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CASE M.6447 - IAG/bmi

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (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 British Midland Limited (“**bmi**”) (the “**Notified Concentration**”) compatible with the internal market and the EEA Agreement by its 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 EU law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004.

O. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meanings:

Affiliated Undertakings	Undertakings controlled by IAG, whereby the notion of control 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
Alliance	The Star Alliance, the SkyTeam Alliance, the oneworld Alliance, or any other similar airline alliance that may be developed
Applicant	Any airline interested in obtaining Slots from IAG in accordance with these Commitments

bmi	British Midland Limited
British Airways	British Airways Plc, being an Affiliated Undertaking of IAG
Category I Cities	This term has the meaning given in the definition of Relevant Long-haul Destination/Origin Cities
Category II Cities	This term has the meaning given in the definition of Relevant Long-haul Destination/Origin Cities
Commitment(s)	The Slot commitment for each Relevant 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 Agreements and/or, as relevant, the commitment relating to the codeshare with Royal Jordanian on London-Amman
Competitive Air Service	A non-stop scheduled passenger air transport service operated on one or more of the Relevant City Pairs
Effective Date	The date of adoption of the Decision
Eligible Air Services Provider	An airline that is not a member of the oneworld Alliance or affiliated with any member of that alliance and which: <ul style="list-style-type: none"> operates new or increased Competitive Air Service on a Relevant City Pair (in the case of an airline requesting IAG to enter into a fare combinability agreement under these Commitments), or operates a non-stop service between Heathrow and one or more of the Relevant Long-haul Destination/Origin Cities (in the case of an airline requesting IAG to enter into a Special Prorate Agreement under these Commitments)
EU Slot Regulation	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
Europe	The European Union, Iceland, Norway, Switzerland and the Channel Islands

European Short-haul City Pair(s)	Any route connecting London with any other part of Europe (which shall, for the avoidance of doubt, include the Identified UK City Pairs)
Fast-Track Dispute Resolution Procedure	This term has the meaning given in Clause 7
FFP Agreement	An agreement by which an airline operating a Frequent Flyer Programme allows another airline to participate in that FFP
Frequency(ies)	A round-trip on a Relevant City Pair
Frequent Flyer Programme (or FFP)	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
General Slot Allocation Procedure	The Slot allocation procedure as set out in the EU Slot Regulation and IATA Worldwide Scheduling Guidelines (including participation at the IATA Scheduling Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline)
Grandfathering	This term has the meaning given in Clause 1.3.2
Heathrow	London Heathrow airport

Hub

An airport at which an airline concentrates its operations. For the purpose of these Commitments, as of the date of the Commitment Decision, the following airlines shall be deemed to have Hubs at the following Relevant Long-haul Destination/Origin Cities:

- Air Canada - Calgary, Edmonton, Halifax, Montreal, Ottawa, Toronto, Vancouver
- Air China - Beijing
- Air India - Delhi
- Air Nigeria - Lagos
- All Nippon Airways - Tokyo
- American Airlines - Chicago, Miami
- Arik - Lagos
- Cathay Pacific - Hong Kong
- China Southern Airlines - Beijing
- Delta - New York
- Emirates - Dubai
- Hainan Airlines - Beijing
- Jet Airways – Delhi
- Japan Airlines - Tokyo
- Kingfisher – Delhi
- Qantas – Sydney
- Qatar Airlines - Doha
- South African Airways - Cape Town, Johannesburg
- United/Continental - Chicago, Houston, Los Angeles, New York, San Francisco, Washington

IAG	International Consolidated Airlines Group, S.A., the parent company of British Airways and Iberia (and, where applicable, shall mean British Airways and/or Iberia and/or any other Affiliated Undertaking of IAG)
IATA	The International Air Transport Association
IATA Scheduling Conference	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 scheduling conference for the Winter Season takes place in June, and the one for the Summer Season in November
IATA Season	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
Iberia	Iberia Líneas Aéreas de España, S.A. Operadora, being an Affiliated Undertaking of IAG
ICC	International Chamber of Commerce
Identified City Pair(s)	London-Aberdeen, London-Edinburgh, London-Nice, London-Cairo, London-Moscow and/or London-Riyadh
Identified UK City Pair(s)	London-Aberdeen and/or London-Edinburgh
Identified Long-haul City Pair(s)	London-Cairo, London-Moscow and/or London-Riyadh
Key Terms	The following terms that shall be included in the Applicant's formal bid for Slots: timing of the Slot, number of frequencies, and IATA Seasons to be operated (year-round service or seasonal)

Miles	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
Misuse	This term has the meaning given in Clause 1.3.5
MITA	Multilateral Interline Traffic Agreements Manual published by IATA
Monitoring Trustee	An individual or institution, independent of IAG, who is approved by the Commission and appointed by IAG and who has the duty to monitor IAG's compliance with the conditions and obligations attached to the Commitment Decision
New Air Services Provider	An airline that is not a member of the oneworld Alliance or affiliated with any member of that alliance and which commences a new non-stop service on a Relevant City Pair or which increases the number of non-stop Frequencies it operates on a Relevant City Pair in accordance with these Commitments
oneworld	The Alliance founded by British Airways, American Airlines, Cathay Pacific and Qantas in 1999. Its members are currently British Airways, Iberia, American Airlines, Cathay Pacific, Finnair, Japan Airlines, LAN Airlines, Malév, Mexicana, Qantas, Royal Jordanian and S7

Prospective Entrant

Any Applicant that is not a member of the **oneworld** Alliance or affiliated with any member of that alliance, 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:

- (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:
 - (i) it is an associated carrier belonging to the same group as IAG; or
 - (ii) it is a member of the **oneworld** Alliance; or
 - (iii) it co-operates with IAG on the Relevant 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;
- (b) it must have the intention to begin or increase regular operations on one or more of the Relevant City Pairs; and
- (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

Published Fares

Fares published by IAG in ATPCo in reservation booking designator (or selling classes):

- Y and J for European Short-haul City Pairs
- Y, J, F and W for the Identified Long-haul City Pairs

Q/YQ/YR Surcharge

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

Relevant City Pair(s)	This term has the meaning given in Clause 1.2.1
Relevant Long-haul Destination/ Origin Cities	<p>The following cities:</p> <ul style="list-style-type: none"> • Category I Cities: Boston, Chicago, Houston, Los Angeles, Miami, New York, San Francisco, Washington, Calgary, Edmonton, Halifax, Montreal, Ottawa, St John's, Toronto, Vancouver, Cape Town, Johannesburg, Sydney • Category II Cities: Beijing, Delhi, Doha, Dubai, Hong Kong, Lagos, Singapore, Tokyo
Relevant Short-haul Origin/ Destination Cities	<p>Cities to which IAG operates from Heathrow which are:</p> <ul style="list-style-type: none"> • in Europe, or • any of the following cities outside Europe: Addis Ababa, Agadir, Almaty, Amman, Amritsar, Baku, Beirut, Bishkek, Cairo, Casablanca, Damascus, Dammam, Freetown, Jeddah, Khartoum, Marrakech, Moscow, Riyadh, Tblisi, Tehran, Yerevan
Requesting Air Services Provider	This term has the meaning given in Clause 3.1
Requesting Party	This term has the meaning given in Clause 7
SAL	Slot Allocation List
SkyTeam	The Alliance which has developed from the original SkyTeam alliance (founded by Air France, Delta and others) and the Wings alliance (which had involved KLM, Northwest and others)
Slot Handback Deadline	15 January for the IATA Summer Season and 15 August for the IATA Winter Season
Slot Release Agreement	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 1 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

Slot Release Procedure	This term has the meaning given in Clause 1.2.1
Slot Request Submission Deadline	The final date for the request for Slots to the slot coordinator as set out in the IATA Worldwide Scheduling Guidelines
Slot(s)	The permission to land and take-off in order to operate an air service at the airport on a specific date and time given in accordance with the EU Slot Regulation
Special Prorate Agreement	An agreement between two or more airlines on the apportionment of through-fares on journeys with two or more legs operated by different airlines
Star	The Alliance which has developed from the alliance established in 1997 between Lufthansa, SAS, United and a number of other carriers
Transaero	Transaero Airlines, a company incorporated in Russia whose registered office is at Domodedovo International Airport, Moscow Oblast, Russia
TFEU	The Treaty on the Functioning of the European Union
Time Window	The period of time either side of the Slot time requested by the Prospective Entrant and shall be: <ul style="list-style-type: none"> • +/- twenty (20) minutes for European Short-haul City Pairs • +/- sixty (60) minutes for the Identified Long-haul City Pairs
Utilisation Period	This term has the meaning given in Clause 1.3.1 and shall be six (6) consecutive IATA Seasons

1. SLOTS

1.1 Slots at Heathrow

1.1.1 IAG undertakes to procure that Slots are made available at Heathrow to allow one or more Prospective Entrant(s) to operate or increase the following number of new or additional Frequencies on the following city pairs:

- (a) up to seven (7) Frequencies per day in total on the Identified UK City Pairs; and
- (b) up to five (5) Frequencies per day in total on the Identified City Pairs.

1.1.2 IAG shall make two (2) Slots available at Heathrow to Transaero for use on London-Moscow in accordance with the terms of the agreement entered into on 15 March 2012 between British Airways and Transaero. In the event that Transaero does not make use of those Slots and they become available to IAG, IAG undertakes to procure that those two (2) Slots will instead be made available to other Prospective Entrants under Clause 1.1.1(b) such that the number of Slots covered by Clause 1.1.1(b) shall be increased from five (5) to seven (7). In the event that those two (2) Slots do become so available, the operation of the Slot Release Procedure in respect of those two Slots shall be adjusted accordingly to reflect the fact that Prospective Entrants shall be entitled to apply for those specific Slots.

1.1.3 Where a New Air Services Provider has operated Competitive Air Service on two or more Identified City Pairs using Slots in accordance with these Commitments for at least two (2) consecutive IATA Seasons, it shall be entitled to apply for any Slots still available under Clause 1.1.1(b) to operate Frequencies on any European Short-haul City Pair provided that it also continues to operate the Frequencies it is operating on the Identified City Pair(s) during the Utilisation Period.

1.2 Conditions pertaining to Slots

1.2.1 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 more of the city pairs covered by Clause 1.1.1 ("**Relevant City Pair(s)**") 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 1.4.1.

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 City Pairs through the normal workings of the General Slot Allocation Procedure.

1.2.2 For the purposes of this Clause 1.2, the Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:

- (a) Slots at Heathrow 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 Heathrow (for use to operate a Competitive Air Service on the Relevant 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 Heathrow. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:
 - (i) if the carrier has Slots at Heathrow 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 City Pair); or
 - (ii) if the carrier has Slots at Heathrow 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 1.2.2(c) (i) and (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.

1.2.3 If the Prospective Entrant obtains Slots through the General Slot Allocation Procedure but after the IATA Scheduling 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).

1.2.4 Without prejudice to these Commitments (and, particularly, of this Clause 1), 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 1.3.5 below).

1.2.5 Subject to the provisions of Clause 1.2.6, 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.

1.2.6 IAG may refuse to offer any arrival Slots at Heathrow before 06:20 (local time). If a Prospective Entrant requests an arrival Slot at Heathrow for a time before 06:20, IAG may offer a slot between 06:20 and 07:20. In addition, IAG shall not be obliged to release more than three (3) daily arrival Slots at Heathrow in the period prior to 08:20 (local time). In the event that a Prospective Entrant requests more than three (3) arrival Slots at Heathrow in this period, for each Slot request which cannot be accommodated within the parameters of this Clause 1.2.6, IAG shall offer the Prospective Entrant the next closest Slot to the time requested in accordance with Clause 1.2.1. In the event that different Prospective Entrants make such requests for different Relevant City Pairs which cannot all be accommodated within the parameters of this Clause 1.2.6, IAG shall give priority to any Prospective Entrant proposing to operate multiple daily frequencies (where relevant) on the Relevant City Pair and shall, in accordance with Clause 1.2.1, offer the next closest Slot to the time requested to each Prospective Entrant whose request cannot as a result be accommodated within the parameters of this Clause 1.2.6. For the avoidance of doubt, nothing in this Clause 1.2.6 shall (subject to Clause 1.4.10) limit the number of arrival Slots IAG would release at Heathrow from 08:20 onwards.

1.3 Grandfathering of Slots

- 1.3.1 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 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 City Pair for which these Slots have been transferred for a number of full consecutive IATA Seasons ("**Utilisation Period**").
- 1.3.2 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 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 or the Identified Long-haul City Pairs ("**Grandfathering**").
- 1.3.3 Grandfathering is subject to approval of the Commission, advised by the Monitoring Trustee, in accordance with Clause 1.4. 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 1.3.2, it will return the Slots in question to IAG or, if IAG does not want the return of the Slots, to the slot coordinator.
- 1.3.4 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.

1.3.5 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 City Pair(s);
- (b) to operate fewer daily Frequencies than those to which it committed in the bid in accordance with Clause 1.4.7 on a Relevant City Pair(s) or to cease operating on a Relevant 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 City Pair(s), as proposed in the bid in accordance with Clause 1.4.7; 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 Heathrow 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 Heathrow as described and interpreted in Article 14(4) of the EU Slot Regulation.

1.3.6 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 1.3.5, IAG shall then use its best efforts to redeploy the Slots in order to safeguard the historic precedents. If despite their 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 1.3.5, the Prospective Entrant shall provide reasonable compensation to IAG as provided for in the Slot Release Agreement.

1.3.7 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.

1.3.8 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.

1.3.9 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 Scheduling Conference.

1.4 Selection procedure, role of Monitoring Trustee and approval by Commission

1.4.1 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 Heathrow, 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 1.2.2(c) and Clause 1.4.4;

- (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).

1.4.2 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 Scheduling Conference, the Monitoring Trustee shall not disclose to IAG the Relevant 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 Heathrow 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 Heathrow 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.

1.4.3 If the Applicant has made a request for anonymity in accordance with Clause 1.4.1(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 this Clause 1.4 shall apply, save that, until the beginning of the IATA Scheduling 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.

1.4.4 After being informed of the Slot request in accordance with Clause 1.4.2, 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 Heathrow.

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.

- 1.4.5 At least one (1) week before the Slot Request Submission Deadline, IAG shall indicate to the Monitoring Trustee and each Applicant which Slots at Heathrow they would release, if necessary, during the Time Window.
- 1.4.6 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.
- 1.4.7 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 frequencies to be operated on a year-round service);
 - (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 City Pair(s) on which it wants to operate. The latter should specify in detail planned operations on the Relevant 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 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.
- 1.4.8 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.

1.4.9 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 City Pair(s) in the long term as a viable and active competitive force;
- (b) evaluate the formal bids of each Applicant, that meets (a) above, and rank these Applicants in order of preference.

1.4.10 In conducting its evaluation in accordance with Clause 1.4.9, the Commission shall give preference to the Applicant (or combination of Applicants) which will provide the most effective overall competitive constraint on services from/to Heathrow on European Short-haul City Pairs (and on the Identified Long-haul City Pairs if applicable), 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) the largest capacity (as measured in seats offered on services for two (2) consecutive IATA Seasons) and/or greatest number of services/frequencies from/to Heathrow on European Short-haul City Pairs (and/or on the Identified Long-haul City Pairs);
- (b) a pricing structure and service offerings that would provide the most effective competitive constraint on the Relevant City Pair(s); and
- (c) plans to offer feed to third party carriers operating services from Heathrow to one or more of the Relevant Long-haul Destination/Origin cities.

The Commission (advised by the Monitoring Trustee) shall also ensure that the twelve (12) arrival Slots to be made available under Clause 1.1.1 (excluding any additional slots made available pursuant to Clause 1.1.2) are spread throughout the day, i.e. no more than five (5) Slots in the morning (the period up until 12:00 local time), no more than five (5) Slots in the afternoon (the period after 12:00 and up until 16:00 local time), and no more than five (5) Slots in the evening (the period after 16:00 local time). If, following the Commission's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on services from/to Heathrow on European Short-haul City Pairs (and on the Identified Long-haul City Pairs if applicable), the Commission shall rank

these Applicants following the ranking provided by IAG under Clause 1.4.8.

- 1.4.11 In advance of the beginning of the IATA Scheduling 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 Scheduling Conference and try to improve its Slots. Following confirmation of the Commission's approval pursuant to Clause 1.4.9, 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 1.4.8. 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.

- 1.4.12 Within two (2) weeks of the end of the IATA Scheduling 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.
- 1.4.13 Within three (3) weeks of the end of the IATA Scheduling Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with Clause 1.4.12 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 1.2.3, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Scheduling Conference, and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

2. FARE COMBINABILITY

- 2.1 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 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 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 City Pair comprising a non-stop service provided one way by one of the Parties 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 City Pair.

- 2.2 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 City Pair operated by the Eligible Air Services Provider; and
 - (d) it shall be subject to the MITA rules.
- 2.3 Subject to Clause 2.7, 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.
- 2.4 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 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 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.
- 2.5 A fare combinability agreement entered into pursuant to this Clause 2 for a particular Relevant 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 2.5, 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.

- 2.6 All agreements entered into pursuant to this Clause 2 for a particular Relevant 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 City Pair.
- 2.7 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.

3. SPECIAL PRORATE AGREEMENTS

- 3.1 At the request of an Eligible Air Services Provider, IAG shall enter into a Special Prorate Agreement with such airline ("**Requesting Air Services Provider**") for traffic with a true origin/destination in one or more of the Relevant Short-haul Origin/Destination Cities 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 air services operated by the Requesting Air Services Provider between Heathrow and the Relevant Long-haul Destination/Origin Cities.
- 3.2 In order to be eligible for a Special Prorate Agreement, the Requesting Air Services Provider must not, alone or in combination with carriers which are part of the same Alliance as the Requesting Air Services Provider:
- (a) in the case of the Category I Cities: have Hubs both at London and at the Relevant Long-haul Destination/Origin City;
 - (b) in the case of the Category II Cities: have a Hub at the Relevant Long-haul Destination/Origin City.
- 3.3 Subject to Clause 3.1, for each Relevant Long-haul Destination/Origin City for which it proposes to enter a Special Prorate Agreement with IAG pursuant to these Commitments, the Requesting Air Services Provider may select up to a maximum of fifteen (15) behind/beyond Relevant Short-haul Origin/Destination Cities which are or will be operated by IAG and to which the Special Prorate Agreement will apply, it being understood that the Special Prorate Agreement shall only apply to frequencies between Heathrow and the Relevant Short-haul Origin/Destination Cities operated by IAG.
- 3.4 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 IAG has agreed with any other carrier with regard to the routes concerned (or which bmi had so agreed under a Special

Prorate Agreement existing at the Effective Date), excluding any agreements (or terms therein) which are excluded pursuant to Clause 3.7 and any codeshare terms within an existing agreement. Subject to the previous sentence of this Clause 3.4, the number of fare classes that the Requesting Air Services Provider may select shall be up to the maximum number of fare classes per cabin that is granted by IAG under an existing Special Prorate Agreement to any other carrier under a Special Prorate Agreement of the same type (or had so been granted by bmi under a Special Prorate Agreement existing at the Effective Date).

3.5 Subject to the provisions of the rest of this Clause 3, the Special Prorate Agreement shall:

- (a) be on terms (rates and interline service charges) which are at least as favourable as the terms agreed by IAG under an existing Special Prorate Agreement (or by bmi under a Special Prorate Agreement existing at the Effective Date) with any other carrier for the same route and in the same fare class (other than any codeshare terms within existing Special Prorate Agreements and any terms excluded by virtue of Clause 3.7). If IAG (or bmi where applicable) does not have an equivalent rate with any other carrier, the rate shall be determined in accordance with Clause 3.8;
- (b) grant the Requesting Air Services Provider equivalent inventory access to that given within IAG; and
- (c) ensure minimum connection times which are based on standard practices at the airport and terminal in question and which are reasonable.

3.6 Subject to Clause 3.13, any term included in the Special Prorate Agreement (for example, rates and interline service charge, number of fare and booking classes included, number of routes covered) can never be less favourable than the corresponding term in any Special Prorate Agreement which IAG or bmi on the one part, and the Requesting Air Services Provider on the other part, have in place as at the Effective Date. To take account of adjustments in fare class usage, for the purposes of Clause 3.4 and Clause 3.5(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.

3.7 For the purposes of Clause 3.4 and Clause 3.5(a), IAG may exclude any existing Special Prorate Agreement which it has (or bmi had) with any other carrier which it would be unreasonable to include, for example because:

- (a) the agreement is *de minimis* (in that fewer than 1,000 sectors were flown on IAG metal (or, as relevant, bmi metal) pursuant to that agreement in the last financial year); or
- (b) the agreement is obsolete.

In addition, the Monitoring Trustee shall exclude any existing Special Prorate Agreements or any individual terms of such agreements which IAG 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.

3.8 For the purposes of Clause 3.5(a):

- (a) where the selected route is included in at least one existing Special Prorate Agreement which IAG has with another carrier (or which bmi had with another carrier at the Effective Date) and which has not been excluded pursuant to Clause 3.7, 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 the selected route is not included in any fare class in any existing Special Prorate Agreements which IAG has with other carriers (or which bmi had with another carrier at the Effective Date), the rate on that route will be either the rate agreed by IAG and the Requesting Air Services Provider or the most favourable rate that applies to the most comparable route (considering factors such as yield and length of haul) which is included in an existing IAG Special Prorate Agreement (or which was included in a bmi Special Prorate Agreement existing at the Effective Date). In the event that IAG can establish that clear and material differences exist between the selection route and the most comparable route, the Monitoring Trustee may make appropriate adjustments to the rate.

3.9 Clauses 3.4 and 3.5(a) in conjunction with Clauses 3.7 and 3.8, shall, subject to Clause 3.13, 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 IAG (or bmi) and any other carrier as existing at the Effective Date, subject to reasonable indexation that takes account of standard industry practices; and

- (b) Special Prorate Agreements (and the terms therein) between IAG and any other carrier as existing at the date of the request for negotiation or re-negotiation of the Special Prorate Agreement.
- 3.10 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 3.10, the Requesting 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 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.
- 3.11 All Special Prorate Agreements entered into pursuant to this Clause 3:
 - (a) shall lapse automatically in the event that the Requesting Air Services Provider:
 - (i) joins an existing Alliance, or is controlled by a member of an Alliance, with Hubs at both London and at the Relevant Long-haul Destination/Origin City (in the case of a Category I City); or
 - (ii) joins an existing Alliance, or is controlled by a member of an Alliance, with a Hub at the Relevant Long-haul Destination/Origin City (in the case of a Category II City); and
 - (b) may with the agreement of the Monitoring Trustee, be subject to annual re-negotiation. Clause 3.9 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.
- 3.12 Should the Requesting Air Services Provider believe that the terms proposed by IAG do not comply with this Clause 3, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.
- 3.13 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.
- 3.14 For the avoidance of doubt, IAG shall not deconcur the Requesting Air Services Provider from routes and fare classes covered by the Special Prorate Agreement. IAG shall also not deconcur the Requesting Air Services Provider from particular fare classes or routes which it currently

prorates under the IATA MPA (or which, at the Effective Date, bmi prorated under the IATA MPA) where the Requesting Air Services Provider's rates cover IAG's marginal costs of carriage.

4. FREQUENT FLYER PROGRAMMES

4.1 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 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 City Pair as compared with other members of the **oneworld** Alliance.

4.2 Any agreement relating to a particular Relevant City Pair and entered into pursuant to this Clause 4 shall:

(a) lapse automatically in the event that the New Air Services Provider ceases to operate non-stop 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 4.2, 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 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.

4.3 Subject to Clause 4.4, any term included in the frequent flyer agreement entered into pursuant to this Clause 4 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.

4.4 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.

5. CODESHARE WITH ROYAL JORDANIAN

5.1 If, following implementation of the Notified Concentration, IAG operates services between London and Amman, it will discontinue its current codeshare arrangements with Royal Jordanian (in accordance with their terms) insofar as they concern point-to-point passengers on that route.

6. MONITORING TRUSTEE

6.1 Appointment of Monitoring Trustee

- 6.1.1 A Monitoring Trustee shall be appointed by IAG on the terms and in accordance with the procedure described below and, once approved by the Commission, shall perform the functions of monitoring IAG's fulfilment of the Commitments and further obligations that may be contained in the Commitment Decision.
- 6.1.2 The Monitoring Trustee shall be independent of IAG and all other members of the **oneworld** Alliance, must be familiar with the airline industry and the slot allocation and exchange procedures, and have the experience and competence necessary for this appointment (e.g. investment bank, consultant specialised in the air transport sector, or auditor). 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 IAG in the last three (3) years and shall not have a similar relationship with 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.
- 6.1.3 IAG shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.
- 6.1.4 Within one (1) week of the Effective Date, IAG shall submit to the Commission for approval a list of one or more persons whom IAG 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.
- 6.1.5 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, IAG shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the Commission, IAG 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.

- 6.1.6 If all the proposed Monitoring Trustees are rejected by the Commission, IAG 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.
- 6.1.7 If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom IAG shall appoint in accordance with the mandate approved by the Commission.

6.2 Monitoring Trustee's Mandate

- 6.2.1 The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:
- (a) to monitor the satisfactory discharge by IAG of the obligations entered into in these Commitments in so far as they fall within the scope of these Commitments;
 - (b) to propose to IAG such measures as the Monitoring Trustee considers necessary to ensure IAG's 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 any Slot Release Agreement and Prospective Entrant, fare combinability agreement, Special Prorate Agreement and FFP Agreement submitted for approval to the Commission under Clauses 1 to 4;
 - (d) to provide written reports to the Commission on IAG's compliance with these Commitments and the progress of the discharge of its mandate, identifying any respects in which IAG has failed to comply with these Commitments or the Monitoring Trustee has been unable to discharge its mandate;
 - (e) to mediate in any disagreements relating to any Slot Release Agreement, if mediation is agreed to by the other party or parties to the agreement in question, and submit a report upon the outcome of the mediation to the Commission; and
 - (f) 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.
- 6.2.2 For the avoidance of doubt, subject to Clause 6.2.1, there is no requirement for the Monitoring Trustee to be involved in the commercial negotiations between IAG 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.

- 6.2.3 Any request made by a third party carrier for the Monitoring Trustee to verify IAG's 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.
- 6.2.4 IAG shall receive simultaneously a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission (as provided for in Clause 6.2.1(c)).
- 6.2.5 The reports provided for in Clauses 6.2.1(c) to 6.2.1(f) shall be prepared in English. The reports provided for in Clause 6.2.1(d) 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. IAG shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.
- 6.2.6 IAG 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. IAG shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.
- 6.2.7 The Monitoring Trustee shall have full and complete access to IAG's books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under these Commitments.
- 6.2.8 IAG 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 IAG 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).
- 6.2.9 At IAG's 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 IAG has been consulted.

6.3 Termination of Mandate

- 6.3.1 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 IAG to replace the Monitoring Trustee; or
 - (b) with the prior approval of the Commission, IAG may replace the Monitoring Trustee.
- 6.3.2 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 6.1.1.
- 6.3.3 Aside from being removed in accordance with Clause 6.3.1, 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 Clauses 1 to 4 shall provide for a Fast-Track Dispute Resolution procedure (the “**Fast-Track Dispute Resolution Procedure**”) described in this Clause 7. In the event that a Prospective Entrant, Eligible Air Services Provider, Requesting Air Services Provider, or New Air Services Provider, as relevant, has reason to believe that IAG 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 Prospective Entrant, Eligible Air Services Provider, or New Air Services Provider, as relevant, which wishes to avail itself of the Fast-Track Dispute Resolution Procedure (the “**Requesting Party**”) shall send a written request to IAG (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that IAG is failing to comply with the requirements of the Commitments (the “**Request**”). The Requesting Party and IAG 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 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 IAG 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 IAG fail to resolve their differences of opinion through cooperation and consultation as provided for in Clause 7.2, 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 IAG.
- 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 IAG (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 IAG 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 IAG 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; IAG shall nominate its arbitrator in the Answer.
- 7.8 The arbitrators nominated by the Requesting Party and IAG 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 IAG 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 IAG 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 Arbitration 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 IAG 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 timetable);
- (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 may 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. Issues not covered by the Commitments and the Decision shall be decided (in the order as 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 IAG 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. REVIEW CLAUSE

- 8.1 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.
- 8.2 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: 28 March 2012

(Signed)

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duly authorised for and on behalf of IAG