



EUROPEAN COMMISSION

DG Competition

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

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Assessment of viability
Date: 12.11.2018



EUROPEAN COMMISSION

Brussels, 12.11.2018
C(2018) 7625 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

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

Assessment of Transavia France S.A.S. pursuant to Clauses 3.3 and 3.4 of the Commitments attached to the Decision in the above-mentioned case – Summer 2019 IATA Season

Dear Sir or Madam,

1. FACTS AND PROCEDURE

- (1) By decision of 9 January 2009 (the "Clearance Decision") based on Article 6(1)(b) in conjunction 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").¹

- (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 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)² 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:³
 - 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
- (4) By the set deadline of 4 October 2018, Transavia France S.A.S. ("Transavia") submitted a formal request to the Monitoring Trustee for three Frequencies in accordance with Clause 3.1 of the Commitments on the Ibiza-Paris route ("IBZ-ORY") for Summer 2019 IATA Season: one on Wednesday, one on Saturday and one on Sunday. Transavia also submitted an updated request correcting two clerical errors, but without any changes to the Slots actually requested by the deadline (the "Application").
- (5) Pursuant to Clause 3.3.(i).(A) of the Commitments, the Commission, advised by the Monitoring Trustee, *"shall assess whether the Applicant qualifies as a*

¹ Capitalised terms not explicitly defined in this Decision are to be understood as defined in the Clearance Decision and the Commitments.

² Prospective New Entrant is defined by the Commitments as *"any Applicant airline that is not a member of the Oneworld 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 Slot Commitment to operate a Competitive Air Service."*

³ In addition to these European routes, the Commitments also identified domestic routes within Spain for which the Parties undertook to make Slots available to one or more Prospective New Entrants (Clause 1.2.1 of the Commitments).

⁴ The Commission already approved on 1 December 2017 the Slot Transfer Agreement between the Parties and Transavia concerning the transfer of Slots (the "2017 Slots") in order for Transavia to operate two weekly Frequencies on the Ibiza-Paris route as of Summer 2018 IATA Season.

Prospective New Entrant and whether the service to be provided by the Applicant qualifies as a Competitive Air Service".

- (6) Pursuant to Clause 3.4 of the Commitments,

"As provided for under Clause 3.3.(i).(A), the Commission shall decide after consulting with the Monitoring Trustee whether or not it considers the Applicant as a Prospective New Entrant pursuant to the following criteria:

(i) the Applicant is independent of and unconnected to the Parties; and

(ii) the Applicant is a viable potential competitor, with the ability, resources and commitment to operate the Identified Route(s) in the long term as a viable and active competitive force."

- (7) Therefore, the Commission shall assess and decide whether Transavia is eligible for Slots under the Commitments based on the criteria set out in Clause 3.4 of the Commitments.
- (8) The Commission further notes that no other applicant has submitted a formal request to the Monitoring Trustee for Slots to commence or increase frequencies on the Ibiza-Paris route, for Summer 2019 IATA Season. Therefore, Clause 3.3.(i).(B) of the Commitments regarding the assessment in cases where there is more than one Applicant is not applicable.
- (9) The purpose of this Decision is to assess whether Transavia qualifies as a Prospective New Entrant in relation to its Application to operate three additional Frequencies on the Ibiza-Paris route in Summer 2019 IATA Season.

2. REPORT OF THE MONITORING TRUSTEE ON THE APPLICATION FOR SUMMER 2019 IATA SEASON

- (10) In accordance with Clauses 3.3, 3.4 and 5.2.1(iii) of the Commitments, the Monitoring Trustee provided the Commission on 24 October 2018 with its report assessing whether Transavia qualifies as a Prospective New Entrant and Transavia is a viable competitor, with the ability, resources and commitment to operate the Ibiza-Paris route in the long term as a viable and active competitive force (the "Report").
- (11) More specifically, the Monitoring Trustee assessed whether Transavia fulfilled the criteria set out in Clause 3.4 of the Commitments, namely whether the Applicant is independent of an unconnected to the Parties and whether it is a viable potential competitor.

2.1. Assessment of Transavia's independence

- (12) The Monitoring Trustee notes that Transavia is the low cost brand of the Air France-KLM group.
- (13) The Monitoring Trustee confirms that Transavia and its shareholders have no link with Iberia, including its subsidiaries. The Trustee has also not identified any

links (equity links, economic links or future economic links) between Iberia and Transavia.

- (14) Transavia is also not a member of the Oneworld alliance, in which Iberia participates.
- (15) In light of the above, the Trustee considers that Transavia is independent of and unconnected to Iberia and that the criterion set out in Clause 3.4(i) of the Commitments is met.

2.2. Assessment of Transavia's viability

- (16) In accordance with Clause 3.5 of the Commitments, Transavia provided the Monitoring Trustee with a detailed business plan for the Ibiza-Paris route.
- (17) Transavia currently already offers airline passenger services on the Ibiza-Paris route. More concretely, Transavia operated during the Summer 2018 IATA Season ten weekly Frequencies on the route. The Monitoring Trustee notes that in Summer 2018 IATA Season, two Frequencies on that route were created by Transavia using the 2017 Slots transferred by Iberia under a Slot Transfer Agreement in the context of the Commitments. The Spanish slot coordinator confirmed to the Monitoring Trustee that Transavia has used the 2017 Slots in accordance with the "*use it or lose it*" principle of the EU Slot Regulation, according to which an air carrier having operated a particular series of slots for at least 80% of the relevant scheduling period is entitled to the same series of slots in the equivalent scheduling period of the following year.⁵ According to the Monitoring Trustee, the compliance of Transavia with the "*use it or lose it*" principle is indicative of Transavia's ability to operate on the Ibiza-Paris route.
- (18) The proposed three additional Frequencies Ibiza-Paris route will be used for scheduled passenger air transport on the Ibiza-Paris route on a direct basis. Transavia intends to service these three additional Frequencies using Boeing 737 aircraft with a capacity of 189 seats in a one-class configuration.⁶
- (19) Based on the above and the financial strength and size of Transavia's parent company, the Monitoring Trustee considers that Transavia would continue to be a viable competitor on the Ibiza-Paris route, with the ability, resources and commitment to operate the additional Frequencies on the route in the long term as a viable and active competitive force. Therefore, the Monitoring Trustee considers that the criterion set out in Clause 3.4(ii) of the Commitments is met.

2.3. Reduced Utilisation Period

- (20) According to Clause 1.3.5 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. Those Slots cannot be used on another route unless the Prospective New Entrant has operated the Identified Route for which

⁵ 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 (the "EU Slot Regulation"), Article 10(2).

⁶ Transavia's Updated Application, Section 3.5.

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").

- (21) 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 transfer of Slots becomes definitive and the Prospective New Entrant can reassign the Slot(s) to another route.
- (22) Pursuant 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").
- (23) Pursuant to Clauses 3.3.(i).(C) of the Commitments, the Monitoring Trustee shall advise the Commission as to whether the Applicant may benefit from the Reduced Utilisation Period in accordance with Clause 1.3.5. of the Commitments.
- (24) In the Report, the Monitoring Trustee considered that the three proposed additional roundtrips on the Ibiza-Paris route do not constitute a "*significant number of Identified Routes from one same airport*" as per Clause 1.3.5 of the Commitments. The Monitoring Trustee therefore considers that the Reduced Utilisation Period should not apply.

2.4. Conclusion of the Monitoring Trustee

- (25) The Monitoring Trustee concludes that (i) Transavia meets the eligibility criteria set out in Clause 3.4 of the Commitments and thus qualifies as a Prospective New Entrant; and (ii) Transavia would continue to be a viable competitor on the Ibiza-Paris route, with the ability, resources and commitment to operate the additional Frequencies on the route in the long term as a viable and active competitive force.
- (26) Besides, the Monitoring Trustee considers that Transavia should not benefit from the Reduced Utilisation Period in this case.

3. COMMISSION'S ASSESSMENT

- (27) 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*".
- (28) Under the Commitments (section "Definitions"), a Prospective New Entrant is defined as "*any Applicant airline that is not a member of the Oneworld alliance, 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*", including the Ibiza-Paris route.

- (29) Pursuant to Clause 3.4(i) of the Commitments, an Applicant is considered to be eligible for Slots if "*the Applicant is independent and unconnected to the Parties*".
- (30) Regarding the criterion of independence as set out in Clause 3.4.(i) of the Commitments, Transavia is not an associated carrier belonging to the same group as Iberia, does not have common ownership with Iberia (or its holding company IAG) and does not participate in the Oneworld alliance. The Commission notes that this was also the conclusion of Commission's assessment in the Decision of 31 October 2017⁷ and that therefore Transavia continues to be independent of and unconnected to the Parties.
- (31) Pursuant to Clause 3.4(ii) of the Commitments, an Applicant is considered to be eligible for Slots if it is a "*viable potential competitor, with the ability, resources and commitment to operate the Identified Route(s) in the long term as a viable and active competitive force*".
- (32) Regarding Transavia's viability, first, it has the ability and resources to operate a direct scheduled service on the Ibiza-Paris route. Indeed, Transavia is one of two operating entities using the Transavia brand (alongside Transavia Netherlands) and holds a valid Air Operator Certificate. Its parent company Air France-KLM has a recorded revenue of EUR 25 billion in 2017. Transavia carried over [...] passengers in 2017, operating a fleet of [...]. As explained in paragraph (17) above, Transavia has already demonstrated its ability to operate viably on the Ibiza-Paris route. In particular, Transavia operated the 2017 Slots as prescribed in the Commitments.⁸
- (33) Second, Transavia is committed to provide direct scheduled services on the Ibiza-Paris route in the long term. Transavia is active on the Ibiza-Paris route since [...] and confirmed its intention to continue operating the Ibiza-Paris route [...].⁹
- (34) Therefore, the Commission's assessment in the Decision of 31 October 2017 that Transavia is a viable competitor on the Ibiza-Paris route remains valid.
- (35) In summary and in line with the Monitoring Trustee's assessment, the Commission considers that the criteria set out in Clause 3.4 of the Commitments are fulfilled since 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.
- (36) As regards the possibility to reduce the Utilisation Period to two consecutive Summer IATA Seasons, the Commission considers, in line with the Monitoring

⁷ Decision of 31 October 2017 in Case M.5364 – Iberia/Clickair/Vueling on the assessment of Transavia France S.A.S – IATA Summer Season 2018.

⁸ Eligibility Report, section 4.6.

⁹ See Eligibility Report, Annex 3b "Monitoring of IBZ slots obtained in 2017 (Transavia France responses)".

Trustee's assessment, that the conditions set out in Clause 1.3.5 of the Commitments are not fulfilled.

- (37) The Commitments provide for the availability of Slots to operate up to 5 routes from/to Ibiza airport during Summer IATA Seasons. Transavia's current Application relates to one single route, i.e. Ibiza-Paris. On that basis, the Commission considers that Transavia does not request Slots to operate a significant number of Identified Routes from Ibiza airport. Therefore, Transavia may not benefit from the Reduced Utilisation Period for the Slots to operate three additional Frequencies on the single Ibiza-Paris route.

4. CONCLUSION

- (38) Based on the above considerations and the available evidence, the Commission decides that Transavia qualifies as a Prospective New Entrant in relation to the Ibiza-Paris route for the purpose of the implementation of the Commitments and intends to provide a Competitive Air Service since (i) Transavia is independent of and unconnected to the Parties and (ii) Transavia is a viable potential competitor of the Parties on the Ibiza-Paris route, with the ability, resources and commitment to operate that route in the long term as a viable and active competitive force.
- (39) This Decision does not constitute a confirmation that the Parties have complied with the Commitments.
- (40) This Decision is based on Clauses 3.3 and 3.4 of the Commitments.

For the Commission

(Signed)

Johannes LAITENBERGER

Director-General