European Commission
Directorate-General for Competition,
Unit A-2
White Paper “Towards more effective EU merger control”
B-1049 Brussels

Our Ref: AJB Your Ref: HT. 3053

RE: WHITE PAPER – TOWARDS MORE EFFECTIVE EU MERGER CONTROL

Aer Lingus welcomes the European Commission’s efforts to design a more effective merger control regime. We therefore support the broad objectives of the White Paper but would like to use this opportunity to comment on the reforms relevant to Aer Lingus’ own experience, particularly the acquisition of non-controlling minority shareholdings.

Aer Lingus is very familiar with the competitive harm that can be caused by minority shareholdings. The lack of power for the European Commission to deal with Ryanair’s acquisition of a minority stake in Aer Lingus1, has allowed the competitive harm caused by it to continue for almost eight years. As confirmed by the UK Competition Commission (now Competition and Markets Authority, CMA)2, Ryanair’s nearly 30% stake has prevented Aer Lingus from combining with potential M&A partners, and has facilitated Ryanair’s two subsequent re-bids for Aer Lingus.

Aer Lingus therefore supports the White Paper’s conclusion that the ability of the acquirer to influence the target’s competitive strategy can significantly impede effective competition because it weakens the acquirer’s competitor. One way of exercising this influence is through special resolutions, as mentioned in the White Paper, but it is not limited to such situations. Every case requires an individual analysis of the means through which the acquirer can influence M&A and investment opportunities of the target. Other types of competitive

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1 Case No COMP/M.4439 Ryanair/Aer Lingus.
2 Competition Commission Report 28 August 2013, Ryanair Holdings plc/Aer Lingus Group plc.
harm such as unilateral and coordinated effects may of course also be relevant, especially in the case of consensual competitively significant links.

Finally, Aer Lingus supports the Staff Working Document’s suggestion that the European Commission should consider modifying Article 8(4) of the Merger Regulation to allow the dissolution of partially implemented transactions.

It would allow the European Commission to require full divestiture of a minority shareholding in cases such as the Ryanair/Aer Lingus case where the minority shareholding was part and parcel of Ryanair’s bid for Aer Lingus and assessed by the European Commission as one single transaction. In 2007, however, once Ryanair’s public offer failed, the European Commission considered it could not apply Article 8(4) to require divestiture of Ryanair’s minority stake because it did in itself not confer control. The proposed extension to Article 8(4) is precisely what could have prevented the competitive harm that Ryanair’s minority stake has caused since 2006. We therefore support the suggestion that Article 8(4) should also cover situations of partial implementation and allow the European Commission to order a sell-down to zero.

Yours sincerely,

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Director of Legal

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