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***Case No COMP/M.6607 - US AIRWAYS/ AMERICAN
AIRLINES***

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: 05/08/2013

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EUROPEAN COMMISSION

Brussels, 5.8.2013
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6607 – US AIRWAYS/ AMERICAN AIRLINES
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹**

- (1) On 18 June 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which US Airways Group ("US Airways", United States) enters into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation with AMR Corporation ("AMR", United States) (together "the Parties" and "the Transaction").²

1. THE PARTIES

- (2) AMR is a holding company whose primary business activity is the operation of a major network air carrier, through its principal subsidiary American Airlines, Inc. ("American Airlines"). It provides scheduled air passenger and air cargo transport services. American Airlines offers scheduled air passenger services on approximately 3 400 flights daily to more than 250 destinations worldwide. American Airlines is a member of the oneworld alliance. In addition, British Airways, American Airlines and Iberia are parties to a joint venture (the "Transatlantic Joint Business" or "TAJB") whereby they have agreed to have

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.

² Publication in the Official Journal of the European Union No C180, 26.06.2013, p. 16.

common fares, capacity, schedules, sales and marketing, share overall revenues and sell each other's products and services without regard to which party is operating the aircraft, also known as a metal neutral joint venture.³

- (3) US Airways' primary business activity is the operation of a major network air carrier. It provides scheduled air passenger and air cargo transport and related services, such as the procurement of aviation fuel and insurance. US Airways offers scheduled air passenger services on more than 3 100 flights daily to more than 200 destinations worldwide. US Airways is currently a member of the Star Alliance, which involves cooperation among its members roughly comparable to that of oneworld. US Airways has announced that following the Transaction, it will withdraw from Star Alliance and join the oneworld alliance as well as the Transatlantic Joint Business.⁴

2. CONCENTRATION

- (4) The Transaction constitutes a concentration within the meaning of Article 3(1)(a) of the Merger Regulation as the whole of US Airways will merge with the whole of AMR. AMR will issue new shares to the current US Airways' equity holders. The combined business will be operated under the brand "American Airlines".
- (5) In addition, AMR has been in bankruptcy under Chapter 11 of the US Bankruptcy Code since late 2011. As required under the US Bankruptcy Code, AMR has already sought approval from the Bankruptcy Court of the Parties' Agreement and Plan of Merger. Once the Parties have obtained all necessary regulatory approvals, the Bankruptcy Court is expected to confirm AMR's Reorganisation Plan by way of a Confirmation Order, which will enable AMR to proceed with exiting bankruptcy and to close the Transaction.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (in 2012 AMR: EUR 19 400 million; US: EUR 10 765 million). Each of them has a Union-wide turnover in excess of EUR 250 million (in 2012 AMR: EUR [...] million; US: EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State⁵. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

- (7) The activities of American Airlines and US Airways overlap in air passenger transport services where they realise the majority of their total operating revenues.⁶

³ The Commission has reviewed the agreements establishing the Transatlantic Joint Business under Article 101 TFEU, see Case COMP/39.596 – British Airways/American Airlines/Iberia (the "Transatlantic Joint Business Decision").

⁴ Form CO, paragraph 605.

⁵ The methodology used by the Parties to calculate their turnover is the "point of sale" methodology, although in any event the thresholds would also be met under the "point of origin" or "50/50 split" methods.

⁶ Form CO, paragraph 4.

The Parties are also active in air cargo transport.⁷ Their remaining ancillary revenues mainly derive from the sale of services related to their fidelity programs, baggage handling fees and change fees.⁸ However, the Transaction only gives rise to affected markets as regards air passenger transport services which will be assessed in the Sections that follow.

4.1. O&D approach

- (8) 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.⁹ Such market definition reflects the demand-side perspective whereby customers 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 to be a separate market.
- (9) The Parties follow the O&D approach in their notification of the Transaction. They however claim that the market for scheduled passenger air transport services increasingly has a network dimension, in particular for long-haul carriers.¹⁰
- (10) The Commission has in the past taken into consideration the network competition between airlines. This is particularly relevant on the supply-side, as network carriers build their network and decide to fly essentially on routes connecting to their hubs.¹¹ While some network carriers argued that competition between carriers takes place on the network level,¹² in line with the Commission's notice on market definition¹³ and with the Commission's decision practice, the Commission has given pre-eminence to demand-side substitution, whereby it considered that customers still need transportation from one point to another and that competition still takes place on an O&D city-pair basis.¹⁴

⁷ Since the combined share of the Parties in air cargo transport between Europe and North America does not exceed 15%, there are no air cargo affected markets for purposes of the Merger Regulation. Therefore cargo services will not be discussed further in this Decision.

⁸ Form CO, paragraph 4.

⁹ COMP/M.5889 – *United Air Lines/Continental Airlines*; COMP/M.5440 – *Lufthansa/Austrian Airlines*; COMP/M.5335 – *Lufthansa/SN Airholding*; COMP/M.5364 – *Iberia/Vueling/Clickair*; COMP/M.3280 – *Air France/KLM*; COMP/M.3770 – *Lufthansa/Swiss*.

¹⁰ Form CO, paragraph 69.

¹¹ On the network approach, see COMP/M.6447 – *IAG/bmi*; COMP/M.5889 – *United Air Lines/Continental Airlines*; COMP/M.5830 – *Olympic/Aegean Airlines I*; COMP/M.5747 – *Iberia/British Airways*. 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.

¹² See responses to question 6 of Q1 – Questionnaire to Competitors.

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

¹⁴ Commission's Notice on the definition of the relevant market, paragraph 13 (OJ C 372, 09.12.1997, p.5); COMP/6447 – *IAG/bmi*, recital 31 and following.

(11) A large majority of respondents to the market investigation have confirmed this approach and its relevance for the purpose of analysing the competitive effects on the overlap routes.¹⁵

(12) In light of the above, the effects of the Transaction will be assessed on the basis of the city-pair O&D approach.

4.2. Premium vs. non-premium passengers

(13) The Commission has traditionally found that a distinction may be drawn between time sensitive/premium and non-time sensitive/non-premium passengers.¹⁶

(14) Premium passengers tend to travel for business purposes, require significant flexibility with their tickets (such as cost-free cancellation and modification of the time of departure, etc.) and tend to pay higher prices for this flexibility. Non-premium customers travel predominantly for leisure purposes or to visit friends and relatives, book long time in advance, do not require flexibility with their booking and are generally more price-sensitive.

(15) The Parties do not object to this distinction but submit that the distinction between premium and non-premium is complicated by certain factors including the existence of tickets which grant access to economy seats (standard or "upgraded") but also allow a certain degree of travel flexibility. However, for the purposes of the analysis of the Transaction, it is not necessary to come to a final conclusion as to these mixed tickets as the competitive assessment would be unaffected regardless of the precise delineation of the two categories because the differences in market shares are slight at best.

(16) A large majority of respondents to the market investigation confirmed the Commission's approach of distinguishing between premium and non-premium passengers, acknowledging that the distinction between premium and non-premium passengers was relevant for the assessment of the Transaction.¹⁷

(17) Some respondents amongst the Parties' competitors nonetheless indicated that the distinction between premium and non-premium passengers has become blurred, and that there is a chain of substitution between these two broad categories rather than a clear-cut distinction.¹⁸

(18) However, for the assessment of the Transaction, the conclusion on whether premium and non-premium passengers belong to the same market can be left open as the outcome of the Commission's competitive assessment would not change under any alternative market definition.

¹⁵ See responses to questions 6 and 7 of Q1 – Questionnaire to Competitors, responses to questions 4 and 5 of Q2 – Questionnaire to Corporate Customers, responses to question 4 and 5 of Q3 – Questionnaire to Travel Agencies.

¹⁶ COMP/M.5889 – *United Air Lines/Continental Airlines*; COMP/M.5440 – *Lufthansa/Austrian Airlines*; COMP/M.5335 – *Lufthansa/SN Airholding*; COMP/M.5364 – *Iberia/Vueling/Clickair*.

¹⁷ See responses to question 8 of Q1 – Questionnaire to Competitors, responses to question 6 of Q2 – Questionnaire to Corporate Customers.

¹⁸ See responses to question 8 of Q1 – Questionnaire to Competitors.

4.3. Non-stop vs. one-stop flights¹⁹

- (19) The Commission has in previous cases considered that, with respect to long-haul routes (more than 6 hours flight duration), one-stop flights constitute a competitive alternative to non-stop services under certain conditions (for example if they are marketed as connecting flights on the O&D pair in the computer reservation system).²⁰
- (20) In line with the Commission's precedents, the Parties maintain that one-stop services can in certain circumstances present a competitive alternative to non-stop services.²¹
- (21) A majority of respondents to the market investigation indicated that one-stop services could constitute competitive alternatives to non-stop services as identified above.²²
- (22) However, for the assessment of the Transaction, the conclusion on whether or not non-stop/direct and one-stop/indirect flights belong to the same market can be left open as the outcome of the Commission's competitive assessment would not change under any alternative market definition.

4.4. Airport substitutability

- (23) The Commission has found in its previous decision practice that flights from and to airports which have sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers. Such airport substitution has often been found where several airports are located in the same city.²³
- (24) In the present case, the question of airport substitutability arises for the overlap routes involving one or two of the following cities which are served by two or more airports: Chicago, Dallas, Washington DC, Los Angeles, Miami, New York, San Francisco, Tampa, London and Paris. However, for the purpose of this Transaction, the Commission does not have to reach a definitive conclusion as to whether flights between alternative airports and the same destination are substitutable as the outcome of the Commission's competitive assessment would not change under any alternative market definition²⁴.

19 "Non-stop" flights are flights that take off at airport A and land at airport B where they load off passengers without any stops in between. By contrast, "direct" flights may entail a refuelling stop and/or a disembarking/re-embarking stop, but are marketed under a single flight code and are flown with a single aircraft. "One-stop" flights include direct flights that do not qualify as "non-stop", as well as indirect flights which are journeys that require a change of aircraft or a change of flight code.

20 COMP/M.5440 – *Lufthansa/Austrian Airlines*; COMP/M.2041 – *United/US Airways*; COMP/M.2672 – *SAS/Spanair*.

21 Form CO, paragraph 81 and following.

22 See responses to question 10 of Q1 – Questionnaire to Competitors, question 10 of Q2 – Questionnaire to Corporate Customers, question 10 of Q3 – Questionnaire to Travel Agencies, question 5 of Q4 – Questionnaire to Consumer Associations.

23 COMP/M.5747 – *Iberia/British Airways*; COMP/M.5440 – *Lufthansa/Austrian Airlines*; COMP/M.5335 – *Lufthansa/SN Airholding*; COMP/M.3280 – *Air France/KLM*. See also judgment of the General Court of 6 July 2010 in case T-342/07 *Ryanair v Commission*, paras. 99 and following.

24 The question of airport substitutability might be relevant on 53 routes of the 67 overlap routes analysed in detail in sections 6.3, 6.4 and 6.5. Based on the analysis of the information provided by the Parties,

- (25) The Parties also argue that, on the London Heathrow – Philadelphia route, their air passenger transport services are constrained by services between London and Newark airport. The Parties' arguments will be assessed in Section 6.3.2 below.

5. TREATMENT OF PROFIT-SHARING JOINT VENTURES FOR THE ASSESSMENT OF THE TRANSACTION

- (26) Prior to assessing the impact of the Transaction on the relevant markets, determined preliminary question must be addressed: the treatment of American Airlines' alliance and the Transatlantic Joint Business partners for the purposes of both the determination of affected markets and the competitive assessment of the Transaction.
- (27) American Airlines is a member of the oneworld alliance. American Airlines, British Airways and Iberia are parties to the metal neutral Transatlantic Joint Business, whereby they have agreed to have common fares, capacity, schedules, sales and marketing, share overall revenues and sell each other's products and services without regard to which party is operating the aircraft.²⁵
- (28) In accordance with previous cases, the assessment of the Transaction will be carried out on the routes operated directly by American Airlines as well as by American Airlines' partners in the Transatlantic Joint Business to the extent that they fall within the scope of the Joint Business Agreement.
- (29) In addition, US Airways has announced that following the Transaction, it will withdraw from Star Alliance and join the oneworld alliance as well as the Transatlantic Joint Business.²⁶
- (30) Similarly, there are two other revenue-sharing joint ventures covering air passenger services on transatlantic routes, namely the Star Alliance A++ Joint Venture of United, Lufthansa and Air Canada (the "A++ JV"), and the profit-sharing transatlantic joint venture between Air France/KLM, Delta Air Lines ("Delta") and Alitalia (the "North Atlantic JV" or the "NAJV"). Their market positions will be analysed as being a single one on all relevant routes.
- (31) On 20 June 2013, the Commission approved the acquisition by Delta and Virgin Group Holdings Limited of joint control of Virgin Atlantic Limited ("Virgin").²⁷ The U.S. Department of Transportation is currently reviewing Delta and Virgin's application for antitrust immunity relating to their proposed joint venture for their operations on non-stop routes between the US and the UK.²⁸ This review is expected

the Commission concludes that the competitive assessment does not change regardless of the airport combination because the differences in combined shares would not be substantial enough to affect the assessment. See the Parties' reply to the Commission's RFI of 27 June 2013. On 14 of the 67 overlap routes, there is only one airport at both ends (Amsterdam–Las Vegas, Amsterdam–Orlando, Athens–Boston, Barcelona–Boston, Dublin–Las Vegas, Dublin–Orlando, Frankfurt–Las Vegas, Frankfurt–Orlando, Frankfurt–Philadelphia, Glasgow–Orlando, Madrid–Boston, Manchester–Las Vegas, Rome–Boston, Rome–Philadelphia). It is noted that the market share estimations set out in this Decision include data for all airports where the Parties fly for each of both ends of a particular O&D pair.

²⁵ See Case COMP/39.596 – British Airways/American Airlines/Iberia (BA/AA/IB).

²⁶ Form CO, paragraph 605.

²⁷ Case COMP/M.6828 – *Delta Air Lines/Virgin Group/Virgin Atlantic*.

²⁸ See press release from Virgin available at http://www.virgin-atlantic.com/gb/en/footer/media-centre/press-releases/Delta/_jcr_content.html.

to be completed during third quarter of 2013, and the implementation of the Delta/Virgin joint venture is anticipated to occur in the first quarter of 2014. However, the evolution of the scope of the North Atlantic JV and of the joint venture arrangements between Delta and Virgin would not affect the Commission's competitive assessment in the present case.

6. COMPETITIVE ASSESSMENT

- (32) The Transaction gives rise to a high number of affected markets. In accordance with the Commission's constant practice in the airline sector, the Commission has not conducted a detailed competitive assessment on the affected markets on which no competition concerns are deemed to arise. For the purpose of this Transaction, this holds true for all affected non-stop/one-stop and one-stop/one-stop overlap routes on which throughout the last four IATA seasons: (i) the Parties' combined market share was below 25%, or (ii) one of the Parties had a market share below 2% or (iii) the total annual traffic was below 30,000 passengers or (iv) the route was below the HHI thresholds of paragraph 20 of the Horizontal Merger Guidelines in all the last four seasons in any passengers segment.
- (33) The Commission has focused its investigation on the remaining 67 overlap routes which are (i) one non-stop/non-stop overlap on London-Philadelphia (ii) 27 non-stop/one stop overlap routes, and (iii) 39 one-stop/one-stop overlap routes. These routes will be analysed in Sections 6.3, 6.4 and 6.5 below.

6.1. Methodology for calculating market shares

- (34) The Commission regularly²⁹ endorses the use of Marketing Information Data Tapes (MIDT) data as the best available proxy to estimate market shares in the air passenger transport market. The Parties therefore submitted data on market size and market share on the basis of MIDT data for each relevant O&D route.
- (35) MIDT data capture the booking of airline tickets made through Global Distribution System (GDS); however MIDT data does not include bookings made directly *via* the airline web-sites and sales of charter airlines.
- (36) The Commission proceeded to a market reconstruction on a number of selected routes where the Parties' market shares were highest by using the Parties' and their competitors' actual passenger numbers on each relevant O&D route.³⁰
- (37) The market shares calculated on the basis of the market reconstruction are broadly similar to the market shares calculated using MIDT data, confirming the possibility to rely on MIDT data, including for the other routes under review. Therefore in line

²⁹ Commission's Decisions of 30 March 2012 in Case No COMP/M.6447 – *IAG/ BMI*; 27 July 2010 in Case No COMP/M.5889 – *United Airlines/ Continental Airlines*; 14 July 2010 in Case No COMP/M.5747 – *Iberia/ British Airways*.

³⁰ A limited number of minor market participants did not respond to the Commission's request. However, they would likely represent a small number of the passengers flying on the affected routes. In any event, their inclusion would have reduced the Parties' market shares.

with previous practice, the competitive assessment of the Transaction will rely only on MIDT data.³¹

- (38) Also in line with previous practice³², for the assessment of the Transaction, all one-stop flights are taken into account without applying a cut-off at a certain maximal duration of the connection time. The Commission takes the view that the competitive analysis can include all booked one-stop tickets because the low popularity of very long one-stop flights will be reflected in the booking data in that they will only account for a very small part of the relevant market.

6.2. Congestion at relevant airports

- (39) The Commission has previously concluded that the lack of slots at congested airports can constitute a barrier to entry on some city pairs.³³ The extent of slot scarcity at a given airport depends on the congestion level of that airport.³⁴ Amongst the airports where the Parties operate, the Commission will assess the congestion level at two airports, namely London Heathrow and Philadelphia.³⁵
- (40) London Heathrow is a fully coordinated airport under the EU Slot Regulation (Level 3)³⁶, meaning that each business and general aviation movement requires the prior allocation of a slot. At London Heathrow, there are constraints on airline access to slots across the whole operating day on every day of the week across all months of the year. It is therefore not currently possible for an airline to rely on the slot pool at London Heathrow to launch or extend services and each season there is either very limited availability or no availability at all, as explained by the London Heathrow slot coordinator, Airport Coordination Limited ("ACL")³⁷. According to ACL, American Airlines held 2.6% and 2.2% of all London Heathrow slots during the Summer 2012 and Winter 2012/13 IATA seasons respectively, while US Airways only held 0.1% and 0.2%³⁸. The main slot holders at London Heathrow are British Airways and Iberia, followed by Lufthansa, Aer Lingus and Virgin.
- (41) As regards Philadelphia airport, the United States' Federal Aviation Administration ("the FAA") confirmed that Philadelphia is not among the airports for which the

31 It is noted that, although based on MIDT data, market share estimations provided by different air carriers can slightly differ depending on the GDS used by the airline for the provision of the MIDT data. Nevertheless, such differences are not significant and do not have an impact on the competitive assessment in this case.

32 Case COMP/M.6828 – *Delta Air Lines/Virgin Group/Virgin Atlantic*, recital 96; COMP/M.5889 – *United Airlines/ Continental Airlines*, recital 25.

33 See e.g. Case T-177/04, *easyJet v Commission*, [2006] ECR II-01931, recital 166.

34 Congestion can extend beyond slot issues, for instance to terminal and stands issues (see for instance COMP/M6663 – *Ryanair/Aer Lingus III*, section 8.5.2.9).

35 For the purpose of the present case, it is not necessary to assess the congestion level at other airports where the Parties operate, as it does not affect the Commission's competitive assessment of the Transaction.

36 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.

37 See ACL's response to questions 3 and 6.1 of Q5 – Questionnaire to slot coordinators.

38 See ACL's Start of the Season Reports for Heathrow Summer 2012 and Winter 2012/2013.

FAA currently regulates the allocation of slots, slot exemptions, operating authorizations, or similar capacity allocation mechanisms.³⁹ In addition, the Philadelphia airport manager confirmed that there are currently no substantial limitations or constraints for airlines to get access to the Philadelphia airport.⁴⁰

6.3. Non-stop/non-stop overlap route: London-Philadelphia

(42) The proposed Transaction gives rise to one non-stop/non-stop overlap on a long-haul route, namely London-Philadelphia.⁴¹

6.3.1. Structure of the market

(43) Approximately 200,000 passengers travelled on the London-Philadelphia route in 2012, of which 47% travelled on a point-to-point basis. In the Summer 2012 IATA season, a total of 59,420 passengers (among whom 20,775 premium passengers) travelled on that route on a point-to-point basis. In the Winter 2012/13 IATA season, 33,119 passengers (among whom 13,325 premium passengers) travelled on that route. For each of these seasons and within each category of passengers (premium and non-premium), approximately 85% or more of these passengers travelled non-stop.

(44) US Airways operates a daily service between London Heathrow airport and Philadelphia airport and British Airways, American Airlines' partner in the Transatlantic Joint Business operates a twice daily service. These three daily flights are the only non-stop services between London and Philadelphia. During the Summer 2012 and Winter 2012/13 IATA seasons, Virgin sold tickets on US Airways' non-stop service on London-Philadelphia under a code-sharing agreement between the two carriers. This explains why the Parties' market shares on non-stop services do not add up to 100%, in particular as regards non-premium passengers. This code-sharing agreement between US Airways and Virgin was terminated on 11 June 2013 and Virgin no longer sells tickets on US Airways' service. Therefore, as of the Summer 2013 IATA season, only the Parties are offering non-stop services on this route.

(45) In addition to the Parties' non-stop and one-stop services, the members of the A++ JV and the North Atlantic JV also offer one-stop services on this route. The market positions of the Parties and their competitors on this market are as follows:

³⁹ See FAA's response to question 1 of Q5 – Questionnaire to Slot Coordinators. The only airports for which the FAA regulates the allocation of slots are New York JFK, New York La Guardia, Newark, Washington National, Chicago O'Hare and San Francisco.

⁴⁰ See City of Philadelphia, Division of Aviation's response to question 18 of Q6 – Questionnaire to Airport managers.

⁴¹ As no other non-stop services are operated from other London airports, the only relevant airport for the purpose of the assessment of the London-Philadelphia route is London Heathrow.

**Table 1: Market shares on London-Philadelphia
- non-stop operations only -**

	Summer 2012			Winter 2012/13		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
US Airways	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[30-40]%
TAJB	[80-90]%	[50-60]%	[60-70]%	[80-90]%	[40-50]%	[60-70]%
Combined market shares	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[80-90]%	[90-100]%
Virgin (marketing carrier only)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%

Source: The Parties, based on MIDT data (rounding effects)

**Table 2: Market shares on London-Philadelphia
- non-stop and one-stop operations -**

	Summer 2012			Winter 2012/13		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
US Airways	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[30-40]%	[30-40]%
TAJB	[70-80]%	[40-50]%	[50-60]%	[70-80]%	[40-50]%	[50-60]%
Combined market shares	[90-100]%	[80-90]%	[90-100]%	[90-100]%	[80-90]%	[80-90]%
A++ JV	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
NAJV	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Virgin (marketing carrier only)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%

Source: The Parties, based on MIDT data (rounding effects)

- (46) The Transaction would lead to a reduction in the number of non-stop carriers active on this route from 2 to 1 and would give the merged entity a [90-100]% market share post-Transaction if only non-stop services are considered and market share of at least [80-90]% if one-stop services are also considered. The Transaction would therefore create a dominant position of the merged entity on the London-Philadelphia route. In addition, the Parties are the only non-stop operators on this route, and thus are by definition the closest competitors.⁴² Lastly, due to the heavy congestion and the scarcity of slots prevailing at London Heathrow, entry opportunities on the London-Philadelphia route would remain strongly limited post-Transaction. As a consequence, the significant increase in the market power of the merged entity will provide it with the ability and most likely with the incentive to increase prices.
- (47) The Parties submit that the Transaction does not raise competition concerns as regards the London-Philadelphia route because (i) the Parties' services will be constrained by operations from and to Newark airport, (ii) the Parties' services will

⁴² However, the concept of closeness of competition is of limited added value for routes on which from the outset only two competitors are active, since both competitors in a duopoly are by definition each other's closest competitors. See Case COMP/M.6663 – *Ryanair/Aer Lingus III*, recital 1009.

be constrained by one-stop operations on this route and (iii) the Transaction will bring about efficiencies⁴³. These arguments will be assessed in turn in Sections 6.3.2 to 6.3.5 below.

6.3.2. *Constraint from Newark airport*

- (48) The Parties claim that transatlantic services to and from Philadelphia airport face a significant constraint from services to and from Newark airport.
- (49) While the Parties agree with the Commission's finding in its decision in *United/US Airways*⁴⁴ that Newark airport and Philadelphia airport are not substitutable and do not belong to the same O&D markets, the Parties argue that alternatives which may be outside the relevant market may still exercise a constraint and contribute to disciplining any attempted price increase.
- (50) In support of their claim that Philadelphia airport faces a significant constraint from Newark airport, the Parties refer to (i) geographical factors such as the distance and the road and rail connections and (ii) commercial factors such as United Airlines' codeshare with Amtrak, the higher number of frequencies from Newark airport, the increased inter-alliance competition and US Airways' own marketing strategy such as [confidential details on marketing strategy]. The Parties also submitted two economic studies submitted by their outside economist to justify their assertion that they face a significant competition constraint from Newark airport on their operations between London Heathrow and Philadelphia, namely an Economic Analysis of Newark Airport's Constraint on fares on the Philadelphia to London route of 27 June 2013 (the "economic study of 27 June 2013") and Correlations of fares on the Newark to London and Philadelphia to London routes of 1 July 2013 (the "economic study of 1 July 2013").⁴⁵
- (51) As noted above in Section 4.1, the Commission traditionally defines 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. In this case, the relevant market is the London-Philadelphia city pair⁴⁶.
- (52) In addition, the Commission has also found that flights from and to airports which have sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers and such airport substitution has often been found where several airports are located in the same city.⁴⁷ The Commission found in previous decisions that, when it comes to choosing between air transport services to and from different airports, passengers take into account a number of elements like travel time, travel costs, flight times/schedules/frequencies and the quality of service and that ultimately a passenger's choice for one or the other airline service from one or the other airport will be driven by a combination of these elements.

43 Form CO, paragraphs 414-476.

44 Case COMP/M.2041-*United Airlines/US Airways*, recital 24.

45 A follow up note was submitted on 22 July 2013 on the Commission's correlation and entry and exit analysis "the economic note of 22 July 2013".

46 As no other non-stop services are operated from other London airports, the only relevant airport for the purpose of the assessment of the London-Philadelphia route is London Heathrow.

47 See for example COMP/M.2041 *United Airlines/US Airways*, paras 20-34, COMP/M.5889 *United Airlines/Continental*, paras 13-14, COMP/M.5747 *BA/IB*, paras 19-20.

- (53) The Commission examined for the purpose of the Transaction whether flights between London Heathrow and Newark airport exert a sufficient competitive constraint on the Parties such that the Parties would not be able to exercise market power post-Transaction on the London Heathrow – Philadelphia route.
- (54) In order to correctly capture the competitive constraint that flights from and to two different airports exert on each other it is necessary to consider the specific characteristics of the case at hand.⁴⁸
- (55) For the purpose of the assessment of this issue in the present Transaction, the Commission considered both qualitative and quantitative elements which will be described in detail below.

6.3.2.1. Geographical aspects and road and rail connections

- (56) The Commission has in previous decisions considered that, for airports which are within 100km or 1 hour from the respective city centre, most passengers would not consider that flying from one airport or the other to the same destination is manifestly inconvenient. However, such benchmark was used by the Commission merely as a "first proxy"⁴⁹ for determining whether airports appear *prima facie* as substitutable and a route-by-route analysis is necessary to capture the specificities of each airport pair.
- (57) Newark airport is located less than 140km (by car) from Philadelphia city centre⁵⁰ whereas Philadelphia airport is located less than 20km (by car) from Philadelphia city centre.⁵¹ Depending on traffic conditions, Newark airport could be reached in about 90 minutes from Philadelphia city centre⁵² whereas Philadelphia airport could be reached in 15 minutes⁵³.
- (58) The Parties argue that, for many people living or working between Philadelphia (including Philadelphia city centre) and Newark, Newark airport would be an alternative. In the Parties' view this would apply even to people living or working in Philadelphia city centre.⁵⁴ The Parties explain that their transatlantic air passengers transport services from and to Philadelphia airport would be constrained by services from Newark airport as the overlap in the catchment areas of the two airports covers a densely populated area that generates substantial corporate and leisure traffic.
- (59) The Parties have estimated that, by using a catchment area of [...] km (around [...] miles) around each of Philadelphia airport and Newark airport, the population size in the overlapping catchment area would be approximately [...] million people. This would represent, in the Parties' view, more than [...]% of the overall population of the Philadelphia airport catchment area. In the economic study of 27 June 2013, the

48 COMP/M.5747 – *Iberia/British Airways*; COMP/M.5440 – *Lufthansa/Austrian Airlines*; COMP/M.5335 – *Lufthansa/SN Airholding*; COMP/M.3280 – *Air France/KLM*. See also judgment of the General Court of 6 July 2010 in case T-342/07 *Ryanair v Commission*, paras. 99 and following.

49 See COMP/M.4439 *Ryanair/Aer Lingus*, recital 85.

50 Form CO, paragraph 419 and www.maps.google.com.

51 www.maps.google.com.

52 Form CO, paragraph 422.

53 www.maps.google.com.

54 Form CO, paragraph 419.

Parties further expand the catchment area of each airport to [...] miles. As the economic study of 27 June 2013 also sets out, one additional adjustment to the catchment area analysis is necessary, namely to exclude the passengers which live in the vicinity around each airport, as such passengers are more likely to use that airport's services and are unlikely to use the other airport's services. The Parties have assumed the immediate vicinity to be a [...] mile radius circle around each airport (i.e. any individual who lives within [...] miles of one of the two airports does not consider the other airport a reasonable substitute for long-haul flights). Therefore, on the basis of a [...] mile catchment area and excluding the passengers living in the immediate vicinity of the airports (i.e. all passengers within [...] miles), the Parties estimate that a population of [...] million live in the overlap catchment area. If a catchment area using [...] mile radius around each airport is used and the population living within a [...] mile radius around each airport from the catchment area overlap is excluded, the Parties estimate that the number of people living in the resulting overlap catchment area decreases to [...] million people.

- (60) The manager of the Philadelphia airport, the Division of Aviation of the City of Philadelphia, stated during the Commission's market investigation that, in their view, Philadelphia airport has a primary catchment area which extends one hour drive time (60 miles) around Philadelphia airport whereas its secondary catchment area reaches 1 hour and 20 minutes' drive time (approximately 75 miles) around Philadelphia airport. The manager of the Philadelphia airport explained that⁵⁵, based on past experience, Philadelphia airport currently only stands to lose discretionary passengers in the secondary catchment area to Newark airport and not passengers in the primary catchment area.
- (61) Based on the views expressed by the manager of the Philadelphia airport, the Commission considers that the Parties' estimation of a [...] mile secondary catchment area appears too wide while their estimate of a [...] mile primary catchment area appears too narrow. In addition, further adjustments would appear necessary to take account of other factors such as for example the fact that it is likely that not all people living in the resulting overlap catchment area would be interested in transatlantic air passenger transport services. The Commission therefore considers that the Parties' estimates are not reliable and that it cannot draw any conclusions as to whether indeed the number of people living in the overlap catchment area of the two airports is significant for the purpose of the assessment of this Transaction.
- (62) The Parties also explain that the area between Philadelphia and Newark is connected by a number of highways and that Virgin Atlantic provides a complimentary chauffeur service for its Upper Class passengers to and from Newark on its twice daily Newark-London Heathrow flight up to 75 miles. In addition, the Parties explained that corporate customers frequently organize their own chauffeur (or taxi) services for transport to and from Newark in addition to the existence of other (shared) means of road transport available such as, for instance, shared shuttle services.

⁵⁵ Response to question 14 of Q6 Questionnaire to Airport Managers and e-Mail exchange of 16 July 2013.

- (63) Lastly, the Parties explain that Amtrak⁵⁶ and New Jersey Transit rail⁵⁷ services conveniently and frequently connect Philadelphia city centre to Newark airport. The Parties also note that United Airlines offers frequent air services between its major hub at Newark airport and London. United Airlines has a codeshare partnership with Amtrak on the Northeast corridor service covering Philadelphia and beyond under a so called "United Airlines Connection Special" service which in the Parties' view clearly demonstrates that United Airlines considers the wider Philadelphia area as part of the Newark catchment area.⁵⁸
- (64) Some respondents (corporate customers and travel agents) to the Commission's market investigation consider that the Amtrak and NJ Transit rail connections could represent an important access to Newark airport from Philadelphia and vice versa. However, some corporate customers indicated that it is difficult to book overseas train journeys in the GDS' and that a train journey before/after a long-haul flight is not desired in particular when considering that this would increase the total travel duration (particularly for passengers living closer to Philadelphia). The Commission considers that only for some customers train could be a convenient means to access Newark airport from the Philadelphia catchment area and this is most likely to be the case for non-premium passengers and passengers living closer to Newark airport. Lastly, the Commission notes that Virgin's complementary service is offered only to a certain category of passengers (high yield) and it does not reach Philadelphia city centre.

6.3.2.2. Commercial aspects

- (65) The Parties argue that the higher frequency of services at Newark airport to London Heathrow (overall currently ten non-stop services) when compared with Philadelphia – London Heathrow services (overall three non-stop services) adds to Newark airports' attraction as an alternative to Philadelphia airport. In particular, [confidential details on marketing strategy]. The Commission considers that the question of attractiveness of the number of frequencies is relevant only for those passengers who are indifferent between flying from Philadelphia airport or from Newark airport. In this sense, for the passengers for which Newark airport is not an alternative, the higher number of frequencies at Newark is not prone to have any impact on the operations from Philadelphia airport.
- (66) In addition, the Parties explain that US Airways put in place specific marketing strategies [confidential details on marketing strategy].
- (67) The Commission notes that the evidence submitted by the Parties relates in most part to flights to and from other EU destinations than London. As for the information

⁵⁶ According to the Parties, the Amtrak Northeast corridor service between Washington, D.C. and New York (with stops in Philadelphia and Trenton) stops nine times a day southbound and eleven times a day northbound on weekdays, and on weekends sixteen times a day (northbound and southbound) at Newark Liberty International Airport Station.

⁵⁷ The Parties note that the New Jersey Transit rail operates a service to and from Newark airport 21 hours a day, seven days a week, connecting areas between Philadelphia and Newark airport. On weekdays, between 6 am and 9 pm, at least six New Jersey Transit trains arrive every hour at the airport station. Between 9 pm and midnight, four trains arrive every hour. From Philadelphia centre, the train takes about two hours.

⁵⁸ United Airlines places its code on Amtrak train services from Wilmington (Delaware), Philadelphia and Trenton to Newark for all destinations United Airlines serves from Newark.

regarding London, the evidence actually shows that [confidential details on marketing strategy]⁵⁹ The Commission considers that this shows that even with [confidential details on marketing strategy], there are additional factors (beyond [confidential details on marketing strategy]) which passengers will consider in their decision to choose a flight to London from Newark or Philadelphia respectively. [Confidential details on marketing strategy].

- (68) Lastly, the Parties argue that US Airways' internal documents also show that [confidential details on internal business process and marketing strategy]. However, the evidence submitted by the Parties does not refer to the London-Philadelphia route but to other transatlantic flights such as [...], [...], [...] or [...] and the Parties do not explain why such evidence would be relevant for the London-Philadelphia route. In any event, the evidence submitted by the Parties consists in [description of factors assessed] which are not in themselves sufficient to demonstrate that flights from Newark to London do sufficiently constrain flights from Philadelphia to London.

6.3.2.3. Price monitoring of both Parties on the London Heathrow – Philadelphia route

- (69) The Commission further investigated whether US Airways and American Airlines (or its partners of the Transatlantic Joint Business) monitor fares on the London-Newark route or if they take into account these fares in their normal course of business, in particular when setting their own fares on the London-Philadelphia route.

- (70) US Airways submitted that, when it comes to monitoring prices, capacities and load factors of rivals, it considers [confidential details on internal business process and marketing strategy]. On London Heathrow-Philadelphia, US Airways noted that [confidential details on internal business process and marketing strategy].⁶⁰ However, US Airways explained that [confidential details on internal business process and marketing strategy]⁶¹.

- (71) As regards pricing on the Transatlantic Joint Business' operations on the London Heathrow-Philadelphia route, [confidential details on internal business process and marketing strategy of the Transatlantic Joint Business' members]. As regards price monitoring on the London Heathrow-Philadelphia route, [confidential details on internal business process and marketing strategy of the Transatlantic Joint Business' members]⁶².

- (72) The Commission considers that, while US Airways [confidential details on internal business process and marketing strategy], this does not show that US Airways considers London Heathrow-Newark as a particular constraint for its London-Philadelphia operations as [confidential details on internal business process and marketing strategy]. Likewise, the Transatlantic Joint Business [confidential details on internal business process and marketing strategy]. If the Transatlantic Joint Business [confidential details on internal business process and marketing strategy] and if services at Newark airport were indeed constraining services at Philadelphia airport, it would be expected that the Transatlantic Joint Business [Commission's

59 [...].

60 [source].

61 [source].

62 [source].

assessment of the Transatlantic Joint Business' internal business process and marketing strategy].

6.3.2.4. Commission's market investigation

- (73) The Commission tested with other market participants such as corporate customers, travel agents or the Philadelphia airport the Parties' arguments regarding the constraints exercised by competing non-stop services offered at Newark airport on the pricing of London-Philadelphia services.
- (74) The majority of corporate customers who bought tickets for their employees in the last two years (2011 and 2012) on the London-Philadelphia route stated that, if prices of flights on the London-Philadelphia route increased by 5-10% post-Transaction, a significant proportion of their employees who need to travel between London and Philadelphia would not choose a flight between London and Newark airport (instead of Philadelphia airport).⁶³ In addition, the majority of corporate customers also responded that if their employees need to fly between London and Philadelphia or London and anywhere between Philadelphia and Newark, they do not consider Philadelphia and Newark airports as equivalent.⁶⁴
- (75) Travel agents who sold tickets in the last two years (2011 and 2012) on the London-Philadelphia route gave more mixed responses. On the one hand the majority of travel agents considered that a significant proportion of their premium customers would not choose a flight between London and Newark airport if prices of flights on the London-Philadelphia airport route increased by 5-10% post-Transaction. On the other hand when it comes to non-premium customers, their views are split and almost equal numbers of travel agents diverge on whether a significant proportion of their non-premium passengers would choose such a flight between London and Newark airport if prices of flights on the London-Philadelphia route increased by 5-10% post-Transaction.
- (76) Lastly, when asked what they would do if the Parties increased their prices on the London-Philadelphia route post-Transaction, only a minority of corporate customers and travel agents replied that they would switch to non-stop flights between London and Newark airport. Of these respondents, almost all corporate customers were located in the overlap catchment area and were already using the two airports alternatively. However, the Parties have been unable to demonstrate that a switch by these marginal customers would be sufficient to defeat any price increase on the London-Philadelphia route post-Transaction. In addition, the majority of the other corporate customers as well as the majority of travel agents would either not switch at all or take a combination of actions (such as not switching at all, switching to one-stop flights and switching to non-stop flights from Newark airport).
- (77) The manager of the Philadelphia airport explained that⁶⁵, based on past experience, he does not consider that flights from Newark (to London Heathrow) are an alternative for passengers in the primary catchment area of Philadelphia airport. As to passengers in the secondary catchment area, the manager considers that only under

⁶³ Responses to question 13 and 14 of Q2 – Questionnaire to corporate customers.

⁶⁴ Responses to question 18 of Q2 – Questionnaire to corporate customers.

⁶⁵ Responses to questions of Q6 – Questionnaire to Airport Managers and e-Mail exchange of 16 July 2013.

certain circumstances and only for certain categories of passengers (such as for non-premium passengers which are very price sensitive) might flights from Newark to London Heathrow constitute an alternative. In spite of this, Philadelphia airport does its best to attract discretionary passengers in the secondary catchment area, despite the large geographic spread and expense of marketing. The manager also explained that, in the past, Philadelphia airport has lost traffic to Newark due to Newark's plethora of international flights and destinations; however, as of late, Philadelphia airport has narrowed the playing field with its global expansion, and as mentioned, currently only stands to lose discretionary passengers in the secondary catchment area.

6.3.2.5. Economic submissions

- (78) As mentioned above, the Parties submitted two studies and a complementary note arguing that the availability of flights between London and Newark constrains the fares on London-Philadelphia flights.
- (79) The economic study of 27 June 2013 argues that, due to the high density of population living in the Newark and Philadelphia catchment overlap area; the convenient transportation options between Newark and the Philadelphia area; the more frequent flights between London Heathrow and Newark relative to London Heathrow and Philadelphia; and the airline's limited ability to price discriminate among passengers based on different locations make Newark a good substitute for the majority of potential flyers from the Philadelphia. The study argues that a price increase on the London-Philadelphia route would be unprofitable as large number of passengers would switch to fly from the Newark airport. The Parties claim that, evaluating a service between London and Newark/Philadelphia combined, the Transaction would be a four-to-three instead of a two-to-one. They cite a recent economic paper that finds only small price effects from this type of mergers (Brueckner et al (2013)).⁶⁶
- (80) A number of the points described in the economic study of 27 June 2013 have already been addressed in the Sections above. The Commission notes that some customers may consider flights from Newark airport or Philadelphia airport as substitutable for flying to and from the same transatlantic destination. However, this does not mean that the London-Newark flights can sufficiently constrain the fares on the London-Philadelphia flights. A hypothetical monopolist (and in this case an actual one at the Philadelphia airport) could still be able to raise prices of its London-Philadelphia flights by 5 to 10% if the lost profit from the customers who switched to flights operated by another airline between Newark and London Heathrow is lower than the increase in profits on those customers who remained. As mentioned, the Parties have not quantified the diversion from Philadelphia to the competitors in Newark due to a price increase.
- (81) Even if the proposed Transaction would be four-to-three, one would expect price effects due to the increased market power of the Parties if there are no compensating efficiencies. The paper cited by the Parties, Bruckner et al. (2013) looks at domestic US airfares. Bruckner et al. (2013) find that most forms of legacy-carrier competition have weak effects on average fares on the domestic US routes. According to the

⁶⁶ Jan K. Brueckner, Darin Lee and Ethan S. Singer (2013), "Airline competition and domestic US airfares: A comprehensive reappraisal" *Economics of Transportation*, 2, pp. 1-17.

paper's results, most hypothetical combinations of legacy carriers (including the American Airlines and US Airways merger) would result on a very modest domestic average fare increase. This result, as the paper points out, is mainly due to the small amount of domestic overlap between networks which dilutes the average effect. However, the fare increases could be rather large on the overlap routes. The majority of the ex-post evaluation literature of airline mergers, summarized by e.g. Kwoka (2013)⁶⁷, finds that actual airlines mergers resulted in significant price increases. Furthermore, the Commission has also conducted its own analysis and concluded that exit events in the past on the London-Philadelphia route have led to non-negligible increases in relative fares. This analysis is described in Section 6.3.5 below.

- (82) The second economic study of 1 July 2013 presents a correlation analysis⁶⁸ using monthly revenue and passenger data for the period May 2010 and April 2013. The study argues that average fares on the London-Philadelphia and London-Newark routes are moving very closely and this indicates that these flights are indeed close substitutes. The study computes correlations of average fares (aggregating the data for the Transatlantic Joint Business and US Airways at a non-directional level), controlling for cabin class and for the existence of corporate customers, and partial correlations of average fares, additionally controlling for fuel costs.⁶⁹ Partial correlations, which are more appropriate for this type of analysis, show that [results of Parties' economic study based on confidential data]⁷⁰ followed by [results of Parties' economic study based on confidential data]. [Results of Parties' economic study based on confidential data].
- (83) The Commission reviewed the Parties' correlation study and identified a number of problems with the analysis that cast doubts on any inference that the Parties want to draw from it. In addition to potential issues related to non-stationarity of some of the series⁷¹, as pointed out in the economic study, the main problem is that the correlation results indicate very high correlation of O&D fares on a significant

⁶⁷ John.E. Kwoka Jr. (2013) "Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes," *Antitrust Law Journal*, Vol.78, No 3, pp 619-650.

⁶⁸ Price correlation is a measure of the strength of co-movement between two price series (in this case, fares on the different routes, London-Newark and London-Philadelphia). Its value is between -1 and 1, with 1 showing perfect parallelism (co-movement) and 0 the lack of co-movement of the series. Strong co-movement between two price series might be the result of a price arbitrage process between the two routes which equilibrates the fares on the routes.. Of course prices of unrelated goods could also move together due to common input costs or demand shocks (for example prices of airline travel and rubber products could move together due to the common oil cost, and prices of airline travel and hotel rooms could move together due to increased demand in the summer vacation period) so one has to be careful to interpret these correlation. Numerous other issues with correlation analysis are described in Davis and Garces (2010), "Quantitative techniques for Competition and Antitrust Analysis."

⁶⁹ As pointed out above, common input cost and demand factors may yield high correlations and these results may not be indicative of price arbitrage between the two routes (i.e. London-Newark and London-Philadelphia in this particular case). This is what partial correlations attempt to remedy. In order to calculate partial correlations, the two price series are first filtered (using statistical methods) from the effect of common factors, such as costs and seasonality. The filtered series, the so-called residuals, are then correlated. The correlation between the residuals (i.e. the partial correlations) captures the price arbitrage which is of interest.

⁷⁰ [Results of Parties' economic study based on confidential data].

⁷¹ Non-stationarity of a time series means that the series is not stable over time, for example because it contains a trend. Any correlation analysis should only be carried on stationary series. Correlations of non-stationary series are examples of the spurious correlations which are not to be relied upon.

number of London-US East Coast routes. Furthermore, the difference between the correlations levels of fares from London-Newark and London-Philadelphia and London-Boston and London-Philadelphia (as submitted by the Parties) is not statistically significant. The Commission has also run the analysis segmenting by cabin class and carrier and found even higher correlations than the Parties. The Commission found that the correlations of the Transatlantic Joint Business' fares between London and Philadelphia and London and Boston, New York JFK and Chicago are all high and often higher (although in most cases the difference is not statistically significant) than the correlation between London and Philadelphia and London and Newark. The Commission considers that it is highly unlikely that for O&D passengers the relevant market would include all these airports. The correlation is more likely to be driven by some unobserved common factor than by airport substitutability. As a result, the Commission notes that this study does not provide meaningful evidence on the potential constraints imposed by London-Newark on the London-Philadelphia route.⁷²

- (84) To address the issues raised by the Commission, in particular at the State of Play meeting of 9 July 2013, the Parties submitted another note on 22 July 2013. The note argues that "[confidential quote from note]" and similarly "[confidential quote from note]" given the small sample. Finally, the Parties argue that their "[confidential quote from note]."
- (85) The Commission notes that statistically insignificant results cannot be relied upon to draw conclusions. As mentioned in the Best Practice guidelines for submission of economic evidence⁷³ "*[W]here econometric analyses are to be conducted, the sample needs to be of sufficient size for meaningful inference.*" Based on the Parties' correlation results, it is not clear how the Newark-London Heathrow fares would constrain the Philadelphia-London Heathrow fares to a significantly (both statistical and economic sense) higher extent than e.g. the New York JFK-London Heathrow fares or the Boston-London Heathrow fares, while the two latter routes are not considered to be a constraint at all on the Philadelphia-London Heathrow route. Finally, the Commission notes that given that the substitution between premium and non-premium passengers are typically found to be relatively low, stacking premium and non-premium prices together to produce a summary correlation coefficient would bias the results.

6.3.2.6. Conclusion on constraint from Newark airport

- (86) On the basis of all the qualitative and quantitative evidence which the Commission had on the file and as described above, the Commission concludes that, post-Transaction, the Parties most likely will not be sufficiently constrained in particular in terms of fare setting on their operations between London Heathrow and Philadelphia airport by their competitors' operations between London Heathrow and Newark airport.

⁷² In addition, the Commission notes that the non-stationarity problem is solved either by running the analysis in first differences or alternatively once the effect of entry/exit events of the sample period is also filtered out in the calculation of the partial correlations. The results of these alternative partial correlations approaches no longer show that the London-Philadelphia fares are significantly related to the London-Newark, London-JFK, London-Boston or London-Chicago routes. This implies that the partial correlations provided by the Parties (which do not adequately treat the non-stationarity issue) are indeed spurious and hence unreliable.

⁷³ http://ec.europa.eu/competition/antitrust/legislation/best_practices_submission_en.pdf.

6.3.3. *Competition from one-stop services*

- (87) The Parties argue that the wide range of competitive one-stop services available for passengers traveling between London and Philadelphia provide a further constraint on pricing for Philadelphia to London services, particularly in respect of non-premium passengers. In the Parties' view, the relatively small number of passengers that currently use one-stop services reflects the fact that prices for non-stop services (including services between London and Newark) are competitive and give passengers no incentive to shift.
- (88) The Parties themselves provide one-stop services on that route, US Airways from London Gatwick via Charlotte and the Transatlantic Joint Business from London Heathrow via Chicago, Miami and Dallas. The Parties' main one-stop competitors on this route are the A++ JV and the North Atlantic JV, each with an overall market share below [0-5]% in both seasons and below [0-5]% as regards premium passengers only. Thus, even adding one-stop services to non-stop ones, the Parties' combined market share on this route remain above [80-90]%, reaching [90-100]% on the premium segment, for each of the Summer 2012 and Winter 2012/13 IATA seasons.
- (89) As regards the London-Philadelphia route, only a small proportion of passengers, 8% overall and 3% of premium passengers, used one-stop services to travel on this route in 2012. Respondents to the market investigation have also largely confirmed that they do not consider that one-stop services are a suitable alternative to non-stop services on the London-Philadelphia route, due to the increase in total travel time, and that they would not switch to one-stop services should prices increase on this route.⁷⁴

6.3.4. *Efficiencies*

- (90) The Parties put forward an analysis claiming that the Transaction will give rise to substantial efficiencies that will benefit present and future passengers using the London-Philadelphia services. These efficiencies would stem from both reduction in schedule delays (in-market efficiencies) and reductions of double marginalization for connecting passengers (out-of market efficiencies). The Parties argue that, in light of the significant constraints on London-Philadelphia services, the existence of important efficiency benefits underscores the conclusion that the Transaction should not impact effective competition on this route.
- (91) As set out in paragraph 84 of the Guidelines on the assessment of horizontal mergers⁷⁵, it is highly unlikely that a concentration leading to a market position approaching that of a monopoly can be declared compatible with the internal market on the ground that efficiency gains would be sufficient to counteract its potential anti-competitive effects. Furthermore, the Parties' study relies, for instance, on a number of assumptions concerning the increase in passenger number resulting from

⁷⁴ See responses to questions 11, 12 and 26 of Q2 – Questionnaire to Corporate Customers, questions 11, 12 and 24 of Q3 – Questionnaire to Travel Agencies.

⁷⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004, p. 5.

the Transaction. Some of these assumptions are questionable, thus undermining the verifiability of these proposed efficiencies⁷⁶.

- (92) Therefore and given the near monopoly on the London-Philadelphia route, the Commission considers that any sufficient pass-on of alleged efficiencies to consumers most likely would not take place.

6.3.5. *Effects analysis*

- (93) The Commission has conducted a price concentration analysis in order to understand the effect on fares from entry and exit events in the London-Philadelphia route. The Commission observed that the partial exit event by US Airways on September 2009 from London Gatwick-Philadelphia, which reduced the overall number of frequencies on London-Philadelphia from 4 to 3 (i.e. 2 from the Transatlantic Joint Business on London Heathrow-Philadelphia and 1 from US Airways on London Heathrow-Philadelphia), had a statistically significant effect of [...] % on the fares of the Transatlantic Joint Business on London Heathrow-Philadelphia for non-premium passengers relative to non-premium fares of the Transatlantic Joint Business on the other routes.⁷⁷ The exit and entry events available have only enabled the Commission to assess the effect from reduction on frequencies and not the effect from the reduction in the number of competitors. However, even if the number of frequencies were to be maintained after the Transaction, the increased market power of the Parties would still likely allow them to increase the fares.⁷⁸ The Commission therefore concludes that the Transaction could have a non-negligible effect on fares on the London-Philadelphia route.
- (94) The Parties' note submitted on 22 July 2013 argues that the effects identified by the Commission could not be considered as a proxy for the effect of the Transaction given that the price increase resulted from a decrease in capacity while the Transaction [confidential details on future plans of the Transatlantic Joint Business on the London-Philadelphia route]. Moreover, the Parties' note of 22 July 2013 claims that due to data limitations, the Commission's analysis was only able to observe the effect of the exit on British Airways' fares and not on the average fares of all carriers operating on the Philadelphia-London route.
- (95) The Commission agrees that the estimated effect may not be a perfect proxy for the merger's effect, as discussed above. However, the price increase due to the decrease in capacity on the Philadelphia-London Gatwick route indicates that the Newark-London Heathrow services are not able to constrain the prices on the Philadelphia-London Heathrow route. As a consequence, any increase in the market power of the

⁷⁶ For instance, the Parties claim that a large share of the efficiencies will be driven by an increase in passenger number after the Transaction. These estimations are based on the information gathered from the Transatlantic Joint Business and the A++ JV. The Parties combine the growth in passenger numbers from these two transatlantic joint ventures and extrapolate it to the current case. Furthermore, the Parties compute the passenger increase estimates extrapolating from routes they consider to be comparable to London Heathrow-Philadelphia. These sets of assumptions raise doubts which at this stage undermine the verifiability of these efficiencies.

⁷⁷ This finding is independent of whether Philadelphia and Newark are considered a single market or not.

⁷⁸ Moreover, it should be noted that the estimated price increase on the London Heathrow – Philadelphia airport pair was the result of a capacity decrease on the London Gatwick – Philadelphia airport pair. Hence, this price increase might underestimate the effect of an event that would reduce competition on the London Heathrow-Philadelphia route.

Parties (the Transaction would lead to a quasi-monopoly on the route) will give the merged entity the ability and the incentive to increase prices⁷⁹. Finally, drawing an inference based on the effect on British Airways' average fares is appropriate since, as the Parties observed in their correlation analysis, prices of competing products should be highly correlated and therefore a similar effect could be expected on the other carriers operating on the route.

6.3.6. Conclusion

- (96) In light of the above and of the other available evidence, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment, and therefore also on the market encompassing all passengers, with respect to the London-Philadelphia route.

6.4. Non-stop/one-stop overlap routes

6.4.1. Introduction

- (97) The proposed Transaction gives rise to non-stop/one-stop horizontal overlaps on 27 long-haul routes which the Commission will assess and which result from US Airways and American Airlines offering either non-stop or one-stop services (the "27 non-stop/one-stop overlap routes"). These are: Barcelona-Miami, Dublin-Chicago, Frankfurt-Dallas, Frankfurt-Philadelphia, London-Atlanta, London-Charlotte, London-Dallas, London-Denver, London-Las Vegas, London-Miami, London-Orlando, London-Phoenix, London-Raleigh, London-San Diego, London-Seattle, London-Tampa, Madrid-Boston, Madrid-Chicago, Madrid-Los Angeles, Madrid-Miami, Madrid-New York, Manchester-New York, Paris-Dallas, Paris-Miami, Paris-Philadelphia, Rome-Chicago and Rome-Philadelphia.
- (98) On 23 of the 27 non-stop/one-stop overlap routes⁸⁰, American Airlines (or one of its Transatlantic Joint Business partners) offers non-stop services whereas US Airways offers one-stop services. On the remaining 4 routes, US Airways offers non-stop services whereas American Airlines offers one-stop services.⁸¹
- (99) For the purposes of this Transaction, the Commission will assess the competitive effects as follow: first, the closeness of competition between the Parties on the relevant routes will be analysed (Section 6.4.2.1). Then, the Commission will look at the 12 routes on which, in addition to the non-stop services of one of the Parties, there is another competitor providing non-stop services (Section 6.4.2.2) and lastly, the Commission will assess the remaining 15 routes on which one of the Parties is

⁷⁹ These findings are in line with the academic empirical literature evaluating airline mergers ex post which indicates that these price increases could be rather large on overlapping routes. For summary see John.E. Kwoka Jr. (2013) "Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes," *Antitrust Law Journal*, No 3, pp 619-650.

⁸⁰ These are: Barcelona-Miami, Dublin-Chicago, Frankfurt-Dallas, London-Atlanta, London-Dallas, London-Denver, London-Las Vegas, London-Miami, London-Orlando, London-Phoenix, London-Raleigh, London-San Diego, London-Seattle, London-Tampa, Madrid-Boston, Madrid-Chicago, Madrid-Los Angeles, Madrid-Miami, Madrid-New York, Manchester-New York, Paris-Dallas, Paris-Miami and Rome-Chicago.

⁸¹ These four routes are Frankfurt-Philadelphia, London-Charlotte, Paris-Philadelphia and Rome-Philadelphia.

the only non-stop operator while the other party and the remaining competitors offer one-stop services (Section 6.4.2.3).

- (100) For the reasons explained below, the Commission considers that the overlaps between the Parties' non-stop and one-stop services do not give rise to serious doubts as to the compatibility of the Transaction with the internal market. Moreover, if non-stop and one-stop flights were to be considered as two separate markets there would be either no overlap between the Parties or there would be only a one-stop/one-stop overlap.

6.4.2. *Competitive assessment*

6.4.2.1. Closeness of competition between the Parties' non-stop and one-stop services

- (101) The Commission will, prior to the assessment of the 27 non-stop/one-stop overlap routes, assess the closeness of competition between the Parties depending if US Airways provides non-stop services and American Airlines one-stop services, or vice versa, if American Airlines provides non-stop and US Airways one-stop services.
- (102) The concept of "closeness of competition" may play an important role in better understanding the competitive constraint exerted by different competitors on each other in differentiated markets such as airline markets.⁸² It is therefore relevant to assess whether the Parties' non-stop and one-stop services would be considered as close substitutes on the 27 non-stop/one-stop overlap routes.
- (103) According to the Parties, one-stop flights could be a substitute for non-stop flights under certain conditions such as if there is a possibility to book the flight in Global Distribution Systems ("GDS") and depending on the daily frequency and on the increase in travel time.⁸³ Moreover, the Parties support the conclusions drawn in the Commission's decision practice⁸⁴ that some passengers prefer one-stop flights to non-stop flights despite an increase in travel time, concluding that all one-stop flights on a US-EU city pair reflected in booking data could be considered substitutes of non-stop flights on the same route.⁸⁵
- (104) The Parties claim that their closest competitors on the transatlantic routes are the other "metal neutral" joint ventures: the A++ JV and the North Atlantic JV.⁸⁶ The Parties submit that these two joint ventures and the Transatlantic Joint Business have comparable network coverage and compete intensively on the transatlantic routes. In addition, the Parties also claim that the recent integration of Virgin Atlantic and Delta will strengthen their position on the transatlantic routes by integrating Virgin Atlantic's substantial Heathrow-based services into their new joint venture.⁸⁷

82 See paragraphs 28-30 of the Horizontal Merger Guidelines.

83 Form CO paragraph 81. See also COMP/M.2041 - *United Airlines/US Airways* and COMP/M.3280 - *Air France/KLM*.

84 COMP/M.5889-*United Air Lines/Continental Airlines*, recital 25.

85 Form CO paragraph 81.

86 Form CO paragraph 524.

87 Due to the announced codeshare agreements between Delta and Virgin Atlantic on a number of routes and implemented on 3 July 2013, customers have gained up to six additional daily frequencies and hence an increased number of passengers will be able to easily connect with Delta's services between the city pairs corresponding to routes like London-New York and New York-Charlotte for the connecting flight between London-Charlotte or London-New York and New-York – Phoenix for the

- (105) When asked which criteria would make passengers choose a non-stop flight over a one-stop flight, competitors⁸⁸ identified most often the total travel duration, the schedules and the frequencies. Corporate customers⁸⁹ also indicated that they would choose a non-stop flight over a one-stop flight by considering the travel duration, the schedules and whether the flight is covered by a corporate agreement. Furthermore, travel agents⁹⁰ indicated that their customers would choose a non-stop flight over a one-stop flight by taking into consideration travel duration, schedules and price as the most important factors.
- (106) On the other hand, when asked which criteria would make passengers choose a one-stop flight over a non-stop flight, corporate customers indicated the price difference, schedules and total travel duration, whereas travel agents indicated that for their customers the most important factor is the price weighted by the total travel duration and the schedules.⁹¹ Overall, the majority of respondents to the market investigation generally consider that price is the biggest factor that would lead a passenger to choose a one-stop flight over a non-stop flight followed by a lack of significant difference in travelling time and convenience of schedules.
- (107) The majority of respondents to the Commission's market investigation consider that one-stop services could constitute competitive alternatives to non-stop services on the transatlantic route where the Parties activities overlap.⁹² Furthermore, a majority of corporate customers and travel agents that responded to the market investigation indicated that premium passengers will always or most often prefer a non-stop flight over the on-stop alternatives, whereas non-premium passengers will prefer the one-stop service if the price is lower or only under certain circumstances. Therefore, in general, non-stop flight appears to be more attractive than the one-stop flight and the Parties' are not each other's closest competitors on the routes on which there is another non-stop operator on the route.
- (108) During its market investigation, the Commission enquired for more than half of the 27 non-stop/one-stop overlap routes⁹³, whom corporate customers and travel agents see as the closest competitor of each of US Airways and American Airlines. On the routes on which American Airlines (or one of its Transatlantic Joint Business partners) operates the non-stop service and US Airways operates the one-stop service, a majority of corporate customers as well as travel agents did not rank US Airways as American Airlines' closest competitor for either premium or non-

connection between London-Phoenix. See Parties' of 9 July 2013 to Commission's request for information of 5 July 2013.

88 See responses to question 12.1 of Q1- Questionnaire to Competitors.

89 See responses to question 12.1 of the Q2-Questionnaire to Corporate Customers.

90 See responses to Question 12.1 of Q3 – Questionnaire to Travel Agencies.

91 See responses to Question 12.2 of Q2 – Question 12.2 of Q3

92 See responses to question 10 of Q2 Questionnaire to Corporate Customers and to question 10 of Q3 Questionnaire to Travel Agencies.

93 Barcelona-Miami, Frankfurt-Dallas, London-Charlotte, London-Denver, London-Phoenix, London-Raleigh/Durham, London-San Diego, London-Tampa, Madrid-Boston, Madrid-Chicago, Madrid-Los Angeles, Madrid-Miami, Paris-Miami, Paris-Philadelphia and Rome-Philadelphia. With regard to the other non-stop/one-stop overlap routes, the Commission considers that the conclusion that the Parties are not closest competitors is also relevant as the replies to the market investigation have not allowed identifying any material element which would lead the Commission to conclude otherwise.

premium passengers.⁹⁴ In the same manner, a majority of corporate customers as well as travel agents did not rank American Airlines as the closest competitor for either premium or non-premium passengers on the routes where US Airways offers the non-stop service and American Airlines (or one of its Transatlantic Joint Business partners) offers the one-stop service.⁹⁵ In the majority of cases, other metal joint ventures (A++ JV, North Atlantic JV) are identified as American Airlines' or US Airways' closest competitor. Even on the routes on which no non-stop competing services are available and where American Airlines is the only non-stop operator and US Airways is offering a one-stop service, respondents identified other one-stop carriers as closer to American Airlines than US Airways and vice versa⁹⁶.

- (109) Some respondents and in particular travel agents noted that many airlines operate on these routes and it is difficult to determine the closest competitor from a customer perspective as price, schedule, convenience, on-board amenities, frequency, seasonality, frequent flyer program, alliance affiliation, etc. would all be contributing factors and would vary by customer.⁹⁷
- (110) In the light of the above and of the other available evidence, the Commission considers that US Airways and American Airlines do not appear to be close competitors on the non-stop/one stop overlap routes⁹⁸.

6.4.2.2. Non-stop/one-stop overlap routes with competition from other non-stop services

- (111) On 12 of the 27 non-stop/one-stop routes, the Parties will continue to face competition from other non-stop and one-stop operators.
- (112) These 12 routes are: (1) Dublin-Chicago⁹⁹, (2) Frankfurt-Dallas, (3) Frankfurt-Philadelphia, (4) London-Atlanta, (5) London-Las Vegas, (6) London-Miami, (7) London-Orlando, (8) Madrid-New York, (9) Manchester-New York, (10) Paris-Miami, (11) Paris-Philadelphia,¹⁰⁰ and (12) Rome-Chicago¹⁰¹.
- (113) On 10 of these 12 routes American Airlines (or one of its Transatlantic Joint Business partners) offers non-stop services, whereas US Airways offers one-stop

94 See responses to question 31-35 of the Q2 Questionnaire to Corporate Customers and responses to questions 28-32 of the Q3 Questionnaire to Travel Agencies.

95 The only exception is London-Charlotte, a route which is discussed in more details in Section 6.4.2.3 below.

96 The only exception occurs for London-Charlotte where US Airways offers the non-stop service, as discussed below in Section 6.4.2.3.

97 See responses to questions 32 of the Q3 Questionnaire to Travel Agencies.

98 See the discussion on London-Charlotte in Section 6.4.2.3.

99 American Airlines provides non-stop services only during the summer season. During the winter season, this is a one-stop/one-stop overlap route with another carrier (Aer Lingus) operating a non-stop service. The Transaction does not raise any serious doubts as to its compatibility with the internal market on this route.

100 The North Atlantic JV provides non-stop services only during the summer season. However, even during the Winter season, the Parties will continue to be constrained by other carriers' one stop services who managed to achieve higher market share than US Airways. In addition, around 70% of the passengers on this route travel during the Summer season.

101 American Airlines and the North Atlantic JV provide non-stop services only during the summer season. During the winter season, this is a one-stop/one-stop overlap route with no other airline operating a non-stop service. The Transaction does not raise any serious doubts as to its compatibility with the internal market on this route.

services. On the remaining two routes (Frankfurt-Philadelphia and Paris-Philadelphia), US Airways offers non-stop services whereas American Airlines (or one of its partners in the Transatlantic Joint Business) offers one-stop services.

- (114) Other competitors, such as the members of the A++JV, North Atlantic JV, Virgin or Aer Lingus also offer non-stop and/or one-stop services on these routes.
- (115) Table 3 below sets out the Parties' combined market shares and their major competitors' share on these routes in the last two IATA seasons:

Table 3: 12 non-stop/one-stop with competition from other non-stop services

Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	A++ JV	NAJV
Frankfurt-Dallas	40,483	Summer 2012	premium	[0-5]%	[60-70]%	[60-70]%	[30-40]%	[0-5]%
			non premium	[10-20]%	[30-40]%	[40-50]%	[40-50]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[30-40]%	[30-40]%	[60-70]%	[0-5]%
			non premium	[5-10]%	[40-50]%	[40-50]%	[40-50]%	[5-10]%
Frankfurt-Philadelphia	43,894	Summer 2012	premium	[60-70]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
			non premium	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
		Winter 2012/13	premium	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
			non premium	[50-60]%	[0-5]%	[50-60]%	[30-40]%	[0-5]%
Manchester-New York	168,979	Summer 2012	premium	[0-5]%	[50-60]%	[50-60]%	[30-40]%	[5-10]%
			non premium	[0-5]%	[50-60]%	[50-60]%	[30-40]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[50-60]%	[50-60]%	[30-40]%	[0-5]%
			non premium	[0-5]%	[50-60]%	[50-60]%	[30-40]%	[5-10]%
Rome-Chicago	63,455	Summer 2012	premium	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%
			non premium	[0-5]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%
		Winter 2012/13	premium	[0-5]%	[10-20]%	[20-30]%	[50-60]%	[10-20]%
			non premium	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%

Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	NAJV	A++ JV
Madrid-New York	265,224	Summer 2012	premium	[0-5]%	[50-60]%	[50-60]%	[10-20]%	[10-20]%
			non premium	[0-5]%	[40-50]%	[40-50]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
			non premium	[0-5]%	[50-60]%	[50-60]%	[10-20]%	[10-20]%
Paris-Miami	158,195	Summer 2012	premium	[0-5]%	[30-40]%	[30-40]%	[50-60]%	[5-10]% ¹⁰²
			non premium	[5-10]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
		Winter 2012/13	premium	[0-5]%	[40-50]%	[40-50]%	[40-50]%	[5-10]%
			non premium	[5-10]%	[40-50]%	[50-60]%	[20-30]%	[10-20]%
Paris - Philadelphia	42,903	Summer 2012	premium	[50-60]%	[5-10]%	[60-70]%	[30-40]%	[0-5]%
			non premium	[50-60]%	[5-10]%	[60-70]%	[30-40]%	[5-10]%

		Winter 2012/13	premium	[70-80]%	[5-10]%	[80-90]%	[10-20]%	[0-5]%
			non premium	[70-80]%	[5-10]%	[80-90]%	[5-10]%	[5-10]%
London-Atlanta	116,349	Summer 2012	premium	[0-5]%	[50-60]%	[50-60]%	[40-50]%	[0-5]%
			non premium	[0-5]%	[20-30]%	[20-30]%	[60-70]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[50-60]%	[50-60]%	[40-50]%	[0-5]%
			non premium	[0-5]%	[20-30]%	[20-30]%	[60-70]%	[5-10]%
Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	Virgin	NAJV
London-Las Vegas	283,692	Summer 2012	premium	[0-5]%	[60-70]%	[60-70]%	[30-40]%	[0-5]%
			non premium	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[60-70]%	[60-70]%	[20-30]%	[5-10]%
			non premium	[0-5]%	[20-30]%	[20-30]%	[60-70]%	[0-5]%
London-Miami	271,108	Summer 2012	premium	[0-5]%	[70-80]%	[70-80]%	[10-20]%	[0-5]%
			non premium	[0-5]%	[40-50]%	[40-50]%	[30-40]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[70-80]%	[70-80]%	[20-30]%	[0-5]%
			non premium	[5-10]%	[40-50]%	[50-60]%	[30-40]%	[5-10]%
London-Orlando	352,696	Summer 2012	premium	[0-5]%	[50-60]%	[50-60]%	[30-40]%	[5-10]%
			non premium	[5-10]%	[10-20]%	[20-30]%	[50-60]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[40-50]%	[40-50]%	[40-50]%	[0-5]%
			non premium	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%
Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	Aer Lingus	A++ JV
Dublin-Chicago	69,054	Summer 2012	premium	[0-5]%	[30-40]%	[30-40]%	[40-50]%	[10-20]%
			non premium	[5-10]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[5-10]%	[10-20]%	[60-70]%	[10-20]%
			non premium	[5-10]%	[10-20]%	[20-30]%	[50-60]%	[10-20]%

Source: Form CO, Annex 12 based on MIDT (rounding effects)

- (116) On all these 12 routes other significant operators such as the members of the A++ JV, the members of the North Atlantic JV, Virgin or other competitors such as Aer Lingus will continue to significantly constrain the Parties post-Transaction with their non-stop services operated from their respective hubs in Europe or the United States. In addition, these and other carriers offer also one-stop services on these routes.
- (117) Furthermore, as mentioned above in Section 6.4.2.1, the Parties are not close competitors on any of these routes as other non-stop operators will continue to be active *post-Transaction*.
- (118) Lastly, the Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to these 12 routes.
- (119) On Frankfurt-Dallas, Frankfurt-Philadelphia, Manchester-New York and Rome-Chicago, the Parties' combined market shares range between [20-30]% and [70-80]% depending on the season and passenger segment. However, the increment brought about by the Transaction is never higher than [0-5]% on most of these routes and passenger segments and the Parties will continue to face a significant competitive constraint from the non-stop services of the A++ JV. Indeed, in both the premium and the non-premium segments, the A++ JV had a significant market share. In addition, the Parties will be further constrained by one stop services offered by the members of the A++ JV, the North Atlantic JV, Virgin or Aer Lingus. The

passengers segments on which the increment will be above [0-5]% are (i) the non-premium segment of Frankfurt-Dallas in Summer Season 2012 and Winter 2012/13, on which the increment was [10-20]% and [5-10]% respectively, however the combined market shares remain below [50-60]% and the largest competitors' market share was around [40-50]% and (ii) the non-premium segment of Rome-Chicago in Winter 2012/13, on which the increment was [5-10]%, however the combined market share was below [30-40]% while the largest competitors' market share was around [40-50]%.

- (120) On Madrid-New York, Paris-Miami, Paris-Philadelphia and London-Atlanta, the Parties' combined market shares range between [20-30]% and [80-90]% depending on the season and the passenger segment. However the increment brought about by the Transaction is never higher than [0-5]% on most of these routes and passenger segments and the Parties will continue to face a significant competitive constraint from the non-stop services of the North Atlantic JV. Indeed, in both the premium and the non-premium segments, the North Atlantic JV had a significant market share. In addition, the Parties will be further constrained by one-stop services offered by the members of the North Atlantic JV, the A++ JV¹⁰³ or TAP. On the Paris-Miami route, the increment was [5-10]% and [5-10]% on the non-premium segment in Summer 2012 and Winter 2012/13 respectively. The combined market shares were [30-40]% and [50-60]% respectively, however the largest competitors' market share was [20-30]% and [20-30]% respectively and the other competitors' share was [20-30]% and [10-20]% respectively. On Paris-Philadelphia, on the non-premium segment the increment was [5-10]% while on the premium segment the increment was [5-10]% in both the Summer 2012 and Winter 2012/13 IATA seasons. However 75% of the passengers on this route travel in the Summer season when the combined market shares of the Parties are below [60-70]% while the North Atlantic JV has market shares of above [30-40]%. In Winter, US Airways is the only non-stop operator, while American Airlines and the other carriers operate one-stop services. The North Atlantic JV managed to achieve a market share of between [5-10]% and [10-20]% and in addition the A++ JV managed to achieve a market share of between [0-5]% and [5-10]% during the Winter season.
- (121) On London-Las Vegas, London-Miami and London-Orlando, the Parties' combined market shares range between [10-20]% and [70-80]% depending on the season and the passenger segment. However, the increment brought about by the Transaction is never higher than [5-10]% and the Parties will continue to face a significant competitive constraint from Virgin. In both the premium and the non-premium segments, Virgin had a significant market share with their non-stop services. In addition, other carriers such as the members of the A++ JV also offer one-stop services on these routes.
- (122) Lastly, on Dublin-Chicago, the Parties' combined market shares range between [10-20]% and [30-40]% depending on the season and the passenger segment. Moreover, the increment brought about by the Transaction is [0-5]% on the premium segment and [5-10]% on the non-premium segment and the Parties will continue to face a significant competitive constraint from Aer Lingus. Indeed, in both the premium and the non-premium segments, Aer Lingus had a significant market share with their

103 The A++ JV offers non-stop services on Madrid-New York.

non-stop services. In addition, other carriers such as the members of the A++ JV also offer one-stop services on this route.

- (123) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on these 12 routes. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on these routes.
- (124) Considering all the above and the other available evidence, the Transaction does not raise serious doubts as to its compatibility with the internal market on the following routes: (1) Dublin-Chicago, (2) Frankfurt-Dallas, (3) Frankfurt-Philadelphia, (4) London-Atlanta, (5) London-Las Vegas, (6) London-Miami, (7) London-Orlando, (8) Madrid-New York, (9) Manchester-New York, (10) Paris-Miami, (11) Paris-Philadelphia and (12) Rome-Chicago, under any possible market definition.

6.4.2.3. Non-stop/one-stop with competition from other one-stop services

Introduction

- (125) On further 15 of the 27 non-stop/one-stop overlap routes, the Parties will continue to face competition from other one-stop operators.
- (126) These 15 routes are: (1) Barcelona-Miami, (2) London-Charlotte, (3) London-Dallas, (4) London-Denver, (5) London-Phoenix, (6) London-Seattle, (7) London-Raleigh, (8) London-San Diego, (9) London-Tampa, (10) Madrid-Boston, (11) Madrid-Chicago, (12) Madrid-Los Angeles, (13) Madrid-Miami, (14) Paris-Dallas, and (15) Rome-Philadelphia.
- (127) On 13 of these 15 routes, American Airlines (or one of its partners in the Transatlantic Joint Business) offers non-stop services whereas US Airways offers one-stop routes. On the remaining two routes out of the 15 routes (London-Charlotte and Rome-Philadelphia), US Airways offers non-stop services whereas American Airlines (or one of its partners in the Transatlantic Joint Business) offers one-stop services.
- (128) On all these routes the A++ JV and the North Atlantic JV offer one-stop services via their hubs in Europe or North America and in addition other carriers also offer one-stop services.
- (129) Table 4 below sets out the Parties' combined market shares and their major competitors' share on these routes in the last two IATA seasons:

Table 4: 15 non-stop/one-stop with competition from other one-stop services

Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	A++ JV	NAJV
(1) Barcelona - Miami	56 916	Summer 2012	premium	[0-5]%	[70-80]%	[80-90]%	[5-10]%	[10-20]%
			non premium	[5-10]%	[60-70]%	[70-80]%	[0-5]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[10-20]%	[0-5]%
			non premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[5-10]%
(2) London - Charlotte	39 661	Summer 2012	premium	[70-80]%	[10-20]%	[80-90]%	[5-10]%	[0-5]%
			non premium	[70-80]%	[5-10]%	[70-80]%	[10-20]%	[5-10]%
		Winter 2012/13	premium	[60-70]%	[10-20]%	[80-90]%	[5-10]%	[0-5]%
			non premium	[70-80]%	[0-5]%	[80-90]%	[10-20]%	[5-10]%
(3) London - Dallas	92 261	Summer 2012	premium	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[0-5]%	[70-80]%	[70-80]%	[10-20]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[5-10]%	[70-80]%	[80-90]%	[10-20]%	[5-10]%
(4) London - Denver	67 986	Summer 2012	premium	[0-5]%	[70-80]%	[70-80]%	[10-20]%	[0-5]%
			non premium	[5-10]%	[50-60]%	[50-60]%	[20-30]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[10-20]%	[0-5]%
			non premium	[5-10]%	[50-60]%	[60-70]%	[20-30]%	[5-10]%
(5) London - Phoenix	50 003	Summer 2012	premium	[0-5]%	[80-90]%	[80-90]%	[0-5]%	[5-10]%
			non premium	[10-20]%	[50-60]%	[70-80]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[90-100]%	[5-10]%	[0-5]%
			non premium	[10-20]%	[60-70]%	[70-80]%	[10-20]%	[5-10]%
(6) London - Raleigh	45 685	Summer 2012	premium	[0-5]%	[80-90]%	[80-90]%	[0-5]%	[5-10]%
			non premium	[5-10]%	[60-70]%	[70-80]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[5-10]%
			non premium	[5-10]%	[70-80]%	[70-80]%	[10-20]%	[5-10]%
(7) London - San Diego	60 400	Summer 2012	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[0-5]%
			non premium	[0-5]%	[60-70]%	[70-80]%	[10-20]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[0-5]%
			non premium	[5-10]%	[70-80]%	[70-80]%	[10-20]%	[5-10]%
(8) London - Seattle	89 772	Summer 2012	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[10-20]%
			non premium	[0-5]%	[40-50]%	[40-50]%	[20-30]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[10-20]%
			non premium	[0-5]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
(9) London - Tampa	62 175	Summer 2012	premium	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[5-10]%
			non premium	[5-10]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[80-90]%	[80-90]%	[0-5]%	[10-20]%
			non premium	[5-10]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
(10) Madrid - Boston	41 136	Summer 2012	premium	[0-5]%	[70-80]%	[80-90]%	[10-20]%	[5-10]%
			non premium	[5-10]%	[70-80]%	[70-80]%	[5-10]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[70-80]%	[80-90]%	[10-20]%	[5-10]%
			non premium	[5-10]%	[70-80]%	[80-90]%	[5-10]%	[5-10]%
(11) Madrid - Chicago	38 665	Summer 2012	premium	[0-5]%	[70-80]%	[70-80]%	[20-30]%	[0-5]%
			non premium	[5-10]%	[60-70]%	[70-80]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[70-80]%	[70-80]%	[20-30]%	[0-5]%
			non premium	[5-10]%	[70-80]%	[70-80]%	[10-20]%	[5-10]%
(12) Madrid - Los Angeles	55 402	Summer 2012	premium	[0-5]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
			non premium	[10-20]%	[50-60]%	[70-80]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[5-10]%	[60-70]%	[60-70]%	[10-20]%	[10-20]%
			non premium	[10-20]%	[50-60]%	[60-70]%	[10-20]%	[10-20]%

Route	Total pax	IATA season	Passenger segmentation	US Airways	TAJB	Parties	A++ JV	NAJV
(13) Madrid - Miami	91 241	Summer 2012	premium	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[10-20]%	[70-80]%	[80-90]%	[0-5]%	[5-10]%
		Winter 2012/13	premium	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[5-10]%	[80-90]%	[80-90]%	[0-5]%	[5-10]%
(14) Paris - Dallas	34 779	Summer 2012	premium	[0-5]%	[60-70]%	[70-80]%	[5-10]%	[20-30]%
			non premium	[0-5]%	[60-70]%	[70-80]%	[10-20]%	[10-20]%
		Winter 2012/13	premium	[0-5]%	[70-80]%	[70-80]%	[0-5]%	[20-30]%
			non premium	[0-5]%	[70-80]%	[70-80]%	[5-10]%	[10-20]%
(15) Rome-Philadelphia	38 710	Summer 2012	premium	[80-90]%	[5-10]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[70-80]%	[5-10]%	[80-90]%	[5-10]%	[5-10]%
		Winter 2012/13	premium	[80-90]%	[0-5]%	[90-100]%	[0-5]%	[0-5]%
			non premium	[70-80]%	[5-10]%	[80-90]%	[5-10]%	[5-10]%

- (130) The market shares achieved by US Airways as a one-stop competitor on these routes stay generally significantly below the market shares of either the A++ JV or the North Atlantic JV or both which shows that US Airways was not the major one-stop operator on these routes. The Transaction does therefore not eliminate an important competitive force on these routes.
- (131) In addition, as mentioned above in Section 6.4.2.1, the Parties do not appear to be close competitors on any of these routes¹⁰⁴.
- (132) Lastly, the Commission notes that the replies to the Commission's market investigation did not reveal any sufficiently substantiated competition concerns with respect to these 15 routes.

Barcelona-Miami, London-Dallas, London-San Diego, London-Seattle, Paris-Dallas, London-Denver, London-Raleigh, London-Tampa, Madrid-Boston, Madrid-Chicago and Rome-Philadelphia

- (133) On Barcelona-Miami, London-Dallas, London-San Diego, London-Seattle, Paris-Dallas, London-Denver, London-Raleigh, London-Tampa, Madrid-Boston, Madrid-Chicago and Rome-Philadelphia, the increment brought about by the Transaction is not higher than [5-10]%. The Parties will continue to face a significant competitive constraint from other one-stop operators such as the members of the A++ JV and the North Atlantic JV. On all these routes, except for Rome-Philadelphia, the highest market share of one of the remaining one-stop competitors is considerably higher than the increment brought by the Transaction (often more than twice as high as the increment). Even on Rome-Philadelphia, the remaining competitors managed to achieve market shares similar to, or higher than, the increment in particular on the non-premium segment which represents 90% of the total passengers travelling on the Rome-Philadelphia route. The Transaction does therefore not eliminate an important competitive force on these routes.

London-Charlotte

- (134) On the segment for premium passengers on the London-Charlotte route, US Airways had a market share of [70-80] and [60-70] in Summer 2012 and Winter 2012/13 respectively while the Transatlantic Joint Business had a market share of [10-20]%

¹⁰⁴ Except for London-Charlotte as explained below.

and [10-20]% respectively. On the segment for non-premium passengers on the London-Charlotte route, US Airways had a market share of [70-80]% in Summer 2012 and of [70-80]% in Winter 2012/13 while the Transatlantic Joint Business had a market share of [5-10]% and [0-5]% respectively. *Post* Transaction, the Parties would reach a combined market share of up to [80-90]%.

- (135) London-Charlotte was the only route on which the majority of respondents to the market investigation considered that one-stop services of American Airlines and of members of the Transatlantic Joint Business are the closest competitor of US Airways' non-stop services. However, members of the A++ JV and the North Atlantic JV offer one-stop services with a comparable or even shorter duration than the flights of the Transatlantic Joint Business on this route and with similar departing times. In addition, the A++ JV and the North Atlantic JV together offer a higher number of one-stop services than the Transatlantic Joint Business. In view of these similarities in the one-stop services, it does not appear that the one-stop services of the Transatlantic Joint Business are a closer substitute to the non-stop services of US Airways than the one-stop services of the A++ JV and the North Atlantic JV.
- (136) Moreover, the increment brought about by the Transaction is limited on the non-premium segment, which represents around 80% of the total passengers on the London-Charlotte route. There are numerous one-stop alternatives on this route, particularly those offered by the members of the A++ JV and the North Atlantic JV. During the IATA Winter 2012/13 Season, members of the A++ JV offered one-stop services through their hubs in Washington, Newark and Toronto, while the North Atlantic JV operated one-stop services through Atlanta, New York and Detroit and they managed to achieve market shares of between [0-5]% and [5-10]% on the premium segment and between [5-10]% and [10-20]% on the non-premium segment. The route is also served on a one-stop basis by Virgin Atlantic. Due to the announced codeshare agreements between Delta and Virgin Atlantic on the London–New York and New York–Charlotte routes, implemented on 3 July 2013, Delta customers have gained an additional six daily frequencies between London and New York¹⁰⁵, which could possibly connect with Delta's services between New York and Charlotte¹⁰⁶. Therefore, the Transatlantic Joint Business is not uniquely positioned to capture one-stop passengers and the Parties will continue to face a significant competitive constraint from A++ JV and the North Atlantic JV on the London Charlotte route.

London-Phoenix

- (137) On the segment for premium passengers on the London-Phoenix route, the Transatlantic Joint Business had a market share of around [80-90]% in Summer 2012 and Winter 2012/13 while US Airways had a market share of [0-5]% in both these seasons. On the segment for non-premium passengers on the London-Phoenix route, the Transatlantic Joint Business had a market share of [50-60]% in Summer 2012 and [60-70]% in Winter 2012/13 while US Airways had a market share of [10-20]%

105 See <http://news.delta.com/index.php?s=43&item=2026> (retrieved 17 July 2013) and the Virgin Atlantic Summer 2013 Schedule, http://www.virgin-atlantic.com/tridion/images/ScheduleSummer13_tcm4-1256046.pdf (retrieved 17 July 2013).

106 Delta Flight Schedules July 2013, p. 104, http://www.delta.com/content/dam/delta-www/pdfs/flight_schedules.pdf (retrieved 17 July 2013).

and [10-20]% respectively. *Post-Transaction*, the Parties would reach a combined market share of up to [90-100]%.

- (138) However, the increment brought about by the Transaction is limited on the premium segment and while on the non-premium segment the increment was higher, the other competitors on the route, the A++ JV and the North Atlantic JV managed to achieve comparable if not higher market shares than US Airways. The A++ and North Atlantic JVs can be regarded as comparable to US Airways. The North Atlantic JV offers one-stop flights through its hubs in Minneapolis, Detroit and Atlanta, while the A++ JV offers one-stop services connecting in Houston, Newark, Washington and Chicago. Furthermore, Virgin also offers one-stop services from London and as a consequence of a codeshare agreement between Delta and Virgin Atlantic on London–New York and New York–Phoenix,¹⁰⁷ there will be additional six daily frequencies between London and New York¹⁰⁸ and an increased number of passengers could possibly be able to connect with Delta's service between New York and Phoenix. Therefore, the Transatlantic Joint Business is not uniquely positioned to capture one-stop passengers and the Parties will continue to face a significant competitive constraint from A++ JV and the North Atlantic JV on the London Phoenix route.

Madrid-Los Angeles

- (139) On the segment for premium passengers on the Madrid-Los Angeles route, the Transatlantic Joint Business had a market share of around [60-70]% in Summer 2012 and Winter 2012/13, while US Airways had a market share of around [5-10]%. On the segment for non-premium passengers on the Madrid-Los Angeles route, the Transatlantic Joint Business had a market share of [50-60]% in Summer 2012 and Winter 2012/13 while US Airways had a market share of [10-20]% and [10-20]% respectively. *Post-Transaction* the Parties would reach a combined market share of up to [70-80]%.
- (140) However, the increment brought about by the Transaction is limited on the premium segment and while on the non-premium segment the increment was higher, the Parties will continue to face a significant competitive constraint from other one-stop operators such as the members of the A++ JV and the North Atlantic JV who offer such services through their hubs in Europe and North America. The A++ JV and the North Atlantic JV have a comparable presence to US Airways' presence on this route. In addition, the A++ JV and the North Atlantic JV had more frequencies than US Airways on this route. Lastly, Virgin Atlantic and Air New Zealand also offer one-stop services on this route.

Madrid-Miami

- (141) On the segment for premium passengers on the Madrid-Miami route, the Transatlantic Joint Business had a market share of [90-100]% in Summer 2012 and Winter 2012/13 while US Airways had a market share of [0-5]%. On the segment for non-premium passengers on the Madrid-Miami route, the Transatlantic Joint Business had a market share of [70-80]% in Summer 2012 and of [80-90]% in Winter 2012/13 while US Airways had a market share of [10-20]% and [5-10]%

107 See <http://news.delta.com/index.php?s=43&item=2026> (retrieved 17 July 2013).

108 Virgin Atlantic Summer 2013 Schedule, http://www.virgin-atlantic.com/tridion/images/ScheduleSummer13_tcm4-1256046.pdf (retrieved 17 July 2013).

respectively. *Post* Transaction, the Parties would reach a combined market share of up to [90-100]%.

- (142) However, the increment brought about by the Transaction is minimal on the premium segment and while on the non-premium segment the increment was higher during the Summer 2012, there are multiple carriers on the route offering one-stop services that are an alternative to the Transatlantic Joint Business' non-stop services and US Airways' one-stop services. In addition, the North Atlantic JV offers significantly more frequencies than US Airways on this route (four average daily frequencies compared with two for US Airways) with a wider choice of departing times and a shorter or comparable duration than US Airways¹⁰⁹. TAP also offers a service with shorter or comparable travel times than US Airways in both directions. As such, US Airways is not uniquely positioned to capture one-stop passengers nor does it offer a unique or superior constraint to the Transatlantic Joint Business' non-stop services.
- (143) Lastly, the Transatlantic Joint Business is subject to commitments under the Commission's Transatlantic Joint Business decision¹¹⁰ on the Madrid-Miami route which are designed to foster entry on this route¹¹¹.

Conclusion

- (144) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on these 15 routes. Therefore, the Commission considers that the Transaction does not raise serious doubts with respect to the "all-passengers" market on these routes.
- (145) Considering all the above and the other available evidence, the Transaction does not raise serious doubts as to its compatibility with the internal market on the following routes 15 non-stop/one-stop overlap routes: (1) Barcelona-Miami, (2) London-Charlotte, (3) London-Dallas, (4) London-Denver, (5) London-Phoenix, (6) London-Seattle, (7) London-Raleigh, (8) London-San Diego, (9) London-Tampa, (10) Madrid-Boston, (11) Madrid-Chicago, (12) Madrid-Los Angeles, (13) Madrid-Miami, (14) Paris-Dallas and (15) Rome-Philadelphia, under any possible market definition.

6.4.2.4. Conclusion

- (146) In light of the above and of the other available evidence, the Commission considers that the Transaction does not raise any serious doubts as to its compatibility with the internal market under any possible market definition on any of the 27 non-stop/one-stop overlap routes: Barcelona-Miami, Dublin-Chicago, Frankfurt-Dallas, Frankfurt-Philadelphia, London-Atlanta, London-Charlotte, London-Dallas, London-Denver, London-Las Vegas, London-Miami, London-Orlando, London-Phoenix, London-

109 Form CO, paragraph 398.

110 COMP/39.596 – BA/AA/IB, recital 73-76 and 92. In particular, the commitments in that case provide for the availability of an SPA for existing competitor services on amongst others the Madrid-Miami route. Such commitment was intended to address the Commission's concerns identified in that case in relation to the access that existing competitors on this route have to connecting traffic provided by the parties and to assist these competitors in sustaining their services on this route.

111 Form CO paragraph 401.

Raleigh, London-San Diego, London-Seattle, London-Tampa, Madrid-Boston, Madrid-Chicago, Madrid-Los Angeles, Madrid-Miami, Madrid-New York, Manchester-New York, Paris-Dallas, Paris-Miami, Paris-Philadelphia, Rome-Chicago and Rome-Philadelphia.

6.5. One-stop/one-stop overlap routes

- (147) The Transaction gives rise to numerous affected transatlantic routes on which both US Airways and the members of the Transatlantic Joint Business provide one-stop services¹¹². These routes were analysed with respect to the market position of the Parties and the market share increment brought about by the Transaction. In addition, the presence and position of competitors and the number of passengers on each route were assessed.
- (148) On all of these routes, depending on the route, the Parties face two or more well-established competitors, such as the A++ JV, the North Atlantic JV, Virgin, Aer Lingus, Condor Flug, XL Airways, Air Europa and Air Berlin. These competitors will continue to be an important constraint on the Parties post-Transaction, both in the premium and in the non-premium segment. In addition, on half of these routes¹¹³, the Parties' services competed with the services of one or sometimes two non-stop competitors in any of the Summer 2012 and Winter 2012/13 IATA seasons and the Parties' combined market share is lower, sometimes significantly, than the one of the non-stop competitor.
- (149) On three of the one-stop/one-stop overlap routes, the Parties' combined market shares are rather high (above [50-60]% in any segment in any of the past four IATA seasons) and the increment due to US Airways' one-stop service is non-negligible (more than [10-20]%). These are Madrid-San Francisco, Manchester-Los Angeles and Manchester-Miami. These routes are all thin routes (approximately 40,000 passengers per year or less) where at least two alternative one-stop flights are offered by competitors in addition to those of the Parties. On Madrid-San Francisco, the A++ JV and the North Atlantic JV also offer one-stop services. On Manchester-Miami, the A++ JV and the North Atlantic JV, as well as Flybe and TAP, also offer one-stop services. On Manchester-Los Angeles, the A++ JV and the North Atlantic JV, as well as Air New Zealand, also offer one-stop services.
- (150) In addition, the replies to the market investigation did not reveal any substantiated competition concerns with respect to the identified one-stop/one-stop overlaps.

¹¹² These are the following 39 routes: Amsterdam-Las Vegas, Amsterdam-Miami, Amsterdam-Orlando, Athens-Chicago, Athens-Boston, Barcelona-Boston, Barcelona-Chicago, Barcelona-Los Angeles, Barcelona-San Francisco, Barcelona-Washington, Brussels-Los Angeles, Brussels-Miami, Brussels-San Francisco, Dublin-Las Vegas, Dublin-Los Angeles, Dublin-Orlando, Dublin-San Francisco, Dublin-Washington, Frankfurt-Las Vegas, Frankfurt-Los Angeles, Frankfurt-Miami, Frankfurt-Orlando, Glasgow-Orlando, Madrid-San Francisco, Madrid-Washington, Manchester-Las Vegas, Manchester-Miami, Manchester-Los Angeles, Munich-Miami, Paris-Las Vegas, Paris-Los Angeles, Paris-Orlando, Paris-San Francisco, Rome-Boston, Rome-Los Angeles, Rome-Miami, Rome-San Francisco, Zurich-Los Angeles, Zurich-Miami.

¹¹³ These are the following 19 routes: Amsterdam-Miami, Dublin-Orlando, Dublin-Washington, Frankfurt-Las Vegas, Frankfurt-Los Angeles, Frankfurt-Miami, Frankfurt-Orlando, Glasgow-Orlando, Madrid-Washington, Manchester-Las Vegas, Paris-Las Vegas, Paris-Los Angeles, Paris-Orlando, Paris-San Francisco, Rome-Boston, Rome-Los Angeles, Rome-Miami, Zurich-Los Angeles, Zurich-Miami.

- (151) In light of all the above and the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the identified one-stop/one-stop overlaps under any possible market definition.

6.6. Overall conclusion air transport of passengers

- (152) In light of the above and of the other available evidence, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the London-Philadelphia route and that it does not raise any serious doubts as to its compatibility with the internal market on the 27 non-stop/one-stop overlap routes and on the 39 one-stop/one-stop overlap routes under any possible market definition.

7. REMEDIES

7.1. Commitments submitted by the Parties

- (153) In order to address the serious doubts raised by the Transaction on the London (Heathrow)-Philadelphia route, the Parties submitted commitments on 16 July 2013. After a first examination by the Commission, the Parties submitted revised commitments on 17 July 2013 (the "Commitments of 17 July"). On 18 July 2013, 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 the Parties on 25 July 2013 (the "final Commitments"). As will be shown below, the Commission considers these final Commitments suitable to entirely remove the serious doubts identified.

- (154) The final Commitments aim at reducing the barriers to entry and facilitating entry for a prospective entrant on the London (Heathrow)-Philadelphia route. Specifically, the Parties undertake to make available slots to allow the operation of 1 daily frequency on the London Heathrow-Philadelphia airport route. Moreover, the final Commitments attempt to make the Slot Commitment very attractive by allowing the new entrant to enter into a Special Prorate Agreement ("SPA") with the Parties, British Airways or Iberia (the "SPA Commitments"), a fare combinability agreement, and have access to the Parties' frequent flyer programmes.

- (155) The main aspects of the final Commitments are summarised below.

7.1.1. The Slot Commitment

7.1.1.1. Slot release on the route with competition concerns

- (156) Under the final Commitments, the Parties undertake to make available slots to allow a prospective entrant to operate one (1) daily frequency (i.e. up to seven (7) frequencies per week) on the Airport Pair (the "Slots"). The Airport Pair is defined as the London Heathrow-Philadelphia airport pair. Slots are defined in the final Commitments as the permission given to the prospective entrant to use the full range of airport infrastructure at London Heathrow (and as necessary at Philadelphia airport) that is necessary to operate and 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.

7.1.1.2. Conditions pertaining to the slots

- (157) The Parties undertake to make Slots available within sixty (60) minutes either side of the time requested by the prospective entrant. However, the Parties may refuse to offer arrival slots before 06:20 (local time) and if a prospective entrant requests such slots, the Parties may offer a slot between 06:20 and 07:20.
- (158) A prospective entrant shall be eligible to obtain Slots from the Parties pursuant to the final 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. The prospective entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary slots if, *inter alia*: (a) slots at London Heathrow (or Philadelphia airport if applicable) were available within 60 minutes but such slots were not accepted by the prospective entrant, (b) slots at London Heathrow (or Philadelphia airport if applicable) were obtained to operate on the route of concern outside 60 minutes and the prospective entrant did not give the Parties the opportunity to exchange those slots for slots under the final Commitments within 60 minutes or (c) the prospective entrant has not exhausted its own slot portfolio at London Heathrow (or Philadelphia if applicable).
- (159) During the first six consecutive IATA seasons (the "Utilization Period"), the prospective entrant will not be entitled to transfer, assign, sell, swap or charge the Slots under the final Commitments (except for changes within 60 minutes and in agreement with the slot coordinator).

7.1.1.3. Grandfathering rights

- (160) As a general rule, the Slots obtained by a prospective entrant under the final Commitments must be used to provide a non-stop scheduled passenger air transport service operated on the London Heathrow – Philadelphia airport pair and cannot be used on another city pair unless the prospective entrant has operated such service during the Utilization Period (six consecutive IATA seasons)¹¹⁴. Once the Utilization Period has elapsed, the prospective entrant will be entitled to use the Slots on any city pair ("grandfathering"). However, grandfathering is subject to approval of the Commission, advised by the Monitoring Trustee.

7.1.1.4. Consideration

- (161) Since the Slots released under the final Commitments are at an airport where secondary trading takes place, the agreement with the prospective entrant may provide for consideration, so long as such contractual provisions are clearly disclosed and comply with the final Commitments and all other administrative requirements set out in the applicable legislation.

7.1.1.5. Ranking of the prospective entrants applying for slots

- (162) Under the final Commitments, the Commission, advised by the Monitoring Trustee, would collect bids for the Slots and assess whether the applicant is a viable 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.

¹¹⁴ The Commitments of 17 July set out a longer Utilization Period (eight consecutive IATA seasons) after which a prospective entrant would have acquired grandfathering rights over the slots.

- (163) The Commission would rank the bids received and will give preference to the applicant which will provide the most effective overall competitive constraint on the Airport Pair. In this respect, the Commission will take into account the strength of the applicant's business plan and give preference to the applicant meeting one or more of the following criteria: (i) largest capacity (measured in seats offered on services for two consecutive IATA seasons) and/or the greatest total number of services/frequencies, (ii) year round service over only IATA Summer or Winter Season service and (iii) a pricing structure and service offering that would provide the most effective competitive constraint on the Airport Pair.
- (164) If, following the Commission's evaluation on the basis of the criteria set out above, several applicants are deemed to provide similarly effective competitive constraints on the Airport Pair, the Commission will rank the applicants following the ranking provided by the Parties. If an Applicant offers compensation for the Slots it has requested pursuant to the Slot Commitment, 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.

7.1.2. Commitments concerning special prorated agreements

- (165) In addition to the Slot commitment, the Parties committed to entering into a Special Prorate Agreement ("SPA") with any requesting carrier (irrespective of whether such carrier commenced non-stop services on the basis of Slots obtained from the Parties under the final Commitments) 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.
- (166) The requesting carrier may select for the Airport Pair 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 London Heathrow¹¹⁵. These routes have to be operated by the Parties but can also be operated by the Transatlantic Joint Business, including services operated by British Airways or Iberia within the context of the Transatlantic Joint Business.
- (167) The requesting carrier may also select the fare class(es) to which the SPA will apply, provided that each selected fare class is included in at least one existing special prorated 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 (subject to certain exclusions).
- (168) The SPA shall be on terms which are at least as favourable as the terms agreed by the Parties, British Airways or Iberia, as the case may be, under an existing special prorated agreement in the context of the Transatlantic Joint Venture with any other carrier for the same route and in the same fare class (subject to certain exclusions). Furthermore, the SPA shall grant the requesting carrier equivalent inventory access to that given to other members of the Transatlantic Joint Business.

¹¹⁵ In the Commitments of 17 July, the Parties were committing to give access to 15 behind/beyond routes in total.

(169) The Parties also 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 the relevant clauses regarding the SPA commitment. Each of British Airways and Iberia confirmed in writing their agreement that, after the final Commitments enter into force, British Airways and Iberia respectively, will be prepared to execute an SPA with any requesting carrier on the terms and under the conditions provided in the final Commitments.

7.1.3. *Other provisions*

7.1.3.1. Fare combinability

(170) The Parties also committed that, at the request of any carrier which operates a non-stop service on London Heathrow-Philadelphia (whether or not such service uses slots released to that carrier pursuant to the final Commitments), they will enter into an agreement that arranges for fare combinability on the Airport Pair across all classes of tickets. Such agreement will provide for the possibility for such requesting carrier (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 Business (including any non-stop services operated by British Airways), and a non-stop service provide the other way by the requesting carrier.

7.1.3.2. Frequent flyer programmes

(171) At the request of a carrier that has commenced a service on the Airport Pair and that does not have a comparable frequent fly program of its own and does not participate in any of the Parties' frequent flyer programmes, the Parties will allow it to be hosted in their frequent flyer programme for the Airport Pair.

7.1.3.3. Interim mechanism

(172) The final Commitments provide that, if necessary, the Monitoring Trustee will be able to make (after prior consultation with the Commission and the Parties), reasonable modifications to the deadlines set-out in the final Commitments in order to allow the slot release procedure to start and to allow a Slot release for the Summer 2014 IATA season. However, the Parties will not be required to enter into a Slot Release Agreement prior to the day on which the proposed Transaction closes. On that day all US Airways Group equity outstanding will be cancelled and new shares in American will be issued to the current US Airways Group equity holders by American.

7.1.3.4. Monitoring Trustee

(173) A Monitoring Trustee would be appointed by the Parties to monitor the correct execution of the final Commitments, subject to previous approval by the Commission. The Monitoring Trustee would be independent of the Parties and the companies belonging to their respective groups. The Parties 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 will have full and complete access to the Parties' books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under the final Commitments. In addition, 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. Each of British

Airways and Iberia confirmed in writing that they are prepared to provide, upon request, to the Monitoring Trustee all relevant information and assistance for the Monitoring Trustee to be in a position to advise the Commission as to the suitability of the SPA proposed by British Airways or Iberia respectively pursuant to the relevant Clauses of the final Commitments.

7.1.3.5. Fast track dispute resolution

- (174) The final Commitments also provide that the agreements concluded to implement the final Commitments will provide for a fast-track dispute resolution procedure as described in the final Commitments. If the prospective entrant or the requesting carrier has reason to believe that the Parties are failing to comply with the requirement of the final Commitments vis-à-vis that party, the fast-track dispute resolution procedure in the final Commitments will apply.

7.2. Analysis of the final Commitments

- (175) As set out in the Commission Notice on remedies, 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.

- (176) 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 a significant impediment on effective competition 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.

- (177) 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.

- (178) The Commission's assessment has concluded that the final Commitments address all serious doubts identified in the course of the procedure. As such, the Commission comes to the conclusion that the final Commitments entered into by the Parties are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

7.2.1. The Slot Commitment

- (179) In airline cases, slot release commitments are acceptable to the Commission where it is sufficiently clear that actual entry by new competitors would occur that would eliminate any significant impediment to effective competition. In this respect,

account must be taken of the facts existing at the time when the decision is adopted and not in the light of subsequent events.¹¹⁶

7.2.1.1. Structure and design of the final Commitment

- (180) The Slot Commitment is based on the fact that slot availability at London Heathrow is the main entry barrier on the route where serious doubts have been identified. Therefore, it is designed to remove (or at least reduce significantly) this barrier and foster sufficient, timely, and likely entry on the London (Heathrow)-Philadelphia route.
- (181) It is important to note also that London Heathrow slots have in themselves a very significant value therefore rendering the Slot Commitment very appealing for prospective entrants. This intrinsic attractiveness of the slots is enhanced in the Commitment package by the prospect of acquiring grandfathering rights after six IATA seasons.
- (182) The Slots offered in the Slot Commitment equal the increment brought about by the Transaction.
- (183) The possibility for carriers to pay a consideration for the Slots offered by the Parties and the possibility for the Parties to give priority, in their ranking, to those carriers that request Slots that are at the times currently operated by US Airways, do not reduce the attractiveness of the Slots or preclude their award to the best applicants. Indeed, the above are 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 London Heathrow.

7.2.1.2. Outcome of the market test

- (184) A majority of respondents to the market test welcomed this type of commitment allowing for the release of slots at London Heathrow and enabling new entry on the London Heathrow-Philadelphia route. They considered that the scarcity of slots at London Heathrow is a significant barrier to entry on the London Heathrow-Philadelphia route.

7.2.1.3. Conclusion

- (185) Without the Slot Commitment, it is unlikely that any prospective new entrant could obtain the slot pair necessary to operate on the London-Philadelphia route to/from London Heathrow with a sufficient number of weekly frequencies from the first IATA season. In addition, without the Slot Commitment, a new entrant at London Heathrow would have no guarantee of obtaining the slot pair at the appropriate times, allowing for an optimised rotation of aircraft. By contrast, with the Slot Commitment, the Slot allocation mechanism in the final Commitments ensures that the prospective new entrant will in all probability receive the requested Slots in an appropriate window of +/- 60 minutes.

¹¹⁶ 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.

(186) In light of the above and of the other available evidence, in particular considering the interest and indications for a likely and timely entry received during the market test, the Commission concludes that the Slot Commitment is a key element in the timely and likely entry on the London-Philadelphia route. The scope of entry on this route will suffice to resolve the serious doubts identified on this market (on all possible passenger segments).

7.2.2. *Special prorata agreements*

7.2.2.1. Outcome of the market test

(187) Many respondents to the market test welcomed this type of commitment allowing for enhanced feeder traffic. They considered that the possibility offered to any requesting carrier to enter into a special prorata agreement with the Parties as an additional incentive to enter on the London-Philadelphia route. Yet, the majority of respondents considered that it would likely not be the determining factor on whether to operate on the route. The Commission considers therefore that the SPA is a relevant element for sustainable operations on this route.

(188) A small number of respondents indicated that the number of beyond/behind routes foreseen in the Commitments of 17 July (15) might not be sufficient to render the slot attractive for a prospective entrant. This was addressed in the final Commitments, as the number of beyond/behind routes was doubled, to 30 routes, which altogether represents a significant proportion of the Parties' own feed that they currently receive on their London-Philadelphia non-stop services. Moreover, several competitors already have feed traffic available at either end of the Airport Pair (i.e. at London Heathrow or at Philadelphia airport).

(189) Lastly, a carrier indicated that a significant delay in concluding an effective SPA could reduce the effectiveness of any SPA commitment, and thus there should be an obligation on the Parties to promptly conclude SPAs with the requesting new entrant within a designated timeframe of request. This was addressed in the final Commitments, as a timeline for negotiation of the SPA was included, putting specific timing obligations on the Parties. Therefore, the Commission considers that the concerns are removed by the improvements provided for in the final Commitments, in particular because the proposed change fulfils the condition attached by a carrier that expressed an interest in the route.

7.2.2.2. Conclusion

(190) In light of the above and of the other available evidence, in particular considering the interest and indications for a likely and timely entry received during the market test, the Commission concludes that the SPA is likely to significantly increase attractiveness of sustainable entry on the London-Philadelphia route in a timely manner and that this entry will suffice to resolve the serious doubts identified on this market (on all possible passenger segments).

7.2.3. *Other Commitments*

(191) As regards other provisions in the final Commitments, such as the possibility for a new entrant to enter into a fare combinability agreement with the Parties and/or to participate in the Parties' frequent flyer program, respondents to the market test considered these provisions generally as additional, although not critical, incentives for a new entrant. The Commission considers that such substantial additional

elements reinforce the other commitments and further increase the likelihood of sustainable entry on the London-Philadelphia route.

- (192) Further elements in the final Commitments such as the commitment to allow a slot release for the IATA Summer season 2014 further strengthen the likelihood of a timely entry on the London Heathrow – Philadelphia route.
- (193) As a further improvement introduced in the final Commitments, the Monitoring Trustee will have access to assistance and information from other members of the Transatlantic Joint Business, such as British Airways and Iberia, which will allow the Monitoring Trustee to carry out its duties under the final Commitments and ensure full compliance by the Parties and/or the other members of the Transatlantic Joint Business with the terms of the SPAs entered into pursuant to the final Commitments¹¹⁷.
- (194) Some travel agents commented that some form of protection should be granted for the continued access by travel agents to the inventory of US Airways. However, this is neither a merger-specific issue, nor significant competition issue. In any event, the final Commitments are adequately designed to ensure a sufficient level of competition between airlines on the London-Philadelphia route, and by addressing this horizontal concern, the final Commitments are also intended, in principle, to mitigate issues related to distribution of airline tickets on this route.

7.3. Overall conclusion on the final Commitments

- (195) In light of the above and of the other available evidence, credible interest for a likely and timely entry on this route was expressed during the market test of the Commitments of 17 July. Considering that the final Commitments reflect to a significant extent the suggested improvements expressed during the market test¹¹⁸, the Commission considers that the final Commitments will lead to sufficient, timely and likely entry on the London-Philadelphia route.
- (196) It therefore follows that the final Commitments submitted to the Commission are sufficient to eliminate all serious doubts identified during the Phase I investigation.

7.4. Conditions and obligations

- (197) 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.
- (198) 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

¹¹⁷ Under the final Commitments, the Parties or the other members of the Transatlantic Joint Business have to grant the requesting carrier equivalent inventory access to that given to other members of the Transatlantic Joint Business. The Commitments empower the Monitoring Trustee to have access to assistance and all necessary information to verify compliance with this obligation.

¹¹⁸ See in particular paragraphs (160), (188), (189) and (193).

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.

- (199) 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 and 4 of the final Commitments (conditions), whereas the other sections of the final Commitments constitute obligations on the Parties.
- (200) The detailed text of the final Commitments is annexed to the present decision. The full text of the final Commitments forms an integral part to this decision.

8. CONCLUSION

- (201) For the above reasons, the Commission has decided not to oppose the notified Transaction as modified by the final Commitments and to declare it compatible with the internal market and with the EEA Agreement, subject to full compliance with the conditions and obligations laid down in the final Commitments annexed to the present decision. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission

(signed)

Günther OETTINGER
Member of the Commission

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