

“DISCLAIMER: This is an interim text of the non-confidential version of the commitments in Case COMP/M.6607 – US AIRWAYS / AMERICAN AIRLINES. The text is made available for information purposes only and does not constitute an official publication. The full text of the decision and the commitments in Annex will be published on DG COMP's website”.

M.6607 – American Airlines/US Airways

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the “*Merger Regulation*”), US Airways Group, Inc. (“*US Airways*”) and AMR Corporation (“*American*”, and, together with US Airways, the “*Parties*”) hereby provide the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the merger of their activities within the meaning of Article 3(1)(a) of the Merger Regulation (the “*Concentration*”) compatible with the internal market and the EEA Agreement by a decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision. The Parties commit to procure that these Commitments will be binding on any successor company arising from the Concentration.

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

DEFINITIONS

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

Affiliated Undertakings: Undertakings controlled by the Parties and/or by the ultimate parents of the Parties whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission’s consolidated Jurisdictional Notice under Council Regulation (EC) No. 802/2004.

Airport Pair: The airport pair consisting of LHR and PHL.

Alliance: The Star Alliance, the SkyTeam Alliance, the oneworld Alliance, or any other similar airline alliance that may be developed.

Applicant: Any airline interested in obtaining Slots from the Parties in accordance with these Commitments.

Commitment(s): The Slot Commitment for the Airport Pair and/or, as relevant, the commitment granting the Prospective Entrant access to the Parties' Frequent Flyer Programme and/or, as relevant, the commitment relating to fare combinability and/or, as relevant, the commitment relating to Special Prorate Agreements on the Airport Pair.

Competitive Air Service: A non-stop scheduled passenger air transport service operated on the Airport Pair.

Closing of the Concentration: The day on which the proposed transaction closes. On that day all US Airways Group equity outstanding will be cancelled and American will issue new shares in American to the current US Airways Group equity holders.

Effective Date: The date of the adoption of the Decision.

EU Slot Regulation: Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14 of 22.01.1993), as amended.

Europe: The European Union, Iceland, Norway, Switzerland and the Channel Islands.

FAA: The U.S. Federal Aviation Administration.

Fare Combinability Agreement: An agreement by which a New Air Service Provider, or travel agents, is able to offer a return trip on the Airport Pair comprising a non-stop service provided one way by the Parties or the Transatlantic Joint Venture, including any non-stop services on the Airport Pair operated by British Airways, and a non-stop service provided the other way by the New Air Services Provider.

Fast-Track Dispute Resolution Procedure: This term has the meaning given in Clause 6.

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 the Airport 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 for LHR as set out in the EU Slot Regulation and IATA Worldwide Slot Guidelines (including participation at the IATA Slot Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline).

Grandfathering: This term has the meaning given in Clause 1.10.

Hub: An airport at which an airline concentrates its operations. For the purpose of these commitments, as of the date of the Decision, the following airports shall be deemed to be Hubs of the following airlines: British Airways – LHR; and US Airways – PHL.

IATA: The International Air Transport Association.

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.

IATA Slot 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 Slot Conference for the Winter Season takes place in June, and the one for the Summer Season in November.

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).

LHR: London Heathrow Airport.

Miles: The credits awarded by an airline to members of its FFP. Such credits include standard reward points only and do not include their status points.

Misuse: This term has the meaning given in Clause 1.13.

MITA Manual: Multilateral Interline Traffic Agreements Manual published by IATA.

Monitoring Trustee: An individual or institution, independent of the Parties, who is approved by the Commission and appointed jointly by the Parties and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

New Air Services Provider: An airline which commences a new non-stop service on the Airport Pair in accordance with these Commitments.

North America: Canada, Mexico and the U.S.

oneworld: The Alliance founded by British Airways, American Airlines, Cathay Pacific and Qantas in 1999. Its members are currently Air Berlin, American Airlines, British Airways, Cathay Pacific, Finnair, Iberia, Japan Airlines, LAN Airlines, Malaysian Airlines, Qantas, Royal Jordanian and S7 Airlines.

Parties: American Airlines and US Airways and companies and/or affiliated businesses controlled by the entities after the Closing of the Concentration.

PHL: Philadelphia International Airport.

Prospective Entrant: Any Applicant that is able to offer a Competitive Air Service and needing a Slot or Slots to be made available by the Parties 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 the Parties. For the purpose of these Commitments, an airline shall not be deemed to be independent of and unconnected to the Parties when, in particular:
 - (i) it is an associated carrier belonging to the same holding company as one of the Parties; or
 - (ii) the airline co-operates with the Parties on the Airport 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 non-stop operations on the Airport Pair; 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 the Parties.

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.

Requesting Air Services Provider: This term has the meaning given in Clause 3.1.

Requesting Party: This term has the meaning given in Clause 6.2.

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 Commitment: This term refers to the commitment set out in Clause 1 to make slots available for the operation of one (1) Competitive Air Service on the Airport Pair.

Slot Handback Deadline: 15 January for the IATA Summer Season and 15 August for the IATA Winter Season.

Slot Release Agreement: An agreement between the Parties and a Prospective Entrant that provides for the exchange of Slot(s) with the Prospective Entrant. 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.

Slot Request Submission Deadline: The final date for the request for slots to the slot coordinator as set out in the IATA Worldwide Slot Guidelines.

Slot(s): Permission given to the Prospective Entrant to use the full range of airport infrastructure at LHR that is necessary to operate an air service at the airport on a specific date and time for the purpose of landing or take-off in accordance with the EU Slot Regulation. As necessary, this permission will also apply to PHL.

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.

Straight Rate Prorate: Method of allocating fares between airlines participating in a connecting passenger itinerary under which fares are allocated between the airlines in proportion to their shares of the prorate mileage for the entire journey.

Time Window: The period of sixty (60) minutes either side of the Slot time requested by the Prospective Entrant.

Transatlantic Joint Venture: Revenue-sharing joint venture between British Airways Plc. (“**British Airways**”), American Airlines Inc. and Iberia Líneas Aéreas de España S.A. (“**Iberia**”), covering all passenger air transport services of the parties on the routes between Europe and North America, reviewed by the Commission in the decision of 14 July 2010 in case COMP/39.596 *British Airways/American Airlines/Iberia*. The Transatlantic Joint Venture provides for extensive cooperation between the parties on these routes, which includes pricing, capacity and schedule coordination, as well as sharing of revenue. The operations of US Airways will be integrated into the Transatlantic Joint Venture.

TFEU: The Treaty on the Functioning of the European Union.

Utilization Period: This term has the meaning given in Clause 1.9 and shall be six (6) consecutive IATA Seasons.

1. SLOTS

Slots for the Airport Pair

- 1.1 The Parties undertake to make available Slots to allow a Prospective Entrant(s) to operate one (1) daily Frequency on the Airport Pair (i.e. up to seven (7) Frequencies per week on the Airport Pair).

Conditions pertaining to Slots

- 1.2 Each Prospective Entrant shall comply with the following procedure to obtain Slots from the Parties (the “**Slot Release Procedure**”).
- 1.3 The Prospective Entrant wishing to commence a Competitive Air Service on the Airport Pair 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 1.18.

The Prospective Entrant shall be eligible to obtain Slots from the Parties 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 Airport Pair through the normal workings of the General Slot Allocation Procedure.

- 1.4 For the purposes of Clause 1.3, the Prospective Entrant shall be deemed to have not exhausted all reasonable efforts to obtain necessary slots if:
- (a) LHR slots (or PHL, if applicable) 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) LHR slots (or PHL, if applicable) for use to operate a Competitive Air Service were obtained through the General Slot Allocation Procedure outside the Time Window and the Prospective Entrant did not give the Parties the opportunity to exchange those slots for Slots within the Time Window; or
 - (c) it has not exhausted its own slot portfolio at LHR (or PHL, if applicable). For these purposes, a carrier will be deemed not to have exhausted its own slot portfolio:
 - (i) if the carrier has slots 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 the Airport Pair); or
 - (ii) if the carrier has slots which are outside 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 the Parties, but only if:
 - (A) the lease was concluded before the Effective Date; or

- (B) 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
- (C) it gives the Parties 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 the Parties will likewise not provide for monetary compensation.

For purposes of Clauses 1.4(c)(i) and (ii) 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.

1.5 If the Prospective Entrant obtains slots through the General Slot Allocation Procedure but after the IATA Slot Conference:

- (a) which are within the Time Window; or
- (b) which (in the case of slots obtained at both ends of the route) are not compatible with the Prospective Entrant's planned operation on the Airport Pair,

the Prospective Entrant shall remain eligible to obtain Slots from the Parties provided that it gives an option to the Parties to use the slots obtained through the General Slot Allocation Procedure 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.

1.6 Without prejudice to these Commitments, the Parties shall not be obliged to honor any agreement to make available the Slots to the Prospective Entrant if:

- (a) the Prospective Entrant has not exhausted all reasonable efforts to obtain the necessary slots to operate a Competitive Air Service on the Airport Pair within the meaning of Clause 1.4; or
- (b) the Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 1.13 below).

1.7 Subject to the provisions of Clause 1.8, the Parties undertake to make available Slots within the Time Window. In the event that the Parties do not have Slots within the Time Window, they shall offer to release the Slots closest in time to the Prospective Entrant's request. The Parties do 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 the Parties have. 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 utilization constraints.

1.8 The Parties may refuse to offer any arrival Slots before 06:20 (local time). If a Prospective Entrant requests an arrival Slot for a time before 06:20, the Parties may offer a slot between 06:20 and 07:20.

- 1.9 As a general rule, the Slots obtained by the Prospective Entrant as a result of the Slot Release Procedure shall be used only to provide a Competitive Air Service on the Airport Pair. The Slots cannot be used on another city pair unless the Prospective Entrant has operated a non-stop service on the Airport Pair in accordance with the bid submitted pursuant to Clause 1.24 for a number of full consecutive IATA Seasons (“**Utilization Period**”).
- 1.10 The Prospective Entrant will be deemed to have grandfathering rights for the Slots once appropriate use of the Slots has been made on the Airport Pair for the Utilization Period. In this regard, once the Utilization Period has elapsed, the Prospective Entrant will be entitled to use the Slots obtained on the basis of these Commitments on any city pair (“**Grandfathering**”).
- 1.11 Grandfathering is subject to approval of the Commission, advised by the Monitoring Trustee at the end of the Utilization Period. Once the Commission approves the granting of Grandfathering rights pursuant to Clause 1.10, the Parties will be released from the slot commitment provided for in Clause 1.1. Any Fare Combinability Agreement, Special Prorate Agreement or FFP Agreement entered into pursuant to Clauses 2, 3 and 4 respectively which is valid at the time of the Commission approval under this Clause 1.11 will continue in force, subject to compliance with the relevant renewal provisions, until such time as the Prospective Entrant ceases to operate a Competitive Service on the Airport Pair.
- 1.12 During the Utilization Period, the Prospective Entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of these Commitments any Slots obtained from the Parties 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.
- 1.13 During the Utilization Period, Misuse shall be deemed to arise where a Prospective Entrant which has obtained Slots released by the Parties decides:
- (a) not to commence services on the Airport Pair;
 - (b) to operate fewer weekly Frequencies than those to which it committed in the bid in accordance with Clause 1.24 or to cease operating on the Airport Pair 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 the Parties 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 the Airport Pair, as proposed in the bid pursuant to Clause 1.24;
 - (e) not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant (i) loses the series of Slots 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 as described and interpreted in Article 14(4) of the EU Slot Regulation.
- 1.14 If the Parties 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, they 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, the Parties shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to the Parties, it being understood that subject to the application of this Clause, the Parties shall remain bound by the undertaking to make slots available to a

subsequent Prospective Entrant under Clause 1.1. In cases (a) and (b) of Clause 1.13, the Parties shall then use their best efforts to redeploy the Slots in order to safeguard the historic precedents. If despite their best efforts, the Parties are 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 1.13, the Prospective Entrant shall provide reasonable compensation to the Parties as provided for in the Slot Release Agreement pursuant to Clause 1.15. If for any reason (including, but without limitation, the insolvency of the Prospective Entrant) the Parties are unable to receive reasonable compensation for the Slots being either lost or not returned within sufficient time for the Parties to preserve their grandfathering rights, the Parties will be released from the slot commitment provided for in this Clause 1.

1.15 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 the Parties in case of Misuse during the Utilization Period.

1.16 In view of the Commission's Communication of 30 April 2008, which stated that: "The text of the current Regulation is silent on the question of exchanges with monetary and other consideration" and that the Commission would therefore "not intend to pursue infringement proceedings against Member States where such exchanges take place in a transparent manner, respecting all the other administrative requirements for the allocation of slots set out in the applicable legislation", and to the extent that the Slots released under the Slot Release Procedure are at an airport where secondary trading takes place, the Slot Release Agreement with the Prospective Entrant may provide for monetary and/or other consideration, so long as such provisions are clearly disclosed and comply with these Commitments and all other administrative requirements set out in the applicable legislation.

1.17 The Slot Release Agreement shall provide that the Prospective Entrant will be able to terminate the agreement at the end of each IATA Season without penalty, provided the Prospective Entrant notifies the termination of the agreement to the Parties in writing no later than two (2) weeks after the IATA Slot Conference.

Selection procedure, role of Monitoring Trustee and approval by Commission

1.18 At least seven (7) weeks before the Slot Request Submission Deadline, any airline wishing to obtain Slots from the Parties 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 LHR (and PHL if applicable), 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 1.4(c);
- (c) indicate to the Monitoring Trustee if it has any confidentiality concerns which would justify keeping its identity anonymous vis-à-vis the Parties, 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).
- 1.19 At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall forward the Slot request to the Parties and to the Commission. Once informed of the Slot request, the Parties may discuss with the Applicant the timing of the Slots to be released and the types of compensation to be offered. The Parties shall copy the Monitoring Trustee on all correspondence between the Parties and the Applicant which relates to the Slot Release Procedure. The Parties 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 LHR (and PHL if applicable) 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 LHR (and PHL if applicable) 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.
- 1.20 If the Applicant has made a request for anonymity in accordance with Clause 1.18(c), the Monitoring Trustee shall not disclose to Parties 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 Clauses 1.20 to 1.30 shall apply, save that, until the beginning of the IATA Scheduling Conference, any communication or correspondence between Parties and the Applicant shall go through the Monitoring Trustee, who shall ensure the protection of the anonymity of the Applicant.
- 1.21 After being informed of the Slot request, 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 the Parties; and
 - (b) the Applicant has exhausted its own slot portfolio in accordance with Clause 1.4.
- If the Commission decides that the Applicant does not fulfill the above criteria, the Commission shall inform the Applicant and the Parties of that decision at least two (2) weeks before the Slot Request Submission Deadline.
- 1.22 At least one (1) week before the Slot Request Submission Deadline, the Parties shall indicate to the Monitoring Trustee and each Applicant which Slots they would release during the Time Window.
- 1.23 By the Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the Slot Release Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure.
- 1.24 By the Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Monitoring Trustee. The formal bid shall include at least:

- (a) the Key Terms (i.e. : timing of the Slot, number of frequencies and IATA Seasons to be operated (year-round service or seasonal));
 - (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 Airport Pair. The latter should specify in detail planned operations on the Airport Pair 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 to the Parties, other undertakings or the public.
- 1.25 In parallel, if the Applicant is offering compensation for the Slots it has requested pursuant to these Commitments, it will send the Parties, 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 sent bids. Within three (3) weeks, the Parties shall provide the Monitoring Trustee with a ranking of these offers. In this regard, the Parties may give priority in ranking the offers to those that request Slots that are at the times currently operated by US Airways on the Airport Pair (i.e., in IATA Summer Season 2013, LHR arrival at 10:00 am London time and LHR departure at 12:15 pm London time, and in the IATA Winter Season 2013/2014 LHR arrival at 09:25 am London time and LHR departure at 12:05 pm London time).
- 1.26 Having received the formal bid(s), the Commission (advised by the Monitoring Trustee) shall:
- (a) assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Airport Pair in the long term as a viable and active competitive force;
 - (b) evaluate the formal bids of each Applicant that meet (a) above, and rank these Applicants in order of preference.
- 1.27 In conducting its evaluation in accordance with Clause 1.26, the Commission shall give preference to the Applicant which will provide the most effective overall competitive constraint on the Airport Pair, without regard to the country in which the Applicant 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 the Applicant 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 the greatest total number of services/frequencies;
 - (b) year-round service over only IATA Summer or Winter Season service; and
 - (c) a pricing structure and service offerings that would provide the most effective competitive constraint on the Airport Pair.

If, following the Commission's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on the Airport Pair, the Commission shall rank these Applicants following the ranking provided by the Parties under Clause 1.25.

- 1.28 In advance of the beginning of the IATA Slot Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive slots within the Time Window as indicated through the Slot Release Procedure) and the slot coordinator:
- (a) whether the Applicant qualifies for the Slots Commitment; and
 - (b) the Applicant's ranking.

In any case, the Applicant shall attend the IATA Slot Conference and try to improve its slots. Following confirmation of the Commission's approval pursuant to Clause 1.30, the Parties and the Applicant shall be deemed to have agreed the Key Terms of the Slot Release Agreement, as well as the compensation which was offered by the Applicant to the Parties under Clause 1.25. The Key Terms may only be changed after such date by mutual agreement between the Applicant and the Parties if the Monitoring Trustee confirms that the changes are not material or if the Commission (advised by the Monitoring Trustee) approves the changes.

- 1.29 Within two (2) weeks of the end of the IATA Slot Conference, each Applicant shall inform the Monitoring Trustee and the Parties whether it will commit to operate the Slots offered by the Parties in case it has not obtained them through the General Slot Allocation Procedure.
- 1.30 Within three (3) weeks of the end of the IATA Slot Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant that has provided the confirmation in accordance with Clause 1.29 that it is entitled to receive Slots from the Parties. The Parties 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. Subject to the prior Closing of the Concentration, and unless both the Parties and the relevant Applicant agree to an extension and subject to Clause 1.5, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Slot Conference and the slot coordinator shall be informed of the slot exchange in order to obtain the required confirmation.
- 1.31 The Parties agree that the Slot Release Procedure can be run in order to allow a Slot release for the Summer 2014 IATA Season. For this purpose and if necessary, the Monitoring Trustee shall be able to make, after prior consultation with the Commission and the Parties, reasonable modifications to the above deadlines in order to allow the process to start (however, such modifications will only be possible for the deadlines that fall in the months of August to October 2013). The Parties, however, shall not be required to enter into a Slot Release Agreement prior to the Closing of the Concentration.

2. FARE COMBINABILITY

- 2.1 At the request of a New Air Services Provider which operates or, after the Effective Date, has started to operate a new Competitive Air Service on the Airport Pair (whether or not such service uses slots released to that carrier pursuant to these Commitments) the Parties shall enter into an agreement that arranges for fare combinability on the Airport Pair across all classes of tickets (i.e., first, business and economy class tickets). This agreement will provide for the possibility for the New Air Services Provider, or travel agents, to offer a return trip on the Airport Pair comprising a non-stop service provided one way by the Parties or the Transatlantic Joint Venture, including any non-stop services on the Airport Pair operated by British Airways, and a non-stop service provided the other way by the New Air Services

Provider. At the request of the New Air Services Provider, the agreement shall apply in relation to all of the New Air Services Provider's services on the Airport Pair.

2.2 Any such agreement shall be subject to the following restrictions:

- (a) it shall provide for fare combinability on the basis of the Parties' published one-way fares including those on services operated by British Airways. In addition, for New Air Service Providers which are not members of a transatlantic joint venture that have been granted antitrust immunity by the DOT, it shall also provide for access to the Parties' other published fares. Where a published round-trip fare is used, the fare can be comprised of half the round-trip fare of the Parties, including those on services operated by British Airways, and half the round-trip fare of the New 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 Airport Pair operated by the New Air Services Provider; and
- (d) it shall be subject to the rules of the MITA Manual published by IATA.

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 favorable than the corresponding term in any fare combinability agreement which any of the relevant Parties and the New Air Services Provider have in place as of the Effective Date.

2.4 Subject to seat availability in the relevant fare category, the Parties or British Airways shall carry a passenger holding a coupon issued by a New Air Services Provider for travel on the Airport Pair. The Parties or British Airways may require that the New Air Services Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties or British Airways and the fare charged by the New Air Services Provider if the Parties or British Airways were not the original ticketed carrier on the Airport Pair. In cases where the New Air Services Provider's fare is lower than the value of the coupon issued by it, the Parties or British Airways may endorse their coupon only up to the value of the fare charged by the New Air Services Provider. A New Air Services Provider shall enjoy the same protection in cases where the Parties' or British Airways' fare is lower than the value of the coupon issued by the Parties or British Airways.

2.5 The fare combinability agreement entered into pursuant to this Clause 2 shall have an effective duration of up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if the New Air Services Provider elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 2.5, it 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 the Parties in writing no later than thirty (30) days before the expiry of the agreement. 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.

2.6 All agreements entered into pursuant to this Clause 2 for the Airport Pair shall lapse automatically in the event that the New Air Services Provider ceases to operate the new service on that Airport 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 a New Air Services Provider (the “**Requesting Air Services Provider**”), irrespective of whether the Competitive Air Service is commenced on the basis of Slots obtained from the Parties under the Commitments, the Parties shall enter into a Special Prorate Agreement with such airline for traffic with a true origin/destination in Europe, and a true destination/origin in North America, the Caribbean, and Central America, provided that part of the journey involves the Airport Pair. At the request of the Requesting Air Services Provider, the Special Prorate Agreement shall apply to all of the Requesting Air Services Provider’s air services on the Airport Pair.
- 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 who are part of the same Alliance as the Requesting Air Services Provider, have Hubs at both ends of the Airport Pair.
- 3.3 Subject to Clause 3.1, for the Airport Pair, the Requesting Air Services Provider may select up to a maximum of thirty (30) behind/beyond routes, of which no more than twenty (20) routes can have a behind/beyond connection at LHR, which are operated by the Parties or the Transatlantic Joint Venture, including services operated by British Airways or Iberia within the context of the Transatlantic Joint Venture, and to which the Special Prorate Agreement will apply, it being understood that the number of routes included cannot be lower than the number of routes that is, on the Effective date, included in an existing special prorate agreement between the Requesting Air Services Provider and the Parties for the Airport Pair and that the Special Prorate Agreement shall only apply to frequencies on the behind/beyond route operated by the Parties or the Transatlantic Joint Venture, including services operated by British Airways or Iberia within the context of the Transatlantic Joint Venture.
- 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 the Parties, British Airways or Iberia, as the case may be, have agreed with any other carrier with regard to the routes concerned, excluding any agreements (or terms therein) which are excluded pursuant to Clause 3.8 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 the relevant Party, British Airways or Iberia, as the case may be, under an existing special prorate arrangement of the same type (Straight Rate Prorate or fixed rate as the case may be) to any other carrier.
- 3.5 If the Special Prorate Agreement provides for Straight Rate Prorate terms:
- (a) straight rate proration shall apply only to published fares;
 - (b) it shall include arrangements for the proration or remittance of any applicable Q/YQ/YR Surcharges;
 - (c) it shall include conditions or provisos (such as minimum fares) at least as favorable as those granted to any other carrier under an existing special prorate agreement; and
 - (d) it shall not prohibit the relevant Party, British Airways or Iberia from making adjustments to ATPCo chart 2 in accordance with normal business practices in managing Straight Rate Prorate agreements. Should the Requesting Air Services

Provider believe that the Parties, British Airways or Iberia have made adjustments to ATPCo chart 2 which are not in accordance with normal business practices but rather an attempt by the Parties, British Airways or Iberia to restrict the Requesting Air Services Provider's inventory access, it may ask the Monitoring Trustee to verify whether the adjustments comply with these Commitments.

- 3.6 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 favorable as the terms agreed by the Parties, British Airways or Iberia, as the case may be, under an existing special prorate agreement in the context of the Transatlantic Joint Venture 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 3.8). If the relevant Party, British Airways or Iberia does not have an equivalent rate with any other carrier, the rate shall be determined in accordance with Clause 3.9;
 - (b) grant the Requesting Air Services Provider equivalent inventory access to that given to other members of the Transatlantic Joint Venture; and
 - (c) ensure minimum connection times which are based on standard practices at the airport and terminal in question and which are reasonable.
- 3.7 Subject to Clause 3.17, any term included in the Special Prorate Agreement (for example, rates and interline service charge, number of fare and booking classes included) can never be less favorable than the corresponding term in any special prorate agreement which the relevant Party/British Airways/Iberia and the Requesting Air Services Provider have in place on the Effective Date. To take account of adjustments in fare class usage, for the purposes of Clause 3.4 and Clause 3.6(a), the fare classes selected by the Requesting Air Services Provider need not be the same fare classes as those specified in any Special Prorate Agreement which is in place as at the Effective Date provided that the requested fare classes reasonably correspond to such specified fare classes.
- 3.8 For the purposes of Clause 3.4 and Clause 3.6(a) the Parties may exclude any existing special prorate agreement which the Parties, British Airways or Iberia have 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 the relevant airline's metal pursuant to that agreement in the last two IATA seasons); 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 the Parties have 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 favorable.

- 3.9 For the purposes of Clause 3.6(a):
- (a) where the selected route is included in at least one existing special prorate agreement which the Parties, British Airways or Iberia, as the case may be, have with another carrier and which has not been excluded pursuant to Clause 3.8, but is included in a different fare class to the one selected by the Requesting Air Services Provider, the terms will be calculated by applying a ratio of the average difference in fares as between the fare class selected by the Requesting Air Services Provider and the fare class on which terms with another carrier are available;

- (b) where the selected route is not included in any fare class in any existing special prorate agreements which the Parties, British Airways or Iberia, as the case may be, have with other carriers, the rate on that route will be either the rate agreed by the Parties, British Airways or Iberia and the Requesting Air Services Provider or the most favorable rate that applies to the most comparable route (considering factors such as yield and length of haul) which is included in an existing special prorate agreement of the Parties/British Airways/ Iberia. In the event that the Parties, British Airways or Iberia 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.

3.10 Clauses 3.4, 3.5(c) and 3.6(a) in conjunction with Clauses 3.8 and 3.9, shall, subject to Clause 3.18, be applied on the basis of the more favorable (to the Requesting Air Services Provider) of the following:

- (a) special prorate agreements (and the terms therein) between the Parties/British Airways/Iberia, as the case may be, and any other carrier as existing on the Effective Date, subject to reasonable indexation that takes account of standard industry practices (including practices between oneworld member airlines); and
- (b) special prorate agreements (and the terms therein) between the relevant Party/British Airways or Iberia, as the case may be, and any other carrier as existing at the date of the request for negotiation or renegotiation of the Special Prorate Agreement.

For the avoidance of doubt, any comparison required by the Clauses 3.4-3.10 with an existing agreement is limited to agreements concluded by the relevant carrier concerned (for example for an agreement with British Airways, only agreements concluded by British Airways will be considered).

3.11 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 3.11, 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 the Parties/British Airways/Iberia 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.

3.12 Within four (4) weeks of the date of the request for a Special Prorate Agreement by a Requesting Air Services Provider, the Parties shall propose a draft Special Prorate Agreement to the Monitoring Trustee in compliance with Clause 3. At the same time, the Parties shall submit supporting evidence, as necessary, in particular with regard to Clauses 3.6, 3.8, 3.9 and 3.10.

3.13 Considering the comments of the Requesting Air Service Provider and after having consulted the Commission, the Monitoring Trustee may request clarification and further evidence from the Parties. The Parties shall provide the requested clarification and evidence within two (2) weeks of the request from the Monitoring Trustee, unless the Parties present bona fide reasons for the Commission to extend this deadline.

3.14 If the Monitoring Trustee confirms that the provided clarification and evidence are sufficient, the Parties shall revise the draft Special Prorate Agreement, as necessary, within two (2) weeks of the confirmation from the Monitoring Trustee. If the Monitoring Trustee requests further clarification and evidence, the Parties shall proceed in accordance with Clause 3.13.

- 3.15 Upon the request of the Requesting Air Service Provider, the draft Special Prorate Agreement proposed by the Parties under Clause 3.12 may be applied provisionally without prejudice to subsequent negotiations on the Special Prorate Agreement.
- 3.16 All Special Prorate Agreements entered into pursuant to this Clause 3:
- (a) shall lapse automatically in the event that the Requesting Air Services Provider ceases to operate a Competitive Air Service on the Airport Pair or establishes Hubs at both ends of the Airport Pair or is controlled by a member of an Alliance with Hubs at both end of the Airport Pair; and
 - (b) may with the agreement of the Monitoring Trustee, be subject to annual renegotiation. Clause 3.10 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.
- 3.17 Should the Requesting Air Services Provider believe that the terms proposed by the Parties/British Airways/Iberia do not comply with this Clause 3, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.
- 3.18 The conclusion of the Special Prorate Agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.
- 3.19 For the avoidance of doubt, the Parties, British Airways or Iberia shall not deconcur the Requesting Air Services Provider from routes and fare classes covered by the Special Prorate Agreement. The Parties, British Airways or Iberia shall also not deconcur the Requesting Air Services Provider from particular fare classes or routes which it currently prorates under the IATA MPA where the Requesting Air Services Provider's rates cover the Parties' marginal costs of carriage.
- 3.20 The Parties undertake to procure that British Airways and/or Iberia enter into a Special Prorate Agreement if so requested by a Requesting Air Services Provider in accordance with this Clause 3 for traffic with a true origin/destination in Europe, and a true destination/origin in North America, the Caribbean, and Central America, provided that part of the journey involves the Airport Pair. All such Special Prorate Agreements entered into by British Airways and/or Iberia shall lapse automatically in the event that the Transatlantic Joint Venture is abandoned, abrogated, unwound, or otherwise terminated.

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 and does not participate in any of the Parties' FFPs, the Parties shall allow it to be hosted in its FFPs for the Airport Pair on which the New Air Services provider has commenced a 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 Airport Pair as compared with members of the **oneworld** Alliance other than the Parties.
- 4.2 Any agreement relating to the Airport Pair and entered into pursuant to this Clause 4 shall have an effective duration of up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if the New Air Services Provider elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 4.2, it 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 the Parties 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 Any agreement relating to the Airport Pair and entered into pursuant to this Clause 4 shall lapse automatically in the event that the New Air Services Provider ceases to operate a non-stop service on the Airport Pair.
- 4.4 Subject to Clause 4.5, any term included in the frequent flyer agreement entered into pursuant to this Clause 4 can never be less favorable than the corresponding term in any FFP agreement which the relevant Party and the New Air Services Provider have in place as at the Effective Date.
- 4.5 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. MONITORING TRUSTEE

Appointment of Monitoring Trustee

- 5.1 A Monitoring Trustee shall be appointed by the Parties on the terms and in accordance with the procedure described below and, once approved by the Commission, shall perform the functions of monitoring the Parties' fulfillment of the Commitments and further obligations that may be contained in the Decision. The Monitoring Trustee shall be independent of the Parties and the companies belonging to their respective groups, and must be familiar with the airline industry and have the experience and competence necessary for this appointment (e.g. investment bank, consultant specialized 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 any of the Parties in the last three (3) years, except as Trustee administering commitments in other cases, and shall not have a similar relationship with the Parties for three (3) years after completing its mandate.
- 5.2 The Parties shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate. Within one (1) week of the Effective Date, the Parties shall submit to the Commission for approval a list of one or more persons whom the Parties consider adequate to fulfill the duties of the Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfills 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 fulfill 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.
- 5.3 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 fulfill its obligations. If only one name is approved, the Parties shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the Commission, the Parties shall be free to choose the Monitoring 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.

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

Monitoring Trustee's Mandate

- 5.6 The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:
- (a) to monitor the satisfactory discharge by the Parties of the obligations entered into in these Commitments in so far as they fall within the scope of these Commitments;
 - (b) to propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' 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 the Parties' compliance with these Commitments and the progress of the discharge of its mandate, identifying any respects in which the Parties have 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 their request, a written or oral report on matters falling within the scope of these Commitments.
- 5.7 For the avoidance of doubt, subject to Clause 5.6, there is no requirement for the Monitoring Trustee to be involved in the commercial negotiations between one or more of the Parties 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.
- 5.8 Any request made by a third party carrier for the Monitoring Trustee to verify the Parties' compliance with these Commitments (including as described under Clauses 3.5(d) and 3.17) 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.
- 5.9 The Parties shall receive a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission.
- 5.10 The Monitoring Trustee's reports provided for in Clauses 5.6(c) to 5.6(f) shall be prepared in English. The reports provided for in Clause 5.6(d) to 5.6(f) 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. The Parties shall receive a non-confidential copy of each Monitoring Trustee report.

- 5.11 The Parties 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. The Parties undertake that they shall procure such assistance and information from British Airways and Iberia in order to allow the Monitoring Trustee to carry out its duties under Clauses 5.6(c) and 5.6(d). The Parties shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.
- 5.12 The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfill its duties under these Commitments.
- 5.13 The Parties 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 the Parties 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 willful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, agents and advisors).
- 5.14 At the expense of the Parties, 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 the Parties have been consulted.

Termination of Mandate

- 5.15 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 the Parties to replace the Monitoring Trustee; or
 - (b) with the prior approval of the Commission, the Parties may replace the Monitoring Trustee.
- 5.16 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 5.1.
- 5.17 Aside from being removed in accordance with Clause 5.15, the Monitoring Trustee shall cease to act as the 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.

6. FAST-TRACK DISPUTE RESOLUTION PROCEDURE

- 6.1 The agreements concluded to implement the Commitments shall provide for a Fast-Track Dispute Resolution procedure (the "**Fast-Track Dispute Resolution Procedure**") described in this Clause 6. In the event that a Prospective Entrant or New Air Services Provider as relevant, has reason to believe that the Parties are failing to comply with the requirements of

the Commitments vis-à-vis that party, this Fast-Track Dispute Resolution Procedure will apply.

- 6.2 Any Prospective Entrant or New Air Services Provider if applicable, which wishes to avail itself of the Fast-Track Dispute Resolution Procedure (the “**Requesting Party**”) shall send a written request to the Parties (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that the Parties are failing to comply with the requirements of the Commitments (the “**Request**”). The Requesting Party and the Parties 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.
- 6.3 The Monitoring Trustee shall present its own proposal (the “**Monitoring Trustee Proposal**”) for resolving the dispute within eight (8) working days, specifying in writing the action, if any, to be taken by the Parties 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.
- 6.4 Should the Requesting Party and the Parties fail to resolve their differences of opinion through cooperation and consultation as provided for in Clause 6.2, the Requesting Party shall serve a notice (the “**Notice**”), in the sense of a request for arbitration, to the International Chamber of Commerce (“**ICC**”) (the “**Arbitral Institution**”), with a copy of such Notice and request for arbitration to the Parties.
- 6.5 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 the Parties (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Monitoring Trustee Proposal, including a comment as to its appropriateness.
- 6.6 The Parties shall, within ten (10) working days from receipt of the Notice, submit their answer (the “**Answer**”), which shall provide detailed reasons for their 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 the Parties propose to undertake vis-à-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Monitoring Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

- 6.7 The Arbitral Tribunal shall consist of three persons. The Requesting Party shall nominate its arbitrator in the Notice; the Parties shall nominate their arbitrator in the Answer.
- 6.8 The arbitrators nominated by the Requesting Party and the Parties 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 the Parties 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 the Parties 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

- 6.9 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.
- 6.10 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.
- 6.11 The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organizational conference to discuss any procedural issues with the parties to the arbitration. Terms of reference shall be drawn up and signed by the parties to the arbitration and the Arbitral Tribunal at the organizational meeting or thereafter and a procedural timetable shall be established by the Arbitral Tribunal.
- 6.12 An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.
- 6.13 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 Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.
- 6.14 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 Monitoring Trustee, the Commission, and outside counsel and experts of the opposing party.
- 6.15 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 favor of the Requesting Party unless the Parties can produce evidence to the contrary.

Involvement of the Commission

- 6.16 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 the 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.

- 6.17 The Arbitral Tribunal shall forward, or shall order the parties to the arbitration to forward, the documents mentioned to the Commission without delay.
- 6.18 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 favor of any party to the arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

- 6.19 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.
- 6.20 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.
- 6.21 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 Commitments if asked by the Arbitral Tribunal.
- 6.22 The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by the Parties 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.
- 6.23 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.
- 6.24 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.
- 6.25 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.

7. GENERAL PROVISIONS

- 7.1 The Commitments shall take effect on the Effective Date; provided, however, that the Parties will not be required to enter into a Slot Release Agreement under Clause 1.30, or to enter into any Fare Combinability Agreement, Special Prorate Agreement or FFP Agreement pursuant to these Commitments, prior to the Closing of the Concentration.
- 7.2 The Parties shall promptly report to the Commission once the Closing of the Concentration has occurred.

8. REVIEW CLAUSE

- 8.1 The Commission may, where appropriate, in response to a request of the Parties 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 (e.g., termination of the Transatlantic Joint Venture), one or more of the undertakings in these Commitments.
- 8.2 Where the Parties seek an extension of a time period, they shall submit a request to the Commission no later than one (1) month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

Date: 25 July 2013

Signed:

duly authorized for and on
behalf of US Airways

Signed:

duly authorized for and on
behalf of American