Case No COMP/M.6447 - IAG/ BMI

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 30/03/2012

In electronic form on the EUR-Lex website under document number 32012M6447

EUROPEAN COMMISSION



Brussels, 30.03.2012 C(2012) 2320

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6447 - IAG/bmi

Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No $139/2004^1$

1. On 10 February 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking International Consolidated Airlines Group ("IAG" - United Kingdom), directly or via its subsidiary British Airways Plc. ("BA"), acquires within the meaning of Article 3(1) (b) of the Merger Regulation sole control of the whole of the undertaking British Midlands Limited ("bmi" – United Kingdom) by way of purchase of shares.

I. THE PARTIES AND THE TRANSACTION

2. IAG is the holding company of both BA and Iberia Líneas Aéreas de España, S.A. ("Iberia"). The IAG airlines (BA and Iberia) fly to around 200 destinations with a further 200 destinations served under various codesharing relationships. BA's hub airport is at London Heathrow; it also has base operations at London Gatwick and

-

1

OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

- London City. Iberia's hub airports are at Madrid Barajas and Barcelona El Prat. Both BA and Iberia are members of the **one**world alliance.
- 3. bmi is currently owned by Deutsche Lufthansa AG ("LH") through its subsidiary LHBD Holding Limited ("LHBD"). It comprises three principal units, namely a London Heathrow-based mainline business ("bmi Mainline"), a regional business based in Aberdeen ("bmi Regional") and a low cost operation based at East Midlands Airport in the United Kingdom ("bmi baby"). Through its three units, bmi flies to over 70 destinations with more destinations served under various codesharing relationships. bmi is currently a member of the Star alliance.

II. THE CONCENTRATION

- 4. Pursuant to the sale and purchase agreement signed by IAG, BA, LHBD and LH on 22 December 2011 ("SPA"), IAG will acquire, directly or through its subsidiary BA, all of the issued share capital of bmi (hereinafter the "Transaction"). The Transaction would bring bmi into the **one**world alliance and into IAG's frequent flyer program ("FFP").
- 5. Although the SPA foresees the eventuality that LH could sell bmi Regional and/or bmi baby to other acquirers prior to the completion of the Transaction, none of the abovementioned sales has been completed to date. Therefore, for the purpose of this decision, it is considered that the Transaction includes all three principal units in which the bmi business is currently divided (i.e. bmi Mainline, bmi Regional and bmi baby).²
- 6. As a result of the Transaction, IAG would therefore acquire sole control of the whole of bmi. The Transaction thus constitutes a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

III. UNION DIMENSION

- 1. Identification of the undertakings concerned for the purposes of determining jurisdiction over the Transaction Calculation of the turnover under Article 5(4) of the Merger Regulation
- 7. According to the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings³ ('JN'), from the point of view of determining jurisdiction, the undertakings concerned

The Transaction includes the transfer of 56 daily slot pairs, which include the Security Slots as defined in section 137 which have been transferred to Lufthansa in the context of interim funding arrangements and will pass on to IAG when the Transaction is completed. These Security Slots will thus fall within the scope of review of this Transaction.

³ OJ C 95, 16.04.2008, p.4.

are those participating in a concentration.⁴ In case of an acquisition of sole control of an undertaking, the undertakings concerned will be the acquiring undertaking and the target undertaking.⁵ On the target's side, the 'undertaking concerned' for determining jurisdiction over the proposed concentration will be bmi. On the acquirer's side, the 'undertaking concerned' will either be IAG (if the acquisition were made by IAG) or BA (if the acquisition were made by BA).⁶

- 8. Paragraph 175 JN states that "When an undertaking concerned by a concentration belongs to a group, not only the turnover of the undertaking concerned is considered, but the Merger Regulation requires to also take into account the turnover of those undertakings with which the undertaking concerned has links consisting in the rights or powers listed in Article 5(4) (...)". The question which companies' turnover should be taken into account pursuant to Article 5(4) of the Merger Regulation on IAG's side is examined below:
- 1.1. On the assumption that IAG is the "undertaking concerned"

1.1.1. The turnover of BA should be added to that of IAG under Article 5(4)(b)(i) of the Merger Regulation

9. The aggregate value of the nominal share capital of BA is £289,541,407. The share capital is represented by three classes of shares: Class A1 and A2 shares (all with a nominal value of £289.7) and Class B shares (with a nominal value of £1). The shares are held as follows:

Shareholder	Class of	Number of	Nominal value	Aggregate	Percentage in
	shares	shares	per share	nominal value	total nominal
					share capital
IAG	A1	896,700	£289.7	£259,771,984	89.7%
Iberia	A2	99,308	£289.7	£28,769,424	9.9%
UK Trustee	В	1,000,000	£1	£1,000,000	0.3%

- 10. The above shows that the UK Trustee holds (in numbers) a little bit more than half of the shares. However, the relevant criterion for Article 5(4)(b)(i) of the Merger Regulation is not the number of shares, but the capital they represent (i.e. the nominal value of the shares). The aggregate nominal value of the shares held by IAG represents far more than half of the capital of BA.
- 11. As a result, it can be concluded that the criterion of Article 5(4)(b)(i) of the Merger Regulation is satisfied and that the turnover of BA should be added to that of IAG.

5 Para 134 JN.

It has not yet been decided whether IAG or BA would eventually acquire bmi.

⁴ Para 129 JN.

- 1.1.2. The turnover of IB should be added to that of IAG, in particular under Article 5(4)(b)(iii), and in subsequent order also under Article 5(4)(b)(iv) and Article 5(4)(b)(ii) of the Merger Regulation
 - 1.1.2. (1) <u>IAG has the power to appoint more than half of the members of the</u> Iberia's board of directors (Article 5(4)(b)(iii) of the Merger Regulation)
- 12. The Iberia operating company, Iberia Líneas Aéreas de España, Sociedad Anónima Operadora ('IB Opco')⁷, has a board of directors consisting of 11 members⁸. Five of them are directly appointed by IAG and four of them by the Spanish Nationality Entity⁹. The five directors directly appointed by IAG are the CEO of BA¹⁰, the CFO of IAG and three senior officers of IB Opco. For the two remaining directors, which are the Chairman and CEO of IB Opco, the following specific arrangements are in place with respect to their appointment and removal.
- 13. IAG has the right to remove the Chairman and CEO of IB Opco. Where a new Chairman or CEO is to be appointed, an *ad hoc* nominations committee is put in place. This committee consists of persons selected by IAG amongst the existing directors of IAG, BA and Iberia. IAG must select at least one member amongst the directors appointed by the Spanish Nationality Entity but is not constrained as regards the number of members on the committee.
- 14. The committee will nominate a person for the role (Chairman or CEO as the case may be). While the Spanish Nationality Entity has a formal right of veto over any person so nominated as Chairman or CEO, if it were to do so then IAG may arrange for the nominations committee to nominate another person in accordance with the same procedures or IAG may refer the matter to its own shareholders.¹¹ In the event of a

4

This company is a fully owned subsidiary of the holding company IB Opco Holding, S.L. ('IB Opco Holding'). The composition of the board of IB Opco Holding is identical to that of IB Opco.

⁸ A majority of the directors must be Spanish nationals.

The Spanish nationality entity was set up to meet 'nationality requirements' specific to the airline sector. It holds 50.1% of the shares of IB Opco Holding.

One of the directors that IAG is entitled to appoint with respect to the board of Iberia must be the CEO of BA. This does not limit however IAG's right to appoint such director. In practice IAG chooses the BA CEO. The procedure for the appointment of the BA CEO is similar to the one that applies to the CEO of Iberia. In the event of formal objections from the UK Nationality Entity as to the appointment of the BA CEO, ultimately IAG would have the power to determine that appointment; this would involve, if necessary, establishing an ad hoc Nominations Committee (consisting of such persons as IAG would specify, chosen from among the directors of IAG and the BA and Iberia operating companies, include at least one of the BA directors appointed by the UK Nationality Entity) and, if there were still objections from the UK Nationality Entity, putting the matter to a vote of the IAG shareholders (with the voting rights of IAG shareholders who are UK nationals magnified so that they represent a majority of the total voting rights in IAG in relation to that matter).

IAG is not subject to the sole or joint control of any of its shareholders; its shares are publicly listed and are widely held by many different undertakings and individuals who do not constitute a single

vote by IAG shareholders on such an appointment, the voting rights of IAG shareholders who are Spanish nationals would be magnified so that they represent a majority of the total voting rights in IAG in relation to that matter. In case of such a dispute between IAG and the Spanish Nationality Entity, should IAG refer the matter to its shareholders, the decision taken by IAG shareholders according to the abovementioned procedure would be binding. Should the person proposed by the nominations committee be approved by IAG shareholders, that person would be appointed.

- 15. From the above it is concluded that the criteria of Article 5(4)(b)(iii) of the Merger Regulation are satisfied and the turnover of Iberia should be added to that of IAG because IAG has the power to appoint more than half of the directors of Iberia. It is immaterial at which level of IAG the ultimate decision is taken, or how the voting rights of IAG's shareholders are weighted in case of a vote, what matters is that IAG has the power to appoint seven of the eleven directors.
- 16. In subordinate order it is also noted that IAG has the right to manage the affairs of IB Opco Holding in the sense of Article 5(4)(iv) of the Merger Regulation and also *de facto* has the power to exercise more than half of the voting rights in the sense of Article 5(4)(ii) of the Merger Regulation.
 - 1.1.2. (2) <u>IAG has the right to manage IB Opco's affairs (Article 5(4)(b)(iv) of the Merger Regulation)</u>
- 17. IAG's structures provide for the BA and Iberia operating companies to be managed in a balanced way. In this respect, IAG, BA and Iberia have entered into an Assurances Agreement under which they agreed certain assurances and principles in respect of the operation of the business of the IAG Group, with the Nationality Entities having a role in monitoring compliance with the Assurances.
- 18. The IAG Group Instruction makes clear that the operating companies' decision making is subject to IAG Management Committee approval. A number of listed actions or decisions cannot be taken without the prior approval of the IAG Management Committee. These include development of the strategy for the Group (including IB Opco), including the implementation and monitoring of that strategy, the annual corporate business plans for IB Opco, and the annual budgets or financial plans for IB Opco (including capital, revenue and manpower).
- 19. Finally, IAG has the right, under the IB Opco Shareholders' Agreement, to issue recommendations to the board of directors of IB Opco (including on the approval of the business plan and annual budgets), which are binding, unless contrary to the

undertaking. It currently has well in excess of 80,000 shareholders. A recent check showed that the largest shareholder is Bankia, a Spanish banking group (with c. 12.1%).

5

above-mentioned 'Assurances' or the fiduciary duties of the directors. ¹² Such recommendations are issued by IAG's CEO or board of directors.

- 20. IAG's right to issue binding recommendations to the board allows it to control IB Opco's board decisions in a number of areas including in relation to the business plan and annual budgets. The Assurances, which limit IAG's instruction right, are as follows:
 - The BA and Iberia operating companies shall continue to operate as airlines with their respective main bases in the UK and Spain and will retain separate operating licences and air operator's certificates and preserve their codes;
 - They shall take all reasonable steps to protect their respective slots and rights to operate to international destinations;
 - They shall retain their respective brands;
 - Their strategy will be developed in a way that reflects the importance of London Heathrow and Madrid Barajas which shall remain as fundamental parts of the multicentre strategy of the IAG Group;
 - Promotions of employees shall be based on merits without any form of discrimination;
 - Collective bargaining agreements and employment contracts shall continue to be organised within BA and Iberia operating companies respectively;
 - Specific commitments relating to pension schemes.
- 21. In view of the relatively limited scope of these Assurances, these leave a very wide margin of freedom to IAG to issue binding recommendations determining the strategic behaviour of IB Opco, in particular in areas such as investment policy, pricing, capacity offered on various routes, annual budget etc.
- 22. As a result, in light of IAG's rights to issue binding recommendations to the directors of IB Opco, it is concluded that IAG has the right to manage IB Opco's affairs and that therefore the condition in Article 5(4)(b)(iv) of the Merger Regulation is met.
 - 1.1.2. (3) <u>IAG has the power to exercise more than half of the voting rights in</u> Iberia (Article 5(4)(b)(ii) of the Merger Regulation)
- 23. All shares issued by IB Opco Holding¹³ carry one vote. IB Opco Holding's shares and voting rights are held as follows:
 - IAG: 43.1% of the shares and voting rights;
 - BA: 6.8% of the shares and voting rights; and
 - the Spanish Nationality Entity: 50.1% of the shares and voting rights.

See IAG Registration Document, paragraph 3.7.3.3.

As indicated above, IB Opco is a fully owned subsidiary of IB Opco Holding.

- 24. The Spanish Nationality Entity, as shareholder in IB Opco Holding, is required to exercise its voting rights at shareholder meetings as directed by IAG (provided that the corresponding resolutions are not contrary to the Assurances (see above) and do not result in the corporate structure no longer meeting the nationality requirements). The Spanish Nationality Entity would not be bound to follow IAG's orders if it considered that voting as directed by IAG would not be in the best interests of the Spanish national shareholders of IAG. If the Spanish Nationality Entity were considering not voting in accordance with an IAG recommendation or direction, IAG may refer the matter to the IAG shareholders. In the event of a vote by IAG shareholders on such a matter, the voting rights of IAG shareholders who are Spanish nationals would be magnified so that they represent a majority of the total voting rights in IAG in relation to that matter (according to the same rules as those foreseen in case of dispute between IAG and the Spanish Nationality Entity in relation to the appointment of the Chairman and CEO).
- 25. Paragraph 179 JN provides that the thresholds listed in Article 5(4)(b)(ii) of the Merger Regulation "are also met if the undertaking concerned de facto has the power to exercise more than half of the voting rights in the shareholders' assembly."
- 26. According to IAG, in practice, the Spanish Nationality Entity has not exercised its voting rights contrary to the directions or recommendations of IAG and it is difficult to imagine any circumstances in which the Spanish Nationality Entity might legitimately vote contrary to IAG's instructions. Also according to IAG, there are no issues where it is expected that the Spanish Nationality Entity might vote contrary to the instructions of IAG.
- 27. The JN recognises the particularities of corporate structures in the airline sector, where it states in paragraph 23 the "The concept of control under the Merger Regulation may be different from that applied in specific areas of Community and national legislation concerning, for example, (...) air transport (...)". Furthermore, the liberty of the Spanish Nationality Entity to vote contrary to IAG's instructions is confined to a limited number of cases (namely only when resolutions would be contrary to the Assurances, when they would result in the corporate structure no longer being compliant with the nationality requirements or when they would not be in the best interests of the Spanish national shareholders of IAG). Finally, even if the Spanish Nationality Entity would seek to vote contrary to the instructions of IAG, the final word would still be with IAG (through a decision of its shareholders' meeting). When taking all these elements on balance, it is concluded that IAG de facto has the power to exercise more than half of the voting rights in the IB Opco Holding shareholders' meeting, such that the criterion of Article 5(4)(b)(ii) of the Merger Regulation is satisfied.14

7

It being noted that IB Opco Holding holds all the shares in IB Opco so that these two companies are linked in the meaning of Article 5(4)(b)(i).

- 1.2. On the assumption that BA is the 'undertaking concerned'
- 28. In this situation, the turnover of Iberia should be added to that of BA under Article 5(4)(d) of the Merger Regulation, given that IAG owns more than half of the capital of BA and enjoys one or more of the powers and rights of Article 5(4)(b) of the Merger Regulation in Iberia (as discussed above).

2. Conclusion

- 29. On the basis of the above, it is concluded that such links as those provided for in Article 5(4) of the Merger Regulation exist between IAG, BA and Iberia, and that as a result, their turnovers must be added together for the purposes of determining jurisdiction under the Merger Regulation (and this regardless of whether IAG or BA would be the buyer).
- 30. IAG and bmi (together "the Parties") combined aggregate worldwide turnover in 2010 exceeded EUR 5 000 million¹⁵ and each of the Parties had an aggregate Union-wide turnover¹⁶ of more than EUR 250 million. The Parties did not achieve more than two-thirds of their respective turnover within one and the same Member State.¹⁷ The proposed Transaction therefore has Union dimension pursuant to Article 1(2) of the Merger Regulation (and this irrespective of the legal entity (be it IAG or BA) which will ultimately acquires bmi).

bmi had a worldwide turnover of more than EUR 600 million. IAG (including IAG, BA and Iberia) had a worldwide turnover of more than EUR14 000 million. BA had a worldwide turnover of more than EUR 9 000 million and Iberia had a worldwide turnover of more than EUR 5 000 million.

Turnover calculations were provided under the three geographical allocation methodologies usually applied in airline cases ('point of sale', 'point of departure', '50 / 50 split').

Consolidated annual IAG accounts have not yet been prepared and IAG turnover data are therefore presented as an aggregation of Iberia and BA turnover data. Iberia and BA have different accounting reference periods. Iberia's latest full year audited accounts are 12 months to 31 December 2010. BA's last full year audited accounts are 12 months to 31 March 2010. Full year (i.e. to 31 March 2011 audited accounts have not been prepared. In order to prepare for consolidated accounting, BA has however also has a 9-month period (to 31 December 2010) audited. For completeness, IAG presented turnover data (i) showing the last full year audited accounts for both Iberia and BA and (ii) showing full year audited accounts for IB and 9-month audited accounts for BA scaled-up to 12 months.

- bmi had a Union turnover of more than EUR 400 million. IAG (including IAG, BA and Iberia) had a Union turnover of more than EUR 8 000 million. BA and IB both had a Union turnover of more than EUR 4 000 million.
- bmi achieved more than two-thirds of its Union turnover within the UK. IAG did not achieve more than two-thirds of its aggregate Union turnover within one Member State.

IV. MARKET DEFINITION

1. Air transport of passengers

1.1. O&D markets

1.1.1. Point of origin/point of destination (O&D) city-pairs

31. In its practice, the Commission has traditionally defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" ("O&D") city-pair approach.18 Such a market definition reflects the demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable to a different city-pair. As a result, every combination of a point of origin and a point of destination is considered a separate market. In the past, the Commission has also taken into consideration supply-side elements such as network competition between airlines based on the hub and spoke structure of traditional carriers. However, the Commission considered that the degree of supply-side substitutability between different O&Ds remains limited. It considered in this respect that, although from a supply-side perspective a network carrier could in theory fly from any point of origin to any point of destination, in practice network carriers build their network and decide to fly almost exclusively on routes connecting to their hubs. 19 In line with the Commission's notice on market definition,²⁰ the Commission has given pre-eminence to demand-side substitution, whereby it considered that customers still need the transportation from one point to another and that competition still takes place on an

Commission's decision of 26 January 2011 in Case No COMP/M.5830 – Olympic/Aegean Airlines; Commission's decision of 27 July 2010 in Case No COMP/M.5889 – United Air Lines/Continental Airlines; Commission's decision of 14 July 2010 in Case No COMP/M.5747 – Iberia/British Airways; Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines; Commission's decision of 14 May 2009 in Case No COMP/M.5403 – Lufthansa/bmi; Commission's decision of 9 January 2009 in Case No COMP/M.5364 – Iberia/Vueling/Clickair; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding; Commission's decision of 6 August 2008 in Case No COMP/M.5181 – Delta Air Lines/Northwest Airlines; Commission's decision of 4 July 2005 in Case No COMP/M.3770 – Lufthansa/Swiss; Commission's decision of 11 February 2004 in Case No COMP/M.3280 – Air France/KLM. The O&D approach was confirmed by the General Court, most recently in Case T-342/07 *Ryanair Holdings plc v European Commission* [2010] ECR, paragraph 53.

On the network approach, see: Commission's decision of 27 July 2010 in Case No COMP/M.5889 – United Air Lines/Continental Airlines, recital 9 and following; Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines recital 11 and following; Commission's decision of 14 May 2009 in Case No COMP/M.5403 – Lufthansa / bmi, recital 8 and following; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 12 and following; Commission's decision of 6 August 2008 in Case No COMP/ M.5181 – Delta Air Lines/Northwest Airlines, recital 8 and following; Commission's decision of 4 July 2005 in Case No COMP/M.3770 – Lufthansa/Swiss, recital 12 and following; Commission's decision of 11 February 2004 in case No COMP/M.3280 – Air France/KLM, recital 9 and following.

Commission Notice on the definition of the relevant market, paragraph 13 (OJ C 372, 09.12.1997, p. 5)

O&D city-pair basis (even though some customers, in particular corporate customers, may have concluded corporate agreements for a range of routes and the commercial advantages stemming from such agreements may lead them to prefer one airline among the different airlines that operate on the route). It has thus traditionally upheld the O&D approach.

- 32. The Parties do not object to the O&D approach. However, they also maintain that the market for scheduled passenger air transport services increasingly has a network dimension (in particular for full-service carriers operating long-haul flights).
- 33. During the market investigation, some competitors indicated that the O&D approach fails to capture the nature and extent of network competition and the issues of slot availability and market dominance of carriers in slot restricted airports. It was also mentioned that while the O&D approach is appropriate for customers that have a particular destination in mind, it would not be appropriate for customers that do not. Some respondents also indicated that the Commission should pay particular attention as to which airports to include in the relevant O&D market, since not all airports at a given city are necessarily substitutable. Nevertheless, a large majority of respondents to the market investigation questionnaires (competitors, travel agents and corporate customers) agreed with the O&D approach.
- 34. In the light of the above, the effects of the Transaction will be assessed on the basis of the city-pair O&D approach, while all substitutable airports will be included in the respective points of origin and destination provided that they are perceived as substitutable by travellers. As suggested by some respondents to the market investigation, and in line with the Commission's practice, the question of airport substitutability will be examined for those O&D routes where relevant (in particular see below Section IV.1.1.3 and Section VI.1.1.4).
- 35. The issues of slot availability and dominance of carriers at slot restricted airports are addressed as part the competitive assessment, notably in the assessment of airport congestion, the analysis of potential entry and exits in the route-by-route assessment, and the assessment of the strengthening of IAG's position at London Heathrow.

1.1.2. Time sensitive vs. non-time sensitive passengers

- 36. In previous cases, when looking at O&D markets for air transport services, the Commission found that a distinction may be drawn between two main groups of passengers: (a) non-price sensitive passengers attaching, *inter alia*, a relatively high value to flexibility with respect to time and date of departure, and (b) more price sensitive passengers willing to trade off flexibility or premium services for a discounted ticket. Traditionally these two groups of passengers have been labelled as time sensitive ("TS") and non-time sensitive ("NTS") passengers, respectively.
- 37. The Parties argue that the line between TS and NTS passengers has never been a clearcut one and has further blurred in recent years. They do not regard the distinction

- between TS and NTS passengers as meaningful given that there is a chain of substitution between them.
- 38. The market investigation revealed that the distinction between TS and NTS passengers is still relevant. Indeed, a large majority of respondents (competitors, travel agents, and corporate customers) agreed with the Commission's traditional distinction between TS and NTS passengers which is considered to reflect in a realistic way the different needs of these passenger groups.
- 39. Several respondents indicated however that the distinction had gotten blurred over the last years as business travellers tended to be increasingly price sensitive and to book economy tickets and as competition from low cost carriers increased. Besides, many of the responding competitors stated that they had a single cabin policy on certain routes. However, in this regard, a majority of the competitors, travel agents and corporate customers considered that this would not affect the importance of the distinction between TS and NTS passengers. It was mentioned in this respect that the attractiveness of a flight would be differentiated between the two groups of passengers on the basis of time of departure, duration and point of arrival, and for NTS passengers, price would be relatively more influential. The availability of a particular cabin class would be a secondary feature for both classifications of passengers.
- 40. A majority of the competitors that responded classify passengers on the basis of their willingness to pay. The willingness to pay is identified on the basis of, amongst others, the time of booking, flexibility requirements, services at the airport, cabin comfort, length of stay, priority check-in, length of stay and whether or not there is a weekend between the dates of arrival and departure. In addition to the class of travel, time sensitive passengers are indeed identified by means of other criteria such as a booking date close to the day of travel, a same day return flight, flexible fares, sales distribution through corporate accounts, airport location, frequency of schedule and the use of frequent flyer programmes. A large majority of the competitors that responded confirmed their ability to discriminate (i.e. charge different prices) between the various categories of passengers and to apply yield management techniques.
- 41. In terms of passenger preferences, the market investigation showed considerable differences between TS and NTS passengers: for example the existence of daily frequencies, timing of departure and return flights, airport location and ticket flexibility were generally considered very important for TS passengers, while these were considered to be less important for NTS passengers. Also, the possibility of a same day return was generally considered important for TS passengers, while not for NTS passengers.

42. In light of the above, the effects of the Transaction will be assessed on the narrowest possible markets, namely on a market for TS passengers and on a market for NTS passengers.²¹

1.1.3. Airport substitutability

43. When defining the relevant O&D markets for air transport services, the Commission previously found that flights from or to airports which have sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers. In order to correctly capture the competitive constraint that flights from/to two different airports exert on each other, a detailed analysis taking into consideration the specific characteristics of the case at hand is necessary.²² In the present case, airport substitutability is particularly relevant for London, Moscow and Vienna.²³

1.1.3. (1) London

44. London has five main airports²⁴, namely Heathrow, Gatwick, City, Stansted and Luton. The travel distances and times between these airports and the centre of London are summarised in Table 1:

This allows the Commission to take into account specific aspects relevant for an analysis of corporate customers and passengers travelling for business purposes.

Commission's decision of 14 July 2010 in Case No COMP/M.5747 – Iberia/British Airways; Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding; Commission's decision of 11 February 2004 in Case No COMP/M.3280 Air France/KLM; See also judgement of the General Court of 6 July 2010 in case T-342/07 Ryanair plc v European Commission paragraph. 99 and following.

Berlin currently has two airports, Berlin-Schönefeld (SFX) and Berlin-Tegel (TXL). However, Tegel will cease operations in 2012 and all air transport will be relocated to an enlarged Schönefeld airport to be known as Berlin-Brandenburg or Willy Brandt airport. Considering these prospects and in line with the Commission's approach adopted in Case No COMP/M.5335 – Lufthansa/SN Airholding, flights to SFX and TXL will be considered as substitutable for the purposes of this decision.

And a sixth one: the new London Southend airport.

Table 1 - Distances and travel times from London airports to London city centre

Airport	Distance to	Private car	Public transport	
Import	city centre	Tirvate car	Tuone umspore	
Stansted	59 km	85 min	bus: 75 min	
			rail: 45 min	
Heathrow	28 km	65 min	Coach/bus: 65/135 min	
			rail: 55 min	
Gatwick	46 km	85 min	Coach/bus: 90/145 min	
			rail: 60 min	
Luton	54 km	44 min	bus: 60 min	
			rail: 25 min	
London	14 km	20 min	rail: 22 min	
City				
Southend	68km	105 min	rail: 53 min	

Source: Form CO

- 45. The question of London airport substitutability for O&D passengers is of particular importance for the present case. For many of the O&D overlap routes, most frequencies (if not all) are offered from Heathrow. Also, often Heathrow has a higher ratio of TS passengers than other London airports. The Parties both have a strong presence at Heathrow and for a number of routes they are the only carriers operating out of Heathrow.
- 46. Previous Commission decisions determined that a certain degree of substitutability exists between the London airports, at least for NTS passengers.²⁵ Also, the Commission found in the past that at least the airports of Heathrow, Gatwick and City were considered substitutable for both TS and NTS passengers flying from London to Madrid and to Barcelona²⁶ and that the airports of Heathrow and Gatwick were considered substitutable for both TS and NTS passengers flying between London and Athens.²⁷
- 47. The Parties, without distinguishing between TS and NTS passengers, consider that all London airports (Heathrow, Gatwick, City, Stansted and Luton and the new London

Commission's decision of 22 September 1997 in Case No COMP/M.967 KLM/Air UK, recital 24; Commission's decision of 10 December 2003 in Case No COMP/D2/38479 British Airways/Iberia/GB Airways, recital 21 and following of the summary of the Commission's assessment; Commission's decision of 27 June 2007 in Case No COMP/M.4439 – Ryanair/Aer Lingus, recital 109 and following; Heathrow, Gatwick, Stansted, Luton and City were considered substitutable for scheduled point-to-point passenger air transport services between Dublin and London.

Commission's decision of 14 July 2010 in Case No COMP/M.5747 – Iberia/British Airways, recital 30.

²⁷ Commission's decision of 26 January 2011 in Case No COMP/M.5830 – Olympic/Aegean Airlines, recital 1644.

Southend airport) and arguably also further airports in the South East of England are substitutable regardless of the city-pair serviced.²⁸

- 48. The Parties refer in this respect to the Commission's Ryanair/Aer Lingus decision,²⁹ where the Commission observed that "all five London airports are within substantially less than 100 km from the centre of London, one of the most densely populate agglomerations in Europe". The Commission further noted that "Driving times by car between the city centre and the airports are below or not significantly above1 hour (1 hour and 25 minutes maximum)" and that "The fact that all the London airports are largely within the indicative 100 km / 1 hour driving time benchmark thus suggests that these airports are substitutable."
- 49. However, the 100 km/one-hour criterion was viewed as only a first "proxy".³⁰ Also, the 100 km/one-hour criterion was defined by the Commission in the specific case of routes served out of Dublin by two airlines with typical attributes of low-frills point-to-point carriers. This "rule" is thus not necessarily strictly applicable for other cases, such as routes served by two network carriers.³¹ Therefore, a more detailed analysis taking into consideration the characteristics of the case at hand rather than a specific proxy should be used to correctly capture the competitive constraint that flights from/to two different airports exert on each other.
- 50. The Parties also refer to a number of papers recently prepared in the UK with respect to the various London airports. They first refer to the UK Competition Commission's final report on the BAA Airport Market Investigation. In 2009, the UK Competition Commission investigated the effect on competition of the common ownership by BAA of seven UK airports, including the three London airports Heathrow, Gatwick and Stansted. In the context of its analysis, the Competition Commission looked amongst others at the question of substitutability of the three London airports. Evidence it found suggested a "significant substitutability of passenger demand between the BAA

The Parties argue that there is no basis for concluding that customer preferences vary depending on which city they are flying to; the individual city-pair assessments indicate that the Parties' services are constrained by third party services from any London airport.

²⁹ Commission's decision of 27 June 2007 in Case No. COMP/M.4439 – Ryanair/Aer Lingus.

This criterion was determined on the basis of information received from 50 different airports that were asked about the "commercial arguments and material that they use for the purpose of marketing airport services towards carriers and attracting them on their tarmac", see Commission's decision of 27 June 2007 in Case No COMP/M.4439 – Ryanair/Aer Lingus, recital 82.

The Commission for example did not use the 100km/one-hour proxy in a number of cases involving network carriers. See Commission's decision of 11 February 2004 in Case No COMP/M.3280 – Air France/KLM, recital 24 and following; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 54 and following; Commission's decision of 14 May 2009 in Case No COMP/M.5403 – Lufthansa/BMI, recital 45 and following.

Report of the Competition Commission of 19 March 2009: "BAA airports market investigation – A report on the supply of airport services by BAA in the UK".

London airports, with significant overlaps between their catchment areas, although to an extent that varies between different categories of passenger". 33 It also found that Heathrow, Gatwick and Stansted are exposed to each other's catchment area to a significant degree (which is higher than their exposure to the catchment areas of Luton and London City). Also, it referred to passengers' surveys that suggested that passengers regard Heathrow, Gatwick and Stansted as better alternatives for each other than non-BAA airports (the only possible exception to this is whether Stansted or Luton is, after Gatwick, the next best alternative to Heathrow). These surveys also showed a relatively low passenger sensitivity to fare increases (83 to 91 per cent of passengers would not switch in response to a £5 increase in air fares). It found that airlines operating routes from Heathrow considered that their main competitors tended to operate from the same airport. It finally noted that "As regards terminating passengers, airlines had a range of views, but a number made the point that Heathrow was preferred to Gatwick by many passengers, in particular business passengers".

- 51. They further refer to a recently published working paper of the CAA,³⁴ analysing the catchment areas of Heathrow, Gatwick, Luton and Stansted³⁵ under three different angles: (i) it defined the airports' catchment areas in function of surface travel time to the airport; (ii) it looked at data about the districts from which passengers originated and (iii) it looked at the geographic distribution of actual airport usage. All three approaches suggested that there was a considerable extent of catchment area overlap between Heathrow, Gatwick, Luton and Stansted.
- 52. The Parties finally refer to a report published in January 2012 by the UK CAA, setting out its initial view of market power of Heathrow, Gatwick and Stansted.³⁶ This report indicates that "for passengers travelling on direct services, Heathrow appears to be competing over a relatively broad geographic area, extending to include the South East and Greater London regions, and extending towards the west and north, particularly when attracting passengers to long-haul services. Consequently, there are very significant overlaps in the airport's catchment area with Gatwick, Stansted and Luton (amongst other smaller airports), although many passengers appear to have a strong preference for using services at Heathrow".
- 53. These various reports, even though they do support that there is indeed a certain degree of overlap between the catchment areas of the various London airports, are as such not sufficient to conclude whether or not flights offered from these various

Civil Aviation Authority, "Airport market power assessments, Catchment area analysis", Working Paper, October 2011.

See paragraph 10 of the report.

Due to its small size, narrow catchment area and focus on business passengers, City has been omitted from the analysis in the working paper.

[&]quot;Heathrow, Gatwick and Stansted – market power assessments", summary of the CAA's initial views – January 2012.

airports are substitutable for passengers travelling on specific routes.³⁷ Moreover, the CAA found in its 2011 passenger survey³⁸ that only 10% of short-haul passengers at Heathrow would be willing to switch away from Heathrow to another airport in light of a £5 (single ticket) / £10 (return ticket) price increase.³⁹ The CAA noted in this respect that "Overall, passengers at Heathrow appear to be the least willing to switch in response to an increase in price. This is perhaps not unexpected, as Heathrow has the largest proportion of passengers travelling for business reasons, who may be less price sensitive and may be more likely to travel under a corporate contract. Further, since prices at Heathrow are typically higher than at other London airports (with the possible exception of London City), Heathrow passengers responding to this question would have already revealed themselves as perhaps having a relatively high willingness to pay (albeit for a possible higher perceived service quality at the airport). (...) By contrast, approximately 20% of short haul passengers at Gatwick and Stansted would be willing to switch away from their current airport in light of a price increase, suggesting that they could be more price responsive than their Heathrow counterparts".

- 54. The Parties also refer to IAG's recent business cases prepared to assess whether it should launch services from City to Copenhagen and Stockholm, which are destinations already served by IAG from Heathrow. The Parties argue in this respect that nearly [20-30]% of the passengers that were expected to travel on the new services between City and Copenhagen and nearly [20-30]% of the passengers that were expected to travel on the new services between City and Stockholm were considered to be passengers who would, before the launch of the City services, have flown from Heathrow.
- 55. The Parties also argue that all six airports are attractive for TS passengers, and indicate that this is supported by the similarity of the "on the ground" products offered at each airport. Finally, they argue that the fact that some airlines have airport preferences in London should not prevent the Commission from concluding that services from any of the London airports are part of the same market.

In its working paper of October 2011 on catchment area analysis, the CAA itself indicated that while catchment areas can provide useful evidence, they should not be taken as establishing which airports are within the same geographic market and supplementary evidence (notably on switching) would need to be considered when defining the relevant geographic market. It indicated in this respect that "Catchment area analysis is a way of estimating the geographic area from which a large proportion of an airport's outbound passengers originate, or inbound passengers travel to, and their geographic distribution within this area. The size of catchment areas and overlaps between catchment areas of neighbouring airports could provide useful evidence of the potential for, and strength of, competition between there airports. (...) By contrast, geographic market definition analyses the area over which passengers would substitute to other airports in light of a small but significant non-transitory increase in price of 5 to 10% above the competitive price level at the original airport".

Civil Aviation Authority, "Airport Market Power Assessment, Passengers' Airport Preferences Results from the CAA Passenger Survey", working paper of November 2011.

It must be noted that passengers were asked to state their response given their knowledge of the alternatives available from other airports.

- 56. The market investigation showed mixed and divergent results with respect to the question whether or not, for the routes which are currently operated by both Parties, flights offered from other London airports were valid substitutes for flights offered from Heathrow. In particular with respect to TS passengers, the results of the market investigation were inconclusive.
- 57. A natural experiment on the London-Glasgow route (exited by bmi in March 2011) indicates that after bmi's exit, IAG has been able to increase its average prices of Glasgow flights offered from Heathrow. The presence of competitors operating to Glasgow from City and Gatwick did not seem to constrain the ability of IAG to increase its prices significantly on the Heathrow-Glasgow route, even for economy restricted fares. Additional information provided by the Parties on 15 March 2012 on the effects of bmi's withdrawal from the London-Glasgow route does not contradict the conclusion reached by the Commission in this regard.
- 58. Given that results of the market investigation are inconclusive, the effects of the Transaction for each of the relevant routes will be examined on the narrowest possible market, namely a market comprising flights to and from Heathrow only. In line with the approach adopted in the decision relating to Case No COMP/M.5747 Iberia/British Airways, the effects of the Transaction will also be examined on a wider "London(three)" market comprising flights to and from Heathrow, Gatwick and City. Finally they will also be examined on an even wider "London(five)" market comprising flights to and from Heathrow, Gatwick, City, Luton and Stansted.

1.1.3. (2) Moscow

59. Moscow has three main airports, namely Domodedovo, Sheremetyevo and Vnukovo. The travel distances and times between these airports and the centre of Moscow are summarised in Table 2:

Table 2 - Distances and travel times from Moscow airports to Moscow city centre

Airport	Approximate distance to city centre	Private car	By aeroexpress	By shuttle bus
Domodedovo	42km to the	47 min	45 min plus 11 min	25-30 min plus
(DME)	South East		on metro	28 min on metro
Sheremetyevo	29 km to the	30 min	35 min plus 10 min	25 min plus 27
(SVO)	North West		on metro	min on metro
Vnukovo (VKO)	28km to the	35 min	35-40 min plus 15	25 min plus 25
	South West		min on metro	min on metro

Source: Form CO

- 60. The Parties consider that the airports of Domodedovo, Sheremetyevo and Vnukovo are substitutable. There are no previous Commission decisions regarding the substitutability of the Moscow airports.
- 61. The results of the market investigation were inconclusive with respect to the question whether or not passengers travelling between London and Moscow would be willing to fly to Sheremetyevo in case prices of flights to Domodedovo would increase with 5-10%.

62. However, since the Transaction leads to serious doubts with respect to the London-Moscow route irrespective of the question whether or not the Moscow airports are substitutable, this question can be left open for the purposes of the present Decision.

1.1.3. (3) Vienna

63. Bratislava airport is located at 87 km from Vienna Schwechat airport. There are frequent public transport services between Bratislava airport and Vienna City centre. The travel times between Bratislava airport to the centre of Vienna are summarised in Table 3:

Table 3 - Travel times from Bratislava airport to Vienna city centre

Airport Bus	Train	Twin City Liner (boat)
110 min	Train: 60-90 min /Bus: 25 min	75-90 min

Source: Form CO

- 64. The Parties consider that Vienna Schwechat and Bratislava Airport are substitutable.
- 65. The Commission has previously considered that services from and to Vienna and Bratislava airports are substitutable as regards air transport services to and from Dublin.⁴⁰
- 66. The market investigation showed that, if prices of flights between London and Vienna Schwechat were to increase by 5-10%, only very few passengers (both as regards TS and NTS passengers) would switch to flights to Bratislava Airport.
- 67. Since the Transaction does not raise serious doubts with respect to the London-Vienna route irrespective of the question whether or not the airports of Vienna and Bratislava are substitutable, this question can be left open for the purposes of the present Decision.

1.1.4. Direct/indirect flights

- 68. The level of substitutability of indirect flights to direct flights largely depends on the duration of the flight. As a general rule, the longer the flight, the higher the likelihood that indirect flights exert a competitive constraint on direct flights.⁴¹
- 69. When defining the relevant O&D markets for air transport services, the Commission has considered in previous decisions⁴² that with respect to short-haul routes (below 6

Commission's decision of 27 June 2007 in Case No COMP/M.4439 – Ryanair/Aer Lingus at recital 225.

Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines, recital 24 and following; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 36 and following.

hours flight duration) indirect/one-stop flights generally do not provide a competitive constraint to direct/non-stop flights absent exceptional circumstances (for example the direct flight does not allow for a one-day return trip, or the share of indirect flights in the overall market is significant). The Commission has sometimes distinguished midhaul routes, which are routes of more than three hours where direct flights normally do not provide the option of one-day return trips, so that indirect flights may be able to compete with direct flights.⁴³ With respect to long-haul routes (more than 6 hours flight duration), the Commission has considered in the past that indirect flights constitute a competitive alternative to direct services under certain conditions (for example if they are marketed as connecting flights on the O&D pair in the computer reservation system).⁴⁴

- 70. The Parties have submitted market shares for all direct-direct, direct-indirect and indirect-indirect overlap routes. For those routes where their activities overlap on a direct-direct basis, they do not consider further the competitive constraint of indirect/one-stop flights when in aggregate they account for under 10% of travel on the O&D pair.
- 71. The question of the substitutability of direct and indirect flights, which is relevant for flights from London to Riyadh and Jeddah, will be examined in the competitive assessment of these routes.

Commission's decision of 28 August 2009 in Case COMP/M.5440 – Lufthansa/Austrian Airlines, recital 25 and following; Commission's decision of 14 May 2009 in Case No COMP/M.5403 – Lufthansa/bmi, recital 17; Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 37 and following; Commission's decision of 4 July 2005 in Case No COMP/M.3770 – Lufthansa/Swiss, recital 16 and following.

Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines, recital 26, Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 37 and following; Commission's decision of 4 July 2005 in Case No COMP/M.3770 – Lufthansa/Swiss, recital 16 and following, Commission's decision of 5 March 2002 in Case No COMP/M.2672 – SAS/Spanair, recital 12 and following.

Commission's decision of 28 August 2009 in Case No COMP/M.5440 – Lufthansa/Austrian Airlines, recital 27; Commission's decision of 14 May 2009 in Case No COMP/M.5403 – Lufthansa/bmi, recital 15-16, Commission's decision of 22 June 2009 in Case No COMP/M.5335 – Lufthansa/SN Airholding, recital 47 and following, Commission's decision of 6 August 2008 in Case No COMP/M.5181 – Delta Air Lines/Northwest Airlines, recital 16 and following, Commission's decision of 4 July 2005 in Case No COMP/M.3770 – Lufthansa/Swiss, recital 16 and following, Commission's decision of 12 January 2001 in Case No COMP/M.2041 – United/US Airways, recital 13 and following.

1.1.5. Substitutability of charter flights and scheduled flights

- 72. When defining the relevant O&D markets for air transport services, the Commission has previously held that charter flights were not part of the same product market as scheduled flights.⁴⁵
- 73. The Parties have only produced market shares both including and excluding charter services for routes on which charter services account for at least 1,000 passengers over the last four IATA Seasons, and in particular for London-Marrakech.
- 74. It can be left open for the purpose of this Decision whether passenger air transport services offered on charter flights belong to the same market as passenger air transport services offered on scheduled flights as the conclusion of the competitive assessment remains the same irrespective of the precise market definition.

1.1.6. Substitutability of train transports services with air transport services

- 75. When defining the relevant O&D markets for air transport services, the Commission has previously also considered other transport alternatives to the extent that they are substitutable to a flight (intermodal competition). This has been considered in cases where alternative modes of transport on the respective O&D route can be considered comparable in terms of price, quality and (global) travel time and can therefore be considered as valuable alternatives by customers.
- 76. The question of substitutability of train transport services with air transport services is relevant in this case for the London-Manchester, London-Edinburg, and London-Aberdeen routes. This issue will be examined on the relevant route by route competitive assessment.
- 77. However, the reduction in travel time by train referred to by the Parties in the notification, relating to the HS2 project, is not relevant considering the time horizon of merger control. Indeed, the first phase of the project (high speed services between London and Birmingham) is expected to be completed in 2026 and the second phase (high speed services from London to Manchester and Leeds) in 2032-2033.

Commission's decision of 27 June 2007 in Case No COMP/M.4439 – Ryanair/Aer Lingus, Commission's decision of 17 December 2008 in Case No COMP/M.5141 – KLM/Martinair.

Commission's decision of 27 June 2007 in Case No COMP/M.4439[—] Ryanair/Aer Lingus; Commission's decision of 22 December 2005 in Case No COMP/M.3940 [—] Lufthansa/Eurowings; Commission's decision of 4 July 2005 in Case No COMP/M.3770 [—] Lufthansa/Swiss; Commission's decision of 11 February 2004 in Case No COMP/M.3280 Air France/KLM; Commission's decision of 17 June 2010 in Case No Comp/M.5655 [—] SNCF/LCR/Eurostar; Commission's decision of 26 January 2011 in Case No COMP/M.5830 [—] Olympic/Aegean.

- 1.2. Market for the provision of access to flights of another carrier for connecting passengers in the context of interlining arrangements
- 78. "Connecting" or "transfer passengers" are passengers who fly indirectly on a given city-pair (e.g. Belfast-Chicago via London Heathrow). These passengers do not necessarily travel each "leg" or "sector" of such journey with the same carrier. In the air transport sector, there is a variety of agreements whereby single tickets may be sold for indirect journeys including two legs operated respectively by the two carriers which concluded the agreement. In the framework of such agreements, the carrier granting access to its flights to passengers connecting onto another carrier's flight and travelling with a single ticket issued by this second carrier provides an "input" to the latter and is remunerated for it. This "input" is used to supply the downstream service, i.e. a ticket for an indirect journey on a given city-pair.
- 79. Two carriers that interline are thus engaged in a vertical relationship when one of them sells tickets for indirect journeys including one leg operated by the other carrier. There are cases where both carriers can sell tickets for indirect journeys including one leg operated by the other party to the agreement. In such a situation, the vertical relationship is symmetrical: both carriers are active upstream and downstream in respect of one another. There are also cases where the ticket for the indirect journey is sold by a third party (e.g. a travel agent). In such situations, which also result from the existence of an agreement between the two carriers, these are active on closely related markets: they both provide inputs corresponding to each leg of the indirect journey, which are used to offer the downstream service (the indirect journey).
- 80. The carrier or distributor operating on the downstream market sells a ticket for an indirect journey between two cities to a passenger. This downstream market is the market for the provision of air transport services between these two cities. As assessed above, this market has to be defined on an O&D basis, i.e. by reference to the two cities (or as the case may be, to the two airports) at both ends of the indirect itinerary. Depending on the specific O&D, such a downstream market may include services to various airports serving the same city and / or transport services relying on another mode than air.
- 81. The carrier operating on the upstream market provides to the downstream carrier or distributor access to its flights between one end of the city pair on which the indirect journey is offered, and a connecting airport (e.g. for indirect journeys between Aberdeen and Los Angeles via London Heathrow, an upstream market for the provision of access to flights for connecting passengers corresponds to the Aberdeen-London Heathrow leg).
- 82. Such an upstream market has to be also defined on the basis of the city / airport pair between which the flight to which access is provided is operated. Indeed, a carrier or distributor wanting to supply indirect journeys e.g. between Aberdeen and Los Angeles via London Heathrow would need as an input access to flights between Aberdeen and London Heathrow. Indeed, flights between other cities cannot, in principle, constitute a valid substitute.

- 83. Moreover, for the purposes of defining such an upstream market, it appears that when London Heathrow is the connecting airport, it cannot be considered substitutable by other airports of the London area. It also appears that transport services on the city pair defining this upstream market by other modes than air, in particular train, cannot be regarded as a valid substitute for travel by air.
- 84. IAG underlined the possibility for passengers to reach London Heathrow from various cities in the UK by train or flights to other airports than Heathrow. However, the market investigation indicates that if "interline arrangements" between carriers operating from Heathrow with train operators or carriers flying to other airports than Heathrow may exist, they appear to be rather marginal, and in any event, access to such trains or flights would hardly be regarded as an acceptable substitute for flights to Heathrow, either by interlining carriers, travel agents or passengers connecting at Heathrow. This appears to be due in particular to significant extra travel time due to transfer between London airports or transfer between a railway station in London and Heathrow.
- 85. Indeed, for connecting passengers, Heathrow is neither their point of origin nor their point of destination as the flight between their original point of departure and Heathrow is only part of their journey. Therefore, for them and for the carriers or distributors that provide them with tickets for an indirect journey via Heathrow, a first leg of the journey arriving at another London airport than Heathrow, or based on another mode of transport than air, could not be regarded as a valid substitute for a flight arriving at Heathrow. This does not contradict the possibility than on downstream markets (markets for the provision of air transport services on a given city- pair), which are different in nature, services on the same city-pair between different airports and services based on different modes of transport may be substitutes in the eyes of consumers.
- 86. As a conclusion, it appears that the relevant markets for the provision of access to flights to Heathrow for connecting passengers in the context of interlining arrangements have to be defined on an O&D basis and include neither air services to other London airports than London Heathrow, nor transport services to London using other modes than air.

2. Air transport of cargo

- 2.1. Relevant product market
- 87. With regard to air cargo transport markets the Commission found in earlier decisions that the O&D approach to market definition is inappropriate. Indeed, cargo is generally less time sensitive than passengers and cargo is usually transported by trans-

modal means of transport "behind" and "beyond" the points of origin and destination.⁴⁷ The relevant market should be therefore defined more broadly.

- 88. The market investigation in the present case showed that a wider market may exist as, unlike passengers, cargo may be routed with a higher number of stopovers and therefore any indirect/one-stop route is a substitute for any direct/non-stop route.⁴⁸ While some market players argued that a separate market could be identified including only direct flights used to transport specific goods (such as time-sensitive products, fruit and vegetables, live animals, pharmaceuticals, valuables, etc.), the majority of the respondents indicated that such a distinction is not material.⁴⁹
- 89. With regard to cargo service operators, the market investigation confirmed that there is no reason to sub-segment the market according to the type of the provider as the four types of air cargo carriers, namely (i) cargo airlines with dedicated freighter planes; (ii) airlines with only belly space cargo capacity on passenger flights; (iii) combination airlines (i.e. airlines with both dedicated freighter airplanes and belly space cargo capacity); and (iv) integrators, ocmpete with each other for business with the same kinds of customers.
- 90. In addition, as established in previous Commission decisions, air cargo transport markets are inherently unidirectional due to differences in demand at each end of the route and must hence be assessed on a unidirectional basis.⁵² This was confirmed by a large majority of respondents in the market investigation.⁵³

Commission decision of 17 December 2008, COMP/M.5141, *KLM/Martinair*, para 35; Commission decision of 16 January 1996, IV/35.545, *Lufthansa/SAS*; Commission decision of 11 February 2004, COMP/M.3280, *Air France/KLM*, para 36; Commission decision of 28 August 2009, COMP/M.5440 *Lufthansa/Austrian Airlines*, para 28; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 37.

See replies to question No 7 of the requests for information to customers and competitors.

See replies to question No 8 of the request for information to customers and No 9 of the request for information to competitors.

Integrators offer not only airport to airport services but also handle cargo from the point of origin to the airport and from the airport to the final destination, including legal formalities such as customs clearance. Examples are DHL, UPS, FedEx and TNT.

See replies to question No 9 of the request for information to customers and No 10 of the request for information to competitors.

Commission decision of 17 December 2008, COMP/M.5141, *KLM/Martinair*, para 38; Commission decision of 6 August 2008, COMP/M.5181, *Delta Air Lines/Northwest Airlines*, para 19; Commission decision of 22 June 2009, COMP/M.5335, *Lufthansa/SN Airholding*, para. 399; Commission decision of 28 August 2009, COMP/M.5440, *Lufthansa/Austrian Airlines*, para 31; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 39.

See replies to question No 12 of the request for information to customers and No 13 of the request for information to competitors.

- 91. In previous cases, the Commission left open the question whether the market for air cargo transport should be further sub-divided according to the nature of the goods transported (for example, dangerous or perishable goods).⁵⁴ The Parties submit that no sub-segmentation according to the type of cargo should be made. The market investigation revealed that the majority of respondents (customers and competitors) agreed with the Parties that the cargo markets should not be segmented in this way. Indeed, nearly all cargo transporters declared that they carry all kinds of cargo in the same aircrafts.⁵⁵ Several respondents also pointed to the use of standardized packaging and to the fact that no different handling is required for loading and unloading.
- 92. Therefore, the competitive assessment in this case will be based on the market for air cargo transport that includes all kinds of transported goods.
- 2.2. Relevant geographic market
- 93. The Commission found in earlier decisions that the relevant market in intra-European routes of air cargo transport can be defined as European-wide and should include alternative modes of transport, notably road and train transport.⁵⁶ The Parties agree and the market investigation in the present case confirmed this view.⁵⁷
- 94. As far as intercontinental routes are concerned, the catchment areas at each end of the route broadly correspond to continents for those continents where local infrastructure is adequate to allow for onward connections (for example, by road, train, or inland waterways), such as Europe.⁵⁸ As regards continents where local infrastructure is less developed, the catchment area corresponds to the country of destination.
- 95. Concerning routes from Europe to the Middle East, and in particular those from Europe to Saudi Arabia, the market investigation showed that the majority of respondents believes that the relevant catchment area is either the whole Middle East Region or a smaller area including Saudi Arabia and other neighbouring countries such as UAE, Bahrein, Oman and Qatar.⁵⁹ This would be due, in particular, to the recent

Commission decision of 11 February 2004, COMP/M.3280, *Air France/KLM*, para 37; Commission decision of 17 December 2008, COMP/M.5141, *KLM/Martinair*, para 33; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 40.

See replies to question No 8 of the request for information to competitors.

Commission decision of 11 February 2004, COMP/M.3280, *Air France/KLM*, para 36; Commission decision of 28 August 2009, COMP/M.5440, *Lufthansa/Austrian Airlines*, para 29; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 41.

See replies to question No 14 of the request for information to customers and No 15.1 of the request for information to competitors.

Commission decision of 11 February 2004, COMP/M.3280, *Air France/KLM*, para 36; Commission decision of 28 August 2009, COMP/M.5440, *Lufthansa/Austrian Airlines*, para 30; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 42.

See replies to question No 16 of the requests for information to customers and competitors.

improvements of the local road networks and to free movement agreements entered into by some countries of the region. Some respondents also mentioned that the relevant market definition should include alternative modes of transport, such as freight ships.⁶⁰

96. In the case at issue it is however not necessary to conclude on the precise scope of the geographic market since no serious doubts arise on the routes from Europe to Saudi Arabia regardless of the market definition adopted.

3. Groundhandling

3.1. Relevant product market

- 97. Aircraft groundhandling refers to the servicing of an aircraft while it is on the ground. It covers a variety of airport services such as ramp services (including aircraft guiding and towing, baggage loading and unloading, freight and mail handling, refueling, deicing, catering, lavatory drainage, water cartage, cleaning and ground power) and passenger services (including check-in counter services, gate arrival and departure services, transfer counters, customer service and airport lounges).
- 98. With regard to the product market definition, the Commission considered in earlier decisions that groundhandling services can be divided into distinct segments on the basis of either the International Air Transport Association ("IATA") Standard Ground Handling Agreement or the EU Directive on groundhandling services,⁶¹ but the determination of whether each segment constituted a separate relevant market was left open.⁶² In other previous decisions the Commission examined possible alternative product market definitions but finally left the precise definition open.⁶³
- 99. The Parties agree, and the market investigation in this case confirmed, that the relevant product market for the provision of groundhandling services encompasses both passenger and aircraft handling. Indeed, while some market players indicated that a narrower market could be identified for specific services like aircraft re-fueling and catering or according to the contestable or non-contestable nature of the services

See replies to question No 11.1 of the request for information to customers and No 12.1 of the request for information to competitors.

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, pp. 36-45.

Commission decision of 11 January 2001, COMP/M.2254, *Aviapartner/Maersk/Novia*, para 15; Commission decision of 29 August 2000, COMP/M.1913, *Lufthansa/Menzies/LGS/JV*, para 11; Commission decision of 8 September 2010, COMP/M.5747, *Iberia/British Airways*, para 45; Commission decision of 26 January 2011, COMP/M.5830, *Olympic/Aegean*, para 311.

Commission decision of 25 March 1997, COMP/M.786, *Birmingham International Airport*, para 15; Commission decision of 22 December 1997, COMP/M.1035 *Hochtief/Aer Rianta/Düsseldorf Airport*, para 12; Commission decision of 5 February 2001, COMP/M.2262, *Flughafen Berlin II*, para 13; Commission decision of 5 May 2004, COMP/M.3382, *Iberia/Cobra Instalaciones/Serpista JV*, para 13.

considered, the majority of the respondents in the market investigation considered that groundhandling services include passenger and baggage registration, handling and leading the aircraft on the ground as well as aircraft cleaning and refueling.⁶⁴

100. Therefore, for the assessment of the present Transaction, the relevant product market definition for the provision of groundhandling services encompasses both passenger and aircraft handling.

3.2. Relevant geographic market

- 101. The Commission considered in previous decisions that the geographic scope for the provision (or contracting) of groundhandling services was restricted to a specific airport given that the services required at a particular airport could not normally be substituted by services provided at other airports. The Commission therefore concluded that the relevant geographic market for the provision of groundhandling services was the area of a specific airport but ultimately left the question open. The Commission also considered that a wider geographic market could be defined encompassing other airports within a catchment area that could attract airlines if groundhandling service providers were present at those airports.
- 102. The Parties argue that the Commission does not need to reach a firm conclusion on the geographic market as, regardless of market definition, the Transaction will not give rise to serious doubts.
- 103. In the case at issue, the market investigation was not entirely supportive of a specific airport market definition.⁶⁷ In the first place, some respondents declared that groundhandling services offered at Spanish airports vary from airport to airport. Other respondents indicated that airlines operating on the Spanish market organize bids to select their groundhandling service provider for several airports, thus contracting with one groundhandling company for all or a number of airports from/to where they operate.
- 104. Therefore, it cannot be excluded that the market for groundhandling services in Spain may have a wider geographic dimension encompassing in some cases more than one airport. However, the precise definition can be left open as the Transaction does not raise serious doubts irrespective of the precise geographic market definition adopted.

See replies to question No 7 of the request for information to competitors and No 8 of the request for information to customers.

See for instance Commission decision of 29 August 2000, COMP/M.1913, *Lufthansa/Menzies/LGS/JV*, para 12; Commission decision of 23 May 2006, COMP/M.4164, *Ferrovial/ Quebec/GIC/BAA*, p. 14; Commission decision of 26 January 2011, COMP/M.5830, *Olympic/Aegean*, para 314.

⁶⁶ Commission decision of 14 May 2001, COMP/M.2315, The Airline Group/NATS, para 20.

See replies to question No 12 of the request for information to competitors and No 13 of the request for information to customers.

4. Maintenance, repair, overhaul ('MRO')

4.1. Relevant product market

- 105. With regard to the product market definition, the Commission distinguished in earlier decisions four separate segments within the MRO market, namely (i) line maintenance, (ii) heavy maintenance, (iii) engine maintenance, and (iv) components maintenance.⁶⁸
- 106. The Parties agree with the Commission's previously established product market definition and the market investigation confirmed the Commission's view.⁶⁹
- 107. The precise scope of the product market definition for MRO services can be left open since the Transaction does not raise serious doubts under any possible product market definition.

4.2. Relevant geographic market

- 108. With regard to the geographic scope of the market for MRO services, the Commission has found that heavy maintenance services might be at least EEA-wide, whereas line maintenance could be local in scope⁷⁰ and engine maintenance world-wide.⁷¹ With regard to MRO services for components, the Commission considered these services to be world-wide.⁷² In recent decisions, the Commission left open the geographic market definition with regard to MRO services.⁷³
- 109. The Parties submit that the precise scope of the geographic market definition for MRO can be left open as no serious doubts would arise under any plausible market definition.
- 110. For the purposes of this Decision, the precise scope of the geographic market definition for MRO can be left open since the Transaction does not raise serious doubts under any geographic market definition.

Commission decision of 11 February 2004, COMP/M.3280, *Air France/KLM*, para 39; Commission decision of 28 August 2009, COMP/M.5440, *Lufthansa/Austrian Airlines*, para 37; Commission decision of 26 January 2011, COMP/M.5830, *Olympic/Aegean*, para 320.

See replies to question No 5 of the request for information to competitors and No 4 of the request for information to customers.

Commission decision of 14 April 2004, COMP/M.3374, SR Technics/FLS Aerospace, para 12.

⁷¹ Commission decision of 11 February 2004, COMP/M.3280, Air France/KLM, para 40.

⁷² Commission decision of 11 August 1999, JV.19 - *KLM/Alitalia*, para 57.

Commission decision of 16 January 2009, COMP/M.5399 - Mubadala/Rolls Royce/JV, para 23; Commission decision of 14 May 2009, COMP/M.5403, *Lufthansa/bmi*, para 22; Commission decision of 28 August 2009, COMP/M.5440, *Lufthansa/Austrian Airlines*, para 39.

V. CONTEXT AND ANALYTICAL FRAMEWORK FOR THE ASSESSMENT OF THE TRANSACTION

1. Competitive situation likely to prevail absent the Transaction

- 1.1. Most likely situation absent the Transaction
- 111. In assessing the competitive effects of a concentration, the Commission compares the competitive conditions that would result from the Transaction with the conditions that would have prevailed absent the Transaction ("counterfactual"). In most cases the competitive conditions existing at the time of the Transaction constitute the relevant comparison for evaluating its effects. However, in some circumstances, the Commission may take into account future changes to the market to the extent that they can be reasonably predicted. It may, in particular, take account of the likely entry or exit of firms if the merger did not take place when considering what constitutes the relevant comparison.⁷⁴ In the case at hand, the Commission conducted a prospective analysis to take into account likely developments in the market.
- 112. IAG underlined that the effects of the Transaction must be compared against the situation that would have prevailed without the Transaction on a route by route basis and referred to that end to the confidential counterfactual analysis made by Lufthansa.⁷⁵ Lufthansa argues that absent the Transaction, bmi would become insolvent and exit all markets since Lufthansa would no longer want to provide financial support to this loss-making company. In this context, Lufthansa argues that bmi meets the criteria of the "failing firm defence" (see Section VII).

1.1.1. bmi's history and attempts to restructure it

113. Lufthansa acquired control of bmi in 2009 following a "put" option exercised by one of bmi's other shareholders. Since then, bmi has been incurring losses of more than GBP [...] per year and Lufthansa has been providing substantial funding to bmi in order to support its operations. Unsecured loans of GBP [...] were granted and subsequently converted into equity. Moreover, bmi benefited from capital increases of GBP [...] and GBP [...] respectively in June 2010 and May 2011. bmi also received GBP [...] through the sale of slots at Heathrow to Lufthansa and Swiss, which is part of the Lufthansa group, and GBP [...] through loans granted by the Lufthansa group and secured by aircraft and slots⁷⁶.

Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 9 (OJ C 31, 5.2.2004, p.5).

See for instance paragraph 6.92 of the Form CO.

Annex 8-1 to Lufthansa's reply to the request for information of 16 February 2012.

114. Table 4 provides bmi's net earnings in GBP million⁷⁷. In 2010, bmi's negative earnings accounted for around -[...]% of its turnover, which is an indication of very substantial losses.

Table 4: bmi's net earnings 2008-2012 (in GBP million)

2008	2009	2010	2011 (unaudited)	2012 (forecast)
-[]	-[]	-[]	- []	-[]

- 115. Lufthansa considers that bmi's persisting losses result from structural disadvantages: obsolete equipment, lack of a market niche with a respective brand and business model, and structural disadvantages stemming from high airport charges at Heathrow, which are designed to attract long-haul traffic rather than a short/ mid-haul business such as the one operated by bmi.
- 116. Lufthansa indicated that as with other Lufthansa affiliates, it had sought to have bmi benefit from synergies with the broader Lufthansa Group, e.g. by joint purchasing and other contracts, joint facilities with other Lufthansa Group companies (e.g. joint maintenance in London), use of other affiliates' services for handling and check-in, and joint marketing in particular with the access to Lufthansa's sales organization like corporate contracts in Germany. It also mentioned its attempts to restructure bmi since it acquired control of it. The first Lufthansa restructuring plan, "bmi Turn-around Plan", dates back to 2009 and was aimed at downsizing the business, moving the focus from domestic to mid-haul routes, and operating wet leases to Lufthansa. According to Lufthansa, the new focus of mid-haul routes improved the overall cost structure, and the measures were generally considered as a success but were eventually insufficient to trigger a turn-around.⁷⁸
- 117. Since the beginning of 2011, bmi has continued to generate significant losses. In May 2011, Lufthansa's management board asked bmi's management to work out a drastic restructuring plan On 24 August 2011, bmi's management presented the core elements of this plan called "Focus bmi" to Lufthansa's management board. bmi's management's proposal was based on four modules designed as separate steps: i) further network downsizing and increased focus on mid-haul routes, ii) increased role as a "production platform" for the Lufthansa group (e.g. through wet lease agreements), iii) specific approach towards domestic UK routes, iv) divestment of surplus slots.

Annex 9 to Lufthansa's reply to the request for information of 16 February 2012 (amended version of 27 February 2012).

Lufthansa's reply to the request for information of 16 February 2012.

1.1.2. Options considered by Lufthansa

- 118. In parallel to the development of the restructuring plan, Lufthansa explored sale options. As of August 2011, investment bank Morgan Stanley approached potential buyers on behalf of Lufthansa. [Redacted Refers to Morgan Stanley's initial contacts]. Lufthansa eventually received offers only from IAG and Virgin Atlantic Airways (hereafter: "Virgin"). Lufthansa received an indicative offer from IAG on [...] September 2011 and an expression of interest from Virgin on [...] October 2011.⁷⁹
- 119. Alongside sale and restructuring, Lufthansa's management board assessed other possible options, namely solvent wind-down, immediate insolvency and continuation of operations. However, in August 2011, Lufthansa's management board dismissed the solvent wind-down and continuation options, which it found too expensive.⁸⁰
- 120. As of August 2011, Lufthansa's management board repeatedly held detailed discussions on the basis of cost simulations for the remaining options, namely restructuring, insolvency, sale to IAG, and sale to Virgin. By mid-December 2011, the costs of the various options were evaluated as follows:

[[]Redacted – Refers to confidential discussions regarding another possible transaction]

Minutes of the meeting of Lufthansa's management board of [...] August 2011.

Table 5: costs of the various options as estimated by Lufthansa

(in EUR million)	Restructuring (Focus bmi)	Insolvency	Sale to IAG (based on offer of 9/12/2011)	Sale to Virgin (based on offer of 11/12/2011)
Estimated net cost of the option ⁸¹	EUR []	EUR [] + [] ⁸²	EUR [] ⁸³	EUR [] ⁸⁴
Additional risks	[]85	[] ⁸⁶	[]	[]

<u>Source:</u> Annex 4 to Annex 1 to the Form CO, Annex 17.2 to Lufthansa's reply to the request for information of 16 February 2012 and other documents provided by Lufthansa

- 121. It follows from Table 5 that all considered options involved a negative revenue (in other words, a cost) for Lufthansa. [...]⁸⁷:
 - [...]
 - [...]
- 122. [Redacted Refers to LH Group decision making criteria]88

Excluding an additional cost of EUR [...] corresponding to part of bmi's pension liabilities that Lufthansa would take up in all scenarios.

In case of insolvency, unsecured trade claims of companies of the Lufthansa group vis-à-vis bmi would risk not being honoured, which would entail a direct cost for Lufthansa. Lufthansa' exposure in case of bmi's insolvency from ongoing trading between Lufthansa and bmi is overall at a limited level, typically in the range of a few millions.

The gross purchase price obtained by Lufthansa would be EUR [...]. The net cost of the sale options corresponds to the gross purchase price obtained by Lufthansa netted off various adjustments such as deductions following due diligence findings, and taking into consideration interim funding of bmi by Lufthansa pending the closing of the sale as well as the effect of mitigation measures such as sales of slots.

The gross purchase price obtained by Lufthansa would be EUR [...].

^{85 [}Redacted – refers to risks for LH Group].

^{86 [}Redacted – refers to risks for LH Group].

These "maximum negative prices" correspond to the net costs of the two sale options for Lufthansa, as defined in Table 5.

See Lufthansa's internal document "Petition to the Management Board, 11 December 2011".

- 123. Lufthansa's supervisory board approved these proposals and Lufthansa continued negotiations with both IAG and Virgin.
- 124. On the basis of its due diligence investigation, [Redacted Refers to confidential negotiations with Virgin]. On 22 December 2011, Lufthansa and IAG signed a sale and purchase agreement on the basis of a final offer by IAG [Redacted Refers to IAG's final offer].
- 125. These elements constitute strong indications that if IAG had made no offer, or had proposed a price entailing [...], bmi's insolvency would have been Lufthansa's preferred option.
- 126. The Commission conducted in-depth analysis to assess the overall consistency of the figures and statements put forward by Lufthansa. For instance, the Commission investigated the magnitude of Lufthansa's trading exposure to bmi on the basis of a report commissioned by bmi to assess the outcome of a possible insolvency scenario⁸⁹ as well as various other documents provided by Lufthansa. This analysis confirms the overall consistency of the elements provided by Lufthansa.
- 127. It was difficult for Lufthansa to calculate precisely certain relevant parameters for the purposes of comparing the various options, [Redacted Refers to LH Group decision making criteria]. However, Lufthansa appears to have come to firm conclusions as to how these parameters should be globally quantified in that context, as evidenced by internal documents⁹⁰. Besides, even if some additional value adjustments could have been considered on some cost/revenue items (such as the loss of air transport revenues for Lufthansa), these adjustments are in total not of such a magnitude as to affect the conclusion that Lufthansa considered restructuring far more costly than insolvency, and that Lufthansa would have sold bmi neither to IAG nor to Virgin [Redacted Refers to LH Group decision making criteria] before the end of 2011. Moreover, all relevant cost/revenue elements appear to have been included in the assessment made by Lufthansa.
- 128. In addition, in 2011, bmi's critical financial situation required its directors to defer the filing of the 2010 statutory accounts, as a going concern declaration on a stand-alone basis would have required a "comfort letter", i.e. a guarantee by Lufthansa to cover bmi's losses for the next financial year. [...]⁹¹ The signing of a term sheet and later the conclusion of a sale and purchase agreement with IAG allowed bmi to submit its accounts on a "going concern" basis only a few days prior to the possible commencement of criminal prosecution against its directors. This indicates that

^{89 &}quot;Project Bow Draft: Estimated insolvency outcome analysis, Ernst & Young", 24 January 2012

^{90 [}Redacted – refers to a confidential internal document concerning decision making criteria]

^{91 [}Redacted – refers to confidential internal document]

Lufthansa was keen to leave the insolvency option open until an agreement could be reached with a potential buyer.

- 129. [Redacted Refers to measures adopted by bmi's management and Lufthansa] This confirms that insolvency was seriously considered by Lufthansa.
- 130. Therefore, the Commission considers that absent a sale of bmi to IAG, bmi would likely have gone insolvent and, as a consequence, would have exited the market quickly afterwards.⁹²
- 131. [Redacted refers to analysis of sale negotiations]^{93 94 95}
- 132. Considering in addition that the cost of restructuring was by far higher than the cost of insolvency [Redacted refers to analysis of sale negotiations], the Commission is of the view that in the absence of a firm offer by IAG [Redacted Refers to LH Group decision making criteria], Lufthansa would have decided in favour of the insolvency scenario.
- 133. To conclude, the pre-Transaction situation is not likely to be sustainable absent the Transaction. Following a detailed analysis of the arguments put forward by the Parties, the most likely situation absent the Transaction would be an immediate/very short term insolvency. In view of bmi's limited cash balance at the end of 2011 (GBP [...]), bmi would very likely stop operations at the beginning of the insolvency proceedings. Indeed, bmi would have quickly lacked all the vital inputs necessary to its business such as fuel, access to airports or aircraft maintenance. Therefore, the Commission considers that the relevant comparison to assess the effects of the Transaction in this case is with a scenario where bmi would have exited all markets.
- 134. During the market investigation, Virgin⁹⁶ claimed that he Transaction should be assessed against the position which existed prior to IAG's recent acquisition of six daily slot pairs from bmi, which was announced in September 2011, six weeks before IAG announced that it has reached an agreement in principle for the acquisition of bmi. According to Virgin, it would be wrong to assess the Transaction by reference to the situation which existed as at the date of announcement of the Transaction.

Even if discussed by some third parties, Lufthansa would have been very unlikely to provide significant additional cash to bmi for an interim period in order to sell valuable slots held by bmi at Heathrow. Indeed, Lufthansa would have had no incentive to do so as it would not have been able to channel more revenues from such sales to its benefit. Indeed, due to the likely magnitude of claims vis-à-vis bmi in case of insolvency, all proceeds from slot sales would have been allocated to bmi's creditors.

^{93 [}Redacted – refers to confidential internal document]

^{94 [}Redacted – refers to confidential internal document]

^{95 [}Redacted – refers to analysis of sale negotiations]

Virgin's submission of 16 February 2012.

- 135. The Commission considers that this approach is incorrect. Indeed, the acquisition of six daily slot pairs by IAG from bmi and the Transaction are not interdependent. The transfer of these six slots took place even before a sale and purchase agreement was signed by IAG and Lufthansa. Moreover, since Lufthansa took its decisions as regards the future of bmi in December 2011, it appears clearly that in the counterfactual, absent an offer by IAG [Redacted Refers to LH Group decision making criteria] bmi would not have become insolvent before December 2011. It would have become insolvent only after the transfer of the six daily slot pairs to IAG. Virgin's argument must thus be dismissed⁹⁷.
- 1.2. Consequences of bmi's market exit reallocation of slots at Heathrow
- 136. Pursuant to Article 8 (2) and 10 (2) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports⁹⁸ (hereafter: "the EU Slot Regulation"), a carrier holding a slot series in a given scheduling season is entitled to retain the same series in the next equivalent scheduling season if it can demonstrate to the slot coordinator that the series of slots has been operated for at least 80% of the time during the scheduling period for which it has been allocated for the operation of scheduled and programmed non-scheduled air services. This is referred to as the "use-it-or-lose-it" rule.
- 137. In case of bmi's exit from the market, its slots would then be made available to other carriers, either through sales (in the case of slots held at Heathrow) during or shortly before the insolvency proceedings⁹⁹, or through fall back to the slot pools and subsequent reallocation by the relevant slot coordinators, with possible exceptions for two specific categories of slots at Heathrow. The first category concerns certain slots which are

⁹⁷ Besides, the 6 slots in question are included in IAG slot portfolio at the time of the notification.

⁹⁸ OJ L14, 22.1.1993, p. 1.

⁹⁹ The UK Civil Aviation Authority (hereafter: "the CAA") indicated that the slots of a company going bankrupt would not automatically fall back to the pool provided the company held an operating licence and respected the "use-it-or-lose-it" rule. Pursuant to Article 9 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3), following bmi's insolvency, the CAA would have to undertake an assessment of bmi's financial situation and its ability to meet its obligations, for instance in relation to safety. This assessment may lead to the suspension or revocation of bmi's operating licence. However, the CAA indicated that this decision would not be automatic. Indeed, the CAA would take into consideration the impact of the withdrawal of the licence in the longer term, notably in terms of competition and choice for consumers. Moreover, a decision to revoke or suspend the licence would not be immediate. The CAA may also decide to grant a temporary licence if there was a realistic chance of a successful reconstruction of the airline. In that case, the "use-it-or-lose-it" rule would be suspended (Non-confidential version of the agreed minutes of the conference call of 9 February 2012 with the CAA., paragraphs 11 to 18). As long as bmi would retain its licence and it would not be established that bmi failed to comply with the "use-it-or-lose-it" rule for a given slot series, the liquidator / administrator would be likely to sell slots at Heathrow to seek to salvage the company or to raise the most value for creditors.

currently leased out by bmi to third parties for a period extending beyond the winter 2011-2012 IATA season and which account for around 9% of bmi's current slot portfolio¹⁰⁰. Should bmi become insolvent, subject to possible specific clauses in the lease contracts, many of these slots (none of which are leased out to IAG) are likely to become permanently held by their lessees¹⁰¹. The second category concerns slots which, pursuant to an arrangement entered into by IAG and Lufthansa alongside the Transaction, have been transferred by bmi to Lufthansa, which currently makes them available to bmi, and will be transferred to IAG after and if the Transaction closes in exchange for a GBP 60 million interim funding provided by IAG. However, should bmi become insolvent, these slots (hereafter: "the security slots"), which account for around [...]% of bmi's current slot portfolio at Heathrow, would be immediately transferred to IAG¹⁰².

- 138. In the absence of additional cash injection by Lufthansa, likely to trigger bmi's exit from all routes in a short timeframe, considering Airport Coordination Limited¹⁰³ (here after: "ACL")'s strict approach to the "use-it-or-use-it" rule¹⁰⁴ and consequently, the relatively short timespan before slots would be withdrawn in application of this rule, part and probably most of bmi's slots at Heathrow for the ongoing season (with the exception of the security slots and slots leased out to third parties) would end up in the slot pool. Indeed, bmi's liquidator / administrator would likely face difficulties to sell all or most of bmi's slots before these slots fall back to the pool in application of the "use-it-or-lose-it" rule.¹⁰⁵ As regards slots for the following season, bmi (or its liquidator) may have more time to sell them. However, for the reasons set out below, IAG would be unlikely to be the only acquirer of these slots, for the reasons explained below.
- 139. As regards Heathrow, the market investigation unambiguously confirmed that this airport is heavily congested, which means that available slots are insufficient to satisfy airlines' demand. In that context, in case of bmi's exit from the market, all the slots currently held by bmi would be very likely to be taken up, be it through sale (probably to a marginal extent), re-allocation via the pool, transfer to IAG in the case of the security slots, or permanent transfer in the case of slots leased out to third parties. Moreover, a significant proportion of bmi's slots at Heathrow would be likely to end up with other carriers than

Annex 20 to the Form CO.

Non-confidential version of the agreed minutes of the conference call of 14 February 2012 with ACL, paragraph 8; Lufthansa's reply to the request for information of 1 March 2012.

Lufthansa's reply to the request for information of 1 March 2012.

Airport Coordination Limited is the slot coordinator at Heathrow.

Non-confidential version of the agreed minutes of the conference call of 14 February 2012 with ACL, paragraphs 5-7..

Moreover, in view of bmi's financial situation, the granting of a temporary licence appears unlikely since the CAA would accept it only if there is a realistic chance of successful reconstruction.

IAG¹⁰⁶, unlike in the post-Transaction scenario where IAG would indirectly take control of all these slots, with the exception of slots leased out to third parties for so long as the lease agreement applies.

- 140. Several respondents to the market investigation indicated that if absent the Transaction bmi were to exit the market in the short term, they would consider entering some of the routes out of Heathrow exited by bmi. UK domestic and European short-haul routes were specifically mentioned. The fact that a relatively large portfolio of slots at Heathrow would be made available either through sale / lease or, probably to a far larger extent, through reallocation via the pool (in total, around 5% of all slots) would significantly facilitate the implementation of such entry plans.
- 141. Should bmi be able to sell / lease out slots, some of these slots may be acquired by IAG but there is no reason to believe that it would be the case for all or even a significant part of them. Indeed, according to data provided by IAG, a number of airlines other than IAG acquired slots at the Heathrow and Gatwick airports through purchases or leases between the summer 2008 and winter 2011 IATA seasons, including companies of the Lufthansa group, Delta, Aegean Airlines, United Continental Holding, Flybe, and Aer Lingus¹⁰⁷. This indicates that IAG is not the only airline ready to pay for the acquisition of scare slots at the most congested London airport. This was confirmed by ACL which mentioned as potential buyers not only IAG but also Virgin, and US and Gulf carriers¹⁰⁸.
- 142. It cannot be excluded that absent the Transaction, other carriers than IAG would try to purchase slots from bmi either before or during insolvency proceedings, in order to enter domestic or European short-haul routes. ACL indicated in this respect that should bmi exit from the market and sell part of its slots, it would expect such slots to be allocated to a mixture of long-haul and short-haul (including domestic) routes. It also pointed out that bmi's portfolio includes a proportion of slot pairs that would not be suitable to operate long-haul flights¹⁰⁹. These elements tend to indicate that at least part of bmi's slots would be used on short-haul routes (including domestic routes) such as those on which bmi currently operates, and not necessarily by IAG.
- 143. As regards the slots that would fall back to the pool, pursuant to Article 10 (6) of the EU Slot Regulation, 50 % of the slots included in the pool are destined to incumbents and

Most of bmi's slots are not part of the "security slots". There is no reason why the non security slots should all end up with IAG should bmi become insolvent.

Annex 22 to the Form CO, chart 14.

Non-confidential version of the agreed minutes of the conference call of 14 March 2012 with ACL, paragraph 3

Non-confidential version of the agreed minutes of the conference call of 14 March 2012 with ACL, paragraph 3.

50% to airlines which qualify as "new entrants" under the above-mentioned Regulation. In practice, numerous airlines would qualify as potential new entrants at London Heathrow.¹¹⁰

- 144. Slots that fall back to the pool would be allocated free of charge. According to ACL, the allocation criteria are in essence the following, both for the part of the pool reserved for new entrants and for the other part: in the first instance, according to the EU Slot Regulation, ACL would have to give priority to scheduled services. Then ACL would give priority to the applicants that are holding slots only in the winter or summer season and intend to offer year-round services. Finally ACL would consider a range of criteria such as: (i) priority to applicants that are already operating weekly frequencies (e.g. 3 operations per week) and want to offer daily services, (ii) the level of competition¹¹¹ on the routes for which the slots are requested¹¹², (iii) the situation at the airport terminals, the runway limits and the stand limits, as it would be important that the timing requested matches the availability of space and facilities.
- 145. As regards the criterion related to the level of competition on routes for which slots are requested, ACL did not provide much detail about how it would apply concretely. Nevertheless, IAG specified that if absent the Transaction bmi were to become insolvent and a carrier were to ask for slots from the pool to operate on a route exited by bmi, the reduction in competition and consumers' choice due to bmi's exit from the route in question would be taken into consideration in the allocation of the slots¹¹³. Furthermore, in order to assess the competitive situation on a route, ACL would primarily consider airport pairs rather than city pairs. ACL specified in this respect that even the qualification of a carrier as a new entrant on a given intra Union route pursuant to Article 2 (b) of the EU Slot Regulation would not depend on whether services are offered on the same city pair but from different airports¹¹⁴.

In particular, according to Article 2 (b) of the EU Slot Regulation, an airline requesting slots to operate on a route between two Union airports where at most two other carriers operate, where if the air carrier's request were accepted the air carrier would hold less than 5 slots on that day for that route, would qualify as a "new entrant".

ACL indicated that this criterion comes from point 7.4 of the IATA Slot Guidelines.

ACL explains that as regards the criterion concerning the existing level of competition on certain routes, it should be underlined that despite slots' lack of route specificity, carriers indicate in their applications the routes on which the slots requested are going to be used. In this respect, airlines are under an obligation to provide correct information to ACL. If they provide false information, ACL has the power (under Article 7 (2) of the EU Slot Regulation) not to take into consideration the slot request. (Non-confidential version of the agreed minutes of the conference call of 14 February 2012 with ACL, paragraph 11).

¹¹³ ACL's reply to the request for information of 16 February 2012.

Non confidential version of the agreed minutes of the conference call of 14 March 2012 with ACL, paragraph 5.

- 146. These elements indicate that should bmi exit all markets, carriers other than IAG requesting slots from the pool for routes from Heathrow where IAG would enjoy a strong competitive position following bmi's exit would likely be granted a relatively high degree of priority. This would be likely the case in particular for the routes from Heathrow to Aberdeen, Edinburgh, Nice, and Basel, where IAG would enjoy a monopoly position following bmi's exit, but also routes from Heathrow to Moscow, Cairo and Riyadh, where IAG would hold a high market share. Similarly, carriers requesting slots for routes where IAG does not operate but where bmi currently enjoys a strong position would also be likely to be granted a high degree of priority.
- 147. If all or part of bmi's slots were to fall back to the pool, providing an accurate estimate of the share of the pool that IAG would obtain appears complex. As a very rough estimate ACL expects British Airways to obtain approximately 40 % of the slots' share destined to incumbents¹¹⁵, i.e. around 20% of the slots returned to the slot pool¹¹⁶.
- 148. Therefore, one difference between the counterfactual and the post-Transaction situations relates to the distribution of slots at Heathrow. In absence of the Transaction, the likelihood that other carriers than IAG may acquire part of bmi's substantial slot portfolio at Heathrow and enter routes where IAG would be in a monopoly or dominant position becasuse bmi's exit, or routes where supply would be significantly reduced following bmi's exit, would be higher than in the post-Transaction situation, where the entirety of bmi's slot portfolio would be controlled by IAG. Indeed, post-Transaction, due to the heavy congestion prevailing at Heathrow, entry opportunities would remain strongly limited by the scarcity of slots whereas in absence of the Transaction, entry barriers would be lowered by the reallocation of most of bmi's substantial portfolio between various carriers, through reallocation via the pool, slot sales (probably more marginally), an,d permanent transfer to lessees (in the case of slots leased out to third parties).
- 149. Other airports from which bmi currently operate in competition with IAG are much less congested than Heathrow. Therefore, the detrimental impact of the Transaction on slot availability for IAG's competitors, assessed by comparison to the counterfactual, is of much more limited importance for these other airports than for Heathrow, which is also bmi's main base.
- 150. The fact that slots can be and are actually traded at Heathrow does not affect the magnitude of the effects of the Transaction concerning the availability of slots at Heathrow as assessed by comparison to the counterfactual. Asked whether they could obtain necessary slots at Heathrow through purchases or leases in order to launch

Non confidential minutes of conference call with ACL of 14 February 2012, paragraph 12.

This is broadly consistent with the result reached in *Impact Assessment for revisions of Regulation* 95/93, Final Report, Steer Davies Gleave, March 2011 (http://ec.europa.eu/transport/air/studies/doc/airports/2011-03-impact-assessment-revisions-regulation-95-93.pdf), paragraph 10.149, where it is estimated that if the total number of slots at Heathrow went up by 10%, British Airways would acquire 25% of the new slots.

hypothetical new services, a majority of respondents to the market investigation that took a clear position on this question replied that they could not or that it would be either difficult or dependent on the requested timing^{117.} Moreover, assuming that enough slots would be available on the secondary or lease market to satisfy all requests, the price itself may constitute a barrier under normal conditions¹¹⁸. A respondent to the market investigation noted in this respect that "slots at a commercially viable price are not available from the pool or in the market."

- 151. Moreover, according to data provided by IAG^{119,} the number of daily slot pairs traded on average at Heathrow in each IATA season since 2009 has always been lower than 14, which represents around one quarter of bmi's slot portfolio only. In addition, bmi itself, unlike IAG, has been a significant seller and lessor of slots since 2009. For example, it sold 6 of the 14 daily slot pairs sold or leased out on average in the winter 2011 season. These elements suggest that the volume of slots available through sales or leases post-Transaction is likely to be significantly lower than bmi's overall portfolio of slots (the security slots being excluded), which would be reallocated to other airlines in the counterfactual.
- 152. Furthermore, several respondents to the market investigation stated that if absent the Transaction bmi were to exit the market in the short term, they would consider entering some of the routes exited by bmi. UK domestic and European short-haul routes were specifically mentioned. According to two respondents, a precise list of routes cannot however be defined. One of them underlined that that any decision would be predicated by its interpretation of actual and anticipated market conditions at the time. However, according to another respondent, "an exit of any competitor from the market presents opportunity for entry, as long as the charges at the airport are of an acceptable level."120 The recent conduct of IAG itself illustrates that the exit of a carrier from a route, including a UK domestic route, creates incentives for other carriers to either enter or expand on this route. Indeed, following bmi's exit from the Heathrow-Glasgow route in March 2011, IAG significantly increased capacity on this route where it was already present¹²¹. Moreover, the exit of a carrier from a route does not necessarily mean that there was room only for the other carriers operating on the route when such exit is triggered by insolvency instead of a route-specific exit decision.

¹¹⁷ Replies to question 40 of the competitors questionnaire (Q1).

For example, IAG purchased 6 daily slot pairs from bmi in September 2011 for a consideration of GBP [25-50] million.

Annex 22 to the Form CO, table A.10.

Replies to questions 35 and 35.1.1 of the competitors questionnaire (Q1).

¹²¹ IAG's submission of 15 March 2012 "Case study: London-Glasgow".

- 153. The Transaction is not expected to have a similar effect on potential new entrant's incentives to enter/expand on routes as bmi's market exit because the Transaction would not translate into a clear and immediate reduction in capacity on the routes where bmi currently operates. Indeed, other carriers' incentives to enter on relevant routes would appear to be more limited than in the counterfactual.
- 154. It thus appears that in the counterfactual, bmi's exit would have heightened other carrier's incentives to enter the exited routes, at least to some extent. Besides, as explained above, the ability of these carriers to enter would have been heightened by the reallocation/sale of bmi's slots at Heathrow.
- 155. In conclusion, it appears that, post-Transaction, IAG would be likely to be less threatened by new entries on the routes where bmi currently operates than in the counterfactual. This is due to lower incentives and higher barriers to entry in the post-Transaction scenario than in the counterfactual.
- 156. It is against this counterfactual that the Commission assessed the effects of the Transaction on the relevant markets.
- 157. Another consequence of the counterfactual identified by the Commission is that issues relating to potential competition within the meaning of the Horizontal Merger Guidelines, would not raise serious doubts as to the compatibility of the present Transaction with the internal market. Indeed, even if pre-Transaction, bmi would have been a potential entrant on routes operated by IAG, possibly acting as a kind of maverick constraining IAG, the counterfactual (i.e. bmi's market exit) would make such theory of harm irrelevant.

2. Treatment of alliance and code-share partners

158. Another issue regarding the conceptual framework for assessing the competitive impact of the Transaction relates to the treatment of airline alliances and codeshare partnerships.

2.1. Treatment of alliance partners

- 159. British Airways and Iberia are members of the oneworld alliance whereas bmi is a member of the Star alliance. Post-Transaction, the merged entity would be a member of the oneworld alliance.
- 160. In line with the Commission's earlier decisions¹²², IAG's alliance partners are not considered for the determination of affected markets except concerning routes and carriers concerned by the Transatlantic Joint Business. Pursuant to the Transatlantic Joint Business agreement, IAG and American Airlines have put in place extensive

¹²² Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*, p. 11, Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*, p. 10, Commission decision of 14 July 2010, M.5747 – *Iberia / British Airways*, p. 55-56.

cooperation on their routes between Europe and North America, including revenue-sharing.

2.2. Treatment of codeshare partners

- 161. The Parties have currently no codeshare agreements between themselves.
- 162. British Airways and Iberia have codeshare relationships with a number of other carriers, notably members of the oneworld alliance.
- 163. bmi has codeshare agreements typically (but not only) with Lufthansa Group and Star alliance carriers, most of which are expected to terminate as a result of the Transaction.
- 164. According to IAG, the existence of a bmi codeshare relationship on a given city-pair should have no material impact on the competitive conditions existing on that city-pair, as it is unlikely to have any appreciable effect on the operating carrier's strategy to continue flying on the city-pair in competition with IAG.
- 165. In some cases, bmi operates direct services on city-pairs on which IAG currently only codeshares on a third party carrier's services. This is the case in particular for the Heathrow-Amman route. In circumstances where IAG proposes to continue bmi flying on such a city-pair, continuation of the codeshare post-Transaction would result in a "parallel codeshare" (i.e. IAG both operating direct service and codesharing on a third party carrier's direct service). IAG indicated that in such cases, it was likely to discontinue the current codeshare relationship.
- 166. Existing codeshare relationships between either Party and third parties have been taken into account as appropriate and relevant in the competitive assessment.

VI. COMPETITIVE ASSESSMENT

1. Air transport of passengers

1.1. Closeness of competition

- 167. Both IAG and bmi offer similar products to their passengers, including different travel classes, loyalty programmes and support for connecting passengers. They have a similar business model as traditional network carriers with a wide range of interline agreements with other carriers. The Commission's market investigation has also shown that IAG and bmi are perceived as having strong brands in particular on the UK domestic routes.
- 168. In addition to the general considerations below, the specific results of the market investigation as regards closeness of competition for each individual O&D route will be summarised in the relevant competition assessment sections of the route by route analysis, where relevant.

1.1.1. TS passengers

- 169. IAG submitted a "Customer Insight Survey" conducted by BA, [...]¹²³ ¹²⁴. [Redacted Analysis of confidential information stemming from the survey]
- 170. Despite the results of this survey, the Commission points out that easyjet generally operates from Gatwick, Luton and Stansted whereas IAG and bmi generally operate from Heathrow. It is therefore likely that easyjet may generally represent a weaker substitute to IAG's flights from Heathrow for those routes on which bmi has operations from Heathrow. This seems particularly relevant for TS passengers and for transfer passengers. In addition, the market investigation confirmed that TS passengers would consider flying with low cost carriers only if these would provide sufficient daily frequencies and if their schedule would be optimised for the needs of TS passengers. Furthermore, operating to a primary airport was identified during the market investigation as an important condition for choosing a low cost carrier on a certain route.

1.1.2. NTS passengers

- 171. According to the above-mentioned survey, 125 the Parties argue that easyJet is a particularly close competitor. [Redacted Analysis of confidential information stemming from the survey]
- 172. The market investigation in this case also indicated that price is an important driver for NTS passengers, which would indicate that NTS passengers would be more likely to use low cost carriers than TS passengers.
- 1.2. Airport congestion in London
- 173. This Transaction has an impact on flights to and from the five London airports: Heathrow, Gatwick, City, Luton and Stansted. This section will describe the airport

See Annex 4 and Attachement H to the Form CO. The Customer Insight Survey is based on three sources: (i) "BA Global Satisfaction Monitor", a survey of UK and US BA Executive Club members who have been active in the past 12 months; (ii) "BA Competitor Monitor", a quarterly survey of UK and US BA Executive Club members who have travelled in the same cabin class of BA and on a competitor's services within the last three months; and (iii) "BA Brand & Communications Tracker" a survey of Business and Leisure flyers aged between 18-65 years in the UK ("Leisure" defined as flown once in the past 12 months for leisure, "Business" defined as flown twice in the past 12 months for business).

IAG (through BA) has a 15% shareholding in FlyBe Limited, however IAG explained that no special rights attach to this shareholding, and IAG (BA) has no board representation on the FlyBe board. In addition, Flybe and IAG have a codeshare agreement for the Gatwick-Aberdeen route, however this codeshare covers transfer passengers only and not O&D passengers on this route. Therefore, for the purposes of this decision, the Commission considers FlyBe as a competitor of IAG on the market for air transport services.

BA's "Customer Insight Survey". See reference above.

congestion issue at these London airports while constraints at the other end of the route will be assessed where and if relevant in the respective route by route analysis (see below Section 1.4).

1.2.1. LONDON HEATHROW

- 174. Heathrow is a fully coordinated airport under the EU Slot Regulation (Level 3)¹²⁷, meaning that each business and general aviation movement requires the prior allocation of a slot. At Heathrow there are constraints on airline access to slots across the whole operating day. It is therefore not currently possible for an airline to rely on the slot pool at Heathrow to launch or extend services and each season there is either very limited availability or no availability at all. ACL, the slot coordinator at this airport was unable to accommodate 38 daily slot pairs in Winter 2011 and in Summer 2012 they were unable to accommodate 41 daily slot pairs.
- 175. Currently, IAG, bmi and Virgin have bases at Heathrow¹²⁸ and they all currently hold slots at Heathrow. IAG with their 301 daily slot pairs (45% share of all slots) have the biggest portfolio of slots at this airport. bmi, in turn, has 56 daily slot pairs (8% of all slots), whereas Virgin has 20 slot pairs (3% of all slots).

1.2.2. LONDON GATWICK

176. Like Heathrow, Gatwick is designated as a fully coordinated airport under the EU Slot Regulation (Level 3). Demand currently exceeds capacity throughout most or all of the day at Gatwick. ACL, the slot coordinator at Gatwick confirmed that at this airport, in the Summer 2012 season, some of the early morning and late evening hours are fully allocated to their capacity (both for arrival and departure) on all days of the week except for maybe Saturday and Sunday. ACL was therefore unable to accommodate requests for 20 daily slot pairs at Gatwick in Summer 2012. In the Winter 2011 season, ACL was not able to accommodate 9 daily slot pairs at Gatwick

The Commission has not included London Southend in its assessment because of the very limited scope of operations from/to this airport. However, its inclusion would not change the outcome of the assessment.

Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1–6 and Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports.

According to the Parties, a carrier is deemed to have a base at an airport if it flies to at least eight destinations from that airport or specifies that airport as a base. The figure of eight destinations reflects a reasonable estimate of the number of destinations which would typically need to be flown in order to justify the costs of establishing a base (engineering capability, ground handling services and cabin crew facilities etc.).

Impact assessment of revisions to Regulation 95/93 Final report (Steer Davies Gleave, March 2011 available at: http://ec.europa.eu/transport/air/studies/doc/airports/2011-03-impact-assessment-revisions-regulation-95-93.pdf

even though slots were generally available with the exception of some few hours on some days.

- 177. easyJet has a base at Gatwick and they are the first holder of slots at Gatwick with 36% of all slots at this airport. As easyJet currently holds slots at Gatwick, the Parties argue that easyJet could reallocate slots within their own portfolio to increase frequencies on various routes. However, easyJet explained in their reply to the market investigation, that, as Gatwick is slot constrained at the beginning and end of the day, new services at these times would need to be operated at the expense of existing services. Furthermore, easyJet explained that it would also be difficult to obtain departure slots in the peak morning hours and therefore it would be difficult to operate a viable schedule on most of the relevant routes without replacing other flying. 131
- 178. FlyBe also has a base at Gatwick, where they hold 8% of the slots. Other relevant airlines which have bases at Gatwick are Virgin and Ryanair.

1.2.3. LONDON CITY

- Like Heathrow and Gatwick, City is designated as a fully coordinated airport under the 179. EU Slot Regulation (Level 3). The Parties believe that City is partly slot constrained, i.e. that the availability of slots is only limited at certain times of the day. ACL, the slot coordinator at this airport explained that an airline can rely on the pool to launch or extend services at City in both the Summer and Winter seasons. For example in Summer 2012 ACL allocated an additional 2 daily services to new entrants. In addition there are still remaining 146 daily slot pairs available which have not been used by the airlines. In Winter 2011 ACL were able to accommodate all slot requests and in Summer 2012 as well with the exception of 0.5 daily slot pairs. There are however, besides the availability of slots, some other limitations at City. Due to steep approach conditions, only short haul aircrafts certified to operate at City are admitted so not all airlines will be able to operate into City as they may not have the appropriate aircraft. The airport also operates a curfew period between midday on Saturday through to midday on Sunday when no aircrafts are allowed to operate due to local noise restrictions.
- 180. Air France has a base at City and is the first holder of slots at that airport, with a portfolio totalling 40% of all slots. IAG also has a share of 33% of all slots at City and also has a base there.

Annex 22 to the Form CO. The share of slots for both easyJet and FlyBe are as provided by the Parties and were calculated from the total number of slots held by each airline from the period 27 March 2011 to 24 March 2012. The source is Airport Coordination Limited (ACL).

easyJet non-confidential response to question 40 of Questionnaire 1 (air passenger services competitors).

1.2.4. LONDON LUTON

- 181. Luton is designated as a schedules facilitated (Level 2) airport in accordance with the IATA Worldwide Scheduling Guidelines, meaning there is potential for congestion during some periods of the day or week. However, there are no legally binding limitations or constraints on airlines access to the airport. Indeed, ACL were able to accommodate all requests to operate services at Luton. In Summer 2012 ACL allocated an additional 5 daily services to new entrants and 9 daily services to incumbents and there are still remaining 131 daily timings available which have not been used by the airlines.
- 182. easyjet has a base in Luton and is the first holder of slots, with 46% of all slots. Ryanair and Wizzair also have a base at Luton and their share of slots at this airport is 12% and 23% respectively.

1.2.5. LONDON STANSTED

- 183. Stansted is designated as a fully coordinated airport under the EU Slot Regulation (Level 3). However, ACL, the slot coordinator at this airport, explained that an airline can rely on the pool to launch or extend services at Stansted in both the Summer and Winter seasons. For example in Summer 2012 ACL allocated an additional 19 daily services to incumbents. In addition there are still remaining 163 daily slot pairs available which have not been used by the airlines. As there are currently no limitations for airlines to get access to slots at this airport, ACL was able to accommodate all slot requests in Winter 2011 and in Summer 2012.
- 184. Ryanair, which operates a base at Stansted, is the biggest holder of slots at this airport with a share of 57%. easyJet is the second biggest holder of slots with a share of 22% of the slots available at this airport.
- 1.3. Routes exited by bmi pre-Transaction (not merger specific)
- 185. bmi decided to stop services on the routes London-Amsterdam¹³², London-Glasgow¹³³, London-Palma de Mallorca¹³⁴ and London-Venice¹³⁵ before the negotiations with IAG started. bmi's exit from these routes is not Transaction specific. bmi (and IAG) also used to codeshare on Spanair's direct flight on Edinburgh-Barcelona, however Spanair has stopped operating on this route.¹³⁶ As such, for the

bmi's presence on this city pair has been limited in all of the last four IATA seasons. In Winter 2009, it operated direct service but this has since been discontinued.

bmi ceased flying on this route in Summer 2011 (the decision to cease flying was taken in December 2010 (Attachment G Form CO).

bmi offered a direct service in Winter 2009 but no longer operates on this route.

bmi operated this route in Winter 2009 but no longer offers a direct service on this route.

Spanair stopped operating in Summer 2011.

purpose of this decision, there is no overlap between IAG and bmi on the routes London-Amsterdam, London-Glasgow, London-Palma de Mallorca, London-Venice and Edinburgh-Barcelona.

1.4. Direct / direct overlap routes by virtue of the Parties' operations 137

1.4.1. London-Aberdeen

1.4.1. (1) Description of the route

- 186. In the Winter 2010 and Summer 2011 IATA seasons, a total of [600,000 650,000] O&D passengers travelled by air between London(five) and Aberdeen. Among them, [450,000 500,000] passengers travelled between London(three)¹³⁸ and Aberdeen. Among these, [350,000 400,000] travelled between Heathrow and Aberdeen. Over the same period, transfer passengers accounted for [30-40]% of all passengers flying between London(five) and Aberdeen. That ratio was [30-40]% for passengers flying between London(three) and Aberdeen and [40-50]% for passenger flying between Heathrow and Aberdeen.
- 187. IAG estimates that [50-60]% of O&D passengers on the London(five)¹³⁹-Aberdeen route were time sensitive over the same period and that this ratio is [50-60]% for O&D passengers that travelled between London(three) and Aberdeen, and [60-70]% for O&D passengers that travelled between Heathrow and Aberdeen.
- 188. Flights between London and Aberdeen are operated from Heathrow, Gatwick and Luton. Both IAG and bmi offer direct services on the London-Aberdeen city pair from Heathrow. Other operators on this route are easyJet, which offers direct services on this city pair from Gatwick and Luton and FlyBe which offers direct services from Gatwick.
- 189. Table 6 displays the market shares of the Parties and their competitors on TS, NTS and all-passengers air services markets on the London-Aberdeen route:

The Commission also considered the effects of the Transaction on the London-Tripoli route, where the current circumstances are exceptional. The Parties' overlap on this route results only from one service offered by bmi to Tripoli in February 2011. Shortly after, all flights operated by European carriers to Tripoli were suspended because of the Arab Spring events. To date, no direct services between London and Tripoli have resumed. IAG has announced resuming operations to Tripoli as from May 2012 with three weekly frequencies, and so far the two Libyan carriers (Libyan Airlines and Afriqiyah Airways) have not yet been allowed to resume services to London. In light of the above and because of the exceptional circumstances, the Commission does not consider the Transaction to give rise to serious doubts as to its compatibility with the internal market as regards the London-Tripoli route.

¹³⁸ Currently there are no services offered to Aberdeen from City.

The London-Aberdeen route, taking into account services offered from the five main London airports.

Table 6 Market shares on air services London-Aberdeen

Carrier		Summer 2011			Winter 2010		
	TS %	NTS %	All %	TS %	NTS %	All %	
		LON	I-ABZ		<u>I</u>		
IAG	[50-60]%	[30-40]%	[40-50]%	[50-60]%	[30-40]%	[40-50]%	
Bmi	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	
Combined	[70-80]%	[40-50]%	[50-60]%	[70-80]%	[40-50]%	[60-70]%	
FlyBe	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	
easyJet	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[30-40]%	[20-30]%	
	•	LHR/LGV	V/LCY-ABZ		<u>I</u>		
IAG	[60-70]%	[40-50]%	[50-60]%	[60-70]%	[60-70]%	[60-70]%	
Bmi	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	
Combined	[80-90]%	[50-60]%	[70-80]%	[80-90]%	[70-80]%	[80-90]%	
FlyBe	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	
easyJet	-	[20-30]%	[10-20]%	-	-	-	
	-	LHR	R-ABZ		ı		
IAG	[70-80]%	[70-80]%	[70-80]%	[70-80]%	[70-80]%	[70-80]%	
Bmi	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	
FlyBe	-	-	-	-	-	-	
easyJet	-	-	-	-	-	-	

Source: Form CO based on CAA and MIDT data¹⁴⁰

190. Table 7 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Aberdeen route:

¹⁴⁰

The market shares are based inter alia on CAA data, tracking the number of passengers flown on the each respective route as provide by the Parties. CAA also conducts a survey identifying several groups of passengers based on the purpose of their journey (business or leisure) which are in the table above used as proxies for time sensitive and non-time sensitive passengers respectively. Marketing Information Data Transfer (MIDT) data are used in particular to distinguish between O&D and transfer passengers on a given route. MIDT data are based on bookings through booking systems (known as Computerised Reservation Systems (CRS) or Global Distribution Systems (GDS)) traditionally used by travel agents. The method for the calculation of turnover is applicable to all routes.

Table 7 Overview of frequency of air services on London-Aberdeen

Carrier	Summe	er 2011	Winter 2010		
	Daily	Weekly	Daily	Weekly	
		LON-ABZ			
IAG	7	46	6	44	
Bmi	5	37	5	38	
Combined	12	83	11	82	
easyJet	2	17	2	11	
FlyBe	3	19	2	17	
Total	17	119	15	110	
	LHF	R/LGW/LCY-ABZ			
IAG	7	46	6	44	
Bmi	5	37	5	38	
Combined	12	83	11	82	
easyJet	1	5	-	-	
FlyBe	3	19	2	17	
Total	16	107	13	99	
		LHR-ABZ			
IAG	7	46	6	44	
Bmi	5	37	5	38	
Total	12	83	11	82	

Source: Form CO¹⁴¹

191. IAG also pointed to the long term competitiveness of train services on this route. They referred to the possibility of avoiding overnight hotel charges in London (and/or Aberdeen) but still being able to spend a full day in Aberdeen/London by travelling on the Caledonian Sleeper services operated by First ScotRail (i.e. travelling during the night and arriving early in the morning in London or Aberdeen). The duration of the train services on this route is 10 hours and 21 minutes, compared to an estimated city centre-to-city centre duration of air travel of a minimum of around 160 minutes¹⁴².

For all routes, frequency defined as average daily or weekly round-trips/rotations in a season.

This estimate was calculated by considering the minimum duration of a flight of 85 minutes and adding 81 minutes as a minimum of time for reaching the airport. This minimum of 81 minutes for reaching the airport is based on the Parties estimate for the London-Edinburgh route for which the flight duration

Train services would unlikely constrain the Parties on this route on any of the passenger segments.

1.4.1. (2) TS passengers

- 192. The Parties' market shares vary depending on which airports in the London area are taken into consideration in the relevant market. In particular, if the relevant market is limited to flights between Heathrow and Aberdeen, the Transaction leads to a monopoly with an increment of [20-30]%, based on the Summer 2011 IATA season data.
- 193. If the relevant market is London(three)-Aberdeen, the Parties' combined market share would be [80-90]% (with an increment of [10-20]%) and another remaining operator would be Flybe with a market share of [10-20]%. Given their limited presence at Gatwick, easyjet appears to have only marginal TS passengers on the market London(three)-Aberdeen. If the relevant market is London(five)-Aberdeen, the Parties' combined market share would be [70-80]% (with an increment of [10-20]%) and the remaining competitors would be FlyBe and easyJet which would have market shares of [10-20]% and [10-20]% respectively.
- 194. On a combined basis, the Parties enjoy a clear frequency advantage over FlyBe and easyJet even on a London(five)-Aberdeen market (12 compared to 5) and more significantly on a London(three)-Aberdeen market (12 compared to 4). Furthermore, FlyBe's and easyJet's schedules appear to be less suitable for TS passengers.
- 195. The replies to the market investigation indicate mixed views as to whether the existing competitors on the route constitute a credible competitive alternative to the Parties' services on this route. While slightly more respondents (competitors, corporate customers, travel agencies) answered that the current competitors constitute a credible alternative to the Parties' services on this route, there was also a considerable number of respondents which did not believe that the competitor's services are credible competitive alternatives Furthermore, most of the respondents considered that there is no sufficient constraint by actual or potential competition on the market so as to prevent IAG from increasing prices post-Transaction. Lastly, almost all respondents to the market investigation (competitors, corporate customers and travel agents) indicated that IAG and bmi are each other's closest competitor.
- 196. Therefore, the Parties would face no competitive constraint on a Heathrow-Aberdeen market and they would only face limited constraints from FlyBe on London(three)-Aberdeen on the TS passenger segment. Even on a London(five)-Aberdeen market,

is a minimum of 75 minutes and the Parties estimated that the minimum city-centre to city-centre time is 156 minutes. However, as the Parties state, this is likely to be underestimated as it simply shows Heathrow Express journey time plus minimum check-in time and taxi time from the Edinburgh airport to the city centre. The distance between the Aberdeen airport and the city centre and the Edinburgh airport and the city centre is similar (seven miles for Aberdeen compared to eight miles for Edinburgh according to the airports' websites).

easyJet and FlyBe do not appear to exert a significant competitive constraint on the Parties on the TS passenger segment.

1.4.1. (3) **NTS passengers**

- 197. The Parties' market shares vary significantly depending on which airports in the London area are taken into consideration in the relevant market.
- 198. In particular, if the relevant market is limited to Heathrow-Aberdeen, the Transaction leads to a monopoly with an increment of [20-30]%, based on the Summer 2011 IATA season data.
- 199. If the relevant market is London(three)-Aberdeen, the Parties' combined market share would be [50-60]% (with an increment of [10-20]%) and the remaining competitors would be FlyBe and easyjet which would have market shares of [10-20]% and [20-30]% respectively.
- 200. If the relevant market is London(five)-Aberdeen, the Parties combined market share would be [40-50]% (with an increment of [5-10]%). easyJet appears to be a significant competitor on the NTS market on the London(five)-Aberdeen market, with a market share of [40-50]%. Flybe would have a market share of [10-20]%.
- 201. The majority of respondents to the market investigation (competitors, corporate customers, travel agencies) were of the opinion that the existing competitors on the route constitute a credible competitive alternative to the Parties' services on this route. Furthermore, a slight majority of the respondents indicated that the Parties would face sufficient constraint on this segment so as to prevent a price increase post-Transaction
- 202. Therefore, the Parties would face no competitive constraint on a Heathrow-Aberdeen market and they would face some constraints from easyJet and FlyBe on London(three)-Aberdeen on the NTS passenger segment. On a London(five)-Aberdeen market, easyJet in particular (and to a more limited extent FlyBe) appear to exert a significant competitive constraint on the Parties on the NTS passenger segment.

1.4.1. (4) Entry/expansion

203. Demand currently exceeds capacity throughout most or all of the day at Heathrow and Gatwick. On the contrary, Luton and Aberdeen are schedules facilitated airports.

204. IAG considers that easyJet and FlyBe would be well placed to expand their current services on this route from their bases. Moreover, IAG submits that Air France with its CityJet, looks set to launch a new service to Aberdeen from City in the near future. 143

CityJet takes on BA with Scots flights, 9 January 2012 (https://www.scotsman.com/scotland-on-sunday/business/cityjet_takes_on_ba_with_scots_flights_1_2043137)

Other potential new entrants could be according to the Parties, Ryanair, Jet2, Aer Lingus and the potential buyer of bmi Regional (Granite).

205. No likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified. If any, new entries and frequency increases post-Transaction would take place from airports other than Heathrow. Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Aberdeen route.

1.4.1. (5) Conclusion on the London-Aberdeen route

- 206. The effects of the Transaction on the London-Aberdeen route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1, the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 207. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Aberdeen route post-Transaction, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Aberdeen route.

1.4.2. London-Edinburgh

1.4.2. (1) Description of the route

- 208. In the Winter 2010 and Summer 2011 IATA seasons, a total of [2,300,000 2,350,000] O&D passengers travelled by air on the London(five)-Edinburgh city pair. Among them, [1,700,000 1,750,000] passengers travelled between London(three) and Edinburgh. Among these, [750,000 800,000] travelled between Heathrow and Edinburgh. Over the same period, transfer passengers accounted for [10-20]% of all passengers flying between London(five) and Edinburgh. That ratio was [20-30]% for passengers flying between London(three) and Edinburgh and [30-40]% for passenger flying between Heathrow and Edinburgh.
- 209. IAG estimates that [40-50]% of O&D passengers on this route were time sensitive over the period covering the Winter 2010 and Summer 2011 IATA seasons, for passengers travelling between London(five) and Edinburgh and that this ratio is [40-50]% for O&D passengers that travelled between London(three) and Edinburgh and [50-60]% for O&D passengers that travelled between Heathrow and Edinburgh.
- 210. Flights between London and Edinburgh are operated from all five London airports: Heathrow, Gatwick, City, Luton and Stansted. IAG offers direct services on the London-Edinburgh city pair from Heathrow, Gatwick and City. bmi offers direct services from Heathrow. Other competitors on this route are easyJet which offer direct

- services on this city pair from Gatwick, Luton and Stansted and Air France, which through its CityJet subsidiary, offers direct services from City.
- 211. Table 8 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air-only services market on the London-Edinburgh route:

Table 8 Market shares on the air-only London-Edinburgh markets

Carrier		Summer 201	1		Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %	
		LON	N-EDI				
IAG	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	
Bmi	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	
Combined	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[50-60]%	
Air France	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
easyJet	[40-50]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	
		LHR/LGV	V/LCY-EDI				
IAG	[60-70]%	[50-60]%	[60-70]%	[50-60]%	[50-60]%	[50-60]%	
bmi	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	
Combined	[80-90]%	[70-80]%	[70-80]%	[80-90]%	[70-80]%	[70-80]%	
Air France	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
easyJet	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	
		LHF	R-EDI				
IAG	[70-80]%	[50-60]%	[60-70]%	[60-70]%	[50-60]%	[60-70]%	
bmi	[20-30]%	[40-50]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%	
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	
Air France	-	-	-	-	-	-	
easyJet	-	-	-	-	-	-	

Source: Form CO based on CAA and MIDT data

212. Table 9 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Edinburgh route:

Table 9 Overview of frequency of air services on London-Edinburgh

Carrier	Sumn	ner 2011	Winte	er 2010
	Daily	Weekly	Daily	Weekly
	ı	LON-EDI		•
IAG	19	133	18	125
bmi	7	46	6	44
Combined	26	179	24	169
easyJet	10	72	11	79
Air France	2	14	3	21
Total	38	265	38	269
	ı	LHR/LGW/LCY-ED	I	•
IAG	19	133	18	125
bmi	7	46	6	44
Combined	26	179	24	169
easyJet	4	25	4	26
Air France	2	14	3	21
Total	32	218	31	216
		LHR-EDI		•
IAG	9	63	9	60
bmi	7	46	6	44
Combined	16	109	15	104

Source: Form CO

213. Train services are also available on the London-Edinburgh route. East Coast trains offer 20 direct daily services each way leaving approximately every half an hour. Virgin trains also offer six indirect services per day which are wholly operated by Virgin and four which are part-operated by Transpennine Express. If these indirect services are taken into account, the total number of train frequencies on the London-Edinburgh city-pair (30 frequencies in total) is comparable to the total number of air frequencies (38 on average in both the Winter 2010 and Summer 2011 IATA seasons).

214. The quickest journey time for travel by $train^{144}$ between London and Edinburgh is 240-262 min by direct $train^{145}$ and 291 – 310 min by indirect $train^{146}$ and 156 min at

As explained above, the Commission does not consider the reduction in travel time by train relating to the HS2 project for the purposes of this decision.

London-Edinburgh – quickest is 4 hours and 22 minutes (262 minutes) and Edinburgh-London – quickest is 4 hours (240 minutes). According to the Parties, the average city centre to city centre journey time is 265 minutes.

minimum by plane from Heathrow. IAG considers however that the air travel time indication is in practice underestimated because it excludes certain elements such as waiting time for Heathrow Express.¹⁴⁷ If East Coast trains' direct services are included in the relevant market, the market shares of the Parties and their competitors on the all-passenger market would be as follows:¹⁴⁸

Table 10 London-Edinburgh market shares including train travel

2009 annual pax	Number of passengers	% share
IAG	[900,000-950,000]	[20-30]%
bmi	[300,000-350,000]	[10-20]%
Combined	[1,200,000-1,250,000]	[30-40]%
Air France	[150,000-200,000]	[5-10]%
easyJet	[950,000-1,000,000]	[30-40]%
East Coast trains	[750,000-800,000]	[20-30]%
TOTAL	[3,150,000-3,200,000]	100%

Source: Form CO based on CAA and MIDT data and National Rail Trends 2009-2010 Yearbook

- 215. The market shares in Table 10 above comprise train services between London and Edinburgh and air services between London(five) and Edinburgh. If, however train services were to be included in the same market as air services between London(three) and Edinburgh, the Parties estimate that their combined market share would be [50-60]% with train having a market share of [30-40]%. On a market limited to train services and air services between Heathrow and Edinburgh, IAG estimates that the combined market shares would be [50-60]% with train having the other [50-60]% of the market.
- 216. The Parties were not able to provide TS and NTS passenger market share data. East Coast Mainline Company (East Coast trains) also submitted that they do not consider it possible to distinguish between passengers. The information provided by East Coast trains during the market investigation was based on the assumption that the majority of their customers are NTS

London-Edinburgh – quickest is 4 hours and 51 minutes (291 minutes) and Edinburgh-London – quickest is 5 hours and 10 minutes (310 minutes).

Heathrow Express is a train service linking Heathrow to the centre of London.

On the basis of 2009 data, as this was the latest year for which the Parties were able to access train data. However, the Parties estimate that the share of travel accounted for by train on this route in 2010 and 2011 are likely to be similar to – or a bit higher than the 2009 share shown above.

These market shares include only direct train services offered by East Coast trains.

1.4.2. (2) TS passengers

Competition from air services

- 217. Assuming that the relevant market comprises only air services, the Parties' market shares vary significantly depending on which airports in the London area are taken into consideration in the relevant market.
- 218. In particular, if only Heathrow is included, the Transaction leads to a monopoly with an increment of [20-30]%, based on the Summer 2011 IATA season data.
- 219. If the relevant market is London(three)-Edinburgh, the Parties' combined market share would be [80-90]% (with an increment of [10-20]%) and the other operators would be easyJet with a market share of [10-20]% and Air France with a market share of [0-5]%.
- 220. If the relevant market is London(five)-Edinburgh, the Parties' combined market share would be [50-60]% (with an increment of [10-20]%). easyJet would have a market share of [40-50]%. The other remaining competitor on this market is Air France which has a market share of [0-5]%.
- 221. On a combined basis, the Parties enjoy a significant frequency advantage over easyJet and Air France even on a London(five) market (26 compared to 12). For the time being, due to its limited number of frequencies, Air France currently exerts limited competitive constraint on the Parties.
- 222. A slight majority of respondents to the market investigation (competitors, travel agents, corporate customers) considered that existing competitors on the route constitute a credible competitive alternative to the Parties' services on this route, however there was a considerable number of respondents which considered the opposite, i.e. that the existing operators do not constitute a credible competitive alternative to the Parties. Furthermore, most respondents (competitors, travel agents, corporate customers) considered that there is no sufficient constraint by actual or potential competition on the market so as to prevent IAG from increasing prices post-Transaction. Lastly, almost all respondents to the market investigation (competitors, corporate customers and travel agents) indicated that IAG and bmi are each other's closest competitor on the TS passenger segment.

Competition from train services

- 223. Train does not appear to exert any significant competitive constraint on the Parties' air services on the TS segment on the London-Edinburgh route.
- 224. First, as regards <u>travel duration and round trips</u>. The Parties submit themselves that the average city centre to city centre journey times between London and Edinburgh are longer on train, 265 minutes on direct train vs. minimum 156 minutes by plane for travel. Moreover, round-trips by train involve a total travelling time of around 9 hours,

that is to say around 4 more hours than by plane. This seems hardly compatible with all-day meetings.

- 225. Second, as regards <u>frequencies and scheduling</u>. Air services enjoy a significant advantage over direct train services on this route in terms of frequency and schedules. Indeed, there are only 20 trains connecting London and Edinburgh per day,¹⁵⁰ compared to 16 daily frequencies from Heathrow only, 32 daily frequencies from London(three) and 38 daily frequencies from London(five). There are almost double as many flights connecting London to Edinburgh as there are direct train services. As regards schedules, air services seem more convenient than train services for TS passengers.¹⁵¹
- 226. Third, as regards the proportion of passengers that travel by train. The Parties submit that approximately [20-30]% of O&D passengers between London and Edinburgh travel by direct train rather than fly (without distinguishing between TS and NTS passengers). East Coast trains submitted that most of their bookings are on fixed "advance" tickets which are not interchangeable. This is generally not an indicator that numerous TS passengers travel by train. It is therefore likely that a significantly lower share of TS passengers actually travel by train between London and Edinburgh.
- 227. Moreover, it does not appear that both IAG and bmi would monitor train prices on this route to any significant extent.
- 228. As regards Virgin's indirect train services, their frequency is lower than that of direct services (in total 10 frequencies per day) and it entails extra travel time (the quickest indirect train from London to Edinburgh takes 4 hours and 51 minutes, i.e. around 30 minutes longer than the quickest direct train from Edinburgh to London). In addition there is the inconvenience of a connection. Indirect trains thus constitute an even weaker competitive constraint on the Parties' air services on the TS passenger segment.
- 229. In addition to the above, the majority of market respondents (competitors, travel agents and corporate customers) also answered that no TS passengers or only a very low share of TS passengers would switch from air services to train services in case of a price increase of air services on the London-Edinburgh route.
- 230. In view of all what precedes, even if train services are part of the relevant product market on this route, they appear to be at best a distant substitute for air services from

East Coast trains will introduce 3 additional services (2 southbound and 1 northbound on Sundays) between Edinburgh and London. However, these additional frequencies are unlikely to have an impact on the TS passenger segment.

Indeed, the first train from London arrives at Edinburgh Waverley station at 11:25 and thus hardly allows business travellers to attend meetings starting in the morning in Edinburgh without spending the night there. East Coast train confirmed that they only operate one train in the morning and they consider this to be a small segment of the market. Furthermore, the last train that leaves London for Edinburgh is at 19h30 and the last train leaving Edinburgh for London is at 18h30 whereas flights between these cities exist until as late as 21h50 from Heathrow or 21h30 from Edinburgh.

the perspective of TS passengers. Therefore, in spite of its theoretical [20-30]% market share on the all-passenger market, East Coast trains and train services in general appear to exert only a limited competitive constraint on the Parties on the TS passenger segment.

1.4.2. (3) NTS passengers

Competition from air services

- 231. The Parties' market shares vary significantly depending on which airports in the London area are taken into consideration in the relevant market.
- 232. In particular, if the relevant market is limited to Heathrow-Edinburgh, the Transaction leads to a monopoly with an increment of [40-50]%, based on the Summer 2011 IATA season data.
- 233. If the relevant market is London(three)-Edinburgh, the Parties' combined market share would be [70-80]% (with an increment of [10-20]%). The other competitors would be easyJet with a market share of [20-30]% and Air France with a market share of [0-5]%.
- 234. If the relevant market is London(five)-Edinburgh, the Parties' combined market share would be [50-60]% (with an increment of [10-20]%). easyJet appears to be a significant competitor on the NTS market on the London(five)-Edinburgh market, where it has a market share of [30-40]%. Air France only has a share of [0-5]%.
- 235. The market investigation confirmed that existing competitors on this route constitute a credible competitive alternative to the Parties' services on the NTS passenger segment on this route. A slight majority of the respondents (competitors, travel agents, corporate customers) also considered that there is a sufficient constraint by actual or potential competition on the market so as to prevent IAG from increasing prices post-Transaction on the NTS passenger segment.

Competition from train services

- 236. As concerns competition from train services, since the main competitive disadvantage of train relates to travel time, train is likely to exert more competitive pressure on the Parties on the NTS passenger segment than on the TS passenger segment.
- 237. The majority of respondents to the market investigation (competitors and travel agents) indicated that 10% or more passengers would switch to train in case of a price increase of air fares on the London-Edinburgh route.
- 238. Therefore, it appears that train is likely to exert at least some constraint on the Parties on the NTS passenger segment, despite the fact that the Parties would face no competitive constraint on a Heathrow-Edinburgh market from other air carriers.

1.4.2. (4) Entry/expansion

- 239. Demand currently exceeds capacity throughout most or all of the day at Heathrow and Gatwick. On the contrary, Luton, Stansted, City and Edinburgh are not slot constrained.
- 240. IAG submits that easyJet, which has a base in Gatwick, Luton, Stansted and Edinburgh and Air France, which has a new base at Edinburgh and a base at City, would likely further increase their frequencies on this route. Other potential new entrants could be according to IAG, Ryanair, Jet2, Aer Lingus, Air Berlin and the potential buyer of bmi Regional (Granite).
- 241. No likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified. If any, new entries and frequency increases post-Transaction would take place from airports other than Heathrow. Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Edinburgh route.

1.4.2. (5) Conclusion on the London-Edinburgh route

- 242. The effects of the Transaction on the London-Edinburgh route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1, the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 243. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Edinburgh route post-Transaction, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Edinburgh route.

1.4.3. London-Manchester

1.4.3. (1) Description of the route

244. In the Winter 2010 and Summer 2011 IATA seasons, a total of [350,000 – 400,000] O&D passengers travelled by air on the London(five)-Manchester city pair. All of them travelled between London(three) and Manchester. Among these, [200,000 - 250,000] travelled between Heathrow and Manchester. Over the same period, transfer passengers accounted for [60-70]% of all passengers flying between London(three) and Manchester and [60-70]% for passenger flying between Heathrow and Manchester.

58

As there are no flights offered from Luton and Stansted, this section will only refer to two possible market definitions: (i) London(three)-Manchester (note that there are no flights from City) and (ii) Heathrow-Manchester.

- 245. IAG estimates that [40-50]% of O&D passengers on this route were time sensitive over the same period for passengers flying between London(three) and Manchester and [30-40]% for O&D passengers that travelled between Heathrow and Manchester.
- 246. IAG offers direct services on the London-Manchester city pair from Heathrow and Gatwick and bmi offers direct services between Heathrow and Manchester. No other airline offers air services on this city pair.
- 247. Table 11 displays the market shares of the Parties on the TS, NTS and all passengers air-only services markets on the London-Manchester route¹⁵³:

Table 11 Market shares on air services London-Manchester

Carrier	Summer 2011			Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %
		LHR/L(GW/LCY-MAN	I		
IAG	[90-100]%	[80-90]%	[80-90]%	[80-90]%	[80-90]%	[80-90]%
bmi	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%
		L	HR-MAN			
IAG	[90-100]%	[70-80]%	[80-90]%	[70-80]%	[70-80]%	[70-80]%
bmi	[5-10]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%

Source: Form CO based on CAA and MIDT data

248. Table 12 provides an overview of the frequencies offered by the Parties on the London-Manchester route¹⁵⁴:

The table does not show data for London(five)-Manchester since there are no flights between Luton and Stansted and Manchester. Also note that there are no flights from City.

¹⁵⁴ *Ibid*.

Table 12: Overview of frequency of air services on London-Manchester

Carrier	Summer 2011		Winter 2010	
	Daily	Weekly	Daily	Weekly
		LHR/LGW/LCY-MAN	1	-
IAG	11	79	12	83
bmi	5	35	6	42
		LHR-MAN		
IAG	7	50	8	56
bmi	5	35	6	42

Source: Form CO

249. Train services are available on the London-Manchester route. Virgin trains offer over 45 daily services each way leaving approximately every 20 minutes. There are significantly more trains running on the London-Manchester city-pair than there are total air frequencies (17 daily air frequencies on average in the Winter 2010 and Summer 2011 IATA seasons). The quickest¹⁵⁵ journey time for travel by train between London and Manchester is 118-127 min¹⁵⁶ and 130 min at minimum by plane from Heathrow.¹⁵⁷ If Virgin trains' services are included in the relevant market, the market shares of the Parties and their competitors on the all-passenger market would be as follows¹⁵⁸:

Table 13: London-Manchester market shares air services and train services

2009 annual pax	pax	% share
IAG	[300,000-350,000]	[5-10]%
bmi	[100,000-150,000]	[0-5]%
Combined	[400,000-450,000]	[5-10]%
Virgin trains	[4,300,000-4,350,000]	[90-100]%
TOTAL	[4,700,000-4,750,000]	100%

Source: Form CO based on CAA and MIDT data and National Rail Trends 2009-2010 Yearbook

As explained above, the reduction in travel time by train referred to by the Parties in the Form CO, relating to the HS2 project is not relevant for the purposes of this decision.

London-Manchester – quickest is 2 hours and 7 minutes (127 minutes) and Manchester-London – quickest is 1 hour and 58 minutes (118 minutes). According to the Parties, the average city centre to city centre journey time is 130 minutes.

¹⁵⁷ IAG considers however that this air travel time indication is in practice underestimated because it excludes certain elements such as waiting time for Heathrow Express.

On the basis of 2009 data, as this was the latest year for which the Parties were able to access train data. However, the Parties estimate that the share of travel accounted for by train on this route in 2010 and 2011 are likely to be similar to – or a bit higher than the 2009 share shown above.

1.4.3. (2) **TS passengers**

- 250. Assuming that the relevant market comprises only air services, the Parties' market shares vary only insignificantly if account is taken of the two possible market definitions. The Transaction leads to a monopoly on all possible markets with an increment of [5-10]% if the market comprises Heathrow-Manchester and [0-5]% if the market is defined as London(three)-Manchester.
- Train, however exerts¹⁵⁹ a significant competitive constraint on the Parties' air services 251. on the TS segment on the London-Manchester route. 160 Train is the fastest and most common mode of transport for passengers travelling between London and Manchester. Indeed, currently more than [0-5] million passengers travel by train, compared to around [350,000 – 400,000] which travel by air. Train services also enjoy a significant advantage over air services in terms of frequency as there are almost three times more daily train services than there are air services on this route. As regards schedule, the first train from London arrives at Manchester Piccadilly Train station at 08:28 and thus allows business travellers to attend meetings starting in the morning in Manchester. There are also numerous trains offered in the afternoon/evening back to London from Manchester. 161 Furthermore, round-trips by train are feasible within one day in either direction as they involve a total travelling time of around 4 hours and 30 minutes. This appears compatible with all-day meetings without there being a need to stay overnight in either London or Manchester, a factor to which TS passengers traditionally attach a lot of importance (and was confirmed by the responses of corporate customers in the current market investigation). In addition, the travel duration is similar for a journey by train or by air – with train being possibly quicker than air. Lastly, Virgin trains offer at least one type of ticket which seems suitable for TS passengers. Their Anytime ticket is a flexible ticket with no time restrictions on when the passenger can travel. The ticket is generally refundable 162 and the time of the journey can be changed. This type of ticket is comparable to the flexible tickets offered by the Parties also in terms of fares. 163
- 252. Lastly, the majority of respondents to the market investigation (competitors, corporate customers, travel agencies) also expressed the view that more than 10% of TS

Virgin trains did not outline existing or future likely capacity constraints on this route in a timeframe relevant for merger control review [...]

This conclusion is limited to O&D passengers only and does not refer to transfer passengers for which the Commission acknowledges that train is unlikely to constitute a significant competitive constraint.

The same also holds true for services from Manchester to London.

Subject to an administration fee of GBP 10.

For a typical weekday business trip London-Manchester return fare for travel on 29 March 2012 the Anytime Virgin fare is around GBP 423 compared to an airfare of GBP 473 on IAG's services from Gatwick. Prices do not seem to be sufficiently different to indicate that air and train are in separate markets. Fares as available on 27 March 2012 on www.virgintrains.co.uk and www.ba.com.

passengers would switch to train should air fares increase on this route. Some market respondents – including in particular corporate customers – indicated that they already use train service on this route. Lastly, at least bmi seems to be monitoring prices of train tickets on the London-Manchester route.

253. In view of the above, irrespective of the precise market definition (Heathrow-Manchester or London (three)-Manchester), train constitutes a significant constraint on the Parties on the TS passenger segment. The Parties would only have a combined market share of [5-10]% on the all-passenger market including flights from Heathrow and Gatwick and train services, with Virgin trains having the remaining [90-100]% of the market. Therefore, their market share on the TS passenger segment is likely to be even lower.

1.4.3. (3) NTS passengers

- 254. Assuming that the relevant market comprises only air services, the Parties' market shares do not vary significantly depending on which airports in the London area are taken into consideration in the relevant market the Transaction would lead to a monopoly with an increment of [20-30]% on a Heathrow-Manchester market and to a monopoly with an increment of [10-20]% on a London(three)-Manchester market based on the Summer 2011 IATA season data.
- 255. However, considering the above analysis of the TS passenger segment, train is very likely to exert a competitive constraint on the Parties also on the NTS passenger segment on the London-Manchester route. This is consistent with the fact that the majority of the respondents to the market investigation (competitors, travel agencies) expressed the view that more than 10% of NTS passengers would switch to train should air fares increase on this route.

1.4.3. (4) Conclusion on the London-Manchester route

256. Considering the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the London-Manchester route.

1.4.4. London-Basel

1.4.4. (1) Description of the route

257. In the Winter 2010 and Summer 2011 IATA seasons, a total of [350,000 – 400,000] O&D passengers travelled by air between London(three) and Basel¹⁶⁴. Among them, [150,000 – 200,000] passengers travelled between Heathrow and Basel. Over the same period, transfer passengers accounted for [20-30]% of all passengers flying between

There is no need to look at the even wider London(five)-Basel market given that no flights are operated from Stansted and Luton.

- London(three) and Basel. That ratio was [30-40]% for passengers flying between Heathrow and Basel.
- 258. IAG estimates that [30-40]% of O&D passengers on the London(three)-Basel route were time sensitive over the same period and that this ratio is [40-50]% for O&D passengers that travelled between Heathrow and Basel.
- 259. Flights between London and Basel are operated from Heathrow and Gatwick. Both IAG and bmi operate direct flights to Basel from Heathrow. easyJet operates direct flights to Basel from Gatwick. Bmi only started operating on the route in Summer 2011, taking over from Swiss which, up to then, was offering services out of City. Ryanair also operated on the route until summer 2010.
- 260. Table 14 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air services market on the London-Basel route:

Table 14 Market shares on the London-Basel route for O&D passengers

Carrier		Summer 201	1	Winter 2010			
	TS %	NTS %	All %	TS %	NTS%	All %	
		LHR/LGV	V/LCY-BSL				
IAG	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[20-30]%	
bmi	[40-50]%	[20-30]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	
Combined	[60-70]%	[50-60]%	[50-60]%	[40-50]%	[20-30]%	[20-30]%	
Swiss	-	-	-	[10-20]%	[20-30]%	[20-30]%	
easyJet	[30-40]%	[40-50]%	[40-50]%	[40-50]%	[50-60]%	[40-50]%	
	<u> </u>	LHF	R-BSL	1			
IAG	[30-40]%	[40-50]%	[40-50]%	[90-100]%	[80-90]%	[90-100]%	
bmi	[60-100]%	[50-60]%	[50-60]%	[0-5]%	[10-20]%	[5-10]%	
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	
Swiss	-	-	-	-	-	-	
easyJet	-	-	-	-	-	-	

Source: Form CO based on CAA and MIDT data

261. Table 15 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Basel route.

Table 15 Overview of frequency of air services on the London-Basel route

Carrier	Sumn	ner 2011	Winte	er 2010
	Daily	Weekly	Daily	Weekly
		LHR/LGW/LCY-BS	L	L
IAG	3	21	3	20
bmi	3	19	-	1
Combined	6	40	3	21
Swiss	-	-	2	12
easyJet	2	13	2	13
Total	8	53	7	46
		LHR-BSL		1
IAG	3	21	3	20
Bmi	3	19	-	1
Combined	6	40	3	21
Swiss	-	-	-	-
easyJet	-	-	-	-
Total	6	40	3	21

Source: Form CO

1.4.4. (2) TS passengers

262. The Parties' market shares with respect to the TS passenger segment would vary depending on which London airports are included in the relevant market. IAG and bmi are the only airlines operating on the route out of Heathrow. Therefore, on a Heathrow-Basel route the Transaction would lead to a monopoly. On a London(three)-Basel market which would also include (easyJet's) flights to and from Gatwick, the Parties would have a combined market share of [60-70]% (easyJet [30-40]%) in IATA Summer 2011.¹⁶⁵

263. The only competing airline post-Transaction would be easyJet, operating from Gatwick. easyJet has a considerable market share in the TS passenger segment ([30-40]% on the London(three)-Basel market). However, the market investigation was inconclusive on the question whether flights to Basel from Gatwick are valid substitutes for flights offered from Heathrow, in particular with respect to TS passengers. The market investigation showed mixed views, in particular among corporate customers, with regard to the question whether or not easyJet offers a credible competitive alternative to the Parties' services. easyJet is a low cost carrier,

Swiss was no longer operating on the route at this time.

offering a different service level, flying to a different airport and offering significantly less frequencies. When asked about closeness of competition, the respondents (competitors, corporate customers and travel agents) either indicated that IAG and bmi are each other's closest competitor or considered that Swiss (currently not operating on the route) is their closest competitor. easyJet was considered a less close competitor. In light of the above, it is not clear to what extent easyJet would exert a competitive constraint on the Parties post-Transaction. However, this does not affect the conclusion drawn by the Commission.

264. From the above it appears that on a Heathrow-Basel route the Transaction would lead the merged entity to a monopoly. The extent to which easyJet currently competes with the Parties is not clear, however, even on a wider London(three)-Basel market, the Transaction would still lead to significant market shares.

1.4.4. (3) NTS passengers

- 265. The Parties' market shares with respect to the NTS passenger segment would vary depending on which London airports are included in the relevant market. Since IAG and bmi are the only airlines operating on the route out of Heathrow, the Transaction would lead the merged entity to a monopoly if only flights to and from Heathrow were included in the relevant market.
- 266. On a London(three)-Basel market, the merged entity would have a market share of [50-60]% (easyJet [40-50]%) in IATA Summer 2011. 166
- 267. The market investigation was inconclusive on the question whether flights to Basel from Gatwick are valid substitutes for flights offered from Heathrow. However, a majority of the competitors and travel agents that responded to the market investigation considered that easyJet offers a credible competitive alternative to the Parties' services for NTS passengers. The results of the market investigation, without being very pronounced, also showed that easyJet was considered to be a less distant competitor to the Parties for NTS passengers than for TS passengers.
- 268. From the above it appears that on a Heathrow-Basel route the Transaction would lead the merged entity to a monopoly. On a wider London(three)-Basel market, easyJet, with a market share of [40-50]%, appears to be a more credible competitor to the Parties on the NTS passenger segment.

1.4.4. (4) Entry/expansion

269. Swiss plans to (re)start operating on the route out of City as from 21 May 2012. It would operate 12 weekly frequencies on an Avroliner with capacity of 97 seats. 167

Swiss was no longer operating on the route at this time.

- 270. Swiss' entry would be likely: it is well placed to enter since it has operated London-Basel until Summer 2011 and it already operated a number of international routes out of Basel. Swiss' entry has been publicly announced.¹⁶⁸
- 271. Swiss' entry would be timely: it will take effect within a near future, namely as from 21 May 2012.
- City is considered a business travellers friendly airport, conveniently located close to 272. London's city centre. Swiss is the flag carrier of Switzerland and is a subsidiary of Lufthansa. Swiss is a Star Alliance member. The market investigation showed that, both with respect to TS and NTS passengers, Swiss is considered by a majority of the respondents (competitors, travel agents and corporate customers) to offer a credible competitive alternative to the Parties' services on the London-Basel route. 169 In addition, even if Swiss is not currently operating on this route, a considerable number of respondents and in particular corporate customers considered Swiss to be the closest competitor to IAG. Also, Swiss would offer an attractive schedule both for TS and for NTS passengers. In particular, it would offer 12 weekly frequencies and interesting morning and evening slots, thus allowing for one-day return trips which is an important factor for many TS passengers. Furthermore, around [50-60%] of bmi's market share is accounted for by Star codeshare passengers (i.e. in summer 2011 over [45,000-50,000] passengers). As the Star codeshares would be discontinued after the Transaction, the Commission considers it likely that much of the Star codeshare passengers would switch to the Swiss operated flights.
- 273. In light of the above, it is the Commission's view that Swiss' entry would be sufficient to deter or defeat any potential anti-competitive effects of the transaction.
- 274. Therefore, Swiss' entry appears to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the transaction, both for TS and NTS passengers.

1.4.4. (5) Conclusion on the London-Basel route

275. Considering the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the London-Basel route.

 $^{^{167}}$ Bmi now has 18 (Winter 11) / 19 (Summer 11) frequencies per week with capacity of 133 seats. However, its planes are only loaded for about 60%.

See http://www.swiss.com/countries/GB/local content/latest news/Pages/SWISS update.aspx

The relevant questions in the market investigation referred to Swiss in general, without clarifying whether Swiss would operate from Heathrow (as it does now through its codeshare with bmi) or from City (as it did until Summer 2011 and as it will do post-Transaction). This however does not alter the Commission's conclusion.

1.4.5. London-Nice

1.4.5. (1) Description of the route

- 276. In the Winter 2010 and Summer 2011 IATA seasons, a total of [850,000-900,000] O&D passengers travelled by air between London(five) and Nice. Among them, [650,000-700,000] passengers travelled between London(three) and Nice. Among these, [300,000-350,000] travelled between Heathrow and Nice. Over the same period, transfer passengers accounted for [10-20]% of all passengers flying between London(five) and Nice. That ratio was [20-30]% for passengers flying between London(three) and Nice and [30-40]% for passenger flying between Heathrow and Nice.
- 277. IAG estimates that [20-30]% of O&D passengers on the London(five)-Nice route were time sensitive over the same period and that this ratio is [20-30]% for O&D passengers that travelled between London(three) and Nice, and [20-30]% for O&D passengers that travelled between Heathrow and Nice.
- 278. IAG currently serves Nice from Heathrow and City, but also has plans to operate new frequencies from Gatwick. bmi only started operating on the London-Nice route in Summer 2011, first with only two weekly frequencies from Heathrow, but in Winter 2011-2012 already with a twice daily service. The only other airline operating on the route is easyJet who operates from Gatwick, Luton and Stansted.
- 279. Table 16 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air services market on the London-Nice route:

Table 16 Market shares on the London-Nice route for O&D passengers

Carrier		Summer 2011			Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %	
	•	LON -	NCE		•	<u> </u>	
IAG	[40-50]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%	
bmi	[0-5]%	[0-5]%	[0-5]%	-	-	-	
Combined	[40-50]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%	
easyJet	[50-60]%	[60-70]%	[60-70]%	[50-60]%	[50-60]%	[50-60]%	
	,	LHR/LGW/	LCY-NCE			<u> </u>	
IAG	[60-70]%	[40-50]%	[50-60]%	[40-50]%	[60-70]%	[50-60]%	
bmi	[0-5]%	[0-5]%	[0-5]%	-	-	-	
Combined	[60-70]%	[50-60]%	[50-60]%	[40-50]%	[60-70]%	[50-60]%	
easyJet	[30-40]%	[40-50]%	[40-50]%	[50-60]%	[30-40]%	[40-50]%	
	,	LHR-	NCE			<u> </u>	
IAG	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	
bmi	[0-5]%	[0-5]%	[0-5]%	-	-	-	
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	
easyJet	-	-	-	-	-	-	

Source: Form CO based on CAA and MIDT data

280. Table 17 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Nice route.

Table 17 Overview of frequency of air services on the London-Nice route

Carrier	Summe	er 2011	Winter 2010	
	Daily	Weekly	Daily	Weekly
		LON-NCE		
IAG	8	59	6	40
bmi	0	2	-	-
Combined	8	61	6	40
easyJet	7	48	3	22
Total	15	109	9	62
		LHR/LGW/LCY-NCE		
IAG	8	59	6	40
bmi	0	2	-	-
Combined	8	61	6	40
easyJet	4	27	2	13
Total	12	88	8	53
		LHR-NCE		
IAG	7	51	5	35
bmi	0	2	-	-
Combined	7	53	5	35
easyJet	-	-	-	-
Total	7	53	5	35

Source: Form CO

1.4.5. (2) TS passengers

- 281. Even though on the basis of the data indicated in the tables above it might seem that the Transaction would only bring about a small increment, it must be noted that the above data are not representative of bmi's real market power, since bmi only recently started operating on the route. Furthermore, bmi has been able to quickly increase its weekly frequencies from 2 in Summer 2011 to already 11 in Winter 2011-2012.
- 282. The Parties' market shares with respect to the TS passenger segment vary depending on which London airports are taken into consideration in the relevant market. In particular, on a Heathrow-Nice route, the Transaction would lead to a monopoly. On a London(three)-Nice market, which would also include flights offered by easyJet from Gatwick, the Transaction would lead the merged entity with respect to the TS passenger segment to a [60-70]% market share based on the Summer 2011 IATA season data (easyJet [30-40]%). On an even wider London(five)-Nice market, the Transaction would lead the merged entity to a market share of [40-50]% with respect

- to the TS passenger segment based on the Summer 2011 IATA season data (easyJet [50-60]%).
- 283. Moreover, bmi exited the Heathrow-Nice route in October 2007 and re-entered in August 2011. Using these events in a quantitative analysis, it appears that after controlling for seasonality and costs, bmi's exit and re-entry on the Heathrow to Nice route had a big effect on IAG's prices. Therefore, bmi would be a significant constraint on IAG's price setting on the route.
- 284. The only competing airline post-Transaction would be easyJet, operating from Gatwick, Luton and Stansted. However, the market investigation was inconclusive on the question whether flights from Gatwick, Luton and Stansted are valid substitutes for flights offered from Heathrow, in particular with respect to TS passengers. Also, the Parties' combined number of weekly frequencies is significantly higher than easyJet's (especially considering that bmi meanwhile substantially increased its weekly frequencies to Nice). The market investigation showed mixed views among the travel agents and corporate customers with regard to the question whether or not easyJet offers a credible competitive alternative to the Parties' services. easyJet is a low cost carrier, offering a different service level, flying to a different airport and offering significantly less frequencies. For the reasons set out above, easyJet appears to be only a distant competitor to the Parties, in particular in the TS passenger segment. This conclusion is not altered by the additional information submitted by the Parties on 23 March 2012.
- 285. A majority of the competitors, travel agents and corporate customers that responded to the market investigation considered that IAG is the closest competitor to bmi. Their responses with respect to the question who is IAG's closest competitor did not allow drawing clear conclusions.
- 286. From the above it appears that on a Heathrow-Nice route the Transaction would lead the merged entity to a monopoly. Even on a wider London(three)-Nice market, the Transaction would still lead to high market shares.

1.4.5. (3) NTS passengers

287. The Parties' market shares with respect to the NTS passenger segment vary depending on which London airports are taken into consideration in the relevant market. In particular, on a Heathrow-Nice route, the Transaction would lead the merged entity to a monopoly. On a London(three)-Nice market, which would also include flights offered by easyJet from Gatwick, the Transaction would lead the merged entity to a [50-60]% combined market share based on the Summer 2011 IATA season data (easyJet [40-50]%). On an even wider London(five)-Nice market, the Transaction would lead the merged entity to a market share of [30-40]% in the Summer 2011 IATA season data (easyJet [60-70]%). However, as set out above, the market share data provided for bmi are not representative given that bmi only recently started operating.

- 288. The market investigation was inconclusive on the question whether flights to Nice from Gatwick, Luton and Stansted are valid substitutes for flights offered from Heathrow. The market investigation was inconclusive on the question whether easyJet offers a credible competitive alternative to the Parties' services for NTS passengers.
- 289. From the above it appears that on a Heathrow-Nice route the Transaction would lead the merged entity to a monopoly. The Transaction would still lead to significant market shares on a wider London(three)-Nice market with respect to the NTS passenger segment.

1.4.5. (4) Entry/expansion

- 290. Demand currently exceeds capacity throughout most or all of the day at Heathrow. Nice is a slot coordinated airport. However, COHOR, the organisation appointed by the French Authorities to allocate slots at the airport of Nice, indicated that airlines, when adopting their programs for future seasons, almost never encounter difficulties in obtaining the necessary slots. The reason why the airport is coordinated is because there is an important flux of business traffic which is only announced at a late stage. COHOR however does not expect any slot shortages to arise at the airport of Nice for the next seasons.
- 291. IAG considers that, given Air France-KLM's strong position at City, it is foreseeable that Air France would launch services on the London-Nice route. However, the press release that IAG sent to the Commission on 26 March 2012 regarding Air France's and easyJet's inauguration of their base at the airport of Nice only refers to Air France's intention to launch new services to Southern Europe, not to London.
- 292. No likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified. If any, new entries and frequency increases post-Transaction would take place from airports other than Heathrow. ¹⁷⁰ Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Nice route.
- 293. Contrary to the submission made by the Parties on 9 March 2012, the Commission doubts that the London-Nice route would have been operated by bmi only for a short timeframe. To the contrary, it appears that bmi's internal documents refer to year round operation. This conclusion is not altered by the additional information submitted by the Parties on 23 March 2012.

71

¹⁷⁰ IAG also argues that the fact that Air France has recently exchanged a pair of daily Heathrow slots to its SkyTeam partner Tarom, shows that it has slots available at Heathrow, which it could use to launch a London-Nice service. This is however unconvincing as it would have to do so by stopping these other services.

1.4.5. (5) Conclusion on the London-Nice route

- 294. The effects of the Transaction on the London-Nice route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1, the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 295. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Nice route post-Transaction, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Nice route, at least for TS passengers.

1.4.6. London-Vienna

1.4.6. (1) Description of the route

- 296. In the Winter 2010 and Summer 2011 IATA seasons, a total of [550,000-600,000] O&D passengers travelled by air between London(three)¹⁷¹ and Vienna. Among them, [400,000-450,000] travelled between Heathrow and Vienna. The same period, transfer passengers accounted for [30-40]% of all passengers flying between London(three) and Vienna. That ratio was [40-50]% for passengers flying between Heathrow and Vienna.
- 297. IAG estimates that [20-30]% of O&D passengers on the London(three)-Vienna route were time-sensitive over the same period. The ratio is slightly less ([20-30]%) for O&D passengers that travelled between Heathrow and Vienna.
- 298. Both IAG and bmi operate direct flights on the London-Vienna route from Heathrow. Austrian also operates direct flights on this city pair from Heathrow. easyJet operates direct flights from Gatwick.¹⁷³
- 299. Table 18 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air services market on the London-Vienna route:

No direct services to Vienna are currently operated from City.

No direct services to Vienna are currently operated from Luton or Stansted. It is therefore not necessary to look at a wider London(five)-Vienna market.

Ryanair flies to Bratislava from Luton and Stansted. The question whether Vienna Schwechat airport and Bratislava airport are substitutable is left open for the purposes of this decision.

Table 18 Market shares on the London-Vienna route for O&D passengers

Carrier		Summer 201	11	Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %
		LHR/LGW/I	LCY-VIE			
IAG	[40-50]%	[20-30]%	[30-40]%	[50-60]%	[10-20]%	[20-30]%
bmi	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[60-70]%	[40-50]%	[40-50]%	[60-70]%	[30-40]%	[40-50]%
Austrian	[5-10]%	[30-40]%	[30-40]%	[5-10]%	[30-40]%	[30-40]%
easyJet	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
		LHR-V	/IE			
IAG	[50-60]%	[30-40]%	[40-50]%	[60-70]%	[20-30]%	[30-40]%
bmi	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Combined	[90-100]%	[50-60]%	[60-70]%	[90-100]%	[40-60]%	[50-60]%
Austrian	[5-10]%	[40-50]%	[30-40]%	[5-10]%	[50-60]%	[40-50]%
easyJet	-	-	-	-	-	-

300. Table 19 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Vienna route.

Table 19 Overview of frequency of air services on the London-Vienna route

Carrier	Sumn	ner 2011	Winte	r 2010
	Daily	Weekly	Daily	Weekly
		LHR/LGW/LCY-VIE		1
IAG	4	28	4	28
Bmi	2	14	2	14
Combined	6	42	6	42
easyJet	1	9	2	12
Austrian	3	21	3	21
Total	10	72	11	75
		LHR-VIE		1
IAG	4	28	4	28
Bmi	2	14	2	14
Combined	6	42	6	42
easyJet	-	-	-	-
Austrian	3	21	3	21
Total	9	63	9	63

Source: Form CO

1.4.6. (2) TS passengers

- 301. The Parties' market shares with respect to the TS passenger segment vary depending on which London airports are taken into consideration in the relevant market. In particular, on a Heathrow-Vienna route, the Transaction would lead the merged entity to a [90-100]% market share with an increment of [30-40]% based on the Summer 2011 IATA season data. Other than the Parties, only Austrian operates on the Heathrow-Vienna route, with a market share of [5-10]% in the TS segment in Summer 2011. On a London(three)-Vienna market, which would also include flights operated by easyJet from Gatwick, the Transaction would lead the merged entity to a [60-70]% market share with an increment of [20-30]% based on the Summer 2011 IATA season data. On such market, Austrian would have a market share of [5-10]% and easyJet [30-40]%.
- 302. At first sight, the market share of Austrian with respect to the TS segment seems low ([5-10]% on a Heathrow-Vienna route and [5-10]% on a London(three)-Vienna market. However, Austrian's market share is understated: Austrian codeshares on bmi's flights and its corresponding market share has been included in bmi's share. Passengers travelling on bmi's flights as a result of Star codeshare arrangements accounted for about [50-60%] of bmi's share (i.e. over [30,000-35,000] passengers annually). If these passengers would instead be included in Austrian's market share, it increases to [10-20]% for TS passengers and bmi's share would accordingly reduce to [10-20]%. As these codeshare relationships would be terminated as a result of the Transaction, it seems likely that much of the share accounted for by Star codesharing would switch to Austrian.
- 303. In Summer 2011, Austrian operated out of Heathrow with 3 daily frequencies. In addition, Austrian will offer an additional daily service in Summer 2012 using a Heathrow slot that it already owns, thus increasing its daily frequencies from 3 to 4. On a combined basis, the Transaction would provide to the merged entity with a frequency advantage over Austrian. Nevertheless, Austrian's frequencies are attractive for TS passengers, with morning outbound and evening return flights in both directions, which is an important factor for TS passengers.
- 304. The market investigation gave strong indications that Austrian is considered as a credible competitive alternative for TS passengers to the Parties' services by competitors, travel agents and corporate customers. Furthermore, Austrian was considered to be IAG's closest competitor by a majority of the competitors, travel agents and corporate customers.
- 305. In light of the above, it can be concluded that Austrian would exert a significant competitive constraint on the Parties for the TS segment on the London-Vienna route post-Transaction.
- 306. In Summer 2011, easyJet operated out of Gatwick with 1 daily frequency only which does not seem convenient for time-sensitive customers. The market investigation showed mixed views amongst the competitors, corporate customers and travel agents

- as regards the extent to which easyJet offers a credible competitive alternative for TS passengers. However, this does not affect the conclusion drawn by the Commission.
- 307. Lastly, a majority of the competitors, travel agents and corporate customers considered that there is sufficient constraint by actual or potential competition on the market so as to prevent IAG from increasing prices post-Transaction.
- 308. Considering all of the above and in particular the fact that Austrian is likely to take over a significant part of bmi's passengers following the termination of the Star Alliance codeshare agreements, that Austrian has a good schedule and the frequency increase, it can be concluded that Austrian would constrain the Parties on the TS passenger segment on the London-Vienna route.

1.4.6. (3) NTS passengers

- 309. The Parties' market shares in the NTS passenger segment vary depending on which airports in the London area are included in the relevant market. In particular, on a Heathrow-Vienna route, the Transaction would lead the merged entity to a [50-60]% market share with an increment of [10-20]%, based on the Summer 2011 IATA season data. Other than the Parties, only Austrian operates on the Heathrow-Vienna route, with a market share of [40-50]% in the NTS passenger segment in Summer 2011.
- 310. On a London(three)-Vienna market, which would also include flights operated by easyJet out of Gatwick, the Transaction leads the merged entity to a [40-50]% market share with an increment of [10-20]% based on the Summer 2011 IATA season data. On such market, Austrian would have a market share of [30-40]% and easyJet of [10-20]%.
- 311. Austrian has a significant market share in the NTS passenger segment ([40-50]% on a Heathrow-Vienna route and [30-40]% on a London(three)-Vienna market). Furthermore, as set out above, as from summer 2012, Austrian's daily frequencies increase from 3 to 4 and Austrian would take over a large share of the passengers that used to travel on the London-Vienna route on Star codeshared flights currently operated by bmi. It can therefore be concluded that Austrian would exert a credible competitive constraint on the Parties post-Transaction in the NTS passenger segment. This was confirmed during the market investigation which showed that a majority of the travel agents and competitors considered Austrian as a credible competitive alternative for NTS passengers.
- 312. The market investigation showed that a majority of the competitors and travel agents also consider easyJet's flights to Vienna out of Gatwick as a credible competitive alternative for NTS passengers.
- 313. Overall, the market investigation showed that a majority of the competitors, travel agents and corporate customers considered that there is sufficient constraint by actual or potential competition on the route so as to prevent IAG from increasing prices post-Transaction.

314. From the above it thus appears that Austrian and easyJet would exert a sufficient competitive constraint on IAG post-Transaction on the London-Vienna route for NTS passengers.

1.4.6. (4) Conclusion on the London-Vienna route

315. Considering the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London-Vienna route.

1.4.7. London-Berlin¹⁷⁴

1.4.7. (1) Description of the route

- 316. In the Winter 2010 and Summer 2011 IATA seasons, a total of [1,050,000-1,100,000] O&D passengers travelled by air between London(five) and Berlin. Among them, [650,000-700,000] travelled between London(three) and Berlin and [400,000-450,000] travelled between Heathrow and Berlin. Over the same period, transfer passengers accounted for [10-20]% of all passengers flying between London(five) and Berlin, while this ratio was [20-30]% for passengers flying between London(three) and Berlin and [30-40]% for passengers flying between Heathrow and Berlin.
- 317. IAG estimates that [30-40]% of O&D passengers on this route over the IATA season Winter 2010 and Summer 2011were time sensitive. The ratio is [30-40]% for passengers that travelled between London(three) and Berlin and [40-50]% for passengers that travelled between Heathrow and Berlin.
- 318. IAG offers direct services on the London-Berlin route from Heathrow. Up to 25 November 2011, bmi was also providing direct services on the London-Berlin route from Heathrow. As from that date, Lufthansa took over bmi's Berlin services, with bmi now just placing its code on the Lufthansa-operated services. 175 easyJet also offers direct services on the route from Gatwick and Luton. Ryanair offers direct services out of Stansted.
- 319. Table 20 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air services market on the London-Berlin route:

Despite the fact that bmi stopped operating on the Berlin route prior to the Transaction, the London-Berlin route is dealt with in the O&D overlap routes assessment since bmi's exit on the route seems to be related to the Transaction.

These services are flown on Lufthansa-held Heathrow slots but are being flown on bmi aircraft which are being leased by Lufthansa. Following the Transaction, Lufthansa will use its own aircraft on the route.

Table 20 Market shares on the London-Berlin route for O&D passengers

Carrier		Summer 201	1		Winter 2010	0					
	TS %	NTS %	All %	TS %	NTS%	All %					
LON-BER											
IAG	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%					
bmi	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%					
Combined	[50-60]%	[30-40]%	[40-50]%	[40-50]%	[20-30]%	[30-40]%					
easyJet	[20-30]%	[40-50]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%					
Ryanair	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%					
	LHR/LGW/LCY-BER										
IAG	[20-30]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%					
bmi	[50-60]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%					
Combined	[70-80]%	[50-60]%	[60-70]%	[70-80]%	[50-60]%	[50-60]%					
easyJet	[20-30]%	[40-50]%	[30-40]%	[20-30]%	[40-50]%	[40-50]%					
Ryanair	-	1	1	1	1	1					
		LHR	R-BER								
IAG	[30-40]%	[60-70]%	[50-60]%	[50-60]%	[40-50]%	[40-50]%					
bmi	[60-70]%	[30-40]%	[40-50]%	[40-50]%	[50-60]%	[50-60]%					
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%					
easyJet	-	-	-	-	-	-					
Ryanair	-	-	-	-	-	-					

320. Table 21 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Berlin route (it being noted that meanwhile Lufthansa has taken over the bmi flying).¹⁷⁶

Table 21 Overview of frequency of air services on the London-Berlin route

Carrier	Sumn	ner 2011	Wint	er 2010
	Daily	Weekly	Daily	Weekly
		LON-BER		L
IAG	6	40	5	35
bmi	5	32	5	33
Combined	11	72	10	68
easyJet	4	31	5	32
Ryanair	2	13	3	19
Total	17	116	18	119
		LHR/LGW/LCY-BEI	R	-
IAG	6	40	5	35
bmi	5	32	5	33
Combined	11	72	10	68
easyJet	3	19	3	19
Ryanair	-	-	-	-
Total	14	91	13	87
	·	LHR-BER		
IAG	6	40	5	35
bmi	5	32	5	33
Combined	11	72	10	68
easyJet	-	-	-	-
Ryanair	-	-	-	-
Total	11	72	10	68

Source: Form CO

¹⁷⁶ [Redacted – refers to confidential internal document]

1.4.7. (2) TS passengers

- 321. Looking at the market share data for Summer 2011, the Parties' market shares with respect to the TS passenger segment vary depending on which London airports are taken into consideration in the relevant market. In particular, the Parties were the only carriers operating on the Heathrow-Berlin route. On a London(three)-Berlin market, which would also include easyJet's flights from Gatwick, the Parties had a combined market share of [70-80]% (with easyJet having a market share of [20-30]%). On a London(five)-Berlin market, which would in addition include easyJet's flights from Luton and Ryanair's flights from Stansted, the Parties had a combined market share of [50-60]% (with easyJet having a market share of [20-30]% and Ryanair of [10-20]%).
- 322. In Summer 2011, bmi had a higher market share in the TS passenger segment than IAG bmi's market share is partially caused by Star codeshare passengers on its flights. According to the Parties, passengers travelling on bmi's flights as a result of Star codeshare agreements accounted for around [50-60%] of bmi's passenger share (i.e. over [100,000-150,000] passengers annually).
- 323. Since November 2011 however, bmi has stopped operating on the route and the services were taken over by Lufthansa with bmi just putting its code on the Lufthansa flights. As the Star codeshares would be discontinued after the Transaction, the Commission considers it likely that much of the Star codeshare passengers would continue to fly on the Lufthansa operated services.
- 324. Bmi's exit and Lufthansa's entry on the route seem directly related to the Transaction. As a result of this exit and entry, the Transaction does not lead to a reduction of the number of competitors operating on the route; on the contrary, Lufthansa already operates on the route in competition with IAG while bmi no longer does.
- 325. Lufthansa operates from the same airport as IAG, namely from Heathrow. It operates on the route with three daily flights. IAG (even though the Transaction would not lead to an increment since bmi is no longer operating on the route) would have a frequency advantage over Lufthansa. Nevertheless, Lufthansa's schedule is attractive for both TS and NTS passengers. It will offer morning outbound and evening return flights in both directions, which is an important factor for TS passengers.
- 326. In the light of the above, it can be concluded that Lufthansa would exert a significant competitive constraint on the Parties for the TS passenger segment on the London-Berlin route post-Transaction.
- 327. The route is also operated by easyJet from Gatwick and Luton, and by Ryanair from Stansted. easyJet has a relatively strong market share in the TS passenger segment (in summer 2011 [20-30]% on a London(three)-Berlin market and [20-30]% on a London(five)-Berlin market), Ryanair less (in summer 2011 [10-20]% on a London(five)-Berlin market). The Parties argued that these are two well established carriers with frequencies that are suitable for a day return between the cities.

- 328. The market investigation showed that IAG was considered by a majority of the competitors, corporate customers and travel agents as bmi's closest competitor. The market investigation was inconclusive with respect to IAG's closest competitor and respondents referred to both bmi and Lufthansa. Easyjet and Ryanair were considered to be more distant competitors. Also, the market investigation showed mixed views amongst the corporate customers and amongst the travel agents as regards the question whether or not easyJet and Ryanair offer a credible competitive alternative for TS passengers. It is thus not clear to what extent easyJet and Ryanair would exert a competitive constraint on the Parties post-Transaction. However, this does not affect the conclusion drawn by the Commission.
- 329. Overall, the market investigation showed that a majority of the competitors, travel agents and corporate customers considered that there is sufficient constraint by actual or potential competition on the route so as to prevent IAG from increasing prices post-Transaction.
- 330. Considering all the above, it can be concluded that at least Lufthansa would constrain the Parties on the TS passenger segment on the London-Berlin route.

1.4.7. (3) NTS passengers

- 331. Looking at the market share data for Summer 2011, the Parties' market shares with respect to the NTS passenger segment vary depending on which London airports are taken into consideration in the relevant market. In particular, the Parties are the only carriers operating on the Heathrow-Berlin route. On a London(three)-Berlin market, which would also include easyJet's flights from Gatwick, the Transaction would lead the merged entity to a combined market share of [50-60]% (with easyJet having a market share of [40-50]%). On a London(five)-Berlin market, which would in addition include easyJet's flights from Luton and Ryanair's flights from Stansted, the Transaction would lead the merged entity to a market share of [30-40]% (with easyJet having a market share of [40-50]% and Ryanair of [20-30]%).
- 332. As set out above, Lufthansa has taken over bmi's services on the route. It will offer an attractive schedule from London Heathrow. The Transaction does not result in a decrease of the number of competitors on the route.
- 333. Furthermore, the market investigation showed that a majority of the competitors and travel agents considered easyJet's and Ryanair's services to Berlin as credible competitive alternatives for NTS travellers.
- 334. Overall, the market investigation showed that a majority of the competitors, travel agents and corporate customers considered that there is sufficient constraint by actual or potential competition on the route so as to prevent IAG from increasing prices post-Transaction.
- 335. From the above it appears that Lufthansa, easyJet, and Ryanair would exert a sufficient competitive constrain on the Parties on the London-Berlin route for NTS passengers.

1.4.7. (4) Conclusion on the London-Berlin route

336. Considering the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London-Berlin route.

1.4.8. London-Cairo

1.4.8. (1) Description of the route

- 337. The provision of air services between UK and Egypt is regulated by the UK-Egypt Air Services Agreement ("ASA") and the related Memorandum of Understanding ("MoU"), whose latest version dates back to June 2010.
- 338. Pursuant to these ASA and MoU, the designated carriers of both countries have the right to operate a total maximum of 14 weekly frequencies to/from Cairo and London with a total seat capacity of 4,500 seats in each direction.
- 339. At present, the UK designated carriers on the London-Cairo route are IAG's British Airways, bmi and easyJet. On the Egyptian side, the designated carrier is Egypt Air. With the exception of easyJet, whose frequencies are currently unused because the Egyptian Civil Aviation Authority does not allow airlines marketing a "single-cabin" product to operate from Cairo for the time being, the UK and Egyptian designated carriers operate the maximum number of frequencies allowed under the UK-Egypt ASA and, therefore, no room for entry or expansion is available.
- 340. With respect to the above, it should be also highlighted that bmi is able to maintain its own level of flying by "borrowing" three frequency permissions per week from Egypt, that are swapped with two pairs of bmi slots at Heathrow, which in turn allow Egypt Air to operate its current 11 weekly frequencies. The incentive for IAG to continue the swap agreement appears very low. This would lead Egyptair to exert a lesser constraint on IAG post-Transaction.
- 341. As clarified by the CAA in the context of the market investigation,¹⁷⁷ a EU airline that would be interested in being designated as a UK carrier on any route subject to restrictions (such as London-Cairo) could at any point apply to the CAA and the UK Department for Transport ("DfT") in order to be allocated traffic rights.
- 342. Such an application could be lodged also for route rights currently held by another carrier. If in such circumstances the incumbent carrier(s) were not prepared to voluntarily surrender their route rights a situation of "scarce bilateral capacity" would materialize. In such a scenario, the DfT could ask the CAA to reconsider the licences of the incumbent carriers and ask the CAA to hold a "scarce bilateral capacity hearing".

81

See minutes of the conference call with the UK CAA held on 9 February 2012.

- 343. The board of the CAA would at such a hearing decide which airlines should be designated. In making this decision the CAA would take into account the competitive situation and consider which carrier could sustainably provide the most benefit for consumers.
- 344. Similarly, in a scenario in which a carrier voluntarily gave up its rights as a designated carrier, the DfT would inform qualifying airlines that the rights to be a UK designated carrier on a route were available. At first, an informal inquiry would take place with those qualifying carriers who have previously expressed an interest in operating a service on that route. If the informal inquiry indicates that other airlines would be interested in operating a route then subsequently a more formal process would take place with qualifying airlines, advised that rights are available. If more airlines are interested in operating the route than there are rights available, the scarce bilateral capacity process outlined above would be triggered.
- 345. The UK DfT explained¹⁷⁸ that a scarce capacity situation has occurred recently, when some additional frequencies have been allowed under the UK-Egypt ASA (3 weekly). In the subsequent scarce capacity hearing bmi, IAG and easyJet applied for the additional frequencies and easyJet was successful. The above-mentioned airline was thus recognised as UK designated carrier and granted 3 weekly frequencies. As mentioned above, however, the Egyptian CAA is for the time being blocking easyJet's operations and its traffic rights are unused¹⁷⁹. The DfT further highlighted that it is currently very difficult to talk to competent authorities in Egypt due to the so called "Arab spring" events.
- 346. On the London-Cairo route a total of [250,000-300,000] O&D passengers travelled by air in the Winter 2010 and Summer 2011 IATA seasons combined. Over the same period, transfer passengers accounted for [40-50]% of all passengers flying between Heathrow and Cairo.
- 347. The Parties estimate that around [30-40]% of O&D passengers on this route over the Winter 2010 and Summer 2011 IATA seasons were time-sensitive.
- 348. Both IAG and bmi operate all year-round non-stop services on this route between Heathrow and Cairo. Egypt Air is also active the same airports' pair with all year-round non-stop flights. Egypt Air and bmi code-shared on each other's Heathrow-Cairo point-to-point services and on certain routes behind or beyond London and Cairo. The Parties anticipate that the existing code-share agreement concerning point-to-point services between London and Cairo will be terminated post-Transaction whereas behind/beyond code-sharing will be subject to review.

See minutes of the conference call with the UK DfT held on 10 February 2012

This is not contradicted by the Parties' submission of 9 March 2012.

- 349. As regards the London-Cairo route it would not be necessary to analyse the issue of airport substitutability in London, since all airlines operating on the route fly to/from Heathrow. ¹⁸⁰ In any event, the market investigation pointed out that, concerning the London-Cairo route, there is a limited propensity to switch from Heathrow to other London airports, especially for TS passengers. ¹⁸¹ In this respect, account must be taken also of the high percentage of connecting passengers flying on the route ([40-50]%), for which Heathrow cannot be substituted with any other London airport.
- 350. Table 22 displays the market shares of the Parties and their competitors on the TS, NTS and all-passengers air services market on the Heathrow-Cairo route. 182

Table 22 Market shares on the London-Cairo markets for O&D passengers

	Summer 2011			Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %
LHR-CAI						
IAG	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%
bmi	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%
Combined	[70-80]%	[30-40]%	[40-50]%	[30-40]%	[60-70]%	[40-50]%
Egyptair	[20-30]%	[60-70]%	[50-60]%	[60-70]%	[30-40]%	[40-50]%

351. As is illustrated in Table 23 below, Egypt Air was the market leader in terms of frequencies in the winter 2012 and summer 2011 IATA seasons.

Actually the issue of airport substitutability in London could become material in the event that easyJet would start its operations on the London-Cairo route. However, as it will be explained in the following paragraphs, it is not possible to conclude that easyJet would be allowed to start such operations in the near future (if ever).

See for example replies to question No 16 in the request for information to competitors, question No 22 in the request for information to travel agents and question No 24 in the request for information to corporate customers.

Since only Heathrow airport is used at the London end of the route, the data below do not distinguish various markets according to which London airport is considered part of the relevant market.

Table 23 Overview of frequency of air services on London-Cairo

Carrier	Summer 2011		Winte	er 2010				
	Daily	Weekly	Daily	Weekly				
LHR-CAI								
IAG	1	7	1	7				
bmi	1	7	1	7				
Egyptair	2	11	2	11				

Source: Form CO

1.4.8. (2) **TS passengers**

352. As shown above, on the Heathrow-Cairo route IAG and bmi had a combined market share for TS passengers of [70-80]% in Summer 2011. As far as closeness of competition is concerned, the results of the market investigation suggest that, although a significant number of respondents indicated that bmi exerts a constraint on IAG, the majority of respondents indicated that Egypt Air is the closest competitor of IAG on the TS passengers' market segments.¹⁸³

1.4.8. (3) **NTS Passengers**

353. On the NTS passengers' segment, IAG and bmi had a combined market share of [30-40]% in Summer 2011. In addition, the results of the market investigation as regards closeness of competition suggest that the majority of respondents indicated that Egypt Air is the closest competitor of IAG on the NTS passengers' market segment.

1.4.8. (4) Entry/expansion

- 354. The market investigation has confirmed that the existing UK-Egypt bilateral restrictions represent a barrier to entry/expansion on flights between the two abovementioned countries.
- 355. In the current situation, the traffic rights that are necessary to operate on the London-Cairo route could be obtained after lodging an application with the UK CAA and DfT asking for the re-allocation of rights currently allocated to other carriers. In the event that these other carriers disagree to release their rights, the "scarce capacity" procedure described above would be triggered, whose outcome largely relies on the appreciation of the CAA's board and cannot be predicted *ex ante*.
- 356. An additional barrier to operate on the route would be the current policy of the Egyptian CAA, which requests for the time being carriers to operate flights with two cabins. In any event, easyJet would under current conditions fly from Gatwick and

See for example replies to questions No 25, 30 and 31 in the request for information to competitors, questions No 28, 33 and 34 in the request for information to travel agents and question No 29, 31 and 32 in the request for information to corporate customers.

- have only three weekly frequencies on the route. Therefore, it would not represent a sufficient constraint post-Transaction for TS passengers.
- 357. On the UK side, a significant barrier to entry/expansion is represented by the scarcity of slots at several London airports and particularly at Heathrow, which is viewed as not sufficiently substitutable with other London airports by a significant number of respondents in the market investigation especially for TS passengers.

1.4.8. (5) Conclusion on the London-Cairo route

- 358. The effects of the Transaction on the London-Cairo route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1., the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 359. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Cairo route post-Transaction, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the London-Cairo route for TS passengers.

1.4.9. London-Marrakech

1.4.9. (1) Description of the route

- 360. The provision of air services between UK and Morocco is regulated by the UK-Morocco Air Services Agreement ("ASA"), pursuant to which no restrictions are imposed as regards frequencies, capacity, number of carriers or requirements for commercial agreements between any point in Morocco and any point in the E.U. for any E.U. airline.
- 361. On the London-Marrakech route a total of [250,000-300,000] O&D passengers travelled by air in the Winter 2010 and Summer 2011 IATA seasons combined. Of these passengers, [200,000-250,000] travelled from London(three) and [0-50,000] flew from Heathrow.
- 362. Over the same period, transfer passengers accounted for: [0-5]% of all passengers flying between all London(five) and Marrakech, [0-5]% of the passengers flying from London(three) and [10-20]% of the passengers flying from Heathrow. A very large majority of these transfer passengers travelled between Marrakech and Heathrow.

- 363. The Parties estimate that around [5-10]% of O&D passengers on this route over the Winter 2010 and Summer 2011 IATA seasons were time-sensitive. The ratio is slightly higher for passengers flying from London(three) ([10-20]%) and slightly lower for passengers flying from Heathrow ([5-10]%).
- 364. Both IAG and bmi operate all year-round non-stop services on this route. However, while IAG operates from Gatwick, bmi operates from Heathrow. As regards competitors, easyJet and Royal Air Maroc¹⁸⁴ fly from Gatwick and Ryanair operates on the route from Luton and Stansted. Some charter flight operators, i.e. Transavia.com and Atlas Blue, are also active on the route from Gatwick.
- 365. Table 24 below shows the Parties' and competitors' market shares on the London-Marrakech route, taking into account scheduled flights only. The data below refer separately to a market comprising all London airports, a market including only Heathrow, Gatwick and London City and a Heathrow-only market. However, the issue of airport substitutability in London appears to be less relevant with respect to the London-Marrakech route since IAG flies from Gatwick and bmi from Heathrow. In the present case it is also not necessary to determine whether charter flights should be considered as a substitute for scheduled flights since the Transaction will not raise doubts on the London-Marrakech route irrespective of the market definition adopted.

86

Royal Air Maroc used to offer direct flights from Gatwick to Marrakech. However, it has ceased operating a direct service in winter 2011 but instead offers a one-stop service via Casablanca.

Table 24 Market shares on the London-Marrakech markets for O&D passengers

Carrier		Summer 20	11		Winter 201	nter 2010	
	TS %	NTS %	All %	TS %	NTS%	All %	
	•	LON-R	RAK				
IAG	[20-30]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	
bmi	[0-5]%	[10-20]%	[10-20]%	-	-	-	
Combined	[30-40]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	
RAM	[10-20]%	[5-10]%	[5-10]%	[30-40]%	[10-20]%	[10-20]%	
easyJet	[40-50]%	[40-50]%	[40-50]%	[50-60]%	[60-70]%	[60-70]%	
Ryanair	[0-5]%	[30-40]%	[30-40]%	[5-10]%	[20-30]%	[10-20]%	
	l .	LHR/LGW/I	CY-RAK				
IAG	[30-40]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	
bmi	[0-5]%	[10-20]%	[10-20]%	-	-	-	
Combined	[30-40]%	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%	
RAM	[10-20]%	[5-10]%	[5-10]%	[30-40]%	[10-20]%	[10-20]%	
easyJet	[40-50]%	[60-70]%	[60-70]%	[60-70]%	[80-90]%	[80-90]%	
Ryanair	-	-	-	-	-	-	
	•	LHR-R	RAK	<u> </u>		<u> </u>	
IAG	-	-	-	-	-	-	
bmi	[90-100]%	[90-100]%	[90-100]%	-	-	-	
Combined	[90-100]%	[90-100]%	[90-100]%				
RAM	-	-	-	[90-100]%	[90-100]%	[90-100]%	
easyJet	-	-	-	-	-	-	
Ryanair	-	-	-	-	-	-	

366. As is illustrated in Table 25 below, easyJet was the market leader in terms of frequencies in the winter 2010 and summer 2011 IATA seasons.

Table 25 Overview of frequency of air services on London-Marrakech

Carrier		mer 2011		er 2010
	Daily	Weekly	Daily	Weekly
		LON-RAK		
IAG	0	3	-	-
bmi	0	3	-	-
easyJet	1	9	2	12
Royal Air Maroc	1	4	1	4
Ryanair	1	6	0	3
		LHR/LGW/LCY-RAK		•
IAG	0	3	-	-
bmi	0	3	-	-
easyJet	1	9	2	12
Royal Air Maroc	1	4	1	4
Ryanair	-	-	0	-
		LHR-RAK		•
IAG	-	-	-	-
bmi	0	3	-	-
easyJet	-	-	-	-
Royal Air Maroc	-	-	-	-
Ryanair	-	-	-	-

Source: Form CO

1.4.9. (2) TS passengers

367. As anticipated, bmi is the only airline active on the Heathrow-Marrakech airport pair and therefore no overlap arises with IAG. Furthermore, the Parties' combined market share is below [30-40]% either on an London(five)-Marrakech market and on a London(three)- Marrakech market. The Parties' market share would decrease slightly if charter flights were taken into account. In addition, several credible competitors would remain active on the market post-Transaction, including Royal Air Maroc, easyJet and Ryanair, with a number of frequencies comparable or superior to the ones of the Parties.

368. As regards closeness of competition, the results of the market investigation suggest that, while bmi and Royal Air Maroc are viewed as potential alternatives especially for corporate customers, overall easyJet is the closest competitor of IAG for TS passengers. The majority of respondents also indicated that IAG is the closest competitor of bmi.

1.4.9. (3) NTS Passengers

- 369. Looking at the NTS Passengers' segment, the Parties' combined market shares are below [30-40]% on London(three)-Marrakech market and below [20-30]% on a London(five)-Marrakech market. The Parties' market share would decrease slightly if charter flights were taken into account. As mentioned above, several credible competitors would remain active on the market post-Transaction, including Royal Air Maroc, easyJet and Ryanair, with a number of frequencies comparable or superior to the one of the Parties.
- 370. Concerning closeness of competition, the results of the market investigation suggest that easyJet is the closest competitor of IAG for NTS passengers. The majority of respondents also indicated that IAG is the closest competitor of bmi.

1.4.9. (4) Conclusion on the London-Marrakech route

371. Considering the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London-Marrakech route.

1.4.10. London-Moscow

1.4.10. (1) Description of the route

- 372. The provision of air services between UK and Russia is regulated by the UK/Russia Air Services Agreement and its side-agreements (ASA), pursuant to which the UK and Russia can each designate up to two national carriers to operate on the London-Moscow city-pair. The first designated carriers from each country are currently IAG(BA) (for the UK) and Aeroflot (for Russia). They are each permitted 21 frequencies per week. The second designated carriers for this route are currently bmi (for the UK) and Transaero (for Russia). They can each operate 14 frequencies per week.
- 373. [...].
- 374. [Redacted refers to IAG-Aeroflot agreement]¹⁸⁵
- 375. [Redacted refers to bmi-Transaero agreement] 186 187

[[]Redacted – refers to a confidential commercial agreement]

Special Prorate Agreements (SPAs) are agreements which specify how revenue for a journey involving carriage of a passenger on flights operated by the marketing and the operating carriers should be divided between the parties.

The other transfer passengers are covered by IATA standards which are a default system for allowing passengers to travel from one place to another using two or more airlines. The Multilateral Interline Traffic Agreements provide a standard traffic document for these tickets and provide procedures for settlement of the revenues owed to the carrying airline.

- 376. On 15 March 2012 IAG (BA) entered into an agreement with Transaero which ensures that, after the Transaction is put into effect, Transaero would continue to be able to use two daily slot-pairs on Heathrow-Moscow, as currently leased from bmi.
- However, despite Transaero having the necessary slots to continue to operate to 377. Heathrow from Moscow, there is uncertainty as to whether IAG could operate both its own frequencies and bmi's frequencies on the London-Moscow route post-Transaction. The Commission understands that, under the UK/Russia ASA, if the second UK designated carrier does not operate, the first UK designated carrier cannot use the spare frequencies of the second UK designated carrier to operate on this route (i.e. IAG could not accumulate both its own existing 21 frequencies and bmi's 14 frequencies and use these 35 frequencies under its own license). However, the UK/Russia ASA is unclear on the question whether the first and the second designated carries could be part of the same group and operate under their individual operating licenses. Indeed, the UK Civil Aviation Authority (CAA) explained that bmi would not lose their status as the second UK designated carrier automatically post-Transaction (as a consequence of the fact that it would belong to the same group as the first UK designated carrier). However, other carriers might challenge bmi's operating license for this route post-Transaction. If that were to happen and if IAG was not prepared to voluntarily surrender bmi's route rights, a situation of "scarce bilateral capacity" would exist in which case the UK Department for Transport could ask the UK CAA to reconsider the licence of the incumbent carrier bmi and ask the UK CAA to hold a "scarce bilateral capacity hearing". The UK CAA explained that at such a hearing, the board of the UK CAA would decide which airlines should be designated and that "In making this decision the CAA will take into account the competitive situation and consider which carrier could sustainably provide the most benefit for consumers. If such a hearing were to be held the CAA would, amongst other factors, take into account whether carriers on a route may be under common ownership, as would be the case of bmi and British Airways (BA) post-Transaction, and would seek to consider the degree of "true" competition that might exist between them." 188.
- 378. [...]¹⁸⁹ Furthermore, despite the slot lease agreement between BA and Transaero, there is uncertainty as regards bmi's right to operate its frequencies post-Transaction on the London-Moscow route.
- (a) <u>Heathrow Moscow</u>
- 379. In the Winter 2010 and Summer 2011 IATA seasons, a total of [550,000-600,000] O&D passengers travelled by air on the London(five)-Moscow city pair. All of them

Excerpt from the non-confidential version of the minutes of the conference call held between the Commission and the UK CAA on 9 February 2012.

¹⁸⁹ [...]

- travelled from Heathrow.¹⁹⁰ Over the same period, transfer passengers accounted for [20-30]% of all passengers flying between Heathrow and Moscow. IAG estimates that [20-30]% of O&D passengers on this route were time sensitive over the same period.
- 380. Flights between London and Moscow are operated from Heathrow on the London end and from Domodedovo and Sheremetyevo on the Moscow end. Both IAG and bmi operate all year-round non-stop services on this route between Heathrow and Domodedovo. Aeroflot and Transaero are also active on the route Heathrow-Moscow with all year-round non-stop flights. In particular, Aeroflot flies between Heathrow and Sheremetyevo and Transaero flies between Heathrow and Domodedovo.
- 381. Table 26 below displays the market shares of the Parties on the TS, NTS and all-passengers air services markets on the London-Moscow route:¹⁹¹

Table 26 Market shares on air services London-Moscow

Carrier		Summer 202	11		Winter 201	010				
	TS %	NTS %	All %	TS %	NTS%	All %				
	LHR-MOW									
IAG	[40-50]%	[20-30]%	[20-30]%	[50-60]%	[20-30]%	[30-40]%				
bmi	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%				
Combined	[70-80]%	[50-60]%	[50-60]%	[70-80]%	[50-60]%	[50-60]%				
Aeroflot	[10-20]%	[30-40]%	[20-30]%	[10-20]%	[30-40]%	[30-40]%				
Transaero	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%				

382. Table 27 below provides an overview of the frequencies offered by the Parties on the London-Moscow route: 192

Therefore, only a possible market definition consisting of Heathrow-Moscow will be considered in this section. For a description of a Heathrow-Domodedovo market see sub-section b below.

The table shows data for flights between Heathrow and Moscow only since only Heathrow is used at the London end of the route.

The table shows data for Heathrow only since only Heathrow is used at the London end of the route.

Table 27 Overview of frequency of air services on London-Moscow

Carrier	Sumn	ner 2011	Winte	r 2010				
	Daily	Weekly	Daily	Weekly				
LHR-MOW								
IAG	3	21	3	20				
bmi	2	14	2	14				
Transaero	2	14	2	14				
Aeroflot	3	21	3	18				

Source: Form CO

(b) Heathrow - Domodedovo

- 383. In the Winter 2010 and Summer 2011 IATA seasons, a total of [350,000-400,000] O&D passengers travelled by air on the London(five)-Domodedovo route. All of them travelled from Heathrow.¹⁹³ Over the same period, transfer passengers accounted for [20-30]% of all passengers flying between Heathrow and Domodedovo.
- 384. IAG estimates that [30-40]% of O&D passengers on this route were time sensitive over the same period.
- 385. Both IAG and bmi operate all year-round non-stop services on this route between Heathrow and Domodedovo. Transaero is the only Russian carrier active on this route with all year-round non-stop flights.
- 386. Table 28 below displays the market shares of the Parties on the TS, NTS and all-passengers air services markets on the Heathrow Domodedovo route:

Table 28 Market shares on the air services Heathrow-Domodedovo markets

Carrier	Summer 2011		Winter 2010					
	TS %	NTS %	All %	TS %	NTS%	All %		
	LHR-DME							
IAG	[40-50]%	[30-40]%	[40-50]%	[60-70]%	[30-40]%	[40-50]%		
bmi	[30-40]%	[40-50]%	[40-50]%	[20-30]%	[50-60]%	[40-50]%		
Combined	[80-90]%	[80-90]%	[80-90]%	[80-90]%	[80-90]%	[80-90]%		
Transaero	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%		

Source: Form CO based on CAA and MIDT data

Therefore, only a possible market definition consisting of Heathrow-Domodedovo will be considered in this section.

387. Table 29 below provides an overview of the frequencies offered by the Parties on the Heathrow-Domodedovo route.

Table 29 Overview of frequency of air services on Heathrow-Domodedovo

Carrier	Summ	ner 2011	Winte	r 2010			
	Daily	Weekly	Daily	Weekly			
LHR-DME							
IAG	3	21	3	20			
bmi	2	14	2	14			
Transaero	2	14	2	14			

Source: Form CO

1.4.10. (2) TS passengers

- 388. The Parties' market shares do not vary significantly depending on which airports in the Moscow area are taken into consideration in the relevant market. As shown in the tables above, on the TS passenger segment, IAG and bmi had a combined market share of [70-80]% on a Heathrow-Moscow route and of [80-90]% on a Heathrow-Domodedovo route in Summer 2011.
- 389. Aeroflot and Transaero are the other operators on the TS passenger segment on the Heathrow-Moscow route, with market shares of [10-20]% and [10-20]% respectively. On a market which is limited to Heathrow-Domodedovo, the other remaining competitor is Transaero with a market share of [10-20]%.
- 390. Therefore in particular considering the high combined market shares of the Parties post-Transaction on all possible market definitions (Heathrow-Moscow and Heathrow-Domodedovo), the Parties would face only limited competition constraints from Aeroflot and Transaero.¹⁹⁴

1.4.10. (3) NTS passengers

- 391. As shown in the tables above, on the NTS passenger segment, IAG and bmi had a combined market share of [50-60]% on a Heathrow-Moscow market and of [70-80]% on a Heathrow-Domodedovo market in Summer 2011.
- 392. Therefore, the Parties would face only limited competition constraints from Aeroflot (which has a market share of [30-40]% on Heathrow-Moscow market in Summer 2011) and Transaero (which has a market share of [10-20]% on Heathrow-Moscow and of [10-20]% on Heathrow-Domodedovo in Summer 2011).

Comparisons with other routes (Paris- Moscow, Frankfurt- Moscow), as made in the Parties' submission of 21 March 2012, are not sufficient to alter the Commission's conclusion regarding the competition assessment on the London-Moscow route.

1.4.10. (4) Entry/expansion

- 393. Despite Transaero having secured the slots at Heathrow, there is uncertainty on who would be the second UK designated carrier operating in this route post-Transaction. It is not excluded that this would be bmi and as explained above, if a new carrier were to be designated, a "scarce capacity hearing" would be necessary. Furthermore demand currently exceeds capacity throughout most or all of the day at Heathrow so that even if a new second UK carrier were to be designated, it would not be in a position to find the necessary slots at Heathrow to operate on this route.
- 394. Therefore, no likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified on this route, in particular from Heathrow. 195 Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Moscow route.

1.4.10. (5) Conclusion on the London-Moscow route

- 395. The effects of the Transaction on the London-Moscow route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1., the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 396. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Moscow route, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Moscow route.

1.4.11. London-Amman

1.4.11. (1) Description of the route

397. In the Winter 2010 and Summer 2011 IATA seasons, a total of [100,000-150,000] O&D passengers travelled by air on London(five)-Amman. All of them travelled between London(three) and Amman. Among these, [50,000-100,000] travelled between Heathrow and Amman. Over the same period, transfer passengers accounted for [40-50]% of all passengers flying between London(three) and Amman and [50-60]% for passenger flying between Heathrow and Amman.

This assessment is not contradicted by the Parties' submission of 9 March 2012 and of 21 March 2012.

As there are no flights offered from Luton and Stansted, this section will only refer to two possible market definitions: (i) London(three)-Amman (however no flights are offered from City) and (ii) Heathrow-Amman.

- 398. IAG estimates that [20-30]% of O&D passengers on London(three) and Amman were time sensitive over the same period and that this ratio is [30-40]% for O&D passengers that travelled between Heathrow and Amman.
- 399. Flights between London and Amman are operated from Heathrow and Gatwick. IAG does not operate on London-Amman, its share is a result of a codeshare relationship with Royal Jordanian. Royal Jordanian flies to Amman from Heathrow and the only other competitor on this route is easyJet which flies from Gatwick.
- 400. Table 30 displays the market shares of the Parties and their competitors on the TS, NTS and all-passenger air services markets on the London-Amman route:

Table 30 Market shares on air services London-Amman

Carrier		Summer 2011			Winter 2010		
	TS %	NTS %	All %	TS %	NTS%	All %	
]	LHR/LGW/L	CY-AMM				
IAG	[0-5]%	[0-5]%	[0-5]%	-	-	-	
bmi	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	
Combined	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	
Royal Jordanian	[40-50]%	[40-50]%	[40-50]%	[60-70]%	[70-80]%	[60-70]%	
easyJet	[0-5]%	[40-50]%	[30-40]%	-	[0-5]%	[0-5]%	
	<u> </u>	LHR-A	MM				
IAG	[0-5]%	[0-5]%	[0-5]%	-	-	-	
bmi	[50-60]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	
Combined	[50-60]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	
Royal Jordanian	[40-50]%	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[60-70]%	
easyJet	-	-	-	-	-	-	

401. Table 31 provides an overview of the frequencies offered by the Parties and competing airlines on the London-Amman route:

Table 31 Overview of frequency of air services on London-Amman

Carrier	Sumn	ner 2011	Winter 2010		
_	Daily	Weekly	Daily	Weekly	
		LHR/LGW/LCY-AMM	1	1	
IAG	-	-	-	-	
bmi	1	9	1	7	
Combined	1	9	1	7	
Royal Jordanian	1	7	1	7	
easyJet	0	3	0	0	
Total	2	19	2	14	
		LHR-AMM			
IAG	-	-	-	-	
bmi	1	9	1	7	
Combined	1	9	1	7	
Royal Jordanian	1	7	1	7	
Total	2	16	2	14	

Source: Form CO

1.4.11. (2) TS passengers

- 402. The Parties' market shares do not vary significantly depending on which airports in the London area are taken into consideration in the relevant market.
- 403. In particular if only Heathrow-Amman is taken into consideration, the Parties' combined market shares are [50-60]% and if a market consisting of London(three)-Amman is taken into consideration, their combined market share is [50-60]% based on the Summer 2011 IATA season data.
- 404. Royal Jordanian has a market share of [40-50]% on a Heathrow-Amman market and of [40-50]% on a London(three)-Amman market.
- 405. easyJet is another operator on the TS passenger segment on the London(three)-Amman market, with a very low market share of [0-5]%. However, easyjet is not present on a Heathrow-Amman market.
- 406. On a combined basis, the Parties (bmi) enjoy a slight weekly frequency advantage over Royal Jordanian (7 weekly) and a significant advantage over easyJet (three weekly frequencies from Gatwick only). Given the duration of the flight, a same day return trip does not appear feasible.
- 407. As mentioned above, IAG does not operate on this route. The overlap arises from a codeshare agreement between IAG and Royal Jordanian which was entered into on 27

November 2008. [Redacted – Contains details concerning the above-mentioned agreement] According to IAG, only around [0-5]% of O&D passengers flew between London and Amman under a BA code in Summer 2011. IAG however stated that, if post-Transaction IAG operated flights between London and Amman, continuation of the codeshare would result in a "parallel codeshare" (i.e. IAG both operating direct service and codesharing on a third party carrier's direct service).

408. In light of the existing codeshare agreement between Royal Jordanian and IAG, post-Transaction on a market limited to Heathrow-Amman, the Parties would not be constrained by Royal Jordanian post-Transaction and they would face only limited competitive constraints from easyJet on a London (three)-Amman market.

1.4.11. (3) NTS passengers

- 409. The Parties' market shares do not vary significantly depending on which airports in the London area are taken into consideration for defining the relevant market. The combined market shares remain in any event below [30-40]% on the NTS passenger segment.
- 410. If the market is limited to Heathrow-Amman, the Parties' combined market shares are [20-30]% and if the relevant market consists of London(three)-Amman, their combined market share is [10-20]% based on the Summer 2011 IATA season data.
- 411. Royal Jordanian has a market share of [40-50]% on the NTS passenger segment on the London(three)-Amman route and a market share of [70-80]% on a Heathrow-Amman route. easyJet appears to be a significant competitor on the NTS passenger segment on the London(three)-Amman market, where it has a market share of [40-50]%. However, easyjet only flies from Gatwick and therefore is not present on a Heathrow-Amman market.
- 412. In light of the existing codeshare agreement between Royal Jordanian and IAG, post-Transaction on a market limited to Heathrow-Amman, the Parties would not be constrained by Royal Jordanian post-Transaction, however they would face a competitive constraint from easyJet on a London (three)-Amman market.

1.4.11. (4) Entry/expansion

- 413. Demand currently exceeds capacity throughout most or all of the day at Heathrow and Gatwick.
- 414. IAG submits that Virgin, who already flies to a number of destinations to the Middle East is a credible entrant on the London-Amman city pair in the right commercial circumstances.
- 415. However, no likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified, in particular from London Heathrow. Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Amman route.

1.4.11. (5) Conclusion on the London-Amman route

- 416. The effects of the Transaction on the London-Amman route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1., the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 417. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Amman route, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Amman route.

1.4.12. London-Jeddah

1.4.12. (1) Description of the route

- 418. In the Winter 2010 and Summer 2011 IATA seasons, a total of [50,000-100,000] O&D passengers travelled by air on London(five)-Jeddah. Among these, the overwhelming majority, namely [50,000-100,000] travelled between Heathrow and Jeddah.¹⁹⁷ Over the same period, transfer passengers accounted for [30-40]% of all passengers flying between Heathrow and Jeddah.¹⁹⁸ IAG estimates that [20-30]% of O&D passengers on the Heathrow-Jeddah route were time sensitive over the same period.¹⁹⁹
- 419. IAG offers direct services on the London-Jeddah city pair from Heathrow. bmi's services between London and Jeddah are also from Heathrow and are in fact "tag" flights which all stop off in Riyadh en route to Jeddah. IAG argues that despite the fact that these flights fall within the definition of direct flights used by the Commission in previous cases, it is at least arguable that they should not be considered as good an alternative as flights which are genuinely non-stop direct flights. Table 32 displays the market shares of the Parties and their competitors on TS, NTS and all-passengers on the air services markets on the London-Jeddah route:

There were only a limited number of passengers which flew with other airlines from other London airports. However, as their number is insignificant, the following section will focus on flights between Heathrow and Jeddah only with figures for the other two possible markets being provided for completeness only.

That ratio was [30-40]% for passengers flying between Jeddah and London(three) and [30-40]% for passenger flying between Jeddah and London(five).

This ratio is 25.7% for O&D passengers that travelled between Jeddah and London (three) and 25.6% for O&D passengers that travelled between Jeddah and London(five).

Table 32 Market shares on air services on London-Jeddah (direct air services only)

Carrier	Summer 2011			Winter 2010				
	TS % NTS % All %		TS %	NTS%	All %			
LHR-JED								
IAG	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%		
bmi	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%		
Combined	[20-30]%	[40-50]%	[30-40]%	[40-50]%	[20-30]%	[30-40]%		
Saudi	[70-80]%	[50-60]%	[60-70]%	[50-60]%	[70-80]%	[60-70]%		

420. Table 33 provide an overview of the frequencies offered by the Parties and competing airlines on the London-Jeddah route:

Table 33 Overview of frequency of air services on London-Jeddah (direct services only)²⁰⁰

Carrier	Sumn	ner 2011	Winter 2010		
	Daily	Weekly	Daily	Weekly	
		LHR-JED			
IAG	1	5	1	5	
bmi	0	3	0	3	
Combined	1	8	1	8	
Saudi	1	7	1	7	
Total	2	15	2	15	

Source: Form CO

421. The flight duration of direct flights ranges between 6 hours and 5 minutes and 6 hours and 50 minutes while bmi's tag flights have a duration of almost nine hours. ²⁰¹ Table 34 illustrates the difference in flight duration between bmi, IAG and their main competitor Saudi Arabian Airlines.

Table 34 Flight duration on London-Jeddah

Duration	bmi	IAG	Saudi Arabian
LHR-JED	555 minutes	405-410 minutes	385 minutes
JED-LHR	595 minutes	390 minutes	365 minutes

Source: Form CO

1.4.12. (2) TS passengers

- 422. The Parties' market shares are the same irrespective of the market definition, as both IAG and bmi fly from Heathrow to Jeddah. Their combined market share on the TS passenger segment is [20-30]% with a limited increment of [0-5]%. Saudi Arabian Airlines is the other competitor on the TS passenger segment on the Heathrow-Jeddah market with a market share of [70-80]%.
- 423. Considering the significant difference in the flight duration between the flights offered by bmi on the one hand (around nine hours) and by IAG and Saudi Arabian on the other (around six hours and 30 minutes), bmi does not appear to be the closest

IAG submits that [around 30-40%] of London-Jeddah O&D passengers fly indirect (including around 13% of TS passengers). The conclusion of the competition assessment would not be affected in a market encompassing both direct and indirect services on this route.

Flight duration calculated on the basis of the scheduled Summer 2011 flights.

competitor to IAG on this route. In addition, the majority of the respondents (competitors, corporate customers, travel agencies) indicated that Saudi Arabian's services constitute a credible competitive alternative to the services offered by the Parties on this route.

424. Therefore and as shown above, the Parties would only have limited combined market shares on the TS passenger segment and they would face significant competitive constraints from Saudi Arabian Airlines post-Transaction on the TS passenger segment.

1.4.12. (3) NTS passengers

- 425. The Parties' market shares are the same irrespective of the market definition, as both IAG and bmi fly from Heathrow to Jeddah. Their combined market share is [40-50]% with an increment of [10-20]%. Saudi Arabian Airlines is the other competitor on the NTS passenger segment on the Heathrow-Jeddah route with a market share of [50-60]%.
- 426. Given that nearly a third of all passengers fly indirect on this route, it appears likely that indirect flights exert a competitive constraint on the Parties in particular on the NTS passenger segment and would continue to do so post-Transaction. Furthermore, given the significant difference in the flight duration between IAG's flights and bmi's flights it seems rather likely that NTS passengers might consider indirect flights as a suitable alternative to direct flights on this route.
- 427. Therefore, the Parties would face a competitive constraint from carriers like Emirates, Lufthansa, Egyptair, Royal Jordanian or Turkish Airlines in addition to the direct and indirect services offered by their direct competitor Saudi Arabian Airlines on the NTS passenger segment.

1.4.12. (4) Conclusion on the London-Jeddah route

428. Considering the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the London-Jeddah route.

1.4.13. London-Riyadh

1.4.13. (1) Description of the route

429. In the Winter 2010 and Summer 2011 IATA seasons, a total of [50,000-100,000] O&D passengers travelled by air on London(five)-Riyadh. All these passengers travelled between Heathrow and Riyadh. Over the same period, transfer passengers accounted for [40-50]% of all passengers flying between Heathrow and Riyadh. IAG estimates that [30-40]% of O&D passengers on the Heathrow-Riyadh route were time sensitive over the same period.

- 430. IAG offers direct services on the London-Riyadh city pair from Heathrow. bmi's services between London and Riyadh are also from Heathrow and are in fact "tag" flights which stop off in Riyadh en route to Jeddah or to Damman.
- 431. Table 35 displays the market shares of the Parties and their competitors on TS, NTS and all-passengers on the air services markets on the London-Riyadh route:

Table 35 Market shares on air services on London-Riyadh (direct air services only)

Carrier	Summer 2011			Winter 2010			
	TS %	NTS %	All %	TS %	NTS%	All %	
LHR-RUH							
IAG	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	
bmi	[40-50]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	
Combined	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[50-60]%	[60-70]%	
Saudi Arabian	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[30-40]%	

432. Table 36 provide an overview of the frequencies offered by the Parties and competing airlines on the London-Riyadh route:

Table 36 Overview of frequency of air services on London-Riyadh (direct services only)

Carrier	Summer 2011		Wint	er 2010				
	Daily Weekly		Daily	Weekly				
LHR-RUH								
IAG	1	5	1	6				
bmi	1	6	1	6				
Combined	2	11	2	12				
Saudi Arabian	1	5	1	5				
Total	3	16	3	17				

Source: Form CO

433. IAG submits that around [20-30]% of all O&D passengers and [10-20]% of TS O&D passengers travel on London-Riyadh using indirect services. Table 37 below displays the market shares of the Parties and their competitors on the TS, NTS and all passengers air services markets including indirect air services on the London-Riyadh route:

Table 37 Market shares on air services on London-Riyadh (including indirect air services)

Carrier		Summer 2011		Winter 2010			
	TS %	NTS %	All %	TS %	NTS%	All %	
	<u> </u>	I	HR-RUH				
IAG	[20-30]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%	
bmi	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	
Combined	[50-60]%	[40-50]%	[40-50]%	[50-60]%	[50-60]%	[50-60]%	
Saudi Arabian	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%	
Emirates	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
Egyptair	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
Lufthansa	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
Other ^[1]	[0-5]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[5-10]%	

Source: Form CO

1.4.13. (2) TS passengers

- 434. Both IAG and bmi fly from Heathrow to Riyadh. Their combined market share on the TS segment is [70-80]% with an increment of [40-50]%. Saudi Arabian Airlines is the other competitor on the TS passenger segment on the Heathrow-Riyadh route with a market share of [20-30]%.
- 435. On a combined basis, the Parties enjoy a significant frequency advantage over Saudi Arabian Airlines on the Heathrow Riyadh route (11 weekly frequencies compared to five).
- 436. Moreover, the majority of respondents to the market investigation (competitors, travel agents, corporate customers) indicated that bmi is the closest competitor to IAG on this route and almost all respondents named IAG(BA) as the closest competitor of bmi on this route. This is consistent with the fact that the majority of the respondents (competitors, travel agents, corporate customers) considered that there is no sufficient constraint by actual or potential competition on the market so as to prevent IAG from increasing prices post-Transaction on the TS passenger segment.
- 437. If indirect services from Heathrow were to be taken into account, the Parties combined market shares on the TS passenger segment would be [50-60]% (with an increment of [20-30]%). The next competitor would still be Saudi Arabian with a market share of [30-40]%, followed by Emirates with [0-5]%, Egyptair with [0-5]% and Lufthansa with [0-5]%. However, an indirect flight is two hours longer than a direct flight on this route. The relatively little share of TS passengers that do use indirect services on this route ([10-20]%) seems to indicate that indirect flights are a distant substitute to direct flights on this route for TS passengers. Lastly, as regards competition from indirect air services on this route, a considerable number of respondents to the market investigation (competitors, corporate customers, travel agents) indicated that they

- would never switch from a direct flight to an indirect flight on this route or they would only switch if direct flights were not available.
- 438. Therefore, it appears that the Parties would not face a significant competitive constraint post-Transaction from competitors on the London-Riyadh route, irrespective of whether direct and indirect flights are considered on the TS passenger segment.

1.4.13. (3) NTS passengers

- 439. The Parties' combined market share on the NTS passenger segment is [60-70]% with an increment of [20-30]% on Heathrow-Riyadh. Saudi Arabian Airlines is the other competitor on the NTS passenger segment on the Heathrow-Riyadh route with a market share of [30-40]%.
- 440. As concerns competition from indirect air services, since one significant competitive disadvantage of indirect services relates to travel time, indirect air services are likely to exert more competitive pressure on the Parties on the NTS passenger segment than on the TS passenger segment. The market investigation indeed showed that switching is a lot more likely for NTS passengers. Most if not all of the respondents indicated that NTS passengers would switch from a direct to an indirect flight on this route in particular if there would be a price difference for the services offered. The Parties' combined market shares would decrease to [40-50]% if indirect air services from Heathrow would be included.
- 441. It therefore appears that the Parties would face a significant competitive constraint both from Saudi Arabian Airlines and from other indirect flights on the NTS passenger segment on the London-Riyadh route.

1.4.13. (4) Entry/expansion

- 442. The UK/Saudi Arabia Air Services Agreement (ASA) limits frequencies to 35 per week between the UK and Saudi Arabia. The Department for Transport in the UK clarified that these frequencies correspond to a cap on all flights operated by UK designated carriers between the UK and any airport in Saudi Arabia. At present, the following frequencies are operated by UK carriers: 13 frequencies by IAG to Riyadh, 5 frequencies by IAG to Jeddah, 3 frequencies by bmi to Jeddah and 3 frequencies by bmi to Dammam, i.e. 24. There are thus available frequencies on the routes to Saudi Arabia under the UK/Saudi Arabia ASA. However, demand currently exceeds capacity throughout most or all of the day at Heathrow.
- 443. No likely, timely and sufficient entry capable of adding significant competitive pressure on the Parties post-Transaction has been identified. Therefore, entry would not appear as sufficient to deter or defeat the anticompetitive effect of the Transaction on the London-Riyadh route.

1.4.13. (5) Conclusion on the London-Riyadh route

- 444. The effects of the Transaction on the London-Riyadh route must be compared against the situation that would have prevailed on this route without the Transaction. As set out above in Section V.1., the Commission considers that, absent the Transaction, bmi would have exited this route and that IAG would likely have been more threatened by new entry on this route than in a post-Transaction scenario.
- 445. Therefore, and in view of the limited competitive constraint that would be expected to be exerted on IAG on the London-Riyadh route, the Transaction gives rise to serious doubts as to its compatibility with the internal market as regards the London-Riyadh route on the TS passenger segment.
- 1.5. Direct / direct overlap routes by virtue of bmi codeshare relationships
- 446. There are 47 routes on which the Transaction would lead to an overlap due to bmi codesharing on flights operated by other carriers.²⁰²
- 447. However, the Transaction would not raise serious doubts as to its compatibility with the internal market due to these overlaps as the combined market shares on all these routes generally remain below 50%.²⁰³

These routes are: London-Athens, London-Brussels, London-Helsinki, London-Copenhagen, London-Dusseldorf, London-Geneva, London-Gothenburg, London-Larnaca, London-Oslo, London-Warsaw, London-Zurich, Birmingham-Dusseldorf, Manchester-Dusseldorf, London-Frankfurt, London-Hamburg, London-Milan, London-Munich, London-Stockholm, London-Stuttgart, London-Abu Dhabi, London-Boston, London-Chicago, London-Denver, London-Doha, London-Dubai, London-Houston, London-Kiev, London-Los Angeles, London-Male, London-Miami, London-Montreal, London-Muscat, London-New York, London-Philadelphia, London-Rio de Janeiro, London-San Francisco, London-Sao Paulo, London-Toronto, London-Vancouver, New York-Manchester, London-Calgary, London-Cape Town, London-Delhi, London-Johannesburg, London-Bahrain, London-Mumbai and London-Washington. Some of these codeshares are with Lufthansa Group / Star alliance carriers which will likely terminate as a result of the Transaction. In the agreements between Lufthansa and IAG it is

foreseen that codeshare relationships between bmi and the Lufthansa group would remain following completion until the end of the summer 2012 season. After summer season 2012, the codeshares would terminate, however it is not yet decided whether interline agreements, including the SPA, would remain

The routes on which the combined share on a <u>market comprising London (three)</u> exceeds 50% and the increment is above 1% are the following: London-Brussels (both on the TS passenger and NTS passenger segments), London-Stuttgart (both on the TS passenger and NTS passenger segments), London-Warsaw (on the NTS passenger segment), London-Bahrain (on the TS passenger segment), London-Cape Town (on the NTS segment) and London Male (both on the TS passenger and NTS passenger segments). If one looks at a <u>market limited to Heathrow</u>, the following routes on which the combined market share exceeds 50% and the increment is above 1% have to be added: London-Dusseldorf (on the NTS passenger segment), London-Geneva (on the NTS passenger segment), London-Munich (NTS passenger segment) and London-Gothenburg (on the NTS passenger segment).

in place.

- 448. On the few routes on which the combined market share is above 50%, the increment brought about by the Transaction is, typically below 4% and often below 2%. ²⁰⁴ The exceptions are London-Stuttgart and London-Brussels. On the NTS passenger segment on London-Stuttgart, the combined market share is [50-60]% with an increment of [5-10]%. However the increment still remains small and other carriers on this route are Lufthansa, airberlin and Germanwings. The codeshare agreement with Lufthansa is in any event likely to be terminated post-Transaction. On London-Brussels the increment on the NTS segment amounts to [5-10]% and the Parties' combined market share is [60-70]%. However, Eurostar operates train services between London and Brussels. The Commission found in its previous decision in Case No COMP/M.5403 -LUFTHANSA / BMI that and air services and train services belong to the same market in particular given the short travel time for train (around 2 hours compared to around 1:15h by direct flight). Therefore, the Parties' combined market shares are likely to be significantly lower. As the Parties would be constrained by train services on this route, the Transaction does not raise serious doubts as to its compatibility with the internal market due to this route.
- 449. The London-Athens route is specific: Aegean has a slot lease agreement with bmi for two daily slot pairs at Heathrow. Since March 2011, Aegean uses one of these two slot pairs to run services on the Heathrow-Athens route. The slot lease agreement was entered into in the IATA Winter season 2009 and is due to expire [...].
- 450. Even if post-Transaction, IAG could decide not to prolong Aegean's slot lease agreement for the slot pair used on the Heathrow-Athens route (the route on which there is an overlap), the Transaction does not raise serious doubts as to its compatibility with the internal market as regards this route. Aegean currently has around four daily frequencies on this route and it managed to secure slots of its own for running three of these four frequencies out of Heathrow, without its services on this route being solely dependent on the slots leased from bmi. These three services would be sufficient to significantly constrain IAG post Transaction. Besides, the Commission concluded in Case No COMP/M.5830 Olympic / Aegean Airlines that Heathrow and Gatwick are substitutes for both TS and NTS passengers travelling on the specific

For the routes listed in the preceding footnote the combined market shares on London(three) and the increment are as follows: on London-Brussels [80-90]% with an increment of [0-5]% on the TS passenger segment, on London-Warsaw [60-70]% with an increment of [0-5]% on the NTS passenger segment, on London-Bahrain [50-60]% with an increment of [0-5]% on the TS passenger segment, on London-Cape Town [50-60]% with an increment of [0-5]% on the NTS passenger segment and London Male [70-80]% with an increment of [0-5]% on the TS passenger segment and [60-70]% with an increment of [0-5]% on the NTS passenger segment are as follows: on London-Dusseldorf [60-70]% with an increment of [0-5]% on the NTS passenger segment, on London-Geneva [50-60]% with an increment of [0-5]% on the NTS passenger segment, on London-Geneva [50-60]% with an increment of [0-5]% on the NTS passenger segment and on London-Gothenburg [50-60]% with an increment of [0-5]% on the NTS passenger segment and on London-Gothenburg [50-60]% with an increment of [0-5]% on the NTS passenger segment.

^{205 [}Redacted – refers to confidential commercial agreement]

Athens-London route. It appears that the Parties would continue to face at least some competitive constraint from easyjet's services out of Gatwick, in addition to constraints from the remaining Aegean operations out of Heathrow. Furthermore, easyJet has their hub/base and large slot portfolios at Gatwick and thus is more likely to have the ability to expand their services on this route, 206 should IAG increase fares. As can be seen from Table 38 below which shows the Parties' combined market shares on the TS passenger segment and on all passengers air services market on the London-Athens route, easyjet has a market share of more than 20% also on the TS passenger segment, while Aegean has a market share of slightly below 30% on the TS passenger segment, compared to combined market shares of below 50% for the Parties on a London(three)-Athens route.

Table 38 Market shares on air services London-Athens

	Summer 2011 ma	rket shares (%)	Winter 2010 ma	arket shares (%)
	All pax	TS pax only	All pax	TS pax only
	LH	R/LGW/LCY-ATI	I	
Parties combined	[30-40]%	[40-50]%	[20-30]%	[40-50]%
Increment	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Aegean	[40-50]%	[20-30]%	[20-30]%	[10-20]%
Olympic	0%	0%	[20-30]%	[10-20]%
easyjet	[20-30]%	[20-30]%	[20-30]%	[20-30]%
		LHR-ATH		
Parties combined	[40-50]%	[60-70]%	[30-40]%	[60-70]%
Increment	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Aegean	[50-60]%	[30-40]%	[30-40]%	[20-30]%
Olympic	0%	0%	[30-40]%	[10-20]%

Source: Form CO

451. Therefore, considering in particular the constraint that Aegean would continue to exert from Heathrow on IAG services, the Transaction does not raise serious doubts as to its compatibility with the internal market on the London-Athens route.

1.6. Direct / direct bmi operated / IAG codeshared routes

452. The Transaction would lead to three additional overlap routes due to bmi operating these routes and IAG codesharing on flights operated by other carriers on these routes: London-Dublin, Birmingham-Frankfurt and Manchester-Frankfurt. However, on the London-Dublin route IAG has a codeshare in place with Aer Lingus for transfer passengers only. There is currently no O&D codeshareing with respect to this city pair. In addition, the combined market share of IAG and bmi remains small and is in any event below 20% on any possible market definition London(five)²⁰⁷,

The Commission acknowledges that easyJet might not be able to increase frequencies in peak hours in the morning/evening at Gatwick, however, in light of the other arguments, this does not change the conclusion on this route.

²⁰⁷ Ryanair also offers services on this route from Luton and Stansted while Air France offers services from City.

London(three) or only Heathrow on both TS and NTS passenger segments.²⁰⁸ On the routes Birmingham-Frankfurt and Manchester-Frankfurt IAG's market share is below [0-5]%.²⁰⁹

- 453. Therefore, the Transaction does not raise serious doubts as to its compatibility with the internal market on these routes.
- 1.7. Direct / indirect overlap routes
- 454. The Transaction would give rise to several horizontal overlaps on short-haul routes where one party offers a non-stop service while the other party offers a one-stop service.
- 455. As indicated above in Section IV on market definition, in general one-stop flights do not constitute a competitive constraint on non-stop flights as far as short-haul routes are concerned. However for certain short-haul routes concerned by the Transaction, a significant proportion of passengers uses one-stop services. The above could indicate that customers consider these one-stop connections as alternative to non-stop connections.
- 456. In any event, in the present case it can be left open whether non-stop and one-stop flights are substitutable on the routes analysed below as the conclusion of the competitive assessment would not change. If non-stop and one-stop flights were considered as two separate markets there would be no overlap between IAG and bmi. If non-stop and one-stop flights were deemed to belong to the same market, the Transaction would lead to an overlap but would not give rise to serious doubts on any of these routes for the reasons explained further below. This conclusion is valid for time sensitive and non-time sensitive passengers.
- 457. The Parties' activities overlap on nine²¹⁰ short-haul routes between the UK and other European countries (i.e. London-Bari; London-Salzburg; Birmingham-Hamburg; Birmingham-Stuttgart; Edinburgh-Brussels; Edinburgh-Stockholm; Manchester-Lisbon; Manchester-Milan; Manchester-Prague), where one party offers non-stop services and the other party offers one-stop services.

²⁰⁸ With the exception of the NTS segment on a Heathrow market on which the combined market share amounts to [30-40]%

On these two routes services were only temporarily operated by bmi, however as at the current Winter 2011/2012 Season, the services are again operated by Lufthansa. In addition to Lufthansa, FlyBe also operates direct services on these two routes and it is FlyBe's services that IAG codeshares on at present.

On the Edinburgh-Dusseldorf route, the Parties' activities overlap because bmi has offered direct flights on the route in the past. bmi's exit from the route is not specifically related to the Transaction. In any event, several credible competitors are operating on the route, including Air France, Lufthansa, FlyBe and Air France/KLM.

458. The Transaction does not raise serious doubts with regard to these routes, even in case non-stop and one-stop flights were substitutes, if account is taken of the following circumstances.

1.7.1. London-Bari; London-Salzburg

- 459. On these two routes the overlap between the Parties' activities arises only if a market comprising Heathrow, Gatwick and London City were taken into consideration.
- 460. In any event, on a market for TS passengers comprising London(five), the Parties' combined market share in the last two IATA seasons was below 20% with an increment ranging between [0-5]% and [0-5]% on both routes. On a market limited to Heathrow, Gatwick and City, the Parties' combined market share would be above 30% only in winter 2010 for London-Salzburg ([50-60]%) and in summer 2011 for London-Bari ([60-70]%). However, in the latter case the increment post-Transaction would be below [0-5]%, while on the former the Parties' combined market share dropped to [20-30]% in the summer 2011 and several credible competitors would remain active on the London Heathrow, Gatwick and City-Salzburg route post-Transaction (Lufthansa, Swiss, Austrian and easyJet).
- 461. On the NTS segment, the Parties' combined market share on a market comprising London(five) was below 10% on both routes in the last two IATA seasons, with an increment below 0.5%. On a market limited to Heathrow, Gatwick and City, the increment brought about by the Transaction in the non-time sensitive segment would be below 3%.

1.7.2. Manchester-Lisbon; Manchester-Prague; Edinburgh-Brussels; Birmingham-Stuttgart; Manchester-Milan; Birmingham-Hamburg

- 462. On the first five of the above-mentioned routes the increment post-Transaction ranges between [0-5 and 0-5]% in the TS segment in the last two IATA seasons. On Birmingham-Hamburg, the increment would be [0-5]% in the winter 2010 season and [5-10]% in the summer 2011 season, in which, however, the Parties' combined market share did not exceed 10%.
- 463. The increment post-Transaction is between [0-5]% and [0-5]% in the NTS segment on the Manchester-Prague and Edinburgh-Brussels routes in the last two seasons. On the Birmingham-Stuttgart and Birmingham-Hamburg routes the increment in the summer 2011 was [5-10]% and [10-20]% respectively (and below 1% in the previous season), however the Parties' combined market share did not exceed [20-30]% on the former route and barely exceeded [30-40]% on the latter route. In addition, several credible competitors would remain active on both routes. (including FlyBe, Lufthansa, Air France/KLM, Swiss) Similarly, on the Manchester-Milan route, the increment post-Transaction was [5-10]% in the summer 2011 (and below 3% in the previous one), but the Parties' combined market share did not exceed 25%. On the Manchester-Lisbon route, the increment post-Transaction would be [5-10]% having regard to the winter

2010 IATA season (and below 3% in the subsequent one). However, the Parties' combined market share was slightly above 25% in that season.

1.7.3. Edinburgh-Stockholm

- 464. As regards Edinburgh-Stockholm, the Parties' combined market share in the TS passengers segment dropped from [50-60]% in winter 2010 to [30-40]% in summer 2011, with a [5-10]% post-Transaction increment. In addition, the merged entity would face significant competition post-Transaction from credible competitors, such as Norwegian Air Shuttle, which offers direct flights on the route, as well as SAS and Air France/KLM, which offer indirect flights.
- 465. The Parties' combined market share in the NTS passenger segment decreased from [60-70]% in the winter 2010 to [40-50]% in the summer 2011, with an increment post-Transaction of [5-10]%. The merged entity would face significant competition post-Transaction from credible competitors, such as Norwegian Air Shuttle, which offers direct flights on the route, as well as SAS and Air France/KLM, which offer indirect flights.
- 466. The market investigation confirmed the conclusions summarized above, since no respondent highlighted the existence of any problem whatsoever on the nine routes at issue.

1.7.4. Edinburgh-Copenhagen; Glasgow-Copenhagen; Manchester-Lyon

- 467. The activities of the Parties result in three additional direct/indirect overlaps on short-haul intra-European routes: Edinburgh-Copenhagen; Glasgow-Copenhagen; Manchester-Lyon.
- 468. First, for the three routes, it is noted that a large majority of the respondents in the market investigation indicated no significant barriers to entry for airlines wishing to operate on the above-mentioned routes and did not make reference to the congestion of airports at either end of the routes as a possible problem in this respect.
- 469. Concerning the competitive situation on the Edinburgh-Copenhagen route, bmi Regional offers direct services and IAG offers indirect services. The number of passengers on this very thin route, including all sales, was [0-50,000] in the winter 2010 and summer 2011 IATA seasons combined. The percentage of passengers flying one-stop was approximately [10-20]% and [20-30]% in the time sensitive market segment in the summer 2011 and winter 2010 IATA seasons respectively and about [10-20] % in the non-time sensitive segment both in the summer 2011 and winter 2010 IATA seasons.
- 470. The combined market share of the Parties in the summer 2011 IATA season was [60-70]% in the TS market segment. The combined market share of the Parties in the summer 2011 IATA season was [70-80]% in the NTS passenger segment. At least three credible competitors would remain active post-Transaction both in the time

- sensitive and in the non-time sensitive segment, namely Norwegian Air Shuttle,²¹¹ which offered direct services in recent seasons, as well as KLM/Air France and Lufthansa, which have offered indirect services.
- 471. As regards the Glasgow-Copenhagen route, bmi Regional offers direct services and IAG offers indirect services. This route is very thin and therefore does not appear to allow for more than one direct service. Indeed, the total number of passengers on this route, including all sales, was [0-50,000] in the winter 2010 and summer 2011 IATA seasons combined. Among these, [30-40]% and [40-50]% flew one stop in the non-time sensitive market segment in the summer 2011 and winter 2010 IATA seasons respectively and [30-40]% and [40-50]% flew indirect in the time sensitive market segment in the summer 2011 and winter 2010 IATA seasons respectively. The combined market share of the Parties in the summer 2011 IATA season was [70-80]% in the TS passenger market segment. The combined market share of the Parties in the summer 2011 IATA season was [80-90]% in the NTS passenger market segment. In the previous IATA season the Parties' market share was [80-90]%.
- 472. Several competitors would remain active post-Transaction both in the TS and in the NTS segment. In particular, KLM has offered indirect service in recent seasons and would remain as credible competitor on this route. SAS also offers indirect services via London Heathrow.
- 473. Concerning the Manchester-Lyon route, the overlap between the Parties' activities arises because bmi Regional offers direct services on this city-pair and IAG offers indirect services. This route is very thin and therefore does not allow for more than one direct service. Indeed, a total of 11,056 passengers flew on the route at issue in the winter 2010 and summer 2011 IATA seasons combined. Among these, [50-60]% and [50-60]% flew one stop in the non-time sensitive passengers market segment in the summer 2011 and winter 2010 IATA seasons respectively and [30-40]% and [60-70]% flew one stop in the time sensitive market segment in the summer 2011 and winter 2010 IATA seasons respectively.
- 474. The Parties' combined market share in the summer 2011 IATA season was [60-70]% in the TS passenger segment. In addition, the increment brought about by the Transaction would be below 1% in the summer 2011. The Parties' combined market share in the summer 2011 IATA season was [50-60]% in the NTS passenger segment. At least four carriers would exert a credible competitive constraint on the Parties post-Transaction both on the time sensitive and on the non-time sensitive segment, namely Air France/KLM as well as Swiss, Lufthansa and Brussels Airlines, which have offered indirect service in recent IATA seasons.

The market share of Norwegian Air Shuttle in the summer 2011 IATA season was 16.3% in the non-time sensitive passenger market segment.

1.7.5. Conclusion on direct/indirect overlap routes

- 475. As a conclusion, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the direct-indirect overlap routes identified above.
- 1.8. Indirect/indirect overlaps
- 476. The activities of the Parties also overlap on five short-haul routes where both operate one-stop flights, i.e. Venice-Edinburgh; Geneva-Glasgow; Edinburgh-Nice; Manchester-Naples; Newcastle-Nice.
- 477. On the routes Venice-Edinburgh and Newcastle-Nice the Transaction would bring about a very limited market share increment (below 3%) irrespective of the market segment considered.
- 478. The Geneva-Glasgow route is very thin as a total of [0-50,000] passengers travelled on it in the summer 2011 and winter 2010 IATA seasons combined, out of which [40-50]% and [5-10]% flew indirect in the non-time sensitive passengers market segment in the summer 2011 and winter 2010 IATA seasons respectively and [90-100]% and [90-100]% flew indirect in the time sensitive market segment in the summer 2011 and winter 2010 IATA seasons respectively. If the summer 2011 IATA season is taken into consideration, the Transaction would bring about a negligible market share increment (below 1%) both in the time sensitive and non-time sensitive segments. Moreover, easyJet offers direct service on this city-pair with increased frequencies in the Winter Seasons and has a market share significantly higher than the ones of the Parties combined. KLM and Swiss have also offered indirect service in recent IATA seasons. The above-mentioned competitors would be a significant constraint on the Parties post-Transaction both in the time sensitive and in the non-time sensitive segment.
- 479. As far as Edinburgh-Nice route is concerned, [0-50,000] passengers travelled on the route in the summer 2011 and winter 2010 IATA seasons combined. Among the TS passengers, [90-100]% flew indirect both in the summer 2011 and winter 2010 IATA seasons. As regards NTS passengers, [5-10]% and [70-80]% flew indirect respectively in the summer 2011 and winter 2010 IATA seasons respectively. The highest post-Transaction increment would be on the TS passenger segment ([5-10]% in the summer 2011 season), in which the Parties' combined market share was [40-50]% in the summer 2011. The Parties' combined market share in summer 2011 is negligible in the NTS passenger segment ([0-5]%). In addition, the Parties would continue to face significant competition post-Transaction both in the time sensitive and in the non-time sensitive segment from easyJet, Lufthansa, Air France/KLM, Brussels Airlines post-Transaction.
- 480. As regards the Manchester-Naples route, [0-50,000] passengers only travelled on this very thin route in the summer 2011 and winter 2010 IATA seasons combined, all of which flew indirect. Lufthansa has offered indirect services in recent IATA seasons on the city pair at issue and has a market share significantly higher than the ones of the Parties combined. Brussels Airlines and Air France/KLM have also offered indirect

- connections on the route in the most recent IATA seasons. Therefore a significant constraint would be exerted on the Parties post-Transaction on this route.
- 481. Finally, it should be mentioned that no respondent in the market investigation mentioned the existence of any competition problem whatsoever on the indirect-indirect overlapping routes at issue.
- 482. In view of the foregoing, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the indirect-indirect overlapping routes.

2. IAG's position at London Heathrow

483. After the Transaction, IAG would hold 53% of all the slots at Heathrow, whereas it currently holds 45% of them. In particular, this would enable IAG to offer more flights out of Heathrow. In the context of heavy congestion prevailing at Heathrow, the strengthening of IAG's already solid position at its main hub might have effects over and beyond the routes where bmi currently operates, as assessed in Sections VI.1 and VI.4.

2.1. Arguments put forward by Virgin and IAG

- 484. In the context of the market investigation, Virgin argued that due to the Transaction, IAG would reinforce its presence at Heathrow and gain additional market power which would lead to various anti-competitive non-route specific effects²¹².
- 485. Referring to literature on economics in the air transport sector, Virgin argues that carriers enjoying significant presence at a given airport may be able to charge a "hub premium" on routes from that airport in other words, higher fares than they would otherwise set due to various reasons.
- 486. The first factor is the control over key inputs like boarding gates and slots usually enjoyed by carriers with large traffic volumes from a given airport. If these inputs are scarce, according to Virgin, control of a large share of them might allow incumbent operators to limit the scale of entry and expansion by potential competitors. As regards slots, this phenomenon is sometimes referred to as "slot hoarding".
- 487. The second main factor relates to the ability of carriers holding a large number of slots to react to competitive conditions more flexibly and effectively than competitors with a smaller slot portfolio. Indeed, according to Virgin, the larger a slot portfolio, the greater the possibility to "shuffle" slots, i.e. to modify the allocation of slots to various routes. Slot shuffling at a congested airport is necessary in order to adapt frequencies and schedules on a given route. Virgin also argues that IAG's increased slot portfolio

Virgin's submission of 16 February 2012.

- would heighten its ability to extract rents in particular from "infra-marginal customers", i.e. business passengers with higher willingness to pay.
- 488. The third main factor evoked by Virgin is the ability of a carrier enjoying strong presence at an airport to increase fares due to the existence of loyalty programmes such as frequent flyer programmes. This would be due in particular to the fact that because of IAG's larger number of flights out of Heathrow post-Transaction, a passenger would have a larger number of flights at his/her disposal on which he/she could accumulate "miles" on IAG's frequent flyer programme and where the accumulated "miles" may be redeemed. This would render IAG's already attractive frequent flyer programme even more attractive than pre Transaction, and generate additional contractual switching costs towards other carriers, with resulting fare increases across routes out of Heathrow.
- 489. According to Virgin, similar effects may be expected from agreements between IAG and corporate customers, which grant rebates in exchange for a large level of use of IAG's services, and travel agents' commissions, which foresee comparable loyalty-rewarding bonuses.
- 490. The four main factor referred to by Virgin relates to exclusionary conducts, which would be facilitated by the increased number of slots held by IAG post-Transaction. According to Virgin, IAG's extended portfolio would increase its slot shuffling ability and correlatively, its ability to react to planned entries by moving flights to the same time as the new entrant's planned flights, or by increasing frequencies on the route, thereby forcing the new entrant to operate at levels at which it may be inefficient. In relation to this issue, Virgin provided a simulation model which tends to indicate that the additional slots obtained by IAG at Heathrow trough the Transaction would significantly increase its ability to deter entries or harm new entrants on routes on which it operates by moving flights to a timing that is as close as possible to the new entrant's envisaged timing.²¹³
- 491. IAG also put forward arguments also essentially based on a review of relevant economic literature. IAG stressed that the majority of studies that found a hub premium are based on data for US domestic routes which pre-date relevant developments such as the emergence of low cost carriers. IAG pointed out that the limited number of studies that have been undertaken on routes from European hubs found little evidence of hub premia, and in particular, found none at Heathrow. IAG also argues that any hub dominance is likely to be undermined by competition from services operated at other airports serving the same city, which would be the case in London where there are four significant airports in addition to Heathrow. IAG eventually put emphasis on the distinction that would have to be made between higher

The Proposed Acquisition of British Midland International's Mainline business by International Airlines Group: Economic considerations, Charles River Associates, 15 February 2012.

fares that adversely affect consumers and higher fares that reflect quality and therefore benefit consumers.

2.2. Commission's assessment

- 492. In order to assess the specific effects of the Transaction on IAG's overall presence at Heathrow, it is necessary to take into consideration the number of slots that IAG would hold post-Transaction as compared to those it would hold in the counterfactual situation.
- 493. As explained in Section V.1, should bmi become insolvent (which is the counterfactual established by the Commission), the "security slots", which make up for [20-30]% of bmi's slot portfolio, would be immediately transferred to IAG and the slots leased out by bmi to third parties beyond the Winter 2011-2012 IATA season, which make up for around 9% of bmi's slots, are likely to be retained by their lessees, subject to specific provisions in the lease agreements. In addition, according to ACL's rough estimates, IAG could obtain around 20% of the slots that would fall back to the pool and be subsequently reallocated. Assuming that the sales of slots shortly before or during insolvency would be marginal²¹⁴, the Commission thus estimates that under this assumption, in the counterfactual, IAG would acquire around [40-50]%²¹⁵ of bmi's slot portfolio, i.e. around 3% of all slots at Heathrow. ²¹⁶
- 494. Therefore, the slots acquired by IAG as a result of the Transaction (i.e. in addition to those acquired in the counterfactual, and not including slots released as a consequence of the commitments) would amount to [5-10]% of all slots at Heathrow. The Commission considers that this relatively limited incremental share of slots is unlikely to significantly increase by itself the anti-competitive effects of IAG's overall presence at Heathrow, in view of IAG's current slot portfolio, which accounts for 45% of all

This is a worst case scenario to assess the likely effects of the Transaction. Indeed, since IAG has been historically an active purchaser of slots and in view of the rules governing the allocation of slots from the pool, it can be reasonably assumed that in the counterfactual, the percentage of slots sold by bmi or bmi's liquidator that would end up with IAG would be larger than the percentage of slots falling back to the pool that would be allocated to IAG.

Under the assumption that slot sales would be marginal, all bmi's slots would fall back to the pool except the security slots and the slots leased out to third parties, which together account for [30-40]% ([20-30]%+9%) of all bmi's slots. Therefore, the slots that would fall back to the pool would account for [60-70]% of all bmi's slots, out of which 20% would be allocated to IAG. The slots allocated to IAG via the pool would thus account for around [10-20]% (20% of [60-70]%) of all bmi's slots. Since IAG would acquire in addition the security slots, which account for [20-30]% of all bmi's slots, IAG would in total obtain [40-50]% ([20-30]%+[10-20]%) of all bmi's slots. In a case scenario where all leased slots would go back to the pool, IAG would obtain [40-50]% of bmi's slots, corresponding to around [0-5]% of the Heathrow slots. The conclusion of the Commission in recital 506 would not be affected.

This is in any event a conservative assumption. Indeed, unlike many other airlines, IAG has been an active buyer of slots at Heathrow, including recently. Therefore, the more slots bmi would be able to sell in the counterfactual, the more slots IAG would be likely to acquire from bmi.

- slots²¹⁷. In any event, the commitments submitted by IAG, which would result in IAG losing control of 14 daily slot pairs acquired via the Transaction, further reduce the number of slots over which IAG would take control as a result of the Transaction.
- 495. Account being taken of the Commitments, the slots over which IAG would take control as a result of the Transaction (i.e. in addition to those acquired in the counterfactual) would amount to only 3% of all slots at Heathrow. The Commission considers that such an increment in IAG's slot holding is unlikely to have any material impact on the market power of IAG related to its overall presence at Heathrow.
- 496. According to Virgin, the further concentration of slots in the hands of IAG following the Transaction may limit the ability of IAG's current and future competitors to achieve an efficient scale at London Heathrow. However, due to the limited increment in IAG's slot holding due to the Transaction (all the more so when IAG's commitments are taken into account), the limitation resulting from the Transaction on other carriers' possibility to grow their overall operations at London Heathrow appears limited, all the more as in the counterfactual, bmi's slots would be likely to be distributed across a range of carriers. Each of these carriers would be unlikely to obtain a very significant share of the slots at Heathrow²¹⁸.
- 497. The Commission notes in addition that the notion of "slot hoarding" referred to by Virgin seems inadequate. Indeed, pursuant to the EU Slot Regulation, IAG has to use the slots acquired through the Transaction to provide services. Failure to use the slots to the extent required in the said Regulation would result in the slots falling back to the pool. Therefore, IAG could not simply "hoard" the slots to prevent competitors' expansion without offering services to consumers. Moreover, the Commission is not aware of any indication that IAG may have in recent years deliberately use slots in a non-efficient manner with the primary objective of keeping these slots and preventing other carriers from acquiring them²¹⁹.
- 498. As regards the effect of the Transaction on IAG's shuffling power, and related ability to engage into exclusionary conduct, the Commission considers that the real effects of the Transaction on IAG's slot portfolio are too limited to materially increase such a shuffling power.

Post-Transaction, the second slot holder would be the Lufthansa group with around 8% of the slots.

It does not mean that on individual routes, other carriers than IAG could not enter or expand up to a level where they could exert some competitive constraint on IAG.

By contrast, such indications of hoarding exist for bmi. Lufthansa has indicated that bmi entered on the Heathrow-Nice route primarily wirth a view to "warehousing" slots (Lufthansa's submission of 9 March 2012).

- 499. The Commission notes in this respect that the simulation provided by Virgin²²⁰ analysed the effects of the Transaction on one aspect of IAG's shuffling power (i.e. its ability to move a flight to a timing close to the timing envisaged by a new entrant) on the basis of the expansion of IAG's slot portfolio by reference to the pre-Transaction situation, and not to the appropriate counterfactual. In addition to the fact that this simulation did not take into account the real slot portfolio of IAG and bmi (but instead, is based on a series of simulations randomly allocating the Parties' slots), this element makes this simulation inadequate to assess the real specific effect of the Transaction on IAG's shuffling power.
- 500. Moreover, shuffling power does not necessarily have only anti-competitive effects. Indeed, it can allow a carrier to react flexibly to changes in demand patterns or events such as exits or entries. Such adaptability can deliver benefits to consumers in particular in that it can allow for quick adaptation of supply to demand. In its analysis of developments that occurred in 2011 on the Heathrow-Glasgow route, IAG indicated that it increased capacity on this route following bmi's exit, which seems to have had at least partially positive effects to consumers.
- 501. In addition, the Commission notes that no concrete example of exclusionary practices by IAG through slot shuffling has been brought forward in the course of the procedure. Moreover, such exclusionary practices would have a cost for IAG, which would have to reduce frequencies or modify schedules on certain routes in order to add frequencies or modify schedule on another route to harm a competitor.
- 502. Finally, as regards the loyalty-inducing effects of IAG's stronger presence at Heathrow, the Commission considers that the Transaction does not seem likely to bring about adverse effects through enhanced attractiveness of IAG's frequent flyer programme due to IAG's expanded operations at London Heathrow post-Transaction. Indeed, the market investigation indicates that frequent flyer programme rewards are a criterion of minor importance, at least on the routes where the Parties both currently offer direct services, amongst all the criteria used by consumers to choose a flight. As regards corporate customers, they usually do not benefit from frequent flyer programme rewards, which generally accrue to their employees. Therefore, the attractiveness of IAG's frequent flyer programme does not seem likely to deter passengers from choosing other carriers' services out of Heathrow to any significant extent.
- 503. In any event, since the number of slots acquired by IAG as a result of the Transaction (i.e. in addition to those it would acquire in the counterfactual) is limited compared to its current slot holding, the number of additional flights that IAG would be able to offer out of Heathrow as a result of the Transaction is also limited. As a result, the loyalty inducing

²²⁰ "The Proposed Acquisition of British Midland International's Mainline business by International Airlines Group: Economic considerations", Charles River Associates, 15 February 2012, Annex 2

effects of the Transaction through IAG's frequent flyer programme, corporate contracts and travel agent commission systems is very unlikely to be material.

- 504. In this respect, the Commission also notes that the number of additional destinations that IAG would serve out of Heathrow as a result of the Transaction appears to be limited. Indeed, according to IAGs current plans, the Transaction would allow IAG to enter on approximately 12 short-haul and 7 mid- / long-haul destinations. ²²¹ The rest of the slots acquired through the Transaction would be used to add frequencies on routes where IAG currently operates. Such a limited number of additional routes, compared to IAG's existing network, is a further factor limiting the loyalty-inducing effects of the Transaction. Indeed, the number of additional routes where passengers will be able to acquire or redeem "miles" accumulated in the context of IAG's frequent flyer programme will be limited. This reasoning also applies to corporate contracts and travel agent commission systems.
- Lastly, the question whether IAG may be able to charge a hub premium on routes from 505. Heathrow depends also on the competitive conditions on the relevant routes. In general price increases are unlikely on routes where IAG faces significant competition. Following the Open Skies Decision²²², the scope of competition on transatlantic markets have significantly increased. Furthermore, the Commission notes that Virgin's arguments remained at a rather theoretical level, with very little analysis of specific features of the Transaction and IAG's current presence at Heathrow. Moreover, Virgin refers extensively to studies conducted on the basis of data relating to the US air transport market, some of which date back to the late eighties, with no justification as to why such data can be extrapolated to the current situation at Heathrow. IAG for its part, referred to a relatively recent study which casts doubts on the possibility to extrapolate the results of hub premium analyses from one airport to another.²²³ IAG also referred to a study where the situation of Heathrow was analysed, and which found no evidence that IAG (BA) charged a hub premium for flights originating from Heathrow relative to flights originating behind.²²⁴

²²¹ Proposed Acquisition of bmi, IAG, January 2012 and IAG's reply to the request for information of 14 February 2012

Decision 2007/339/EC of the Council and the Representatives of the Governments of the Member States of the European Union meeting within the Council, of 25 April 2007, on the signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand. With this Decision, the European Union approves the 'Open Skies' agreement concluded with the United States of America. The agreement provides for all transatlantic routes to be opened up to European and American companies. It also includes an arrangement to develop the agreement further on matters such as airline ownership.

^{223 &}quot;Hubs versus Airport Dominance", Bilotkach, V. and V. Pai. 2009.

[&]quot;Do European Carriers Charge Hub Premia?" Network and Spatial Economics, 4: (2004) 347-360. Lijesen, M. and P. Rietveld, 2004.

2.3. Conclusion

506. The strengthening of IAG's presence at Heathrow brought about by the Transaction through the additional slots acquired by IAG does not give rise to serious doubts as to the compatibility of the Transaction with the internal market, at least if the effects of the commitments submitted by IAG are taken into account.

3. Feeder traffic issues

3.1. Introduction

- 507. As explained in Section IV.1.2 above, in the air transport sector, there is a variety of agreements whereby tickets may be sold for indirect journeys including two legs operated respectively by each party to the agreement. Interlining arrangements are in principle mutually beneficial as they give each party the opportunity to increase its load factors. In principle, they also benefit passengers as they increase connection opportunities, allow passengers to be compensated in case of missed connections and spare them from taking back luggage at the connection airport. In particular for long-haul flights, traffic made up by passengers connecting at either or both ends of the route is commonly referred to as "feeder traffic".
- 508. Moreover, as also explained in Section IV.1.2 above, depending on which company sells a ticket for such indirect journeys (one of the two carriers or a third party such as a travel agent), the two carriers may be regarded as engaged in a vertical relationship or active on neighbouring markets. For the purposes of the present analysis, the exact nature of the relationship between the two carriers is of no significant relevance.
- 509. Indeed, the theory of harm examined in relation to feeder traffic relates to a risk of foreclosure whereby IAG would deny or hamper access to its short-haul flights or raise the price charged for such access on routes currently operated by bmi for passengers connecting at Heathrow onto flights operated by another carrier to a destination where IAG also offers services from Heathrow. For example, according to this theory of harm, IAG could deny or hamper access to its flights from Aberdeen to Heathrow for passengers connecting onto a flight operated by another carrier to Los Angeles (a destination where IAG also operates). As a result, prices may increase on the Aberdeen-Los Angeles air transport market and competitive constraint on IAG may be reduced on that market as well as on the Heathrow Los Angeles market.
- 510. Such a risk does not depend on how the tickets for such indirect journeys are distributed.
- 511. Therefore, the assessment is the same no matter whether the two carriers are engaged in a vertical relationship or are active in closely related markets²²⁵, providing the

See Non Horizontal Merger Guidelines, paragraph 91.

- "inputs" necessary to a sale of tickets for indirect journeys by a third party²²⁶. For the sake of simplification, the terminology of the input foreclosure theory will be used to conduct this assessment.
- 512. In order for foreclosure to occur and harm competition as a result of the Transaction, the latter must confer on IAG the ability and incentives to engage in such foreclosure, or increase such ability and incentives, and foreclosure must be likely to significantly impede effective competition.
- 3.2. Concerns raised during the market investigation
- 513. In the framework of the market investigation, serious concerns were expressed by certain long-haul carriers as regards the effects of the Transaction on feeder traffic. For example, Air Canada expects a decline in load factors on flights from Heathrow to Canada as well as possible reduced gauge for some of these flights²²⁷.
- 514. [A third party], for its part, argued that IAG's foreclosure strategy would reduce rivals' ability to compete and would affect their viability²²⁸.
- 515. Virgin argues that post-Transaction, the specific complementarities between bmi's flights into Heathrow that feed passengers and IAG's long-haul services are likely to be privileged at the expense of the complementarities that exist with the long-haul flights of IAG's rivals. According to Virgin, IAG would be able to use its strong position on several short-haul routes to capture customers on the long-haul routes, directly increasing the costs of indirect journeys with a long-haul segment operated by another carrier in competition with IAG, and reducing the viability of these competitors on the routes concerned and the constraint they exert on IAG.
- 516. Virgin listed various mechanisms allegedly available to IAG to implement such strategy, notably the termination of special prorate agreements governing the sale of tickets for indirect journeys with one leg operated by IAG and the other leg operated by a competitor, or the manipulation of access to its seat inventories by IAG on its short-haul flights.
- 517. Virgin argues that the costs of such strategy, which would stem from the risk of losing passengers on short-haul flights, would likely not outweigh its benefits, notably because margins on long-haul flights are understood to be significantly greater than on

When a ticket for an indirect journey is sold by a third party rather by one of the two carriers, the theory of harm would take the form of foreclosure through tying. It refers to a situation where IAG would avoid selling one leg of the indirect journey in isolation from the second one, thereby preventing the sale of indirect journeys combining a leg operated by IAG and one of its competitors on a given route.

Non-confidential version of Air Canada's reply to question 22.1 of the Feeder Traffic Questionnaire.

^{228 [...]}

short-haul flights. Virgin also referred to bmi's market power on certain feeder routes (not limited to routes where the Parties' operations overlap), which would be marginally constrained by the possibility that passengers might be able and willing to reach their final destinations through hubs other than Heathrow, and which would allow IAG to effectively foreclose other carrier's access to feeder traffic from routes currently operated by bmi.

518. According to Virgin, a foreclosure strategy affecting feeder traffic would harm consumers in that it would bring prices up for indirect journeys on itineraries affected by foreclosure, and it would relax competitive constraint exerted on IAG on both these indirect itineraries and their long-haul segments out of Heathrow.

3.3. Commission's assessment

- 519. IAG is a major long-haul carrier out of Heathrow. In the Summer 2011 IATA season, it ranked first amongst long-haul carriers in terms of number of passengers carried out of Heathrow, carrying 4.7 million passengers, i.e. more than three times as many passengers as the second carrier, Virgin (1.3 million passengers). bmi, for its part, focuses on short-haul and mid-haul routes and from these routes, provides significant feeder traffic to a range of long-haul carriers. As shown by the table below, the feeder traffic provided by bmi and the combined traffic provided by the Parties account for significant shares of the total number of passengers carried on certain long-haul routes by certain carriers. For example, in 2011, more than [10-20]% of the passengers carried by Air Canada on its Heathrow-Toronto route was carried by bmi on its "feeder routes".
- 520. Table 39 provides an overview of feeder traffic provided by the Parties to other carriers for a range of international routes where IAG operates. These routes and carriers have been selected on the basis of thresholds reflecting the importance of the feeder traffic provided by the Parties relative to the total number of passengers travelling on the services provided by the carrier in question on the route²²⁹, as well as on the basis of the market investigation.

The criterion is that feeder traffic provided by the Parties to the service in question accounts for 3% of the total number of passengers, or the feeder traffic provided by bmi only accounts for 1% of the total number of passengers. In addition, only routes where IAG carried at least 10,000 passengers were considered. These thresholds are adequate to focus the Commission's analyses of routes where feeder traffic could be a material aspect of operations.

Table 39: feeder traffic provided by the Parties at Heathrow on a range of international routes

Destination	Carrier to which feeder traffic is provided	IAG's feeder traffic (% of total passengers carried on the route into / out of Heathrow in 2011)*	bmi's feeder traffic (% of total passengers carried on the route into / out of Heathrow in 2011)*
Delhi	Jet Airways	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Delhi	Virgin	[0-5]%-[05]%	[0-5]%
Delhi	Air India	[0-5]%	[0-5]%
Delhi	Kingfisher	[5-10]%-[10-20]%	[0-5]%-[0-5]%
Doha	Qatar Airways	[5-10]%-[5-10]%	[0-5]%-[0-5]%
Dubai	Emirates Airways	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Dubai	Virgin	[0-5]%-[0-5]%	[5-10]%-[5-10]%
Hong Kong	Air New Zealand	[0-5]%-[5-10]%	[0-5]%-[0-5]%
Hong Kong	Virgin	[0-5]%	[0-5]%-[0-5]%
Tokyo	All Nippon Airways	[0-5]%-[0-5]%	[0-5]%- [0-5]%
Tokyo	Virgin	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Beijing	China Airlines	[0-5]%-[0-5]%	[0-5]%
Singapore	Singapore Airlines	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Sydney	Virgin	[0-5]%-[0-5]%	[5-10]%-[5-10]%
Montreal	Air Canada	[5-10]-[5-10]%	[10-20]%-[10-20]%
Vancouver	Air Canada	[10-20]%-[10-20]%	[5-10]%-[10-20]%
Calgary	Air Canada	[10-20]%	[10-20]%-[10-20]%
Toronto	Air Canada	[5-10]%-[5-10]%	[10-20]%-[10-20]%
Washington DC	Virgin	[0-5]%	[0-5]%-[0-5]%
Washington DC	United Airlines	[0-5]%-[0-5]%	[10-20]%-[10-20]%

New York (JFK)	Virgin	[0-5]%-[0-5]%	[0-5]%-[0-5]%
New York (Newark)	Continental	[0-5]%-[0-5]%	[5-10]%-[5-10]%
New York (Newark)	Virgin	[0-5]%	[0-5]%
Houston	Continental	[0-5]%-[0-5]%	[10-20]%-[10-20]%
Boston	Virgin	[0-5]%-[0-5]%	[0-5]%-[5-10]%
Los Angeles	Air New Zealand	[10-20]%-[10-20]%	[5-10]%-[5-10]%
Los Angeles	United Airlines	[0-5]%-[0-5]%	[5-10]%-[10-20]%
Los Angeles	Virgin	[0-5]%-[0-5]%	[5-10]%-[5-10]%
San Francisco	United Airlines	[0-5]%-[0-5]%	[5-10]%-[10-20]%
San Francisco	Virgin	[5-10]%-[5-10]%	[5-10]%-[5-10]%
Miami	Virgin	[0-5]%	[5-10]%-[5-10]%
Chicago	United Airlines	[0-5]%	[10-20]%-[10-20]%
Chicago	Virgin	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Johannesburg	Virgin	[0-5]%-[0-5]%	[0-5]%-[0-5]%
Johannesburg	South African Airways	[5-10]%-[5-10]%	[5-10]%-[5-10]%
Cape Town	Virgin	[5-10]%-[5-10]%	[5-10]%-[5-10]%
Cape Town	South African Airways	[5-10]%-[5-10]%	[0-5]%-[0-5]%
Lagos	Virgin	[0-5]%-[0-5]%	[0-5]%-[0-5]%

Source: MIDT data provided by IAG

521. For example, for Virgin, which is a significant recipient of feeder traffic from the Parties at Heathrow, this feeder traffic accounted for approximately 100,000 passengers²³⁰ on the routes listed in Table 39 in 2011.

_

^{*} Each box in the last two columns contains two figures, one corresponding to the percentage of feeder traffic on the route out of Heathrow and one to the % of feed in the route into Heathrow.

According to the same dataset as that used to produce Table 39.

- 522. As underlined by Luftahnsa, the feeder traffic provided by bmi for transatlantic routes changed dramatically with bmi joining the transatlantic A++ Joint Venture with various partners of the Star alliance in April 2011. From that moment on, the feeder traffic provided by bmi switched to these partners.
- 523. The magnitude of the feeder traffic provided by the Parties to carriers competing with IAG on a number of long-haul routes out of Heathrow, warrants an assessment of a theory of harm relating to foreclosure of access to flights for connecting passengers.

3.3.1. Ability to foreclose

- 524. To offer an indirect journey on a given city pair via Heathrow, access to flights linking each end of the route with Heathrow may constitute an essential input. Therefore, restriction of access to that input can potentially raise competition problems²³¹.
- 525. Different types of "feeder traffic" or "interlining arrangements" exist in the air transport sector: (i) Multilateral Interline Traffic Agreement (MITA), which is the basis for giving carriers the ability to sell onto each other's services; (ii) Bilateral Interline Traffic Agreements (BITA), which give more freedom to the parties to agree specific terms; (iii) Special Prorate Agreements (SPA), which provide a specific financial settlement in terms of flown tickets which can depart from the "default" financial settlement rules provided for by the MITA system; (iv) codeshare agreements allowing one carrier to sell tickets on another carrier's flight under its own name and flight code. MITA and BITA agreements are typically open ended and have a 30 day notice/termination whereas SPAs generally have a one year validity and are renegotiated thereafter. Codeshare agreements are typically open ended and have various termination clauses. Post-Transaction, IAG would therefore be able to terminate bmi's feeder traffic agreements with third parties in the short term and, given this possibility, to impose on them a revision of such agreements on terms less favourable than pre-Transaction.
- 526. Moreover, even without terminating or revising interlining arrangements, IAG may be able to restrict interlining partners' access to its flights for example by discriminating against them as regards how access is provided to its seats inventory. IAG indicated that it was technically possible to close an entire booking class or route to an interlining partner, but that it would be easily known by that third party and prohibited by the relevant agreement.
- 527. Since IAG controls the system through which competing carriers book seats on its flights for connecting passengers, it seems possible for IAG to close punctually certain booking classes for passengers connecting onto another carrier's flight, possibly leaving open more expensive classes. It may not be immediately apparent to the other

See Non-horizontal Merger Guidelines, paragraph 34.

²³² Lufthansa's submission of 1 February 2012.

party to the interlining arrangement that the class in question is still open for passengers connecting onto flights operated by IAG.

528. IAG's ability to foreclose access to its flights for connecting passengers on certain routes may be limited depending on the degree of market power that IAG would enjoy on these upstream markets.²³³ As explained in Section V.1, in the post-Transaction situation, IAG would be less threatened by new entries than in the counterfactual scenario on routes where bmi currently operates, due to both lower incentives to enter and higher barriers to entry. This would in turn strengthen its ability to effectively hamper access to flights for connecting passengers on these routes. Moreover, as shown by Table 40 for a number of routes where bmi operates and IAG does not, bmi faces no competition (and thus enjoys market power). In the other cases, it has only one competitor. Moreover, not all these competitors provide feeder traffic to third parties at Heathrow. Therefore, on a number of these routes, it is unlikely that there are suitable alternatives to bmi's flights for passengers travelling on these routes and connecting at Heathrow.

Table 40: routes on which bmi operates and IAG does not (Summer 2011)

Routes (out of Heathrow)	Carrier competing with bmi	Provides feeder traffic at Heathrow to third parties (Y / N)
Addis-Ababa	Ethiopian Airways	Y
Almaty	Air Astana	Y
Amman	Royal Jordanian	Y
Amristar	Air India	Y
Beirut	Middle East Airlines	Y
Bergen	-	
Belfast	Aer Lingus ²³⁴	Y
Casablanca	Royal Air Maroc	Y
Damascus	Syrian Arab Airlines	N

Non-horizontal Merger Guidelines, paragraph 35

bmi and Aer Lingus operate from different airports at the Belfast end of this route.

Dublin	Aer Lingus	Y
Dammam	-	
Yerevan	-	
Free Town	-	
Bishkek	-	
Baku	Azerbaijan Airlines	N
Hanover		
Tehran	Iran Air	Y
Khartoum	-	
Marrakech	-	
Stavanger	SAS Scandinavian Airlines	Y
Tbilisi	-	

Source: IAG's reply to the request for information of 23 February 2012

- 529. Moreover, there are indications that even in cases where bmi faces competition by a carrier which provides feeder traffic at Heathrow, this carrier's services may not necessarily constitute suitable or viable alternatives to IAG's services on the market for access to flights for connecting passengers. In the market test of the commitments, a respondent mentioned the example of Iran Air, whose services would allegedly not constitute a fully suitable and viable alternative to bmi's services on the Heathrow-Tehran route as regards the provision of access to flights for connecting passengers.
- 530. Indeed, the ability of carriers currently competing with bmi to provide access to their flights for connecting passengers may be limited notably by their schedules, number of frequencies and incentives to provide feeder traffic in competition with IAG. A third party emphasized in this respect the alleged comprehensive cooperation of IAG with carriers such as Aer Lingus or Royal Jordanian, which might limit these carriers' incentives to compete with IAG on the market for the provision of access to flights for connecting passengers.²³⁵
- 531. Therefore post-Transaction, IAG is likely to be able to foreclose access to flights to Heathrow for connecting passengers on most of the routes on which bmi currently

Non confidential version of Virgin's submission of 16 February 2012.

operates. This is also likely to be the case for direct-direct overlap routes where the Parties currently operate alone to Heathrow, (i.e. from Aberdeen, Edinburgh, Manchester, Basel and Nice) or have high combined market shares or frequencies on a Heathrow-only basis. Indeed, on these routes, whereas currently, attempts by IAG to foreclose access to its own flights may result in carriers switching to bmi, this would not be the case post-Transaction.

- 532. This is particularly the case for the routes to Aberdeen, Edinburgh, and Manchester on which only the Parties currently operate, and which at the same time, appear as important routes in terms of provision of feeder traffic to other carriers at Heathrow according to the market investigation.
- 533. Besides, in view of the congestion prevailing at Heathrow, bmi's current competitors other than IAG would be unlikely to be in a position to easily add frequencies to accommodate needs for access to their flights for connecting passengers should IAG engage in a foreclosure strategy on routes where they currently compete with bmi.
- 534. To conclude with, as a result of the Transaction, IAG is likely to be able to hamper access to flights for passengers connecting at Heathrow on most of the routes currently operated by bmi.

3.3.2. Incentives to foreclose

- IAG could deny or hamper access to its flights or raise the costs²³⁶ of such access -535. for passengers connecting onto flights operated by another carrier on a route where this carrier would compete with IAG. An objective could be to raise the costs incurred by other carriers in offering certain indirect journeys (e.g. Aberdeen-Los Angeles via Heathrow), which may allow IAG to raise prices for such indirect journeys. Another objective could be to divert away passengers from that competitor to IAG's own flights, with a view to increasing load factors but also to weaken that competitor and pave the way for price increases. For example, by applying such a foreclosure strategy on various "feeder routes" to passengers connecting onto services offered by a competitor on the Heathrow – Vancouver route (where IAG also operates), IAG may reduce the number of passengers carried on this competitor's services between Heathrow and Vancouver. This competitor would then be weakened on this route and exerts less competitive pressure on IAG, thereby allowing it to raise prices, both for direct journeys out of Heathrow to Vancouver and for indirect journeys via Heathrow to Vancouver.
- 536. As already indicated, IAG and bmi's feeder traffic provided to certain carriers for certain long-haul routes (in particular the routes listed in table 39 above) can be significant. Control by IAG over such a significant portion of the total number of

The costs of such access depend on fares and financial settlement rules set in the relevant interlining and special prorate agreements.

passengers carried by a competitor on a given route is likely to incentivise IAG to engage in a foreclosure conduct as such a conduct can be expected to have a significant impact on the profitability of this competitor and its ability to exert competitive constraint on IAG on the route.

- 537. The incentive to foreclose depends on the degree to which foreclosure would be profitable. IAG is expected to take into account how the provision of access to its flights for connecting passengers would affect its profits on that upstream market, but also its profits on the downstream air passenger transport market. IAG would face a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers. The trade-off is likely to depend on the level of profits the merged entity obtains upstream and downstream. Other things constant, the lower the margins upstream, the lower the loss from restricting input sales. Similarly, the higher the downstream margins, the higher the profit gain from increasing.²³⁷
- 538. IAG provided margin data for a range of UK domestic short-haul and international long-haul routes. These data show that the margins for international long-haul routes are at least around [1-10] times higher than on UK domestic routes. This suggests that if it undertook a foreclosure strategy on a given route, even a small number of passengers diverted away from a competitor onto one of its long-haul flights (compared to the number of passengers lost on short-haul flights as a result of foreclosure) would make foreclosure profitable.
- As an illustration of the alleged benefits that IAG could expect from such a foreclosure strategy, Virgin brought forward an analysis of a "natural experiment", namely, bmi's exit from the Heathrow-Glasgow route in March 2011. Virgin considered various international destinations and for each of them, assessed the number of passengers that switched from indirect journeys from Glasgow to the international destination in question with legs respectively operated by bmi and a competitor of IAG, to indirect journeys with both legs operated by IAG. Virgin concluded in substance that should such a switch have resulted from foreclosure instead of bmi's exit, it would have made foreclosure profitable in view of the number of passengers that switched and Virgin's estimates for margins on short-haul and long-haul routes.
- 540. In order to assess IAG's incentives to engage in a foreclosure strategy, it could be necessary to take into consideration the possibility that certain passengers may switch from services via Heathrow (e.g. Aberdeen-Los Angeles via Heathrow) to services via other hubs (e.g. Aberdeen-Los Angeles via Amsterdam). Such passengers would not be diverted away to IAG's services. IAG provided data illustrating that the ends of the

Non Horizontal Merger Guidelines, paragraphs 40-41

various routes operated by bmi from Heathrow were well connected to a range of other European and non-European hubs.²³⁸

- 541. Moreover, IAG provided data on the proportion of connecting passengers travelling respectively via Heathrow and other European or non-European hubs on given citypairs with an end in the UK or Ireland (e.g. Edinburgh-San Francisco). According to IAG, those data show that in many cases, Heathrow is not the most common connection airport²³⁹. However, the Commission analysed these data and found that for several of these city pairs, more than two thirds of the passengers travel via Heathrow. This constitutes an indication that at least in these cases, a foreclosure strategy leading to price increases for indirect journeys via Heathrow offered by IAG's competitors, may not trigger a major switch of customers to indirect services via other hubs but may rather entice a large proportion of passengers to switch to IAG's services.
- Furthermore, even in cases where the proportion of passengers travelling on the city 542. pair via other hubs than Heathrow is higher, it is not ascertained that a price increase for access to IAG's feeder flights would lead a large proportion of passengers to switch to services via these other hubs. In the framework of the market investigation, travel agents and corporate customers were asked whether when booking a flight which connects at Heathrow and for which the first leg is operated by bmi, they considered and compared prices of other carriers' flights to the same destination via other European hubs. A large majority of travel agents and corporate customers indicated that they would make such a comparison, for journeys either westwards or eastwards. Moreover, they mentioned various criteria used for the choice of a given itinerary, i.e. not only ticket prices but also overall travel time and connecting time and convenience at the hub. The fact that price clearly appears not to be the only criterion used to select a connecting hub is an indication that journeys on a given city-pair via two different hubs may be relatively differentiated services. This may limit the extent to which passengers would switch from services via Heathrow to services via another hub if they were facing a price increase.
- 543. Another relevant element to assess IAG's incentives to foreclose accesss to its flights for passengers connecting onto a flight operated by another carrier on a long-haul route where IAG also operates is the presence of a hub of this carrier at the non London end of the route, or at both ends. IAG argues that a carrier with a hub at both ends of a route should be at least equally well placed (if not significantly better placed) than IAG to provide feed passengers to its own services. Moreover, according to IAG, a carrier with a hub at the non London end of a long haul route of concern would be able to leverage its provision of feed to IAG at its hub airport to secure feed from IAG.

²³⁸ IAG's Supplemental Observations on feeder traffic of 28 February 2012.

IAG's reply to the request for information of 23 February 2012.

- 544. The data provided by IAG²⁴⁰ show that in a number of cases, IAG and bmi receive significant feeder traffic from competitors on the long-haul routes of concern that have a hub at the non-London end of the route. For example, in 2011, IAG and bmi received on their Heathrow-Johannesburgh route more than [0-50,000] connecting passengers as feeder traffic provided by South African Airways, whereas together they accounted for around [0-50,000] of the passengers connecting onto flights operated by South African Airways on the London-Johannesburg route. If IAG undertook a foreclosure strategy against South African Airways on this route, it would risk losing many connecting passengers on its London-Johannesburgh route. Moreover, a carrier operating from a hub has in principle access to plentiful feeder traffic at its hub and, for that reason, would be unlikely to be significantly weakened by a foreclosure strategy undertaken by IAG. IAG's incentives to engage in a foreclosure strategy targeting this kind of carriers thus appears limited
- 545. Therefore, the Commission considers that post-Transaction, IAG is likely to have the incentives to restrict access to its flights on some and possibly all the routes on which bmi currently operates for passengers connecting onto flights competing with IAG's services on certain routes, in particular the routes listed in table 39, in view of the importance of feeder traffic brought by the Parties to these routes. However, IAG's incentives to foreclose appear not be present in cases where it competes with a carrier having a hub at the non London end of the route.

3.3.3. Overall likely impact on effective competition

- 546. Anticompetitive foreclosure may occur when a vertical merger allows the parties to increase the costs of downstream rivals on the market thereby leading to an upward pressure on their sales prices. Significant harm to effective competition normally requires that the foreclosed firms play a sufficiently important role in the competitive process on the downstream market²⁴¹.
- 547. As already indicated, there are a number of routes where the Parties' combined market shares (taking into consideration only Heathrow at the London end of the route) are high or even equal to 100%. In addition, there are a number of routes where bmi currently faces no competition, or faces competition by a carrier which does not provide feeder traffic at Heathrow. The Commission considers that post-Transaction, a foreclosure strategy affecting such routes could result in foreclosing all rivals on relevant downstream markets (e.g. all carriers offering indirect journeys on the Aberdeen-Los Angeles O&D via Heathrow could be foreclosed in view of the Parties' position on the Aberdeen-Heathrow route). This could result in significant price increase for such indirect journeys.

²⁴⁰ Form RM of 28 March 2012, table 2-7.

Non Horizontal Merger Guidelines, paragraph 48.

- 548. Moreover, in view of the importance of the aggregate feeder traffic brought by bmi alone and / or by the Parties together to certain carriers for certain long-haul routes out of Heathrow, a foreclosure strategy significantly reducing such feeder traffic (or increasing the costs incurred to keep this feeder traffic) is likely to have detrimental consequences on these long-haul routes out of Heathrow. Indeed, in certain cases, carriers that could be foreclosed by IAG appear to play an important role on such long-haul routes out of Heathrow. If these carriers were severely affected by foreclosure on the part of IAG, the competitive constraint that they would exert on other carriers active on the routes in question (including IAG) may be significantly reduced, bringing prices upwards.
- 549. Table 41 sets out for various routes listed in table 39 the share of total passengers travelling on the route carried by various airlines which could be potentially foreclosed by IAG²⁴²

Table 41: % of passengers carried by potentially foreclosed competitors on various long-haul routes out of Heathrow (summer 2011 IATA season)

Route	Carrier	%
Calgary	Air Canada	[40-50]%
Montreal	Air Canada	[40-50]%
Toronto	Air Canada	[50-60]%
Vancouver	Air Canada	[30-40]%
Chicago	United / Continental	[20-30]%
Chicago	Virgin	[5-10]%
Houston	United / Continental	[40-50]%
Los Angeles	Air New Zealand	[10-20]%
Los Angeles	United / Continental	[5-10]%
Los Angeles	Virgin	[20-30]%
New York (all airports)	Virgin	[20-30]%
New York (all airports)	United / Continental	[10-20]%

²⁴² IAG's reply to the request for information of 23 February 2012

_

San Francisco	United / Continental	[20-30]%
San Francisco	Virgin	[20-30]%
Washington DC	Virgin	[10-20]%
Cape Town	South African Airways	[30-40]%
Cape Town	Virgin	[5-10]%
Johannesburg	South African Airways	[20-30]%
Johannesburg	Virgin	[20-30]%

550. In a number of cases, this percentage can be very significant, illustrating the important role played by the potentially foreclosed competitor in the competitive process on the route. In such cases, foreclosure on the part of IAG by raising the costs of the foreclosed rival or reducing the number of passengers it carries is likely to weaken that competitor, lessen the competitive constraint it exerts on IAG, and eventually bring prices up on the route.

3.3.4. Conclusion

551. The Transaction may lead IAG to engage in a foreclosure strategy consisting in restricting access to flights (or raising the costs of that access) for passengers connecting at Heathrow to services operated by other carriers in competition with IAG on various long-haul routes. Such a strategy is likely to have a detrimental impact on prices on these long-haul routes. However, such a strategy is unlikely to be implemented and to have significant detrimental effect on competition and prices in the case of competing carriers that have a hub at one end of the route. Therefore, the Transaction raises serious doubts as to its compatibility with the internal market.

4. Cargo

- 4.1. Situation absent the Transaction
- 552. As far as the market for the air transport of cargo is concerned, no serious doubts as to the compatibility of the Transaction with the internal market arise irrespective of the scenario used as counterfactual.
- 4.2. Horizontal relationships
- 553. IAG's cargo business includes British Airways World Cargo (British Airways' cargo airline carrying freight, mail and courier traffic) and Iberia Cargo (Iberia's cargo division). These businesses use capacity in the belly-hold of passenger aircraft and on three long-haul freighter aircraft. bmi's cargo business is limited to the use of capacity in the belly-hold of its passenger aircrafts.

- 554. As far as intra-European routes for air cargo are concerned the Parties estimate that their combined market share in 2010 was [10-20]%, with bmi accounting for [0-5]%, calculated on the basis of a market definition of intra-European routes excluding alternative means of transport such as road and train.
- 555. However, the data available to the Parties are based on the CASS and World ACD databases, which have a market coverage of 60% and 40% respectively and therefore underestimate the total market sizes and, as a consequence, overestimate the Parties' market shares.
- 556. The Parties' market shares are likely to be further overestimated since the market investigation confirmed that the relevant market of intra-European routes of air cargo transport can be defined as European-wide and should include alternative modes of transport, in particular road and train transport. In any event, the Parties' combined market share on a narrower definition of the market is not significant ([10-20]% in value and [10-20]% in volume) and there will remain numerous competitors active on the market post-Transaction.
- 557. In light of the foregoing, the Commission considers that the Transaction does not raise serious doubts on the market for intra-European routes of air cargo transport.
- 558. As regards inter-continental routes, according to the Parties the Transaction gives rise to only one affected market, namely air transport of cargo to Europe from Saudi Arabia, in which the Parties' combined market share is [20-30]%, with bmi accounting for approximately [0-5]%.
- 559. As noted above, however, the Parties' combined market share on this route is likely to be overestimated due to incomplete total market data. Moreover, there will remain a number of alternative credible suppliers capable of imposing a significant competitive constraint on the Parties on the route at issue, such as Saudi Arabian Airlines (which also operates long-haul freighter aircraft in addition to using capacity in the belly-hold of its passenger aircraft), Etihad, Qatar, Emirates, Lufthansa Cargo, Air France/KLM, and Turkish Airlines.
- 560. The market investigation confirmed the existence of alternative credible suppliers in the affected route that would act as a competitive constraint on the merged entity.²⁴³ A large majority of respondents also considered unlikely the possibility that the Parties could increase prices following the Transaction²⁴⁴ and indicated that IAG is not the closest competitor of bmi on the routes from Saudi Arabia to Europe and the same is true for bmi with respect to IAG.²⁴⁵

See replies to question No 20.3 of the requests for information to competitors and customers.

See replies to question No 23 of the requests for information to competitors and customers.

See replies to questions No 21 and 22 of the requests for information to competitors and customers.

- 561. In addition, a further competitive constraint on the merged entity is posed by cargo carriers and freight forwarders, which appear to exert considerable countervailing buyer power because of their size and importance. Indeed, the market investigation confirmed that cargo carriers enjoy greater flexibility with regard to schedules and the use of alternative airports and therefore that indirect flights should be included in the relevant cargo market.²⁴⁶
- 562. Finally, the market investigation confirmed that cargo customers could easily switch to other suppliers at limited costs and within a short time frame post-Transaction and that IAG and bmi do not enjoy any competitive advantage *vis* à *vis* their competitors.²⁴⁷

4.3. Conclusion

563. In view of the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for air cargo transport services.

5. Groundhandling

- 5.1. Situation absent the Transaction
- 564. As far as the market for the supply of groundhandling services is concerned no serious doubts arise irrespective of the scenario used as counterfactual.
- 5.2. Horizontal relationships
- 565. IAG provides groundhandling services to third Parties at several airports located in Spain, Tel-Aviv (Israel), Malabo (Equatorial Guinea) as well as at London Heathrow.
- 566. bmi provides groundhandling services to third Parties at certain UK airports (London Heathrow, Edinburgh, Glasgow and Manchester). It also currently provides intragroup groundhandling services to other airlines within the Lufthansa Group (Lufthansa and Austrian Airlines).
- 567. In light of the above, the Transaction would lead to only one minor horizontal overlap between the Parties (namely groundhandling at London Heathrow). However, the Parties' combined share would be below 15% regardless of the product and geographic market definition and therefore the Transaction does not lead to serious doubts about its compatibility with the internal market in this respect.

See replies to question No 28 of the request for information to competitors.

See replies to questions No 24 of the request for information to customers and No 25 of the request for information to competitors.

5.3. Vertical relationships

- 568. There are no existing supplier/customer relationships between the Parties to the concentration, as IAG does not provide any groundhandling services to bmi and bmi does not provide any groundhandling services to IAG.
- 569. There are however potential vertical relationships between the Parties, since IAG is a purchaser of groundhandling services from third Parties at the London Heathrow, Edinburgh and Glasgow airports, at which bmi is a supplier of groundhandling services to third Parties.
- 570. bmi baby is also active as a purchaser of groundhandling services from third Parties at the following Spanish airports at which IAG is a supplier of groundhandling services: Malaga, Palma de Mallorca, Alicante, San Javier, Mahon, Barcelona and Ibiza.
- 571. The Transaction therefore would lead to two minor vertically affected markets in the UK, namely the provision of groundhandling services at Edinburgh and Glasgow airports.
- 572. In addition, the Transaction would lead to six vertically affected markets in Spain, at the airports of Malaga, Palma de Mallorca, Alicante, San Javier, Mahon and Ibiza.
- 573. The Commission considers, however, that the Transaction would not lead to an input foreclosure at any of the two above-mentioned UK airports for the following reasons.
- 574. As regards Edinburgh and Glasgow airports, the Parties' combined share of supply of groundhandling services would not exceed 15% and and bmi's groundhandling activities at both airports are extremely limited, i.e. accounting for about 1% of the flights at these airports. Moreover, several alternative credible suppliers would remain active at each of those airports, including Plane Handling, Cobalt, Menzies, Servisair, ASIG, and Swissport.
- 575. The Transaction would also not lead to customer foreclosure as the Parties purchase only a limited amount of groundhandling services from third Parties at both Edinburgh and Glasgow, where they have a combined share of demand for third party groundhandlers of [20-30]%, with bmi accounting for less than [5-10]% of purchases at Glasgow and less than [10-20]% of purchases at Edinburgh.
- 576. As far as the supply of groundhandling services at Spanish airports is concerned, the merged entity would have significant market shares in Malaga ([50-60]%), Mahon ([70-80]%) and Ibiza ([60-70]%). The Commission however deems that the Transaction would not lead to serious doubts about input foreclosure.

- 577. First of all, at all the above-mentioned airports the Parties would face competition from at least one credible alternative supplier,²⁴⁸ such as:
 - i. At Malaga: Flightcare Espana and Clever Handling Services;
 - ii. At Palma de Mallorca: Acciona Airport Services;
 - iii. At Alicante: Swissport International Limited and Flightcare Espana;
 - iv. At San Javier: Menzies;
 - v. At Mahon: Acciona;
 - vi. At Ibiza: Acciona.
- 578. In addition, it should be considered that IAG is currently active in the supply of groundhandling services at Spanish airports to downstream rivals and is expected to continue these supplies, since bmi accounts for under 10% of purchases of groundhandling services at each of the Spanish airports listed above. This is particularly relevant given that all of the groundhandling services supplied in Spain to the bmi group are supplied to bmi baby, the part of the bmi business which is likely to be closed or divested in the near future.
- 579. Moreover, the majority of the respondents in the market investigation mentioned that switching supplier at reasonable cost and within a short timeframe could be feasible in Spain.²⁴⁹
- 580. The Transaction would also not lead to customer foreclosure, since bmi is a relatively small purchaser of groundhandling services (under 10%, irrespective of the airport considered). Therefore even if it were to purchase all of its requirements from IAG, rival suppliers of groundhandling services would continue to have alternative customers to whom they could sell their services post-Transaction.
- 581. In addition, in the course of the next two years AENA (the Spanish airports' operator) is expected to revoke the existing licenses for ramp handling (which according to the Parties would represent approximately [90-100]% of all ground-handling services in Spain) and launch a call for tenders that will promote competition between existing suppliers and potential new entrants.

See replies to question No 20 of the requests for information to customers and competitors.

See replies to question No 21 of the requests for information to customers and competitors.

5.4. Conclusion

582. In view of the foregoing, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for groundhandling services.

6. Maintenance, repair, overhaul

- 6.1. Situation absent the Transaction
- 583. As far as the markets for the provision of MRO services are concerned, no serious doubts arise irrespective of the scenario used as counterfactual.
- 6.2. Horizontal relationships
- 584. Both Parties are active in the provision of MRO services to third Parties. While IAG is active in all the four segments identified by the Commission in the MRO market, bmi is active only on the segments of line maintenance and components maintenance.
- 585. In relation to the components maintenance segment, the Transaction does not give rise to horizontally affected markets. With regards to line maintenance, if a geographic market definition limited to individual airports is considered, only London Heathrow would be horizontally affected, as the Parties have an estimated combined market share of between [40-50]-[50-60]%, with bmi accounting for approximately [5-10]%.
- 586. In particular, both IAG and bmi provide line maintenance services at Heathrow²⁵⁰ for the following aircraft models: Airbus A320; Airbus A330; Boeing B737. Both IAG and bmi have a license to provide line maintenance services at Heathrow also for Airbus A319 aircrafts, but only bmi actually provides such services to third parties. IAG, but not bmi, has a license to provide line maintenance services at Heathrow also for Airbus A340 aircrafts. Neither IAG nor bmi do purchase line maintenance services from third parties at Heathrow.
- 587. Post-Transaction, the Parties would continue to face competition from a large number of alternative credible suppliers of line maintenance at Heathrow, including Air France/KLM, Virgin Engineering, Cathay Pacific, Turkish Airlines, and Delta.
- 588. In particular, as regards Airbus A320, the merged entity would face competition at LHR from Air France/KLM, Virgin Engineering and Turkish Airlines. Concerning Airbus A330, competition would be provided by Air France/KLM, Virgin Engineering, Delta and Turkish Airlines. As far as Boeing B737 is concerned, Air France/KLM, Delta and Turkish Airlines represent a credible alternative to the merged entity post-

For the purpose of his decision it is immaterial to determine whether these activities also include periodic inspections known as "A checks", since neither IAG nor bmi do provide such checks for other airlines at Heathrow.

Transaction. Finally, Air France/KLM and Turkish Airlines are active in the supply of line maintenance services to Airbus A319 aircrafts at Heathrow.

- 589. The Parties also submit that in order to be able to provide line maintenance services for a given aircraft model, a specific certification for that model is needed. However, this latter certification would be usually obtained in a short time-frame (approximately 1 month) and therefore would not represent a high barrier to entry for providers of line maintenance services for certain aircraft models that would like to expand their activities to other models. In this respect, the CAA explained that the timescale in which a licence would be granted depends on the level of the resources available and confirmed that for an existing organisation the timescale to gain any necessary approval would be considerably shorter.
- 590. Moreover, if a wider geographic market were considered, the Transaction would not raise serious doubts as to its compatibility with the internal market, because the Parties would face significant competition from a larger number of suppliers at alternative regional airports, including in particular the other London airports as well as other UK airports. These suppliers include Storm Aviation, SR Technik, Virgin Engineering, Monarch Engineering, Thomas Cook, Thomas Airways, Apple Aviation, BCT, Delta Tech, Swiss Airlines, Air France (City Jet).
- 591. Virgin expressed the view that post-Transaction IAG could restrict third party access to facilities owned by bmi at Heathrow (i.e. hangar bays and parking spaces) that are used by other airlines to provide MRO services, thus foreclosing competitors in that market and/or giving rise to increased barriers to entry/expansion and higher costs for other service suppliers. In particular, Virgin claims that some line maintenance activities need to be performed in a hangar, e.g. those relating to casualty repairs, which need to be remedied as soon as the defects are noted. Customer airlines would be therefore attracted to line maintenance services providers who can offer facilities to support such maintenance work in the event that a major defect is uncovered. As a consequence, IAG's acquisition of bmi's hangar bay at Heathrow would represent a competitive advantage [...].

592. With regard to the above, it should be underlined that the market investigation confirmed that, in principle, hangars are not essential for the line maintenance of aircrafts except during inclement weather or for lengthy fault rectification, certain complex tasks or particular scheduled maintenance tasks.²⁵¹

See CAA e-mail of 9 March 2012.

- 593. In any event, as Virgin also admitted, it is possible for service providers to obtain hangar or parking space access at Heathrow on an *ad-hoc* basis. This also applies to hangar space to be used for "casualty repairs".
- 594. Indeed, both Parties provide access to other airlines in order to allow them to perform MRO activities at Heathrow. In particular, IAG allows other airlines to the use of its hangar bays²⁵² and casualty repair staff on an *ad hoc* basis irrespective of the alliance memberships of the requesting airlines.²⁵³ Moreover, it provides parking space to[...], which according to the Parties is the only non Heathrow-based airline which requested it to date. bmi's line maintenance contracts contain specific provisions for the use of bmi's hangar bays, parking spaces and/or casualty repair staff at Heathrow. However, the Parties submit that demand for the above-mentioned facilities is low and therefore the majority of these contracts these entitlements have either not been used, or have been taken up only on an infrequent, *ad hoc* basis by bmi's customers.²⁵⁴ In any event, IAG considers that subject to the counterparties' wishes it will maintain bmi's on-going contracts also post-Transaction.²⁵⁵
- 595. Besides the Parties' infrastructures (i.e. 9 hangar bays and 36 parking stands in total), airlines needing hangars, parking space or other facilities at Heathrow could rely on Virgin (which owns 1 hangar bay [...]) as well as on the airport manager BAA (which owns approximately 200 parking stands at Heathrow, many of which could be used for line maintenance activities).²⁵⁶ In addition, as the CAA explained, IAG, bmi and Virgin also have dedicated ramp areas adjacent to their respective terminals that may be used line maintenance.
- 596. In view of the foregoing, it can be concluded that post-Transaction the merged entity would have no ability to foreclose other airlines' access to IAG's and bmi's Heathrow facilities and/or an incentive to do so. Indeed, BAA's parking spaces and Virgin's infrastructures represent a credible alternative to those of the merged entity at Heathrow. Moreover, IAG's incentive to provide access to its hangar bays, parking spaces and other facilities on an *ad hoc* basis would not change for the following reasons.
- 597. First of all, the demand stemming from bmi's fleet would not need to be met by IAG, since it is currently satisfied at bmi's Heathrow facilities in its entirety, which have spare

Including the hangar bay that is specifically reserved for casualty repairs.

IAG estimates that it provided hangar support for third party casualty aircraft on around 40 occasions in the last 2 years at LHR, including for [*Redacted – Beneficiary airlines*].

^{254 [}Redacted – refers to confidential customer details].

See the Parties' reply to the Commission's request for information of 22 February 2012.

See CAA e-mail of 9 March 2012.

capacity and are thus rented out to other airlines.²⁵⁷ Similarly, IAG does not face capacity shortages at its Heathrow facilities, which are also rented-out to other airlines. Therefore nothing suggests that post-Transaction IAG would have an incentive to foreclose bmi's infrastructures to satisfy its airlines' needs. Secondly, it should be borne in mind that – as the Parties submit – it is common for carriers to own and use such facilities at the airports where they are based. Consequently, agreements concerning the rental of airport facilities are usually negotiated between airlines bearing in mind the long term relationship between carriers and are thus concluded on a reciprocal basis (i.e. knowing that the lessor at airport X could be the lessee at airport Y and that refusing access at airport X would expose to retaliation at airport Y).

- 598. In conclusion, therefore, the horizontal overlaps existing between the Parties' activities on the MRO market do not give rise to serious doubts.
- 6.3. Vertical relationships
- 599. The Transaction does not give rise to vertically affected markets in components maintenance. In relation to line maintenance, if the narrowest hypothetical geographic market definition is considered (i.e. the provision of line maintenance services at individual airports), only the Barcelona El Prat airport would be vertically affected.
- 600. However, no supply relationship exists between the Parties at the above-mentioned airport, at which IAG estimates that it provides around [60-70]-[70-80]% of line maintenance services to third parties. bmi estimates that it accounts for less than [10-20]% of demand for line maintenance services from third parties at Barcelona El Prat.
- 601. The Transaction would not lead to input foreclosure at Barcelona El Prat, as there are alternative credible suppliers of line maintenance services, including Lufthansa.
- 602. In addition, if a wider geographic market were considered, there would be a greater number of alternative suppliers to IAG, including at other airports which serve the city of Barcelona, such as Girona and Reus, as well as other airports located throughout Spain.
- 603. Moreover, bmi accounts for less than [10-20]% of demand for third party line maintenance at Barcelona El Prat and therefore its addition to IAG's portfolio would not change its current incentive to continue supplying third parties at the above-mentioned airport.
- 604. The majority of the respondents in the market investigation also indicated that purchasers of MRO services could easily switch (i.e. in a limited time frame and at a reasonable cost) to alternative providers at any given British or Spanish airport.²⁵⁸

See Virgin's response to the request for information to competitors.

_

See replies to question No 9 of the request for information to competitors and No 8 of the request for information to customers.

- 605. As regards the Parties, with the exception of bmi's line maintenance contract with Lufthansa, all contracts operate on a rolling basis (i.e. they continue until terminated by either party). Moreover, the termination periods for line maintenance contracts are regulated by the relevant International Air Transport Association (IATA) regulations, providing *inter alia* that all such contracts are terminable on maximum 60 days' notice.
- 606. In relation to customer foreclosure concerns, the merged entity would not have the ability to foreclose other suppliers of line maintenance services at Barcelona El Prat. As mentioned above, bmi's share of purchases of line maintenance services at Barcelona El Prat is limited. As a consequence, third party suppliers of line maintenance would continue to have a range of alternative customers to whom they can provide their services.

6.4. Conclusion

607. In view of the foregoing, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for MRO services.

VII. FAILING FIRM DEFENCE

- 608. The Horizontal Merger Guidelines and the case law of Court of Justice establish a threepronged test to determine whether a "rescue merger" may be allowed (that is to say, a failing firm defence can be accepted) despite its adverse effects on competition:
 - i. the allegedly failing firm would, in the near future, be forced out of the market because of financial difficulties if not taken over by another undertaking (see Section 2);
 - ii. there is no less anti-competitive alternative purchase than the notified merger (see Section 2); and
 - iii. in the absence of a merger, the assets of the failing firm would inevitably exit the market (see Section 3).²⁵⁹
- 609. More generally, a merger that is found to give rise to significant impediment of effective competition may be found compatible with the internal market if it can be proved that without the merger the competition would be deteriorated at least to the same extent as the failing firm would simply disappear from the market. In that context, "the Commission may decide that an otherwise problematic merger is nevertheless compatible with the common market if one of the merging parties is a failing firm. The basic requirement is that the deterioration of the competitive structure that follows the merger

Horizontal Merger Guidelines, paragraph 90.

Horizontal Merger Guidelines, paragraph 89.

cannot be said to be caused by the merger. This will arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger."²⁶¹

- 610. It is then for the notifying Parties to provide in due time all the relevant information necessary to demonstrate that the deterioration of the competitive structure that follows the merger is not caused by the merger.²⁶²
- 611. Lufthansa considers that bmi meets the requirements of the failing firm defence as set out in paras. 89-91 of the Commission's Horizontal Merger Guidelines²⁶³:
 - i. bmi is a separate entity rather than a division of Lufthansa.
 - ii. bmi is a failing firm that, absent the Transaction, would in the near future be forced out of the market.
 - iii. There is no alternative purchaser for bmi.
 - iv. In the absence of the Transaction, bmi's assets would inevitably exit the relevant markets.

1. Firm vs. division

- 612. Firstly, even if bmi has operated as a separate legal entity with its own management, brand, and commercial strategy since Lufthansa's takeover in 2009²⁶⁴, bmi is a fully owned subsidiary of Lufthansa. The Lufthansa group is not facing overall financial difficulties; the losses incurred by bmi are not of a magnitude which would endanger the whole Lufthansa group (net loss of approximately EUR 170 million in 2010 and 2011, compared to total assets of EUR 29.3 billion, net profit of EUR 1.13 bn and cash flow from operating activities of EUR 3.1 bn for the overall Lufthansa group according to its 2010 consolidated statements).
- 613. Importantly, the discussions about the fate of bmi held at Lufthansa board level indicate that costs related to "reputational damage" and "domino effects" were taken into account; these costs are relevant at group level. This also demonstrates that for the purpose of the

Horizontal Merger Guidelines, paragraph 89.

Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para 91 (OJ C 31, 5.2.2004, p.5). See also COMP/M.308 KALI+SALZ and Joined Cases C-68/94 and C-30/95 France and Others v Commission (Kali & Salz) [1998] ECR I-1375.

Annex 1 to the Form CO.

Case COMP/M.5403 Lufthansa / bmi.

- Commission assessment, bmi should be regarded as a Lufthansa division rather than as a separate entity.
- 614. However, the qualification of failing firm or of failing division does not appear to have any bearing on the assessment by the Commission in this case because the requirements for a failing firm defence do not appear fulfilled irrespective of this qualification.

2. bmi's exit from the market and alternative purchaser

615. As explained in Section V.I, the most likely situation absent the Transaction is bmi's exit from all markets. This is due in particular to the absence of a credible purchase offer by Virgin.

3. Asset exit

- 616. One of the cumulative criteria laid down in the Horizontal Guidelines to accept a failing firm defence is that absent the merger, "the assets of the failing firm would inevitably exit the market" (emphasis added).
- 617. The main assets of bmi are the 56 slot pairs the carrier holds at Heathrow. In case of insolvency, and due to the severe congestion affecting Heathrow, all bmi's slots would be reallocated to other carriers, most likely via the slot pool managed by the slot coordinator. Nothing would prevent carriers obtaining such slots to use them on the routes where they are currently used by bmi. Therefore, these assets would not "inevitably" exit the market.
- 618. In addition, slots are not route-specific assets. They must be held by the carrier in order to operate but could in general be transferred between routes²⁶⁵. This specificity has to be taken into account in the assessment of whether slots would be likely to exit the market.
- 619. If bmi became insolvent, in the likely situation where at least some if not most of bmi's slots at Heathrow would end up in the slot pool managed by the slot coordinator, ACL would, in the reallocation process, take into consideration the competitive impact of the applicants' requests on routes for which slots would be requested. It is thus likely that the loss of competition and supply on routes exited by bmi would be taken into consideration in the assessment of requests for slots for these routes. This further increases the likelihood that some of the slots of the current bmi portfolio may be reused on routes previously operated by bmi.
- 620. Furthermore, the post-Transaction frequency planning made by IAG shows that IAG would increase its frequencies (vs. IAG frequencies operated pre-Transaction) on a number of routes, and would maintain operations on most of the routes where bmi currently operates. This is at least an indication that, should IAG receive slots from ACL

However, there are cases where slots would have to be used in a route-specific manner, at least for some time.

- in case of bmi insolvency, some bmi slots would possibly continue to be used on routes affected by the Transaction.
- 621. Therefore, it is concluded that at least some of these slots would likely continue to be used on the routes currently operated by bmi. This further shows that "inevitable exit" from the market would not be warranted²⁶⁶, and that the criterion about exit of assets would not be fulfilled.
- 622. In addition, bmi holds traffic rights granted on the basis of bilateral Air Service Agreements or similar intergovernmental agreements for 17 international routes. 267
- 623. An airline's intangible assets mainly include "its route/traffic rights, and the rights to take-off and landing slots at congested airports." ²⁶⁸
- 624. The bilateral rights to operate flights to certain countries (such as Russia, Egypt, Armenia or Iran) give the right to a specific airline to operate on an international route, sometimes with a cap on frequencies. Traffic rights are usually granted to a carrier of a given nationality by the national authorities competent in the country of this carrier. Therefore, should bmi cease business, these traffic rights would revert back to the UK and be allocated to other airlines willing to take up the freed rights for operations on the same route. Therefore, these assets would at least in certain cases remain in the market where they were previously used by bmi, but distributed to different market participants.
- 625. On the contrary, in the post-Transaction situation, bmi's traffic rights would be inherited by the merged entity at least as long as IAG keeps bmi as a separate airline with its own operating license, and as long as the merged entity's traffic rights are not reallocated by the competent national authorities following a scarce capacity hearing.
- 626. As a result it cannot be concluded that absent the Transaction bmi's traffic rights would inevitably exit the market.

4. Overall causality criterion

- 627. The overall criterion for assessing a failing firm defence is whether the proposed Transaction has to be considered to be the cause of the significant impediment of effective competition.
- 628. In order to conclude that the Transaction is compatible with the internal market, it is necessary to establish whether the likely outcome(s) of the counterfactual would produce

The same would hold true for bmi's aircraft, part of which might potentially be used on the routes where bmi currently operates.

Lufthansa's reply to the request for information of 1 March 2012.

Morrell, Peter, Airline Finance, Ashgate, 2007, page 75.

- a deterioration of the competitive structure in the market to a similar degree compared to the merger. As explained in particular in Section V.1 about the reallocation of slots, the Commission has indications that absent the Transaction competition in the market would not deteriorate to the same extent as it would should the Transaction go through.
- 629. First, the re-allocation of bmi's slots, in particular its large portfolio at highly congested Heathrow, would increase opportunities and incentives for entry and expansion by other airlines than IAG, in particular on the routes of concern. The same opportunities would not arise in the post-Transaction scenario.
- 630. Moreover, even if none of bmi's current slots was reallocated for use on the specific route where it is currently used by bmi, there is a certain degree of likelihood that some of bmi's current slots would be reallocated for use on other routes where bmi operates, as explained in Section V.1 especially on routes where the degree of competition and consumers' choice would be low following bmi's insolvency. For example, following bmi's insolvency, a slot currently used by bmi on the Aberdeen-Heathrow route may be reallocated to a carrier other than IAG for entry on the Heathrow-Edinburgh route. This type of transfer, which would be possible in the counterfactual but very unlikely post-Transaction (due to IAG's expected reluctance to sell or lease out slots obtained through the proposed Transaction) would have the same competitive effect on the Heathrow-Edinburgh as if a slot currently used by bmi on the London-Edinburgh route would be channelled to another carrier than IAG for use on the same route. Therefore, even if bmi's slots would inevitably exit all the markets were they are currently used (quod non), the overall causality criterion underpinning the three criteria of the failing firm defence would not be met.
- 631. Moreover, on routes where the Parties currently compete against each other and third parties, the counterfactual may result in a more balanced distribution of market shares (and frequencies of service) than the post-Transaction scenario
- 632. To conclude, the overall causality criterion is not be fulfilled.

5. Conclusion on the failing firm defence

633. It is concluded that the Parties have failed to demonstrate that the deterioration of the competitive structure that follows from the Transaction would not be directly caused by the Transaction. The three-pronged test set out in the Horizontal Merger Guidelines does not appear to be met. Instead, the Transaction would most likely deteriorate competition to an extent beyond the extent of the deterioration that could result from bmi exiting the market. In addition, it appears likely that the negative effects of bmi's bankruptcy would be short term while the negative effects likely to be caused by the Transaction would be structural in nature.

VIII. COMMITMENTS

1. Commitments submitted by IAG

- 634. In order to address the serious doubts raised by the Transaction on the London-Aberdeen, London-Edinburgh, London-Nice, London-Moscow, London-Cairo, London-Amman, and London-Riyadh routes, as well as on feed traffic issues on a number of indirect itineraries via London-Heathrow, IAG submitted commitments on 9 March 2012. After a first examination by the Commission, IAG submitted revised commitments on 13 March 2012. On the same date, the Commission launched a market test in order to gather the opinion of market participants. Following the market test, an improved version of the commitments was submitted by IAG on 28 March 2012 (the "Commitments"). As will be shown below, these Commitments are suitable to entirely remove the serious doubts identified by the Commission.
- 635. The Commitments aim at reducing the barriers to entry and facilitating entry for prospective entrant(s)²⁶⁹ on the London-Aberdeen, London-Edinburgh, London-Nice, London-Moscow, London-Cairo and London-Riyadh routes. Specifically, they provide for the release and transfer of a number of slots at Heathrow (the "Slot Commitments"). In addition, the Commitments aim at preserving the competitive situation on the London-Amman route. Moreover, the Commitments attempt to remedy the feeder traffic issues identified by allowing IAG's competitors on long haul routes to enter into Special Prorate Agreements ("SPA") with IAG (the "SPA Commitments").
- 636. The main aspects of the Commitments are summarised below.

1.1 The Slot Commitments

1.1.1. Slot release on city pairs with competition concerns

- 637. At the outset, it is worth mentioning that Heathrow is a heavily congested airport where slots are a scarce resource that is commonly exchanged between carriers with monetary and other consideration. Under the Commitments, IAG would procure that slots are made available at Heathrow in order to allow one or more prospective entrant(s) to operate or increase their services on the following city pairs:
 - (i) the "Identified UK City Pairs": London-Aberdeen and London-Edinburgh and
 - (ii) the "Identified City Pairs": London-Aberdeen, London-Edinburgh, London-Nice, London-Cairo, London-Riyadh and London-Moscow

269

Defined in the Commitments as "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" (i.e. a scheduled passenger air transport service on one or more of the routes concerned by the slot release).

- 638. The number of slots to be made available would enable prospective entrant(s) to operate up to a total of seven frequencies per day on the Identified UK City Pairs and up to a total of five frequencies per day on any Identified City Pair.²⁷⁰
- 639. Where a prospective entrant would have operated on one or more Identified City Pairs with the released slots for at least two consecutive IATA seasons, it would be entitled to apply for any slots still available in the quota for the Identified City Pairs 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 Pairs.
- 640. On 15 March 2012 IAG and Transaero entered into an agreement pursuant to which IAG made two slots available to Transaero at Heathrow for use on the London-Moscow route. The Commitments provide that in the event that Transaero would not make use of these two slots and these would become available to IAG, IAG would undertake to procure that these slots will be made available to other prospective entrants such that the number of slots to be used on the Identified City Pairs would be increased from five to seven.²⁷¹

1.1.2. Conditions pertaining to the slots

641. A prospective entrant shall be eligible to obtain slots from IAG pursuant to the Commitments only if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary slots to operate on the city pairs concerned through the normal workings of the normal slot allocation procedure. The prospective entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary slots if, *inter alia*, (a) slots at Heathrow were available through the normal slot allocation procedure within twenty minutes (for services on any route connecting London with any other part of Europe, including Aberdeen and Edinburgh) or sixty minutes (for services on London-Cairo, London-Moscow and London-Riyadh) of the times requested but such slots have not been accepted by the prospective entrant; or (b) slots at Heathrow were obtained through the normal slot allocation procedure more than twenty or sixty minutes (as relevant) from the times requested and the prospective entrant did not give IAG the opportunity to exchange those slots for slots within twenty or sixty minutes of the times requested; or (c) it has not exhausted its own slot portfolio at Heathrow.

As opposed to the initial version, the final version of the Commitments does not tie each slot released by IAG to a specific route, but rather provides for a certain degree of flexibility, allowing prospective entrants to take as many of the offered slots as they deem necessary to operate on the route(s) concerned.

The total number of slots offered by IAG in the initial version of the commitments was ten. However, IAG has increased to number of slots to fourteen in the final version submitted on 28 March 2012. To the twelve slots which are offered for the Identified UK City Pairs and the Identified City Paris, the two slots leased by IAG to Transaero pursuant to the agreement of 15 March 2012 should be added.

- 642. Slots will be released within twenty or sixty minutes (as relevant) of the time requested if IAG has such slots available. Otherwise, IAG must offer the slots closest in time to the request.
- 643. However, 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 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 arrival slots at Heathrow in this period, for each slot request which cannot be accommodated IAG shall offer the prospective entrant the next closest slot to the time requested. In addition, the twelve arrival slots released by IAG (seven for the Identified UK City Pairs and five for the Identified City Pairs) should be spread throughout the day, i.e. no more than five slots in the morning (the period up until 12:00 local time), no more than five slots in the afternoon (the period after 12:00 and up until 16:00 local time), and no more than five slots in the evening (the period after 16:00 local time).

1.1.3. Grandfathering rights

- As a general rule, the slots obtained by a prospective entrant must be operated on the city pair(s) for which they have been requested from IAG and cannot be used on another city pair unless the prospective entrant has operated them during at least six full consecutive IATA seasons ("the Utilisation Period").²⁷² The prospective entrant would be deemed to have grandfathering rights for the slots once appropriate use of the slots has been made on the city pairs at issue, for the Utilisation Period. Once the Utilisation Period has elapsed, the prospective entrant would be entitled to use the slots obtained on the basis of the Commitments exclusively to operate services on any route connecting London with any other part of Europe (including Aberdeen and Edinburgh), or on London-Moscow, London-Cairo and London-Riyadh.
- 645. During the Utilisation Period, the prospective entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of the Commitments any slots obtained from IAG (except for changes to any such slots which are within the twenty/sixty minutes time window and which have been agreed with the slot coordinator.). Provisions on misuse of slots also apply. In the event of a misuse, the prospective entrant shall have thirty days after such notice to cure the misuse, failure to which gives IAG the right to terminate the agreement and obtain restitution of the slots.

148

The initial version of the Commitments set out a longer Utilisation Period (eight consecutive IATA seasons) after which a prospective entrant would have acquired grandfathering rights over slots used on the London-Cairo and London-Riyadh routes.

1.1.4. Consideration

646. Since the slots released under the Commitments are at an airport where secondary trading takes place, the agreement with the prospective entrant may provide for monetary and/or other consideration, so long as such contractual provisions are clearly disclosed and comply with the Commitments and all other administrative requirements set out in the applicable legislation.

1.1.5. Ranking of the prospective entrants applying for slots

- 647. The Commitments provide that the Commission, advised by the Monitoring Trustee, would collect bids for IAG's slots and assess whether each applicant is a viable competitor, with the ability, resources and commitment to operate services on the routes of concern in the long term as a viable and active competitive force.
- 648. The Commission would rank the bids received and will give preference to the applicant (or combination of applicants) which will provide the most effective competitive constraint on the routes of concern. In this respect it will consider the strength of the applicant's business plan and give priority to the airline(s) providing: (i) the largest capacity and/or greatest number of services/frequencies; (ii) a pricing structure and service offerings that would provide the most effective competitive constraint; and (iii) plans to offer feed to third party carriers operating services from Heathrow to one or more of the long-haul destination/origin cities where feed issues have been identified.
- 649. Applicants may offer a compensation for the slot(s) requested pursuant to the Commitments. However, this is not an obligation, but rather an option that applicants may use in order to have increased chances to obtain the slots requested. Indeed, in the event that, following the Commission's evaluation, several applicants are deemed to provide similarly effective competitive constraints on services from/to Heathrow on the routes of concern, the Commission would rank these applicants according to the compensation offered.

1.2. Commitments concerning special prorate agreements

- 650. In addition to the Slot Commitments, IAG committed to entering into a Special Prorate Agreement ("SPA") with non oneworld airlines operating long-haul services from Heathrow for traffic:
 - (i) with a true origin/destination in one or more of the cities to which IAG operates from Heathrow which are 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, Tbilisi, Tehran, Yerevan (the "Relevant Short-haul Origin/Destination Cities");

- (ii) and a true destination/origin in one or more of the following cities (the "Relevant Long-haul Destination/Origin 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 (the "Category 1 Cities"); Beijing, Delhi, Doha, Dubai, Hong Kong, Lagos, Singapore, Tokyo (the "Category 2 Cities").
- 651. In order for a Relevant Long-haul Destination/Origin City to be eligible for the SPA, the requesting airline must not, alone or in combination with carriers which are part of the same alliance as the requesting airline, for the Category 1 Cities, have hubs at both London and the Relevant Long-haul Destination/Origin City; for the Category 2 Cities, the requesting airline must not, alone or in combination with carriers which are part of the same alliance as the requesting airline have a hub at the Relevant Long-haul Destination/Origin City.
- 652. Moreover, for each Relevant Long-haul Destination/Origin City for which it proposes to enter into a SPA with IAG, the requesting airline may select up to a maximum of fifteen behind/beyond Relevant Short-haul Origin/Destination Cities which are or will be operated by IAG and to which the SPA will apply.
- 653. The requesting airline may also select the fare class(es) to which the SPA would apply, provided that each selected fare class is included in at least one existing SPA which IAG has agreed with any other carrier with regard to the routes concerned (or which bmi had so agreed under an SPA). In addition, the SPA 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) with any other carrier for the same route and in the same fare class (other than some specific codeshare terms within existing special prorate agreements that are excluded from the scope of the SPA Commitments). (b) grant the requesting airline 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.
- 654. In addition, any term included in the SPA (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 airline on the other part, have in place. To take account of adjustments in fare class usage, the fare classes selected by the requesting airline need not be the same fare classes as those specified in any special prorate agreement which is in place provided that the requested fare classes reasonably correspond to such specified fare classes. In any event, 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 *de minimis* or obsolete.

1.3. Additional commitments: London Amman

655. Furthermore, if, following implementation of the Transaction, IAG decided to operate services between London and Amman, it would discontinue its current codeshare arrangements with Royal Jordanian Airlines (in accordance with their terms) insofar as they concern point-to-point passengers on that route.

1.4. Other provisions

1.4.1. Fare combinability

656. IAG also committed to enter, at the request of an airline which started to operate new or increased services on any of the city pairs concerned by the Slot Commitments (whether or not such service uses slots released to that carrier pursuant to the commitments), an agreement that arranges for fare combinability on the relevant city pair. This agreement provides for the possibility for the airline concerned, or travel agents, to offer a return trip on the city pair at issue comprising a non-stop service provided one way by IAG and a non-stop service provided the other way by the airline at issue.

1.4.2. Frequent flyer programmes

657. At the request of a carrier wishing to operate new or increased services on any of the routes concerned by the slot release Commitments that does not have a comparable frequent flyer program ("FFP") of its own, IAG would allow it to be hosted in its FFP for the relevant city pair(s) on which it has commenced or increased service.

1.4.3. Monitoring Trustee

658. A Monitoring Trustee would be appointed by IAG to monitor the correct execution of the Commitments, subject to previous approval by the Commission. The Monitoring Trustee would be independent of IAG and all other members of the oneworld Alliance. IAG would be under the obligation to 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. In particular, the Monitoring Trustee would 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 the Commitments.

1.4.4. Fast track dispute resolution

659. The Commitments also contain provisions on fast-track dispute resolution according to which the new entrant can decide to settle any dispute with the Parties in relation to the Commitments through arbitration. Both the new entrant and the Parties will then be bound by the arbitration decision.

2. Analysis of the Commitments

- 660. As set out in the Commission Notice on remedies,²⁷³ the Commission assesses the compatibility of a notified concentration with the internal market on the basis of its effect on the structure of competition in the European Union. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the parties may seek to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the merger cleared.
- 661. In assessing whether or not the remedies will restore effective competition, the Commission considers *inter alia* the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise. It should be highlighted, however, that commitments in Phase I can only be accepted when the competition problem is readily identifiable and can easily be remedied.
- 662. The Commission's assessment has concluded that the Commitments, as submitted by IAG on 28 March 2012, address all serious doubts identified in the course of the procedure. As such, the Commission comes to the conclusion that the Commitments entered into by IAG are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

2.1 The Slot Commitments

2.1.1. Structure and design of the Commitments

- 663. The Slot Commitments are based on the fact that slot availability at Heathrow is the main entry barrier on the routes where competition concerns have been identified. Therefore, they are designed to remove (or at least reduce significantly) this barrier and foster sufficient, timely, and likely entries on the above-mentioned routes.
- 664. It is important to note first that Heathrow slots have in thesmeselves a significant value. This intresic attractiveness of the slots is enhanced in the Commitment package by the prospect of acquiring grandfathering rights after six IATA seasons.
- 665. The number of slots offered in the Slot Commitments are similar to (if not above) the ones that would have most likely been operated absent the Transaction on the routes of concern.
- 666. Indeed, as ACL explained during the market investigation, should bmi's slots go back to the pool following insolvency, priority would be given to re-assigning slots to carriers needing to adjust their schedules (e.g. to airlines that are already operating for example weekly frequencies and want to offer daily services, etc.). ACL would also consider the possibility to use bmi's slots to improve the competitive situation on some

²⁷³ OJ C 267, 22.10.2008, p. 1.

routes. In this respect, however, it would need to take the total number of slots contained in bmi's portfolio, their characteristics as well as the availability of terminal capacity (especially at Heathrow) into account. ACL also clarified that, in a scenario in which bmi's slits would return to the pool, it would most likely re-allocate bmi's slots on a mix of long-haul and short-haul routes²⁷⁴.

2.1.2. Outcome of the market test: the Aberdeen and Edinburgh routes

- 667. As regards the outcome of the market test, several carriers expressed their interest to take the slots offered by IAG to operate air services on the London-Edinburgh and London-Aberdeen routes. Some of these carriers attached conditions to their entry; however, a significant portion of the conditions raised by these carriers have been included in the Commitments submitted on 28 March, in particular the possibility for more flexibility and for a shorter utilization period.
- 668. Besides, the large majority of customers/travel agencies/airports and the large majority of competitors confirmed that the Commitments would facilitate entry on the London-Edinburgh and London-Aberdeen routes.

2.1.3. Outcome of the market test: the Cairo and Riyadh routes

- 669. With regard to London-Cairo and London-Riyadh, the market investigation confirmed that the Commitments will lead to likely entry, because they will substantially decrease the main barrier to entry on the routes, i.e. the availability of slots at Heathrow.
- 670. The above was confirmed by the large majority of customers/travel agencies/airports and the large majority of competitors, according to which the Commitments will, overall, facilitate entry on these two routes.
- 671. The Commission notes in this respect that the London-Cairo and London-Riyahd routes are seen by bmi as routes with prospects of profitably. [*Redacted Refers to confidential internal document*]²⁷⁵. This is likely to foster new entries which would be made possible thanks to the Slot Commitment.
- 672. Again, entry projects appear to be subject to some improvements in the Commitments. Some of the requested improvements are included in the Commitments submitted on 28 March, including the introduction the greater flexibility in the use of slots and the reduction of the duration of the Utilisation Period.

153

Considering the re-allocation criteria applied by ACL, the Commission deems it highly unlikely that in case of bmi's insolvency ACL would have re-allocated more than seven frequencies on the London-Aberdeen and London-Edinburgh routes, or more than 1 frequency on London-Nice.

^{275 [}Redacted – refers to confidential internal document]

2.1.4. Other routes

- 673. As regards the Moscow route, IAG recently entered into a slot lease agreement with Transaero in order to allow it to keep operating on this route. Moreover, two of the slot pairs made available by IAG for operations on the Identified City Pairs could be taken up by another carrier to offer air services on the London-Moscow route.²⁷⁶
- 674. In the market investigation two carriers indicated that they would consider operating on the London-Moscow route if slots at Heathrow were available. Entry projects appear to be subject to some improvements in the Commitments, a significant part of which are included in the Commitments submitted on 28 March, including the introduction the greater flexibility in the use of slots and the reduction of the duration of the Utilisation Period.
- 675. Concerning the London-Nice route, at least one of the slot pairs made available by IAG for operations on the Identified City Pairs could be used on this route.
- 676. One carrier indicated in the market investigation that it would consider operating on the London-Nice route but lacks sufficient slots at London Heathrow to do so. Therefore, the Commitments appear to remove the main barrier for this carrier to start operating on this route.
- 677. In reply to the market test, several respondents argued that additional overlap routes should be covered by the Slot Commitments. In particular, Virgin stressed that the Slot Commitments should cover the Heathrow-Manchester route, which will become a monopoly route post Transaction irrespective of whether the relevant market is defined as including services from various airports in London or not²⁷⁷. However, Virgin's arguments in favour of such inclusion relate to connecting, and not O&D passengers. Virgin acknowledged that "rail transport services may compere with air services on this route."²⁷⁸, which is the essential reason why the Transaction raises no serious doubts as regards its impact on O&D passengers on this route.
- 678. The Commission agrees with Virgin that train services between Manchester and London do not constitute a valid substitute for air services for connecting passengers. However, the Commission's route-by-route competitive assessment developed in section VI.1.4 only concerns O&D passengers, and not connecting passengers. These

Provided it would secure designation as the second UK carrier on this route. This is likely to happen post-Transaction once a scarce bilateral capacity hearing has taken place.

Virgin's non-confidential reply to question 15.1 of the market test questionnaire for competitors and non-confidential version of Virgin's submission of 16 February 2012.

Non confidential version of Virgin's submission of 16 February 2012, paragraph 9.4.4

connecting passengers do not belong to the Manchester-London O&D market, but to other O&D markets (e.g. Manchester-Los Angeles, Manchester-Tokyo...) depending on the final destination (or true origin) of their journeys. Any detrimental horizontal effect of the Transaction on such connecting passengers would have been caught by the assessment of the effects of the Transaction on O&D routes with an end in Manchester and an end in another city than London, and where the Parties' direct or indirect services would overlap. Yet, as shown in section VI, the Commission's assessment has not revealed horizontal problems on any such routes.

679. Moreover, the Commission recognizes that post-Transaction, for passengers originating from Manchester and connecting at Heathrow to another destination, only IAG's services will be available for the Manchester-Heathrow leg of such journeys, and that it may entail a vertical issue (i.e. the risk that IAG may restrict access to its Manchester-Heathrow flights for passengers connecting at Heathrow onto services operated by other carriers to certain destinations). However, this vertical issue, which has been assessed in section VI.3, is fully addressed by the SPA Commitment (see below), which will allow other carriers than IAG to offer competitive tickets for indirect journeys originating from Manchester with a connection at Heathrow to the destinations for which foreclosure risks exist. Indeed, the carriers concerned by the foreclosure risk will have the necessary access to IAG's Manchester-Heathrow flights to offer such tickets, since they will be entitled to request the inclusion of the Manchester-Heathrow route into the list of "feeder routes" covered by the Special Prorate Agreement to be entered into with IAG.

2.1.5. Conclusion

- 680. According to the European Union Courts' case law, commitments must be likely to eliminate competition concerns identified and ensure competitive market structures. In particular, contrary to those entered into during the phase II procedure, commitments offered in Phase I are intended not to prevent the creation or strengthening of a dominant position but rather to clearly dispel all serious doubts in that regard. The Commission enjoys a broad discretion in assessing whether these remedies constitute a direct and sufficient response capable of dispelling any such doubts.²⁷⁹
- 681. In airline cases, slot release commitments are acceptable to the Commission where it is sufficiently clear that actual entry by new competitors that would eliminate any significant impediment to effective competition would occur. For such commitments to be acceptable, the notifying party need not identify a precise new entrant if various competitors express an interest during the administrative procedure in entering the markets concerned in view of the proposed commitments. In this respect, account must

²⁷⁹ Case T-177/04 *easyJet* v *Commission* [2006] ECR II-1931, para 128 ff.

- be taken of the facts existing at the time when the decision is adopted and not in the light of subsequent events.²⁸⁰
- 682. The market investigation confirmed that Heathrow is the most congested airport in Europe. Consequently slots at Heathrow are highly valuable, therefore rendering the Slot Commitments very appealing for prospective new entrants.
- 683. Indeed, it is extremely unlikely that any prospective new entrant could obtain all the slots necessary to operate the above-mentioned routes to/from Heathrow with a sufficient number of frequencies from the first IATA season. In addition, a new entrant at Heathrow would have no guarantee of obtaining the slots at the best times, allowing for an optimised level of rotation of aircraft. By contrast, the slot allocation mechanism in the Commitments ensures that the prospective new entrant will in all probability receive the requested slots in a window of +/-20/60 minutes.
- 684. The limitation concerning the need to spread released slots throughout the day does not change the picture materially, since IAG has committed to release a significant number of slots (up to five) in each period of the day. In addition, the possibility for carriers to pay a consideration for the slots offered by IAG does not reduce the attractiveness of the slots or preclude their award to the best applicants. Indeed, the above is not an obligation, but rather an option that carriers may use in order to have a chance to obtain the slots in the event that, following the Commission's evaluation, several applicants are deemed to provide similarly effective competitive constraints on services from/to Heathrow.
- 685. Moreover, IAG has introduced some flexibility in the use of the slots released, that could be allocated among different routes within the categories described above, and has agreed to reduce the duration of the Utilisation Period, making slots offered even more attractive for prospective entrants.
- 686. In light of the above, and on the basis of the information available to the Commission, in particular considering the interest demonstrated by several airlines, it is concluded that the Slot Commitments lead to likely entry by one or several airlines on the routes mentioned above in a timely manner and that this entry will suffice to resolve the competition concerns identified on these markets.
- 687. In this respect, it should also be highlighted that the criteria set out in the Commitments for the assessment of bids for the released slots enable the Commission to give preference i.a. to the applications made (i) by carriers offering the largest capacity and/or the greatest number of services/frequencies on the routes of concern as well as (ii) by airlines planning to offer feed to one or more of the long-haul destination/origin cities where issues have been identified. As such, the Commitments

156

²⁸⁰ Cf. point 63 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1, and Case T-177/04 *easyJet* v *Commission* [2006] ECR II-1931, para 197 ff.

enable the Commission to give priority in the allocation of slots to airline(s) offering the best package in terms of coverage of O&D routes where concerns have been identified and provision of feed traffic to long-haul flights from Heathrow.

2.2. Special prorate agreements

2.2.1. Outcome of the market test

- 688. While the Commitments at issue in the version submitted to the market test have been generally evaluated in a positive way, several respondents questioned their effectiveness and ability to address the concerns raised by the Commissions in a full and comprehensive manner.
- 689. In particular, these respondents considered that a number of additional long-haul routes should have been included in the scope of the Commitments. Some respondents also highlighted the need to extend the scope of the "feeder routes" covered by the commitment (initially limited to European routes) to the whole of the routes operated by bmi pre-Transaction and in particular to routes to/from the Middle East.
- 690. The above-mentioned concerns have been comprehensively addressed by IAG in the final version of the Commitments, whose scope covers all routes that have been identified as potentially causing foreclosure concerns in respect of feeder traffic issues, both on the long-haul and on the "feeder" leg (which now includes all the routes operated by bmi pre-Transaction, to the extent that they will be operated by IAG post-Transaction as well as all intra European routes).
- 691. The fact that the SPA Commitment is not open to a given carrier if this carrier, either alone or in combination with alliance partners, has a hub at either both ends or at the non-London end of the route (depending on whether the route is "Category 1" or "Catgory 2") does not call into question the viability of the SPA Commitment. Indeed, in such cases, as already explained in section VI.3, IAG's incentives to reduce the feeder traffic provided to the carrier in question would be limited. Moreover, as regards the Category 2 routes, carriers that have a hub at the non London end of the route (and which will thus not be entitled to benefit from the SPA Commitment for this route) have not raised significant concerns during the market test of the Commitments.
- 692. The Commission considers that the SPA Commitment, addresses, in its principle, the serious doubts raised by the Transaction as regards a possible foreclosure strategy undertaken by IAG post-Transaction in relation to feeder traffic. Indeed, as a consequence of this commitment, IAG would have to enter into a SPA's with the carriers and for the long-haul routes for which a risk of foreclosure has been identified.
- 693. Pursuant to such SPA's, IAG would commit to carrying connecting passengers on up to 15 routes amongst those operated by bmi pre-Transaction, i.e. the routes where foreclosure would otherwise be likely to be implemented. Moreover, the fare classes included in the SPA would, at the applicant's request, cover all the fare classes

included in any existing similar agreement between IAG and another carrier with regard to the routes concerned, or any similar agreement between bmi and another carrier existing at the date of adoption of the present decision²⁸¹. This would allow the applicants to benefit from feeder traffic arrangements of the same scope as those previously entered into with bmi, and will prevent IAG from reducing the feeder traffic previously provided to the applicants by bmi for its services on the long-haul routes of concern.

- 694. Moreover, the terms of the SPA would have to be at least as favourable as the terms of any similar agreement between IAG and any other carrier at the date of the request and the terms of any similar agreement between IAG or bmi and any other carrier existing at the date of adoption of the present decision, subject to reasonable indexation. This would prevent IAG from unduly raising the cost of access to its flights on the routes previously operated by bmi for passengers connecting at Heathrow onto flights operated by the carriers that could potentially be targeted by foreclosure on the long-haul routes of concern.
- 695. In the context of the market test of the Commitments, the limitation of the SPA Commitment to 15 "feeder routes" was called into question. However, IAG has provided historical data²⁸² which show that with 15 feeder routes amongst those operated by bmi, the various carriers that could benefit from the SPA Commitment would be able to secure most of the feeder traffic that they currently receive from the Parties from the routes currently operated by bmi.
- More precisely, IAG's data show that for the various long-haul routes covered by the SPA Commitment and for the various carriers potentially eligible to the SPA Commitment for these routes, feeder traffic provided by bmi from the 15 largest "feeder routes" (amongst all routes where bmi currently operates) would account for at least [80-90]% of the feeder traffic currently provided by bmi. Moreover, for the various long-haul routes covered by the SPA Commitment and for the various carriers potentially eligible to the SPA Commitment for these routes, aggregate feeder traffic provided by the Parties from the 15 largest "feeder routes" (amongst all routes where bmi currently operates) would account for at least [80-90]% of the feeder traffic currently provided by the Parties from the routes where bmi currently operates. Moreover, as underlined by IAG, in the framework of the SPA Commitment, an applicant could select 15 "feeder routes" in a broader range of routes than those on which bmi currently operates (i.e. all intra European routes in addition to bmi's current network).

Subject to reasonable correspondence between bmi's fare classes and fare classes requested for the Special Prorate Agreement pursuant to the SPA Commitment.

²⁸² IAG's submission of 29 March 2012

- 697. Besides, the Commission recalls that the effects of the Transaction on feeder traffic must be assessed against the relevant counterfactual, whereby bmi would exit from all markets. As already explained, post Transaction, the likelihood of entry by another carrier than IAG on routes where bmi currently operates would be lower than in the counterfactual due to factors relating to both barriers to entry and incentives. However, in the counterfactual, it appears rather unlikely that after bmi would become insolvent, on each and every route where it currently operates, carriers other than IAG and willing to provide feeder traffic at Heathrow would enter with the same number of frequencies as bmi previously offered. Therefore, the feeder traffic that the carriers exposed to a risk of foreclosure post Transaction would receive after bmi would become insolvent from carriers entering onto the routes where bmi previously operated would likely be more limited than the feeder traffic received from bmi pre Transaction, though to an extent which is very difficult to assess. In addition, entry on routes previously operated by bmi could be achieved by carriers whose business model would not include the provision of feed to long haul operators²⁸³. Moreover, entrants on such routes may also not be interested in providing feed in conditions as favorable as the ones granted by means of the Commitments to all the carriers concerned by the risks of foreclosure.²⁸⁴
- 698. In addition, IAG has agreed to remove the clause whereby the "fifteen routes" to which the SPA Commitments apply could not be cumulated with those covered by an SPA pursuant to the commitments made by IAG in the context of case 39.596 BA/AA/IB, thereby addressing a criticism expressed during the market test.
- 699. As regards the list of long-haul routes included in the scope of the SPA Commitment, various respondents to the market test had called for the inclusion of additional routes. Most of these routes have been included by IAG. For those that have not been included, the Commission checked that they did not meet the thresholds below which it considers that no foreclosure concern can reasonably arise²⁸⁵.
- 700. In its assessment of feeder traffic issues, the Commission has identified possible risks of restriction of access to feeder traffic even if an SPA is in place, in particular though punctual restrictions to seat inventories via revenue management systems. As already indicated, IAG has acknowledged that it would be technically possible. IAG could close a fare class for passengers connecting onto a competitor's services while leaving

For example, easyJet indicated that its business model restricted it from providing feeder traffic to other carriers.

For example, a member of the Star alliance may focus its provision of feeder traffic for transatlantic routes to the benefit of members of the A++ Joint Venture.

At least 10,000 passengers per year carried by IAG on the long-haul route in 2011, and either bmi's feeder traffic accounting for at least 1% of the passengers carried by the carrier concerned on this route in 2011, or the Parties' combined feeder traffic accounting for at least 3% of all passengers carried by the carrier concerned

it open for passengers connecting onto its own services, without this being necessarily immediately apparent to the competitor in question.

- 701. However, the Commission considers that the Commitments reduce this risk to a sufficient extent. First of all, IAG is obliged, in the context of a Special Prorate Agreement entered into pursuant to the Commitments, to grant the applicant equivalent inventory access to that given within IAG. In addition, it shall not deconcur the other party to a Special Prorate Agreement from routes and fare classes covered by that agreement. Undue restriction or discriminatory access to its seat inventory would thus be a breach of the Commitments on the part of IAG.
- 702. Secondly, such conduct could be detected by the carriers that it would target. Virgin indicated that "it is possible to monitor discriminatory conduct in the way an airline manages access to a given flight for passengers connecting onto one of its other flights and for those connecting onto another airline's flight. However, this would be a very time consuming." The fact that it would be time-consuming to do carry out such monitoring on a day-to-day basis is of little relevance. Indeed, a carrier which would be unsatisfied with the working of the Special Prorate Agreement and would have reasons to suspect a discriminatory conduct on the part of IAG (for example, if it realized that only a limited or abnormally low number of passengers connecting onto its flights could actually access IAG's "feeder flights") could investigate the issue.
- 703. Furthermore, if elements suggesting the existence of such a conduct were found, they could be reported and further investigated by the Monitoring Trustee. Indeed, the Commitments foresee that the Monitoring Trustee, whose task will consist i.a. in monitoring the satisfactory discharge of its obligations by IAG, will have full and complete access to IAG's books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfill its duties. The Monitoring Trustee will thus be in a position to find evidence of any such discriminatory conduct and report them to the Commission. Such a conduct could possibly constitute a breach of the Commitments, and IAG would be exposed to the far-reaching consequences foreseen in the EU Merger Regulation in such cases In addition, such conduct could be efficiently dealt with by the fast-track dispute resolution mechanism provided for in the Commitments.
- 704. Moreover, the SPA Commitment is largely similar to a commitment made legally binding on IAG in 2010 in the context of Case 39.596 BA/AA/IB. To the knowledge of the Commission, the Monitoring Trustee in Case 39.596 BA/AA/IB has so far received no indication that this commitment was circumvented by tactics such as discriminatory access to seat inventories through IAG's revenue management system

160

Non-confidential version of the agreed minutes of the meeting of 29 February 2012 with Virgin.

705. Finally, the Commission notes that pursuant to the SPA Commitment, an SPA is concluded for up to 5 years and can be renewed on an evergreen basis. It can thus address the risks of foreclosure on a long-lasting basis.

2.2.2. Conclusion

706. In light of the above, and on the basis of the information available to the Commission, it is concluded that the SPA Commitments will suffice to resolve the competition concerns identified with respect to the availability of feed traffic to other airlines flying from Heathrow. The Slot Commitment contributes to addressing these concerns since among the criteria to be used to assess requests for slots under the Slot Commitments, the Commission will be entitled to consider the carrier's willingness to provide feeder traffic to carriers operating on the long-haul routes of concern

3.1 Other Commitments

707. The same conclusion applies to the commitment offered on the London-Amman route, as IAG agreed to discontinue its current codeshare arrangements with Royal Jordanian Airlines concerning point-to-point passengers, ensuring therefore that competition would be maintained between IAG and Royal Jordanian Airlines post-Transaction on this route.

3. Overall conclusion on the proposed Commitments

708. From all the above, it follows that the Commitments submitted to the Commission are sufficient to eliminate all serious doubts identified during the Phase I investigation.

4. Conditions and obligations

- 709. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- 710. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- 711. In accordance with the distinction described above, the decision in this case is conditioned on the full compliance with the requirements set out in sections 1, 2, 3, 4

and 5 of the Commitments submitted by IAG on 28 March 2012 (conditions), whereas the other sections of the Commitments constitute obligations on IAG.

712. The detailed text of the Commitments is annexed to the present decision. The full text of the annexed commitments forms an integral part to this decision.

IX. CONCLUSION

713. For the above reasons, the Commission has decided not to oppose the notified Transaction as modified by the Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions and obligations laid down in the Commitments annexed to the present decision. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission (signed)
Siim KALLAS

Vice-President

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 controlled by IAG, whereby the notion of control
Undertakings	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 **one**world 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 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 This term has the meaning given in the definition of Relevant

Cities 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 **one**world Alliance or affiliated with any member of that alliance and which:

- 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 Shorthaul 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

London Heathrow airport Heathrow

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, Ottowa, 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 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 Longhaul 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 **one**world 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 **one**world 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 **one**world 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

The following cities:

- 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 Shorthaul Origin/ Destination Cities

Cities to which IAG operates from Heathrow which are:

- 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 Domedodovo 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:

- +/- 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 lATA 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 lATA 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 lATA 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 lATA 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 renegotiation. 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 **one**world 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 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 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:	
orginea.	
	duly authorised for and on behalf of IAG