

**“DISCLAIMER: This is an interim text of the non-confidential version of the commitments in Case M.7541 – IAG / Aer Lingus. The text is made available for information purposes only and does not constitute an official publication. The full text of the decision and the commitments in Annex will be published on DG COMP's website”.**

## **M.7541 – IAG / AER LINGUS**

### **COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the “**Merger Regulation**”), International Consolidated Airlines Group, S.A. (“**IAG**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the proposed acquisition by IAG of Aer Lingus Group plc (“**Aer Lingus**” or “**El**”) compatible with the internal market and the EEA Agreement by a decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of European Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004.

#### **1. DEFINITIONS**

For the purpose of the Commitments, the terms below shall have the following meaning:

<b>Aer Lingus</b>	Aer Lingus Group plc, its subsidiaries, and any successor airline(s)
<b>Affiliated</b>	An airline will be considered to be affiliated with another airline where it is controlled by, the controller of, or under common control with that other airline. The notion of control for these for these purposes shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 802/2004
<b>Alliance</b>	The Star Alliance, the SkyTeam Alliance, the <b>oneworld</b> Alliance, or any other similar airline alliance that may be developed
<b>Applicant</b>	Any airline interested in obtaining Slots from IAG in accordance with these Commitments
<b>Commitment(s)</b>	The Slot commitment for each Relevant London-Irish City Pair and/or, as relevant, the commitment granting the Prospective Entrant access to one of IAG's Frequent Flyer Programmes and/or, as relevant, the commitment relating to fare combinability and/or, as relevant, the commitment relating to Special Prorate Agreement(s)
<b>Competitive Air Service</b>	A non-stop scheduled passenger air transport service

	operated on one or more of the Relevant City Pairs
<b>Effective Date</b>	The date of adoption of the Decision
<b>Eligible Air Services Provider</b>	<p>An airline that is not a member of the <b>oneworld</b> Alliance or affiliated with any member of that alliance and which:</p> <ul style="list-style-type: none"> <li>operates new or increased Competitive Air Service on a Relevant London-Irish City Pair (in the case of an airline requesting IAG to enter into a fare combinability agreement under these Commitments; or</li> <li>operates or will operate a non-stop service between the Relevant Hub Airport and the Relevant Long-Haul Destination/Origin City/ies (in the case of an airline requesting Aer Lingus to enter into a Special Prorate Agreement under these Commitments)</li> </ul>
<b>EU Slot Regulation</b>	Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at EU airports (OJ L 14 of 22.01.1993), as amended
<b>Europe</b>	The European Union, Iceland, Norway, Switzerland and the Channel Islands
<b>European Short-Haul City Pair</b>	Any route connecting London with any other part of Europe (which shall, for the avoidance of doubt, include the Relevant London-Irish City Pairs)
<b>Feeder Routes Operated By Aer Lingus</b>	<ul style="list-style-type: none"> <li>With respect to feeder routes to/from <u>Shannon</u> and/or <u>Dublin</u> means Frequencies operated by Aer Lingus from/to Shannon or Dublin (as relevant) to/from the Relevant Short-Haul Origin/Destination City</li> <li>With respect to feeder routes to/from <u>London Heathrow</u>, <u>London Gatwick</u>, <u>Manchester</u>, and/or <u>Amsterdam</u> means the average number of non-stop daily Frequencies which were operated by Aer Lingus during the IATA seasons winter 2014/15 or summer 2015 (as relevant) on the feeder routes between the Relevant Irish Airport and the Relevant Airport Hub</li> </ul> <p>The number of Frequencies in a given IATA season shall be increased if, after the Effective Date, Aer Lingus operates additional Frequencies on the relevant feeder route in the corresponding IATA season</p> <p>The number of Frequencies in a given IATA season shall be decreased if, after the Effective Date, Aer Lingus operates fewer Frequencies on the relevant feeder route in the corresponding IATA season. The number of Frequencies shall not, however, be decreased insofar as another IAG-owned operating company increases Frequency on the relevant feeder route less than two IATA seasons before or after Aer Lingus reduces Frequency on the same feeder route, in which case the Special Prorate Agreement shall apply to</p>

	those increased IAG Frequencies
<b>FFP Agreement</b>	An agreement by which an airline operating a frequent flyer programme allows another airline to participate in that FFP
<b>Frequency</b>	A round-trip between two airports
<b>Frequent Flyer Programme (or FFP)</b>	A programme offered by an airline to reward customer loyalty under which members of the programme accrue points for travel on that airline which can be redeemed for free air travel and other products or services, as well as allowing other benefits such as airport lounge access or priority bookings
<b>General Slot Allocation Procedure</b>	The Slot allocation procedure as set out in the EU Slot Regulation and IATA Worldwide Slot Guidelines (including participation at the IATA Slot Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline)
<b>Grandfathering</b>	This term has the meaning given in Clause 2.10
<b>Hub</b>	An airport at which an airline, airline joint business and/or Alliance operates long-haul and/or short-haul air passenger transport services and where there are a material number of connections between such services
<b>IATA</b>	The International Air Transport Association
<b>IATA Season</b>	The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March
<b>IATA Slot Conference</b>	The industry conference of airlines and airport coordinators worldwide to solve scheduling issues where there are discrepancies between the slots requested by the airlines and allocated by the airport coordinators. The IATA slot conference for the Winter Season takes place in June, and the one for the Summer Season in November
<b>Key Terms</b>	The following terms that shall be included in the Applicant's formal bid for Slots: timing of the Slot, number of daily and weekly Frequencies, and IATA Seasons to be operated (year-round service or seasonal)
<b>Long-Haul Airport Pair</b>	This term has the meaning given in Clause 4.1
<b>Miles</b>	The credits awarded by an airline to members of its FFP. Such credits include standard reward points only and do not include tier or status points
<b>Misuse</b>	This term has the meaning given in Clause 2.13
<b>MITA</b>	Multilateral Interline Traffic Agreements Manual published by IATA
<b>Monitoring Trustee</b>	An individual or institution, independent of IAG, who is approved by the Commission and appointed by Aer Lingus and who has the duty to monitor IAG's compliance with the conditions and obligations

	attached to the Decision
<b>New Air Services Provider</b>	An airline that is not a member of the <b>oneworld</b> Alliance or affiliated with any member of that alliance and which commences a new non-stop service on a Relevant London-Irish City Pair or which increases the number of non-stop Frequencies it operates on a Relevant London-Irish City Pair in accordance with a Slot Release Agreement agreed with IAG pursuant to these Commitments
<b>Prospective Entrant</b>	<p>Any Applicant that is able to offer a Competitive Air Service individually or collectively by codeshare and needing a Slot or Slots to be made available by IAG in accordance with the Commitments in order to operate a Competitive Air Service. For the avoidance of doubt, the Prospective Entrant shall comply with the following requirements:</p> <ul style="list-style-type: none"> <li>(a) It must be independent of and unconnected with IAG. For the purpose of these Commitments, an airline shall not be deemed to be independent of and unconnected to IAG when, in particular: <ul style="list-style-type: none"> <li>(i) It is an associated carrier belonging to the same group as IAG; or</li> <li>(ii) It co-operates with IAG on the Relevant London-Irish City Pair concerned in the provision of passenger air transport services, except if this co-operation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis;</li> </ul> </li> <li>(b) It must have the intention to begin or increase regular operations on one or both of the London-Irish City Pairs; and</li> <li>(c) To that effect, it needs a Slot or several Slots for the operation of a Competitive Air Service which competes with those of IAG</li> </ul>
<b>Published Fares</b>	Fares published by the relevant IAG carrier in ATPCo in relevant reservation booking designators (or selling classes) Y and J
<b>Q/YQ/YR Surcharge</b>	Charges paid in addition to the base fare amount of a ticket which are allocated to the Q, YQ, or YR IATA ticket coding and which are used in particular to recover fuel, insurance and/or security charges.

<b>Relevant Airport Hubs</b>	<p>For the purpose of these commitments the following airports shall be deemed to be the relevant hubs:</p> <ul style="list-style-type: none"> <li>• London Heathrow (LHR)</li> <li>• London Gatwick (LGW)</li> <li>• Manchester Airport (MAN)</li> <li>• Amsterdam (AMS)</li> <li>• Shannon (SNN)</li> <li>• Dublin (DUB)</li> </ul>
<b>Relevant Irish Airports</b>	<p>Airports in the following cities on the island of Ireland:</p> <ul style="list-style-type: none"> <li>• Belfast</li> <li>• Cork</li> <li>• Dublin</li> <li>• Knock</li> <li>• Shannon</li> </ul>
<b>Relevant London-Irish City Pair(s)</b>	London-Belfast and/or London-Dublin
<b>Relevant Long-Haul Destination/Origin Cities</b>	<p>With respect to air services operated by the Requesting Air Services Provider at <u>London Heathrow</u>: Boston (BOS), Chicago (ORD), Houston (IAH), Los Angeles (LAX), Miami (MIA), New York (EWR and JFK), San Francisco (SFO), Washington (IAD), Calgary (YYC), Montreal (YUL), Toronto (YYZ), Vancouver (YVR), Hong Kong (HKG), Seoul (ICN), Shanghai (PVG), Singapore (SIN), Tokyo (NRT), Riyadh (RUH), Tel Aviv (TLV), Cape Town (CPT), Johannesburg (JNB) and Sydney (SYD)</p> <p>With respect to air services operated by the Requesting Air Services Provider at <u>London Gatwick</u>: Las Vegas (LAS), Orlando (MCO), Cancun (CUN) and Bridgetown (BGI)</p> <p>With respect to air services operated by the Requesting Air Services Provider at <u>Manchester</u>: Las Vegas (LAS), Orlando (MCO) and Bridgetown (BGI)</p> <p>With respect to air services operated by the Requesting Air Services Provider at <u>Amsterdam</u>: Abu Dhabi (AUH), Doha (DOH), Dubai (DXB), Bangkok (BKK), Beijing (PEK), Hong Kong (HKG), Tokyo (NRT), Singapore (SIN), Cairo (CAI), Lagos (LOS), Johannesburg (JNB), Rio de Janeiro (GIG), São Paulo (GRU), Toronto (YYZ) and Vancouver (YVR)</p> <p>With respect to air services operated by the Requesting Air Services Provider at <u>Shannon</u>: Chicago (ORD)</p> <p>With respect to air services operated by the Requesting Air Services Provider at <u>Dublin</u>: Chicago (ORD)</p>

<b>Relevant Short-Haul Origin/Destination Cities</b>	<p>With respect to feeder routes to/from London Heathrow, London Gatwick, Manchester and/or Amsterdam means the Relevant Irish Airports</p> <p>With respect to feeder routes to/from Shannon and/or Dublin means airports in Europe from/to which Aer Lingus operates Frequency to/from Shannon or Dublin (as relevant) at the time that the Requesting Air Services Provider applies for a Special Prorate Agreement pursuant to these Commitments and which continue to be so operated by Aer Lingus whilst the relevant Special Prorate Agreement is in force</p>
<b>Requesting Air Services Provider</b>	This term has the meaning given in Clause 4.1
<b>SAL</b>	Slot Allocation List
<b>Slot Handback Deadline</b>	15 January for the IATA Summer Season and 15 August for the IATA Winter Season
<b>Slot Release Agreement</b>	An agreement between IAG and a Prospective Entrant that provides for the exchange of Slot(s) with the Prospective Entrant according to the principles laid down in Clause 2 of these Commitments. For the avoidance of doubt, the Slot Release Agreement shall abide by the EU Slot Regulation and any exchange pursuant to this agreement shall be confirmed by the slot coordinator
<b>Slot Release Procedure</b>	This term has the meaning given in Clause 2.2
<b>Slot Request Submission Deadline</b>	The final date for the request for Slots to the slot coordinator as set out in the IATA Worldwide Slot Guidelines
<b>Slot(s)</b>	The permission (as defined by Article 2(a) of the EU Slot Regulation) for an aircraft operator to land and take-off on a specific date and time in order to operate an air service at the airport, to be used in combination with the full range of airport infrastructure parking and access to gates at the airport that are necessary to operate such service
<b>Special Prorate Agreement</b>	An agreement entered into pursuant to these Commitments between two or more airlines on the apportionment of through-fares on journeys with two or more legs operated by different airlines
<b>Straight Rate Prorate</b>	Method of allocating fares between airlines participating in a connecting passenger itinerary under which fares are allocated between the airlines in proportion to their shares of the prorate mileage for the entire journey
<b>Time Window</b>	The period of twenty (20) minutes either side of the Slot time requested by the Prospective Entrant
<b>Utilisation Period</b>	This term has the meaning given in Clause 2.9 and shall be six (6) consecutive IATA Seasons

## 2. SLOTS

### Slots At London Gatwick

- 2.1 IAG undertakes to procure that Slots are made available at London Gatwick to allow one or more Prospective Entrant(s) to operate up to five (5) new or additional daily Frequencies on the Relevant London-Irish City Pairs as follows:

- (a) Two (2) daily Frequencies to/from Dublin; and
- (b) One (1) daily Frequency to/from Belfast;

with the remaining two (2) daily Frequencies to/from either Dublin or Belfast, or both.

### Conditions Pertaining To Slots

- 2.2 Each Prospective Entrant shall comply with the following procedure to obtain Slots from IAG ("**Slot Release Procedure**").

The Prospective Entrant wishing to commence/increase a Competitive Air Service on one or both of the Relevant London-Irish City Pairs shall:

- (a) Apply to the slot coordinator for the necessary Slots through the General Slot Allocation Procedure; and
- (b) Notify its request for Slots to the Monitoring Trustee, within the period foreseen in Clause 2.18.

The Prospective Entrant shall be eligible to obtain Slots from IAG pursuant to these Commitments only if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary Slots to operate on the Relevant London-Irish City Pairs through the normal workings of the General Slot Allocation Procedure.

- 2.3 The Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:

- (a) Slots at the same airport were available through the General Slot Allocation Procedure within the Time Window but such Slots have not been accepted by the Prospective Entrant; or
- (b) Slots at the same airport (for use to operate a Competitive Air Service on the Relevant London-Irish City Pair) were obtained through the General Slot Allocation Procedure outwith the Time Window and the Prospective Entrant did not give IAG the opportunity to exchange those Slots for Slots within the Time Window; or
- (c) It has not exhausted its own Slot portfolio at the airport. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:

- (i) If the carrier has Slots at the airport within the Time Window which are being leased-out to or exchanged with other carriers (unless that lease or exchange was concluded before the Effective Date or the carrier can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee) that there are bona fide reasons for this being done rather than its being a pretext to enable the carrier to present itself as needing Slots to operate a Competitive Air Service on a Relevant London-Irish City Pair); or
- (ii) If the carrier has Slots at the airport which are outwith the Time Window and which are leased-out to other carriers, in which case the Prospective Entrant shall be entitled to apply for Slots from IAG, but only if:
  - That lease was concluded before the Effective Date; or
  - It can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee) that there are bona fide reasons for leasing the Slot out in this way rather than using it itself; or
  - It gives IAG an option to become the lessee of the leased-out Slot at the earliest possible time allowed under the applicable lease (on terms substantially the same as that lease and for a duration that runs in parallel with the Slot Release Agreement). If the Slot Release Agreement with the Prospective Entrant does not provide for monetary compensation, then the lease to IAG will likewise not provide for monetary compensation.

For the purposes of Clause 2.3(c)(i) and 2.3(c)(ii), the bona fide reasons for leasing out (or, as relevant, exchanging) Slots by the Applicant shall include, but shall not be limited to, a situation where the Applicant can provide clear evidence of an intention to operate those Slots on a specific route and clear and substantiated evidence of its reasons for not currently doing so.

2.4 If the Prospective Entrant obtains Slots through the General Slot Allocation Procedure but after the IATA Slot Conference:

- (a) Which are within the Time Window; or
- (b) Which (in the case of Slots obtained at both ends of the route) are not compatible with the planned flight duration of the Applicant's operation on the route,

the Prospective Entrant shall remain eligible to obtain Slots from IAG provided that it gives an option to IAG to use the obtained Slots on terms substantially the same as the terms of the Slot Release Agreement, and for a duration that runs in parallel with the Slot Release Agreement (provided that such use by IAG is compatible with Article 8a(3) of the EU Slot Regulation).



- 2.5 Without prejudice to these Commitments (and, particularly, to this Clause 2) IAG shall not be obliged to honour any agreement to make available the Slots to the Prospective Entrant if:
- (a) The Prospective Entrant has not exhausted all reasonable efforts in the General Slot Allocation Procedure to obtain the necessary Slots to operate a new or increased service on the Relevant City Pair; or
  - (b) The Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 2.13 below).
- 2.6 Subject to the provisions of Clauses 2.7 and 2.8, IAG undertakes to make available Slots within the Time Window (if it has such Slots). In the event that IAG does not have Slots within the Time Window, it shall offer to release the Slots closest in time to the Prospective Entrant's request. IAG does not have to offer Slots if the Slots which the Prospective Entrant could have obtained through the General Slot Allocation Procedure are closer in time to the Prospective Entrant's request than the Slots that IAG has. The arrival and departure Slot times shall be such as to allow for reasonable aircraft rotation, taking into account the Prospective Entrant's business model and aircraft utilisation constraints.
- 2.7 IAG may refuse to offer any arrival Slots at Gatwick after 23:30 (local time). If a Prospective Entrant requests an arrival Slot at Gatwick after 23:30, IAG may offer a Slot between 22:30 and 23:30 (local time). In addition, IAG shall not be obliged to release more than one (1) daily departure Slot at Gatwick in any hour of the day (local time), i.e. no more than one (1) daily departure Slot at Gatwick 06:00-07:00 (local time), no more than one (1) daily departure Slot at Gatwick 07:00-08:00 (local time), etc. As an exception, in circumstances where no such departure Slot has been granted or requested by any Prospective Entrant in the 06:00-08:00 (local time) period, two (2) departure Slots may instead be requested in either the 08:00-09:00 (local time) period or the 09:00-10:00 (local time) period instead of one (1) in each of those two periods, provided that in circumstances where two (2) departure Slots are so requested in the same such period:
- (a) The two such departure Slots shall not be used on the same Relevant London-Irish City Pair; and
  - (b) No more than one of the arrival Slots at Gatwick released by IAG under these Commitments will be before 08:00 (local time).
- 2.8 In the event that a Prospective Entrant requests departure Slot timings which cannot be accommodated within the parameters of Clause 2.7, IAG shall offer the Prospective Entrant the next closest Slot to the time requested in accordance with Clause 2.2. In the event that different Prospective Entrants make such requests for different Relevant London-Irish City Pairs which cannot all be accommodated within the parameters of Clause 2.7, IAG shall give priority to the Prospective Entrant proposing to operate multiple daily Frequencies (where relevant) on the Relevant London-Irish City Pair and shall, in accordance with Clause 2.2, offer the next closest Slot to the time requested to

each Prospective Entrant whose request cannot be accommodated within the parameters of Clause 2.7.

### **Grandfathering Of Slots**

- 2.9 As a general rule, the Slots obtained by the Prospective Entrant from IAG as a result of the Slot Release Procedure shall be used only to provide a Competitive Air Service on the Relevant London-Irish City Pair for which the Prospective Entrant has requested them from IAG through the Slot Release Procedure. These Slots cannot be used on another city pair unless the Prospective Entrant has operated the Relevant London-Irish City Pair for which these Slots have been transferred for a number of full consecutive IATA Seasons ("**Utilisation Period**").
- 2.10 The Prospective Entrant will be deemed to have grandfathering rights for the Slots once appropriate use of the Slots has been made on the Relevant London-Irish City Pair for the Utilisation Period. In this regard, once the Utilisation Period has elapsed, the Prospective Entrant will be entitled to use the Slots obtained on the basis of these Commitments exclusively to operate services on any European Short-Haul City Pair ("**Grandfathering**").
- 2.11 Grandfathering is subject to approval of the Commission (advised by the Monitoring Trustee). The Commission's approval shall be conditional on the Prospective Entrant committing that if it ceases to use the Slots in question for the purposes described in Clause 2.10, it will return the Slots in question to IAG or, if IAG does not want the return of the Slots, to the slot coordinator.
- 2.12 During the Utilisation Period, the Prospective Entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of these Commitments any Slots obtained from IAG under the Slot Release Procedure, except for changes to any such Slots which are within the Time Window and which have been agreed with the slot coordinator.
- 2.13 During the Utilisation Period, Misuse shall be deemed to arise where a Prospective Entrant which has obtained Slots released by IAG decides:
- (a) Not to commence services on the Relevant London-Irish City Pair(s);
  - (b) To operate fewer daily Frequencies than those to which it committed in the bid in accordance with Clause 2.24 on a Relevant London-Irish City Pair(s) or to cease operating on a Relevant London-Irish City Pair(s) unless such a decision is consistent with the "use it or lose it" principle in Article 10(2) of the EU Slot Regulation (or any suspension thereof);
  - (c) To transfer, assign, sell, swap, sublease or charge any Slot released by IAG on the basis of the Slot Release Procedure, except for changes to the Slot which are within the Time Window and which have been agreed with the slot coordinator;
  - (d) Not to use the Slots on a Relevant London-Irish City Pair(s), as proposed in the bid in accordance with Clause 2.24; or

- (e) Not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant (i) loses the series of Slots at the airport as a consequence of the principle of “use it or lose it” in Article 10(2) of the EU Slot Regulation or (ii) misuses the Slots at the airport as described and interpreted in Article 14(4) of the EU Slot Regulation.
- 2.14 If IAG or the Prospective Entrant which has obtained Slots under the Slot Release Procedure become aware of or reasonably foresee any Misuse by the Prospective Entrant during the Utilisation Period, it shall immediately inform the other and the Monitoring Trustee. The Prospective Entrant shall have 30 days after such notice to cure the actual or potential Misuse. If the Misuse is not cured, IAG shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to IAG. In cases (a) and (b) of Clause 2.13, IAG shall then use its best efforts to redeploy the Slots in order to safeguard the historic precedents. If despite its best efforts, IAG is not able to retain the historic precedent for these Slots, or in case of a Misuse as defined in cases (c), (d) or (e) of Clause 2.13, the Prospective Entrant shall provide reasonable compensation to IAG as provided for in the Slot Release Agreement.
- 2.15 For the avoidance of doubt, the Slot Release Agreement may:
  - (a) Contain prohibitions on the Prospective Entrant transferring its rights to the Slots to a third party, making the Slots available in any way to a third party for the use of that third party, or releasing, surrendering, giving up or otherwise disposing of any rights to the Slots; and/or
  - (b) Provide for reasonable compensation to IAG in case of Misuse during the Utilisation Period. If for any reason (including, but without limitation, the insolvency of the Prospective Entrant) IAG is unable to receive reasonable compensation for the Slots being either lost or not returned within sufficient time for IAG to preserve its grandfathering rights, such Slots shall be counted against the maximum number of Slots to be released in accordance with the Commitments.
- 2.16 In view of the Commission's Communication of 30 April 2008, which stated that: “The text of the current Regulation is silent on the question of exchanges with monetary and other consideration” and that the Commission would therefore “not intend to pursue infringement proceedings against Member States where such exchanges take place in a transparent manner, respecting all the other administrative requirements for the allocation of slots set out in the applicable legislation”, and to the extent that the Slots released under the Slot Release Procedure are at an airport where secondary trading takes place, the Slot Release Agreement with the Prospective Entrant may provide for monetary and/or other consideration, so long as such Slot Release provisions are clearly disclosed and comply with these Commitments and all other administrative requirements set out in the applicable legislation.
- 2.17 The Slot Release Agreement shall provide that the Prospective Entrant will be able to terminate the agreement at the end of each IATA Season without penalty, provided the Prospective Entrant notifies the termination of the agreement to IAG in writing no later than two (2) weeks after the IATA Slot Conference.

### **Selection Procedure, Role Of Monitoring Trustee And Approval By Commission**

- 2.18 At least seven (7) weeks before the Slot Request Submission Deadline, any airline wishing to obtain Slots from IAG pursuant to the Slot Release Procedure shall:
- (a) Inform the Monitoring Trustee of its proposed Slot request (indicating the arrival and departure times);
  - (b) Submit to the Monitoring Trustee the list of its leased out or exchanged Slots at the airport, along with the date at which the leases or exchanges were concluded. The Monitoring Trustee or the Commission may also request additional information from the Applicant to enable assessment of its eligibility pursuant to Clause 2.3(c) and Clause 2.21;
  - (c) Indicate to the Monitoring Trustee if it has any confidentiality concerns which would justify keeping its identity anonymous vis-à-vis IAG, in which case it must provide a reasoned explanation of those concerns together with its request for anonymity. In the event that such a request is made, the Monitoring Trustee shall:
    - (i) Immediately inform the Commission of that request;
    - (ii) Within one (1) week of that request advise the Commission whether or not that request should be granted; and
    - (iii) Within three (3) weeks of the request, in consultation with the Commission, determine whether or not the Applicant's Slot request may be treated anonymously (and, if so, to what extent, subject to what conditions and for what period).
- 2.19 At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall forward the Slot request to IAG and the Commission. Until the beginning of the IATA Slot Conference, the Monitoring Trustee shall not disclose to IAG the Relevant London-Irish City Pair for which the Slot is requested. Once informed of the Slot request, IAG may discuss with the Applicant the timing of the Slots to be released and the types of compensation which could be offered. IAG shall copy the Monitoring Trustee on all correspondence between it and the Applicant which relates to the Slot Release Procedure. IAG shall not share any information about such discussions with other Applicants and may require the Applicant not to share any such information with other Applicants. At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall also inform the manager of the airport and the slot coordinator of the Slot request and, subject to the Applicant's consent, disclose to them any relevant information regarding the Slot request. The Monitoring Trustee shall ask the manager of the airport and the slot coordinator to inform it of any likely impediments to the satisfaction of the request, in particular due to the availability of terminal facilities and infrastructure.
- 2.20 If the Applicant has made a request for anonymity in accordance with Clause 2.18(c), the Monitoring Trustee shall not disclose to IAG the identity of the Applicant for so long

as that request is pending or has been granted. In such a case, the procedure set down in Clauses 2.20-2.31 shall apply, save that, until the beginning of the IATA Slot Conference, any communication or correspondence between IAG and the Applicant shall go through the Monitoring Trustee, who shall ensure the protection of the anonymity of the Applicant.

- 2.21 After being informed of the Slot request in accordance with Clause 2.19, the Commission (advised by the Monitoring Trustee) shall assess whether the Applicant meets the following criteria:

- (a) The Applicant is independent of and unconnected to IAG; and
- (b) The Applicant has exhausted its own Slot portfolio at the airport.

If the Commission decides that the Applicant does not fulfil the above criteria, the Commission shall inform the Applicant and IAG of that decision at least two (2) weeks before the Slot Request Submission Deadline.

- 2.22 At least one (1) week before the Slot Request Submission Deadline, IAG shall indicate to the Monitoring Trustee and each Applicant which Slots at the airport they would release, if necessary, during the Time Window.

- 2.23 By the Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the Slot Release Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure.

- 2.24 By the Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Monitoring Trustee. The formal bid shall include at least:

- (a) The Key Terms (i.e. timing of the Slots and number of daily Frequencies to be operated on a year-round service); and
- (b) A detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The detailed business plan shall provide information on the plans that the company has in terms of access to capital, development of its network, fleet etc. and detailed information on its plans for the Relevant London-Irish City Pair(s) on which it wants to operate. The latter should specify in detail planned operations on the Relevant London-Irish City Pair(s) over a period of at least two (2) consecutive IATA Seasons (size of aircrafts, seat configuration, total capacity and capacity by each class, number of daily Frequencies operated, pricing structure, service offerings, planned time-schedule of the flights) and expected financial results (expected traffic, revenues, profits, average fare by cabin class). The Monitoring Trustee and/or the Commission may also request any additional information and documents from the Applicant required for their assessment, including a copy of all cooperation agreements the Applicant may have with other airlines. Business secrets and confidential information will be

kept confidential by the Commission and the Monitoring Trustee and will not become accessible IAG, other undertakings or the public.

- 2.25 In parallel, if an Applicant is offering compensation for the Slot(s) it has requested pursuant to these Commitments, it will send IAG, copying the Monitoring Trustee, a detailed description of the compensation which it is willing to offer in exchange for the release of the Slots for which it has submitted bids. Within three (3) weeks, IAG shall provide the Monitoring Trustee with a ranking of these offers.
- 2.26 Having received the formal bid(s), the Commission (advised by the Monitoring Trustee) shall:
- (a) Assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Relevant London-Irish City Pair(s) in the long term as a viable and active competitive force; and
  - (b) Evaluate the formal bids of each Applicant that meets (a) above, and rank these Applicants in order of preference.
- 2.27 In conducting its evaluation in accordance with Clause 2.26, the Commission shall give preference to the Applicant (or combination of Applicants) which will provide the most effective overall competitive constraint on the Relevant London-Irish City Pair(s), without regard to the country in which the Applicant(s) is licensed or has its principal place of business. For these purposes, the Commission shall take into account the strength of the Applicant's business plan and in particular give preference to Applicants meeting one or more of the following criteria:
- (a) A pricing structure, capacity (measured in seats), and service offerings that would provide the most effective competitive constraint on the Relevant London-Irish City Pair(s); and
  - (b) Plans to offer feed to third party carriers operating services from London Gatwick to one or more of the Relevant Long-Haul Destination/Origin Cities.
- 2.28 The Commission (advised by the Monitoring Trustee) shall also ensure that the departure Slots at Gatwick to be made available under Clause 2.1 for the same Relevant London-Irish City Pair are spread throughout the day, including: no more than two (2) Slots in the period up until 12:00 local time, no more than two (2) Slots in the period after 12:00 and up until 16:00 local time, and no more than two (2) Slots in the period after 16:00 local time.
- 2.29 In advance of the beginning of the IATA Slot Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive slots within the Time Window as indicated through the SAL) and the slot coordinator:
- (a) Whether the Applicant qualifies for the Slots Commitment; and
  - (b) The Applicant's ranking.

In any case, the Applicant shall attend the IATA Slot Conference and try to improve its Slots. Following confirmation of the Commission's approval pursuant to Clause 2.26), the Applicants and IAG shall be deemed to have agreed the Key Terms of the Slot Release Agreement, as well as any compensation which was offered by the Applicant to IAG under Clause 2.25. The Key Terms may only be changed after such date by mutual agreement between the Applicant and IAG if the Monitoring Trustee confirms that the changes are not material or if the Commission (advised by the Monitoring Trustee) approves the changes.

- 2.30 Within two (2) weeks of the end of the IATA Slot Conference, each Applicant shall inform the Monitoring Trustee and IAG whether it will commit to operate the Slots offered eventually by IAG in case it has not obtained them through the General Slot Allocation Procedure.
- 2.31 Within three (3) weeks of the end of the IATA Slot Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with Clause 2.30 that it is entitled to receive Slots from IAG. IAG shall offer the dedicated Slots for release to such Applicant. The Slot Release Agreement shall be subject to review by the Monitoring Trustee and approval of the Commission. Unless both IAG and the relevant Applicant agree to an extension and subject to Clause 2.4, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Slot Conference, and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

### **3. FARE COMBINABILITY**

- 3.1 At the request of an Eligible Air Services Provider which, after the Effective Date, has started to operate new or increased Competitive Air Service on a Relevant London-Irish City Pair (whether or not such service uses Slots released to that carrier pursuant to these Commitments), IAG shall enter into an agreement that arranges for fare combinability on that Relevant London-Irish City Pair. This agreement will provide for the possibility for the Eligible Air Services Provider, or travel agents, to offer a return trip on the Relevant London-Irish City Pair comprising a non-stop service provided one way by an IAG carrier and a non-stop service provided the other way by the Eligible Air Services Provider. At the request of the Eligible Air Services Provider, the agreement shall apply in relation to all of the Eligible Air Services Provider's services on the Relevant London-Irish City Pair.
- 3.2 Any such agreement shall be subject to the following restrictions:
  - (a) It shall provide for fare combinability on the basis of IAG's Published Fares. Where this provides for a published round-trip fare, the fare can be comprised of half the round-trip fare of IAG and half the round-trip fare of the Eligible Air Services Provider;
  - (b) It shall provide for the appropriate division or recovery of any applicable Q/YQ/YR Surcharges;

- (c) It shall be limited to true origin and destination traffic on the Relevant London-Irish City Pair operated by the Eligible Air Services Provider; and
  - (d) It shall be subject to the MITA rules.
- 3.3 Subject to Clause 3.7, any term included in the agreement (for example, interline service charge, number of booking classes included) can never be less favourable than the corresponding term in any fare combinability agreement which IAG and the Eligible Air Services Provider have in place as at the Effective Date.
- 3.4 Subject to seat availability in the relevant fare category, IAG shall carry a passenger holding a coupon issued by an Eligible Air Services Provider for travel on a Relevant London-Irish City Pair. IAG may require that the Eligible Air Services Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by IAG and the fare charged by the Eligible Air Services Provider if IAG was not the original ticketed carrier on the Relevant London-Irish City Pair. In cases where the Eligible Air Services Provider's fare is lower than the value of the coupon issued by it, IAG may endorse its coupon only up to the value of the fare charged by the Eligible Air Services Provider. An Eligible Air Services Provider shall enjoy the same protection in cases where IAG's fare is lower than the value of the coupon issued by it.
- 3.5 A fare combinability agreement entered into pursuant to this Clause 3 for a particular Relevant London-Irish City Pair shall have an effective duration of up to five (5) years at the choice of the Eligible Air Services Provider, or if it elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 3.5, the Eligible Air Services Provider shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing IAG in writing no later than thirty (30) days before the expiry of the agreement. The Eligible Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.
- 3.6 All agreements entered into pursuant to this Clause 3 for a particular Relevant London-Irish City Pair shall lapse automatically in the event that the Eligible Air Services Provider ceases to operate the new or increased service on that Relevant London-Irish City Pair.
- 3.7 The conclusion of the fare combinability agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

#### 4. SPECIAL PRORATE AGREEMENTS

- 4.1 At the request of an Eligible Air Service Provider, Aer Lingus shall enter into a Special Prorate Agreement with such airline (the "**Requesting Air Services Provider**"), for traffic with a true origin/destination at the Relevant Short-Haul Origin/Destination City, and a true destination/origin in one or more of the Relevant Long-Haul Destination/Origin Cities. At the request of the Requesting Air Services Provider, the Special Prorate Agreement shall apply to all of the non-stop air services operated by the



Requesting Air Services Provider between a Relevant Airport Hub and a Relevant Long-Haul Destination/Origin City (the “**Long-Haul Airport Pair**”).

- 4.2 In order to be eligible for a Special Prorate Agreement, the Requesting Air Services Provider must not, alone or in combination with carriers who are members of the same Alliance (or who are Affiliated with members of the same Alliance) as the Requesting Air Services Provider, have Hubs at both ends of the Long-Haul Airport Pair.
- 4.3 Subject to Clause 4.1, for each Relevant Long-Haul Destination/Origin City for which it proposes to enter into a Special Prorate Agreement with Aer Lingus pursuant to these Commitments, the Requesting Air Services Provider may request a Special Prorate Agreement to/from one or more of the Relevant Short-Haul Origin/Destination Cities to one or more of the Relevant Long-Haul Destination/Origin Cities via the Relevant Airport Hub(s). In the case of travel via Heathrow, Gatwick, Manchester and/or Amsterdam, this is limited to the Relevant Irish Airports, in the case of travel via Shannon, this is limited to up to five (5) Relevant Short-Haul Origin/Destination Cities and in the case of travel via Dublin, this is limited to up to twenty (20) Relevant Short-Haul Origin/Destination Cities. It is understood that the Special Prorate Agreement shall only apply to Frequencies on the Feeder Routes Operated By Aer Lingus (as defined).
- 4.4 The Requesting Air Services Provider may also select the fare class(es) to which the Special Prorate Agreement will apply, provided that each selected fare class is included in at least one existing special prorate agreement which Aer Lingus has agreed and applied with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair, excluding any agreements (or terms therein) which are excluded pursuant to Clause 4.8. Subject to the previous sentence of this Clause 4.4, the number of fare classes that the Requesting Air Services Provider may select shall be up to the maximum number of fare classes that is granted by Aer Lingus under an existing special prorate arrangement of the same type (Straight Rate Prorate or fixed rate as the case may be) to any other carrier.
- 4.5 If the Special Prorate Agreement provides for Straight Rate Prorate terms:
  - (a) Straight rate proration shall apply only to published fares;
  - (b) It shall include arrangements for the proration or remittance of any applicable Q/YQ/YR Surcharges;
  - (c) It shall include conditions or provisos (such as minimum rates) at least as favourable as those granted to any other carrier under an existing special prorate agreement which Aer Lingus has agreed and applied with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport-Pair (other than if the terms are excluded by virtue of Clause 4.8); and
  - (d) It shall not prohibit Aer Lingus from making adjustments to ATPCo chart 2 in accordance with normal business practices in managing Straight Rate Prorate

agreements. Any such adjustments to ATPCo chart 2 shall be communicated by Aer Lingus to the Requesting Air Services no fewer than 30 days prior to the adjustment being put into effect. Should the Requesting Air Services Provider believe that Aer Lingus has made adjustments to ATPCo chart 2 which are not in accordance with normal business practices but rather an attempt by Aer Lingus to restrict the Requesting Air Services Provider's inventory access, it may ask the Monitoring Trustee to verify whether Aer Lingus' adjustments comply with these Commitments.

4.6 Subject to the provisions of the rest of this Clause 4, the Special Prorate Agreement shall:

- (a) Be on terms (e.g. rates and interline service charges) which are at least as favourable as the terms agreed and applied by Aer Lingus under an existing special prorate agreement with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair and in the same fare class (excluding any codeshare or interline terms within an existing codeshare-related agreement and any other terms excluded by virtue of Clause 4.8). If Aer Lingus does not have an equivalent rate with any other carrier, the rate shall be determined in accordance with Clause 4.9;
- (b) Grant the Requesting Air Services Provider equivalent inventory access to that given by Aer Lingus under existing special prorate agreement with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair and in any event no worse than as between Aer Lingus and other IAG carriers (other than, in each case, if the terms are excluded by virtue of Clause 4.8); and
- (c) Ensure minimum connection times which are based on standard practices at the airport and terminal in question, and which are reasonable.

4.7 Subject to Clause 4.17, any term included in the Special Prorate Agreement (for example, rates and interline service charge, number of fare and booking classes included) can never be less favourable than the corresponding term in any existing special prorate agreement which Aer Lingus has in place with the Requesting Air Services Provider on the Effective Date, other than any terms excluded by virtue of Clause 4.8. To take account of adjustments in fare class usage, for the purposes of Clause 4.4 and Clause 4.6(a), the fare classes selected by the Requesting Air Services Provider need not be the same fare classes as those specified in any special prorate agreement which is in place as at the Effective Date provided that the requested fare classes reasonably correspond to such specified fare classes.

4.8 For the purposes of Clause 4.4, Clause 4.5 and Clause 4.6(a) and 4.5(b) and Clause 4.7, Aer Lingus may exclude any existing special prorate agreement which Aer Lingus has with any other carrier where:

- (a) The agreement is *de minimis* (in that fewer than 1,000 sectors were flown on the relevant airline's metal pursuant to that agreement in the last two IATA seasons); and/or
- (b) The agreement is obsolete or has expired.

In addition, the Monitoring Trustee shall exclude any existing special prorate agreements or any individual terms of such agreements which Aer Lingus has demonstrated, to the satisfaction of the Monitoring Trustee, that it would be unreasonable to include because, due to exceptional circumstances, the relevant agreements or terms are exceedingly favourable.

4.9 For the purposes of Clause 4.6(a):

- (a) Where at least one existing special prorate agreement which Aer Lingus has agreed and applied with another carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair and which has not been excluded pursuant to Clause 4.8, but is included in a different fare class to the one selected by the Requesting Air Services Provider, the terms will be calculated by applying a ratio of the average difference in fares as between the fare class selected by the Requesting Air Services Provider and the fare class on which terms with another carrier are available;
- (b) Where any existing special prorate agreements which Aer Lingus has agreed and applied with other carriers do not include the same feeder route and/or are not or have not been used for providing feeder traffic for the relevant Long-Haul Airport Pair, the rate for providing feeder traffic for the relevant Long-Haul Airport Pair will be either the rate agreed by Aer Lingus and the Requesting Air Services Provider or the most favourable rate (considering factors such as yield and length of haul) which is included in an existing special prorate agreement of Aer Lingus and is used for feed on the most comparable Long-Haul Airport Pair from/to the same Relevant Airport Hub. In the event that Aer Lingus can establish that clear and material differences exist between the selected Long-Haul Airport Pair and the most comparable Long-Haul Airport Pair, the Monitoring Trustee may make appropriate adjustments to the rate.

4.10 Clauses 4.4 and 4.7 in conjunction with Clauses 4.8 and 4.9, shall, subject to Clause 4.18, be applied on the basis of the more favourable (to the Requesting Air Services Provider) of the following:

- (a) Special prorate agreements (and the terms therein) between Aer Lingus and any other carrier as existing on the Effective Date, subject to reasonable indexation that takes account of standard industry practices; and
- (b) Special prorate agreements (and the terms therein) between Aer Lingus and any other carrier as existing at the date of the request for negotiation or renegotiating of the Special Prorate Agreement.

- 4.11 Subject to Clause 4.16 the Special Prorate Agreement shall have an effective duration of up to five (5) years at the choice of the Requesting Air Services Provider. Thereafter, or if it elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 4.11, the Requesting Air Services Provider shall have a right to renew the agreement on an evergreen basis for further periods of up to two (2) years (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing Aer Lingus in writing no later than thirty (30) days before the expiry of the agreement. The Requesting Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.
- 4.12 Within four (4) weeks of the date of the request for a Special Prorate Agreement by a Requesting Air Services Provider, Aer Lingus shall propose a draft Special Prorate Agreement to the Monitoring Trustee in compliance with this Clause 4. At the same time, Aer Lingus shall submit supporting evidence, as necessary, in particular with regard to Clauses 4.6, 4.8, 4.9 and 4.10.
- 4.13 Considering the comments of the Requesting Air Service Provider and after having consulted the Commission, the Monitoring Trustee may request clarification and further evidence from Aer Lingus. Aer Lingus shall provide the requested clarification and evidence within two (2) weeks of the request from the Monitoring Trustee, unless Aer Lingus presents bona fide reasons for the Commission to extend this deadline.
- 4.14 If the Monitoring Trustee confirms that the provided clarification and evidence are sufficient, Aer Lingus shall revise the draft Special Prorate Agreement, as necessary, within two (2) weeks of the confirmation from the Monitoring Trustee. If the Monitoring Trustee requests further clarification and evidence, Aer Lingus shall proceed in accordance with Clause 4.13.
- 4.15 Upon the request of the Requesting Air Service Provider, the draft Special Prorate Agreement proposed by Aer Lingus under Clause 4.12 may be applied provisionally without prejudice to subsequent negotiations on the Special Prorate Agreement.
- 4.16 All Special Prorate Agreements entered into pursuant to this Clause 4:
- (a) Shall lapse automatically with respect to the relevant Long-Haul Airport Pair in the event that the Requesting Air Services Provider: ceases to operate a service on the relevant Long-Haul Airport Pair; or joins an Alliance, or becomes Affiliated with a member of an Alliance, with Hubs at both the Relevant Airport Hub and at the Relevant Long-Haul Destination/Origin City.
  - (b) In the case of any Special Prorate Agreement entered into pursuant to these Commitments in order to provide feeder traffic for the Dublin-Chicago Relevant Long-Haul Airport Pair, such an agreement may also be terminated on 30 days' notice in the event that the Requesting Air Services Provider's service(s) account(s) for 30% or more of all passengers (including connecting passengers) travelling on the Dublin-Chicago Relevant Long-Haul Airport Pair in two consecutive IATA seasons (calculated by using Amadeus Marketing Information Data Tapes (MIDT) data). This is subject to the proviso that, in each relevant

IATA season, feeder traffic provided by Aer Lingus pursuant to the Special Prorate Agreement did not account for more than 5% of the total number of passengers travelling on the Requesting Air Services Provider's Dublin-Chicago service(s) (calculated by reference to the Requesting Air Services Provider's actual passenger number data). For the avoidance of doubt:

- (i) Where the Requesting Air Services Provider's is seasonal, consecutive means a summer or winter IATA season followed by the next summer or winter IATA season;
  - (ii) Any bookings made under the terms of the Special Prorate Agreement prior to the date of service of the notice of termination will be honoured.
  - (c) May with the agreement of the Monitoring Trustee, be subject to annual renegotiation. Clause 4.10 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.
- 4.17 Should the Requesting Air Services Provider believe that the terms proposed by Aer Lingus do not comply with this Clause 4, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.
- 4.18 The conclusion of the Special Prorate Agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.
- 4.19 For the avoidance of doubt:
- (a) Aer Lingus shall not deconcur the Requesting Air Services Provider from routes and fare classes covered by the Special Prorate Agreement.
  - (b) Aer Lingus shall also not deconcur the Requesting Air Services Provider from particular fare classes or routes which it currently prorates under the IATA MPA where the Requesting Air Services Provider's rates cover Aer Lingus' marginal costs of carriage.
  - (c) Any Ticketing Time limits ("**TTLs**") applied to bookings made under any Special Prorate Agreement entered into pursuant to these Commitments shall be no less favourable than the TTLs applied by Aer Lingus to any other bookings made on the applicable Aer Lingus-operated routes.

## **5. FREQUENT FLYER PROGRAMMES**

- 5.1 At the request of a New Air Services Provider that does not have a comparable FFP of its own, IAG shall allow it to be hosted in its FFP for the Relevant London-Irish City Pair(s) on which the New Air Services Provider has commenced or increased service. The FFP Agreement with the New Air Services Provider shall be on terms such that the New Air Services Provider shall have equal treatment vis-à-vis the accrual and redemption of Miles on the particular Relevant London-Irish City Pair as compared with other members of the oneworld Alliance.

5.2 Any agreement relating to a particular Relevant London-Irish City Pair and entered into pursuant to this Clause 5 shall:

- (a) Lapse automatically in the event that the New Air Services Provider ceases to operate the new or increased service on that Relevant City Pair; and
- (b) Have an effective duration of up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if it elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 5.2, the New Air Services Provider shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing IAG in writing no later than two (2) weeks after the IATA Slot Conference preceding the requested extension. The New Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.

5.3 Subject to Clause 5.4, any term included in the frequent flyer agreement entered into pursuant to this Clause 5 can never be less favourable than the corresponding term in any FFP agreement which IAG and the New Air Services Provider have in place as at the Effective Date.

5.4 The conclusion of the FFP agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

## **6. MONITORING TRUSTEE**

### **Appointment Of Monitoring Trustee**

6.1 A Monitoring Trustee shall be appointed by Aer Lingus on the terms and in accordance with the procedure described below and, once approved by the Commission, shall perform the functions of monitoring Aer Lingus' fulfilment of the Commitments and further obligations that may be contained in the Decision.

6.2 The Monitoring Trustee shall be independent of Aer Lingus and all other members of the oneworld Alliance, must be familiar with the airline industry, and have the experience and competence necessary for this appointment (e.g. investment bank, consultant specialised in the air transport sector, or auditor, provided in all cases that they are able to demonstrate sufficient industry expertise). In addition, it shall not be exposed to any conflict of interest and shall not have had any direct or indirect work, consulting or other relationship with Aer Lingus or IAG in the last three (3) years and shall not have a similar relationship with Aer Lingus or IAG for three (3) years after completing its mandate. For the avoidance of doubt, the performance of the role of monitoring trustee in other Commission proceedings shall not be an obstacle to the appointment as Monitoring Trustee.

6.3 Aer Lingus shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.

- 6.4 Within one (1) week of the Effective Date, Aer Lingus shall submit to the Commission for approval a list of one or more persons whom Aer Lingus considers adequate to fulfil the duties of the Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out above and shall include:
- (a) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
  - (b) The outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to it.
- 6.5 The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Aer Lingus shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the Commission, Aer Lingus shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee should be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.
- 6.6 If all the proposed Monitoring Trustees are rejected by the Commission, Aer Lingus shall submit the names of at least two more individuals or institutions within one (1) week of being formally informed of the rejection by the Commission.
- 6.7 If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Aer Lingus shall appoint in accordance with the mandate approved by the Commission.

#### **Monitoring Trustee's Mandate**

- 6.8 The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:
- (a) To monitor the satisfactory discharge by Aer Lingus of the obligations entered into these Commitments in so far as they fall within the scope of these Commitments;
  - (b) To propose to Aer Lingus such measures as the Monitoring Trustee considers necessary to ensure Aer Lingus' compliance with the conditions and obligations attached to the Decision;
  - (c) To advise and make a written recommendation to the Commission as to the suitability of the Special Prorate Agreement submitted for approval to the Commission under Clause 4;
  - (d) To provide written reports to the Commission on Aer Lingus' compliance with these Commitments and the progress of the discharge of its mandate,

identifying any respects in which Aer Lingus has failed to comply with these Commitments or the Monitoring Trustee has been unable to discharge its mandate; and

- (e) At any time, to provide to the Commission, at its request, a written or oral report on matters falling within the scope of these Commitments.
- 6.9 For the avoidance of doubt, subject to Clause 6.8, there is no requirement for the Monitoring Trustee to be involved in the commercial negotiations between Aer Lingus and a third party carrier entering into any of the agreements under the Commitments. Any such agreements however remain subject to the Commission's approval.
- 6.10 Any request made by a third party carrier for the Monitoring Trustee to verify Aer Lingus' compliance with these Commitments must be reasonable. In particular, the Monitoring Trustee may refuse to conduct such a verification where the third party carrier fails to produce any evidence of a suspected breach of the Commitments and/or appears to be making a vexatious request.
- 6.11 Aer Lingus shall receive a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission (as provided for in Clause 6.8(b)).
- 6.12 The reports provided for in Clauses 6.8(b) to 6.8(d) shall be prepared in English. The reports provided for in Clause 6.8(c) shall be sent by the Monitoring Trustee to the Commission within ten (10) working days from the end of every IATA Season following the Monitoring Trustee's appointment or at such other time(s) as the Commission may specify and shall cover developments in the immediately preceding IATA Season. Aer Lingus shall receive a non-confidential copy of each Monitoring Trustee report.
- 6.13 Aer Lingus shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate. Aer Lingus shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.
- 6.14 The Monitoring Trustee shall have full and complete access to Aer Lingus' books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under these Commitments.
- 6.15 Aer Lingus shall indemnify the Monitoring Trustee (and, where appropriate, its employees, agents and advisors) (each an "**Indemnified Party**") and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to Aer Lingus for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, agents and advisors).
- 6.16 At Aer Lingus' expense, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval, if the Monitoring Trustee reasonably considers the appointment of such advisors necessary for the performance of its duties under the



mandate, provided that any fees incurred are reasonable and upon which Aer Lingus has been consulted.

- 6.17 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (a) The Commission may, after hearing the Monitoring Trustee, require Aer Lingus to replace the Monitoring Trustee; or
  - (b) With the prior written approval of the Commission, Aer Lingus may replace the Monitoring Trustee.
- 6.18 If the Monitoring Trustee is removed, it may be required to continue its functions until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Clause 6.17.
- 6.19 Aside from being removed in accordance with Clause 6.17, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.

## 7. FAST-TRACK DISPUTE RESOLUTION PROCEDURE

- 7.1 The agreements concluded to implement the Commitments in accordance with Clause 1 to 6 shall provide for a Fast-Track Dispute Resolution procedure (the “**Fast-Track Dispute Resolution Procedure**”) described in this Clause 7. In the event that an Eligible Air Services Provider or a Requesting Air Services Provider, as relevant, has reason to believe that Aer Lingus is failing to comply with the requirements of the Commitments vis-à-vis that party, this Fast-Track Dispute Resolution Procedure will apply.
- 7.2 Any Eligible Air Services Provider or Requesting Air Services Provider, which wishes to avail itself of the Fast-Track Dispute Resolution Procedure (the “**Requesting Party**”) shall send a written request to Aer Lingus (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that Aer Lingus is failing to comply with the requirements of the Commitments (the “**Request**”). The Requesting Party and Aer Lingus will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time not to exceed fifteen (15) working days after receipt of the Request.
- 7.3 The Monitoring Trustee shall present its own proposal (the “**Trustee Proposal**”) for resolving the dispute within eight (8) working days, specifying in writing the action, if any, to be taken by Aer Lingus in order to ensure compliance with the Commitments vis-à-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.

- 7.4 Should the Requesting Party and Aer Lingus fail to resolve their differences of opinion through cooperation and consultation as provided for in Clauses 7.2 and 7.3, the Requesting Party shall serve a notice (the “**Notice**”), in the sense of a request for arbitration, to the International Chamber of Commerce (the “**ICC**”) (the “Arbitral Institution”), with a copy of such Notice and request for arbitration to Aer Lingus.
- 7.5 The Notice shall set out in detail the dispute, difference or claim (the “**Dispute**”) and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by Aer Lingus (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
- 7.6 Aer Lingus shall, within ten (10) working days from receipt of the Notice, submit its answer (the “**Answer**”), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Aer Lingus proposes to undertake vis-à-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

#### **Appointment Of The Arbitrators**

- 7.7 The Arbitral Tribunal shall consist of three persons. The Requesting Party shall nominate its arbitrator in the Notice; Aer Lingus shall nominate its arbitrator in the Answer.
- 7.8 The arbitrators nominated by the Requesting Party and Aer Lingus shall, within five (5) working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators. Should the Requesting Party wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Requesting Party and Aer Lingus shall agree on the nomination of a sole arbitrator within five (5) working days from the communication of the Answer, communicating this to the Arbitral Institution. Should Aer Lingus fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the “**Arbitral Tribunal**”.

#### **Arbitration Procedure**

- 7.9 The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “**Rules**”). The arbitration shall be conducted in London, England in the English language.

- 7.10 The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.
- 7.11 The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the Arbitration. Terms of Reference shall be drawn up and signed by the parties to the Arbitration and the Arbitral Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.
- 7.12 In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the parties to the Arbitration agree.
- 7.13 The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Trustee, the Commission and outside counsel and experts of the opposing party.
- 7.14 The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless Aer Lingus can produce evidence to the contrary.

#### **Involvement Of The Commission**

- 7.15 The Commission shall be allowed and enabled to participate in all stages of the procedure by:
- (a) Receiving all written submissions (including documents and reports, etc.) made by the parties to the Arbitration;
  - (b) Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the Arbitration (including Terms of Reference and procedural time-table);
  - (c) Giving the Commission the opportunity to file amicus curiae briefs; and
  - (d) Being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the parties to the Arbitration to forward, the documents mentioned to the Commission without delay. In the event of

disagreement between the parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal shall seek the Commission's interpretation of the Commitments before finding in favour of any party to the Arbitration and shall be bound by the interpretation.

### **Decisions Of The Arbitral Tribunal**

- 7.16 The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. The Commitments shall be construed in accordance with Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national legal system. Issues not covered by the Commitments and the Decision shall be decided (in the order a stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
  
- 7.17 Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal. The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.
  
- 7.18 The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.
  
- 7.19 The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by Aer Lingus in order to comply with the Commitments vis-à-vis the Requesting Party (e.g. specify a contract including all relevant terms and conditions). The final award shall be final and binding on the parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal.
  
- 7.20 The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
  
- 7.21 The parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.
  
- 7.22 Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the TFEU.

## 8. GENERAL PROVISIONS

- 8.1 The Commitments shall take effect on the Effective Date. However, no IAG carrier shall be required to enter into any agreement pursuant to these Commitments prior to the completion of IAG's acquisition of Aer Lingus.
- 8.2 IAG shall promptly report to the Commission once IAG's acquisition of Aer Lingus has completed.

## 9. REVIEW CLAUSE

- 9.1 The Commission may, where appropriate, in response to a request from IAG showing good cause and accompanied by a report from the Monitoring Trustee:
- (a) Grant an extension of the time periods foreseen in the Commitments; or
  - (b) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.
- 9.2 Where IAG seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall IAG be entitled to request an extension within the last month of any period.

Date: 8 July 2015

Signed