

CASE COMP/F-1/39.596 - BA/AA/IB

COMMITMENTS TO THE EUROPEAN COMMISSION

In accordance with Article 9 of Council Regulation (EC) No. 1/2003 (**Regulation 1/2003**), the Parties offer the following commitments (**Commitments**) with a view to remedying the competition concerns retained by the Commission following its Statement of Objections dated 29 September 2009 (**Statement of Objections**) in the context of its investigation in Case COMP/F-1/39.596 and enabling the Commission to adopt a decision confirming that the Commitments meet its concerns (**Commitment Decision**).

Consistent with Article 9 of Regulation 1/2003, these Commitments may not be interpreted as an acknowledgement that the Parties have infringed the EU competition rules or that the Proposed Alliance is incompatible with Article 101 TFEU. The Parties are acting on the assumption that, by accepting these Commitments, the Commission will confirm that there are no longer grounds for action by the Commission without concluding whether or not there has been an infringement of the EU competition rules.

Taking into account the cooperation between the European Commission (**Commission**) and the U.S. Department of Transportation (**DOT**) pursuant to Annex II of the EU-U.S. Air Transport Agreement dated 30 April 2007, these Commitments provide for close involvement of the DOT throughout the procedure. The Commission shall consult and take due consideration of the opinion of the DOT at key steps of the procedure, and in particular when choosing the preferred Prospective Entrant on each relevant Identified City Pair, as set out below.

This text shall be interpreted in the light of the Commitment Decision and in the general framework of EU law, in particular Article 101 TFEU and Regulation 1/2003.

O. DEFINITIONS

For the purpose of the Commitments, the subsequently listed terms shall have the following meanings:

AAdvantage American Airlines' FFP

Agreements All final signed agreements (including all schedules, annexes, addenda, etc.) between the Parties and Other **oneworld** Members Involved relating to the Proposed Alliance. The Agreements currently comprise the following:

- (a) Joint Business Agreement (**JBA**) of 14 August 2008 between the Parties (as amended by the Parties on 30 March 2010)
- (b) Alliance Coordination Agreement of 14 August 2008 between the Parties and Other **oneworld** Members Involved providing for enhanced transatlantic cooperation of the type contemplated by the various Bilateral Alliance Agreements between them

- (c) Bilateral Alliance Agreement of 14 August 2008 between AA and BA
- (d) Second Amendment to the Codeshare Agreement of 14 August 2008 between AA and BA
- (e) Bilateral Alliance Agreement of 14 August 2008 between AA and IB
- (f) Bilateral Alliance Agreement of 20 March 2002 between AA and Finnair
- (g) Bilateral Alliance Agreement of 16 July 2007 between AA and Royal Jordanian

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

American Airlines (or AA) American Airlines, Inc., including its affiliates American Eagle Airlines, Inc. and Executive Airlines, Inc. (doing business as American Eagle)

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

British Airways (or BA) British Airways Plc and its affiliates (including OpenSkies SAS)

Central America Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

Commitment(s) The Slot commitment for each relevant Identified City Pair and/or, as relevant, the commitment granting the Prospective Entrant access to one of the Parties' Frequent Flyer Programmes on one or more of the Identified City Pairs and/or, as relevant, the commitment relating to fare combinability and/or, as relevant, the commitment relating to Special Prorate Agreements on one or more of the Identified City Pairs

Competitive Air Service Scheduled passenger air transport service operated on one or more of the Identified City Pairs:

- (a) On a non-stop basis (that is, a flight that is constantly in the air between its origin and final destination airports); or
- (b) With one stop, on a direct or connecting basis, provided that its total elapsed time is not more than 240 minutes longer than the elapsed time of the non-stop service

Competitive Non-stop Air Service	A Competitive Air Service operated on a non-stop basis
Competitive One-stop Air Service	A Competitive Air Service operated with one stop, on a direct or connecting basis, provided that its total elapsed time is not more than 240 minutes longer than the elapsed time of the non-stop service
Effective Date	The date of the adoption of the Commitment Decision
Eligible Non-stop Air Services Provider	<p>An airline that is not a member of the oneworld Alliance or affiliated with any member of that alliance and which operates a non-stop service on an Identified City Pair (whether or not a New Non-stop Air Services Provider) and which does not, alone or in combination with its Alliance partners (if applicable), operate a Hub at both ends of the Identified City Pair</p> <p>For the purposes of this definition an airline will not be considered to be affiliated with a member of the oneworld Alliance on the basis that it has agreed a special prorate agreement, fare combinability agreement or a codeshare agreement with that member of the oneworld Alliance (provided that any such codeshare agreement does not apply to the Identified City Pair)</p>
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 and Switzerland
Executive Club	British Airways' FFP
FAA	The U.S. Federal Aviation Administration
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 an Identified City Pair

Frequent Flyer Programme (or FFP)	A programme offered by an airline to reward customer loyalty under which members of the programme accrue points for travel on that airline which can be redeemed for free air travel and other products or services, as well as allowing other benefits such as airport lounge access or priority bookings
General Slot Allocation Procedure	<p>(a) For London Heathrow and London Gatwick airports: the Slot allocation procedure as set out in the EU Slot Regulation and IATA Worldwide Scheduling Guidelines (including participation at the IATA Scheduling Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline); and/or, where applicable</p> <p>(b) For New York JFK airport: the generally used operating authorization allocation procedure as defined by the FAA or any other relevant U.S. government agency, as well as the petitioning of the FAA (or any other relevant U.S. government agency administering capacity limitations at New York JFK airport) for a new operating authorization beyond those currently allocated at New York JFK airport</p>
Hub	An airport at which an airline concentrates its operations. For the purpose of these Commitments, as of the date of the Commitment Decision, the following cities shall be deemed to have Hubs of the following airlines: Chicago – United, London – bmi and Virgin Atlantic, Madrid – Air Europa, and New York – Continental and Delta
IATA	The International Air Transport Association
IATA Scheduling Conference	The industry conference of airlines and airport coordinators worldwide to solve scheduling issues where there are discrepancies between the slots requested by the airlines and allocated by the airport coordinators. The IATA scheduling conference for the Winter Season takes place in June, and the one for the Summer Season in November
IATA Season	The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March
Iberia (or IB)	Iberia Líneas Aéreas de España, S.A.
Iberia Plus	Iberia's FFP
ICC	International Chamber of Commerce
Identified City Pair(s)	London-Dallas/Fort Worth, London-Boston, London-Miami, London-Chicago, London-New York, Madrid-Miami

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). In the case of an Applicant intending to offer a Competitive One-stop Air Service, these terms shall also include the connecting itinerary (in particular, the connecting hub and total elapsed time)
Miles	The credits awarded by one of the Parties to members of its FFP. Such credits include standard reward points only and do not include tier or status points
Misuse	Misuse of the type described at Clause 1.2.8
MITA	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 Commitment Decision
New Non-stop Air Services Provider	An airline that is not a member of the oneworld Alliance or affiliated with any member of that alliance and which commences a new non-stop service on an Identified City Pair or which increases the number of non-stop Frequencies it operates on an Identified City Pair in accordance with these Commitments
North America	Canada, Mexico and the U.S.
oneworld	The Alliance founded by BA, AA, Cathay Pacific and Qantas in 1999. Its members are currently the Parties and Other oneworld Members Involved, together with Cathay Pacific, Japan Airlines, LAN Airlines, Malév, Mexicana and Qantas
Other oneworld Members Involved	Finnair (AY) and Royal Jordanian (RJ)
Parties	British Airways (BA), American Airlines (AA) and Iberia (IB), each a "Party"
Proposed Alliance	The cooperation envisaged by the Agreements, involving (a) transatlantic cooperation between the Parties and (b) cooperation between the Parties and the Other oneworld Members Involved in connection with the transatlantic cooperation between the Parties
Prospective Entrant	Any Applicant that is not a member of the oneworld Alliance or affiliated with any member of that alliance, able to offer a Competitive Air Service individually or collectively by codeshare and needing a Slot or Slots to be

made available by 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:
- it is an associated carrier belonging to the same holding company as one of the Parties; or
 - it is a member of the **oneworld** Alliance; or
 - the airline co-operates with the Parties on the Identified City Pair concerned in the provision of passenger air transport services, except if this co-operation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis;
- (b) it must have the intention to begin or increase regular operations on one or more of the Identified City Pairs; and
- (c) to that effect, it needs a Slot or several Slots for the operation of a Competitive Air Service which competes with those of the Parties

Prospective Non-stop Entrant	A Prospective Entrant able to offer a Competitive Non-stop Air Service
Prospective One-stop Entrant	A Prospective Entrant able to offer a Competitive One-stop Air Service
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

SkyTeam	The Alliance which has developed from the original SkyTeam alliance (founded by Air France, Delta and others) and the Wings alliance (which had involved KLM, Northwest and others)
Slot Handback Deadline	15 January for the IATA Summer Season and 15 August for the IATA Winter Season
Slot Release Agreement	An agreement between any of the Parties and a Prospective Entrant that provides for the exchange of Slot(s) with the Prospective Entrant according to the principles laid down in Clause 1 of these Commitments. For the avoidance of doubt, the Slot Release Agreement shall abide by the EU Slot Regulation and any exchange pursuant to this agreement shall be confirmed by the slot coordinator
Slot Release Procedure	This term has the meaning given in Clause 1.2.1
Slot Request Submission Deadline	The final date for the request for Slots to the slot coordinator as set out in the IATA Worldwide Scheduling Guidelines
Slot(s)	<p>(a) For London Heathrow and London Gatwick airports: permission to land and take-off in order to operate an air service at the airport on a specific date and time given in accordance with the EU Slot Regulation; and/or, where applicable</p> <p>(b) For New York JFK airport: the operating authorization, i.e. a take-off or landing reservation under instrument flight rules.</p>
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
TFEU	The Treaty on the Functioning of the European Union

1. SLOTS

1.1 Slots for certain Identified City Pairs

1.1.1 The Parties undertake to make Slots available at London (at the choice of the Prospective Entrant, at either Heathrow or Gatwick) and, if applicable, at New York JFK airport, to allow one or more Prospective Entrant(s) to operate or increase the following number of new or additional Frequencies on the following Identified City Pairs:

- London-Dallas/Fort Worth: up to seven (7) Frequencies per week;
- London-Boston: up to fourteen (14) Frequencies per week;
- London-Miami: up to seven (7) Frequencies per week; and
- London-New York: up to twenty one (21) Frequencies per week.

1.1.2 As a general rule, the Parties shall make Slots available in accordance with Clause 1.1.1 only to Prospective Non-stop Entrant(s) on the Identified City Pairs. Exceptionally, as of IATA Summer Season 2013, if there are still Slots available for the London-Dallas/Fort Worth and London-Miami city-pairs in accordance with Clause 1.1.1, the Parties shall make these Slots available to both Prospective Non-stop Entrant(s) or Prospective One-stop Entrant(s). For the avoidance of doubt (and without prejudice to the operation of Clause 1.1.3), the Slots on London-Boston and London-New York shall be available only to Prospective Non-stop Entrant(s).

1.1.3 If the aggregate number of daily Competitive Non-stop Air Services operated by third party carriers on an Identified City Pair, without using Slots made available by the Parties under these Commitments, exceeds for a particular IATA Season (Summer and/or Winter) zero (0) for London-Dallas/Fort Worth, one (1) for London-Boston, one (1) for London-Miami or ten (10) for London-New York, the number of such additional services shall be deducted from the number of Slots which the Parties have to make available on that Identified City Pair pursuant to Clause 1.1.1 in that particular IATA Season, subject to the condition that the Commission (advised by the Monitoring Trustee and having consulted and taken due consideration of the opinion of the DOT) has confirmed that the new services are operated by an airline which is independent and unconnected to the Parties and a viable competitor.

For the avoidance of doubt:

- (a) a subsequent reduction in the aggregate number of Competitive Non-stop Air Services operated by third party carriers not using a Slot made available by the Parties shall increase the number of Slots to be made available by the Parties accordingly, but only up to the number specified in Clause 1.1.1;
- (b) an additional Competitive Non-stop Air Service not using a Slot made available by the Parties shall neither affect the Slot Release Agreements already

concluded by the Parties under these commitments nor affect the right of the Prospective Entrant to renew the agreement as long as the Commitment Decision is in force;

- (c) it is confirmed that, in the event that they are in fact operated and insofar as they continue to be so operated:
- (i) the two new daily services which Continental Airlines, Inc. has announced it will be operating on London-New York (giving it a fourth daily frequency from IATA Summer Season 2010 and a fifth daily frequency from IATA Winter Season 2010/11), and
 - (ii) the new daily service which Delta Air Lines, Inc. has announced it will be operating on London-New York (giving it a third daily frequency from IATA Winter Season 2010/11),

satisfy the requirements of this Clause 1.1.3.

1.2 Conditions pertaining to Slots

- 1.2.1 Each Prospective Entrant shall comply with the following procedure to obtain Slots from the Parties (***Slot Release Procedure***).

The Prospective Entrant wishing to commence/increase a Competitive Air Service on one or more of the Identified City Pairs listed at Clause 1.1.1 shall: (i) apply to the slot coordinator and, where applicable, to the FAA (or any other relevant U.S. government agency administering capacity limitations at New York JFK airport) for the necessary Slots through the General Slot Allocation Procedure, and (ii) notify its request for Slots to the Monitoring Trustee, within the period foreseen in Clause 1.3.1.

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 Identified City Pairs through the normal workings of the General Slot Allocation Procedure.

- 1.2.2 For the purposes of this Clause 1.2, the Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:
- (a) Slots at the same airport were available through the General Slot Allocation Procedure within sixty (60) minutes of the times requested but such Slots have not been accepted by the Prospective Entrant; or
 - (b) Slots at the same airport (for use to operate a Competitive Air Service on the relevant Identified City Pair) were obtained through the General Slot Allocation Procedure more than sixty (60) minutes from the times requested and the Prospective Entrant did not give the Parties the opportunity to exchange those

Slots for Slots within (equal or less than) sixty (60) minutes of the times requested; or

- (c) It has not exhausted its own Slot portfolio at the airport. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:
- (i) If the carrier was offering a Competitive Non-stop Air Service (on its own aircraft or those of an Alliance partner with which it has a transatlantic joint venture) on any of the Identified City Pairs less than four (4) consecutive IATA Seasons before the IATA Season for which it is applying for Slots but where it (or its Alliance partner) has subsequently reduced or cancelled that service and reutilised or intends to reutilise the Slots used for that service on another route so as to present itself as needing Slots to operate a Competitive Air Service on the same Identified City Pair. In such circumstances, there will be a presumption that the carrier has reutilised or intends to reutilise its Slots in order to present itself as needing Slots to operate a Competitive Air Service on the Identified City Pair. Exceptionally, however, such a carrier will be deemed to have exhausted its own Slot portfolio if:
- it can provide detailed compelling evidence satisfying the Commission (following consultation with the Monitoring Trustee and the DOT and having given the Parties the opportunity to comment) that there are bona fide reasons why it could not utilise the Slot which it was previously using for that service; or
 - it gives the Party holding the Slot covered by the Slot Release Agreement an option to become a lessee of that reutilised Slot at the earliest possible time on reasonable terms and for a duration that runs in parallel with the Slot Release Agreement; or
- (ii) If the carrier has Slots at the airport within sixty (60) minutes of the time requested which are being leased-out to or exchanged with other carriers (unless that lease or exchange was concluded before 12 May 2010 or the carrier can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee and the DOT) 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 an Identified City Pair); or
- (iii) If the carrier has Slots at the airport which are outside the sixty (60) minutes requested 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:
- that lease was concluded before 12 May 2010; or

- it can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee and the DOT) that there are bona fide reasons for leasing the Slot out in this way rather than using it itself; or
- it gives the Party holding the Slot covered by the Slot Release Agreement 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 Party will likewise not provide for monetary compensation.

For the purposes of Clause 1.2.2(c) (ii) and (iii), the bona fide reasons for leasing out (or, as relevant, exchanging) Slots by the Applicant shall include, but shall not be limited to, a situation where the Applicant can provide clear evidence of an intention to operate those Slots on a specific route and clear and substantiated evidence of its reasons for not currently doing so;

(iv) In the specific case of Slots at New York JFK, if the aggregate holding of Slots held at New York JFK airport by:

- the Prospective Entrant;
- its regional affiliates (whether wholly owned or otherwise); and
- any other carriers with which it has a transatlantic joint venture which has been granted antitrust immunity by the DOT and those carriers' regional affiliates (whether wholly owned or otherwise),

is higher than the aggregate holding of Slots held by the Parties at that airport.

1.2.3 If the Prospective Entrant obtains Slots through the General Slot Allocation Procedure but after the IATA Scheduling Conference:

- (a) which are within the +/- 60 minute window; or
- (b) which (in the case of Slots obtained at both ends of the route) are not compatible with the planned flight duration of the Applicant's operation on the route,

the Prospective Entrant shall remain eligible to obtain Slots from the Parties provided that it gives an option to the Parties to use the obtained Slots on terms substantially the

same as the terms of the Slot Release Agreement, and for a duration that runs in parallel with the Slot Release Agreement.

- 1.2.4 Without prejudice to these Commitments (and, particularly, of this Clause 1), the Parties shall not be obliged to honour any agreement to make available the Slots to the Prospective Entrant if:
- (a) The Prospective Entrant has not exhausted all reasonable efforts in the General Slot Allocation Procedure to obtain the necessary Slots to operate a new or increased service on the Identified City Pair; or
 - (b) The Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 1.2.8 below).
- 1.2.5 Subject to the provisions of Clause 1.2.6, the Parties undertake to make available Slots within +/- sixty (60) minutes of the time requested by the Prospective Entrant (if the Parties have Slots within this time-window). In the event that the Parties do not have Slots within the +/- sixty (60) minutes 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 utilisation constraints.
- 1.2.6 The Parties may refuse to offer any arrival Slots at Heathrow before 06:20 (local time). If a Prospective Entrant requests an arrival Slot at Heathrow for a time before 06:20, the Parties may offer a slot between 06:20 and 07:20. In addition, the Parties shall not be obliged to release more than three (3) daily arrival Slots at Heathrow in the period prior to 08:20 (local time). In the event that a Prospective Entrant requests more than three (3) arrival Slots at Heathrow in this period, for each Slot request which cannot be accommodated within the parameters of this Clause 1.2.6, the Parties shall offer the Prospective Entrant the next closest Slot to the time requested in accordance with Clause 1.2.1. In the event that different Prospective Entrants make such requests for different Identified City Pairs which cannot all be accommodated within the parameters of this Clause 1.2.6, the Parties shall give priority to any Prospective Entrant proposing to operate multiple daily frequencies on the Identified City Pair and shall, in accordance with Clause 1.2.1, offer the next closest Slot to the time requested to each Prospective Entrant whose request cannot as a result be accommodated within the parameters of this Clause 1.2.6. For the avoidance of doubt, nothing in this Clause 1.2.6 shall limit the number of arrival Slots the Parties would release at Heathrow from 08:20 onwards.
- 1.2.7 The Slots obtained by the Prospective Entrant as a result of the Slot Release Procedure shall only be used for the purpose of providing the service proposed in the bid in accordance with Clause 1.3.7, for which the Prospective Entrant has requested the Slots, and cannot be used on another route.

- 1.2.8 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 relevant Identified City Pair(s);
 - (b) to operate fewer weekly Frequencies than those to which it committed in the bid in accordance with Clause 1.3.7 on an Identified City Pair(s) or to cease operating on an Identified City Pair(s) unless such a decision is consistent with the “use it or lose it” principle in Article 10(2) of the EU Slot Regulation (or any suspension thereof);
 - (c) to transfer, assign, sell, swap, sublease or charge any Slot released by the Parties on the basis of the Slot Release Procedure, except for changes to the Slot which are within +/- sixty (60) minutes of the time originally requested by the Prospective Entrant and which have been agreed with the slot coordinator or the FAA or any other relevant U.S. government agency;
 - (d) not to use the Slots on an Identified City Pair(s), as proposed in the bid in accordance with Clause 1.3.7; or
 - (e) not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant (i) loses the series of Slots at London airports 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 Slot at London airports as described and interpreted in Article 14(4) of the EU Slot Regulation or (iii) loses the Slot at JFK airport because it failed to comply with the conditions imposed by the FAA or any other U.S. government agency.
- 1.2.9 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. In cases (a) and (b) of Clause 1.2.8, 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 1.2.8, the Prospective Entrant shall provide reasonable compensation to the Parties as provided for in the Slot Release Agreement.
- 1.2.10 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 the airports 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.

- 1.2.11 The Slot Release Agreement may (i) 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, (ii) provide that at the expiry of the agreement, the Prospective Entrant shall release the Slots back to the Parties by way of an exchange, and/or (iii) provide for reasonable compensation to the Parties in case of Misuse. 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, such Slots shall be counted against the maximum number of Slots to be released in accordance with the Commitments.
- 1.2.12 The Slot Release Agreement shall have the following duration: (i) if the Slot Release Agreement starts applying before IATA Winter Season 2012/13 (inclusive), the Slot Release Agreement shall have an effective duration of up to ten (10) years at the choice of the Prospective Entrant; or (ii) if the Slot Release Agreement starts applying after IATA Winter Season 2012/13, the Slot Release Agreement shall have an effective duration for a period of up to the end of IATA Winter Season 2020/21 or (if later) up to five (5) years at the choice of the Prospective Entrant. If the Prospective Entrant elects to have a shorter initial duration than that to which it was entitled pursuant to this Clause 1.2.12, it shall have a right to renew the Slot Release 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 the Prospective Entrant exercises its right of extension by informing the Parties in writing no later than two (2) weeks after the IATA Scheduling Conference preceding the requested extension.
- 1.2.13 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 Scheduling Conference.

1.3 Selection procedure, role of Monitoring Trustee and approval by Commission

- 1.3.1 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), including, for the avoidance of doubt and where applicable, request for Slots at New York JFK airport;
 - (b) submit to the Monitoring Trustee the list of its leased out or exchanged Slots at the relevant London airport, and where applicable at New York JFK airport,

along with the date at which the leases or exchanges were concluded. The Monitoring Trustee, the Commission or the DOT may also request additional information from the Applicant to enable assessment of its eligibility pursuant to Clause 1.2.2(c) and Clause 1.3.4;

- (c) provide a waiver authorising the Commission and the Monitoring Trustee to share with the DOT any information or documents submitted to either or both of them by the Applicant in accordance with these Commitments; and
- (d) request anonymity in accordance with Clause 1.3.3, if it so wishes.

If the Applicant requests Slots at New York JFK airport, it shall at the same time also apply to the FAA (or any other relevant U.S. government agency administering capacity limitations at New York JFK airport), with notice to the DOT, for the Slots at New York JFK airport in accordance with the applicable rules and procedures.

- 1.3.2 At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall forward the Slot request to the Parties to the Commission and to the DOT. Until the beginning of the IATA Scheduling Conference the Monitoring Trustee shall not disclose to the Parties the Identified City Pair for which the Slot is requested. 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 which could 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.
- 1.3.3 Until the beginning of the IATA Scheduling Conference, the Monitoring Trustee shall not disclose to the Parties the identity of the Applicant, if the Applicant so requests in accordance with Clause 1.3.1(d). In such a case, the procedure set down in this Clause 1.3 shall apply, save that, until the beginning of the IATA Scheduling Conference, any communication or correspondence between the Parties and the Applicant shall go through the Monitoring Trustee, who shall ensure the protection of the anonymity of the Applicant.
- 1.3.4 After being informed of the Slot request in accordance with Clause 1.3.2, the Commission (advised by the Monitoring Trustee and the DOT) 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 at the relevant London airport and/or, where applicable, at New York JFK airport in accordance with Clause 1.2.2(c).

If the Commission decides that the Applicant does not fulfil 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.

- 1.3.5 At least one (1) week before the Slot Request Submission Deadline, the Parties shall indicate to the Monitoring Trustee and each Applicant which Slots at the relevant London airport and/or, where applicable, at New York JFK airport they would release, if necessary, during the time window (+/- sixty (60) minutes of the Applicant's requested time). If the Applicant requested Slots at both London and New York JFK, the Slots at each end of the route shall be compatible with the planned flight duration of the Applicant's operations on the route.
- 1.3.6 By the Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the Slot Release Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure.
- 1.3.7 By the Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Monitoring Trustee. The formal bid shall include at least:
 - (a) the Key Terms (i.e. timing of the Slot, number of frequencies and IATA Season(s) to be operated). In the case of an Applicant intending to offer a Competitive One-stop Air Service in accordance with Clause 1.1.2, the Key Terms shall also include the connecting itinerary (in particular, the connecting airport and total elapsed time);
 - (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 Identified City Pair(s) on which it wants to operate. The latter should specify in detail planned operations on the Identified City Pair(s) over a period of at least two (2) 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, the Commission and/or the DOT 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, the DOT and the Monitoring Trustee and will not become accessible to the Parties, other undertakings or the public.
- 1.3.8 In parallel, if an Applicant is offering compensation for the Slot(s) 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.

1.3.9 Having received the formal bid(s), the Commission (advised by the Monitoring Trustee and having consulted and taken due consideration of the opinion of the DOT) shall:

- (a) assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Identified City Pair(s) in the long term as a viable and active competitive force;
- (b) evaluate the formal bids of each Applicant, that meets (a) above, and rank these Applicants in order of preference.

1.3.10 In conducting its evaluation in accordance with Clause 1.3.9, the Commission shall give preference to the Applicant (or combination of Applicants) which will provide the most effective competitive constraint on the Identified City Pair(s), without regard to the country in which the Applicant(s) is licensed or has its principal place of business. For these purposes, Prospective Non-stop Entrant(s) shall always have priority over Prospective One-stop Entrant(s). Furthermore, the Commission shall take into account the strength of the Applicant's business plan and in particular give preference to Applicants meeting one or more of the following criteria:

- year-round service over only IATA Summer or Winter Season service;
- the greatest total number of services/frequencies on the Identified City Pair;
- the largest capacity on the Identified City Pair, as measured in seats for the entire IATA Season; and
- a pricing structure and service offerings that would provide the most effective competitive constraint on the Identified City Pair.

If, following the Commission's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on the Identified City Pair, the Commission shall rank these Applicants following the ranking provided by the Parties under Clause 1.3.8.

1.3.11 In advance of the beginning of the IATA Scheduling Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive slots within the time-window of +/- sixty (60) minutes as indicated through the SAL) and the slot coordinator:

- (a) whether the Applicant qualifies for the Slots Commitment; and
- (b) the Applicant's ranking.

In any case, the Applicant shall attend the IATA Scheduling Conference and try to improve its Slots. Following confirmation of the Commission's approval pursuant to

Clause 1.3.9, the Applicants and the Parties shall be deemed to have agreed the Key Terms of the Slot Release Agreement, as well as any compensation which was offered by the Applicant to the Parties under Clause 1.3.8. 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 and having consulted and taken due consideration of the opinion of the DOT) approves the changes.

- 1.3.12 Within two (2) weeks of the end of the IATA Scheduling Conference, each Applicant shall inform the Monitoring Trustee and the Parties whether it will commit to operate the Slots offered eventually by the Parties in case it has not obtained them through the General Slot Allocation Procedure.
- 1.3.13 Within three (3) weeks of the end of the IATA Scheduling Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with Clause 1.3.12 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, which shall beforehand consult and take due consideration of the opinion of the DOT. Unless both the Parties and the relevant Applicant agree to an extension and subject to Clause 1.2.3, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Scheduling Conference and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

2. FARE COMBINABILITY

2.1 At the request of:

- (a) an Eligible Non-stop Air Services Provider which, after the Effective Date, has started to operate new or increased Competitive Air Service on an Identified City Pair (whether or not such service uses Slots released to that carrier pursuant to these Commitments); or
- (b) an Eligible Non-stop Air Services Provider which operates a Competitive Non-stop Air Service on London-Chicago,

the Parties shall enter into an agreement that arranges for fare combinability on that Identified City Pair. This agreement will provide for the possibility for the Eligible Air Non-stop Services Provider, or travel agents, to offer a return trip on the Identified City Pair comprising a non-stop service provided one way by one of the Parties and a non-stop service provided the other way by the Eligible Non-stop Air Services Provider. At the request of the Eligible Non-stop Air Services Provider, the agreement shall apply in relation to all of the Eligible Non-stop Air Services Provider's services on the relevant Identified City Pair.

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

- (a) in the case of London-Chicago, London-New York and Madrid-Miami, it shall apply only to business class and first class cabins, and fully flexible economy class tickets (and the World Traveller Plus cabin in the case of BA);
 - (b) it shall provide for fare combinability on the basis of the Parties' published one-way fares, and, for Eligible Non-stop Air Service Providers which are not members of a transatlantic joint venture which has been granted antitrust immunity by the DOT, it shall also provide for access to the Parties' other published fares. Where this provides for a published round-trip fare, the fare can be comprised of half the round-trip fare of the relevant Party and half the round-trip fare of the Eligible Non-stop Air Services Provider;
 - (c) it shall provide for the appropriate division or recovery of any applicable Q/YQ/YR Surcharges;
 - (d) it shall be limited to true origin and destination traffic on the Identified City Pair operated by the Eligible Non-stop Air Services Provider; and
 - (e) it shall be subject to the MITA rules.
- 2.3 Subject to Clause 2.7, any term included in the agreement (for example, interline service charge, number of booking classes included) can never be less favourable than the corresponding term in any fare combinability agreement which the relevant Party and the Eligible Non-stop Air Services Provider have in place as at 12 May 2010.
- 2.4 Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by an Eligible Non-stop Air Services Provider for travel on an Identified City Pair. The Parties may require that the Eligible Non-stop Air Services Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the Eligible Non-stop Air Services Provider if one of the Parties was not the original ticketed carrier on the Identified City Pair. In cases where the Eligible Non-stop Air Services 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 Eligible Non-stop Air Services Provider. An Eligible Non-stop Air Services Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.
- 2.5 The fare combinability agreement entered into pursuant to this Clause 2 for a particular Identified City Pair shall have the following duration: (i) if the fare combinability agreement starts applying before IATA Winter Season 2012/13 (inclusive), the fare combinability agreement shall have an effective duration of up to ten (10) years at the choice of the Eligible Non-stop Air Services Provider; or (ii) if the fare combinability agreement starts applying after IATA Winter Season 2012/13, the fare combinability agreement shall have an effective duration for a period of up to the end of IATA Winter Season 2020/21 or (if later) of up to five (5) years at the choice of the Eligible Non-stop Air Services Provider. If the Eligible Non-stop 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 Eligible Non-stop Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.

- 2.6 All agreements entered into pursuant to this Clause 2 for a particular Identified City Pair shall lapse automatically in the event that the Eligible Non-stop Air Services Provider ceases to operate the new or increased service on that Identified City Pair. With respect to London-Chicago, any agreement entered into pursuant to this Clause 2 shall lapse automatically in the event that the Eligible Non-stop Air Services Provider ceases to operate service on that Identified City Pair.
- 2.7 The conclusion of the fare combinability agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

3. SPECIAL PRORATE AGREEMENTS

3.1 At the request of:

- (a) a New Non-stop Air Services Provider, irrespective of whether the Competitive Non-stop Air Service is commenced on the basis of Slots obtained from the Parties under the Commitments; or
- (b) an Eligible Non-stop Air Services Provider which operates a Competitive Non-stop Air Service on London-Chicago, London-Miami or Madrid-Miami,

the Parties shall enter into a Special Prorate Agreement with such airline (**Requesting Air Services Provider**) for traffic with a true origin/destination in Europe or Israel, and a true destination/origin in North America, the Caribbean, Central America, Venezuela, Colombia, Ecuador or Peru, provided that part of the journey involves the Identified City Pair on which the Competitive Air Service is offered. 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 Identified City Pair on which the Competitive Air Service is offered.

- 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 hub airports at both ends of the Identified City Pair.
- 3.3 Subject to Clause 3.1, for each relevant Identified City Pair and for each of the Parties with whom it proposes to enter a Special Prorate Agreement pursuant to these Commitments, the Requesting Air Services Provider may select up to a maximum of fifteen (15) behind/beyond routes which are operated by the relevant Party and to which

the Special Prorate Agreement will apply, it being understood that the number of routes included for each Identified City Pair cannot be lower than the number of routes that is, at 12 May 2010, included in an existing special prorate agreement between the Requesting Air Services Provider and the same Party and that the Special Prorate Agreement shall only apply to frequencies on the behind/beyond route operated by the relevant Party.

- 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 relevant Party has 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 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 favourable as those granted to any other carrier under an existing special prorate agreement; and
 - (d) it shall not prohibit the Relevant Party 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 relevant Party has made adjustments to ATPCo chart 2 which are not in accordance with normal business practices but rather an attempt by that Party to restrict the Requesting Air Services Provider's inventory access, it may ask the Monitoring Trustee to verify whether the relevant Party's 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 favourable as the terms agreed by the relevant Party under an existing special prorate agreement 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 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 the other Parties; and
 - (c) ensure minimum connection times which are based on standard practices at the airport and terminal in question and which are reasonable. The Requesting Air Services Provider shall have the option to agree minimum connection times on the same terms as those that the Parties grant to each other to the extent that this is reasonable *inter alia* in light of the infrastructure investments involved.
- 3.7 Subject to Clause 3.14, 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 favourable than the corresponding term in any special prorate agreement which the relevant Party and the Requesting Air Services Provider have in place as at 12 May 2010.
- 3.8 For the purposes of Clause 3.4 and Clause 3.6(a), the relevant Party may exclude any existing special prorate agreement which that Party has 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 Party's metal pursuant to that agreement in the last financial year); or
 - (b) the agreement is obsolete.

In addition, the Monitoring Trustee shall exclude any existing special prorate agreements or any individual terms of such agreements which the relevant Party has demonstrated, to the satisfaction of the Monitoring Trustee, that it would be unreasonable to include because, due to exceptional circumstances, the relevant agreements or terms are exceedingly favourable.

- 3.9 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 relevant Party has 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 relevant Party has with other carriers, the rate on that route will be either the rate agreed by the relevant Party and the Requesting Air Services Provider or the most favourable rate that applies to the

most comparable route (considering factors such as yield and length of haul) which is included in an existing special prorate agreement of the relevant Party. In the event that the relevant Party 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 3.14, be applied on the basis of the more favourable (to the Requesting Air Services Provider) of the following:
- (a) special prorate agreements (and the terms therein) between the relevant Party and any other carrier as existing at 12 May 2010, subject to reasonable indexation that takes account of standard industry practices (including practices between the Parties); and
 - (b) special prorate agreements (and the terms therein) between the relevant Party and any other carrier as existing at the date of the request for negotiation or re-negotiation of the Special Prorate Agreement.
- 3.11 The Special Prorate Agreement shall have the following duration: (i) if the Special Prorate Agreement starts applying before IATA Winter Season 2012/13 (inclusive), the Special Prorate Agreement shall have an effective duration of up to ten (10) years at the choice of the Requesting Air Services Provider; or (ii) if the Special Prorate Agreement starts applying after IATA Winter Season 2012/13, the Special Prorate Agreement shall have an effective duration for a period of up to the end of IATA Winter Season 2020/21 or (if later) up to five (5) years at the choice of the Requesting Air Services Provider. If the Requesting Air Services Provider elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 3.11, 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 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 All Special Prorate Agreements entered into pursuant to this Clause 3 for a particular Identified City Pair:
- (a) shall lapse automatically in the event that the Requesting Air Services Provider ceases to operate Competitive Non-stop Air Service on that Identified City Pair or joins an existing Alliance with Hubs at both end of the City Pairs referred to in Clause 3.1 or is controlled by a member of an Alliance with Hubs at both ends of the City Pair referred to in Clause 3.1; and
 - (b) may with the agreement of the Monitoring Trustee, be subject to annual re-negotiation. Clause 3.10 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.

- 3.13 Should the Requesting Air Services Provider believe that the terms proposed by the relevant Party do not comply with this Clause 3, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.
- 3.14 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.
- 3.15 For the avoidance of doubt, the Parties shall not deconcur the Requesting Air Services Provider from routes and fare classes covered by the Special Prorate Agreement. The Parties 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 relevant Party's marginal costs of carriage.

4. FREQUENT FLYER PROGRAMMES

- 4.1 At the request of a New Non-stop 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 their FFPs for the Identified City Pairs on which the New Non-stop Air Services Provider has commenced or increased service. The FFP agreement with the New Non-stop Air Services Provider shall be on terms such that the New Non-stop Air Services Provider shall have equal treatment vis-à-vis the accrual and redemption of Miles on the particular Identified City Pair as compared with members of the **oneworld** Alliance other than the Parties.
- 4.2 Any agreement relating to a particular Identified City Pair and entered into pursuant to this Clause 4 shall:
- (a) lapse automatically in the event that the New Non-stop Air Services Provider ceases to operate non-stop service on that Identified City Pair; and
 - (b) have the following duration: (i) if the FFP agreement starts applying before IATA Winter Season 2012/13 (inclusive), the FFP agreement shall have an effective duration of up to ten (10) years at the choice of the New Non-stop Air Services Provider; or (ii) if the FFP agreement starts applying after IATA Winter Season 2012/13, the FFP agreement shall have an effective duration for a period of up to the end of IATA Winter Season 2020/21 or (if later) of up to five (5) years at the choice of the New Non-stop Air Services Provider. If the New Non-stop 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 Non-stop Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.

- 4.3 Subject to Clause 4.4, any term included in the frequent flyer agreement entered into pursuant to this Clause 4 can never be less favourable than the corresponding term in any FFP agreement which the relevant Party and the New Non-stop Air Services Provider have in place as at 12 May 2010.
- 4.4 The conclusion of the FFP agreement shall be subject to the approval of the Commission, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

5. MONITORING TRUSTEE

5.1 Appointment of Monitoring Trustee

- 5.1.1 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' fulfilment of the Commitments and further obligations that may be contained in the Commitment 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 specialised in the air transport sector, or auditor). In addition, it shall not be exposed to any conflict of interest and shall not have had any direct or indirect work, consulting or other relationship with any of the Parties in the last three (3) years and shall not have a similar relationship with the Parties for three (3) years after completing its mandate.

- 5.1.2 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 fulfil the duties of the Monitoring Trustee.

The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out above and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
- (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to it.

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 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 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.

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.

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.

- 5.1.3 In approving the Monitoring Trustee as set forth in Clause 5.1, the Commission shall consult and take due consideration of the opinion of the DOT with a view to appointing a common Monitoring Trustee.

5.2 Monitoring Trustee's Mandate

- 5.2.1 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 and the DOT 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 and the DOT 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 the DOT; and

- (f) at any time, to provide to the Commission and the DOT, at their request, a written or oral report on matters falling within the scope of these Commitments.
- 5.2.2 For the avoidance of doubt, subject to Clause 5.2.1, 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.
- 5.2.3 Any request made by a third party carrier for the Monitoring Trustee to verify the Parties' compliance with these Commitments (including as described at Clause 3.5(d) and Clause 3.13) 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.
- 5.2.4 The DOT shall receive simultaneously a copy of any report or recommendation made by the Monitoring Trustee to the Commission (as provided for in Clause 5.2.1(c) to 5.2.1(f)).
- 5.2.5 The Parties shall receive simultaneously a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission and the DOT (as provided for in Clause 5.2.1(c)).
- 5.2.6 The reports provided for in Clauses 5.2.1(c) to 5.2.1(f) shall be prepared in English. The reports provided for in Clause 5.2.1(d) shall be sent by the Monitoring Trustee to the Commission and the DOT 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 simultaneously a non-confidential copy of each Monitoring Trustee report.
- 5.2.7 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 shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.
- 5.2.8 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 fulfil its duties under these Commitments.
- 5.2.9 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 wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, agents and advisors).

- 5.2.10 At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval and consultation with the DOT, 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.

5.3 Termination of Mandate

- 5.3.1 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:

- (a) the Commission in consultation with the DOT may, after hearing the Monitoring Trustee, require the Parties to replace the Monitoring Trustee; or
- (b) with the prior approval of the Commission (which will have duly consulted the DOT and taken its opinion into consideration), the Parties may replace the Monitoring Trustee.

- 5.3.2 If the Monitoring Trustee is removed, it may be required to continue its functions until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in 5.1.1.

- 5.3.3 Aside from being removed in accordance with Clause 5.3.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.

6. FAST-TRACK DISPUTE RESOLUTION PROCEDURE

- 6.1 The agreements concluded to implement the Commitments in accordance with Clauses 1 to 4 shall provide for a Fast-Track Dispute Resolution procedure (***Fast-Track Dispute Resolution Procedure***) described in this Clause 6. In the event that a Prospective Entrant, Eligible Air Services Provider, Requesting Air Services Provider, or New Non-stop 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 Eligible Air Services Provider which wishes to avail itself of the Fast-Track Dispute Resolution Procedure (***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.

The Trustee shall present its own proposal (**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.

- 6.3 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**) (hereinafter the **Arbitral Institution**), with a copy of such Notice and request for arbitration to the Parties.
- 6.4 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 Trustee Proposal, including a comment as to its appropriateness.
- 6.5 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 Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

- 6.6 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.
- 6.7 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

- 6.8 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.
- 6.9 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.
- 6.10 The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.
- 6.11 In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the Parties to the Arbitration agree.
- 6.12 The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under Regulation 1/2003. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Trustee, the Commission, the DOT and outside counsel and experts of the opposing party.
- 6.13 The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless the Parties can produce evidence to the contrary.

Involvement of the Commission

- 6.14 The Commission and the DOT shall be allowed and enabled to participate in all stages of the procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
 - (b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
 - (c) giving the Commission and the DOT the opportunity to file amicus curiae briefs; and
 - (d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission and the DOT without delay.

In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitment, the Arbitral Tribunal may seek the Commission's interpretation of the Commitment before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

- 6.15 The Arbitral Tribunal shall decide the dispute on the basis of the Commitment and the Decision. Issues not covered by the Commitment and the Decision shall be decided (in the order as stated) by reference to Regulation 1/2003, 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.
- 6.16 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.
- 6.17 The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.
- 6.18 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.

- 6.19 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.
- 6.20 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.
- 6.21 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 Regulation 1/2003 and the TFEU.

7. REPORTING OBLIGATIONS

- 7.1 The Parties shall promptly report to the Commission once the Proposed Alliance has been implemented in accordance with the Agreements, and shall also promptly provide to the Commission copies of any material variations, amendments or additions to the Agreements.
- 7.2 The Parties shall permit the DOT to transmit to the Commission data based on information supplied to it by the Parties in accordance with the reporting obligations provided for in its Final Order in Case DOT-OST-2008-0252 (or any future amendment thereof). AA shall additionally permit the DOT to transmit to the Commission relevant data based on information previously supplied to it by AA in accordance with applicable legislation.

8. TERMINATION AND REVIEW

- 8.1 If the Proposed Alliance is abandoned, abrogated, unwound, not approved or disapproved by a relevant government authority, or otherwise terminated including as a result of any regulatory approvals having been withdrawn or expired, then these Commitments shall automatically cease to apply.
- 8.2 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. Without prejudice to the generality of this Clause 8, if the approval of the Proposed Alliance by another governmental authority is made subject to requirements that are potentially incompatible with these Commitments, the Parties may request such a re-opening of the proceedings and modification of these Commitments in order to avoid such incompatibilities.

8.3 In addition and without prejudice to the provisions of Article 9(2) of Regulation 1/2003, the Commission may, on its own initiative, review these Commitments five (5) years after the Effective Date. Such a mid-term review shall in any event not affect the validity of the Slot Release Agreements, Special Prorate Agreements, fare combinability agreements and FFP agreements already concluded.

8.4 On becoming aware of any new legislation which would prohibit any of the terms of the Proposed Alliance or the Parties' compliance with these Commitments (**Adverse New Legislation**), the Parties shall consult in good faith with the Prospective Entrant and the Monitoring Trustee about its effect on:

- (a) the agreements entered into pursuant to these Commitments; and
- (b) the practicability of making alternative arrangements which would have the same effect as carrying out such agreements,

and as agreed may then, prior to such Adverse New Legislation coming into force:

- (c) enter into supplemental agreements varying the relevant agreements to implement the alternative arrangements; or
- (d) elect to terminate the agreements.

Any changes in accordance with (c) and (d) above shall be subject to prior confirmation of the Monitoring Trustee that they are not material or approval of the Commission (advised by the Monitoring Trustee and having consulted and taken due consideration of the opinion of the DOT).

8.5 For the avoidance of doubt, the expiry of these Commitments (e.g. as a result of the expiry or review of the Commitment Decision or as a result of Clauses 8.1 or 8.2 above) shall not affect the validity of the Slot Release Agreements, Special Prorate Agreements, fare combinability agreements and FFP agreements already concluded, unless the Commission's review results in a decision explicitly ending such agreements. As long as such agreements continue to apply beyond the expiry of the Commitments, the provisions in these Commitments that concern these agreements also continue to apply. However, the expiry of these Commitments shall end the Parties' obligation to renew those agreements.

Date: 25 June 2010

Signed:

Signed:

Signed:

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duly authorised for and on behalf of British Airways

duly authorised for and on behalf of American Airlines

duly authorised for and on behalf of Iberia