



EUROPEAN COMMISSION

DG Competition

***Case M.5364 - IBERIA /
VUELING / CLICKAIR***

Only the English text is available and authentic.

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

Decision on the implementation of remedies - Art. 6(1)(b)
in conjunction with 6(2) - Assessment of viability

Date: 31.10.2017



EUROPEAN COMMISSION

Brussels, 31.10.2017
C(2017) 7449 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

IMPLEMENTATION OF
COMMITMENTS

To the notifying party:

Subject: Case M.5364 – Iberia/Clickair/Vueling

Assessment of the viability of Transavia France S.A.S. and evaluation of its formal bid pursuant to Clause 3.4 of the Commitments attached to the Decision in the above-mentioned case following the Monitoring Trustee's opinion of 18 October 2017 – IATA Summer Season 2018

Dear Sir or Madam,

1. FACTS AND PROCEDURE

- (1) By decision of 09 January 2009 ("the Decision") based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004, the Commission declared the concentration by which the undertaking Iberia Líneas Aéreas de España, S.A. ("Iberia", Spain) acquired sole control of the undertakings Vueling Airlines, S.A. ("Vueling", Spain) and Clickair, S.A. ("Clickair", Spain) compatible with the internal market subject to conditions and obligations (the "Commitments").

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

- (2) Iberia, Vueling and Clickair are hereinafter together referred to as the "Parties".
- (3) Pursuant to Clause 1.1.1 of the Commitments, the Parties undertake inter alia to make slot(s) available in Barcelona and/or Venice and/or Rome and/or Nice and/or Athens and/or Madrid and/or Naples and/or Ibiza and/or Paris to allow one or more Prospective New Entrant(s) to operate or increase the following number of additional frequency(ies), that is, a roundtrip in an Identified Route (hereinafter, the Frequency(ies)), in the following Identified European Routes:¹
- i. Barcelona-Venice - up to seven (7) Frequencies per week.
 - ii. Barcelona-Rome - up to fourteen (14) Frequencies per week.
 - iii. Barcelona-Nice - up to four (4) Frequencies per week.
 - iv. Barcelona-Athens - up to three (3) Frequencies per week.
 - v. Madrid-Venice - up to seven (7) Frequencies per week.
 - vi. Madrid-Naples - up to four (4) Frequencies per week.
 - vii. Ibiza-Paris - up to seven (7) Frequencies per week during the IATA Summer Season.
- (4) On 5 October 2017, Transavia France S.A.S. ("Transavia") submitted a formal request to the Monitoring Trustee for two Frequencies in accordance with Clauses 1.3.1 and 3.1 of the Commitments on the route Paris Orly–Ibiza (ORY-IBZ) for the IATA Summer Season 2018: one on Fridays and one on Sundays.
- (5) On 18 October 2017, the Monitoring Trustee provided the Commission with its report assessing the request by Transavia pursuant to the criteria set out in Clauses 3.3. and 3.4 of the Commitments.
- (6) Table 1 below provides a summary of the slots requested by Transavia:

Table 1: Slots and Frequencies of Transavia request

Departure		Arrival	Departure		Arrival	Frequency per week	
City	Days	City	City	Days	City	Request	Remedy
Flight	Time	Time	Flight	Time	Time	airline	EC
ORY - 5		IBZ	IBZ - 5		ORY		7
TO3158	15:30	17:40	TO3159	18:25	20:30	1	
ORY - 7		IBZ	IBZ - 7		ORY		
TO3158	15:30	17:40	TO3159	18:25	20:30	1	

ORY	Paris Orly
IBZ	Ibiza

All times in UTC, not local times
 Summer 2018 - Local time = UTC + 2 hours

5 - 7 Operations on Friday & Sunday

¹ In addition to these European routes, the Commitments also identified slots available for domestic routes within Spain (Clause 1.2.1 of the Commitments).

- (7) No other applicant has submitted a formal request to the Monitoring Trustee for any of the Frequencies identified in the Commitments for the IATA Summer Season 2018.

2. REPORT OF THE MONITORING TRUSTEE ON TRANSAVIA SLOT APPLICATION FOR IATA SUMMER SEASON 2018

- (8) In its report of 18 October 2017, the Monitoring Trustee assessed that Transavia France fulfilled the two eligibility criteria set out in Clause 3.4 of the Commitments, namely independence and viability.

2.1. Assessment pursuant to independence

- (9) The Monitoring Trustee notes that Transavia is the low cost brand of the Air France-KLM group.
- (10) The Monitoring Trustee confirms that Transavia and its shareholders have no link with Iberia. The Trustee has also not identified any links (equity links, economic links or future economic links) between Iberia and Transavia.
- (11) Transavia is also not a member of the oneworld Alliance, in which Iberia participates.
- (12) Transavia further informed the Monitoring Trustee that no co-operation agreement with any other airlines is currently in place for the proposed Ibiza-Paris route.
- (13) In light of the above, the Trustee considers that Transavia is independent of and unconnected to Iberia (Clause 3.3(i)(A) of the Commitments).

2.2. Assessment pursuant to viability

- (14) Pursuant to Clause 3.5 of the Commitments, Transavia provided the Monitoring Trustee with a detailed business plan.
- (15) Transavia currently offers already airline passenger services on the Ibiza-Paris route. More concretely, Transavia operated during the IATA Summer Season 2017 eight weekly Frequencies on the route.
- (16) Transavia intends to service the additional Frequencies using Boeing 737 aircrafts with a capacity of 189 seats in a one-class configuration.²
- (17) Transavia carried [...] passengers in IATA Summer Season 2017, and forecasts to carry [...] passengers in IATA Summer Season 2018 and [...] passengers in IATA Summer Season 2019 (including the additional requested Frequencies).
- (18) [...].³

² See Transavia Application, [...]

³ The route is operated [mostly] during Summer Season.

- (19) Transavia's expected load factors for IATA Summer Seasons 2018 and 2019 are [...], compared against a load factor of [...] for IATA Summer Season 2017.
- (20) The Ibiza-Paris route has recently seen strong growth, with a capacity expanding from [...] seats in IATA Summer Season 2015 to [...] seats in IATA Summer Season 2017).⁴
- (21) Based on the above and the financial strength and size of Transavia's parent company, the Monitoring Trustee considers that Transavia would be a viable competitor on the Ibiza-Paris route, with the ability, resources and commitment to operate the additional Frequency on the route in the long term as a viable and active competitive force (Clause 3.3(i)(B) of the Commitments).

2.3. Reduced Utilisation Period

- (22) According to Clause 1.3.1 of the Commitments, the Slots obtained by the Prospective New Entrant from the Parties shall only be used to provide a Competitive Air Service on the Identified Route for which the Prospective New Entrant has requested the slots to the Parties. Those Slots cannot be used on another route unless the Prospective New Entrant has operated the Identified Route for which the Slots have been transferred at least during four (4) consecutive IATA Seasons (i.e. Summer/Winter/Summer/Winter or four consecutive Summer seasons in those routes which are not operated during the whole year) (the "Utilisation Period").
- (23) During the Utilisation Period the Prospective New Entrant shall not be entitled to transfer, assign, sell or charge in any way any Slot transferred by the Parties. Once the Utilisation Period has elapsed, the slots become definitive and the Prospective New Entrant can reassign the Slot(s) to another route.
- (24) According to Clause 1.3.5 of the Commitments, the Utilisation Period shall be reduced to two (2) full and consecutive IATA Seasons for a Prospective New Entrant that requests Slots to operate "*a significant number of Identified Routes from one same airport (i.e. Summer/Winter or two consecutive Summer seasons in those routes which are not operated during the whole year)*" (the "Reduced Utilisation Period").
- (25) In its report of 18 October 2017, the Monitoring Trustee considered that the two proposed additional roundtrips on the Ibiza-Paris route do not constitute a *significant number* as per Clause 1.3.5 of the Commitments. The Monitoring Trustee therefore considers that the Reduced Utilisation Period does not apply (Clause 3.3(i)(C) of the Commitments).

2.4. Conclusion

- (26) In light of the above, the Trustee concludes that (i) Transavia should qualify as a Prospective New Entrant under the EU Commitments and (ii) the service to be provided by Transavia should qualify as a Competitive Air Service under the EU Commitments (Clause 3.3 of the Commitments).

⁴ See [...].

- (27) Moreover the Monitoring Trustee considers that Reduced Utilisation Period does not apply in this case.

3. COMMISSION'S ASSESSMENT

- (28) According to Clause 1.1.1 of the Commitments, Iberia undertakes to make slots available at a number of airports to allow one or more "*Prospective New Entrant(s) to operate or increase*" a "*number of additional Frequencies (...) in the (...) Identified European Routes*".
- (29) Under the Commitments (Definitions), a Prospective New Entrant is "*an airline (...) able to offer a Competitive Air Service*" and "*independent of and unconnected with the Parties*". In addition, the Commitments define Competitive Air Service as "*scheduled passenger air transport on a direct basis operated in one or more of the Identified Routes*", among which the Commitments include the Ibiza-Paris route.
- (30) Transavia is not an associated carrier belonging to the same group as Iberia. It does not have common ownership with Iberia (or its holding company, IAG) and it does not participate in the oneworld alliance. Transavia does not have a codeshare agreement with Iberia and does not cooperate with Iberia on the Ibiza-Paris route in the provision of passenger air transport services.
- (31) Moreover Transavia is active on the Ibiza-Paris route since 2013 and proved its ability to operate viably the route.
- (32) In line with the Monitoring Trustee's assessment, the Commission thus considers that Transavia:
- (a) is independent of and unconnected to the Parties; and
 - (b) is a viable potential competitor, with the ability, resources and commitment to operate the Ibiza-Paris route in the long term as a viable and active competitive force.
- (33) Moreover, also in line with the Monitoring Trustee's assessment, the Commission considers that the Reduced Utilisation Period does not apply.

4. OVERALL CONCLUSION

- (34) Based on the foregoing considerations and all the other evidence available to it, the Commission decides in relation to Transavia's slot application for IATA Summer Season 2018 on the Ibiza-Paris route that Transavia is a "Prospective New Entrant" pursuant to Clause 3.4 of the Commitments.
- (35) This decision does not constitute a confirmation that Iberia has complied with its Commitments.
- (36) This decision is based on Clause 3.4 of the Commitments.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General