

## COMMITMENTS PACKAGE

### CASE COMP/37984 SkyTeam

Pursuant to Article 9(1) of Council Regulation (EC) 1/2003 as amended (“Regulation 1/2003”), Aerovías de México S.A, Alitalia-Linee Aeree Italiane S.p.A., České Aerolinie a.s., Delta Air Lines, Inc., Koninklijke Luchtvaart Maatschappij N.V., Korean Air Lines Co. Ltd, Northwest Airlines, Inc., and Société Air France (together the “Parties”) submit the commitments specified below (the “Commitments”) to enable the European Commission (the “Commission”) to adopt a decision pursuant to Article 9 of Regulation 1/2003 that there are no longer grounds for action (the “Commitment Decision”).

These Commitments are offered exclusively in the context of the nine-party proceedings in Case COMP/37984 SkyTeam and are without prejudice to the position of any of the Parties in any other proceedings that the Commission might conduct under Regulation 1/2003 or Regulation 139/2004.

This text shall be interpreted in the light of the Commitment Decision, in the general framework of Community law and in particular in the light of Article 81 of the EC Treaty and Regulation 1/2003.

## 0 DEFINITIONS

### Competitive Air Service

- a non-stop scheduled passenger air service on any of the Long-Haul City Pairs to/from destinations in the United States which is operated on a daily basis (or in any case not less than six (6) times a week)
- a non-stop scheduled passenger air service on any of the Long-Haul City Pairs to/from destinations outside the United States which is operated at least three (3) frequencies per week
- a scheduled passenger air service operated by a Prospective New Entrant via a European hub or any US airport on any of the Long-Haul City Pairs, provided the service is operated on a daily basis (or in any case not less than six (6) times a week where the destination is in the United States and not less than three (3) times a week where the destination is outside the United States), the connecting time is not more than 150 minutes and the total elapsed time of the indirect service is not more than 240 minutes longer than the elapsed time of the direct service, or
- a non-stop scheduled passenger air service on any of the European City Pairs which is operated at least five days a week, Monday to Friday, provided that the spread between the earliest departure time and the latest departure time for a flight using the same flight number Monday to Friday is not more than 60 minutes

### Effective Date

the date of notification of the Commitment Decision to the Parties

**European City Pairs**

Amsterdam-Prague, Milan-Prague, Paris-Prague, Rome-Prague

**FFP (Frequent Flyer Programme)**

a programme offered by airlines to reward customer loyalty under which airline passengers enrolled in the programme accrue points for travel on that airline that can be redeemed for free air travel, as well as allowing passengers to have increased benefits, such as airport lounge access or priority bookings

**IATA Scheduling Conference**

an industry conference of airlines and airport coordinators worldwide to address scheduling issues where there are discrepancies between the slots required by airlines and the slots allocated by the airport coordinators. The IATA scheduling conference for the winter season takes place in mid-June; the conference for the summer season takes place in mid-November in the preceding calendar year

**IATA Scheduling Period or IATA Season**

the IATA summer scheduling period, or IATA Summer season, starts on the fourth Sunday in March and ends on the Saturday preceding the fourth Sunday in October; the IATA winter scheduling period, or IATA Winter season, starts on the fourth Sunday in October and ends on the Saturday preceding the fourth Sunday in March in the following calendar year

**Interline Agreement**

an agreement between two or more airlines under which the contracting airlines accept each other's travel documents (tickets)

**Intermodal Partner**

has the meaning given to it in Paragraph 8.1

**Long-Haul City Pairs**

Amsterdam-Detroit, Amsterdam-Minneapolis, Milan-New York City, Paris-Atlanta, Paris-Cincinnati, Paris-Seoul, Rome-Atlanta

**MITA**

the Multilateral Interline Traffic Agreements Manual published by the International Air Transport Association

**Monitoring Trustee**

an individual or institution, independent of the Parties, who is approved by the Commission and appointed by the Parties and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Commitment Decision

**New Air Service Provider**

either

- an airline that commences a new non-stop service on a European City Pair or that increases the number of frequencies it operates on a European City Pair; or
- an airline (or any combination of airlines) that individually or collectively by codeshare provide(s) a new or additional Competitive Air Service on a Long-Haul City Pair

**Prospective New Entrant**

any airline (or any combination of airlines) able to offer a Competitive Air Service individually or collectively by codeshare and needing a slot or slots to be made available by the Parties in accordance with the Commitment(s) to operate a Competitive Air Service;

for the avoidance of doubt,

- a Prospective New Entrant must be independent of and unconnected to the Parties
- a Prospective New Entrant must be a viable actual or potential competitor, with the ability, resources and commitment to operate a Competitive Air Service

**Slot Return Date**

31 January for the following IATA Summer season and 31 August for the following IATA Winter season

**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

**Standard Slot Allocation Procedure**

has the meaning given to it in Paragraph 3.1

**1 SLOTS FOR LONG-HAUL CITY PAIRS**

**A COMMITMENT TO MAKE SLOTS AVAILABLE ON HUB-TO-HUB CITY PAIRS WHERE MEMBERS OF SKYTEAM ARE THE ONLY AIRLINES CURRENTLY OFFERING A NON-STOP SCHEDULED PASSENGER AIR SERVICE**

**Amsterdam-Detroit**

- 1.1** The Parties undertake to make slot(s) available at Amsterdam to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Amsterdam-Detroit.

**Amsterdam-Minneapolis**

- 1.2** The Parties undertake to make slot(s) available at Amsterdam to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Amsterdam-Minneapolis.

**Paris-Atlanta**

- 1.3** The Parties undertake to make slot(s) available at Paris to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Paris-Atlanta.

**Paris-Cincinnati**

- 1.4** The Parties undertake to make slot(s) available at Paris to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Paris-Cincinnati.

**Paris-Seoul**

- 1.5 The Parties undertake to make slot(s) available at Paris to allow up to two Prospective New Entrants each to operate a new or additional Competitive Air Service on Paris-Seoul.

**Rome-Atlanta**

- 1.6 The Parties undertake to make slot(s) available at Rome to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Rome-Atlanta.

**Provisions applicable to all long-haul hub-to-hub city pairs**

- 1.7 The Parties will make slots available to a Prospective New Entrant selected in accordance with Clause 4.
- 1.8 The Parties will inform the Monitoring Trustee and the Commission of the announced commencement by an airline of a new or additional service to be operated on a long-haul hub-to-hub city pair that does not use slots made available by the Parties as soon as possible following the announcement of that service. The Commission will confirm to the Parties, in accordance with Clause 4, whether or not such new or additional service satisfies the definition of a Competitive Air Service with respect to that Long-Haul City Pair once such service is commenced.
- 1.9 The Parties will also inform the Monitoring Trustee and the Commission each IATA Season of the announcement by an airline operating a non-stop scheduled passenger air service on any of the long-haul hub-to-hub city pairs that it is to reduce the number of non-stop frequencies on the city pair or to cancel its service.

**B COMMITMENT TO MAKE SLOTS AVAILABLE ON OTHER CITY PAIRS WHERE ONE OR MORE OTHER AIRLINES ALREADY OPERATE A COMPETING NON-STOP SCHEDULED PASSENGER AIR SERVICE**

**Milan-New York City**

- 1.10 The Parties undertake to make slot(s) available at Milan to allow one Prospective New Entrant to operate a new or additional Competitive Air Service on Milan-New York.

**Provisions applicable to all other long-haul city pairs**

- 1.11 The Parties will make slots available to a Prospective New Entrant selected in accordance with Clause 4.
- 1.12 The Parties will inform the Monitoring Trustee and the Commission of the announced commencement by a carrier of a new or additional service to be operated on any other long-haul city pair that does not use slots made available by the Parties as soon as possible following the announcement of that service. The Commission will confirm to the Parties, in accordance with Clause 4, whether or not such new or additional service satisfies the definition of a Competitive Air Service with respect to that Long-Haul City Pair once such service is commenced.
- 1.13 The Parties will also inform the Monitoring Trustee and the Commission each IATA Season of the announcement by an airline operating a non-stop scheduled passenger air service on any of the other long-haul city pairs that it is to reduce the number of non-stop frequencies on the city pair or to cancel its service.

## 2 SLOTS FOR EUROPEAN CITY PAIRS

### Underlying scope of the commitment for the European City Pairs

- 2.1** The Parties undertake to make slot(s) available at Amsterdam and/or Milan and/or Paris and/or Prague and/or Rome to allow one or more Prospective New Entrant(s) to operate one or more Competitive Air Services on the European City Pairs mentioned in Paragraph 2.2.
- 2.2** The Parties' shall be obliged to make available to Prospective New Entrants the number of slots needed to support in aggregate:
- for flights between **Amsterdam and Prague**: up to two (2) Competitive Air Services
  - for flights between **Milan and Prague**: up to two (2) Competitive Air Services
  - for flights between **Paris and Prague**: up to three (3) Competitive Air Services and
  - for flights between **Rome and Prague**: up to one (1) Competitive Air Service.
- 2.3** For as long as the Parties' obligation to make slots available to a Prospective New Entrant on a European City Pair is not exhausted, at the request of an airline operating a non-stop scheduled passenger air service that is not a Competitive Air Service, the Parties undertake to make slot(s) available to that airline in accordance with Paragraph 3.5 so that its service satisfies the definition.
- 2.4** When a Prospective New Entrant indicates that it wishes to launch its Competitive Air Service six or seven days a week, the Parties undertake to make slot(s) available on Saturday or Sunday.

### Provisions applicable to all European City Pairs

- 2.5** The Parties will make slots available to a Prospective New Entrant selected in accordance with Clause 4.
- 2.6** Subject to the Commission's confirmation of the competitiveness of the service (which on PRG-ROM may reflect fluctuations in demand in the course of a season), the frequencies of a Competitive Air Service operated by an airline independent of and unconnected to the Parties on a European City Pair shall be counted against the number of frequencies to be supported by the Parties' Commitments under Paragraph 2.2.
- 2.7** The Parties will inform the Monitoring Trustee and the Commission of the announced commencement by an airline of a new or additional or improved service to be operated on a European City Pair that does not use slots made available by the Parties as soon as possible following the announcement of that service. The Commission will confirm to the Parties, in accordance with Clause 4, whether or not such new or additional service satisfies the definition of a Competitive Air Service with respect to that European City Pair once such service is commenced.
- 2.8** The Parties will also inform the Monitoring Trustee and the Commission each IATA Season of the announcement by an airline operating a Competitive Air Service on any of the European City Pairs that it is to reduce the number of Competitive Air Services on the city pair Monday to Friday or to cancel its service.

### 3 CONDITIONS APPLICABLE TO SLOTS

**3.1** At least three (3) weeks prior to the IATA Scheduling Conference for the traffic season in which the Prospective New Entrant intends to commence a new or additional Competitive Air Service, the Prospective New Entrant shall notify the Parties of its intention to request slots pursuant to the Commitments. A Prospective New Entrant shall be eligible to receive slots pursuant to these Commitments only if it can demonstrate that all reasonable efforts to obtain slots for the Long-Haul or European City Pair(s) through the normal workings of the slot allocation procedure before the beginning of the relevant IATA traffic season (the "Standard Slot Allocation Procedure") have failed. To this end, the Prospective New Entrant shall apply for these slots at the forthcoming IATA Scheduling Conference through the Standard Slot Allocation Procedure and maintain an "open book" policy for the airports concerned during the entire period between the notification to the Parties of its intention to apply for slots in order to operate services on a Long-Haul or European City Pair and the end of the respective IATA Scheduling Period, including the allocation of slots by the coordinator from the waitlist following the Slot Return Date.

**3.2** The Prospective New Entrant will be deemed not to have exhausted all reasonable efforts to obtain slots if, in the case of a Long-Haul City Pair:

- (i) slots were obtained through the Standard Slot Allocation Procedure within ninety (90) minutes of the times requested, but such slots have not been accepted by the Prospective New Entrant; and/or slots were obtained through the Standard Slot Allocation Procedure more than ninety (90) minutes from the times requested and the Prospective New Entrant did not give the Parties the opportunity to exchange those slots for slots within ninety (90) minutes of the times requested and/or
- (ii) a request for slots at Paris Orly is made using the Standard Slot Allocation Procedure by a Prospective New Entrant (x) that does not serve Paris at all or (y) that already operates long haul services from both Paris CDG and Paris ORY, without a request for slots for the same City Pair being made simultaneously at Paris CDG, if fewer slots would in fact need to be made available by the Parties under the Commitments at CDG than at ORY, and if the Prospective New Entrant declines to operate from CDG.

**3.3** The Prospective New Entrant will, similarly, be deemed not to have exhausted all reasonable efforts to obtain slots if, in the case of a European City Pair:

- (i) slots were obtained through the Standard Slot Allocation Procedure within thirty (30) minutes of the times requested, but such slots have not been accepted by the Prospective New Entrant; and/or slots were obtained through the Standard Slot Allocation Procedure more than thirty (30) minutes from the times requested and the Prospective New Entrant did not give the Parties the opportunity to exchange those slots for slots within thirty (30) minutes of the times requested; and/or
- (ii) when the quality of an existing service is to be improved, the Prospective New Entrant did not give the Parties the opportunity to exchange slots already held by the Prospective New Entrant and used to operate flights on the European City Pair on an irregular basis, which are not to be used for the improved service, for slots within thirty (30) minutes of the times requested and/or
- (iii) a request for slots at Paris Orly is made using the Standard Slot Allocation Procedure by a Prospective New Entrant (x) that does not serve Paris at all or (y)

that already operates intra-European services from both Paris CDG and Paris ORY, without a request for slots for the same City Pair being made simultaneously at Paris CDG, if fewer slots would in fact need to be made available by the Parties under these Commitments at CDG than at ORY, and if the Prospective New Entrant declines to operate from CDG and/or

- (iv) a request for slots at Milan Linate is made using the Standard Slot Allocation Procedure by a Prospective New Entrant (x) that does not serve Milan at all or (y) that already operates intra-European services from LIN and Milan Malpensa and/or BGY, without a request for slots for the same City Pair being made simultaneously at MXP and BGY, if fewer slots would in fact need to be made available by the Parties under these Commitments at MXP or BGY than at LIN, and if the Prospective New Entrant declines to operate from MXP or BGY.

- 3.4** On the basis that Paris CDG and Paris ORY airports are substitutable for intra-European services, Prospective New Entrants may request slots at either CDG or ORY. Paragraph 3.3(iii) preserves the proportionality of the Commitments. However, in the specific circumstances of this case, a Prospective New Entrant ordinarily caught by provisos (x) and (y) of Paragraph 3.3(iii) that does not request slots at both airports will not be deemed to have failed to take all reasonable efforts to obtain slots.
- 3.5** The slots made available by the Parties shall be within ninety (90) minutes in the case of a Long-Haul City Pair and within thirty (30) minutes in the case of a European City Pair of the time requested by the Prospective New Entrant, if the Parties have slots within this time-window. Landing and take-off slots shall be such as to allow for reasonable aircraft rotation. In the event that the Parties do not have slots within this time-window, they shall offer to make available the slots closest in time to the Prospective New Entrant's request. The Parties do not have to make slots available, however, if the slots that the Prospective New Entrant can obtain through the Standard Slot Allocation Procedure are closer in time to the Prospective New Entrant's request than the slots that the Parties have available.
- 3.6** Requests for slots to the slot coordinator and to the Parties shall be renewed by the Prospective New Entrant for each subsequent IATA Scheduling Season.
- 3.7** Where one or more slots have been made available by the Parties, the New Air Service Provider shall remain under a continuing obligation to make all reasonable efforts to obtain suitable slots at Amsterdam, Milan, Paris, Prague and/or Rome airports enabling it to provide a Competitive Air Service through the Standard Slot Allocation Procedure.
- 3.8** If the New Air Service Provider has obtained slots from the Parties pursuant to these Commitments for a particular IATA Season and requests for the following IATA Season some or all of the slots at the same times as the slots made available by the Parties, the Parties shall make slots available to the New Air Service Provider at the same time as in the previous IATA Season, unless the Parties do not hold a slot at that time in the latter season, in which case they shall make available a slot as close as possible in time to the slot made available in the preceding IATA Season, provided always the New Air Service Provider has complied with the conditions and procedure described above.
- 3.9** Subject to Paragraph 3.8, where one or more slots have been made available by the Parties for a particular IATA Season, the Parties shall remain under a continuing obligation to make slots available to the New Air Service Provider for later IATA Seasons until such time as the Commission modifies the Parties' Commitments as they affect that City Pair pursuant to Article 9(2)(a) of Regulation 1/2003.

- 3.10** For the purposes of these Commitments, it is understood that a single daily connecting service departing from (or arriving at) Amsterdam, Milan, Paris, Prague or Rome can constitute part of a new or additional Competitive Air Service on more than one Long-Haul or European City Pair.
- 3.11** Where a Prospective New Entrant which has obtained slots pursuant to these Commitments decides:
- not to commence services on a Long-Haul or European City Pair (un-used slots),
  - to operate a lower number of frequencies or to cease operating on a Long-Haul or European City Pair (misused or under-used slots) or
  - not to use the slots on the Long-Haul or European City Pair (improperly used slots),
- it shall inform the Parties in writing and return those un-used, misused, under-used or improperly used slots to the Parties immediately. In these circumstances, the Parties shall make the returned slots available to any other Prospective New Entrant.
- 3.12** For the purposes of Paragraph 3.11, a Prospective New Entrant will be deemed to have ceased operating on a Long-Haul or European City Pair if it has not used at least 80% of its slots during the IATA Season for which they had been allocated for services on the city pair in question unless such non-use of the slots is justified on one of the grounds referred to in Article 10(5) of Regulation 95/93, as amended most recently by Regulation 793/2004. Should a Prospective New Entrant be considered to have ceased operating the Long-Haul or European City Pair pursuant to Paragraph 3.11, the Parties may refuse to surrender slots to this Prospective New Entrant to operate services on this Long-Haul or European City Pair in the future. For good order, the Monitoring Trustee shall record these facts in the next report that the Monitoring Trustee files with the Commission pursuant to Paragraph 10.3.
- 3.13** Should the New Air Service Provider notify the Parties too late in an IATA Season for the Parties to be able to use a returned slot pursuant to Article 10(2) of Regulation 95/93, either with immediate effect or after the deadline provided for in Article 10(3) of that Regulation and before the effective start of the IATA Season, the Parties shall be entitled to require the Prospective New Entrant to transfer to them a comparable slot as compensation in the event the slot is lost. If, for any reason, the Prospective New Entrant is unable to transfer to the Parties a comparable slot, the Parties may justify the non-use of the surrendered slot on the basis of Article 10(5) of Regulation 95/93 in order to recover and retain the unused slot.
- 3.14** Slots made available by the Parties under these Commitments shall be offered without compensation.
- 3.15** To ensure that any slots made available by the Parties are used in the manner prescribed in these Commitments, a mechanism shall be agreed by the Parties and the Prospective New Entrant, and approved by the Commission, that will allow the Monitoring Trustee to verify that the slots are being used properly and efficiently.



#### 4 SELECTION PROCEDURE, ROLE OF THE MONITORING TRUSTEE AND APPROVAL OF THE COMMISSION

- 4.1 A Prospective New Entrant wishing to obtain slots from the Parties pursuant to these Commitments shall notify the Parties of its intention to apply for these slots at the forthcoming IATA Scheduling Conference within the time period specified in Paragraph 3.1. A copy of this notification shall be sent immediately by the Parties to the Monitoring Trustee and to the Commission at the following address:

Commission of the European Communities  
DG Competition for Competition  
Antitrust Registry (COMP/37984)  
rue de la Loi/Wetstraat 200  
B-1049 Bruxelles/Brussel  
  
Fax: +32 2 295 01 28

- 4.2 Should a Prospective New Entrant be unable to obtain slots through the Standard Slot Allocation Procedure at the IATA Scheduling Conference for the traffic season in which services are intended to commence or in which the quality of an existing service is to be improved, it shall apply to the Parties for slots within one (1) week following the end of that IATA Scheduling Conference. A copy of the Prospective New Entrant's application shall be sent by the Prospective New Entrant to the Monitoring Trustee and to the Commission at the address indicated in Paragraph 4.1 at the same time as it is sent to the Parties.
- 4.3 The application shall give details of and take into account slots obtained at the IATA Scheduling Conference within ninety (90) minutes of the times requested in the case of a Long-Haul City Pair and give the Parties the opportunity to exchange slots obtained more than ninety (90) minutes from the times requested, for slots of the Parties within ninety (90) minutes of the times requested pursuant to Paragraph 3.1. The application shall, similarly, give details of and take into account the slots obtained at the IATA Scheduling Conference within thirty (30) minutes of the times requested in the case of a European City Pair and give the Parties the opportunity to exchange slots obtained more than thirty (30) minutes from the times requested for slots of the Parties within thirty (30) minutes of the times requested pursuant to Paragraph 3.1.
- 4.4 Within two (2) weeks following the end of the IATA Scheduling Conference for the traffic season in which services are intended to commence, the Parties shall identify to the Prospective New Entrant a time frame of 20 minutes for each slot it intends to make available to the Prospective New Entrant. Within four (4) weeks following the end of the IATA Scheduling Conference for the traffic season in which services are intended to commence, the Parties shall submit to the Monitoring Trustee and the Commission a proposal for the selection of the Prospective New Entrant on the Long-Haul or European City Pair and shall identify to the Prospective New Entrant the exact time of the slots it intends to make available to the Prospective New Entrant.
- 4.5 When submitting a proposal to the Commission for the selection of the Prospective New Entrant on a Long-Haul City Pair, the Parties shall accord a preference to:
- (i) the Prospective New Entrant that has indicated that it intends to operate a non-stop scheduled passenger air service; and **then**
  - (ii) the Prospective New Entrant that has indicated that it intends to operate a new transatlantic service that will serve the Long-Haul City Pair.

- 4.6** When submitting a proposal to the Commission for the selection of the Prospective New Entrant on a European City Pair, the Parties shall accord a preference to:
- (i) the Prospective New Entrant that has indicated that it intends to operate the highest number of frequencies on that European City Pair Monday to Friday inclusive; and **then**
  - (ii) the Prospective New Entrant that already operates a non-stop scheduled passenger air service on the O&D, even if that airline's service does not satisfy the definition of a Competitive Air Service; and **then**
  - (iii) on a first-come-first-served basis.
- 4.7** The Commission shall consider the advice of the Monitoring Trustee (as provided for in Paragraph 10.1) and decide whether or not to approve the Parties' proposal, applying the following criteria:
- the Prospective New Entrant is independent of and unconnected to the Parties and
  - the Prospective New Entrant is a viable actual or potential competitor, with the ability, resources and commitment to operate the Long-Haul or European City Pair as a viable and active competitive force.
- 4.8** To assist the Monitoring Trustee in the preparation of his advice and/or the Commission in taking its decision, the Monitoring Trustee and/or the Commission may ask the Prospective New Entrant to provide a detailed business plan to the Monitoring Trustee and/or the Commission. 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 should provide information on the plans that the company has in terms of development of its network, fleet etc, and detailed information on its plans for the route on which it wants to operate. The latter should specify in detail planned operations on the route over a period of three (3) years (size of aircraft, number of frequencies operated, planned time-schedule of the flights) and expected financial results (expected traffic, revenues, profits). The Commission may also request a copy of all co-operation agreements the Prospective New Entrant may have with other airlines. Business secrets and confidential information shall be protected and be kept confidential by the Monitoring Trustee and the Commission and shall not become accessible to other undertakings or to the public.
- 4.9** If the Commission does not oppose the Parties' proposal within six (6) weeks following the end of the IATA Scheduling Conference, this proposal will be deemed accepted.
- 4.10** In the event that the Commission does not approve the proposal submitted by the Parties, and if other carriers have applied to the Parties for slots, the Parties shall communicate to the Monitoring Trustee and the Commission without delay the names of other carrier(s) that might be selected.
- 4.11** Within one (1) week after the approval by the Commission of the selection of the Prospective New Entrant on the Long-Haul or European City Pair, the Parties shall submit their written proposal for slots as approved by the Commission to this Prospective New Entrant.
- 4.12** In the event that, after the Effective Date, slots are made available by any of the Parties to allow a Prospective New Entrant to operate a Competitive Air Service on any Long-Haul or

European City Pair, the Monitoring Trustee shall record this fact in the next report that the Monitoring Trustee files with the Commission pursuant to Paragraph 10.3.

## **5 INTERLINING AGREEMENTS**

**5.1** At the request of a New Air Service Provider, any one or more of the Parties as appropriate shall enter into an Interline Agreement concerning any Long-Haul or European City Pair operated by the New Air Service Provider.

**5.2** Any Interline Agreement shall be subject to the following restrictions:

- it shall apply to the first class, business class and leisure travel categories only; for the avoidance of doubt, it shall not apply to promotional fares
- it shall provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued
- it shall be limited to true origin and destination traffic on the Long-Haul or European City Pair operated by the New Air Service Provider
- it shall be subject to the MITA rules and procedures and/or normal commercial conditions
- it shall include the possibility for the New Air Service Provider and/or travel agents to offer a return trip comprising services provided one-way by the Parties and one-way by the New Air Service Provider.

**5.3** Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a New Air Service Provider for travel on a Long-Haul or European City Pair. However, to avoid abuse, the Parties may require that the New Air Service Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Party operating the service and the fare charged by the New Air Service Provider. In cases where the New Air Service Provider's fare is lower than the value of the coupon issued by it, the Parties may endorse its coupon only up to the value of the fare charged by the New Air Service Provider. A New Air Service Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

**5.4** All Interline Agreements entered into pursuant to this Clause 5 for a Long-Haul or European City Pair shall lapse automatically in the event that the New Air Service Provider ceases to operate that city pair.

## **6 SPECIAL PRORATE AGREEMENTS**

**6.1** At the request of a Prospective New Entrant, the Parties shall enter into a Special Prorate Agreement with it for traffic with a true origin and destination in, on the one hand, the Czech Republic and, on the other hand, France or Italy or The Netherlands, provided part of the journey involves the Amsterdam-Prague, Milan-Prague, Paris-Prague or Rome-Prague city pair.

- 6.2** The conditions for a Special Prorate Agreement shall be on terms such that the New Air Service Provider shall have equal treatment as compared with the Parties' alliance partners on the same European City Pair, or, in the absence of such alliance partner, with other airlines on the same European City Pair or, in the absence of such airline, with other airlines on comparable city pairs.

## **7 FREQUENT FLYER PROGRAMME**

- 7.1** If a New Air Service Provider does not participate in any of the Parties' Frequent Flyer Programmes or does not have its own comparable FFP, the Parties shall allow it, on request, to be hosted in its FFP for the Long-Haul or European City Pairs operated by the New Air Service Provider. The agreement with the New Air Service Provider shall be on terms such that the New Air Service Provider shall have equal treatment as compared with the Parties' alliance partners on the same Long-Haul or European City Pair.
- 7.2** Any agreement relating to a particular European or Long-Haul City Pair and entered into pursuant to this Clause 7 shall lapse automatically in the event that the New Air Service Provider ceases to operate that city pair.

## **8 COMMITMENT TO FACILITATE INTERMODAL SERVICES**

- 8.1** At the request of a railway or other surface transport company operating between on the one hand the Czech Republic and on the other hand either France or Italy or The Netherlands (an "Intermodal Partner"), the Parties shall enter into an intermodal agreement whereby they provide passenger air transport on their services on any of the European City Pairs as part of an itinerary that includes surface transportation by the Intermodal Partner.
- 8.2** Any intermodal agreement entered into pursuant to this Clause 8 shall be based on the MITA principles (including the Intermodal Interline Traffic Agreement - Passenger and IATA Recommended Practice 1780e) and normal commercial conditions. The Parties shall accept full pro-rating according to the terms applied by MITA members, including on routes where only rail services are provided. No restrictions shall apply to fare combinations between carriers that are IATA intermodal MITA members and the most restrictive conditions rule shall apply only for the applicable segment and its carrier. The Parties and the Intermodal Partner may waive minimum stay requirements on any fare and any city pair they operate. Such decisions are respected and published reciprocally. Where the Intermodal Partner requires notification of a sector mileage, a location identifier or an add-on fare, the Parties shall make such a request to IATA under normal IATA procedures.
- 8.3** At the request of a potential Intermodal Partner, the Parties shall make efforts in good faith to reach an agreement on conditions comparable to those granted to other Intermodal Partners on the European City Pair or, in the absence of such Intermodal Partners, to those granted to other Intermodal Partners on comparable city pairs, provided that the necessary requirements are met especially with regard to safety, quality of service, insurance coverage and liability limits. The conditions of such an agreement shall override the general obligations arising pursuant to this Clause 8.

## **9 APPOINTMENT OF MONITORING TRUSTEE**

- 9.1** A Monitoring Trustee shall be appointed in accordance with the procedure described in Paragraph 9.2 and following. The Monitoring Trustee must be familiar with the airline industry and have the experience, competence and independence necessary for this appointment. The Monitoring Trustee will have had no direct or indirect employment, consultancy or other relationship with any of the Parties during the past three years and will have no such relationship with any of the Parties for the two years following the completion of its mandate.
- 9.2** Within one week of the Effective Date, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in Paragraph 9.1 and shall include:
- (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments
  - (ii) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.
- 9.3** 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 fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the individual or institution concerned as Monitoring Trustee. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.
- 9.4** If all the proposed Monitoring Trustees are rejected, the Parties shall submit the names of at least two more individuals or institutions within two weeks of being informed of the rejection, in accordance with the requirements and the procedure set out in Paragraph 9.1.

## **10 THE MONITORING TRUSTEE'S MANDATE**

- 10.1** The Monitoring Trustee's mandate shall include, in particular, the following responsibilities:
- (i) 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 the Monitoring Trustee's mandate
  - (ii) 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
  - (iii) giving proper weight to the preferences provided for at Paragraph 4.5 (long-haul services) and Paragraph 4.6 (intra-EU services), to advise and make a written recommendation to the Commission as to the suitability of any Prospective New Entrant submitted for approval to the Commission under Paragraph 4.7, in the case

of ROM-PRG having particular regard to fluctuations in demand in the course of an IATA Season on the O&D

- (iv) to make binding third party determinations on matters referred to it pursuant to Clause 12
- (v) 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 and
- (vi) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the Monitoring Trustee's mandate.

**10.2** The Parties shall receive simultaneously a non-confidential version of any written recommendation made by the Monitoring Trustee to the Commission as provided for in Paragraph 10.1(iii).

**10.3** The reports provided for in Paragraph 10.1(v) shall be prepared in English. They 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 times as the Commission may specify, and shall cover developments in the immediately preceding IATA Season. These reports shall report any matters referred to in Paragraphs 3.12 or 4.12. They shall also reproduce the text of any binding determinations made pursuant to Paragraph 12.2. The Parties shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.

**10.4** The Parties shall provide the Monitoring Trustee with such access to the Parties' books, records, documents, management or other personnel facilities, sites, technical information as the Monitoring Trustee may reasonably require in fulfilling its duties.

**10.5** 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 and shall pay reasonable remuneration for its services.

**10.6** The Monitoring Trustee shall protect and keep confidential business secrets and confidential information of the Parties, including as and between the members of SkyTeam.

**10.7** The Parties shall indemnify the Monitoring Trustee (and, where appropriate, its employees and agents) (each an "Indemnified Party") and hold each Indemnified Party harmless, and hereby agree 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 wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees and agents).

**10.8** At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the Parties' approval, if the Monitoring Trustee considers the appointment of such advisors essential for the performance of its duties under the mandate, provided that any fees incurred are reasonable.

## **11 TERMINATION OF MONITORING TRUSTEE'S MANDATE**

- 11.1** If the Monitoring Trustee ceases to perform or to be able 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, or the illness or death of the Monitoring Trustee):
- (i) the Commission may, after hearing the Monitoring Trustee (if practicable), require the Parties, to replace the Monitoring Trustee or
  - (ii) the Parties, with the prior approval of the Commission, may replace the Monitoring Trustee.
- 11.2** If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function 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 Paragraph 9.2.
- 11.3** Aside from being removed in accordance with Paragraph 11.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

## **12 BINDING THIRD PARTY DETERMINATIONS**

- 12.1** In the event that a New Air Service Provider, a Prospective New Entrant or an Intermodal Partner, as the case may be, wishes to conclude an agreement of the type provided for in Clauses 5, 6, 7 or 8, the New Air Service Provider, the Prospective New Entrant or the Intermodal Partner shall send a written request to the relevant SkyTeam carrier to negotiate and agree terms at least three (3) months before the beginning of the relevant IATA Season.
- 12.2** In the event that the New Air Service Provider, the Prospective New Entrant or the Intermodal Partner, as the case may be, and the Parties have been unable to conclude an agreement of the type provided for in Clause 5, 6, 7 or 8 four weeks before the beginning of the relevant IATA Season, any of the parties to the proposed agreement may ask the Monitoring Trustee to determine what "normal commercial conditions" are for the purpose of Clauses 5 or 8, or what constitutes "equal treatment" for the purposes of Clauses 6 or 7.
- 12.3** The party to the proposed agreement requesting the intervention of the Monitoring Trustee (the "Applicant") shall send the Monitoring Trustee a copy of the latest draft of the parties' agreement and any other documents it deems necessary to enable the Monitoring Trustee to make his determination, together with a short explanatory note (if appropriate) (the "Applicant's Documents"). A copy of the Applicant's Documents shall be sent by the Applicant to the other party (the "Respondent") at the same time as it is sent to the Monitoring Trustee.
- 12.4** Within five business days of receipt of the Applicant's Documents, the Respondent shall send the Monitoring Trustee any documents it deems necessary to enable the Monitoring Trustee to make his determination, together with a short explanatory note (if appropriate)

(the "Respondent's Documents"). A copy of the Respondent's Documents shall be sent by the Respondent to the Applicant at the same time as it is sent to the Monitoring Trustee.

- 12.5** In the event that the Applicant's Documents or the Respondent's Documents include confidential information, the Applicant or the Respondent shall send them solely to the Monitoring Trustee.
- 12.6** Having regard to Clause 5, 6, 7 or 8 (as appropriate), the Monitoring Trustee shall review the draft agreement, the Applicant's Documents and the Respondent's Documents. The Monitoring Trustee may also require the Applicant and/or the Respondent to produce documents or other materials needed to facilitate his determination.
- 12.7** Within five business days of receipt of the Respondent's Documents, the Monitoring Trustee shall convene a meeting with the Applicant and the Respondent. This meeting may be conducted in person, by telephone, by video conference or any other means agreed by the parties. At this meeting, and having regard to Clause 5, 6, 7 or 8 (as appropriate), the Monitoring Trustee shall review and discuss the basis of his likely determination.
- 12.8** The Monitoring Trustee may, if he sees fit, adjourn the meeting once, for no more than five business days, to enable the Applicant and the Respondent to negotiate terms.
- 12.9** In the event that the Applicant and the Respondent have not been able to agree terms within fifteen business days of receipt by the Monitoring Trustee and the Respondent of the Applicant's Documents, the Monitoring Trustee shall, having regard to Clause 5, 6, 7 or 8 (as appropriate), make the determination provided for in Paragraph 12.2.
- 12.10** In performing the tasks set out in Clause 12, the Monitoring Trustee shall not disclose confidential information of the Applicant to the Respondent or vice versa, and shall at all times apply the standards attributable to confidential information and business secrets in European competition rules.

### **13 GENERAL PROVISIONS**

- 13.1** These Commitments shall be binding on the Parties and on their subsidiaries, successors and assigns.
- 13.2** The Commitments shall take effect on the Effective Date and shall be valid:
- on Long-Haul City Pairs to/from destinations in the United States for five years from the Effective Date
  - on all other City Paris for six years from the Effective Date.
- 13.3** If any airline giving these Commitments ceases to be a member of SkyTeam, then these Commitments shall automatically cease to apply to it at the end of the IATA Season during which the airline leaves SkyTeam.



**14 REVIEW CLAUSE**

**14.1** Pursuant to Article 9(2)(a) of Regulation 1/2003, any of the Parties may request the Commission to re-open the proceedings with a view to modifying these Commitments where there has been a material change in any of the facts on which the Commitment Decision was based.

[Name] \_\_\_\_\_ }  
duly authorised for and on behalf of }  
Date: [            ] 2007 }

[Name] \_\_\_\_\_ }  
duly authorised for and on behalf of }  
Date: [            ] 2007 }

ends