



EUROPEAN COMMISSION

DG Competition

***Case M.7541 - IAG/AER LINGUS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004**  
**MERGER PROCEDURE**

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Decision on the implementation of remedies

Date: 26.05.2016



## EUROPEAN COMMISSION

Brussels, 26.05.2016  
C(2016) 3326 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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  
IMPLEMENTATION OF  
COMMITMENTS

### To the notifying party:

Dear Sir/Madam,

**Subject: Case M.7541 – IAG/AER LINGUS**  
**Approval of the special prorated agreement between Aer Lingus and Virgin Atlantic Airways in accordance with the commitments annexed to the Decision of 14 July 2015**

### 1. FACTS AND PROCEDURE

1. By decision of 14 July 2015 ("the Decision") based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004,<sup>1</sup> the Commission declared the operation by which International Consolidated Airlines Group, S.A. ("IAG", United Kingdom) acquired sole control of the whole of Aer Lingus Group, plc. ("Aer Lingus", Republic of Ireland) (the "Transaction") compatible with the internal market subject to conditions and obligations (the "Commitments").

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<sup>1</sup> 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.

## 1.1. Monitoring Trustee

2. The Commitments provide for the appointment of a Monitoring Trustee. On 24 July 2015, the Commission approved Advolis SA as the Monitoring Trustee in this case. IAG subsequently appointed Advolis SA as the Monitoring Trustee.

## 1.2. The SPA Commitments

3. The Commitments provide in particular that, at the request of an Eligible Air Service Provider<sup>2</sup> ("the Applicant"), Aer Lingus shall enter with such airline into a special prorate agreement ("SPA") for traffic:
  - with a true origin/destination at the Relevant Short-Haul Origin/Destination City,<sup>3</sup>
  - and a true destination/origin in one or more of the Relevant Long-Haul Destination/Origin Cities.<sup>4</sup>
4. An SPA, in particular, is intended to set out the terms for revenue distribution between the parties to the agreement. The purpose of the SPA Commitments is to sustain the feeder traffic of carriers competing against IAG on a series of major long-haul routes

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<sup>2</sup> Defined in Section 1 of the Commitments as "*Alliance or affiliated with any member of that alliance and which: operates new or increased Competitive Air Service on a Relevant London-Irish City Pair (in the case of an airline requesting IAG to enter into a fare combinability agreement under these Commitments; or operates or will operate a non-stop service between the Relevant Hub Airport and the Relevant Long-Haul Destination/Origin City/ies (in the case of an airline requesting Aer Lingus to enter into a Special Prorate Agreement under these Commitments))*".

<sup>3</sup> Defined in Section 1 of the Commitments as "*With respect to feeder routes to/from London Heathrow, London Gatwick, Manchester and/or Amsterdam means the Relevant Irish Airports [i.e. Belfast, Cork, Dublin, Knock, Shannon]. With respect to feeder routes to/from Shannon and/or Dublin means airports in Europe from/to which Aer Lingus operates Frequency to/from Shannon or Dublin (as relevant) at the time that the Requesting Air Services Provider applies for a Special Prorate Agreement pursuant to these Commitments and which continue to be so operated by Aer Lingus whilst the relevant Special Prorate Agreement is in force*".

<sup>4</sup> Defined in Section 1 of the Commitments as "*With respect to air services operated by the Requesting Air Services Provider at London Heathrow: Boston (BOS), Chicago (ORD), Houston (IAH), Los Angeles (LAX), Miami (MIA), New York (EWR and JFK), San Francisco (SFO), Washington (IAD), Calgary (YYC), Montreal (YUL), Toronto (YYZ), Vancouver (YVR), Hong Kong (HKG), Seoul (ICN), Shanghai (PVG), Singapore (SIN), Tokyo (NRT), Riyadh (RUH), Tel Aviv (TLV), Cape Town (CPT), Johannesburg (JNB) and Sydney (SYD). With respect to air services operated by the Requesting Air Services Provider at London Gatwick: Las Vegas (LAS), Orlando (MCO), Cancun (CUN) and Bridgetown (BGI). With respect to air services operated by the Requesting Air Services Provider at Manchester: Las Vegas (LAS), Orlando (MCO) and Bridgetown (BGI). With respect to air services operated by the Requesting Air Services Provider at Amsterdam: Abu Dhabi (AUH), Doha (DOH), Dubai (DXB), Bangkok (BKK), Beijing (PEK), Hong Kong (HKG), Tokyo (NRT), Singapore (SIN), Cairo (CAI), Lagos (LOS), Johannesburg (JNB), Rio de Janeiro (GIG), São Paulo (GRU), Toronto (YYZ) and Vancouver (YVR). With respect to air services operated by the Requesting Air Services Provider at Shannon: Chicago (ORD). With respect to air services operated by the Requesting Air Services Provider at Dublin: Chicago (ORD)*".

out of London Heathrow, London Gatwick, Manchester, Amsterdam, Shannon and Dublin airports ("Relevant Airports Hubs").<sup>5</sup>

5. At the request of the Applicant, the SPA shall apply to all of the non-stop air services operated by the Applicant between a Relevant Airport Hub and a Relevant Long-Haul Destination/Origin City (the "Long-Haul Airport Pair").<sup>6</sup>
6. In order to be eligible for an SPA for a given Relevant Long-haul Destination / Origin City under the SPA Commitments, the Applicant must meet the following criteria:
  - the Applicant is not a member of the **oneworld** Alliance or affiliated with any member of that alliance;
  - the Applicant operates new or increased a non-stop service between the Relevant Hub Airport and the Relevant Long-Haul Destination/Origin City/ies;
  - the Applicant must not, alone or in combination with carriers who are members of the same alliance, have Hubs<sup>7</sup> at both ends of the Long-Haul Airport Pair.
7. Pursuant to clause 4.3 of the Commitments, the Applicant may request an SPA to/from one or more of the Relevant Short-Haul Origin/Destination Cities to one or more of the Relevant Long-Haul Destination/Origin Cities *via* the Relevant Airport Hub(s). In the case of travel *via* Heathrow, Gatwick, Manchester and/or Amsterdam, this is limited to the Relevant Irish Airports,<sup>8</sup> in the case of travel *via* Shannon, this is limited to up to five (5) Relevant Short-Haul Origin/Destination Cities and in the case of travel *via* Dublin, this is limited to up to twenty (20) Relevant Short-Haul Origin/Destination Cities. It is understood that the SPA shall only apply to Frequencies on the Feeder Routes Operated by Aer Lingus (as defined in the Commitments).<sup>9</sup>

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<sup>5</sup> See Section 1 of the Commitments.

<sup>6</sup> See Section 4.1 of the Commitments.

<sup>7</sup> Defined in Section 1 of the Commitments as "An airport at which an airline, airline joint business and/or Alliance operates long-haul and/or short-haul air passenger transport services and where there are a material number of connections between such services".

<sup>8</sup> Defined in Section 1 of the Commitments: "The Relevant Irish Airports are Airports in the following cities on the island of Ireland: Belfast, Cork, Dublin, Knock, Shannon".

<sup>9</sup> Defined in Section 1 of the Commitments: "With respect to feeder routes to/from Shannon and/or Dublin means Frequencies operated by Aer Lingus from/to Shannon or Dublin (as relevant) to/from the Relevant Short-Haul Origin/Destination City. With respect to feeder routes to/from London Heathrow, London Gatwick, Manchester, and/or Amsterdam means the average number of non-stop daily Frequencies which were operated by Aer Lingus during the IATA seasons winter 2014/15 or summer 2015 (as relevant) on the feeder routes between the Relevant Irish Airport and the Relevant Airport Hub. The number of Frequencies in a given IATA season shall be increased if, after the Effective Date, Aer Lingus operates additional Frequencies on the relevant feeder route in the corresponding IATA season. The number of Frequencies in a given IATA season shall be decreased if, after the Effective Date, Aer Lingus operates fewer Frequencies on the relevant feeder route in the corresponding IATA season. The number of Frequencies shall not, however, be decreased insofar as another IAG-owned operating company increases Frequency on the relevant feeder route less than two IATA seasons before or after Aer Lingus reduces Frequency on the same feeder route, in which case the Special Prorate Agreement shall apply to those increased IAG Frequencies."

8. A detailed methodology is set out in the Commitments to determine the fare classes that the applicant is entitled to select for inclusion into the SPA, as well as the other terms of the SPA, notably with respect to fares and interline service charges. The basic principle underpinning this methodology is that the terms of an SPA entered into pursuant to the Commitments must be at least as favourable as the corresponding terms agreed on and applied by Aer Lingus under an existing special prorate agreement with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair. However, certain SPAs (or the individual terms thereof) may be excluded from the set of benchmark SPAs (or benchmark terms) because it would be unreasonable to include them (e.g. *de minimis* or obsolete SPAs as well as SPAs or terms thereof which are considered exceedingly favourable).<sup>10</sup> In addition, codeshare and interline terms are excluded in certain cases.<sup>11</sup>
9. Pursuant to clause 4.6 of the Commitments, the SPA shall be concluded on terms at least as favourable as terms agreed by IAG with any other airline (the "most-favoured nation" condition), it shall grant the Applicant equivalent seat inventory access to that given by Aer Lingus under existing special prorate agreements with any other carrier for the same feeder route between the Relevant Short-Haul Origin/Destination City and the Relevant Airport Hub to provide feeder traffic for the same Long-Haul Airport Pair and in any event no worse than as between Aer Lingus and other IAG carriers (unless, in each case, the terms are excluded by virtue of Clause 4.8).
10. Pursuant to clause 4.11 of the Commitments, the SPA must have an effective duration of up to five (5) years at the choice of the Applicant. Thereafter, or if it elects to have a shorter initial duration, the Applicant has a right to renew the agreement on an ever-green basis for further periods of up to two (2) years (rolled over on the same terms).
11. Clause 4.16 of the Commitments sets out the conditions under which an SPA can lapse automatically, namely in case the Applicant ceases to operate a service on the relevant Long-Haul Airport Pair; or joins an alliance, or becomes affiliated with a member of an alliance, with Hubs at both the Relevant Airport Hub and at the Relevant Long-Haul Destination/Origin City.<sup>12</sup>
12. The Applicant may ask the Monitoring Trustee to verify whether the terms proposed by Aer Lingus for this SPA comply with the Commitments.<sup>13</sup>
13. When an SPA has been entered into pursuant to the Commitments, Aer Lingus shall not deconcur the Applicant from routes and fare classes covered by the SPA. Aer Lingus shall also not deconcur the Applicant from particular fare classes or routes which it currently prorates under the IATA Multilateral Prorate Agreement ("IATA MPA"),

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<sup>10</sup> Clause 4.8 of the Commitments provides criteria enabling to determine whether an SPA is *de minimis*, obsolete or exceedingly favourable (whether in its entirety or with respect to some of its terms).

<sup>11</sup> See clause 4.6 and 4.8 of the Commitments.

<sup>12</sup> Specific terms are set out for the termination of any SPA entered into to provide feeder traffic for the Dublin–Chicago Relevant Long-Haul Airport Pair. See Clause 4.16 (b) of the Commitments.

<sup>13</sup> See Clause 4.17 of the Commitments.

where the Applicant's rates cover Aer Lingus' marginal costs of carriage. Any Ticketing Time limits ("TTLs") applied to bookings made under any SPA entered into pursuant to these Commitments shall be no less favourable than the TTLs applied by Aer Lingus to any other bookings made on the applicable Aer Lingus operated routes.<sup>14</sup>

14. The conclusion of an SPA pursuant to the Commitments is subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.<sup>15</sup>

### **1.3. Virgin's application**

15. On 10 November 2015, Virgin Atlantic Airways Limited ("Virgin") made a request to Aer Lingus to conclude an SPA pursuant to the Commitments with respect to routes between London Heathrow, London Gatwick, Manchester and the Relevant Irish Airports.
16. As regards the behind / beyond Relevant Short-Haul Origin/Destination Cities to be covered by the SPA, Virgin requested feeder routes to/from London Heathrow, London Gatwick, Manchester from/to the Relevant Irish Airports (Belfast, Cork, Dublin, Knock and Shannon), the set of Relevant Long-Haul Destination/Origin Cities varying according to the routings *via* the Relevant Airport Hubs as follows:
  - *via* London Heathrow: Boston (BOS), Chicago (ORD), Los Angeles (LAX), Miami (MIA), New York Newark (EWR), San Francisco (SFO), New York JFK (JFK), Washington (IAD), Hong Kong (HKG), Shanghai (PVG) and Johannesburg (JNB)
  - *via* London Gatwick: Las Vegas (LAS), Orlando (MCO), Cancun (CUN) and Bridgetown (BGI)
  - *via* Manchester: Las Vegas (LAS), Orlando (MCO) and Bridgetown (BGI)
17. Virgin requested to have access to the same booking classes as in its existing SPA with Aer Lingus.
18. On 8 December 2015, Aer Lingus proposed a first draft of the SPA. The Monitoring Trustee requested information from Aer Lingus notably with respect to the SPAs concluded by Aer Lingus with third parties, which had to be used to establish the terms of the future SPA between Aer Lingus and Virgin.<sup>16</sup>
19. Further to discussions between the Monitoring Trustee, Aer Lingus and Virgin, Aer Lingus provided a revised draft of the SPA on 18 December 2015. In particular, the revised draft SPA included, in addition to Dublin airport, also all the Relevant Irish Airports (namely, Belfast, Cork, Dublin, Knock, Shannon).

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<sup>14</sup> See Clause 4.19 of the Commitments.

<sup>15</sup> See Clause 4.18 of the Commitments.

<sup>16</sup> The SPAs used as benchmark SPAs on a route-by-route basis according to clause 4.10 of the Commitments are as follows: SPAs concluded between, on the one hand, Aer Lingus and, on the other hand, [ BUSINESS SECRET ]. See Annex 1 to the Monitoring Trustee report.

20. The Monitoring Trustee engaged in further discussions with the Commission, Aer Lingus and Virgin with a view to resolving outstanding issues, mainly relating to booking class mapping. As a result, Aer Lingus proposed a number of amendments to its initial draft on 27 January, 11 February, 29 March, on 6 May and on 9 May 2016 respectively.
21. The final draft SPA was proposed by Aer Lingus on 10 May 2016 and was agreed for signature by Virgin on 12 May 2016 ("the Final SPA"). The Final SPA is due to apply to tickets issued from 01 June 2016.

#### **1.4. The Final SPA**

22. The most relevant provisions of the Final SPA are the following:
  - the Final SPA applies to the Relevant Long-Haul Destination / Origin Cities and the Relevant Short-Haul Origin / Destination Cities included in Virgin's request;
  - The Final SPA applies to published and unpublished fares in up to 6 booking classes (the exact number of booking classes depending on the routes concerned);
  - Clause 3.4 of the Final SPA sets out one way net prorata amounts per booking class to be paid by Virgin to Aer Lingus for each of the specified behind / beyond Relevant Short-Haul segments connecting to the various Relevant Long-Haul services via the Relevant Irish Airport operated by Virgin and covered by the agreement;
  - the Final SPA requires Aer Lingus to provide Virgin with equivalent inventory access as it gives to all carriers, in conformity with Clause 4.6(b) of the Commitments;
  - the Final SPA has an initial duration of up to five years. It envisages that in the event that Virgin ceases to operate a Relevant Long-Haul sector covered by the agreement, the Final SPA will lapse in respect of that long-haul sector. Virgin may renew the agreement on an evergreen basis for further periods of up to two years (rolled over on the same terms) as long as the Commitments are in force. Virgin may also terminate the Final SPA at any time during the initial term or the extensions. The Final SPA would lapse automatically with respect to any of the Relevant Long-haul Destination / Origin City if Virgin joined an existing alliance or was controlled by a member of an alliance with Hubs at the Relevant Airport Hub and the Relevant Long-Haul Destination / Origin City.
23. On 17 May 2016, the Monitoring Trustee submitted to the Commission its detailed report regarding the Final SPA, positively assessing the eligibility of Virgin and the proposed rates of the Final SPA and concluding that the terms of the signed agreement were in line with the Commitments.<sup>17</sup>

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<sup>17</sup> The Trustee supplemented his report on 20 May 2016 expressly concluding that Virgin is an Eligible Air Services Provider for the Relevant Hub Airports and the Relevant Long-Haul Destination/Origin Cities.

## 2. ASSESSMENT

### 2.1. Eligibility of the applicant

24. Virgin is neither a member of the **oneworld** alliance nor affiliated with any member of that alliance. Moreover, Virgin provides non-stop services from London Heathrow, London Gatwick, and Manchester airports to each of the Relevant Long-haul Destination / Origin Cities mentioned in Section 1.3 above, and included in the Final SPA, and has no Hub at any end of the Long-Haul Airport Pair, either alone or in combination with carriers which are part of the same alliance.<sup>18</sup>
25. Therefore, Virgin is eligible for an SPA within the meaning of Clause 4.2 of the Commitments.

### 2.2. Assessment of the Final SPA

26. The Relevant Long-haul Destination / Origin Cities and the Relevant Short-haul Origin / Destination Cities covered by the Final SPA fall within the scope of the Commitments.
27. The terms of the Final SPA, including rates, are at least as favourable as the terms agreed with any other airline, in accordance with the Commitments. In particular, the rates offered on the requested routes are based on the most favourable rates offered by Aer Lingus to Virgin or other carriers for the same feeder route in existing SPAs, in line with clauses 4.6 (a) and 4.7 of the Commitments. [ BUSINESS SECRET ]
28. Besides, the terms of the Final SPA provide Virgin with equivalent inventory access to that given by Aer Lingus under existing special prorate agreement with any other carrier for the same feeder route between the Relevant Short-Haul Origin / Destination City and the Relevant Airport Hub to provide feed to the same Relevant Long-haul Destination / Origin City and in any event no worse than as between Aer Lingus and other IAG carriers, as the inventory access will be determined by the Aer Lingus booking classes used by Virgin and there is no contractual restriction to this access in the Final SPA .<sup>19</sup>
29. Also, the minimum connecting times for Virgin onto Aer Lingus' services out of the Relevant Airport Hubs, and for Aer Lingus onto Virgin's services out of the Relevant Airport Hubs, are reasonable and based on standard practices at the Relevant Airport Hubs, apart from some exceptions which were introduced by Virgin itself.
30. Finally, the terms of the Final SPA relating to duration, renewal, termination and periodic renegotiation are consistent with the Commitments.
31. On this basis, it is concluded that the terms of the Final SPA are reasonable and consistent with the Commitments.

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<sup>18</sup> While Virgin is 49% co-owned by Delta Airlines which is a member of the SkyTeam Alliance, Virgin is not a member of any alliance.

<sup>19</sup> Annex 1 to the Monitoring Trustee report.

3. **OVERALL CONCLUSION**

32. On the basis of its own analysis, taking account of the report of the Monitoring Trustee, the Commission considers that the terms of the Final SPA are reasonable and compliant with the Commitments. Therefore, the Commission approves this SPA pursuant to Clause 4.18 of the Commitments.
33. This decision only constitutes approval of the SPA. It does not constitute a confirmation that Aer Lingus has complied with the Commitments.
34. This decision is based on Clause 4.18 of the Commitments.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*