (or silica) carrier for a choline chloride potency of 50% to 60%. Some producers produce both varieties but are particularly strong in one variety while other producers have a tolling agreement whereby the tolling company converts for example liquid choline chloride into choline chloride fixed on a carrier, which it then returns to the producer of the liquid choline chloride.

Over 95% of choline chloride is sold as unrefined feed grade which is combined in pre-mixes and animal feeds. About two-third of this choline chloride is used for poultry feed, with swine feed making up the bulk of the remainder. The remaining 5% of choline chloride is refined further to a higher purity food grade (pharmaceutical grade) which is used for the preparation of vitamins, nutrient supplements and infant formulae. Choline chloride also has minor uses as a catalyst, a curing agent and as a neutralising agent. Demand in these applications is very low. Choline chloride is the most widely used – most economical and easy to handle – form of choline for the animal feed industry. Choline is used to maintain commercial production levels of poultry and swine. The absence of choline would lead to drastically reduced growth rates, longer growth periods, smaller animals, and lower yields.

The European Chemical Industry Council, hereafter referred to as “CEFIC”, is the European trade association for the chemical sector. It represents, directly or indirectly, about 40 000 large, medium and small chemical producers in Europe, which employ about two million people and account for more than 30% of the world’s chemicals production. CEFIC is

made up of the national chemical industry federations of 25 countries in Europe and large international producers which are members in their own right.

One Sector Group of CEFIC is referred to as “Methylamines & Derivatives”, the members of which are Air Products, Akzo Nobel, BASF, UCB and Ertisa. The Sector Group's key roles are to promote the quality image of choline chloride and to monitor trends in the use of methylamines and choline chloride. The Sector Group gathers data on choline chloride production of European producers and consolidates such data. Producers regularly meet in official CEFIC meetings. Non-European choline chloride.

By its nature, choline chloride, whether in liquid or dry form, is a product that can be easily transported. Nevertheless, because it is a commodity product with a relatively low cost price, producers located on the same continent as the customer have, because of lower transport and storage costs, a significant competitive advantage compared to producers located in other parts of the world. This does not, however, prevent producers in all parts of the world from being able and sometimes willing to sell in other areas of the world. In areas of the world with little local production and expanding demand, such as the Far East and Central and South America during the period of investigation, exports by the large producers in North America and Europe to such areas were of considerable commercial interest, at least until such time as the producers concerned could create local production facilities in those areas. Import sales for a product like choline chloride may be relatively infrequent where the import market is a mature one with well-established local producers, as is the case in Europe and North America. But such sales may still be an attractive commercial policy for a company with an excess of production, trying to reclaim part of its fixed costs. Any such imports from other parts of the world can in such circumstances be made at prices below the prevailing prices in the area of importation. If this is the case, they can, despite the small volumes involved, have a destabilizing effect on the prevailing price level in the area of importation, especially if this price level were relatively high.

Eurostat figures show that in 1990, before the infringement described in this Decision took place, imports of choline chloride (at 100%) into the Community amounted to 3 525 metric tonnes (4 700 metric tonnes at 75%, as registered by Eurostat), close to nine percent of the estimated market in the Community at that time of around 40 000 metric tonnes (at 100%). Exports of choline chloride (at 100%) from the Community to other parts of the world

in 1990 were only 548 metric tonnes (730 metric tonnes at 75%, as registered by Eurostat)<sup>33</sup>. In 1999, Community exports had grown to 12 413 metric tonnes (at 100%)<sup>34</sup>.

At the start of the period of investigation, choline chloride was produced mainly in Europe and North America (United States and Canada), although there was also choline chloride production capacity in China, India, Japan, Korea and Taiwan. The North American producers were exporting to Central and South America, Europe, the Far East and the South East. The European producers were starting to export to Central and South America, Africa, the South East and the Far East. European and North American producers also had production facilities in different areas of the world and were expanding local production in order to cut transportation and storage costs and better penetrate local markets. In particular, BASF established production facilities in Mexico, Brazil and Thailand, Akzo Nobel and UCB in China, Ducoa in Mexico and Chinook in Singapore.

On the European market, in 1991, 2 500 metric tonnes (100%) choline chloride had been imported from North America and this figure was increasing over time, from only 71 metric tonnes in 1989 to 2 900 metric tonnes in the first 7 months of 1992<sup>76</sup>. Of these quantities, Chinook exported 1 288 metric tonnes of choline chloride (100%) to Europe in 1991 and 1 994 metric tonnes (100%) in the first seven months of 1992<sup>77</sup>. DuCoa, from its side, did not export any substantial amounts of choline chloride to Europe at that time. According to Akzo Nobel, some North American exports of choline chloride entered the European market under different, more favourable customs headings (for example, cattle feed instead of choline chloride). Akzo Nobel states that this led to “a reaction” from the European producers, in the sense that in 1992, BASF's subsidiary in Mexico entered into a contract to supply about 400 metric tonnes of choline chloride to a US trading company, South Central products, for resale in the United States. According to Bioproducts, the background to this sale to the United States was that “BASF is not happy with DuCoa’s announcement to take 40- 50% of Mexico and Latin American market”.

On 16 and/or 23 November 1992, the six producers, DuCoa, Bioproducts, Chinook, Akzo Nobel, UCB and BASF, met again, in a meeting or meetings organised by BAS in Ludwigshafen, Germany. Their discussion on what to do started from the following analysis of the world market situation for choline chloride at that time:

· “All producers have excess capacities

- Market shares of major producers are fairly constant
- Intentions for a higher market share by price cutting had little success and serves no one
- Present profit situation in chemical companies asks for price increases in general
- Converters and distributors should be controlled by proper pricing

#### Conclusion

- Price cutting is nonsense when market positions are firm
- Choline deserves higher prices”.

There was discussion about certain “general rules” that all producers should follow. As listed by UCB, these were:

- Major areas of interest are clearcut
- Temporary advantage of exchange rate is no reason and no solid base for substantial market shift
- Capital expenditure is a major reason for market share in a region

New capacities need slow market penetration; grow with growing market in order not to rock the boat

- Aggressive behaviour puts pressure on prices only and for everybody. There are no substantial market shifts possible on a long term base
- Adequate burden sharing with regard to capacity utilisation in major areas of interest is indicated”.

Most importantly, according to an internal report from Chinook of 23 November 1992, “an accord was reached between the European and North American producers on November 16, 1992 in Ludwigshafen”<sup>104</sup>. This agreement consisted of the following::

1. Bio Products and Chinook give up W. Europe by mid-1993.
2. Bio Products and Chinook give up E.Europe by mid-1994.
3. Asia: - Ducoa decrease shipments to Asia by 250 TPA.

- Europeans freeze shipments to Asia at current levels – to be audited – approximately 3500 TPA combined.

- Bio Products and Chinook continue to expand market share in Asia.

4. North America - Europeans and Mexicans out, completely, by mid-1993.

5. Latin America - BASF transfer exports from Europe to Latin production.

Other Europeans hold exports to Latin America at existing levels.

- Bio Products and Chinook hold Latin America exports at existing levels.

6. Pricing - World-wide pricing will be adhered to by all according to the agreed schedule:

### CASE 3

Brasseries Kronenbourg is the leading brewer on the French market in terms of sales volume. In 1999, its output was [5-15] million hectolitres, and it imported [250-300 000] hectolitres. The trend in its market share (in volume terms) between 1990 and 1999 remains between 35-50%.

Brasseries Heineken is the second largest brewer on the French market. In 1999, its output was some [6-8] million hectolitres<sup>13</sup>. It also imported some [70 000 □ 80 000] hectolitres. Brasseries Heineken is a wholly owned subsidiary of Heineken France, the Heineken group's holding company in France. In 1996, Heineken France acquired Brasseries de Saint-Omer (Saint-Arnould group) and the Fischer group. The trend in Heineken France's market share remains between 20-35%.

Interbrew France S.A. (□Interbrew France□) is the third largest brewer on the French market. Since 1993, it has imported all of the products which it markets. In 1999, its volume amounted to some [1-3] million hectolitres<sup>19</sup>. The trend in its market share (in volume terms) remains between 15-25%

In 1999, the brewing companies operating in France had a turnover of some □1.75 billion from an output of 19.9 million hectolitres of beer (including exports). Output in 1999 was slightly down on output in 1992 (21.3 million hectolitres). In addition, between 1990 and 2000, the number of brewing companies fell from 27 to 15

The structure of supply remained relatively stable over the ten years. Brasseries Kronenbourg, Brasseries Heineken and Interbrew France accounted for more than [75-85]% of the volume of output in 1999. The companies already held some [75- 85]% of the market in 1990, and their respective market shares changed relatively little during the ensuing period<sup>27</sup>. The increase in Heineken France's market share in the mid-1990s is due mainly to its acquisition of the Saint-Arnould and Fischer groups rather than to any internal growth<sup>28</sup>. Similarly, the main beer brands saw little change over the decade.

Since 1995, Brasseries Kronenbourg, Brasseries Heineken and Interbrew France have also taken over a large part of the wholesale beer distribution trade.

The off-trade, comprising mainly supermarkets and hypermarkets, accounted for slightly over two thirds of the total volume of beer sales in France in 2000<sup>31</sup>, a proportion which tended to increase over the ten-year period. Some 90% of demand in the off-trade is accounted for by seven groups of large retailers<sup>32</sup>. The latter generally obtain their supplies direct from the brewers.

The on-trade accounts for less than one third of the total market in volume terms, and its share declined over the ten-year period<sup>33</sup>. The on-trade has two levels: wholesale and retail. Wholesale distribution is performed by wholesalers, who also sell other types of beverages. Since 1995, the two brewery groups involved in this case and Interbrew have integrated a substantial part of wholesale demand, acquiring numerous independent wholesalers. Thus, [65-75]% of the total volume of draught beer sold in 2000 was distributed by the subsidiaries of the three undertakings, including [55-65]% by the subsidiaries of the Heineken group and of Danone/Brasseries Kronenbourg, whereas in 1995 [70-80]% of the total was distributed by independent distributors. This trend is mainly due to the growth of the Heineken France and Brasseries Kronenbourg networks. The share of the total volume of draught beer sold by the subsidiaries of Heineken France rose from [5- 15]% to [30-40]% during the period and that of the subsidiaries of Brasseries Kronenbourg from [5-15]% to [25-35]%, while the share of the subsidiaries of Interbrew France rose from [1-5]% to [5-10]%<sup>35</sup>. The wholesalers of the Heineken France and Brasseries Kronenbourg networks are spread throughout most of the regions of France; their geographical coverage is thus greater than that of the competing networks.

As far as retail sales in the on-trade are concerned, brewers make a distinction between two segments. Firstly, the traditional pub, hotel and restaurant segment. Demand there is



highly dispersed, with the number of establishments being estimated at 170 000. Secondly, the more modern sector known as the third market comprises national hotel and restaurant chains, and in particular fast-food outlets, canteens, transport, leisure sites, vending machines and local shops.

On 12 February 1996<sup>43</sup>, a member of the board of Heineken N.V. and the then CEO of Heineken France met in the offices of Danone in Paris with the director of Danone and the CEO of Brasseries Kronenbourg. The management of Heineken France decided to hold this meeting in order to announce to Danone their planned acquisition of the Fischer and Saint-Arnould groups and to see what Danone's reaction was [BUSINESS SECRETS], because of the Saint-Arnould group's distribution of large quantities of Kronenbourg beer. According to Heineken France, the director of Danone and the CEO of Brasseries Kronenbourg reacted vehemently at the meeting to the announcement of Heineken France's planned acquisition of the Saint-Arnould group. □ In view of this reaction, it was envisaged at their request that discussions should take place on a possible rebalancing of positions in on-trade distribution □

Heineken France states, however, that such discussions never took place and that Brasseries Kronenbourg reacted unilaterally to the acquisitions of the Fischer and Saint-Arnould groups by taking over the wholesalers Blanchet, Lemay, GBN, Freyssinet and Soleilhavoup, which distributed substantial volumes of Heineken beer. □ All in all, in only a few weeks, Kronenbourg had taken over wholesalers distributing almost [180 000-230 000] hectolitres of draught beers of the Heineken group, i.e. around [5-15%] of the group's sales on the French on-trade some 20 wholesalers, substantially inflating the value of the businesses.

According to Heineken France, □ if this situation had continued or intensified, it would certainly have had a lasting effect on the profitability and investment capacity of the two companies. Accordingly, a □ cease fire □ was concluded, the only effect of which was a return to normal competition. Since there was no follow-up, it did not affect the behaviour of the two companies, which continued to engage in intense competition with one another.

The meeting of 12 February 1996 is also mentioned in three in-house memos drafted within the Heineken group. First, in a record of the meeting drafted for the board of Heineken N.V. on 14 February 1996, a member of the Heineken N.V. board describes the reaction of the Danone group/s representatives to the announcement of Heineken France's acquisition plans, going on to state: We quickly came to the conclusion that there is only a problem in

distribution and that both parties must ensure that a solution is found for it. [The director of Danone] urged that this must be done before mid-March. The record concludes as follows on this subject: □It is of the utmost importance that we ensure that a solution is found for the distribution problem.

In a second memo to the Heineken N.V. board, also entitled □Horeca Distributor acquisitions in France (price war)□<sup>57</sup>, dated 22 March 1996, Heineken France□s CEO describes the terms of the □armistice□ agreement concluded the previous day between Heineken France and Danone:

□Agreement: Yesterday we have reached agreement with Danone to put an end to the stupid and costly acquisition war. We share the objective that between our two groups equilibrium must exist according to a general rule that none of the two is dominant in the Horeca market with regard to three main aspects:

1. Volume integrated through each of the distribution networks must be equal. For the time being, minority shareholdings with pre-emptive rights count as controlled by. However, Danone reserved the right to come back to this issue.
2. Volume of the other party's brands, controlled by integrated network of the competitor must be equal.
3. Wholesalers to be integrated in the future must be identified as□naturally□ belonging to one of the two groups, conditional to the long term equilibrium according to items 1 and 2. In order to avoid any misunderstanding for the short run, we have both signed a list of wholesalers that were either actually acquired during the war, or where we committed ourselves to a firm offer and now await the reaction of the present owner. For the time being no other engagements will be made by either party outside these two lists. Based on actual 1995 volume figures the status quo regarding the equilibrium will be determined and if necessary adjustments through wholesaler transfers back and forth will be effectuated.

According to the information available to the Commission, the armistice agreement was not implemented. In the first place, it is evident that the parties did not comply with the □short-term□ aspect of the agreement, i.e. the undertaking no to acquire the other party's wholesalers, as set out in two lists, and not to acquire wholesalers not included on the lists (see paragraphs (41) to (43)). The reality was that some wholesalers allocated to one party were subsequently acquired by the

other party, and the two parties continued to acquire wholesalers not included on the lists. Secondly, the long-term aspect of the agreement, i.e. the equilibrium to be achieved as regards the volume of each party's brands included in the distribution network controlled by the other party and as regards the total volume included in the network of each party, was never pursued in practice. In the period from 1996 to 2002, the parties rather tended, within the distribution network they controlled, to supplant their competitors' beer by their own beer. An agreement intended to ensure equilibrium between brands thus became pointless.

#### CASE 4

Scandinavian Airlines System ("SAS") is a consortium owned by SAS Sverige AB (3/7), SAS Danmark A/S (2/7) and SAS Norge ASA (2/7). Each of the three companies is 50 % owned by the State and 50 % by industry. According to SAS 2000 annual report, the turnover of SAS in 2000 was SEK 44481 million (EUR 4917 million). SAS is part of the Star Alliance<sup>(4)</sup> and serves 105 scheduled destinations (40 within Scandinavia, 56 in the rest of Europe and nine outside Europe).

Maersk Air A/S is a Danish company owned by the A. P. Møller group, which is also active in other activities, such as shipping and oil and gas. The A. P. Møller group also controls Maersk Air Ltd, UK. Maersk Air A/S and Maersk Air Ltd, UK together form the Maersk Air group. The Maersk Air group controls 49 % of AS Estonian Air. According to the 2000 preliminary annual accounts of the A. P. Møller group, the turnover of the Maersk Air group in 2000 was DKK 3422 million (EUR 458,6 million). Maersk Air A/S ("Maersk Air") operates four Danish domestic routes and 15 scheduled international routes, to and from Copenhagen and Billund.

By letter of 23 November 1998, Sun-Air of Scandinavia A/S ("Sun-Air"), a small Danish airline that operates as a British Airways franchisee, submitted a complaint to the Commission against the cooperation between SAS and Maersk Air. The complaint was registered on 7 January 1999. In relation with the SAS/Maersk Air cooperation, Sun-Air stated that: "there is a history of SAS working far more closely, coordinating far more business activities with its partner airlines than it has announced publicly. It is this surreptitious cooperation that I [the chief executive officer of Sun-Air] asked the Commission to investigate."

It appeared that, coinciding with the entry into force of the cooperation agreement, Maersk Air had withdrawn from the Copenhagen-Stockholm route where it had until then been competing with SAS. It also appeared that, at the same moment, SAS had stopped flying on the Copenhagen-Venice route and Maersk Air had started operations on this route. Finally, it appeared from the preliminary enquiry that SAS had withdrawn from the Billund-Frankfurt route, leaving Maersk Air - its previous competitor on the route - as the only carrier. These entries and withdrawals were not notified as part of the agreement between SAS and Maersk Air.

In the notification of 9 March 1999, SAS and Maersk Air indicate that the cooperation agreement includes two main arrangements: (a) code-share on a number of Maersk Air routes (four domestic and nine international), thereby making it possible for SAS to market seats in the code-shared flights and (b) FFP participation, which allows Maersk Air passengers to earn points on SAS' FFP (called "EuroBonus"), and, conversely, to allow EuroBonus members to redeem the points they have on Maersk Air flights. The FFP cooperation covers all of Maersk Air's routes.

The main clauses of the cooperation agreement are:

- (a) the parties remain independent and retain their own corporate identity, brand name and capacity to take autonomous decisions;
- (b) in circumstances where SAS is not in a position to operate certain routes or flights to/from Copenhagen or to/from Jutland, SAS will invite Maersk Air to start operations on such routes (subject to SAS' regulatory, commercial and strategy considerations);
- (c) the costs for services provided by one party to the other under the implementing agreements shall not be less favourable than the costs for such services offered by such party to any third carrier;
- (d) each party shall develop at its own cost automated procedures to provide the non-operating carrier<sup>(6)</sup> with its seat inventory information, in order to enable the non-operating carrier to sell seats under its own designator code;
- (e) both parties undertake to achieve the shortest possible connection time between flights. In particular, Maersk Air will coordinate its schedules of the code-shared flights, to maximise passenger connection opportunities and minimise the waiting time for connecting passengers;

(f) the parties shall as soon as technically feasible provide passengers travelling on the code-shared flights with through check-in, seat assignments, boarding passes, documentation checks, baggage tags and FFP credits for connecting flights.

The cooperation agreement does not specify the individual routes affected by the cooperation. It simply states (in point 3.1) that the parties shall enter into a code-sharing agreement in respect of routes operated by Maersk Air. Conversely, the agreement foresees the possibility that similar code-sharing agreements in respect of routes operated by SAS may also be established.

According to the information provided by the parties, the cooperation agreement affects the routes operated by Maersk Air between the following city pairs. Domestic routes in Denmark: Copenhagen-Billund; Copenhagen-Esbjerg; Copenhagen-Bornholm; Billund-Aalborg. International routes: Copenhagen-Athens; Copenhagen-Faroe Islands; Copenhagen-Kristiansand; Copenhagen-London (Gatwick); Copenhagen-Venice; Billund-Amsterdam; Billund-Brussels; Billund-Frankfurt; Billund-Faroe Islands; Billund-London (Gatwick); Billund-Nice; Billund-Paris; Billund-Stockholm

As regards the individual routes on which the parties cooperate, the following should be pointed out.

(a) SAS and Maersk Air do not code-share on the following five routes: Billund-Brussels (which Maersk Air operates in code-share with Sabena), Billund-Paris (which Maersk Air operates in code-share with Air France), Billund-Amsterdam (code-share with KLM), Billund-Faeroe Islands and Copenhagen-Faeroe Islands. The EuroBonus participation agreement however applies to all the above routes.

It appears from the documents obtained during the inspection that the decision not to terminate all of Maersk Air's code-sharing agreements on the occasion of the entry into force of the SAS cooperation, and to maintain instead certain routes where Maersk Air code-shared with other airlines was taken by Maersk Air in coordination with SAS, with the aim of avoiding visibility and "problems with the Commission" (record of the 17 July 1999 meeting between SAS and Maersk Air)(7). The parties foresaw (as reflected in the status report of 5 September 1998) that the remaining Maersk Air cooperation with carriers other than SAS

would continue during the initial cooperation stage ("phase 1") but terminate at a later stage ("phase 2").

(b) Among the international routes on which the parties code-share, there are certain routes where the entry into force of the cooperation agreement did not result in one of the parties ceasing operations on the route concerned. These Maersk Air-operated routes are the following: Copenhagen-Athens, Copenhagen-Kristiansand, Copenhagen-London (Gatwick), Billund-London (Gatwick) and Billund-Stockholm.

Five ancillary agreements to the cooperation agreement were also notified. The aim of the ancillary agreements is to provide the necessary technical and financial details to allow the code-share and the cooperation regarding the EuroBonus programme. The content of the ancillary agreements may be summarised as follows:

(a) EuroBonus participation agreement, dated 30 November 1998. Pursuant to the cooperation agreement, Maersk Air participates in SAS's EuroBonus programme. The EuroBonus participation agreement contains the technical details relating to the award and redemption of points, such as the number of points earned when travelling to Maersk Air's destinations and the number of EuroBonus points needed for award tickets used in Maersk Air's flights;

(b) code-share agreement, of 21 December 1998. This agreement contains provisions relating to the schedules of the code-shared flights, computer reservation charges, applicable conditions of carriage; passenger and cargo claims; liability, insurance, and the handling of flight delays, cancellations and emergencies; station and ground handling procedures; reservations of seats, including how and when to inform SAS of Maersk Air's changes of schedule; accounting procedures and statistical follow-up; in-flight services and the use of trademarks;

(c) standard ground handling agreement, of 15 December 1998. According to the cooperation agreement, Maersk Air is to obtain passenger ground handling from SAS or from the same passenger ground handling agent used by SAS at airports used for its international code-shared flights;

(d) main agreement on hosting services, dated 11 January 1999. According to the cooperation agreement, SAS is to supply Maersk Air with so-called hosting services. These are a total of nine SAS systems (inter alia, for inventory control, yield management, level prognoses,

ticketing, and traffic planning). The terms and conditions of the sale and delivery of the systems are set forth in the main agreement on hosting services;

(e) special prorate agreement ("SPA"), of 1 February 1999. The SPA regulates the manner in which the revenue derived from the fares is shared between the parties in the case of interlining (interline exists when a passenger buys a ticket from SAS but flies with Maersk Air or vice versa). The SPA extends beyond the code-shared flights since it also covers those cases where SAS is a transporting carrier. An example of interlining in the latter case is that of a passenger with a ticket Billund-Copenhagen-Moscow, where the first leg is operated by Maersk Air and the second by SAS. The SPA then allows the parties to calculate how much each carrier receives for their sector.

In addition to the cooperation on specific routes, SAS and Maersk Air negotiated an overall arrangement regarding their future operations on domestic routes and on all international routes from/to Denmark. This arrangement covers the following aspects:

(a) as regards routes out of Copenhagen, Maersk Air and SAS agreed that Maersk Air would not operate new international routes without specific request or approval by SAS and, conversely, that SAS would not operate on domestic or international routes that are operated by Maersk Air.

This agreement is reflected in one of the documents obtained during the June 2000 inspection, dated 16 July 1998. This document bears the title "Policy regarding international (including intra-Scandinavian) routes from Copenhagen". Despite the fact that the title refers to international routes, the document also covers domestic routes: "DM [Maersk Air] will not operate, alone or in cooperation with other carriers, without specific request or approval by SAS, international routes from CPH - apart from those operated by DM or agreed by SAS initially, i.e. CPH-ARN, CPH-LGW, CPH-OSL, CPH-KRS, CPH-FAE, CPH-ATN, CPH-LIS, and CPH-IST - to airports in Europe to which SAS is operating from CPH in 1998 or to those airports in IATA TC1 and TC3 served by SAS.

...

SAS will not operate, either with their own aircraft or in some form of cooperation, including, but not limited to, codesharing, with other carriers, on domestic or international routes from CPH operated by DM, with the exception of CPH-ARN, CPH-LON and CPH-OSL.

Routes from CPH started by DM or taken over by DM from SAS cannot be taken over by SAS at a later date except by mutual agreement between SAS and DM";

(b) As regards the routes to/from Jutland, SAS and Maersk Air agreed that SAS would not operate domestic routes from Jutland:

"It was also originally agreed that... SAS would not fly international routes from Jutland either by itself or in cooperation with other airlines, and that SAS/its partners and Maersk would not encroach on each others' existing domestic routes. These principles should be confirmed."

(c) A later Maersk Air note on the cooperation with SAS, dated 29 September 1998, summarises the agreed route policy as follows: "SAS will not operate on DM's routes out of Jutland, and DM will be able to launch routes from Copenhagen which SAS does not operate or does not wish to operate.

The share-out of the domestic routes will be respected.

The cooperation also covers a negotiated package according to which:

- Maersk Air would withdraw from the Copenhagen-Stockholm and Copenhagen-Geneva routes, where it was previously competing with SAS,
- as compensation for Maersk Air's withdrawal from the Copenhagen-Stockholm route, Maersk Air took over the Copenhagen-Venice route from SAS (which ceased flying on this route),
- SAS would cease flying on the Billund-Frankfurt route and Maersk Air would take over from it.