EN

Case No COMP/M.5830 – Olympic/ Aegean Airlines

Only the English text is authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 8 (3)
Date: 26/01/2011

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PUBLIC VERSION

COMMISSION DECISION

of 26/01/2011

declaring a concentration to be incompatible with the internal market and the EEA Agreement

(Case No COMP/M.5830 - Olympic/ Aegean Airlines)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("the EC Merger Regulation")[1], and in particular Article 8(3) thereof,

Having regard to the Commission's Decision of 30 July 2010 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case[3],

WHEREAS:

1 OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

2 OJ C ...,...20. , p....

3 OJ C ...,...200. , p....

I. INTRODUCTION AND PROCEDURE

(1) On 24 June 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the Vassilakis Group of companies, Greece ("Vassilakis"), Marfin Investment Group, Greece ("Marfin") and the Laskaridis Group of companies, Greece ("Laskaridis") (collectively "the Parties") acquire joint control by way of purchase of shares over a newly merged company ("the merged entity") including the businesses of the following previously independent Greek companies:

a) Aegean Airlines S.A. ("Aegean")[4]; and

b) Olympic Air S.A. ("Olympic Air")[5], Olympic Handling S.A. ("Olympic Handling") and Olympic Engineering S.A ("Olympic Engineering") (collectively, "Olympic").

(2) After examination of the notified transaction described in recital (1) ("the transaction"), the Commission concluded that the notified operation fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the internal market and the EEA Agreement. The Commission therefore initiated proceedings in accordance with Article 6(1)(c) of the Merger Regulation on 30 July 2010 ("the decision opening proceedings").

(3) The Parties submitted their written comments on the decision opening proceedings on 10 August 2010[6].

(4) Following a request by the Parties, a non-confidential version of certain key submissions of third parties collected during the first phase investigation was provided to the Parties on 17 August 2010.

(5) On 1 September 2010, pursuant to Article 11(3) of the Merger Regulation, the Commission addressed a decision to Marfin and a decision to Olympic Air, requiring those undertakings to provide email correspondence of selected individuals over a certain time period. The requested information was needed to assess the relevant context of the transaction and in particular Olympic Air's financial situation. Further to that request, the proceedings were suspended from 2 September 2010 until 28 September 2010[7].

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4 IATA airline designator of Aegean is "A3".

5 IATA airline designator of Olympic Air is "OA".

6 Reply of the Parties to the decision opening proceedings of 30 July 2010.

7 Under Article 9 of Commission Regulation No (EC) 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1), the time limits referred to in Article 10(3) of the Merger Regulation are suspended for the period between the end of the time limit fixed in the first request for information and the receipt of complete and correct information required by a decision adopted pursuant to Article 11(3) of the Merger Regulation.

(6) On 20 October 2010, a Statement of Objections was sent to the Parties, pursuant to Article 18 of the Merger Regulation. The Parties submitted their reply to the Statement of Objections on 5 November 2010. A Hearing took place at the Parties' request on 11 November 2010. On 18 November 2010 the Commission sent the Parties a Supplementary Statement of Objections, to which the Parties replied to on 23 November 2010. On 6 December 2010, the Commission sent the Parties a Letter of Facts. In order to allow the Parties to assess the content of the Letter of Facts the Commission granted access to a data room to the Parties' mandated external expert on 10 December 2010. The Parties replied to the Letter of Facts on 13 December 2010. The Advisory Committee was convened on 13 January 2011.

(7) In order to address competition concerns identified in the Statement of Objections, the Parties submitted commitments on 12 November 2010 pursuant to Article 8(2) of the Merger Regulation. On 18 November 2010, the Parties submitted a revised version of these commitments. Following submission of this revised version, the Commission launched a market test to gather the views of relevant market participants on the effectivness of the proposed commitments. On 29 November 2010, the Parties submitted a new version of the commitments which was subsequently modified on 6 December 2010. On the same day, the Commission launched a market test of these modified commitments.

II. THE PARTIES

(8) Vassilakis is a privately owned Greek group of companies with investments in aviation (Aegean), ground handling (Goldair Handling), car rental and leasing as well as car import and distribution.

(9) Marfin is an investment group with investments in aviation (Olympic Air), ground handling (Olympic Handling), maintenance, repair and overhaul services (Olympic Engineering), in-flight catering (Olympic Catering), shipping (including Attica Group's Superfast Ferries and Blue Star Ferries which are active on several routes between the Greek mainland and islands in the Aegean sea as well as other car-passenger transport and freight services active in the Adriatic Sea), healthcare, IT and telecoms, tourism and leisure, and the food and beverages sectors.

(10) Laskaridis is a privately owned group of companies with investments in aviation (Aegean), shipping and shipyards, ground handling, tourism and real estate.

(11) Aegean is a listed independent[8] Greek airline providing scheduled and charter air passenger transport as well as air cargo transport. Since 1999, Aegean has been offering scheduled flights on Greek domestic routes and international short-haul routes. It operates a base at AIA and currently serves more than 45 short-haul destinations

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8 Aegean's largest shareholders are Vassilakis (36.3%), Laskaridis (19%), Piraeus Bank (4.7%), […]* (6.4%), […]* (6%), […]* (4.7%) with remaining shares in free float (16.9%) on the Athens Stock Exchange. According to the parties, no entity currently exercises control over Aegean after the termination of a Shareholders' Agreement between Vassilakis and Laskaridis following Aegean's listing in 2007. […]*.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(including some public service obligation routes). Aegean joined the Star Alliance[9] on 30 June 2010.

(12) Olympic is solely controlled by Marfin and consists of three entities:

i. Olympic Air is active in air transport of passengers and cargo. It started its operations on 1 October 2009 following the privatisation of former Olympic Airlines ("Old Olympic")[10] during which Marfin acquired the brand, slots and licenses of liquidated Olympic Airlines[11]. Olympic Air operates a base at AIA and serves around 40 short-haul destinations (including some public service obligation routes). It does not belong to any airline alliance;

ii. Olympic Handling offers a full range of ground handling services at 39 Greek airports, serving both Olympic Air and third party airlines;

iii. Olympic Engineering is currently in start-up mode and will provide maintenance, repair and overhaul services ranging from the handling of general events for a single aircraft to full support packages for commercial airplanes.

III. THE TRANSACTION AND THE CONCENTRATION

(13) According to a Share Purchase Agreement ("SPA") signed between the Parties on 22 February 2010, the transaction is to be achieved in three steps:

a) […]*;

b) […]*;

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9 The Star Alliance is one of the three major airline alliances counting among its members airlines like Lufthansa, Air Canada, United Airlines, US Airways, etc. The alliance members have various degrees of bilateral or multilateral cooperation in place among themselves, ranging from code-share agreements to integrated joint ventures.

10 Old Olympic is the company that pre-existed Olympic Air and that was liquidated pursuant to a Commission's State aid decision (see State aid Cases Commission Decisions of 23 January 2010, N 321 / 2008 - Olympic Airlines, N 322 / 2008 - Olympic Airways Services (first part) and N 323 / 2008 - Olympic Airways Services (second part) OJ C 18, 23.01.2010, p.9).

11 The creation of the new Olympic, that is Olympic Air, the company created in 2009 and subject to this proceedings ("New Olympic") was approved by the Commission (see State aid Cases Commission Decisions of 23 January 2010, N 321 / 2008 - Olympic Airlines, N 322 / 2008 - Olympic Airways Services (first part) and N 323 / 2008 - Olympic Airways Services (second part) OJ C 18, 23.01.2010, p.9) on the basis that the undertakings given by the Greek authorities were fully complied with (that is, the privatisation process would result in three entities: one a flight company taking over 65% of the capacity of Olympic Airlines as well as the possibility to use the Olympic Airways brand and logo; and two further companies dealing respectively with ground-handling and maintenance. The remaining parts of Olympic Airlines and of Olympic Airways Services would be liquidated). During the privatisation process, the Commission found that the notified sale processes were no different to any other type of sale of assets on market terms, taking into consideration the specific circumstances of the case. The Commission noted that the new entities would develop their business activities based on the business plan of the new owners in accordance with market conditions.

c) […]*

(14) Following the transaction, Marfin and Vassilakis will each hold [20-30]*% of the shares in the merged entity, whilst Laskaridis' shareholding will be [10-20]*%[12]. According to the SPA, all decisions taken by the Board of Directors, are in principle taken by simple majority.

(15) The Parties argue that important veto rights relating to market-specific rights and investments decisions are granted to each of Marfin, Vassilakis and Laskaridis, in particular for certain changes […]*[13]. According to the Parties, the veto rights enjoyed by the Parties are sufficient to confer them joint control.

(16) According to point 66 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings[14], veto rights confer control if related to strategic decisions on the business policy of the undertaking concerned and go beyond the veto rights usually held by minority shareholders to protect their financial interests.

(17) It should be noted that the business plans of airline companies are determined to a large extent by the choice of aircraft operated and seat capacity, while entry on long-haul routes affects in a significant way the business model of an airline.

(18) [*Changes to the type of fleet*]*

(19) [*Entry into long-haul routes*]*[15]

(20) Each of Vassilakis, Laskaridis and Marfin have veto rights on certain measures which are of considerable importance for the strategic direction of an airline and go well beyond the veto rights usually held by minority shareholders to protect their financial interests. In addition, the use of such veto rights by the Board of Directors of the merged entity is foreseeable in the near future when adopting strategic decisions. Each of Vassilakis, Laskaridis and Marfin will individually be able to block strategic decisions of the merged entity.

(21) As a result, the transaction involves the acquisition of joint control by the Parties over the merged entity. The transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. UNION DIMENSION

12 […]*.

13 […]*.

14 OJ C 95, 16.04.2008, p.4.

15 […]*.

(22) The undertakings concerned[16] have a combined aggregate world-wide turnover of more than EUR 2.5 billion (Vassilakis EUR […]*, Marfin EUR […]*, Laskaridis EUR […]*, Aegean EUR […]*, Olympic EUR […]*). In each of at least three Member States, the combined aggregate turnover of the undertakings concerned is more than EUR 100 million (Greece EUR […]*, Cyprus EUR […]*, Germany EUR […]*). The aggregate turnover of each of Aegean and Marfin exceeds EUR 25 million in each of the above-mentioned three Member States (Greece, Cyprus and Germany). Vassilakis, Marfin, Laskaridis, Aegean and Olympic each have a Union-wide turnover in excess of EUR 100 million. Finally, they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. Although the Parties used the '50/50' method to calculate their turnover, the thresholds would also be met by using the "point of origin" or "point of sale" methods[17]. The transaction therefore has a Union dimension in accordance with Article 1(3) of the Merger Regulation.

V. INVESTIGATION OF THE CASE

(23) Given the complexity of the case, the Commission has sought to make use of all available means of investigation pursuant to Article 11 of the Merger Regulation. It not only analysed questionnaires which were sent, *inter alia*, to competing scheduled airlines, ferry/train operators, groundhandlers, travel agents, corporate customers, and airports but also undertook other written and oral contacts with these market participants other third parties such as slot coordination authorities, civil aviation authorities, and consumers associations. In addition, the Commission analysed a substantial amount of internal documents belonging to the Parties, including more than 90 000 internal emails[18].

(24) Against this background, it is important to stress that the assessment of the competitive impact of the transaction involves a complex legal and economic analysis, the results of which are based on the totality of the available evidence[19].

(25) In particular as concerns the questionnaires, it is important to note that the market investigation is by no means an "opinion poll". For instance, the fact that the majority of third parties provide a similar opinion in reply to a specific question, can only be an indication for the Commission's own investigation, not a foregone conclusion. Likewise, it would not be appropriate to assume that the answers to the questionnaires can always

16 See Jurisdictional Notice, Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16 April 2008, paragraphs 124-128.

17 These methods are described in Commission Decision of 27 June 2007, Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraphs 18 et seq.

18 See Letter from the Parties received by e-mail on 12 October 2010 at 11:30.

19 See Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraphs 35 et seq. According to this Decision, the fact that single pieces of evidence may not support a certain conclusion, cannot as such put into question the Commission's assessment, since the Commission cannot base its decision on one single piece of evidence, but must collect as much evidence as possible, analyse all available facts and opinions and weigh all the available evidence when deciding on the compatibility of a transaction with the internal market.

be considered thought-through objectively. The specific level of knowledge of third parties might vary, the questions might have been misunderstood, the replies might be more or less representative, and the opinion provided might be "biased" to influence the Commission's decision-making process in a certain way[20].

(26) As in any other merger investigation, the Commission has therefore carefully analysed, interpreted and weighed all views expressed during the market investigation. It must be borne in mind that the quotes from market participants selected by the Parties in their response to the Statement of Objection, Supplementary Statement of Objection and Letter of Facts are only part of a large number of statements from third parties. However, the Commission considers that the relevant statements need to be weighed against all available evidence.

(27) Therefore, it is important to stress that the market investigation is an on-going process, in the course of which the Commission usually refines and narrows down the issues it analyses[21] and clarifies unclear and contradictory opinions with third parties. Therefore, not only were various written questionnaires sent, but detailed interviews were also carried out, in particular with the most important competitors to tackle potential omissions in some responses, to clarify unclear opinions from the written responses and to learn more about some key facts of the case (for example, competition by ferries, entry barriers, entry/expansion plans). The minutes of these interviews were sent to the interviewees for correction (and to suggest deletion of confidential business information) before they were added to the case file[22] .

(28) In their replies to the Statement of Objections, the Supplementary Statement of Objections and the Letter of Facts, the Parties criticised on several occasions the absence of empirical analysis, or econometric or other economic analysis of any sort, as opposed to the thorough analysis carried out by the Commission, in particular in the *Ryanair/Aer Lingus* case[23].

(29) However, during the market investigation, comprehensive information was requested through questionnaires and interviews from the Parties, travel agents, corporate customers, domestic and international competing airlines, ferry companies, relevant authorities and other organised stakeholders. These requests included both

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20 In particular, the Commission analyses opinions by competitors very carefully, since these might have an interest in making the transaction of their competitors more difficult, in particular in the framework of a contested bid. However, other airlines indicated even that they would welcome the transaction since they were generally in favour of airline consolidation. Indeed, since a number of airlines have just undergone merger control procedures at the occasion of national or European mergers, carriers interested in future acquisition might be rather interested to avoid the view that airline consolidation could have negative aspects. Furthermore, competitors operating on the same market as the merging parties might also be biased in favour of the transaction, since they would benefit from the price increase resulting from the transaction.

21 For example, the decision to open the second phase proceedings considered many more routes than the Statement of Objections.

22 Where answers were unclear or contradictory, the Commission generally attached greater weight to the interview held after the written reply and aimed at clarifying the written answers.

23 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*.

qualitative and quantitative data (whenever the latter was readily available). Once verified for accuracy and relevance, qualitative and quantitative data obtained were used in the decision making process for all relevant issues.

(30) As a main remark, while complex inferences can sometimes be validated or rejected by conducting a sophisticated empirical analysis, at least three pre-conditions need to be met for such analysis to be informative[24]:

i. All the necessary data must be available to implement the chosen empirical methodology and the available data must be of adequate quality, otherwise the significance of the results obtained is at most very limited;

ii. Empirical analysis in merger cases necessarily involves the use of historical data. Thus, the data to be usable in such analyses need to be a good indicator of the likely impact of the merger on future competition; and

iii. The sufficient variability in the data to identify references for comparison.

(31) None of the above three pre-conditions were met in this case:

i. the data obtained was of poor quality, incomplete and/or inaccurate. For instance, directional data[25] and time of purchase data was not available from at least one of the Parties. Data on passengers and revenues used by the Parties for their Discounted Cash Flow ("DCF") analysis was not in line with the Parties' internal documents or with the data used in the counterfactual analysis. Ferry operators' database are not as developed as the sophisticated systems/databases used by airlines. As a result, the split by type of ticket, time of travel and capacity was not always available from ferry operators and no relevant data were made available for the different tickets sold by the ferry companies;

ii. Olympic Air started operations in October 2009. Therefore, Olympic Air's data were limited to a few months. Accordingly, the Commission requested data from Old Olympic. However, the Commission accepted the Parties' argument that the past was not a good predictor for the future in this case[26]. Hence at best, any analysis based on historic quantitative data, even if doubtful given the importance of the counterfactual analysis, could only go back to October 2009, when Olympic Air started operations. Consequently, there exist only 11 time series observations to undertake an analysis

24 Further, according to the Best practices for the submission of economic evidence and data collection in cases concerning the application of Articles 101 and 102 TFEU and in merger cases (DG Competition, 6 January 2010), any meaningful empirical or economic analysis needs to (i) ask a relevant question that cannot be answered through other, less onerous means (ii) rely on the "right" data (iii) use the appropriate methodology (iv) lead to clear and relevant conclusions (v) be robust and counterarguments be given adequate consideration.

25 Directional data allow identifying the origin and the destination of the flights.

26 See however Section VI.1.4.1.11 of the Decision; data referring to Old Olympic are used for the purpose of a limited descriptive exercise, observing the evolution of air and ferry fares and passengers over a sufficient period of time.

concerning competitive effects. It is not possible for the Commission to rely on an econometric analysis containing so few observations. Indeed, such an econometric analysis would not be robust enough (nor possibly even statistically significant) for the standards of the Best practices for the submission of economic evidence[27] (nor the Court of Justice of the European Union's standards for that matter); and

iii. There is limited variability in the available data and, save for a few exceptions, there are no (systematic) natural experiments that can be exploited.

(32) In the *Ryanair/Aer Lingus* case[28], considered a key precedent by the Parties, none of the data-related difficulties described above were encountered. The data was complete, accurate, and adequate for the methodologies for which it was used. Moreover, the issues assessed in the *Ryanair/Aer Lingus* case, namely airport substitutability at various points of origin and points of destination, the level of mutual competitive constraint exercised between Ryanair and Aer Lingus, and the brand recognition were not relevant in this case. Instead, this case raised issues of counterfactual analysis and of the substitutability of ferries and air services, which were not analysed in the *Ryanair/Aer Lingus* decision. In light of the difference of the questions to be investigated in the market investigation in the two cases, any comparison of the investigative tools in those cases is inappropriate.

(33) Moreover, the General Court of the European Union ("the General Court") confirmed in the *Ryanair/Aer Lingus* judgment[29] that there is no hierarchy between "technical" and "non-technical" evidence, since the Commission's task is to make an overall assessment of the case. The General Court also emphasized in that judgment that the lack of sufficient data meant that the Commission could use other reliable estimations[30].

(34) The Parties criticised the Commission for not carrying-out a customer survey assessing the critical question of substitutability of ferries to air services on relevant Greek domestic routes where both modes of transport are available. According to the Parties, this is in contrast to other second phase merger airline industry-related Commission decisions in which such surveys were carried out and used in the decisions' reasoning.

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27 Best practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases; http://ec.europa.eu/competition/consultations/2010_best_practices/best_practice_submissions.pdf.

28 Commission Decision of 27 June 2007, M.4439 - Ryanair/Aer Lingus.

29 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 136: *"the applicant's assertion that the 'non-technical evidence' cannot be taken into account unless it is supported by 'technical evidence' cannot be upheld. There is no need to establish such a hierarchy. It is the Commission's task to make an overall assessment of what is shown by the set of indicative factors used to evaluate the competitive situation. It is possible, in that regard, for certain items of evidence to be prioritised and other evidence to be discounted".*

30 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraphs 156 to 158.

(35) First of all, in this case, as in earlier cases, the Commission did consider carrying out a customer survey, in particular, to examine substitutability between air services and intermodal services (ferry/train). The Commission concluded that such a survey would raise significant methodological difficulties given the specific circumstances of the case. For instance, the survey would not have been representative since as a consequence of the timing of the investigation at that stage, it would have covered only a short period in the summer[31].

(36) Second, despite the methodological flaws identified, the Commission organised a tender procedure to try to identify proper means of conducting a customer survey. Two bids were received. However, the Commission's panel, having evaluated the submitted bids, concluded that none of the submissions offered adequate methodology solutions to conduct a satisfactory customer survey in this case since such survey would not have met the required standards.

(37) Therefore, the Commission focused its analyses and resources on other means of investigation and conducted a wide-reaching market investigation to collect qualitative evidence to assess the substitutability of train/ferries and air services on Greek domestic routes.

(38) Using the tools described above, the Commission demonstrated in this Decision that evidence collected during the market investigation allows an adequate assessment of all issues raised by this case including, for instance, the extent of competitive constraints exercised by ferries on the Parties on affected routes.

(39) Besides, the Parties submitted several documents containing empirical analysis. Following a careful assessment of the documents, the Commission either accepted these, at least in part, or dismissed them entirely for methodological or technical reasons, or dismissed or attached limited weight to them for lack of relevance. The documents submitted were:

i. Discounted cash flow analysis:

This analysis does not reflect the decision making process within an airline.

ii. Aegean and Olympic Air's counterfactual analyses:

These analyses have been assessed in great detail. While inconsistencies in the data and assumptions employed were noted, the Commission establishes the most likely counterfactual, using data and general information on a route by route basis from these analyses.

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31 Given the case calendar of the case at hand, the survey in this case would have had to take place during the second half of August 2010 according to the legal deadline in force at the opening of the Proceedings, before the suspension of the time limit pursuant to Article 9 of Regulation 802/2004 which occurred in September 2010. Given the high degree of seasonality, which is characteristic of the Greek market, the representativeness of the sample subject to the survey in that period would be questionable and no general conclusions applicable to the entire year could be drawn from the collected evidence. "Redressing" data in this context would not have been sufficiently meaningful.

iii. Critical Loss Analysis:

Critical loss analysis is unsuitable for delineating market boundaries in this case. First and foremost, this type of analysis is inappropriate for the airline transport industry that relies on yield management to price its products (namely, product differentiation is an important competitive variable). Second, there are methodological flaws in the analysis put forward by the Parties. Last, the analysis is incomplete.

iv. Customer surveys:

The customer surveys submitted by the Parties suffer precisely from the methodological flaws that led the Commission not to conduct its own survey. Moreover, the Parties' customer surveys, despite having been carried out for the purpose of these proceedings, failed to ask the critical question namely whether respondents considered ferry services as a suitable alternative to air services, either in general or on specific routes (as relevant).

v. Stationarity analysis to delineate product markets:

In the context of product differentiation and yield management pricing, such analysis is inadequate. For instance, a constant relation in the fares between flexible tickets and restricted tickets exists as a matter of fact on any given flight. A robustness test carried out by the Commission and based on a counter-experiment using price series unrelated to each other by arbitrage confirms that the results of the stationarity analysis are spurious.

vi. Regression analysis on the impact of ferry presence on airline pricing:

The Parties' regression analysis suffers from lack of appropriate control of variables and robusness checks, and the results confirm rather than refute the limited significance of ferry presence. The results also confirmed a clear differentiation between time sensitive and non time sensitive passengers.

(40) More detailed analyses of the Parties' submissions are conducted in the relevant Sections of this Decision.

VI. MARKET DEFINITION

1. AIR TRANSPORT OF PASSENGERS

1.1. Point of origin/point of destination (O&D) city-pairs

(41) Earlier Commission decisions have traditionally defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" ("O&D") city-pair approach[32]. Such a market definition reflects the

32 Commission decision of 22 January 2010, M.5440 - *Lufthansa/Austrian Airlines*; Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*; Commission decision of 26 March

demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable to a different city-pair. As a result, every combination of a point of origin and a point of destination is considered a separate market.

(42) The Parties submit that indeed, from the passengers' point of view, every O&D combination should be considered as a separate market.

(43) The market investigation in this case largely confirmed this approach. While some network carriers indicated that, from the supply-side perspective, major airlines compete on a network-to-network basis, most respondents to the requests for information, including airlines, corporate customers and travel agents, agreed that from the demand perspective each O&D constitutes a separate market with specific characteristics in terms of passenger mix and product qualifications[33].

(44) Therefore the effects of this transaction are assessed on the basis of an O&D city-pair approach[34].

1.2. Substitutability of charter flights and scheduled flights

(45) Charter flights, as opposed to scheduled flights, are usually defined as air transport services that take place outside normal schedules, normally through a hiring arrangement with a particular customer (for example, a tour operator). Indeed, traditionally charter airlines did not sell tickets directly to passengers, but to tour operators who chartered the flight to include it in holiday packages[35]. As such, the flight (air transport) is part of a package holiday, the price of which includes flights, accommodation and other services. However, charter airlines nowadays sometimes sell so-called "dry seats" directly to passengers in addition to the sales of seats to tour operators for inclusion in "package holidays".

(46) In past decisions in the airline sector, the Commission did not consider charter flights as part of the same product market as scheduled flights.[36]

(47) The Parties submit that given the specificities of this case, in terms of market definition, charter flights are relevant for all international air transport affected markets. This is due to the fact that Greece is a typical European holiday destination served by

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2009, M.5364 - *Iberia/Vueling/Clickair*; Commission decision of 9 March 2004, M.3280 - *Air France/KLM*; Commission decision of 20 August 2005, M.3770 - *Lufthansa/Swiss*. The O&D approach was confirmed by the General Court, most recently in Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 53.

33 Replies to question 8 of the phase I request for information to travel agents of 25 June 2010; replies to question 6 of the phase I request for information to corporate customers of 25 June 2010; replies to questions 8 and 9 of the phase I request for information to competitors of 25 June 2010.

34 The question of an inclusion of airport substitutability at points of origin and destination is discussed in the context of the specific O&D pair. See section IX.1.10.5 and section IX.1.10.6

35 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraph 297.

36 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*; Commission Decision of 4 March 2009, M.5141- *KLM/Martinair*.

charter flights from most European cities to Athens and on all overlap routes to island destinations at various times of year, particularly in the summer season.

(48) However, as concerns seats included in "package holidays", these seats cannot be considered as substitutable for seats on scheduled flights as most passengers purchase seats only and not package holidays. By definition, package holidays oblige passengers to acquire a number of complementary products such as accommodation, transportation at destination, meals, etc. in which only a reduced subset of passengers might be interested. As a result, a test based on a small but significant non-transitory increase in price ("SSNIP") of 5 % or 10 % in the price of scheduled flights is unlikely to lead a sufficient number of passengers to purchase a package holiday so as to render the SSNIP unprofitable for a hypothetical airline with a monopoly over all scheduled flights.

(49) These considerations do not apply to "*dry seats*" which are sold on a stand-alone basis. However, in this case travel agents pointed out during the market investigation that charter flights on international routes of concern in this transaction are of inferior quality when compared to scheduled flights (such as the level of the service offered, availability of seats, frequencies, reliability of service, price, duration of travel, quality of service on board). Therefore, according to travel agents, passengers do not frequently buy "dry seats" on charter flights on the international routes analysed[37]. The disadvantages of charter flights as compared to scheduled flights were also underlined by other market participants.[38]

(50) Furthermore, charter airlines active on most international routes affected by this transaction do not operate throughout the year and therefore, as concerns these routes, substitutability between scheduled flights and so-called "dry seats" on charter flights would in any case be limited to the summer season.[39]

(51) For the purpose of this Decision whether charter flights should be included in the same relevant market as scheduled flights can be left open. Indeed, the relevance of charter flights in this case is limited to certain international routes.[40] No competition concerns arise on these routes irrespective of whether or not charter flights are included into the same relevant market as scheduled flights.

37 Replies to questions 52-54 of the phase II request for information to travel agents of 13 August 2010.

38 The Thessaloniki Chamber of Commerce pointed out that time sensitive passengers do not buy so-called "dry seats" on charter flights on a frequent basis on any of the affected international non-stop/non-stop overlap routes, see: Reply to question 37 of phase II request for information to consumer associations in Greece of 13 August 2010 [ID 2847]. According to the Greek consumer organisation Kepka, "charter flights are generally cheaper but consumers cannot use them unless they have booked a group travel", see: Reply to question 36 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

39 Replies to question 12 and 15 of the phase II request for information to competitors-charter of 13 August 2010; reply to question 6 of phase II request for information to consumer organisations EU of 13 August 2010 [ID 3540].

40 Reply of the Parties to question 16 of request for information of 04 August 2010.

1.3. Time sensitive vs. non-time sensitive passengers

(52) In previous merger cases in the airline industry, the Commission has found that a distinction may be drawn between two main groups of passengers: (a) non-price sensitive passengers attaching, *inter alia*, a relatively high value to flexibility with respect to time and date of departure, and (b) more price sensitive passengers willing to trade off flexibility or premium services for a discounted ticket. Traditionally these two groups of passengers have been labelled as *time sensitive* and *non-time sensitive* passengers, respectively[41].

(53) There are various reasons why passengers may be less sensitive to price. In particular, passengers travelling for business purposes tend to value the opportunity cost of the time they spend travelling. As a result they often require significant flexibility with their tickets and are willing to pay a higher price for this flexibility. In most instances, price insensitive passengers tend to consider flexible tickets purchased some time in advance of departure and tickets purchased soon before departure as relative close substitutes in that such tickets simply offer interchangeable ways of retaining flexibility.

(54) Nevertheless, not only passengers travelling for business reasons exhibit lower price elasticity for air travel - at any given point in time. For example, the opportunity cost of time for high earners and high-income passengers is likely to be relatively high even when travelling for leisure. These passengers can have a relatively high willingness to pay to depart on the latest flight on a Friday or return on the latest flight on a Sunday, to give just one example. Similar considerations apply to passengers travelling for leisure. Indeed, leisure passengers returning a day later than preferred could incur unwanted additional expenses such as hotel accommodation. Similarly, the Greek consumer organisation, Kepka, underlined that "*when working people travel for leisure they have taken their days off from their work, have arranged for replacements etc. So it is not without consequences that they must be flexible with their booking*".[42]

(55) By contrast, price sensitive passengers are typically less time sensitive (in that they have less need for flexibility with respect to date or time of departure), often because they travel for leisure or to visit friends and relatives ("VFR passengers"). Such price sensitive and time insensitive passengers also typically book well in advance and have relatively lower incomes[43].

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41 The terms "price elastic", "price sensitive" or "non-time sensitive" are used interchangeably throughout this Decision to refer to the group of passengers that prefer lower prices over flexibility. Similarly, the terms “price inelastic”, “price insensitive” and “time sensitive” are used to refer to the group of passengers valuing flexibility more than the price. See, in this context, further observations by the consumer organization Ekpizo in the Statement of Objections according to which it is “appropriate to make an analytical distinction between price sensitive and non-price sensitive customers” [ID 5967].

42 Email of Kepka of 1 July 2010 [ID 883].

43 Commission decision of 22 January 2010, M.5440 - *Lufthansa/Austrian Airlines*; Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*; Commission decision of 26 March 2009, M.5364 - *Iberia/Vueling/Clickair*; Commission decision of 9 March 2004, M.3280 - *Air France/KLM*; Commission decision of 20 August 2005, M.3770 - *Lufthansa/Swiss*.

(56) Given the existence of two groups of passengers willing to pay different prices for tickets, airlines (including Olympic Air and Aegean) seek to differentiate tickets along various factors that price insensitive passengers value more than price sensitive passengers (such as last minute purchase, schedule and flexibility of the ticket), thereby inducing the former to purchase a higher fare ticket.

(57) The Parties argue that a distinction between time sensitive and non-time sensitive passengers is becoming increasingly doubtful in particular because the price sensitivity of business passengers has increased over time. According to the Parties this is also evidenced by the fact that nowadays business passengers do not hesitate to book cheaper flights with so-called low-frills airlines. The Parties further argue that the vast majority of business passengers, given the current economic conditions, consider the cheapest fare available and therefore often travel behind the curtain. Restricted economy class fares thus discipline all fares including business class fares. Moreover, according to the Parties, the importance of convenience generally, and the need for flexibility in particular, has lessened as a factor influencing all passengers' purchase decisions. When buying flight tickets, passengers take into consideration a variety of factors, such as price, service, convenience and travel time, rather than basing their decision on flexibility alone.

(58) The Commission's market investigation confirms that passengers take into consideration a variety of factors when purchasing flight tickets. However, precisely by varying the ticket characteristics along such factors, airlines are capable of discriminating between price sensitive and non-price sensitive passengers through sophisticated pricing strategies in particular yield (or revenue) management. Revenue management ("RM") system *"is the practice of maximising revenue generated from a fixed seat inventory which is perishable at the time of departure. It does this by controlling the release of seats for sale at different fares, in other words, by optimising the passenger mix. The RM [revenue management] problem can therefore be characterised as a decision whether or not to accept a booking request; the answer to this problem depends upon whether or not revenue earned by accepting the request exceeds the revenue that could be earned by denying it and retaining the seat(s) for later sale at a higher price"*[44]. The rationale of yield management is that airlines engaging in various forms of price discrimination earn a larger share of their potential revenue. They segment the market by imposing restrictions on low-fare tickets that most time sensitive passengers are unable or unwilling to meet, thus forcing them to purchase expensive full-fare tickets instead. To lower the risk of having to turn down booking requests for the higher, more profitable fare classes after selling out a flight, airlines limit the number of discount seats available, a practice known as seat inventory control[45]. This

44 Holloway, S.: Straight and Level Practical Airline Economics, Ashgate Publishing Limited, Hampshire, 2008. p. 495. Yield management is a dynamic process. In particular, the average fare (namely, fare classes available) at each point in time reflects the opportunity costs of selling a seat today rather than tomorrow. This in turn is determined by a host of factors, the most important of which is the interplay between the remaining seats (or equivalently the sold ones), the remaining time until departure and expected demand.

45 Also described by Holloway S., Ibid, p. 143 *"pricing and revenue management have increasingly been used together to maximise revenue capture on a departure-by-departure basis by 'ring-fencing' different market segments with ticket conditions and constrained seat availability in an attempt to prevent price-inelastic customers buying fares set below their willingness to pay"*.

combination of price differentiation, market segmentation and seat inventory control is a form of RM, which allows airlines to achieve sufficiently high load factors while maintaining yields.

1.3.1. Preliminary remarks

(59) According to the Commission Notice on the definition of relevant market for the purposes of Community competition law (the Relevant Market Notice)[46], the main purpose of market definition is to identify in a systematic way the competitive constraints faced by the merging parties. In doing so, the Commission takes into account a range of evidence enabling to assess of the extent to which substitution would take place. The Commission considers the characteristics and specificity of the industry and products or services analysed[47].

(60) Specific requirements and preferences of different passenger groups might result in differences in competitive constraints prevailing on the corresponding market segments. As explained in the Relevant Market Notice ("*one way of making this determination can be viewed as a speculative experiment, postulating a hypothetical small, lasting change in relative prices and evaluating the likely reactions of customers to that increase [...] Conceptually, this approach means that, starting from the type of products that the undertakings involved sell and the area in which they sell them, additional products and areas will be included in, or excluded from, the market definition depending on whether competition from these other products and areas affect or restrain sufficiently the pricing of the parties' products in the short term*."[48]

(61) To determine in this case whether there exists a segment of passengers such that a hypothetical monopolist owning all the tickets could profitably impose a small but non-transitory increase in price, it is first necessary to assess whether various passenger groups can be differentiated according to their respective price sensitivity.

(62) According to the Relevant Market Notice "*differences in product characteristics are not in themselves sufficient to exclude demand substitutability, since this will depend to a large extent on how customers value different characteristics*"[49]. Thus, the fact that products are differentiated does not indicate whether they belong to separate product markets. What matters is the effect of these product characteristics on substitution patterns, namely on how many passengers would switch in response to the relative price change hypothesised, and the impact on the profitability of the hypothetical monopolist. However, as also explained in the Relevant Market Notice: "*The extent of the product market might be narrowed in the presence of distinct groups of customers. A distinct group of customers for the relevant product may constitute a narrower, distinct market when such a group could be subject to price discrimination. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which group an*

46 OJ C 372, 9.12.1997, p. 5, point 2.

47 OJ C 372, 9.12.1997, p. 5, point 25.

48 OJ C 372, 9.12.1997, p. 5, points 15-16.

49 OJ C 372, 9.12.1997, p. 5, point 36.

individual customer belongs to at the moment of selling the relevant products to him, and (b) trade among customers or arbitrage by third parties should not be feasible"[50].

(63) Available evidence is reviewed to determine whether in this case: (i) there exists a segment of relatively non-price sensitive (i.e. time sensitive) passengers, and (b) airlines are able to successfully implement pricing and product differentiation strategies that induce the price insensitive (time sensitive) passengers at the time of booking to self sort into a high fare allowing airlines to extract a higher margin from the price insensitive passengers. As stated in recital (62), when a segment of non-price sensitive passengers "*could be subject to price discrimination*" that segment *"may constitute a narrower, distinct market"*.[51]

1.3.2. There exists a segment of relatively price insensitive passengers (i.e. time sensitive) distinct from others relatively price sensitive (non-time sensitive)

(64) The Commission's market investigation in this case examined in detail whether the existence of a sizeable segment of relatively price insensitive passengers. In particular, passengers that, for various reasons, are more willing to pay for flexibility in terms of time or date of departure, and/or place a higher value on related services that increase travel convenience. The existence of such a segment of relatively price insensitive passengers is a necessary condition to determine whether a hypothetical monopolist that owns all tickets offering such flexibility would be able to impose a

50 OJ C 372, 9.12.1997, p. 5, point 43. It is to be stressed that the first condition for price discrimination, namely that customers are identified as belonging to the "price sensitive" or the "non-price sensitive" segment, can be met in two ways. One directly, as in the case of "third degree" price discrimination, where passengers have observable characteristics that allow the airlines to offer different prices, for example, some passengers belong to the airline's frequent flyer program whereas others not, or some passengers travel in a group, are connecting, or simply some passengers infants/children and other are adults. In all these cases the airlines have the possibility of directly identifying a relevant characteristic of the passenger related to his/her willingness to pay and thus charge different prices. Another way to price discriminate arises in the case of "second degree" price discrimination. See Section VI.1.3 and Annex 1 of this Decision for a more detailed description of price discrimination.

51 The Parties argued in their response to the Statement of Objections and the Supplementary Statement of Objections that "in order to discharge of the burden of proving a significant impediment of effective competition, the Commission should have addressed, in the SO and/or the SSO, the critical questions of: (a) whether there is a distinct category of customers on whom it would be possible to impose a SSNIP without this being defeated by a loss of passengers to other means of transport or otherwise; and (b) whether this category of passengers can be price-discriminated against". The Commission finds that this statement is confusing, at best. First (a) and (b) are not necessary conditions to delineate markets as the Parties imply. Condition (a) is a conceptual experiment that can assist in delineating markets but may not be possible to observe or implement in practice: according to point 15 of the Relevant Market Notice *"one way of making this determination can be viewed as a speculative experiment, postulating a hypothetical small, lasting change in relative prices and evaluating the likely reactions of customers to that increase one way of making this determination"*. As regards condition (b) according to point 43 of the Relevant Market Notice a finding that a group of customers could be subject to price discrimination may be evidence that such group "constitute a narrower, distinct market". But this condition is not necessary, and in the absence of a proper understanding of the mechanism of price discrimination, nor is it sufficient.

small and non transitory price increase without passengers switching to cheaper but restricted tickets.

(65) The market investigation in this case showed, in line with well established observations in the economic and industry specific literature[52], that airlines can induce passengers to reveal whether they attach a relatively high value to flexibility in at least two ways: first, by offering high-priced advanced-purchase tickets but with minimal fees for change or cancellation; second, by increasing the average price of tickets as the departure date approaches.[53] In the latter case, the longer passengers wait to purchase flight tickets, the more likely it is that their travel arrangements are less prone to changeand hence the higher their willingness to pay.

Competitors

(66) During the market investigation, several competitors pointed out that all passengers, whether time sensitive or non-time sensitive, are becoming increasingly price sensitive.

(67) However, competitors responding to the market investigation still widely distinguish time sensitive passengers according to one or several criteria, such as flexibility, time of booking, length of stay and business travel[54]. These preferences are revealed through passengers' booking behaviour.

(68) In particular, a large majority of airlines consider passengers' need for flexibility as a relevant parameter to determine their willingness to pay different prices for their seat[55].

(69) Similarly, a large majority of airlines consider the time of booking as a relevant parameter to distinguish between time sensitive and non-time sensitive passengers.[56] Indeed, passengers booking close to departure are prepared to pay a higher price since by delaying their purchase decisions they benefit from the inherent flexibility in not finalising travel plans until most of the uncertainties concerning the trip are resolved.

(70) The market investigation revealed that a passenger group, in particular passengers travelling for business purposes, continues to show a relatively lower price elasticity for air travel given particular preferences and a higher opportunity cost of time that distinguish them from non-time sensitive passengers, who in general travel for leisure.[57] More specifically, passengers travelling for business seek punctuality to be on time at

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52 Holloway, S., *Straight and Level Practical Airline Economics*, Ashgate Publishing Limited, Hampshire, 2008.

53 As time of departure approaches and the different ticket types are sold or some booking classes are closed the average price of the available tickets is higher. In other words, the lowest available ticket price is higher.

54 Replies to question 6 of phase II request for information to competitors of 11 August 2010.

55 Replies to question 7 of phase II request for information to competitors of 11 August 2010.

56 Replies to question 8 of phase II request for information to competitors of 11 August 2010.

57 Replies to questions 9 and 10 of phase II request for information to competitors of 11 August 2010.

their meetings, ability to return to their offices/homes as quickly as possible and they generally favour one-day business trips. Airlines also confirmed that passengers travelling for business tend to book their tickets close to departure as many business meetings and similar events are scheduled at rather short notice[58].

Corporate customers

(71) The market investigation showed that a large majority of corporate customers who replied to the relevant question endorsed the distinction between time sensitive and non-time sensitive passengers[59]. Corporate customers underlined that flexibility is an important, if not the most important, criterion for passengers travelling for business[60]. A large majority of corporate customers also underlined that flexibility and short trip duration are important criteria when travelling for business.[61]

(72) Furthermore, when replying to the question how much time in advance a ticket is bought, most corporate customers indicated that they buy their tickets seven days or less before departure.[62]

Travel agents

(73) Similary, a majority of travel agents[63] endorsed the distinction between time sensitive and non-time sensitive passengers indicating that in line with the common saying "time is money" time sensitive passengers are typically willing to pay a premium for a quicker connection or flexibility, in contrast to non-time sensitive passengers accepting the disadvantages related to schedule and non-flexibility against lower price.[64]

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58 Replies to questions 6-12 of phase II request for information to competitors of 11 August 2010.

59 Replies to questions 13 and 14 of phase II request for information to corporate customers of 13 August 2010. The Parties point out in their reply to the Statement of Objection that "corporate customers" account for a very small proportion of total passengers so their views are neither material nor representative (Greek "corporate customers" purchased […]* tickets last winter season (2009-2010) from Aegean and […]* tickets from Olympic Air). However, the "corporate customers" to whom requests for information were addressed in phase II have not been selected on the basis of their contractual relationship with the Parties (i.e. if they have a "corporate contract" with one of the two carriers). Rather, contact details requested from the Parties for "corporate customers" included the biggest companies in Greece (in terms of turnover) as well as 10 biggest companies (in terms of turnover) which are located in each Athens, Thessaloniki and each of the other destinations at one end of an affected domestic non-stop/non-stop route, see Parties' reply to request for information of 27 July 2010. On the basis of these criteria, the Commission considers that the replies of "corporate customers" in this case are highly relevant and informative about the preferences of time sensitive passengers.

60 Replies to question 18 of phase II request for information to corporate customers of 13 August 2010.

61 Replies to questions 19 and 20 of phase II request for information to corporate customers of 13 August 2010.

62 Replies to question 21 of phase II request for information to corporate customers of 13 August 2010.

63 According to the Parties, travel agents are a very important distribution channel for all domestic routes, see Annex 63 to the Form CO.

64 Replies to questions 13-14 of phase II request for information to travel agents of 13 August 2010; replies to question 12 of phase I request for information to travel agents of 25 June 2010.

These characteristics, and in particular time sensitive passengers' need for flexibility (for instance due to frequent short-term changes in professional meetings), short journey times and a tendency to book tickets relatively close to the day of departure clearly distinguish them from non-time sensitive passengers[65]. More specifically, in their replies, almost all travel agents considered the need for flexibility and journey times as important criteria for time sensitive passengers[66].

(74) In their reply regarding the timing of advance bookings of tickets, a large majority of travel agents considered that time sensitive passengers book seven days or less before departure while non-time sensitive passengers book longer in advance[67].

Other respondents

(75) The distinction between time sensitive and non-time sensitive passengers was also confirmed by other respondents to the Commission's market investigation[68][69]. The replies underlined flexibility[70] and journey times[71] as being important criteria for time sensitive passengers as opposed to non-time sensitive passengers.

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65 Replies to questions 23-25 of phase II request for information to travel agents of 13 August 2010.

66 Replies to questions 23 and 24 of phase II request for information to travel agents of 13 August 2010.

67 Replies to question 25 of phase II request for information to travel agents of 13 August 2010.

68 Replies to question 7 of phase II request for information to Union consumer organisation of 13 August 2010 [ID 3048]; [ID 2673]; [ID 3540]; [ID 2542]; [ID 4584] - *"business travellers want to use their time more effectively"*; Reply to question 3 of phase II request for information to the UK CAA of 13 August 2010 [ID 2764] - *"passengers travelling for business purposes tend to be more time sensitive and want greater flexibility than passengers travelling for leisure purposes"*; Replies to question 20 of phase 1 request for information to Greek airports of 25 June 2010; Reply to question 3 of phase I request for information to Union consumer organisations of 25 June 2010 [ID 881] - *"customers who tend to travel for business purposes are more willing to pay higher prices in order to maintain a level of flexibility of their tickets"*.

69 Replies of ferry operators are mixed, see: Replies to question 6 of phase I request for information to travel agents of 25 June 2010; Replies to question 10-11 of phase II request for information to ferry operators of 13 August 2010.

70 Reply to question 11 of phase II request for information to Union consumer organisations of 13 August 2010 [ID 2673] - *"trips are often business related"*; [ID 3540] and [ID 4584]; Reply to question 13 of phase II request for information to Greek chamber of commerce of 13 August 2010, [ID 2542] - *"time is important and time schedules do change during business trips. The more options a traveller has the better the airline"*.

71 Replies to question 12 of phase II request for information to Union consumer organisations of 13 August 2010 [ID 2673] - *"time is money"*; [ID 3540] - *"le temps total de déplacement est un facteur déterminant pour [un time sensitive passenger] il recherche toujours une optimisation maximale du temps passé sur place en évitant les nuités d'hotel non strictement indispensable"*. Reply to question 14 of phase II request for information to Greek chamber of commerce of 13 August 2010, [ID 2542] - *"short journeys are preferred"*; reply to question 12 of phase II request for information to Union chambers of commerce of 13 August 2010 [ID 4584].

Frequency of daily services

(76) Another feature distinguishing time sensitive from non-time sensitive passengers, in line with the former's need for flexibility, is that time sensitive passengers generally require a certain f*requency* of daily frequencies at each end of the route, depending on the specific route at issue. This point was for instance underlined by easyJet: "*easyJet believes that time sensitive passengers generally prefer to have a range of return departure times available to them, in case whatever they are attending finishes earlier or later than planned.*"[72]

(77) The market investigation showed that for domestic routes in Greece time sensitive passengers ideally preferred a minimum of two daily services, that is at least one early morning flight and one evening flight[73]. Indeed, the availability of several flights per day enables time sensitive passengers to adjust to their constraints.

(78) Olympic Air confirmed this, indicating that "*the reduction in frequencies [at issue] could also be harmful to OA, as for certain routes passengers are generally time sensitive and prefer to have multiple options.* […]* [74].

(79) In conclusion, the market investigation confirms the existence of a segment of time sensitive passengers characterised by different needs and relative price insensitivity.

(80) This conclusion is in line with the Commission's decision practice, where time sensitive passengers were approximated in terms of flexibility needed (i.e. flexible vs. non-flexible tickets)[75], purpose of travel (i.e. business vs. leisure and VFR) [76] or time of booking[77], depending on the availability of reliable data. These different methods are the best available proxies to quantify or otherwise determine the group of time sensitive passengers.

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72 Reply to question 12 of phase II request for information to competitors of 11 August 2010 [ID 4425].

73 Replies to questions 22-23 of phase II request for information to corporate customers of 13 August 2010; replies to question 26 of phase II request for information to travel agents of 13 August 2010; reply to question 23 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567]; reply to question 22 of phase II request for information to Greek chambers of commerce of 13 August 2010 [ID 2542]; replies to question 48 of phase I request for information to corporate customers of 25 June 2010; replies to question 17 of phase I request for information to competitors of 25 June 2010.

74 Agreed minutes of a meeting with Olympic Air of 6 October 2010.

75 See for instance Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*, paragraphs 30 et seq.

76 See for instance Commission decision of 8 September 2010, M.5747 - *Iberia/British Airways*, paragraph 74.

77 See for instance Commission decision of 22 January 2010, M.5440 - *Lufthansa/Austrian Airlines*, paragraphs 150, 244.

(81) As explained in Section IX.1.1, the market shares in this Decision are based on the first two criteria mentioned in recital (80), while no data are available for both Aegean and Olympic Air as to the date of booking.

1.3.3. Ability of airlines to charge higher prices to time sensitive passengers

(82) Price discrimination generally means charging different prices to different consumers, in situations where the price difference cannot be fully explained by differences in cost. The variation in airfares can be either justified by cost differences (cost-based) or discriminatory (demand-based). Airlines price discriminate in two ways: first, by offering passengers a range of fares and restrictions attached to the tickets; and second, by restricting the number of discounted seats on each flight. The first type of price discrimination is known as second-degree or self-selection price discrimination[78]. Passengers choose their preferred version of a product based on their willingness to pay for specific attributes of the good (such as time, convenience of schedule, flexibility). The second type refers to a situation where airlines use a rationing device and limit the supply of cheaper products. Travel restrictions attached to cheaper tickets make it costly for passengers to obtain discounts. That way, airlines separate price-sensitive passengers (with relatively low disutility from travel restrictions) from price-inelastic passengers with high disutility from ticket restrictions. For example, cancellation fees and change restrictions are designed to discourage price-inelastic consumers from buying cheaper tickets on a given flight.

(83) More generally, in order to price discriminate, airlines seek to separate passenger groups with different demand elasticities. First, airlines attach various restrictions to cheaper tickets, thereby rendering such tickets unattractive to passengers with a high valuation of time or convenience and low price elasticity. Second the specific booking behaviour of passengers allows airlines to engage in yield management thus exploiting the relative price insensitivity of time sensitive passengers by increasing prices as the date of departure approaches.

(84) To price discriminate successfully, an undertaking must have market power to charge prices above marginal cost (such as arising from its ability to differentiate its product offerings), the population of consumers must be heterogeneous (otherwise the undertaking cannot separate the market), and product resale must be impossible or costly, to prevent arbitrage[79]. These conditions are all met in this Decision.

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78 Traditionally, price discrimination is divided into three types by degree of discrimination. First degree price discrimination means perfect price discrimination, meaning that each buyer pays 100 % of the subjective value of the goods purchased, and prices are based on the buyer's identity. Different consumers are charged different prices, but each consumer pays a constant price for each unit of the good bought. Third degree price discrimination means an imperfect form of first degree. Second degree, in contrast, means offering a menu of options, like a quantity discounts, and letting consumers choose what to buy.

79 For a discussion on price discrimination in the particular context of competition policy enforcement see for example, Preston McAfee, R.: *Price Discrimination*, in ISSUES IN COMPETITION LAW AND POLICY (ABA Section of Antitrust Law), 2008,p.465. See also O'Donoghue, R and Padilla, J: *The Law and Economics of Article 82 EC*, Hart Publishing, Oxford and Portland, Oregon, 2006, p.

(85) First, as explained in Section VI.1.3.2, the market investigation confirmed that, in this case, there exists a segment of relatively non-price sensitive (that is time sensitive) passengers.

(86) Second, the pricing structure put in place by airlines, including Olympic Air and Aegean, enables to single out passengers according to their price sensitivity revealed at the time of booking by the type of ticket selected (for instance business passengers tend to be willing to pay a higher price for flexible tickets), by the time of the booking (business passengers tend to book close to the departure while leisure passengers book well ahead), by the choice of schedule (day/ week/ weekend and time of the day) etc. […]* [80] More generally, the air transportation market allows for price discrimination. Barriers to entry arising from sunk costs, scale economies, base advantages, and brand differentiation give airlines market power even on relatively competitive routes. For example, airlines differentiate among themselves by occupying different slots in flight schedules and by offering different route networks[81].

(87) Third, targeted passengers are not generally able to engage in resale. Individual passengers flying on commercial airlines (including Olympic Air and Aegean) must present personal identification documents that match the name on the ticket/boarding pass. Thus, a passenger cannot sell the ticket or a portion of the ticket to a third party for that third party's use. Consequently, airline ticket resale between individual passengers is neither feasible nor legal.

(88) The criteria described are met in this case. Annex I to this Decision further explains how yield management induces passengers to self-select thereby revealing their relative sensitivity to price or time, and how airlines manage the seat inventory.

(89) Indeed, both Aegean an Olympic Air use yield management price setting mechanisms systematically enabling the implementation second degree price discrimination. The system is designed in such a way that passengers self select themselves and reveal their degree of price sensitivity according to parameters such as time of booking, the degree of flexibility, the type of fare, the period of the year, day of the week for which the ticket is booked and time of departure. This enables airlines to increase their average yield.

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557 where second degree price discrimination is described as follows: "*Sorting, and hence price discrimination, is still possible [when sold at list prices], but now suppliers must offer a range of different "deals" and let consumers sort themselves by picking the one they prefer. This is known as second degree price discrimination. There are many ways to offer a range of deals that induce self sorting. One method is to create different versions of the product. For example airlines target business travellers with a high willingness to pay by offering a ticket which is more expensive, but which has features that they consider important [these feature include the ability to change or cancel the journey at short notice, access to a lounge where the traveller can work, faster check-ins so that less time is wasted in queues, and more comfortable seats, so the traveller arrives better able to do business]*" (emphasis added).

80 Olympic Air's response to the request for information of 20 August 2010, question 6.

81 Thus airlines can often be regarded as monopolistically competitive.

(90) As regards price discrimination, it is appropriate to delineate markets on the basis of ticket type and taking as the initial candidate market, on the one hand, flexible tickets and, on the other, restricted tickets. This is further explained in Annex I to this Decision.

(91) The Parties argued that time sensitive and non-time sensitive passengers should be included in the same market with a correlation and co-integration analyses showing that prices for time sensitive and non-time sensitive passengers were stationary. The main shortcomings of these analyses and their limited value regarding market definition in this case are discussed in Annex I to this Decision.

1.3.4. Conclusion

(92) Therefore, time sensitive passengers and non-time sensitive passengers constitute two distinguishable groups of passengers. Time sensitive passengers can be approximated by the type of the ticket purchased (namely, flexible tickets), by purpose of travel (namely, business), by time of booking (namely, close to departure), or by a combination of these indicators, subject to the availability of reliable data[82].

(93) However, it can be left open for the purpose of this Decision whether time sensitive and non-time sensitive passengers belong to two separate markets or whether one market encompassing all passengers should be defined as the competitive assessment remains the same irrespective of the precise market definition.

1.4. Substitutability of sea and train transports services with air transport services

(94) When determining the scope of the relevant markets on various city-pairs, the Commission analysed in earlier decisions the level of substitutability of other available transport modes with air travel[83]. Such intermodal substitutability was in particular considered in cases where relevant alternative modes of transport were considered comparable alternatives for prospective passengers in terms of price, aggregate travel time, schedule, quality and convenience of service, and reliability of service.

(95) The Parties submitted that the relevant market as concerns Greek domestic routes comprises not only air transport services but also surface transportation, namely ferries and train to the extent that these are available on individual city pairs. More specifically, the Parties argued that Greek domestic routes have a predominant non-business character and thus lend themselves to competition from conveniently priced intermodal services. Alternatively, even if the relevant market were to be defined to exclude surface transportation, the Parties argued that surface transportation would nonetheless exert a significant competitive constraint on air transport services.

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82 These different methods are also reflected in the replies to the market investigation, see: Replies to questions 6-12 of phase II request for information to competitors of 11 August 2010, see also submission of HALPA, p. 12 et seq. [ID 2109].

83 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*; Commission Decision of 25 January 2006, M.3940 - *Lufthansa/Eurowings*, p.7; Commission decision of 20 August 2005, M.3770 - *Lufthansa/Swiss*, p.3; Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN* Airholding, p.10; Commission decision of 8 October 2010, M. 5655 - *SNCF/LCR/Eurostar*, p. 3.

(96) According to the Relevant Market Notice, the purpose of market definition *"is to identify those actual competitors of the undertakings involved that are capable of constraining [merging] undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure*".

(97) In this case, given the geographic situation of Greece, the main alternative means of transport are ferries. However, on the route Athens- Thessaloniki train services are also available.

1.4.1. Competition by ferries

(98) There are three main types of ferries active in Greece, namely conventional ferries, catamarans and hydrofoils. The latter two categories are considerably faster than conventional ferries.

(99) The level of ferry transport services in Greece often differs significantly between summer and winter. Furthermore, ferries are subject to annual technical maintenance during which they might not operate[84].

(100) The Parties argue that in this case ferry services are the predominant mode of transport in Greece and therefore exert significant a competitive constraint on air transport services on routes where both modes of transport are available. As a result, according to the Parties ferry services should be considered as part of the same relevant market on such routes.

(101) To substantiate their claim, the Parties have submitted a survey[85] on the parallel use of ferry and air transport services in Greece and a report on ferry competition.[86] In addition, at the hearing the Parties presented a comparative analysis of airline fares both on routes with or without ferry services, followed later on by a submission by LECG on the same subject[87].

(102) During its market investigation, the Commission analysed the extent to which ferry services are substitutable to air services on the various Greek domestic routes where both are available. In order to assess the level of competitive constraint exercised by ferry services on air services, the Commission compared in particular prices and/or pricing strategies of airlines and ferry companies, aggregate travel time by plane and ferries on individual routes, level of frequencies on individual routes, and overall quality, reliability and convenience of service offered by Parties' air travel services and ferries.

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84 See for example agreed minutes of a teleconference call with Aegean Speed Lines of 1 September 2010 [ID 5246] paragraph 10: *"Between November and March, its fleet is withdrawn and sent for maintenance. ASL specifies that this is the practice for high-speed vessels"*. See also agreed minutes of a teleconference call with Minoan of 8 September 2010 paragraph 4 [ID 4950]: *"vessels [operate] on a year round basis unless maintenance is required"*.

85 Reply of the Parties to the decision opening proceedings of 30 July 2010.

86 See submission of LECG of 5 October 2010, Appendix III.

87 See LECG presentation at the oral hearing of 11 November 2010 and Analysis of the impact of ferry competition on airline prices, LECG Project Team, 23 November 2010.

1.4.1.1. Pricing strategies and price levels of seats of airlines and ferry companies differ on Greek domestic routes

(103) Pricing strategies of airlines and ferry companies differ substantially. This is mainly due to the use by airlines of a specific yield management system. In essence, a yield management system is designed to maximize airline revenues by anticipating the price-sensitivity of various passengers for a particular flight and thereby fill up the planes with passengers to the maximum possible extent. This system typically results in price discrimination whereby airlines charge different prices to passengers consuming otherwise identical goods or services. In practice, this means that airlines open different booking classes for which they charge different fares. In each booking class, the airlines set the number of available seats. This number is adjusted as the plane fills up. Both Aegean and Olympic use yield management systems.

(104) The general implication of yield management is that prices go up as available capacity on planes decreases.

(105) While some ferry companies use differentiated pricing structure depending on the travel class (for instance cabin, business, economy) and on the period of the year (high season/low season), they usually do not use sophisticated price management systems[88].

(106) The Parties have pointed out that ferry services are considerably cheaper than air services.[89] Indeed, as shown in the route-by-route assessment, ferry tickets are on average often significantly cheaper than plane tickets. On several routes, the difference is particularly remarkable during the peak summer season. For instance, on the Athens-Chania route, the weighted average air fare is on average about [30-50] % higher than the weighted average ferry fare in winter, while it is more than […]* % higher between April and July 2010. In July 2010, which is the last month for which ferry data was available, the weighted average air fare is [170-190] % higher than the ferry fare.

1.4.1.2. Aggregate travel times by air and ferry services, on Greek domestic routes differ substantially

(107) Air services and ferry services also differ considerably as regards aggregate travel duration, namely journey from the city center of the origin to the city center of the destination.

(108) Indeed, as shown in the route-by-route assessment, the trip by ferry is normally more than twice as long as the trip by plane on almost all routes of concern. For instance, on the Athens-Chania route, the journey from city center to city center by plane takes approximately 3:20 while the fastest ferry on the route takes 8 hours 30minutes.

(109) These disadvantages of ferry services in terms of travel duration are relevant in particular for time sensitive passengers due to their preference for the shortest possible trip durations.

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88 Replies to question 12 of phase II request for information to ferry operators of 25 August 2010.

89 See for example Parties' reply to the Supplementary Statement of Objections, point 3.42.

(110) In addition, the considerably longer travelling time makes ferry services a distant substitute to air services even for non-time sensitive passengers. Indeed, a number of travel agents responding to the market investigation indicated that leisure or VFR passengers also value the existence of fast modes of transport services[90].

(111) Similarly, the Hellenic Airline Pilots Association ("HALPA") underlined that many VFR passengers "*have to commute between islands and Athens and often only have limited time to visit their relatives and friends*"[91].

(112) More generally, the significant differences in travel time between both means of transport were pointed out by travel agents and corporate customers[92].

1.4.1.3. Frequency of air and ferry services on Greek domestic routes differ substantially

(113) Air and ferry services further differ in the level of frequencies offered, as explained in more detail in the route by route assessment.

(114) Aegean and Olympic Air have a considerable frequency advantage on almost all routes of concern. For instance, on the route Athens-Chania, Olympic Air and Aegean operate jointly between 42 and 56 weekly frequencies in 2010, while the ferries frequency on the route ranges between 7 and 19, depending on the time of the year. Generally, the frequency offered by ferries in winter is considerably lower than in summer.

(115) These disadvantages of ferry services in terms of frequencies are relevant in particular for time sensitive passengers due to their need for flexibility. On Greek domestic routes time sensitive passengers ideally need a minimum of two daily services, namely at least one early morning service and one evening service[93]. However, mostly as a consequence of the longer trip duration by sea, ferry services on the relevant domestic routes typically do not offer several daily departures throughout the year on almost all routes of concern.

(116) The lower frequency of ferry is also a competitive disadvantage as concerns those time sensitive passengers with a preference for same day return trips.[94]

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90 Replies to question 24 of phase II request for information to travel agents of 13 August 2010.

91 Agreed minutes of a teleconference call with HALPA of 30 August 2010, paragraph 58 [ID 4428].

92 Replies to question 35 of phase II request for information to travel agents of 13 August 2010; replies to question 29 of phase II request for information to corporate customers of 13 August 2010.

93 Replies to questions 22-23 of phase II request for information to corporate customers of 13 August 2010; replies to question 26 of phase II request for information to travel agents of 13 August 2010; reply to question 23 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567]; reply to question 22 of phase II request for information to Greek chambers of commerce of 13 August 2010 [ID 2542]; replies to question 48 of phase I request for information to corporate customers of 25 June 2010; replies to question 17 of phase I request for information to competitors of 25 June 2010.

94 As explained in the competitive assessment of the relevant routes, passengers can carry out same-day return trips at least every weekday (i.e. from Monday to Friday) on both Aegean and Olympic Air on

(117) The Parties argue that such same-day return trips are unimportant in this case, as evidenced by […]*[95] and by the fact that such same-day return trips are not possible year-round on both Aegean and Olympic Air flights on several routes for which competition concerns were identified.

(118) In contrast, several travel agents noted during the market investigation a higher proportion of time sensitive passengers carrying out same-day return trips[96]. More generally, most travel agents who replied to the relevant question considered the possibility to return the same day as an important factor for time sensitive passengers[97].

(119) Similarly, most airlines (including several Greek airlines) responding to the question "what are the needs/usual requirements of time sensitive passengers" considered the possibility to return the same day as "very important" for time sensitive passengers[98].

(120) In view of the […]* ratio of Aegean's passengers returning the same day, same day return trips are in this Decision considered in the wider context of a time sensitive passengers' needs for flexibility. Indeed, the possibility to carry out same-day return trips illustrates the increased level of flexibility offered to passengers by airlines with higher frequencies. More generally, airlines offer time sensitive passengers a wider choice both on the first-leg and the return-leg of trips to travel before or after a day's work, at the point of destination.

1.4.1.4. Air and ferry services differ in further important competitive parameters

(121) Several parameters determine the comparability of alternative modes of transport on respective O&D markets for potential passengers. Such parameters include price, aggregate travel time, schedule, quality and convenience of service, and reliability of service.

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the Athens-Chania, Athens-Herakleion, Athens-Chios, Athens-Mytilini, Athens-Rhodes, Athens-Thessaloniki and Athens-Alexandroupolis routes throughout the year. The situation is different for the Athens-Mykonos, Athens-Santorini, Athens-Kos and Athens-Samos routes due to seasonal variations in the offer of Aegean and/or Olympic Air.

95 For example, in the period January 2009 – July 2010 [0-5]*% on Athens-Mykonos, [0-10]*% on Athens-Santorini, [0-10]*% on Athens-Chania, [0-10]*% on Athens-Herakleion, [0-5]*% on Athens-Chios, [0-10]*% on Athens-Mytilini, [0-5]*% on Athens-Samos, [0-5]*% on Athens-Kos, [0-5]*% on Athens-Rhodos and [0-10]*% on Athens-Thessaloniki, see: Reply of the Parties to question 17 of request for information of 1 September 2010; reply of the Parties to the decision opening proceedings of 30 July 2010. It should be noted that the Parties have not provided equivalent data for Olympic Air.

96 Replies to question 18 and 19 of phase I request for information to travel agents of 25 June 2010 and replies to request for information of 24 September 2010 [ID 5177 and 5139]. Contrary to the argument of the Parties in their reply to the Statement of Objections, it can be assumed that the travel agents replying to this question have the necessary market knowledge.

97 Replies to question 19 of phase I request for information to travel agents of 25 June 2010.

98 Replies to question 12 of phase II request for information to competitors of 11 August 2010.

(122) The market investigation in this case showed that, for passengers, the level of substitutability between ferry and air services depends on the overall level of service offered by those transport modes in particular in terms of the frequency level, reliability of service, speed and convenience. The degree of substitutability between air and ferry services differs for time sensitive and non-time sensitive passengers, given the different perception of these parameters by both passenger groups.

(123) The qualitative analysis of data collected during the Commission's market investigation showed that indeed while time sensitive passengers generally do not consider ferry services as substitutes for air services unless the time of travel is comparable, non-time sensitive passengers are more likely to switch to ferries under certain circumstances.

Time sensitive (that is relatively price inelastic) passengers

(124) The replies of most corporate customers confirmed that, for time sensitive passengers, the constraint exercised by ferry services on the market for air services is limited or even non-existent.[99] This is mainly due to the substantially shorter travel duration on most Greek domestic routes when travel is made by air as compared to travel by ferry.

(125) Indeed, some corporate customers clearly indicated that they do not "*use ferries when a flight route exists, in order to save time*"[100] or that "*Air travelling has significant advantages over travelling by conventional ferries and catamarans: the journey is significantly shorter, it permits one day travels, and it is less affected by weather conditions (esp. in winter time)*"[101] and that "*for the purpose of business travel, even high speed ferries cannot be a sufficient substitute to air travel, due to trip duration*".[102] Some corporate customers also explained that the frequencies offered by ferry companies are less convenient for business travel especially in the winter season. In this context a corporate customer indicated that "*the disadvantage of ferries is that frequencies are diminished after summer months and are also more sensitive in weather conditions*"[103].

(126) The market investigation also revealed that most corporate customers do not purchase ferry tickets or do so only under specific circumstances.[104] Indeed, according

99 Replies to questions 24 et seq. of phase II request for information to corporate customers of 13 August 2010.

100 Reply to question 25 of phase II request for information to corporate customers of 13 August 2010 [ID 2852].

101 Reply to question 25 of phase II request for information to corporate customers of 13 August 2010 [ID 2938].

102 Reply to question 25 of phase II request for information to corporate customers of 13 August 2010 [ID 2914].

103 Reply to question 29 of phase II request for information to corporate customers of 13 August 2010 [ID 2947].

104 Replies to questions 27 and 28 of phase II request for information to corporate customers of 13 August 2010.

to the results of the market investigation most corporate customers either do not buy ferry tickets for their employees travelling on business trips or do so only for instance, in case of "*non-availability of airflights*"[105], or "*if plane frequency is not adequate, there is no availability or plane connection [...]; also in case employee needs to carry appliance with a company car*"[106]. In this context one corporate customer indicated that at most "*quick ferry could be an option for Mykonos and Santorini but not for Rhodes or Corfu*"[107]. The latter reply clearly shows that the substitutability of the two means of transport has to be assessed on a route-by-route basis.

(127) Similarly, according to the results of the market investigation should prices of plane tickets rise by 5-10 % on Greek domestic routes on which corporate customers purchase tickets for their employees travelling on business trips, a majority of corporate customers would absorb such price increase and continue buying the plane ticket irrespective of the price increase[108]. That most corporate customers consider air services as "must" service is illustrated by statements such as "*the prices have already increased during the summer of 2010. But, since the business trips are necessary we can't do otherwise*"[109] or "*because trips with ferry bring us a lot of time (8-19 hours) and depend on the weather circumstances, we don't have alternative (so we have to travel only by plane)*." [110]

(128) Similarly, a large majority of travel agents who replied to the relevant question indicated that they do not believe that a significant proportion of time sensitive passengers would switch to ferry services should the prices of air services on this route increase by 5-10 %[111]. Travel agents are the main distribution channel for transport services in Greece and are therefore well aware of preference and purchasing patterns of both time sensitive and non time sensitive passengers.

(129) Competitors also indicated that time sensitive passengers generally do not consider ferries as substitutable to air services[112].

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105 Reply to question 33 of phase II request for information to corporate customers of 13 August 2010 [ID 2932].

106 Reply to question 27 of phase II request for information to corporate customers of 13 August 2010 [ID 2947].

107 Reply to question 27 of phase II request for information to corporate customers of 13 August 2010 [ID 4747].

108 Replies of corporate customers who responded to question 30 of phase II request for information to corporate customers of 13 August 2010 and to question 33 of the phase I request for information to corporate customers of 25 June 2010.

109 Reply to question 30 of phase II request for information to corporate customers of 13 August 2010 [ID 3377].

110 Reply to question 30 of phase II request for information to corporate customers of 13 August 2010 [ID 3477].

111 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

112 Replies to question 26 of phase I request for information to competitors.

(130) As concerns Greek airlines, which are more aware of the specificities of Greek market, Athens Airways' perception of passenger preference is that "*in general the time sensitive traveller almost never prefers sea travel for air travel [...]. Leisure passengers who intend to travel with their car will choose the normal ferry. Passengers who travel to near islands like Mykonos and can not find air tickets will use catamara.*"[113]. Likewise, the Greek airline Astra Airlines ("Astra") considers "*that super-fast ferries could potentially compete with the airline industry on some routes, while normal ferries would cater to a very different traveller profile. [Astra] considers that even super-fast ferries are not an alternative to a flight for time-sensitive passengers*"[114]. The Greek airline Sky Express considers that "*ferry transport is only suitable for non-time sensitive passengers"*[115]. The Greek airline Hellenic Imperial Airways ("Hellenic Imperial") even considers all air passengers as time sensitive[116].

(131) Similarly, as submitted by the Greek Airline Pilots Association ("HALPA"), "*the need of time sensitive passengers, who travel for business reasons, to travel in a specific time and return as soon as possible and preferably in most cases on the same day to their place of departure, means that they do not have as reliable alternative solutions companies not offering flights during peak hours (early in the morning, late in the evening) or offering a limited number of daily routes*"[117]. Thus "*for time-sensitive passengers, road, railway or maritime transport is not a reasonable alternative choice*"[118].

(132) The Greek consumer organisation Kepka indicated that the level of substitutability of the air and ferry transport services should be evaluated on a route-by-route basis. In this respect Kepka considered that only on the Athens-Mykonos and Athens-Santorini routes, passengers would (both time sensitive and non-time sensitive) consider ferries when booking trips (thus, checking the availability of seats and comparing prices)[119].

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113 Reply to question 17 of the phase II request for information to competitors of 11 August 2010 [ID 3024].

114 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

115 Agreed minutes of a teleconference call with Sky Express on Tuesday 24 August 2010 [ID 5398].

116 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 7 [ID 5145].

117 Reply of HALPA to request for information of 05 August 2010, paragraph 32, [ID 2109] - The Greek text is as follows: *"Η ανάγκη της κατηγορίας επιβατών ευαίσθητων στο χρόνο, οι οποίοι ταξιδεύουν για τις ανάγκες της εργασίας τους, να ταξιδεύσουν σε συγκεκριμένο χρόνο και να επιστρέψουν το συντομότερο δυνατόν και κατά προτίμηση στις περισσότερες των περιπτώσεων αυθημερόν στη βάση τους έχει ως συνέπεια να μην αποτελούν γι' αυτούς αξιόπιστες εναλλακτικές λύσεις εταιρείες που δεν προσφέρουν πτήσεις κατά τις ώρες αιχμής (νωρίς το πρωί, αργά το απόγευμα) ή που προτείνουν περιορισμένο αριθμό ημερησίων δρομολογίων"*.

118 Reply of the HALPA to request for information of 05 August 2010, paragraph 36 [ID 2109] - The Greek text reads as follows: *"Για τους ευαίσθητους στο χρόνο επιβάτες, η μετακίνηση οδικώς, σιδηροδρομικώς ή ατμοπλοϊκώς δεν αποτελεί εύλογη εναλλακτική λύση."*

119 Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

(133) Furthermore, according to the Form CO, the two routes on which competition by ferries is supposed to be the strongest (Athens-Mykonos and Athens-Santorini), […]*.

(134) Although the relevant SSNIP question is whether air passengers would switch to ferries in case of a price increase of air travel and not the other way around, the Commission in order to assess the characteristics of passengers travelling by plane and by ferries inquired ferry companies about their views.

(135) Replies of ferry companies showed that substitutability between the two modes of transport is indeed limited as far as time sensitive passengers are concerned, in particular where ferry trips are substantially longer than air plane trips. In this respect, ferry operators indicated that time sensitive passengers are concerned by duration of travel and therefore are reluctant to use ferry services if air services are available. "*Ferry services – especially conventional ferry services – are substantially slower than airplanes, therefore they do not appeal to time sensitive passengers*"[120]. Ferry companies also hinted at the fact that the customer base of ferries and planes may not be the same as "*Travellers opting to travel via air are often more time-sensitive and less-price sensitive*"[121] and "*Air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers. [...] only a very small number of passengers would consider switching between air and sea services. [...] most of the business passengers it transports choose to travel via sea in order to bring their car with them so that they can drive within the islands for business*"[122].

(136) Therefore, substitutability between air and ferry services is very limited as far as time sensitive passengers are concerned.

Non time sensitive (namely, relatively price elastic) passengers

(137) Non-time sensitive passengers who are by definition more price sensitive may be willing to substitute ferries by air travel under certain circumstances.

(138) Indeed, as pointed out by the Parties in their reply to the Statement of Objections, most travel agents consider that a significant proportion of non-time sensitive air passengers would switch to ferries if airfares were to rise by 5-10 %[123].

(139) The Parties further point out in their reply to the Letter of Facts that "*of the Greek travel agents who responded to the phase one questionnaire to travel agents, in response to question 30 which asks "[...] if prices of flights between those city pairs were to increase by 5-10%, would a significant proportion of time sensitive or non-time*

120 Reply to question 13 of phase II request for information to ferry operators of 13 August 2010 [ID 3231].

121 Agreed minutes of a teleconference call with Aegean Speedlines of 01 September 2010, paragraph 20 [ID 5246].

122 Agreed minutes of a teleconference call with Anek of 01 September 2010, paragraph 8 [ID 5387].

123 Replies to question 29 of phase I request for information to travel agents of 25 June 2010 and replies to question 37 of the phase II request for information to travel agents of 13 August 2010.

sensitive passengers switch to ferry services as concerns these routes?" only one said No for all or a majority of routes".

(140) However, the relevant question in phase I (question 29[124]) needs to be read in conjunction with a more refined question in phase II (question 37[125]) in which respondents were asked to quantify the proportion of passengers that would switch transport services if airfares were increased. If considering only the replies by Greek travel agents to these questions, almost half of all Greek travel agents consider that no significant proportion of non-time sensitive passengers would switch to ferry services[126].

(141) Furthermore, while the relative higher price sensitivity of such passengers might induce a significant proportion of these passengers to consider switching to ferry transport services in the event of small but permanent increase in price imposed by a hypothetical monopolist of air services, account also needs to be taken of the differences of both modes of transport in terms of service, convenience, reliability and total duration of travel[127].

(142) In this regard, travel agents replied that due to a number of objective reasons such as level of services or weather conditions, passengers have preference to travel by air irrespective of whether they are time sensitive or non-time sensitive. It was pointed out that "*Many times during the winter the ferries do not operate because of weather*"[128] and that "*ferries are mainly used during summer and for close destinations. For the rest of the destinations, the frequency and the level of the services is very low*"[129]. Travel agents also hinted to the fact that substitutability of ferry services to air services is limited in

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124 Question 29 of the phase I request for information to travel agents is worded as follows: *"As concerns journeys between the city pairs listed in the table below, do passengers generally view air services and ferry services as substitutable with each other? In other words, if prices of flights between those city pairs were to increase by 5-10 %, would a significant proportion of time sensitive or non-time sensitive passengers switch to ferry services as concerns these routes? Please provide reasons for your reply. Explain if it would be relevant to distinguish various ferry services and, if applicable, please mention further routes listed in Annex I on which you believe that passengers generally view air services and ferry services as substitutable with each other".*

125 Question 37 of the phase II request for information to travel agents is worded as follows: *"As concerns the routes in the table below, imagine the situation where prices of plane tickets were to raise by 5-10%. Do you think that a significant proportion of your customers (for example 0-5%, 5-10%, 10-25%, more than 25%) travelling by plane would switch to ferry in response to this price increase? Please distinguish between time-sensitive and non time sensitive passengers".*

126 The Parties argue in their reply to the Statement of Objections that Greek travel agents are highly focussed on either air travel or ferry travel and that the contact details of travel agents procured by the Notifying Parties for the Commission emphasise travel agents who deal primarily with air tickets. The fact that approximately half of all Greek travel agents consider that non-time sensitive passengers may be willing to substitute air services with ferry services does not suggest that such "bias" would exist.

127 Replies to question 27 of phase I request for information to competitors of 25 June 2010.

128 Reply to question 35 of phase II request for information to travel agents of 13 August 2010 [ID 2546].

129 Reply to question 34 of phase II request for information to travel agents of 13 August 2010 [ID 2839].

the winter season, as the "*level of service in high demand destinations like Chania, Mykonos is very good as well as frequencies only though for the summer months June-September. Reliability is good and prices of ferries can't be considered competitive to air if you include the duration of the trip and the whole process of boarding etc. Duration of travel is much higher and the approach to port compared to the airport is much harder. Furthermore, the element of weather conditions both in summer but mostly in winter makes ferry travel a lot less reliable and very difficult regarding travelling conditions*"[130].

(143) The same travel agents further stated that airfares had varied by 5-10 % in the past (for example until September 2009). However, during the relevant period no reduction in total number of passengers was osberved, rather a corresponding increase in the number of ferry passengers was noted[131] .

(144) As pointed out by the Parties in their reply to the Statement of Objections, a majority of competitors considered a significant proportion of non-time sensitive air passengers would switch to ferry services if the airfares were to rise by 5-10 %[132].

(145) The Parties underlined in their reply to the Letter of Facts that most airlines with experience on Greek domestic routes (namely according to the Parties: Athens Airways, Hellenic Imperial, Hellas Jet, Sky Express, Athens Airways and Cyprus Airways) considered ferry services as substitutable. However, not only did Athens Airways[133] and Hellenic Imperial[134] express different views, but Astra explained that a competitive constraint might only emanate from "super-fast" ferries while normal ferry services would cater to a very different passenger profile.[135] Nor did Sky Express consider ferry services as substitutable to air services for all routes of concern[136].

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130 Reply to question 34 of phase II request for information to travel agents of 13 August 2010 [ID 3355].

131 Reply to question 37 of phase II request for information to travel agents of 13 August 2010 [ID 3355].

132 Replies to question 27 of phase I request for information to competitors of 25 June 2010.

133 Reply to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1050] making reference to the "very long travel time" compared to air services. In a telephone conference, Athens Airways considered that ferries have "some influence" on air travel, *"especially on routes such as […] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*; agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

134 Hellenic Imperial explained in its reply to question 27 of phase I request for information that non-time sensitive passengers consider air services and ferry services as substitutable on all routes, while time sensitive passengers do not consider the two means of transport substitutable apart from Athens-Mykonos and Athens-Santorini *"because of the long sailing hours" [ID 4582]. In a later conference call of 17 September 2010 Hellenic Imperial explained that it considers all air passengers as "time sensitive"*, see paragraph 7 of the agreed minutes of conference call [ID 5145].

135 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

136 According to the reply of Sky Express to question 53 of phase I request for information to competitors of 25 June 2010 [ID 1010] no substitutability between air services and ferry services for non-time sensitive passengers exists on the routes Athens-Rhodes and Athens-Kos. Furthermore, as

(146) Ferry operators often consider ferry services as alternative to air services which suggests that in their view non-time sensitive passengers consider both means of transport as substitutable. Indeed, when asked if passengers generally consider air services and ferry services as substitutable with each other, the ferry operators Nel, Aegean Speedlines, Anek, Attica, Hellenic Seaways and Minoan replied to this question in the affirmative.[137] For instance, Hellenic Seaways mentioned that one advantage of ferry services is that passengers can travel overnight, do not have to pay for a hotel and have the possibility to travel with a car.[138]

(147) However, replies of ferry operators to the market investigation questionnaires and their statements in interviews held during the phase II investigation overall reveal an ambiguous picture and a significant degree of differentiation between air and ferry services.

(148) For instance, Aegean Speedlines noted that "*Usually passengers travelling to shorter destinations tend to prefer ferry services (e.g. Mykonos) while longer destinations are more attractive to air service option.*"[139] This indicates that even as concerns non-time sensitive passengers the level of substitutability depends on the trip duration. Aegean Speedlines further emphasised that "*overall there is significant difference in competition of air and maritime transport for long and short-haul destinations",* that on longer destinations *"competition between air and sea travel is directly dependent on the quality and the speed of the ship that serves each line. This is due to the uncertainty in costal shipping and the redeployment or modification of an itinerary can significantly affect the behaviour of passengers*" and that "*travellers opting to travel via air are often more time-sensitive and less price sensitive*".[140]

(149) Cyclades Fast Ferries stated regarding the level of substitutability of ferries to air travel that: "*Not even high-speed ferry passengers would compete with air services (let alone conventional ferry services), as air services are faster, more comfortable and less crowded.*"[141]

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regards the route Athens-Herakleion, Sky Express explained that any decision to enter that route is based on the pricing and capacity of Aegean and Olympic Air, not on shipping companies, agreed minutes of conference call with Sky Express of 24 August 2010, paragraph 37 [ID 5398].

137 See in particular replies to question 9 of phase I request for information to ferry operators of 25 June 2010 and replies to question 18 of phase II request for information to ferry operators of 13 August 2010.

138 Reply to question 9 of the phase I request for information to ferry operators of 25 June 2010 [ID 5729] and reply to question 18 of the phase II request for information to ferry operators of 13 August 2010 [ID 5730].

139 Reply to question 14 of phase II request for information to ferry operators of 13 August 2010 [ID 2534]. In its reply to question 16 (i.e. if passengers generally consider air services and ferry services as substitutable) Aegean Speedlines consider such substitutability for all destinations except Athens-Mykonos due to the short distance.

140 Letter of Aegean Speedlines of 11 August 2010 [ID 2207] and agreed minutes of a teleconference call call with Aegean Speedlines of 1 September 2010, paragraph 20 [ID 5246].

141 Agreed minutes of a teleconference call with Cyclades Fast ferries of 2 September 2010, paragraph 15 [ID 5392].

(150) Minoan stated during the market investigation that "*ferry transportation is the preferred mode of travel for families, students and for holiday makers who desire to take their vehicles with them. It is far cheaper for the traveller to bring their own vehicle than rent a car at their holiday destination. Air passengers as time sensitive passengers want to arrive at their end destination in short time. [Minoan] has researched passenger types for many years and has come to the conclusion that air and sea operators cater to different market needs and that the profile of air passengers is different than that of the ferry*."[142]

(151) Similarly, the ferry operator Anek "*believes that air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers, […] that only a very small number of passengers would consider switching between using air and sea services […] and that most of the business passengers it transports choose to travel via sea in order to bring their car with them so that they can drive within the islands for business*".[143]

(152) Furthermore, while a number of ferry operators indicated that in their view passengers travelling on Greek domestic routes where air services and ferry services are available do compare prices of both modes[144] of transport, ferry operators generally often indicated they did not see any significant impact of the transaction on their own operations.[145] This suggests that they do not expect a significant shift in passengers' choices between the modes of transport.

(153) These findings are further underlined by the replies of ferry operators to the market test questionnaire of 19 November 2010.

(154) Indeed, several ferry operators stated explicitly that they ddi not consider themselves as competitors of airlines, including Agoudimos[146] ("*we are not direct competitors, since we are a maritime company*"), Cyclades Fast Ferries[147] ("*we do not consider ourselves competitors to any airline company as it is a totally different market*"), Minoan[148] ("*we are not competitors with the airlines companies*"), Sea Jets[149]

142 Agreed minutes of a teleconference call with Minoan Lines Shipping of 8 September 2010, paragraph 16-18 [ID 4950].

143 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 8 [ID 5387]. In its earlier reply to questions 8 and 9 of phase I request for information to ferry operators of 25 June 2010 [ID 1015], Anek had mentioned that no *"significant proportion of passengers would switch to shipping line services on short routes, e.g. Mykonos and Santorini"* while it generally considered a substitutability between air services and ferry services for non-time sensitive passengers for all routes.

144 Replies to question 17 of the phase II request for information to ferry operators of 13 August 2010.

145 Replies to question 22 of the phase II request for information to ferry operators of 13 August 2010.

146 Email of Agoudimos of 25 November 2010 [ID 6621].

147 Email of Cyclades Fast Ferries of 25 November 2010 [ID 6628].

148 Email of Minoan of 23 November 2010 [ID 6897].

149 Email of Sea Jets of 25 November 2010 [ID 6632].

("*we consider our shipping company to be on a different market than the airline industry and we have different costumers and target group*"), Ventouris[150] ("*we are not competitors*") and Zante[151] ("*Our company is a maritime company and there is no competition with the airline companies*"). Lane provided a similar statement in reply to the market test questionnaire of 6 December 2010.[152]

(155) Most other ferry operators who replied to the market test questionnaire of 19 November 2010 made clear that they did not have the necessary expertise to fill in the questionnaire, including Anek[153] ("*our Company is activating in the shipping sector with no knowledge of the air services market*"), Attica[154] ("*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*", "*[unable] to quantify [the effect of the remedies] or to judge whether [the remedies] are sufficient*"), and Hellenic Seaways[155] ("*our Company can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*").

(156) Therefore, and as explained in the competitive assessment of each route in Section IX.1.9, statements by ferry operators on balance confirm the distant competitive relationship between air and ferry services.

(157) The above statements illustrate that air services and ferry services are only distant substitutes to each other as far as non-time sensitive passengers are concerned.

Capacity and actual use of ferries

(158) Finally, the Parties argued in their replies to the Statement of Objections and the Supplementary Statement of Objections that ferry services on routes of concern transport more passengers than air services and that ferry services offer more capacity than air services.

(159) However, the figures for ferry passengers provided by the Parties' presentation at the hearing include passengers exiting at intermediary stops, that is the number of passengers travelling by ferry on the relevant O&D will in reality be lower[156]. More importantly, more use of ferry services is not in itself informative on passengers' switching behaviour and does therefore not necessarily provide an indication on the competitive constraint exercised by ferry services on air transport services.

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150 Email of Ventouris of 25 November 2010 [ID 6963].

151 Email of Zante of 25 November 2010 [ID 6761].

152 Email of Lane of 9 December 2010 [ID 7107].

153 Email of Anek of 23 November 2010 [ID 6363].

154 Reply to question 1 of request for information of 19 November 2010 market testing commitments submitted by the Parties [ID 6499].

155 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

156 Slide 72 of the Parties' presentation at the Oral Hearing.

Ferry services are generally more affected by adverse events

(160) In terms of the level and reliability of service, the market investigation showed that air services tend to be more reliable since they are less sensitive to weather conditions.

(161) In their reply to the Statement of Objections, the Parties pointed out that most ferry operators dismissed weather conditions as a concern.

(162) Indeed, the replies of some ferry operators do not suggest that adverse weather conditions would not be a significant concern. However, ferry services overall are relatively less reliable than air services[157].

(163) Aegean Speed Lines explained "*that adverse weather conditions have seldom caused delays and cancellations to ASL operations. ASL estimates that in an average year weather conditions force two operation cancellations. Regarding delays, ASL estimates that weather conditions and/or technical problems force 30 minute delays 10 times in an average year*".[158] However, Aegean Speed Lines still considers air services to be "*less sensitive on the weather conditions*" than ferry services.[159]

(164) Anek estimated "*that a small number of trips per year are cancelled because of adverse weather conditions and that these cancellations are most likely to occur in the winter season*".[160]

(165) Similarly, Minoan stated "*that its operations are rarely cancelled because of adverse weather conditions and that adverse weather conditions exist only in the winter season*".[161]

(166) Nel mentioned that "*reliability in travelling time depends on the weather conditions*".[162]

(167) Cyclades Fast Ferries pointed out: "*Weather conditions [are] important [...]. Prohibition of departure for conventional boats is set at 9 Beaufort and can sometimes last up to 7 days. During the summer/August, there are the etesians ("meltemia"), which can also hinder operations. However, these conditions vary significantly over seasons*

157 In this context, it should be noted that the Attica group, although not referring specifically to weather conditions, considers air services and ferry services comparable in terms of reliability, reply to question 13 of the phase II request for information to ferry operators of 13 August 2010 [ID 3231].

158 Agreed minutes of a teleconference call with Aegean Speed Lines of 1 September 2010, paragraph 13 [ID 5246].

159 Reply to question 13 of the phase II request for information to ferry operators of 13 August 2010 [ID 2534].

160 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 10 [ID 5387].

161 Agreed minutes of a teleconference call with Minoan of 8 September 2010, paragraph 20 [ID 4950].

162 Reply to question 13 of the phase II request for information to ferry operators [ID 4718].

and years. For instance, in August 2010 there was only 1 etesian while the average is 10 per year. On average, one should count 6-7 days per year. Strikes by port staff: 6/7 days per year, usually around Easter and August." [163]

(168) Sea Jets concurred: "*There is always the restriction of bad weather which can cause great delays on the ships timetable. The travel time estimation is based on the perfect sea conditions and this is not the case in many situations. This also depends on the type of the vessel for example small catamaran like our company's is more likely to be effected by bad weather conditions*".[164]

(169) Similarly, the Greek consumer organisation, Kepka, indicated that during winter when there are strong winds Greek islands can be connected only by air.[165]

(170) Also, Athens Airways emphasised that "*unpredictable weather conditions leave [ferries as transport option] as highly unreliable. For instance, strong winds may mean that ferry voyages, usually lasting 3 hours, could last for 5/6 hours – or in worst case scenario are cancelled all together (there are some wind strength limitations for departure of ferries. The limit is lower for fast ferries and therefore they stop first.). This is quite current during the July-August peak period when almost every three days there is some adverse weather condition influencing ferry operations. Following a ban on sailing, congestions at the ports affect ferries punctuality even after resuming operations*".[166]

(171) A corporate customer located on Crete stated "*We don't travel usually with ferries (trip: 8-10 hours in the night + weather-difficulties in winter)*"[167] and another corporate customers stated for the routes of concern that the disadvantage of ferry services on these routes was that they were more sensitive to weather conditions.[168] Similarly, a travel agency stated for all relevant routes of concern that "*many times during the winter the ferries do not operate because of weather*[169] and another travel agent stated for all relevant routes of concern that "*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*".[170]

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163 Agreed minutes of a teleconference call with Cyclades Fast ferries of 2 September 2010, paragraphs 9-11 [ID 5392].

164 Reply to question 13 of the phase II request for information to ferry operators of 13 August, 2010 [ID 5581].

165 Reply to question 26 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

166 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 49 [ID 5236].

167 Reply to question 25 of the phase II request for information to corporate customers of 13 August 2010 [ID 3477].

168 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

169 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

170 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

(172) These statements illustrate that ferry services are more sensitive to weather conditions and air services are therefore to a certain degree perceived as more reliable than ferry services.

Further observations

(173) Further qualitative differences between ferry and air services were submitted by Athens Airways in its observations on the Parties' presentation at the hearing.[171]

(174) According to Athens Airways several ferry operators had not published the ships and schedules they intended to operate in 2011 and as a result it was not possible, at the time, to book in advance ferry tickets on selected dates for 2011.[172] Indeed, in mid-December 2010, it was not possible to book tickets beyond January 2011 on Anek's website for the Athens-Kos, Athens-Rhodes and Athens-Samos routes and Hellenic Seaways' website for the Athens-Chios, Athens-Kos, Athens-Mytilini and Athens-Rhodes routes.[173] Anek and Hellenic Seaways are among the most important ferry operators in Greece.

Conclusion

(175) The qualitative analysis of the result of the market investigation in this case, contrary to the Parties' argument in particular in their reply to the Letter of Facts that the evidence does not demonstrate that air and ferry services are distant substitutes, shows that ferry and air services have indeed different characteristics making them distant substitutes.

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171 According to Athens Airways, there are an array of other substantial "look and feel" differences between ferry and air services:

As regards ferry trips: there are serious traffic problems in the ports in almost all islands - ports are often at the centre of town - this causes serious congestion around sailing times; there is lack of adequate car parking facilities in several ports; ports lack adequate passenger terminal facilities (e.g. air-conditioned waiting halls); ports lack adequate taxi services; there is lack of adequate access roads to ports; foot passengers have to queue for considerable time, which can be in the order of several hours during delays due to adverse weather conditions – foot passengers have also to carry luggage for significant distances - often in high temperatures in the summer season; foot passenger embarkation/disembarkation is usually a difficult or unpleasant experience on ferries. This is because large numbers of passengers have to go through narrow, long and steep staircases, or through the car deck area whilst cars/trucks embark/disembark and there is often a high concentration of car fumes. Foot passengers also often have to carry all of their luggage - escalators may exist but very often do not function, and need to embark/disembark quickly due to the need for quick ferry turn around times.

As regards air transport, it is a superior quality service with a materially different look/feel quality due to the following key features: better road access to the Athens airport; airports on the Greek islands invariably have easy/good access roads; airports have relatively short queues compared to the ports; airports have good and mostly modern passenger terminal facilities (air conditioned), with restaurant/cafe/recreational facilities; airports offer good ground handling services for luggage; airports are well served by taxis; airports offer on-site car rental facilities and parking.

See Athens Airways' observations on the Parties' presentation at the Oral Hearing [ID 7255].

172 See Athens Airways' observations on the Parties' presentation at the Oral Hearing [ID 7255].

173 These websites were accessed on 3 December 2010.

(176) Aggregate travel time and level of frequencies offered by both means of transport differ significantly, in particular in winter.

(177) Furthermore, it seems that airlines and ferry companies are not targeting the same customer base. Moreover, travelling by ferry services is at least to some extent associated with adverse weather conditions, again in particular in the winter period. Last but not least, air services are on average often significantly more expensive than ferry tickets; this does not suggest that a 5 % price increase for air services would trigger substantial switching of passengers (including non-time sensitive passengers[174]) who are already willing to pay higher price for air travel.

(178) These findings are also in line with an earlier decision of the Hellenic Competition Commission (Decision 210/III/2002) concerning a series of acquisitions by the Greek ferry operator Minoan Lines. In that decision, also referred to by Athens Airways in at the Hearing[175], the Hellenic Competition Commission concluded that ferry passenger transport constitutes a distinct product market from air transport services: *"The market for the provision of transport services by sea constitutes a distinct market, despite the fact that transport is also carried out by air and by road, due to: a) the differences in price (cost of transport) of each means [of transport], which vary depending on the method of calculation of the total transport cost (individual or family or group transport cost, cost for special passenger groups, one way or return trip etc.); b) the different characteristics of each transport means, such as trip duration, speed in connection to the distance, security, comfort, baggage weight limit, ease of approach to final destination, weather conditions sensitivity, other ancillary services offered by each transport means etc.; and c) the special reasons for the use of each transport means (such as business trips, leisure trips, need to transport great weight, need to travel by car, etc.)."*

1.4.1.5. Airlines do not take into consideration ferry prices in setting their fares

(179) If the Parties' statement that ferry services significantly constrain airlines were true, airlines would monitor and somehow integrate ferry presence/behaviour in their pricing strategy on individual routes. However, while Olympic Air and Aegean systematically monitor each other's prices and those of other competing airlines, neither of them monitor the prices of ferry services.

(180) Olympic Air indicated that it is "*generally aware*" of the fare levels of ferry operators on Athens-Mykonos, Athens-Santorini, Athens-Herakleion and Athens-Chania routes.[176] An internal email of Olympic Air of 5 August 2010 relating to the preparation

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174 In the competitive assessment for each relevant route, the average price difference between air services and ferry services have been examined for a market comprising all passengers. As regards non-time sensitive passengers only, the average price difference between air services and ferry services would be lower. The average price difference between air services for time sensitive passengers and ferry services would be higher.

175 See Athens Airways' observations on the Parties' presentation at the Oral Hearing [ID 7255].

176 Reply of the Parties to question 3 of request for information of 20 July 2010.

of a reply to a request for information of the Commission[177] suggests the contrary. The email states: "[…]**[178]*; […]*".[179]

(181) In their reply to the Statement of Objections, the Parties argue that further internal emails of Olympic Air support the Parties' argument that they are constrained by ferry services. More specifically, they point to an email of August 2010 which relates to increased competition from ferry services connecting […]*; however, the probative value of this email is very limited given that it was written concomitantly with the phase II investigation in this case and is not backed up by internal correspondence of Olympic Air which predates the these proceedings.

(182) Two further emails referred to by the Parties, which predated these proceedings (October and November 2009) do not directly concern monitoring. Indeed, the first is a complaint of an unhappy customer who has suffered major inconvenience due the unavailability of a connecting flight and thus refers to using "*the more reliable*" ferry services. The second, which describes Attica and Olympic Air as having "*more or less the same clientele*" relates to creditworthiness of existing and future clients. Thus it is not relevant for price monitoring and, at most, of very remote relevance for intermodal competition.

(183) Similarly, Aegean claimed to be "*generally aware*" of the price levels offered by ferry operators.[180] Aegean provided several internal emails […]*[181]. These emails therefore do not evidence that Aegean's systematically monitoring of prices of ferry services.

(184) This was also indicated by […]*.[182] The Parties argued in their reply to the Statement of Objections that the reference to this quote was "*completely out of context*". What was meant by […]*.

(185) However, the Commission considers that this statement was given in the specific context of monitoring.[183]

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177 Reply of the Parties to question 8 of request for information of 4 August 2010 - *"what do you mean by "Olympic/Aegean is generally aware of the price levels offered by ferry operators"? Please provide for both Olympic and Aegean evidence (internal documents or other evidence) illustrating this awareness, notably as air fare setting is concerned"*.

178 JMK is an IATA code of Mykonos airport; JTR is IATA code of Santorini airport.

179 […]*. The Parties argued that the Commission cannot rely on this e-mail as (1) it is protected by legal professional privilege and (2) that it is taken out of context as it relates to a particular discussion between two Olympic individuals one of whom does not work in the pricing department. However, the e-mail does not constitute an exchange between the Parties and their external lawyers for the purposes of exercise of their rights of defense. Instead, the e-mail is a message between two employees of Olympic discussing the reply to a factual question. It is therefore not covered by legal professional privilige. It is a clear and unequivocal statement provided by an Olympic Air employee precisely in the context of monitoring of ferry prices.

180 Reply of the Parties to question 3 of request for information of 20 July 2010.

181 Reply of the Parties to question 8 of request for information of 04 August 2010.

182 Agreed minutes of a meeting with the Parties of 12 August 2010.

(186) More generally, the Parties claimed that ferry prices are particularly transparent: they are posted on ferry companies' websites, are reproduced by all travel agents and appear on the front pages of daily newspapers, the sector being one of the most heavily advertised.[184] However, the Parties were unable, despite repeated requests by the Commission, to provide complete ferry schedules in 2010 for several of the non-stop/non-stop routes of concern which shows that any monitoring carried out by the Parties is at best limited.[185]

(187) The Parties underlined in their reply to the Statement of Objections that they were fully able to provide ferry timetables for current periods, but what was more difficult was to obtain historic timetables as these are not systematically retained. However, the information referred to relates to basic information such as whether or not a ferry is active on a route at a certain point in time and with how many weekly frequencies. That the Parties were unable at several instances to provide basic information on the products' characteristics of ferry services casts doubts on their submission that they would be constrained by ferry services. Furthermore, if basic information on ferry services is not systematically retained it is reasonable to assume that ferry services are only to a limit extent (if at all) taken into account by the Parties in their future planning (which would require such information).

(188) In addition, Athens Airways until recently the main competitor of Olympic Air and Aegean on domestic routes, did not take into account the presence and prices of ferry services when setting its prices on the route (with the exception of the Athens-Mykonos route).[186] According to Athens Airways, "*the influence of the ferries as an alternative remains very limited*".[187]

(189) The Commission does not share the Parties' view that statements made by Athens Airways are irrelevant. On the contrary, it was until recently the Parties' main competitor on domestic routes.

(190) The Parties further argued in their reply to the Statement of Objections that the Commission failed to mention that ferry fares were taken into account by Sky Express and Cyprus Airways. The latter made clear that it monitors fares of ferry services "[…]*".[188] As regards Sky Express, contrary to its questionnaire reply in phase I, it later stated that it did not follow the pricing of ferry services and that on the routes where its

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183 The relevant part of paragraph 24 is worded as follows: *"DB informed the Parties that so far there is no evidence that the Parties would consider the ferries as a constraint.* […]*

184 Reply of the Parties to question 8 of request for information of 04 August 2010.

185 See reply of the Parties to request for information of 4 August 2010; reply of the Parties to request for information of 1 September 2010; reply of the Parties to request for information of 1 October 2010.

186 Reply of Athens Airways to question 32 of the phase I request for information of 25 June 2010 [ID 1050].

187 Agreed minutes of a teleconference with Athens Airways of 18 August 2010, paragraph 50 [ID 5236].

188 Agreed minutes of a teleconference call with Cyprus Airways of 2 September 2010, paragraph 25 [ID 4991].

activities overlap with ferry services it did not adjust its pricing in accordance to the prices of ferry services.[189]

(191) Similarly, the Greek airline Hellenic Imperial "*does not base its fare price according to ferry fare prices*" and explained "*that it is not possible to directly compare the fare prices of air and ferry operators*".[190]

(192) Further evidence regarding the limited impact of ferry services on airline pricing is found in Table 1 showing Olympic Air's seat allocation by period. In particular, Table 1 shows that, […]*. This is clear evidence of passengers' limited price sensitivity and the minimal competitive constraint imposed by ferry services.

			C	Y	M	L	B	X	U	T
AXD	**[…]***	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
CHQ	**[…]***	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
HER	**[…]***	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
JKH	**[…]***	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
JMK	**[…]***	**[…]***	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*

189 Agreed minutes of a teleconference call with the Sky Express on 24 August 2010, paragraphs 33, 37 [ID 5398].

190 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 9 [ID 5145].

	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
JTR	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
KGS	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
MJT	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
RHO	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
SKG	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
SMI	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
		[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*

Table 1 : Olympic Air's seat allocation by booking class per period of the year for schedules between 23/08/10-31/03/11

Source: Response to request for information of 20 August 2010.

(193) Therefore, ferry ticket prices only have a limited impact on the price-setting by airlines and underline the distant competitive relationship between both modes of transport.

1.4.1.6. Assessment of the Parties' survey on the parallel use of ferry and air transport services

(194) To substantiate their claim that ferry services exert a competitive constraint on air transport services, the Parties first submitted, in their response to the decision opening proceedings, a quantitative study[191] on the parallel use of ferry and air services in Greece ("first survey") and, at a later stage, a report on ferry competition[192], which partly relies on the findings of the first survey complemented by those of a second quantitative study ("second survey").[193]

(195) The research questions underlying the two surveys submitted by the Parties seem to be ill suited to provide an insight into the issue of the extent to which air travellers would consider switching to a ferry in case of a small but permanent increase of airfares. The first survey examined *"the phenomenon of parallel use of Ferries and Airplanes as transportation means towards domestic destinations amongst the Greek population.*" However, while the first survey tries to establish that ferry services are widely used in Greece, even more than air transport services, the parallel use of those two means of transport does not necessarily provide an indication on the competitive constraint exercised by ferry services on air transport services. This remark also applies to the second survey, which focuses on parallel use of those two means of transport although on a route-by-route basis. The objective of the second study was *"to analyse the nature of passengers on the ferry routes"*.[194]

First survey on the parallel use of ferry and air transport services

(196) According to the Parties the first survey represents "*a quantitative research on the parallel use of ferries and airplanes… [showing] that Greeks are more likely to use the ferry than plane for domestic travel and that the ferry is the predominant transportation mean used for domestic travel*".[195] This conclusion is not contested by the Commission as it corresponds to the reality of travelling patterns of Greek citizens.

(197) In terms of characteristics of the sample, the submitted survey is nation-wide, covering the Greek urban population of age from 18 to 64 and the field research took place between 25 June and 12 July 2010 in the form of face-to-face home interviews. Parallel use is captured by the proportion of airplane passengers who had also travelled both by plane and by ferry during the last 12 months (and the respective proportion of airplane travellers who had also travelled by ferry). Further distinction was made with respect to destinations where both an airport and a port were present. On two occasions, the percentage of airplane trips, where the passenger was aware of the possibility to travel with ferry, was reported.

191 Parties's response to the Decision opening proceedings of 30 July 2010.

192 Submission of LECG of 5 October 2010.

193 Submission of LECG of 5 October 2010, Appendix III.

194 Submission of LECG of 5 October 2010, Appendix III.

195 Parties's response to the Decision opening proceedings of 30 July 2010.

(198) However, the following criticisms are made as concerns the first survey.

(199) Regarding the methodology, the first survey's sample comprises only the Greek urban population, while a non-negligible proportion of passengers on domestic routes may be neither Greek, nor living in urban areas. This is actually confirmed by the second survey which notes countries of residence. For instance, concerning Chania and Herakleion, about half of the passengers are non-Greek residents.

(200) Regarding the evidence of parallel use of the two modes of transport, namely the fact that people who travelled by airplane during a given time period also travelled by ferry during the same period, this evidence does not demonstrate the extent to which a passenger might switch to ferry services as a result of an increase in the price of air transport services. The use of different modes of transport on different occasions, possibly to different destinations and, more generally, under different circumstances, does not indicate substitutability between these modes on a particular route. This is valid also where travel is restricted to destinations where both an airport and a port are present. In addition, awareness of the possibility to travel by ferry is not indicative of the passenger having actually considered the alternative mode and, even less so, of whether the same passenger would consider switching to a ferry following a price increase of the airplane ticket.

(201) Moreover, the presentation of the findings of the first survey is often not route specific. The only disaggregated results presented concern travel to Crete destinations and, separately, Herakleion. Aggregating responses across routes might not be appropriate if the circumstances of passengers and characteristics of the routes differ systematically, which is likely to be the case at hand.

(202) The Parties mention that the *"survey report [...] shows that of the passengers who flew by air from Athens to Chania or Herakl(e)ion within the past year, approximately half had made the same trip by ferry"*.[196]. However, given the small number of air passengers included in this sub-sample[197], it seems disputable how any conclusion could be drawn on the basis of this exercise concerning the behaviour of air passengers. The small sample size might indeed explain why no information is provided on the reasons behind the modal choice. However, such information is likely to be relevant as the need to bring along one's own car, for example, might constrain a passenger's choice, limiting it to travel by ferry only.

(203) Therefore, the Commission considers that the first survey, while being informative of the general travelling patterns in Greece, is not relevant for the assessment of the competitive constraint exerted by ferry services on air transport services, which is the key question in this case. Instead, the survey simply shows that in

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196 Parties's response to the Decision opening proceedings of 30 July 2010. However, it is not clear whether this result concerns travel from Athens only or from all destinations covered by the first survey. The title of the relevant part of the presentation *is "% of Greek urban population aged 18-64 yrs. that travelled via Ferry or Airplane during the past 12 months to Crete (Herakl(e)ion+Chania)&Herakle(i)on"*.

197 Parties's response to the Decision opening proceedings of 30 July 2010 - Based on the information provided on p.19, it seems that less than 14 people travelled by airplane, out of which about 7 had also used a ferry. The figures are even lower when taking Herakleion alone.

Greece more passengers take ferries than planes. This is consistent with the fact that the number of seats offered by ferry services is much higher than that offered by airlines.

Second survey

(204) The second survey was carried out among departing passengers from Athens International Airport ("AIA"), Piraeus port and the port of Rafina (for the route Athens-Mykonos), between 28 August and 4 September 2010. The surveying method involved self completed questionnaires.

(205) With respect to the methodology, it seems that only Aegean passengers were surveyed. This influences the representativeness of the sample and might bias the survey.

(206) Moreover, as the the survey was conducted in the summer it is likely that the sample includes a disproportionate number of leisure passengers relative to business passengers.

(207) Finally and most importantly, the second survey, as the first, does not address the critical issue in this case, namely to what extent air passengers would consider switching to ferry services should airplane tickets prices on individual routes increase. Evidence on parallel use in the past, but also possible intention of using an alternative transport mode in the future[198], does not necessarily indicate substitutability of the two modes on individual routes, especially because passenger circumstances at the time the choice is made are not considered in the survey. In that respect, car ownership, family composition, purpose of travel and length of stay seem to be particularly relevant for modal transport choices on a given route.

(208) In conclusion, the two surveys fall short of indicating to what extent a non-negligible share of passengers would consider switching to ferry services should the merged entity raise prices post-transaction relative to the prices that would exist in the absence of the transaction.

1.4.1.7. Assessment of the results in the Parties' report on intermodal transport competition

(209) On 5 October 2010, the Parties provided a report to further support their claim that ferry services impose a constraint on air transport services. The report has two parts. In the first part, a number of economic studies/papers are reviewed, while in the second part, a route-by-route analysis of the substitutability between ferry and air transport services is carried out for a number of routes.

(210) The first part of the report presents the findings of four economic studies and concludes that these findings *"are consistent with there being a competitive constraint imposed on airlines by ferries"*.

198 The second survey also asks respondents whether they intend to use the alternative mode in the following 12 months.

(211) It is necessary first to point out that, the first three studies do not seek to measure the extent to which ferry services exert a competitive constraint on either Olympic Air or Aegean, or the nature of such constrain, neither generally nor on any of the individual routes of concern. In other words, the analysis in three of these studies is performed at an aggregate level and thereforedoes not allow for conclusions to be drawn for any of the routes of concern. Importantly, none of the four studies even asks whether ferry services actually influence airline prices or whether the magnitude, if any, of the constraint exerted on Olympic Air and Aegean is higher relative to the constraint they exert on each other.

(212) The first study[199] ("first study") seeks to provide: "*an aggregate analysis of the substitution and complementarity relationships among all available transport modes for domestic travel in Greece within the period 1994-2004 […] The modeling system uses household travel expenditures as a proxy for travel demand and it processes aggregate information obtained from the last three waves (1994, 1999 and 2004) of the Greek Household Budget Survey (HBS) for the thirteen regions of the country*".

(213) Two issues are clear from this description of the timeframe and the objective of the study. First, it refers to a time period during which, for the most part, Aegean was not active in the market. Indeed, the most recent data used in the study is from 2004, at which time Olympic was more than five years away from privatisation. In light of the importance of the counterfactual analysis in this case and the Parties' claims that the recent financial and economic crisis affected passengers' willingness to pay for international as well as domestic travel, it is difficult to see how a study relying on data from 1994, 1999 and 2004 can provide any meaningful information regarding the extent to which ferry services exert a significant competitive constraint on airline companies engaging in competition through sophisticated yield management systems on any of the routes of concern.

(214) More importantly,: "*the AIDS* [Almost Ideal Demand System] *demand system used in this study includes demand equations corresponding to all available modes (private car, urban public transport, taxi, coach, rail, coast-wise sea ferry and airplane) to enable full examination of competitiveness in the domestic passenger transport market in Greece* [200]*"*. The purpose of the study is essentially to understand the way in which households allocate their budget across modes of transport. For example, the largest share of household transport expenditures relates to private motoring costs, which are mainly composed of the money spent for car usage and, especially, petrol consumption. Specifically, petrol expenses increased from 73.7 % to 75.7 % of total travel expenditures over the decade 1994-2004. Some of the main conclusions of the study refer to general interactions across modes of transport such as whether taxi and sea travel are complementary (the sign of the cross price elasticity suggests they are) or whether sea travel and air travel are substitutes (the sign of the cross price elasticity is positive, confirming the rather obvious intuition that for domestic travel they are not

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199 Tsekeris, Theodore, C*onsumer Demand Analysis of Complementarities and Substitutions in the Greek Passenger Transport Market*, KEPE Discussion Papers, 2007, Published in the International Journal of Transport Economics, 2008, Vol. 35, No. 3, pp. 415-449

200 Tsekeris, Theodore, *Consumer Demand Analysis of Complementarities and Substitutions in the Greek Passenger Transport Market*, KEPE Discussion Papers, 2007, Published in the International Journal of Transport Economics, 2008, Vol. 35, No. 3, p.10.

complements but substitutes). Another interesting result is that airplanes and sea ferry services (together with private vehicle (energy) use) can be characterized as necessities.[201] Finally the author concludes that "*subsidization policies implemented to reduce the fare of urban and inter-urban public transport services are likely to positively affect the demand share of these modes and, hence, the revenues of the corresponding transport firms, particularly those of sea ferry, coach and rail, which are the most price-elastic travel commodities*[202]*.*"

(215) It is readily apparent that the study does not address the question relevant for the market delineation in this case, namely, the extent to which passengers, having decided that they prefer to travel by plane on a given route, at a given time, would consider switching to ferry services if prices were to increase by a small but non-transitory amount.

(216) A number of the cross-price elasticities in the elasticity matrix are insignificant. However, the key conclusion with respect to the relationship between sea and air travel is that "*the evolution of liberalization in the Greek short-sea passenger transport market since 2004, in combination with the deregulated air passenger transport market (since 1992), is likely to invoke significant inter-modal substitution effects. These effects may cause a reduction of the budget share of inter-urban surface public transport modes, due to the significant and large cross-price elasticities of land with sea and air*[203]". It is unclear why the Parties cite this study as a basis to conclude that ferry services currently "exert a competitive constraint on airlines".

(217) The second study[204] ("second study") estimates the demand of air travel in different periods of the year reporting rather long-run industry-wide elasticity of demand for air travel to the relative price of air travel to ferry travel ranging between -0.1 and -0.2. The Commission notes that the data used in this second study *"span[s] [between] 1968–2000"*[205] These data is even older than the data used for the first study and refers to a period during most of which Aegean was not present, while (old) Olympic was still controlled by the Greek state. Hence, the same critique as for the first study mentioned in recital (213) applies. An additional methodological concern of the study relates to the lack of route specific results, which undermine the possibilities to extract conclusions relevant for this case. Finally, the Commission, without expressing a position concerning the reliability of the long run industry elasticity figures put forward by the

201 To the contrary, the paper finds that the usage of urban and inter-urban land (bus and rail) public transport services and taxis can be characterised as luxuries.

202 Tsekeris, Theodore, *Consumer Demand Analysis of Complementarities and Substitutions in the Greek Passenger Transport Market*, KEPE Discussion Papers, 2007, Published in the International Journal of Transport Economics, 2008, Vol. 35, No. 3, p.26.

203 Tsekeris, Theodore, *Consumer Demand Analysis of Complementarities and Substitutions in the Greek Passenger Transport Market*, KEPE Discussion Papers, 2007, Published in the International Journal of Transport Economics, 2008, Vol. 35, No. 3, p.26.

204 Tsekeris, Theodore, *Dynamic analysis of air travel demand in competitive island markets*, Journal of Air Transport Management Volume 15, Issue 6, November 2009, p. 267-273.

205 Tsekeris, Theodore, *Dynamic analysis of air travel demand in competitive island markets*, Journal of Air Transport Management Volume 15, Issue 6, November 2009, p.267.

second study, notes that demand for air travel is rather inelastic to the relative price of air travel compared to ferry. This seems to suggest that there is little scope for substitution between the two modes of transport. However, the Commission does not consider this result as decisively informative about the substitution between air and ferry on the problematic routes.

(218) The Parties' report also refers to results of a third study[206] ("third study") which *"examined the views of the leisure passengers travelling to islands, by air and sea transport, in an effort to better understand the characteristics and the reasons behind their choice of mode"*[207]. The author analyses leisure passengers' behaviour through a questionnaire survey which took place during the summer period of 2005. 318 responses were collected for the survey (207 boat passengers and 111 air passengers). The study assumes that all passengers that participated in the survey are leisure passengers[208]. The Commission observes that the methodology employed in the third study is questionable and not appropriate for the purposes of the issues under analysis in this case, because among other things: (i) the third study assumes that all respondents are leisure passengers without any apparent verification of such assumption or any attempt to identify different segments of passengers with respect to price sensitivity; (ii) the results are not route specific; and (iii) the sample employed is very small, just focusing on the summer of 2005 and limited to 318 respondents. In addition to the methodological concerns, the third study concludes that (i) for a significant proportion of passengers travel time is the most important reason for them choosing travel by air compared to travel by ferry, and (ii) that 17 % of respondents would be willing to switch to ferry services if the travel duration were to reduce by 20 %. This finding, however, is not informative about the switching pattern between air services and ferry services following a price increase of the air fare[209], neither does the study tackle directly this question. Moreover, a substantial proportion of the respondents (28%) would not consider switching from air travel to ferry travel irrespective of the ferry trip duration.[210]

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206 Rigas, K., *'Boat or airplane? Passengers' perceptions of transport services to islands*. The example of the Greek domestic leisure market', *Journal of Transport Geography*, 2008.

207 Rigas, K., *'Boat or airplane? Passengers' perceptions of transport services to islands*. The example of the Greek domestic leisure market', *Journal of Transport Geography*, 2008, p. 5.

208 Rigas, K., *'Boat or airplane? Passengers' perceptions of transport services to islands. The example of the Greek domestic leisure market*, Journal of Transport Geography, 2008, p.3*"[a]s during the summer period the majority of leisure journeys were expected to be for tourism reasons (including at least one overnight stay) no differentiation was made as far as week day and time of day is considered".*

209 The Report also does not explain whether the 20% reduction of travel time is considered feasible and on which routes. For example, the author of the paper concludes that reductions of more than 30% in boat trip duration might not be feasible, especially for the longer destinations.

210 Rigas, K., *'Boat or airplane? Passengers' perceptions of transport services to islands*. The example of the Greek domestic leisure market', *Journal of Transport Geography*, 2008, p. 4 *"There is here too an important part of the demand (28%) which does not consider travelling by boat an alternative irrespective of trip duration."*

(219) The fourth study ("fourth study")[211], unlike the other three studies, focuses on a specific route, namely Athens-Chios. This study estimates a multinomial logit model on longitudinal survey based data on the choice of the mode of transport. The study aims to test which set of personal characteristics, such as age, income, level of education, and travel mode's features, such as time or cost, affects the utility consumers gain from choosing a given mode of transport. For mode of transport's characteristics, separate estimates are provided for the different alternatives – these being conventional ferries, fast ferries, Aegean, Olympic Air. The utility gained from the different modes of transport for different portions of the population are tested in a binary way, meaning comparing fast modes – either fast ships or airplane – against the baseline case of conventional ferries.

(220) In contrast to the other three studies, the fourth one potentially provides information on a particular route, even if on one route only. However, the purpose of the study is more general than that which is of concern when delineating markets. The study investigated which socio-economic characteristics of individuals influence the mode choice behaviour as well as what mode characteristics affect the choice between new and conventional technology ships and airplanes. In other words, the study sought to understand which demographic characteristics and features of the transport mode drive passengers' choice of a conventional ferry, a high-speed ferry or air travel. For example, at the time of study travel time by ferry from Athens with a conventional ferry took between 8-11 hours and 5-6.5 hours with a high-speed ship. The air trip lasted between 30 and 40 minutes. On the basis of these facts, the study shows that older passengers or passengers with lower income may be more inclined to travel by ferry than to fly, since they are likely to be rather non-time sensitive yet price sensitive. The study sought to understand the reasons for those differences in preferences, and concluded that there were different categories of passengers with different preferences over trip duration and price.

(221) The study was based on survey data. In principle, for such a route- specific study, the number of observations appears appropriate: the authors collected a total of 756 questionnaires. Also, importantly, the authors obtained data from different periods of time over four years. Such a longitudinal survey would presumably ensure representativeness of the sample is and no seasonal bias. Unfortunately, however, the study is even less informative for the purposes of this case than is apparent. First, the data collection methodology involved personal interviews addressed to Chios residents travelling to and from Athens. Interviews took place in the port and airport of Chios as well as households residing in the island. In other words, the only prospective passengers surveyed were at Chios and no passengers originating at the other end of the route were interviewed. In addition, the study relies on stated preference data. Such data, while potentially informative as to reactions of passengers to the transaction, tends to be less reliable than actual data on real purchasing decisions. More so in the current competitive environment where passengers may be uncertain as regards their date of travel despite yield management precisely leading to price increases as the date of travel approaches. Finally, the study was conducted between 2001 and 2004, but Aegean only operated on the route in 2004 so that only a small fraction of respondents (less than 5 %) had actually chosen Aegean in the sample. In any event, the conditions of competition in

211 Polydoropoulou, Amalia & Litinas, Nikolaos, *Chapter 9 Demand Models for Greek Passenger Shipping, Research in Transportation Economics*, Elsevier, vol. 21(1), January 2007, p. 297-322.

the absence of the transaction in 2011, even on this route, are likely to differ to those prevailing in 2004 when Aegean entered the route.

(222) In conclusion, the evidence reported in the four studies referred to by the Parties does not support the Parties' claim that ferry services exert a competitive constraint on air transport on the domestic routes affected by this transaction.

1.4.1.8. Parties' response to the Statement of Objections

(223) In response to the Commission’s argument to the longer duration of travel by ferry services as opposed to the air transport services on individual routes and the argument that passengers prefer shorter travel times, the Parties explained that ferry services actually saved time due to travelling overnight thus avoiding the accommodation costs at destination. Night travel (even in a high-priced independent cabin) is unlikely to be considered as convenient as air transport for a short trip combined with the possibility to rest in the comfort of one’s own bed. Furthermore, spending a night in a hotel room at the destination or in a ferry cabin is unlikely to be more cost efficient than returning by plane to the point of origin the same day. However, the Commission acknowledges that, as the Parties have, it cannot determine how much a time sensitive passenger may be willing *to save* not to sleep in a ferry cabin. The Commission, however, notes that the price of a cabin in a night ferry can be higher than a “Flex” fare of Aegean.

(224) In response to the Commission’s criticism that ferry prices/behaviour were not monitored nor integrated in their pricing, the Parties argued that ferry services only recently introduced a more sophisticated pricing behavior and that, prior to that, the pricing structure of ferry companies was static so that Parties did not need to “monitor” the ferry prices in the way suggested by the Statement of Objections. In other words, the Parties argued that ferry prices were static until recently, making any monitoring unnecessary.

(225) The Parties have misunderstood the Commission's argument. It is clear that the Parties do not need sophisticated “real time” price monitoring software of the kind used to monitor each other’s pricing behaviour. Indeed the nature of price competition among ferry services is largely different than that among the Parties (essentially posted prices in the former case, whilst the Parties use sophisticated yield management techniques). Equally importantly, the Parties were not even able to provide certain ferry schedules, which shows at best very limited interest of the Parties in ferry activities.

(226) This suggests that neither Olympic Air nor Aegean would set pricing grids or booking limits for each class and capacity taking into account ferry presence, contrary to the importance given to each other.[212] In any event, despite the lack of price management by ferry companies, ferry prices were subject to price movements. In addition, price monitoring is not the only competitive parameter usually used by market participants. Besides prices, market participants usually analyse the level of frequencies, quality of service and schedules of othermarket participants.

(227) The Parties submitted a correlation analysis, and a cointegration analysis of fares on the Athens-Mykonos, Athens-Chania, Athens-Herakleion, Athens-Mytilini, Athens-

212 […]*.

Chios, Athens-Kos, Athens-Rhodes and Athens-Samos routes to show that prices of air tickets and ferry services move together over time indicating that ferry and air transport services are subject to the same competitive dynamics and therefore should be included in the same market.[213]

(228) During the hearing, the Parties presented an analysis showing that air fares on routes with ferry competition are lower than fares on routes where ferry transport services are not an alternative. The slide results showed in 2009 the average price on routes with ferry competition were EUR […]* while the average price on routes without ferry competition was EUR […]*.

(229) On this basis, as concerns the substitutability of ferry to air transport services in relation to Greek domestic routes on which Parties' activities overlap, the Parties continued to claim that intermodal competition existed in the Greek domestic market. As a result, any attempt to increase prices by the merged entity would be defeated by passengers switching to ferry services. According to the Parties, the proportion of passengers needed to switch would not even need to be significant given that the critical loss of passengers that would render a price increase of 5 % unprofitable is around […]*%.

(230) On 23 November 2010, the Parties submitted an additional study presenting in more detail the results introduced during the hearing on intermodal competition.[214] The study uses a multiple regression analysis to assess the potential constraint imposed by the presence of ferry services on the fare charged by Aegean. To assess the presence and the magnitude of this alleged constraint, the study used a cross-sectional approach, comparing routes in which ferry service was available with routes in which it was not. The analysis was performed on data for the 22 Greek destinations to islands to which Aegean flies, either from Athens or Thessaloniki airport.

(231) The analysis shows that ferry presence on routes out of Athens is associated with a decrease in average air fare between [0-5]*% and [10-20]*%, depending on the specification and the type of estimation. Ferry presence on routes out of Thessaloniki is in general associated with a fare *increase* of [5-10]* to [10-20]*%. Time sensitive passengers are charged a fare which is [60-70]* to [70-80]*% higher than non-time sensitivity passengers. The study emphasises the result concerning ferry presence on routes out of Athens as providing evidence that ferry services impose a significant constraint on airfares in the routes to and from Athens. In Sections 1.4.1.9 and 1.4.1.10, the regression analysis and the critical loss analysis submitted by the Parties are critically assessed.

1.4.1.9. Assessment of the Parties' regression analysis of ferry presence on airlines pricing

(232) Whilst a single slide was presented by the Parties at the hearing showing the results of the regression analysis, the report (and the data for replication) was submitted

213 No analysis has been provided here about the following routes: Athens-Thessaloniki, Athens-Alexandropoulis, and Athens –Santorini.

214 See *"Analysis of the impact of ferry competition on airline prices",* LECG Project Team, 23 November 2010.

to the Commission only on 23 November 2010, 12 days after the hearing. The review of this analysis confirms the two comments made by the Commission at the hearing. This analysis is reviewed in depth in Annex I to this Decision.

(233) First, according to this analysis, on island routes with ferry services air fares are lower than average fares on routes on which there are no direct ferry services. The Commission pointed out in response that there appears to be no economically significant difference between average prices on routes with or without ferry services […]*. The Parties acknowledged this point but argued that average prices are not informative nor reflect the competitive constraint they allegedly exert on air fares. The Commission agrees with this remark. Indeed, the Parties significantly differentiate their products and use yield management practices to discriminate across passengers with different price sensitivity. Ferry services might be considered as an alternative in some circumstances by the most price sensitive passengers, but not by a large majority of passengers willing to pay a higher price for the additional convenience and the reduced travel time. It follows that if ferry services have any impact on air fares this would be essentially on low fares. Given the limited tickets sold at the lowest fares, it is not surprising that there is little difference in average prices across routes with or without ferry services. Notwithstanding this, the Commission attaches no significance to this result as it could well be a simple coincidence. This is because simple averages do not control for all relevant differences across routes, besides ferry presence.

(234) The regression analysis is intended to control for observable difference across routes (cross-sections) besides presence or not of ferry services. However, even if the methodology were approriate, the results confirm that ferry services have a very limited impact on prices. *Statistical* significance does not mean the same as economic significance. According to the Best practices for the submission of economic evidence[215]: "*An empirical submission should not only discuss the statistical significance of the results but also their practical relevance. [...] This requires interpreting the results in connection with the hypothesis that is being tested, so as to draw implications for the case under investigation*".[216] In this case, the hypothesis being tested is that ferry services constrain the pricing of airlines, and more concretely, air fares to price sensitive as well as to price insensitive passengers. If that is the case, one would expect that ferry services affect air fare pricing irrespective of the fare. But the relevant coefficient is very low, especially relative to the coefficient that controls for time or non-time sensitive fares. Even taking the results of the regressions analysis at face value, after careful examination, the regressions proved not to be sufficiently robust to a series of tests conducted by the Commission. Additional details are provided in the Annex I.

215 Best practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases, DG Competition, 6 January 2010.

216 Best practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases, DG Competition, 6 January 2010, paragraph 35.

1.4.1.10. Assessment of the results of the Critical Loss Analysis included in the reply to the Statement of Objections

(235) The concept of Critical Loss builds on the definition of a relevant market contained in the Relevant Market Notice, that is: a market is the smallest group of producers that, if they behaved as a single hypothetical profit-maximizing firm, would impose at least a small but significant and non-transitory increase in price ("SSNIP").[217] The logic of the test is to identify a group of producers that would be able to exercise market power if they could coordinate their pricing and output behaviour.

(236) The Critical Loss identifies for any given price increase the amount of sales that could be lost before the price increase becomes unprofitable. Different levels of critical loss are associated with different levels of hypothesized price increases. A profit-maximizing firm by definition will choose the price increase that produces the greatest increase in profits. The Critical Loss concept is typically based on situations where a single price is charged to all passengers by a producer or group.

(237) The Critical Loss Analysis estimates by how much the hypothetical monopolist's sales would have to fall in order to render the hypothetical price increase unprofitable. The price increase contemplated in the SSNIP test has two opposing effects on the hypothetical monopolist's profits. It has a negative effect on profits because sales will fall as some consumers substitute to rival firms' products in response to the increase in price. However, there is an offsetting positive effect on profits as the hypothetical monopolist now earns higher margins on all of the remaining sales. If the negative effect on profits is greater than the positive effect, then the price increase will be unprofitable for the hypothetical monopolist, and the relevant market is wider. The Critical Loss is the percentage reduction in quantity such that these two effects just balance. If the reduction in unit sales is greater than the Critical Loss, then the price increase will reduce profits. If the reduction in unit sales is less then the Critical Loss, the price increase will increase profits for the hypothetical monopolist, and the relevant market must not be expanded.

(238) A Critical Loss Analysis contains two steps. First, the Critical Loss amount is estimated for a range of hypothesized price increases. Second, the actual loss that would result for that range of price increases must be estimated. If the evidence on the likely loss of sales associated with a price rise suggests that the actual loss would be greater than the critical loss, then the products in question do not form a relevant market. Thus, the price increase would not be profitable and the market must be expanded.

(239) Typically it is possible to calculate the actual loss using traditional tools of market definition analysis such as estimating demand elasticities, other statistical analyses such as import origin analysis, shock analysis, customer reactions and switching surveys.

Critique of the Parties' Critical Loss Analysis

217 The standard hypothetical monopolist test starts by narrowly defining each product produced by each merging firm, asks whether a hypothetical monopolist could profitably impose a SSNIP, and progressively broadens the market by adding the nearest substitute products up to the point that a grouping susceptible to such a price increase is first reached.

(240) Critical Loss Analysis is indeed a simple and appealing methodology to assess the SSNIP question. However, because of its simplicity, Critical Loss Analysis relies on numerous assumptions and its use has been subject to significant debate (in particular for industries with high fixed costs such as the airline industry).

(241) Typically where gross margins are high, markets tend to be defined as wide because a price increase would be unprofitable with a few lost sales. However, high margins also tend to indicate that firms have a certain degree of market power and that in fact, price elasticity may be rather low.[218] Not only would this suggest that actual loss would in fact be low as well but it would also suggest that markets may possibly be narrow (as firms can charge high prices, because passengers would not switch). Indeed, firms are expected to set prices that maximise profits and price is inversely related with the demand elasticity faced by the firm. Hence, low price elasticity tends to lead to high prices (and high margins).

(242) The Parties submit a one page Critical Loss Analysis computing the critical loss for eight routes (that is Athens-Herakleion, Athens-Chania, Athens-Santorini, Athens-Mykonos, Athens-Samos, Athens-Kos, Athens-Chios, Athens-Mytilini) for Aegean in 2009. They put forward this analysis as evidence of intermodal transport competition in the Greek market. As a preliminary remark, the Commission notes that (i) this analysis does not compute the actual loss; (ii) this analysis is not computed for the Athens-Thessaloniki, Athens-Rhodes and Athens-Alexandropoulis routes; (iii) it is limited to Aegean.

(243) From a methodological point of view, the Critical Loss Analysis included in the reply to the Statement of Objections assumes that all products are homogeneous. However, this methodology is of little use for the airline passenger transport industry which is clearly a differentiated product market. Different fares and booking classes are associated to different services (such as flexibility to change ticket, access to business lounges, reimbursement or simply service on board, among other features).

(244) Furthermore, airline companies, such as Aegean and Olympic Air, use yield management systems to price discriminate passengers according to their different characteristics. The Critical Loss Analysis fails to account for these features, which are distinctive of the airline transport industry. In particular, airlines offer a large array of fares and booking classes. The prices for the different fares and booking categories evolve as the time of departure approaches, as the aircraft fills up, and according to the day of the week and period of the year. The Critical Loss Analysis presented by the Parties assumes a constant margin for each route and for the whole year and therefore fails to capture this intense price discrimination. Indeed, the Critical Loss Analysis assumes that a single price is charged to all passengers. The use of an average price and a single price increase across the board to calculate the critical loss is not consistent with the way a hypothetical monopolist would price in this industry. It is possible that a 5-10 % average price increase could profitably be achieved through a large price increase for

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218 The Commission notes that this has also been pointed out by another jurisdiction: *"if a firm sets price well above incremental cost, that normally indicates either that the firm believes its customers are not highly sensitive to price (not in itself of antitrust concern, [...]) or that the firm and its rivals are engaged in coordinated interaction"*, United States Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines, 19 August 2010, paragraph 2.1.1.

high yield, less price-sensitive passengers and a very small (or even no) price increase for low yield, price sensitive passengers.

(245) Other methodological issues include the calculation of costs with a short run perspective. While in the short run, most costs are essentially fixed in this industry, a hypothetical monopolist could, in case of a permanent price increase, find it profitable to increase prices if the loss in sales was accompanied by a modification of frequencies, of flight schedules, or by using different (smaller) aircraft. This would lead to the gross margin (based on avoidable costs) being lower than those based on short-run variable costs.

(246) The use of the Critical Loss Analysis for the purposes of market definition requires the estimation of the actual loss in volume from a hypothetical increase in price. The comparison between the actual loss and the critical loss is then used to decide whether the candidate market has to be expanded or not. In particular, the candidate market requires to be expanded if the actual loss exceeds the critical loss. This step is missing in the Parties' Critical Loss Analysis, most likely because of the same strong data limitations which led the Commission not to conduct an empirical analysis of it own. Furthermore, the Parties failed to provide any evidence, qualitative or quantitative, showing that a 5-10 % increase in prices would trigger a high loss in sales that would exceed the critical loss.

(247) The Critical Loss Analysis included in the reply to the Statement of Objections is limited to eight of the eleven domestic routes of concerns. The Commission has replicated the same analysis for the three missing routes (that is Athens-Thessaloniki, Athens-Rhodes and Athens-Alexandropoulis). The Commission obtains identical results to those put forward by the Parties for the eight routes. It is quite interesting to note that in the Athens-Alexandropoulis route there is no possibility of intermodal transport competition and yet the results are identical. This finding cast doubts on the constraints imposed by other means of transport. If the Commission were to accept the results of the Critical Loss Analysis at face value, it would still not be able to conclude anything on the substitution between air and ferry services. It could well be that air passengers simply opt out and decide not to travel. Yet, the Parties' Critical Loss Analysis provides no evidence of the alleged competitive constraints imposed by ferry services.

(248) Finally, the Critical Loss Analysis is limited to Aegean data. By doing this, the Critical Loss Analysis fails to mimic a hypothetical monopolist. The data on Olympic Air, which accounts for a large chunk of the market, is not included. While it is true that the critical loss for a hypothetical monopolist, including Olympic Air and Athens Airways would be lower, it is also true that the actual loss would be even lower. This result follows from the strong interdependence between demand price elasticity and margins.

(249) As concluded in an earlier decision[219], the Critical Loss Analysis is not an appropriate tool for the evaluation of the SSNIP test for the airline industry in view of the extent of price discrimination and the difficulties in evaluating appropriately gross

219 Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*, paragraphs 85 et seq. See also Commission Decision of 4 March 2009, M.5141- *KLM/Martinair*, paragraphs 296 to 299, where the Commission discussed some of the reasons why a critical loss analysis was not instructive in that airline case.

margins. In addition, the Parties' Critical Loss Analysis is flawed and fails to meet the minimum standards required to conduct an analysis of the kind.

1.4.1.11. Assessment of the Parties' reply to the Letter of Facts

(250) On 6 December 2010, the Commission issued a Letter of Facts in which evidence concerning fare evolution of air and ferry services on the routes of concern was presented in more detail than in the Statement of Objection. In addition, the Letter of Facts presented a simple test on the effect of the entry of Blue Star Ferries on the route Athens-Chania. The Commission considers this evidence as supportive of the conclusion of the Statement of Objections and of the Supplementary Statement of Objections that ferry services are only a distant substitute to air travel.

(251) On 13 December 2010, the Parties replied to the Letter of Facts. The reply includes an additional study[220] containing several arguments. Together with the report attached to it, the reply questions whether the evidence included in the Letter of Facts is consistent with the fact that ferry services are only a distant substitute to air travel.

(252) The Parties argue that price difference is not used approriately by the Commission to reach a conclusion concerning presence or absence of substitution between ferry and air transport services. According to the additional study, the difference in price is not inconsistent with the possibility that ferry and air transport services belong to the same market. This is argued considering the trade-off faced by passengers between travelling time and fare charged by the two modes of transport. For this reason, given the longer travelling time of ferry services, ferry services would charge lower prices than airlines to attract passengers. The study concludes that "*the isolated observations of price differentials are insufficient to show that either ferries are in a separate market or that they are not close competitors*"[221].

(253) The study opposes the argument, contained in the Statement of Objections and in the Letter of Facts, that some passengers continue to use air transportation even when it becomes relatively more expensive than the ferry alternative. According to the study, the Commission did not take in to account all the confounding factors that may drive the development of air and ferry transport services prices across the different seasons.

(254) The study further claims that the Commission applied the wrong test when finding the existence of a significant group of passengers that would not switch transport modes even if air fares increased with respect to ferry services.

(255) The study refutes the fact that the different evolution of fares and total passengers on the routes Athens-Chania and Athens-Herakleion is an indication that the two transport modes serve different segments of demand.

(256) Finally, concerning the effect on air and ferry transport fares of the entry of Blue Star Ferries on the Athens-Chania route in April 2010, the study claims that there is

220 Response to the Letter of Facts, LECG Project Team, 13 December 2010.

221 Best practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases, DG Competition, 6 January 2010.

insufficient evidence to argue that ferry services are not in the same relevant market as airlines.

(257) It is important to recall that the purpose of the Letter of Facts was to give the Parties the opportunity to comment on part of the evidence which was presented in less detail in the Statement of Objection and Supplementary Statement of Objection. This evidence therefore is not new, to the extent that it was already the basis of the conclusions of the Statement of Objection and Supplementary Statement of Objection. The evidence included in the Letter of Facts should therefore be read in connection with all the other evidence related to the differences between air and ferry transport services, the replies from the market investigation and all the other qualitative evidence exposed in the Statement of Objection and Supplementary Statement of Objection.

(258) Therefore the evidence contained in the Letter of Facts should not be considered, on a stand-alone basis, as conclusive to refute the fact that ferry services exert a certain level of constraint on air transport services on any of the routes of concern where ferry services operate. This evidence, if read in connection with rest of the evidence included in the Statement of Objection and Supplementary Statement of Objection, indicates that ferry services are, possibly to different extents on the routes of concern, distant substitutes to air transport services.

(259) The Commission considers that price difference between two products does not *per se* constitute evidence of the fact that the two products do not belong to the same relevant market. Difference in price, in a differentiated products' environment, provides a proxy of the distance in the product space between the two products. The larger this difference, the lower the likelihood that these two products are considered substitutable by a significant portion of consumers.

(260) To provide a meaningful comparison between air and ferry fares, it was necessary to properly observe the fluctuation in air and ferry fares during different periods of the year. For this purpose only, data of old Olympic have been used in connection with those of new Olympic (and where available Athens Airways' data) to find the weighted average fare for each given month. In the reply to the Letter of Facts, the Parties argue that this is inappropriate as the two companies (Old and New Olympic) should be clearly distinguished, as having different costs and pricing strategies.

(261) The Commission agrees that the two companies should be clearly distinguished and no inference can be drawn from data referring to Old Olympic with respect to the extent of competition between Aegean and Olympic Air, or between the Parties and other alleged competitors. Nevertheless, for the purpose of this limited descriptive exercise only, data referring to Old Olympic was used to observe the evolution of fares and passenger behaviour over a certain period of time.

(262) A significant difference in the average fare between air and ferry services was identified by the Commission in seven out of the eight routes of concern in which the Parties claim that competition between ferry and air transport services takes place. Such price difference is only indicative of the actual price difference observed by air passengers, since the yield management system used by airlines allows for providing different available fares according to the moment of purchase with respect to the day of departure. Therefore, late booking passengers may be faced with a fare difference which is significantly higher than the average one.

(263) The interpretation of this difference by the Parties is that ferry services, providing a lower quality product in terms of travelling time, would indeed be included in the same relevant market on the basis of the lower fare charged. Each passenger, according to the interpretation, would face a trade-off between time and price, and would choose the means of transportation which provides them with the optimal combination of the two aspects. Supposing that a continuum of alternatives is available, each passenger would face an indifference curve between price and time. Following the Parties' argument, an alternative which offers same travelling time but higher fare than the one located on the passengers' indifference curve, would not be considered as an option. This argument, in presence of a difference in fare between Aegean and Olympic Air, would lead to the exclusion of one the Parties from the relevant market, with the contestual inclusion of one or more ferry alternatives. This conclusion is not consistent with the evidence on the Parties' competitive interaction.[222]

(264) Concerning the analysis of the variation of fares and total passengers on the Athens-Chania and Athens-Herakleion routes over time, changes in the size and in the composition of demand affect the fare charged by airlines at different periods of the year. This is explicitly expressed in the Letter of Facts.[223] The Commission, in proposing this comparison, highlights how this variation takes place in different ways for ferry services and airplanes. While, at the aggregate level, ferry services, to a different extent on the different routes, induce little or no adjustment to the fare charged and experience huge expansions in demand during the summer period, airlines significantly increase fare during peaks in demand.

(265) Such difference reflects the different composition of demand for the two modes of transport. Even in summer, when the proportion of leisure passengers increases, airlines can profitably increase fares with respect to the winter season. [224]

(266) The composition of the total demand in terms of sensitivity to time and price is not directly observable, but can only be indirectly proxied observing other characteristics of passengers, such as purpose of travel or flexibility of the ticket purchased. In this respect, whichever the proxy used, it is reasonable to assume that there is a portion of demand which would travel independently of the season, such as, for example, business passengers or those visiting friends and relatives. With respect to these passengers, the increase in the average airfare observed in summer can be reasonably considered exogenous. If, in presence of such increase, the total demand of air transport actually increases, this provides an indication that the extent of this group is large enough to make the fare increase profitable. This is, in the Commission's view, an additional indication that air and ferry services serve significantly different portions of demand.

(267) Concerning the effect of the entry of Blue Star Ferries on the Athens-Chania route, the Parties argue that the fact that only Anek's fare was affected in a negative way, while those of Aegean and Olympic Air were not, does not mean that ferry services belong to a separate market. In this respect, the Commission considers that this evidence

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222 See section IX.1.3 of this Decision.

223 See Letter of Facts, recital 9.

224 This evidence does however not constitute a SSNIP test.

provides another indication that airlines and ferry services serve segments of demand which are very different in terms of their sensitivity to price.

(268) Finally, this conclusion is obtained using, concerning Olympic Air, only information related to the period of operations of (New) Olympic Air, and is confirmed if data for Old Olympic were used.

1.4.1.12. Conclusion

(269) Therefore, and as further explained in the competitive assessment for each route in Section IX.1.9, for the purpose of this Decision, as concerns time sensitive passengers, ferry services and air services form part of two separate markets, except for the Athens-Mykonos route. On the Athens-Mykonos route, air services and ferry services are part of the same product market as concerns time sensitive passengers.

(270) As concerns the markets for non-time sensitive passengers and all passengers, the question whether air services and ferry services belong to the same market can be left open for the purpose of this Decision, except for the Athens-Mykonos and Athens-Rhodes routes, as the competitive assessment would remain the same irrespective of whether ferry services are included or not to the relevant market. This is because as will be shown in the route-by-route analysis, ferry services are only distant substitutes to air services on the routes of concern.

(271) For the Athens-Mykonos route, air and ferry services are part of the same product market as concerns the markets for non-time sensitive passengers and for all passengers. For the Athens-Rhodes route, air and ferry services are not part of the same product market as concerns the markets for non-time sensitive passengers and for all passengers.

1.4.2. Competition by train

(272) The Parties argue that on the Athens-Thessaloniki route only, train services offered by the Greek railway company OSE form part of the same relevant market as air transport, considering the high number of frequencies offered by train, the relatively short travel time offered by faster train services and the high number of passengers using train services.

(273) However, train services are not to be considered belonging to the same market as air services for any category of passengers for the purpose of this Decision.

(274) As explained in more detail in Section IX.1.9.1.10, the various internal documents of the Parties do not evidence that they themselves consider train as a competitive constraint to their services on the route, as confirmed explicitly by one of the Parties in the course of the procedure. Nor are train prices systematically monitored by the Parties and their competitors.

(275) Furthermore, considerable differences exist between the two modes of transport as regards travelling time and the level of fast frequencies. Importantly, the quality of train services on the route is perceived by many respondents as inferior to those of air services.

(276) Many respondents to the market investigation did not consider that a significant proportion of time sensitive or non-time sensitive air passengers would switch to train services in response to a price increase of air services on the route.

(277) As explained in the competitive assessment for this route in Section IX.1.9.1.10, train services are therefore not to be considered in the same market as air services for any category of passengers.

2. PUBLIC SERVICE OBLIGATION ("PSO") ROUTES

(278) Olympic Air and Aegean are both active in the provisions of scheduled air travel services on PSO routes (that is public service obligation routes operated in monopoly in exchange for a subsidy) in Greece.

2.1. Relevant product market

(279) Under PSO rules[225], Member States may impose obligations in respect of scheduled air services between two airports to ensure fixed standards of continuity, regularity, pricing and minimum capacity. This arrangement is used for routes which are considered vital for the economic and social development of the region which the airport serves. When public service obligations are imposed, any EEA airline is at any time allowed to commence scheduled air services meeting the requirements of the PSO. Where the market forces do not provide air services in conformity with the public service obligations, one airline may be selected pursuant to a tender for a specified period of time (around 2-4 years) to operate the air transport service under an exclusive concession, with regulated fares, and, if needed, in exchange of a given compensation, as well as airport and slot access. This is the case, for instance, for operations to/from a number of Greek islands.

(280) The Hellenic Civil Aviation Authority ("HCAA") with the consent of the Greek Ministry of Transport decides whether a route should be classified as a PSO route on the basis of various parameters including, among other, low traffic volume and limited access by other means of transport between the two cities connected by the route and subsequently puts the route out to tendering.

(281) HCAA is responsible for organising the calls for tenders to select the operators of the PSO routes. Bidders are required to submit a proposal separately for each of the PSO routes, which are then attributed one by one.

(282) The tenders are published in the Official Journal of the Union, in local Greek journals, "*and all the Greek carriers (including Aegean and Olympic Air) receive an invitation*".[226] In accordance with Union rules, all EEA carriers are allowed to bid for PSO routes. The tender specifies, for each route, the technical details (minimum weekly frequencies and seat requirements, which usually differ between summer and winter periods), as well as the upper limit (price cap) for the single economy fare. The latter is

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225 PSO routes are governed at Union level by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293/3, 31.10.2008; also as regards the Greek legislation Π.Δ. (Presidential Decree) N° 118/2007, ΦΕΚ (Issue of Government's Journal) 150A/10.07.2007 Π.Δ. (Presidential Decree) N° 60/2007, ΦΕΚ (Issue of Government's Journal) 64A/16.03.2007 on the tender procedures.

226 Agreed minutes of a teleconference call with the HCAA of 09 July 2010, paragraph 2 [ID 1596].

fixed for the whole PSO contract life. As regards timetables, the arrivals and departures of the aircraft are to be planned within the operating hours of the airports to be served.

(283) Bids are submitted in three sealed envelopes. The first contains details about the submitting company, its shareholders, and its structure. The second contains the technical details and the third contains the financial offer. The envelopes containing the identities of the companies and the technical details are opened on a given date, in the presence of representatives of all bidding companies. Each bidder has the right to raise objections related to the offer made by other bidders, which are then examined by a claim committee. A final list of acceptable bidders, based on technical criteria, is then produced by the technical committee, and approved at ministerial level.[227]

(284) The financial offers are then opened, in the presence of representatives of all the bidding companies. For each PSO route, the decision to award the route to an operator is taken exclusively on the basis of the lowest compensation asked to the Government for the operation of the route. If two bids are identical in that respect, then the second criterion is the proposed fare for the operation of the route.[228]

(285) Finally, after the tender process, the designated bidders proceed to sign the relevant contract for the exploitation of the awarded routes.

(286) The Parties submitted that "*the auction mechanism for the PSO tendering process resembles a first-price sealed bid auction.*"[229]

(287) The Parties argued that "*there is no market as such for bidding for PSO routes*"[230], although they acknowledged that there was competition for the PSO market. They further argued that if such a market were to exist, the market definition should cover all airlines able to participate in the tenders, including foreign airlines.

(288) PSO routes are operated as an exclusive concession by the chosen airline; no airline can operate on a commercial basis on the same route until the end of the concession, although an airline can propose, at anytime before the tender is awarded, to operate the route on a commercial basis.

(289) Therefore, the operation of PSO routes could be considered distinct from the commercial air transport of passengers, as no competition can take place on PSO routes

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227 Agreed minutes of a teleconference call with HCAA of 09 July 2010, paragraphs 3-5 [ID 1596].

228 There are cases where the requested compensation is zero. For example, for the Thessaloniki-Samos and Thessaloniki-Chios routes, three bidders offered to serve them on a zero subsidy basis. However, even in such cases, carriers benefit from other features of PSO routes in general, such as no airport levy of passenger tickets and the right to serve the given PSO route exclusively for a specified time period defined in the tender procedure.

229 Parties's response to the Decision opening proceedings of 30 July 2010.

230 Form CO, p. 287. In the reply of the Parties to decision opening proceedings of 30 July 2010, the Parties did not appear to question the existence of a bidding market as such.

conceded to a single airline. Rather, competition takes place for the market at the tender stage.[231]

(290) The Parties argued in their response to the decision to open proceedings that "*PSO routes are heterogeneous in terms of the type of aircraft required, the distance flown, the expected demand and the frequency of flights. Furthermore, certain airports have short runaways and can only be flown to by certain types of aircraft.*"[232]

(291) The current 26 PSO routes are indeed diverse in terms of the requirements that are set in terms of frequencies, number of seats available, and fares, by HCAA. In terms of passenger numbers in 2009, the Thessaloniki-Skyros route for instance involved only 3 591 passengers while the Athens-Paros and Athens-Milos routes transported more than 30 000 passengers.

(292) The market investigation confirmed this heterogeneity, especially regarding suitable aircraft type constraints. Indeed, Athens Airways stated that a number of PSO routes "*can only be operated by Dash 8-100/200 aircraft because of technical characteristics and runway lengths*").[233] Sky Express believed that due to its type of aircraft (that is aircraft with a maximum of 30 seats), it may be better placed than large airlines to serve some PSO routes, and considered that "*only OA has the Dash-100 necessary to operate some of the PSO routes*".[234]

(293) HCAA also pointed out that "*most runways of the airports in the islands are not long enough. Taking into account the weather conditions in Greece – especially high temperature in summer time when traffic demand is increased – take off weight of the aircraft used in some cases must be decreased.*"[235] Routes to such airports are commonly referred to as Short Take-Off and Landing ("STOL") routes.

(294) The precise definition of the relevant product market can, however, be left open as the transaction is unlikely to significantly impede effective competition irrespective of whether the market at the tender stage is defined as encompassing tenders for all Greek PSO routes or, on the basis of supply-side criteria (routes that require aircraft with STOL or aircraft with a certain passenger capacity), with a view to tenders for different segments.

231 Such bidding markets have been analysed by the Commission in a large number of cases, notably in the public transport sector (Commission decision of 29 October 2009, M.5557 - *SNCF-P/ CDPQ/ KEOLIS/ EFFIA*, para. 17, Commission decision of 11 August 2010, M.5855 - *DB/ARRIVA*, or in the engineering sector, Commission decision of 13 January 2010, M.5697 - *ALSTOM HOLDINGS/ ALSTOM HYDRO HOLDING*, paragraph 10 and 17).

232 Parties's response to the Decision opening proceedings of 30 July 2010.

233 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 67 [ID 5236].

234 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 55 [ID 5398].

235 Reply to question 4 of phase II request for information to the HCAA of 13 August 2010 [ID 2780].

2.2. Relevant geographic market

(295) The Parties argue that if a market for bidding for PSO routes were to exist, the geographic market definition should be wider than national as it would include all airlines able to participate in the tenders. This includes all Greek airlines and non-Greek airlines, which in accordance with Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community[236] must be allowed to participate on equal terms as Greek airlines.

(296) The fact that airlines not active in the Greek domestic market can participate on equal terms is not sufficient to demonstrate that geographic market is wider than national.[237]

(297) The precise definition can, however, be left open as the transaction is unlikely to significantly impede effective competition irrespective of the precise geographic market definition.

3. GROUNDHANDLING

3.1. The relevant legislation and Market Players

(298) Overall, there are 39 airports in Greece. The total market for groundhandling services in Greece is estimated by the Parties at approximately EUR 170 million in 2009.

(299) All airports with annual traffic of no less than two million passenger movements or 50 000 tonnes of freight are subject to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ("the Directive").[238]

(300) Five airports in Greece, namely Athens, Corfu, Herakleion, Rhodes and Thessaloniki, meet the criteria set by the Directive. As a result of the liberalization of ground handling services , the following companies, Goldair Handling ("Goldair"), Swissport International, Swissport Hellas Sud and Olympic Handling, started to provide ground handling services at these airports**:**

236 (Recast), OJ L 293, 31.10.2008, p. 3.

237 For example, in the transport sector, the Commission considered that bidding markets for public transport services in France had at most a national dimension (see Commission decision of 29 October 2009, M.5557 - *SNCF-P/ CDPQ/ KEOLIS/ EFFIA*, paragraphs 43-46).

238 J L 272, 25.10.1996, p. 36.

Airport	Swissport International	Swissport Hellas Sud	Olympic Handling	Goldair Handling
ATH	Active		Active	Active
SKG	Active		Active	Active
HER		Active	Active	Active
RHO		Active	Active	Active
CFU		Active	Active	Active

Table 2: presence of competitors at the five liberalised Greek airports

Source: Information provided by the Parties and market investigation.

(301) Indeed, these full service groundhandling companies were qualified by HCAA and are currently active on the Greek market. Goldair is an independent company. Swissport Hellas Sud is an independent company linked to Swissport International by a franchise agreement, allowing it to use the brand and know-how. Swissport Hellas Sud holds 49 % in Swissport Hellas S.A which is active in Athens and Thessaloniki Airports, with Swissport International holding a 51 % majority stake.[239]

(302) For the remaining 34 Greek airports (for which Union legislation does not require liberalisation given their size, number of passenger movements, etc.), the Parties indicated that liberalisation occurred in May 2010 and as a result up to three groundhandling companies provide groundhandling services in other airports.

(303) Indeed, HCAA stated that "*following the sale of Olympic Airways Services to Marfin Investment Group (MIG), the Greek State introduced a call for tenders with a view to opening the Greek ground handling market and liberalizing [these] 34 airports*".[240]

(304) As a consequence of legal issues, including the annulment of the outcome of a call for tenders organized by HCAA, the *"tender allocation enabled the existing handlers to apply for a license for every airport they wished to serve. The licenses were issued [in] May 2010*"[241] for a maximum interim period of 18 months (12 months, with a possibility to renew for 6 additional months).

(305) According to HCAA, "*due to individual selections, Swissport* [Hellas Sud] *obtained licenses for 18 airports*[242]*, Goldair for 6 and Olympic Handling for all airports*".[243] [244]

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239 Agreed minutes of a teleconference call with Swissport Hellas Sud of 27 August 2010, paragraph 2 [ID 3368].

240 Agreed minutes of a teleconference call with the HCAA of 25 August 2010, paragraph 2 [ID 3491].

241 Agreed minutes of a teleconference call with the HCAA of 25 August 2010, paragraph 2 [ID 3491].

242 The Parties claim that Swissport is active in 22 airports, see Parties' response to the Decision opening proceedings of 30 July 2010.

(306) Swissport Hellas Sud and Goldair had the legal possibility to provide groundhandling services in all 34 airports in the interim period but chose not to do so.

(307) Olympic Handling offers the full range of groundhandling services in all 39 airports (including the 5 liberalised airports), *inter alia* as a consequence of a condition which is part of the State aid decision approving the Greek government's plan regarding the sale of certain assets of Olympic Airlines/Olympic Airways Services.[245] This condition requires the new owner to provide third party groundhandling services at peripheral, non-liberalised airports and participate in any forthcoming HCAA tender process for the provision of third party handling services at the non-liberalised airports and, if successful, to operate at those airports for at least three years.

(308) According to a Greek law published in 2010[246], during the interim period the Greek state will tender groundhandling services for non-liberalised airports to groundhandlers already active in the five liberalised airports (Swissport (Hellas or Hellas Sud), Goldair Handling and Olympic Handling). The new legislative framework organising groundhandling services is expected to be applicable in February 2011. As a result, the next call for tenders is most likely to take place in the second half of 2011 allowing thus selected groundhandling companies to start their services thereafter.

(309) Under the proposed future legislation, the provisions of the Directive would be extended to all Greek airports. However, according to HCAA, for some small airports, only one groundhandler would be licensed, depending upon the ability of the airport to accommodate more than one handler.[247]

3.2. Relevant Market Definition

3.2.1. Relevant product market

(310) Aircraft groundhandling refers to the servicing of an aircraft while it is on the ground. It covers a variety of airport services such as ramp services (including aircraft guiding and towing, baggage loading and unloading, freight and mail handling, refuelling, de-icing, catering, lavatory drainage, water cartage, cleaning and ground power) and passenger services (including check-in counter services, gate arrival and departure services, transfer counters, customer service and airport lounges).

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243 Agreed minutes of a teleconference call with the HCAA of 25 August 2010, paragraph 2 [ID 3491].

244 The Commission notes that these figures relate to the airports where the companies offer baggage and ramp handling services. For example, Goldair is further active in 7 other non liberalised Greek airports, see Reply to question 1 of phase II request for information to the HCAA of 13 August 2010 [ID 2780].

245 Βρυξέλλες, 17.IX.2008. E (2008) 5074 τελικό. Θέμα: Κρατική ενίσχυση αριθ. N 321/2008, N 322/2008 και N 323/2008 – Ελλάδα Πώληση ορισμένων περιουσιακών στοιχείων των Ολυμπιακών Αερογραμμών και της Ολυμπιακής Αεροπορίας – Υπηρεσίες, paragraph 101.

246 ΝΟΜΟΣ ΥΠ.ΑΡΙΘ. 3842 (ΦΕΚ 58Α 23.04.2010) Αποκατάσταση φορολογικής δικαιοσύνης και αντιμετώπιση της φοροδιαφυγής.

247 Agreed minutes of a teleconference call with the HCAA of 25 August 2010, paragraph 6 [ID 3491].

(311) With regard to the product market definition, the Commission in earlier decisions divided groundhandling services into distinct segments on the basis of either the International Air Transport Association ("IATA") Standard Ground Handling Agreement or the Directive, but the determination of whether each segment constituted a separate relevant market was left open.[248]

(312) The Parties agree, and the market investigation in this case confirmed, that the relevant product market for the provision of groundhandling services encompasses both passenger and aircraft handling. Indeed, the great majority of airlines responding to the request for information considered that the relevant market included both passenger and aircraft handling.[249]

(313) Therefore, the relevant product market definition for the provision of groundhandling services encompasses both passenger and aircraft handling.

3.2.2. Relevant geographic market

(314) The Commission considered in earlier decisions that the geographic scope for the provision (or contracting) of groundhandling services was restricted to a specific airport given that the services required at a particular airport could not normally be substituted by services provided at other airports. The Commission thus considered that the relevant geographic market for the provision of groundhandling services was the area of a specific airport but ultimately left the question open.[250] The Commission also considered that a wider geographic market could be defined encompassing other airports within a catchment area that could attract airlines.[251]

(315) For the purpose of this Decision, the Parties did not disagree with a geographic market definition restricted to a specific airport where the services are provided. The market investigation in this case largely confirmed that the relevant geographic market for the provision of groundhandling services is restricted to the specific airport.

(316) However, the market investigation was not entirely supportive of a specific airport market definition[252], in particular because of several features characterising the Greek market for the provision of groundhandling services.

(317) Indeed, the market investigation indicated that airlines operating on the Greek market often organised bids to select their groundhandling service provider for several Greek airports, thus contracting with one groundhandling company for all or a number

248 Commission decision of 27 January 2001, M.2254 - *Aviapartner/Maersk/Novia*, p. 60; Commission decision of 27 April 2001, M.1913 - *Lufthansa/Menzies/LGS/JV*, p. 11; Commission decision of 26 March 2009, M.5364 - *Iberia/Vueling/Clickair*, p. 2; Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*, p. 11; Commission decision of 8 September 2010, M.5747 - *Iberia/British Airways*, p. 2.

249 Replies to question 33 of phase I request for information to competitors of 25 June 2010.

250 See for instance Commission decision of 27 April 2001, M.1913 - *Lufthansa/Menzies/LGS/JV*, p. 11; Commission decision of 4 August 2006, M.4164 - *Ferrovial/ Quebec/GIC/BAA*, p. 12.

251 Commission decision of 4 May 2001, M.2315 - *The Airline Group/NATS*.

252 Reply to question 34 of phase I request for information to competitors of 25 June 2010 [ID 1010].

of airports from/to where they operate. The Parties note themselves that "*Swissport is winning* <u>*pan-Greek*</u> *contracts with major airlines such as easyJet…*"[253] (emphasis added).

(318) Furthermore, based on past practice and for the new upcoming tenders, HCAA considers organising tenders on a cluster of airports basis with a view to ensuring maximum participation of all market participants irrespective of the size of the airport.[254]

(319) Therefore, it cannot be excluded that the market for groundhandling services in Greece may have a wider geographic dimension encompassing in some cases more than one airport if groundhandling companies can very easily substitute providing their services to different airports. The precise definition can however be left open as the transaction is unlikely to significantly impede effective competition irrespective of the precise geographic market definition.

4. MAINTENANCE, REPAIR AND OVERHAUL ("MRO")

4.1. Relevant product market

(320) With regard to the product market definition, the Commission distinguished in earlier decisions four separate segments within the MRO market, namely (i) line maintenance, (ii) heavy maintenance, (iii) engine maintenance, and (iv) components maintenance.[255]

(321) The Parties did not disagree with the Commission's previously established practice and argued that the transaction did not entail an exact product market definition concerning MRO services.

(322) In the absence of horizontal overlap on this market and for the purposes of this Decision, the precise scope of the product market definition for MRO services can be left open since the transaction would not significantly impede effective competition under any product market definition.

4.2. Relevant geographic market

(323) With regard to the geographic scope of the market for MRO services, the Commission found that heavy maintenance services might be at least EEA-wide, whereas line maintenance could be local in scope[256] and engine maintenance world-wide.[257] With regard to MRO services for components, the Commission considered

253 Reply of the Parties to the decision opening proceedings of 30 July 2010.

254 Agreed minutes of teleconference call with the HCAA of 25 August 2010, paragraph 6 [ID 3491].

255 Commission decision of 11 August 1999, JV.19 - *KLM/Alitalia*; Commission decision of 9 March 2004, M.3280 - *Air France/KLM*; Commission decision of 14 April 2004, M.3374 - *SR Technics/FLS Aerospace*; Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*.

256 Commission decision of 14 April 2004, M.3374 - *SR Technics/FLS Aerospace*.

257 Commission decision of 9 March 2004, M.3280 - *Air France/KLM*.

these services to be world-wide.[258] In recent decisions, the Commission left open the geographic market definition with regard to MRO services.[259]

(324) The Parties consider the relevant market to be the world-wide provision of MRO services. The market investigation results suggest that in general, for MRO, the geographic market definition could be wider than national and at least EEA-wide. However, for the specific segment of line maintenance, the market investigation suggested that the geographic market definition could rather be local (that is restricted to a given airport) or regional.

(325) In any case, for the purposes of this Decision, the precise scope of the geographic market definition for MRO can be left open since the transaction would not significantly impede effective competition under any geographic market definition.

5. IN-FLIGHT CATERING

5.1. Relevant product market

(326) In earlier decisions, the Commission found that the in-flight catering market comprised all in-flight catering services, including for short-haul and medium-haul flights, economy and business class and hot/cold meals and snacks as well as other ancillary services.[260] The Commission more recently indicated that this market evolved significantly in the past few years with new types of in-flight catering services emerging[261].

(327) The Parties referred to the Commission's past decisional practice. They submitted that the relevant market definition concerning in-flight catering could be left open as there were no competition concerns.

(328) For the purposes of this Decision, the precise scope of the product market definition for in-flight catering can be left open since the transaction would not significantly impede effective competition under any product market definition.

5.2. Relevant geographic market

(329) The geographic market for in-flight catering is considered to be limited to the relevant airport or airport region (where several airports are located in close proximity to each other)[262].

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258 Commission decision of 11 August 1999, JV.19 - *KLM/Alitalia*.

259 Commission decision of 21 January 2009, M.5399 - *Mubadala/Rolls Royce/JV*; Commission decision of 14 May 2009, M.5403 - *Lufthansa/bmi*; Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*.

260 Commission decision of 28 August 2009, M.2190 - *LGS/OFSI*.

261 Commission decision of 19 July 2006, COMP/M.4170 *Lufthansa Service Holding/Gate Gourmet Switzerland*.

262 Commission decision of 19 July 2006, COMP/M.4170 *Lufthansa Service Holding/Gate Gourmet Switzerland*.

(330) The Parties refer to Commission's past decisional practice limiting in-flight catering to the relevant airport or airport region.

(331) The market investigation confirmed the Commission's practice to define the market for in-flight catering as comprising all in-flight catering services[263], and confirmed that the relevant geographic market for in-flight catering was limited to the relevant airport or airport region (where several airports are located in close proximity).

(332) For the purposes of this Decision, the precise scope of the geographic market definition for in-flight catering can be left open since the transaction would not significantly impede effective competition under any geographic market definition.

6. SUPPLY OF AIRLINE SEATS TO TOUR OPERATORS

6.1. Relevant product market

(333) In earlier Commission decisions, the supply of airline seats to tour operators was considered as a distinct relevant product market.[264] Whereas Aegean is active in the market for supply of airline seats to tour operators, and Olympic Air's activities in this regard are very small (so that the Parties considered Olympic Air as not active in this market), the Parties submitted that it was not necessary to conclude on the exact definition of the market for supply of airline seats to tour operators.

(334) For the purposes of this Decision, the precise scope of the product market definition for supply of airline seats to tour operators can be left open since the transaction would not significantly impede effective competition under any product market definition.

6.2. Relevant geographic market

(335) In earlier Commission decisions, the market for supply of airline seats to tour operators was considered to be national in scope[265]. The Parties did not contest this conclusion and submitted that the relevant geographic market for the supply of airline seats to tour operators did not need to be defined in this case.

(336) For the purposes of this Decision, the precise scope of the geographic market definition for supply of airline seats to tour operators can be left open since the transaction would not significantly impede effective competition under any geographic market definition.

VII. CONTEXT OF THE TRANSACTION

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263 For example, including for short-haul and medium-haul flights, economy and business class and hot/cold meals and snacks as well as other ancillary services.

264 Commission decision of 28 August 2009, COMP/M.5440 – *Lufthansa/Austrian Airlines*, paragraph 36; and Commission decision of 27 June 2007COMP/M.4439 – *Ryanair/Aer Lingus*, paragraph 299.

265 Commission decision of 20 August 2005, COMP/M.3770 – *Lufthansa/Swiss*, paragraph 20.

1. THE PRIVATISATION OF OLYMPIC AIRWAYS

(337) Before the 2008 privatisation process which led to the sale of Olympic to Marfin in 2009, several attempts to restructure and privatise Olympic Airways (Old Olympic) had already been made. Many restructuring plans were proposed and implemented, the first one dating back to 1993. Already in 1999, discussions were held with British Airways ("BA"), which was granted an option to purchase a significant stake in Old Olympic. However, one year later, BA decided not to exercise its option. Therefore, in 2001 and 2002, there were two unsuccessful attempts to sell part of Old Olympic. After various restructuring efforts by the Greek government, another attempt to privatise Old Olympic, then called Olympic Airlines[266], occurred in 2004-2005.

(338) In 2005, Aegean submitted an offer[267] to buy the assets of Old Olympic, demonstrating a strong interest for its competitor. Under the terms of the proposal, Aegean was willing to pay […]*. The then-designed transaction structure resembled to the option eventually chosen by the Greek government in 2008/2009. However, this solution was never implemented and Old Olympic continued to operate as a State-owned entity.

1.1. Timeline of the initial sale process and structure of the transaction

(339) On 27 June 2008, the Greek government notified the Commission of its plans to sell certain assets of Old Olympic. These assets consisted of flight operations, technical base assets (MRO) and ground handling. The original privatisation plan of Old Olympic approved by the Commission on 17 September 2008[268] was based on an open, transparent and non-discriminatory public tender procedure.

(340) On 30 September 2008, the Greek government publicised three open tender processes conducted by several investment banks. The Greek government's privatisation advisers prepared an information memorandum which they distributed to about 100 potential investors including a large number of foreign airlines.

(341) As stated in the information memorandum, the *"Structuring [of] the transaction as an asset sale enables the new owner to benefit from the globally recognisable Olympic brand and its market position in Greece, but simultaneously helps to protect him from any unwanted legacy issues, namely employee related liabilities and potential State aid claims."*

(342) The transaction consisted in the sale of certain minimum assets, regrouped in different categories. Assets pertaining to the air transport business had been regrouped in a company called "Pantheon Airways", while the handling assets were grouped in "Ground Handling NewCo", and the MRO assets were grouped in "MRO-NewCo".

(343) The minimum assets of Pantheon Airways consisted in:

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266 Rigas, Doganis, *The Airline Business*, Routledge, second edition, 2006, p. 252-255.

267 Final offer for participation in a publicly announced tender for the privatization of Olympic Airlines S.A, Annex 33 to the Form CO.

268 See State aid Cases Commission Decisions of 23 January 2010, N 321 / 2008 - *Olympic Airlines, N 322 / 2008 - Olympic Airways Services (first part)* and N 323 / 2008 - *Olympic Airways Services (second part)*.

i. The right to use the Olympic brand, logo and registered trademark. This was evaluated at EUR 30,700,000[269], or 67 % of the total value of Pantheon Minimum assets.

ii. A portfolio of slots, in particular in New York John Fitzgerald Kennedy ("JFK"), London Heathrow ("LHR"), Milan Linate ("LIN"), Paris Charles de Gaulle ("CDG"), Rome Fiumicino ("FCO"), and Frankfurt ("FRA"), valued at EUR 15,000,000.

(344) Therefore, the essential part of the transaction consisted in the Olympic brand, which represented more than 67 % of the total value of Pantheon's assets. Apart from the slots, no other assets such as aircraft or equipments were part of the minimum assets. In essence, the transaction involved the famous established brand name, with some slots allowing the new company to operate in congested airports, but nothing else. Therefore, a totally new company had to be built by the potential purchaser.

(345) The minimum assets of MRO consisted in the long term lease of two MRO hangars in Athens (up to 2026), valued at EUR 16,700,000.

(346) The minimum assets of groundhandling consisted in:

i. Rights for the provision of restricted groundhandling services at the five liberalised Greek airports, for a total amount of EUR 27,400,000.

ii. Rights to operate cargo services at AIA for an amount of EUR 10,724,000.

iii. Rights to operate ground support equipment facilities at AIA for an amount of EUR 6,676,000.

(347) After the expiry of the deadline for final offers on 30 January 2009, very few bids had been presented, and these bids had values below those ascertained in the independent valuations provided. Furthermore, most bids did not comply with the terms of the tender processes. Given the low prices offered in conjunction with the failure of most bidders to comply with the requirements of the tender processes, the Greek government notified the Commission of changes that it wanted to introduce in the sale process of certain assets of Old Olympic in February 2009 and indicated that a direct sale was the only viable solution which would allow it to remedy the failure of the tender processes. The Commission imposed 30 April 2009 as the deadline for the transfer of Old Olympic assets and 31 December 2009 for the final liquidation of Olympic Airlines.

(348) On 4 February 2009, the Interministerial Privatisation Committee announced the failure of the tender process. That same day, a public bid invitation (following the revised procedure for the sale of Old Olympic's assets) was made by the Interministerial Privatisation Committee.

269 Article 4.1 of the Pantheon Share Purchase agreement.

1.2. Timeline of the sale process leading to the sale of Olympic to Marfin and structure of the transaction

(349) On 5 February 2009, Marfin announced its intention to enter into direct negotiations with the Greek Government for the sale of the flight and MRO assets of Old Olympic. Marfin was given an exclusivity right for the negotiations concerning the sale of the Pantheon Airways assets, as well as MRO assets, until 6 March 2009.

(350) Having access to Old Olympic's data room, Marfin prepared a business plan[270] and on 13 February 2009, submitted a binding offer for the acquisition from the Greek government of certain assets of Old Olympic based on the business plan which it had prepared independently, that is without the help of external consultants. This binding offer was subject to agreement on the transaction legal documentation, as well as to the approval by Marfin's Board of Directors.

(351) The content of the initial binding offer was limited to the flight and MRO assets. […]*. As Greece asked Marfin to present a global bid including groundhandling, Marfin decided to bid also for the groundhandling assets.

(352) The final price proposed by Marfin for the various minimum assets was :

i. Pantheon minimum assets Euros 45,700,000

ii. MRO minimum assets Euros 16,700,000

iii. Groundhandling minimum assets Euros 44,800,000

(353) The offered price for all various minimum assets is equal to the minimum valuation which was performed by an independent valuation firm on behalf of Greece.

(354) The potential acquisition of Old Olympic assets was presented to Marfin's Board of directors on 26 February 2009.[271] Marfin's key assumptions and the alternative strategic scenarios discussed were prepared by Marfin without any external assistance.[272]

(355) On 6 March 2009, the Greek Development Minister announced the sale of the relevant Old Olympic assets to Marfin and the latter signed agreements with the Greek government on 23 March 2009.

1.3. Conditions attached to the transaction

(356) The sale of Olympic to Marfin was subject to a number of conditions/commitments. In particular, according to the Parties[273], Marfin committed:

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270 Reply of the Parties to the request for information of 05 July 2010.

271 Form CO, Annex 34a.

272 Parties' response to Request for Information of 12 July 2010, p. 11.

273 See the Parties' submission (pages 5-6, and Annex 8) dated 16 July 2010 in response to the Commission's request for information of 14 July 2010.

a. to take all necessary steps in order for Olympic Air to participate in good faith in the PSO tenders, as PSOs are defined in the Pantheon Share Sale and Purchase Agreement (Pantheon SPA) - all public service obligation routes in Greece to be tendered by HCAA in 2009 - with a view to winning the tenders and to operate the PSO routes awarded to it;

b. to ensure that Olympic Air was in a position to operate and would operate any PSO Routes awarded to it in the public tender processes in 2009;

c. to ensure that Olympic Air continued to use the "Olympic" brand name and logo for at least three years following the final closing;

d. to procure Olympic Handling to take any necessary step in order for it to be able to perform services pursuant to the PSOs as defined in the Ground Handling Share Sale and Purchase Agreement (Ground Handling SPA), including to provide third party groundhandling services at the 34 non liberalised airports until 6 October 2009, participate in good faith in any PSO tenders in accordance with their requirements with a view to winning such tenders and operating the PSOs awarded to it in accordance with the contracts regulating such PSOs;

e. to ensure that the Companies shall not be or become owned or controlled (whether directly or indirectly) by any Prohibited Person through a transfer of shares in the Company; and

f. not to transfer to any third party a majority of the share capital of the Companies for a period of one year following the final closing (which occurred at the end of September 2009), without the prior written consent of Greece.

1.4. Status of the "Olympic" brand

(357) According to the licence agreement signed by Pantheon Airways and the Hellenic Company for the Management of State Owned intellectual and industrial property rights SA[274], the right to use the Olympic brand and logo was granted to Pantheon Airways. Article 13 of the agreement states that "*the term of the present agreement will be 25 years from the date of execution of this Agreement and will be automatically extended for consecutive terms of 25 years thereafter, unless terminated by the Licensee [...]*".

(358) The license could be freely transferred to the new owner of the airline, should it be sold, under the provision that the new owner would abide by the license agreement.

(359) In a same way, the license could be freely transferred to an acquiring third party or to a new merged entity, should a merger or an acquisition occur, under the condition that the new corporate entity would abide by the license agreement.

274 Annex 8 to Law 3759, Licence Agreement.

(360) However, the license agreement could be terminated, and therefore the brand returned to Greece, in particular in the following cases:

i. Insolvency of the licensee, readjustment of its debts, or foreclosure of a substantial part of its assets;

ii. Dissolution or cessation of the licensee's business;

iii. Change of business involving the exit from the airline industry; or

iv. Non-use of the "Olympic" brand and logo for three consecutive years.

(361) It is clear that Greece intented to regain the brand should new Olympic become bankrupt. However, in the event of a merger or an acquisition, the brand could be transferred together with other assets.

2. General situation of the air transport market in Greece

2.1. General economic conditions and prospects in Greece

(362) The global financial crisis affected all sectors of economy and the transport industry in particular. As concerns specifically the air transport sector, the macroeconomic conditions prevailing in 2009 and 2010 translated in heavy losses for airlines world-wide and led a number of airlines towards bankruptcy (for instance, FlyLAL in January 2009, SkyEurope in September 2009, FlyGlobespan in December 2009). A large number of airlines were forced to adopt far reaching cost-cutting measures and to use policies such as lowering of fares in order to maintain their passenger volumes. Virtually all airlines announced decreases in revenues in 2009 and most of them recorded losses, with total losses exceeding USD 10 billion (with some exceptions, see recital ((364)). Year 2010 seemed more optimistic with expected positive results, higher yields, higher demand forecast and recovery of cash flows.[275]

275 IATA Economics – September 2010 Industry Financial Forecast.

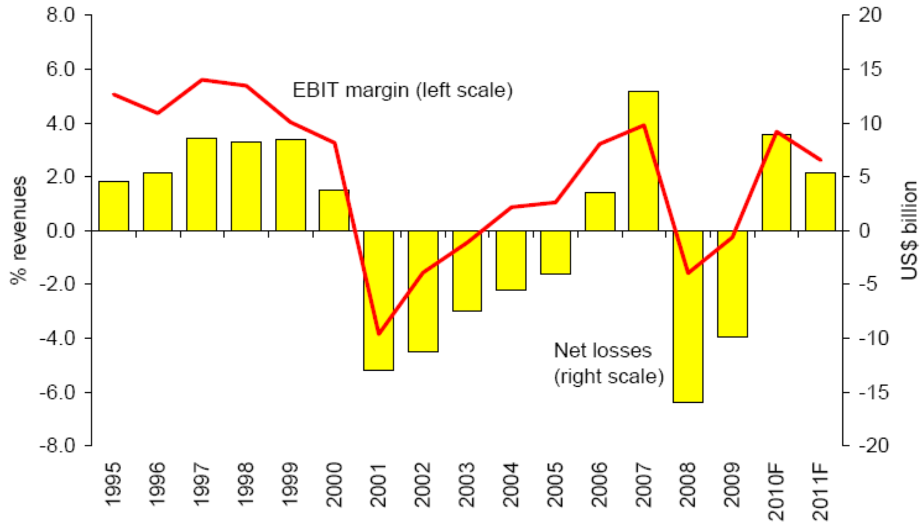


Figure 1 : Global commercial airline profitability
Source: IATA

(363) However, IATA noted that "cash flows rebound except in Europe", and noted that globally, European commercial airlines would loose USD 1.3 billion in 2010 and would not generate profits in 2011 .

(364) The only airlines that somewhat took advantage of the crisis were low cost airlines such as Ryanair, easyJet or Wizzair, which used aggressive promotion policies to attract passengers turning away from the traditional higher cost airlines. This translated in higher sales for low cost airlines.

(365) In Greece, the impact of the global financial crisis was magnified by the Greek debt crisis that hit the country at the beginning of 2010 and resulted in an uncertainty affecting (at least temporarily) the demand for a number of services, including air transport.

(366) According to the Parties, "*The fact that Greece is entering its worst recession in recent memory and for which recovery is not expected for three years can only make matters worse. The Greek financial system has effectively collapsed. Despite the joint financial rescue package proposed by the European Union and the International Monetary Fund, the economic future of Greece remains bleak and this entails grave consequences for both Aegean and Olympic Air*".[276]

(367) Indeed, a report by the Directorate General for Economic and Financial Affairs ("DG ECFIN") noted that, "*Over the last decade, Greece's growth performance was based on unsustainable drivers: consumption and residential investment booms were accompanied by high real wage increases and rapid credit growth; low real interest rates associated with euro adoption and financial market liberalisation fed the boom. The 2008-2009 global crisis exposed the vulnerabilities […].The extent of the deterioration in the fiscal position was revealed late due to grave deficiencies in Greece's accounting and statistical systems. This delayed the implementation of corrective measures. As concerns about Greek fiscal sustainability arose and global risk aversion heightened, market*

276 Form CO, paragraph 223.

sentiment vis-à-vis Greece worsened sharply in early 2010. In April 2010, Greece asked for international financial assistance as it was confronted with sizeable financing needs and not able to access international capital markets.[277]"

(368) As a result, the Greek economy has been contracting significantly since 2009, as shown in Figure 2:

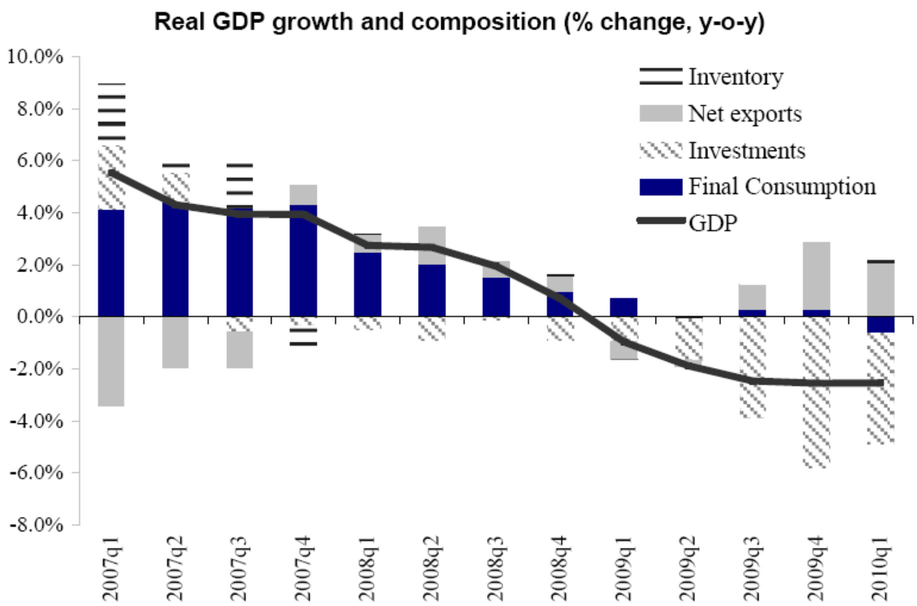
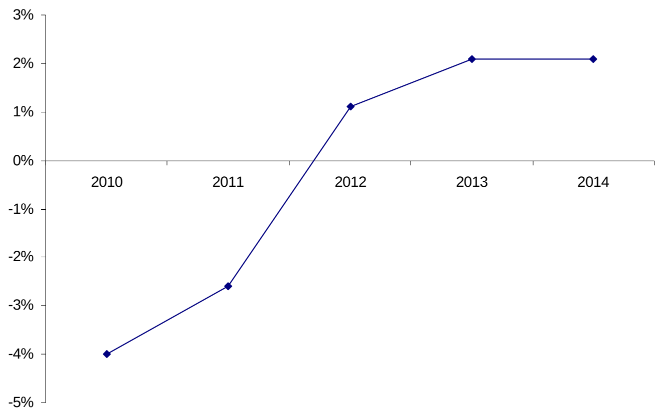


Figure 2 : Evolution of Greek GDP

Source: Economic Adjustment Programme for Greece, First review summer 2010, DG ECFIN, European Commission

(369) While Greece is facing a difficult economic period, current forecasts indicate nevertheless that it is on good track for recovery in the years to come. As shown in Figure 3, while Greek Gross Domestic Product ("GDP") growth is expected to be negative in 2011 (-2.6 %), it is expected to become positive again in 2012. According to the Parties, the Greek GDP would not come back to its pre-crisis level before 2016.



277 Economic Adjustment Programme for Greece, First review summer 2010, DG ECFIN, European Commission, page 9.

Figure 3: GDP Growth Forecast
Source: Economic Adjustment Programme for Greece, First review summer 2010, DG ECFIN, European Commission

(370) While the overall economic situation in Greece has impacted all sectors of the economy, the magnitude of this impact differs across sectors. One would expect the crisis to have a very significant impact on the tourism sector, as consumers curb their leisure expenses. However, as shown in Figure 4, the tourism sector was particularly affected with regards to travels of non-residents to Greece but domestic travel remained almost unaffected, at least until 2009 included. This can be explained since the effects of the global financial crisis affected Greece later than other countries, even though its impact during 2010 was particularly significant domestically. As shown in Figure 2, the Greek economy only recorded negative growth in the fourth quarter of 2008. The Parties, in their reply to the decision opening proceedings[278], claimed that "*the Greek economic crisis is making a structural adjustment to the Greek economy and consumption. As the economy shrinks so will demand hence the market for domestic air services will be appreciably smaller in the coming years entailing an inevitable adjustment in the Greek aviation industry*".

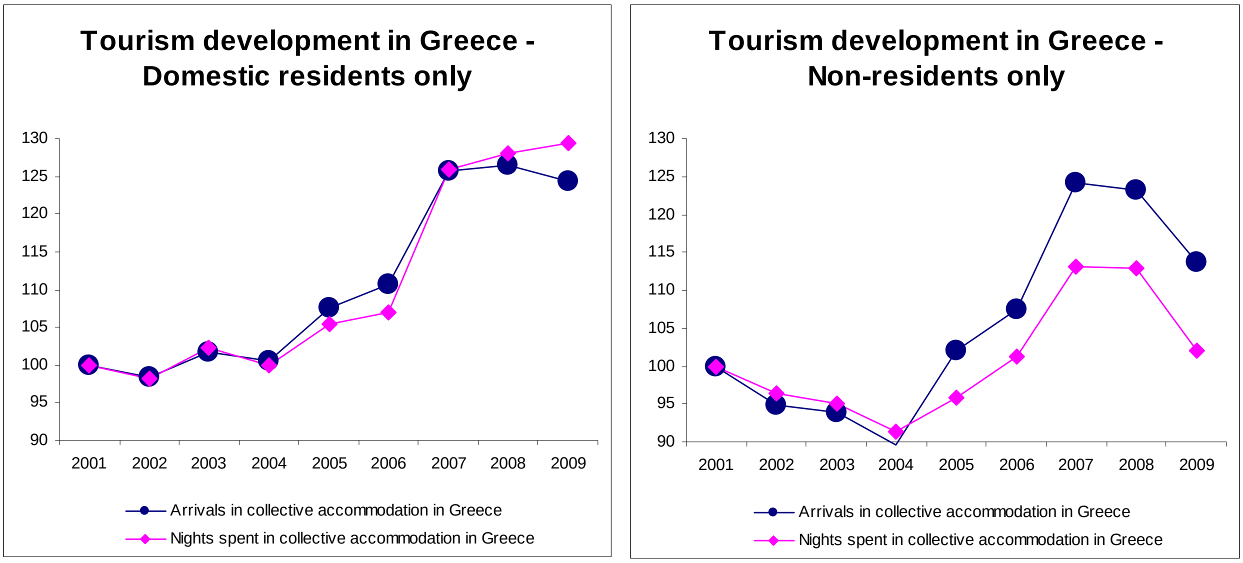


Figure 4: Development of tourism in Greece, base 100 in 2001
Source: Eurostat

(371) As stated in DG ECFIN's report the *"Government presents a report analysing the potential contribution of the tourism sector to growth and jobs in the Greek economy. It should identify all legislative, administrative and other obstacles hindering competition and market entry to the realisation of the potential."* Therefore, it is generally recognised that tourism has a key role to play inenhancing growth in the Greek economy. Furthermore, the latest data from the Bank of Greece, notes that the net receipts from travel services decreased by EUR 109 million compared to July 2009. It is noted that the net receipts from travel services decreased to a relatively small degree (by 4.7 %) compared to July 2009, while in June 2009 they had decreased (year to year) by 15.7%.[279]

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278 Reply of the Parties to the decision opening proceedings of 30 July 2010.

279 *"Αντίθετα, οι καθαρές εισπράξεις από ταξιδιωτικές υπηρεσίες περιορίστηκαν κατά 109 εκατ. ευρώ σε σχέση με τον Ιούλιο του 2009. Σημειώνεται ότι οι εισπράξεις από ταξιδιωτικές υπηρεσίες εμφάνισαν σχετικά περιορισμένη μείωση (κατά 4,7%) έναντι του Ιουλίου 2009, ενώ τον Ιούνιο είχαν μειωθεί κατά*

(372) However, a recent report by the United Nations World Tourism Organisation ("UNWTO") notes that "*Tourism in Greece has been weak for the past few years, and the financial crisis in 2009-10 exacerbated the situation. In H1 2010 arrivals were down a further 5%. Strikes and riots earlier in the year did not help the image of the destination abroad, but memories of these now appear to be fading. Experts report that by August arrivals by air had begun to improve*".[280] Indeed, according to this report, international tourist arrivals were down by 17.3 % in April compared to 2009, by 4.8 % in May, and only by 1.5% in June[281]. This was confirmed by a report from the European Travel Commission, noting that hotel occupancy rates were down by more than 5 % for the period January-August 2010 compared to 2009, but remarking that "*the declines in August were smaller than for the year to date.*"[282]

2.2. Demand for air transport in and towards Greece

(373) The Parties claimed that the current economic conditions in Greece were such that in the short to medium term their competing operations are unsustainable. Indeed, according to the Parties, *"deteriorating economic circumstances in Greece which are threatening to reduce domestic competition dramatically over the next few years leading to significant falls in demand only make the need for restructuring more acute"*.

(374) Indeed, during the second quarter 2010, Greek airlines' domestic traffic started to decline, which could be due to the current turmoil in the Greek economy. In this respect, in June, domestic passenger traffic experienced a sharp drop of 17.4 %, international passenger throughput presented a decline of 4.5 %, and overall passenger demand decreased by 9.3 %.[283] However, in June and July 2010, there were severe strikes (in particular by Air Traffic Control personnel) which affected air traffic. Data from September 2010 show that AIA passenger traffic decreased compared to 2009 but in a limited manner, with a 3.8 % overall decrease, corresponding to a 6.4 % decrease in domestic passengers and a 2.3 % decrease in international passengers.

(375) In the short term, domestic and short haul international routes to/from Greece were considered as mature by a majority of respondents to the market investigation. However some respondents indicated that the short term trend was declining, while a somewhat smaller number of respondents regard the short term trend as growing.[284]

15,7% έναντι του αντίστοιχου μήνα του 2009." See http://www.bankofgreece.gr/Pages/el/Bank/News/PressReleases/DispItem.aspx?Item_ID=3422&List_ID=1af869f3-57fb-4de6-b9ae-bdfd83c66c95&Filter_by=DT.

280 UNWTO World Tourism Barometer, Volume 8, No. 3, page 24. October 2010 [ID 7071].

281 UNWTO World Tourism Barometer, Volume 8, No. 3, page 21. October 2010 [ID 7071].

282 ETC, EUROPEAN TOURISM 2010 – Trends & Prospects, Quarterly Report - Q3/2010, page 12. [ID 7108].

283 ATHENS INTERNATIONAL AIRPORT, Passenger Traffic Development 2010, http://www.aia.gr/UserFiles/File/trafficStatistics/2010/july_2010/115143_2010_Passengers_EN.pdf.

284 Replies to question 49 of phase I request for information to travel agents of 25 June 2010; replies to question 49 of phase I request for information to corporate customers of 25 June 2010; replies to question 74 of phase I request for information to competitors of 25 June 2010.

(376) Globally, medium and long term trends on domestic and short haul international routes to/from Greece are considered as growing or mature by a majority of respondents to the market investigation. Only few responding competitors and travel agents regard the medium term trend as declining.[285] This is indicative of the confidence of market operators in the positive evolution of the market in the medium-long term.

(377) This expected growth is confirmed by the projections of Eurocontrol, as shown in Figure 5. Between 2011 and 2016, the forecasted number of domestic flights is expected to grow at an average growth rate of 2.3%, while the number of international flights should grow at an average growth rate of 2.8%.

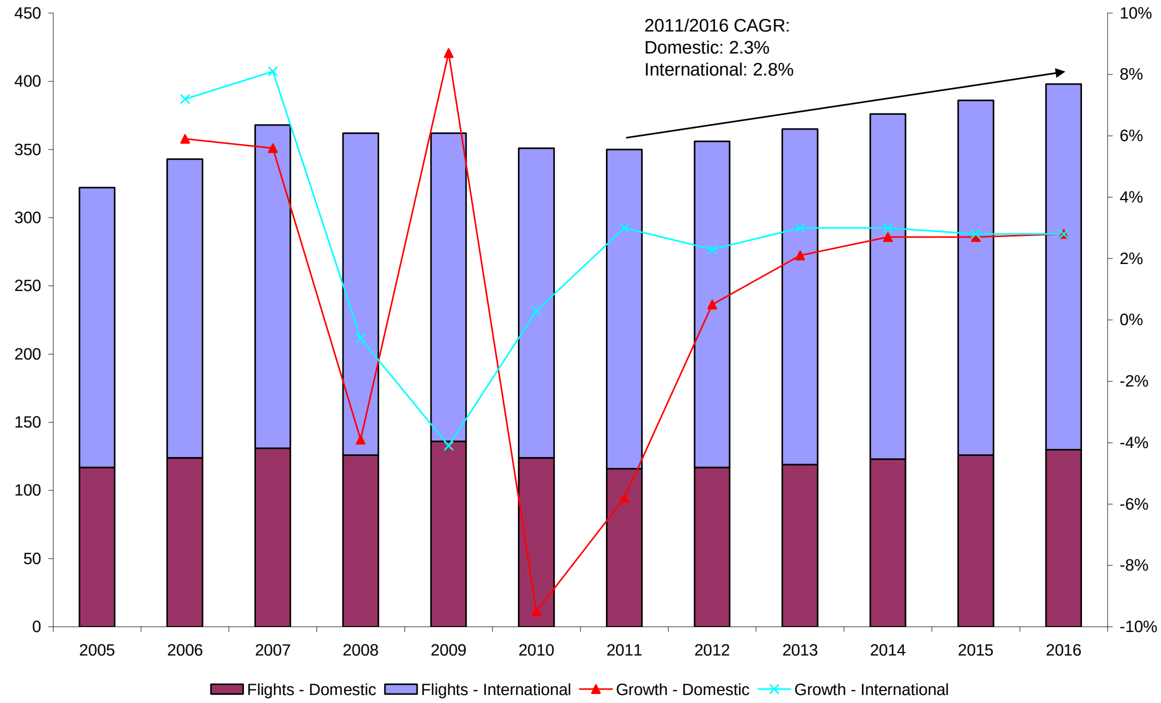

Figure 5 : Actual and forecasted number of flights in Greece, 2005-2016[286]

VIII. ANALYTICAL FRAMEWORK FOR THE ASSESSMENT OF THE TRANSACTION

1. OVERVIEW OF THE COMMISSION'S APPROACH

(378) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the transaction with the conditions that would have prevailed without the transaction ("counterfactual"). In most cases the competitive conditions existing at the time of the merger constitute the relevant

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285 Replies to question 49 of phase I request for information to travel agents of 25 June 2010; replies to question 74 of phase I request for information to competitors of 25 June 2010.

286 Source: Eurocontrol. Flight numbers are domestic and international IFR Flight Movements [ID 5637].

comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of firms if the merger did not take place when considering what constitutes the relevant comparison.[287] Therefore, the Commission conducts a prospective analysis to take into account likely developments in the market.

(379) In the case at hand, the Parties claimed that, in view of a prospective analysis they carried out, the pre-transaction situation is unlikely to be sustainable in the near future. In particular, they argued that in the near future at least one of the two airlines would exit all of the routes where they had overlapping activities at the time the transaction was notified to the Commission. The Parties contend that therefore the relevant counterfactual for assessing the competitive impact of the transaction is one where there no longer are any overlaps between the Parties' commercial operations. In support of their contentions, the Parties submitted a range of data concerning their air transport operations, as well as background information and forecasts on the likely development of their commercial operations.

(380) At the outset in this case, due to the current challenges and uncertainties in the Greek air transport market, it is particularly difficult to undertake a prospective analysis of the likely development of the market with a view to establishing a counterfactual. Indeed, the Parties themselves see major difficulties to accurately forecast their activities beyond a six month time horizon, as it was pointed out […]* during the Hearing on 11 November 2010. He indicated that Aegean just announced its summer schedule for 2011, but that he was not in a position to make any predictions regarding the schedule for the winter 2011/2012 season. According to him, in the current economic climate in Greece it is simply impossible to make any business forecast beyond six months.[288] The Commission agrees that, given the very specific current situation of the Greek economy in general and the Greek air transport market in particular, predictions of likely changes to the market and the Parties' operations are likely to become very uncertain if they go beyond the IATA summer 2011 season, which ends in October 2011.

(381) In this context, if future changes cannot reasonably be foreseen, it is reasonable and prudent to base the competitive assessment of a proposed merger on the current competitive conditions. Indeed, the Court confirmed that "*it has consistently been held that the appraisal by the Commission of the compatibility of a concentration with the common market must be carried out solely on the basis of matters of fact and law existing at the time of notification of that transaction, <u>and not on the basis of hypothetical factors, the economic implications of which cannot be assessed at the time when the decision is adopted</u> (Air France v Commission, cited in paragraph 41 above, paragraph 70).*"[289] (emphasis added). In this regard, the Court also noted that "*Where, for the purposes of applying Article 2(3) of the Merger Regulation, the Commission*

287 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para 9 (OJ C 31, 5.2.2004, p.5).

288 Recording of the Oral Hearing held on 11 November 2010, […]*.

289 Case T-374/00 *Verband der freien Rohrwerke and Others v Commission* [2003] ECR II-2275, paragraph 170. See also Case T-279/04 - T-452/04 *Éditions Jacob v Commission* [2010] ECR Judgment of the General Court (Sixth Chamber) of 13 September 2010, paragraph 327.

examines a concentration, it must ascertain whether the concentration would have the direct and immediate effect of creating or strengthening a dominant position. In the absence of such an alteration to competition as it stands, the merger must be approved."[290] (emphasis added).

(382) The Commission carefully reviewed and assessed the data and analyses submitted by the Parties. In its Statement of Objections, the Commission indicated a range of concerns regarding the methodology and the reliability of the business forecasts submitted by the Parties, which the Parties were unable to address. Therefore, the conclusions of the forecasts submitted by the Parties cannot be considered as the most likely development of the Parties' operations on the routes they were active at the time of notification (see, in more detail, Section VIII.2 below as well as Annex II). Nonetheless, various data and explanations submitted by the Parties, in particular, financial data and the commercial and strategic considerations relating to specific routes, can be used in the Commission's assessment.

(383) On the basis of the information available, the Commission carefully analysed, for the routes of concern, whether or not it is likely that the Parties would cease operations in the foreseeable future in absence of the transaction, eliminating thereby an overlap of the Parties' activities on that route. In this context, the Commission took into account those changes to the Parties' operations, route-by-route, as could already be observed or reasonably predicted from the time the transaction was notified. The counterfactual obtained following such reasonably predictable changes is used to assess the competitive impact of the transaction on a route by route basis.[291] Where future changes in the Parties' operations could not reasonably be foreseen, the Commission based its competitive assessment on the currently observable situation adjusted by those changes that could be considered as reasonably predictable in the foreseeable future. In the current situation there are considerable difficulties to make such reasonable predictions over a period longer than six months.

(384) The counterfactual retained by the Commission in its Statement of Objections is consistent with the Parties' schedules for winter 2010-2011 that entered into application shortly after the Statement of Objections was sent to the Parties. The counterfactual retained by the Commission in this Decision on the basis of all the information available is consistent with the Parties' summer 2011 schedules that apply until end-October 2011.

(385) The Parties claimed that they devised their summer 2011 schedules on the basis of the assumption that the transaction would be implemented by then, and that therefore the summer schedules could not give any indication of the likely situation in a non-transaction scenario. The Commission considered the Parties' schedules as only *one* factual element amongst a range of others when assessing whether it is more likely than not that at least one of the two Parties would cease operations in the foreseeable future on a given route.

290 Case T-87/05 *EDP v Commission* [2005] ECR II-3745, paragraph 124. See also Case T-342/99 *Airtours v Commission* [2002] ECR II-2585, paragraph 82.

291 The Commission considers the likely longer-term evolution of the market within the framework of its analysis of whether Olympic Air is a "failing firm" in Section X of this Decision.

(386) Furthermore, in this respect, in view of the serious competition concerns expressed by the Commission in the Statement of Objections, the Parties could not assume that the transaction would be approved and implemented. It is therefore unlikely that the Parties devised their summer 2011 schedules without accounting, at least to some extent, also for the possibility that the transaction would not take place.

(387) Moreover, the Parties themselves requested the Commission to take the summer 2011 schedule as benchmark for establishing the relevant counterfactual for the […]* route,[292] which is no longer part of Olympic Air's summer 2011 schedule. It is difficult to see, and the Parties give no reasons, why the summer schedule should only be relevant for one route and not for others.

(388) This Decision examines in detail the Parties' general submission that, irrespective of the transaction, at least one of the two airlines would exit all of the routes where they currently have overlapping activities. In particular, the assessement focuses on how the air transport market would in general be likely to develop in the foreseeable future absent implementation of the transaction so as to establish a counterfactual that can be compared to the situation likely to arise if the transaction is implemented.

(389) In this context, the Commission, firstly, addresses the Parties' argument that the size of the overall Greek air transport market and the size of certain individual routes would, in any event, not sustain the operations of two airlines (see Section VIII.2.1 and VIII.2.2). Secondly, the Commission analyses in Section VIII. 2.3 (as complemented by Annex II) several submissions by the Parties regarding the issue of the appropriate counterfactual to assess the competitive impacts of the transaction. In these submissions and in particular the prospective analysis performed by the Parties themselves, the Commission identified several shortcomings that compromise the reliability of the overall forecast by the Parties. Nevertheless, the Commission has used a range of the factual submissions by the Parties, including data on their financial performance as well as commercial and strategic considerations, in its assessment of whether or not it is likely that one of the Parties would cease to operate certain routes in the foreseeable future.

(390) In Sections IX.1.9 and IX.1.10, for each route of concern, the likelihood that the Parties continue to both operate as competitors in the foreseeable future is assessed. The claim […]* is analysed in the framework of the Failing Firm Defence in Section X. This analysis lead the Commission to conclude that a complete exit of Olympic Air from the market is not the most likely scenario in this case.

2. PARTIES' ASSESSMENT OF THE COMPETITIVE SITUATION ABSENT THE TRANSACTION

(391) The Parties argued that the competitive situation absent the transaction was likely to be different from the pre-transaction situation, claiming that the size of the overall Greek air transport market and the size of certain individual routes (Sections VIII.2.1 and VIII.2.2) would be too small for two airlines like Aegean and Olympic, and relying on two main economic submissions concerning the issue of the appropriate counterfactual (see Sections VIII.2.3 et seq.).

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292 Parties' response to the Supplementary Statement of Objections, paragraph 4.4.

2.1. The size of the Greek market

(392) According to the Parties, the Greek market is too small to allow sustainable competing operations of two full service national airlines such as Aegean and Olympic Air. The Parties argue that […]*.[293] The Parties further argued that "*The operation by two full-service Greek carriers on most routes is plainly not sustainable and there is no historical evidence to show that it might be*".[294]

(393) However, there are no indications that the Greek market could not sustain operations by more than one airline in Greece (see Section VIII.3). The Commission notes that it is not indispensable for Aegean and Olympic Air to remain in the market both operating as "full service national airlines". Indeed, there are, for example for Olympic Air, various options to restructure its operations or to change its strategic positioning on the market (see in further detail in Section VIII.3.).

(394) Finally, the Parties' statement that all other Member States have typically one full service national airline and a airline with a very differentiated business model, does not allow to draw a meaningful conclusion for the Greek market. Greece has indeed a very specific situation, with a specific geography (in particular many islands, to which air service is provided), and specific infrastructure issues (high speed train services largely absent) having impact on the dynamics of transport markets.

(395) This situation of the Greek air transport market, and in particular of the operations of the Parties on this market, is further assessed in the competitive assessment of this case.

2.2. Arguments based on the small size of certain routes ("thin routes")

2.2.1. Submission of the Parties

(396) The Parties argued that Greece is characterised by a net of "thin routes" with such a low level of demand that would not allow sustainable commercial operations on these routes by two competing airlines.

(397) In particular, the Parties submit that this would be the case for the following routes[295]:

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293 Form CO, paragraph 224.

294 Parties' response to the Decision opening proceedings of 30 July 2010.

295 Form CO, section VI.

	Passenger Number		
	summer 2009	winter 2009-2010	Passengers /year
ATH-EFL	[45,000 – 50,000]*	[15,000 – 20,000]*	**[60,000 – 65,000]***
ATH-LXS	[60,000 – 65,000]*	[30,000 – 35,000]*	**[90,000 – 95,000]***
ATH-IOA	[75,000 – 80,000]*	[50,000 – 55,000]*	**[125,000 – 130,000]***
ATH-KVA	[90,000 – 95,000]*	[60,000 – 65,000]*	**[150,000 – 155,000]***
ATH-SMI	[125,000 – 130,000]*	[60,000 - 65,000]*	**[185,000 – 190,000]***

Table 3 : List of "thin routes" according to the Parties

(398) Amongst these routes, as of winter 2010-2011, only Athens-Samos is a route where the Parties' activities overlap since Aegean exited the other four routes after the summer of 2010.

2.2.2. Analysis of "thin" routes identified by the Commission in previous cases

(399) In previous cases, the Commission has acknowledged that routes having inherently low passenger traffic may present characteristics of a natural monopoly and thus cannot be operated economically on a sustainable basis by more than one airline. This was concluded in particular as concerns routes having yearly O&D and connecting traffic of around 30 000 to 40 000 passengers.

(400) For example, in its decision on the *Lufthansa/Swiss* case, the Commission considered that the "*city pair Basel-Munich is a relatively thin route (about [50,000 - 100,000] passengers of which [30,000 - 40,000] are direct O&D passengers)*"[296], but noted that Lufthansa ("LH") and Swiss were however able to operate competing services on this route pre-transaction. The Commission also noted that Geneva-Warsaw, with about [10,000 - 15,000] direct O&D passengers was a thin route.[297]

(401) Similarly, in the *Lufthansa/Austrian Airlines* ("OS") case, the Commission considered that Salzburg-Düsseldorf ([20 000 – 30 000] O&D and [20 000 – 30 000] total passengers), Graz-Düsseldorf ([30 000 – 40 000] O&D and [30 000 – 40 000] total passengers) and Linz-Düsseldorf ([30 000 – 40 000] O&D and [30 000 – 40 000] total passengers) were thin routes. The Commission noted that "*low local traffic on these routes thus indicates that it would not be economically sustainable for both LH and OS to be present as operating carriers on these routes*".[298]

(402) In sum, in exceptional circumstances, such as inherently low traffic that is unlikely to grow in the foreseeable future, certain routes may be operated on a sustainable basis by only one airline. Such circumstances were found in past cases after a factual inquiry and a

296 Commission decision of 20 August 2005, M.3770 - *Lufthansa/Swiss*, paragraph 70.

297 The Commission found that the transaction did not raise serious doubts on this route.

298 Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*, paragraph 198.

thorough market investigation for routes having passenger numbers below 40,000 O&D passengers.[299] This does not mean that all routes below 40 000 O&D yearly passengers cannot support operations of more than one airline. Any conclusion has to be drawn after thorough examination of the specific facts of the route.

2.2.3. Results of the market investigation concerning thin routes

(403) In the course of the market investigation, the Commission assessed the Parties' claim that routes with O&D passenger numbers between 60,000 and 190,000 would be impossible to be operated in competition with another airline.

(404) While no systematic statistics exist that would allow studying the number of such routes operated in competition by two airlines in the EU, some respondents to the market investigation provided various examples of such operations.

(405) For example, according to the UK Civil Aviation Authority[300], a large number of domestic or international routes from/to the UK had passenger numbers between 60,000 and 190,000. A sample of these domestic routes is shown in Table 4:

Route	Annual Number of Passengers
Aberdeen-Norwich	120,847
Alderney - Guernsey	88,951
Bristol - Isle of Man	94,223
Cardiff - Glasgow	117,754
Jersey - Cardiff	49,741
Jersey - Manchester	189,210
Guernsey - Manchester	148,841

Table 4: Routes from / to the UK with two or more competitors and less than 200,000 passengers per year in 2009
Source: UK Civil Aviation Authority.

(406) All these routes were operated by two or more scheduled airlines at least in 2008 and 2009. Interestingly, a significant number of routes connect to an island, which is also the situation for some of the problematic routes in this case.

(407) Other airlines provided digressing opinions as to the commercial viability of thin routes. An airline indicated that it operates a significant number of routes having a number of annual passengers comparable to the one for which the Parties in the present case claim

299 The situation is not necessarily different in the case of long haul routes, see for instance Commission decision of 9 March 2004, M.3280 - *Air France/KLM*, p. 5 where two routes with [35,000 – 45,000] O&D passengers were considered as large enough to allow two operators to operate in competition.

300 Reply to question 8 (Annex) of phase II request for information to the UK CAA of 13 August 2010 [ID 2765].

that they cannot be operated by more than one carrier, and this in competition with other airlines.[301] Another competitor, among the largest regional airlines in the Union, stated that routes below 100 000 passengers could be served by two airlines with different business models and offer different services to their passengers. This airline operates such routes profitably.[302]

2.2.4. Response of the Parties to the Statement of Objections

(408) The Parties criticise in their reply to the Statement of Objections the Commission's argument that routes with passenger numbers between 60,000 and 190,000 passengers per year could not sustain two airlines. The Parties argue that the routes examined by the Commission as a comparison are not comparable to the Greek routes at stake.

(409) While operations in two different Union Member States cannot be compared in detail, the Commission still considers that the various examples provided in the Statement of Objections demonstrate that, in general, routes with such annual passenger traffic can be operated sustainably by two airlines. No specific indications suggesting that the routes concerned in this case could only be operated by one airline have emerged in the market investigation, and also the Parties have merely claimed that these routes were "thin" or "very thin" without providing further specific arguments and evidence.[303]

(410) In any event, the only route described by the Parties as a "thin route" and that is identified in the Statement of Objections and this Decision as a route where significant impediment to effective competition would occur is the Athens-Samos route. With 186,896 O&D passengers in 2009, this route cannot be considered as a route that is not capable of sustaining operations by two airlines.

(411) Therefore, on the basis of the available evidence, no route listed by the Parties presents characteristics of a natural monopoly which, due to an inherently low demand, would not sustain competing operations of more than one airline. The Parties’ argument based solely on such characteristics of certain routes did therefore not lead the Commission to adjust the counterfactual for the assessment of this case.

2.3. Counterfactual papers submitted by the Parties and their assessment by the Commission

(412) The Parties claim that due to deteriorating profitability of Aegean and Olympic Air, at least one of the two airlines would exit all of the overlap routes irrespective of the transaction. Therefore, instead of the current level of competition between Aegean and Olympic Air, the relevant counterfactual should be a situation in which the affected routes would be operated by only one full-service Greek airline, namely either Aegean

301 Reply of Brussels Airlines to Question 69 of request for information R1 to airline competitors [ID 4897].

302 Agreed minutes of teleconference call with Flybe of 8 September 2010, paragraphs 18 and 19 [ID 5408].

303 Form CO, paragraphs 461, 466, 508, 556 and 561.

or Olympic Air, possibly alongside some differentiated airlines (for example entry of a European low cost airline or Greek start-ups).

(413) In its decision opening proceedings, the Commission concluded despite its disagreement with the counterfactual forecasted by the Parties, that the financial situation of Aegean and Olympic/Marfin ought to be taken into account in the competitive assessment.[304]

(414) The Parties, in their response, argued that "*the Commission asserts that it is unlikely that all overlaps would disappear absent the merger and that neither Olympic Air nor Aegean seem to be about to exit the market. Once again, these statements may be relevant for the precise characterisation of the relevant counterfactual, but they do not contradict the finding that the status quo or pre-merger scenario is not the relevant counterfactual.*"[305]

(415) As confirmed by different independent analysts[306], both Olympic Air and Aegean incurred losses in 2009 and most of 2010[307] and, to minimize these losses, management of both airlines took measures such as aircraft redelivery, network adaptations etc. The level and causes of financial difficulties of Olympic Air and Aegean are analysed in detail, as they are relevant to the analysis of whether the Parties would altogether exit the market absent the transaction, within the framework of the Failing Firm Defence in Section X. The profitability of Olympic Air and Aegean on the various individual routes they operate is, nonetheless, also of importance in assessing whether or not, in the foreseeable future, one of the Parties is likely to cease its commercial activities on routes where they had overlapping activities at the time when the transaction was notified (“overlap routes”).

(416) The Parties submitted different counterfactual papers, initially an economic study, relying on a discounted cash flow (“DCF”) analysis ("the Study"), and most recently papers analysing separately for each airline the performance of each route and the commercial and strategic factors which are likely to drive choices about maintaining or exiting the route, or other possible restructuring options for each route such as changing aircraft type or frequencies ("the route Analyses").[308]

(417) In relation to Olympic Air, the counterfactual papers prepared by the Parties concluded that [*Analysis of Olympic's potential exit from overlap routes absent the merger*]*.

(418) The Parties considered that the *status quo ante* cannot be the most likely outcome if the transaction does not proceed, since the *status quo ante* has been superseded by events and no longer exists. Thus the *status quo ante*, namely the situation at the time of

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304 See also Commission Decision of 4 March 2009, M.5141- *KLM/Martinair*, p.4.

305 Reply of the Parties to request for information of 05 July 2010.

306 Reply of the Parties to request for information of 25 August 2010.

307 The Commission notes that the results of Aegean in the second and third quarter 2010 are comparable to the results of 2009 (namely a year with overall profits) and in the 9 months of 2010 the company has recorded a EUR 2 million loss before tax (due to an extraordinary social contribution overall loss reached EUR 8 million), see http://en.aegeanair.com/aegeanCMS/uploads/IR/112210_9M10_en.pdf.

308 Aegean counterfactual analysis, 25 August 2010; Olympic Restructuring Plan, 25 August 2010.

notification of the transaction, would be more than unlikely as a counterfactual: actual events have shown it to be impossible. [C*onclusions of the study submitted by the Parties in May 2010*]*. As a result, according to the Parties, the transaction would not lead to a significant impediment of effective competition.

(419) In its decision opening proceedings, the Commission analysed the arguments put forward in the Study and in subsequent submissions by the Parties, and concluded that the Study was not an appropriate basis to establish the relevant counterfactual. The decision opening proceedings details the reasoning of the Commission in this regard. This Decision refers to the analyses made in the decision opening proceedings and analyses the Parties' replies, including the reply to the Statement of Objections (see Section VIII.2.3.1 and Annex II), and concludes on that basis on the Parties' submissions contained in the Study.

(420) The route Analyses provided subsequently by the Parties rely upon an examination of each of the overlap routes[309], considering, *inter alia*, specific factors such as passenger mix, characteristics of the route, competition on the route, but also the Parties' respective financial situation and, in the case of Olympic Air, forecasts until 2012. These route Analyses consist essentially of two parts: (1) a range of commercial and strategic considerations relevant in the decision of the respective airline whether to operate the given route and (2) financial profitability forecasts, in the case of Olympic Air, based on several assumptions. The route Analyses indicate what the Parties consider to be the most likely outcome absent the transaction for each individual route (see Section VIII.2.3.2). The Commission carefully assessed the conclusions presented by the Parties in this respect as well as their underlying assumptions and the methodology used.

(421) In view of the information provided by the Parties, the Commission recognises that the pre-transaction situation (namely the size and the scope of pre- transaction networks of Aegean and Olympic Air) is not likely to be sustainable absent the transaction. However, following an analysis of the counterfactual put forward by the Parties, the Commission, considers that the conclusions presented by the Parties (removal of all overlaps between Olympic Air and Aegean) cannot be regarded as the most likely scenario absent the transaction. On the basis of the Parties' submissions, the Commission identifies a range of criteria and considerations of the Parties themselves that allow taking a view on which individual routes are, in the foreseeable future, likely to be discontinued by either Olympic Air or Aegean. These route specific considerations by the Parties will be used, at the outset of the competitive assessment of each individual route, to conclude whether or not an overlap of Olympic Air and Aegean's activities would disappear also in the absence of the transaction (see Sections IX.1.9 and IX.1.10).

2.3.1. The Study

(422) [*Submission by the Parties of a study to support their counterfactual*]*

309 Olympic Air has subsequently provided information on non overlap routes.

(423) The Study, as complemented by various subsequent submissions[310], is described in detail in the decision opening proceedings. The latter decision indicated that based on the evidence available to the Commission, the counterfactual proposed by the Parties, according to which at least one of them would exit all overlap routes, could not be accepted. The analysis of business decisions, […]*, for the purpose of this case, should reflect the specificities of the affected markets, the competitive interactions, and the business practices of the industry. The evidence gathered by the Commission suggests that such aspects were not adequately reflected in the Study.[311] Moreover, several technical and conceptual problems undermined the Parties' analysis of the relevant counterfactual.[312] The value of the analysis was further compromised by the implicit assumption that the behaviour of the rival company remained unchanged, which implied that the outcome predicted by the analysis did not represent a situation where each company accommodated the response of the rival.[313]

(424) In view of the comments received from the Parties, the Commission reviewed its analyses made in the decision opening proceedings and in the Statement of Objections. The Commission, however, reaches in essence the same conclusions, subject to some additional comments that are explained in detail in Annex II to this Decision. In particular, there are strong indications that:

i. the Study methodology does not correspond to Olympic Air's and Aegean's usual business practice when deciding to exit a route;

ii. the Study's assumptions are identical for all routes;

iii. network effects are not taken into account by the Parties;

iv. possibilities of frequency adaptations have not been analysed adequately;

v. the airlines, and in particular Olympic Air, do not consider changes to their business model;

vi. Olympic Air is currently in start-up mode which is not reflected in the Study; and

vii. different underlying data employed in later submissions raise concerns on the reliability of the data.

(425) The additional arguments put forward by the Parties in their reply to the Statement of Objections do not change the Commission’s assessment, in particular the conclusion that the Study methodology is not appropriate for the assessment of the

310 Relevant Counterfactual for assessing the Aegean/Olympic Transaction, LECG, 7 May 2010; Analysis of the competitive effects of the proposed transaction under the appropriate counterfactual, LECG, 26 May 2010; Second supplementary report on the counterfactual, LECG, 10 June 2010; An economic analysis of the proposed merger and counterfactual, LECG, 14 July 2010.

311 See in further detail Annex II.

312 See in further detail Annex II.

313 See in further detail Annex II.

likelihood of exit from overlap routes. [*Discrepancies between the usual business practice of OA and Aegean and the analysis outlined in the Study*]*.[314]

(426) Besides, the route Analyses prepared and submitted subsequently by the Parties, which according to the Parties provide insight into Olympic Air's and Aegean's respective strategies vis-à-vis each overlap route, contradict many of the conclusions of the Study, at least on route specific outcomes.

(427) Therefore, the results of the Study are not an appropriate basis for the purpose of determining the relevant counterfactual for the assessment of this case. At most, they add marginal insights on some financial elements pertaining to the route Analyses.

2.3.2. The route Analyses

(428) In view of the financial situation of both airlines, the Commission considers it unlikely that the pre-transaction situation (namely the extent of operations by Olympic Air and Aegean at the time of notification) would continue in the absence of the transaction. Indeed, already during the Commission's investigation, Olympic Air and Aegean ceased operations on some routes. Therefore, for the purpose of determining the relevant counterfactual in this Decision, the likely development for all overlap routes[315] has to be established.

(429) To this effect, the Parties submitted the route Analyses for the overlap routes[316], indicating the likely strategic decisions Olympic Air and Aegean would implement independently should the transaction not be implemented.

2.3.2.1. General Methodology

(430) Contrary to the Study, the Parties argued that the route Analyses were performed by Aegean and Olympic Air (separately) taking into account the actual profitability of the specific route for each airline individually (and for Olympic Air financial forecasts) in addition to other factors which were not accounted for in the Study but are nonetheless critical to the decision making process of airlines in general and to Aegean and Olympic Air in particular. […]*:

i. […]*;

ii. […]*;

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314 See in further detail Annex II.

315 Potential competition issues will be addressed in Section IX.1.9.2.

316 *"The analysis focuses on the overlap routes, which comprise the majority of our business"* (Olympic Air counterfactual, p1). These routes are: Athens-Thessaloniki, Athens-Herakleion, Athens-Rhodes, Athens-Corfu, Athens-Alexandroupolis, Athens-Kos, Athens-Mytilini, Athens-Mykonos, Athens-Santorini, Athens-Ioannina, Athens-Kavala, Athens-Samos, Athens-Chania, Athens-Chios, Thessaloniki-Herakleion, Thessaloniki-Chania, Thessaloniki-Rhodes Thessaloniki-Mytilini, Athens-London, Athens-Paris, Athens-Brussels, Athens-Larnaca, Athens-Istanbul, Athens-Rome, Athens-Milan, Athens-Vienna, Athens-Cairo and Athens-Tirana. The Athens-Limnos, Athens-Keffalonia, Athens-Bucarest, and Athens-Sofia routes, exited by Aegean in March 2010, are assessed notably in section IX.1.8.

iii. […]*;

iv. […]*.

(431) Notwithstanding the improvements compared to the Study, the Commission identified some significant methodological flaws in the route Analyses, in particular in the financial analyses conducted by Olympic Air, as detailed in Section VIII.2.3.2 and Annex II.

2.3.2.2. Aegean's approach

(432) Aegean undertook for each route a prospective analysis based on a number of restructuring possibilities. […]*.

(433) [*Information on actual revenues provided by Aegean in its counterfactual analysis*]*

(434) [*Nature of the costs taken into consideration in Aegean's counterfactual analysis*]*[317]

(435) Also, the results of Aegean in the third quarter of 2010 were substantially better than in the previous quarters and similar to the results of 2009 (profit before tax of EUR […]* million). In the first 9 months of 2010, Aegean recorded an overall loss before tax of less than EUR […]* million. Therefore, the Commission anticipates an overall improvement of the results provided by the Aegean in the counterfactual analysis.[318]

(436) Taking into account all these elements, Aegean formulated, for each route, whether it intended in the near future to either stay or exit the route.

2.3.2.3. Olympic Air's approach

(437) The route Analyses performed by Olympic Air took into account two main categories of inputs.

(438) Olympic Air has analysed all its routes, taking into account general commercial considerations, using many elements which are used by airlines to define whether to enter or exit specific routes. Indeed, the route Analyses in particular take into account:

i. […]*;

ii. […]*.

(439) These factors are therefore translating the importance of each route for Olympic Air’s network, and their strategic weight in the future development of the airline.

(440) Olympic Air has analyzed all overlap routes, and tried to forecast their profitability under five alternative scenarios, which represent according to Olympic Air

317 [*Differences with OA's accounting methodology*]*

318 Aegean has not updated the analysis for data running up to October 2010.

all the restructuring measures it could implement. To do this, the Parties used a prospective model, relying on a number of assumptions and hypotheses.

(441) According to Olympic Air, it envisaged and tested the following different options:

i. Scenario A: base case assuming current fleet composition (namely […]*), same frequencies, no growth in fares, and annual passenger numbers' decrease of […]*% for both 2011 and 2012.

ii. Scenario B: best case assumes the same frequencies and capacities as scenario A, but assumes both passenger and fare growth of […]*% in 2011 and 2012.

iii. Scenario C: restructuring with current fleet maintained but significant capacity reductions on both domestic and international flights […]*.

iv. Scenario D: restructuring with reduced fleet ([…]*).

v. Scenario E: restructuring with reduced fleet ([…]*).

vi. Revised Scenario E: restructuring as in Scenario E, with revised costs figures […]*.

(442) As a result of this analysis, and taking into account the general commercial factors described in particular in recital (430) as well as the financial prospects according to the different scenarios, Olympic Air assigned each of its domestic and international routes to three categories, A, B and C. These categories do not correspond to the different scenarios presented above, but rank the routes according to their importance for Olympic Air, from the least important (category A) to the most strategic ones (category C).

(443) […]*[319]

(444) […]*. Therefore, absent the transaction, Olympic Air would not be present on these routes.

(445) Category B routes […]*, therefore, are maintained in Olympic Air's schedule for winter 2010-2011.

(446) Finally, category C routes […]*, as such, they are the last ones Olympic Air would exit, should it have to do so.

(447) [*OA's conclusions of its route analyses*]*.

319 […]*

2.3.2.4. Limits of the methodology used by Olympic Air and consequences

(448) Olympic Air has submitted its routes Analyses in order to demonstrate that the transaction was the only […]* option. Therefore, even if the Parties claimed that "[…]*",[320] this analysis is not based on documents pre-dating the transaction, but largely on documents established for the purpose of the competitive assessment of the transaction.

(449) […]*[321] Therefore, considerable doubts arise concerning as to whether the restructuring analysis provided by Olympic Air/Marfin provides a true picture of what the realistic scenarios could be.

(450) The Parties argued, in their reply to the Statement of Objections, that "[…]*".[322] However, when reading the email in its entirety, the impression is still that Olympic Air's winter schedule was meant to follow the route Analyses prepared for the Commission,[323] whereas it would seem more natural if the route Analyses reflected the commercial and strategic considerations of Olympic Air as manifested in the winter schedule for example. The Commission therefore cannot exclude that Olympic Air's route Analysiswas prepared for the purpose of demonstrating that Olympic Air would exit or reduce its frequencies on every single route.

(451) The route Analyses submitted by Olympic Air, as compared to the Study, appear to nonetheless better reflect the commercial decision-making process within an airline. Indeed, while the Study only relied on a purely financial analysis of the discounted cash flows of both airlines, the route Analyses contain several parameters beyond the financial forecasts. However, the Commission does not agree with the claim of Olympic Air that "[…]*".[324]

(452) The restructuring scenario (scenario E, even as revised by the Parties) in Olympic Air's route Analysis has several important shortcomings. A number of assumptions were not sufficiently explained and in several instances appeared unrealistic. Most importantly, the restructuring Analysis was largely prepared by Olympic Air under the assumption that the transaction would be implemented. [...]*[325] However, as a principle, the counterfactual cannot be established by taking into account the future transaction, but has to be, as noted by the Parties themselves, a reflection of the competitive situation likely to occur "*in the event the merger does not proceed*".[326]

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320 Agreed minutes of meeting with Parties of 6 October 2010.

321 […]*.

322 Parties' response to the Statement of Objections, paragraph 13.96.

323 […]*.

324 […]*.

325 Parties' response to the Statement of Objections, paragraph 13.175.

326 Parties' response to the Statement of Objections, paragraph 2.61.

(453) Furthermore, the routes Analyses of Olympic Air, did not really consider a real restructuring, but rather some network adaptations, which were not demonstrated to be optimal. Also, the Commission raised significant concerns on the reliability of the underlying data employed in the analysis. These significant issues and shortcomings are explained in further detail in Annex II.

(454) The Parties claimed that the Commission did not suggest anywhere in the Statement of Objections an alternative input or a different assumption and merely did "*no more than make vague and generalised comments and raise[s] vague and unspecified questions*".[327]

(455) In this respect, the Commission, firstly, notes that there is an asymmetric information problem in assessing Olympic Air's costs and revenue structure. Yet, the Commission's assessment is dependant on the Party comprehensively making available all relevant information. Secondly, the Commission nonetheless provided, in the Statement of Objections and now in Annex II to this Decision, concrete examples demonstrating which assumptions of the routes Analyses were unrealistic.

(456) Due to the information asymmetry, the Commission cannot "*put[s] forward its own model with the data and assumptions it considers the most accurate and then give the parties the opportunity to comment on that model*".[328] All the more so, when the Commission put forward clear evidence that the data provided in the context of the routes Analyses was to a very significant extent different from the figures of the cost/revenue data provided by the Parties in earlier submissions and diverged significantly from the latest predictions of Olympic Air concerning its 2010 results.[329]

(457) The model used in the route Analyses prepared by Olympic Air has several shortcomings, which do not make it an adequate instrument to assess reliably the sustainability of Olympic Air's operations on a global basis. The Commission has identified several assumptions that affect negatively the results, both on the revenue and on the cost side.[330] More importantly, further potential restructuring and strategic positioning options for the airline were not included in the analysis […]*. This is due, in particular, to the Olympic Air's analyses being conducted taking into account the implementation of the transaction.[331]

(458) However, even if the Commission cannot rely on the results of the financial forecasts according to the model used for Olympic Air's route Analyses because of the several problems already mentioned, the commercial and strategic considerations and the financial data submitted by the Parties for the various individual overlap routes provide the Commission with a basis on which to assess for each route the situation likely to occur absent the transaction.

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327 Parties' response to the Statement of Objections, paragraph 13.92.

328 Parties' response to the Statement of Objections, paragraph 13.93.

329 See in further detail Annex II.

330 […]*.

331 See in further detail Annex II.

(459) Indeed, the route Analyses were made using many elements used by airlines to define whether to enter or exit specific route, and did not only rely on the model to forecast future profitability of Olympic Air on each route.

(460) The statements by Olympic Air regarding these important aspects for Olympic Air's decision to stay or to exit a route were helpful to define the route by route counterfactual, namely to assess on which routes Olympic Air is likely to be active in the foreseeable future. In contrast, in the Commission's view the financial forecasts of the route Analyses, namely the financial results Olympic Air claimed it would obtain by applying the forecasted scenario, can only be considered with great caution given their shortcomings (set out in greater detail in Annex II).

(461) The Commission assessed the routes Analyses provided by the Parties to establish the competitive situation likely to prevail absent the transaction.

3. COMMISSION'S ASSESSMENT OF THE COMPETITIVE CONDITIONS ABSENT THE TRANSACTION

3.1. Procedure and methodology

(462) Even before the beginning of the proceedings, the Parties had several contacts and exchanges with the Commission concerning the issue of the competitive conditions absent the transaction or "counterfactual". These exchanges were continued throughout the proceedings.

(463) The Parties however argued in their reply to the Statement of Objections that, concerning the counterfactual, *"The procedure followed by the Commission to arrive at the SO was unsatisfactory and not consistent with the Commission's Best Practices on the conduct of Merger Control Proceedings*".[332] The Parties further argued that "*Marfin has had inadequate opportunity to make its point of view known. Despite requesting several times for a meeting, this was consistently refused until effectively the last minute*".[333]

(464) Following its decision opening proceedings, the Commission had very frequent and extended exchanges with the Parties, essentially concerning their proposed counterfactual. In particular, a specific meeting was dedicated to the counterfactual as early as 4 August 2010. The counterfactual was also discussed in subsequent other meetings, in particular on 12 August 2010, and 6 October 2010, and in several telephone conferences (in particular on 23 August 2010, 25 August 2010, 30 September 2010, and 5 October 2010).

(465) Finally, extensive requests for information were sent to the Parties at several instances inviting them to further clarify their views as to the likely counterfactual. Therefore, the Parties had many occasions to make their points of view known during the proceedings.

332 Parties' response to the Statement of Objections, paragraph 13.81.

333 Parties' response to the Statement of Objections, paragraph 13.9.

(466) The Parties also indicated in their reply to the Statement of Objections that the Commission "*must provide precise and compelling evidence supporting its view as to the likely non-merger counterfactual and why this particular counterfactual scenario is the most likely to arise if the merger does not proceed compared to other scenarios*".[334] The Parties then argued that "*the Commission must either accept the notifying parties' model or put forward its own. It cannot set the bar at requiring the parties to prove the counterfactual as that would be reversing the burden of proof*".[335]

(467) For the purpose of establishing the relevant counterfactual for the competitive assessment of this case, the Commission relied largely on submissions by the Parties describing the intended course of action of each of Aegean and Olympic Air allegedly absent the transaction. These submissions contained a number of limitations and shortcomings, identified by the Commission in the Statement of Objections. However, the Commission did not, as the Parties argued, "*content itself with raising vague issues about the notifying parties' model*".[336] Indeed, even if the Parties' financial forecasts in the route Analyses were based on a set of assumptions and underlying data that overestimate the extent of the losses, the information provided represents an appropriate basis for the Commission to reasonably predict the likely counterfactual in this case, namely to take a view on the likely development of the Parties' activities on individual routes. On the basis of information provided by the Parties, the Commission established separately for each individual route the likely counterfactual that could reasonably be considered in the foreseeable future.

(468) Contrary to the Parties' claim, the Statement of Objections and this Decision clearly set out for each of the routes concerned what the Commission considers to be the likely competitive situation absent the transaction. The counterfactual retained by the Commission for the purpose of this Decision is coherent with the Parties' schedule for summer 2011. Although, Olympic Air's financial forecasts in its routes Analyses include 2012, h the forecasts contained several shortcomings. In addition, the results for 2012 are improved in relation to 2011 for the relevant scenarios D and E (initial and revised) as discussed in Annex II. Furthermore, the Parties themselves acknowledged that, under the current economic conditions, it was impossible for airlines to forecast their schedules beyond the next IATA season.

3.2. Assessment of the Parties' route Analyses

3.2.1. Aegean

(469) Aegean has analysed all the overlap routes, and concluded that, [*Presentation of Aegean's business strategy for the future*]*.[337]

(470) The Commission in principle considers Aegean's analyses constitute an appropriate basis for establishing the counterfactual, namely whether or not Aegean is

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334 Parties' response to the Statement of Objections, paragraph 13.9.

335 Parties' response to the Statement of Objections, paragraph 13.9.

336 Parties' response to the Statement of Objections, paragraph 13.9.

337 […]*.

likely to exit a given route in the foreseeable future. The Commission has assessed the analyses and conclusions of Aegean in more detail in the specific context of the routes concerned (see the first section of each route-by-route assessment in Sections IX.1.9 and IX.1.10 of the competitive assessment).

(471) Concerning the Athens-Samos, Athens-Chios, and Athens-Kos routes, as well as several international routes, the Parties argued in their reply to the Statement of Objection and Supplementary Statement of Objection that the Commission had misinterpreted their counterfactual submitted in their route Analyses, and that [*Analysis of the presence of Aegean on the Athens-Samos, Athens-Chios, Athens-Kos and several international routes*]*. The Commission addresses this issue in the first section of the relevant route-by-route assessment in Section IX.1.9.

3.2.2. Olympic Air

(472) In Olympic Air's analysis, routes were classified into three categories, as explained in recital (441). [*Domestic overlap routes falling under Category A*]*[338]

(473) [*International overlap routes falling under category A*]*

(474) Concerning the Athens-Alexandropoulis route, the Parties argued in their reply to the Statement of Objection and Supplementary Statement of Objection that the Commission had misinterpreted their counterfactual, […]*. The Commission analyses this argument in Section IX.1.9.1.1.

(475) The Parties also argued in their reply to the Supplementary Statement of Objections that "[…]*"[339] and that as such, all routes not operated in Scenario E should not be part of the relevant counterfactual*.

(476) However, Scenario E (or the Revised Scenario E) of Olympic Air's route Analyses cannot be the relevant situation likely to prevail absent the transaction for Olympic. […]*. Indeed, a number of realistic restructuring options appear more likely (see Section X.2.1.4).

(477) [*Analysis of the alternative restructuring options*]*.

(478) Indeed, as shown in Table 5, the route Analyses provided by Olympic Air indicate, despite the shortcomings identified, that the domestic network of Olympic Air would yield a positive operating result for 2010 to 2012 in revised scenario E. This scenario still indicates negative earnings before interest and taxes ("EBIT") margin, but as explained in Annex II, these results are significantly affected by the methodological flaws identified and that the actual results could be significantly better. [*Description of results of the international network*]*

338 […]*.

339 Parties’ response to the Supplementary Statement of Objections, paragraph 4.3.

		[…]*	[…]*	[…]*
[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*
[…]*	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*

Table 5: […]*

(479) Therefore, absent the transaction, in order to further establish its global profitability, Olympic Air could likely, in addition to the restructuring measures described, decide to focus essentially on domestic routes and also downsize its operations by exiting from a number of international routes, should they still be loss making, and substitute some direct operations by various agreements ([*OA's alternatives to restablish its global profitability*]*) with other airlines. These agreements would limit the negative impact of exiting the international routes at stake on the profitability of domestic routes since Olympic Air would be likely to maintain feeder traffic (see also Annex II).

(480) Where relevant, the counterfactual concerning international routes is discussed in Section IX.1.10.

3.3. Conclusion on the competitive situation likely to prevail absent the transaction

(481) The Commission established, for each route on which the airlines' activities overlapped at the time of notification, the relevant counterfactual (see the first part of each route-by-route assessment in Sections IX.1.9 and IX.1.10 on the competitive assessment). In total, in the foreseeable future absent the transaction, Aegean and Olympic Air would most likely be in actual competition on 10 domestic, representing a total of 4 550 000 passengers per year, and on several international routes.

(482) Concerning domestic routes, the counterfactual retained by the Commission is consistent with the schedules of Olympic Air and Aegean for the IATA summer season 2011, namely flights offered by the Parties until end-October 2011.

(483) As a result, the analysis of the competitive situation likely to prevail absent the transaction reveals that Olympic Air and Aegean would be able to both operate on the Greek market. This contradicts the claim by the Parties that the Greek market would be unable to support sustainable operations by Olympic Air and Aegean, and that at least one of them would exit on each of the overlap routes.

4. TREATMENT OF ALLIANCE AND CODE-SHARE PARTNERS

(484) Another issue regarding the conceptual framework for assessing the competitive impact of the notified transaction relates to the treatment of airline alliances and code-share partnerships.

4.1.1. Treatment of alliance partners

(485) On 30 June 2010, Aegean became a member of Star Alliance. After the proposed transaction, it is expected that the combined entity be a member of Star Alliance.

(486) In line with the Commission's earlier decisions[340], Aegean's alliance partners are not considered for the determination of affected markets.

(487) According to the information provided by the Parties, […]*. However, any cooperation between Aegean and an alliance partner is taken into account qualitatively in the competitive assessment.

4.1.2. Treatment of code-share partners

(488) For the overlap routes, a code-share exists between Aegean and SN, which is also a member of Star Alliance, on Athens-Brussels. This code-share is taken into consideration in the competitive assessment.

(489) Olympic Air entered into several code-share agreements concerning non-overlap routes.[341]

IX. COMPETITIVE ASSESSMENT

1. AIR TRANSPORT OF PASSENGERS

1.1. Methodology

Time sensitive vs. non-time sensitive passengers

(490) As far as the distinction between time sensitive and non-time sensitive passengers is concerned, market shares in this Decision are based on two methods: ticket flexibility (namely flexible vs. non-flexible tickets) and purpose of travel (namely business vs. leisure and VFR).

(491) As regards domestic routes in Greece, the market shares included in Section IX.1.9 for time sensitive and non-time sensitive passengers were calculated by the Commission on the basis of ticket type, following a market reconstruction involving all relevant operators. This market reconstruction was carried out for the IATA winter 2009-2010 season and part[342] of the IATA summer 2010 season. The market reconstruction further showed that market shares would not be substantially different if,

340 Commission decision of 28 August 2009, M.5440 – *Lufthansa/Austrian Airlines*, p. 11, Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*, p. 10.

341 For instance, the code share agreement signed with Etihad Airways on 15 May 2010, as well as the agreements with Delta, Flybaboo, and the special prorate agreements with Air Europa, Alitalia, Tarom or Korean Air. Olympic Air also recently entered into a free-flow code share agreement with Meridiana Fly (IG), effective 16 August 2010, under which each airline will offer seats on specific flights operated by the other between Italy and Greece

342 Data of all relevant operators are available for the period April-July 2010.

instead of ticket type, they were calculated on the basis of air passengers' purpose of travel, and in any event a calculation of market shares based on travel purpose would not decisively alter the competitive assessment on any domestic route.[343]

(492) As regards international routes, the market shares included in Section IX.1.10 for time sensitive and non-time sensitive passengers are based on the Form CO. The market shares in the Form CO are based on purpose of travel and relate to the summer 2009 season[344] and the winter 2009-2010 season. The split between time sensitive and non-time sensitive passengers is based on AIA survey which identifies passengers according to their purpose of travel.[345] Although, as a result of the competitive assessment a comprehensive market reconstruction was not deemed necessary for the international routes at issue, a reconstruction of market shares of Olympic Air, Aegean and competing airlines for the routes at issue for the last winter season showed that market shares would not be substantially different if time sensitive passengers were not identified according to purpose of travel, but according to flexible tickets purchased.

Air services vs. ferry services

(493) On each route where according to the Parties intermodal transport competition is relevant, market shares of possible markets comprising both air and ferry services were reconstructed for the past winter 2009-2010 season as well as partly for the summer 2010 season (namely April, May, June and July 2010 as only for these months complete data were available).

(494) No such meaningful reconstruction was possible for summer 2009 due to the fact that Olympic Air had started operating only at the end of 2009. Data of airlines and ferry operators prior to the market entry of Olympic Air were therefore only used for other economic analysis for which the absence of Olympic Air from the market is not crucial.[346]

(495) For a possible market for non-time sensitive passengers, calculations were based on the number of passengers travelling on non-flexible air tickets and all passengers travelling

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343 This relates to the past winter season as only for this season complete data on air passengers' purpose of travel were available.

344 As far as summer 2009 is concerned, the Parties calculated the market share of Olympic Air on the basis of data for Old Olympic in aggregation to data for New Olympic. At the same time, the Parties made clear that already during pre-notification the data from Old Olympic cannot be used as a continuation of New Olympic. Both companies were managed in different ways, there were differences in the composition of the fleet and more importantly the pricing policy was completely different. The Commission has analysed the average fares for New and Old Olympic and observes significant differences. Fare levels for Old Olympic are substantially below fares by New Olympic. This is likely to be due to the public control the Greek government had over Old Olympic and the public subsidies it was receiving.

345 AIA distinguishes in its survey between the following travel purposes: business, holidays/tourism, VFR, military, studies and other. The Parties submit that business passengers are a good proxy for time sensitive passengers in this case. As regards an alternative approach to the market share calculation on the basis of MIDT data, the Parties claimed that none of them subscribes to MIDT data and that the high cost of procuring such data would be "prohibitive" for them.

346 For instance, data of Old and New Olympic were used in the context of intermodal competition when comparing prices of airlines with prices of ferries.

by ferry. The market reconstruction further showed that market shares would not be substantially different if, instead of ticket type, they were calculated on the basis of air passengers' purpose of travel, and in any event a calculation of market shares based on travel purpose would not decisively alter the competitive assessment on any domestic route.[347]

(496) For a possible market encompassing all passengers, calculations are based on all air passengers and all ferry passengers.[348]

(497) As operating conditions vary significantly between winter and summer seasons (in particular in terms of frequencies and ferry travel time), analyses have to be conducted and conclusions drawn on a seasonal basis. Consumers need to be protected the whole year round.

(498) For this reason, on each route where according to the Parties intermodal transport competition is relevant, the level and timing of frequencies of airlines were compared with those of ferry operators. More specifically, such comparisons were made for each of the months January, March, August and October 2010 in order to capture seasonal patterns in the offer of airlines and ferry services.[349] The information on frequencies in January, March, August and October 2010 is based on the Parties' submissions[350] in this regard, unless indicated otherwise.

(499) The Commission moreover assessed the total travel time from city centre to city centre on each individual route by the different means of transport on these routes, namely transfer from city centre of origin to the airport/harbour, check-in/boarding time, actual travel time, disembarking/baggage and transfer from the airport/harbour to the city centre of the destinations. In this context, the Parties submitted that 1 hour 30 minutes was necessary for check-in/boarding at AIA. However, it appears that this estimate is too long and that a check-in/boarding time of 1 hour for domestic flights is closer to reality.[351]

(500) Indeed, as regards check-in and boarding times, the investigation showed that check-in counters close 30-40 minutes before the flight.[352] In addition, according to

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347 This relates to the past winter season as only for this season complete data on air passengers' purpose of travel were available.

348 Non revenue passengers are excluded.

349 For January 2010, the Parties retrieved historic data related to the week of 24 - 31 January 2010; for March 2010, the Parties retrieved information from the print edition of the March OAG; for August 2010, the Parties retrieved information from the print edition of the August OAG; and for October 2010, the Parties collected data for the week of 18 - 24 October 2010 from the online version of the OAG, see: reply of the Parties to the request for information of 22 September 2010.

350 Reply of the Parties to question 15 of request for information of 04 August 2010; reply of the Parties to question 15 of request for information of 01 September 2010; reply of the Parties to question 15 of request for information of 01 October 2010.

351 Similarly, the Commission found in Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding* that 60 minutes were necessary for the route Frankfurt-Brussels.

352 E-mail from AIA of 7 October 2010 [ID 5410].

AIA, in 2009, average queuing time for check-in was 4 minutes and 49 seconds with a maximum of 12 minutes in heavy traffic periods in July. According to the same source, queuing time was 2 minutes and 38 seconds for security screening and 3 minutes and 44 seconds for passport screening.[353] In addition, Aegean's website indicates that it is possible to check-in up to 30 minutes and board up to 20 minutes prior to departure.[354]

(501) On this basis, it is reasonable to assume that checking and boarding time at AIA is at most one hour, with a most likely average time varying between 45 minutes and one hour.

(502) Aggregate travel time from city center to city center by ferry, namely including transfer from city center of origin to port of origin, boarding, disembarking and transfer from port of destination to city center of destination, was calculated on the basis of information provided by the Parties for each individual route.[355]

Treatment of Blue Star Ferries and Superfast Ferries

(503) Marfin, via its subsidiary Attica, solely controls two ferry companies active in Greece, namely Blue Star Ferries and Superfast Ferries.[356]

(504) In its Statement of Objections, the Commission disregarded Attica as competitor to the merged entity on hypothetical markets encompassing both air and ferry services and aggregated Attica's market shares to the one of the Merged Entity. In the Supplementary Statement of Objections, the Commission explained that, given the decisive influence that Marfin exercises on both, the Merged Entity and Attica, Attica could not be considered as independent competitor to the Merged Entity.

(505) The Parties in their reply to the Statement of Objections and Supplementary Statement of Objections argued that the Commission's approach was incorrect as the intention is that Marfin is one of the three jointly controlling shareholders of the Merged Entity, holding only a 26 % shareholding while Attica is an independent listed company. According to the Parties, there is no evidence that following the transaction Attica

353 Aerostat 2009 handbook, Athens international airport, pages 43-44 (available at http://ebook.aia.gr/?id=110).

354 http://en.aegeanair.com/Content.aspx?Page=21 .

355 Reply of the Parties to request for information of 25 November 2010. According to the Parties, ferry operators recommend to passengers to arrive 45 minutes prior to departure. However, typically passengers can board 5-10 minutes prior to departure, given that they carry their luggage with them and are only subject to ticket control upon boarding. It is reasonable to assume that 30 minutes are necessary for boarding & disembarking, which is in between the range of 10-55 minutes indicated by the Parties in their reply.

356 The Attica Group is a holding company with expertise in quality shipping, transportation and leisure. As the owner of the two leading ferry operators in Southeastern Europe, Superfast Ferries (leading ferry operator in the Adriatic Sea and Crete routes) and Blue Star Ferries (leading ferry operator in the Aegean Sea routes), Attica Group owns and operates modern, fast, cruise-class car-passenger ferries providing year-round transportation services for passengers, private vehicles and freight. The Group’s full year 2009 financial results show consolidated Revenues of EUR 302 million (EUR 326 million in 2008). In 2009, revenues on domestic routes were EUR 161 million, while revenues on routes in the Adriatic Sea were EUR 141 million.

would not compete with the Merged Entity. To support this view, the Parties referred to *Smith & Nephew + Beiersdorf/JV*[357], a decision in which the Commission viewed the risk of coordinated effects as very small because the joint venture's parent companies were active on different markets.[358]

(506) First, as acknowledged by the Parties, Marfin has control over Attica.[359] Marfin would thus be in a position to control both the Merged Entity and Attica. As a result, Marfin could influence strategic decisions of both entities. It follows that the threshold of control is met and the nature of the control, be it joint or sole, is irrelevant for this purpose.

(507) Second, as concerns the reference to the *Smith & Nephew + Beiersdorf/JV* decision, the factual situation in that case was different from the one in this case. Indeed, contrary to the *Smith & Nephew + Beiersdorf/JV* case, in this case, the starting point of the analysis is the hypothesis of air and ferry services belonging to the same relevant markets (market for non time sensitive passengers and market encompassing all passengers), as argued by the Parties, and therefore it cannot be concluded that Merged Entity's parents are active in different markets.

(508) Lastly, it is a common practice by the Commission to analyse links between competitors as reducing the incentives to compete and pushing the undertakings concerned towards a convergence of their commercial policies.[360]

(509) Concerns in this respect were also raised in the course of the market investigation.[361]

(510) As a result, it is concluded that due to Marfin's control and decisive influence over both the Merged Entity and Attica, the latter cannot be considered as independent competitor of the former on markets where both are present. This conclusion is applied individually on each route where Attica is present and competing on a hypothetical market encompassing both air and ferry services. The question whether the market shares of Blue Star Ferries and Superfast Ferries must be added to those of the merged entity on the ground that they would operate as a single entity on the market can be left

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357 Commission decision of 30 January 2001, JV.54 - *SMITH & NEPHEW/BEIERSDORF/JV*.

358 See Commission decision of 30 January 2001, JV.54 - *SMITH & NEPHEW/BEIERSDORF/JV*, paragraph 87; *"The only common interest of the parties in the relevant markets, therefore, lies in their joint participation in the JV. As a result of the specialisation of the parties, the risk of co-ordination of competitive behaviour between the parent companies as a consequence of the creation of the JV would appear to be very small, which is why it can be concluded that the JV does not have as its object or effect the co-ordination of the competitive behaviour of the parent companies"*.

359 Section 8.93 of the Parties' response to the Statement of Objection. Marfin ownership in Attica Holding S.A. is 87.5 %.

360 Commission decision of 11 April 2006, M.4150 - *ABBOTT / GUIDANT*, paragraph 61; *British American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission* - Joined cases 142 and 156/84, paragraphs 37 and 38.

361 HALPA Comments, p. 17 et seq. [ID 2109]; observations of consumer organisation Ekpizo to the Statement of Objections [ID 5967].

open. It is clear, however, that the competitive pressure of these ferry services on the Merged Entity is limited by the fact that they are controlled by Marfin.

1.2. The transaction leads to very large market shares in a number of routes

(511) Olympic Air and Aegean account for the largest share of passenger traffic at AIA, both for domestic and international routes. Olympic Air and Aegean accounted respectively for [40-50]*% and [40-50]*% (jointly [90-100]*%), of all passengers out of Athens in the period January-June 2010 in domestic routes and [10-20]*% and [20-30]*% (jointly [30-40]*%) in international routes on the same period.[362] The third largest domestic airline, Athens Airways, had considerably smaller operations before it suspended its activity. Finally, Olympic Air and Aegean also serve the largest number of destinations out of Athens with 16 domestic and 20 international destination airports for Aegean, and 29 domestic and 15 international destination airports for Olympic Air[363].

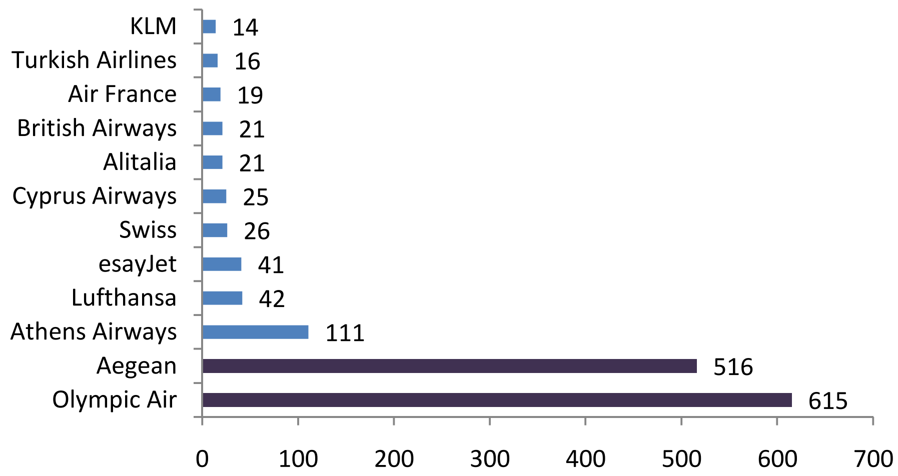

Figure 6 : Top 12 airlines at AIA

Source: OAG Max Online for w/c 1 March 2010[364]

(512) The operations of Olympic Air and Aegean overlap currently on 17 routes (11 domestic routes and 6 international routes).[365]

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362 AIA data [ID 2105] and http://www.aia.gr/UserFiles/File/trafficStatistics/2010/153851_paxEN.pdf.

363 AIA data [ID 2105].

364 See:http://www.anna.aero/2010/03/02/aegean-olympic-merger-would-dominate-greek-domestic-market/

365 In line with earlier Commission decisions (Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding* paragraphs 368 et seq.; Commission decision of 8 September 2010, M.5747 - *Iberia/British Airways* paragraph 69), no competition concerns are deemed to arise on all non-stop/one-stop overlaps where throughout the last four IATA seasons (i) the combined market share of Aegean and Olympic Air was below 25%, or (ii) one of Aegean and Olympic Air had a market share below 2%, or (iii) where the total share of one-stop operations in the relevant market was below 10%. The routes not fulfilling these conditions are not deemed to raise competition concerns. For one-stop/one-stop overlaps, no competition concerns are deemed to arise where throughout the last four IATA seasons (i) the combined market share of Aegean and Olympic Air was below 25% or (ii) one

(513) According to the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.[366]

(514) The Horizontal Merger Guidelines also state that according to well established case-law, very large market shares - 50% or more - may in themselves be evidence of the existence of a dominant market position.[367]

(515) In the recent Ryanair/Aer Lingus judgement, the General Court also confirmed that: *"although the importance of market shares may vary from one market to another, the view may legitimately be taken that very large market shares are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position"*.[368]

(516) Considering time sensitive passengers, the transaction would lead to a situation close to a monopoly on all domestic routes. More specifically, on all routes of concern Aegean and Olympic Air had a combined market share of [90-100] % in the past winter season. Since Athens Airways' ceased operations, Aegean and Olympic Air have been operating all of these routes (except the Athens-Herakleion route, where Sky Express currently entered with small scale operations) in monopoly.

(517) As regards non-time sensitive passengers and all passengers, it is to be recalled that the inclusion of ferry services is left open for all relevant routes of concern, except the Athens-Rhodes route. However, even if ferry services were included in the same product market as air services, the merged entity would on some routes have market shares of [50-60] % or higher. More importantly, in the context of this case, surface transportation by ferry is only a distant substitute to air travel. The competitive significance of distant substitutes is unlikely to be commensurate with their shares in a broad market. As a result, evaluating shares in a product market that includes ferry would greatly underestimate the competitive significance of Olympic Air in constraining Aegean, and *vice versa*, and greatly overestimate the significance of ferry services.

(518) More detailed analyses were made in the route-by route-assessment, in Sections IX.1.9 and IX.1.10, also for non time sensitive passengers and all passengers on domestic routes, and for time sensitive and non time sensitive passengers on international routes.

(519) Although the number of passengers and the frequency of operations on the overlap routes may vary[369], it remains that the transaction would eliminate or

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of Aegean and Olympic Air had a market share below 2%, or (iii) where the total annual traffic was below 15,000 passengers.

366 Horizontal Merger Guidelines, point 14.

367 Point 17 of the Horizontal Merger Guidelines. See in this respect Case T-221/95 *Endemol v Commission* [1999] ECR II-1299, paragraph 134; Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paragraph 205; Case T-210/01 *General Electric v Commission* [2005] ECR II-5575, paragraph 115; Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 174.

368 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 41.

369 See for a detailed analysis of the passenger number and the frequencies offered on each route the route-by-route analysis in Sections IX.1.9 and IX.1.10.

significantly reduce passengers' choice on all routes, even thinner or seasonal ones. Even on "thinner" and seasonal routes, passengers can currently choose between at least two airlines which operate on these routes. The Commission therefore has to ensure that also passengers of "thinner" or seasonal routes are not harmed by the elimination of the main competitor.

(520) Therefore, it is concluded that the transaction would lead to very large market share in a significant number of routes. However, in order to take due account of the particularities of each route, the Commission has also analysed the competitive situation and in particular the main potential factors that might counteract the effects of the transaction on a route-by-route basis.

1.3. Closeness of competition between Aegean and Olympic Air

1.3.1. Aegean and Olympic Air offer very similar services, operate similar networks from the same base and have strong brands

(521) The Commission considered in its Statement of Objections that Olympic Air and Aegean had a very close competitive relationship.

(522) Indeed, most respondents to the market investigation considered that the services offered of Olympic Air and Aegean were similar in terms of elements such as level of frequencies offered to various destinations, size and scope of network, business model, use of Frequent Flyer Programmes ("FFPs"), level of service on board, punctuality, type of aircraft and customer groups targeted.[370]

(523) In addition, Aegean and Olympic Air are the only airlines that operate with a large base at Athens, and have a strong brand widely recognised among domestic passengers.

(524) The Parties are present at AIA for serving domestic flights, which is at one end of all routes of concern. Prior to the transaction anouncement the Parties engaged in strong competition. The Parties competed on all relevant dimensions, including price, frequencies, quality and service and capacity. Furthermore, their existing base at AIA limits the sunk investment required for the Parties to serve new routes or further increase frequencies.

(525) The Parties’ closeness of competition is significantly reinforced by the fact that both have an extensive base at AIA, as explained in further detail in Section IX.1.5.1. No other airline operating on the Greek domestic market has such a base.[371] As a result, only the Parties benefit from a range of competitive advantages derived from their base operations. These include, in particular, flexibility to respond or adapt to changes in

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370 Replies to question 9 of phase II request for information to travel agents of 13 August 2010; replies to question 6 of phase II request for information to corporate customers of 13 August 2010; replies to question 2 of phase II request for information to competitors of 11 August 2010; reply to question 5 of phase II request for information to Greek chambers of commerce of 13 August 2010 [ID 2542]; reply to question 5 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 5208].

371 Sky Express is based at Herakleion, Astra is based at Thessaloniki and Athens Airways who has currently suspended its scheduled operations plans to move its base from Athens to Thessaloniki.

market conditions (namely fluctuations in demand) and cost savings arising both from demand-side and supply-side economies of scale.

(526) Another important reason for the close competitive relationship between the Parties is the high reputation of their respective brands. Both Parties' brands, and in particular that of Olympic, are considered to be very strong brands that are widely recognised and highly valued by Greek air passengers.[372] No other airline operating on the Greek domestic market has a brand with a reputation and appeal to Greek air passengers comparable to those of the Parties.

(527) The close competitive relationship between Aegean and Olympic Air is further underlined when comparing their services with those of other domestic airlines and ferry operators.

(528) As regards Athens Airways, the similarities between Aegean and Olympic Air in particular in terms of level of frequencies and capacity on each route, in conjunction with the competitive disadvantages of Athens Airways mentioned in Section IX.1.6.2 illustrate that Aegean and Olympic Air are very close competitors to each other.[373]

(529) Similarly, as regards Sky Express which recently entered the Athens-Herakleion route, the similarities between Aegean and Olympic Air in particular in terms of level of frequencies and capacity, in conjunction with the very limited scope of Sky Express' services in terms of frequencies and capacity mentioned in Section IX.1.9.3 illustrate that Aegean and Olympic Air are very close competitors to each other on that route.

(530) As regards domestic routes on which ferry services could be considered as a travel alternative, it is explained on a route-by route basis in Section IX.1.9 that the services of each of Aegean and Olympic Air are significantly faster and more frequent than those of ferry operators and are also similar to each other, *inter alia*, in terms of quality, convenience and reliability while ferry services are only a distant substitute to air services on each route.

(531) In their reply to the Statement of Objections, the Parties only contested to a limited extent the fact that Aegean and Olympic Air have a very close competitive relationship. Tellingly, the Parties focus their argument on claiming that the transaction would induce entry, but do not submit any evidence concerning the alleged lack of closeness of competition between Aegean and Olympic Air. Regarding closeness of competition, the Parties in essence claim that the lack of empirical analysis means that the Commission's conclusion is unfounded.

(532) However, as acknowledged by the Parties themselves, *"the issue of concern is whether the merging parties' products are sufficiently interchangeable compared to those of their competitors thus allowing the newly merged entity to raise prices without*

372 Sections IX.1.5.2 and IX.1.5.3.

373 Replies to question 9 and 10 of phase II request for information to travel agents of 13 August 2010; replies to question 7 of phase II request for information to corporate customers of 13 August 2010; reply to question 6 of phase II request for information to Greek chambers of commerce of 13 August 2010 [ID 2542]; reply to question 6 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

rival products acting as a constraint on pricing".[374] Therefore, the opinion of corporate customers and travel agents is relevant on this point, as they are the main demand-side actors able to judge if the Aegean's and Olympic Air's products are sufficiently interchangeable.

(533) Furthermore, the Parties themselves argued several times that Aegean and Olympic Air had exactly the same type (namely business model) and the same shape (namely network configuration) of operations to support their claim that the two airlines could not sustainably operate on the Greek market. In addition, many internal documents submitted by Olympic Air clearly identify Aegean as its main and closest competitor.[375] Conversely, ferry companies contacted during the market investigation often considered that they were not competitors of Aegean and Olympic Air, let alone closest competitors. For instance, the 2009 Attica group annual report stated that its most significant competitors on routes between Athens and the Cyclades, Crete or Dodecanese were ferry companies (Hellenic Seaways, Nel, Anek, Agoudimos, Fast Ferries and Minoan).[376]

(534) Finally, in their reply to the Supplementary Statement of Objections, the Parties argued that *"the SSO fails to provide evidence that Olympic and Aegean are each other's closest competitors on each of the examined route"* and that *"to support a claim of "closeness of competition", one would need at a minimum, some measure of actual diversion between Olympic and Aegean, and then between the airlines and ferries*".

(535) However, the Commission again notes that, in the market investigation, the large majority of corporate customers and travel agents replied that Aegean and Olympic Air were each other's closest competitors.[377] Furthermore, in relation to intermodal competition by ferry, the similarities between Aegean and Olympic's products on each route in particular in terms of travel time, level of frequencies, quality and convenience of service as well as reliability of service further underline that they are each other's closest competitor.

1.3.2. Both Aegean and Olympic Air engage in very similar price setting and seat inventory control mechanisms

(536) Aegean and Olympic Air engage in very similar pricing and seat inventory control mechanism, in particular when compared to ferry operators. The Commission has described, above in Section VI.1.4.1.1, the differences in pricing strategies between airlines, which use yield management, and ferry operators.

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374 Parties' response to the Statement of Objections, paragraph 11.2.

375 […]*.

376 Attica Annual consolidated and company financial statements for the fiscal year 2009, section 3.1.7 "Competition".

377 Replies to question 49 of phase I request for information to competitors of 25 June 2010; replies to question 38 of phase I request for information to corporate customers of 25 June 2010; replies to question 3 of phase II request for information to competitors of 11 August 2010; replies to question 38 of phase II request for information to corporate customers of 13 August 2010; replies to question 10 of phase II request for information to travel agents of 13 August 2010.

(537) Table 6 below shows the price grid for Aegean for April 2010, which includes all the routes of concern. Aegean offers 8 classes and four types of tickets with different characteristics in particular with regard to flexibility: flexible business (*Business*), flexible economy (*Flex*), semi-flexible economy (*Semi-Flex*) and restricted economy (*Saver*). Prices range from EUR 19 in the lowest fare class in restricted economy to EUR 142 Euros (on most routes) in flexible business (prices net of airport takes and booking fees). In other words, passengers travelling in flexible business can be expected to pay up to seven times more than passengers travelling on the lowest class in restricted economy. The average increment from a lower class to a higher class is around EUR 17-18 with the largest increment being in the high end steps of the price grid. For example, for Alexandroupolis, Chania and Herakleion this increment is the same: EUR 28 (from M to Y and from Y to C).

Athens to	**Flexible Business**	**Flexible Economy**			**Semi Flexible Economy**	**Restricted Economy**		
	C	**Y**	**M**	**H**	**K**	**S**	**T**	**U**
Alexandroupolis	142	114	86	77	59	48	33	19
Chania	142	114	86	77	59	48	33	19
Chios		104	81	76	59	48	33	19
Herakleion	142	114	86	77	59	48	33	19
Kos	142	111	86	77	59	48	33	19
Mykonos		107	81	76	59	48	33	19
Mytilini	130	107	81	76	59	48	33	19
Rhodes	142	120	92	79	59	48	33	19
Samos	127	105	81	76	55	48	33	19
Santorini		114	86	77	59	48	33	19
Thessaloniki	142	120	92	79	59	48	33	19

Table 6 : Aegean's Domestic Price Grid for April 2010

Source: Response to request for information of 20 August 2010

(538) Similar patterns can be observed in the price grid of Olympic Air, which also includes all the routes of concern (Table 7). A comparison of the price grids of Aegean and Olympic Air reveals striking similarities and constitutes a strong indication of the extent to which the Parties monitor each other closely in setting their fares and how closely they compete in terms of pricing. The most expensive fare is also around seven times higher than the lowest fare and the average increment between classes is around EUR 18 in most routes. It is also remarkable that the increment in the last two steps is also exactly EUR 28 for the same three routes identified above. More importantly on *all routes of concern* and *for all fare classes* Olympic Air - for August 2010 - is positioned at a slightly higher price than Aegean, EUR 4 difference between the lowest fare up to EUR 8 difference between the highest fares.

(539) Moreover, both airlines use price comparison software (such as Infare), which enables companies to closely monitor the development of each other's fares over time[378]. This analysis certainly confirms the Parties' own statements that fares are set with reference to each other airline's fares rather than in reference to other modes of transport such as train or ferry. It further underlines the very close competitive relationship between Aegean and Olympic Air generally and across all routes of concern. Finally, there appears to be no difference in the relative price, or even in the absolute price levels, across routes, for routes where ferry services are present or not.

Athens to/Booking classes	C	Y	M	L	B	X	U	T
AXD (no ferry)	150€	122€	94€	85€	67€	57€	36€	23€
CFU (no ferry)	150€	128€	100€	87€	67€	57€	36€	23€
CHQ	150€	122€	94€	85€	67€	57€	36€	23€
HER	150€	122€	94€	85€	67€	57€	36€	23€
IOA (no ferry)	136€	113€	89€	84€	67€	57€	36€	23€
JKH	131€	110€	89€	84€	67€	57€	36€	23€
JMK	137€	115€	89€	84€	67€	67€	67€	67€
JTR	137€	122€	94€	85€	67€	57€	36€	23€
KGS	150€	119€	94€	85€	67€	57€	36€	23€
KVA (no ferry)	150€	122€	94€	85€	67€	57€	36€	23€
MJT	138€	115€	89€	84€	67€	57€	36€	23€
RHO	150€	128€	100€	87€	67€	57€	36€	23€
SKG (no ferry)	150€	128€	100€	87€	67€	57€	36€	23€
SMI	135€	113€	89€	84€	63€	57€	43€	23€

Table 7: Olympic's Domestic Price Grid for August 2010

Source: Response to request for information of 20 August 2010.

1.3.3. Conclusion

(540) It is clear that Aegean and Olympic Air have a very close competitive relationship. This clearly distinguishes them from other domestic airlines, active on a much lower scale, and from domestic ferry operators which offer products differing from those of Aegean and Olympic Air in several important competitive dimensions and whose pricing system is less sophisticated on domestic routes. The closeness of competition between Aegean and Olympic Air on domestic routes is further discussed on a route-by-route basis in Section IX.1.9.

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378 See Aegean's to response to question 6 of the request for information of 20 August 2010.

(541) As regards international routes, the closeness of competition between Aegean and Olympic Air is discussed on a route-by-route basis in Section IX.1.10.

1.4. Analysis of airport congestion

(542) Different degrees of capacity constraints appear to exist at certain Greek airports, although to a limited extent, at least at peak periods of the year. These constraints could make entry or expansion by airlines on routes to/from these airports more difficult.

(543) This is because in order to operate a flight to/ from a given airport an airline needs access to airport facilities, such as runway, terminal and apron. The right to use the runway for a departure or arrival of an aircraft is ensured through the allocation of a 'slot' to a particular airline. Runway capacity constraints together with security requirements regarding the time interval between aircraft movements put a limit on the maximum number of available slots during a given time interval, which might be less than the slots demanded by airlines. Limitations with respect to the availability of other types of airport facilities (namely terminal, apron) have the same effect. In such a case a mechanism to allocate slots is needed and, according to the level of congestion, different rules for slot allocation apply.[379] Airports with limited level of congestion are designated "facilitated airports" and slots there are distributed by a scheduled facilitator appointed by airlines on the basis of voluntary cooperation. Highly congested airports are designated "coordinated" and slots there are allocated by a slot-coordinator.

(544) Inability to obtain the number of required slots at commercially attractive time of the day/week might render competitors' services less attractive to passengers and thus could diminish the competitive constraint exercised by these competitors or prevent them from entering a route altogether. This has been acknowledged by the Commission in its earlier decisions.[380]

(545) In their Reply to the Statement of Objection, the Parties "*do not consider there to be any concerns with slots at Greek airports*".[381] even when taking into account that the higher demand for slots in the summer season than in winter due to the tourist traffic to and from the Greek islands.[382]

(546) As concerns airports in Greece, the Commission investigation showed that, while AIA is a facilitated airport and no slot constraints seem to be present there, other Greek airports are coordinated airports and appear subject to some slot constraints at least during certain times of the day and certain days of the week in the summer period.

(547) Based on information received from the Hellenic Slot Coordinator regarding runway, terminal and apron capacity utilisation per hour and day of the week, the

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379 The rules on slot allocation are set by Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at community airports, OJ L 14, 22.1.1993, p. 1.

380 See for instance Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, p. 9, paragraph 691.

381 Parties' response to the Statement of Objection, paragraph 10.50.

382 Parties' response to the Statement of Objection, paragraph 10.50.

following airports appeared to suffer from congestion during the summer period of 2010[383]:

i. airports somewhat congested in terms of: --runaway (arrival): Chania, Herakleion, Rhodes; --runway (departure): Chania, Herakleion, Rhodes; terminal (arrival): Herakleion, Corfu; --terminal (departure): Herakleion, Corfu; and --apron: Herakleion, Chios, Mytilini, Mykonos.

ii. airports not very much or slightly congested in terms of: --runaway (arrival): Chios, Mytilini, Kos, Kefallonia, Thessaloniki; --runway (departure): Chios, Kos, Kefallonia, Thessaloniki; terminal (arrival): Chios, Kavala, Mytilini, Mykonos, Santorini, Kos, Kefallonia, Thessaloniki; --terminal (departure): Kavala, Mytilini, Mykonos, Santorini, Kos, Kefallonia, Thessaloniki; --apron: Chania, Santorini, Kos, Kefallonia.

(548) Whilst Thessaloniki airport was not congested during the winter 2009-2010 period, respondents to the market investigation raised concerns about congestion during the summer period.

(549) A more detailed analysis of the airport capacity charts showed that congestion increased during certain hours of the day and in several cases during the week-end days as well as the beginning of the week.

(550) Most of Greek airports do not expect changes in the airport capacity during the next three to five years.[384] Terminal expansion is planned to start in late 2010 at the airport of Chania and possibly in two-three years time at the airport of Kavala. Apron capacity is likely to increase in the next three to five years at Ioannina and Mytilini airports.

(551) The airports of Chania and Herakleion seem unable to accommodate new airlines' base due to unavailability of space. Further, the airport of Chios stated limitations in its apron capacity as the reason why low cost carriers ("LCC") do not have a base there.

(552) To conclude, whilst the extent of the slot constraints appears limited overall, some Greek airports appear to be slot constrained at certain peak hours in particular during the summer. Therefore, new or expanding entrants are faced with some degree of congestion and space limitations in certain Greek airports (other than AIA), including airports serving thick domestic routes such as Thessaloniki, Herakleion and Chania.

1.5. Entry into the Greek domestic market is subject to overcoming a number of barriers

(553) A number of elements stand in the way of potential new entrants into the Greek domestic market. First, to compete efficiently on the Greek domestic market, any competitor has to have a base at AIA and operate a substantial number of flights out of Athens. Indeed, Athens is an important domestic point of origin/destination and also acts as an important distribution centre of international traffic coming from and to Greece.

383 Submissions of Hellenic Slot Coordinator of 05 October 2010 [ID 5255-5269].

384 Replies to phase II request for information to the HCAA of 13 August 2010 [ID 1067-1079].

There are a number of barriers to setting up a base in Athens, including the very high charges at AIA and the significant presence of both Olympic Air and Aegean deterring such new entry. Second, in order to appeal to the Greek domestic market, a known brand is needed, which takes time and investment to build. Third, airlines need to incur significant sunk costs. Finally, access to connecting traffic and the Greek distribution channels is important for credible and sustained entry.

1.5.1. To be efficient and to be able to compete with the merged entity, a new entrant needs to have a base at Athens

(554) Generally speaking, base operations confer significant advantages to airlines as they allow for flexible deployment of assets, ability to react to demand shifts and generate operational cost savings. As concerns Greek domestic market in particular, a base at AIA is crucial for airlines in order to be able to provide adequate coverage of the Greek domestic market and exert adequate competitive pressure on the merged entity. Given the high AIA charges, new entrants face significant difficulties to set up a base at Athens. As a result, such base entry is unlikely by any domestic or international airlines already present in the market on isolated routes.

1.5.1.1. Base operations provide significant advantages

(555) The term "base" is used in the airline industry to characterise airports where airlines base a certain number of aircraft and at which they concentrate their operations so as to be able to operate a number of routes out of these airports.[385] Setting up a hub or a base usually translates in hiring local staff and crew allowing airlines to optimize their costs. Traditional network airlines operate out of "hubs" which are in principle bases on a wider scale. While some airlines have only one hub/large base to benefit from substantial efficiencies achieved from centred operations, some airlines, especially low cost airlines or point to point airlines have numerous bases out of which they operate several routes.

(556) A base at an airport entails more than just 'overnighting' a number of aircraft. The base usually implies additional services, such as maintenance, consumer care, ground-handling services and probably keeping stand-by aircraft. Importantly, as opposed to simply 'overnighting' aircraft, a base allows to avoid the costs of accommodating staff and crew at a hotel.

(557) Aegean and Olympic Air have significant operations at AIA. In July 2010, Aegean and Olympic Air together had 43 out of a total of 51 aircraft based at AIA:

385 See for instance Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraph 691.

Airlines having a hub or base at LGAV	Number of aircraft stationed	Number of routes served
Aegean (AEE)	19	37
Olympic (OAL)	24	43
Athens Airways (ATW)	2	7
Lufthansa (DLH)	2	4
Hellenic Imperial (IMP)	2	Ad hoc operations
Air France/KLM (AFR-KLM)	2	2

Table 8: Operations of airlines out of AIA[386]

(558) As explained in earlier Commission decisions, in particular in the *Ryanair/Aer Lingus* decision[387], concentrating aircraft and traffic at a base can generate considerable cost savings and increased flexibility. In comparison to providing a point-to-point service on a single route without a base at either end, base operations provide numerous competitive advantages for the routes operated from that base. There are mainly two effects which arise from base operations. First, a base enables cost savings due to economies of scale and scope. Secondly, airlines can respond more easily and more quickly to changes, in particular unexpected demand shocks, on routes out of a base.

(559) The market investigation in this case largely confirmed that base operations lead to cost efficiencies arising from economies of scale and scope and increased ability to react to changes in demand.[388] The Parties did not dispute the existence of base advantages in general but argued that in this case these are limited due to the characteristics of the Greek market. To support their position, the Parties submitted an economic analysis ("Base Competition Paper")[389] about the importance of base competition. The Base Competition Paper argues, first, that due to the characteristics of the Greek market, the advantages from operating a base are limited and, second, that operating a base and its size is not important for entering the Greek market.

i) Increased flexibility in reacting to demand-side shocks

(560) Large operations at base airport allow faster responses to unexpected shocks or shifts in demand-side (but also supply-side) incidents on individual routes. The dynamic nature of competition in the airline industry is evidenced by the fact that airlines constantly adjust the capacity (and routes operated) in their network. In this respect both

386 Athens International Airport's reply to question 16 of phase I request for information to airports [ID 856]. For the purpose of this table, "base" means that at least two aircraft of an airline stay overnight at the airport.

387 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, p. 9, Section 7.3.4.1.

388 Replies to question 85 of phase I request for information to competitors of 25 June 2010.

389 Annex 1 (Importance of base competition) to reply of the Parties to the decision opening proceedings of 10 August 2010.

Aegean and Olympic appear to shift their frequencies from one route to another and open or close or change frequencies on routes out of Athens regularly.[390]

(561) Two types of “demand shocks”[391] may be distinguished in the airline industry.[392] First, certain shifts in demand, such as changed customer preference or a change in the overall income, can affect all routes out of an airport. The second type of changes in demand is route specific and these changes do not affect all routes in the same way. Route specific demand fluctuations can arise due to different weather patterns across destinations, important one-time events or festivities, or different seasonality patterns. In the case of route specific "demand shocks", having a wider route network at a base allows the airlines to adjust capacity to match such fluctuations in demand. Airlines can more easily reallocate planes, slots and crew, between the different routes in response to changes in relative demand or profitability without incurring significant additional costs or risks. An airline which does not have a significant presence at the airport would find it more difficult and time-consuming to react to such an increase in demand on a certain route.

(562) […]*[393]. The Commission agrees that, in principle, flexibility in aircraft use can be limited in this case due to the similarity in the seasonal pattern that the operated routes exhibit, at least compared to a situation where the seasonal patterns of these routes would be negatively correlated. However some of the thickest Greek domestic routes, like the routes from Athens to Thessaloniki, Herakleion, Chania, and Alexandroupolis, do not exhibit strong seasonality and are rather all-year-round destinations. In particular, […]*[394].

(563) The Parties also pointed out that the aircraft used on domestic and international routes are not of the same type, therefore limiting the extent to which they can be moved between routes. In that respect it is to be noted that Olympic Air uses Q100 and Q400 aircraft on PSO routes and Q400 aircraft on domestic and international thin/short routes, Airbus aircraft on thick domestic and longer distance international routes, and that Aegean also uses a mix of aircraft types on a number of routes (with Airbus operating both in domestic and international routes).[395] While fleet heterogeneity could indeed reduce to some extent the flexibility to move aircraft between routes of different size and limit the potential for economies of scope from increased aircraft utilization, it does not eliminate the flexibility to adjust capacity on routes out of the base airport and the advantages that it confers.

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390 For instance, in the summer season, frequencies are shifted from less seasonal routes such as Athens-Alexandroupolis to more seasonal routes such as Athens-Mykonos or Athens-Corfu.

391 A demand shock is a sudden increase or a sudden decrease in demand for the services provided.

392 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraphs 389-392.

393 Parties’ response to the Decision opening proceedings of 30 July 2010, Annex 1 (Importance of base competition), p. 5.

394 Aegean's counterfactual analysis dated 6 September 2010 in response to the Commission's request for information of 20 August 2010.

395 Parties’ response to the Decision opening proceedings of 30 July 2010, Annex 1 (Importance of base competition), p. 4.

(564) First, even accepting the categorisation of the Parties' fleet into "small" and "large" as suggested in the Base Competition Paper[396], a certain flexibility to shift aircraft within each of the aircraft categories would still exist even if the difference in the thickness/distance of the routes required employing aircrafts of different sizes.

(565) Secondly, contrary to the Parties' arguments, the ability to respond to changing supply and demand conditions in a flexible manner might actually be enhanced by the presence of a heterogeneous fleet, as it offers the advantage of better matching aircraft capacity to demand on individual routes. Operating with a heterogeneous fleet from a base allows adjusting capacity on different routes by adjusting the size of aircraft rather than frequencies. […]*[397]. For example, Olympic Air operates the Athens-Mykonos route in summer with DH4 and A319 aircraft, with a respective capacity of 78 and 138 passengers, and in winter with DH8 and AT4 aircraft, with a respective capacity of 37 and 46 passengers.[398]

(566) Thirdly, and most importantly, the Parties also argued that neither Aegean nor Olympic Air have a hub-and-spoke network at AIA but offer rather point-to-point services which limit the advantages of a base. However, relative to a hub-and-spoke network, in a point-to-point network, routes are less interdependent, at least in the sense that there is a need to coordinate departure and arrival times of passengers connecting through the hub. It is precisely the fact that routes tend to be less "complementary" in a point-to-point network than in a hub-and-spoke network which introduces flexibility to respond to unexpected shocks in one route by shifting assets, including planes and crews, from any other route where resources might be slack. This confers Olympic Air and Aegean a competitive advantage over their actual or potential competitors that do not enjoy such flexibility and thus increases the competitive constraint they mutually exert on each other in domestic routes.[399]

ii) Demand-side economies of scope

(567) The Parties argued that economies of scope on the demand side stemming from operating many routes from the same base, which allows for the possibility to reach many destinations through connecting flights, to accumulate frequent flyer points and also leads to "inherent marketing advantages", were limited in this case.

(568) First, according to the Parties, since neither Aegean nor Olympic Air are network hub-and-spoke operators, the importance of connecting passengers on Aegean‘s and Olympic Air‘s networks is very low.[400] However, although Aegean‘s and Olympic Air‘s

396 Parties' response to the Decision opening proceedings of 30 July 2010, Annex 1 (Importance of base competition), p. 19. The paper groups Aegean airplanes into "small" (Avro RJ100 and ATR-72) and "large" (Airbus A321 and A320) aircraft.

397 Form CO, paragraph 281.

398 The same pattern may occur also during ad hoc periods throughout the year such as Easter. This flexibility is not limited to seasonal fluctuations but applies equally to daily or weekly variations.

399 This flexibility might be affected to the extent that the Parties promote connectivity through coordinating arrivals and departure times across different destinations.

400 Parties' response to the Decision opening proceedings of 30 July 2010.

respective domestic network can be considered point-to-point, the Parties themselves argued that connectivity of domestic with international routes is important.[401] […]*.

(569) Furthermore, the base at AIA, with a significant domestic and international network out of Athens offers both Aegean and Olympic Air an additional advantage in negotiating corporate contracts (which are usually of a higher yield) with Greek firms or large multinationals that require extensive frequencies and tend to value an extensive domestic or international network footprint.[402] An airline without an extensive domestic and/or international network out of Athens would be less able to compete for corporate contracts.[403] This is supported by Olympic Air's counterfactual submission, where, in the context of possible restructuring, it is stated that […]*.[404] Furthermore, a base at AIA enables both Olympic Air and Aegean to benefit from connecting passengers coming from international and domestic destinations. This aspect is further developed below in Section IX.1.5.4.

(570) The Parties also maintained that Aegean's and Olympic Air's customers do not demand a high number of routes implying that any positive effect stemming from passengers' strong preference for the two airlines' services because of the possibility to accumulate Frequent Flyer miles on different routes is limited. In support of this argument the Parties presented an analysis of the flying behaviour of Olympic Air's top 100 frequent flyers. The Parties show that, on average, [70-80]*% of the flights of a frequent flyer passenger are on the so-called "main" route, which is the route most often travelled by each individual passenger. For half of these frequent flyers, trips on the main route accounted for more than [80-90]*% of the total trips.

(571) It is not obvious, however, why Olympic Air's top 100 frequent flyer passengers should be considered representative of the entire population of frequent flyers. These frequent flyers might be business passengers from a particular Greek region travelling regularly to the same destination (place of business/subsidiary/business partner). For this subgroup of frequent flyer passengers Olympic Air's associated economies of scope might be limited. However, this should not necessarily be the case for many less FFPs members who might choose Olympic Air over other airlines also on the basis of their FFPs membership and regardless of the final destination of each of their travels. In addition, it is true that Olympic Air's top frequent flying passengers still fly on routes other than their "main" route with the same airline. Moreover, to argue that there is no demand by Olympic Air's passengers for a high number of routes is necessarily incomplete when it does not rely on the entire travel history of passengers (for example, with other airlines on routes not served by Olympic Air). This is relevant for the strength

401 Parties' response to the Decision opening proceedings of 30 July 2010.

402 The way this international footprint can be achieved, notably using agreements with other airlines, is also discussed in Section X.2.1.4.2 and in Annex 2.

403 In that respect, it is worth noting for instance that the majority of corporate customers do not consider the brand name of Athens Airways particularly appealing. Among the reasons provided are the limited schedule, few destinations, frequencies and advertising, see: Replies of corporate customers to question 47 of the phase II request for information to corporate customers of 13 August 2010.

404 […]*.

of the demand side economies of scope post-transaction when the respective FFPs of Aegean and Olympic Air will be united.

(572) In addition, the analysis referred to the main route travelled by each of the top 100 frequent flyer passengers. However, the analysis did not examine whether the main route was different for each of top 100 frequent flyer passengers. The fact that a number of passengers use a certain route intensively does not mean that the rest of the population is not interested in travelling to different destinations. Moreover, opening a new route is likely to increase the demand for air travel. For instance, passengers willing to travel to a certain destination, before the opening of a new route, might have had to fly to a different airport and take a ferry, car or train to complete their journey. While some passengers might have been discouraged from such a trip, the opening a new route may change their incentives and result in increased traffic. Also, the introduction of new frequencies increases the attractiveness of a destination.

(573) Moreover, the Parties claimed that the majority of bookings were made via travel agents, excluding the existence of "*inherent marketing advantages*".[405] The existence of 'inherent marketing advantages' allows an airline to generate traffic on routes originating at the airport where large scale operations are based. Passengers' awareness of an airline presence, possibly because of previous travel on a different route, would increase the likelihood that passengers would consider such airline when planning a trip. The Parties claimed that this potential advantage is limited because of the low internet penetration and credit card ownership in Greece,[406] the resulting low proportion of sales over the Internet and, respectively, the high proportion of tickets sold via travel agents, in particular for Olympic Air.

(574) The evidence provided by the Parties suggests that, currently, the proportion of tickets sold over the Internet is not very high. However, the proportion of passengers concerned is not negligible. As much as sales through travel agents are important, the market investigation revealed that the use of internet for ticket booking within Greece was a significant part of the distribution channels and growing.[407] Moreover, irrespective of the distribution channel, brand awareness and reputation affect passengers' willingness to pay and, therefore, their choice of an airline. The market investigation largely confirmed that brand and good reputation played a significant role in the choice of an airline by passengers[408]. Concerning Greek passengers, in particular, a majority of respondents considered that they attached importance to an airline's brand when making their travelling decisions[409]. The importance of building brand recognition

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405 Parties’ response to the Decision opening proceedings of 30 July 2010, Annex 1 (Importance of base competition), p. 2.

406 However a competitor states the contrary to this claim. Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraph 37 [ID 3178].

407 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 15 [ID 4477]; agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 11 [ID 5236].

408 Replies to the question 68 of phase II request for information to travel agents of 13 August 2010.

409 Replies to the question 68 of phase II request for information to travel agents of 13 August 2010.

and the value that the Parties attach to Olympic Air's brand are revealed by the analysis and the evidence presented in Section IX.1.5.2.

iii) Cost savings arising from supply- side economies of scale

(575) Aegean and Olympic Air benefit also from supply-side economies of scale and scope stemming from spreading marketing, sales and catering, technical/ maintenance, airport costs, disruption and crew deployment costs (reduced costs for crew hotel accommodation and increased crew usage) as well as from optimal infrastructure use at their AIA base.[410]

(576) The costs associated with sales and marketing are largely fixed. Recovering these costs over a larger fleet of aircraft and a wider portfolio of routes therefore also translates into lower unit costs. Moreover, sufficient scale of operations at a base allows airlines to operate their own dedicated facilities such as own check-in and customer information counters, etc. at an airport, thereby providing passengers with higher levels of service at a lower cost. The market investigation evidenced the high charges at AIA; therefore entry has to take place on a sufficient scale to spread these charges, especially the fixed ones, throughout routes operated from/to Athens.

(577) A base with multiple aircraft also allows airlines to obtain better terms for ground handling services based on the more important volume. Similarly, with a base presence at AIA both Aegean and Olympic benefit from a stronger bargaining position relative to competing airlines. Indeed, due to the overall amount of traffic that either of the two airlines brings to AIA, they have more flexibility in the use they make of airport facilities. For instance, Aegean and Olympic Air have flexibility in allocating to certain flights gates in close proximity to main terminals, which ultimately leads to an increase in product quality at little or no additional cost. These advantages could not be easily replicated by a competitor operating or intending to operate in multiple domestic routes without setting up a base at AIA.

(578) The only two airlines currently operating domestic flights have a base at an airport other than AIA (Astra: Thessaloniki, Sky Express: Herakleion), in addition to having a very small fleet and a limited route portfolio.

iv) Cost savings arising from supply-side economies of scope

(579) Basing a number of aircraft at the same airport implies that airlines can also benefit from economies of scope derived from the ability to easily switch assets between routes.

(580) For example, a portfolio of aircraft allows improved aircraft utilisation by reducing overall fleet downtime in order to meet punctuality requirements since any temporary delays can be absorbed by using the ground time allowed for other aircraft in the portfolio. Additionally, airlines operating from a base can use the early morning slots at their base airport which are economically important since the demand for flights is particularly high at that time, in particular for routes where a significant majority of passengers originate at this end of the route.

410 Replies to question 85 of phase I request for information to competitors of 25 June 2010; replies to question 23 of phase II request for information to competitors of 11 August 2010.

(581) Indirect evidence of the importance of economies of scale and scope arising from base presence at AIA emerges from competitors' responses to the Commission's market investigation in this case. The market investigation confirmed that setting up operations at a new airport and promoting that entry requires important investment. In this respect, one respondent indicated that the most appropriate means to enter successfully the Greek domestic market was through a marketing campaign, to have dedicated aircraft as an investment in developing routes, staff to run the stations and other commercial arrangements. The financial efforts associated with undertaking such activities would be considerable.[411]

(582) Without a large number of routes over which to spread these fixed costs it would be difficult to achieve the same level of cost-efficiency that both Olympic Air and Aegean have, in particular in domestic routes. Ryanair stated that to be able to serve the Greek domestic market, it would have to open a base in Greece. Ryanair estimated that developing operations in Greece to the point where it could open a Greek base would take at least two to three years and would be subject to conditions that are not currently fulfilled.[412] Ryanair indicated that the level of airports charges, in particular at AIA, as the primary barrier to entry for low cost companies. According to Ryanair, entry can occur only if there is a reduction of the airports costs.[413] EasyJet stated that the merged entity's significant position in the Greek market would increase the degree of difficulty for any competing airline wanting to develop a base at AIA and that doing so would in any case require a significant investment to build up a marketing presence.[414] Therefore, operating a base at AIA is a prerequisite for sustainable entry in the Greek domestic market.

1.5.1.2. Having a base at AIA is an advantage for operations in the Greek domestic market and a prerequisite for any airline to be able to compete with the merged entity

(583) The Parties argued that it was not necessary for an airline to have a base at AIA in order to enter and compete on the Greek domestic market. According to the Parties this was due in particular to:

i. the presence of strong competitors on international routes without base at AIA;

ii. the fact that other airlines are able to compete by offering direct flights to holiday destinations and thus capturing this traffic does not require connecting flight through Athens;

411 Agreed minutes of a teleconference call with Carpatair of 23 August 2010, paragraph 13 [ID 5232].

412 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraph 12 [ID 3178].

413 Agreed minutes of a teleconference call with Ryanair of 19 November 2010, paragraphs 5, 6 and 13 [ID 6694].

414 EasyJet reply to question 78 of phase I request for information to competitors [ID 1843], "No significant airport related barriers to entry, but we note the merged entity would have an overwhelming presence on domestic routes. Any entry would be likely to require significant investment".

iii. Aegean and Olympic Air's low share of international passengers coming through AIA;

iv. the presence of a significant number of non-base operations of several airlines from numerous Greek airports; and

v. the number of airlines who overnight their aircraft in AIA such as Lufthansa, Swiss, Iberia, KLM, British Airways; Air France; Turkish Airlines; Alitalia, and others.[415]

(584) These arguments refer and apply mainly to international routes, on which competitors of Aegean and Olympic Air indeed usually operate from a base at the other end of the route or directly to the destination without a stop at AIA. Their reference to the strength of international competitors is of little relevance to the domestic market as these competitors do not serve Greek domestic routes but merely operate international flights to some typical Greek holiday destinations during a limited period of the year. Indeed, insofar as these airlines operate point-to-point operations to Greek (holiday) destinations, there is no need for connecting domestic flights. The reality is that where international airlines bring passengers to AIA, the vast majority of these passengers depend on Aegean and Olympic Air for further Greek domestic destinations.[416]

(585) Precisely because of their bases at AIA, Aegean and Olympic Air can conveniently schedule their flights so as to respond to both the local demand and the connecting traffic demand. The ability to operate times and frequencies well adapted to the market gives them another advantage vis-à-vis competitors not operating a base at AIA.[417] One competitor indicated that, because of the exclusive feeding of inbound international passengers, Olympic Air and Aegean's base in AIA exerts a commercial constraint on other airlines (not based at AIA) wishing to enter at a smaller scale or to operate individual routes out of Athens.[418] This issue was also emphasized by an aviation consultant, who considered that AIA was an important distribution centre for connecting international traffic to Greek locations, and that scheduling connecting flights would be an impossible task without a base in Athens.[419]

(586) Given that no other airline serving the Greek domestic market currently has a base at AIA, allowing it to efficiently adapt to the demand by opening, closing, or changing frequencies on the routes, Aegean and Olympic Air will be better placed to respond to any competitor without a base at AIA. Moreover, the advantages of the

415 Parties' response to the Decision opening proceedings of 30 July 2010.

416 It is noted that none of the international carriers which overnight their aircraft at AIA expressed in the market investigation any future plans to enter the Greek domestic market.

417 Agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 22 [ID 4424]. This is also confirmed by HALPA, see: Reply of HALPA to request for information of 05 August 2010, paragraphs 96 et seq. [ID 2109].

418 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 16 [ID 5145].

419 Agreed minutes of a teleconference call with Aviation Economics of 06 September 2010, paragraph 29 [ID 5394].

merged entity's base at Athens in terms of flexibility to adjust capacity and schedule can be used in order to deter entry (for instance, by reallocating slots in order to offer the most attractive schedule, by adjusting this schedule to match the competitor's departure times, or in general increasing capacity). The scope of such strategic behaviour vis-à-vis a competing entrant without an AIA base, who consequently does not enjoy similar flexibility, could increase after the transaction since currently the presence of the other base competitor (Olympic Air or Aegean) might act as a constraint (for instance, should one of the Parties reallocate capacity from a route to another one, where it is facing entry, there is a risk that the other Party would enter or expand on that route).

(587) In this context, it is important to note that according to HALPA, "*an airline must have operations from AIA because half of the Greek population live in or around the Athens area. However, AIA is very expensive and this may prove a hindrance to potential new players. Furthermore, HALPA explains that, for the time being at least, there is no possibility of opening another commercial airport within a 60 nautical miles radius of AIA – this was a specific contract condition when the Greek state sold (leased) AIA to its current lessees.*"[420]

(588) To conclude, base operations at AIA make Aegean and Olympic Air close competitors and therefore, an entrant attempting to constrain the merged entity in its domestic operations has to also develop a base at AIA.

1.5.1.3. High AIA airport charges constitute a barrier to setting up a base

(589) The Parties initially argued that charges at AIA did not constitute a barrier to entry.[421] In particular, according to the Parties, AIA advertises itself as having a very attractive marketing and incentive program for airlines wishing to operate from/to AIA. So far, airlines have not been deterred from operating from/to Athens. On the contrary, the practice evidenced in AIA's data submitted to the Commission shows that AIA is a popular airport to operate to/from[422]. In addition, the Parties also contested the relevance of AIA airport charges for the assessment of the barriers to entry on routes out of Athens as they claimed that airlines could successfully enter and expand their Greek operations without being based at AIA airport.[423]

(590) In their reply to the Statement of Objections and during the Hearing, the Parties did not contest the high charges of the AIA, contrary to their initial stance. However, according to the Parties, although AIA's costs are considerably higher than those of other main European airports, these costs are the same for all airlines[424], so that these costs would not be a barrier to entry. To the extent that Aegean and Olympic Air can ultimately pass the high AIA airport costs on to passengers, new entrants would be able to do the same. Moreover, to the extent that new entrants are more efficient, they would

420 Agreed minutes of a teleconference call with HALPA on 30 August 2010, paragraph 23 [ID 4428].

421 Parties' response to the Decision opening proceedings of 30 July 2010.

422 Parties' response to the Decision opening proceedings of 30 July 2010.

423 Parties' response to the Decision opening proceedings of 30 July 2010.

424 Parties' response to the Statement of Objections, paragraph 2.55.

have both the ability and incentive to exercise a competitive constraint on the merged entity.

(591) During the Hearing, the Parties also urged the Commission to take action with a view of alleviating the high costs faced by airlines operating at AIA.[425] However, the Parties reiterated their argument that AIA charges still are not a barrier to entry as the same charges apply to all airlines, including Olympic Air and Aegean.[426]

(592) According to the Parties, high costs mean that an airline will have to collect higher revenues to cover the costs. If the merged entity were to raise its fares to supra-competitive levels, there would be a *'golden opportunity'* for competitors such as Ryanair or easyJet to enter. To the extent that future entrants are more efficient, this will allow more efficient entrants to charge lower fare levels than the merged entity and still cover their costs including the costs from operating a base at AIA.[427] However, such argument remains irrelevant in so far as low cost airlines ("LCCs"), such as Ryanair or easyJet, stated in the market investigation that they would not establish a base at Athens because of reasons unlikely to change within the relevant timeframe of the Commission's prospective analysis. Both easyJet and Ryanair confirmed the very high charges at AIA.[428] For the time being Ryanair does not operate any route out of AIA.

(593) For Ryanair, it should be noted that setting up a base at a primary airport with the level of charges such as AIA is incompatible with their business model[429]. Indeed, Ryanair's business model resides in its ability to charge low prices (due to low costs of operations) and not in passing on high airport costs to their passengers. As a result, the Parties' argument about passing on high charges to the passengers cannot be applied to all airlines as some airlines do not operate on this basis. Ryanair considered the level of airport charges at various Greek airports to be *"the main barrier for low cost companies such as (Ryanair) to establish themselves in this market"*.[430]. The high charges at both AIA and Thessaloniki, but in particular at AIA are *"...incompatible with (Ryanair)'s low cost model and seriously restricts the growth at these airports"*.[431] Ryanair quantified

425 Aegean's Vice-Chairman stated: *"So the question is does the Commission have a job to do? Yes, I think the Commission must go chase after AIA please. But AIA makes € 400 million revenue and last year it had €280 million of profit. This sounds like monopoly profit. Now our company, Aegean, has contributed taxes to the Greek state in 11 years. So please make the airport cheaper and you will have additional entry in the future. You have to fix what is wrong and you should address the charges of the airport."* [11112010AMInCameraSession 46:03 – 47:50]

426 Parties' response to the Statement of Objections, paragraph 2.54.

427 Parties' response to the Statement of Objections, paragraphs 2.55 and 10.19.

428 Agreed minutes of a teleconference call with Ryanair of 19 November 2010, paragraph 5 [ID 6694]. Agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 27 [ID 4424]. E-mail sent to the European Commission by easyJet on 19 November 2010 [ID 6237].

429 Ryanair explains that the high charges at AIA (also for Thessaloniki although lower than AIA) are incompatible with its low cost model and seriously restrict their growth in these airports. Agreed minutes of a conference call with Ryanair on 19 November 2010, paragraph 5 [ID 6694].

430 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraph 3 [ID 3178].

431 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraph 5 [ID 3178].

the degree of incompatibility by stating that "*for FR (Ryanair) to consider opening a route to/from ATH airport, the airport would have to reduce its costs by* […]*%."

(594) […]* [432] [433]

(595) AIA is indeed significantly more expensive than other Greek or international airports[434]. Several respondents even indicated that AIA is one of the most expensive airports in Europe[435].

(596) In this respect, the market investigation indicated that high airport charges may constitute a barrier to entry, in particular as concerns airlines setting up their operations at AIA. SkyExpress characteristically mentioned that: *"no new airline in aviation history would be able to survive opening their first base in AIA because it is "1000 times" more expensive than other airports. On the other hand ... Thessaloniki Airport is more reasonably priced because this is a state owned airport."*[436] Sky Express also expressed the view that the high airport charges at AIA were a barrier to entry (or expansion) on routes originating from Athens and barrier to setting up a base.

(597) The level of costs associated with airport charges appear to be particularly important for both the entry of LCCs on routes to/ from Athens as well as for small entrants.

(598) Internal documents belonging to Olympic Air revealed that costs related to operations at AIA represent a very large proportion of Olympic Air operating costs.[437] It is also acknowledged in the internal documents that high airport charges are *"ultimately passed on to the passengers and thus inhibit Air Transport demand in Greece"*.[438] This statement shows that the Parties do believe that high airport charges at AIA constitute a barrier for the development of the market.

(599) As a result, the high charges at AIA constitute a deterrent for domestic and international airlines (in particular for LCCs) to set up a base in Athens in the absence of which no international or domestic airline has the ability to efficiently constrain the merged entity as concerns Greek domestic routes from/to Athens.

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432 Agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 27 [ID 4424].

433 Reply to questions 42 and 43 of the phase II request for information of 11 August 2010.

434 Reply of the Parties to question 19 of request for information of 20 July 2010.

435 For instance CyUprus Airways, see: Reply to question 26 of request for information to competitors [ID 3443].

436 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 5 [ID 5398].

437 "OLYMPIC AIR MERGER THOUGHTS", Email from George Koulouris to Andreas Vgenopoulos of 2 February 2010, 13:59.

438 "OLYMPIC AIR MERGER THOUGHTS", Email from George Koulouris to Andreas Vgenopoulos of 2 February 2010, 13:59.

1.5.1.4. International airlines operating on international routes to Greece are unlikely to set up a base at AIA

(600) A number of international airlines operate international flights to Greece from their home bases/hubs. While traditional national network airlines operating a one hub strategy can be outright excluded from the potential candidates that might set up a base at AIA, LCCs operating from multiple bases would be more adapted to such a venture.

(601) Throughout the case, the Parties claimed that easyJet and Ryanair in particular were likely entrants into Greek domestic market through setting up a base at AIA. This would be in line with their business models of serving point-to-point operations from various bases in Europe.

(602) The Commission examined the likelihood of these two airlines developping operations in the Greek domestic market by setting up a base. On the basis of the Commission's investigation it appears that, while these LCCs may expand their operations in Greece by adding further international routes to Greek destinations, it is unlikely that LCCs would enter Greek domestic destinations and set up a base at AIA.

EasyJet

(603) EasyJet operates domestic routes in France, Spain and Italy, and indicated that operating domestic routes was not incompatible with its business model. However, in the market investigation, easyJet explained that *"the decision to enter or expand in markets that are based on the expected financial performance which is determined by a combination of the expected fare and the costs"* and that "[…]*".[439] EasyJet further noted that the merged entity "*will have a significant position in the Greek market with very limited competition from alternative Greek carriers. This would increase the degree of difficulty for anyone who wants to develop a base at Athens*".[440]

(604) The limited likelihood of easyJet entering into the Greek domestic market is further underlined by other documents received in the course of the market investigation, including press coverage on easyJet statements concerning the high charges at AIA.[441]

Ryanair

(605) Ryanair also operates six European routes to Greece, four from Italy and two from Germany serving Volos, Rhodes and Kos with two weekly frequencies. Although Ryanair indicated its belief that there was substantial demand to justify increasing flights to Greece in the next years, Ryanair did not commit to flying to any particular Greek airport. Ryanair indicated that AIA and Thessaloniki were highly expensive airports and as such incompatible with its LCC model. These airport charges seriously restrict their

439 Reply to questions 42 and 43 of the phase II request for information of 11 August 2010.

440 Reply of easyJet to question 79 of phase I request for information to competitors of 25 June 2010 [ID 1843].

441 Email of easyJet of 19 November 2010 [ID 6237] and email to the Parties of 22 November 2010.

growth potential in these airports as they do not allow to generate demand through lower prices.[442]

Cyprus Aiways

(606) Cyprus Airways operates five routes to Greece, one of which is LCA-HER-RHO-HER-LCA[443] and another LCA-SKG-CDG-SKG-LCA[444]. Cyprus Airways is in very dire financial situation as further explained in the Commitments section, that is in Section XI. Under these circumstances, it is considered very unlikely that Cyprus airways will engage in expansion projects in the Greek domestic market and open a base at AIA, even if the transaction takes place.

Carpatair

(607) Carpatair is a Romanian airline based in Timisoara (Romania). Besides operating domestic routes in Romania, it specialises in traffic between Romania and Italy. It also serves several other foreign destinations, including one destination in Greece, namely Timisoara-Athens. Carpatair was not mentioned in the Form CO as a candidate for entry into the Greek market.

(608) According to Carpatair, it will probably start new destinations to or from Greece in the next summer season. It is considering establishing a partnership with a local airline, including the Parties, in order to operate jointly on Greek domestic routes. It also considers that the aircraft operating in the morning Timisoara-Athens could then serve the domestic market before returning in the evening to Timisoara. In the longer term (two to three years) an aircraft could be placed at AIA. Carpatair indicated that if it were awarded a PSO route, this would support its decision to enter the Greek market[445].

(609) Subsequently, Carpatair clarified for which domestic routes in Greece it has entry plans: "[…]*", as it has the appropriate equipment for PSO routes, and its plans do not relate to any domestic routes for which competition concerns were identified in this Decision. Furthermore, "[…]*"[446].

(610) Thus, it is considered unlikely that Carpatair would in the near future operate scheduled flights within Greece other than PSO routes. Hence, it is considered very unlikely that Carpatair will open a base at AIA, even if the transaction takes place.

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442 Agreed minutes of teleconference call with Ryanair on 19 November 2010, paragraphs 2, 5 and 6 [ID 6694].

443 Larnaca – Herakleion – Rhodes – Herakleion – Larnaca.

444 Larnaca – Thessaloniki – Paris Charles de Gaulle – Thessaloniki – Larnaca.

445 Agreed minutes of a teleconference call with Carpatair of 23 August 2010, paragraphs 4 and 11 [ID 5232].

446 Reply of Carpatair to request for information of 16 November 2010 [ID 6195]. These clarifications are in line with Carpatair's earlier statements that *"it is almost impossible for a small carrier to directly enter a market where two big airlines already operate.* […]**"*, see agreed minutes of a teleconference call with Carpatair of 23 August 2010, paragraph 18 [ID 5232].

1.5.1.5. There is no alternative for international airlines to serve Greek domestic market without a base at AIA

(611) The Parties argued that for international airlines already operating flights to numerous Greek airports it would be operationally easy to "join the dots". For instance, easyJet which operates to ten airports in Greece could thus join the dots by adding domestic flights between them. Air Berlin likewise has extensive operations to nearly 20 airports in Greece. According to the Parties various international airlines already offer domestic flights as part of an international journey.[447]

(612) First of all, the market investigation did not reveal any specific airlines intending to "join the dots" in the foreseeable future. As to various international airlines offering domestic flights as part of an international journey, the market investigation did not identify any airline willing to do so in the future through Athens.[448]

(613) Secondly, "joining the dots" is unlikely to be profitable without significant direct point-to-point traffic between two domestic destinations. This would require investments related to the establishing of commercial presence on various domestic routes, which international airlines do not appear to be ready to make. More importantly, all of the routes of concern in this case involve AIA, so connecting two domestic destinations other than Athens is of limited consequence to the assessment of the competitive effects of the transaction.

(614) The extent to which foreign competitors without an AIA base could perform “W” or triangle pattern routes was investigated. According to the Parties “W” or triangle pattern routes could substitute the need for an AIA base. The market investigation generally ruled that option out because of the operational complexity it would entail. While easyJet operates "W" flights in Europe and, for instanc,e connects Nice with Brussels from its well-established base at Zurich, easyJet has ruled out […]*.

(615) As a result, given the geographic location of Greece, alternative “W” flights to serve Greek domestic routes by international airlines based at airports outside of Greece and operating various international flights to Greece cannot be sufficiently efficiently performed. This conclusion can be extended to domestic operators without an AIA base. It follows that in absence an AIA base, no international or domestic airline can credibly constrain the Parties as concerns Greek domestic routes originating in Athens.

1.5.1.6. Actual domestic competing airlines are unlikely to establish a base at AIA

(616) Having an AIA base is crucial in order to cover the Greek domestic market and, in particular, the demand on routes originating out of Athens. In the absence of such base, domestic competing airlines may constrain the merged entity only on individual

447 Parties’ response to the Decision opening proceedings of 30 July 2010.

448 As an example, Cyprus Airways offers a route Larnaca – Herakleion – Rhodes – Herakleion – Larnaca. In the context of serving the Larnaca -Herakleion route, seats on the HER-RHO-HER legs are offered to the Greek market, see: Agreed minutes of a teleconference call with Cyprus Airways of 2 September 2010, paragraph 4 [ID 4991].

routes on which they operate. The degree of competitive constraint on individual routes depends on whether the Parties' competitors operate a base at the other end of the route.

(617) There are two Greek domestic scheduled airlines established in the domestic market, but none has a base at AIA. Astra has a base at Thessaloniki airport and Sky Express has a base in Herakleion. Given that these two airlines are not based at AIA and operate only a limited number of routes to Athens, their ability to competitively constrain the merged entity on routes out of Athens would be at best limited.

(618) Astra and Sky Express operate a limited number of routes, usually where there is no competition.[449] This implies that these airlines have largely confined themselves to being regional niche airlines. For that reason it is unlikely that Astra and/or Sky Express would consider entering domestic routes on which the transaction eliminates the competitive constraint exerted by Olympic Air and Aegean on each other pre-transaction. To become a credible and committed competitor on the overall Greek domestic market implies serving an important number of routes out of Athens which requires establishing an AIA base. Currently without an AIA base, Astra is unlikely to be interested in domestic routes other that those departing from Thessaloniki airport.[450] Similarly, Sky Express has confirmed that its future orientation will be limited to seeking niche markets, and that it would consider entering only those routes that do not originate from the expensive AIA base.[451] Both airlines indicated that they would not base themselves at AIA.[452]

(619) The Parties indicated in their reply to the Statement of Objections that "*Astra indicates it is interested in expanding and opening a second base*"[453], and that it would probably open a base in Athens. The Commission notes that Astra indicated that "*The company intends to move to another base (such as Athens but for the time being, it is focused only on routes originated from Thessaloniki, as it has strong links to the local market. It would be a second base (by no means replacement)*".[454] A second base therefore remains only a remote possibility, in particular in the light of Astra not entering into Greek domestic scheduled services. Indeed, Astra clearly stated that *"It is a firm decision of Astra's shareholders not to enter into Greek domestic scheduled*

449 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraphs 6, 10 and 16 [ID 4477]. Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraphs 2 and 3 [ID 5398].

450 For instance, Astra refers to the merged entity's capacity to dump prices. Agreed minutes of a teleconference call with Astra, 25 August 2010, paragraphs 10 and 11 [ID 4477]. Also exchange of e-mails with Astra [ID 6194].

451 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 8, 12, 13 [ID 6673].

452 Agreed minutes of a teleconference call with Astra, 25 August 2010, paragraphs 7, 16, 21 [ID 4477] and email from […]* (Astra) of 16 November 2010 [ID 6859], explaining that it is a firm decision of Astra's shareholders not to enter into Greek domestic scheduled services. Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 8 [ID 6673].

453 Parties' response to the Statement of Objections, paragraph 10.28.

454 Agreed minutes of a teleconference call with Astra, 25 August 2010, paragraph 7 [ID 4477].

services".[455] The Parties' assertions about the entrance of Astra at AIA are therefore irrelevant for the relevant markets in this case. Besides, the Parties indicated that Astra had recently entered the Athens-Kos route. This is factually incorrect. Astra never operated nor intends to operate the Athens–Kos route[456].

(620) The detailed situation of Astra is further analysed in Section IX.1.6.2.1.

(621) Finally, Hellas Jet, which has currently no operating licence, and Hellenic Imperial indicated that they might eventually operate domestic routes out of Athens. This is analysed in detail in Section IX.1.6.2.2.

(622) Although the niche orientation of Astra and Sky Express and their very limited fleet already limit their competitive constraint on the Parties, it was verified whether these airlines could operate a wider number of routes than they currently operate from Thessaloniki airport and Herakleion respectively. Without a base at AIA, such services would require operation of so-called "W" flights. In practice this means that these airlines have to fly planes from their base at Thessaloniki airport and Herakleion to Athens in the morning, and then back to their base in the evening. Such operations are inherently more costly, especially if the route from the base to Athens is not commercially extremely attractive or is already served by several airlines. This is confirmed by a competitor, according to whom, serving routes out of Athens via "W" flights from a base different from Athens (or keeping an aircraft for 8-12 hours in Athens) is costly.[457] In this context, SkyExpress also explained that *"in theory they could enter the HER-SKG route and on this basis fit in there some W flights to ATH such as for instance HER-island-ATH-island-HER. However, any such operation would be conditional upon Aegean and Olympic not operating or at least not employing a jet aircraft*"[458].Therefore, even if it would theoretically be possible for SkyExpress, a domestic operator, to operate W-flights, this would clearly not be rational economically.

(623) Therefore, and in particular in view of the fact that current domestic competitors, that is Astra and Sky Express, neither have a base in Athens nor intend to set up such base post transaction, it can be concluded they will not enter domestic routes in Greece.

1.5.1.7. Conclusion

(624) Consequently, base operations confer significant advantages to airlines as they allow for a flexible use of assets and for quick adaptations to changes in demand and supply conditions. Both Olympic Air and Aegean operate a base at Athens. Given that there are no likely alternative solutions such as “W” flights from bases outside of Greece, an AIA base can thus be considered as a prerequisite for any airline to efficiently competitively constrain the merged entity as concerns Greek domestic routes from/to Athens. High AIA charges constitute a barrier to setting up a base in Athens. As

455 Email from […]* (Astra) of 16 November 2010 [ID 6859].

456 Email from […]* (Astra) of 16 November 2010 [ID 6859].

457 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraphs 63-64 [ID 5236].

458 Agreed minutes of a teleconference call with SkyExpress of 17 November 2010, paragraph 9 [ID 6673].

a result no actual domestic or international airline is likely post-transaction to set up a base at AIA and thus exert credible competitive constraint on the merged entity.

1.5.2. New entrants would need to develop a brand to gain brand awareness similar to Aegean's and Olympic Air's brand

(625) The market investigation showed that both Parties' brands and, in particular Olympic Air's, are considered to be strong brands, widely recognised among Greek passengers.

(626) Globally, most respondents to the market investigation acknowledged that both airlines possess a strong brand image both in the Greek market and beyond Greek national borders[459]. This is particularly true for the Olympic brand, considered an *"inherent piece of Greek national tradition"*. It is one of the most valuable brands both in the country and internationally and is intrinsically appealing to airline passengers in Greece.[460] Aegean has over the years presented itself as a 'serious operation' and thus has a strong brand too.[461] Air France stated that *"both brands are recognised in the same way by passengers. Olympic profits from the national flag carrier image of old Olympic, while Aegean has managed to build up a strong brand in its years of operation"*.[462]

(627) While Olympic Air indicated that brand as such had no value and that airline passengers only valued low prices, it also recognised that an airline must establish itself in the market and "build up" the market through awareness campaigns. In addition, Olympic Air's argument that converting to a mid/low cost airline would not be possiblebecause, *inter alia*, its brand value would depreciate significantly, indicates the importance attached to passengers' brand awareness. Furthermore, the CEO of Olympic Air, Mr Simigdalas, indicated in an interview that the brand was central to Marfin's decision to invest in Olympic Air: *"It [Olympic] is, by surveys, the most recognisable Greek brand around the world and a culturally important name [...] You don't leave what has come to be, either in perception or reality, a historic brand, just to die. You use that, even if you have been its competitor. And that was the whole idea"*.[463]

(628) Aegean's Vice Chaiman responding to the question why Aegean, instead of merging with Olympic Air, did not simply let Olympic Air exit the market as a result of market forces, stated "[…]*".[464]

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459 Replies to questions 45 and 46 of phase II request for information to corporate customers of 13 August 2010; replies to question 70 and 71 of phase II request for information to travel agents of 13 August 2010.

460 Parties' reply to request for information of 5 July 2010, p. 5.

461 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 57 [ID 5236]; agreed minutes of a teleconference call with Hellenic Imperial of 3 September 2010, paragraph 7 [ID 5242].

462 Agreed minutes of a teleconference call with Air France of 19 August 2010, paragraph 10 [ID 3093].

463 Airline Business, 16 February 2010 [ID 2240].

464 […]*.

(629) Strong recognition of the incumbent's brand makes it much more difficult for new entrants on domestic routes to attract passengers. In this respect, Sky Express noted that while its brand image was well known in Crete, it was unsure as to whether its brand would be equally well received at Athens or Thessalonik.[465]

(630) In the airline sector, customer loyalty to a particular brand (which might already exist due to national preference) is further enhanced by offering passengers FFPs. FFPs raise the cost to the passengers of switching between airlines by giving them a stronger incentive to fly with the same airline again.

(631) The size of Olympic Air and Aegean's overall network combined with the base presence at Athens, allow both airlines to offer attractive FFPs, even more so in view of the prospect that the merged entity would belong to Star Alliance, offering access to the powerful "Miles&More" FFP[466]. Moreover, the attractiveness of FFPs increase with the number of routes served because it allows passengers to accumulate points faster and offers more possibilities to redeem miles. Therefore, the fact that both Olympic Air and Aegean are based in Athens (where most of the domestic demand originates) further strengthens the effect of the FFP due to the wide portfolio of routes operated by Olympic Air and Aegean from Athens.

(632) The fact that Olympic Air and Aegean enjoy wide brand recognition, in particular domestically, implies high marketing costs for raising brand awareness, which any entrant in the Greek domestic market would need to incur in order to develop credible operations in the market. Such investments are largely sunk and therefore affect the entry decision of potential competitors. Moreover, unlike other fixed entry costs, advertising costs are endogenous. The economic literature[467] suggests that such endogenous fixed sunk costs (in advertising) may increase with demand, in such way that higher demand does not lead to new entry but to an escalation of advertising (and hence an increase in the cost of entry relating to brand building).

(633) The market investigation confirmed that building brand reputation is important for entry into the Greek market and that significant marketing costs are necessary. It is difficult and expensive for new airlines to build up a brand reputation and to compete with Aegean's and Olympic Air's brand support.[468] According to a competing airline "*for a newcomer into the Greek market… it would be expensive (…) to build up a brand*

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465 Agreed minutes of teleconference call with Sky Express of 17 November 2010, paragraph 12 [ID 6673].

466 To that effect, see also statement of Athens Airways of 19 November 2010; reply to the Commission's request for information of 16 November 2010 (response to question D) [ID 6193].

467 See for instance Motta, M., *Competition Policy: Theory and Practice*, Cambridge University Press, p.72, and the references therein.

468 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraphs 23-24 [ID 5398].

reputation."[469] Another stated that *"...a new entrant would have to make a significant investment to build up a marketing presence"*[470].

(634) In their reply to the Statement of Objections, the Parties also claimed that five (Cyprus Airways, easyJet, Ryanair, Hellas Jet and Sky Express) out of eight airlines did not consider branding to be a barrier to entry into the Greek domestic market and where airlines had raised brand as a barrier, the replies were considered too short or insufficiently detailed[471].

(635) As regards the five airlines which did not consider branding to be a barrier to entry according to the Parties, Cyprus Airways stressed that *"it [had] no experience of operating domestic Greek flights and therefore [could not] comment on how the Olympic Air, nor the Aegean Airlines brands are perceived in their respective domestic markets"*. Cyprus Airways however did not believe that an airline would face much difficulty in establishing its brand within the Greek market[472]. Another, easyJet viewed Aegean as an established brand within the Greek domestic market and that its strong presence on the market resulted of this. EasyJet explained that *"a new entrant would therefore need to consider the cost of marketing investment before entering"*.[473] Finally, Sky Express, commented that "*OA has one of the best brands in the world and that is why Aegean opted to keep the brand when deciding to merge"*. Additionally, Sky Express believed Aegean to also have a strong brand built up over the years. For a newcomer into the Greek market, Sky Express stated that *"it would be expensive for them to build up a brand reputation*".[474]

(636) As a result, the Parties' statement that five out of eight airlines did not consider branding to be a barrier to entry appears factually incorrect. Furthermore, a large majority of customers considered that brand names/good reputation play a significant role in the choice of an airline when booking tickets.[475]

(637) The Parties also indicated that *"if either brand was such a barrier, why did Athens Airways enter against both?"*[476]. However concerning Athens Airways, it suspended its operations in September 2010, showing that its entry against Olympic Air and Aegean was not sustainably successful. In this regard, almost all the corporate

469 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 24 [ID 5398].

470 Reply to question 79 of phase I request for information to competitors of 25 June 2010 [ID 1843].

471 Parties' response to the Statement of Objections, paragraphs 10.28 – 10.31.

472 Agreed minutes of a teleconference call with Cyprus Airways of 02 September 2010, paragraphs 21 and 22, [ID 4991].

473 Agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 24 [ID 4424]

474 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraphs 23-24 [ID 5398].

475 Replies to question 41 of Phase II request for information to corporate customers.

476 Parties' response to the Statement of Objections, paragraph 10.31.

customers indicated that Athens Airways brand was not appealing to Greek corporate customers.[477]

(638) Furthermore, Norwegian, an airline with flights to Greece, believes *"the stronger a brand is locally, the larger the competitive constraint is for a new entrant intending on entering the market. Should the OA/A3 merger be successful, [It] believes that this would present a competitive restraint on the Greek domestic market – especially for airlines depending on Greek passengers"*. Norwegian also explained that *"in order to establish itself [...][i]t was also necessary to invest in marketing to build the brand"*.[478] Also, Astra noted that *"only a brand of similar size and standing [of that of Aegean] could break into the Greek domestic market"*[479].

(639) Evidence gathered throughout the market investigation confirms the importance of marketing as a strategic competitive variable for both Olympic Air and Aegean as well as the increasing nature of marketing/advertising expenses. In this respect, it is recalled that:

a) In 2009, both airlines spent approximately EUR […]* million on marketing.[480] […]*;

b) According to the Parties, Aegean *"invested significant efforts to reinforce quality perception about its products and services"*[481].

(640) Moreover, Aegean expects marketing benefits and overall brand recognition from joining Star Alliance[482].

(641) Olympic Air itself is a good example of the difficulty and costs associated with entering into the market. Despite having a well established and highly recognised brand among domestic passengers in Greece, Olympic Air invested about EUR […]* million in marketing costs only in 2009 to relaunch its operation[483]. […]*[484]. Such expenditures are largely sunk and can generally be expected to lead to heavy financial losses in the short to medium run. The example of Aegean is relevant here. It took Aegean four years, following the start of its operations, to become profitable at an EBIT level.

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477 Replies to question 47 of Phase II request for information to corporate customers.

478 Agreed minutes of a teleconference call with Norwegian of 26 August 2010, paragraphs 48 and 29 respectively [ID 5248].

479 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 17 [ID 4477].

480 Reply of the Parties to question 18 of request for information of 20 August 2010.

481 Reply of the Parties to question 42 of request for information of 20 August 2010.

482 Reply of the Parties to question 2 of request for information of 20 August 2010.

483 Reply of the Parties to question 18 of request for information of 20 August 2010. […]*

484 Where Olympic Air maintains that the "[…]*", see: agreed minutes of conference call with Marfin of 23 August 2010.

(642) To conclude, in order to compete with the merged entity on the Greek domestic market, new entrants would need to develop a strong brand such as Aegean or Olympic. Only airlines with strong financial backing can be reasonably expected to undertake the necessary risks and absorb temporary losses in order to establish a brand and acquire sufficient passengers to become and remain profitable in the medium-run.

1.5.3. New entrants would have to cope with high sunk costs

(643) The Parties presented a table according to which six out of eight airlines do not consider sunk costs to be a barrier to entry.[485] Also, the Parties put forward that competing airlines, with low cost bases and small fleets of aircraft types, already operating in Greece on domestic and PSO routes have – owing to their small size - a smaller cost base[486].

(644) The market investigation revealed some different considerations. The likelihood of entry on a given route depends on the profitability the potential competitor would expect on such route. An important element for a potential entrant considering whether to enter a market is the level of sunk costs which it would have to write off in case of a failed entry. In this context, the Horizontal Merger Guidelines provide that: *"(...) a high risk and costs of failed entry may make entry less likely. The costs of failed entry will be higher, the higher is the level of sunk cost associated with entry."*[487]

(645) The significant marketing expenditure necessary for any new entrant to establish its brand in Greece and attract new passengers (and which represent a large, if not the largest, part of expenditure for opening a new route) can be considered as sunk costs should the entry fail. Furthermore, opening a new route out of Athens, let alone setting up a base at AIA, requires additional investments in new or at least newly leased aircraft or to deploy an aircraft from another route (with the related opportunity costs of losing that aircraft for services on another route). Apart from these sunk costs, additional costs are required to instal and operate the necessary ground services (boarding personnel, customer care personnel, technical staff, office buildings, but also costs for luggage handling, security, and other airport related costs etc.).

(646) In the airline industry, start-up operations by a new entrant are normally associated with certain initial losses. EasyJet stresses in that respect that "*a new entrant might expect to incur losses for a long period of time, relative to other aviation markets. It can generally be stated that the Greek market is relatively small compared to other markets and that a new entrant would thus have to offer low fares and be ready to bear significant losses for quite some time*."[488] Aegean also acknowledges that new routes are usually loss-making for an initial period of two years[489]. To build up a brand reputation able to compete with that of the merged entity, whilst at the same time assuming entry

485 Parties' response to the Statement of Objections, Table 18 and paragraph 10.39.

486 Parties' response to the Statement of Objections, paragraph 10.35.

487 Horizontal Merger Guidelines, point 69.

488 Agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 23 [ID 4424].

489 […]*.

losses for a period of at least two years would require significant investment[490]. Any new entrant, therefore, would have to incur high risks.

(647) The degree of risk associated with the sunk costs entailed by market entry is different according to the business model and the operational strategy of potential entrants.

(648) As to international network airlines and charter airlines, the market investigation showed, quite apart from sunk cost considerations, that potential operations on the Greek domestic market do not serve strategy of those airlines nor are they compatible with their business model and/or their financial situation.

(649) As to Greek domestic airlines, that would be potential new entrants, the sunk costs that accompany expansion are considerable, if not insurmountable. The same holds for established domestic airlines not based in Athens, although they already incurred part of the sunk costs required for entry in the Greek domestic market. Moreover, the smaller the aircraft fleet and the more reduced the number of routes they serve, the higher the unit costs for operating in the Greek domestic market.

(650) To conclude, entry entails a high risk of significant sunk costs for competitors in particular in view of Olympic Air and Aegean combined strengths, including brand recognition and their base at AIA.

1.5.4. New entrants would need access to domestic and international connecting traffic

(651) Unlike their competitors, Aegean and Olympic Air have significant operations on both international and domestic level. The profitability of Greek domestic operations depends in part on the connecting traffic fed in internationally, which in practice translates into a higher demand for the domestic segment which other domestic airlines currently cannot meet. The presence of Aegean and Olympic Air on international routes to/from Athens and most importantly their contemplated membership in Star Alliance ensure a flow of connecting traffic, which is to a much lesser degree available to other domestic competitors, thus, putting the latter at a competitive disadvantage.

(652) The information gathered during the market investigation suggests that the number of connecting passengers travelling on domestic routes is far from negligible. Internal documents of the Parties suggest that network considerations play an important role in their business decisions. The Parties argued on a number of occasions that connectivity was important for a significant number of their routes. Moreover, […]*.

(653) The importance of connecting traffic considerations was also recognised in a study prepared by AIA, according to which "*The business and transfer traffic segments of each route are estimated to be crucial to the successful reaction of the incumbents, as easyJet would not achieve a high penetration factor in these traffic components*" and *"In all markets, the connecting traffic for easyJet has been capped at a 5% level of its total*

490 To this effect, easyJet stated that for new entrants in the market investment in marketing is needed. Agreed minutes of a conference call with easyJet of 26 August 2010, paragraph 22 [ID 4424].

traffic in that route, as the UK low-cost carrier does not offer an official interline product and invariably carries low levels of connecting passengers"[491].

(654) Moreover, Aegean' membership of Star Alliance and Olympic Air's likely integration into an alternative alliance in the foreseeable future absent the transaction will further increase the options to receive traffic from international routes to feed the domestic network (and conversely). Indeed, a respondent to the market investigation pointed out: *"Star Alliance will become an even stronger player in the international routes ex and to Greece as it controls the majority market share of the market. Furthermore for destinations not originating or ending to Athens or Thessaloniki it becomes a full scale monopoly as it controls the whole domestic market. Passengers not originating from or to Athens and Thessaloniki will be forced to use Star Alliance through fares otherwise if they choose a non star member for the international route they will have to pay a very high premium for the domestic to reach the final destination which means that the total fare will be significantly higher from choosing Star Alliance all the way*"[492]. Another respondent also pointed to the expected benefits of Olympic Air's joining Sky Team in terms of access to feeder traffic and a better offer to Olympic Air's passengers, who could then connect to flights through it's partners' hubs: *"This could help Olympic develop both its leisure and business traffic to and from Greece and become a strong competitor of Aegean which is enjoying the same kind of benefits through its participation in the STAR Alliance*".[493] Furthermore, Athens Airways stated that *"the approval of the proposed merger would give rise to a monopoly at least as far as the domestic commercial/PSO routes are concerned, which would be in a position to eliminate competition and/or foreclose entry into the market both through the adoption of an aggressive/predatory policy and upon the basis of its significant financial resources, its membership with Star Alliance and the significant feed-in passenger traffic captured through this alliance"*.[494]

(655) In their reply to the Statement of Objections, the Parties state that it gives too much weight to travel agents' views when underlining the role played by connecting traffic in the context of airline alliance membership. According to the Parties, connecting traffic is not a barrier to entry[495].

(656) The Commission's assessment of connecting traffic is not based solely on the views of travel agents. The market investigation took into account the views of all third parties concerned, including those of passengers and a very significant number of competitors. Secondly and equally importantly, the Commission's investigation is also based on the positions, statements and documents provided by the Parties themselves. For instance, the counterfactual analysis provided in the context of the route-by-route

491 See page 2 and page 21 of the report attached to the email from […]* to […]* of 27 November 2009, 17:17; the report is based on data from October 2004- September 2005.

492 Reply to question 77 of phase II request for information to travel agents of 13 August 2010 [ID 3355].

493 Reply to question 50 of phase II request for information to competitors of 11 August 2010 [ID 3053].

494 Athens Airways reply of 19 November 2010 to the Commission's request for information of 16 November 2010 (response to question D) [ID 6193].

495 Parties' response to the Statement of Objections, paragraphs 10.40 -10.45 and in particular 10.43.

analysis indicates that on many routes the share of connecting passengers is significant, around 25 % on domestic and international routes[496]. In addition, alliance membership would impose conditions in terms of aircraft to be deployed, operating out of AIA, as well as other qualitative/quantitative requirements that none of the existing domestic competitors of the Parties are currently able to meet. Moreover, Aegean's membership in Star Alliance introduces a disincentive for other members to enter independently on the Greek domestic market. This is because such entry would cannibalise some share of Aegean's domestic passengers thus introducing tensions between partners and potentially inducing retaliation, particularly on the routes concerned.

(657) Therefore, the Commission concludes that the merged entity would have access to a large volume of connecting traffic, both international and domestic, not be easily accessible to a new entrant.

1.5.5. A new entrant would need access to Greek domestic distribution channels

(658) According to the information submitted by the Parties, currently, a significant proportion of sales is made trough travel agents, in particular for domestic routes and for Olympic Air flights. Other domestic airlines confirmed that travel agents represent the main distribution channel in Greece. Athens Airways stated that travel agents handle nearly 50 % of domestic tickets.[497] For Sky Express, direct-sales, achieved via internet or its airport desk, account for […]*% of its overall sales, while sales through travel agents account for […]*%.[498]

(659) According to Athens Airways travel agents are an important channel to enter the market. The airline believes that it is not easy for a new entrant to establish good connections with travel agents in Greece. For a Greek airline to achieve an appropriate network of travel agents in Greece takes at least a year[499]. Moreover, according to Athens Airways, commissions and incentives to travel agents are important costs, alongside advertising and communication costs[500].

(660) Entry in the Greek domestic market might require significantly higher investment, if there is a need to set up a distribution network through travel agents, compared to when sales are done mostly through the Internet. The time required for developing the distribution network as well as the associated costs (in particular promotional costs), which are likely to be to a large extent sunk, would affect the

496 Agreed minutes of a teleconference call with Olympic Air/Marfin on 6 October 2010, paragraph 9. For precise figures on different routes, see replies of the Parties to requests for information of 17 November 2010 and of 10 October 2010.

497 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 17 [5236].

498 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 27 [ID 5398].

499 Agreed minutes of teleconference call with Athens Airways of 18 August 2010, paragraph 17 [ID 5236].

500 Reply to question 40 of phase II request for information to competitors of 11 August 2010 [ID 3024].

expected profitability of entry putting potential entrants at a competitive disadvantage vis-à-vis Olympic Air and Aegean. Moreover, the Parties insisted that Internet penetration is lower in Greece than in most other European countries.

(661) The reliance of passengers on travel agents for ticket bookings and the particularly low Internet penetration in Greece, which was in 2010 significantly below the 27 Member States average, are in themselves barriers for LCCs to apply their business model to Greek domestic flight passengers, as confirmed by the Parties in the investigation.

(662) In the Reply to the Statement of Objections, the Parties claimed that the market investigation was based on a limited number of respondents and relying unduly on Athens Airways' stance that it would take a year to establish a sufficient network of travel agents.[501]

(663) The Commission's analysis relies on and includes all relevant categories of respondents, including the Parties themselves. The market investigation shows that, for a new entrant, access to a network of travel agents is required to successfully operate on a large scale in Greece, and that to develop such a network entails costs, which Aegean and Olympic Air already incurred. Even if travel agents were to actively support new or expanding domestic entrants in order to safeguard a degree of countervailing power vis-à-vis the merged entity, the limited number of routes that could be served by competitors, in particular without an AIA base, would severely limit their relevance and importance to the travel agents. As such, none of the current alternative domestic airlines can be considered as being able to replicate the distribution network of Aegean and Olympic Air in terms of quantity and ubiquity and to profit from the scale advantages that result from access to such distribution network.

(664) To conclude, Aegean and Olympic Air currently have access to well-established Greek domestic distribution channels. A new entrant, in order to exercise sufficient competitive constraint on the merged entity, will need to overcome the difficulties and costs of developing an equally efficient distribution network in Greece. None of the current domestic airlines is able to replicate the scale of an equally efficient distribution network in Greece.

1.6. Evidence on the transaction-induced entry in domestic routes

(665) Since new entrants on the Greek domestic market would face, post-transaction, a considerable number of hurdles, it is necessary to examine to what extent post-transaction entry would constrain the merged entity.

(666) For entry to be a sufficient competitive constraint on Aegean and Olympic Air, it must be shown to be likely, timely and sufficient in order to restore the competitive constraint Aegean and Olympic Air would exert on each other in the absence of the transaction.

(667) According to the General Court in its recent judgement in *Ryanair Holdings* v *Commission*, *"the mere 'threat' of an entry, on which the applicant relies, is not sufficient [...] What counts is the prospect of an entrant which offsets the anti-*

501 Parties' response to the Statement of Objections, paragraph 10.47.

competitive effects specifically established in the contested decision at that stage of the assessment"[502].

(668) Hence, the Commission has to ensure that transaction-induced entry is not only a theoretical and remote possibility, but constitutes an immediate and actual threat to the merged entity. Entry has to exert a competitive constraint on the merged entity to such an extent that the latter would refrain from any transaction-induced anti-competitive behaviour. It is not necessary to show that entry is impossible on a given route to dismiss the likelihood of entry as a countervailing factor. It is sufficient for the Commission to establish that the degree of likelihood of transaction-induced entry is low or that the scope of the expected entry is insufficient to defeat the anti-competitive effects of the transaction in all relevant markets. This holds in particular true in this case, as Olympic Air and Aegean hold very large market shares and are considered as close competitors on all relevant domestic markets.

(669) Furthermore, in order to be a countervailing factor, entry should compensate for the loss of competitive constraint that Aegean and Olympic Air would have exerted on each other in the absence of the transaction. Clearly, the total elimination of competition on the relevant domestic routes to and from Athens cannot be compensated by the potential of entry on an isolated route or an expanded entry by airlines operating some routes to and from Thessaloniki or to and from Herakleion. In other words, a selective entry whereby competing airlines either avoided competing with the merged entity or engaged in cherry picking routes out of cities other than Athens would not compensate for the loss of the competitive constraint.

(670) In markets in which Olympic Air and Aegean reach very large market shares or even create monopoly, a remote "likelihood" of entry which could offset the anti-competitive effects cannot be sufficient to dismiss the Commission's competition concerns. In such a situation, the significant impediment of effective competition cannot be dismissed without clear indications that actual or potential entry would constrain the merged entity's behaviour on relevant city-pairs.

1.6.1. Parties' arguments presented in their response to the Statement of Objections and at the Hearing

(671) The Parties pointed out that, in 2009, 13 new airlines started service to or from AIA (Athens Airways, Hellenic Imperial, Sun Express, Air Arabia, Baboo, Cimber Sterling, Libyan, Lvov, Transavia, Atlant-Souyz Airlines, Etihad, Pegasus and Kuban airlines). As a result, competition amongst the various airlines increased substantially. This allowed AIA to be the only European airport with an increased number of frequencies, thanks to its successful airline marketing programme: in 2009, AIA offered direct scheduled services to 113 destinations (80 international) in 52 countries, serviced by 70 airlines (including the 13 new entrants)[503]. The Parties further claimed that 21 Greek airlines and 26 new entrants in total entered the market over the past ten years with airlines like Athens Airways gaining a similar load factor to Aegean and Olympic Air within a few months of route commencement[504].

502 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 239.

503 Reply of the Parties to question 55 of request for information of 28 May 2010.

504 Parties's response to the Decision opening proceedings of 30 July 2010.

(672) The Parties further argued that LCCs in general have been growing rapidly at AIA which now has the third highest LCCs penetration of European airports, showing ease of entry in Athens since it is not slot restricted like many of the major other European airports and provides substantial incentives for new routes and frequencies[505]. In order to substantiate this, the Parties submitted a full AIA presentation on Low Cost & Alliances which shows that (i) between 2002 and 2003, there was one LCC at AIA; (ii) between 2004-2007, there was an exponential increase in the number of LCCs at AIA with this number reaching 16 LCC in 2008-2009; and that (iii) AIA was one of the top European airports for LCCs in 2008.[506]

(673) During the Hearing and in their reply to the Statement of Objections, the Parties claimed that the Statement of Objections's conclusion on transaction induced entry in domestic routes was incorrect and that the Commission had applied the wrong legal test. The Parties argued that most airlines having responded to the market investigation in this case had active expansion plans on Greek domestic routes but that these might require time to materialise. According to the Parties, it was inaccurate to dismiss the potential entry of eight airlines on the basis that they had no active and immediate plans for Greek domestic routes. Also, according to the Parties, it was not necessary to identify actual entrants as it would suffice to identify those potential competitors that could enter the market within two years. The Parties also raised the argument that the decision of several airlines to expand or enter into Greek domestic routes depended on the transaction going ahead. In addition, the Parties claimed that concrete plans of entry did exist in the form of 10 aircraft entering on domestic routes out of Athens. According to the Parties, the fact that such plans were under discussions shows that the threat of entry is real.[507]

1.6.2. Analysis of entry plans by actual and potential competitors in the Greek domestic market

(674) The Horizontal Merger Guidelines require that for entry to be considered as a sufficient competitive constraint on the merging parties, it must be likely, timely and sufficient.

(675) In relation to the Parties' arguments that the Commission should show that an entry is possible within next two years, the Commission believes that "possibility of entry" is not the right test. As already indicated, the appropriate test must determine the extent to which entry is likely, timely and sufficient so as to constrain any transaction-induced anti-competitive behaviour of the Parties. As a result, an analysis of the possibility of entry as presented by the Parties is irrelevant because it does not answer the right question.

(676) In addition, the Parties' arguments regarding the possibility of entry or expansion mainly focused on the timeliness of entry and on the fact that entry plans were under discussion. According to the Parties this demonstrated the reality of the threat to entry. However, entry cannot be not a "mere" threat but rather an identifiable prospect, at the

505 Parties's response to the Decision opening proceedings of 30 July 2010.

506 Reply of the Parties to question 2 and 42 of request for information of 25 August 2010.

507 Parties' response to the Statement of Objections, Chapter 10.

time of the Commission's assessment, sufficient to counteract the anti-competitive effects of the transaction.

(677) As concerns the Parties' claims about the existence of very dynamic competition in the Greek domestic market (evidenced by the significant number of entries and expansions over the recent years), a majority of these airlines were only performing charter operations, and were therefore not active on the market for scheduled services. In addition, a large majority of these entrants were forced out of the market rapidly after the beginning of their operations, thereby demonstrating that successful entry on the Greek market for scheduled air transport services is very difficult. Indeed, out of the 26 entrants listed by the Parties[508], only a few were active long enough to develop a market presence.

(678) In fact, the Greek aviation history is riddled with failed start-ups and prompt exits. Some of these larger start-ups concern limited charter flights such as Alexandair (closed down in 2008), EuroAir (closed down in 2009) and Venus Airlines (closed down in 1996). Others concern domestic flights, such as Cretan airlines (closed down in 1995), Air Sea Lines (closed down in 2008), Cretan Air (closed down in 2000). Air Greece and Cronus were acquired by Aegean respectively in 1999 and 2002.

(679) In their reply to the Statement of Objections, the Parties asserted that out of the eight competitors listed, five were already established on the Greek domestic market or wereestablished on some domestic routes until recently (Athens Airways, SkyExpress, Astra, Hellenic Imperial, and Hellas Jet). The sixth competitor mentioned is an international foreign full service airline (Cyprus Airways). Finally, the Parties submit that to two LCCs (Ryanair and easyJet), already serving the Greek market, albeit only with international connections, as allegedly having expressed an interest in expanding into domestic services[509].

(680) In this respect, the Commission analysed in detail the entry plans of each and every domestic and international potential competitor to assess the extent to which entry on an individual basis or an aggregate level would be sufficient to counteract anti-competitive effects of the transaction on the Greek domestic market.

1.6.2.1. Likelihood of entry by current Greek domestic competitors

(681) The only two domestic airlines currently 'in operation' in Greece, namely Astra and Sky Express, have a base at an airport other than AIA. Astra is based at Thessaloniki and Sky Express has a base at Herakleion. Both airlines are active on a limited number of niche domestic markets operated out of their bases with very small fleets.

(682) In their reply to the Statement of Objections, the Parties claimed that both Astra and Sky Express intend to expand in the Greek domestic market.[510] More specifically,

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508 Parties' response to the Statement of Objections, paragraph 10.51.

509 Parties' response to the Statement of Objections, paragraph 10.53.

510 Parties' response to the Statement of Objections, Table 1, page 17.

the Parties stated that Astra intended to establish a base at AIAI and that it had recently entered the Athens – Kos route. As to Sky Express, the Parties stressed its intention to enter the main Greek domestic routes only if the transaction went ahead.[511] Furthermore, according to the Parties, in case of a supra-competitive price rise by the merged entity, both Astra and Sky Express intend to accelerate their plans to enter with the effect of defeating any anti-competitive effects of the transaction.[512]

(683) The Commission carefully assessed the ability and intentions of Sky Express and Astra to enter the Greek domestic routes with scheduled services post-transaction. The Commission analysed the extent to which their expansion would be capable of defeating any anti-competitive effects of the transaction.[513]

Sky Express

(684) Sky Express was set up in Herakleion in 2005-2006 and mainly operates regional services pursuant to PSO awards in Greece. It is also active on one Greek domestic scheduled route Athens-Herakleion and operates numerous charter flights, mostly in the summer season. Sky Express' turnover in 2009 was less than EUR 7.5 million. It operated a fleet of three Turboprop aircraft with a capacity of 30 passengers each and was expecting delivery of two additional Turboprops before early December[514]. One aircraft was delivered by the end of 2010 delivery of one additional Turboprop aircraft is expected in early 2011.

(685) Sky Express currently serves eight "thin" PSO routes and its website indicates that one of its objectives is to develop new routes: "*Based on the reliability of the J31/2, Sky Express ordered two more Jetstream 41 with 30 seats, which arrived in June 2008, aiming to cover the high demand in our current schedule as well as developing new routes. The company plans to acquire three more J41s by 2010, thus achieving a total fleet of 7 Aircraft*".[515]

(686) Sky Express established itself as a niche player, and is not in direct competition neither with Olympic Air nor Aegean. Sky Express explained that they *"conducted different types of market surveys and had identified a demand in the Greek domestic market for point-to-point air travel that does not go through AIA. SEH considers this to be a niche market that is ideally served by the aircraft capacity of the Turboprop*."[516] Only recently did Sky Express test the market by commercially opening one daily frequency between their base in Herakleion and Athens. The decision to open the route was based on the fact that Sky Express operated the Athens-Kozani-Kastoria and

511 Parties' response to the Statement of Objections, paragraph 2.33 .

512 Parties' response to the Statement of Objections, paragraphs 2.39, 2.49, 10.5 and 10.6.

513 Further analysis is conducted route by-route, where relevant.

514 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 2 and 6 [ID 6673].

515 Reply of the Parties to question 42 of request for information of 20 August 2010.

516 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 8, [ID 5398]. SEH is Sky Express.

Athens-Skiros PSO routes. Sky Express stated that it made sense to open this route commercially to cover direct operating costs of the Herakleion-Athens flight necessary for the operation of the PSO routes out of Athens[517]. This service is of very limited scope, in particular because of the very small size of the aircraft used for such a thick route and because only one daily frequency is operated.[518] Sky Express explained that it was currently charging a flat fee on this route. In order to introduce another frequency on this route, Sky Express would need to charge twice the current fare prices. Furthermore, it would only be rationale for entry in this route if Sky Express were able to achieve load factor figures of around 75 %.[519]

(687) Sky Express stated that *"it does not take much"* to create a new route and "*if the proposed OA/A3 merger would be successful then it would consider expanding into the market*".[520] On average, according to Sky Express creating a new route would take about three months. It would expect to incur losses for […]* before the route's load factor reached high levels and became profitable (to. start breaking-even or better). This estimate would vary according to the number of frequencies, type of aircraft, and how well the route is known locally.[521]

(688) Sky Express could open new routes provided that this is in line with their business model to operate routes connecting PSO routes already operated by Sky Express, on which turboprop aircraft can be used and no competitor uses a jet aircraft. Indeed, Sky Express explained that *"irrespective of the merger they would not enter any route where one of the Parties operates a jet aircraft as simply they cannot compete with jet aircraft, such as Airbus A320. Therefore, as a matter of general policy Sky Express would not enter such routes"*[522]. While explaining the reasons to avoid head to head competition with large jets, Sky Express gave an example of *"unfair competition"*, where in 2006, it *"introduced a new route, KGS-SKG-KGS [Kos-Thessaloniki-Kos]. This route had about 15.000 pax[ssengers] a year. The route had an average load factor 85% until A3 decided to put an Airbus during the summer. This inevitably forced Sky Express out of the route."*[523]

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517 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraphs 15 [ID 5398] and agreed minutes of teleconference call with Sky Express of 17 November 2010, paragraph 6 [ID 6673].

518 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 6 [ID 6673].

519 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 7 and 10 [ID 6673].

520 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraphs 7 and 41 [ID 5398].

521 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 41 [ID 5398].

522 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 3 [ID 6673].

523 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 11 [ID 6673].

(689) In terms of aircraft, Sky Express already operates larger aircraft (161-seater/MD83) for charter operations only. In this respect, Sky Express explained that it uses large jet aircraft for charter operations from Crete and that *"in principle they would never use jet aircrafts for scheduled services in Greece, as it is not economically sound to use this kind of aircraft to fly to the islands"*. However, *"if the conditions are right and if there is spare capacity, the jet a/c that would mainly serve the charter needs may be also used in some high demand domestic routes without being able to commit at this time to which routes and at what frequency. Prerequisite to keep these routes would be to sustain a* […]**% average load factor"*.[524]

(690) Moreover, Sky Express considered that "*if more (aircraft) are necessary, then they will be added onto our AOC. These (aircraft) are inexpensive to acquire and there are plenty in the market*." In this regard, Sky Express added that *"[it] has not performed any assessments or business plans"* in order to operate this additional aircraft.[525]

(691) Sky Express does not have a base at AIA and *"would never consider having a base in ATH"*.[526] According to Sky Express, no airline in aviation history would be able to survive opening their first base in AIA because it is "1000 times" more expensive than other airports.[527]

(692) The fact that Sky Express ruled out that it would open a base at Athens shows that it intends to remain a niche player in the Greek market. While it cannot be excluded that Sky Express would enter new routes, these would likely be routes where no competitor is present, or at least where no competitor operates a jet aircraft such as Aegean or Olympic.[528] For the bigger aircraft, the MD83, Sky Express was not *"able to commit at this time to which routes and at what frequency"* it would use it.[529]

(693) More generally, the likelihood of Sky Express expanding on the Athens-Herakleion route and entering other domestic routes is further decreased due to its business model. Its business model is not to compete directly with airlines operating much larger aircraft, not to expand or add new routes in Greece if there is no change in the current domestic market, in particular a decrease of actual capacity of the merged entity on the routes, and not to compete against airlines employing jet aircraft.[530]

(694) Therefore, the competitive constraint that Sky Express could exert on the merged entity could not be compared to that currently exerted by Olympic Air and Aegean on each other. The possible expansion plans referred to by the Parties are unlikely to

524 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 14-16 [ID 6673].

525 E-mail of […]* of 29 September 2010, at 15:20 pm [ID 5167].

526 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 8 [ID 6673].

527 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 5 [ID 5398].

528 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 3 [ID 6673].

529 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 16 [ID 6673].

530 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 4, 13, 20 [ID 6673].

increase the competitive constraint in the future to a meaningful extent. Sky Express' recent flight operations between Herakleion and Athens are performed with aircraft unsuitable to adequately address demand. Flying a thick route such as Herakleion and Athens with a 30-seater aircraft is unlikely to be a credible competitive constraint to the merged entity which serves this route with large commercial aircrafts (A319/A320).

(695) Consequently, it is considered that Sky Express's expansion project is neither definite nor substantiated. Should expansion materialise in the future, it would likely remain of very limited scale and, as a consequence of Sky Express' business model, would not take place out of Athens. As a result, Sky Express cannot be considered as a likely and sufficient competitive force on the market, and in particular on the relevant routes, able to constrain the merged entity's behaviour post-transaction.

Astra

(696) Astra launched its operations in 2008 with base in Thessaloniki in order to operate *ad hoc*, pre-scheduled charter flights and ACMI (Aircraft, Crew, Maintenance, Insurance included – also called wet-lease) flights on behalf of other operators.[531] Astra's turnover in 2009 was approximately EUR 11 million.

(697) Astra's current activities on Greek domestic routes are very limited in scope. Astra currently uses two BAe 146/300 "Jumbolinos" with a 112-seater configuration[532] and it operates one PSO route, namely Thessaloniki - Chios.[533] After having been awarded the Thessaloniki-Chios PSO route, Astra saw an opportunity for operating the "W" line SKG-JKH-ATH-JKH-SKG (Thessaloniki-Chios-Athens-Chios-Thessaloniki). Astra operated this route from 1st July 2010 until 19 September 2010 when it stopped operating this route. Astra stooped operating that route because Aegean re-introduced another frequency and introduced promotional fares to the Athens – Chios route. Astra explained *"[they] reached a point where this particular routing was not only marked by overcapacity but also by promotional rates in the very heart of summer season [2010]."*[534]

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531 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 2 [ID 4477].

532 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 4 [ID 4477].

533 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 6 [ID 4477].

534 Astra's e-mail of 20 November 2010 [ID 6194]. Astra e-mail states the following: *"Routing: JKH ATH JKH. This is how the story goes. It was early jun10 when de decided to deploy a seasonal scheduled operation(1jul-19sep10) for domestic routing JKH ATH JKH.We thought it would be a trial period and if we achieved acceptable load factors and respective yield then we would continue into the tricky winter fall/period. We were urged by 3 main factors to be involved in it:We already operated the routing SKG JKH SKG(effective from 1apr10 as a PSO) and it would make a perfect sense(in terms of planning) to further continue to ATH and back track of course(In simple words, we would be able to serve JKH ATH JKH without having to place an A/C in very expensive ATH APT) •That period(early jun),it was Aegean which decided to curtail capacity in the quoted routing by phasing out their morning slot leaving the morning flights ATH JKH ATH to OA only" hands" •It was high season(1jul-19sep10) and we believed that we would have enough traffic by nature and itself! •It only took a couple of days after making known our intention to step into seasonal scheduled operation when "abruptly" Aegean decided to reshuffle the program adding one more morning frequency just next to us. Added to that ,Aegean decided to offer for very first time in the heart of summer peak season a promotional booking class too! Now we reached a point where this particular*

(698) The fact that Astra exited these limited operations is not surprising in the light of its comments on the ability of small domestic airlines to compete with the Parties. During the market investigation Astra explained that it would be discouraged to enter given that these routes are dominated by "*the giants Aegean and Olympic, which could apply dumping fares in order to squeeze out a potential competitor"*.[535] According to Astra, *"the most lucrative route is Athens – Thessaloniki. All routes from/to Thessaloniki have a big potential. […] yet Astra is not sure how wise a decision to enter this route would be from a commercial point of view"*.[536] Astra expressly stated that it chose Thessaloniki as its base because the airport is regional, not congested and there is less competition.[537]

(699) As to the alleged operation of Athens – Kos route by Astra raised by the Parties,[538] Astra replied that *"we neither ever operated this routing nor we intend to do so in the near future"*.[539]

(700) Astra operates a base in Thessaloniki, which it chose as the airport is regional, not congested and there is less competition. As to AIA, Astra considers that it has disproportionately high charges as there is no secondary airport in the area.[540]

(701) In their reply to the Statement of Objections, the Parties claimed that Astra indicated its interest in expanding and opening a second base. However, to the specific Commission's question as to whether Astra would enter any domestic route and whether it envisaged having a base at certain airports, in particular at AIA, Astra responded the following: *"We haven't drawn any business plan focused on scheduled operations including pre/post merge scenario simply because we are not interested in Greek domestic scheduled routes"*.[541]

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routing was not only marked by overcapacity but also by promotional rates in the very heart of summer season. (The ship tickets were more expensive.) We needed to be serious and not to withdraw from this operation being exposed to public therefore we decided to apply aggressive rates too but it was obvious that we could not suffer long this kind of competition and as result we operated our last scheduled flight on 19sep(as originally scheduled)[...]In order to [be] 100% accurate pls also note in the beginning of Jun10, Aegean claimed that they did not have enough capacity (due to demanding high season) therefore they did not schedule morning flight/slot for ATH JKH ATH. Later on, they revoked understanding that we are determined to go on w JKH ATH JKH ourselves."

535 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 10 [ID 4477].

536 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 11 [ID 4477].

537 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 16 [ID 4477].

538 Parties' response to the Statement of Objections, paragraph 10.67.

539 See http://www.astra-airlines.gr/frontend/index.php: Astra's website. Astra's reply of 17 November 2010 to the Commission's questionnaire of 16 November 2010 (response to question 1) [ID 6859].

540 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 21 [ID 4477].

541 Astra's reply of 17 November 2010 to the Commission's questionnaire of 16 November 2010 (response to question 3 b) [ID 6859].

(702) Thus, Astra cannot be considered as a likely, let alone sufficient, competitive constraint on the merged entity post-transaction. The Parties' allegation that Astra intends to expand in the Greek domestic market and to move its base to AIA to materialise that expansion were categorically rejected by Astra: "*It is a firm decision of Astra's shareholders not to enter into Greek domestic scheduled services. Astra airlines is built on different commercial principles aiming at profitable operation through* [...]*. *Our strategy and development is irrelevant of the outcome of the merge study." [...]. We haven't drawn any business plan focused on scheduled operations including pre/post merge scenario simply because we are not interested in Greek domestic scheduled routes".*[542]

(703) As is further explained in Section XI relating to Commitments, in its latest reply to the second market test, Astra reiterated its position by stating that *"we do not intend to step into scheduled ops no matter what remedies are offered by the parties".*[543]

(704) Therefore, without an actual and foreseeable base at AIA, the only two actual domestic competitors, Astra and Sky Express cannot be considered sufficient competitors to constrain the merged entity's pricing behaviour on the affected routes out of Athens post-transaction.

1.6.2.2. Likelihood of entry by Greek airlines not currently active on the scheduled Greek domestic market

(705) The domestic carrier Athens Airways has recently suspended its activities on the domestic market. Hellenic Imperial shelved its expansion plans to enter the domestic market because of the transaction. Hellas Jet is no longer operating, and its licence was revoked by the HCAA.

(706) Despite this apparent suspension of (present and future) activities, the Commission analysed whether these three airlines might re-enter the market (in the absence or as a consequence of the transaction) and the reason for Athens Airways' exit. As stated by the Parties in the reply to the Statement of Objections[544], even if that entry failed, the Commission should have analysed the causes of that failed entry with a view to determining the real barriers to entry.

(707) The Parties claimed that the main cause of Athens Airways' failure to enter the market was the significant competition exerted by Olympic Air and Aegean. The Parties are of the view that post-transaction new entrants such as Athens Airways, Hellas Jet and Hellenic Imperial would be in a better position as they would no longer have to compete with two airlines but only with the merged entity.

(708) To effectively discipline the merged entity's pricing behaviour, a new entrant would have to enter the market on a sufficient scale. In order to assess the likelihood of Athens Airways, Hellas Jet and Hellenic Imperial successfully entering the Greek domestic market with scheduled operations and the level of competitive constraint likely

542 Astra's reply of 17 November 2010 to the Commission's questionnaire of 16 November 2010 (response to question 3) [ID 6859].

543 Astra's e-mail to the Commission of 8 December 2010 [ID 7086].

544 Parties' response to the Statement of Objections, paragraph 10.51.

to be exercised by these airlines on the merged entity, the Commission analysed in detail the characteristics of each airline, their business model and plans for future expansion, if any.

Athens Airways

(709) Athens Airways was launched in 2008 as a regional airline targeting the Greek domestic market and in particular routes originating from Athens and Thessaloniki. It started operations in 2009 and, by summer 2009, it was operating approximately 1,500 flights per month on 22 routes, with four-five aircraft.[545] Besides scheduled operations, Athens Airways was awarded contracts to operate 9 PSO routes on 1 April 2010. HCAA cancelled these PSO contracts two months later, in May 2010.[546]

(710) Athens Airways entirely ceased its scheduled operations in September 2010.[547] Athens Airways stated that *"it stopped their scheduled operations because they were making losses and remaining in the market would have lead to even more losses. ZF (Athens Airways)'s major losses was the result of Aegean's and Olympic predatory behaviour and the decision by the HCAA to remove their rights to operate on the nine PSO routes".*[548]

(711) Athens Airways is planning to relocate its base from Athens to Thessaloniki[549]. This is mainly because AIA is very expensive – especially in respect to landing fees, office services (for example, an office of 10 m^2 in AIA costs about EUR 1,500 per month whereas it costs only about EUR 150/200 per month at other airports).[550]

(712) As to its future expansion/ re-entry decisions, Athens Airways is hesitant to take any concrete actions pending the transaction. "*Athens Airways cannot make a decision before knowing the outcome of the OA/Aegean merger*." According to Athens Airways,

545 Agreed minutes of a conference call with Athens Airways of 18 August 2010, paragraph 2, [ID 5236].

546 Agreed minutes of a conference call with Athens Airways of 18 August 2010, paragraph 5, [ID 5236].

547 HCAA's reply to the Commission's email of 24 November 2010 addressed to the Commission on 26 November 2010 [ID 6731].

548 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 12 [ID 6544]. See also Athens Airways' reply to the request for information of 16 November 2010, point 2D [ID 6193] : *"A number of factors were taken into account in our decision to suspend our scheduled flights until around May 2011: (i) the continuing coordination of the merging parties' practices regarding both predatory prices and flight schedules; (ii) the low season for tourism in Greece, which means a material reduction in demand; (iii) the adverse economic situation in Greece which has led to a reduction in demand; (iv) the fluid environment on the domestic airline industry in Greece in the run up to the Commission's decision on the proposed merger; (v) the pending Greek Supreme Court appeal process regarding our PSO routes; (vi) our limited financial resources, compared to those of the merging parties which allow them to sustain their predatory pricing policy."*

549 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 10 [ID 6544].

550 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 23 [ID 5236].

had it not been for the transaction, it is very likely that it would have gone ahead with its expansion plans.[551]

(713) More recently, Athens Airways indicated that three cumulative conditions had to be met for them to decide to enter the market regardless of whether the transaction takes place or not: […]*.[552]

(714) It is uncertain whether all these conditions will be met in the future. More specifically as regards PSO routes, a decision by the Greek Supreme Administrative Court on Athens Airways' appeal against HCAA's decision to remove their PSO routes is expected in early 2011. Athens Airways made clear that this decision will be crucial for any entry project.[553] In this respect, HCAA stated that Athens Airways was not providing the relevant air service in accordance with the concession contract.[554] In particular, HCAA noted that Athens Airways deregistered four aircrafts allocated to the nine PSO routes. This led to a breach of Athens Airways' contractual obligations: (i) *"an enormous number of cancellations of flights happened in the time period between 01/04/2010 till 31/05/2010"*; (ii) *"Also very long delays of flights - up to 12 hours - were causing big problems to the local communities and we were receiving a lot of complaints by passengers asking for compensation";* and (iii) *"Repeated use of types of aircrafts other than the ones submitted in the tendering procedure and provided in the contract.*[555] Although the Commission cannot prejudge the Supreme Administrative Court's decision, HCAA's reasons cast doubt on the likelihood of Athens Airways winning back the licenses to operate the nine PSO routes. Furthermore, Athens Airways made clear that it would not re-enter the domestic routes under the current prevailing conditions (that is "*excess capacity and prices which may be below cost as a reaction to entry*").[556]

(715) In terms of the competitive constraint Athens Airways could potentially exert on the merged entity, already before the transaction, Athens Airways exerted a limited constraint on Olympic Air and Aegean, evidenced by the level of market share gained on the markets where it was active, reaching a maximum of 10 %. Even if, according to the Parties, Athens Airways' load factors were similar to those of Olympic Air and Aegean, the market shares of Athens Airways were limited throughout the period it was active.

551 Agreed minutes of a teleconference call with Athens Airways of 9 September 2010, paragraph 8 and 9 [ID 4969].

552 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 4 [ID 6544].

553 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 4 [ID 6544].

554 HCAA's reply to the Commission's email of 24 November 2010 addressed to the Commission on 26 November 2010 [ID 6731].

555 HCAA's reply of 26 November 2010 to the Commission's email dated 24 Novemebr 2010 [ID 6731].

556 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 5 [ID 6544].

(716) The constraint exercised by Athens Airways in particular on the routes out of Athens would likely be even lower post-transaction as Athens Airways intends in future to operate from a base at Thessaloniki.[557]

(717) Moreover, the financial situation of Athens Airways seems to be difficult, which would further reduce its ability to effectively compete with the merged entity. In this respect, following the evaluation of Athens Airways' 2009 financial accounts, HCAA observed that Athens Airways had significant financial problems; in light of this HCAA stated its intention to recommend the suspension of Athens Airways' operating license.[558]

(718) Therefore, and in particular in view of the conditions attached to Athens Airways' entry exogenous to the transaction, it is unlikely that Athens Airways would (re)enter the market post transaction in the near future. Even if such re-entry were to occur, it is unlikely that Athens Airways would be in a position to exert sufficient competitive pressure on the merged entity so as to discipline its pricing behaviour on the routes of concern.

(719) Athens Airways also indicated that commitments by the Parties might further incentivise their entry projects into Greek domestic market. This is analysed in Section XI relating to Commitments.

Hellenic Imperial

(720) Hellenic Imperial was established in 2006 in Athens as an airline operating exclusively on a charter basis. It operates four wet-leased B747-200s (456-458 seaters).

(721) Before the transaction, Hellenic Imperial examined the possibility to expand its operations and begin operating scheduled flights to Greek, European and some long-haul destinations. It intended to operate […]*.[559] To this end, Hellenic Imperial established an individual business plan for each route it planned to start operating and looked at the feasibility study for the network as a whole. Hellenic Imperial also

557 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 10 [ID 6544].

558 HCAA's reply to the Commission's questionnaire of 24 November 2010 addressed to the Commission on 26 November 2010 [ID 6731]. More specifically, HCAA noted in relation to Athens Airways' audited accounts of the financial year 2009: *"Taking into consideration that Athens Airways did not provide to HCAA its updated accounts and the serious liquidity crisis identified on its audited accounts of 2009, it was given the opportunity, according to article 14 of the EC 1008/2008, of being heard before HCAA. According to Athens Airways' letter and the partial updated accounts that were submitted to HCAA on 25 November 2010, the said air carrier decided to suspend all its operations and activities. Athens Airways declared that as a consequence of this suspension and due to its staff shortage, the updated accounts were submitted to HCAA with delay and underlined that the required by the provisions of EC 1008/08 business plan can not be developed and communicated. Following the evaluation of the requested accounts and in particular, the identification of the same financial problems once again as well as Athens Airways' inability to meet all its existing and potential obligations, HCAA will recommend to the Minister of Infrastructure, Transport and Networks the suspension of Athens Airways' Operating Licence."*

559 Agreed minutes of a teleconference call with Hellenic Imperial of 03 September 2010, paragraph 1, 3, and 4 [ID 5242].

considered the possibility of entering […]* but took no further definitive actions. However, following the announcement of the Parties' transaction, Hellenic Imperial froze its plans.[560]

(722) According to Hellenic Imperial, both Olympic Air and Aegean possess strong brand images.[561] Furthermore, Olympic Air and Aegean's bases at AIA are a commercial constraint because of their exclusive feeding from inbound international passengers which Aegean in particular derives as a member of Star Alliance.[562]

(723) On several occasions Hellenic Imperial reiterated that it had put on hold any plans pending the outcome of the transaction. *"In order to avoid any misunderstanding and for the sake of clarification, we would like to state that the plan of Hellenic Imperial Airways to operate domestic and International flights was frozen early 2010, as a result of the announcement of the merging between Olympic/ Aegean."* [563] Hellenic Imperial did not clarify which options would be available to it were the transaction to take place.

(724) In addition, due to certain air safety problems Hellenic Imperial's air operator certificate ("AOC") was suspended from October to December 2008 by the relevant Greek authorities. The suspension was lifted following verification of successful completion of corrective actions by Hellenic Imperial. According to recital 7 of Regulation (EC) No 298/2009 of 8 April 2009 amending Regulation (EC) No 474/2006 establishing the Community list of airlines which are subject to an operating ban within the Community[564], "*following information resulting from SAFA ramp checks carried out on aircraft of certain Community air carriers, as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: ... the competent authorities of Greece lifted the suspension of the AOC of the carrier Hellenic Imperial Airways on 18 December 2008 following verification of successful completion of corrective actions by the carrier...*".

(725) Safety concerns were also reported in the Greek press.[565]

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560 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 1 [ID 5145].

561 Agreed minutes of a teleconference call with Hellenic Imperial of 03 September 2010, paragraph 7 [ID 5242].

562 Agreed minutes of a teleconference call with Hellenic Imperial dated 17 September 2010, paragraph 16 [ID 5145].

563 E-mail of Hellenic Imperial of 29 November 2010 [ID 6782]. In this regard, it should be noted that Hellenic Imperial 's plans had frozen once the merger was announced. Hellenic Imperial had already prepared commencement of their operations, they even had their in-flight magazine ready, agreed minutes of conference call with Hellenic Imperial of 13 December 2010, paragraph 2 [ID 7428] and e -mail of Hellenic Imperial of 16 September 2010 to the Commission [ID 4531].

564 Commission Regulation (EC) No 298/2009 of 8 April 2009 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community, OJ L 95/16 of 9 April 2009.

565 According to Greek newspaper Eleftherotypia *"Hellas Jet together with Hellenic Imperial Airways (also a Greek company) have been included in EASA's black list. Since February, EASA published the results of the controls which it made for an entire year in 2008. In this 'black list', Hellenic*

(726) To conclude, Hellenic Imperial stated that it intended to grow out of Athens on both domestic and international routes. However, the expansion plans were subject to the transaction not taking place. In any case, the Commission doubts that these plans were sufficiently mature even before the announcement of the transaction as the financing of the project remains unclear and doubtful.

(727) Later on, during the market test of the commitments[566], Hellenic Imperial further indicated that it would consider entry into the Greek market. Such entry plans, however, turned out not to be credible. This is analysed in Section XI relating to commitments.

Hellas Jet

(728) Hellas Jet began operating in 2002 as a subsidiary of Cyprus Airways.[567] Until recently, it had charter operations to European and Greek destinations. At the end of March 2010, it suspended all its operations. According to HCAA, Hellas Jet's licenses were revoked and its aircraft (two A320s) were removed from the air operator certificate ("AOC") at Hellas Jets' own request.[568] Hellas Jet maintains that it is undertaking an internal restructuring and intends to operate more scheduled flights.

(729) Hellas Jet is a niche player and focuses on routes with no competition.[569] Hellas Jet indicated that it planned to enter the scheduled market with services from Athens to a few destinations.[570] More precisely, Hellas Jet plans to start scheduled operations as of […]* to a number of international destinations […]*[571]. To this end, Hellas Jet claims to be in discussions with a number of leasing companies to obtain […]*. Hellas Jet estimates that it needs EUR […]* million to finance this investment and counts on obtaining this financing from an independent investor.[572]

Imperial has the 4th worst safety record place and Hellas Jet the 8th.Both also are included in the very same 'black list' in which are included air carriers from Kazakhstan, S. Africa, Ukraine, Brazil, Ethiopia; Ghana, Madagascar which permanently are characterised as "public dangers" due to big deficits in flight safety rules"; see http://archive.enet.gr/online/online_text/c=110,dt=27.03.2009,id=60761300 [ID 7459].

566 Commitments submitted by the Parties pursuant to Article 8(2) of the Merger Regulation.

567 Agreed minutes of a teleconference call with Hellas Jet of 7 September 2010, paragraph 1 [ID 5492].

568 Agreed minutes of a teleconference call with the HCAA of 22 September 2010, paragraph 15 [ID 5227].

569 Agreed minutes of a teleconference call with Hellas Jet of 7 September 2010, paragraph 21 [ID 5492].

570 Agreed minutes of a teleconference call with Hellas Jet of 7 September 2010, paragraph, 5-7 and 14-17 [ID 5492].

571 Agreed minutes of a teleconference call with Hellas Jet of 19 November 2010, paragraph 2 [ID 6627].

572 Agreed minutes of a teleconference call with Hellas Jet of 19 November 2010, paragraph 6 [ID 6627] and agreed minutes of a teleconference call with Hellas Jet of 24 November 2010, paragraph 8 [ID 6962].

(730) As concerns Hellas Jet's plans to enter the Greek domestic market, Hellas Jet initially explained that it would enter post transaction a number of routes provided […]*.[573]

(731) As concerns the financing of the investment associated with the entry into Greek domestic market, […]*.

(732) As regards Hellas Jet's financial situation, it suffered around EUR 49 million of accumulated losses in 2009.

(733) In addition, it seems that Hellas Jet has experienced air safety issues. According to Recital 12 of Regulation (EC) No 1071/2010 of 22 November 2010 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community[574], *"following information resulting from SAFA ramp checks carried out on aircraft of certain Union air carriers, as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: Greece informed about the revocation of the Air Operator Certificate (AOC) and of the operating license of Hellas Jet on 2 November 2010 following the stop of operations on 30 April 2010..."* .

(734) The Greek press also reported on Hellas Jet's services' safety concerns relating that Hellas Jet had been under the scrutiny of the relevant authorities with regard to air safety.[575]

(735) Consequently, and in particular in view of Hellas Jet's lack of necessary administrative authorisations and financing, its entry into the Greek domestic market post transaction is unlikely. Further analyses are contained in Section XI on committments .

1.6.2.3. Likelihood of entry by international airlines

(736) Overall, there are no indications that international airlines, be it full service or low cost, are considering entering or expanding operations on Greek domestic routes under current conditions. This section examines airline by airline to which extent the incentives of international airlines to enter Greek domestic market may be altered post-transaction for instance in response to the change in capacities and/or prices of the merged entity

573 Agreed minutes of a teleconference call with Hellas Jet of 19 November 2010, paragraph 3 [ID 6627]. Agreed minutes of a teleconference call with Hellas Jet of 24 November 2010, paragraph 4 [ID 6962], as later modified by email of Hellas Jet of 15 December 2010 [ID 7420].

574 OJ L 306, 23 November 2010, p.44.

575 According to Greek newspaper Eleftherotypia *"Hellas Jet together with Hellenic Imperial Airways (also a Greek company) have been included in EASA's black list. Since February, EASA published the results of the controls which it made for an entire year in 2008. In this 'black list', Hellenic Imperial has the 4th worst safety record place and Hellas Jet the 8th. Both also are included in the very same 'black list' in which are included air carriers from Kazakhstan, S. Africa, Ukraine, Brazil, Ethiopia; Ghana, Madagascar which permanently are characterised as "public dangers" due to big deficits in flight safety rules"*; see http://archive.enet.gr/online/online_text/c=110,dt=27.03.2009,id=60761300 [ID 7459].

Cyprus Airways

(737) Cyprus Airways is an international airline currently operating five routes to Greece.[576] It also recently operated on a temporary basis (in summer 2010) *ad-hoc* charter flights to Greek islands.

(738) As concerns the possibility of entry, Cyprus Airways stated that "*Currently with the two market participants we deem that there is no business opportunity for a third airline to operate with good success possibilities in the domestic market. Should this situation change in the future we shall of course re-evaluate.*"[577]

(739) The Commission investigated further with Cyprus Airways to which extent it would re-evaluate its position, under which circumstances and in what time frame.

(740) Cyprus Airways is currently in a very difficult financial situation. On 10 November 2010, the Cypriot Finance Minister stated before the national Parliament that Cyprus Airways had lost €25 million in the first six months of the year and losses were expected to rise to €30 million in 2010. The Cypriot Finance Minister further explained that "*Cyprus Airways' capital base was weak and if the airline failed to prepare a new restructuring plan as a matter of urgency, the carrier was in danger of ending up like [the bankrupt] Eurocypria within a short time*".[578]

(741) Later on, during the market test of the commitments, Cyprus Airways made reference to "*current market conditions"* as being inadequate for it to consider entry, even despite remedies.[579]

(742) Consequently, and in particular in view of its dire financial situation, Cyprus Airways is unlikely to enter the Greek domestic market post-transaction under the current circumstances.

Carpatair

(743) As mentioned in Section IX.1.5.1.4, Carpatair is a Romanian airline based in Timisoara (Romania). Besides operating domestic routes in Romania, it specialises in traffic between Romania and Italy. It also serves several other foreign destinations, including one destination in Greece, that is the Timisoara-Athens route.

(744) Carpatair intends to start new destinations to or from Greece in summer 2011. It is considering establishing a partnership with a local airline to operate jointly on Greek

576 Agreed minutes of a teleconference call with Cyprus Airways of 2 September 2010, paragraph 4 [ID 4991].

577 Reply to question 25 of Phase II Request for information to competitors [ID 3443].

578 See article in the Cyprus-mail: http://www.cyprus-mail.com/cyprus/viability-cyprus-airways-worry/20101110 [ID 6330].

579 Reply of Cyprus Airways to the Commission's questionnaire of 6 December 2010, [ID 7341].

domestic routes. It also considers that the aircraft operating in the morning Timisoara-Athens could then serve the domestic market before returning in the evening to Timisoara. In the mid- to long-term (two to three years) an aircraft could be based at AIA. If Carpatair were awarded a PSO route, this would support its decision to enter the Greek market.[580]

(745) Subsequently, Carpatair clarified for which domestic routes in Greece it has entry plans, indicating that "[…]*", as it has the appropriate equipment for PSO routes, and its plans do not relate to any domestic routes for which competition concerns are identified in this Decision. Furthermore, "[…]*".[581]

(746) These clarifications are in line with Carpatair's earlier statements that "*it is almost impossible for a small carrier to directly enter a market where two big airlines already operate.* […]*".[582]

(747) As a result, it is clear that Carpatair's future plans regarding regular (non-PSO) scheduled flights are neither targeted nor sufficiently advanced nor, in any event, backed by necessary financing.

(748) Furthermore, such entry would be conditional on either winning PSO routes in the next PSO bid (2011/2012) or the possibility to enter domestic non-PSO routes using a co-operation with an airline already established on the market. Post-transaction, it is unlikely that the merged entity would be interested in co-operating with Carpatair should it enter the Parties' domestic routes.

(749) As to the possibility of entering routes out of Athens with W flights out of Timisoara (leaving Timisoara in the morning and returning in the evening) and allowing for daily rotations using a 50-seater Saab 2000 aircraft, such services would be isolated and unlikely to have any meaningful competitive impact given the absence of an AIA base.

(750) Consequently, post-transaction entry by Carpatair on Greek domestic routes with scheduled flights is neither likely nor sufficient.

Ryanair

(751) Ryanair started its operations to Greece from its bases at various international airports in early 2010 and currently operates six routes to Greece. According to the Parties, Ryanair was reported as having plans to expand its operations to the Greek market significantly.

(752) These expansion plans appear to be however limited to its international operations, bringing in international traffic to destinations in Greece. Ryanair has no

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580 Agreed minutes of a teleconference call with Carpatair of 23 August 2010, paragraphs 4, 11 and 18 [ID 5232].

581 Reply of Carpatair to request for information of 16 November 2010 [ID 6195].

582 Agreed minutes of a teleconference call with Carpatair of 23 August 2010, paragraph 18 [ID 5232].

entry plans for domestic routes. During the market investigation, Ryanair consistently ruled out such plans mainly because it does not have a base atAIA and considers that the costs involved in establishing a base at AIA and Thessaloniki airports are prohibitive. Ryanair stated: "*It is Ryanair's policy to avoid routes that do not have a base at either end of the route, given that such routes introduce complexity to operations and increase the risk of so-called knock-on delays to the system. No such Ryanair base has been established at any Greek airport."*[583] As to the prohibitive cost levels of AIA and Thessaloniki airports, Ryanair stated: "*Ryanair does not operate on any of the affected Greek domestic routes. While Ryanair does not rule out operating on any of these routes in the future, currently airport costs at Athens and Thessaloniki are substantially excessive".*[584] Ryanair further added: "*For FR* [IATA code for Ryanair] *there is currently no prospect of operations to these airports as the costs of these airports are beyond the acceptable levels in view of FR's business model [...]. The high costs of ATH airport translate into passenger numbers which are low compared to the size of the market*."[585] As a result, such operations would be incompatible with Ryanair's business model of operating (essentially) from secondary and/or low cost airports. Given that Ryanair decides between various entry opportunities on a continuous basis, it is unlikely that routes originating in such high cost airports would come top of the list. As far as other Greek airports are concerned and given the prevailing costs, entering domestically is not Ryanair's top priority. Should the conditions change, Ryanair would consider entering those routes in the future.[586]

(753) For Ryanair to reconsider its position, charges at AIA and Thessaloniki airports would need to be reduced considerably. In this respect, Ryanair stated that "*For FR to consider opening a route to/from ATH airport, the airport would have to reduce its costs by* […]**%. In the case of the SKG airport, the airport would have to reduce its costs by* […]**%."*[587]

(754) The market investigation did not provide any indication that airport charges at AIA and Thessaloniki airports would be reduced in the near future. Indeed, despite attempts to negotiate lower airport costs, AIA appears to have rejected such demands.

(755) Even if these costs were to decrease in the future, Ryanair stated that building up operations and establishing an AIA base would require considerable time. Ryanair stated: "*FR estimates that it will take at least* […]* *to develop the operations in Greece to the point where it could open a Greek base. While Greek market would definitely justify a base there, factors currently stopping FR from undertaking such a venture are*

583 Reply to question 55 of Phase II Request for information to competitors [ID 2684].

584 Reply to question 17 of Phase II Request for information to competitors [ID 2684].

585 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraphs 6 and 7 [ID 3178].

586 Agreed minutes of a teleconference call with Ryanair of 19 November 2010, paragraph 11 [ID 6694].

587 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraph 8 [ID 3178].

related to costs –specifically the cost of establishing a base at either the ATH or SKG airport." [588]

(756) As to its general intention to enter the Greek domestic market, Ryanair specified that although there was substantial demand, *"it has not committed to flying to any particular Greek airports next year"* and in any case *"the commercial viability of entry on to the domestic Greek market for FR is not related to the proposed merger"*.[589] Ryanair explains that *"any commercial decision [it] takes regarding whether to operate domestic flights in Greece and from what base, would be unaffected by the merger or nay of the proposed remedies"*.[590]

(757) Consequently, it is unlikely that post-transaction Ryanair would enter Greek domestic routes and set up a base at AIA in the foreseeable future.

easyJet

(758) EasyJet currently operates a number of routes to Greek destinations from its bases at various international airports and has increased those operations considerably in 2010. easyJet operates scheduled flights to Athens, Zakynthos, Herakleion, Thessaloniki, Corfu, Kos, Mykonos, Rhodes, Santorini and Chania.

(759) EasyJet has not ruled out adding further routes in the future. However, similarly to Ryanair, any expansion plans would be limited to its international operations *("the economic situation will not automatically constrain growth, and we are looking at new international routes into Greece for summer 2011*"[591]).

(760) As regards entry into the domestic market, easyJet stated that "[…]*".[592] In addition, easyJet explained that the merged entity "*will have a significant position in the Greek market with very limited competition from alternative Greek carriers. This would increase the degree of difficulty for anyone who wants to develop a base at Athens. We believe that a new entrant would have to make a significant investment to build up a marketing presence."*[593]

588 Agreed minutes of a teleconference call with Ryanair of 19 August 2010, paragraphs 12 and 13 [ID 3178].

589 Agreed minutes of a teleconference call with Ryanair of 19 November 2010, paragraphs 2 and 3 [ID 6694].

590 Email sent to the Commission by Ryanair on 23 November 2010 [ID 6557].

591 Reply of easyJet to question 76 of phase I request for information to competitors of 25 June 2010 [ID 1843].

592 Reply of easyJet to question 42 and 43 of the phase II request for information to competitors of 11 August 2010.

593 Reply of easyJet to question 79 of phase I request for information to competitors of 25 June 2010 [ID 1843].

(761) During the market investigation, easyJet clarified that it had "*no plans for domestic flights*"[594] and that it was unlikely to open a Greek base in 2011.[595]

(762) The Parties, claiming that easyJet's entry into Greek domestic market was particularly likely, extensively referred to press articles from the Greek media (Naftemporiki, Kerdos and Kathimerini on 7 October 2010) in relation to easyJet's intentions in Greece. According to the Parties, these articles state that "*should the merger go ahead, easyJet see the clear potential for them to create a base in Athens with at least six aircraft. easyJet believe that the merger would create room for a 'strong player' such as easyJet to enter the Greek market and enhance competition."*[596]

(763) On 19 November 2010, in order to clarify the statements reported in the Greek press on 7 October 2010, easyJet explained that, in answer to the question whether it intended to enter the Greek domestic market, it replied as follows: *"this is not the case, especially since all the necessary factors required to enable such kind of operations, do not prevail at present"*.[597] EasyJet further stated that it "*had in the past evaluated the conditions required for Athens to "house" easyJet aircraft . However the results of our evaluations were then and continue to be unfavourabl , mainly due to the extremely high cost to operate from AIA (euro* […]* *per pax), as well as due to other easyJet related strategic factors*".[598]

(764) To the question whether easyJet would consider to base aircraft at AIA if the conditions were right and the AIA charges were reduced, easyJet's replied: "*we examine every possible expansion/growth opportunity on our network, provided that all the necessary factors are favourable. Unfortunately, this is not the case for Athens at present and I am also not very optimistic about the near future".*[599]

(765) Therefore, easyJet's entry on Greek domestic routes appears neither likely nor timely, especially as far as routes to/from Athens are concerned.

(766) Consequently, it is unlikely that easyJet would enter the Greek domestic market and set up a base at AIA in the foreseeable future.

1.7. Conclusion on entry

(767) There are a number of features specific to the Greek domestic market that advantage Olympic Air and Aegean over potential competitors and which make entry by small-scale airlines particularly difficult.

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594 Reply of easyJet to question 76 of the phase I request for information to competitors of 25 June 2010 [ID 1843].

595 See for instance agreed minutes of a teleconference call with easyJet paragraph 40 [ID 5713] and email sent to the Parties on 22 November 2010, which further underlines the lack of likelihood of easyJet's entry into the domestic market in the near future.

596 Email of the Parties of 7 October 2010.

597 E-mail sent to the Commission by easyJet on 19 November 2010 [ID 6237].

598 Email sent to the Commission by easyJet on 19 November 2010 [ID 6237].

599 Email sent to the Commission by easyJet on 19 November 2010 [ID 6237].

(768) While only some Greek airports are congested to a limited degree, in order to to exert a credible competitive constraint on the merged entity, a new entrant would need an AIA base so as to serve Greek demand out of Athens and international traffic coming to Athens. Without such base, post-transaction, a new entrant could compete with the merged entity on capacity and frequencies on the majority of Greek domestic routes only to a limited extent. While there are domestic airlines currently active on the Greek domestic market, these airlines operate essentially on niche routes from airports other than AIA and as such have neither the ability nor the incentive to compete with the merged entity on domestic routes out of Athens.

(769) In addition, the merged entity's brand is a significant barrier in itself that will be difficult to overcome for any Greek domestic airline that would enter in competition with the merged entity. The only way to overcome this barrier and to appeal to Greek domestic passengers in particular, is for new entrants to have similarly recognizable brands.

(770) Moreover, new entrants would have to cope with significant investments, associated with entering or expanding in the Greek market, even if the costs related to aircraft leases have decreased recently[600]. Faced with the overwhelming presence of the merged entity post-transaction, any new entrant or expanding domestic airline would need to invest significantly to build up a brand, a marketing presence and an AIA base. Given the importance of the costs of failed entry, the level of sunk costs associated with entry in the Greek market represents a significant barrier.

(771) In addition, to enter the domestic routes of concern, any new entrant or expanding domestic airline would need a fleet as competitive as the one of the merged entity, access to travel agents as an important distribution channel in Greece, and financial strength to withstand possible retaliation of the merged entity in a form of aggressive price war with the new entrant.[601]

(772) Existing, expanding and start-up Greek domestic airlines lack many if not most of these capabilities. Those Greek domestic airlines that are still present on the market are not in the process of expanding their operations to compete with the merged entity. Potential small scale entrants, be it Greek or international airlines, lack the capacity to compete with the merged entity on "thick" routes. The possibility to enter "thin" routes appears to be essentially limited to PSO routes where entrants, once selected by HCAA, are shielded from pricing pressures by the merged entity to drive them out of the market.

(773) Furthemore, contrary to the Parties' claims, and irrespective of whether the transaction takes place, there are no realistic prospects for LCCs such as Ryanair and easyJet to enter the Greek domestic market and establish an AIA base. Most of the reasons for Ryanair's and easyJet's lack of interest in the Greek domestic market are not transaction-specific and are unlikely to change in the foreseeable future. As a result, it is unlikely that a timely entry could occu by any of these airlines.

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600 See, inter alia, agreed minutes of a teleconference call with easyJet of 26 August 2010, paragraph 22 [ID 4424].

601 See Athens Airways statement that it already experienced the predatory pricing of the Parties to drive domestic competitors out of the market. Reply of Athens Airways of 19 November 2010 to the Commission's request for information of 16 November 2010, response to question D [ID 6193].

(774) Lastly, operating Greek domestic routes is, in view of the financial and economic crisis in Greece and the difficulties to gather necessary financing, an uncertain business proposition for any airline, in particular for start-up and small scale domestic airlines.

(775) In the absence of potential new entrants, and given that no credible competitor indicated seriously considering entering in direct competition with the merged entity on a significant scale (in particular by opening a base at AIA), entry into the Greek domestic market post-transaction is unlikely in the foreseeable future. In addition, the market investigation did not identify a new entrant having sufficient scale to competitively constrain the merged entity and thus compensate for the loss of competitive constraint that Olympic Air and Aeagen exerted on each other pre-transaction. As a result, it is concluded that no entry is likely to counteract the significant impediment of effective competition created by the transaction.

(776) The likelihood of market entry by new entrants based on the commitments offered by the Parties is analysed in Section XI.

1.8. Treatment of routes exited by Olympic Air and Aegean after the announcement of the transaction

(777) Given the dynamic nature of competition in the airline industry, Aegean and Olympic Air regularly open and close routes according to their performance and to their overall strategy. In particular, Aegean and Olympic Air exited several routes, on which they were competitors, since the beginning of the negotiations which led to the public announcement of the transaction.

(778) The Parties argued that their decisions to exit such routes were motivated purely by commercial and strategic factors and were unrelated to the transaction. As such, the Parties claimed that when one or the other exited a route, no overlap between them will exist as they are no longer competitors.

(779) The Commission analyses whether, for all routes, the exit of Aegean or Olympic Air was related to the proposed transaction ("transaction specific"). If the exit of a given route is not found to be transaction specific, that route is not be treated as an overlap between the Parties for the purpose of the competitive assessment in this Decision.

1.8.1. Routes exited by Aegean following the announcement of the transaction

(780) The decision opening proceedings noted that Aegean exited a number of routes, namely Athens (ATH)-Kefallonia (EFL), Athens (ATH)-Limnos (LXS), Athens (ATH)-Sofia (SOF) and Athens (ATH) – Bucharest (OTP) at the end of winter 2009-2010 indicating that it was not sufficiently clear whether Aegean's exit from the four routes was not transaction-specific.

(781) The Parties, in their reply to that decision, noted that "*Merger talks started on 11 January 2010 and the decision to exit these routes was considered and envisaged well before Aegean entered into merger talks with Olympic Air*".[602]

602 Parties response to the Decision opening proceedings of 30 July 2010, paragraph 109.

(a) Athens-Limnos and Athens-Kefallonia

(782) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Linnos and Athens-Kefallonia was not merger specific*]*

(783) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Linnos and Athens-Kefallonia was not merger specific*]*[603] [604]

(784) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Linnos and Athens-Kefallonia was not merger specific*]*[605]

(785) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Linnos and Athens-Kefallonia was not merger specific*]*[606]

(786) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Linnos and Athens-Kefallonia was not merger specific*]*[607]

(787) Therefore, it appears that Aegean had long considered the Athens-Limnos and Athens-Kefallonia routes as severely underperforming and that the decision to stop operating them was considered already […]* before transaction talks were initiated.

(788) Accordingly, it can be concluded that Aegean's exit from the Athens-Limnos and Athens-Kefallonia routes was not transaction specific. As such, for the purpose of this Decision, there is no competitive overlap between Aegean and Olympic Air on those routes.

(b) Athens-Sofia and Athens-Bucharest

(789) According to the Parties, Aegean noticed performance issues on the Athens-Sofia and Athens-Bucharest routes and also decided to close them long before the transaction was decided.

(790) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Sofia and Athens-Bucharest was not merger specific*]*[608]

(791) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Sofia and Athens-Bucharest was not merger specific*]*[609]

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603 […]* .

604 […]*.

605 […]*.

606 […]*.

607 […]*.

608 […]* .

609 […]*.

(792) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Sofia and Athens-Bucharest was not merger specific*]*[610]

(793) Therefore, it appears that Aegean had […]* considered the Athens-Sofia and Athens-Bucharest routes as severely underperforming and that the decision to stop operating them was considered already in [*before the transaction was envisaged*]*.

(794) Accordingly, it can be concluded that Aegean's exit from the Athens-Sofia and Athens-Bucharest routes is not transaction-specific. As such, for the purposes of this Decision, there is no competitive overlap between Aegean and Olympic Air on those routes.

Conclusion on the routes exited by Aegean following the announcement of the transaction

(795) Therefore, for the purposes of this Decision, it is concluded that there is no actual competition between Aegean and Olympic Air on the routes Athens (ATH)-Kefallonia (EFL), Athens (ATH)-Limnos (LXS) Athens (ATH)-Sofia (SOF) and Athens (ATH) – Bucharest (OTP).

1.8.2. Routes exited by Aegean and Olympic Air in autumn 2010

1.8.2.1. Routes exited by Aegean

(a) Athens-Ioannina and Athens-Kavala

(796) The Athens-Ioannina and Athens-Kavala routes became Aegean's two smallest commercial routes in terms of passenger numbers after it stopped operating the Athens-Limnos and Athens-Kefallonia routes for the IATA summer season 2010.

(797) At Aegean's board of directors' meeting of […]*, it was decided that "[…]*".[611]

(798) Therefore, it appears Aegean had long considered the Athens-Ioannina and Athens-Kavala routes as severely underperforming and that the decision to stop operating them was considered already in January 2010. Accordingly, it can be concluded that Aegean's exit from the Athens-Ioannina and Athens-Kavala routes is not transaction-specific. As such, for the purposes of this Decision, there is no competitive overlap between Aegean and Olympic Air on those routes.

(b) Athens-Vienna

(799) The presentation to Aegean's board of directors on [*Before the transaction was envisaged*]* states, concerning the minimum plan for 2010 for international route, that "[…]*".[612]

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610 […]*.

611 Reply of the Parties to request for information of 5 July 2010, Annex B.

612 […]*.

(800) Therefore, it appears that Aegean had […]* considered the Athens-Vienna route as severely underperforming, and that the decision to stop operating the route was envisaged [*Before the transaction was envisaged*]*. Accordingly, it can be concluded that Aegean's exit from the Athens-Vienna route is not transaction-specific. As such, for the purposes of this Decision, there is no competitive overlap between Aegean and Olympic Air on that route.

(c) Athens-Tirana

(801) The first internal documents containing explicit discussions about the performance of Athens-Tirana are found in [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Tirana was not merger specific*]*. This document states that "*Problem area: Balkans and Bilaterals as capacity, far exceeds deman*d"[613].

(802) [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Tirana was not merger specific*]*[614]

(803) In […]*, Aegean decided to […]*, as noted in the minutes of the board of directors' meeting of [*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Tirana was not merger specific*]*[615]

(804) This was confirmed during Aegean's board of directors' meeting of […]*.[616] The minutes state that "[*Submission by the Parties of internal evidence demonstrating that Aegean's exit from Athens-Tirana was not merger specific*]*"[617]

(805) Therefore, it appears that Aegean had […]* considered the Athens-Tirana route as severely underperforming and that the decision to stop operating it was envisaged [*Before the transaction was envisaged*]*. Accordingly, it can be concluded that Aegean's exit from the Athens-Tirana route is not transaction-specific. As such, for the purpose of this Decision, there is no overlap between Aegean and Olympic Air on this specific route.

1.8.2.2. Routes exited by Olympic Air

(806) For its winter schedule for 2010-2011, Olympic Air announced that it would stop operating its Athens-Corfu, Athens-Milan and Athens-Rome routes, as well as its domestic routes from Thessaloniki (Thessaloniki-Chania, Thessaloniki-Herakleion, Thessaloniki-Mytilini and Thessaloniki-Rhodes).

(807) The analysis of Olympic Air's internal documents and board minutes has allowed the Commission to verify the claim by the Parties, according to which the decision to cease operation on these routes was not transaction-specific.

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613 Annex D to Aegean's response to request for information of 5 July 2010.

614 […]*.

615 […]*.

616 […]*.

617 […]*.

(808) As such, for the purposes of this Decision, there is no actual competition issue between Aegean and Olympic Air on the Athens-Corfu, Thessaloniki-Chania, Thessaloniki-Herakleion, Thessaloniki-Mytilini and Thessaloniki-Rhodes routes, as well as on the Athens-Milan and Athens Rome routes.

1.9. Domestic routes

1.9.1. Actual competition

1.9.1.1. ATH-AXD (Athens-Alexandroupolis, 307,899 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(809) [*Analysis of Aegean's performance and competitive situation of the ATH-AXD route*]*

(810) […]*. As concerns the competition situation on the route, Athens Airways ceased operations; [*Analysis of Aegean's performance and competitive situation of the ATH-AXD route*]*.

(811) [*Analysis of Aegean's performance and competitive situation of the ATH-AXD route*]*[618]. Under its recently published summer 2011 schedule, Aegean is already offering flights on the ATH-AXD route until end-October 2011.

(812) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-AXD route in the foreseeable future.

(ii) Olympic Air

(813) [*Analysis of OA's performance competitive situation of the ATH-AXD route*]*[619] [620] [621]

(814) [*Analysis of OA's performance and competitive situation of the ATH-AXD route*]*. The Commission also noted that Athens Airways's frequencies on the route gradually decreased in 2010 and that, in September 2010, Athens Airways entirely ceased operations on the route.

(815) Internal documents of Olympic Air indicate [...]*[622]. Furthermore, according to Olympic Air's 2011 summer schedule available at the time of this Decision, it will not operate on the ATH-AXD route during the 2011 summer season.

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618 Aegean counterfactual, p. 4.

619 […]*.

620 […]*.

621 [...]* .

(816) Besides, Olympic Air mentioned that the Greek authorities do not pay in due time the flights booked for Greek soldiers on this route. [...]*. (see also Annex II).

(817) As a result, it is concluded that absent the transaction, it is likely that Olympic Air would not continue operating on the ATH-AXD route in the foreseeable future.

(iii) Conclusion

(818) In view of the above, it is concluded that absent the transaction, it is unlikely that Aegean and Olympic Air would continue competing on the ATH-AXD route in the foreseeable future.

(b) Competitive analysis for the route

(819) Given that the competitive situation likely to prevail on the ATH-AXD route absent the transaction would be one where only Aegean would be active, it is concluded for the purpose of the present Decision that there is no actual competition between Aegean and Olympic Air on this route.

1.9.1.2. ATH-CHQ (Athens–Chania, 475,704 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(820) On the ATH-CHQ route Aegean used to operate on average slightly more than 4 flights per day in the summer and 4 flights in the winter, but claimed it reduced its frequencies in summer 2010 due [*Analysis of Aegean's performance and competitive situation of the ATH-CHQ route*]*[623].

(821) [*Analysis of Aegean's performance and competitive situation of the ATH-CHQ route*]*.

(822) According to Aegean's analysis, passenger numbers on this route […]*. Aegean in addition claims that due to increased competition by ferry services […]*.

(823) [*Analysis of Aegean's performance and competitive situation of the ATH-CHQ route*]*

(824) Consequently, and taking into account the fact that the ATH-CHQ route […]*. Under its recently published summer 2011 schedule, Aegean is already offering flights for this route until end-October 2011. [...]*[624].

(825) Therefore, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-CHQ route in the foreseeable future.

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622 [...]*.

623 […]*.

624 […]*.

(ii) Olympic Air

(826) [*Analysis of OA's performance and competitive situation of the ATH-CHQ route*]*

(827) [*Analysis of OA's performance and competitive situation of the ATH-CHQ route*]*[625].

(828) [*Analysis of OA's performance and competitive situation of the ATH-CHQ route*]*[626] [627] [628]. Under its recently published summer 2011 schedule, Olympic Air is also already offering flights for the ATH-CHQ route until end-October 2011.

(829) Therefore, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-CHQ route in the foreseeable future.

(iii) Conclusion

(830) In viw of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-CHQ route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(831) On the ATH-CHQ route, 298,487 passengers travelled by air in summer 2009 while 177,217 passengers travelled by air during winter 2009-2010. […]*.

(832) In 2009, […]*% of all air passengers on the ATH-CHQ route were travelling for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of passengers had their main residence in Greece.[629]

(833) Both Olympic Air and Aegean operate on the route with non-stop services. Athens Airways entered the route in March 2009 with non-stop services but ceased operations. While Athens Airways operated on this route with 49-seater aircraft, the Parties use larger aircraft up to 138 seats (Olympic Air) and 168 seats (Aegean).[630]

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625 […]*.

626 […]*.

627 […]*.

628 […]*.

629 Form CO, Annexes 48 and 49.

630 Form CO, paragraph 440.

(834) The ATH-CHQ route is served by two ferry companies, namely by Marfin's subsidiary Blue Star Ferries (which entered the market in April 2010) and by Anek. Both operate conventional ferry services.

(ii) Relevant market

(835) According to the Parties, air transport on the ATH-CHQ route is subject to intermodal competition by ferry services. Due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services, and the fact that a large number of passengers travel for non-business purposes, ferry services are a substitute for those passengers for which travelling time is not an issue.

(836) This point was again underlined by the Parties in their replies to the Statement of Objections and to the Supplementary Statement of Objections where, in addition, they argued that several airlines (Sky Express, Astra, Hellenic Imperial and Cyprus Airways) as well as the relevant ferry services themselves considered that ferry services constrained air transport services on the ATH-CHQ route.

(837) In terms of overall travelling time on this route, the journey from city centre to city centre by ferry takes between 8 hours 30 minutes and 9 hours 45 minutes, while the aggregate travel time by plane is 3 hours 20 minutes.[631] The journey by sea is thus more than twice as long as travel time by air. This considerable difference in travelling time was also confirmed by respondents to the market investigation when comparing the services offered by both modes of transport.[632] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future on the ATH-CHQ route.

(838) In terms of prices, there is also a significant difference between those charged by airlines and ferry companies on this route. On the basis of the data submitted by the Parties[633] and ferry companies in the course of the market investigation, the Commission computed the average weighted fare charged by airlines and by all ferry companies on a monthly basis for the period between January 2009 and July 2010.

(839) The difference in the average fare on the ATH-CHQ route charged by both modes of transport is significantly different according to the period of the year in which it is computed. Air fares are on average about [30-50] % higher than ferry fares in winter, while air fares are more than 100 % higher between April and July 2010. In July 2010, which is the last month for which data was available, the weighted average air fares was [170-190] % higher than ferry fares.

(840) As stated in Section VI.1.3, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. More specifically for

631 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

632 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

633 Reply of the Parties to the request for information of 8 June 2010.

this route, the market investigation revealed that time sensitive passengers require an even higher level of frequencies at each end of the route.[634] In contrast, both Anek and Blue Star Ferries typically (that is apart from the summer months) offer at most one daily service at each end of the route.

(841) In view of the longer travel duration by ferry compared to plane on the ATH-CHQ route, it is moreover not possible for passengers to make same-day return trips by ferry.[635] By contrast, an analysis of frequencies offered by Aegean and Olympic Air showed that passengers could make same-day return trips at least each weekday (Monday to Friday) with both Aegean and Olympic Air.[636] This illustrates the flexibility offered by air services as compared to ferry services.

(842) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers responding to the question on the modes of transport they considered on this route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[637]

(843) According to the results of the market investigation, Greek corporate customers that replied to the market investigation indicated that should prices of plane tickets increase by 5-10 % on Greek domestic routes on which they purchased tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(844) Similarly, a large majority of travel agents who replied to the relevant question indicated that they did not believe that a significant proportion of time-sensitive passengers would switch to ferry services should the prices of air services on this route increase by 5-10 %.[638]

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634 According to Athens Airways, the route should be served with a minimum of three daily frequencies, see: Reply to question 16 of phase II request for information to competitors of 11 August 2010. Half of all corporate customers consider that ideally more than 2 daily frequencies should be available, see: Replies to question 23 of phase II request for information to corporate customers of 13 August 2010. A large majority of travel agents considers that more than 2 daily frequencies should be available to provide suitable services for time sensitive passengers, see: Replies to question 27 of phase II request for information to travel agents of 13 August 2010; see also Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

635 An overnight trip with Anek allows a passenger to arrive early the next day but bears the inconvenience of a very early arrival time at the destination (5:00 or 5:30).

636 See paras. 440 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010. In their reply to the Statement of Objections, the Parties argue that no same-day return trip is possible with Aegean in winter. This submission is however not in line with the reply of the Parties to the decision opening proceedings of 30 July 2010; annex 4 of this reply shows that passengers carry out same-day return trips on Aegean on this route throughout the winter months.

637 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

638 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

(845) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators would have been disregarded by the Commission insofar as they had stated that ferry services exercised a competitive constraint on air travel. However, the view of corporate customers and travel agents was also shared by a large majority of competitors who expressed their opinion during the market investigation[639], including Cyprus Airways, Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers*")[640], Hellenic Imperial ("*people travelling via air are always time-sensitive passengers*")[641] and Sky Express **(**" *ferry transport is only suitable for non-time sensitive passengers*").[642]

(846) Similarly, according to ferry company Anek active on the ATH-CHQ route, time-sensitive passengers do not consider air services and ferry services as substitutable "due to duration of trip".[643] Attica emphasised that conventional ferry services do not appeal to time-sensitive passengers.[644] As previously stated in recital (834), only conventional ferry services operate on this route.

Conclusion

(847) As concerns the ATH-CHQ route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(848) As far as time-sensitive passengers on the ATH-CHQ route are concerned, the market investigation showed also that according to most respondents the two modes of transport are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers.

(849) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services are to be included in the relevant market. Indeed, as concluded in recital (905), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

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639 Replies to question 27 of the phase I request for information to competitors of 25 June 2010 and/or conference calls with competitors.

640 Agreed minutes of a teleconference call of 25 August 2010 with Astra, paragraph 20 [ID 4477].

641 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 7 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on the present route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

642 Agreed minutes of a teleconference call with Sky Express of 24 August 2010 paragraph 35 [ID 5398].

643 Reply to question 9 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

644 See Reply to question 13 of the phase II request for information to passenger shipping operators of 13 August 2010 [ID 3231]. Attica does, however, not consider that there is distinction to be made between non-time sensitive and time sensitive passengers.

(850) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-CHQ route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(851) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-CHQ route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time-sensitive passengers

(852) As shown in table 9 below, on a possible market for time sensitive passengers on the ATH-CHQ route, Olympic Air and Aegean had a combined share of [90-100] % in the IATA season Winter 2009-2010. Between April and July 2010, their combined market share further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-CHQ winter 2009-2010 Time sensitive passengers	
Olympic Air	[40-50]%
Aegean	[50-60]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 9: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(853) It follows that this transaction leads to the creation of a monopoly on the ATH-CHQ route as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted in the past on Aegean and Olympic air on this route no longer exists.

(854) In addition, even if Athens Airways were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity.

(iv) Non-time sensitive passengers

(855) As concerns a possible market for non-time sensitive passengers on the ATH-CHQ route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(856) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly[645] of the merged entity and eliminate very close competition currently existing between the two airlines.

(857) Should ferry services be included in a relevant market for non-time sensitive passengers on the ATH-CHQ route, then, Olympic Air and Aegean would have a combined market share in the range of [30-40] % (data based on the IATA season winter 2009-2010), as shown in Table 10 below:

645 Or close to monopoly if Athens Airways were to resume its operations on this route.

ATH-CHQ Non-time sensitive passengers (incl. ferries) winter 2009-2010	
Olympic Air	[20-30]%
Aegean	[10-20]%
Combined	**[30-40]%**
Athens Airways	[0-5]%
Anek	[50-60]%
Total	100%

Table 10 : Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(858) Other than Aegean and Olympic Air, the independent ferry operator Anek was also active on the ATH-CHQ route in winter 2009-2010 and held a share of [50-60] %. However, Marfin's subsidiary Blue Star Ferries entered the market in April 2010 and has constantly been growing since then. In July 2010, only three months after it launched operations on this route, Blue Star Ferries already accounted for [40-50%] of all ferry passengers on the route.

(859) As already indicated in Section IX.1.1, Marfin, one of the controlling shareholders of the merged entity solely controls Blue Star Ferries. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on the ATH-CHQ route. Indeed, the level of competitive interaction between the merged entity and Blue Star Ferries is likely to be affected by this commonality of shareholding between Marfin and Blue Star Ferries. As a result, the competitive pressure exerted on the merged entity by remaining ferry companies is more limited than the market share of all ferry companies combined would suggest, in particular since the only independent ferry operator, Anek, lost a considerable part of its share on this route to Blue Star Ferries, which recently entered this route.

(860) While more recent data for April-July 2010 show a contraction of the combined share of the Parties to [10-20 %] on the ATH-CHQ route, evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry services are only distant substitutes to air services. Due to these differences and in view of the fact that Blue Star Ferries cannot be considered as a fully independent operator, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert on Olympic Air and Aegean on this route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and *vice versa*. They are each other's closest competitors on the ATH-CHQ route.

Travel time

(861) The considerably longer travelling time by ferry (8 hours 30 minutes by ferry compared to 3 hours 20 minutes by plane) renders ferry services a distant substitute to air services even for non-time sensitive passengers on the ATH-CHQ route. Indeed, a number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[646]

Level of frequencies

(862) According to the Parties, the level of weekly services operated by the Olympic Air and Aegean and other operators at various points of the time of the year 2010 on this route is as follows:

Frequencies in 2010	**ATH-CHQ**			
	January	March	August	October
Olympic Air	28	28	21	21
Aegean	28	28	21	21
Combined	**56**	**56**	**42**	**42**
Athens Airways	12	12	12	
Blue Star Ferries (conventional)	0	0	7	7
Anek (conventional)	7	7	12	7
Total independent operators[647]	**19**	**19**	**24**	**7**

Table 11 : Weekly services on the ATH-CHQ route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.

(863) Table 11 illustrates that the combined frequencies of Aegean and Olympic Air are substantially higher than the level of frequencies offered by the independent ferry operator Anek on the ATH-CHQ route. Even if Athens Airways were to restart its operations on this route, the combined frequency share of Aegean and Olympic Air would still significantly exceed those of Anek and Athens Airways together. It is therefore clear that Aegean and Olympic Air have a significant frequency advantage on the ATH-CHQ route over their competitors.

646 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 58 [ID 4428]: *"More in particular as regards VFR passengers, many of those have to commute between islands and Athens and often only have limited time to visit their relatives and friends"*.

647 “Independent operators” do not include Blue Star Ferries.

Quality and convenience of the service

(864) While the results of the market investigation are mixed as regards the quality of air services as compared to the quality of ferry services and several respondents pointed out that modern ferry services exist on this route[648], it should be noted more generally that both types of transport have different advantages, which adds to the differentiation of the respective services offered. As pointed out by the Parties in their reply to the Statement of Objections, advantages of (modern) ferry services include availability of internet and mobile telephone connections, lounges, restaurants, cabins, entertainment on board, shopping, etc. In contrast, air services offer on board services such as the serving of a variety of food, drinks and other refreshments.[649] In addition, on the ATH-CHQ route, while air services are available during the day, the only independent ferry company, Anek, merely provides night services during most of the year, thus offering a product which is very different from Aegean's and Olympic Air's.

Reliability of the service

(865) The Parties were also requested to identify the number of days on which ferry schedules were affected by strikes and bad weather conditions in 2009 and 2010 on the ATH-CHQ route. They solely identified such information as of April 2010, thus excluding the winter season. For instance the data show that during the period from 26 April 2010 to 8 July 2010, ferry services were affected by twice as many strikes as air services, that is by eight days of strikes for ferry services compared to four days for air services.[650]

(866) Several respondents to the market investigation also indicated that, due to adverse weather conditions, ferry services were less reliable on all routes of concern, including explicitly the ATH-CHQ route. This concern was raised by Athens Airways that used to operate on ATH-CHQ route which is ("*often compounded by adverse sea conditions and strikes*"[651]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[652]*)*; ("*many times during the winter the ferries do not operate because of weather*"[653]) and corporate customers ("*[ferries are] more sensitive in weather conditions*"[654]); "(*[plane is] less*

648 Replies to question 35 of phase II request for information to travel agents of 13 August 2010 and replies to question 29 of phase II request for information to corporate customers of 13 August 2010.

649 Seehttp://en.aegeanair.com/Content.aspx?Page=33, http://www.olympicair.com/Default.aspx?a_id=654 and submission of the HALPA, p. 10 and 11 [ID 2109].

650 Reply of the Parties to question 50 (and annex to 25) of request for information of 20 August 2010.

651 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

652 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

653 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

654 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

affected by weather conditions"[655]). Another corporate customer located on Crete explained that ("*We don't travel usually with ferries (trip: 8-10 hours in the night + weather-difficulties in winter)*")[656]. The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*").[657]

Further results from the market investigation

(867) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the Commission disregarded the views of airlines and ferry companies insofar as they stated that ferry services exercise a competitive constraint on air travel.[658]

(868) A majority of airlines, including the Greek airline Sky Express, indeed stated that ferry services exerted a sufficient competitive constraint upon Aegean and Olympic Air on this route.[659] However, other Greek airlines, namely Athens Airways[660] and Hellenic Imperial[661] expressed a different view and Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different passenger profile.[662]

(869) As far as ferry companies are concerned, their replies to the market investigation questionnaires and their statements in interviews carried out in the course of the phase II investigation revealed an ambiguous picture. While, as pointed out by the Parties in their

655 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

656 Reply to question 25 of the phase II request for information to corporate customers of 13 August 2010 [ID 3477].

657 Reply to question 26 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

658 For the views of travel agents see Ssection VI.1.4.1.4.

659 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

660 Reply to question 54 of phase I request for information to competitors of 25 June 2010 (ID 1050) with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as […] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

661 While Hellenic Imperial considered in its reply to question 54 of the phase I request for information to competitors of 25 June 2010 that such a sufficient constraint exists as far as time sensitive and non-time sensitive passengers are concerned [ID 4582]. Hellenic Imperial stated in its reply to question 27 of the same questionnaire reply that no substitutability between the two modes of transport exists for time sensitive passengers *"because of the long sailing hours"* and it explained in a conference call of 17 September 2010 that it considers all air passengers as "time sensitive", see paragraph 7 of the agreed minutes of a teleconference call [ID 5145].

662 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

reply to the Supplementary Statement of Objections, Anek and Marfin's Blue Star Ferries consider that their passengers perceive ferry services as an alternative to air services and that ferry services thus impose a competitive constraint on air services, Anek made clear, when explaining its pricing strategy, that "*air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers*" and that *"only a very small number of passengers would consider switching between using air and sea services.*"[663]

(870) More specifically, according to HCAA "*On the Athens-Chania route, [...] Aegean and Olympic Air have reduced their offered seats [...] by 30% and 46.3% respectively and the average ticket price in this route was increased to an amount exceeding €220-250[664]"*. Such possibility to decrease capacity while at the same time increasing prices shows that, already pre-transaction, Aegean and Olympic Air face a low competitive constraint by ferry companies.

(871) Indeed, as explained in a letter of the Prefecture of Chania to the Greek authorities, Olympic Air and Aegean, in the summer of 2009, offered an aggregate of 10 flights and 1 126 seats daily on the ATH-CHQ route in competition with Athens Airways and "*passengers could find a seat at anytime and at an affordable price*". In the summer of 2010, the Prefect of Chania complained that after Athens Airways left the market "*Aegean has reduced its offered seats by 30% and Olympic Air by 46.30% having reduced [...] their flights in the Chania-Athens route [...] and the average ticket price [...] has rocketed during this period to an amount which exceeds €220-250.*"[665]

(872) This is also in line with the fact that neither Olympic Air nor Aegean regularly monitored ferry prices on the ATH-CHQ route. Indeed, the statement that Aegean "*did not keep track of the ferries recently, as it is more focused on competition from OA*"[666] relates specifically to Crete and thus to the ATH-CHQ route.

(873) This finding is further in line with the statement by Athens Airways that it had exited the ATH-CHQ route not because of competition by ferry services but due to the level of frequencies and pricing by Aegean and Olympic Air (to recall, Athens Airways stopped operating on the ATH-CHQ route during the IATA summer 2010 season, while Blue Star Ferries entered this route)[667].

(874) Finally, the distant competitive relationship between air services and ferry services is confirmed by the replies of ferry companies to the market test on remedies of

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663 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 8 [ID 5387]. In addition, Aegean Speedlines, a operator not active on the ATH- CHQ route, stated that *"the strong competition in tariffs and offers (e.g. free tickets for private cars instead of car hire on the island) in itineraries to Crete have significantly influenced the final choice of the public and there is a move from air to sea travel"* [ID 2207].

664 Agreed minutes of a teleconference call with HCAA of 9 July 2010, paragraph 14 [ID 1596].

665 http://www.chania-citizen-guide.gr/news_readmore_215.html

666 Agreed minutes of a meeting with the Parties of 12 August 2010.

667 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 46 [ID 5236].

19 November 2010. In this context, Anek stated that it lacked the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[668] Similarly, Attica explained that it is "*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*" and that it is unable "*to quantify [the effect of the remedies] or to judge whether [the remedies are] sufficient*".[669]

Conclusion

(875) The significant differences between air services and ferry services show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint on Aegean and Olympic Air on the ATH-CHQ route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean mentioned in Table 10 therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-CHQ route.

(876) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-CHQ route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Olympic Air and Aegean are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(877) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-CHQ route.

(878) As a result, as far as non-time sensitive passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction on the ATH-CHQ route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on this route.

(v) All passengers

(879) On a possible combined market including all passengers on the ATH-CHQ route, the market shares of the various operators are illustrated in the table 12 below, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

668 Email of Anek of 23 November 2010 [ID 6363].

669 Reply to question 1 of market test request for information of 19 November 2010 [ID 6499].

ATH-CHQ winter2009-2010		
All passengers	***Without ferries***	***Including ferries***
Aegean	[40-50] %	[20-30] %
Olympic Air	[40-50]%	[20-30] %
Combined	**[90-100] %**	**[40-50] %**
Athens Airways	[0-5]%	[0-5]%
Anek	X	[50-60] %
Total	100%	100%

Table 12: Market shares for air and ferry services
Source: Parties data and market investigation.

(880) The combined market shares of Olympic Air and Aegean on the ATH-CHQ route thus vary substantially depending on whether or not the ferry services are included in the relevant market. Indeed, should the ferries not be included in the relevant market for all passengers travelling on this route, the combined market share of Aegean and Olympic Air was [90-100] % in the IATA winter season 2009-2010. Given that Athens Airways suspended their operations, the proposed transaction would lead to a monopoly on the ATH-CHQ route[670] and eliminate the very close competition currently existing between Aegean and Olympic Air.

(881) Should however ferry services be considered as part of the relevant market, the combined market share of the merged entity would be in the range of [40-50] %.

(882) Even if more recent data for the year 2010 show a contraction of the combined share of the merged entity to [20-30] %, in particular as a consequence of the increase in the overall number of passengers travelling by ferries, ferry services remain only a distant substitute to the air services on the ATH-CHQ route due to objective comparision characteristics such travel time and level of service.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(883) The distant competitive relationship between air services and ferry services on the ATH-CHQ route is due to the substantial difference in the services provided by ferries and by air services referred to in section (iv) above, that is travel time, level of services, quality and convenience of the service, reliability of the service. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services.

670 Or close to monopoly if Athens Airways were to resume its operations on this route.

Prices

(884) In addition, air services and ferry services differ significantly in terms of prices on the ATH-CHQ route. On the basis of the data submitted by the Parties[671] and those provided by other operators in the course of the market investigation, the difference in the average fare charged by the two modes of transport is significantly different according to the period of the year in which it is computed. Air fare is on average about [30-50] % higher than ferry fare in winter, while it is more than 100% higher between April and July 2010. In July 2010, which is the last month for which data are available, the weighted average air fare is [170-190] % higher than the ferry fare.

Passenger and fare development

(885) The Commission, in order to detect a possible pattern of substitution analysed the passenger and fare data of Aegean and Olympic Air as well as data o fferry companies active on the ATH-CHQ route.

(886) By and large, the distribution of passengers on the two modes of transport varies significantly in the different periods of the year. While in general demand for travelling to Chania is very seasonal, the magnitude of seasonal fluctuations is different for the two means of transport. In terms of total number of passengers, these are roughly similar during the winter season, when the number of ferry passengers is around [10-30] % higher than those of air travellers. The situation is very different during the summer, when ferry passenger numbers are three times, as in July 2009, or four times, as in August 2009, higher than air passengers. In the period after April 2010, when Blue Star Ferries started operating on the ATH-CHQ route, the number of ferry passengers has additionally increased. In July 2010, ferry passengers were six times more numerous than air passengers.

(887) For what concerns average fare evolution, airline fares show a higher degree of seasonal fluctuation, as well as a higher absolute level throughout the year, than ferry fares. Air fare is on average fare of the two means for the year August 2009-July 2010, air fare is on average about [30-50] % higher than ferry fare in winter, while it is more than 100% higher between April and July 2010. In July 2010, which is the last month available, the weighted average air fare is [170-190] % higher than the ferry fare.

(888) Despite the significant increase in the relative fare, that should in principle make the ferry option attractive to many air passengers, it is observed that total air passengers on the ATH-CHQ route increased in summer, compared to winter, by [20-40] %. In absence of a capacity constraint on ferry companies, which is unlikely to occur, especially after the recent expansion in April 2010, this evidence points to the presence of a significant proportion of air passengers that would not switch to ferry services even in summer, despite this being a much cheaper alternative. In addition, to recall, the share of leisure passengers travelling both on ferries and on planes is significantly higher during the summer, compared to the winter. It has therefore to be concluded that a substantial amount of air passengers considers ferry a poor substitute to air transport.

(889) The Parties claimed that air transport activity declined on the ATH-CHQ route in summer 2010 because of the adverse economic conditions affecting Greece and fiercer

671 Reply of the Parties to the request for information of 8 June 2010.

competition by ferry companies operating on this route.[672] The Parties argued that this was due, in particular, to the fact that Blue Star Ferries started operating the route in April 2010. Data gathered in the course of the investigation confirmed a decline in total air passengers in the summer of 2010, compared to the same period of the previous year. At the same time, the total number of passengers travelling by ferry on the ATH-CHQ route increased in comparison to the previous summer.

(890) Incidentally, some additional insights can be obtained from observing how the average fares of Aegean and Olympic Air and the fares of Anek, the independent ferry operator already active on the ATH-CHQ route, were affected by the entry of Blue Star Ferries on the route. Comparing the fares charged by all competitors before and after April 2010, the fares of Anek fell significantly, by a magnitude of [10-20] % once seasonality was taken into account. That is to say Anek's fares were 10-20 % lower than expected in the absence of the entry by Blue Star Ferries. By contrast, following the entry of Blue Star Ferries on the ATH-CHQ route, no significant decline in the fares of either Aegean or Olympic Air, can be observed while controlling for seasonality. In fact, the entry of Blue Star Ferries coincided with an increase in Olympic Air's fares whereas Aegean fares are in line with the fares during the same period in the previous year.[673]

(891) In their reply to the Letter of Facts, the Parties argued that the fact that only Anek's fares were affected in a negative way, while those of Aegean and Olympic Air were not negatively affected, does not mean that ferries would not be a sufficient constraint. In this respect, the Commission considers that this evidence provides, nevertheless, clear indication that airlines and ferry companies serve portion of demand, which are very different in terms of sensitity to price[674].

(892) In addition, the decline in the number of air passengers is paralllel to the reduction in the number of total frequencies offered by Aegean and Olympic Air on the ATH-CHQ route.[675] This is consistent with the existence of a portion of demand which is not sensitive to price, and therefore chooses to travel by air transport despite the existence of cheaper alternatives. Therefore, when pricing tickets with respect to this portion of the demand, for which ferry travel is a poor substitute to air travel, the airlines found it economically reasonable to concentrate on this segment, exploit higher rents than those they could have possibly obtained when adjusting price downward in response to a credible competitive force.[676] Anek, on the other hand, being closer to

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672 Reply of the Parties to question 39 of the phase II request for information of 25 August 2010.

673 In their reply to the Letter of Facts, the Parties claim that the entry of Blue Star Ferries had an impact on the fares of Aegean for non-time sensitive passengers of [10-20]*%. Once seasonality is controlled for, this effect is reduced to [0-5]*% and it is not statistically significant, as it is the case for Anek.

674 This conclusion is obtained using, for what concerns Olympic Air, only information related to the period of operations of Olympic Air, and is confirmed if data for Old Olympic are used.

675 Aegean reduced frequencies in April 2010, while Olympic Air did the same in June.

676 A similar pattern is observed, for example, in consumer product markets when a new private label is introduced in a market where other private labels and branded products were previously present. While other private labels tend to compete with the new entrant, reducing their price, branded products do not modify, and sometimes actually increase, their price to serve to less price sensitive portion of the demand. The fact that, by doing so, some customer may refrain from purchasing

Blue Star Ferries in product space, and competing for the same portion of demand as Blue Star Ferries, was forced to adjust the fares downward. This suggests that entry of Blue Star Ferries, while fostering competition among ferry operators, did not have an appreciable direct impact on air transport on the ATH-CHQ route.

(893) In their reply to the Letter of Facts, the Parties disputed the fact that the reduction in the number air passengers occured as a consequence of the reduction in frequencies, and claimed, instead, that Olympic Air adjusted frequencies only in June 2010 when demand was already on the fall. The Commission does not object this fact, but notices that Olympic Air's average fare was rising on the ATH-CHQ route in the same period. This is yet consistent with the interpretation given above concerning the lack of reaction in the airlines' pricing strategy in the months immediately following the entry of Blue Star Ferries.

(894) In a study submitted by the Parties[677], evidence concerning fare and travelling time differences is reported, together with the results of the second survey[678] for this route concerning the choice of travel mode, as an indication of a certain degree of substitution between air transport and ferries. While the Parties point to the difference in price between ferry services and air services, as well the fact that a certain proportion of air passengers stated having used ferry services in the previous 12 months or would do so in the future, this does not constitute reliable evidence of a competitive constraint exerted by ferry services on airlines. As already mentioned above in the general assessment of the survey (see Section VI.1.4.1.6), evidence on parallel use in the past, but also possible intention of using the alternative mode in the future, does not necessarily indicate substitutability, especially because such use may well depend on the passenger circumstances at the time the choice is made (such as for instance holiday trip as opposed to business trip).

(895) As explained in the general assessment of the two surveys submitted by the Parties, a similar assessment applies to the results on routes to Crete presented in the first survey[679]. In addition, the size and the characteristics of the sample interviewed (that is, passengers from Greece to Crete, and not just passengers on the ATH-CHQ route) cast further doubts on the reliability of the result of this survey with respect to the ATH-CHQ route.

Views of travel agents

(896) The distant competitive relationship between ferry services and air services is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on Olympic Air and Aegean so as to prevent the latter from increasing prices post-transaction. Most travel agents who replied to that question, not

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branded product, either choosing private labels, or dropping out of the market, is yet consistent with branded products' producers enjoying market power on the less price sensitive portion of the demand.

677 Submission of LECG of 5 October 2010.

678 Submission of LECG of 5 October 2010, Appendix III].

679 Pages 18 and following to Annex 6 to Parties' response to the Decision opening proceedings of 30 July 2010.

distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-CHQ route.[680]

Conclusion

(897) Therefore, it is concluded that on the ATH-CHQ route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other on this route.

(898) Moreover, the combined market shares of Olympic Air and Aegean also underestimate the level of their actual influence on the market for another reason. In April 2010, Blue Star Ferries (a subsidiary controlled by Marfin) entered on the ATH-CHQ route with ferry services and has been aggressively gaining market share since then. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on the ATH-CHQ route.

(899) As a result, on the ATH-CHQ route, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-CHQ route.

(vi) Entry/expansion

(900) The Parties argued that no competition concerns arise on the ATH-CHQ route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(901) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-CHQ route.

(902) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(903) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2 that any possible re-entry on the ATH-CHQ route by this airline is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of

680 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

Athens Airways in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(904) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the transaction on the ATH-CHQ route.

(vii) Overall conclusion

(905) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-CHQ route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.3. ATH-HER (Athens-Herakleion, 813,783 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(906) Aegean used to operate up to eight flights per day in the summer on the ATH-HER route, but has reduced its frequencies to six to seven flights daily, using A320 and A321 aircraft.[681]

(907) [*Analysis of Aegean's performance and competitive situation of the ATH-HER route*]*

(908) [*Analysis of Aegean's performance and competitive situation of the ATH-HER route*]*

(909) [*Analysis of Aegean's performance and competitive situation of the ATH-HER route*]*. Athens Airways, which entered the ATH-HER route in 2009, suspended operations and no longer operates on this route. SkyExpress which recently entered on this route, offers very limited capacities and frequencies.

(910) [*Analysis of Aegean's performance and competitive situation of the ATH-HER route*]*

(911) [*Analysis of Aegean's performance and competitive situation of the ATH-HER route*]*[682]. Under its recently published summer 2011 schedule, Aegean is already offering tickets on the ATH-HER route until end-October 2011.

(912) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-HER route in the foreseeable future.

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681 For the data on Aegean’s operations referred to in this section, see Aegean Counterfactual, 6 September 2010.

682 […]*.

(ii) Olympic Air

(913) [*Analysis of OA's performance and competitive situation of the ATH-HER route*]*[683]

(914) [*Analysis of OA's performance and competitive situation of the ATH-HER route*]*

(915) [*Analysis of OA's performance and competitive situation of the ATH-HER route*]*[684]

(916) [*Analysis of OA's performance and competitive situation of the ATH-HER route*]*

(917) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-HER route in the foreseeable future.

(iii) Conclusion

(918) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-HER route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(919) On the ATH-HER route, 500,689 passengers travelled by air in IATA summer season 2009 while 313,094 passengers travelled by air in the IATA season winter 2009-2010. […]*.

(920) In 2009, […]*% of all air passengers travelled on the ATH-HER route for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these passengers had their main residence in Greece.[685]

(921) Both Olympic Air and Aegean operate on the ATH-HER route with non-stop services. Athens Airways entered the ATH-HER route in March 2009 with non-stop services but cease activities on this route. While Athens Airways operated on this route with small 49 seater planes, Aegean and Olympic Air use larger aircraft having up to 195 seats and 138 seats respectively.[686]

(922) In addition, Sky Express recently started operating on the ATH-HER route with one daily frequency. As explained in more detail above in Section IX.1.6.2, Sky Express decided to test the market by commercially opening one daily frequency between their base in Herakleion and Athens, which it flies in order to serve the PSOs out of Athens.

683 […]*.

684 […]*.

685 Form CO, annexes 48 and 49.

686 Form CO, paragraph 458.

This service is of very limited scope, in particular because of the very small size of the aircraft used for such a thick route and because only one daily frequency is operated.[687]

(923) The ATH-HER route is also served by ferry companies, in particular by Marfin's subsidiaries Blue Star Ferries and Superfast Ferries as well as by independent ferry operators Minoan and Anek. All ferry companies but Anek that operates a conventional ferry operate high-speed ferries on the ATH-HER route.

(ii) Relevant market

(924) According to the Parties, air transport on the ATH-HER route is subject to intermodal competition by ferry. This is due to in particular the large number of passengers travelling by ferry on this route, the high number of ferry companies active on the route with a very large capacity (Minoan, Blue Star Ferries, Anek, and Super Fast Ferries which entered this route in 2009), the competitive pricing (with promotional fares starting as low as from EUR 19) and comparable comfort offered by ferries, and the fact that a large number of passengers travel for non-business purposes which would suggest that travelling time is not an issue.

(925) This point was again underlined by the Parties in their replies to the Statement of Objections and the Supplementary Statement of Objections where, in addition, they argued that several airlines (Sky Express, Astra, Hellenic Imperial and Cyprus Airways) as well as the relevant ferry operators themselves considered that ferry services constrain air services.

(926) In terms of overall travelling time on the ATH-HER route, the journey from city centre to city centre by ferry differs from operator to operator (Blue Star Ferries 7 hours 40 minutes – 9 hours 10 minutes, Superfast Ferries 7 hours 40 minutes - 9 hours 40 minutes, Minoan 7 hours 10 minutes – 8 hours 10 minutes and exceptionally 5 hours 10 minutes in August, and Anek 9 hours 40 minutes – 14 hours 10 minutes). The shortest travel duration by ferry (7 hours 10 minutes and 5 hours 10 minutes in August) is thus normally (except in August) at least twice as long (and often even longer) as travel time by plane (3 hours 5 minutes).[688] This considerable difference in travelling time was also confirmed in the market investigation when comparing the service offerings of the two modes of transport.[689] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future on the ATH-HER route.

687 The ATH–HER route is connected to Sky Express' operation of a PSO route. Sky Express explains that it serves this route with one daily frequency but it is just to cover direct operating costs as with the applicable price, they are not making money. For Sky Express *"to decide to introduce another frequency in the route Athens – Herakleion, the Parties should reduce capacity in such a way that they attain an average load factor of* […]**%. This may justify another player getting in."* Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraphs 3, 7 and 11 [ID 6673].

688 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

689 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

(927) In terms of prices, the aggregate air travel fare on the ATH-HER route is consistently higher than ferry fares throughout the year. Considering the period between August 2009 and March 2010, the average air fare was between [40-50]*% and [90-100]*% higher than ferry yield, registered respectively in December 2009 and March 2010. […]*.

(928) Furthermore, as mentioned in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. More specifically for this route, the market investigation revealed that time sensitive passengers require an even higher level of services at each end of the route.[690] As illustrated in Table 15, none of the ferry companies active on the ATH-HER route offers two daily services at each end of the route across the year.

(929) In view of the longer travel duration by ferry compared to plane, passengers cannot make same-day return trips by ferry.[691] The significance of same- day return trips was confirmed by Sky Express ("*SEH believes that it is important that a carrier provides services in: a) the morning so that passengers are able to make connecting international flights; b) the evening so that passengers have a day-return option; c) and midday*")[692] and HALPA ("*HALPA estimates that approximately 20-30% of passengers on the route ATH-HER return at the same day*").[693]

(930) An analysis of frequencies of Aegean and Olympic Air showed that passengers could carry out same-day return trips each day during the week on both Aegean and Olympic Air.[694] This illustrates the flexibility offered by air services as compared to ferry services.

(931) The competitive disadvantages of ferry services were also reflected in the replies of corporate customers to the market investigation: most corporate customers who

690 According to Athens Airways, the route should be served with a minimum of three daily frequencies, see: Reply to question 16 of phase II request for information to competitors of 11 August 2010. According to a majority of corporate customers, ideally more than two daily frequencies should be available on the route, see: Replies to question 23 of phase II request for information to corporate customers of 13 August 2010. According to all travel agents, a minimum number of three (or more) daily frequencies should be available on the route in order to provide suitable services for time sensitive passengers, see: Replies to question 27 of phase II request for information to corporate customers of 13 August 2010; An even higher level of frequencies was indicated by a Greek consumer organisation, see: Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

691 While it is possible to travel overnight with Minoan and Anek, this bears most often the inconvenience of a very early arrival time at the destination (with Minoan at 5:00, with Anek at 2:50, 3:30, 5:01, 5:15 or 5:30) or of a very late departure (with Minoan at ATH at 23:59, with Anek at ATH at 23:59).

692 Agreed minutes of a teleconference call with the Sky Express of 24 August 2010, paragraph 20 [ID 5398].

693 Agreed minutes of a teleconference call with Hellenic Air Line Pilot Association of 30 August 2010, paragraph 59 [ID 4428].

694 See paras. 458 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010.

responded to the question asking about the modes of transport they would consider to travel on the ATH-HER route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[695]

(932) According to the results of the market investigation, Greek corporate customers that replied to the market investigation indicated that should prices of plane tickets increase by 5-10 % on Greek domestic routes on which they purchased tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(933) Similarly, a large majority of travel agents who replied to the relevant question did not believe that a significant proportion of time sensitive passengers would switch to ferry services should air fares on the ATH-HER route increase by 5-10 %.[696]

(934) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the view of corporate customers and travel agents was also shared by a large majority of competitors who responded to the relevant question as concerns the ATH-HER route[697], including Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers*[698]*"),* Hellenic Imperial ("*people travelling via air are always time-sensitive passengers*")[699] and Sky Express ("*ferry transport is only suitable for non-time sensitive passengers"*).[700] Similarly, according to the ferry operators Anek and Minoan Lines, time sensitive passengers do not consider air services and ferry services as substitutable.[701]

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695 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

696 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

697 Replies to question 27 of the phase I request for information to competitors of 25 June 2010, teleconference calls with competitors.

698 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

699 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 7 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on the ATH-HER route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

700 Agreed minutes of a teleconference call with the Sky Express of 24 August 2010, paragraph 35 [ID 5398].

701 Reply to question 8 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015] and reply to question 8 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1059].

Conclusion

(935) As concerns the ATH-HER route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(936) As far as time-sensitive passengers on the ATH-HER route are concerned, the market investigation showed also that according to most respondents the two modes of transport are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers.

(937) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers on the ATH-HER route, it can be left open whether or not ferry services are to be included in the relevant market. Indeed, as concluded in recital (989), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(938) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-HER route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(939) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-HER route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(940) As shown in Table 13 below, on a possible market for time sensitive passengers on the ATH-HER route, Olympic Air and Aegean had a combined market share of [90-100] % in the IATA season winter 2009-2010. Between April and July 2010, their combined market share further increased. More recently, Athens Airways suspended its operations and is no longer active on the ATH-HER route.

ATH-HER winter 2009-2010 Time sensitive passengers	
Olympic Air	[30-40]%
Aegean	[50-60]%
Combined	**[90-100]%**
Athens Airways	[5-10]%
Total	100%

Table 13 : Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation[702].

(941) It follows from Table 13 that the transaction leads to the creation of a dominant position on the ATH-HER route as Athens Airways no longer operates on this route and SkyExpress that recently entered the ATH-HER route exercises only a very limited competitive pressure. This is in particular due to the fact that Sky Express operates only one daily frequency (compared to five daily operated by Olympic Air and seven daily operated by Aegean in October 2010). As a result, Sky Express is not in a position to offer a credible alternative to time-sensitive passengers having the need for several frequencies a day so as to be able to make daily round trips in a most efficient maner.

(942) In addition, even if Athens Airways were to be active on the route along with Sky Express, the transaction would eliminate the two particularly close ocmpetitors and create a dominant position of the merged entity.

(iv) Non-time sensitive passengers

(943) As concerns a possible market for non-time sensitive passengers on the ATH-HER route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(944) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to the creation of a dominant position on the ATH-HER route and eliminate very close competition between Aegean and Olympic Air.

(945) Should ferry services be included in a relevant market for non-time sensitive passengers on the ATH-HER route, then, Olympic Air and Aegean would have a combined market share of [30-40] % (data based on IATA season winter 2009/10) as shown in Table 14 below:

702 Sky Express was not yet active in winter 2009-2010 on the ATH-HER route.

ATH-HER Non-time sensitive passengers (incl. ferries) winter 2009-2010	
Olympic Air	[10-20] %
Aegean	[10-20] %
Combined	**[30-40] %**
Athens Airways	[0-5] %
Attica Combined	[10-20] %
Minoan	[30-40] %
Anek	[10-20] %
Total	100%

Table 14: Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation.[703]

(946) More recent data for the year 2010 show a contraction of the combined market share of Olympic Air and Aegean on the ATH-HER route to [20-30%], as a consequence of the increase in ferry passenger numbers during the 2010 spring and summer seasons. The intensification of ferry services and the increase in ferry passengers during spring and summer is consistent with the seasonality of traffic on this route.

(947) It follows that Aegean's and Olympic Air's main competitors on the ATH-HER route would be Anek and Minoan, while Superfast Ferries and Blue Star Ferries are controlled by Marfin. Given that Marfin is in a position to exercise decisive influence on both Superfast Ferries and Blue Star Ferries and on the merged entity, these ferry operators cannot be considered as fully independent competitors on the ATH-HER route. Indeed, the level of competitive interaction between the merged entity and Blue Star Ferries and Superfast Ferries is likely to be affected by this commonality of shareholding between Marfin and Attica[704]. As a result, the competitive constraint exerted on the merged entity by remaining ferry services on the ATH-HER route is more limited than the market share of all ferry services combined would suggest.

(948) Furthermore, in view of the evidence collected during the market investigation and in particular the considerable difference between ferry services as compared to

703 Sky Express was not yet active in IATA winter season 09/10.

704 Marfin's subsidiary Attica controls Blue Star Ferries and Superfast Ferries.

services offered by Aegean and Olympic Air in terms of travel time, scheduling and quality, convenience and reliability, ferry services are only distant substitutes to air services. As a result, the inclusion of ferry services in the relevant market would lead to market shares which would overestimate the actual competitive constraint that ferry services exert on Olympic Air and Aegean on the ATH-HER route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and *vice versa*. They are each other's closest competitors.

Travel time

(949) It is also to be recalled that the shortest travel duration by ferry (7 hours 10 minutes, except for August) is more than twice as long as travel time by plane (3 hours 5 minutes). While exceptionally the fastest ferry can make this trip in 5 hours 10 minutes, this is only possible during the summer season and still considerably exceeds journey time by plane.

(950) The considerably longer travelling time by ferry makes ferry services a distant substitute to air services even for non-time sensitive passengers. Indeed, a number of travel agents responding to the market investigation indicated that also leisure or VFR passengers valued the existence of fast modes of transport.[705]

Level of frequencies

(951) According to the Parties, the level of weekly services operated by Olympic Air and Aegean and other operators at various points of the time of the year 2010 on the ATH-HER route is as follows:

Frequencies in 2010	ATH-HER			
	January	March	August	October
Olympic Air	56	53	35	35
Aegean	49	49	49	49
Combined	**105**	**102**	**84**	**84**
Sky Express			6	6
Athens Airways	14	14	14	
Attica combined (high speed ferry)	7	7	14	3
Minoan (high speed ferry)	10	7	14	7
Anek (conventional)	10	9	15	7
Total independent operators[706]	**34**	**30**	**49**	**20**

705 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of a teleconference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

706 Independent operators do not include Super Fast Ferries and Blue Star Ferries, controlled by Attica, Marfin's subsidiary.

Table 15: Weekly services on the ATH-HER route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010, complemented by the market investigation.

(952) Table 15 illustrates that the Olympic Air and Aegean combined share of frequencies is substantially higher than the level of frequencies offered by the independent ferry operators Minoan and Anek on the ATH-HER route. Even if Athens Airways were to restart its operations on this route, the Aegean and Olympic Air combined frequency share would still significantly exceed those of Minoan, Anek and Athens Airways. It is therefore clear that the Aegean and Olympic Air have a significant frequency advantage on the ATH-HER route vis-à-vis their competitors.

Quality and convenience of the service

(953) While the results of the market investigation are mixed as regards the quality of air services as compared to the quality of ferry services and several respondents pointed out that modern ferry services exist on the route[707], the Commission notes more generally that both modes of transport have different advantages, which adds to the differentiation of the respective services offered. As pointed out by the Parties in their reply to the Statement of Objections, advantages of ferry services include availability of internet and mobile telephone connections, lounges, restaurants, cabins, entertainment on board, shopping, etc. In contrast, air services offer on board services such as the serving of a variety of food, drinks and other refreshments.[708] In addition, on the ATH-HER route, while air services are available during the day, the only independent ferry companies, Anek and Minoan often provide night services while in some periods only night services are available (for instance in October 2010 both Minoan and Anek offered only night services). Therefore, product offered by ferry comparies is substantially different from the one offered by Aegean and Olympic Air.

Reliability of the service

(954) The Parties were also requested to identify the number of days on which ferry schedules were affected by strikes and bad weather conditions in 2009 and 2010 on the ATH-HER route. They were only able to identify such information as of April 2010, thus excluding the winter season. The data show that during the period between 21 April 2010 and 8 July 2010, ferry services were affected by strike six times while air services were affected only 4 times in the same time period.[709]

(955) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services were less reliable on all relevant routes of concern, including explicitly the ATH-HER route. This concern was raised by Athens Airways who used to operate on the route (the route is "*often compounded by adverse sea*

707 Replies to question 35 of phase II request for information to travel agents of 13 August 2010 and replies to question 29 of phase II request for information to corporate customers of 13 August 2010.

708 See http://en.aegeanair.com/Content.aspx?Page=33, http://www.olympicair.com/Default.aspx?a_id=654 and submission of HALPA, p. 10 and 11 [ID 2109].

709 Reply of the Parties to question 50 (and annex 25) of request for information of 20 August 2010.

conditions and strikes"[710]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[711]; "*many times during the winter the ferries do not operate because of weather*"[712]) and corporate customers ("*[ferries are] more sensitive in weather conditions*"[713]; "(*plane [is] less affected by weather conditions*"[714]); a corporate customer located on Crete explained that ("*We don't travel usually with ferries (trip: 8-10 hours in the night + weather-difficulties in winter)*"[715]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[716]).

(956) Similarly, Sky Express, based at Herakleion, underlined that it "*sometimes lays on extra services when adverse conditions hinder ferry transportation in a bid to capture passenger market share. This is often the case in the month of August when weather conditions are particularly volatile*". This is despite the fact that the sea craft that serve this route are more robust and are less likely to be impacted by adverse weather conditions.[717]

Further results from the market investigation

(957) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[718]

(958) A majority of airlines, including the Greek airline Sky Express, indeed stated that ferry services exerted a sufficient competitive constraint upon Aegean and Olympic Air

710 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

711 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

712 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

713 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

714 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

715 Reply to question 25 of the phase II request for information to corporate customers of 13 August 2010 [ID 3477].

716 Reply to question 26 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

717 Agreed minutes of a teleconference call with the Sky Express of 24 August 2010, paragraphs 31 and 36 [ID 5398].

718 For the views of travel agents see also section VI.1.4.1.4.

on on the ATH-HER route. [719] Other Greek airlines, namely Athens Airways[720] and Hellenic Imperial[721] expressed a different view and Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different passenger profile.[722]

(959) In particular, Sky Express explained that any decision to enter the ATH-HER route was based on Aegean and Olympic Air's capacity and pricing strategy and unrelated to ferry companies.[723] This statement does not suggest that ferries would be a sufficient constraint on the merged entity.

(960) As far as ferry operators are concerned, their replies to the market investigation questionnaires and their statements in interviews during the phase II investigation reveal an ambiguous picture. While, as pointed out by the Parties in their reply to the Supplementary Statement of Objections, ferry operators on the ATH-HER route consider that their passengers perceive ferry services as alternative air services, the distant competitive relationship between both modes of transport is illustrated by Anek, namely one of the two independent ferry operators on the ATH-HER route, who made clear that "*air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers*" and that *"only a very small number of passengers would consider switching between using air and sea services.*"[724]

(961) Similarly, Minoan, the other independent ferry operator on the ATH-HER route, explained that "*it has researched passenger types for many years and has come to the conclusion that air and sea operators cater to different market needs and that the profile of air passengers is different than that of the ferry. A ferry operator […] offers passengers good prices and flexibility. Airlines tend to be expensive during the summer season.*"[725] Minoan further stated that it considered Anek and Superfast Ferries as its

719 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

720 Reply to question 54 of phase I request for information to competitors of 25 June 2010 [ID 1050] with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as […] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

721 While Hellenic Imperial considered in its reply to question 54 of the phase I request for information to competitors of 25 June 2010 that such a sufficient constraint exists as far as time sensitive and non-time sensitive passengers are concerned [ID 4582]. Hellenic Imperial stated in its reply to question 27 of the same questionnaire reply that no substitutability between the two modes of transport exists for time sensitive passengers *"because of the long sailing hours"* and it explained in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see paragraph 7 of the agreed minutes of a teleconference call [ID 5145].

722 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

723 Agreed minutes of a teleconference call with Sky Express of 24 August 2010, paragraph 37 [ID 5398].

724 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 8 [ID 5387].

725 Agreed minutes of a teleconference call with Minoan of 8 September 2010, paragraph 18 [ID 4950].

two main competitors on the ATH-HER route and that it had lost market share to Anek and Superfast Ferries (but not to airlines) because of their low prices.[726] This is also in line with the fact that Minoan considers air passengers as time sensitive passengers[727] and that in Minoan's view time sensitive passengers do not consider air and ferry services as substitutes.[728]

(962) These findings are in line with the fact that neither Olympic Air nor Aegean regularly monitor ferry prices on the ATH-HER route.

(963) Finally, the distant competitive relationship between air services and ferry services is confirmed by the replies of ferry operators to the market test on remedies of 19 November 2010. Anek stated that it lacked the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[729] Similarly, Attica explained that it was "*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*" and that it was unable "*to quantify [the effect of the remedies] or to judge whether [the remedies] are sufficient*".[730] Similarly, Minoan stated "*we are not competitors with the airlines companies*".[731]

Conclusion

(964) The significant differences between air services and ferry services show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the ATH-HER route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean mentioned in Table 14 therefore greatly understate the importance of the actual competitive constraint that they exercise on each other.

(965) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-HER route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

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726 Agreed minutes of a teleconference call with Minoan of 08 September 2010, paragraphs 8-11 [ID 4950].

727 Agreed minutes of a teleconference call with Minoan of 8 September 2010, paragraph 17 [ID 4950].

728 Reply to question 8 of the phase I request for information to ferry operators of 25 June 2010 [ID 1059].

729 Email of Anek of 23 November 2010 [ID 6363].

730 Reply to question 1 of market test request for information of 19 November 2010 [ID 6499].

731 Email of Minoan of 23 November 2010 [ID 6897].

(966) It follows that the transaction leads to the elimination of the closest competitor of Aegean and Olympic Air on the ATH-HER route.

(967) As a result, as far as non-time sensitive passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction on this route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour on the ATH-HER route, especially concerning fare setting.

(v) All passengers

(968) On a possible combined market including all passengers on the ATH-HER route, the market shares of the various operators are illustrated in the table 16 below, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

ATH-HER winter 2009-2010		
All passengers	***Without ferries***	***Including ferries***
Aegean	[50-60] %	[20-30] %
Olympic Air	[40-50] %	[10-20] %
Combined	**[90-100] %**	**[30-40] %**
Athens Airways	[0-5] %	[0-5] %
Attica combined	x	[10-20] %
Anek	x	[10-20] %
Minoan	x	[30-40] %
Total	100%	100%

Table 16 : Market Share for air and ferry services[732]

Source: Parties data and market investigation.

(969) The combined market shares Olympic Air and Aegean on the ATH-HER route thus vary substantially depending on whether or not ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-HER route, the combined market share of Aegean and Olympic Air was [90-100] % in the IATA winter season 2009-2010. Given that Athens Airways suspended their operations and considering the very small scale of Sky Express operations, the transaction would lead to the creation of a dominant position and elimination of close competition between Aegean and Olympic Air on ATH-HER route.

732 Sky Express was not yet active in winter 2009-2010 on the ATH-HER route.

(970) Should ferry services be included as part of the relevant market for all passengers on ATH-HER route, the combined market share of Aegean and Olympic Air is in the range of [30-40] %. More recent data for the year 2010 confirm the same figure.

(971) However, irrespective of whether or not ferry services are included in the relevant market, ferry services are only a distant substitute to the air services on the ATH-HER route due to objective comparision characteristics such travel time and level of service.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(972) The distant competitive relationship between air services and ferry services on the ATH-HER is first of all due to the substantial difference in the services provided by ferries and by air services referred to in section (iv) above, that is travel time, level of services, quality and convenience of the service, reliability of the service as well as further results from the market investigation. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services.

Prices

(973) As mentioned in recital (927), the aggregate air travel fare is consistently higher than ferry fares throughout the year on the ATH-HER route. Considering the period between August 2009 and March 2010, the average air fare is between [40-50]*% and [90-100]*% higher than the ferry fare, registered respectively in December 2009 and March 2010. As of April 2010, the air fare is constantly double the average ferry fare.

Passenger and fare development

(974) The Commission also analysed data on total passengers travelling by air and ferry services between January 2008 and June 2010 on the ATH-HER route. As in other domestic destinations, data clearly showed that ferry services are much more affected by seasonality than air transport. While seasonal fluctuations in air passenger numbers are in the order of 20% to 30%, ferry operators reported in five times more passengers in the summer of 2010 than in the winter of 2009.

(975) The Parties claimed that air transport services declined on the routes to Crete in the summer 2010 because of the adverse economic conditions affecting Greece and because Aegean and Olympic Air were facing fiercer competition by ferry companies.[733] Data gathered in the course of the investigation confirmed the decline in total air passenger numbers in the summer of 2010, as compared to the same period in 2009. At the same time, total passenger numbers travelling by ferry on the ATH-HER route increased in comparison to the previous summer.

(976) Fare data showed that the increase of the demand for ferry services and the parallel reduction of frequencies offered by Aegean and Olympic Air on the ATH-HER route were associated with an increase in the difference between the average fare of air services and ferry services. It is observed that the average air fare was […]*% higher

733 Reply of the Parties to question 39 of the phase II request for information of 25 August 2010.

than ferry fare in July 2010, which is the highest difference in the period for which data were available. None of the airlines operating on the route adjusted their fares in response to the increase in ferry services, while they kept concentrating on the less price sensitive portion of the demand. This suggests, together with evidence on the level of differentiation between the two modes of transport, a substantial difference between demand for air and ferry transport services on this route.

(977) This conclusion is not contradicted by the results of the first consumer survey provided by the Parties concerning the routes from Athens to Crete[734], which arguably shows that ferry services are substitutable with air transport services on these routes. For instance, the size and the characteristics of the sample interviewed in that survey, namely passengers from Greece to Crete, not only passengers on the ATH-HER route, casts doubts on the applicability of the result of this survey with respect to ATH-HER route specifically (see Section VI.1.4.1.6 above).

Views of travel agents

(978) The distant competitive relationship between the two modes of transport is further evidenced by the views of travel agents who were asked during the market investigation whether ferry services on the ATH-HER route exerted or might exert a competitive constraint on Aegean and Olympic Air so as to prevent the latter from increasing prices post-transaction. Most travel agents who replied to that question, without distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry services could exert a sufficient competitive constraint on Aegean and Olympic Air providing air services on the ATH-HER route.[735]

Conclusion

(979) Therefore, it is concluded that on the ATH-HER route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other.

(980) Moreover, the combined market shares of Aegean and Olympic Air on the market including ferries underestimate the level of their actual influence on the market because the two ferry operators active on the market, Superfast Ferries and Blue Star Ferries, cannot be considered as fully independent competitors on the ATH-HER route because they are controlled by Marfin.

(981) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on the ATH-HER route. Customers' choices of

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734 Parties' response to the Decision opening proceedings of 30 July 2010, Annex 6, p. 18ff.

735 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-HER route.

(vi) Entry/expansion

(982) The Parties argued that no competition concerns arise on ATH-HER route due to the absence of barriers to entry.

(983) Also in their reply to the Statement of Objections and Supplementary Statement of Objections, the Parties argued that the merged entity would be sufficiently constrained by existing and potential competition. More specifically, they argued that at least two airlines were considering entering the ATH- HER route, namely Sky Express and Hellas Jet while Sky Express have in fact already entered by selling seats on its flights to Athens.

(984) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which also apply to the ATH-HER route.

(985) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects by airlines or ferry operators for this route as regards all categories of passengers.

(986) As regards Sky Express, it would consider expand its current one daily frequency service only if some conditions are met, in particular the merged entity would have to decrease its capacity compared to combined *status quo* and competitors would not employ jet aircraft to serve this route. These conditions are uncertain to be met in the future, all the more since both Aegean and Olympic Air currently employ large aircraft up to 138 seats (Olympic Air) and 195 seats (Aegean) on this thick route and thus are unlikely to switch to another type of aicraft.[736] In any event, such limited expansion of Sky Express services on the ATH-HER route would not be sufficient to constraint the merged entity.

(987) As regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2 that any possible re-entry on the ATH-HER route is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways in the past, is is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(988) Thus, the evidence indicates that entry or expansion on ATH-HER route in the foreseeable future is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the transaction on this route.

(vii) Overall conclusion

(989) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-HER route, and this irrespective of whether the effects of the

736 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 4 [ID 6673].

transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.4. ATH-JKH (Athens-Chios, 217,053 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(990) Aegean operated on the ATH-JKH route using ATR72 aircraft […]*, as well as RJ Avro aircraft in summer 2010.[737] [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*.

(991) [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*[738]. However, Aegean maintained the ATH-JKH route in both summer 2010 and winter 2010-2011 IATA seasons.

(992) [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*

(993) [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*

(994) Aegean considers that Olympic Air, in the lead in terms of frequencies and market share on the ATH-JKH route, […]*. Moreover, as Aegean no [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*.

(995) Accordingly, in its winter season 2010-2011 schedule Aegean reduced its operations on the ATH-JKH route to a single daily frequency. [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*.

(996) [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*

(997) The Parties argued in their replies to the Statement of Objections and to the Supplementary Statement of Objections that Aegean[*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*[739] [740] [741].

737 Aegean Counterfactual, 6 September 2010.

738 […]*.

739 […]*.

740 […]*.

741 […]*.

(998) Regarding the availability of aircraft, the market investigation showed that airlines under current market conditions do not encounter any significant difficulties in finding aircraft for lease at commercially reasonable conditions[742] and therefore it is unlikely that availability of aircraft would be an obstacle for Aegean to operate on this route.

(999) The ATH-JKH route has a non negligible share of connecting passengers of 10% which indicates that the route has a network contribution value.[743] [*Analysis of Aegean's performance and competitive situation of the ATH-JKH route*]*[744].

(1000) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-JKH route in the foreseeable future.

(ii) Olympic Air

(1001) [*Analysis of OA's performance and competitive situation of the ATH-JKH route*]*[745]

(1002) [*Analysis of OA's performance and competitive situation of the ATH-JKH route*]*

(1003) [*Analysis of OA's performance and competitive situation of the ATH-JKH route*]*

(1004) [*Analysis of OA's performance and competitive situation of the ATH-JKH route*]*

(1005) [*Analysis of OA's performance and competitive situation of the ATH-JKH route*]*

(1006) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-JKH route in the foreseeable future.

(iii) Conclusion

(1007) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-JKH route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1008) On the ATH-JKH route, 135,975 passengers travelled by air in the IATA season summer 2009 while 81,078 passengers travelled by air in IATA season winter 2009-2010. […]*.

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742 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraphs 13 and 30 [ID 5236] and agreed minutes of a teleconference call with Hellas Jet of 24 November 2010, paragraph 7 [ID 6962].

743 Connecting passenger numbers for Aegean are for the period January-October 2010 and do not include interlines passengers.

744 […]*.

745 […]*.

(1009) In 2009, […]*% of all air passengers travelled on the ATH-JKH route for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1010) Both Olympic Air and Aegean operate on the ATH-JKH route with non-stop services. Athens Airways entered the ATH-JKH route in June 2009 with non-stop services but ceased operations. While Athens Airways operated on this route with small aicraft of 50 seats, Aegean and Olympic Air use larger aircraft up to 78 seats (Olympic Air) and 112 seats (Aegean).[746] Astra also operated on the ATH-JKH route between July and September 2010.[747]

(1011) The ATH-JKH route is also served by several ferry operators, namely by Anek, Nel and Hellenic Seaways.

(ii) Relevant market

(1012) According to the Parties, air transport on this route is subject to intermodal competition by ferry services. Due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services, and the fact that a large number of passengers travel for non-business purposes, ferry services are a substitute for those passengers for which travelling time is not an issue.

(1013) This point was again underlined by the Parties in their replies to the Statement of Objections and to the Supplementary Statement of Objections where, in addition, they argued that several airlines (Sky Express, Astra, Hellenic Imperial and Cyprus Airways) as well as the relevant ferry operators themselves considered that ferry services constrained air services.

(1014) In terms of overall travelling time on the ATH-JKH route, the journey from city centre to city centre by ferry services differs from operator to operator, around 7 hours by Hellenic Seaways, 8 hours 50 minutes to 9 hours 35 minutes by Nel, and 10 hours and 5 minutes by Anek. The shortest trip duration by ferry is thus at least twice as long as travel time by plane lasting less than 3 hours.[748] This considerable difference in travelling time has also been confirmed by respondents to the market investigation when comparing the service offerings of the two modes of transport.[749] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future.

(1015) In terms of prices on the ATH-JKH route, air services and ferry services differ significantly. More specifically, the average air fare is consistently more than double of the price of ferry ticket in the period between January 2009 and July 2010, with the only

746 Form CO, paragraph 450.

747 Email of Astra of 20 November 2010 [ID 6194].

748 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

749 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

exception of November 2009 and January 2010, where air fare is on average 60% higher than the contemporaneous ferry fare.

(1016) As mentioned in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. The market investigation showed that the number of frequencies necessary on this route is even higher.[750] However, as illustrated in Table 19, none of the ferry companies active on this route offers two daily services at each end of the route across the year.

(1017) In view of the longer travel duration by ferry compared to plane, it is moreover not possible for passenger to make same-day return trips by ferry on the ATH-JKH route.[751] An analysis of frequencies offered by Aegean and Olympic Air shows that passengers can carry out same-day return trips at least every weekday (Monday to Friday) with both Aegean and Olympic Air.[752] This illustrates the flexibility offered by air services as compared to ferry services.

(1018) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers who responded to the question asking about the modes of transport they considered for travelling on the ATH-JKH route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[753]

(1019) It is also to be recalled that according to the results of the market investigation, Greek corporate customers that replied to the Commission's market investigation indicated that should airfares increase by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(1020) Similarly, a large majority of travel agents who replied to the relevant question indicated that as concerns time-sensitive passengers they did not believe that a

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750 According to Athens Airways, the route should be served with a minimum of two daily frequencies, see: Replies to question 16 of phase II request for information to competitors of 11 August 2010. According to a majority of corporate customers, ideally more than two daily frequencies should be available on the route, see: Replies to question 23 of phase II request for information to corporate customers of 13 August 2010. According to approximately half of all travel agents, a minimum number of three daily frequencies should be available on the route in order to provide suitable services for time sensitive passengers, see: Replies of travel agents to question 27 of the phase II request for information to travel agents of 13 August 2010. This is further confirmed by a Greek consumer organisation, see: Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

751 In addition, overnight trips by ferry bear the inconvenience of a very early arrival time at JKH (between 2:00 and 4:00 in the morning with both Anek and Nel).

752 See paras. 450 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010.

753 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

significant proportion of time sensitive passengers would switch to ferry services should airfares on this route increase by 5-10%.[754]

(1021) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the same view as the view of corporate customers and travel agents was also taken by a large majority of competitors who responded to the relevant question for the ATH-JKH route[755], including Astra (*"even super-fast ferries are not an alternative to a flight for time-sensitive passengers[756])",* Hellenic Imperial (*"people travelling via air are always time-sensitive passengers"*)[757] and Sky Express (*" ferry transport is only suitable for non-time sensitive passengers"*[758]).

(1022) According to the ferry operator Hellenic Seaways, time sensitive passengers consider air and ferry services as substitutes only in the case of high speed ferries, especially on trips of small distances where the aggregate travel time is comparable.[759] According to Anek, time sensitive passengers do not consider air services and ferry services as substitutable on this route.[760]

Conclusion

(1023) As concerns the ATH-JKH route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(1024) As far as time-sensitive passengers on the ATH-JKH route are concerned, the market investigation showed also that according to most respondents the two modes of transport are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers on this route.

(1025) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services

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754 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

755 Replies to question 27 of the phase I request for information to competitors of 25 June 2010 and teleconference calls with competitors.

756 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

757 Agreed minutes of a teleconference call with Hellenic Imperial on Friday 17 September 2010, paragraph 7 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on the ATH-JKH route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

758 Agreed minutes of a teleconference call with the Sky Express on Tuesday 24 August 2010 paragraph 35 [ID 5398].

759 Reply to question 8 of phase I request for information [ID 1099].

760 Reply to question 9 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

are to be included in the relevant market. Indeed, as concluded in recital (1065), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(1026) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-JKH route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(1027) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-JKH route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1028) On a possible market for time sensitive passengers, as shown in Table 17, Olympic Air and Aegean had a combined market share of [90-100] % in winter 2009-2010. Between April and July 2010, their combined market share has further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-JKH winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[40-50]%
Aegean	[50-60]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 17: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1029) It follows from Table 17 that this transaction leads to the creation of a monopoly as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted on the Aegean and Olympic Air on the ATH-JKH route no longer exists. Astra, a small Greek airline mainly active on PSO market and that used to operate the route for a short period of time in summer 2010 also withdrew from the route.

(1030) In addition, even if Athens Airways and/or Astra were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity.

(iv) Non-time sensitive passengers

(1031) As concerns a possible market for non-time sensitive passengers on the ATH-JKH route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(1032) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly[761] of the merged entity and eliminate very close competition currently existing between Olympic Air and Aegean.

(1033) Should ferry services be included in a relevant market for non-time sensitive passengers on the ATH-JKH route, Olympic Air and Aegean would have a combined market share in the range of [40-50] % (data based on the IATA season winter 2009-2010), as shown in Table 18 below:

ATH-JKH **Non-time sensitive passengers (incl. ferries)** **winter 2009-2010**	
Olympic Air	[10-20] %
Aegean	[20-30] %
Combined	**[40-50] %**
Athens Airways	[0-5] %
Anek	[20-30] %
Nel	[5-10] %
Hellenic Seaways	[20-35] %
Total	100%

Table 18: Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1034) Should ferries be included in the market for non-time sensitive passengers on the ATH-JKH route, Table 18 illustrates that Aegean and Olympic Air would also have a relatively high combined market share of [40-50%]. More recent data for the year 2010 indicates a contraction of the combined share of Aegean and Olympic Air to [30-40%], as a consequence of the increase in the number of ferry travellers.

761 Or close to monopoly if Athens Airways and/or Astra were to resume operations on the ATH-JKH route.

(1035) Furthermore, evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry services are only distant substitutes to air services on the ATH-JKH route. Due to these differences, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert on Aegean and Olympic Air on this route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and *vice versa*. They are each other's closest competitors on the ATH-JKH route.

Travel time

(1036) The considerably longer travelling time by ferry (seven to ten hours by ferry compared to three hours by plane) on the ATH-JKH route render ferry services a distant substitute to air services even for non-time sensitive passengers. Indeed, number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[762]

Level of frequencies

(1037) According to the Parties, the level of weekly services operated by Olympic Air, Aegean and other operators at various points of the time of the year 2010 on this route is as follows:

Frequencies in 2010	**ATH-JKH**			
	January	March	August	October
Olympic Air	21	19	28	21
Aegean	14	14	21	14
Combined	**35**	**33**	**49**	**35**
Astra			3	
Athens Airways	5	7	7	
Hellenic Seaways (conventional)	5	5	7	5
Anek (conventional)	3	3	4	3
Nel (conventional)	2	2	6	3
Total independent operators	**15**	**17**	**27**	**11**

Table 19: Weekly services on the ATH-JKH route

762 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.[763]

(1038) Table 19 illustrates that the combined share of frequencies of Aegean and Olympic Air is substantially higher than the level of frequencies offered by their competitors. Even if Athens Airways and/or Astra were to restart operations on the ATH-JKH route, the combined frequency share of Aegean and Olympic Air would still significantly exceed those of ferry operators and Athens Airways together. It is therefore clear that the merged entity would have a significant frequency advantage on the ATH-JKH route over their competitors.

Quality and convenience of the service

(1039) Several travel agents indicated that the quality of ferry services (comfort level, punctuality etc.) is inferior to the quality of air services on this route.[764] Also Sky Express mentioned that ferries on the route are "*old and slow*".[765]

(1040) Furthermore, ferries on this route often only provide night services and thus offer a product that is very different from the one of Aegean and Olympic Air.

(1041) In addition, it is noteworthy that not all ferries on the ATH-JKH route can be booked sufficiently long in advance. While plane tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the websites of Hellenic Seaways and Nel mid December 2010 indeed revealed that ferry services on the ATH-JKH can indeed be booked only until the end of January 2011 while no trip can be booked with Anek.[766]

Reliability of the service

(1042) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services were less reliable on all relevant routes of concern, including explicitly the ATH-JKH route. This concern was raised by Athens Airways that used to operate the route and according to which the ATH-JKH route is "*often compounded by adverse sea conditions and strikes*"[767], two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of*

763 Information for January and March 2010 is complemented by the market investigation. Information on Astra is based on Astra's email of 3 December 2010 [ID 6895].

764 Replies to question 35 of phase II request for information to travel agents of 13 August 2010.

765 Replies to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1010].

766 Time schedules of ferries, websites visited in December 2010 [ID 7462].

767 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

ferries this is not so"[768]; "*many times during the winter the ferries do not operate because of weather*"[769]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[770]; "*plane [is] less affected by weather conditions*"[771]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[772]).

Further results from the market investigation

(1043) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[773]

(1044) A majority of airlines, including the Greek airline Sky Express, indeed stated that ferry services exerted a sufficient competitive constraint upon Aegean and Olympic Air on the ATH-JKH route.[774] Other Greek airlines, namely Athens Airways[775] and Hellenic Imperial[776] expressed a different view and Astra explained that such a constraint might

768 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

769 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

770 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

771 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

772 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

773 For the views of travel agents see Section VI.1.4.1.4.

774 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

775 Reply to question 54 of phase I request for information to competitors of 25 June 2010 (ID 1050) with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as […] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

776 While Hellenic Imperial considered in its reply to question 54 of the phase I request for information to competitors of 25 June 2010 that such a sufficient constraint exists as far as time sensitive and non-time sensitive passengers are concerned [ID 4582]. Hellenic Imperial stated in its reply to question 27 of the same questionnaire reply that no substitutability between the two modes of transport exists for time sensitive passengers *"because of the long sailing hours"* and it explained in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see agreed minutes of a teleconference call, paragraph 7 [ID 5145].

only emanate from "super-fast" ferries while normal ferries would cater to a very different passenger profile.[777]

(1045) As far as ferry operators are concerned, it is to be recalled that their replies to the market investigation questionnaires and their statements in interviews carried out during the phase II investigation reveal an ambiguous picture. While several ferry operators including Anek and Nel[778] considered that their passengers perceived ferry services as an alternative to air services, according to Anek "*air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers"* and that *"only a very small number of passengers would consider switching between using air and sea services.*"[779]

(1046) The distant competitive relationship between air and ferry services is further underlined by the fact that neither Olympic Air nor Aegean regularly monitor ferry prices on the ATH-JKH route.

(1047) Finally, the distant competitive relationship between air services and ferry services is also illustrated by the replies of ferry operators to the market test on remedies of 19 November 2010. Anek stated that it lacked the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[780] Similarly, Hellenic Seaways explained that it "*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*".[781] Also Nel made a similar statement ("*we can not provide any answers though we are not in the airline field*").[782]

Conclusion

(1048) The significant differences between air services and ferry services on the ATH-JKH route show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the ATH-JKH route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-JKH route.

(1049) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-JKH route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry

777 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

778 Reply to question 17 of phase II request for information [ID 4718].

779 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 8 [ID 5387].

780 Email of Anek of 23 November 2010 [ID 6363].

781 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

782 Email of Nel of 25 November 2010 [ID 6674].

operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(1050) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-JKH route.

(1051) As a result, as far as non-time sensitive passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-JKH route.

(v) All passengers

(1052) On a possible combined market including all passengers on the ATH-JKH route, the market shares of the various operators are illustrated in Table 20, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

ATH-JKH winter 2009-2010		
All passengers	***Without ferries***	***Including ferries***
Aegean	[50-60] %	[20-30] %
Olympic Air	[40-50] %	[20-30] %
Combined	**[90-100] %**	**[50-60] %**
Athens Airways	[5-10] %	[0-5] %
Anek	x	[10-20] %
Hellenic Seaways	x	[0-20] %
Nel	x	[5-10] %
Total	100%	100%

Table 20: Market share for air and ferry services

Source: Parties data and market investigation.

(1053) The combined market shares of Aegean and Olympic Air on the ATH-JKH route thus vary substantially depending on whether or not transport by ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-JKH route, the combined market share of Aegean and Olympic Air was [90-100] % in winter 2009-2010. Given that Athens Airways and Astra suspended their operations, the transaction would lead to a monopoly[783] and eliminate close competition between Aegean and Olympic Air on the ATH-JKH route.

(1054) Should however transport by ferries be considered as part of the relevant market on the ATH-JKH, the combined market shares Aegean and Olympic Air would still be very high reaching [50-60] %. Even if more recent data for the year 2010 show a contraction of the combined share of Aegean and Olympic Air to [40-50] %, in particular as a consequence of the increase in the overall number of passengers travelling by ferries, ferry services are only a distant substitute to the air services on the ATH-JKH route due to objective comparison characteristics such travel time and level of service.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(1055) The distant competitive relationship between air services and ferry services on the ATH-JKH route is due to the substantial difference in the services provided by ferries and by air services, that is travel time, level of services, quality, convenience and reliability of the service. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services.

Prices

(1056) In addition, air services and ferry services differ significantly in terms of prices on the ATH-JKH route. More specifically, the average air fare is consistently more than double of ferry fare in the period under examination, with the only exceptions of November 2009 and January 2010, where air fare is on average 60% higher than the contemporaneous ferry fare.

Views of travel agents

(1057) The distant competitive relationship between both modes of transport is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on Olympic Air and Aegean so as to prevent the merged entity from increasing prices post-transaction. Most travel agents who replied to that question, not distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-JKH route.[784]

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783 Or close to monopoly if Athens Airways and/or Astra were to resume operations on the ATH-JKH route.

784 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

Conclusion

(1058) Therefore, it is concluded that on the ATH-JKH route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-JKH route.

(1059) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on the ATH-JKH route. Customers' choice of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour on the ATH-JKH route, especially concerning fare setting.

(vi) Entry/expansion

(1060) The Parties argued that no competition concerns arise on the ATH-JKH route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1061) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-JKH route.

(1062) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(1063) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2 that any possible re-entry by this airline on the ATH-JKH route is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways and Astra in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(1064) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the transaction on the ATH-JKH route.

(vii) Overall conclusion

(1065) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-JKH route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.5. ATH-JMK (Athens-Mykonos, 207,881 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1066) [*Analysis of Aegean's performance and competitive situation of the ATH-JMK route*]*[785]

(1067) [*Analysis of Aegean's performance and competitive situation of the ATH-JMK route*]*

(1068) [*Analysis of Aegean's performance and competitive situation of the ATH-JMK route*]*

(1069) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-JMK route in the foreseeable future.

(ii) Olympic Air

(1070) [*Analysis of OA's performance and competitive situation of the ATH-JMK route*]*

(1071) [*Analysis of OA's performance and competitive situation of the ATH-JMK route*]*

(1072) [*Analysis of OA's performance and competitive situation of the ATH-JMK route*]*

(1073) [*Analysis of OA's performance and competitive situation of the ATH-JMK route*]*

(1074) [*Analysis of OA's performance and competitive situation of the ATH-JMK route*]*[786]

(1075) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-JMK route in the foreseeable future.

(iii) Conclusion

(1076) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-JMK route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1077) On the ATH-JMK route, 181,866 passengers travelled by air in IATA season summer 2009 while 26,015 passengers travelled by air in IATA season winter 2009-2010. […]* as is underlined by the very high difference in the number of travellers during the two seasons.

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785 […]*.

786 […]*.

(1078) In 2009, […]*% of all air passengers on the ATH-JMK route travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1079) Olympic Air and Aegean operate on the ATH-JMK route with non-stop services. Athens Airways was active on this route in summer 2009 but not in winter 2009-2010 and ceased operations. In winter season, both Aegean and Olympic Air operate on the route with smaller aircraft (Olympic Air: 37-46 seats, Aegean: 112 seats)[787] whereas during the summer Aegean flies A 320 having a capacity of 168 seats and Olympic Air uses both A 319 having 138 seats and Bombardier Q400 78–seater aircrafts.[788]

(1080) In addition, the ATH-JMK route is served by numerous ferry operators from the ports of Pireus and Rafina.[789] The following ferry companies are active: Marfin's subsidiaries Blue Star Ferry (Piraeus and Rafina) and Super Fast Ferries (Rafina), Hellenic Seaways (Piraeus and Rafina), Agoudimos (Piraeus and Rafina), Aegean Speed Lines (Piraeus), Cyclades Fast Ferries (Rafina) and Sea Jet (Rafina). Many of these ferry companies offer fast services on the ATH-JMK route.

(ii) Relevant market

(1081) According to the Parties, air transport on the ATH-JMK route is subject to competition by ferry. The Parties point out that passengers have the choice of a number of ferry operators that are very competitively priced, and often operate high-speed vessels with convenient schedules similar to the ones offered by airlines on this route.

(1082) While ferry prices are not regularly monitored by Aegean and Olympic Air, Athens Airways used to monitor prices of ferries on this specific route, different from all other domestic routes on which it used to be active.[790] This is in line with Athens Airways' explanations that the influence of competition by ferries on the ATH-JMK route is higher than on other routes.[791]

(1083) As concerns the difference in travel time between the air services and ferry services on the ATH-JMK route, while travel time from city center to city center by

787 Form CO, paragraph 490.

788 Aegean Countrefactual analysis, page 28.

789 According to the Parties, the port of Rafina is located about 14km from AIA and 26km from Athens city centre. Its main advantage is therefore its close proximity to the AIA. The port of Rafina can be reached by public transport via the KTEL intercity bus system. The bus serves the route Rafina-AIA from 5.45 am to 10.30 pm with buses leaving very regularly from the arrivals level of the AIA. The approximate trip duration from Athens city centre to Rafina is 40 minutes. There are 30 frequencies per week. Ticket price for one-way trip is approximately EUR 3, see reply of the Parties to question 43 of request for information of 25 August 2010 and to question 48 of request for information of 20 August 2010.

790 Reply to question 31 of the phase I request for information to competitors of 25 June 2010 [ID 1040]; Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

791 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 47 [ID 5236].

plane is approximately 3 hours, travel time by ferry differs from operator to operator. While on average the ferry trip takes between 4 and 5 hours, the shortest ferry trip in the summer season may be even shorter than travel by plane, that is only 2 hours 30 minutes. Indeed, during the summer season, Sea Jet makes the route in between 2 hours 30 minutes and 3 hours 30 minutes. The other ferry companies make the trip in various timeframes: Blue Star Ferries between 5 hours 25 minutes and 7 hours 15 minutes, Hellenic Seaways between 4 hours 10 minutes and 5 hours, Agoudimos between 4 hours 20 minutes and close to 6 hours, Aegean Speedlines between 4 hours 30 minutes and 5 hours, and Cyclades Fast Ferries between 5 hours 15 minutes and 5 hours 30 minutes.

(1084) This illustrates that travel time between the two modes of transport is roughly comparable, in line with the statements of several respondents to the market investigation in relation to the ATH-JMK route (e.g. "*high speed modern ferries and short travel time*", "*usually passengers travelling to shorter destinations tend to prefer ferry services (e.g. Mykonos)*").[792]

(1085) However, replies of ferry operators do not reveal a clear picture. According to Anek, all passengers consider air services and ferry services as substitutable during March to October[793] while in the view of Cyclades Fast Ferries *"not even high-speed ferry passengers would compete with air services"*[794] but the opposite view was expressed by Hellenic Seaways.[795]

(1086) Furthermore, due to the short distance between Athens and Mykonos, the route does not lend itself to overnight services and ferry services are therefore less differentiated from air services than on other routes.

(1087) A recent study submitted by the Parties[796] reports the differences in terms of fares and total travelling time between the two modes of transport. While ferry price is less than half the average fare charged for air travel on this route, it is to be recalled that time sensitive passengers in particular value elements such as flexibility and travel duration more than the price. On this specific route, level of flexibility and travel duration of ferry trips are comparable to the ones offered by air transport services.

(1088) Indeed, travel time from city centre to city centre by ferry is not significantly longer than by plane and can be even shorter during summer. As regards flexibility, Table 22 showing the weekly services operated by the Parties and their competitors

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792 Reply of Athens Airways to question 54 of the phase I request for information to competitors of 25 June 2010 [ID 1050], reply of Aegean Speedlines to question 14 of the phase II request for information to ferry operators of 13 August 2010 [ID 2534].

793 Reply to question 9 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

794 Agreed minutes of a teleconference call with Cyclades Fast Ferries of September 2010, paragraph 15 [ID 5392].

795 Reply of Hellenic Seaways to question 16 of the phase II request for information to ferry operators of 13 August 2010 [ID 5730].

796 Submission of LECG of 5 October 2010.

evidences that during the summer season the number of ferry services competing with the Parties' air transport services is roughly equal (and in August 2010 even higher).

Conclusion

(1089) Therefore, in view of the comparable travel time between the two modes of transport and adequate level of frequencies offered by ferries, air services and ferry services are considered to be substitutable for all categories of passengers on the ATH-JMK route. Air services and ferry services are therefore part of the same product market for all categories of passengers on this route.

(1090) As a result, it can be left open whether different markets needs to be distinguished for time sensitive passengers, non-time sensitive passengers and all passengers on the ATH-JMK route, as the transaction would not significantly impede effective competition for any category of passengers on the present route.

(iii) Competitive assessment

(1091) Table 21 below illustrates the market position of Olympic Air and Aegean on a possible market for all passengers on the ATH-JMK route. In the IATA season winter 2009-2010, Aegean and Olympic Air controlled together market share of [20-30] %.

ATH-JMK winter 2009-2010	
Olympic Air	[10-20] %
Aegean	[10-20] %
Combined	**[20-30] %**
Blue Star Ferry	[30-40]%
Aegean Speed Lines	[0-5] %
Cyclades Fast Ferries	[20-30] %
Hellenic Seaways	
Agoudimos	
Sea Jets	[10-20] %
Total	100%

Table 21: Market shares for air and ferry services

Source: Parties' data and market investigation.

(1092) More recent data for the year 2010 actually shows a decrease of the combined market share of Aegean and Olympic Air together reaching [20-30%], which appears to be related to the increase of ferry passengers during the summer.

(1093) According to the Parties, the weekly services operated by Olympic Air, Aegean and other operators on the ATH-JMK route are as follows:

Frequencies in 2010	ATH-JMK			
	January	March	August	October
Olympic Air	11	11	28	17
Aegean	5	8	24	17
Combined	**23**	**33**	**67**	**55**
Blue Star Ferries	7	14	15	21
Hellenic Seaways (conventional/high-speed)	3	7	33	20
Agoudimos (Nisia)	7	Not active due to annual review of vessel	7	7
Sea Jet (high-speed)			16	10
Cyclades Fast Ferries (conventional)		7	9	7
Aegean Speedlines (high-speed)		4	7	6
Total independent operators[797]	**10**	**18**	**72**	**50**

Table 22 : Weekly services on the ATH-JMK route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.[798]

(1094) Table 22 shows that both time sensitive and non-time sensitive passengers have several alternatives to the services of Aegean and Olympic Air both in the summer and in the winter season. Furthermore, it is to be recalled that the route has a highly seasonal character, with almost 90% of all passengers on the route travelling in the summer season. As is illustrated in Table 22, the number of services offered by Aegean and Olympic Air's competitors during the summer season is comparable to the number of services offered together by Aegean and Olympic Air. In August 2010 independent competitors of Aegean and Olympic Air offered even more frequencies than Aegean and Olympic Air.

(1095) The fact that travel time from city centre to city centre by ferry is not significantly longer by ferry than by plane (and can be even shorter during summer) significantly increases the attractiveness of ferry services on this route, in particular for time sensitive passengers. In this respect, ferry services are much closer substitutes to air services on the ATH-JMK route than on other Greek domestic routes for which competition concerns are raised in this Decision. This is in particular due to the fact that ferries on

797 "Independent operators" do not include Blue Star Ferry.

798 Information for March 2010 is complemented by the market investigation.

this route allow for day return trips, they do not imply overnight travels and there is wide availability of schedules throughout the day (especially in summer).This is in line with the statement of Athens Airways that the influence of ferry competition on the ATH-JMK route is higher than on other routes.[799]

(1096) Although Aegean and Olympic Air are each other's closest competitors also on the ATH-JMK route, the distance in the competitive relationship with ferries is significantly smaller on the ATH-JMK route than on other routes making ferries a credible alternative to air travel on this route. The merged entity will therefore continue to face competition from the existing ferry companies active on this route and offering comparable service to the one offered by Aegean and Olympic Air as far as all categories of passengers on the ATH-JMK route are concerned.

(iv) Overall conclusion

(1097) Therefore, it is concluded that the transaction is unlikely to significantly impede effective competition on the ATH-JMK route and that irrespective of the precise market definition.

1.9.1.6. ATH-JTR (Athens-Santorini, 334,442 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1098) [*Analysis of Aegean's performance and competitive situation of the ATH-JTR route*]*[800]

(1099) [*Analysis of Aegean's performance and competitive situation of the ATH-JTR route*]*

(1100) [*Analysis of Aegean's performance and competitive situation of the ATH-JTR route*]*. This intention is also evidenced by the fact that the ATH-JTR route is part of Aegean's recently published summer 2011 schedule.

(1101) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-JTR route in the foreseeable future.

(ii) Olympic Air

(1102) [*Analysis of OA's performance and competitive situation of the ATH-JTR route*]*

(1103) [*Analysis of OA's performance and competitive situation of the ATH-JTR route*]*[801]

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799 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 47 [ID 5236].

800 […]* .

801 […]* .

(1104) [*Analysis of OA's performance and competitive situation of the ATH-JTR route*]*

(1105) [*Analysis of OA's performance and competitive situation of the ATH-JTR route*]* Under its recently published summer 2011 schedule, Olympic Air is already offering flights and selling seats on the ATH-JTR route until end-October 2011.

(1106) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-JTR route in the foreseeable future.

(iii) Conclusion

(1107) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-JTR route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1108) On the ATH-JTR route, 293,625 passengers travelled by air in the IATA season summer 2009 while 40,817 passengers travelled by air in the IATA season winter 2009-2010. […]*.

(1109) In 2009, […]*% of all air passengers travelled ont his route for business purposes, […]*% were VFR passengers, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1110) Both Olympic Air and Aegean operate non-stop services on the ATH-JTR route. Athens Airways entered the route in April 2009 with non-stop services but ceased operations. While Athens Airways operated on this route with small aircraft of 49 seats, Olympic Air and Aegean use larger aircraft up to 78 seats (Olympic Air) and 112 seats (Aegean).[802]

(1111) The ATH-JTR route is served by several ferry operators, namely Anek, Ventouris, Lane, Sea Jets, Hellenic Seaways, Zante, Aegean Speed Lines as well as Marfin's subsidiary Blue Star Ferry. While Blue Star Ferry operates the highest number of ferry frequencies on this route throughout the year, not all of the other ferry operators are active throughout the year on the ATH-JTR route.

(ii) Relevant market

(1112) According to the Parties, air transport on this route is subject to intermodal competition by ferry services. Due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services, and the fact that a large number of passengers travel for non-business purposes, ferry services are a substitute for those passengers for which travelling time is not an issue.

(1113) This point was again underlined by the Parties in their replies to the Statement of Objections and to the Supplementary Statement of Objections where, in addition, they argued that several airlines (Sky Express, Astra, Hellenic Imperial and Cyprus Airways)

802 Form CO, paragraph 505.

as well as the relevant ferry operators themselves considered that ferry services constrained air services.

(1114) In terms of overall travelling time on the ATH-JTR route, the journey from city centre to city centre by ferry differs from operator to operator but is in all cases at least twice as long as the trip by plane. Marfin controlled Blue Star Ferries make the trip between in between 6 hours 20 minutes and 9 hours and 15minutes, Anek's trip lasts between 8 hours 45 minutes and 10 hours 15 minutes, Ventouris makes it in almost 11 hours, Lane in 12 hours. In the summer the trip takes 6 hours 15 minutes to Sea Jets, between 5 hours 25 minutes and 6 hours 10 minutes for Hellenic Seaways, close to 6 hours 5 minutes for Aegean Speedlines and almost 15 hours for Zante. This trip duration is in stark contract with the duration of the trip by plan which takes slightly less than 3 hours (2 hours 55 minutes).[803] Theerefore, the shortest travel duration by ferry (5 hours 25 minutes in the summer and 6 hours 20 minutes in the winter) is thus considerably longer than travel time by plane. This difference in travel time in particular outside the summer season was also emphasised by travel agents during the market investigation.[804] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future.

(1115) In terms of prices, on the ATH-JTR route, in the period September 2009 to May 2010 the average air fare was higher than the average ferry fare by 20 to 70%.[805] This difference reached 80%-100% in June and July 2010. Compared to other highly touristic routes, the difference in price between the two modes of transport on the ATH-JTR route seems more stable over the year, despite the single fare series being significantly different in winter and summer. This has to do with the increase in the activity of fast ferries during the summer months, which have higher prices than conventional ones. The presence of these ferries make the average ferry fare to increase significantly in summer compared to winter, when they are not active.

(1116) Even though the difference in the level of frequencies between air services and ferry services on this route is less pronounced, the replies of corporate customers to the market investigation reflect that ferry services on the route have a competitive disadvantage vis-à-vis air services. Most corporate customers who responded to the question asking about the means of transport they consider for travelling on this route indicated that they do not normally consider the ferry when purchasing tickets for business travels.[806]

(1117) It is also to be recalled that according to the results of the market investigation, Greek corporate customers that replied to the Commission's market investigation indicated that should airfares increase by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would

803 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

804 Replies to questions 34 and 35 of phase II request for information to travel agents of 13 August 2010.

805 This includes Anek, Sea Jets, Hellenic Seaways, Aegean Speedlines, Blue Star Ferries, Ventouris, Lane and Zante.

806 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(1118) Similarly, a large majority of travel agents who replied to the relevant question indicated that as concerns time-sensitive passengers they did not believe that a significant proportion of time sensitive passengers would switch to ferry services should airfares on this route increase by 5-10%.[807]

(1119) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the same view as the view of corporate customers and travel agents was also taken by a large majority of competitors who responded to the relevant question for the [808], including Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers")*[809] and to a certain extent Hellenic Imperial[810].

(1120) According to the ferry operator Hellenic Seaways, time sensitive passengers consider air and ferry services as substitutes only in the case of high speed vessels, especially on trips of small distances where the aggregate travel time is comparable[811], thus suggesting that no such substitutability exists for the conventional ferries operating on this route. According to Anek, time sensitive passengers consider air services and ferry services as substitutable on the ATH-JTR route only during March to October.[812] The ferry operator Lane stated in its reply that its customers are "*truck drivers, fisherman, and farmers that they traveling for professional reason and most of them are poor and they a using our Ferry because is the smallest rate for transportation. The prices for our tickets are given as obligation from the Greek government because of the support that is given to us for this journeys'. I wish we Gould have an opinion about the case that you are studying with the airlines but is irrelevant to us if there is one or two airlines but this do not interferes to our traditional shipping traveling and there is no competition to us because our fisherman or farmers do not have the amount of money for traveling with the plain*".[813]

Conclusion

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807 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

808 Replies to question 27 of the phase I request for information to competitors of 25 June 2010 and teleconferences with competitors.

809 Agreed minutes of a teleconference call with Astra of 25 August 2010 [ID 4477].

810 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 7 [ID 5145]. Hellenic Imperial explained that air passengers are always time sensitive; it considers substitutability between the two modes of transport for time sensitive passengers only in the case of high speed ferries (reply to question 27 of phase I request for information [ID 4582]).

811 Reply to question 8 of phase I request for information [ID 1099].

812 Reply to question 9 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

813 Letter of Lane of 25 November 2010 [ID 6676].

(1121) As concerns the ATH-JTR route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(1122) As far as time-sensitive passengers on the ATH-JTR route are concerned, the market investigation showed also that according to most respondents the two modes of transport are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers.

(1123) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services are to be included in the relevant market. Indeed, as concluded in recital (1164), on the ATH-JTR route, the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(1124) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-JTR route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(1125) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-JTR route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1126) As shown Table 23, on a possible market for time sensitive passengers on the ATH-JTR route, Olympic Air and Aegean had a combined market share of [90-100] % in the IATA season winter 2009-2010. Between April and July 2010, their combined market share has further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-JTR winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[50-60]%
Aegean	[40-50]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 23: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1127) It follows that this transaction leads to the creation of a monopoly on the ATH-JTR route as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted on the Aegean and Olympic Air no longer exists.

(1128) In addition, even if Athens Airways were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity on the ATH-JTR route.

(iv) Non-time sensitive passengers

(1129) As concerns a possible market for non-time sensitive passengers, a separate assessment is to be conducted depending on whether ferries are or not included as part of the relevant market.

(1130) Should the market be confined to air services only, the competitive assessment for the time sensitive segment on the ATH-JTR route applies correspondingly, i.e. the present transaction would lead to a monopoly[814] and eliminate very close competition currently existing between the two airlines. Should ferry services be included in a relevant market for non-time sensitive passengers, Olympic Air and Aegean would have a combined market share in the range of [30-40] % in winter 2009-2010, as shown in Table 24:

814 Or close to monopoly if Athens Airways were to resume its operations on the ATH-JTR route.

ATH-JTR Non-time sensitive passengers (incl. ferries) winter 2009-2010	
Olympic Air	[20-30] %
Aegean	[10-20] %
Combined	**[30-40] %**
Blue Star Ferry	[50-60] %
Athens Airways	[0-20]%
Anek	
Ventouris	
Hellenic Seaways	
Lane	
Sea Jets	
Total	100%

Table 24: Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1131) Besides Blue Star Ferries controlled by Marfin and holding a market share of [50-60%], the main competitors of Aegean and Olympic Air on the ATH-JTR route are minor players Anek and Hellenic Seaways. Given that Marfin is in a position to exercise decisive influence on Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on the ATH-JTR route. Indeed, the level of competitive interaction between the merged entity and Blue Star Ferries is likely to be affected by this commonality of shareholding between Marfin and Blue Star Ferries. As a result, the competitive pressure exerted on the merged entity by remaining ferry services on the ATH-JTR route is much more limited than the market share of all ferry services combined would suggest.

(1132) The combined market shares of Aegean and Olympic Air are lower during the summer season [20-30%], as high speed ferries of Hellenic Seaways, Aegean Speed Lines and Sea Jets are also active.[815] Evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry services are only distant substitutes to air services. Due to these differences and in view of the fact that Blue Star Ferries cannot be considered as a fully independent operator, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert

815 Zante did not operate this route throughout the winter season. During the summer the market share of Zante is very small, which is consistent with its low number of weekly frequencies (1 in August 2010) on the route and its very long travel time (14 hours 20 minutes). This would thus not alter the conclusion on this route.

on Olympic Air and Aegean on the ATH-JTR route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and *vice versa*. They are each other's closest competitors on the ATH-JTR route.

Travel time

(1133) The considerably longer travelling time by ferry (6 hours to 15 hours by ferry compared to less than three hours by plane) render ferry services a distant substitute to air services even for non-time sensitive passengers on the ATH-JTR route. Indeed, number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[816]

Level of frequencies

(1134) According to the Parties, the level of weekly services operated by Olympic Air, Aegean, and other operators at various points of the time of the year 2010 on this route was as follows:

Frequencies in 2010	**ATH-JTR**			
	January	March	August	October
Olympic Air	14	14	39	27
Aegean	7	7	25	21
Combined	**21**	**21**	**64**	**48**
Athens Airways	3	3	3	
Blue Star Ferries (conventional)	11	8	11	11
Anek (conventional)	4	4	4	4
Ventouris (conventional)	2	2	2	2
Lane	2		1	
Sea Jets (catamaran)			7	
Hellenic Seaways (high-speed)		7	7	5
Aegean Speed Lines (high-speed)			7	
Zante			1	
Total independent operators[817]	**11**	**16**	**32**	**11**

Table 25: Weekly services on the ATH-JTR route

816 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of a teleconference call with the HALPA of 30 August 2010, paragraph 50 [ID 4428].

817 "Independent operators" do not include Blue Star Ferries.

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.[818]

(1135) Table 25 illustrates that the Aegean and Olympic Air's combined share of frequencies is substantially higher than the level of frequencies offered by independent operators on the ATH-JTR route. Even if Athens Airways were to restart its operations on the route, the combined frequency share of Aegean and Olympic Air would still significantly exceed those of ferry operators and Athens Airways together. It is therefore clear that Aegean and Olympic Air have a significant frequency advantage on this route over their competitors.

Quality and convenience of the service

(1136) The Parties claimed in their reply to the Statement of Objections, that advantages of ferries include availability of internet and mobile telephone connections, lounges, restaurants, cabins, entertainment on board, shopping, etc. While several respondents to the market investigation pointed out that modern ferry services existed on the route, the overall results of the market investigation concerning the quality of air services as compared to the quality of ferry services are mixed.[819]

(1137) In addition, it is noteworthy that not all ferries on the ATH-JTR route can be booked sufficiently long in advance. While plane tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the websites of Hellenic Seaways and Anek mid December 2010 indeed revealed that ferry services on the ATH-JTR can indeed be booked only until the end of January 2011.[820]

Reliability of the service

(1138) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services are less reliable on all relevant routes of concern, including explicitly on the ATH-JTR route. This concern was raised by Athens Airways who used to operate the route (the route is "*often compounded by adverse sea conditions and strikes*"[821]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[822]; "*many times during*

818 According to the Parties, not all information on ferries is available, see: Reply to question 1 of the request for information of 4 October 2010. Missing information has been complemented by the market investigation.

819 Replies to question 35 of phase II request for information to travel agents of 13 August 2010 and replies to question 29 of phase II request for information to corporate customers of 13 August 2010.

820 Time schedule ferries, websites visited mid December 2010 [ID 7462].

821 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

822 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

the winter the ferries do not operate because of weather"[823]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[824]; "*plane [is] less affected by weather conditions*"[825]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[826]).

Further results from the market investigation

(1139) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[827]

(1140) A majority of airlines indeed stated that ferries exert a sufficient competitive constraint upon Aegean and Olympic Air on the ATH-JTR route.[828] While this includes the Greek airlines Sky Express and Hellenic Imperial (for high-speed ferries)[829], the Greek airline Athens Airways[830] expressed a different view and the Greek airline Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different traveller profile.[831]

(1141) As far as ferry operators are concerned, their replies to the market investigation questionnaires and their statements in interviews carried out during the phase II

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823 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

824 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

825 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

826 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

827 For the views of travel agents see section VI.1.4.1.4 above.

828 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

829 While the reply of Hellenic Imperial to question 54 of the phase I request for information to competitors of 25 June 2010 is ambiguous [ID 4582], it stated in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see paragraph 7 of the agreed minutes of conference call [ID 5145] and that in the case of high-speed ferries substitutability for time sensitive passengers exists on this route (see reply to question 27 of the phase I request for information).

830 Reply to question 54 of phase I request for information to competitors of 25 June 2010 [ID 1050] with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, "*especially on routes such as […]Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of conference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

831 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

investigation reveal an ambiguous picture. While, as pointed out by the Parties in their reply to the Supplementary Statement of Objections, ferry operators (including the independent ferry operator Anek) often consider that their passengers perceive ferry services as alternative air services and that ferries thus impose a constraint on air services, it is to be recalled that according to Anek "*air passengers usually do not travel for the same purpose as sea passengers and therefore they constitute two different types of passengers"* and that *"only a very small number of passengers would consider switching between using air and sea services."*[832] Sea Jets underlined that "*our main competitors are otrher shipping companies and not air carriers. A change in the price of the airline tickets won't have a major impact on our business*".[833]

(1142) Finally, the distant competitive relationship between air services and ferry services is also illustrated by the replies of ferry operators to the market test of remedies of 19 November 2010. Anek stated that it lacks the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[834] Similarly, Attica explained that it is "*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*" and that it is unable "*to quantify [the effect of the remedies] or to judge whether [the remedies] are sufficient*".[835] Hellenic Seaways explained that it "*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*".[836] Also Nel made a similar statement ("*we can not provide any answers though we are not in the airline field*").[837]

(1143) Several ferry operators stated even explicitly that they did not consider themselves as competitors of air services, including Sea Jets[838] ("*we consider our shipping company to be on a different market than the airline industry and we have different costumers and target group*"), Ventouris[839] ("*we are not competitors*" and Zante[840] ("*Our company is a maritime company and there is no competition with the airline companies*").

Conclusion

832 Agreed minutes of a teleconference call with Anek of 1 September 2010, paragraph 8 [ID 5387].

833 Reply to question 15 of the phase II request for information to ferry operators of 13 August 2010 [ID 5550].

834 Email of Anek of 23 November 2010 [ID 6363].

835 Reply to question 1 of market test request for information of 19 November 2010 [ID 6499].

836 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

837 Email of Nel of 25 November 2010 [ID 6674].

838 Email of Sea Jets of 25 November 2010 [ID 6632].

839 Email of Ventouris of 25 November 2010 [ID 6002].

840 Email of Zante of 25 November 2010 [ID 6761].

(1144) The significant differences between air services and ferry services show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the ATH-JTR route route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-JTR route.

(1145) In addition, the biggest ferry operator on this route, having a market share of [50-60] % on the market for all passengers including ferry services, is Blue Star Ferries, a company controlled by Marfin. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on this route and is not likely to constitute a sufficient competitive constraint on the merged entity on the ATH-JTR route.

(1146) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-JTR route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(1147) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-JTR route.

(1148) As a result, as far as non-time sensitive passengers on the ATH-JTR route are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-JTR route.

(v) All passengers

(1149) On a possible market including all passengers o nthe ATH-JTR route, the market shares of the various operators are illustrated in Table 26 below, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

ATH-JTR winter 2009-2010

All passengers	***Without ferries***	***Including ferries***
Aegean	[30-40]%	[10-20] %
Olympic Air	[50-60]%	[20-30] %
Combined	**[90-100] %**	**[30-40] %**
Athens Airways	[0-5] %	[0-5] %
Blue Star Ferries	x	[50-60] %
Anek	x	
Sea Jets	x	
Hellenic Seaways	x	[0-20] %
Ventouris	x	
Lane	x	
Total	100%	100%

Table 26: Market shares for air and ferry services

Source: Parties data and market investigation.

(1150) The combined market shares of Aegean and Olympic Air on the ATH-JTR route thus vary substantially depending on whether or not transport by ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-JTR route, the combined market share of Aegean and Olympic Air was [90-100] % in winter 2009-2010. Given that Athens Airways suspended their operations, the transaction would lead to a monopoly[841] and eliminate close competition between Aegean and Olympic Air on the ATH-JTR route.

(1151) Should however transport by ferry services be considered as part of the relevant market, the combined market shares of Aegean and Olympic Air would be [30-40] % on the ATH-JTR route. This position is also confirmed in the more recent data for the year 2010.[842]

(1152) However, irrespective of whether or not ferry services are included in the relevant market, ferry services are only a distant substitute to air services on the ATH-JTR route.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

841 Or close to monopoly if Athens Airways were to resume its operations on the ATH-JTR route.

842 Zante did not operate this route throughout the winter season. During the summer the market share of Zante is very small, which is consistent with its low number of weekly frequencies (1 in August 2010) on the route and its very long travel time (14 hours 20 minutes). This would thus not alter the conclusion on this route.

(1153) The distant competitive relationship between air services and ferry services on the ATH-JTR route is due to the substantial difference in the services provided by ferries and by air services in terms of travel time, level of services, quality, convenience and reliability of the service. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services.

Prices

(1154) Air fares on the ATH-JTR route are significantly higher than the average ferry fare. For instance, in the period September 2009 to May 2010 the average air fare was higher than the average ferry fare by 20 to 70%. This difference reaches 80%-100% in June and July 2010.[843]

Views of travel agents

(1155) The distant competitive relationship between both ferry services and air services is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on Olypic Air and Aegean so as to prevent the merged entity from increasing prices post-transaction. Most travel agents who replied to that question, not distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-JTR route.[844]

Conclusion

(1156) Therefore, it is concluded that on the ATH-JTR route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other.

(1157) Moreover, the combined market shares of Olympic Air and Aegean also underestimate the level of their actual influence on the market for another reason. The biggest ferry operator on this route is Blue Star Ferries controlled by Marfin. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator.

(1158) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers

843 In a study submitted by the Parties (Submission of LECG of 5 October 2010), it is also reported that ferry fare is less than half the average fare charged by the Parties.

844 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

exert upon each other pre-transaction on the ATH-JTR route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-JTR route

(vi) Entry/expansion

(1159) The Parties argued that no competition concerns arise on the ATH-JTR route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1160) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-JTR route.

(1161) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(1162) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2, that any possible re-entry by this airline on the ATH-JTR route is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(1163) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-JTR route.

(vii) Overall conclusion

(1164) It is conluded that the transaction is likely to significantly impede effective competition on the ATH-JTR route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.7. ATH-KGS (Athens-Kos, 219,933 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1165) Aegean operated on the ATH-KGS route using ATR72, as well as a RJ Avro aircraft. [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*[845] .

845 […]*.

(1166) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*

(1167) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*

(1168) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*. In terms of aircraft, it only operates Avro RJ 100 aircraft after September 2010 on this route.

(1169) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*[846]

(1170) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*[847] [848]

(1171) Insofar as the Parties argue that [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*[849] the Commission notes that it is not in a position to reasonably conclude that by the time Aegean's summer 2011 schedule ends [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*.

(1172) [*Analysis of Aegean's performance and competitive situation of the ATH-KGS route*]*[850]

(1173) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-KGS route in the foreseeable future.

(ii) Olympic Air

(1174) [*Analysis of OA's performance and competitive situation of the ATH-KGS route*]*

(1175) [*Analysis of OA's performance and competitive situation of the ATH-KGS route*]*

(1176) [*Analysis of OA's performance and competitive situation of the ATH-KGS route*]*

(1177) […]*. Under its recently published summer 2011 schedule, Olympic Air is already offering flights on the ATH-KGS route until end October 2011.

846 […]*.

847 […]*.

848 […]*.

849 […]*.

850 […]*.

(1178) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-KGS route in the foreseeable future.

(iii) Conclusion

(1179) In view of the above, it is concluded that absent the transaction it is likely that Aegean and Olympic Air would continue competing on the ATH-KGS route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1180) On the ATH-KGS route, 147,753 passengers travelled by air in IATA season summer 09 while 72,180 passengers travelled by air in IATA season winter 09/10.

(1181) In 2009, […]*% of all air passengers on the ATH-KGS route travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1182) Aegean and Olympic Air are the only airlines operating on the ATH-KGS route. The Parties in their reply to the SO that Astra has recently started operating the ATH-KGS route. However, contrary to this claim, Astra confirmed that it has never operated the ATH-KGS route and does not intend to do so in the future.[851]

(1183) The ATH-KGS route is also served by several ferry operators, namely by Marfin's subsidiary Blue Star Ferry as well as by Anek and Hellenic Seaways.[852]

(ii) Relevant market

(1184) According to the Parties, air transport on this route is subject to intermodal competition by ferry services. Due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services, and the fact that a large number of passengers travel for non-business purposes, ferry services are a substitute for those passengers for which travelling time is not an issue.

(1185) This point was again underlined by the Parties in their replies to the Statement of Objections and to the Supplementary Statement of Objections where, in addition, they argued that several airlines (Sky Express, Astra, Hellenic Imperial and Cyprus Airways) as well as the relevant ferry operators themselves considered that ferry services constrained air services.

(1186) In terms of overall travelling time on the ATH-KGS route, the journey from city centre to city centre by ferry ranges between 9 hours 5 minutes and 15 hours 20 minutes by Blue Star Ferries, between 11 hours and 15 minutes and 12 hours and 40 minutes by Hellenic Seaways, and slightly above 15 hours by Anek. The shortest travel duration by ferry is thus more than twice as long as travel time by plane, taking only 3 hours 25

851 Email of Astra of 17 November 2010 [ID 6859].

852 Lane does not appear to be currently active on the route although it used to be active in the first half of 2010.

minutes.[853] This considerable difference in travelling time has also been confirmed by respondents to the market investigation when comparing the service offerings of the two modes of transport.[854] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future.

(1187) In the winter season, average fare of air and ferry do not significantly differ. In the summer sason, however, the average air fare is usually [20- 40] % higher than the fare of ferries.[855]

(1188) As mentioned in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. This has also been confirmed for the present route.[856] Even though Aegean only offered 11 weekly frequencies on this route in October 2010 and the Parties submit in their reply to the Statement of Objections that no same day return trips are possible with Aegean in winter, the Parties' independent ferry competitors Anek, Hellenic Seaways and Lane merely offer between 1-3 weekly frequencies each, as illustrated in Table 29 below. Also Blue Star Ferries does not offer two daily frequencies at each end of the route throughout the year.

(1189) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers who responded to the question asking about the modes of transport they considered for travelling on the ATH-KGS route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[857]

(1190) It is also to be recalled that, Greek corporate customers that replied to the Commission's market investigation indicated that should prices of plane tickets raise by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

853 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

854 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

855 While no data are available for Hellenic Seaways, such data are unlikely to change the situation described above, given the small number of frequencies operated by Hellenic Seaways as compared to Blue Star Ferries.

856 Replies to question 23of phase II request for information to corporate customers of 13 August 2010; Replies to question 27 of phase II request for information to travel agents of 13 August 2010; Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2847].

857 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

(1191) Similarly, a large majority of travel agents who replied to the relevant question do not believe that a significant proportion of time sensitive passengers would switch to ferry services should the prices of air services on this route increase by 5-10%.[858]

(1192) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the same view as the view of corporate customers and travel agents was also taken by a large majority of competitors who responded to the relevant question[859], including Cyprus Airways, Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers"*[860] and Hellenic Imperial ("*people travelling via air are always time-sensitive passengers)*"[861].

(1193) Similarly, according to the ferry operator Anek which is active on the ATH-KGS route, time sensitive passengers do not consider air services and ferry services as substitutable on this route[862] while Attica (Marfin's subsidiary holding Marfin's interests in Blue Star Ferries and Super Fact Ferries) made a distinction between conventional and high-speed ferries indicating that conventional ferries do not appeal to time sensitive passengers.[863] According to the ferry operator Hellenic Seaways, time sensitive passengers consider air and ferry services as substitutable only in the case of high speed ferries, especially on trips of small distances where the aggregate travel time is comparable.[864]

Conclusion

(1194) As concerns the ATH-KGS route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(1195) As far as time-sensitive passengers on the ATH-KGS route are concerned, the market investigation showed also that according to most respondents ferry services and

858 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

859 Replies to question 27 of the phase I request for information to competitors of 25 June 2010 and teleconferences with competitors.

860 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

861 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on the ATH-KGS route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

862 Reply to question 9 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

863 Reply to question 13 of the phase I request for information to passenger shipping operators of 25 June 2010 [ID 1015].

864 Reply to question 8 of phase I request for information [ID 1099].

air services are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers on this route.

(1196) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services are to be included in the relevant market. Indeed, as concluded in recital (1234), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(1197) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-KGS route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(1198) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-KGS route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1199) On a possible market for time sensitive passengers on the ATH-KGS route, Olympic Air and Aegean were the only airlines active in winter 2009-2010 as shown in Table 27 below.

ATH-KGS Winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[40-50]*%
Aegean	[50-60]*%
Combined	**100%**

Table 27: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1200) It follows that this transaction leads to the creation of a monopoly on the ATH-KGS route and eliminates competition between two particularly close competitors.

(iv) Non-time sensitive passengers

(1201) As concerns a possible market for non-time sensitive passengers on the ATH-KGS route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(1202) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly of the merged entity and eliminate very close competition currently existing between the two airlines on the ATH-KGS route.

(1203) Should ferry services be included in a relevant market for non-time sensitive passengers, Olympic Air and Aegean would have a combined market share in the range of [50-60] %. While Olympic Air, Aegean, Anek and Blue Star Ferries were active the ATH-KGS route during winter 2009-2010, Hellenic Seaways have developed their activity on the route only later.[865] More recent data for the year 2010 shows a contraction of the Parties' combined market share the ATH-KGS route to [40-50] %, as a consequence of the increase of number of ferry passengers during the summer months.

865 Lane does not appear to be active on the ATH-KGS route anymore. In any event, the market share of Lane is likely to be very small, given its very low number of weekly frequencies (1-2) on the route and its very long travel time (14 hours) and would thus not alter the fact that Olympic Air and Aegean have a very high combined market share on this route.

ATH-KGS Non-time sensitive passengers (incl. ferries) Winter 2009-2010	
Olympic Air	[30-40] %
Aegean	[20-30] %
Combined	**[50-60] %**
Blue Star Ferries	[30-40] %
Anek	[0-5%]
Total	100%

Table 28: Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation

(1204) As already indicated in Section IX.1.1, Marfin, one of the controlling shareholders of the merged entity solely controls Blue Star Ferries holding substantial market share of [40-50] % on this route. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on the ATH-KGS route. Indeed, the level of competitive interaction between the merged entity and Blue Star Ferries is likely to be affected by this commonality of shareholding between Marfin and Blue Star Ferries. As a result, the competitive pressure exerted on the merged entity by remaining ferry companies is more limited than the market share of all ferry companies combined would suggest, in particular since the only independent ferry operator, Anek, lost a considerable part of its share on this route to Blue Star Ferries recently entering the route.

(1205) Evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry services are only distant substitutes to air services on the ATH-KGS route. Due to these differences and in view of the fact that Blue Star Ferries cannot be considered as a fully independent operator, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert on Olympic Air and Aegean on this route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and vice versa. They are each other's closest competitors on the ATH-KGS route.

Travel time

(1206) The considerably longer travelling time by ferry (trip by ferry is at least twice as long as the trip by plane) render ferry services a distant substitute to air services even for non-time sensitive passengers on the ATH-KGS route. Indeed, number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[866]

Level of frequencies

(1207) According to the Parties, the level of weekly services operated by Olympic Air, Aegean, and other operators at various points of the time of the year 2010 on this route was as shown in table 29 below:

Frequencies in 2010	**ATH-KGS**			
	January	March	August	October
Olympic Air	21	21	21	21
Aegean	14	14	14	11
Combined	**35**	**35**	**35**	**32**
Blue Star Ferries (conventional)	10	10	9	10
Lane	1	2	0	0
Hellenic Seaways (conventional)	1	0	3	3
Anek	0	0	2	2
Total independent operators[867]	**2**	**2**	**5**	**5**

Table 29: Weekly services on the ATH-KGS route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.

(1208) Table 29 illustrates that the combined frequency share of Aegean and Olympic Air is substantially higher than the level of frequencies offered by independent ferry operators on the ATH-KGS route.

Quality and convenience of the service

(1209) When comparing air services and ferry services on the ATH-KGS route, several travel agents pointed out that ferry services are of an inferior quality compared to air

866 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

867 "Independent operators" do not include Blue Star Ferries.

services (comfort level, punctuality etc.).[868] Sky Express mentioned that ferries on the ATH-KGS route are "*old and slow*".[869]

(1210) In addition, it is noteworthy that not all ferries on the ATH-KGS route can be booked sufficiently long in advance. While plane tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the relevant ferry operators' website mid December 2010 indeed revealed that, except for Blue Star Ferries which allow for bookings until April 2011, no trips can be booked beyond January 2011 with Anek and Hellenic Seaways.[870]

Reliability of the service

(1211) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services are less reliable on all relevant routes of concern, including explicitly the ATH-KGS route. This concern has been raised by Athens Airways (the route is "*often compounded by adverse sea conditions and strikes*"[871]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[872]; "*many times during the winter the ferries do not operate because of weather*"[873]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[874]; "*plane [is] less affected by weather conditions*"[875]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[876]).

868 Replies to question 35 of phase II request for information to travel agents of 13 August 2010.

869 Replies to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1010].

870 Time sechedules of ferries, websites visited mid December 2010 [ID 7462].

871 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

872 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

873 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

874 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

875 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

876 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

Further results from the market investigation

(1212) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[877]

(1213) Half of the airlines that replied to the relevant question indeed stated that ferries exert a sufficient competitive constraint upon Aegean and Olympic Air on this route.[878] However, the Greek airlines Athens Airways[879], Sky Express[880] and Hellenic Imperial[881] expressed a different view and the Greek airline Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different traveller profile.[882]

(1214) Finally, the distant competitive relationship between air services and ferry services is also illustrated by the replies of ferry operators to the market test of remedies of 19 November 2010. Anek stated that it lacks the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[883] Similarly, Attica explained that it is "*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*" and that it is unable "*to quantify [the effect of the remedies] or to judge whether [the remedies] are sufficient*".[884] Hellenic Seaways explained that it "*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*".[885]

877 For the views of travel agents see section VI.1.4.1.4.

878 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

879 Reply to question 54 of phase I request for information to competitors of 25 June 2010 [ID 1050] with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as [...] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

880 Reply to question 53 of phase I request for information to competitors of 25 June 2010 [ID 1010].

881 While the reply of Hellenic Imperial to question 54 of the phase I request for information to competitors of 25 June 2010 is ambiguous [ID 4582], it stated in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see paragraph 7 of the agreed minutes of conference call [ID 5145].

882 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

883 Email of Anek of 23 November 2010 [ID 6363].

884 Reply to question 1 of request for information of 19 November 2010 market testing the commitments submitted by the Parties [ID 6499].

885 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

Conclusion

(1215) The significant differences between air services and ferry services show, first of all, that ferry services and air services are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the on the ATH-KGS route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-KGS route.

(1216) In addition, the biggest ferry operator on this route, having a market share of [30-40] % on the market for all passengers including ferry services, is Blue Star Ferries, a company controlled by Marfin. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on this route and is not likely to constitute a sufficient competitive constraint on the merged entity.

(1217) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-KGS route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(1218) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-KGS route.

(1219) As a result, as far as non-time sensitive passengers on ATH-KGS route are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction on the ATH-KGS route. Customers' choice of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-KGS route.

(v) All passengers

(1220) On a possible combined market including all passengers on the ATH-KGS route, the market shares of the various operators are illustrated in Table 30 below, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

ATH-KGS (Winter 09/10)		
All passengers	***Without ferries***	***Including ferries***
Aegean	[40-50]*%	[30-40] %
Olympic Air	[50-60]*%	[30-40] %
Combined	**100%**	**[60-70] %**
Blue Star Ferries	x	[30-40] %
Anek	x	[0-5]%
Total	100%	100%

Table 30: Market share for air and ferry services

Source: Parties data and market investigation.

(1221) The combined market shares of the Aegean and Olympic Air on the ATH-KGS route thus vary substantially depending on whether or not transport by ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-KGS route, the combined market share of Aegean and Olympic Air was 100 % in winter 2009-2010. Should transport by ferries be considered as part of the relevant market the combined market shares of Aegean and Olympic Air would still be very high, in the range of [60-70] %. While more recent data for the year 2010 show, as a consequence of the increase in the number of ferry travellers, contraction of the combined share of Aegean and Olympic Air to [50-60%], and while Anek and Hellenic Seaways became active on the ATH-KGS route with a limited amount of frequencies[886], the only ferry company significantly active on this route in winter 2009-2010 was Marfin's subsidiary Blue Star Ferries having a market share of [30-40] %. As already indicated for other routes, given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as fully independent competitor and are not likely to constitute a sufficient competitive constraint on the merged entity. As a result, the combined market shares of Aegean and Olympic Air are likely underestimating the level of their actual influence on the market.

(1222) However, irrespective of whether or not ferry services are included in the relevant market, ferry services are only a distant substitute to air services on the ATH-KGS route due to objective comparision characteristics of air and ferry services.

886 Lane does not appear to be currently active on this route to any significant extent. In any event, the market share of Lane is likely to be very small, given its very low number of weekly frequencies (1-2) on the route and its very long travel time (14:00) and would thus not alter the conclusion that Olympic Air and Aegean have a very high combined market share on this route. The same applies to Hellenic Seaways in the winter season 2009-2010.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(1223) The distant competitive relationship between air services and ferry services is due to the substantial difference in the services provided by ferries and by air services in terms of travel time, level of services, quality, convenience and reliability of the service on the ATH-KGS route. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services on this route.

Prices

(1224) Air fares tend to be higher than ferry ones, at least during the summer season on the ATH-KGS route.

Views of travel agents

(1225) The distant competitive relationship between both modes of transport is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on Aegean and Olympic Air so as to prevent the merged entity from increasing prices post-transaction. Most travel agents who replied to that question, not distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-KGS route.[887]

Conclusion

(1226) Therefore, it is concluded that on the ATH-KGS route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, and despite the recent small-scale entry of Anek and Hellenic Seaways, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-KGS route.

(1227) Moreover, the combined market shares of Olympic Air and Aegean also underestimate the level of their actual influence on the market for another reason. The biggest ferry operator on this route is Blue Star Ferries controlled by Marfin. Given that Marfin is in a position to exercise decisive influence on both Blue Star Ferries and the merged entity, Blue Star Ferries cannot be considered as a fully independent operator on the ATH-KGS route.

(1228) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers

887 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

exert upon each other pre-transaction on the ATH-KGS route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-KGS route.

(vi) Entry/expansion

(1229) The Parties argued that no competition concerns arise on the ATH-KGS route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1230) As explained above in Section IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which apply also on this route.

(1231) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects by airlines or ferry operators for this route.

(1232) As to the alleged operation of the ATH-KGS route by Astra raised by the Parties,[888] Astra replied that *"we neither ever operated this routing nor we intend to do so in the near future"*.[889] It is therefore clear that Astra is not a likely candidate for entry on the ATH-KGS route.

(1233) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-KGS route.

(vii) Overall conclusion

(1234) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-KGS route, and this irrespective of whether the effects of the merger are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

888 Parties reply to the Statement of Objections, page 20 and paragraph 10.67.

889 http://www.astra-airlines.gr/frontend/index.php: Astra's website. Astra's reply of 17 November 2010 to the Commission's questionnaire of 16 November 2010, question question 1 [ID 6859].

1.9.1.8. ATH-MJT (Athens-Mytilini, 335,454 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1235) Aegean is operating on the ATH-MJT route using ATR72 aircraft, as well as a RJ aircraft and A320 aircraft. [*Analysis of Aegean's performance and competitive situation of the ATH-MJT route*]*[890]

(1236) [*Analysis of Aegean's performance and competitive situation of the ATH-MJT route*]*

(1237) [*Analysis of Aegean's performance and competitive situation of the ATH-MJT route*]* [891]

(1238) Aegean has retained a clear leadership on the ATH-MJT route, [*Analysis of Aegean's performance and competitive situation of the ATH-MJT route*]*. Currently, Athens Airways has suspended its operations. Finally, this route is one of the less seasonal routes.

(1239) In conclusion, Aegean considers that the [*Analysis of Aegean's performance and competitive situation of the ATH-MJT route*]* and, indeed, the route is part of Aegean's recently published summer 2011 schedule.

(1240) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-MJT route in the foreseeable future.

(ii) Olympic Air

(1241) [*Analysis of OA's performance and competitive situation of the ATH-MJT route*]*[892]

(1242) [*Analysis of OA's performance and competitive situation of the ATH-MJT route*]*[893]

(1243) [*Analysis of OA's performance and competitive situation of the ATH-MJT route*]*

(1244) [*Analysis of OA's performance and competitive situation of the ATH-MJT route*]*. Under its recently published summer 2011 schedule, Olympic Air is already offering flights on the ATH-MJT route until end October 2011.

(1245) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-MJT route in the foreseeable future.

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890 […]*.

891 […]*.

892 […]*.

893 […]*.

(iii) Conclusion

(1246) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-MJT route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1247) On the ATH-MJT route, 216,756 passengers travelled by air in the IATA season summer 09 while 118,698 passengers travelled by air in the IATA season winter 09/10. […]*.

(1248) In 2009, […]*% of all air passengers on the ATH-MJT route travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1249) Both Aegean and Olympic Air operate on the route with non-stop services. Athens Airways entered the route in June 2009 with non-stop services but ceased operations. While Athens Airways operated on this route with small aircraft of 49 seats, both Aegean and Olympic Air use larger aircraft of up to 162 seats (Olympic Air) and 112 seats (Aegean).[894]

(1250) The ATH-MJT route is also served by ferry operators, namely by Anek, Hellenic Seaways and Nel.

(ii) Relevant market

(1251) According to the Parties, air transport on this route is subject to intermodal competition by ferry services due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services.

(1252) In terms of overall travelling time on the ATH-MJT route, the journey from city centre to city centre by ferry differs from operator to operator, and takes between 9 hours 35 minutes and 9 hours 50 minutes by Hellenic Seaways, 10 to 15 hours by Nel and between 13 hours 35 minutes and 14 hours by Anek. This is substantially more than the duration of the trip by plane taking only 3 hours 10 minutes.[895] The fastest ferry on the route therefore takes three times as long as the trip by plane. This considerable difference in travelling time has also been confirmed in the market investigation when comparing the service offerings of the two modes of transport.[896] Furthermore, the market investigation did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future.

894 Form CO, paragraph 499.

895 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

896 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

(1253) The difference between fares charged by airline operators and ferries is substantial on the ATH-MJT route. […]*, the average air fare is consistently throughout the year […]* as the average ferry fare.

(1254) As mentioned in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. The market investigation showed that the number of frequencies necessary on this route is even higher.[897] However, as illustrated in Table 33, none of the ferry companies active on this route offers two daily services at each end of the route across the year.

(1255) In view of the longer travel duration by ferry compared to plane, it is not possible for a passenger to carry out a same-day return trip by ferry on the ATH-MJT route.[898] In contrast, an analysis of frequencies offered by Aegean and Olympic Air shows that passengers can make same-day return trips at least every weekday (i.e. from Monday to Friday) with both Aegean and Olympic Air.[899]

(1256) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers who responded to the question asking about the modes of transport they considered for travelling on the ATH-MJT route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[900]

(1257) It is also to be recalled that Greek corporate customers that replied to the Commission's market investigation indicated that should prices of plane tickets raise by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(1258) Similarly, a large majority of travel agents who replied to the relevant question indicated that they do not believe that a significant proportion of time sensitive

897 According to Athens Airways, the route should be served with a minimum of two daily frequencies, see: Replies to question 16 of phase II request for information to competitors of 11 August 2010. According to a majority of corporate customers, ideally more than two daily frequencies should be available on the route, see: Replies to question 23 of phase II request for information to corporate customers of 13 August 2010. According to approximately half of all travel agents, a minimum number of three daily frequencies should be available on the route in order to provide suitable services for time sensitive passengers, see: Replies of travel agents to question 27 of the phase II request for information to travel agents of 13 August 2010. This is further confirmed by a Greek consumer organisation, see: Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

898 As regards overnight services, it should be noted that in January and March 2010, only Hellenic Seaways offers daily overnight services but these bear an inconvenient arrival time at MJT (3:10).

899 See paras. 499 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010.

900 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

passengers would switch to ferry services should the prices of air services on this route increase by 5-10%.[901]

(1259) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the same view as the view of corporate customers and travel agents was also taken by a large majority of competitors who responded to the relevant question[902], including Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers*[903]*"*, Hellenic Imperial ("*people travelling via air are always time-sensitive passengers*")[904] and Sky Express **(**"*ferry transport is only suitable for non-time sensitive passengers")*[905].

(1260) According to the ferry operator Hellenic Seaways, time sensitive customers consider air and ferry services as substitutes only in the case of high speed ferries, especially on trips of small distances where the aggregate travel time is comparable.[906] According to Anek, time sensitive passengers do not consider air services and ferry services as substitutable on this route[907]

Conclusion

(1261) As concerns the ATH-MJT route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(1262) As far as time-sensitive passengers on the ATH-MJT route are concerned, the market investigation showed also that according to most respondents the ferry services and air services are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers on this route.

(1263) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services are to be included in the relevant market on the ATH-MJT route. Indeed, as concluded in

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901 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

902 Replies to question 27 of the phase I request for information to competitors of 25 June 2010.

903 Agreed minutes of a teleconference call with Astra of 25 August 2010 [ID 4477].

904 Agreed minutes of a teleconference call with Hellenic Imperial of Friday 17 September 2010 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on this route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

905 Agreed minutes of a teleconference call with the Sky Express of 24 August 2010 [ID 5398].

906 Reply to question 8 of phase I request for information [ID 1099].

907 Reply to question 8 of phase I request for information [ID 1099]

recital (1298), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(1264) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-MJT route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and
- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(1265) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-MJT route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1266) On a possible market for time sensitive passengers on the ATH-MJT route, as shown in Table 31, Olympic Air and Aegean had a combined market share of [90-100] % in winter 2009-2010. Between April and July 2010, their combined market share has further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-MJT Winter 2009-2010 Time sensitive passengers	
Olympic Air	[30-40]%
Aegean	[60-70]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 31: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1267) It follows that this transaction leads to the creation of a monopoly on the ATH-MJT route as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted on the Aegean and Olympic Air on the ATH-MJT route no longer exists. In addition, even if Athens Airways were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity on the ATH-MJT route.

(iv) Non-time sensitive passengers

(1268) As concerns a possible market for non-time sensitive passengers on the ATH-MJT route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(1269) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly[908] of the merged entity and eliminate very close competition currently existing between Olympic Air and Aegean on the ATH-MJT route.

(1270) Should ferry services be included in a relevant market for non-time sensitive passengers on the ATH-MJT route, Olympic Air and Aegean would have a combined market share in the range of [40-50] % (data based on the IATA seaspn Winter 2009-2010, as shown in Table 32 below:

ATH-MJT **Non-time sensitive passengers (incl. ferries)** **Winter 2009-2010**	
Olympic Air	[20-30] %
Aegean	[30-40] %
Combined	**[60-70] %**
Athens Airways	[5-10] %
Anek	[10-20] %
Hellenic Seaways	[0-20] %
Nel	[5-10] %
Total	100%

Table 32 : Market shares for air and ferry services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1271) Should ferries be included in the market for non-time sensitive passengers on the ATH-MJT route, Table 32 illustrates that Aegean and Olympic Air would still have a high combined market share of [60-70%]. More recent data for the year 2010 indicates a contraction of the combined share of Aegean and Olympic Air to [30-40%], as a consequence of the increase in the number of ferry travellers.

(1272) Furthermore, evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry

908 Or close to monopoly if Athens Airways were to resume its operations on the ATH-MJT route.

services are only distant substitutes to air services on the ATH-MJT route. Due to these differences, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert on Aegean and Olympic Air on this route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and *vice versa*. They are each other's closest competitors on the ATH-MJT route.

Travel time

(1273) The considerably longer travelling time by ferry (seven to ten hours by ferry compared to three hours by plane) render ferry services a distant substitute to air services even for non-time sensitive passengers on the ATH-MJT route. Indeed, number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[909]

Level of frequencies

(1274) According to the Parties, the level of weekly services operated by Aegean, Olympic Air, and other operators at various points of the time of the year 2010 on this route was as follows:

Frequencies in 2010	ATH-MJT			
	January	March	August	October
Olympic Air	21	21	21	21
Aegean	21	21	21	14
Combined	**42**	**42**	**42**	**35**
Athens Airways	12	11	11[910]	
Hellenic Seaways (conventional)	5	5	7	5
Nel	3	3	7	6
Anek	3	3	3	3
Total other operators	**23**	**22**	**28**	**14**

Table 33: Weekly services on the ATH-MJT route

Source: Reply of the Parties to requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.

(1275) Table 33 illustrates that the Aegean and Olympic Air's combined share of frequencies is substantially higher than the level of frequencies offered by independent operators. Even if Athens Airways were to restart its operations on the route, the combined frequency share of Aegean and Olympic Air would still significantly exceed

909 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

910 According to Athens Airways' schedules for Summer 2010, it only operated 5 flights.

those of ferry operators and Athens Airways together. It is therefore clear that Aegean and Olympic Air have a significant frequency advantage on the route over their competitors.

Quality and convenience of service

(1276) Sky Express mentioned that ferries on the ATH-MJT route are "*old and slow*".[911]

(1277) In addition, it is noteworthy that not all ferries on the ATH-MJT route can be booked sufficiently long in advance. While plane tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the websites of Hellenic Seaways and Nel mid December 2010 indeed revealed that ferry services on the ATH-MJT can indeed be booked only until the end of January 2011 while no trip can be booked with Anek.[912]

Reliability of the service

(1278) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services were less reliable on all relevant routes of concern, including explicitly the ATH-MJT route. This concern was raised by Athens Airways that used to operate the route according to which the ATH-MJT route is "*often compounded by adverse sea conditions and strikes*"[913], two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[914]; "*many times during the winter the ferries do not operate because of weather*"[915]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[916]; "*plane [is] less affected by weather conditions*"[917]). The existence of adverse weather conditions was further underlined by the Greek consumer

911 Replies to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1010].

912 Time schedule of ferries, websites visited in December 2010 [ID 7462].

913 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

914 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

915 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

916 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

917 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[918]).

Further results of the market investigation

(1279) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[919]

(1280) A majority of airlines, including the Greek airline Sky Express, indeed stated that ferry services exerted a sufficient competitive constraint upon Aegean and Olympic Air on this route.[920] Other Greek airlines, namely Athens Airways[921] and Hellenic Imperial[922] expressed a different view and Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different passenger profile.[923]

(1281) Finally, the distant competitive relationship between air services and ferry services is also illustrated by the replies of ferry operators to the market test on remedies of 19 November 2010. Anek stated that it lacked the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[924] Similarly, Hellenic Seaways explained that it "*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*".[925] Also Nel

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918 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

919 For the views of travel agents see section VI.14.1.4.

920 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

921 Reply to question 54 of phase I request for information to competitors of 25 June 2010 [ID 1050] with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as [...] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

922 While Hellenic Imperial considered in its reply to question 54 of the phase I request for information to competitors of 25 June 2010 that such a sufficient constraint exists as far as time sensitive and non-time sensitive passengers are concerned [ID 4582]. Hellenic Imperial stated in its reply to question 27 of the same questionnaire reply that no substitutability between the two modes of transport exists for time sensitive passengers *"because of the long sailing hours"* and it explained in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see paragraph 7 of the agreed minutes of a teleconference call [ID 5145].

923 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

924 Email of Anek of 23 November 2010 [ID 6363].

925 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

made a similar statement ("*we can not provide any answers though we are not in the airline field*").[926]

Conclusion

(1282) The significant differences between air services and ferry services show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the ATH-MJT route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-MJT route.

(1283) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-MJT route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(1284) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-MJT route.

(1285) As a result, as far as non-time sensitive passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-transaction on the ATH-MJT route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-MJT route.

(v) All passengers

(1286) On a possible combined market including all passengers on the ATH-MJT route, the market shares of the various operators are illustrated in Table 34, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

926 Email of Nel of 25 November 2010 [ID 6674].

ATH-MJT Winter 2009-2010		
All passengers	***Without ferries***	***Including ferries***
Aegean	[50-60] %	[30-40] %
Olympic Air	[30-40] %	[20-30] %
Combined	**[90-100] %**	**[60-70] %**
Athens Airways	[5-10] %	[5-10] %
Anek	x	[10-20] %
Hellenic Seaways	x	[0-20] %
Nel	x	[5-10] %
Total	100%	100%

Table 34: Market share for air and ferry services

Source: Parties data and market investigation.

(1287) The combined market shares of the Aegean and Olympic Air on the ATH-MJT route thus vary substantially depending on whether or not transport by ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-MJT route, the combined market share of Aegean and Olympic Air was [90-100] % in winter 2009-2010. Given that Athens Airways suspended their operations, the transaction would lead to a monopoly[927] and eliminate close competition between Aegean and Olympic Air on the ATH-MJT route.

(1288) Should however transport by ferries be considered as part of the relevant market, the combined market shares Aegean and Olympic Air would still be very high reaching [60-70] % on the ATH-MJT route. Even if more recent data for the year 2010 show a contraction of the combined share of Aegean and Olympic Air to [40-50] %, in particular as a consequence of the increase in the overall number of passengers travelling by ferries, ferry services are only a distant substitute to the air services on this route due to objective comparison characteristics such travel time and level of service.

927 Or close to monopoly if Athens Airways were to resume its operations on the ATH-MJT route.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(1289) The distant competitive relationship between air services and ferry services is due to the substantial difference in the services provided by ferries and by air services on this route, as concerns in particular the travel time, level of services, quality, convenience and reliability of the service. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services on the ATH-MJT route.

Prices

In addition, air services and ferry services differ significantly in terms of prices on the ATH-MJT route. More specifically, the average air fare is consistently throughout the year more than double of ferry fare.

Views of travel agents

(1290) The distant competitive relationship between both modes of transport is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on the merged entity so as to prevent the latter from increasing prices post-transaction. Most travel agents who replied to that question, not distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-MJT route.[928]

Conclusion

(1291) Therefore, it is concluded that on the ATH-MJT route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-MJT route.

(1292) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on the ATH-MJT route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-MJT route.

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928 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

(vi) Entry/expansion

(1293) The Parties argued that no competition concerns arise on the ATH-MJT route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1294) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-MJT route.

(1295) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(1296) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2 that any possible re-entry by this airline on the ATH-MJT route is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(1297) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-MJT route.

(vii) Overall conclusion

(1298) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-MJT route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.9. ATH-RHO (Athens-Rhodes, 569,492 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1299) [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]*[929]

(1300) Indeed, Aegean has significantly reduced its frequency on the ATH-RHO route from five to three flights daily, [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]*.

929 […]*.

(1301) [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]*, while Athens Airways exited the route.

(1302) […]*. Aegean is using A320 aircraft [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]*.

(1303) [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]* [930]

(1304) [*Analysis of Aegean's performance and competitive situation of the ATH-RHO route*]*, the route is part of Aegean's recently published summer 2011 schedule.

(1305) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-RHO route in the foreseeable future.

(ii) Olympic Air

(1306) [*Analysis of OA's performance and competitive situation of the ATH-RHO route*]* [931]

(1307) [*Analysis of OA's performance and competitive situation of the ATH-RHO route*]*

(1308) [*Analysis of OA's performance and competitive situation of the ATH-RHO route*]*

(1309) In conclusion, Olympic Air considers that […]*. Indeed, according to Olympic Air, [*Analysis of OA's performance and competitive situation of the ATH-RHO route*]* [932] [933]. Under its recently published summer 2011 schedule, Olympic Air is already offering flights on the ATH-RHO route until end-October 2011.

(1310) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-RHO route in the foreseeable future.

(iii) Conclusion

(1311) Iit is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-RHO route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1312) On the ATH-RHO route, 382,523 passengers travelled by air in the IATA season summer 2009 while 186,969 passengers travelled by air in the IATA season winter 2009-2010. […]*.

930 […]*.

931 […]*.

932 [...]*.

933 […]*.

(1313) In 2009 on the ATH-RHO route […]*% of all air passengers travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1314) Both Olympic Air and Aegean operate on the route with non-stop services. Athens Airways entered the route in June 2009 with non-stop services but ceased activities. While Athens Airways operated on this route with small aircraft of 49 seats, Aegean and Olympic Air use larger aircraft of up to 138 seats (Olympic Air) and 195 seats (Aegean).[934]

(1315) The ATH-RHO route is also served by several ferry operators, namely by Marfin's subsidiary Blue Star Ferries (conventional, throughout the year) as well as by Anek (throughout the year), Hellenic Seaways (conventional, entered in June 2010) and Lane (which was active in January and March 2010 only).

(ii) Relevant market

(1316) According to the Parties, air transport on this route is subject to intermodal competition by ferry services due to the large number of passengers travelling by ferry on this route, the competitive pricing and comparable comfort offered by ferry services.

(1317) Average air and ferry fares are comparable on the ATH-RHO route. While in winter air fare is usually lower than ferry fare, during the summer season they are approximately the same on this route.[935]

(1318) In terms of overall travelling time on the ATH-RHO route, the journey from city centre to city centre by plane takes approximately 3 hours 35 minutes. In contrast, travel time by ferry is substantially higher. Blue Star Ferries make the trip in between 12 and 19 hours, Anek between 18 hours 40 minutes and 27 hours and 30 minutes, and Hellenic Seaways' trips last between 11 and 15 hours.[936] The fastest travel duration by ferry is therefore three times longer than plane trip. Furthermore, the market investigation confirmed this substantial difference and did not provide any indications that the difference in travelling time between both modes of transport would decrease in the foreseeable future.

(1319) Furthermore, as has been mentioned above in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. More specifically for this route, the market investigation revealed that time sensitive passengers require an even higher level of services at each end of the route.[937] That ferries do not meet this requirement can be illustrated by the very low

934 Form CO, paragraph 505.

935 Computation based on data provided by Anek and Blue Star Ferries, while data for Hellenic Seaways were not available.

936 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

937 According to Athens Airways, the route should be served with a minimum of two daily frequencies, see: Reply to question 16 of phase II request for information to competitors of 11 August 2010, [ID 3024]. According to a majority of corporate customers, ideally at least three daily frequencies should be available on the route, see: Replies to question 23 of phase II request for information to corporate

number of journeys offered by Lane (2-3 weekly), Hellenic Seaways (2-3 weekly) and Anek (2-6 weekly) on this route.

(1320) In view of the very long travel duration by ferry compared to plane, it is impossible for a passenger to carry out a same-day return trip by ferry.[938] By contrast, an analysis of frequencies offered by Aegean and Olympic Air shows that passengers can carry out same-day return trips every day on both Aegean and Olympic Air.[939]

(1321) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers who responded to the question asking about the modes of transport they considered for travelling on the ATH-RHO route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[940]

(1322) It is also to be recalled that Greek corporate customers that replied to the Commission's market investigation indicated that should prices of plane tickets raise by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.14).

(1323) In their reply to reply to the Statement of Objections, the Supplementary Statement of Objections and the letter of facts, the Parties argue that most Greek travel agents responding to the relevant question in the phase I market investigation questionnaire suggest that a significant proportion of non-time sensitive passengers would switch to ferry services on the ATH-RHO route in response to a 5-10% price increase by the merged entity.[941] However, this conclusion was not confirmed and does not stand if the replies to an equivalent question in the phase II market investigation questionnaire are considered.[942]

(1324) As far as competitors are concerned, the Greek airlines responding to the relevant question do not consider air services and ferry services on this route as substitutable for non-time sensitive passengers.[943] Sky Express, who as mentioned above indicated such

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customers of 13 August 2010. According to a large majority of travel agents, at least three daily frequencies should be available on the route in order to provide suitable services for time sensitive passengers, see: Replies to question 27 of phase II request for information to travel agents of 13 August 2010. This is further supported by the reply of a Greek consumer organisation, see: Reply to question 23 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

938 Overnight services by ferries are unlikely to be a substitute in this regard due to the long travel time by ferry on this route.

939 See paras. 504 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010.

940 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

941 Replies to question 29 of the phase I request for information to travel agents of 25 June 2010.

942 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010.

943 Replies to question 27 of the phase I request for information to competitors of 25 June 2010. As regards Hellenic Imperial, its reply to question 27 of the phase I request for information to

substitutability on other routes, explained that as concerns the ATH-RHO route the significantly longer travel duration and quality of services offered by ferries play an important role ("*Price is good but ferries are old and slow. Also too far*").[944]

(1325) As regards ferry operators, it is to be noted that the ATH-RHO is the only route where Hellenic Seaways does not consider ferry services as a sufficient constraint ("*the duration and frequency of shipping voyages will not exert a significant impact on airlines*").[945]

(1326) Indeed, the very long absolute travel time sometimes exceeding 24 hours in comparison with four hour plane trip, makes ferry a distant substitute to air services even for non-time sensitive passengers. It is also to be recalled that a number of travel agents responding to the market investigation indicated that also leisure or VFR passengers value the existence of fast modes of transport.[946]

(1327) As a consequence of the very significant trip duration by sea, all ferry services (with the exception of a part of Blue Star Ferries' services in August 2010) are only overnight services throughout the year on the ATH-RHO route. These overnight services need to be compared with the very high level of frequencies of Aegean and Olympic Air (56-63 weekly flights in each direction, depending on the season) available at all times of the day on this route. This illustrates that ferry operators offer a very different product on the route that can hardly be compared with air services on the ATH-RHO route.

(1328) Sky Express mentioned that ferries on this route are "*old and slow*".[947]

(1329) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services are less reliable on all relevant routes of concern, including explicitly this route. This concern has been raised by Athens Airways who used to operate the route (the route is "*often compounded by adverse sea conditions and strikes*"[948]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[949]; "*many times during*

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competitors of 25 June 2010 should be read in conjunction with the agreed minutes of conference call with Hellenic Imperial of 17 September 2010, paragraph 7, where it stated that it considers all air passengers as *"time sensitive"* [ID 5145]; Hellenic Imperial considers that the two modes of transport are not substitutable on this route as far as time sensitive passengers are concerned *"because of the long sailing hours"*, reply to question 27 of phase I request for information [ID 4582].

944 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1010].

945 Reply to question 23 of the phase I request for information to ferry operators of 25 June 2010 [ID 5729].

946 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

947 Replies to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1010].

948 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

949 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

the winter the ferries do not operate because of weather"[950]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[951]; "*plane [is] less affected by weather conditions*"[952]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[953]).

(1330) In addition, it is noteworthy that not all ferries on the ATH-RHO route can be booked sufficiently long in advance. While plane tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the relevant ferry operators' website mid December 2010 indeed revealed that, except for Blue Star Ferries which allow for bookings until April 2011, no trips can be booked beyond January 2011 with Anek and Hellenic Seaways.[954]

(1331) Finally, the distant competitive relationship between air services and ferry services is also illustrated by the replies of ferry operators to the market test of remedies of 19 November 2010. As mentioned above, Anek stated that it lacks the necessary expertise to respond to the questionnaire ("*our Company is activating in the shipping sector with no knowledge of the air services market*").[955] Similarly, Attica explained that it is "*impossible therefore to draw parallels between the operation of maritime vessels and airplanes, as their operational platform (and of course legislative framework) are completely different*" and that it is unable "*to quantify [the effect of the remedies] or to judge whether [the remedies] are sufficient*".[956] Hellenic Seaways explained that it "*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*".[957]

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950 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

951 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

952 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

953 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

954 Time schedules of ferries, websites visited mid December 2010 [ID 7462].

955 Email of Anek of 23 November 2010 [ID 6363].

956 Reply to question 1 of market test request for information of 19 November 2010 [ID 6499].

957 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

Conclusion

(1332) As concerns the ATH-RHO route, air services and ferry services differ significantly from each other in terms of aggregate travel time and level of frequencies. Given the distance between Athens and Rhodes, ferry trips take most of the day, often times even longer. The market investigation showed that ferries are not a real alternative to air services on the ATH-RHO as they offer a completely different product. Therefore, ferry services are not to be included in the relevant market for any segment of passengers on this route.

(1333) This conclusion is reinforced by the fact the ATH-RHO route appears not to have been included in the scope of the survey on intermodal competition commissioned by the Parties in August/September 2010. Similarly, in a study submitted by LECG in the course of these proceedings, the ATH-RHO route was not mentioned in the list of routes for which ferry would possibly represent a constraint.[958]

(1334) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-RHO route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers, and
- a market encompassing all passengers.

(1335) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-RHO route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1336) On a possible market for time sensitive passengers on the ATH-RHO route, as shown Table 35, Olympic Air and Aegean had a combined market share of [90-100] % in winter 2009-2010. Between April and July 2010, their combined market share has further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-RHO Winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[50-60]%
Aegean	[40-50]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

958 Submission of LECG of 5 October 2010.

Table 35 : Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1337) It follows from table 35 that this transaction leads to the creation of a monopoly on the ATH-RHO route as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted on the Aegean and Olympic Air route no longer exists. In addition, even if Athens Airways were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity on the ATH-RHO route.

(iv) Non-time sensitive passengers

(1338) Given that ferries are not to be considered in the relevant market for any type of passengers, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly[959] of the merged entity and eliminate very close competition currently existing between the two airlines on the ATH-RHO route.

(v) All passengers

(1339) On a possible combined market including all passengers on the ATH-RHO route, the market shares of the various operators are illustrated in Table 36.

ATH-RHO Winter 2009-2010	
All passengers	***Without ferries***
Aegean	[40-50] %
Olympic Air	[50-60] %
Combined	**[90-100] %**
Athens Airways	[0-5] %
Total	100%

Table 36 : Market share for air services

Source: Parties data and market investigation.

(1340) Given that Athens Airways suspended their operations, the transaction would lead to a monopoly[960] of the merged entity and eliminate very close competition currently existing between the two airlines.

959 Or close to monopoly if Athens Airways were to resume its operations on the ATH-RHO route.

960 Or close to monopoly if Athens Airways were to resume its operations on the ATH-RHO route.

(vi) Entry/expansion

(1341) The Parties argued that no competition concerns arise on the ATH-RHO route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1342) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-RHO route.

(1343) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(1344) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6 that any possible re-entry by on the ATH-RHO route by this airline is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(1345) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-RHO route.

(vii) Overall conclusion

(1346) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-RHO route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers.

1.9.1.10. ATH-SKG (Athens-Thessaloniki, 1,189,657 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1347) [*Analysis of Aegean's performance and competitive situation of the ATH-SKG route*]*[961]

(1348) Aegean has the highest market share on this route. [*Analysis of Aegean's performance and competitive situation of the ATH-SKG route*]*.

961 […]*.

(1349) [*Analysis of Aegean's performance and competitive situation of the ATH-SKG route*]*.

(1350) The route is also part of Aegean’s recently published summer 2011 schedule.

(1351) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-SKG route in the foreseeable future.

(ii) Olympic Air

(1352) [*Analysis of OA's performance and competitive situation of the ATH-SKG route*]*[962] [963]

(1353) [*Analysis of OA's performance and competitive situation of the ATH-SKG route*]*

(1354) [*Analysis of OA's performance and competitive situation of the ATH-SKG route*]*

(1355) [*Analysis of OA's performance and competitive situation of the ATH-SKG route*]*

(1356) [*Analysis of OA's performance and competitive situation of the ATH-SKG route*]* [964]. Under its recently published summer 2011 schedule, Olympic Air is already offering flights for the ATH-SKG route until end-October 2011.

(1357) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-SKG route in the foreseeable future.

(iii) Conclusion

(1358) In view of the above, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-SKG route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1359) On the ATH-SKG route, 662,234 passengers travelled by air in the IATA season summer 2009 while 527,423 passengers travelled by air in the IATA season winter 2009-2010. […]*.

(1360) In 2009, […]*% of all air passengers on the ATH-SKG route travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1361) Both Aegean and Olympic Air operate on the route with non-stop services and aircraft up to 162 seats (Olympic Air) and 168 seats (Aegean). Athens Airways entered

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962 […]*.

963 [*Analysis of OA's performance and competition characteristics of the ATH-SKG route*]*

964 […]*.

the route in March 2009 with non-stop services and aircraft of 49 seats[965] but ceased activities in September 2010.

(ii) Relevant market

(1362) According to the Parties, air transport on this route is subject to intermodal competition by train.

(1363) Overall travelling time on this route from city centre to city centre by plane is 3 hours 20 minutes, while the duration of a train journey depends on the type of train. InterCity Express trains ("ICE") trains take approximately 4 hours 30 minutes while InterCity ("IC") trains take approximately 5 hours. Slower services ("Express") can take as long as 7 hours 45 minutes.[966]

(1364) In terms of frequencies, Aegean and Olympic Air operate 98-149 weekly flights at either end of the route (depending on the time of the year). OSE offers 77 weekly services at each end of the route, out of which 14 weekly services are ICE trains and 14 weekly services are IC trains.[967]

(1365) In terms of prices, the average air fare is about 80% higher than train fare during the winter season, while it is more than twice or more important in the summer season.

General observations for all categories of passengers

(1366) The Greek consumer organisation Kepka believes that time sensitive and non-time sensitive passengers only consider "Intercity" services on the route when making their purchase decisions.[968]

(1367) This is confirmed by the Greek railway operator OSE itself who believes that only ICE services could be considered substitutable to air services by time sensitive and non-time sensitive passengers on the ATH-SKG route.[969] Only 14 of such ICE services are available per week, which need to be compared to 98-149 weekly services operated by Aegean and Olympic Air.

(1368) The limited substitutability between air services and train services on the ATH-SKG route is further underlined by the fact that Aegean and Olympic Air do not systematically monitor train prices. No internal documents of Aegean and Olympic Air evidence that the two carriers themselves would consider train as a competitive

965 Form CO, paragraph 531.

966 Paragraph 528 Form CO; Replies of the Parties to requests of 4 August 2010; Replies of the Parties to requests of 1 September 2010; Replies of the Parties to requests of 1 October.

967 Replies of the Parties to requests of 4 August 2010; Replies of the Parties to requests of 1 September 2010; Replies of the Parties to requests of 1 October.

968 Reply to question 24 of phase II request for information to consumer associations Greece of 13 August 2010 [ID 2567].

969 Reply to paragraphs 9 et seq. of the phase I request for information to OSE of 25 June 2010 [ID 4913]. OSE further specified that even concerning ICE services in general only those passengers would switch who do not have travel time as their highest priority.

constraint on the ATH-SKG route. This was also confirmed explicitly by Aegean's Vice-Chairman in a meeting with the Commission when he stated that on "*the route Athens-Thessaloniki, train was obviously not a constraint today, notably in view of the very poor organization of OSE. Maybe train could become a constraint starting in 2012*".[970]

(1369) Similarly, Athens Airways, which used to be active on this route, did not take train services into account when making its pricing decisions.[971]

Time sensitive passengers

(1370) More specifically for time sensitive passengers, the market investigation showed that substitutability between air services and train services is very limited on the ATH-SKG route.

(1371) As regards travel duration, the fastest train on the route (ICE) takes approximately one hour longer than the journey by plane from city center to city center.

(1372) As regards the level of frequencies offered by both modes of transport, it is to be recalled that the Greek train operator OSE considers that at most ICE train services are substitutable to air services. Only 14 of such ICE services are available per week, while Aegean and Olympic Air have seven to ten times more frequencies on the route, depending on the time of the year.

(1373) In addition, in view of the longer travel duration by train, same day return trips by train bear the inconvenience of a very late arrival back at the point of departure (23:16 at ATH, 23:55 at SKG). The inconvenience of such a day-return by train was also confirmed by OSE.[972] An analysis of frequencies of Aegean and Olympic Air shows that passengers can make same-day return trips every day on both Aegean and Olympic Air on the ATH-SKG route.[973]

(1374) The competitive disadvantages of train services on this route are also reflected in the replies of corporate customers. More specifically, if prices of plane tickets were to rise by 5-10% on the route, most corporate customers would continue buying the plane ticket irrespective of the price increase.[974] In addition, most corporate customers do not

970 Agreed minutes of a meeting with the Parties of 04 August 2010. It should be noted in this context that the market investigation has not revealed that the situation of OSE is likely to significantly change in the foreseeable future.

971 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 44 [ID 5236]; Also Hellenic Imperial does not take train services into account when making its pricing decisions, see replies to question 31 of the phase I request for information to competitors of 25 June 2010; Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010, paragraph 5 [ID 5145].

972 Agreed minutes of a teleconference call with OSE of 20 August 2010, paragraph 8 [ID 5379].

973 See paras. 531 et seq. of the Form CO for March 2010 and Annex 13 of the Parties' reply to the request for information of 20 July 2010 for August 2010.

974 Replies to question 35 of phase II request for information to corporate customers of 13 August 2010; replies to question 34 of the phase I request for information to corporate customers of 25 June 2010.

normally consider the train when purchasing tickets for business travels on this route.[975] Further replies illustrate that corporate customers consider air services superior to train services not only in terms of travel time but also in terms of quality of service (e.g. "*the quality of railway travelling offered in Greece is substantially poorer*").[976]

(1375) Similarly, the Thessaloniki Chamber of Commerce underlined that time sensitive customers would normally not consider train on the route when making the purchasing decision (i.e. look at the availability of seats and compare prices) unless "*plane service is not available (fully booked or other factors prohibit plane travel)*"; time sensitive passengers would thus continue buying plane tickets if prices of plane tickets were to increase by 5-10%.[977]

(1376) In line with the above, a large majority of travel agents and competitors do not consider that a significant proportion of time sensitive passengers would switch to train services if the prices of plane tickets on the route were to rise by 5-10%.[978]

(1377) Therefore, it is concluded that as far as time-sensitive passengers on the ATH-SKG route are concerned, train services do not constitute a credible alternative to air services on this route and thus are not part of the same market.

Non-time sensitive passengers

(1378) As far as non-time sensitive passengers are concerned, it is to be recalled that also for this segment of passengers OSE believes that only ICE trains, that is less than 20% of OSE's services, are substitutable to air services on the ATH-SKG route.

(1379) While several (non-Greek) competitors indicated that the train might be an alternative for non-time sensitive passengers, the Greek competitors (aware of local conditions and level of service offered by OSE) responding to the relevant question do not consider that a significant proportion of non-time sensitive passengers would switch to train services if the prices of plane tickets on the route were to rise by 5-10%.[979] Greek competitors pointed out that they do not consider train services as a sufficient constraint Aegean and Olympic Air, in particular due to poor quality of service offered by the Greek train operator ("*owing to a historical low public confidence in public rail transportation only a small percentage of passengers use this option. There is no train culture in Greece*"; "*travel time is too long; passengers will still pay the air fare*";

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975 Replies of corporate customers to questions 24 and 32 of the phase II request for information to corporate customers of 13 August 2010.

976 Replies to question 31 of the phase II request for information to corporate customers of 13 August 2010.

977 Reply to questions 24, 40 and 32 of phase II request for information to Greek chambers of commerce of 13 August 2010 [ID 2542].

978 Replies to question 43 of the phase II request for information to travel agents of 13 August 2010; Replies to question 33 of the phase I request for information to travel agents of 25 June 2010, replies to question 31 of the phase I request for information to competitors of 25 June 2010.

979 Replies to question 31 of the phase I request for information to competitors of 25 June 2010. Sky Express did not specifically reply to this question but emphasised the role of the car on the route which according to Sky Express offers more independence than train [ID 1010].

"*Greek train services are not well organised*"[980]; "*bad reputation for a number of reasons*"[981]; "*OSE is considered to be very disorganised and not a competitor*"[982]).

(1380) Similarly, the replies of Greek travel agents do not suggest that a significant proportion of non-time sensitive passengers would switch to train services if the prices of plane tickets on the route were to rise by 5-10%.[983] In this context, a travel agent explained that "*Besides travel time which is quite longer it is also the time it takes someone to drive at the station and park their car but there is no parking lot similar to the airport's. Furthermore Trains in Greece have substantially lower service level compared to Air as they are filthy inside [...]. Even when OA was a monopoly in the domestic the train's market share to the route of Thessaloniki –Athens was extremely small*".[984]

(1381) Travel agents also consider that air services are of a higher quality than train services, in particular in terms of travelling time (e.g. "*travel time from and to place of origin by train is double from travel time by plane and it is not proposed for a daytrip or a two days trip* ") and level of service (travel agents refer for instance to the "*low quality of services and dirty wagons*", "*poor comfort as most trains are old, dirty etc*").[985]

(1382) Therefore, it is concluded that as far as non time-sensitive passengers on the ATH-SKG route are concerned, train services do not constitute a credible alternative to air services on this route and thus are not part of the same market.

Conclusion

(1383) As concerns the ATH-SKG route, air services and train services differ in important competitive parameters such as travel time, level of frequencies and quality and convenience of service, and are not perceived as a relevant constraint by Aegean and Olympic Air and their competitors. The market investigation showed that trains are not a real alternative to air services on the ATH-SKG as they are of substantially lower quality than air services. Therefore, train services are not to be included in the relevant market for any segment of passengers on this route.

980 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010 [ID 5145].

981 Submission of Athens Airways of 13 August 2010 [ID 2285].

982 Agreed minutes of a teleconference call with Hellenic Imperial of 3 September 2010 [ID 5242].

983 Replies to question 43 of the phase II request for information to travel agents of 13 August 2010; Replies to question 33 of the phase I request for information to travel agents of 25 June 2010. This is in line with the fact that, when requested to indicate the proportion of tickets sold for plane and train respectively, no travel agent replying to this question sold a significant number of train tickets to any category of passengers, replies of travel agents to question 31 of the phase II request for information to travel agents of 13 August 2010.

984 Reply to question 33 of the phase I request for information to travel agents of 25 June 2010 [ID 1116].

985 Replies to questions 36 and 41 of the phase II request for information to travel agents of 13 August 2010; replies to question 33 of the phase I request for information to travel agents of 13 August 2010.

(1384) This conclusion is reinforced by the fact that this route was not included in the scope of the survey on intermodal competition commissioned by the Parties in August/September 2010. Similarly, in a study submitted by the Parties[986] as well as in the reply of the Parties to the Statement of Objections and the Supplementary Statement of Objections, the route was not mentioned in the list of routes for which intermodal competition would possibly represent a constraint.

(1385) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-SKG route are analyzed on the following possible markets:

- a market for time sensitive passengers,
- a market for non-time sensitive passengers, and
- a market encompassing all passengers.

(1386) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-SKG route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1387) As shown in the table 23 below, on a possible market for time sensitive passengers on the ATH-SKG route, Olympic Air and Aegean had a combined market share of [90-100] % in winter 2009-2010. Between April and July 2010, their combined market share has further increased. More recently, Athens Airways suspended its operations and is therefore no longer active on this route.

ATH-SKG Winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[40-50]%
Aegean	[50-60]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 37: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1388) It follows that this transaction leads to the creation of a monopoly on the ATH-SKG route as Athens Airways no longer operates on this route and therefore even the limited competitive pressure that this airline may have exerted on Aegean and Olympic Air on the ATH-SKG route in the past no longer exists.

986 Submission of LECG of 5 October 2010.

(1389) In addition, even if Athens Airways were to be active on the route, the transaction would eliminate competition between two particularly close competitors and create a dominant position of the merged entity.

(iv) Non-time sensitive passengers

(1390) Given that train services are not to be considered in the relevant market for any type of passengers on the ATH-SKG route, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly[987] of the merged entity and eliminate very close competition currently existing between the two airlines on this route.

(v) All passengers

(1391) On a possible market including all passengers on the ATH-SKG route, the market shares of the various operators are illustrated in Table 38.

ATH-SKG (Thessaloniki) Winter 2009-2010 All passengers (without train)	
Olympic Air	[40-50]%
Aegean	[50-60]%
Combined	**[90-100]%**
Athens Airways	[0-5]%
Total	100%

Table 38: Market shares for air services
Source: Parties data and market investigation.

(1392) Given that Athens Airways suspended their operations, the transaction would lead to a monopoly[988] of the merged entity on the ATH-SKG route and eliminate very close competition currently existing between the two airlines.

(vi) Entry/expansion

(1393) The Parties argued that no competition concerns arise on the ATH-SKG route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1394) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-SKG route.

(1395) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers.

987 Or close to monopoly if Athens Airways were to resume its operations on the ATH-SKG route.

988 Or close to monopoly if Athens Airways were to resume its operations on the ATH-SKG route.

(1396) More specifically as regards Athens Airways, it is clear from the reasons explained in Section IX.1.6.2 that any possible re-entry by this airline on the ATH-SKG route is conditional upon several cumulative conditions which are uncertain to be met in the foreseeable future. Furthermore, given the very limited scale of operations of Athens Airways in the past, it is unlikely that any such re-entry would be sufficient so as to effectively constrain the merged entity.

(1397) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-SKG route.

(vii) Overall conclusion

(1398) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-SKG route, and this irrespective of whether the effects of the transaction are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers.

1.9.1.11. ATH-SMI (Athens-Samos; 186,896 passengers/year)

(a) Competitive situation on the route likely to prevail absent the transaction

(i) Aegean

(1399) Aegean has been operating the ATH-SMI route using ATR72 and RJ Avro aircraft in the summer. [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*[989]

(1400) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*

(1401) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*

(1402) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*

(1403) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*

(1404) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*[990]

(1405) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*[991] [992]

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989 […]*.

990 […]*.

(1406) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*[993] [994]

(1407) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*[995] [996]

(1408) Moreover, regarding the availability of aircraft, the market investigation showed that airlines under current market conditions do not encounter any significant difficulties in finding aircraft for lease at commercially reasonable conditions[997]

(1409) [*Analysis of Aegean's performance and competitive situation of the ATH-SMI route*]*

(1410) As a result, it is concluded that absent the transaction, Aegean is likely to continue operating on the ATH-SMI route in the foreseeable future.

(ii) Olympic Air

(1411) [*Analysis of OA's performance and competitive situation of the ATH-SMI route*]*[998]

(1412) [*Analysis of OA's performance and competitive situation of the ATH-SMI route*]*

(1413) [*Analysis of OA's performance and competitive situation of the ATH-SMI route*]* Under its recently published summer 2011 schedule, Olympic Air is already offering flights on the ATH-SMI route until end October 2011.

(1414) As a result, it is concluded that absent the transaction, Olympic Air is likely to continue operating on the ATH-SMI route in the foreseeable future.

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991 […]*.

992 […]*.

993 […]*.

994 […]*.

995 […]*.

996 […]*.

997 Agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraphs 13 and 30 [ID 5236] and agreed minutes of a teleconference call with Hellas Jet of 24 November 2010, paragraph 7 [ID 6962].

998 […]*.

(iii) Conclusion

(1415) In view of the ablve, it is concluded that absent the transaction, it is likely that Aegean and Olympic Air would continue competing on the ATH-SMI route in the foreseeable future.

(b) Competitive analysis for the route

(i) Route characteristics

(1416) On the ATH-SMI route, 125,150 passengers travelled by air in the IATA season summer 09 while 61,746 passengers travelled by air in the IATA season winter 2009-2010. […]*.

(1417) In 2009, […]*% of all air passengers on the ATH-SMI route travelled for business purposes, […]*% were VFR, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece.

(1418) Both Olympic Air and Aegean operate on the route with non-stop services. Athens Airways has not been active on this route in the last two seasons.

(1419) This route is also served by ferry services of Hellenic Seaways and, for some limited operations, Lane[999].

(ii) Relevant market

(1420) According to the Parties, air transport on the ATH-SMI route is subject to intermodal competition by ferry services due to the large number of passengers travelling by ferry, and the competitive pricing and comparable comfort offered by ferry services.

(1421) In terms of overall travelling time on on the ATH-SMI route, the journey from city centre to city centre by ferry ranges differs from operator to operator. It takes between 8 hours 45 minutes and 11 hours to Hellenic Seaways while Lane used to make it in between 14 and 16 hours.[1000] The fastest ferry on the route is therefore at least twice as long as the trip by plane taking only 3 hours 25 minutes. This considerable difference in travelling time has also been confirmed by respondents to the market investigation when comparing the service offerings of the two means of transport.[1001] Furthermore, the market investigation did not provide any indications that the difference in travelling

999 Lane did not appear to be active on the route in summer 2010, http://www.lane.gr/. Moreover, it is unclear from the information provided by the Parties if and to which extent Kallisti Ferries is active on the route The Parties were not able to provide any information on that ferry company, see: Reply to question 15 of requests for information of 04 August 2010; Reply to question 15 of requests for information of 01 September 2010.

1000 Based on the information provided by the Parties in their reply to requests for information of 4 August 2010, 1 September 2010, 1 October 2010 and 25 November 2010.

1001 Replies to question 29 of the phase II request for information to corporate customers of 13 August 2010; replies to question 35 of the phase II request for information to travel agents of 13 August 2010.

time between both modes of transport would decrease in the foreseeable future on this route.

(1422) In terms of prices, the average air fare is on average 20 to 30 % higher than ferry fare in the winter season, while during summer season it is around 40 to 90 % higher on the ATH-SMI route.

(1423) As has been mentioned above in Section VI.1.3.2, a service suitable for time sensitive passengers should generally provide at least two daily services at each end of a route. This is in line with the replies of many respondents to the market investigation.[1002] As is clear from Table below, ferries on this route do not even operate a daily service throughout the year on the ATH-SMI route.

(1424) While the Parties submit in their reply to the Statement of Objections that no same day return trips are possible by neither Aegean nor Olympic Air in the winter on this route, the information below shows that the level of frequencies of ferry competitors does not meet the general requirements of time sensitive passengers as regards the necessary level of frequencies across the year.

(1425) The competitive disadvantages of ferry services are also reflected in the replies of corporate customers to the market investigation: most corporate customers who responded to the question asking about the modes of transport they considered for travelling on the ATH-SMI route indicated that they did not normally consider ferry services when purchasing tickets for business trips.[1003]

(1426) It is also to be recalled that Greek corporate customers that replied to the Commission's market investigation indicated that should prices of plane tickets raise by 5-10% on Greek domestic routes on which they purchase tickets for their employees travelling on business trips, a majority would absorb such price increase and continue buying the plane tickets irrespective of the price increase (see Section VI.1.4.1.4).

(1427) Similarly, a large majority of travel agents who replied to the relevant question indicated that they do not believe that a significant proportion of time sensitive passengers would switch to ferry services should the prices of air services on this route increase by 5-10%.[1004]

1002 According to Athens Airways, the route should be served with a minimum of two daily frequencies, see: Reply to question 16 of the phase II request for information to competitors of 11 August 2010 [ID 3024]. According to a majority of corporate customers, ideally more than two daily frequencies should be available on the route, see: Replies to question 23 of the phase II request for information to corporate customers of 13 August 2010. According to a majority of travel agents, two daily frequencies should be available on the route in order to provide suitable services for time sensitive passengers, see: Replies to question 27 of the phase II request for information to travel agents of 13 August 2010. A Greek consumer organisation indicated an even higher level of frequencies, see: Reply to question 24 of the phase II request for information to consumer organisations Greece of 13 August 2010.

1003 Replies to question 24 of phase II request for information to corporate customers of 13 August 2010.

1004 Replies to question 37 of the phase II request for information to travel agents of 13 August 2010 and to question 29 of the phase I request for information to travel agents of 25 June 2010.

(1428) The Parties claimed in their reply to the Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel. However, the same view as the view of corporate customers and travel agents was also taken by a large majority of competitors who responded to the relevant question[1005], including Astra ("*even super-fast ferries are not an alternative to a flight for time-sensitive passengers[1006]",* Hellenic Imperial ("*people travelling via air are always time-sensitive passengers*")[1007] and Sky Express **(**"*ferry transport is only suitable for non-time sensitive passengers").*[1008]

(1429) According to the ferry operator Hellenic Seaways, time sensitive customers consider air and ferry services as substitutes only in the case of high speed ferries, especially on trips of small distances where the aggregate travel time is comparable.[1009]

Conclusion

(1430) As concerns the ATH-SMI route, air services and ferry services differ significantly from each other in terms of aggregate travel time, level of frequencies and prices.

(1431) As far as time-sensitive passengers on the ATH-SMI route are concerned, the market investigation showed also that according to most respondents the two modes of transport are not substitutable to each other. Therefore, ferry services are not to be included in the relevant market for time-sensitive passengers on the ATH-SMI route.

(1432) As regards the possible market for non-time sensitive passengers and the possible market that encompasses all passengers, it can be left open whether or not ferry services are to be included in the relevant market on the ATH-SMI route. Indeed, as concluded in recital (1467), the transaction significantly impedes effective competition in these markets irrespective of whether ferry services are or not part of the relevant market.

(1433) As a result, for the purpose of the present Decision, the effects of the transaction on the ATH-SMI route are analyzed on the following possible markets:

– a market for time sensitive passengers,

1005 Replies to question 27 of the phase I request for information to competitors of 25 June 2010 and teleconferences with competitors.

1006 Agreed minutes of a teleconference call with Astra of 25 August 2010 [ID 4477].

1007 Agreed minutes of a teleconference call with Hellenic Imperial of 17 September 2010 [ID 5145]. Hellenic Imperial considers that the two modes of transport are not substitutable on this route as far as time sensitive passengers are concerned *"because of the long sailing hours",* reply to question 27 of phase I request for information [ID 4582].

1008 Agreed minutes of a teleconference call with the Sky Express of 24 August 2010 [ID 5398].

1009 Reply to question 8 of phase I request for information [ID 1099].

- a market for non-time sensitive passengers including two hypotheses according to which ferry services are or not to be included in the relevant market, and

- a market encompassing all passengers including two hypotheses according to which ferry services are or not to be included in the relevant market.

(1434) Given that the transaction would significantly impede effective competition for all categories of passengers on the ATH-SMI route under any possible market scenario, the precise market definition can ultimately be left open for the purpose of this Decision.

(iii) Time sensitive passengers

(1435) On a possible market for time sensitive passengers on the ATH-SMI route, as shown in Table 39, Olympic Air and Aegean had a combined market share of 100 % in winter 2009-2010.

ATH-SMI winter 2009-2010 **Time sensitive passengers**	
Olympic Air	[60-70]*%
Aegean	[30-40]*%
Combined	**100%**

Table 39: Market shares for air services

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1436) It follows that this transaction would create a monopoly on the ATH-SMI route and eliminate competition between two particularly close competitors.

(iv) Non-time sensitive passengers

(1437) As concerns a possible market for non-time sensitive passengers on the ATH-SMI route, the Commission conducted a separate assessment depending on whether or not ferry services should be included as part of the relevant market.

(1438) Should the market be confined to air services only, the competitive assessment for the time sensitive segment applies correspondingly on this segment; that is the transaction would lead to a monopoly of the merged entity and eliminate very close competition currently existing between the two airlines on the ATH-SMI route.

(1439) Should ferry services be included in a relevant market for non-time sensitive passengers, Olympic Air and Aegean would have a combined market share in the range of [50-60] % in winter 2009-2010 on the ATH-SMI route, as shown in Table 40.

ATH-SMI Non-time sensitive passengers (incl. ferries) Winter 2009-2010	
Olympic Air	[30-40]%
Aegean	[20-30] %
Combined	**[50-60] %**
Hellenic Seaways	[35-50] %
Total	100%

Table 40: Market shares for air and ferry services[1010]

Source: Parties' data and reconstruction of market shares based on the market investigation.

(1440) Should ferry services be included in a relevant market for non-time sensitive passengers on the ATH-SMI route, Table 40 illustrates that Aegean and Olympic Air would have a high combined market share in the range of [50-60] %. More recent data for the year 2010 show a contraction of the combined share Aegean and Olympic to [40-50%] as a consequence of the increase in the number of ferry travellers.

(1441) Evidence collected during the market investigation and in particular the considerable difference between the services provided by ferry companies as compared to the air services of Aegean and Olympic Air in terms of travel time, scheduling, and quality, convenience and reliability of the service underlined that ferry services are only distant substitutes to air services on the ATH-SMI route. Due to these differences, the inclusion of ferry services in the relevant market would lead to market shares which overestimate the actual competitive constraint that ferry companies exert on Olympic Air and Aegean on this route. The main competitive constraint currently exerted on Olympic Air emanates from Aegean, and vice versa. They are each other's closest competitors on the ATH-SMI route.

Travel time

(1442) The considerably longer travelling time by ferry (trip by ferry is at least twice as long as the trip by plane) render ferry services a distant substitute to air services even for non-time sensitive passengers on the ATH-SMI route. Indeed, number of travel agents responding to the market investigation indicated that also leisure passengers or those VFR passengers value the existence of fast modes of transport.[1011]

1010 Lane does not appear to be active on this route to any significant extent. In any event, the market share of Lane is likely to be very small, given its very low number of weekly frequencies (1-3) on the route and its very long travel time and would thus not alter the conclusion that the Parties have a very high market share on this route.

1011 Replies to question 24 of phase II request for information to travel agents of 13 August 2010; see also agreed minutes of conference call with HALPA of 30 August 2010, paragraph 50 [ID 4428].

Level of frequencies

(1443) According to the Parties, the level of weekly services operated on the ATH-SMI route by Aegean and Olympic Air and other operators at various points of the time in 2010 was as follows:

Frequencies in 2010	**ATH-SMI**			
	January	March	August	October
Olympic Air	21	21	26	24
Aegean	14	14	7	7
Combined	**35**	**35**	**33**	**31**
Lane	3	1		
Hellenic Seaways (conventional)	5	5	6	5
Total other operators	**8**	**6**	**6**	**5**

Table 41: Weekly services from ATH to SMI

Source: Reply of the Parties to requests for information of 4 August 2010, 1 September 2010 and 1 October 2010. [1012]

(1444) Table 41 illustrates that the combined frequency share of Aegean and Olympic Air is substantially higher than the level of frequencies offered by independent ferry operators on the ATH-SMI route.

Quality and convenience of the service

(1445) When comparing air services and ferry services on the ATH-SMI route, several travel agents pointed out that ferry services are of an inferior quality compared to air services (comfort level, punctuality etc.).[1013] Sky Express mentioned that ferries on the ATH-SMI route are "*old and slow*".[1014]

(1446) In addition, it is noteworthy that not all ferries on the ATH-SMI route can be booked sufficiently long in advance. While airline tickets can already be booked in December for the upcoming summer season, ferry tickets are often available only 1-2 months before the departure date. As Athens Airways pointed out in its observations of 26 November 2010 to the presentation made by the Parties at the Oral Hearing, several ferry operators have not published the schedules they intend to operate in 2011 and as a result it is not possible to book in advance ferry tickets on selected dates for 2011. A visit of the website of Hellenic Seaways mid December 2010 indeed reveals that no tickets can be booked for 2011.[1015]

1012 Estimated maximum frequencies for Hellenic Seaways have been added for January and March.

1013 Replies to question 35 of phase II request for information to travel agents of 13 August 2010.

1014 Replies to question 27 of phase I request for information to competitors of 25 June 2010 [ID 1010].

1015 Ferry schedules, websites visited mid December 2010 [ID 7462].

Reliability of the service

(1447) Several respondents to the market investigation also indicated that due to adverse weather conditions ferry services are less reliable on all relevant routes of concern, including explicitly the ATH-SMI route. This concern has been raised by Athens Airways (the route is "*often compounded by adverse sea conditions and strikes*"[1016]), two travel agents ("*air has equally sustainable service and comfort regardless of weather conditions. In case of ferries this is not so*"[1017]; "*many times during the winter the ferries do not operate because of weather*"[1018]) and two corporate customers ("*ferries are more sensitive in weather conditions*"[1019]; "*plane [is] less affected by weather conditions*"[1020]). The existence of adverse weather conditions was further underlined by the Greek consumer organisation Kepka ("*Greece has a lot of islands, which especially during winter (when there are strong winds) can be connected only through air*"[1021]).

Further results of the market investigation

(1448) The Parties submitted in their reply to the Statement of Objections and Supplementary Statement of Objections that the views of airlines and ferry operators were disregarded by the Commission insofar as they stated that ferry services exercised a competitive constraint on air travel.[1022]

(1449) A majority of airlines indeed stated that ferries exert a sufficient competitive constraint upon Aegean and Olympic Air on this route.[1023] While this includes the Greek airline Sky Express, it should be noted that the Greek airlines Athens Airways[1024] and

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1016 Reply to question 27 of the phase I request for information to competitors of 25 June 2010 [ID 1050].

1017 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 3355].

1018 Reply to question 35 of the phase II request for information to travel agents of 13 August 2010 [ID 2546].

1019 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2947].

1020 Reply to question 29 of the phase II request for information to corporate customers of 13 August 2010 [ID 2938].

1021 Reply to questions 26 and 27 of the phase II request for information to Greek consumer organisations of 13 August 2010 [ID 2567].

1022 For the views of travel agents see section VI.1.4.1.4.

1023 Replies to question 54 of phase I request for information to competitors of 25 June 2010.

1024 Reply to question 54 of phase I request for information to competitors of 25 June 2010 (ID 1050) with reference to the *"very long travel time"* compared to air services. In a telephone conference, Athens Airways considered that ferries have *"some influence"* on air travel, *"especially on routes such as […] Athens to Mykonos, Athens to Heraklion, and Athens to Chania where high-speed boats operate"*, agreed minutes of a teleconference call with Athens Airways of 18 August 2010, paragraph 45 [ID 5236].

Hellenic Imperial[1025] expressed a different view and that the Greek airline Astra explained that such a constraint might only emanate from "super-fast" ferries while normal ferries would cater to a very different traveller profile.[1026]

(1450) Finally, the distant competitive relationship between air services and ferry services is confirmed by Hellenic Seaways ("*can make no comments or assessment on such commitments and their content since it is has no knowledge of the air services market and the operation thereof, in order to evaluate the impact of the proposed remedies, as it operates only in the maritime sector*")[1027] and Lane (customers are "*truck drivers, fisherman, and farmers that they traveling for professional reason and most of them are poor and they a using our Ferry because is the smallest rate for transportation. […] I wish we Gould have an opinion about the case that you are studying with the airlines but is irrelevant to us if there is one or two airlines but this do not interferes to our traditional shipping traveling and there is no competition to us because our fisherman or farmers do not have the amount of money for traveling with the plain*").[1028]

Conclusion

(1451) The significant differences between air services and ferry services show, first of all, that the two transport modes are significantly different and that, therefore, ferry services exert only a limited competitive constraint upon Aegean and Olympic Air on the ATH-SMI route, contrary to the Parties' arguments in their replies to the Statement of Objections and the Supplementary Statement of Objections. The market shares of Olympic Air and Aegean therefore greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-SMI route.

(1452) Furthermore, the competitive parameters illustrate that Aegean and Olympic Air are each other's closest competitors on the ATH-SMI route. In particular, the services of each of Aegean and Olympic Air are significantly faster and higher in number than those of ferry operators and are also similar to each other in terms of quality, convenience and reliability. In addition, as already outlined in Section IX.1.3, Aegean and Olympic Air are very close competitors due to their base at AIA, their strong recognised brands and their similarities in terms of business model, pricing, type of aircraft and network.

(1453) It follows that the transaction leads to the elimination of the closest competitor of each of Olympic Air and Aegean on the ATH-SMI route.

(1454) As a result, as far as non-time sensitive passengers on ATH-SMI route are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the

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1025 While the reply of Hellenic Imperial to question 54 of the phase I request for information to competitors of 25 June 2010 is ambiguous [ID 4582], it stated in a conference call of 17 September 2010 that it considers all air passengers as *"time sensitive"*, see paragraph 7 of the agreed minutes of a tele conference call of of 17 September 2010 [ID 5145].

1026 Agreed minutes of a teleconference call with Astra of 25 August 2010, paragraph 20 [ID 4477].

1027 Letter of Hellenic Seaways of 23 November 2010 [ID 6456].

1028 Letter of Lane of 25 November 2010 [ID 6676].

important competitive constraint that both airlines exert upon each other pre-transaction on the ATH-SMI route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-SMI route.

(v) All passengers

(1455) On a possible combined market including all passengers on the ATH-SMI route, the market shares of various operators are illustrated in Table 42, distinguishing two hypotheses namely without ferries and including ferries in the relevant market.

ATH-SMI Winter 2009-2010		
All passengers	***Without ferries***	***Including ferries***
Aegean	[30-40]*%	[20-30] %
Olympic Air	[60-70]*%	[30-40] %
Combined	**100%**	**[60-70] %**
Hellenic Seaways	x	[35-50] %
Total	100%	100%

Table 42 : Market share for air and ferry services[1029]

Source: Parties data and market investigation.

(1456) The combined market shares of the Aegean and Olympic Air on the ATH-SMI route thus vary substantially depending on whether or not transport by ferry services are included in the relevant market. Indeed, should ferry services not be included in the relevant market for all passengers travelling on the ATH-SMI route, the combined market share of Aegean and Olympic Air was 100 % in winter 2009-2010. Should transport by the ferries be considered as part of the relevant market the combined market shares of Aegean and Olympic Air would still be very high, in the range of [60-70] % on the ATH-SMI route. More recent data for the year 2010 shows a contraction of the combined share of Aegean and Olympic Air to [50-60%], as a consequence of the increase in the number of ferry travellers.

1029 Lane does not appear to be active on this route to any significant extent. In any event, the market share of Lane is likely to be very small, given its very low number of weekly frequencies (1-3) on the route and its very long travel time and would thus not alter the conclusion that the Parties have a very high market share on this route.

(1457) However, irrespective of whether or not ferries are included in the relevant market ferries are only a distant substitute to air services on the ATH-SMI route due to objective comparison characteristics such as travel time and level of service.

Travel time, level of services, quality, convenience and reliability of the service, further results from the market investigation

(1458) The distant competitive relationship between air services and ferry services is due to the substantial difference in the services provided by ferries and by air services in terms of travel time, level of services, quality, convenience and reliability of the service on the ATH-SMI route. These substantial differences are even more relevant on a market encompassing all passengers due to the fact that such an overall market also comprises time sensitive passengers for whom these differences render ferry services an even more distant substitute to air services on this route.

Prices

(1459) Average air fare on the ATH-SMI route is on average 20 to 30% higher than ferry fare in the winter season, while it is around 40 to 90% higher during summer season.

Views of travel agents

(1460) The distant competitive relationship between both modes of transport is further evidenced by the views of travel agents who were asked during the course of the market investigation whether ferry companies on this route exert or may exert a sufficient competitive constraint on the Parties so as to prevent the latter from increasing prices post-transaction. Most travel agents who replied to that question, not distinguishing between time sensitive and non-time sensitive passengers, confirmed that they did not believe that ferry companies could exert a sufficient competitive constraint on Aegean and Olympic Air on the ATH-SMI route.[1030]

Conclusion

(1461) Therefore, it is concluded that on the ATH-SMI route Olympic Air and Aegean are each other's closest competitor, while ferry services are only a distant substitute to air services. Under these circumstances, the market shares of Olympic Air and Aegean greatly understate the importance of the competitive constraint that they exercise on each other on the ATH-SMI route.

(1462) As a result, as far as all passengers are concerned, the transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic Air and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on the ATH-SMI route. Customers' choices of travelling options would therefore be substantially reduced and it is unlikely that any ferry company would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting, on the ATH-SMI route.

1030 Replies to the question 41 of the phase I Request for information to travel agents of 25 June 2010. This question needs to be distinguished from question 27 of the phase I request for information to travel agents of 25 June 2010. Question 27 is informative as to the question whether or not air services and ferry services are in the same product market, while question 41 relates to the question whether ferries would be a sufficient constraint in a market encompassing air and ferry services.

(vi) Entry/expansion

(1463) The Parties argued that no competition concerns arise on the ATH-SMI route due to the absence of barriers to entry. Also in their reply to the Statement of Objections and Supplementary Statement of Objections, they argued that the merged entity will be sufficiently constrained by existing and potential competition.

(1464) As explained above in Sections IX.1.5 and IX.1.6, several general barriers to entry and expansion exist, which are also present on the ATH-SMI route.

(1465) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects for this route for any category of passengers by airlines or ferry operators.

(1466) Thus, the evidence indicates that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the proposed concentration on the ATH-SMI route.

(vii) Overall conclusion

(1467) It is concluded that the transaction is likely to significantly impede effective competition on the ATH-SMI route, and this irrespective of whether the effects of the merger are assessed on separate markets for time sensitive and non-time sensitive passengers or on a combined market that encompasses all passengers, and irrespective of whether or not ferry passengers are included in the latter two markets.

1.9.1.12. Further overlaps between Aegean and Olympic Air: Thessaloniki-Kos and Thessaloniki-Chios

(1468) On the Thessaloniki-Kos route, Olympic Air and Aegean are present with one-stop services (Aegean in summer also with non-stop services) and face competition from Sky Express. Such non-stop services generally exert a higher competitive constraint upon the merged entity than the constraint exerted by Aegean and Olympic Air upon each other pre-transaction with their one-stop-non-stop/one-stop services.[1031] It follows that the transaction would not significantly impede effective competition on the Thessaloniki-Kos route, irrespective of whether or not non-stop and one-stop services are in the same product market.

(1469) Similarly, on the Thessaloniki-Chios route, Olympic Air and Aegean are present with one-stop services (Aegean in summer also with non-stop services) and face competition from Astra which has a base in Thessaloniki. Such non-stop services by Astra generally exert a higher competitive constraint upon the merged entity than the constraint exerted by Aegean and Olympic Air upon each other pre-transaction with

1031 Replies to question 21 of phase I request for information to travel agents of 25 June 2010, replies to question 24 of the phase I request for information to corporate customers of 25 June 2010 and replies to question 19 of the phase I request for information to competitors of 25 June 2010.

their one-stop-non-stop/one-stop services.[1032] It follows that the transaction would not significantly impede effective competition on the Thessaloniki-Chios route, irrespective of whether or not non-stop and one-stop services are in the same product market.

1.9.2. Potential competition

1.9.2.1. Introduction

(1470) On a number of routes to and from the Greek airports where Aegean and Olympic Air have domestic activities (in particular AIA, where both airlines have their main base), only one of the Merging Parties is currently present.

(1471) In line with the practice of the Commission[1033], it is necessary to analyse whether the transaction would affect competition by eliminating the other airline as a potential competitor on these routes.

(1472) Competition on the individual domestic routes operated by both Aegean and Olympic Air cannot be regarded in isolation. Such an isolated analysis would imply that the respective product markets are entirely independent from each other and would negate that these routes are linked by many elements to each other, in particular by the fact that they are operated from Olympic Air's and Aegean's main base in Greece. Such a base provides the two airlines with the required flexibility to shift and add routes and increase/decrease frequencies in response to changes in the competitive structure of the different routes operated from AIA (see section IX.1.5.1). This implies that the Commission's analysis cannot only be "static", in the sense that it does not suffice to focus only on the overlap routes which have resulted from the counterfactual analysis. What is required is a dynamic analysis that takes into account to what extent the disappearance of one airline's closest and most important competitor might eliminate potential competition that would have constrained Olympic Air and Aegean in the absence of the transaction.

(1473) The Horizontal Merger Guidelines acknowledge that concentrations where an undertaking already active on a relevant market merges with a potential competitor may have anti-competitive effects and thus lead to significant impediment of effective competition. Point 60 of the Guidelines sets two conditions for establishing loss of potential competition:"*[f]irst, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Second, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.*"

(1474) As to the first criterion, it is relevant to consider, (i) the closeness of competition between Olympic Air and Aegean and the extent to which they constrain each other,

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1032 Replies to question 21 of phase I request for information to travel agents of 25 June 2010, replies to question 24 of the phase I request for information to corporate customers of 25 June 2010 and replies to question 19 of the phase I request for information to competitors of 25 June 2010.

1033 See e.g. the Commission decisions in cases M.3280 – Air France/KLM, M.3770 – *Lufthansa/Swiss,* M.3940 – *Lufthansa/Eurowings*; see also the discussion of potential competition by the CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR (2006) II-1913, at paragraphs 63 et seq. and case T-342/07 *Ryanair Holdings v Commission* [2010] ECR.

and, (ii) the ability of Olympic Air and Aegean to enter routes where currently only one of them is active or where there will be only one airline in the foreseeable future. In previous cases, the Commission found that an airline active on a route could be constrained not only by its actual competitors on this route but also by potential competitors. Furthermore, the Court acknowledged in its judgment concerning the Commission's decision in the *Ryanair / Aer Lingus* case, that for routes operated by Aer Lingus out of Dublin, "*it is in fact likely that Aer Lingus would charge lower fares than it would charge if Ryanair did not have a base at Dublin airport*".[1034]

(1475) As regards the second criterion (ability of alternative airlines to enter), it is necessary to demonstrate that entry by other competing airlines on these routes is less likely and thus would not provide sufficient competitive pressure on the merged entity.

(1476) The history of competition between Aegean and a privately owned New Olympic is short, and hence there is no observable pattern of entry by Olympic Air or Aegean on routes on which previously only one of the two airlines was active.

(1477) However, Olympic Air and Aegean are close competitors since they both have a base at AIA, operate a similar business model and both enjoy a well-recognised brand. Moreover, they are engaged in dynamic competition (and would be in the absence of the transaction). This means that even if currently a given route to and from Athens is being served by only one airline, the other airline is well placed, without significant sunk investments, to enter (i.e. become an actual competitor) and compete on all relevant dimensions: price, frequencies, quality, service etc. For example this can happen if demand conditions improve on a given route and passenger numbers expand but also if as a result of relatively higher decline of demand in a certain route where one of the airlines enjoys spare capacity. In that case it may decides to shift its planes and crew to other relatively more profitable routes, including those in which it previously had no presence.

(1478) The presence of a very close potential competitor in routes to and from AIA would induce the merging party to keep prices lower than otherwise. Moreover although prices can quickly be adjusted, frequencies and service are normally predetermined for one IATA season. So an incumbent, which at the beginning of an IATA season is competing on capacity with any other airline (i.e they set their capacity simultaneously), can easily decide to start operating a route (say because it has a base at the originating airport). This capacity competition is eliminated post transaction. Moreover, in an extended dynamic consideration, an incumbent may keep prices lower than in the absence of the potential entrant to avoid reallocation of capacity to the route in question by the rival airline for the next IATA season.[1035]

(1479) (Re)entry by a firm which shares base presence in the same airport is generally more likely than completely new entry by another competitor without a base. In fact, as far as capacity competition is concerned, two airlines operating a base at the same airport are essentially actual competitors since every IATA season they must decide separately but simultaneously whether they will exit some unprofitable routes and enter

1034 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 162.

1035 It is precisely this feature of airline competition that leads to a pattern of entry and exit from summer to winter seasons.

or reenter other routes where a competitor faces no actual competition. In this sense, "re-entry" is a constraint and the transaction eliminates a "potential" competitor, that is, a competitor which is effectively constraining the ability of the other to extract monopoly rents.[1036]

(1480) The importance of potential competition in the case of airlines that both benefit from competitive advantages derived from the operation of a base has also been accepted by the General Court: "*Iin that regard, a 7 to 8% price influence appears significant at first sight. That effect is also likely to be underestimated, since it is an average which does not take particular account of the routes on which the concentration would lead to the creation of a monopoly*"[1037]. The General Court implies that potential competition leads to lower fares than would have otherwise.

(1481) All these elements are analysed below, first in general, and then applied to individual routes.

1.9.2.2. Olympic Air and Aegean are very close competitors that constrain each other and are capable of entering into each other's routes

(1482) Olympic Air and Aegean are very close competitors to each other. This implies that Olympic Air and Aegean currently engage in dynamic competition with each other and will likely enter each other's markets in the future. Indeed, on those routes out of Athens where only one of the airlines is currently present or where it is likely that in the short term only one of the airlines will remain present, the other airline will be well placed to (re)enter those routes as such entry can occur without facing significant sunk investments. That entry will also be swift, for instance in reply to increasing prices or demand, and the new entrant will be able to compete on all relevant dimensions: price, frequencies, capacity, quality and service. Absent the transaction, consumers are likely to benefit from the increased competition that follows such entry.

(1483) Post transaction, such (re)entry cannot take place anymore. For example, in case demand were to increase there will be no entry from a airline with a base at the AIA to keep the merged entity from increasing prices. Hence, the transaction-induced structural change will eliminate potential competition and hence there is prospective harm to consumers. The competitive constraint that a new entrant − to the extent that there is potential entry on the route in question − other than Olympic Air and Aegean could exert is much more limited. Indeed, in particular in the absence of a base at AIA, such entrant would not be able to compete on capacity and frequencies but only on price. Such 'hit and run' price competition can be rather easily defeated by the incumbent on the route and may lead the new entrant to exit the route very soon after having entered.

(1484) As acknowledged in the Horizontal Merger Guidelines, "*a merger with a potential competitor can generate horizontal anti-competitive effects, whether coordinated or non-coordinated, if the potential competitor significantly constrains the behaviour of the firms active in the market. This is the case if the potential competitor*

1036 It is essentially the same thing as arguing that a rival airline with 1 frequency can expand and offer 2 frequencies in the event its competitor tries to raise prices.

1037 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 162.

possesses assets that could easily be used to enter the market without incurring significant sunk costs."[1038]

(1485) The competitive advantages that both Olympic Air and Aegean derive from their strong presence at AIA have already been explained in Section IX.1.5.1. Both airlines, unlike their competitors that have no base at AIA, enjoy significant flexibility to reschedule their operations across routes from and to Greece within a reasonably short timeframe. Particularly in times of crisis affecting demand, presence at AIA provides Olympic Air and Aegean with flexibility in re-allocating capacity to routes out of AIA in response to weakening demand or unexpected cost increase reducing profitability. The presence at AIA allows Olympic Air and Aegean to enter routes without incurring significant sunk costs and thus mitigates the costs of failed entry.

(1486) Apart from presence at AIA, Olympic Air and Aegean possess other assets that allow entry without incurring significant sunk costs: a young fleet that is particularly adapted to Greek domestic flights, a portfolio of slots and bases at several Greek airports, a deep knowledge of the Greek air transport and related markets and the leading brands in Greek aviation.

(1487) It has been concluded that Aegean and Olympic Air are each other's closest competitor on domestic routes (see sections IX.1.3). In that respect, it is to be emphasised that the Parties themselves claim that the merged entity "*will be constrained by the threat of entry of a second, differentiated, competitor in each and every one of the overlap routes*".[1039] If such potential constraint exercised by a small scale new entrant exists, then it must be all the more material for the constraint exercised by Aegean on Olympic, and vice-versa. Also very tellingly, Aegean has taken into account the increasing potential competition of Olympic Air at the time Olympic was starting its activities, in order to fight the entry of Olympic. Indeed, Aegean's Board of Directors on 11/11/2009 considered as an option to "[…]*"[1040]

(1488) Furthermore, HALPA has noted that for the Parties, "*avoiding competition was a preferable scenario. In this way, the parties could avoid a price war. But this did'nt allow them to charge monopoly prices, as each party was a potential entrant to the markets fominated by the other. The mere presence of the other, its strength and the possibility to challenge its position was enough to discipline each other. Eventually the possibility of collaborating actively or even merging came up*".[1041]

1.9.2.3. Entry by other competing airlines on these routes is significantly less likely

(1489) As explained in section IX.1.6, entry in the Greek domestic market by alternative airlines has been particularly unsuccessful. These airlines have either exited the market or suspended their activities or have retrenched to airports other than the AIA in order to

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1038 Horizontal Merger Guidelines, point 59.

1039 Parties' response to the Decision initiating proceedings of 30 July 2010, paragraph 48.

1040 Annex D to Aegean's response to information request of 5 July 2010.

1041 Reply of HALPA to question 7 of 2nd market test of remedies to customers and other market participants [ID 7118].

avoid entering into direct competition with Olympic Air and Aegean. In the market investigation, alternative airlines point to Olympic Air and Aegean supposedly engaging in selective and strategic price dumping in order to drive them out of the market. Entry by alternative airlines on routes ex Athens is particularly unlikely, in particular on routes for which the Commission identified a significant impediment to effective competition in the Statement of Objections. Even if two niche airline (Hellas Jet and Hellenic Imperial) have claimed that they could conditionally consider operating some Greek domestic routes from a base at AIA post transaction, no such provisional entry plans have been formulated in the absence of adequate remedies for the routes that the Commission has retained as routes where the transaction will lead to an elimination of potential competition.

1.9.2.4. Routes where the transaction will lead to an elimination of potential competition

(1490) The threat of entry is not necessarily equally significant on all the routes where only Olympic Air or Aegean is present or will be present in the foreseeable future. In determining and applying the criteria of the Horizontal Merger Guidelines, the Commission is taking a cautious and conservative approach to identify those concrete routes where it is most likely that entry has a significant constraining influence, and has established certain criteria for identifying such routes. The criteria on which the Commission has based its selection are as follows: (i) whether the route connects to the AIA and whether the potential entrant has a base at that airport; (ii) whether the route has historically had sufficient demand to sustain operations of (at least) two airlines and whether there are indications that either Olympic Air or Aegean would (re)enter that route; (iii) whether there is an alternative airline currently active on the route, taking into account that the presence of an actual competitor is likely to constitute a stronger competitive constraint to Olympic Air or Aegean than a potential entrant; (iv) whether entry by another competitor is likely and foreseeable (either there is a significant potential entrant based at the destination airport or the existing entrants based at the other end are likely to provide sufficient competitive pressure). There may, of course, be other reasons why a particular route may be particularly attractive for entry by either Olympic Air or Aegean (for instance, a certain route may be likely to have some growth potential).

(1491) For routes that do not consistenly comply with the above criteria, the Commission is not able to establish to the necessary legal standard that the entry of either Olympic Air or Aegean would exert a significant constraining influence.

(1492) Applying the above described cautious approach, the Commission has identified the Athens-Corfu route as route where it is most likely that, although not operating, Olympic Air will likely restart operation in the event that Aegean attempted to increase prices to levels where it can extract significant rents from consumers.

(1493) Both Olympic Air and Aegean have a base at AIA. Sections IX.1.5 and IX.1.6 have shown that a base at AIA is a prerequisite for sufficient entry in the Greek domestic market and have established that, apart from Hellas Jet and Hellenic Imperial that would conditionally consider opening such base to serve a limited number of routes out of Athens and with a much more limited size of fleet than that of Olympic Air and Aegean, no other airline serving domestic flights in Greece is likely to operate such a base in the foreseeable future, taking into account, amongst other elements the very considerable costs associated with a base at AIA and the related high risk of significant sunk costs when entering on routes that connect to AIA.

(1494) When starting its activities, Olympic Air had an aggressive entry strategy on routes where Aegean has been operating.[1042] Past entry shows that both Olympic Air and Aegean are well placed through their AIA base to exert competitive pressure on the domestic routes. That analysis is all the more valid once demand would increase following a recovery of the Greek economy. Such recovery could take place progressively as of 2012, which is a relevant timeframe for a prospective merger analysis.[1043]

(1495) On the Athens-Corfu route, the likelihood of future entry is established by the fact that it has historically had sufficient demand as shown in Table. The fact that the airline that is currently not active on this route (Olympic Air) does not operate the route in the winter season 2010-2011 and does not have the route listed in its summer 2011 schedule, is without prejudice to Olympic Air operating this seasonal route in upcoming summer seasons, when passenger traffic is significant and when the frequencies and prices applied by the only airline operating the route (Aegean) may render entry commercially interesting. The passenger traffic on the route for the last five IATA seasons is set out in Table 43, which shows that demand in summer increases by almost 100% compared to winter:

	winter 2007-2008	summer 2008	winter 2008-2009	summer 2009	winter 2009-2010
Athens-Corfu	98,525	177,351	88,210	172,854	96,066

Table 43: O&D passengers on the Athens-Corfu route for the last five IATA seasons

Source: Information provided by the Parties and market investigation

(1496) Moreover, Olympic Air requested on 14 October 2010 slots for operations at Corfu for summer 2011[1044], with 651 departures and arrivals requested.[1045] This request for slots was made only shortly before Olympic Air submitted its summer 2011 schedule to GDS[1046], which suggests that Olympic Air wanted at least to retain the possibility and flexibility of re-entering this route in summer 2011, even if it had not yet scheduled flights for that period.

1042 Olympic Air has (re)gained very significant market shares, notably over Aegean since October 2009. For instance, from domestic market shares of around 30% in October 2009, Olympic Air had around 47% in December 2009 (see Olympic Air Executive Committee presentation, 08/02/2010).

1043 Greek Gross Domestic Product (GDP) growth is expected to be negative in 2011 (-2.6%), however, it is expected to become positive again in 2012 (Source: Economic Adjustment Programme for Greece, First review summer 2010, DG ECFIN, European Commission). Eurocontrol forecasts domestic flights to grow at an average growth rate of 2.3% between 2011 and 2016.

1044 Email from Hellenic Slot Coordination Authority [ID 5837].

1045 Email from Hellenic Slot Coordination Authority [ID 5808].

1046 Olympic Air submitted its summer 2011 schedule during the week of 22 November 2010.

(1497) In addition, several market participants confirmed, in the market test of the remedies submitted by the Parties, that Olympic could re-enter the Athens-Corfu route in a short timeframe. In particular, the Corfu Civil Aviation Authority indicated that there was a high likelihood of the Parties becoming actual competitors on this route in the near future[1047], and that "*Aegean's capacity utilization since Olympic's withdrawal is over 83% on average. This we think point to the fact that there is plenty of room for healthy competition which we feel will disappear if the merger is allowed to take place*".[1048]

(1498) No other airline than Aegean is currently active on this route[1049]. Regarding the second limb of the test set by paragraph 60 of the Horizontal Merger Guidelines, the market investigation has not identified any potential competitor other than Olympic Air for the Athens-Corfu route. According to the results of the market investigation, neither international airlines nor Greek domestic airlines have expressed an interest in entering into the Athens-Corfu route in a timely manner if the transaction were to take place.

(1499) Even for the airlines that are already active on Greek domestic routes other than Athens to Corfu, the absence of a base at AIA does not allow them, contrary to Olympic Air, to enter a route such as Athens-Corfu without some delay and without incurring significant sunk costs and thus very considerable costs of failed entry. Even if the provisional and conditional plans of Hellas Jet and Hellenic Imperial to open a base at AIA for Greek domestic routes would materialise, the routes served and capacity offered would be very limited and not of such nature that it would likely develop into a sufficient competitive constraint on the merged entity. The likelihood that Astra and SkyExpress would enter this route if the transaction were to take place (and irrespective of the fact that they have currently excluded such entry) is further diminished by the fact that their fleet is limited to a small number of aircraft. Any entry other than the routes they currently operate would thus come with significant opportunity costs. As to the possibility of these airlines expanding their fleet, it is to be recalled, as explained in section IX.1.6.2.1, that these airlines consider themselves mainly as regional niche operators which lack the necessary size and financing to expand outside their geographical niche, in particular because these operators have excluded setting up a base at AIA.

(1500) It can thus be concluded that entry by other competing airlines on the route Athens-Corfu is significantly less likely and thus would not provide sufficient competitive pressure on the merged entity.

1.9.2.5. Routes not retained for the analysis of whether the transaction will lead to an elimination of potential competition

(1501) In the Statement of Objections, it was also concluded that, apart from the Athens - Corfu route, the transaction would also eliminate potential competition between

1047 Reply of Corfu Civil Aviation Authority to question 17 of the Market Test [ID 6413].

1048 Reply of CFU Civil Aviation Authority to question 18 of the Market Test [ID 6413].

1049 According to the Form CO, intermodal means of transport (ferry, train) are not relevant for the competition assessment of the Athens-Corfu route.

Olympic Air and Aegean on the domestic routes from Athens to Kavala, Ioanina, Limnos and Kefallonia. However, on the basis of the criteria that the Commission has applied in identifying routes where it is most likely that entry by either Olympic Air or Aegean has a significant constraining influence, and in view of the cautious and conservative approach that the Commission thus takes, these routes are not retained in this Decision. As indicated in the table below, each of the routes from Athens to Kavala, Ioanina, Limnos and Kefallonia are significantly less "thick" routes than Athens - Corfu in terms of number of passengers served.

	winter 2007-2008	summer 2008	winter 2008-2009	summer 2009	winter 2009-2010
Athens-Kefalonnia	9,405	41,531	10,669	46,369	16,945
Athens-Ioannina	52,783	73,771	49,284	76,343	50,078
Athens-Kavala	34,970	49,034	32,833	57,910	38,130
Athens-Limnos	25,377	53,434	24,017	61,703	33,146

Table 44: O&D passengers on the five routes for the last five IATA seasons

Source: Information provided by the Parties and market investigation

1.9.2.6. Conclusion on the elimination of potential competition

(1502) Given the closeness of competition between Olympic Air and Aegean and given the low likelihood and the limited impact of potential entry by other airlines on Aegean, the Commission concludes that Olympic Air exerts a competitive constraint on Aegean on the Athens-Corfu route. The Commission considers that on this route potential entry by Olympic Air is most likely to have a significant constraining influence.

1.10. International routes

1.10.1. ATH-BRU (Athens-Brussels, 227,677 passengers/year)

1.10.1.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1503) Aegean has been operating the ATH-BRU route since April 2009 with one daily flight, and has also a code share with SN.

(1504) [*Analysis of Aegean's performance and competitive situation of the ATH-BRU route*]*

(1505) [*Analysis of Aegean's performance and competitive situation of the ATH-BRU route*]*

(1506) [*Analysis of Aegean's performance and competitive situation of the ATH-BRU route*]*

(1507) [*Analysis of Aegean's performance and competitive situation of the ATH-BRU route*]*

(1508) Therefore, it is concluded that it is likely that absent the transaction, Aegean would continue operating on this route in the foreseeable future.

(b) Olympic Air

(1509) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*

(1510) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*

(1511) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*

(1512) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*

(1513) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*

(1514) [*Analysis of OA's performance and competitive situation of the ATH-BRU route*]*[1050]. Therefore, the Commission considers that, in light of the financial situation of Olympic Air, it is more likely that the company would exit the ATH-BRU route in the foreseeable future.

(1515) However, the establishment of the position of Olympic Air on this route absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on the ATH-BRU route.

(c) Conclusion

(1516) It is concluded that absent the transaction, the most likely situation is that only Aegean would continue operating on this route in the foreseeable future. However, the establishment of the precise competitive situation likely to prevail absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on the ATH-BRU route.

1.10.1.2. Competitive analysis for the route

(i) Route characteristics

(1517) On the ATH-BRU route, 139,781 passengers travelled by air in summer 2009 while 87,896 passengers travelled by air in winter 2009-2010. […]*.

(1518) In 2009, […]*% of all air passengers travelled for business purposes, […]*% were visiting friends and relatives, and […]*% were travelling for leisure purposes.

1050 […]*.

[…]*% of these travellers had their main residence in Greece, while the proportion of non-Greek originating passengers is […]*%.[1051]

(1519) Olympic Air and Aegean operate non-stop services on this route.

(1520) In addition, SN is active on this route. Like Aegean, and as intended for the merged entity, SN is also a Star Alliance member. SN has its hub at Brussels International Airport.

(1521) Aegean has a free-flow code-share agreement[1052] with SN, which is also a Star Alliance member. Both SN and Aegean currently offer one flight per day as operating carrier, whilst being the marketing carrier on the flight operated by the other.

(1522) The Parties underline in this regard that the existence of this code-share agreement between SN and Aegean does not lead to coordination between the two airlines in relation to fares.[1053]

(ii) Markets for time sensitive and non-time sensitive passengers

(1523) The market shares below illustrate the market situation in summer 2009 and winter 2009-2010. As explained in section IX.1.1, these market shares are taken from the Form CO, as an in-depth reconstruction of market shares was not deemed necessary for the international routes at issue.

(1524) As shown Table 45, Aegean and Olympic Air had a combined market share for time sensitive passengers of [70-80]*% in summer 2009 and of [80-90]*% in winter 2009-2010. For non-time sensitive passengers, Aegean and Olympic Air had a combined market share of [60-70]*% in summer 2009 and of [70-80]*% in winter 2009-2010.

	summer 2009		winter 2009-2010	
	Time Sensitive	Non-time sensitive	Time Sensitive	Non-time sensitive

1051 Annexes 48 and 49 of the Form CO.

1052 A "free-flow" code-share means that the marketing carrier can sell as many code-share seats as possible, as long as there are seats available. In order to know how many seats remain available in each class (non-flexible, flexible, economy class, business class, etc) the marketing carrier must be able to see the operating carrier's seat inventory in real time (via an IT link). In this type of code-share, the marketing carrier does not bear any economic risk, so it effectively acts as an agent. Free-flow code-sharing is different from "blocked space" code-sharing, where the marketing carrier purchases a block of seats in advance and resells them under its own code and at his own economic risk. Free-flow code-shares are now much more common than blocked space code-shares.

1053 More specifically, the agreement provides that Aegean and SN do not discuss price and capacity. The operating carrier sets the fare and capacity without consultation with the marketing carrier and controls the inventory without consultation with the marketing carrier. The marketing carrier is essentially a sales agent with all decisions which affect the competitiveness of the flight or service taken by the operating carrier. The operating carrier takes the entire revenue from the fare sold minus commission.

		passengers		passengers
Olympic Air	[40-50]*% + [5-10]*%[1054]	[30-40]*% + [5-10]*%	[50-60]*%	[40-50]*%
Aegean	[20-30]*%	[20-30]*%	[20-30]*%	[30-40]*%
Combined	**[70-80]*%**	**[60-70]*%**	**[80-90]*%**	**[70-80]*%**
SN	30%	36%	19%	24%

Table 45: Market shares for air services

Source: Form CO.

(1525) It follows that post-transaction Aegean and Olympic Air would have a very large market share for both time sensitive and non-time sensitive passengers, in particular in the winter season.

(1526) These figures do not take into consideration the activities of charter airlines. In the framework of the market investigation the relevance of charter services on the ATH-BRU route was underlined by *Test Achats,* one of the most important consumer associations in Belgium[1055] and by *Connections.be,* one of the major travel agents in Belgium[1056]. The question of the inclusion of such charter operations into the relevant market can be left open for the reasons outlined below.

(1527) According to the Parties, the weekly flights operated by Aegean, Olympic Air and SN on this route are as follows:

Frequencies	**ATH-BRU**			
	January	March	August	October
Olympic Air	13	14	14	14
Aegean	7	14	7	7
Combined	**21**	**28**	**21**	**21**
SN	7	7	12	7

Table 46: Weekly flights on the ATH-BRU route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 amd 1 October 2010.

1054 For Olympic Air in summer 2009, the two different values represent the market shares held by Old Olympic before privatization (i.e. March 2009/30 September 2009), and by (New) Olympic Air (i.e. 1 October 2009 to 31 October 2009).

1055 Reply to question 6 of the phase II questionnaire to consumer organisations of 13 August 2010 [ID 3540].

1056 Reply to question 40 of the phase I questionnaire to travel agents of 25 June 2010 [ID 858].

(1528) While Aegean and Olympic Air had a clear frequency advantage[1057] over their competitor SN during the year, as indicated by the Parties, Olympic Air decided to reduce its services to one and a half daily frequencies as of winter 2009-2010.[1058] This frequency reduction is in line with the above analysis of the competitive situation of the route in the absence of the proposed transaction.

(1529) Conversely, SN will increase its market share in terms of seat capacity and frequencies by adding an extra daily flight on this route. This second flight is foressen all year round as of 27 March 2011. SN will therefore operate two daily flights from the next summer season instead of one daily flight.[1059]

(1530) The majority of passengers on this route (63%) are non-Greek originating passengers, which provides SN with a competitive advantage over Aegean and Olympic Air.

(1531) The Parties also point out that SN is part of the Lufthansa group (and thus much larger than the merged entity with significantly greater financial reserves, size, economies of scale etc) and that their international competitors generally account for a very significant part of sales with travel agents in Greece. [1060]

(1532) The market investigation revealed that travel agents indeed sell to a considerable extent tickets of foreign airlines such as SN.[1061] Market participants also confirmed that tickets are purchased on the basis of price, schedule etc. and not primarily on the basis of a preference for a specific airline.[1062] Further market participants confirmed that passengers compare prices between Aegean, Olympic Air and SN.[1063] In addition, the

1057 This frequency advantage remains if further frequencies offered by way of code-sharing are considered.

1058 Parties' response to the Statement of Objections of 5 November 2010, p. 166 and 168 and Olympic Air's schedules for Summer 2011.

1059 Response of SN to request for information of 8 November 2010 [ID 5963]. It should be noted that two daily service are required for time sensitive passengers at each end of the route, see replies to question 36 of the phase II request for information to corporate customers of 13 August 2010 and replies to question 48 of the phase II request for information to travel agents of 13 August 2010.

1060 The Parties further submit that SN benefits from the fact that its first daily departure from Brussels International Airport is almost six hours before the first Aegean or Olympic Air flight, reply of the Parties to decision to open proceedings, p. 65. This seems however not to be the case in October 2010.

1061 Replies to question 47 of the phase II request for information to travel agents of 13 August 2010.

1062 Replies to question 49 of the phase II request for information to travel agents of 13 August 2010; replies to question 43 of the phase II request for information to corporate customers of 13 August 2010; reply to question 14 of the phase II request for information to consumer organisations EU of 13 August 2010 [ID 3540].

1063 Reply to question 35 of the phase II request for information to consumer organisations Greece of 13 August 2010 [ID 2567]; replies to question 37 of the phase II request for information to corporate customers of 13 August 2010; reply to question 22 of the phase II request for information to consumer organisations EU of 13 August 2010 [ID 3540]; reply to question 35 of the phase II request for information to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

replies of competitors and a majority of travel agents suggest that SN is a sufficient competitive constraint upon the Parties.[1064]

(1533) The results of the market investigation as regards closeness of competition do not clearly suggest that Aegean and Olympic Air would be closer competitors to each other than SN on the Athens-Brussels route.[1065] The Belgian consumer organisation Test Achats considers SN as closest competitor of both Aegean and Olympic Air due to the fact that SN operates several regular daily flights.[1066] However, the Thessaloniki Chamber of Commerce considers that Aegean and Olympic Air are each other's closest competitors on this route.[1067]

(iii) Entry/expansion

(1534) Aegean and Olympic Air do not benefit from a base/hub advantage on this route as SN has its hub/base and a large slot portfolio at BRU. Therefore, in spite of slot restrictions at Brussels International Airport at peak times (i.e. 8.00-10.00 and 18.00-20.00)[1068] SN has the ability to expand its services on this route, as evidenced by the fact that it will increase operations from one to two daily flights in the next summer season.

(iv) Conclusion

(1535) In particular in view of the expanding operations of SN on this route, it is concluded that the transaction would not significantly impede effective competition on the ATH-BRU route irrespective of the precise market definition. For the same reason, it can be left open whether or not Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1.10.2. ATH-CAI (Athens-Cairo, 121,010 passengers/year)

1.10.2.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1536) Aegean operates five weekly flights to Cairo [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*.

1064 Replies to question 50 of the phase I request for information to competitors of 25 June 2010; replies to question 40a of the phase I request for information to travel agents of 25 June 2010.

1065 Replies to question 12 of the phase II request for information to travel agents of 13 August 2010; Replies to question 9 of request for information to corporate customers of 11 August 2010; Replies to question 5 of the phase II request for information to competitors of 11 August 2010.

1066 Reply to question 6 of the phase II request for information to consumer organisations EU of 13 August 2010 [ID 3540].

1067 Reply to question 8 of the phase II request for information to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1068 Reply of the Parties to request for information of 30 April 2010.

(1537) [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*

(1538) [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*

(1539) [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*

(1540) [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*

(1541) The Parties have argued in their reply to the Statement of Objections that, for the ATH-CAI route, [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]* [1069].

(1542) The Commission notes that the ATH-CAI route [*Analysis of Aegean's performance and competitive situation of the ATH-CAI route*]*. Furthermore, it appears that Aegean summer schedule for 2011 does not include the ATH-CAI route[1070].

(1543) Therefore, absent the transaction, it appears likely that Aegean will not continue operating on the ATH-CAI route. The question whether the exit of Aegean is merger specific can ultimately be left open since the transaction would not significantly impede effective competition on the ATH- CAI route.

(b) Olympic Air

(1544) [*Analysis of OA's performance and competitive situation of the ATH-CAI route*]*

(1545) [*Analysis of OA's performance and competitive situation of the ATH-CAI route*]*

(1546) [*Analysis of OA's performance and competitive situation of the ATH-CAI route*]*

(1547) [*Analysis of OA's performance and competitive situation of the ATH-CAI route*]* [1071]

(1548) [*Analysis of OA's performance and competitive situation of the ATH-CAI route*]*

(1549) Therefore, it is concluded that it is likely that absent the transaction, Olympic Air would continue operating on the ATH-CAI route in the foreseeable future.

(c) Conclusion

(1550) It is concluded that absent the transaction, the most likely situation is that only Olympic Air would continue operating on this route in the foreseeable future. However, the establishment of the precise competitive situation likely to prevail absent the

1069 […]*.

1070 Based on the reply of the Parties to the request for information of 18 November 2010.

1071 […]*

transaction can ultimately be left open since the transaction would not significantly impede effective competition on the ATH-CAI route.

1.10.2.2. Competitive analysis for the route

(i) Route characteristics

(1551) On the ATH-CAI route, 62,558 passengers travelled by air in summer 2009 while 58,452 passengers travelled by air in winter 2009-2010. […]*.

(1552) In 2009, […]*% of all air passengers travelled for business purposes, […]*% were visiting friends and relatives, and […]*% were travelling for leisure purposes. […]*% of these travellers had their main residence in Greece[1072].

(1553) Olympic Air and Aegean operate non-stop services on the ATH-CAI route.

(1554) In addition, Egyptair ("MS") is active on this route. Like Aegean, and as intended for the merged entity, MS is also a Star Alliance member. MS has its hub at Cairo International Airport.

(ii) Markets for time sensitive and non-time sensitive passengers

(1555) As shown Table 47, MS is currently the market leader on the ATH-CAI route. Aegean and Olympic Air have a combined market share for non-time sensitive passengers of [40-50]*% in summer 2009 and of [50-60]*% in winter 2009-2010. As regards time sensitive passengers, Aegean and Olympic Air have a combined market share of [50-60]*% in summer 2009 and of [60-70]*% in winter 2009-2010.

1072 Form CO, Annexes 48 and 49.

	summer 2009		winter 2009-2010	
	Time sensitive passengers	Non-time Sensitive passengers	Time sensitive	Non-time sensitive passengers
Olympic Air	[30-40]*%+[0-5]*%	[20-30]*%+[0-5]*%	[30-40]*%	[20-30]*%
Aegean	[20-30]*%	[10-20]*%	[30-40]*%	[30-40]*%
Combined	**[50-60]*%**	**[40-50]*%**	**[60-70]*%**	**[50-60]*%**
MS	42%	54%	33%	44%

Table 47: Market shares for air services
Source: Form CO.

(1556) The table above illustrates that post-transaction Aegean and Olympic Air, despite very high market shares for both time sensitive and non-time sensitive passengers, in particular in the winter season, will face competition from a significant player. The results of the market investigation as regards the possibility of considering MS as a credible alternative to the Parties' services are mixed.[1073] However, in spite of its currently declining market shares, MS had an average market share of approximately 40%-60% in 2007 and 2008 for Greek point-of-sale passengers compared to about 20%-30% for Aegean and Olympic Air.[1074] Therefore it can be assumed that MS being the Egyptian national carrier, together with its size and market share, will continue to exert competitive pressure on the merged entity on the ATH-CAI route.

(1557) Aegean and Olympic Air have a frequency advantage on this route throughout the year 2010, i.e. 12 weekly flights at each end of the route compared to seven weekly flights by MS at each end of the route:

Frequencies	**ATH-CAI**			
	January	March	August	October
Olympic Air	7	7	7	7
Aegean	7	5	5	5
Combined	**14**	**12**	**12**	**12**
MS	5	7	7	7

1073 Replies to question 50 of the phase I questionnaire to competitors of 25 June 2010 and replies to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1074 Parties's response to the Decision opening proceedings of 30 July 2010 and Parties's response to the Statement of Objections of 5 November 2010, p. 173.

Table 48: Weekly flights on the ATH-CAI route

Source: Reply of the Parties to the requests for information of 4 August 2010, 1 September 2010 and 1 October 2010.

(1558) A majority of the passengers on this route are non-Greek residents (52%), which benefits any non-Greek airline flying this route.

(1559) Aegean, in addition to having fewer frequencies than Olympic Air and MS, also operates a smaller aircraft (Avros RJ100), which puts it at a quality disadvantage in relation to its competitors who operate the A320 aircarfts.[1075]The replies of travel agents who participated in the market investigation do not suggest that the Parties would be closer competitors to each other than MS[1076]on this route, whereas the replies of competitors suggest that MS is the closest competitor of Aegean and Olympic Air due to its market position.[1077] MS has also been described as both Aegean's closest competitor and Olympic Air's closest competitor by the Thessaloniki Chamber of Commerce.[1078]

(1560) In addition, the Parties point out that the fact that MS and Olympic Air operate the same type of aircraft (i.e. A320s) and the same number of weekly frequencies since March 2010 indicates, rather, that MS is the closest competitor of Olympic Air.[1079]

(iii) Entry/expansion

(1561) Aegean and Olympic Air do not have any hub/base advantage on this route as MS is the incumbent at the other end of the route and has its hub at Cairo International Airport. The Parties argue that no competition concerns arise on this route due to the absence of barriers to entry. Cairo International Airport is facilitated and slots can thus easily be obtained on this route.

(iv) Conclusion

(1562) Therefore, it is concluded that the transaction would not significantly impede effective competition on the ATH-CAI route irrespective of the precise market definition. For the same reason, it can be left open whether or not Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1075 Parties’s response to the Decision opening proceedings of 30 July 2010.

1076 Replies to question 12 of the phase II request for information to travel agents of 13 August 2010.

1077 Replies of competitors to question 5 of the phase II questionnaire to competitors of 11 August 2010.

1078 Reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1079 Parties’s response to the Statement of Objections of 5 November 2011, p. 174.

1.10.3. ATH-IST (Athens-Istambul – 208 880 passengers/year)

1.10.3.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1563) Since September 2009 Aegean has been operating on the ATH-IST route one daily flight [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*.

(1564) [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*

(1565) [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*

(1566) [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*

(1567) [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*

(1568) [*Analysis of Aegean's performance and competitive situation of the ATH-IST route*]*

(1569) It is concluded that it is likely that absent the transaction, Aegean would continue operating on this route in the foreseeable future.

(b) Olympic Air

(1570) [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*

(1571) [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*

(1572) [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*

(1573) [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*

(1574) [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*

(1575) The Commission notes that Olympic Air [*Analysis of OA's performance and competitive situation of the ATH-IST route*]*.

(1576) Therefore, absent the transaction, the most likely situation is that Olympic Air would stop its operation on the ATH-IST route. However, the establishment of the position of Olympic Air on this route absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on this route.

(c) Conclusion

(1577) It is concluded that absent the transaction, the most likely situation is that only Aegean would continue operating on the ATH-IST route. However, the establishment of the precise competitive situation likely to prevail absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on the ATH-IST route.

1.10.3.2. Competitive analysis for the route

(i) Route characteristics

(1578) On the ATH-IST route, 113,427 passengers travelled by air in summer 2009 while 95,453 passengers travelled by air in winter 2009-2010.

(1579) Both Aegean and Olympic Air operate non-stop services on this route. Turkish Airlines also operates active non-stop services on this route. Turkish Airlines and Aegean are members of the Star Alliance, but only interline with each other.[1080] Turkish Airlines has its hub at the Atatürk International Airport in Istanbul.

(1580) In 2009, […]*% of all air passengers travelled for business purposes, […]*% were visiting friends and relatives, and […]*% were travelling for leisure purposes. Of those travellers, […]*% had their main residence in Greece[1081].

(ii) Markets for time sensitive and non-time sensitive passengers

(1581) As shown Table 49, Turkish Airlines is currently the market leader on the ATH-IST route. Aegean and Olympic Air had a combined market share for time sensitive passengers of [30-40]*% in summer 2009 and of [40-50]*% in winter 2009-2010. For non-time sensitive passengers, Aegean and Olympic Air had a combined market share of [40-50]*% in summer 2009 and of [50-60]*% in winter 2009-2010.

	summer 2009		winter 2009-2010	
	Time sensitive passengers	Non-time sensitive passengers	Time sensitive passengers	Non-time sensitive passengers
Olympic Air	[30-40]*%+[0-5]*%	[30-40]*%+[0-5]*%	[20-30]*%	[30-40]*%
Aegean	[5-10]*%	[5-10]*%	[10-20]*%	[20-30]*%
Combined	**[30-40]*%**	**[40-50]*%**	**[40-50]*%**	**[50-60]*%**
Turkish Airlines	61%	59%	52%	50%

Table 49: Market shares for air services

Source: Form CO.

1080 Reply of the Parties to question 3 of request for information of 1 June 2010.

1081 Form CO, Annexes 48 and 49.

(1582) Therefore, while post transaction Aegean and Olympic Air would have high market shares for both time sensitive and non time-sensitive passengers, Turkish Airlines would remain the market leader for both categories of passengers on the ATH-IST route.

Level of services

(1583) According to the Parties, the weekly frequencies operated by Aegean, Olympic Air and Turkish Airlines are shown in Table 50:

Frequencies	**ATH-IST**			
	January	March	August	October
Olympic Air	14	14	14	14
Aegean	7	7	7	7
Combined	**21**	**21**	**21**	**21**
Turkish Airlines	21	21	21	21

Table 50: Weekly flights on the ATH-IST route

Source: Reply of the Parties to request for information of 25 August 2010.

(1584) As illustrated in Table 50, post-transaction Aegean and Olympic Air would have a combined identical number of frequencies as their competitor, the current market leader.

(1585) More specifically, Turkish Airlines has three daily departures, compared to one daily flight for Olympic Air and two daily flights for Aegean, with better departure times than the Parties in both directions due to the fact that it overnights at AIA.[1082]

(1586) In addition, with three daily departure flights, Turkish Airlines is the best placed airline for same day return flights on this route.[1083]

(1587) Market participants widely confirmed that tickets are purchased on the basis of price and schedule and not primarily on the basis of a preference for a specific airline.[1084] Furthermore, competitors[1085] and travel agents[1086] considered Turkish Airlines Airlines as a credible competitive alternative for the ATH-IST route, exerting a competitive constraint on Aegean and Olympic Air likely to deter them from increasing

1082 Reply of the Parties to question 13 of request for information of 20 July 2010.

1083 According to a majority of travel agents, a minimum of 3 daily frequencies is necessary to provide suitable services to time sensitive passengers on this route (Reply of travel agents to question 48 of the phase II questionnaire to travel agents of 13 August 2010).

1084 Reply to question 49 of the phase II questionnaire to travel agents of 13 August 2010.

1085 Reply of competitors to question 51 of the phase I questionnaire to competitors of 25 June 2010.

1086 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

prices post-transaction. The fact that consumers[1087] and corporate customers[1088] compare prices between Aegean and Olympic Air and their competitor evidences as well that Turkish Airlines is a genuine alternative to the services of Aegean and Olympic Air.

(1588) The results of the market investigation as regards closeness of competition on the ATH-IST route suggest that Turkish Airlines is the closest competitor to both Aegean and Olympic Air, because of its convenient schedules, its network and market position.[1089]

(iii) Entry/expansion

(1589) As regards barriers to entry, Aegean and Olympic Air do not benefit from a base/hub advantage on this route as Turkish Airlines is the incumbent at the other end of the route with a hub at the Atatürk International Airport in Istanbul and the largest slot portfolio at that airport.[1090]

(iv) Conclusion

(1590) In particular in view of the presence of Turkish Airlines on this route, it is concluded that the transaction would not significantly impede effective competition on the ATH-IST route irrespective of the precise market definition. For the same reason, it can be left open whether Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1.10.4. ATH-LCA (Athens-Larnaca – 670 690 passengers/year)

1.10.4.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1591) [*Analysis of Aegean's performance and competitive situation of the ATH-LCA route*]*

(1592) [*Analysis of Aegean's performance and competitive situation of the ATH-LCA route*]*

(1593) [*Analysis of Aegean's performance and competitive situation of the ATH-LCA route*]*

1087 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1088 Reply to question 37 of the phase II questionnaire to corporate customers of 13 August 2010.

1089 Replies of corporate customers to question 9 of the phase II questionnaire to corporate customers of 11 August 2010; replies of travel agents to question 12 of the phase II questionnaire to travel agents of 13 August 2010; replies of competitors to question 5 of the phase II questionnaire to competitors of 11 August 2010; reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1090 Parties's response to the Decision opening proceedings of 30 July 2010, p. 65.

(1594) Cyprus Airways is the market leader on this route, [*Analysis of Aegean's performance and competitive situation of the ATH-LCA route*]*.

(1595) [*Analysis of Aegean's performance and competitive situation of the ATH-LCA route*]*

(1596) Therefore, it is concluded that it is likely that absent the transaction, Aegean would continue operating on this route in the foreseeable future.

(b) Olympic Air

(1597) [*Analysis of OA's performance and competitive situation of the ATH-LCA route*]*

(1598) [*Analysis of OA's performance and competitive situation of the ATH-LCA route*]*

(1599) [*Analysis of OA's performance and competitive situation of the ATH-LCA route*]*

(1600) [*Analysis of OA's performance and competitive situation of the ATH-LCA route*]*

(1601) [*Analysis of OA's performance and competitive situation of the ATH-LCA route*]*

(1602) Therefore, it is concluded that it is likely that absent the transaction, Olympic Air would continue operating on this route in the foreseeable future or seek to form a strategic alliance to continue operating on the route. In this respect it is noted that Olympic Air considered a code-sharing agreement with Cyprus Airways, as evidenced in Olympic Air's internal documents.

(c) Conclusion

(1603) It is concluded that it is likely that absent the transaction, both Aegean and Olympic Air would continue competing on the ATH-LCA route in the foreseeable future. However, the establishment of the precise competitive situation likely to prevail absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on this route.

1.10.4.2. Competitive analysis for the route

(i) Route characteristics

(1604) On the ATH-LCA route, 386,412 passengers travelled by air in summer 2009 while 284,278 passengers travelled by air in winter 2009-2010.

(1605) Aegean and Olympic Air operate non-stop services on the ATH-LCA route. Cyprus Airways is also active on this route with non-stop services.

(1606) Cyprus Airways has its main base at Larnaca Airport.

(1607) In 2009, […]*% of all air passengers travelled for business purposes, […]*% were visiting friends and relatives, and […]*% were travelling for leisure purposes. The majority of passengers on this route ([…]*%) are non-Greek residents[1091].

1091 Form CO, Annexes 48 and 49.

(ii) Markets for time sensitive and non-time sensitive passengers

(1608) As shown in Table 51, Aegean and Olympic Air had a combined market share for time sensitive passengers of [50-60]*% in summer 2009 and of [60-70]*% in winter 2009-2010. For non-time sensitive passengers, Aegean and Olympic Air had a combined market share of [50-60]*% in summer 2009 and [60-70]*% in winter 2009-2010.

	summer 2009		winter 2009-2010	
	Time sensitive passengers	Non-time sensitive passengers	Time sensitive passengers	Non-time sensitive passengers
Olympic Air	[10-20]*% + [0-5]*%	[10-20]*% + [0-5]*%	[30-40]*%	[20-30]*%
Aegean	[30-40]*%	[40-50]*%	[30-40]*%	[40-50]*%
Combined	**[50-60]*%**	**[50-60]*%**	**[60-70]*%**	**[60-70]*%**
Cyprus Airways	46%	45%	35%	37%

Table 51: Market shares for air services

Source: Form CO.

(1609) It follows that post-transaction Aegean and Olympic Air would have a very large market share for both time sensitive and non-time sensitive passengers, in particular in the winter season on the ATH-LCA route.

(1610) According to the Parties, the weekly services operated by Aegean and Olympic Air and Cyprus Airways on this route in 2010 are as follows:

Frequencies	**ATH-LCA**			
	January	March	August	October
Olympic Air	21	21	14	14
Aegean	24	24	28	25
Combined	**45**	**45**	**42**	**39**
Cyprus Airways	25	25	31	32

Table 52: Weekly flights on the ATH-LCA route

Source: Reply of the Parties to request for information of 25 August 2010.

(1611) As shown in Table 52 Cyprus Airways is the current market leader in terms of frequencies. Post-transaction Aegean and Olympic Air would have a frequency advantage on this route. However, the difference in frequencies of Aegean and Olympic Air and those of their competitor is reducing. In January and March 2010, the Parties operated 45 weekly flights at each end of the route while Cyprus Airways operated 25 weekly flights at each end of the route. In August 2010, that advantage was less pronounced with 42 frequencies of Aegean and Olympic Air compared to 31 of Cyprus Airways. Similarly, in October 2010 Aegean and Olympic Air offered 39 weekly flights compared to 32 weekly flights offered by Cyprus Airways. Furthermore, Cyprus Airways and Aegean and Olympic Air offer the possibility to do same-day return trips in both directions.[1092]

(1612) The majority of passengers on this route (59%) are non-Greek residents, which provides Cyprus Airways with a competitive advantage over Aegean and Olympic Air.

(1613) Market participants widely confirmed that tickets are purchased on the basis of price and schedule and not primarily on the basis of a preference for a specific airline.[1093] Furthermore, competitors[1094] and travel agents[1095] considered Cyprus Airways as a credible competitive alternative for the ATH-LCA route exerting a competitive constraint on Aegean and Olympic Air likely to deter them from increasing prices post-transaction. The fact that corporate consumers[1096] and other respondents to the market investigation[1097] compare prices between Aegean and Olympic Air and Cyprus Airways on this route is also evidence that the services provided by Cyprus Airways are seen as a genuine alternative.

(1614) Analysis of the data gathered in the course of the proceedings confirms the results of the market investigation. Comparing the winter and summer season in the last two years, Cyprus Airways seems to accommodate the fluctuations in demand better than Aegean and Olympic Air, adapting their frequencies accordingly.

(1615) In addition, Cyprus Airways reported a better performance in terms of load factor on this route than both Olympic Air and Aegean between September 2009 and July 2010 (with the exception of one month) on the ATH-LCA route.[1098]

(1616) Finally, note should be taken of the strategic role played by this route on Cyprus Airways' network, which would make a withdrawal from the route very unlikely, even in the context of the current financial difficulties encountered by the airline. On the contrary, being based at one end of the route, Cyprus Airways could easily adjust its frequencies, possibly deploying airplanes to serve the route, in order to compete on the

1092 Reply of the Parties to question 14 of request for information of 20 July 2010.

1093 Reply to question 49 of the phase II questionnaire to travel agents.

1094 Reply of competitors to question 51 of the phase I questionnaire to competitors of 25 June 2010.

1095 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1096 Reply to question 37 of the phase II questionnaire to corporate customers of 13 August 2010.

1097 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010. Reply of the Thessaloniki Chamber of Commerce and Industry to question 35 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1098 Reply of the Parties to request for information of 25 August 2010, annexes 32 A and 32 B and reply of Cyprus Airways to request for information of 11 August 2010 [ID 3445].

route. It is thus highly likely that Cyprus Airways would exert a significant constraint on the merged entity.

(1617) The results of the market investigation as regards closeness of competition on the ATH-LCA route indicate that Cyprus Airways is the closest competitor of both Aegean and Olympic Air, mainly because of its strong market position and the high level of frequencies[1099] due to which Cyprus Airways is the biggest operator in the market pre-transaction.

(iii) Entry/expansion

(1618) As regards barriers to entry, Larnaca airport is a schedules facilitated airport, namely a level 2 airport, and that entry or expansion is therefore not hindered by slot constraints. In addition, Aegean and Olympic Air do not benefit from a base/hub advantage on this route as Cyprus Airways is the incumbent at the other end of the route with its main base at Larnaca.

(iv) Conclusion

(1619) In particular in view of the presence of Cyprus Airways on this route, it is concluded that the transaction would not significantly impede effective competition on the ATH-LCA route for both time sensitive and non-time sensitive passengers.It can therefore be left open whether Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1.10.5. ATH-LON (Athens-London – 909 970 passengers/year)

1.10.5.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1620) [*Analysis of Aegean's performance and competitive situation of the ATH-LON route*]*

(1621) British Airways ("BA") is the market leader in terms of market shares, while easyJet is the leader in terms of load factors on the ATH-LON route. [*Analysis of Aegean's performance and competitive situation of the ATH-LON route*]*

(1622) [*Analysis of Aegean's performance and competitive situation of the ATH-LON route*]*

(1623) [*Analysis of Aegean's performance and competitive situation of the ATH-LON route*]*

1099 Replies of corporate customers to question 9 of the phase II questionnaire to corporate customers of 11 August 2010; replies of travel agents to question 12 of the phase II questionnaire to travel agents of 13 August 2010; reply of competitors to question 5 of the phase II questionnaire to competitors of 11 August 2010; reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

(1624) It is concluded that it is likely that absent the transaction, Aegean would continue operating on this route in the foreseeable future.

(b) Olympic Air

(1625) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1626) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1627) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1628) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1629) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*[1100]

(1630) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1631) [*Analysis of OA's performance and competitive situation of the ATH-LON route*]*

(1632) Therefore, absent the transaction, it is most likely that Olympic Air would exit the ATH-LON route, […]*. However, the establishment of Olympic Air's position on the ATH-LON route absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on this route.

(c) Conclusion

(1633) It is concluded that absent the transaction, it is most likely that only Aegean would continue operating on the ATH-LON route. However, the establishment of the precise competitive situation likely to prevail absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on this route.

1.10.5.2. Competitive analysis for the route

(i) Route characteristics

(1634) On the ATH-LON route, 592,240 passengers travelled by air in summer 2009 while 317,730 passengers travelled by air in winter 2009-2010.

(1635) Both Aegean and Olympic Air operate non-stop services on the ATH-LON route. BA and easyJet are also active on this route with non-stop services. Aegean, Olympic Air and British Airways operate to London Heathrow (LHR) all year round. Olympic Air also operates a limited number of flights to London Gatwick (LGW) during the winter season only. EasyJet operates to LGW on a year-round basis.

(1636) BA operates from its two main hubs: LGW and LHR. EasyJet has its most important base at LGW.

1100 Connecting passenger numbers for Olympic Air are for the period January-August 2010. This represents more than […]* passengers in this period

(1637) In 2009, […]*% of all air passengers on this route travelled for business purposes, […]*% were visiting friends and relatives, and […]*% were travelling for leisure purposes. […]*% of those travellers had their main residence in Greece.[1101]

(ii) Airport substitutability

(1638) Previous Commission decisions determined that a certain degree of substitutability exists between the London airports, at least for non-time sensitive passengers.[1102] As far as time-sensitive passengers are concerned, the Commission found in the past that LGW is substitutable to LHR for passengers travelling between London and Barcelona and between London and Madrid.[1103]

(1639) In this case a majority of the competitors[1104] and travel agents[1105] having participated in the market investigation viewed LHR and LGW as substitutable for both time sensitive and non-time sensitive passengers with regard to the ATH-LON route.

(1640) LHR and LGW are considered to be substitutable by market participants for non-time sensitive but also for time sensitive passengers mainly due to the availability of means of transport connecting these airports to central London and the similar travelling time from each of these airports to the main destination areas for time sensitive passengers. As indicated by the Parties, travel time from LHR and LGW to the three most likely destinations for time sensitive passengers (Bank-City of London, Canary Wharf, and Piccadilly) is 25% shorter from/to LGW compared to LHR on two of these three itineraries while it is practically the same on the third.[1106]

(1641) The UK CAA provides further arguments supporting the substitutability between LHR and LGW. According to the CAA a significant degree of substitutability exists between all London airports, "*all of which carry a significant number of business passengers*", including the LON-ATH route.[1107]

(1642) An analysis of the proportions of time sensitive and non-time sensitive customers computed using the sales data provided by the Parties and the competitors operating in the ATH-LON route further confirms this conclusion of substitutability.

1101 Annexes 48 and 49 of the Form CO.

1102 Commission Decision of 22 September 1997, M.967 *KLM/Air UK*, para. 24; Commission Decision of 10 December 2003, COMP/D2/38479 *British Airways/Iberia/GB Airways*, paragraphs 21-24 of the summary of the Commission's assessment; Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraphs 109-125; London Heathrow, Gatwick, Stansted, Luton and City airports were considered substitutable for scheduled point-to-point passenger air transport services between Dublin and London.

1103 Commission Decision of 14 July 2010, M. 5747 *Iberia/British Airways*, paragraphs 21-30.

1104 Reply to questions 24 and 25 of the phase I questionnaire to travel agents of 25 June 2010; reply to questions 55 and 56 of the phase II questionnaire to travel agents of 13 August 2010.

1105 Reply to questions 21 and 22 of the phase I questionnaire to competitors of 25 June 2010.

1106 Parties's response to the Decision opening proceedings of 30 July 2010, Annex 7.

1107 Reply to question 5 of the phase II questionnaire to UK CAA of 12 August 2010 [ID 2764].

(1643) More specifically, analysis of the sales data shows a similar evolution in the fares charged by Aegean and Olympic Air, both active at LHR, and easyJet, active at LGW. The similarity in these dynamics suggests that the offer of Aegean and Olympic Air and the one of easyJet are considered as close substitutes by a significant portion of the passengers.

(1644) It is concluded that LHR and LGW are substitutes for both time sensitive and non-time sensitive passengers travelling on the ATH-LON route.

(iii) Markets for time sensitive and non-time sensitive passengers

(1645) As shown in Table 53, on the ATH-LON route, Olympic Air and Aegean had a combined market share for time sensitive passengers of [30-40]*% in summer 2009 and of [40-50]*% in winter 2009-2010. For non-time sensitive passengers, Olympic Air and Aegean had a combined market share of [30-40]*% in summer 2009 and [50-60]*% in winter 2009-2010.

	summer 2009		winter 2009-2010	
	Time sensitive passengers	Non-time sensitive passengers	Time sensitive passengers	Non-time sensitive passengers
Olympic Air	[20-30]*% + [0-5]*%	[10-20]*% + [0-5]*%	[30-40]*%	[20-30]*%
Aegean	[10-20]*%	[10-20]*%	[10-20]*%	[20-30]*%
Combined	**[30-40]*%**	**[30-40]*%**	**[40-50]*%**	**[50-60]*%**
BA	44%	28%	38%	25%
EasyJet	20%	36%	13%	25%

Table 53: Market shares for air transport services

Source: Form CO.

(1646) The table 53 above illustrates that post-transaction Aegean and Olympic Air, despite relatively high market shares on the ATH-LON route, particularly in winter, face competition from two significant airlines.

(1647) As is illustrated in Table 54, BA is the current market leader in terms of frequencies in 2010. Post-transaction Aegean and Olympic Air would generally have the same level of frequencies as their competitors.

Frequencies	ATH-LON			
	January	March	August	October
Olympic Air	21	21	21	21
Aegean	14	14	14	14
Combined	**35**	**35**	**35**	**35**
BA	21	21	30	22
EasyJet	14	12	14	13
Total competitors	**35**	**33**	**44**	**35**

Table 54 : Weekly flights on the ATH-LON route

Source: Reply of the Parties to request for information of 25 August 2010.

(1648) Aegean and Olympic Air have five daily departures in both directions on the ATH-LON but BA has at least four daily departures and easyJet has two. BA overnights at AIA and has earlier departure times in the morning than both Aegean and Olympic Air.[1108] Additionally, BA enjoys a better terminal at LHR than the Parties.[1109]

(1649) According to the Parties, British Airways and easyJet are credible competitors on this route and are in a position to significantly constrain the merged entity. Indeed the fact that the majority of passengers on this route (64%) are non-Greek residents gives BA and easyJet a significant competitive advantage.

(1650) The results of the market investigation confirm the Parties' views. Competitors[1110] and travel agents[1111] considered BA and easyJet as a credible competitive alternative for the ATH-LON route, exerting a competitive constraint on Aegean and Olympic Air. The fact that consumers[1112] and corporate customers[1113] compare prices between Aegean, Olympic Air and British Airways and also often easyJet is further evidence that these airlines are genuine alternatives to the merged entity.

(1651) The results of the market investigation as regards closeness of competition on the ATH-LON route suggest that BA is both Aegean's and Olympic Air's closest competitor, essentially because of the similarities on service levels and frequencies.

1108 Parties’s response to the Decision opening proceedings of 30 July 2010, p. 64.

1109 Parties’s response to the Decision opening proceedings of 30 July 2010, p. 73.

1110 Reply of competitors to question 51 of the phase I questionnaire to competitors of 25 June 2010.

1111 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1112 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1113 Reply to question 37 of the phase II questionnaire to corporate customers of 13 August 2010.

More precisely, the replies of travel agents and competitors suggest that BA is the closest competitor of both Aegean and Olympic Air while the replies of corporate customers do not clearly suggest that Aegean and Olympic Air are each other's closest competitors.[1114] The Thessaloniki Chamber of Commerce considers BA to be both Aegean's and Olympic Air's closest competitor on the ATH-LON route.[1115]

(iv) Entry/expansion

(1652) As regards barriers to entry and expansion, despite slot constraints both at LHR and LGW, BA and easyJet have their hubs/bases and large slot portfolios at LHR and LGW respectively, and thus have the ability to expand their services.

(v) Conclusion

(1653) In particular in view of the presence of BA and easyJet on the ATH-LON route, it is concluded that the transaction would not significantly impede effective competition on this route irrespective of the precise market definition. For the same reason, it can be left open whether Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1.10.6. ATH-PAR (Athens-Paris – 587 350 passengers/year)

1.10.6.1. Competitive situation on the route likely to prevail absent the transaction

(a) Aegean

(1654) Aegean started operating on the ATH-PAR route in 2008 with a daily flight, and introduced a second daily flight in April 2009. [*Analysis of Aegean's performance and competitive situation of the ATH-PAR route*]*

(1655) Air France is the clear market leader on this route with up to five daily frequencies. It has also a hub advantage since 66% of passengers are non-Greek.

(1656) [*Analysis of Aegean's performance and competitive situation of the ATH-PAR route*]*

(1657) [*Analysis of Aegean's performance and competitive situation of the ATH-PAR route*]* [1116] [1117]

1114 Replies of travel agents to question 12 of the phase II questionnaire to travel agents of 13 August 2010; replies of competitors to question 5 of the phase II questionnaire to competitors of 11 August 2010; replies of corporate customers to question 9 of the phase II questionnaire to corporate customers of 11 August 2010.

1115 Reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1116 […]*.

1117 […]*.

(1658) It is concluded that it is likely that absent the transaction, Aegean would continue operating on the ATH-PAR route in the foreseeable future.

(b) Olympic Air

(1659) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]* [1118]

(1660) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]*

(1661) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]*

(1662) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]*

(1663) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]*

(1664) [*Analysis of OA's performance and competitive situation of the ATH-PAR route*]*

(1665) Therefore, absent the transaction, it is most likely that Olympic Air would exit the ATH-PAR route or seek to establish a strategic alliance on that route in order to safeguard a significant part of feeder traffic on its network. Olympic Air' internal emails show that it has been in close negotiations with SkyTeam and could eventually enter into a strategic alliance with Air France, absent the transaction (see also Annex II). However, the establishment of the position of Olympic Air on the ATH-PAR route absent the transaction can ultimately be left open since the proposed transaction would not significantly impede effective competition on this route.

(c) Conclusion

(1666) It is concluded that absent the transaction, it is most likely that only Aegean would continue operating on the ATH-PAR route. However, the establishment of the precise competitive situation likely to prevail absent the transaction can ultimately be left open since the transaction would not significantly impede effective competition on the ATH-PAR route.

1.10.6.2. Competitive analysis for the route

(i) Route characteristics

(1667) On the ATH-PAR route, 392,985 passengers travelled by air in summer 2009 while 194,366 passengers travelled by air in winter 2009-2010.

(1668) Both Aegean and Olympic Air operate non-stop services on this route. In addition, Air France and easyJet are also active on this route with non-stop flights. Aegean, Olympic Air and Air France operate to CDG all year-round. EasyJet also operates on the route all year round, flying to Paris Orly airport (ORY).

(1669) Air France has its main hub at CDG and a base at ORY. EasyJet has bases at both of these airports.

1118 […]*.

(1670) In 2009, 23% of all air passengers on the route travelled for business purposes, 14% were visiting friends and relatives, and 60% were travelling for leisure purposes. Only 34% of those travellers had their main residence in Greece[1119].

(ii) Airport substitutability

(1671) The Commission has previously concluded that ORY and CDG are substitutable airports.[1120] In this case a majority of travel agents[1121] considered CDG and ORY as substitutes for both time sensitive and non-time sensitive passengers as far as flights from and to ATH are concerned, mostly because the airport facilities and the distance (travel time) to the city centre is comparable for these two airports.

(1672) Indeed, as indicated by the Parties the average travel times from CDG to two representative points in Paris likely to be taken by time-sensitive passengers, namely Opera (45 min) and La Défense (53 min), are effectively the same as for ORY to Opera (49 min) and ORY to La Défense (56 min).[1122]

(1673) The French Civil Aviation Authority also acknowledges a certain degree of substitutability between ORY and CDG for all types of passengers and in particular for non-time sensitive passengers.[1123]

(1674) In addition, the analysis of sales data shows a very similar evolution in the average fare charged by Aegean and Olympic Air, both active at CDG, and easyJet, operating at ORY. The similarity in these dynamics suggests that the offer of Aegean/Olympic Air and the one of easyJet are considered as close substitutes by a significant part of the passengers.

(1675) The analysis of the proportions of time sensitive and non-time sensitive customers flying to or from CDG and ORY, computed using the sales data provided by the Parties and the competitors, shows a very similar distribution in the types of passengers throughout the whole year.

(1676) It can be concluded that CDG and ORY are substitutable for both time-sensitive and non time sensitive passengers travelling on the ATH-PAR route.

(iii) Markets for time sensitive and non-time sensitive passengers

(1677) As shown in Table 55, on the ATH-PAR route, Air France is currently the market leader followed by Aegean. Aegean and Olympic Air had a combined market share for

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1119 Annexes 48 and 49 of the Form CO.

1120 Commission decision of 9 March 2004, M.3280 *Air France/KLM*, paragraphs 27-30.

1121 Reply to question 26 of the phase I questionnaire to travel agents of 25 June 2010. Reply to question 57 of the phase II questionnaire to travel agents of 13 August 2010.

1122 Parties's response to the Decision opening proceedings of 30 July 2010, p. 73.

1123 Reply to question 5 of the phase II questionnaire to the French Civil Aviation Authority of 12 August 2010 [ID 3137].

time sensitive passengers of [30-40]*% in summer 2009 and of [40-50]*% in winter 2009-2010. For non-time sensitive passengers, Aegean and Olympic Air had a combined market share of [40-50]*% in summer 2009 and of [40-50]*% in winter 2009-2010.

	summer 2009		winter 2009-2010	
	Time sensitive passengers	Non-time sensitive passengers	Time sensitive passengers	Non-time sensitive passengers
Olympic Air	[10-20]*% + [0-5]*%	[10-20]*% + [0-5]*%	[20-30]*%	[20-30]*%
Aegean	[10-20]*%	[20-30]*%	[20-30]*%	[20-30]*%
Combined	**[30-40]*%**	**[40-50]*%**	**[40-50]*%**	**[40-50]*%**
Air France	45%	44%	34%	32%
EasyJet	18%	20%	17%	19%

Table 55 : Market shares for air services

Source: Form CO.

(1678) Table 55 illustrates that post-transaction Aegean and Olympic Air, despite relatively high market shares on the ATH-PAR route, face competition from two significant airlines.

(1679) As illustrated in Table 56, Air France is currently the market leader in terms of frequencies. Post-transaction, Air France and easyJet would offer a similar or even higher level of frequencies as the Parties.

Frequencies	**ATH-PAR**			
	January	March	August	October
Olympic Air	14	14	21	21
Aegean	14	14	15	7
Combined	**28**	**28**	**36**	**28**
Air France	21	21	35	28
EasyJet	7	7	12	7
Total competitors	**28**	**28**	**47**	**35**

Table 56 : Weekly flights on the ATH-PAR route

Source: Reply of the Parties to request for information of 25 August 2010.

(1680) Air France operates four daily frequencies out of Paris, bringing the total of weekly frequencies on the same level as Olympic Air and Aegean combined. Air France overnights at AIA and it has early morning departures in both directions whereas

Aegean and Olympic Air do not.[1124] Additionally, Air France enjoys a better terminal at CDG.[1125]

(1681) According to the Parties, Air France and easyJet are credible competitors on this route and they are in a position to significantly constrain the merged entity. The fact that the majority of the passengers on the ATH-PAR route (66%) are non-Greek residents provides Air France and easyJet with a significant competitive advantage.

(1682) The results of the market investigation confirm the Parties' views. Competitors[1126] and travel agents[1127] considered Air France and easyJet as a credible competitive alternative for the ATH-PAR route exerting a competitive constraint on Aegean and Olympic Air. The fact that consumers[1128] and corporate customers[1129] compare prices between Aegean, Olympic Air, Air France and also often easyJet suggests that these airlines are genuine alternatives to Aegean and Olympic Air.

(1683) Finally, account is taken of the fact that Air France is a much bigger competitor than Aegean and Olympic Air, feeding a large hub at CDG, which makes it a strong competitor.

(1684) The results of the market investigation as regards closeness of competition on the ATH-PAR route suggest that Air France is the closest competitor of both Aegean and Olympic Air, particularly as far as time sensitive passengers are concerned. This is essentially due to the fact that Air France is close to Aegean and Olympic Air in terms of number of frequencies.[1130] A majority of corporate customers consider that Air France is both airlines' closest competitor.[1131] Replies of travel agents and competitors do not suggest that Aegean and Olympic Air would be closer competitors to each other

1124 Reply of the Parties to question 13 of the request for information of 20 July 2010.

1125 Parties's response to the Decision opening proceedings of 30 July 2010, p. 73.

1126 Reply of competitors to question 51 of the phase I questionnaire to competitors of 25 June 2010.

1127 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1128 Reply to question 40a of the phase I questionnaire to travel agents of 25 June 2010.

1129 Reply to question 37 of the phase II questionnaire to corporate customers of 13 August 2010.

1130 Replies to question 9 of the phase II questionnaire to corporate customers of 11 August 2010; replies of travel agents to question 12 of the phase II questionnaire to travel agents of 13 August 2010; reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1131 Replies of corporate customers to question 9 of the phase II questionnaire to corporate customers of 11 August 2010.

than Air France.[1132]Air France has been described as both Aegean's closest competitor and Olympic Air's closest competitorby the Thessaloniki Chamber of Commerce.[1133]

(iv) Entry/expansion

(1685) Aegean and Olympic Air do not have any hub/base advantage on this route as Air France is the incumbent on the other end of the route and has a large hub at CDG. EasyJet has bases at both CDG and the ORY airports. Although both airports are congested at peak times, Air France and easyJet have a considerable number of slots available at these airports.

(v) Conclusion

(1686) In particular in view of the presence of Air France and easyJet on the ATH-PAR route, it is concluded that the transaction would not significantly impede effective competition on this route irrespective of the precise market definition. For the same reason, it can be left open whether or not Aegean or Olympic Air are likely to continue competing on this route absent the transaction.

1.10.7. Further overlaps between Aegean and Olympic Air[1134]

(1687) On the Thessaloniki-Larnaca route, Aegean operates non-stop services while Olympic Air operates one-stop services. Both airlines face competition from Cyprus Airways which operates non-stop services and will remain the strongest player on the route post-transaction while Aegean and Olympic Air's combined market shares has been below [50-60]*% for time sensitive and non-time sensitive passengers (with an increment below 5% on any market) in the past seasons. The competitive strength of Cyprus Airways is reinforced by the fact that it has its main hub at one end of the route. It follows that the transaction would not significantly impede effective competition on the Thessaloniki-Larnaca route, irrespective of whether or not non-stop and one-stop services are in the same product market.

(1688) On the Thessaloniki-London route, Aegean and Olympic Air operate one-stop services to LHR while British Airways and easyJet offer non-stop flights between Thessaloniki and LGW. Both British Airways and easyJet have a base at London Gatwick. In a market comprising both LHR and LGW, Aegean and Olympic Air have a combined market share below 30% both for time sensitive and non-time sensitive passengers in the last four seasons.[1135] It follows that the transaction would not significantly impede

1132 Replies of travel agents to question 12 of the phase II questionnaire to travel agents of 13 August 2010; replies of competitors to question 5 of the phase II questionnaire to competitors of 11 August 2010.

1133 Reply of the Thessaloniki Chamber of Commerce and Industry to question 8 of the phase II questionnaire to Chambers of Commerce in Greece of 13 August 2010 [ID 2542].

1134 No competition concerns arise on the route Thessaloniki-Milan for the reasons described above for the route Athens-Milan.

1135 As explained above in section IX.1.10.5.2 , Heathrow and Gatwick airports are substitutable for flights between Athens and London both for time sensitive and non-time sensitive passengers. No effective competition on the Thessaloniki-London route, irrespective of the precise market definition.

(1689) On the Thessaloniki-Paris route, Aegean and Olympic Air operate one-stop services to CDG. Cyprus Airways operates non-stop services between CDG and Thessaloniki and is the biggest player on the route. In addition, this route was served from CDG during the last four seasons by XL Airways France. The combined market share of Aegean and Olympic Air remained below [50-60]*% in the last four seasons. In addition, while Cyprus Airways and the merged entity would post transaction have a similar market position, the non-stop operations of Cyprus Airways will exert a higher competitive constraint upon the merged entity than the constraint exerted by Aegean and Olympic Air upon each other pre transaction with their one-stop services.[1136] It follows that the transaction would not significantly impede effective competition on the Thessaloniki-Paris route, irrespective of the precise market definition.

(1690) On the Herakleion-Paris route, Aegean and Olympic Air are present with one-stop services to CDG (Aegean in summer also with non-stop services) and face competition from several charter and schedules flights airlines with non-stop services, i.e. according to the Parties Transavia out of ORY, XL Airways, Eurocypria[1137] and Europe Airpost out of CDG. The route has a highly seasonal character, as illustrated by the fact that the number of passengers travelling in the preceding two summer seasons exceeds those in the preceding two winter seasons by approximately 20 times.[1138] More in particular in summer 2009, the combined market share of Aegean and Olympic Air was less than [20-30]*% in the presence of all competitors mentioned above.[1139] In addition, non-stop operations will generally exert a higher competitive constraint upon the merged entity than the constraint exerted by Aegean and Olympic Air upon each other pre-transaction with their one-stop services.[1140] It follows that the transaction

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different conclusion is to be reached for this route if it was assumed that non-stop and one-stop services fall into the same product market, as the longer travel time of one-stop connections will further increase the readiness of passengers to consider both London airports for this route.

1136 Replies to question 21 of phase I request for information to travel agents of 25 June 2010, replies to question 24 of the phase I request for information to corporate customers of 25 June 2010 and replies to question 19 of the phase I request for information to competitors of 25 June 2010.

1137 This company entered into creditor's liquidation on 29 November 2010, according to the information displayed on its web page.

1138 160, 026 passengers travelled in summer 08, 4,951 in winter 08/09, 122,889 in summer 2009 and 10,368 in winter 2009-2010. Due to the highly seasonal character of this route and the very low number of passengers travelling in winter, no competition concerns are deemed to arise as far as the winter season is concerned.

1139 As explained above in section IX.1.10.6.2, Charles de Gaulle and Orly airports are substitutable for flights between Athens and Paris both for time sensitive and non-time sensitive passengers. No different conclusion is to be reached for this route if it was assumed that non-stop and one-stop services fall into the same product market, as the longer travel time of one-stop connections will further increase the readiness of passengers to consider both Paris airports for this route.

1140 Replies to question 21 of phase I request for information to travel agents of 25 June 2010, replies to question 24 of the phase I request for information to corporate customers of 25 June 2010 and replies to question 19 of the phase I request for information to competitors of 25 June 2010.

would not significantly impede effective competition on the Herakleion-Paris route, irrespective of the precise market definition.

(1691) On the Thessaloniki-Brussels route, Aegean and Olympic Air are present with one-stop services. They face competition from several other one-stop services such as by Alitalia (via Rome), Austrian Airlines (via Vienna), Malev (via Bucharest) and Czech Airlines (via Prague) and such competing one-stop services account for approximately half of all one-stop services offered on this route. In addition, the charter airline Jetairfly is active with non-stop services on the route during summer and has transported more passengers in the last two summer seasons than Aegean and Olympic Air. It follows that the transaction would not significantly impede effective competition on the Thessaloniki-Brussels route, irrespective of the precise market definition.

1.11. Conclusion on the route assessment

(1692) This transaction would lead to a significant impediment of effective competition due to the elimination of actual competition between Aegean and Olympic Air on the following nine domestic routes: Athens-Thessaloniki, Athens-Herakleion, Athens-Chania, Athens-Rhodes, Athens-Santorini, Athens-Mytilini, Athens-Chios, Athens-Kos, and Athens-Samos.

(1693) More specifically, the transaction would create a dominant position as regards the possible markets for time sensitive passengers on all routes and on the Athens-Rhodes and Athens-Thessaloniki routes as far as the possible markets for non-time sensitive passengers and all passengers are concerned. For those markets where ferries may be part of the relevant market, i.e. the possible markets for non-time sensitive passengers and all passengers on the Athens-Herakleion, Athens-Chania, Athens-Santorini, Athens-Mytilini, Athens-Chios, Athens-Kos and Athens-Samos routes, it is not necessary to definitively conclude on the creation of a dominant position, given that, even in the absence of the creation of a dominant position, the transaction would in any event significantly impede effective competition as a result of the elimination of the particularly close competitive relationship between Aegean and Olympic Air and thus of the important competitive constraints that both airlines exert on each other pre-transaction. This is because the Parties are particularly close competitors while the services offered by ferries are only distant substitutes. As a result, customer choice of travelling options would be significantly reduced and it is unlikely that entry by new operators would compensate for the reduction of competition induced by the transaction. In addition, this transaction would lead to a significant impediment of effective competition by the elimination of a credible potential entrant on the Athens-Corfu route.

(1694) In contrast, no competition concerns arise on further domestic and international routes.

2. PUBLIC SERVICE OBLIGATION ("PSO") ROUTES

(1695) Olympic Air and Aegean's activities overlap regarding PSO routes (i.e. public service obligation routes operated in monopoly in exchange for a subsidy) in Greece.

(1696) Prior to the notification of the transaction, in the last round of calls for tenders organized by HCAA in March 2010, 24 PSO routes have been attributed in Greece, of which nine were awarded to Olympic Air, nine to Athens Airways, four to Aegean, one to Astra and one to Sky Express, as shown in Table , in the column headed "Routes awarded by tender (March 2010)".

(1697) In May 2010, HCAA considered that the quality of the operations by Athens Airways was unsatisfactory, with frequent flight cancellations, and local communities served by PSO routes complained. HCAA mentioned that "*immediately after signing the concession contract (on 08/04/2010), Athens Airways deregistered out of its AOC two (out of a total of four) aircrafts. This fact had a very negative impact to the airline's operation and, as a result, the airline breached the obligations pledged by the contract*".[1141] Therefore, HCAA decided to cancel the awarding of these nine routes to Athens Airways, and to award them to the second best bidder[1142] of the initial tender, as shown in Table 57, in the column headed "Routes operated (June 2010)".[1143]

(1698) Furthermore, two additional PSO routes have been awarded to Sky Express, to operate as of July and September 2010 respectively.

(1699) The figures relating to the routes operated by the market participants as of September 2010 are also provided in Table 57:

Airline	Routes awarded by tender (March 2010)	Routes operated (June 2010)	Routes operated (September 2010)
OLYMPIC AIR	9	13	13
ATHENS AIRWAYS	9	0	0
AEGEAN	4	4	4
ASTRA	1	1	1
SKY EXPRESS	1	6	8
Total	24	24	26

Table 57: PSO routes awarded by the HCAA

Source: Information provided by the Parties and market investigation.

1141 Non-confidential report by HCAA on Athens Airways, of 26 November 2010 [ID 6731].

1142 Agreed minutes of a teleconference call with the HCAA of 09 July 2010, paragraph 9 [ID 1596].

1143 According to the HCAA an exception occurred when Athens Airways rights to operate the PSO routes allocated to it were withdrawn. Aegean, which was ranked second on the Athens-Ikaria route notified HCAA that it was not able to operate the route because it did not have the suitable aircraft available anymore. The PSO route was therefore given to the bidder ranked third, Olympic Air, see: Agreed minutes of conference call with the HCAA of 22 September 2010, paragraph 17 [ID 5227].

(1700) Olympic Air was the airline that was awarded most PSO routes, followed by Athens Airways (initially)[1144], and Aegean. Astra and Sky Express were initially awarded one route each.

(1701) As of September 2010, Sky Express operates on eight routes and therefore is the second largest supplier in terms of the number of operated routes while Aegean is the third largest.

(1702) Currently, following Athens Airways' withdrawal from operations, Aegean is the second biggest operator in terms of number of seats offered with around 25%, although it operates on four routes only. Olympic Air has 58%, Sky Express around 9% and Astra 8% of the total number of seats offered. In terms of number of frequencies, Olympic Air has a share of 68%, Sky Express approximately 19%, Aegean approximately 10%, and Astra 3%.[1145]

(1703) The Parties submit that the market for the award of PSO routes in Greece is characterised by a high level of competition (reference is made to HCAA describing the market for the award of PSO routes as 'strong') and submit that "*Aegean is likely to become a less significant competitor in PSO tenders in the future*."[1146] This assessment by the Parties is mainly based on the view that Aegean's fleet is not well suited for PSO routes and that […]*.[1147]

(1704) In particular, in their response to the Statement of Objections, the Parties claim that "[…]*" (paragraph 15.41). […]*. The Commission […]* notes that load factors on for instance the Thessaloniki-Samos route reach […]*% in June 2010 and reach figures in the […]*% for July and August 2010. Also, significant load factors are observed on the Athens-Kalamata and Athens-Sitia routes, reaching […]*% and […]*% in August 2010 respectively. On the other hand, load factors on the Thessaloniki-Corfu route appear […]* ([…]*% in August 2010).[1148] […]*.

(1705) The Parties argue that in the bids for PSO routes, "*Aegean and Olympic Air were not each other's closest competitors in the tender for 24 PSO routes organised in March 2010*".[1149] The results of the market investigation regarding this question do not show a clear picture in this respect. Whilst the organiser of the Greek PSO tenders, HCAA, considers that Olympic Air is the closest competitor of Aegean and *vice versa*,[1150] some competitors consider Sky Express to be a closer competitor to Olympic Air than

1144 Following HCAA decision to cancel the awarding of these 9 routes to Athens Airways, and to award them to the second best bidder of the initial tender 5 routes were awarded to Sky Express and 4 to Olympic Air (see table on pages 2-3 of the Parties' submission on PSO routes dated 13 July 2010).

1145 Reply of the Parties to Question 1 of request for information of 21 September 2010.

1146 Parties’s response to the Decision opening proceedings of 30 July 2010.

1147 […]*.

1148 Reply of the Parties to request for information of 15 September 2010, Annex 2.

1149 Parties’s response to the Decision opening proceedings of 30 July 2010.

1150 Reply to question 54 of phase II request for information to the HCAA of 11 August 2010 [ID 4432].

Aegean.[1151] Nonetheless, HCAA stated that post-transaction "*there will still be other competitors bidding for Greek PSO routes*".[1152]

(1706) Sky Express is a Herakleion-based operator (with a turnover of approximately EUR 7.5 million in 2009). For its PSO flights, it operates a fleet of three turboprop aircraft that are able to carry a maximum of 30 passengers each (see also section IX.1.6.2)[1153], and the fleet is currently being extended to five such turboprop planes.[1154] Sky Express is currently operating on eight PSO routes in Greece.

(1707) On a number of routes *not* requiring aircraft with STOL (short take off and landing) capacity (non-STOL routes), the Commission considers that Sky Express is indeed the closest competitor of Olympic Air because it is the only other airline that operates turboprop aircraft. On four such routes, Sky Express and Olympic Air were actually the only bidders. Later, as a result of the cancellation of Athens Airways' right to operate PSO routes, Sky Express was awarded five more such PSO routes, meaning that they were ranked second by HCAA at the time of the initial bids.

(1708) On routes that require specific aircraft *with* STOL capability because of technical characteristics or runway length at the destination airports,[1155] Olympic Air was the only bidder in the tenders organised by HCAA in 2009. This is because it was the only airline technically able to operate the routes, thanks to its Dash 8-100/200 aircraft. Aegean does not possess such or similar aircraft […]*. The notified transaction would therefore not bring about a significant change to the competitive situation with respect to STOL routes.

(1709) Sky Express has been particularly successful in those *non*-STOL routes which are most efficiently operated (in view of HCAA minimum weekly seats/weekly frequencies requirements) with aircraft of less than 30 seats. In this respect, Sky Express noted that for the time being it can only commercially "*compete in PSOs that require less than 30 seater a/c and airports that we can land*".[1156] […]*[1157] […]*[1158] In current times airlines do not appear to encounter significant difficulties in finding aircraft for lease at commercially interesting conditions.

1151 Reply to question 121 of phase I request for information to competitors of 25 June 2010 [ID 1010].

1152 Agreed minutes of a teleconference call with HCAA of 22 September 2010 [ID5227].

1153 In addition, Sky Express has also larger aircraft (161 seats/MD83) that it uses mainly for its charter flights business. MD 83 do not appear suitable for operating the Greek PSO routes, notably due to their size/capacity.

1154 Agreed minutes of a teleconference call with Sky Express of 17 November 2010, paragraph 2 [ID 6673].

1155 This is particularly the case for the airports of Paros, Milos, Kastelorizo and with some further restrictions at the airports of Naxos, Astypalea, Leros, Kalymnos and Kassos. See Reply of the Parties to question 7 of request for information of 21 September 2010.

1156 Reply to question 119 of phase I request for information to competitors of 25 June 2010 [ID 1010].

1157 Reply to request for information of 27 September 2010 [ID 5149].

1158 Reply to request for information of 27 September 2010 [ID 5149].

(1710) Another competitor on Greek PSO routes, Thessaloniki based Astra with a turnover in 2009 of approximately EUR 11 million operates two BAe 146/300 "Jumbolinos" with a 112 seat configuration (see also section IX.1.6.2). Astra therefore has the equipment to operate also routes where the weekly seats/weekly frequencies requirements make aircraft with more than 30 seats commercially advantageous. In previous tenders, Astra placed four bids for routes to and from Thessaloniki and is currently operating the Thessaloniki-Chios PSO route.[1159] […]*[1160].

(1711) HCAA considers that both Astra and SkyExpress could be bidders in upcoming tenders on those non-STOL PSO routes that are currently operated by either Olympic Air or Aegean and that commercially require larger aircraft than 30 seater aircraft.[1161]

(1712) The Commission further notes that two previous participants in tenders for Greek PSO routes – Danish Air Transport and in particular Romania's Carpatair – have expressed a clear interest in bidding for Greek PSO routes under certain circumstances. Both airlines have in the past submitted bids for operating PSO routes in Greece.

(1713) Carpatair, which has its base at Timisoara, had a turnover of approximately EUR 90 million in 2008 (see also section IX.1.6.2). It has in its fleet Saab 2000 planes, with a capacity of 50 seats, which according to Carpatair "*are very economical on short routes up to an hour or one hour and 15 minutes*".[1162] All PSO flights are within this range.

(1714) Carpatair appears to be familiar with the Greek market, as it is operating the Timisoara-Athens route since 2007. Carpatair submitted bids for operating PSO routes in Greece in September and November 2009. In the September round, the company had planned to allocate […]* from its existing fleet for the operation of the PSO routes, if awarded. During the Commission's investigation, Carpatair explicitly stated that it still has "[…]*" and that "[…]*".[1163] […]*. Indeed, Carpatair's […]* are able to land in most PSO airports in Greece with full weight load and can operate the PSO routes competitively in commercial terms. […]*. […]*.[1164] For the […]* route, Carpatair already submitted a bid in a tender that was later cancelled in November 2009.

(1715) The example of Sky Express shows that, on Greek PSO routes, an airline can compete with Olympic Air and Aegean, even without having a base at one end of the route. Indeed, Sky Express is based in Herakleion and none of its eight PSO routes is

1159 Around 17 000 passengers travelled on the Thessaloniki-Chios PSO route in 2009.

1160 Astra's reply of 17 November 2010 to the Commission's questionnaire of 16 November 2010, question 3 [ID 6859].

1161 See HCAA's response of 23 November 2010 to question 36 in reply to market test. The routes concerned are SKG-CFU (Corfu), ATH-AOK (Karpathos), ATH-KIT (Kithira), and ATH-JIK (Ikaria).

1162 Agreed minutes of a teleconference call with Carpatair of 28 August 2010, paragraphs 6 and 9 [ID 5232].

1163 E-mail exchange with Carpatair of 18 November 2010 [ID 6101].

1164 The full list of the nine routes is: […]*. See agreed minutes of conference call with Carpatair on 28 August 2010 [ID5232] and email exchange with Carpatair of 18 November 2010 [ID 6101].

from and to Herakleion. The specificities of PSO routes (for instance, the operation of the route under exclusive concession) render the existence of a base at one end of the route – though useful – not a necessary requirement to operate PSO routes in a commercially successful manner.

(1716) The market investigation has further shown that airlines can start operations on PSO routes at a relatively small scale (e.g. with two planes). Compared to regular scheduled air services, entry on PSO routes is also facilitated by the fact that the exclusive concession and regulated fares give airlines more certainty in terms of the revenues they can expect during the duration of the concession.

(1717) The Commission, finally, notes that relevant Union legislation on the award of PSO routes leaves scope to the Greek State to calibrate the bidding process in tenders for Greek PSO routes. Although the HCAA considers that under the current tender procedures no barriers to entry exist,[1165] Greece could thus further increase the attractiveness of PSO tenders for potential bidders from Greece and abroad in time for the next rounds of bids in 2011 and 2012. For instance, applicable Union legislation does not prevent Member States from accepting also airlines as PSO operators that operate with wet-leased aircraft, which would increase the flexibility for potential bidders.[1166] Furthermore, the HCAA could make available the full tender package and the technical documentation in languages other than Greek, and to extend consultation period of tenders and the period between the publication of the tender and the start of a new concession.[1167] Other possibilities under applicable Union legislation that the HCAA could consider to further increase the attractiveness of the Greek PSO tenders for potential bidders include the extension of the duration of the PSO contracts to four years[1168], as the HCAA already did with the latest two contracts awarded in 2010.

Conclusion

(1718) It is concluded that the transaction would not significantly impede effective competition in the market for public service obligation routes in Greece, regardless of the definition of the relevant market.

3. GROUNDHANDLING

(1719) Given that Aegean does not provide third party groundhandling services[1169], the Parties claim that the transaction does not give rise to horizontal overlap as concerns groundhandling market at Greek airports. As a result only vertical relationship between groundhandling market and the market for the provision of air transport services ought to be assessed. However, during the first phase market investigation, it came to light that

1165 Agreed minutes of a teleconference call with HCAA of 22 September 2010 [ID5227].

1166 See Article 16.1 last sentence of Regulation 1008/2008.

1167 In other Member States, this period is apparently longer than the current practice of the HCAA.

1168 See Article 16.9 of Regulation 1008/2008.

1169 Aegean self handles most of its flights and uses Olympic Handling in two small airports - Kalamata and Sitia.

the two key shareholders of Aegean, Vassilakis and Laskaridis, have an […]* stake in Goldair[1170], provider of groundhandling services at numerous Greek airports and one of the only two competitors of Olympic Handling.

(1720) As a result, besides the vertical link, the Commission also analyzed the effects of the potential horizontal overlap resulting from Aegean's shareholders stake in Goldair.

3.1. Horizontal assessment

(1721) The decision opening proceedings raised serious doubts with respect to the groundhandling market due to the existence of a potential horizontal overlap between the Parties. Indeed, during the first phase market investigation it appeared that Goldair (one of the only two competitors to Olympic Handling in the groundhandling market in Greece) may be controlled by the two main Aegean's shareholders, Vassilakis and Laskaridis (who will also be controlling shareholders of the merged entity).

(1722) […]* [1171] [1172]

(1723) […]*[1173]. […]* and therefore Vassilakis and Laskaridis currently do not have sole or joint control over Goldair.

(1724) The Greek groundhandling market presents the following characteristics:

i. The Greek gourndhandling market appears to be concentrated, with only three significant groundhandlig service providers active at liberalized airports in Greece;

ii. The groundhandlig providers offer services that are fairly standardized[1174] and they compete on price, yet it appears that quality considerations also play an important role in the choice of the handler. Thus, Swissport Hellas Sud believes that service level and quality is a differentiator between the various groundhanlers.[1175] It also appears that the scope of contracts may vary significantly depending on the requirements of each airline;

1170 Agreed minutes of a teleconference call with Goldair Handling of 10 August 2010, paragraphs 2-6 [ID3070].

1171 […]*.

1172 […]*.

1173 Agreed minutes of State of Play meeting of 12 August 2010, paragraph 16.

1174 IATA Standard Ground Handling service agreement is used to define the services to be provided (see http://www.swissport.com/download/publications/sgha_2008.pdf). The price and the exact range and scope of services is set by a Service Level Agreement tailored to the particular requirements of the airline at the specific airport (see document ID5766). Contracts are generally concluded for a typical length of three years (although they can range from one to five years), but airlines generally have the ability to terminate the contract after a short notice period, and at limited cost (see replies to question 4 of Request for Information R18 to groundhandlers and replies to questions 20 and 23 of Request for Information Q4 to groundhandlers).

1175 Agreed minutes of a teleconference call with Swissport Hellas Sud on 26 October 2010 [ID 5766].

iii. The Commision notes that all three groundhandling licences available for the liberalized airports are currently used. However, with the new groundhandling legislation regulatory package on the way, the competition for groundhandling licences in Greece will be open to both the existing handlers and any new entrants;

iv. Groundhandling market in Greece appears to have a certain degree of transparency as the market investigation showed that groundhandling providers are broadly aware of prices of their competitors.[1176] However, the exact final winning price of the contract winning a tender does not appear to be announced.

(1725) Groundhandling market is characterised by tenders organized by airlines for the procurement of groundhandling services. A respondent to the market investigation indicated that airlines "*usually call for official tenders every 3 years. During the tender process cost and service delivery standards prevail as the main selection criteria*".[1177] Generally, airlines select one single supplier for groundhandling services at a given airport[1178], and tend to select one single provider for all their operations in Greece except for airports where there is only one single provider.

(1726) Whereas groundhandling is an essential service representing up to 20% of airlines' costs, some customers regularly perform benchmarking exercises and in a number of cases have switched providers where an alternative was available. According to Swissport Hellas Sud, the majority of switching cases occurs at the end of the contract, while switching before contract expiry has been noted in the market (e.g. Air France switched from Swissport to Goldair while the contract was still in place).[1179]

(1727) […]*[1180]

(1728) […]*, post-transaction they may have an incentive to influence Goldair to the extent that the merged entity will directly compete with Goldair on the market. In addition, […]*, Vassilakis and Laskaridis may have access to commercially sensitive information of Goldair which would post-transaction be directly accessible to the controlling shareholders of the new entity.

(1729) While the market for groundhandling appears to be concentrated, with a certain degree of transparency and homogeneity of products, and new entry appears to be

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1176 An internal document of Olympic Handling shows that the cost structure and main performance indicators of its competitors are known to Olympic Handling. See Budget Olympic Handling, Annex 52 to Parties' reply to the request for information of 20 August.

1177 See reply of Swissport Hellas Sud to question 17 of Request for Information Q4 to groundhandlers [ID 1103].

1178 See replies to Question 8 and 9 of Request for Information Q4 to groundhandlers, Passengers and ramp-handling can sometimes be offered by a different supplier, as well as cargo handling, although on a limited basis, see replies to Question 13 of Request for Information Q4 to groundhandlers.

1179 Agreed minutes of a teleconference call with Swissport Hellas Sud on 26 October 2010 [ID 5766].

1180 […]*.

possible only at the time of the next tenders, the Commission considers that Swissport Hellas Sud/Swissport Hellas would be in a strong enough position to undermine possible coordination attempts by Goldair Handling and Olympic Handling. Moreover, the Commission notes that the next tender for groundhandling licences will be open to both existing handlers and any new entrants and that a number of alternative groundhandling service providers have approached HCAA with enquiries regarding this market[1181]

(1730) As an independent groundhandling provider, Swissport Hellas/Swissport Hellas Sud is a strong and credible competitor on the Greek groundhandling market, has grown its market share aggressively and in 2010 significantly increased its coverage by adding 17 Greek airports to its portfolio[1182]. Swissport Hellas/Swissport Hellas Sud indicate that they are currently present in 20 airports[1183]. Moreover, Swissport believes that the market for groundhanding is not mature in Greece and there are still some opportunities for growth.[1184] It appears unlikely that the transaction would lead to Swissport Hellas/Swissport Hellas Sud having increased incentives to coordinate with Goldair Handling and/or Olympic Handling.

(1731) Based on the foregoing, the Commission has taken the view that the transaction is unlikely to give rise to coordinated effects as the post-transaction market structure will not increase incentives of market participants to enter into collusive agreements.

3.2. Vertical effects

(1732) The provision of groundhandling services to third parties is upstream to the airlines' passenger and/or cargo movement services at the specific airport, as established in Commission's decision making practice.[1185]

(1733) Olympic Handling is active in all 39 airports in Greece. The Parties submit that Aegean is active in the downstream market at 15 airports where Olympic Handling is active in the provision of third party groundhandling services, namely in Athens, Corfu, Herakleion, Rhodes, Thessaloniki, Alexandroupolis, Chania, Chios, Kalamata, Kos, Mykonos, Mytilini, Samos, Santorini and Sitia.

(1734) The Parties argue that there are now 12 vertically affected airports where Olympic Handling's share of supply of groundhandling services exceeds 25%: Corfu, Herakleion and Rhodes, as well as at the airports of Alexandroupolis, Chania, Chios, Ioannina, Kalamata, Kavala, Kos, Mykonos, Mytilini, Samos, Santorini, and Sitia.

(1735) According to the Parties, at Athens, Corfu and Thessaloniki Olympic Handling has less than 25% market share. However, the Commission notes that in Thessaloniki airport, Aegean has [30-40]*% share of the traffic and therefore the market is

1181 Agreed minutes of a teleconference call with HCAA on 5 November 2010 [ID 5994].

1182 Agreed minutes of a teleconference call with Swissport Hellas Sud on 26 October 2010 [ID 5766].

1183 See responses to Q2 in phase II questionnaire to competitors [ID 2901 and 2920].

1184 Agreed minutes of a teleconference call with Swissport Hellas Sud on 26 October 2010 [ID 5766].

1185 Commission decision of 26 March 2009, M.5364 - *Iberia/Vueling/Clickair*.

technically vertically affected. At Corfu airport, Aegean has [10-20]*% share of the traffic, at AIA - [20-30]*%.

(1736) The market investigation showed that self-handling could possibly be an alternative for airlines subject to a sufficient minimum number of weekly frequencies, and subject to a sufficient number of self-handling licences being available. However, it also emerged from the market investigation that the number of licences for self-handling is limited by the groundhandling regulatory regime currently in place in Greece.

(1737) At airports where more than one handler operates, most customers (airlines) believe that sufficient alternatives are available. Switching handlers has been noted - for example, two Greek airlines switched away from Olympic Handling at airports where an alternative was available.

(1738) While Swissport International, Swissport Hellas Sud and Goldair have recently expanded to a number of peripheral airports, no other new entrants have been identified as the current (temporary) legislation does not allow new entry prior to the next round of tenders, and the number of any new entrants would be limited by the restriction of licenses awarded by the HCAA. However, a number of alternative groundhandling service providers had expressed to HCAA interest to provide third party baggage and/or ramp handling services at AIA during the tender processes in 1999 and 2007. An alternative player also participated in bids for the licences to operate at Herakleion, Thessaloniki, Rhodos and Corfu during bids in 2000-2004.

Input foreclosure

(1739) In the five fully liberalised airports of ATH, CFU, HER, RHO and SKG Swissport Hellas/ Swissport Hellas Sud and Goldair Handling are alternative suppliers. Therefore, it is unlikely that the merged entity will have the ability to input foreclose downstream competitors.

(1740) Furthermore, in a great number of other airports at least more than one ground handler is active. According to HCAA, the current number of handlers at some airports may further increase once the new legislative package regulating groundhandling services at Greek airports comes into force and is implemented.

(1741) Indeed, in only two of these affected airports (Alexandroupolis and Sitia) Olympic Handling is currently acting as the sole third party ground handler and for these airports the Commission has primarily investigated whether post transaction the merged entity would have an incentive to input foreclose.

(1742) In their response to the Decision opening proceedings of 30 July 2010, the Parties argue that post transaction they would not have the ability to restrict access to competing ground handlers' services raising any downstream rival's costs. Concerning their ability post transaction to input foreclose, the Parties argue that Olympic Handling is not involved in the appointment process of new third party groundhandlers and does not control any facility that is essential for entry in the market for the provision of groundhandling services at any of the airports.

(1743) Although under the current legislative framework for groundhandling Olympic Handling appears to be allowed to apply selectively higher charges to competitors, the Commission considers that the transaction would not significantly alter the incentives of

Olympic Handling to increase prices even at the affected airports where currently Olympic Handling is currently acting as the sole third party ground handler.

(1744) A constraint on the possible price increase appears to be the possibility of self-handing. Should Olympic Handling charge a price at a level that makes an airline indifferent between self-handling and being served by Olympic Handling, such airline would still have the possibility to self-handle post transaction.

(1745) The Commission further notes that Aegean is serving Sitia under PSO rules and therefore other airline activities at Sitia would not directly compete with the Parties. With respect to Alexandroupolis, the transaction will not have a significant impact on the competitive situation on the groundhandling services provided at the airport.

Customer foreclosure

(1746) Customer foreclosure could arise if (upstream) groundhandlers would not be able to find sufficient customers to offer their services to as a result of the proposed transaction. […]*. Therefore, post-transaction, even if all the operations of the merged entity were to be served by Olympic Handling, this would not deprive other upstream market participants (i.e. Goldair Handling and Swissport Hellas / Swissport Hellas Sud) of an essential customer base in Greece.

(1747) Even at the only three airports where Aegean is outsourcing groundhandling services, namely Corfu, Rhodes, and Herakleion (for charter flights only), Aegean accounts for a relatively small share of total passengers and it is unlikely that customer foreclosure would arise.

(1748) The market investigation points to the fact that groundhandling charges at Greek airports open to competition appear to have been decreasing. Most airlines responding to the market investigation have not raised concerns about the impact of the notified concentration, and in particular not with regard to customer foreclosure.

(1749) Overall, the Commission considers that the transaction is not likely to lead to input or customer foreclosure.

3.3. Conclusion

(1750) It is concluded that the transaction would not significantly impede effective competition in the market for the provision of groundhandling services in Greece.

4. MAINTENANCE, REPAIR AND OVERHAUL ("MRO")

(1751) Olympic Engineering is the only party active in the provision of MRO services to third parties, although the company is still in start-up mode and currently has only one customer. Aegean does not provide MRO services to third parties.

(1752) This transaction involves the vertical integration of Olympic Engineering's MRO activities with Aegean's downstream airline business.

(1753) According to the Parties, Olympic Engineering's market share in the provision of MRO services is well below [0-5]*%. According to market estimates, the total volume of the overall provision of MRO services exceeded €[…]* billion in 2009. Olympic

Engineering had revenues which represented a very small fraction of that amount in the same year.

(1754) In terms of fleet size, Aegean's share downstream to the provision of MRO services is also well below 1%. According to the Parties, the estimated size of the world fleet was over 6,600 aircraft in 2009. Aegean's current fleet consists of 26 aircraft**.**

(1755) Olympic Engineering is only licensed to provide line maintenance services, engine maintenance and components maintenance. Based on the Commission's decisional practice the narrowest market definition possible in relation to MRO services for the purposes of this analysis would be the market for line maintenance at AIA.

(1756) Olympic Engineering had marginal revenue in the supply of line maintenance at AIA during 2009 and the Parties do not expect this to change significantly during 2010. Olympic Engineering's current activities in components maintenance have been limited to batteries and oxygen bottles and are expected to generate revenue of roughly Euro […]* in 2010. Olympic Engineering's operations in line maintenance will continue to be minimal, with a projected 2010 turnover of only EUR […]*.

(1757) […]*.

(1758) Most airlines appear to have their own line maintenance licence, some of which provide line maintenance services for both their own fleet and third parties' fleet at AIA, such as KLM. Other third party line maintenance providers at AIA are Swiss and Interjet. Aegean self-maintains its aircraft at AIA, although it does not provide third party line maintenance services. According to the Parties, other maintenance organizations, such as Hellenic Aerospace Industry S.A. (EAB), are active in line maintenance or are launching operations at AIA.

(1759) If the geographic market were wider, then Olympic Engineering's market share would reduce further from its already low level of 2.3%.

(1760) With regard to components maintenance, the Parties submit that following companies are active in this industry in Greece: Apella S.A.; Scandinavian Avionics; EAB and One Source. There is no supplier of heavy maintenance services for commercial aircraft in Greece.

(1761) Therefore, any potential link created between Olympic Engineering and Aegean does not give raise to any vertically affected market with respect to the provision of MRO services or any risk of foreclosure.

Conclusion

(1762) It is concluded that the transaction would not significantly impede effective competition in the market for MRO services.

5. IN-FLIGHT CATERING

(1763) Neither Aegean nor Olympic Air is active in the market for provision of in-flight catering services.

(1764) Marfin is active in in-flight catering through Olympic Catering S.A., a listed company operating at Athens, Corfu, Herakleion, Rhodes, and Thessaloniki airports. The transaction creates a vertical link between Olympic Catering and the operation of scheduled passenger airline services by the merged entity.

(1765) The Parties submit that Olympic Catering currently deals with Olympic Air on an 'arm's length' basis and will continue to do so in relation to the merged entity. Aegean currently outsources all its in-flight requirements to Olympic Catering's main competitor, the Newrest Group at Athens, Corfu, Herakleion, Rhodes and Thessaloniki airports. The Parties estimate that each of Olympic Catering and the Newrest Group has approximately [50-60]*% of the market share at each of these airports.

(1766) In addition to the five airports mentioned above, the Newrest Group is active at airports in Kos, Zakynthos and Chania.

(1767) During the market investigation, the vast majority of airline customers indicated that they could easily switch their in-flight catering suppliers and that they believe sufficient alternatives exist. In addition, the Newrest Group does not appear to have capacity constraints at the moment, while the airlines seem to have a significant degree of countervailing buyer power vis-à-vis in-flight catering service providers. In addition, Newrest Group indicates[1186] that its customers apply what is referred to as "return catering" (loading at the hub of all the food served in-board for the entire journey of the aircraft until its return to the hub).

(1768) Following the transaction, it appears that the Newrest Group, despite losing a significant part of its turnover (as it is the supplier of Aegean), would continue to exercise sufficient competitive constraint on Olympic Catering and the merged entity would appear unlikely to be able to restrict access to in-flight catering services for Olympic and Aegean's competitors.

Conclusion

(1769) It is concluded that the transaction would not significantly impede effective competition in the market for in-flight catering services.

6. SUPPLY OF AIRLINE SEATS TO TOUR OPERATORS

(1770) Aegean has a fleet of five dedicated charter aircraft, which perform charter flights between Greece and Italy, France, Germany, Austria, the UK, Poland, Slovenia, Israel, Switzerland, the Netherlands, Belgium, Romania and Czech Republic. In 2009, Aegean's charter division generated total revenues of €[…]* million, less than […]*% of which were derived from the supply of airline seats to tour operators in Greece.

(1771) According to the data provided by Aegean, on the majority of its routes the proportion of group bookings on scheduled flights appears to be generally low. Aegean argues that in all cases, these sales are essentially those for sales of seats on scheduled flights and as such must be assimilated with the overall scheduled air transport passengers.

(1772) According to the Parties, Olympic Air's activities with regard to the sale of airline seats to tour operators are insignificant compared to airlines with dedicated charter

1186 Newrest Group's response to questionnaire on in-flight catering [ID 839].

business. Between the launch of its operations in October 2009 and June 2010 inclusive, Olympic Air generated sales of around EUR […]* from sales of seats to tour operators (with a total of […]* passengers ticketed). Olympic Air does not operate dedicated charter aircraft and the Parties consider these sales by Olympic to be effectively sales of individual seats, for which Olympic competes against all airlines offering scheduled services. For this reason, the Parties consider Olympic not to be present on this market.

(1773) Several other airlines are active in supply of airline seats to tour operators in Greece, such as Hellenic Imperial, Sky Express, Viking Airlines, Condor and Thomas Cook, amongst others. Aegean considers that its main competitors for this business are mainly Viking Hellas, Hellas Jet and Eurocypria, and all the European charter operators.

Conclusion

(1774) It is concluded that the transaction would not significantly impede effective competition in the market for supply of airline seats to tour operators.

7. EFFICIENCIES

(1775) According to the Merger Regulation[1187] and the Horizontal Merger Guidelines[1188], it is possible that efficiencies brought about by a merger counteract the effects on competition and in particular the potential harm to consumers that it might otherwise have. It is for the merging parties to show that the efficiency gains generated by the concentration are likely to enhance the ability and the incentive of the merged entity to act pro-competitively for the benefit of consumers.

(1776) As pointed out by the General Court in its recent *Ryanair/Aer Lingus* judgment[1189] the guidance of the Commission referred to in recital 29 of the Merger Regulation is set out in points 76 to 88 of the Horizontal Merger Guidelines. First, efficiency claims need to be verifiable (namely reasoned, quantified and supported by internal studies and documents if necessary). Secondly, to counteract the anticompetitive effects of a merger, such efficiencies must be likely to benefit consumers (and in particular, to benefit directly customers in the relevant markets where competition concerns have been identified). Thirdly, and the efficiencies could not have been achieved to a similar extent by means that are less anticompetitive than the proposed concentration (that is to say efficiencies need to be also "merger specific"). These three conditions (verifiability, merger specificity and consumer benefit) are cumulative.[1190]

1187 Merger Regulation, Article 2(1)(b) and recital 29.

1188 Horizontal Merger Guidelines, paragraphs 76 et seq.

1189 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 387.

1190 Horizontal Merger Guidelines, paragraph 78.

(1777) In the reply to the Statement of Objections[1191] the Parties argue that the transaction would lead to three categories of efficiencies: (a) supply-side quantifiable savings (b) supply-side non-quantifiable efficiencies, and (c) demand-side savings.

(1778) As a preliminary comment, the Parties argue that is not yet possible to quantify precisely some cost savings since they have not yet discussed between themselves or with suppliers the specific future operations of the merged entity (as the transaction has not yet been approved by the Commission). Also they claim that other efficiencies are inherently difficult to quantify yet unambiguous and significant. Finally, they argue that the savings identified are not necessarily exhaustive.

(1779) With regards to these preliminary remarks, the Commission notes the following. First, there is no absolute requirement that the efficiencies are exactly quantified to the utmost precision. Nonetheless, as the Horizontal Merger Guidelines point out at paragraph 86 "*The more precise and convincing the efficiency claims are, the better the Commission can evaluate the claims*". Moreover, the Commission needs to be provided with sufficient evidence, in the form, for example, of documentary evidence in order to determine whether "[it] *can be reasonably certain that the efficiencies are likely to materialise, and be substantial enough to counteract a merger's potential harm to consumers".* In this respect it can be reasonably expected that the Parties either independently or with the support of external consultants or experts would normally evaluate the prospects for cost savings and synergies even before the transaction is implemented. Such assessment is often important for the shareholders of either party in order to determine the commercial logic of the transaction. Further, estimates of potential synergies and efficiencies are usually important to fix the financial conditions for the transaction. As pointed out by the General Court in the *Ryanair/Aer Lingus* judgment, evidence of various kinds can be used to verify the claimed efficiencies, in particular, "*internal documents that were used by the management to decide on the merger, statements from the management to the owners and financial markets about the expected efficiencies, historical examples of efficiencies and consumer benefit, and pre-merger external experts' studies on the type and size of efficiency gains, and on the extent to which consumers are likely to benefit*".[1192] In this case, no such documentation has been provided by the Parties during the administrative proceedings.

(1780) The Commission therefore considers that any alleged difficulties to discuss *"between themselves or with suppliers the specific operation of the merged entity*" is not a reasonable justification to waive the Parties' obligation to provide the necessary evidence to verify any efficiency claims and/or to, at least approximately, quantify the importance of such efficiencies. Indeed the Horizontal Merger Guidelines further indicate that: "*When the necessary data are not available to allow for a precise quantitative analysis, it must be possible to foresee a clearly identifiable positive impact on consumers, not a marginal one".*

(1781) Finally, the statement that "*the identified savings are not necessarily exhaustive*" is of no consequence for these proceedings. Unverified efficiencies, let alone unidentified efficiencies can not be taken into account in the Commission's assessment

1191 Statement of objections, section 17.

1192 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 408, by reference to point 88 of the Horizontal Merger Guidelines.

of the competitive effects of the present transaction. This is also confirmed by the General Court in the *Ryanair/Aer Lingus* judgment: "*Point 87 of the Guidelines states that it is incumbent upon the notifying parties to provide that evidence. Those efficiencies have to be 'quantified' or, at the very least, 'clearly identifiable', as is apparent from point 86 of the Guidelines*."[1193]

Alleged supply-side quantifiable savings

(1782) According to the Parties, with regard to supply-side savings, the transaction will allow the firms to enjoy savings from joint purchasing of inputs (notably by extracting discount from supplies) such as fuel costs, computer reservation systems ("CRS"), maintenance agreements, merchant fees on credit cards, handling and catering, insurance and IT communication systems. These savings allegedly accrue through discounts from larger order sizes of the combined entity, and, according to the Parties, are as such merger-specific. In the reply to the Statement of Objections, the Parties claim that Olympic Air would save up to EUR […]*[1194] whereas Aegean would save up to EUR […]*.[1195]

(1783) The Commission first points out that the Parties have not provided any documentary evidence of the kind described in point 88 of the Horizontal Merger Guidelines (or otherwise) to confirm that the suppliers of the various services would indeed offer the alleged volume discounts. In particular, the Parties would have to at least confirm (i) that the existing contracts that either Aegean or Olympic have with any of its suppliers include significant volume discounts and (ii) that the thresholds for such discounts to be further increased are not yet met at the current level of operations of either Olympic or Aegean, (iii) that if Aegean and Olympic pool their purchases together the volume thresholds that would trigger a higher discount would be met. However, the Parties simply put forward statements without reference to existing contracts, prospective negotiations with suppliers or even any shred of circumstantial evidence that the transaction would in fact increase the bargaining power of the merged entity vis-à-vis its suppliers. In sum, the Parties offer no more than unverified and unverifiable statements as regards possible discounts that the merged entity would allegedly obtain post-transaction.

(1784) Such assessment is all the more necessary to determine whether any of the airlines would, independently, be in a position to negotiate better terms in the absence of the transaction. This is particularly the case with respect to Olympic Air. The market investigation has revealed that in order to acquire a market share comparable to that of old Olympic and thereby to maintain its brand recognition Olympic Air had to enter quickly into contracts with suppliers. It is reasonable to presume (and the market investigation confirms[1196]) that Olympic Air was placed at a disadvantageous bargaining position vis-à-vis potential suppliers and entered into purchasing contracts at a relatively

1193 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 412.

1194 […]*.

1195 […]*.

1196 See Annex II.

high cost. It is clear, however, that in the medium to long-run many such contracts can be renegotiated potentially to the advantage of Olympic Air.

(1785) More generally, efficiencies such as reductions in maintenance charges and aircraft costs, CRS costs, fuel or leasing, (and other purchasing efficiencies), to the extent they can be achieved, would largely represent a re-distribution of rents in intermediate markets, rather than real efficiencies.[1197] Also, the Parties presume that all suppliers of inputs and services, such as catering, fuel, IT, maintenance or insurance have significant market power and there are important non-exhausted economies of scale in the provision of such services to Olympic and Aegean, such that volume discounts can be significant. Whilst the Commission does not deny this might be the case in some instances, no evidence in this respect has been put forward by the Parties.

(1786) Finally, as regards of the individual items leading to cost savings from joint purchasing, the Commission observes the following.

(1787) With respect to catering the Parties argue: "*Olympic and Aegean currently purchase from two different catering companies, Olympic Catering and Newrest respectively". Post-merger it is reasonable to assume that the new company will only source from one provider. It has not yet been decided which provider will be used, but clearly the combined entity's order will be much larger than wither firm individually*". The Commission notes that the cost of catering services is likely proportional to the number of passengers to be served. To the extent that there is sufficient competition in catering services (an issue on which the Parties fail to provide evidence, or even mention) prices will be relatively close to average variable costs, leaving little opportunity for catering companies to offer significant volume discounts. It is thus difficult to assess, based on the available evidence, how Olympic and Aegean can save EUR […]* and EUR […]* respectively from simply pooling their contracts. In addition, the Parties fail to explain why Olympic can save around […]*% whereas Aegean would save […]*% in catering costs.[1198]

(1788) As regards savings in fees to CRS, the Parties "*are unsure whether the merged entity could get a discount over current cost levels*". Nonetheless the Parties claim that the merged entity may be given a larger incentive for exclusivity than Olympic could obtain separately. However, the Parties seem to argue that "*incentives for exclusive contract agreements*" with suppliers, "*preclude online sales*". It is difficult to understand why the merged entity would forego the possibility of making online sales

1197 To better understand the distinction between real and pecuniary efficiencies, note that total input costs may fall due to savings in the organisation of procurement due to consolidated purchasing or a re-optimisation of delivery and logistical operations. Such reductions in the costs of procurement entail savings in real resources and therefore cannot be considered pecuniary gains. On the other hand, mergers may induce input cost reductions when suppliers offer non-linear prices involving for example volume discounts. Such discounts are used to price-discriminate between low and high users. When firms merge, they become high users, and thereby can spread the fixed fee and obtain a lower average price for their supplies. Such cost savings are largely pecuniary.

1198 One could argue that Aegean may benefit from better terms and conditions from Olympic Catering as the latter would offer its services at marginal cost. However, the Parties have not made this argument. In any case, even assuming that Olympic Catering is at least as efficient as its competitors, it would be difficult to understand how there can be scope for Olympic to reduce its catering costs by 10% given that the margin on catering should already be internalized.

only to obtain some unspecified (and possibly small) discount. In any event, apparently Olympic "*believes*" that such a discount would be given, yet again offers no concrete evidence.

(1789) With respect to "merchant fees on credit cards" it is not clear what the source of the efficiency is. The Parties claim that "*the average credit card sales fee will go down to* […]**% of revenues*" [from […]*%] presumably due to better credit rating of Aegean and higher card penetration. But despite the apparent accuracy of these figures the underlying calculations are not presented, let alone explained. Indeed there is little reason to expect that the credit rating of the merged entity would be any better than that of Marfin or Aegean since the associated risks of operating a larger airline will also increase. Also, the Parties offer no explanation as to why credit card companies would concede discounts linked to aggregate card penetration. In any event, airlines can offer alternative payment systems to their online customers in order to reduce or avoid credit card fees, and this can be done independently of the transaction.

(1790) As regards savings in leasing costs, the Parties admit that to the extent that they do not plan to expand their fleet in the near future any benefits from increased purchasing power in leasing aircraft "*are only likely to be realised in the medium to long term*". The Commission points out, however, that as indicated in point 83 of the Horizontal Merger Guidelines: "*In general, the later the efficiencies are expected to materialise in the future, the less weight the Commission can assign to them. This implies that, in order to be considered as a counteracting factor, the efficiencies must be timely*". The Parties have not shown that efficiencies in leasing would be timely and benefit the consumers in the routes where competition concerns arise.

(1791) With respect to savings in fuel costs the Parties admit that "*The cost of the fuel itself is determined by market rates. The merger would not affect the price paid for fuel, as this would remain a combination of spot and hedged price".* It is therefore not clear how the Parties could in fact, as claimed, reduce transportation costs by 15% *"by making larger order sizes*". No evidence is presented that would allow the Commission to verify whether fuel suppliers offer volume rebates and how large these rebates may be at the level of operations of the merged entity relative to Aegean and Olympic separately.[1199]

(1792) Finally, with respect to the item offering the opportunity for the highest cost savings for Olympic (maintenance cost) the Parties argue that "*the merged entity will require a lower inventory of spare parts than the two individual parties combined*". They estimate such savings for Olympic at […]*%[1200] of base maintenance or EUR […]* million. For Aegean, Table 30 reveals savings of EUR […]* out of EUR […]* million (that is, […]*%) though the Commission notes that no concrete explanation is offered as to the source of these savings for Aegean. The Commission acknowledges

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1199 The Parties claim "additional cost savings on fuel transport could be made by self-supplying fuel". However this is only a mere possibility. They admit that "to set up a self supply chain would require investment in infrastructure and legal costs" and that the savings over time are "not quantifiable at this stage". It is thus clear that any such savings would not be timely and it is highly uncertain what their significance might be for the passengers in the routes of the concern.

1200 This figure is […]*% in the Parties' response to the Statement of Objections but this appears to be a typo. In any event this is immaterial to the argument.

that at least in principle, the necessary inventory required to maintain a certain aircraft type may increase less than proportionally with fleet size. However, it is far from clear whether such scale economies are already exhausted at the current fleet level of each of Olympic and Aegean. Even to the extent this is not the case it remains unclear why, if such scale economies are so significant the maintenance of inventory cannot be subcontracted to an independent supplier that serves not only Olypic Air and Aegean but also other airlines. In any event, an inventory agreement between the Parties, short of a full merger would appear possible. It follows that such efficiencies are also not likely to be merger specific.

(1793) As regards insurance contracts, the Parties argue that *"insurance companies have indicated that post-merger they are likely to offer lower premiums for aircraft insurance*". In principle, this statement could be verified. However, the Commission notes that this claim (as most other regarding efficiencies) are made for the first time only at the time of the Parties' reply to the Statement of Objections. However as indicated in paragraph 87 of the Horizontal Merger Guidelines, it is: "*incumbent upon the notifying parties to provide in due time all the relevant information necessary to demonstrate that the claimed efficiencies are merger-specific and likely to be realised*". The Commission is not generally in a position to verify this and other efficiency claims at this stage in the proceedings, and certainly not in the absence of further information such as the name of the insurance companies in question or copies of prospective quotes given to the Parties.

(1794) The Parties also claim cost savings from reductions in overheads resulting from integrating the two management structures into one. Synergies from elimination of overheads are estimated at around EUR […]* domestically and these will include combining head office functions, sales force, cost savings from office rents, IT systems unification, advertising and marketing, and contracted personnel. Overlapping operations on international stations could further yield EUR […]* cost efficiencies. Again, the Commission first notes that the claimed savings in overhead cannot be verified on the basis of the information provided by the Parties.

(1795) Savings in staff costs, is by far the item offering the largest savings for both Olympic and Aegean (Olympic Air claims it could achieve a cost saving of EUR […]* per annum whereas Aegean claims to be able to save more than EUR […]*).[1201] However the lack of documentary evidence to verify these claims is particularly problematic since it is not clear to what extent there may be some double counting in respect of these numbers. In any event, to the extent they were to actually materialise, these savings affect essentially fixed, rather than marginal, costs. While the Horizontal Merger Guidelines do not explicitly limit the notion of efficiencies to reductions in marginal costs, a pass-on of cost reductions within a reasonable timeframe is less likely for fixed cost reductions because they do not immediately affect a firm's profit maximising price/output decisions.

(1796) Furthermore, according to the Parties, Aegean can reduce payroll at headquarters to almost half from EUR […]* to EUR […]* whilst Olympic can save EUR […]* from the right sizing of ground operations and sales force. However the Commission notes that it is hard to see how such reduction in personnel at headquarters could be achieved

1201 The Commission notes that for some items (such as contracted personnel) the savings appear to be larger than the actual incurred costs (EUR 3.1 million vs. EUR 5 million).

without compromising the efficiency of the merged entity, given the fact that the merged entity would run a larger network and its operations would likely be more complex.

(1797) More generally, as explained at point 79 of the Horizontal Merger Guidelines, claimed efficiencies "*should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur*". The Parties make no attempt to determine whether the claimed efficiencies are route-specific or at least the extent to which the claimed efficiencies would benefit passengers in the routes of concern.

Alleged supply-side non-quantifiable savings

(1798) The Parties also claim that the "*the merger will allow the firms to benefit from network efficiencies i.e. savings through more efficient operation of network*". In particular, according to the Parties "*the larger network would allow the firms to lower interline expenses as it will be able to satisfy a greater ranger of indirect flights using its own network. A larger network may allow it to become a net receiver of interline revenue on some route*s".

(1799) First, as the Parties admit "*Olympic and Aegean have not discussed the possible network of the merged entity. Therefore it is not possible to know with certainty the network that the merged entity will offer nor quantify efficiency savings*". Secondly, irrespective of the alleged inability to quantify efficiency savings, the Commission notes that interlining is particularly relevant for connecting passengers, which combine at least one international and one domestic leg. This implies that O&D passengers in the affected routes of concern would not directly benefit from the alleged reduction in interline expenses.

(1800) According to point 79 of the Horizontal Merger Guidelines, efficiencies "*should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur*". The Commission acknowledges that it is not excluded that efficiencies to passengers in markets other than the routes of concern can be taken into consideration. The alleged reduction in interlining expenses constitutes an efficiency analogous to the internalisation of double mark-ups that is brought about by a vertical merger. Notwithstanding this, the Commission notes that a merger is not necessary to reduce interlining expenses since alternatives exist such as code-sharing that can to a large extent reduce interlining mark-ups.[1202]

1202 A merger allows full collaboration in the choice of segment fares, which the carriers would set so as to maximize joint profit from the various markets where they would otherwise provide interline service. Under a traditional non-codeshare pricing method for interline trips amongst independent carriers, fares are generated at periodic IATA fare conferences. Here carriers set fares for a multitude of international city-pair markets, with the fare charged for a given interline trip set at the IATA level, and total revenue split between the interlining carriers according to a distance-based prorate formula. The adoption of IATA fares requires unanimous agreement among the airlines participating in the conference, so that fares are set high enough to cover the costs of the least efficient carriers. Under a codeshare agreement, there is bilateral negotiation, whereby each of the two carriers specifies the revenue it requires to carry a passenger along its portion of an interline trip ticketed by the other carrier. The ticketing carrier then sets the overall fare for the trip, taking into account the amount it must be paid to the collaborating carrier. Because such agreements are bilateral rather than multilateral, the resulting fares are likely to be lower on average than IATA fares.

(1801) Irrespective of the lack of merger specificity as regards the bulk of the reduction in interlining expenses, the Commission notes that the Parties have presented no evidence as to the potential significance of these efficiencies, at the very least by reference to the share of connecting passengers travelling in behind or beyond routes directly related to the routes of concern.

(1802) Finally, and more importantly as pointed out by the General Court in its *Ryanair/Aer Lingus* judgment[1203] : "*it is apparent from point 84 of the Guidelines that the incentive on the part of the merged entity to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in the market and from potential entry. The greater the possible negative effects on competition, the more the Commission has to be sure that the claimed efficiencies are substantial, likely to be realised, and to be passed on, to a sufficient degree, to the consumer. As regards that point, the Guidelines state that it is highly unlikely that a merger leading to a market position approaching that of a monopoly, or leading to a similar level of market power, can be declared compatible with the common market on the ground that efficiency gains would be sufficient to counteract its potential anti-competitive effects*". It is clear that, post transaction, the market position of Olympic Air and Aegean on Greek domestic routes would approach that of a monopoly, notably for time sensitive passengers, while for non time sensitive and for a market encompassing all passengers, ferry services would only be distant competitor.

(1803) The Parties further argue that "[…]*". In respect of these claims, the Commission points out the following: first and contrary to the claims of the Parties, there is no reason why, if Olympic Engineering is too large for Olympic pre-transaction, it could not offer its services to Aegean and other international airlines independently of the transaction. Second, no evidence is presented as what the critical mass is required to operate an efficient MRO business that also offers heavy maintenance services, nor the relevance of such services to make the Greek air transportation market attractive. In any event, it is clear that any such benefits stemming from the alleged development of an operational MRO business would very indirectly and only to a limited extent benefit the passengers harmed by the transaction in the routes of concern, if at all. The Commission can thus not take these efficiency claims into account in the assessment of the competitive effects of the transaction.

(1804) The Parties also claim that "[…]*". The Parties fail to quantify the potential benefits associated with this efficiency (although it would appear that at least the price paid to at AIA relative to the price of fuel paid to other potential suppliers should be known; namely the maximum differential charge). More importantly, the costs of obtaining a particular efficiency needs to be assessed since only "net" benefits can be taken into account. As the Parties themselves admit "*to set up a self supply chain would require investment in infrastructure and legal costs. However, the savings over time, albeit not quantifiable at this stage, would be a very significant portion of the differential charge*". In other words, this efficiency claim is not verified, its magnitude is not estimated, accounting also for the required investment in self-supply infrastructure and finally any alleged benefits are neither likely to be timely nor is it known to what extent they will benefit passengers in the routes of concern.

Alleged demand-side savings

1203 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 436.

(1805) The Parties also believe that the transaction may result in demand side (consumer) benefits. These include benefits to consumers of a larger network, in particular "*greater choice of indirect routes due to larger network, greater choice in flight times due to the larger combined schedule and greater range of flights to earn and burn frequent flyer points*". More generally the Parties argue that "*The combined entity is expected to benefit from optimizing frequencies on overlapping routes, thus better covering the needs of its customers on existing destinations and at the same time releasing capacity for serving new destinations. The overall main gain is that the company will be a better representative of Greece in the international aviation market and is going to yield important benefits in the long run*".

(1806) The Commission first notes that the alleged main gain, namely that the merged entity will be a better representative of Greece in international aviation market, cannot be taken into consideration, *inter alia*, since the Parties offer no assessment of the benefits to passengers in the routes of concern that might result from such international presence. Similarly, no evidence is presented as regards the alleged greater choice in flight times due to the larger combined schedule. In any case, Olympic Air and Aegean already offer one-way tickets. This implies that to a large extent, passengers in the affected routes can already combine two one-way tickets from Olympic Air and Aegean in the absence of the transaction. As regards the possibility to collect and burn more frequent flyer points, this cannot be considered a merger-specific efficiency as Olympic Air and Aegean can join individually, or jointly join, an existing international airline alliance (see in particular Section X.2.1.4.2).

(1807) The Parties also argue that the merged entity would benefit from "fleet efficiencies" arising from, in particular, the replacement of the four engined RJ100 aircraft with the new Q400 aircraft on domestic and regional international routes or deployment of lower seat capacity aircraft on thin routes or higher seat capacity aircraft on heavy traffic routes. These efficiencies are not merger-specific since Olympic Air and Aegean can independently adapt their fleet to ensure that thin routes and thick routes are served with low and high seat capacity aircraft respectively.

(1808) Finally, as indicated in point 87 of the Horizontal Merger Guidelines "*it is for the notifying parties to show to what extent the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the merger, and therefore benefit consumers*". In this respect, the Parties have provided no arguments or evidence.

Conclusion

(1809) It is concluded that there is insufficient evidence to conclude that the alleged efficiencies generated by the transaction are sufficient to counteract its negative effects on competition and the potential harm to consumers.

X. FAILING FIRM DEFENCE

(1810) As explained in Section VIII, the Parties consider that even if Olympic Air were to adopt a radical restructuring programme, involving a significant fleet reduction and route exits, it will still be incurring […]* losses. Therefore, if not taken over by another undertaking Olympic Air would be in the near future forced out of the market because of financial difficulties.

(1811) Indeed, a merger that is found to give rise to significant impediment of effective competition may be found compatible with the internal market if it can be proved that without the merger the competition would be deteriorated at least to the same extent as the failing firm would simply disappear from the market.[1204] In that context, *"the Commission may decide that an otherwise problematic merger is nevertheless compatible with the common market if one of the merging parties is a failing firm. The basic requirement is that the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger. This will arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger."*[1205]

(1812) Accordingly, an analysis is conducted to determine whether the financial situation of one of the Parties is such that it could be deemed a failing firm[1206] within the meaning of the Horizontal Merger Guidelines.

1. OVERALL FINANCIAL SITUATION OF AEGEAN AND OLYMPIC AIR

1.1. Overall financial situation of Aegean

(1813) The Parties, in their reply to the decision opening proceedings submit that *"Aegean has publicly announced a significant fleet reduction and withdrawal of certain aircraft types from its fleet making exit from some routes inevitable"*; and that *"*[*Most likely outcome on overlap routes*]*"*.[1207]

(1814) In the past, Aegean recorded a series of very good financial year results. In its 2009 annual report[1208], Aegean notes that "*2009 has been a difficult year for the airline sector, characterised by sharp fall in demand and continuous yield pressures… Nevertheless, our financial result remained in positive territory in a year where the majority of European airlines reported losses*". This is also stressed further in the report: "*the Company being among the few profitable listed European airlines in 2009*".

(1815) First, Aegean has made several years of profits. The revenue of the company has increased significantly since 2005; by more than 40% to EUR 622 million in 2009. Operating profits have been consistently positive and have reached a peak in 2008 (EUR 50 million) to fall to EUR 19.5 million in 2009. The first quarter results of 2010 have been negative and the company made operating losses of EUR 20.7 million.[1209]

1204 Horizontal Merger Guidelines, paragraph 89.

1205 Horizontal Merger Guidelines, paragraph 89.

1206 Paragraph 143 of the Decision opening proceedings of 330 July 2010 recalls that *"If one of the Parties were likely to exit the market absent the merger, a failing firm scenario could be considered. It is then for the notifying Parties to provide in due time all the relevant information necessary to demonstrate that the deterioration of the competitive structure that follows the merger is not caused by the merger."*

1207 […]*.

1208 Form CO, Annex 28.

1209 See p17 http://en.aegeanair.com/aegeanCMS/uploads/IR/NOTES_1Q10_en.pdf.

However, the results in the first semester have been relatively better and the company made a first semester operating losses of EUR 16 million. Therefore in the second quarter the company made EUR 4.7 million operating profits.[1210]

(1816) The financial results of Aegean show that in the second quarter the company made pre-tax loss of EUR 700 000 (and EUR 7 million after tax loss due to a EUR 6.3 million special tax contribution). More importantly, the company reported EUR 29.2 million EBITDAR in the second quarter of 2010 which was actually an increase compared to the second quarter of 2009 (where the company recorded EBITDAR of EUR 27.2 million), namely, an increase of 8%.[1211] Similarly, also in the 3rd quarter of 2010, Aegean recorded positive EBITDAR of EUR 49 million and EUR 31.6 million profit before tax, both higher than in the 3rd quarter of 2009. [1212]

(1817) Since 2007, Aegean has enjoyed a significant increase in the assets of the company and more importantly the cash available for the company has increased substantially from EUR 7.5 million in 2005 to more than EUR 200 million in 2009. On this point, the minutes of Aegean's Board of Director of 21 December 2009 state that "[…]*".[1213]

(1818) Furthermore, in its 2009 annual report Aegean states that "*due to the necessary actions already been taken – investments in fleet renewal, competitive cost structure, sound capital structure, sufficient available cash balances, market positioning in most operating markets, expected full Star Alliance membership in June 2010 – the Company is optimistic regarding its market position, recognizing the significance and the difficulty of the forthcoming two years of increased risks. It is obviously necessary to adapt the development strategy, reorganize the fleet, reassess and readjust the operational network and control internal costs in order to manage to mitigate the negative impacts of the economic downturn and the competitive environment.*"

(1819) The Parties have suggested that the results of the first quarter of 2010 are indicative of the worsening economic climate. However, in Aegean's annual report, it is highlighted that "*the financial and operating results of the Company and the sector's in general, are highly affected by seasonality with the most important quarter of the period regarding passenger traffic being historically the third quarter.*" Therefore, it is not representative to base any inference only on the basis of one quarter results.

(1820) Finally, Aegean joined the Star Alliance in June 2010. Aegean can therefore expect significant positive developments, particularly in terms of feeding traffic, which will materialize progressively during the course of next year. The development of new interline agreements with Star Alliance carriers should allow Aegean to develop the number of connecting passengers using its domestic network.

1210 See p26 http://en.aegeanair.com/aegeanCMS/uploads/IR/NOTES_1H10_en.pdf.

1211 See page 6 of Alpha Finance report.

1212 http://en.aegeanair.com/aegeanCMS/uploads/IR/112210_9M10_en.pdf.

1213 […]*.

(1821) The Parties, in their response to the Statement of Objections, have not disputed this fact. […]*. In this regard, the Commission notes again that the results of Aegean for the third quarter of 2010 were positive, with revenue slightly decreasing by 3.4% and net profit before tax of EUR 31.6 Million, an increase of 6% compared with the same quarter of 2009.[1214]

(1822) In conclusion, it appears that the prospects of Aegean are positive, irrespective of the transaction.

1.2. Overall financial situation of Marfin and Olympic Air

(1823) Marfin approved a definitive agreement with Greece on the 23 March 2009 for the sale of Old Olympic, less than two months after having announced its intention to bid for these assets.

(1824) During this period, Marfin analysed the profitability prospects of the contemplated acquisition, and established its own business plan. After the investment decision had been made, Marfin had its business plan verified by consultants. According to the Parties, the consultants considered that Olympic Air "[*Conclusions of the consultants*]*"[1215], […]* Marfin decided not to change its business plan or engage into further studies with this consultant (see recital (1856) et seq).

(1825) [*Actual performance of OA*]*[1216]

(1826) The Parties' claims concerning the financial health of Olympic Air and its performance compared to initial expectations and business plan are assessed in depth.

1.2.1. Initial profitability forecast for Olympic according to business plan

(1827) In order to assess Olympic Air's performance, it is relevant to understand Marfin's expectations at the time of the purchase of the company, and how these expectations have been further revised.

(1828) It can be perfectly reasonable for a company to incur significant losses for a given period of time in an attempt to gain a sufficient market share and generate profits afterwards. Therefore, a business plan can rationally forecast significant losses for one, two, or three years, and expect to recoup these losses thereafter. For instance, Marfin's approach in some of investments ([…]*, […]*) had been to invest significant amounts of money in loss making companies, […]*.

(1829) Therefore, it appears normal that Olympic Air post privatization and under such circumstances would incur losses throughout the phasing in of the company's operations.

1214 Financial Results for the Nine Month 2010 in accordance with IFRS, http://en.aegeanair.com/aegeanCMS/uploads/IR/Notes_9M10_en.pdf.

1215 […]*.

1216 […]*.

1.2.1.1. Initial summary business plan

(1830) The information memorandum communicated to the potential buyers by Lazard, acting on behalf of Greece, contained a summary business plan based on indications provided by the economic consultant Aviation Economics. However, this document was merely an illustration of what could be eventually achieved, should the buyer decide to follow the network and fleet options which were suggested.

(1831) As indicated by Aviation Economics[1217], these initial forecasts were not a real business plan but rather an 'indicative projection plan' forecasting what restructuring Olympic Air would need to undertake if it were to operate according to optimal European efficiency levels. These projections were purely of an indicative nature given that the investors were not taking over an existing business but building their own airline essentially from the core assets that were sold.

(1832) […]*[1218] […]*[1219]

(1833) The Pantheon business case, prepared by Aviation Economics, contained an indicative business plan based on a network of 74 routes (of which 38 are domestic destinations) and a fleet of 36 aircraft.[1220] According to Aviation Economics, that business plan was elaborated taking into account the most efficient European airlines, namely, a hybrid low-cost model (mid-frills) with, for example, full internet distribution, high utilization rate of airplanes, etc.

(1834) […]*[1221]. As explained above, the "business plan" put together by the Greek government consultants was in fact a very rough estimate of what could be achieved under a very limited set of assumptions (notably, using the fleet of Old Olympic).

(1835) […]*[1222]

(1836) […]*[1223]

(1837) Therefore, the extent to which the business plan prepared by the Greek Government's consultant was used for the Marfin's decision to bid for the assets of Old Olympic was limited.

1217 Agreed minutes of a teleconference call with Aviation Economics of 6 September 2010, paragraph 16 [ID 5394].

1218 […]*.

1219 […]*.

1220 See pages 8, 10 and 13 of Pantheon's business case, prepared by Aviation Economics, submitted by the Parties.

1221 […]*.

1222 […]*.

1223 […]*.

1.2.1.2. First business plan of Marfin: Project Argonaut

(1838) Further to being given access to the Old Olympic's data room, Marfin prepared a business plan[1224], which the Parties claim was prepared *"extremely quickly and without the help of external consultants".* This document contained a detailed forecast of the operations of the new Olympic (Air) until 2014.

(1839) This business plan was a bottom-up route-by-route business plan, containing detailed financial projections. In one of their submissions, the Parties argued that "*The original business plan contained financial projections for years* […]* *and* […]* *(visibility beyond year* […]* *being "severely compromised")*".[1225]

(1840) The Parties claim in another submission that "*This is the main document which was used to prepare the schedules for the winter season 2009/2010 and the summer season 2010. Indeed, this business plan lists and contains all the data that was looked at the time to plan for the first* <u>[…]* *years*</u> *of operation"*[1226]*(*emphasis added*).*

(1841) The Commission notes that this initial business plan was initially not limited to projection covering […]*, […]*, or even […]* years. Indeed, it contained financial projections up to […]*. Even if some of the worksheets in this business plan present a summary of the forecasts for the […]* years, the business plan contained assumptions and results for the next […]* years (as evidenced for example in worksheet *P&L assumptions, Financial statements, WorkingCap, Financing*).

(1842) According to the Parties, and as evidenced in the business plan, the various parameters which Olympic Air took into account when preparing the business plan include notably:

i. […]*.

ii. […]*.

iii. […]*.

iv. […]*.

v. […]*.

vi. […]*.

vii. […]*.

(1843) Four different scenarios, also corresponding to different parameters taken into account to establish these forecasts, were considered: A, B, C and D. […]*.

(1844) The different scenario envisaged by Marfin / Olympic Air at this time were:

1224 Parties's reply to the to request for information of 05 July 2010, annex B.

1225 Parties's reply to the request for information of 25 August 2010.

1226 Parties's reply to the request for information of 23 August 2010.

i. Scenario A: […]*.

ii. Scenario B: […]*.

iii. Scenario C: […]*.

iv. Scenario D: […]*.

(1845) […]*[1227]

(1846) [S*imilar domestic network for all the scenarios*]*[1228]

(1847) [*Parameters of the scenarios as regards passenger numbers, revenues and cost: IATA winter and summer seasons*]*

(1848) […]*[1229]

(1849) The drafting of this business plan started on the […]*, after Marfin had announced its intention to acquire Old Olympic's assets, further to approval by the Board. This business plan was continuously updated, as evidenced by the many different versions of this document submitted by the Parties.

(1850) […]*[1230]

(1851) Marfin then details the scenarios envisaged: [*Description of the two feasible scenarios*]*.[1231]

(1852) […]*

(1853) The Parties have argued in their reply to the Statement of Objections that the projections shown to the Board of 6 March 2009 showed that the investment was made based on a projection (i) for Scenario A of a small profit in year 1 ([…]*, net income) and then steady state profitability from year 2 onwards ([…]*, net income) and (ii) for Scenario B of a profit in year 1 ([…]*, net income) and year 2 ([…]*, net income).

(1854) [*Reaction of Marfin's Board to the stress test of all the scenarios*]*

(1855) [*Underperformance of OA's actual financial situation vs. scenarios envisaged by Marfin*]*

1227 […]*.

1228 […]*.

1229 […]*.

1230 […]*.

1231 […]*.

1.2.1.3. Intervention of […]* and discussion on the winter Schedule

(1856) It is only after Marfin had prepared its business plan and submitted a binding offer, subject to approval by its Board of Directors, that a consultant specialized in aviation, […]* ("[…]*"), intervened. […]* was engaged by Marfin on 25 March 2009 as can be seen from their engagement letter.[1232]

(1857) [*The consultant's missions: i) to examine Marfin's pre-existing business plan and ii) to help with rescheduling*]*

(1858) [*Scope of the consultant's review*]*

(1859) [*Discrepancies between the consultant's conclusions and the assumptions upon which OA's business plan was based*]*[1233]

(1860) [*Marfin's decision not to engage the consultant for further work*]*

1.2.2. Actual profitability of Olympic Air's operation

(1861) [*Marfin's aim for OA*]*

(1862) […]*[1234]

(1863) […]*[1235]

(1864) […]*[1236]

(1865) Accordingly, it appears that the strategy followed by Marfin from the beginning of its investment was to establish Olympic Air as a large airline with a significant market share, and sell it to another investor, potentially Aegean. The Parties have contested this point in their reply to the Statement of Objections, which, however, contradicts their statement made at the time of the notification (see recital (1977)).

(1866) The development of actual performance of Olympic Air compared to management expectations and forecasted budget is analyzed on the basis of internal documents.

1.2.2.1. First assessment of Olympic Air underperformance: December 2009

(1867) [*Analysis of OA's financial situation – December 2009*]*[1237]

1232 Annex 34 to Form CO.

1233 […]*.

1234 […]*.

1235 […]*.

1236 […]*.

1237 […]*.

(1868) [*Analysis of OA's financial situation – December 2009*]*[1238]

(1869) [*Analysis of OA's financial situation – December 2009*]*[1239] [1240]

i. [*Analysis of OA's financial situation – December 2009*]*

ii. [*Analysis of OA's financial situation – December 2009*]*

iii. [*Analysis of OA's financial situation – December 2009*]*

(1870) [*Analysis of OA's financial situation – December 2009*]*

(1871) [*Analysis of OA's financial situation – December 2009*]*

(1872) [*Analysis of OA's financial situation – December 2009*]*

(1873) [*Analysis of OA's financial situation – December 2009*]*[1241] [1242]

(1874) [*Analysis of OA's financial situation – December 2009*]*

(1875) [*Analysis of OA's financial situation – December 2009*]*[1243]

(1876) [*Analysis of OA's financial situation – December 2009*]*

1.2.2.2. January 2010

(1877) [*Analysis of OA's financial situation – January 2010*]*[1244]

(1878) [*Analysis of OA's financial situation – January 2010*]*

[…]*

1238 […]*.

1239 […]*.

1240 […]*.

1241 […]*.

1242 […]*.

1243 […]*.

1244 […]*.

Table 58: Budget scenarios discussed in January 2010

Source: Parties

(1879) [*Analysis of OA's financial situation – January 2010*]*[1245]

[…]*

Table 59: 2009 Financial Results compared to business plan

Source: Parties

(1880) [*Analysis of OA's financial situation – January 2010*]*

(1881) [*Analysis of OA's financial situation – January 2010*]*

(1882) [*Analysis of OA's financial situation – January 2010*]*

(1883) [*Analysis of OA's financial situation – January 2010*]*[1246]

(1884) [*Analysis of OA's financial situation – January 2010*]*[1247]

(1885) [*Analysis of OA's financial situation – January 2010*]*

1.2.2.3. February 2010

(1886) [*Analysis of OA's financial situation – February 2010*]*[1248]

(1887) [*Analysis of OA's financial situation – February 2010*]*[1249]

[…]*

Table 60: Comparison of actual and budgeted average fares

(1888) [*Analysis of OA's financial situation – February 2010*]*

(1889) [*Analysis of OA's financial situation – February 2010*]*

1.2.2.4. March 2010

(1890) [*Analysis of OA's financial situation – March 2010*]*

1245 […]*.

1246 […]*.

1247 […]*.

1248 […]*.

1249 […]*.

[…]*

Figure 7 : Olympic Air results for 2009
source: Annex 52 to Parties' reply to Request for information of 20 August 2010

(1891) [*Analysis of OA's financial situation – March 2010*]*

(1892) [*Analysis of OA's financial situation – March 2010*]*[1250]

(1893) [*Analysis of OA's financial situation – March 2010*]*[1251]

(1894) [*Analysis of OA's financial situation – March 2010*]*

(1895) [*Analysis of OA's financial situation – March 2010*]*[1252]

(1896) [*Analysis of OA's financial situation – March 2010*]*

(1897) [*Analysis of OA's financial situation – March 2010*]*

[…]*

Figure 8 : Olympic Air results for January 2010 compared to budget
source: Annex 52 to Parties' reply to Request for information of 20 August

(1898) [*Analysis of OA's financial situation – March 2010*]*

(1899) [*Analysis of OA's financial situation – March 2010*]*

(1900) [*Analysis of OA's financial situation – March 2010*]*

1.2.2.5. April 2010

(1901) [*Analysis of OA's financial situation – April 2010*]*

(1902) [*Analysis of OA's financial situation – April 2010*]*[1253]

(1903) [*Analysis of OA's financial situation – April 2010*]*

1250 […]*.

1251 […]*.

1252 […]*.

1253 […]*.

(1904) [*Analysis of OA's financial situation – April 2010*]*

[…]*

Figure 9: Net income evolution for Olympic Air

Source : BOD presentation, April 2010, Annex 52 to Parties' reply to Request for Information of 20 August, slide 3

(1905) [*Analysis of OA's financial situation – April 2010*]*

1.2.2.6. May 2010

(1906) [*Analysis of OA's financial situation – May 2010*]*

[…]*

Figure 10: Olympic Air results for First Quarter 2010 compared to budget

source: Annex 52 to Parties' reply to Request for information of 20 August

(1907) [*Analysis of OA's financial situation – May 2010*]*

(1908) [*Analysis of OA's financial situation – May 2010*]*

(1909) [*Analysis of OA's financial situation – May 2010*]*

[…]*

Figure 11 : Revenue / Fare evolution for Olympic Air

source: Annex 52 to Parties' reply to Request for information of 20 August

(1910) [*Analysis of OA's financial situation – May 2010*]*

(1911) [*Analysis of OA's financial situation – May 2010*]*[1254]

(1912) [*Analysis of OA's financial situation – May 2010*]*

(1913) [*Analysis of OA's financial situation – May 2010*]*

(1914) [*Analysis of OA's financial situation – May 2010*]*

(1915) [*Analysis of OA's financial situation – May 2010*]*

(1916) [*Analysis of OA's financial situation – May 2010*]*[1255]

1254 […]*.

1255 […]*.

(1917) [*Analysis of OA's financial situation – May 2010*]*[1256]

1.2.2.7. August 2010

(1918) [*Analysis of OA's financial situation – August 2010*]*

(1919) [*Analysis of OA's financial situation – August 2010*]*[1257]

(1920) [*Analysis of OA's financial situation – August 2010*]*

(1921) [*Analysis of OA's financial situation – August 2010*]*

(1922) [*Analysis of OA's financial situation – August 2010*]*

(1923) [*Analysis of OA's financial situation – August 2010*]*

(1924) [*Analysis of OA's financial situation – August 2010*]*

(1925) [*Analysis of OA's financial situation – August 2010*]*[1258]

1.2.2.8. September 2010: Olympic Air's winter 2010-2011 schedule decision

(1926) [*Analysis of OA's financial situation – September 2010*]*

(1927) [*Analysis of OA's financial situation – September 2010*]*[1259]

(1928) [*Analysis of OA's financial situation – September 2010*]*[1260]

(1929) [*Analysis of OA's financial situation – September 2010*]*[1261]

1.2.2.9. Parties' response to the Statement of Objections

(1930) The Parties claimed in their reply to the Statement of Objections that "[…]*".[1262]

(1931) However, the Parties fail to demonstrate that this would be the case. The Parties only argue that the budget is showing […]* losses, and that it would therefore be irrelevant to assess Olympic Air's performance according to that budget. However, these budgets were used internally by Olympic Air for the purpose of managing the company

1256 […]*.

1257 […]*.

1258 […]*.

1259 […]*.

1260 […]*.

1261 […]*.

1262 […]*.

and assessing its performance. As already explained in the above section, the actual numbers compared to the budget do not show severe underperformance on a monthly basis.

(1932) However, even if the budget for 2010 led to a large financial loss, it has to be recalled that this was the first year of operation for Olympic Air, which had to incur large start-up inefficiencies and costs as explained in particular in Section X.1.2.3 and in Annex II. Furthermore, Olympic Air was engaged into a price war with Aegean, which had a drastic consequence on its ability to obtain high fares, and therefore led to significant losses. As shown in Figure 14, the financial performance of Olympic Air has been improving almost continuously since the beginning of its commercial operations. The Parties have not commented or discussed this point in their response to the Statement of Objections.

(1933) Rather, the Parties have simply argued that "[…]*".[1263]

(1934) However, paragraph 1330 of the Statement of Objections only discusses Olympic Air's revenues. The Parties therefore do no contest that, concerning margins, as discussed in paragraph 1331 of the Statement of Objections, Olympic Air's EBIT from April to July 2010 has significantly improved compared to the budget. Indeed, in June 2010, actual EBIT was higher than forecast, and in July it was positive and very close to the forecast figure.

(1935) The Parties have also argued that their results for the first half of 2010 would show "[…]*", and that "[…]*". The Commission notes that these results are exposed and discussed in the Statement of Objections, notably in the paragraphs 333, ("*Olympic Air's results for the first half of 2010 indicate a significant loss of EUR -61.1million*"), 1321 and 1366.

(1936) Moreover, the Parties claim that "[…]*".[1264] However, the Commission only undertook a descriptive analysis, relying upon internal documents of the Parties and of the internal comments made by Olympic Air management itself to evaluate Olympic Air performance.

(1937) The Parties also claim that "[…]*".[1265] However, Olympic Air decided to engage into an aggressive strategy which of course had an influence on its financial results. It is therefore not surprising that the budget of Olympic Air was initially revised downwards.

(1938) Finally, the Parties indicate that "[…]*"[1266], and that as a result, the decision to open the London-Thessaloniki route was justified. The Commission notes that the counterfactual cannot be established by taking into account the future situation in the context of the transaction, but has to be a reflection of competition likely to occur absent the transaction.

1263 […]*.

1264 […]*.

1265 […]*.

1266 […]*.

(1939) Therefore, while Olympic Air has incurred significant losses, the Commission notes that profitability has been continuously improving, a fact not disputed by the Parties. However, it has to be noted that this improvement is also correlated with the summer season, which is traditionally better than the winter season for Greek airlines.

1.2.2.10. Conclusion

(1940) Olympic Air's financial results have been […]* negative since the launch of its commercial operation in 2009.

(1941) However, after a careful assessment of all internal documents submitted by the Parties, it cannot be concluded that Olympic Air is severely underperforming against the business plan and the revised budget, […]*.

(1942) As shown in Figure 12[1267], [*Performance of Olympic Air against budget*]*.

[…]*

Figure 12 : OA's revenues (budget and actual)

[…]*

Figure 13 : OA's EBIT (budget and actual)

(1943) However, as shown in Figure 13, [*April to September 2010: Improvement of Olympic Air's performance against budget*]*.

(1944) […]*. [*April to September 2010: Improvement of Olympic Air's performance against budget*]*.

(1945) In conclusion, as shown in Figure 14, the financial performance of Olympic Air has been almost continuously improving since the beginning of its commercial operations.

[…]*

Figure 14: Evolution of Olympic Air Gross Profit and EBIT margin since 2009[1268]

(1946) […]*, the Commission notes that Olympic Air has been set up in less than six months, and has been commercially active for less than a year when the transaction was notified.

(1947) [*Analysis of Aegean's financial results in 1999-2003*]*

[…]*

Figure 15 : Aegean initial losses

1267 Parties's reply to the request for information of 24 September 2010.

1268 […]*.

(1948) This fact has also been noted by Athens Airways, which stated that "*The new company, Olympic Air, began flying on 29 September 2009 with the official full-scale opening of the company taking place two days later on 1 October 2009. Given this history, Athens Airways does not consider that historical or prevailing profitability provides a reliable measure of the medium to long term prospects of Olympic Air since its new owner will yet to have fully applied private sector disciplines to this business*".[1269]

(1949) The Commission will analyze these aspects in the next sections.

1.2.3. Operational situation of Olympic Air

(1950) Between the acquisition of Old Olympic's assets by Marfin and the launch of the first commercial flight of New Olympic, Marfin had only 6 months to set-up the new company. Therefore, it appears logical that the first months of (new) Olympic Air have been marked by several operational problems, leading to significant inefficiencies. These inefficiencies led to increased costs which, in turn, had a negative impact on the profitability of the newly created company. However, these issues appear start-up related and not structural (see Annex II for the analysis of Olympic Air costs).

(1951) […]*[1270]

(1952) […]*

[…]*

Table 61 : CASK for Olympic Air and Aegean

Source: Annex 10 A and 10B to reply to Request for Information of 6 September

(1953) However, as evidenced by internal documents, these inefficiencies are currently being addressed by Olympic Air's management, which should decrease the costs and increase the profitability of the airline.

(1954) Furthermore, the cost-cutting initiatives along with the various synergies to be realized with other Marfin's subsidiaries seem to be very significant. In an internal presentation from January 2010, Marfin states that "[…]*".[1271]

1.2.4. Cash and credit lines available to Olympic Air

(1955) […]*

(1956) […]*.

1269 Observations of Athens Airways on the presentation by Olympic Air and Aegean and their advisers at the oral hearing of 11 November 2010, paragraph 5.5 [ID 7255].

1270 […]*.

1271 […]*.

1.2.5. Conclusion on Olympic Air's financial situation

(1957) Olympic Air has been incurring losses. Incurred losses are not significantly higher than what Marfin/Olympic Air have forecasted in the path towards sustainable long-term viability for Olympic Air. Restructuring measures are under way and should provide improved financial results for the airline in the short/medium term.

(1958) Besides, Olympic Air is not an independent company, but is owned by Marfin.

(1959) As such, the financial situation of Olympic Air should be looked at in the context of the broader financial situation of its only parent, Marfin. Olympic Air's exit from the Greek air transport market would be a deliberate decision of Marfin's management to abandon a business activity which would not have lived up to its expectations and not a bankruptcy prompted by Olympics' inability to pay its creditors.[1272]

(1960) The decision by Marfin to liquidate Olympic Air would notably depend on Olympic Air forecasted financial results and on the amount of extra capital to be contributed in order to obtain return on investment for Marfin (taking also into account Olympic Air liquidation costs[1273]). However, Marfin's results will also need to be considered, as well as other qualitative factors like for instance the reputational effect of Olympic Air liquidation on Marfin.[1274]

(1961) Sections X.1.2.6 and X.2.13 address the financial situation of Marfin, as well as its willingness and its incentives to support or liquidate its subsidiary, Olympic Air.

1.2.6. Financial situation of Marfin

1.2.6.1. Marfin's liquidity and creditworthiness

(1962) In June 2007, Marfin's rating was downgraded by Standard and Poor's (S&P) from BBB- to BB. This followed the change in Marfin's strategy from a bank holding company to a listed investment and holding company.

(1963) Following this downgrade, Marfin was able to retain its BB rating. However, in March 2009, following Marfin's announcement of its investment in Olympic, S&P's announced that it was revising its outlook from positive to stable. However, S&P noted that Marfin "*benefits from its net cash position, and we believe that its financial profile will remain sound. This should, in our view, balance the risks inherent in owning equity shares which are very volatile asset class*".[1275]

1272 Olympic Air does not appear to have very significant creditors out of the Marfin group, which could potentially prompt a bankruptcy procedure to be initiated.

1273 It cannot be excluded that the liquidation of Olympic Air would trigger the liquidation/significant downsizing of Olympic Handling and of Olympic Engineering (see Parties reply to question 4.a of Request for information of 15 September 2010). These elements will be assessed as part of the global liquidation costs incurred by Marfin if they decided to let Olympic Air exit the market.

1274 The reputational effects would also likely have a financial impact on Marfin, as the ratings of Marfin could be affected. See Parties' reply to Request for information of 15 September 2010.

1275 Standard and Poor's, Marfin Investment Group Holdings, March 26, 2009.

(1964) Finally, in March 2010, S&P revised its outlook from stable to negative. According to S&P, *"this reflects MIG's investment portfolio, whose diversity, liquidity and asset quality are fairly weak in our view, and which is predominantly exposed to the weakened Greek economic environment"*.[1276] However, S&P noted that "*Offsetting these points, however, are our expectations that MIG's net cash profile will likely persist and that its debt maturity profile is good, and our opinion that MIG's strategic approach is fairly conservative*".[1277]

(1965) According to data by S&P, the historical probability for a company rated BB to go bankrupt in the next year is 0.97%, and 5.21% in the next 3 years.[1278] Therefore, it is very unlikely that Marfin will be unable to meet its financial obligations in the short term.

(1966) On the contrary, in view of its significant cash reserve, Marfin appears to be able to support its subsidiary. Indeed, at the end of the first semester of 2010, Marfin had an amount of cash of EUR 570 million. According to Marfin, "*MIG's cash position ensures that the company is in a strong position to face the continued economic crisis in 2010 and to seize any opportunities that may arise. This liquidity continues to set MIG apart in a domestic environment in which it is undoubtedly difficult to obtain liquidity*".[1279]

1.2.6.2. Marfin's business model and operating performance

(1967) Marfin is a listed holding investing in a variety of listed and private companies. The company describes its aims as "*to deliver superior returns to shareholders, primarily by making private equity-type investments, as well as investments in privatizations and infrastructure projects*".[1280]

(1968) According to independent financial analysts, Marfin's strengths are:

i. *"Strong cash position [...],*

ii. *Leverage in portfolio companies is non-recourse for MIG*

iii. *Relatively defensive profile in holding subsidiaries, particularly food & dairy company Vivartia and health operator Hygeia*

iv. *Successful management track record in raising equity".[1281]*

(1969) Marfin describes its investment strategy as seeking "*to invest in generally sound businesses which it believes, with additional capital and management resources, can*

1276 Standard and Poor's, Marfin Investment Group Holdings, March 19, 2010.

1277 Standard and Poor's, Marfin Investment Group Holdings, March 19, 2010.

1278 Default, Transition, and Recovery: 2009 Annual Global Corporate Default Study And Rating Transitions. Standard and Poor's, 17 March 2010.

1279 See Marfin investor release " FINANCIAL RESULTS: FIRST HALF 2010", 1st September 2010.

1280 See Marfin's website.

1281 CA Chevreux, Marfin Investment group, 17 February 2009.

successfully participate in consolidating fragmented industries or otherwise provide opportunities to extract value".

(1970) However, Marfin has also realized several investments in distressed companies, in order to try to restructure them and make them profitable. For example, Marfin invested in Korasidis, a troubled electronic goods retailer "[…]*".[1282]

(1971) […]*[1283]

(1972) Accordingly, […]*, Marfin's strategy also implies investments in troubled companies which are, by nature, of a long term character because they involve a restructuring of the company and therefore a certain level of financial losses during some years before a return to profitability.

(1973) […]*

[…]*

Table 62 : Financial results of selected loss making Marfin's investments

Source: Parties

(1974) Some other portfolio companies of Marfin have also exhibited temporary but significant losses, such as Attica in 2009. However, no company in Marfin's portfolio was ever put into bankruptcy. The only exit by Marfin from a difficult investment was with Korasidis, when Marfin sold its stake to its partner and manager of the business.

1.2.6.3. Parties' response to the Statement of Objections

(1975) […]*[1284] [1285]

(1976) […]*[1286]

(1977) […]*[1287]

(1978) […]*[1288]

1282 […]*.

1283 […]*.

1284 […]*.

1285 […]*.

1286 […]*.

1287 […]*.

1288 […]*.

2. SPECIFIC CRITERIA FOR THE FAILING FIRM DEFENCE

(1979) When analyzing whether a merger that would otherwise be found incompatible with the internal market is nevertheless compatible with the internal market because one of the merging parties is a failing firm, the basic question to be answered is whether the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger. This will arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger.

(1980) In the case at hand, the Commission has indications that absent the transaction competition in the market would not deteriorate to the same extent as it would should the transaction go through. Indeed, the market investigation revealed that some of the Parties' competitors may have expansion plans as concerns the Greek domestic market, but should the transaction be implemented these plans, even of limited scope, would be abandoned.

(1981) For instance, Athens Airways indicated that it was "*weary about how domestic traffic develops and in particular about the impact a possible Olympic Air (OA) and Aegean Airlines (A3) merger may have on the domestic market, […] states that it cannot make a decision before knowing the outcome of the OA/A3 merger".*[1289]

(1982) In another submission, Athens Airways emphasized that "*The "failing firm" defence could not be satisfied in the present case. Were one of OA or Aegean to fail in the absence of the merger, other less anti-competitive alternative purchasers of the relevant assets would be available. Moreover, following the merger the market share of the "failing firm" would almost certainly be transferred to the merged entity whereas, in the absence of the merger, a competitor such as Athens Airways or Sky Express would clearly have a very good prospect of acquiring all or at least a good part of it".*[1290]

(1983) Finally, Athens Airways has also claimed that "*Turning to profitability assessments at the individual route level, these clearly need to be carried out very carefully. This is because many routes are not fully stand alone, but can be viable as part of a network of routes, with aircraft serving a number of routes and feeding traffic to other routes (thereby boosting the profitability of these other routes). Greece is a market where geography and limited rail/ferry competition allows many routes to exist which can be served with small fleets.*

Moreover, there should be no assumption that lack of profitability would lead to market exit by each party:

(a) there should be no presumption that prevailing challenging economic conditions will persist forever;

(b) if one party exits, Athens Airways would expect that the remaining market leader would enjoy a substantial increase in capacity utilisation, an ability to increase fares and thus higher profits. This incentivises the parties not to exit routes first; and

1289 Agreed minutes of a teleconference call with Athens Airways of 09 September 2010, paragraph 8 [ID 4969].

1290 Athens Airways memorandum Re: Case No COMP/5830 – Aegean / Olympic, 13 August 2010, paragraph 32 [ID 2270].

(c) exit costs – such as redundancy payments – may deter exit.

These factors, of course, mean that low profits do not necessarily mean that one or both of the parties "would in the near future be forced out of the market because of financial difficulties" which is a necessary, but not sufficient argument for the failing firm defence to apply "[1291]

(1984) Therefore, the deterioration of competition on a number of routes would be smaller in case the transaction would not proceed. Indeed the market investigation showed that, absent the transaction, a number of airlines would have had incentives to expand their operations. In addition, it is likely that the negative effects of a liquidation of Olympic Air would be short term while the negative effects likely to be caused by the transaction are structural in nature.[1292]

(1985) The Horizontal Merger Guidelines and the case law of Court of Justice establish a three-pronged test to determine whether a "rescue merger" may be allowed (that is to say, a failing firm defence can be accepted) despite its adverse effects on competition:

i. the allegedly failing firm would, in the near future, be forced out of the market because of financial difficulties if not taken over by another undertaking (see Section X.2.1);

ii. there is no less anti-competitive alternative purchase than the notified merger (see Section X.2.2); and

iii. in the absence of a merger, the assets of the failing firm would inevitably exit the market (see Section X.2.3).[1293]

(1986) As a preliminary remark, it should be recalled that in the case at hand, the factual situation rather corresponds to the one of a "failing division" and not of a "failing firm". This is because the "failing firm" at stake is Olympic Air, a single division of Marfin, which, according to the Parties, is making […]* losses and […]*, unlike the remaining divisions of Marfin. Indeed, as discussed in Section X.1.26, it appears that Marfin is not facing overall financial difficulties. Moreover, the loss incurred by Olympic Air is not of a magnitude which would endanger the whole Marfin group (loss of […]* for the first half 2010, compared to total assets of […]* and cash of […]* on 30 June 2010 according to Marfin's consolidated statements). It should be noted that the qualification of failing firm or of failing division has no bearing on the assessment by the Commission in this case.

(1987) It is for the Parties to provide in due time all the relevant information necessary to demonstrate that the deterioration of the competitive structure that follows the merger is not caused by the merger.[1294]

1291 Observations of Athens Airways on the presentation by Olympic Air and Aegean and their advisers at the oral hearing of 11 November 2010 [ID 7255].

1292 Commission decision of 08 October 2009, M.4381 - *JCI/VB/FIAMM*, paragraph 814.

1293 Horizontal Merger Guidelines, paragraph 90.

1294 Horizontal Merger Guidelines, paragraph 91.

(1988) While the Parties do not explicitly argue a failing company defence, they put forward arguments analyzing the defence criteria.

(1989) [*Parties' agruments as regards the failing firm defence criteria*]*

i. [*Parties' agruments as regards the failing firm defence criteria*]*

ii. [*Parties' agruments as regards the failing firm defence criteria*]*

iii. [*Parties' agruments as regards the failing firm defence criteria*]*

(1990) The Commission analyzed one by one the arguments put forward by the Parties.

2.1. The failing firm (or division) would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking

(1991) [*Parties's arguments as to Olympic's financial situation*]*

2.1.1. The Greek market would be too small for two airlines

(1992) In light of Greece's geographical characteristics, air transport is a particularly well adapted form of travel for domestic trips. Indeed, Greece is a very fragmented country with many islands which can only be reached in a reasonable time by plane. Furthermore, the limited surface transport infrastructure, such as high speed trains, has also to be considered in this regard. In its financial report for 2009, Olympic Air notes that *"Despite the reduction of traffic on international routes, passenger traffic on domestic routes increased compared with 2009. This is partly due to the absence of surface transport infrastructure in Greece, which makes an important means of air transport "(*emphasis added).

(1993) This fact was further emphasized by the CEO of Olympic Air, Mr Simigdalas, who pointed out in February 2010 that there is a potential for the coexistence of two airlines in Greece that would supplement each other, perhaps operating different business models: *"there is a room for more than two, but they have to find their own niches."*[1295] (emphasis added)

(1994) The market investigation did not confirm that the Greek market would be inherently too small to justify operations of more than one airline. According to several of the Parties' competitors, the Greek market can sustain profitable operations of two airlines such as Aegean and Olympic Air. For instance, one airline indicated that it could "*see no specific reason why the two carriers [Aegean and Olympic Air] could not successfully compete on the Greek market*"[1296]. Another indicated that "*the market is big*".[1297]

(1995) A few of Olympic Air and Aegean's competitors nonetheless considered that the Greek market would be rather too small for two competing airlines such as Aegean and

1295 Airlines Business, INTERVIEW: Olympic Air CEO Antonis Simigdalas 16 February 2010 [ID 2240].

1296 Reply to question 48 of phase II request for information to competitors of 11 August 2010 [ID3053].

1297 Reply to question 49 of phase II request for information to competitors of 11 August 2010 [ID 3059].

Olympic Air. It has to be noted though that amongst these few competitors which considered that the Greek market was too small for two airlines, two are close partners of Aegean (notably through code-sharing agreements) and Star Alliance members. Another Greek airline stressed that "*Although their merger will have an impact on fares as well as unemployment, it is unavoidable for their survival. The Greek market is too small for two large carriers*".[1298]

(1996) Many of Olympic Air's and Aegean's competitors having responded to the market investigation also believe that absent the transaction both Aegean and Olympic Air would continue operating on the Greek market, possibly with some network, fleet or business model adaptations.[1299] A competitor explained that if the transaction does not go through, some restructuring measures such as "*some route cancellations or reduction of frequencies. Eventually different optimisation programs (e.g. fleet)*"[1300] could be expected, while another submitted that "*They will continue close cooperation, operating on different routes*".[1301]

(1997) The Commission does not share the Parties' interpretation of the results of the market investigation. First, the Parties argue that seven competitors considered the Greek market not sustainable for two airlines. However, the Commission notes that the counting in the reply to the Statement of Objections includes opinions by companies that are not active in the scheduled air transport of passengers in Greece[1302], a fact that needs to be taken into account when appreciating the results of the market investigation. Secondly, the Parties seem to have misread some of replies to the market investigation. For instance, the Parties claim in their reply to the Statement of Objections that Alitalia would say that the Greek market could not sustain two full service airlines. However, to the question "can a market such as Greece sustain profitable operations of two airlines such as Aegean and Olympic Air", Alitalia replied "*Yes, if cost dynamics are structured in appropriate manner. Furthermore, the Country is fragmented, made up of a number of little islands where the quickest way to get around is by flight. However it should be also considered that the Greek market seems not to be very large and profitable*".[1303] The Parties also claim that Brussels Airlines would state that the Greek market could not sustain two full service airlines such as Olympic and Aegean whilst, however, Brussels Airlines has replied that "*it is possible given the size of the airlines involved*".[1304]

1298 Reply to question 136 of phase I request for information to competitors of 25 June 2010 [ID 1010].

1299 Replies to question 50 of phase II request for information to competitors of 11 August 2010 [ID 3074].

1300 Reply to question 50 of phase II request for information to competitors of 11 August 2010 [ID 3074].

1301 Reply to question 50 of phase I request for information to competitors of 25 June 2010 [ID 2825].

1302 The Parties have included the French charter company XL Airways, and the company Interjet which operates helicopters and private jets in Greece.

1303 Reply of Alitalia to question 49 of phase II request for information to competitors of 11 August 2010 (email sent to the Parties on 25 November 2010).

1304 Reply of Brussels Airlines to question 49 of phase II request for information to competitors of 11 August 2010 (email sent to the Parties on 3 November 2011).

(1998) Overall, the Commission considers that there are no clear indications from the market investigation that the Greek market could not support operations by more than one competing airlines such as Olympic Air and Aegean.

(1999) The fact that both Aegean and, more so, Olympic Air have met some financial difficulties over the recent months does also not provide evidence that the Greek market would be too small to allow sustainable operations by more than one airline. Indeed, this period has been characterized by several specific factors: (i) the harsh price competition between the Parties, notably as a consequence of Olympic Air's policy to gain significant market shares on the domestic and international markets ("[…]*"[1305], "[…]*"[1306]); (ii) by difficult economic circumstances, domestically and internationally[1307]; and (iii) by a down cycle in the airline sector which is anticipated given the cyclicality of the sector. Temporary losses are therefore not surprising or necessarily indicative of the unsustainability of operations by more than one airline.

(2000) [*Parties' submissions as to the structure of the Greek airline market*]*[1308]. The Commission, already in the Statement of Objections, acknowledged that competition on the Greek market was recent. It is for this reason that the Commission carried out a prospective analysis in order to establish the relevant counterfactual and in order to address the possibility that Olympic Air may be a “failing” firm (division) within the meaning of section VIII of the Horizontal Merger Guidelines. Furthermore, the Commission notes that Athens Airways remarked that "*the size of the airline passenger market in Greece can sustain the operation of more than one airline, as Aegean's successful entry and competition against State-aided OA on these routes over a period of more than 10 years has shown. As can be seen from the merging parties' respective flight schedules for the 2010/2011 winter season, the exit by one of the merging parties from certain domestic routes in Greece in which the two parties previously overlapped or the reduction in Aegean's weekly frequencies on such overlapping routes in the 2010/2011 winter season does not affect this conclusion, especially given that (i) both parties continue to overlap on 11 domestic routes and (ii) not only has OA maintained its winter season weekly frequencies on these domestic routes but it has increased them (as compared to its 2009/2010 winter season weekly frequencies on the same routes)*"[1309].

(2001) The Parties have also repeatedly argued that Greece is the only Member State with two full service national airlines[1310]. They have, however, not disputed the fact that in geographic terms, Greece is in a very specific situation compared to other Member States given that it is a fragmented country with many islands and a low development level of surface transport.

1305 […]*.

1306 […]*.

1307 Many full service airlines have made losses in the recent period, as explained in detail in section VII.2

1308 […]*.

1309 Athens Airways Memorandum, 22 November 2010 [ID 6226].

1310 Parties’s response to the Statement of Objections, paragraph 13.20.

(2002) Moreover, it needs to be taken into account that Olympic Air started operations on the last day of September 2009. As a consequence of the start up phase, the losses generated by Olympic Air have also to be considered in this light, and cannot in themselves be seen as evidence that the Greek market would be unable to sustain more than one airline.

(2003) [*Evidence that Olympic's financial situation is attributable to its early stage of development*]*[1311] [1312] [1313] [1314]

2.1.2. Olympic Air's financial difficulties

(2004) […]*[1315]

(2005) […]*

(2006) […]*

(2007) However, it cannot be concluded that the financial performance of Olympic Air is deviating from its business plan to the extent claimed by the Parties. The Commission also considers that Olympic Air financial results can be improved following several restructuring choices as further explained in Section X.2.1.4 and in Annex II.

(2008) […]*

(2009) However, negative equity in itself cannot be considered as a proof that a company will be forced into bankruptcy. For instance, a significant number of firms bought by investment funds, such as Marfin, can display negative equity, due to the financial structure of the acquisition or to a subsequent leveraged recapitalisation.[1316] […]*[1317] […]*[1318] […]*.

(2010) Furthermore, the amount of equity of Olympic Air is directly linked to the initial equity invested by Marfin in the airline. [*Consideration on share capital, equity and losses*]*[1319]

1311 […]*.

1312 […]*.

1313 […]*.

1314 […]*.

1315 […]*.

1316 Martin S. Fridson, Fernando Álvarez, Financial statement analysis: a practitioner's guide, Wiley, 2002, p. 39.

1317 […]*.

1318 […]*.

1319 […]*.

(2011) [*Commission's conclusions: no evidence of Olympic Air's imminent exit of the market*]*.

2.1.3. *Marfin support*

(2012) Olympic Air accounts for only part of Marfin's activities. Olympic Air's withdrawal from the Greek market would accordingly take the form of a management decision to abandon a business activity whose development has not lived up to the expectations of the firm's shareholder.

(2013) Indeed, even if Olympic Air is currently making […]* losses, it could in theory still count on the support of its parent company, Marfin. […]*.

(2014) [*Parties' claim as regards Marfin's support*]*[1320]

(2015) [*Parties' claim as regards Marfin's support*]*[1321]

(2016) [*Parties' claim as regards Marfin's support*]*[1322] [1323]

(2017) However, the […]*% to […]*% percentage is linked to specific circumstances, notably the start-up nature of Olympic Air. The degree of loss in the first year of operations of Olympic Air has no direct bearing on the restructuring potential of the subsidiary. Moreover, considering the cash available to Marfin, the loss incurred by Olympic Air is not of a magnitude which would endanger the survival of Marfin.

(2018) As a result, the level of losses incurred by Olympic Air does not indicate *prima facie* that Marfin's support would substantially endanger Marfin's business to an extent that this support would be an unrealistic option.

(2019) Furthermore, the Commission notes that Marfin's latest financial results exhibit strong performance, with "*consolidated 9M 2010 sales of €1,169.7m, reflecting a 22% growth over the previous year*" and "*consolidated net profits after tax and minorities in the third quarter of €1.9m*". Marfin also noted that "*the company maintains solid capital adequacy having a cash position of €484.9m a a time when liquidity in the domestic environment is of paramount importance and where investment opportunities will most likely emerge imminently*".[1324]

2.1.3.1. Analysis of Marfin's internal emails

(2020) In order to analyze the assessment of Olympic Air's financial and operational situation made by its shareholder, the Commission analyzed the emails of Olympic Air

1320 […]*.

1321 […]*.

1322 […]*.

1323 […]*.

1324 Marfin Press release, Nine months 2010 results, 26 November 2010.

management (CEO and Commercial director), as well as Marfin's management as of September 2009.[1325]

(2021) Indeed, the Parties claim that [*Situation of Olympic Air as seen by Marfin*]*. Accordingly, the Commission tried to verify whether internal communication within Marfin, as well as between Marfin and Olympic Air, demonstrated a high level of concerns.

(2022) [*Olympic's situation as seen by Marfin*]*[1326]

(2023) [*Olympic's situation as seen by Marfin*]*[1327] [1328]

(2024) [*Commission's appraisal of the evidence regarding Marfin's view of Olympic's situation*]*

(2025) However, it is noteworthy that during the same period, Marfin discussed the financial situation of other portfolio companies […]*.

(2026) Therefore, the absence of in-depth discussion between Marfin's management concerning Olympic Air's financial situation and losses clearly indicate that Marfin has not been seriously concerned by the results of the airline so as to […]*.

(2027) Furthermore, the behaviour of Marfin with its other portfolio companies (notably […]* but also […]* and […]*) shows that Marfin has previously tried to support its subsidiary through capital increases and loans, and has never put any significant investment in bankruptcy.

2.1.3.2. Analysis of Marfin's incentives

(2028) [*Marfin's decision logic about whether to let OA exit the market*]*[1329]

(2029) [*Estimated amounts that Marfin would have to cash out in case of OA's exit from the market*]*

[…]*

Table 63: Guarantees from Marfin to Olympic Air

Source: Parties

(2030) Additionally, the right to use the Olympic brand would be returned to the Greek State in case of Olympic Air's bankruptcy. Therefore, Marfin would also lose the potential value of this intangible asset, currently recorded at […]* in its books, compared to the situation where it would sell the company to another investor.

1325 […]*.

1326 […]*.

1327 […]*.

1328 […]*.

1329 […]*.

(2031) Furthermore, as Olympic Air operates on 13 PSO routes, it would have to pay damages to Greece for the breach of Olympic Air's obligation or find sub-contractors which would accept to operate on these routes until the end of the contract passed with HCAA.

(2032) In addition, Marfin also owns Olympic Handling and Olympic Engineering. [*Consequences of OA's exit from the market on Olympic Handling*]*.

(2033) [*Consequences of OA's exit from the market on Olympic Engineering*]*

(2034) [*Potential loss by Marfin in case of OA's exit from the market*]*

[…]*

Table 64 : Potential losses by Marfin in case of bankruptcy

Source: extract from Parties' submission

(2035) According to Table 64, the amount potentially lost by Marfin in case it would let Olympic Air go bankrupt would be potentially around […]* (while direct additional liquidation costs would amount to around […]*). Therefore, there are very strong exit costs linked to the bankruptcy of Olympic Air, which are clearly an incentive for Marfin to support its subsidiary or to sell it rather than incurring a very large financial loss.

(2036) Furthermore, the decision to let Olympic Air go bankrupt would significantly harm the reputation of Marfin. Indeed, Marfin wants to be a model of Greek company having a very favorable reputation among Greek citizens.

(2037) The bankruptcy/liquidation of Olympic Air would also probably undermine Marfin's ability to raise fund in equity markets, as well as its credit ratings. […]*[1330]. Accordingly, the default of Olympic Air would very likely increase the interest rates for all other Marfin's subsidiaries. The relating amounts have not been quantified by the Parties.

(2038) Therefore, reputational effects have a critical importance for Marfin as these could damage the entire Marfin business in the long run. […]*[1331].

(2039) In light of the above, and in particular in light of the costs associated with potential bankruptcy, it appears that Marfin's incentives to keep Olympic Air running are higher than the ones to let it go bankrupt.

2.1.4. Restructuring options

(2040) [*Analysis by the Parties of the similar outcome of the various restructuring options*]*

(2041) However, the methodology followed by the Parties contains several flaws which overestimate the extent of losses to be incurred by Olympic Air and do not allow to conclude that it would be impossible for Olympic to restructure absent the transaction (see Section VIII.2.3.2 and Annex II).

1330 […]*.

1331 […]*.

(2042) Furthermore, the Commission considers that a number of restructuring options are possible for Olympic Air, but they have been rebutted by the Parties.

2.1.4.1. Olympic Air could adopt a differentiated business model

(2043) […]*. However, Olympic Air being a new airline, it is normal that it is still struggling to find its positioning in the market. It would be a natural reaction for Olympic Air to review its strategy after an initial period and adapt its positioning so as to address the Greek demand in the most sustainable and profitable manner. The market investigation suggested that nothing would prevent Olympic Air from adopting a business model differentiated from the one of Aegean[1332], or vice versa.

(2044) [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*[1333]

i. [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*

ii. [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*

iii. [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*

iv. [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*

v. [*Parties' arguments as regards the conversion of OA into a mid/low cost model*]*

(2045) [*Commission's assessment of the Parties' arguments as regards the conversion of OA into a mid/low cost model*]* [1334] [1335] [1336]

(2046) Furthermore, the market investigation showed that, contrary to allegations made by the Parties, travel agents responding to the market investigation consider that the Greek passengers do not seem to be opposed as a principle to the use of LCC, although a certain category of customers (for instance business passengers) might prefer traditional airlines.[1337] When asked whether, in a hypothetical situation where a low cost carrier (such as easyJet or Ryanair for instance) were to enter a domestic route in Greece, Greek customers would be inclined travelling with such low cost carrier, a majority of responding

1332 [Aegean's view of its business model]*

1333 […]*.

1334 […]*.

1335 […]*.

1336 […]*.

1337 Replies to question 73 of phase II request for information to travel agents of 13 August 2010.

travel agents considered that it would indeed be the case.[1338] Also a large majority of responding corporate customers considered that they would use a low cost carrier for domestic routes in Greece, explaining notably that it would be the case "*under condition that the carrier complies with safety rules*"[1339]. However, a limited number of responding corporate customers ruled out this possibility, explaining that LCC may not offer the same degree of flexibility and punctuality as traditional scheduled airlines.[1340]

(2047) Besides, examples of traditional airlines having switched to a low cost model demonstrate that this change could be undertaken quite efficiently and rapidly. For example, Norwegian changed its business model in 2001 and was able to turn to a low cost model in six months.[1341] Aer Lingus also changed its business model from a 'legacy' carrier to a low cost carrier.[1342] Both Norwegian and Aer Lingus have adopted a 'hybrid' low cost model. Finally, Aviation Economics, the economic consultancy which advised the Greek government for the sale of Old Olympic indicated that, according to them, *"this hybrid business model to be the most logical way to rebuild the airline following its privatisation".*[1343]

(2048) In light of the foregoing, the conversion of Olympic Air to a mid/low cost model appears to be an option for Olympic Air, to be considered within the more global framework of a restructuring (including a downsizing)/change in Olympic Air's business model.

(2049) The Parties have argued in their reply to the Statement of Objections that the Statement of Objections was based on pure speculation, […]*.[1344]

(2050) [*Discrepancies between the consultant's conclusions and the Parties' assumptions in relation to Olympic's business model*]*[1345]

(2051) [*Scope of the consultant's mandate*]*[1346] [1347]

1338 Replies to question 74 of phase II request for information to travel agents of 13 August 2010.

1339 Reply to question 49 of phase II request for information to corporate customers of 13 August 2010 [ID 2932].

1340 Replies to question 49 of phase II request for information to corporate customers of 13 August 2010.

1341 Agreed minutes of a teleconference call with Norwegian Air Shuttle ASA of 26 August 2010, paragraph 5 [ID 5248].

1342 Agreed minutes of a teleconference call with Aer Lingus of 10 September 2010, paragraph 1 [ID 5445]; agreed minutes a teleconference call with Norwegian Air Shuttle ASA of 26 August 2010, paragraph 16 [ID 5248].

1343 Agreed minutes of a teleconference call with Aviation Economics of 06 September 2010, paragraph 19 [ID 5394].

1344 […]*.

1345 […]*.

1346 […]*.

(2052) The Parties argue that "[…]*"[1348]. However, the Parties only provide a subjective interpretation of some results from the market investigation but do not provide evidence of their claim. Indeed, the Parties do not contest the result of the market investigation, which has shown that the Greek passengers do not seem to be opposed to the use of LCC.

(2053) Concerning their fleet, the Parties have only argued[1349] that the fact that a fleet comprising different type of aircraft is not in itself incompatible with a mid or low frill operating model was not supported, because it was taken from a book by an aviation specialist. However, the Parties do no contest that several successful LCC, cited in the decision, operate a mixed fleet (such as Cimber Sterling or FlyBe, see recital (2045)).

(2054) [*Effect of internet distribution on Olympic Air's ability to convert to a low cost model*]*. However, the Commission notes that hybrid carriers /LCC may also use a mix of GDS and internet distribution.[1350]

(2055) Moreover, the Parties have argued that the fact that "[*Analysis of impact on Olympic handling and Olympic Engineering*]*".[1351] First, the Commission notes that Olympic Handling and Olympic Engineering are two separate business entities owned by Marfin, and not directly integrated as a part of Olympic Air. Therefore, these entities can be operated separately of Olympic Air, or even sold to potential buyers if they do not fit anymore in the global strategy of Marfin. Furthermore, some European airlines with differentiated business model also have MRO services, such as FlyBe with FlyBe Aviation Services.

2.1.4.2. Olympic Air could join a global alliance absent the transaction

(2056) Moreover, one of the Parties' competitors explained that, absent the merger "*Olympic would most probably join the SkyTeam Global Alliance. Through this operation Olympic would certainly benefit from feeder traffic to Greece and could develop its traffic towards the main SkyTeam partners hubs where their passengers could enjoy connections to the main world destinations. This could help Olympic develop both its leisure and business traffic to and from Greece and become a strong competitor of Aegean which is enjoying the same kind of benefits through its participation in the STAR Alliance*".[1352]

(2057) [*Analysis of the likelihood of Olympic joining an alliance*]*[1353]

1347 […]*.

1348 […]*.

1349 Parties's response to the Statement of Objections, paragraph 13.62.

1350 For instance, easyJet uses both online sales and GDS, see agreed minutes of a conference call with easyJet of 26 August 2010, paragraph 9 [ID 4424].

1351 […]*.

1352 Reply to question 50 of phase II request for information to competitors of 11 August 2010 [ID 3053].

1353 […]*.

(2058) [*Analysis of the likelihood of Olympic joining an alliance*]*[1354]

(2059) [*Analysis of the likelihood of Olympic joining an alliance*]*[1355] [1356]

(2060) [*Analysis of the likelihood of Olympic joining an alliance*]*[1357] [1358]

(2061) [*Analysis of the likelihood of Olympic joining an alliance*]*

(2062) [*Analysis of the likelihood of Olympic joining an alliance*]*[1359]

(2063) [*Analysis of the likelihood of Olympic joining an alliance*]*

(2064) [*Analysis of the likelihood of Olympic joining an alliance*]*[1360]

(2065) It is therefore very likely that, absent the transaction, Olympic Air would have joined an alliance, […]*.

2.1.4.3. Response from the Parties to the Statement of Objections

(2066) The Parties claim that the routes Analyses show that "[…]*".[1361] However, the Commission disagrees with this statement.

(2067) The Commission notes that the routes Analyses essentially consider only one further restructuring scenarios[1362], scenario E (and revised E), as Olympic Air's winter 2010-2011 schedule presently resembles to scenario […]*. Furthermore, the Commission notes that Marfin acknowledges that scenario […]* in terms of routes operated reflects the winter schedule. This therefore implies that in the counterfactual analysis there is only one restructuring scenario that has been studied and suggested, namely scenario E (and revised E); […]*. […]*[1363] However, the Commission does not consider that it is necessary that Olympic Air maintains such status, […]*. Also, the Commission has identified precise examples where the fleet, routes and frequencies considered are suboptimal, and to which the Parties have not responded/nor adjusted their model (discussed in detail in Annex II).

1354 […]*.

1355 […]*.

1356 […]*.

1357 […]*.

1358 […]*.

1359 […]*.

1360 […]*.

1361 […]*.

1362 Agreed minutes of meeting with the Parties of 16 November 2010.

1363 […]*.

(2068) The Commission has performed an in-depth analysis of the routes Analyses and has concluded that the most likely outcome absent the transaction would be that Olympic Air continues domestic operations while it would retrench from international operations where […]*. [*Possible retrenchment of international activity compensated by cooperation agreements with other airlines*]*. […]*. Indeed Olympic Air has entered a number of significant cooperation agreements.[1364] Furthermore, the overall results of Olympic Air domestically provide sufficient evidence that Olympic Air is more likely than not to continue operating the domestic network in combination with a more limited international network, especially since its current fleet is particularly well placed to operate on such routes. According to the Vice Chairman of Aegean, Mr Vassilakis, at the Oral Hearing, […]* (as also confirmed by CEO of Olympic Air, "[…]*"[1365]).

2.1.5. Conclusion on first criterion

(2069) The Parties were unable to provide evidence that the first criterion would be satisfied and that absent the transaction Olympic would exit the market.

(2070) Therefore, on the basis of the evidence in the Commission's file, the Commission's conclusion is that it is unlikely that Olympic would be forced out of the market in the near future because of its financial difficulties if not taken over by another undertaking.

2.2. There is no less anti-competitive purchase than the notified merger

(2071) [*Assessment of existence of potential buyer for Olympic Air's assets*]*[1366]

(2072) [*Assessment of existence of potential buyer for Olympic Air's assets*]*

(2073) [*Assessment of existence of potential buyer for Olympic Air's assets*]*

(2074) As assessed by the Commission in the case COMP/M.993 Bertelsmann/Kirch/Premiere, "*In particular, a mere reference to [Kirch's] lack of success in identifying a partner is insufficient to prove that there is no less anticompetitive alternative available*".[1367]

(2075) The Commission's statements in *Kali und Salz* show clearly that it sets stringent requirements for establishing that there is no possible alternative purchaser to the acquiring undertaking and this view has in fact been upheld by the Court of Justice.[1368]

1364 […]*.

1365 […]*.

1366 […]*.

1367 Commission decision of 27 February 1999, M.993 *Bertelsmann/Kirch/Premiere*, p. 2, paragraph 75.

1368 Joined Cases C-68/94 and C-30/95 *France and Others v Commission (Kali und Salz)* [1998] ECR I-1375.

2.2.1. Marfin does not substantiate that it has looked for another potential buyer

(2076) The Parties argue that most bidders in the first sale process presented bids lower than the Greek government's expectations, or did not comply with the requirement of the procedure. However, several bidders were nevertheless interested by the acquisition of the assets at that time. Notably, Chrysler Aviation, as well as Athens Airways submitted bids for the acquisition of Pantheon Airways. Furthermore, and most importantly, it has to be recalled that the assets put for sale essentially consisted in the right to use the Olympic brand, as well as a limited portfolio of slots. Therefore, the potential acquirers needed to setup the airline in six months, which was a very challenging task and therefore, a factor limiting the number of potential bidders.

(2077) […]*[1369]

(2078) The Commission asked the Parties to submit evidence that there was no realistic prospect of a less anti-competitive purchaser. […]*[1370]

2.2.2. Analysis of Marfin's internal emails demonstrate that less anti-competitive purchases were not seriously considered by Marfin

(2079) [*Analysis relating to alleged contacts between Marfin and potential investors*]*[1371]

(2080) [*Analysis relating to alleged contacts between Marfin and potential investors*]*

(2081) [*Analysis relating to alleged contacts between Marfin and potential investors*]*[1372]

(2082) [*Analysis relating to alleged contacts between Marfin and potential investors*]*[1373]

(2083) [*Analysis relating to alleged contacts between Marfin and potential investors*]*[1374] [1375]

1369 […]*.

1370 […]*.

1371 […]*.

1372 […]*.

1373 […]*.

1374 […]*.

1375 […]*.

2.2.3. *Parties' response to the Statement of Objections*

(2084) The Parties argue in their response to the Statement of Objections that "[…]" and that "[…]*".

(2085) [*Outcome of the Commission's investigation on the existence of several potential buyers interested by OA*]*

2.2.4. *Conclusion on the second criterion*

(2086) The Parties' arguments are insufficient to establish that there is no less anticompetitive alternative to the transaction. The Parties were not willing to identify the third parties with whom Marfin would have negotiated nor the reasons why the negotiations would have been unsuccessful whereas […]*.[1376]

(2087) Therefore, on the basis of the evidence in the Commission's file, the Commission's conclusion is that less anti-competitive alternatives than the proposed concentration are likely to exist.

2.3. In the absence of a merger, the assets of the failing firm would inevitably exit the market

(2088) [*Parties' arguments regarding Olympic's assets*]*.[1377]

(2089) The main assets currently held by Olympic Air, whose future allocation is critical for the competitive dynamic of the Greek air transport market are:

i. The Olympic brand and logo

ii. Olympic Air's slot and bilateral rights

(2090) Aircraft leased by Olympic Air could also be an issue in this regard.

2.3.1. *Olympic brand and logo*

(2091) The right to use the Olympic brand and logo was the main asset bought by Marfin during the sale of Pantheon Airways' assets, as it represented more than [60-70%]* of the total value invested by Marfin in Olympic Air initially.

(2092) However, the Parties have argued that "*the Olympic brand, on the other hand, is not an asset that can sustain a business by itself*".[1378]

1376 Annex 34 to the Form CO.

1377 [Parties' arguments regarding Olympic's assets]*

1378 Overview of the Appropriate counterfactual, document provided by the Parties dated 15 September 2010, p. 5.

2.3.1.1. Commission's assessment of the value of the Olympic brand

(2093) [*Assessment of Aegean's position if the Olympic brand were to be sold*]*[1379]

(2094) [*Assessment of Aegean's position if the Olympic brand were to be sold*]*[1380]

(2095) [*Assessment of Aegean's position if the Olympic brand were to be sold*]*[1381]

(2096) This clearly demonstrates the essential value of the "Olympic" brand in the Greek air transport market, as it is seen […]* as the most important competitive threat.

2.3.1.2. Results of the market investigation

(2097) During the course of the market investigation, the Commission has assessed the importance of brands in the Greek air transport market, as well as the perception of the Olympic brand, in order to evaluate its importance.

(2098) The role of brands may vary according to the industry at stake as, for example, it is possible in some industries to link specific attributes to a particular brand, whereas this is not the case in other industries (for instance, in some commodity-like products).

(2099) In the framework of the market investigation, an overwhelming majority of respondents estimated that brand names and good reputation played a significant role in the choice of an airline by passengers.[1382] A significant number of respondents explained that it was notably due to the implication of the brand in terms of security and reliability. For example, a large travel agent indicated that "*Travel is linked to reliability and security and a good brand name/good reputation company has much more less possibilities of something to go "wrong", but even if something will go "wrong" they do have procedures in place in order to react/response accordingly*".[1383]

(2100) Furthermore, a majority of respondent travel agents considered that Greek customers attach importance to the brand name of an airline when making their travelling decisions[1384]. For instance, a travel agent indicated that "*they give much attention, and that can be proved by the rates of small carriers*".[1385]

1379 […]*.

1380 […]*.

1381 […]*.

1382 Replies to question 68 of phase II request for information to travel agents of 13 August 2010.

1383 Reply to question 68 of phase II request for information to travel agents of 13 August 2010 [ID 2757].

1384 Replies to question 68 of phase II request for information to travel agents of 13 August 2010.

1385 Reply to question 69 of phase II request for information to travel agents [ID 2839].

(2101) Finally, a large majority of the respondents considered that Olympic Air has a brand name particularly appealing to Greek customers.[1386] For example, it was noted by a respondent that Greek customers "*love it like their flag*".[1387]. Many respondents emphasized that the Olympic brand was associated with Greek history, and as such had a very emotional link with Greek customers.

(2102) Therefore, the results of the market investigation clearly demonstrate that the brand is a significant asset in the air transport market in Greece, and that Olympic brand possess a very high brand recognition and appeal, notably for Greek travellers.

2.3.1.3. Conclusion on the Olympic brand

(2103) In case M.4381 *JCI/FIAMM*, the Commission noted that "*one of the main reasons why the merger would entail serious adverse effects in the four national markets is the fact that, in addition to the market share of FIAMM, the notifying party would also acquire the relevant FIAMM brands, which are particularly strong in the countries in question*".[1388]

(2104) The Commission further stated that "*In the failed-firm scenario, the value of these brands would probably be diminished because, in the liquidation process, they would lose part/all of their goodwill (that is to say, customer base). […] Nevertheless, it is still likely that these brands could outlive the previous owner and be usefully purchased by smaller competitors*".[1389]

(2105) Similarly, in the case at hand, the Commission considers that, should Olympic Air be liquidated, the Olympic brand would return to the Greek government and probably be licensed to another existing Greek airline or to a new entrant. Furthermore, the conditions attached by Greece to the license agreement should ensure that the value of the brand itself is not affected by the potential bankruptcy of Olympic Air.

(2106) Therefore, the Olympic brand appears to be the main asset of Olympic Air. This asset is very attractive, and could likely find a potential buyer which would use it in order to operate flights in the Greek market. As a result it cannot be concluded that absent the transaction the Olympic brand would inevitably go out of the market.

2.3.2. Olympic Air's bilateral rights

(2107) An airline's intangible assets mainly include *"its route/traffic rights, and the rights to take-off and landing slots at congested airports"*.[1390]

(2108) Indeed, Olympic Air is entitled to use a number of traffic rights allowing it to operate to certain countries having bilateral air service agreements with Greece.

1386 Replies to question 71 of phase II request for information to travel agents of 13 August 2010.

1387 Reply to question 71 of phase II request for information to travel agents [ID 2839].

1388 Commission decision of 08 October 2009, M.4381 - *JCI/VB/FIAMM*, paragraph 809.

1389 Commission decision of 08 October 2009, M.4381 - *JCI/VB/FIAMM*, paragraph 809.

1390 Morrell, Peter, Airline Finance, Ashgate, 2007, page 75.

(2109) The bilateral rights to operate flights to certain countries (such as Turkey, Egypt, or Albania) are specifically negotiated agreements which are associated to a route, and give the right to a specific airline to operate on a given route with a specific number of frequencies.

(2110) Traffic rights are considered as government property, and revert back to the State in case the airline ceases traffic. Therefore, should Olympic Air cease business, these traffic rights would revert back to the Greek state and be allocated to other airlines, sometimes including but not limited to Aegean. Therefore, these assets would remain in the market but be distributed to the different market participants.

(2111) On the contrary, should Olympic Air be merged with Aegean, the traffic rights would be inherited by the merged entity. As a result it cannot be concluded that absent the transaction Olympic Air's traffic right would inevitably exit the market.

2.3.3. Olympic Air's aircraft

(2112) Olympic Air currently leases […]*.[1391]

(2113) The leased aircraft would not be part of the bankruptcy estate and would not be sold by the bankruptcy trustee.

(2114) The Parties claim that "[…]*".

(2115) The situation of the Dash 8 -1000 is quite specific. Indeed, according to the Parties, the current worldwide fleet of Dash-8-100 is of approximately 220 aircraft only and, "[…]*".[1392]

(2116) These aircraft belong to the category of Short Take-Off and Landing ("STOL") aircraft which are the only one able to land on the airstrips of various Greek islands, such as Paros, Naxos or Milos.

(2117) Therefore, it can be assumed that, should Olympic Air cease to operate, other Greek companies such as Athens Airways, Astra or Sky Express would be willing to lease the Dash 8 – 100 so as to operate them on the Greek PSO routes.

2.3.4. Conclusion on the third criterion

(2118) The Parties have not provided sufficient evidence that the third criterion would be satisfied and that absent the transaction Olympic Air's assets would inevitably exit the market.

(2119) Therefore, on the basis of the evidence in the Commission's file, it is concluded that absent the transaction, the assets of Olympic Air would not inevitably exit the market.

1391 […]*.

1392 […]*.

2.4. Conclusion on the failing firm defence

(2120) It is concluded that the Parties have failed to demonstrate that the deterioration of the competitive structure that follows from the transaction is not directly caused by the transaction. The three-pronged test set out in the Horizontal Merger Guidelines is not met as it has not been demonstrated that absent the transaction Olympic would be forced out of the market in the near future, that there is no less anticompetitive alternative to the transaction and that absent the transaction the assets of Olympic Air would inevitably exit the market. Instead, the evidence collected by the Commission during its in-depth market investigation indicates that the criteria for failing firm defence are not met and that the transaction would most likely deteriorate competition to a significant extent, well beyond the extent of the deterioration that could result were Olympic Air to exit the market.

XI. COMMITMENTS

(2121) In order to address the competition concerns identified by the Commission during its market investigation and set out in the Statement of Objections, the Parties submitted commitments on 12 November 2010 (the "Commitments of 12 November 2010") pursuant to Article 8(2) of the Merger Regulation. The Commitments of 12 November 2010 were replaced by a substantially revised set of commitments submitted on 18 November 2010 (the "Commitments of 18 November 2010") following a State-of-Play meeting held on 17 November 2010.[1393]

(2122) Further to the submission of the Commitments of 18 November 2010, the Commission launched a market test in order to gather the views of competitors, customers, airport operators and the HCAA on the effectiveness of the submitted commitments and their ability to restore competition on the markets where competition concerns were identified (the "Initial market test"). A second State-of-Play meeting with the Commission took place on 29 November 2010 to inform the Parties on the preliminary results of the market test. In light of the results of the market test, the Parties presented a new set of commitments on 29 November 2010 (the "Commitments of 29 November 2010") which was subsequently modified on 6 December 2010 (the "Commitments of 6 December 2010") after a third meeting with the Commission held on 30 November 2010. On 6 December 2010, the market test of the Commitments of 6 December 2010 was launched (the "Second market test"). A State of Play meeting took place on 20 December, at which the Parties were informed of the outcome of the Second market test.

1. DESCRIPTION OF THE PROPOSED COMMITMENTS

1.1. The Commitments of 12 November 2010

(2123) The Commitments of 12 November 2010 referred to the market for air transport of passengers on three Greek domestic routes and to the market for attribution of PSO routes in Greece.

1.1.1. Commitments on three Greek domestic routes

(2124) As concerns the three Greek domestic routes, namely Athens-Mytilini, Athens-Rhodes and Athens-Thessaloniki, the Parties essentially committed in favor of the prospective new entrants to the following:

1393 At a State-of-Play meeting held on 17 November 2010, the case team informed the Parties that the initial set of commitments was clearly insufficient. As a result, a substantially modified set of commitments was submitted on 18 November 2010. This triggered an extension of the deadline pursuant to Article 10(3) of the Merger Regulation and paragraph 89 of the Commission Notice on remedies acceptable under Council Regulation No 139/2004 and under Commission Regulation No 802/2004.

(b) - to release slots to operate the following number of frequencies:

(i) Athens-Mytilini: up to […]* frequencies offered daily;
(ii) Athens-Rhodes: up to […]* frequencies offered daily; and
(iii)Athens-Thessaloniki: up to […]* frequencies offered daily;

(c) - to freeze the merged entity's frequencies[1394] for [5-10]* IATA seasons, based on Aegean and Olympic Air combined 2010 summer season frequencies;

(d) - to grant the opportunity to new entrants to enter into an interlining agreement with the Merged Entity, limited to true origin and destination traffic on the Identified City Pair operated by the Prospective Airline; and

(e) - to give access to the Merged Entity's FFP.

(2125) The Commitments of 12 November 2010 were of duration of a maximum of […]* years, subject to two limitations:

(f) - to be able to benefit of the commitments, the total group revenues of the new entrant could not be greater than those of Aegean in the 2009 financial year (or, if applicable, the most recent completed financial year); and

(g) - the commitments on each city pair were in force only until the Merged entity would face competition from two other airlines.

1.1.2. Commitments on the market for attribution of PSO routes in Greece

(2126) As concerns the market for the attribution of PSO routes, the Parties offered a commitment for the four routes referred to in the SO namely (i) Athens-Ikaria (currently operated by Olympic), (ii) Athens-Karpathos (Olympic), (iii) Athens-Kythira (Olympic) and (iv) Thessaloniki-Corfu (Aegean).

(2127) The Parties undertook that the Merged Entity would commit to bid in the next round of tendering process for these routes, due in 2011/2012, at a level not exceeding the current subsidies Olympic or Aegean receive from Greece on these particular routes. These bids would be subject to an indexation mechanism to reflect any increase or decrease in the fuel prices at which Aegean or Olympic purchase fuel since January 2010 (the date on which the bids for these routes were originally submitted to the HCAA).

(2128) The Commitments of 12 November 2010 did not address any other market for which significant impediment of effective competition was concluded in the SO.

1394 A frequency freeze consists in the Parties being prevented from increasing their daily frequencies above the proposed number of frequencies, in case of a new entry based on the use of the commitments.

(2129) The Parties submitted a substantially modified version of the commitments on 18 November 2010.

1.2. The Commitments of 18 November 2010 and the results of the Initial market test

1.2.1. Description of the Commitments of 18 November 2010

(2130) The Commitments of 18 November 2010 incorporated the following substantial modifications to the Commitments offered on 12 November 2010:

(h) - up to […]* daily frequencies on one additional route, namely Athens-Kos were included;

(i) - the number of slots offered on the Athens-Thessaloniki route was increased from […]* to […]*;

(j) - the frequency freeze and the condition pertaining to the maximum turnover of the new entrant were removed;

(k) - the condition pertaining to the number of entrants that could benefit from the commitments was removed;

(l) - grandfathering of slots after four IATA seasons was introduced;

(m) - the time window of the slots to be released was narrowed down from […]* to […]* minutes;

(n) - the initial duration of the commitments of […]* years was complemented by a […]*% market share threshold whereby the Commitments would cease to exist on individual routes where a new entrant would acquire a market share of […]*% measured by total number of O&D passengers for two consecutive IATA seasons;

(o) - a provision was added giving a preference to entrants wishing to operate the greatest number of routes; and

(p) - as concerns PSO routes, the indexation formula in the Commitments of 12 November 2010 was clarified.

1.2.2. Results of the initial market test

(2131) Despite the Commission's view that the proposal was insufficient to remedy the competition concerns identified in the SO, a market test was launched on 19 November 2010 in order to gather the views of the relevant market participants.

(2132) According to the results of the initial market test, the technical aspects of the Commitments of 18 November were in general perceived as adequate, however several respondents indicated the need for improvements, notably as concerns additional slots on the routes for which commitments had been offered and inclusion of other routes within the scope of the commitments.[1395] In addition, several respondents pointed out the inappropriateness of the slot commitments in view of the lack of congestion at Athens and other Greek airports.[1396]

(2133) The market test also revealed some rather general and not sufficiently specified entry projects, the analysis of which led the Commission to conclude that these projects cannot be considered as sufficiently concrete and credible to remedy the competition concerns. Further explanation on this issue is provided below in section XI.2.

(2134) Overall, in view of the insufficient scope of the Commitments of 18 November 2010 and lack of any credible entrants, the proposed package was considered inadequate to solve the competition concerns identified in the SO. The Parties were informed accordingly in a State-of-Play meeting on 29 November 2010.

(2135) The Parties, in order to enlarge the scope of the Commitments and provide additional incentives to potential entrants, submitted a further substantially modified version of the Commitments on the same day.

1.3. The Commitments of 29 November 2010

(2136) In addition to what was offered in the Commitments of 18 November, the Commitments of 29 November 2010 included the following substantial changes:

(q) - slot releases on three additional routes (bringing the total number of the routes subject to commitments to seven):

(i) Athens–Chania: up to […]* frequencies per day;

(ii) Athens-Chios: up to […]* frequencies per day; and

(iii) Athens-Herakleion: up to […]* frequencies per day;

(r) - a frequency cap whereby the Parties committed not to add frequencies beyond those operated in aggregate by Aegean and Olympic during the 2010 IATA summer season, for [5-10]* IATA seasons;

(s) - the availability of non-discriminatory access to ground handling and MRO services at AIA or at any destination airport for the seven identified city pairs;

1395 For example, reply of Hellas Jet to questions 4 and 6 of the request for information to competitors of 19 November 2010 [ID 6596]; reply of Athens Airways to the request for information to competitors of 19 November 2010 [ID 6584]; reply of Hellenic Imperial to the request for information of competitors of 19 November 2010 [ID 6691]. See also replies of customers to question 4 of the request for information to customers of 19 November 2010: many of the participants consider the number of slots offered to be insufficient.

1396 For example replies of the HALPA [ID 6920] and Athens Airways [ID 6584] to the request for information of 19 November 2010.

(t) - access to further destinations via the interline agreement, that is, including also "any behind or beyond routes that connect onto the relevant Identified City Pair and operated by the Prospective Airline", and

(u) - fare control commitment whereby the merged entity would not increase their published fares on the routes subject to the commitments for a period of four consecutive IATA seasons.

(2137) Upon the reception of the new package, the Commission informed the Parties that measures such as frequency freeze could have the effect of not allowing the consumers to reap full benefit of the highest possible amount of frequencies offered as a result of competitive interaction of market participants. In addition, the Commission explained that a fare control commitment would be very difficult to implement and to monitor and would go against the objective of letting the market forces set the market price for products and services.

(2138) The Parties then submitted a new version of the Commitments on 6 December 2010.

1.4. The Commitments of 6 December 2010

(2139) The Commitments of 6 December 2010 incorporated the following substantial modifications to the previous version of 29 November 2010:

(v) - the fare control mechanism and the frequency freeze were removed;

(w) - slot releases on two additional routes (bringing the total number of the routes subject to commitments to nine, namely, all the routes were the transaction would lead to the elimination of actual competition between the Parties and for which competition concerns were maintained in this Decision):

i) Athens–Samos: up to […]* daily frequency; and

ii) Athens–Santorini: up to […]* daily frequency during the IATA winter season and up to […]* daily frequencies during the IATA summer season.

(x) - the time window of the slots to be released was narrowed down from […]* to […]* minutes.

(2140) The second market test, aimed at gathering views of all relevant market participants, was launched on 6 December 2010. The results of this market test are discussed in the next section.

2. Assessment of the Commitments

2.1. Analytical framework

(2141) Where a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger. The commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission will consider all relevant factors including *inter alia* the type, scale and scope of the proposed commitment, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.[1397]

(2142) It is for the Parties to put forward commitments.

(2143) As concerns the exact form of the commitments, the Court pointed out that while the Merger Regulation lays down the principle whereby the Commission may authorize a merger only if the proposed commitments address the competition concerns identified, it *"leaves it a wide discretion as to the form which the commitments in question may take."*[1398]

(2144) The commitments put forward by the Parties in this case mainly consist in a so-called "access remedy".[1399]

(2145) If the access commitments actually make entry by sufficient competitors timely and likely, they can be considered to have a similar effect on competition in the market as a divestiture. If it cannot be concluded that the lowering of the entry barriers by the proposed commitments will likely lead to the entry of new competitors in the market, the Commission will reject such remedy package. The notice on remedies points out specifically that, in air transport mergers, a mere reduction of barriers to entry by a commitment of the parties to offer slots on specific airports may not always be sufficient to ensure the entry of new competitors on those routes where competition problems arise and to render the remedy equivalent in its effects to a divestiture.[1400]

(2146) In this context, the Parties submit that the mere existence of the commitments will discipline their pricing behaviour as any attempt to increase prices would certainly attract new entry as a result of which the merged entity, faced with competition, would be forced to decrease prices. The Parties claim that the correct legal standard under which to assess the commitments is the removal of barriers to entry so that entry may occur in the event of an anti-competitive post-transaction effect such as price increase. In case such price increase does not materialize, the Parties claim that there is no need for an immediate entry.

1397 See Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("the notice on remedies"), paragraphs 5, 9, and 12 (OJ 2008/C 267/01).

1398 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197: *"Article 6(2) of Regulation No 4064/89 provides that the Commission may authorise a merger if the commitments proposed by the parties dispel the serious doubts as to the compatibility of the merger with the common market. Regulation No 4064/89 thus lays down the objective to be achieved by the Commission, but leaves it a wide discretion as to the form which the commitments in question may take."*

1399 See Notice on remedies, paragraphs 62 et seq.

1400 See Notice on remedies, paragraph 63.

(2147) According to paragraph 68 of the Horizontal Merger Guidelines, *"for entry to be sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger."*[1401]

(2148) Even though the Merger Regulation generally does not require the identification of a new entrant, this *"may be necessary in certain cases [...] in particular where no competitor shows any interest in entering affected routes."*[1402] It follows that when various competitors had expressed an interest in entering the affected markets, no such identification is required[1403]. *A contrario* when no competitor shows credible interest, the Commission may require to identify the new entrant(s) on problematic routes so as to ascertain that an entry is likely to occur.

(2149) In the present case there is no evidence that a mere threat of entry would be sufficient to constrain the merged entity, in particular in view of the fact that there is currently no other airline with a base at Athens and which would be sufficiently strong to exercise credible competitive pressure on the merged entity. Moreover, as it is explained in more detail below, the Commitments submitted in the present case fail to remove the barriers to entry identified in Section IX 1.5.

(2150) The Commission investigated the extent to which potential entrants may reconsider their decision not to enter the affected routes precisely in the circumstances where the merged entity would increase prices post transaction and in case the entry does not occur, the extent to which market participants believe that the mere existence of commitments would discipline the merged entity's pricing behaviour.

(2151) The effectiveness of the submitted Commitments and the results of the market test have been analysed with a view to notably determining whether they create a prospect of entry that is likely, timely and sufficient to exert competitive constraint on the merged entity so as to offset anticompetitive effects specifically established in this Decision at the stage of the assessment.[1404]

2.2. Effectiveness of the submitted Commitments and their suitability to remove competition concerns identified in the present case

2.2.1. General features of the Commitments packages offered by the Parties

(2152) All Commitments packages offered by the Parties have one common feature, consisting in the offer to release a number of slots at various Greek airports connecting the routes for which competition concerns were identified. While the Commitments of 12 November 2010 contained slots concerning only three routes, the Commitments of 6 December 2010 offered slots to Prospective New Entrants with respect to all routes

1401 The three characteristics of entry, i.e. likely, timely and sufficient are cumulative.

1402 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197.

1403 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 206: *"The Commission was not required to identify a definite new entrant since various competitors had expressed an interest in entering the affected markets."*

1404 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR, paragraph 239 .

where this Decision found that the proposed transaction would lead to significant impediment of effective competition, except for routes where significant impediment of effective competition was identified in the SO in connection to the elimination of potential competition between the Parties.

(2153) The slot commitments are accompanied by various ancillary commitments, which are common in the airline merger cases, in particular the access to FFP of the merged entity and the possibility for new entrant to conclude interlining agreement with the merged entity. Moreover, the Commitments of 29 November 2010 and of 6 December 2010 also include non-discriminatory access to ground handling and MRO services at AIA or at any destination airport for the relevant identified city pairs.

(2154) Besides, in addition to these commitments, the Parties also offered a frequency freeze and/or a form of price control in the Commitments of 12 and 29 November 2010, whereby prices could not be increased on some routes. These two measures were ultimately removed from the Commitments submitted by the Parties.

(2155) Before analysing the Commitments submitted by the Parties on 6 December 2010, it should first be underlined that the present case is characterized by two main features:

i. the transaction amounts to the merger of the only two scheduled airlines based at AIA and *de facto* covering the totality of the Greek domestic scheduled market; and

ii. contrary to previous merger cases[1405], the airports concerned by the case at hand, and in particular AIA, are generally not slot congested to the extent that slots would constitute a barrier to entry that could not be overcome by potential new entrants.

(2156) As explained extensively in this Decision, in order to be able to exert sufficient competitive constraint on the merged entity so as to counteract post transaction potential price increase, a new entrant would in particular have to be based at AIA, have a credible brand to compete with the one of the merged entity, and be in a position to develop its connecting/feeder traffic. It follows that in order to be effective, any commitment in the present case would have to address these issues.

(2157) Despite the fact that the Commission informed the Parties that the Commitments essentially based on slot releases at Greek airports were unlikely to resolve competition concerns in the present case[1406], the Commission market tested the Commitments of 6 December 2010 to test their effectiveness with the relevant market participants.

2.2.2. Outcome of the market test on slot and ancillary commitments

(2158) The market test of the Commitments of 6 December 2010 was aimed at verifying the extent to which slot commitments and ancillary commitments proposed by the Parties are likely to address competition concerns identified in the present case and

1405 See for instance Commission decision of 22 January 2010, M.5440 - *Lufthansa/Austrian Airlines* and Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*.

1406 Email of the Commission to the Parties of 26 November 2010, 19:24.

whether credible new entrants have plans to enter the routes of concern. Over 80 market participants replied to the Commission's market test questionnaire.

Slot commitments

(2159) Overall, the outcome of the market test confirmed the Commission's analysis, as also reflected in Section IX.1.4, that slots are not the main barrier to entry in this case, at least as most of the airports are concerned.

(2160) The lack of slot congestion in Greece was confirmed by most airports having responded to the Commission's market test in the present case.[1407] In this respect AIA stated that *"[c]ompetition effectiveness should be rather examined in connection to the potential interest of airlines to enter the Greek air transportation market, which seems to provide sufficient space opportunities as per the so far published traffic figures at almost all Greek airports, than solely to the direct effect of the provided remedies."*[1408] Similarly, Corfu airport explained that "*Releasing and transferring of slots is not in our view a satisfactory remedy. Although a few airports for certain days and times of the week might have heavy traffic in the summer months (June to mid October) the acquisition of slots is not a major issue for a new entrant. One way or another a potential entrant will eventually find a suitable slot, especially in the light of the overall diminishing of traffic in the last few years."*[1409]

(2161) HALPA also confirmed that slots are not the appropriate remedy in this case given that slots do not constitute the main barrier to entry: *"The Greek airports (including the proposed destinations Kos, Mytilini, Rhodes and Thessaloniki) are not coordinated in that sense, as they dispose a great number of non used slots. Even the capacity of Athens Airport is actually used at 50%."*[1410] In conclusion, HALPA noted that i) slots are largely available not only in the proposed but all Greek airports, ii) slots available at non-congested airports are not likely to attract new entry.[1411]

(2162) Several airlines also indicate that slots are not the main element that could resolve competition problems identified in this case.[1412] In its observations of 10 December

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1407 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to airports, question 4. Athens, Corfu and Mytilini airports indicated that there is generally a sufficient amount of slots available at Greek airports. Kos airport indicated that slots do constitute a barrier to entry without providing further explanation and/or specifying the times when the airport is congested. Samos airport did not reply to the question whether the slots constitute a barrier to entry, however it indicated that slots are appropriate remedies in this case.

1408 E-mail sent to the Commission by AIA on 23 December 2010 [ID 7509].

1409 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to airports, question 1 [ID 7099].

1410 Reply to the Commission's market test of the Commitments of 23 November 2010, p. 11 of the observations submitted by HALPA [ID 7118].

1411 Reply to the Commission's market test of the Commitments of 23 November 2010, p. 11 of the observations submitted by the HALPA [ID 7118].

1412 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 6.

2010, Athens Airways reiterated that *"[a]s emphasised in [the previous] submission, the mere release of slots does not lower barriers to entry as there is, as a generality, no shortage of slots at airports in Greece."*[1413] According to Hellas Jet, slots do not constitute a barrier to entry to the routes at stake, except for the Athens-Thessaloniki and Athens-Herakleion routes.[1414] Lufthansa explained that *"the affected airports are mainly not coordinated. Hence any New Entrant should be able to obtain all requested slots within the normal slot allocation procedure."*[1415] While Hellenic Imperial initially noted that slots constitute a barrier to entry on the nine routes where commitments were offered by the Parties, in a teleconference call following up on the questionnaire, Hellenic Imperial stated that it does not consider that there is any slot congestion in the Greek domestic airports.[1416] Hellenic Imperial also mentioned that the proposed commitments are unlikely to provide sufficient incentive to new entrants to start operations in competition with the merged entity.

(2163) Besides, the consumer organization Ekpizo noted that "*the offer of slot divestiture does not deal at all with the main issue affecting potential stifling of competition, that is that of the size of the new "monopolistic" carrier.*"[1417]

(2164) In this respect it is also important to recall that in their Reply to the SO, the Parties themselves, agreeing that the extent of slot constraints appear to remain generally limited, conclude that they "*do not consider there to be any concerns with slots at Greek airports*",[1418] even when taking into account that there is a higher demand for slots in the summer season than in winter due to the tourist traffic to and from the Greek islands.[1419]

(2165) As concerns the number of slots offered, the Parties offered to potential entrants to divest slots from the combined Aegean/Olympic IATA summer season 2010 portfolio on the relevant routes, as explained by the Parties in the Form RM. While the number of slots offered appears to generally amount to the overlap between Olympic Air and Aegean' activities in October 2010 (with the exception of notably Athens-Thessaloniki where the overlap in October 2010 was almost eight daily frequencies), some market participants, like Hellas Jet, indicated that the number of slots should be increased, for

1413 Observations of Athens Airways on the improved remedies offered by the parties on 6 December 2010, page 1 [ID 7243].

1414 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 6 [ID 7045].

1415 Reply to the Commission's market test of the Commitments [ID 7231].

1416 Agreed minutes of a teleconference call with Hellenic Imperial, 13 December 2010, paragraph 13 [ID 7428].

1417 Replies to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, question 1.

1418 Parties' response to the Statement of Objections, paragraph 10.50.

1419 Parties' response to the Statement of Objections, paragraph 10.50.

instance so as to allow for a "shuttle service" especially on thick routes like Athens-Thessaloniki and Athens-Herakleion.[1420]

Ancillary commitments

(2166) As concerns ancillary commitments, notably FFP and interlining agreements, the vast majority of competitors considered the scope of the offers as sufficient.[1421] No detailed reasoning was generally provided by the respondents. However, according to Athens Airways, "*interlining and FFP hosting cannot be considered as sufficient to ensure viable market entry […] it is striking that the commitments do not include access to special prorate and codeshare agreements so that the new provider will have equal treatment with the merged entity's airline alliance partners",* and the commitments lack "*sufficient certainty that they would lead to the development of a competitor"*[1422].

(2167) Corfu airport explained that *"Interline agreements sound good but do not really make an effective contribution to encourage new entrants as the bulk of haulage is on a basic route (to and from destinations to Athens airport). A Frequent flyers' program is good but valid for a very small number of passengers and thus makes it a small part of the equation of market entry."*[1423]

(2168) HALPA also noted that "*An interlining agreement would make commercial sense only if it regarded destinations that new entrant doesn't yet serve. Despite the improvement brought by the parties, they still propose an interlining agreement only regarding the "affected" routes and only if the potential entrant operates already in these routes. It means that the interlining agreement would be limited to the 9 national routes covered by the commitments. This commitment doesn't make much commercial sense".*[1424]

(2169) As concerns the commitment to offer to new entrants ground-handling and MRO services on a non-discriminatory basis at airports concerned by the Commitments, the wide majority of respondents considered that this commitment may have positive impact on new entrants wishing to enter the markets where the commitment is applicable.[1425]

1420 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 2a) where apart from the Thessaloniki and Herakleion route, Hellas Jet also requests three instead of two slots for Athens – Mytilini and two instead of one slot offered for Athens – Samos route [ID 7045].

1421 Replies to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, questions 10 and 11; replies to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, questions 3 and 4.

1422 Observations of Athens Airways on the remedies offered by the parties on 18 November 2010, point 13 [ID 6584].

1423 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to airports, question 7.

1424 Observations of HALPA on the improved remedies offered by the parties on 6 December 2010, page 15 [ID 7118].

1425 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, questions 13 and 14.

On the other hand, easyJet highlighted that *"[r]egarding the terms of the MRO offered we do not believe that this is a meaningful remedy as the true price paid by the merged airline can be hidden or bundled in such a way as to render the apparent price paid higher than in fact. Furthermore the merged entity may decide to make the MRO more profitable than the airline thus inflating the charges – given that the charges are a pass through within the group it will may be to their advantage to do this. Finally there is no substitute to the pressures exerted by competitors"*.[1426]

(2170) The outcome of the market test as regards the likelihood of entry of new players into domestic routes is discussed in the next section.

2.2.3. Outcome of the market test about the attractiveness of the proposed Commitments to Prospective New Entrants and likelihood of entry

(2171) While a majority of competitors indicated that in their view the Commitments of 6 December 2010 are sufficient to remedy competition concerns identified in the Commission's market investigation[1427], the outcome of the market test revealed little interest amongst airlines into proposed commitments and did not allow identifying a committed entrant.

(2172) As concerns the crucial question of whether the Commitments are likely to generate an entry on the routes where competition concerns were identified, Corfu airport explained that *"We believe that new entrants will have a difficult task entering and staying in any of these markets for a number of reasons. Firstly with the exception of Ryanair and Easyjet all other companies are relatively new and have very few and small aircraft in their fleet. Secondly passengers will not easily trust small companies with unknown "Brand names". Thirdly there are indications of predatory pricing in some routes where the two parties were operating and new entrants were attempting market share in the past."*[1428]

(2173) Similarly, as explained by the Hellenic Airline Pilot Association in their comments on the proposed commitments in this case *"it is not the absence of available slots that causes the most significant concerns. It is the fact that there is no reliable and interested airline that could enter or expand its business in order to compete in the Greek market."*[1429]

(2174) HCAA in this respect noted that "*As you very well know there is nothing concrete in the Greek aviation market today on either dramatic expansion of existing airlines or sudden appearance of new players in order to safely guess on your queries*."[1430]

1426 E-mail sent to the Commission from easyJet on 9 December 2010 [ID 7202].

1427 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 1.

1428 Reply to the Commission's market test of the Commitments of 6 December 2010, question 6 [ID 7099].

1429 Reply to the Commission's market test of the Commitments of 23 November 2010, page 8 of the observations submitted by HALPA [ID 6816]

1430 E-mail sent from HCAA to the Commission on 10 December 2010 [ID 7376].

(2175) More concretely, as concerns entry plans of airlines that replied to the Commission's market test of the Commitments of 6 December, no airline expressed sufficiently credible interest to enter the routes of concern post transaction. The Parties were informed of that situation in a State of Play meeting held on 20 December 2010.

2.2.3.1. Market test revealed no entry plans from international airlines

(2176) As concerns international airlines that the Parties identified as potential entrants in their response to the SO, at the Hearing and during the meetings with the Commission, namely easyJet, Ryanair, Carpatair, Cyprus Airways and Bulgaria Air, none of these airlines expressed interest in entering the routes of concern.

(a) Carpatair

(2177) Carpatair indicated that entry *"is not in our business plan"* although it added *"we will reconsider in near future"*[1431].

(2178) In a follow up e-mail Carpatair specified the following: *"With regard to our answers [...] to the second [market test] questionnaire [...], we would like to mention the following:--By "near future" we understand 2 to 3 years; --We are only interested in* […]* *on the Greek market; --Our business plan is still "a work in progress""*.[1432]

(2179) As a result, Carpatair's entry into Greek domestic scheduled market cannot be considered as timely and likely as their main interest relates to […]* and would in any event occur at best only in a time horizon of 2-3 years, even in case of an increase in air fares and/or reduction in capacity in the market.

(b) Ryanair

(2180) In the framework of the market test, Ryanair again reiterated their previous position whereby *"Ryanair's commercial decisions on whether to enter on any of the routes will be unaffected by the merger or by the remedies offered. Ryanair is of the view that we would not need to take advantage of any of the proposed remedies in order to enter any of these routes. The sole obstacle to entry on these routes, for Ryanair, is the high airport charges at Athens, not any competitive concern regarding the undertakings involved."*[1433]

(2181) As a result, as already explained in particular in Sections IX.1.5 and IX.1.6, Ryanair's entry is unrelated to the Commitments offered by the Parties or price levels on the routes. The main reason why Greek routes out of Athens do not interest Ryanair is the high airports charges at AIA which are unacceptable to Ryanair irrespective of the Commitments or the merger. As a result, Ryanair's entry into Greek domestic market

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1431 Reply to the Commission's market test of the Commitments of 6 December 2010, question 16 and 20 [ID 7406].

1432 E-mail sent to the Commission by Carpatair on 14 December 2010 [ID 7405].

1433 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 16 [ID 7013]. See also the analysis of the position of Ryanair in Section IX.1.6.2.3.

cannot be considered as timely and likely in the present circumstances, even in case of an increase in air fares and/or reduction in capacity in the market.

(c) Easyjet

(2182) EasyJet does not appear to be interested in the Greek domestic market in general and in the proposed commitment packages in particular. In response to the Commission's market test, easyJet stated *"we are not interested in flying Greek domestic routes and as such we have not undertaken any recent evaluation of them".*[1434] In relation to the proposed commitments, easyJet reiterated that "*The proposed remedies relate to domestic operations which we are not interested in flying and therefore have not looked into for several years.*"[1435] Finally, easyJet stated that "*In summary however I can say that we are not interested in flying Greek domestic routes*"[1436].

(2183) Therefore, and in particular the fact that easyJet's decision not to enter into Greek domestic a market is unrelated to the merger or the offered commitments, easyJet's entry cannot be considered as timely and likely in the present circumstances, even in case of an increase in air fares and/or reduction in capacity in the market.

(d) Cyprus Airways

(2184) Cyprus Airways, which the Parties also quoted as a potential entrant, did not indicate any potential entry plans and indicated that the Commitments offered by the Parties are not a sufficient incentive for them to reconsider this stance. While in response to the first market test Cyprus Airways indicated that it would consider entering the routes concerned by the commitments "*after preparing a business plan for each of these routes separately and provided that the results would justify this entry*,"[1437] in the second market test Cyprus Airways indicated that "*as they appear, the remedies described in the questionnaire may not be sufficient for Cyprus Airways to consider the entrance in the routes to which reference is made, especially under the current market conditions."[1438]* In addition, as already explained in the part of this Decision dealing with merger-induced entry, Cyprus Airways is in a difficult financial situation.

(2185) A press article reports that, in an effort to cut down costs and make savings, Cyprus Airways would contemplate downsizing its flight programme by stopping

1434 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, accompanying e-mails.

1435 Reply to the Commission's market test of the Commitments of 18 November 2010 [ID 7101]. See also the analysis of the position of easyJet in Section IX.1.6.2.3.

1436 Email of easyJet of 9 December 2010 [ID 7202].

1437 Cyprus Airway's reply to question 28 of the request for information of 19 November 2010 [ID 6725].

1438 E-mail sent to the Commission from Cyprus Airways of 13 December 2010 [ID 7341].

several destinations and reducing frequencies in some routes with a view to sub-leasing expensive and redundant aircraft (A330) to other airlines.[1439]

(2186) Therefore, and in particular in view of the company's difficult financial situation, Cyprus Airways' entry plans cannot be considered as likely, even in case of an increase in air fares and/or reduction in capacity in the market.

(e) Bulgaria Air

(2187) In addition, during the State of Play meeting of 29 November 2010, the Parties claimed that Bulgaria Air is a potential entrant into Greek domestic market. However, the Commission notes that the Bulgarian national airline, Bulgaria Air, replied to the first market test that they would not enter the Greek domestic market using the commitments as *"This is no part of Bulgaria Air business plan"*[1440]. Similarly, in their reply to the questionnaire sent within the framework of the second market test, Bulgaria Air indicated that they do not plan to enter any of the Greek domestic routes where competition concerns were identified in the coming four IATA seasons and that even in the event of post transaction price-increases.[1441]

(2188) Therefore, entry of Bulgaria Air into Greek domestic scheduled market cannot be considered as likely, even in case of an increase in air fares and/or reduction in capacity in the market.

2.2.3.2. Market test did not reveal sufficiently committed entrant amongst Greek airlines

(2189) While three Greek airlines (Athens Airways, Hellas Jet, and Hellenic Imperial)[1442] expressed some level of interest in entering some or all of the Greek domestic routes for which competition concerns were identified, careful analysis of their plans and company profiles reveals that similarly to international airlines, no entry by Greek airlines would be likely and sufficient to offset competition concerns identified in the present case.

(2190) In their reply to the SO[1443] and during the Hearing, the Parties identified 5 Greek airlines as potential entrants in the Greek domestic market, namely Astra, Sky Express, Hellas Jet, Athens Airways and Hellenic Imperial. All of these airlines responded to the

1439 The Fileleftheros, 30 December 2010; http://www.philenews.com/main/320,1,4995,0,55007-.aspx [ID 7508]. According to the article, this downsizing is not definitive and most probably finalising any plans to that end will take place after the end of the year 2010 holidays.

1440 Reply to the Commission's market test of the Commitments of 18 November 2010, questionnaire to competitors, questions 28 and 29, [ID 6624].

1441 Reply to the Commission's market test of the Commitments of 6 December 2010, question 16 [ID 7353].

1442 The Commission notes that entry by Hellas Jet, Hellenic Imperial, and Athens Airways would not be cumulative. […]*

1443 Parties' response to the Statement of objections, paragraph 10.54 ff.

Commission's market test of the Commitments submitted by the Parties on 6 December 2010. As explained in section IX.1.6, these are all small airlines whose current fleet does not allow operations on a scale sufficient to address the competition concerns raised by the present transaction.

(a) Astra

(2191) The Greek airline Astra explained that commitments do not play any role in its decision not to enter the Greek domestic market with scheduled operations: *"Ref to your attached questionnaire, please note that [....] are not relevant w our business philosophy and development model of Astra Als because we do not intend to step into scheduled ops no matter what remedies are offered by the parties."*[1444]

(2192) Therefore, entry of Astra into the Greek domestic scheduled market cannot be considered as likely, even in case of an increase in air fares and/or reduction in capacity on the market.

(b) Sky Express

(2193) Sky Express confirmed that it would not enter any of the markets in competition with the merged entity as its *"strategy has always been the exploitation of niche monopolistic –oligopolistic markets and do not enter direct competition with large players, especially if they operate the wrong aircraft (capacity/size) in the wrong markets (distance/market size)."*[1445]

(2194) Therefore, entry of Sky Express into any of the markets in competition with the merged entity cannot be considered as likely, even in case of an increase in air fares and/or reduction in capacity in the market.

(c) Hellas Jet

(2195) Hellas Jet, which had its operating licence recalled by HCAA in November 2010, stated that they would enter on […]*. However, such entry would be subject on the one hand to some general conditions and to some improvements to the commitments package on the other hand. As concerns the improvement to the commitments package, Hellas Jet requested that more slots should be added to four routes, […]* where the total amount of slots to be transferred to new entrants should be respectively […]*.

(2196) More generally, in two conference calls conducted in November 2010, concerning the entry projects and the market test questionnaires, Hellas Jet indicated that in order to enter the routes of concern the following cumulative conditions (which are outside the realm of the proposed package) would have to be met:

(a) Aegean and Olympic's current capacity would have to be reduced by at least […]*%;

1444 Email from Astra of 8 December 2010 [ID 7086].

1445 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 16 and 20.

(b) the level of daily frequencies operated by Hellas Jet and the merged entity would have to be […]*, except for the […]* routes where they would enter with respectively […]* and […]* daily frequencies, and on […]*, where they could accept to have […]*;

(c) apart from the merged entity and Hellas Jet, there would be […]*.[1446]

(2197) However, in a subsequent conference call of 10 December 2010 and with no apparent reason, Hellas Jet modified its statement as to the condition of capacity under point (a) of recital (2196). Instead of a reduction of […]*% capacity of the Parties, the condition now is "*a reduction of at least* […]* *on the routes offered*" whereas the other conditions remain the same as with the previous conference calls.[1447] Later on, in an e-mail of 15 December 2010 responding to the Commission's request for the clarification of the […]*% market share condition, Hellas Jet changed again its position and asked to remove such condition indicating that the […]*% request related to the issue of duration of the commitments pursuant to which they are in place only until the new entrant acquires […]*% market share.[1448] Such repeated changes raise further doubts on the seriousness of the entry projects conducted by Hellas Jet.

(2198) Hellas Jet is a small size airline with 5 to6 employees[1449] working on charter-related activities. The significant expansion in activities, which would be implied by the entry on international and domestic routes, would be all the more difficult to manage.

(2199) As concerns the financing, Hellas Jet indicated it would need to raise EUR […]*[1450] to finance the expansion into […]* domestic routes ([…]*). At this stage however no steps were taken to secure such financing.[1451] In addition, Hellas Jet would need […]* additional aircraft to operate on these routes.[1452] Given that Hellas Jet's 2009 balance sheet shows accumulated loss of EUR 49 million since it started operations, it is unlikely that Hellas Jet would be in a position to proceed with such investment in the

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1446 Agreed minutes of a teleconference call with Hellas Jet of 19 November 2010, paragraph 3 [ID 6627]; agreed minutes of a conference call with Hellas Jet of 24 November 2010, paragraph 4 [ID 6962].

1447 Agreed minutes of a teleconference call with Hellas Jet of 10 December 2010, paragraph 14 [ID 7342].

1448 E-mail of Hellas Jet asking to remove that condition and referring to paragraph 6 of the agreed minutes of 10 December 2010 dealing with market share threshold for the duration of the commitments [ID 7420].

1449 Agreed minutes of a teleconference call with Hellas Jet of 10 December 2010 [ID 7342].

1450 Agreed minutes of a teleconference call with Hellas Jet of 24 November 2010, paragraph 8 [ID 6962].

1451 Agreed minutes of a teleconference call with Hellas Jet of 24 November 2010 [ID 6962].

1452 Agreed minutes of a teleconference call with Hellas Jet of 24 November 2010 [ID 6962]. Hellas Jet later explained that […]*. The situation is unclear for […]* because Hellas Jet did not know whether […]*; agreed minutes of a conference call with Hellas Jet of 10 December 2010, paragraph 5 [ID 7342].

near future.[1453] In any event, even if Hellas Jet were to enter some domestic routes, insufficient financing would make it a particularly weak and vulnerable competitor to the merged entity.[1454]

(2200) The lack of serious consideration of imminent (re)entry on the Greek domestic scheduled market is also evidenced by the fact that no recent business plans or updates to the previous plans have been prepared internally within Hellas Jet.[1455] Finally, Hellas Jet specified that its first priority, before any entry in the Greek domestic routes, remains starting operations […]*.[1456]

(2201) In addition, it seems that Hellas Jet has had some problems in relation to air safety. According to recital 12 of Regulation (EC) No 1071/2010 of 22 November 2010 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community[1457], *"following information resulting from SAFA ramp checks carried out on aircraft of certain Union air carriers, as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: Greece informed about the revocation of the Air Operator Certificate (AOC) and of the operating license of Hellas Jet on 2 November 2010 following the stop of operations on 30 April 2010..."*.

(2202) The Greek press also reported on safety concerns in relation to Hellas Jet's services whereby Hellas Jet has been under scrutiny of the relevant authorities with regard to air safety.[1458] In such circumstances, it is unlikely that Hellas Jet would be able to gain sufficient customer confidence so as to exert credible competitive constraint on the merged entity, notably without very significant financing means, which do not appear to be available. It is indeed reasonable to assume that any safety concerns also have a negative impact on the brand of an airline. Moreover, as Hellas Jet in recent years only engaged in charter operations, it has no brand recognition for scheduled air services and would have to engage in significant investments in order to build up a strong brand.

1453 Hellas Jet noted that these losses specifically during the Cyprus Airways' ownership. The fact remains that the accumulated losses are very significant compared to the capital of the company […]*.

1454 Notably when compared to the sole marketing costs incurred by Olympic Air when it entered the market, and this despite the fact that Olympic Air has a very strong brand in the Greek market.

1455 In 2009, business plan was prepared by Hellas Jet for a […]*. As concerns […]*, no business plan was elaborated.

1456 Agreed minutes of a teleconference call with Hellas Jet of 24 November 2010 [ID 6962].

1457 OJ L 306, 23.11.2010, p. 44.

1458 According to Greek newspaper Eleftherotypia "*Hellas Jet together with Hellenic Imperial Airways (also a Greek company) have been included in EASA's black list. Since February, EASA published the results of the controls which it made for an entire year in 2008. In this 'black list', Hellenic Imperial has the 4th worst safety record place and Hellas Jet the 8th. Both also are included in the very same 'black list' in which are included air carriers from Kazakhstan, S. Africa, Ukraine, Brazil, Ethiopia; Ghana, Madagascar which permanently are characterised as "public dangers" due to big deficits in flight safety rules*"; see http://archive.enet.gr/online/online_text/c=110,dt=27.03.2009,id=60761300 [ID 7459].

(2203) In addition, a majority of customers that replied to the Commission's market test of the Commitments of 6 December 2010 indicated that Hellas Jet would not in their view exert sufficient competitive pressure on the merged entity in case it would decide to enter any of the routes of concern.[1459]

(2204) Therefore, despite their own claims in the response to the Commission's market test, entry by Hellas Jet into Greek domestic scheduled market cannot be considered as likely, even in case of an increase in air fares and/or reduction in capacity in the market. Even if Hellas Jet entered the Greek domestic routes, considering notably their weak financial position, their entry would not be of a sufficient scope to avoid the anti-competitive effects of the merger.

(d) Athens Airways

(2205) Athens Airways revealed interest to enter some of the domestic routes for which competition concerns were identified as of May-June 2011. In this respect it should be recalled that Athens Airways suspended its operations in September 2010 after around 2 years of operations during which it was not able to become commercially viable. This is clearly evidenced by the low market shares Athens Airways gained on all routes where it used to operate, reaching maximum 10% compared for instance to the market shares gained by Olympic Air in 10 months of operation reaching 50 or more on some routes.[1460] This indicates the limited competitive constraint Athens Airways used to exercise on Aegean and on Olympic Air. Ultimately, Athens Airways withdrew from all the routes it used to operate on. In addition, the financial situation of Athens Airways is difficult and HCAA will recommend the suspension of Athens Airways' operating license.

(2206) In any event, Athens Airways conditions its entry to several factors not directly related to the merger and the proposed commitments, such as the level of demand, available seat price offered on the market, capacity/daily frequencies per route, spread of daily frequencies on each route, financing. Key to Athens Airways' decision to enter is also the judgment of the Supreme Administrative Court on Athens Airways' appeal against the HCAA decision which removed Athens Airways' nine PSO routes.[1461]

(2207) It should also be noted that entry by Athens Airways, if it were to occur, would only occur on a small scale. For instance, only a limited number of frequencies would be operated by Athens Airways on some of the routes where SIEC has been identified.[1462]

1459 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, question 6. A majority of customers and other market participants that provided an unconditional YES/NO answer to this question said that Hellas Jet would not be able to exert sufficient competitive pressure on the merged entity post-transaction.

1460 Market shares computed on the basis of air services only.

1461 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 4 [ID 6544].

1462 Athens Airways notes that *"Four of these routes are amongst those 11 routes on which the Commission has identified competition problems in the non-confidential summary of the SO as a result of the proposed merger… 36 of these 71 weekly frequencies will be on the four routes mentioned in the reply to question (i) above. The level of flight frequency/capacity on each of these four routes is extremely low relative to the merging parties' services, upon the basis of the aggregate number of their*

Moreover, Athens Airways has decided to move its (future) base from Athens to Thessaloniki[1463] and hence would not be in a position to react to the market in a same way as the merged entity having a base at AIA.

(2208) The brand is also another issue indicating the limited extent of the competitive constraint that Athens Airways would exert on the merged entity; indeed Athens Airways' brand is very weak compared to the strong and recognised Olympic brand. In order to appeal to Greek domestic travellers in particular, Athens Airways would have to build up a similarly recognizable brand; such action would require significant investment, which appears difficult to obtain in addition to the other investments required to relaunch the company.

(2209) Furthermore, in their reply to the market test relating to the Commitments of 6 December 2010, Athens Airways maintained their views that they considered the commitments insufficient to address the competition concerns. According to Athens Airways, there must be a mechanism for a transfer of market share to a new entrant. To achieve this, i) the merging Parties should proceed to a permanent release of defined time slots; ii) considerable time windows should be given to the new entrant on all the routes of concern, plus two additional routes (Athens–Alexandroupolis, Athens–Kavala); and iii) coupled with a reduction of the Parties' corresponding capacity. As regards ground handling, technical and catering services, the provision of such services should be for a period of 10 years including a ban on termination (save for material breach and insolvency). The services should present competitive prices linked to an inflation index.[1464] Further, Athens Airways stressed that the appropriate commitment is also *"finding a suitable remedy candidate which would ensure effective competition against the merged entity, failing which the merger should not be allowed to proceed"*.[1465] It finally concludes that finding such a "candidate" is uncertain at this point in time. This confirms that Athens Airways' plans are far from being firm.

(2210) Lastly, a majority of customers that replied to the Commission's market test of the commitments submitted on 6 December 2010 indicated that Athens Airways would not in their view exert sufficient competitive pressure on the merged entity in case it would decide to enter any of the routes of concern.[1466]

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combined weekly frequencies on these routes in the summer of 2010. Thus, Athens Airways' 36 weekly frequencies in the summer of 2011 could not be considered as capable of imposing a sufficient competitive constrain upon the parties' activity post merger." Email of Athens Airways to the Commission of 30 November 2010 [ID 6851].

1463 Agreed minutes of a teleconference call with Athens Airways of 17 November 2010, paragraph 10 [ID 6544].

1464 Observations of Athens Airways of 10 December 2010 on the improved remedies offered by the parties on 6 December 2010 [ID 7243].

1465 Observations of Athens Airways of 10 December 2010 on the improved remedies offered by the parties on 6 December 2010, point 10 [ID 7243].

1466 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, question 6. Majority of customers and other market participants that provided an unconditional YES/NO answer to this question said that Athens Airways would not be able to exert sufficient competitive pressure on the merged entity post-transaction.

(2211) Therefore, Athens Airways' entry plans cannot be considered likely, even in case of an increase in air fares and/or reduction in capacity in the market, and, in any event, not sufficient to offset competition concerns identified in the Commission's market investigation in relation to this case.

(e) Hellenic Imperial

(2212) Hellenic Imperial reiterated several times their position whereby the merger had the effect of freezing their entry plans and no further decision have been taken: *"In order to avoid any misunderstanding and for the sake of clarification, we would like to state that the plan of Hellenic Imperial Airways to operate domestic and International flights was frozen early 2010, as a result of the announcement of the merging between Olympic/ Aegean."* [1467]

(2213) However, Hellenic Imperial also expressed interest in entering the Greek domestic market with scheduled operations in their response to the market test of the Commitments of 6 December 2010. Indeed, Hellenic Imperial replied that they would enter on […]*.

(2214) During the conference call held on 13 December 2010, Hellenic Imperial stated that they are in the process of negotiating the […]*. It should also be recalled that Hellenic Imperial studied the profitability of various routes in spring 2010. Pursuant to the business plan from March 2010, Hellenic Imperial argued that their commercial department is currently looking at all domestic routes and will present its findings to the board. However, and as confirmed by Hellenic Imperial, no final decision regarding entry has been taken. Indeed, pending a final decision by the Commission in the present case, Hellenic Imperial put all of its plans on hold in order to keep all options open.[1468]

(2215) Access to international feeder traffic was analyzed as an important element to achieve profitability and load factors on Greek domestic routes. In this respect Hellenic Imperial explained "*that in order to enter Greek domestic market, it would first have to have access to sufficient feeder traffic.*"[1469] However, Hellenic Imperial would likely be at a significant competitive disadvantage vs. the merged entity in this regard. The limited scope of the interlining agreements proposed in the commitments does not appear sufficient to alleviate the handicap faced by Hellenic Imperial to any significant extent.

1467 E-mail of Hellenic Imperial of 17 November 2010 to the Commission's questionnaire of 16 November 2010 [ID 6084]. In this regard, it should be noted that Hellenic Imperial's plans had frozen once the merger was announced. Hellenic Imperial had already prepared commencement of their operations, they even had their in-flight magazine ready. E-mail of Hellenic Imperial to the Commission of 29 November 2010 [ID 6782].

1468 Agreed minutes of a teleconference call with Hellenic Imperial of 13 December 2010 [ID 7428].

1469 This is why for instance Hellenic Imperial *"would need to obtain* […]* *slots at LHR so it can offer this connection to its customers. According to HT (nb: Hellenic Imperial), these slots would attract necessary feeder traffic. HT explains that it only required slots at LHR, and not at other airports, because it is very difficult to obtain slots at LHR, whereas it is much easier to get slots at other large airports (such as Paris CDG or Larnaca). If HT does not obtain the* […]* *slots at Heathrow, it may not enter the Greek domestic market. The subject will be re-evaluated in due time."* [ID 7428].

(2216) The Commission, in order to verify the credibility of Hellenic Imperial's plans and the likelihood of entry into the Greek domestic market with scheduled operations in the near future, issued a decision pursuant to Article 11(3) of the Merger Regulation to obtain Hellenic Imperial's internal documents pertaining to the leasing of the aircraft, the financing and other elements of their business plans.[1470]

(2217)In response to that Decision, Hellenic Imperial explained that their plans were not as mature as initially presented. Indeed, Hellenic Imperial clearly stated that recently "*in view of developments in 2010, notably those with regards to the economical situation in Greece, (Hellenic Imperial) decided not to conduct further investigations into the possibilities of operating on Greek scheduled domestic market".*[1471] […]*[1472] No document exists from Hellenic Imperial about the financing of any investment project. Moreover, Hellenic Imperial specified that --*"it did not request any slots at Greek airports for summer season 2011"*; --*"*[…]**"*.[1473]

(2218) As concerns the credibility of Hellenic Imperial and its brand recognition in the Greek market, the Parties, in the reply to the Statement of Objections, wrote that "*Hellenic Imperial's market intelligence is highly questionable*"[1474]. This is in line with the fact that Hellenic Imperial has low brand recognition in the Greek domestic market as it has been principally active as a charter operator bringing in international traffic. This would be a significant hurdle to overcome and act as a competitive disadvantage vis-à-vis the merged entity.

(2219) It should also be noted that due to problems related to air safety, the AOC of Hellenic Imperial has been suspended from October to December 2008 by the competent Greek authorities and the suspension was lifted only following verification of successful completion of corrective actions by the airline. According to recital 7 of Regulation (EC) No 298/2009 of 8 April 2009 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community[1475], "*following information resulting from SAFA ramp checks carried out on aircraft of certain Community air carriers, as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: ... the competent authorities of Greece lifted the suspension of the AOC of the carrier Hellenic Imperial Airways on 18 December 2008 following verification of successful completion of corrective actions by the carrier...*".

1470 Commission's decision of 15 December 2010 pursuant to Article 11(3) of the Merger Regulation addressed to Hellenic Imperial [ID 7507].

1471 Hellenic Imperial's response to the Commission's Request for information of 15 December pursuant to Article 11(3) of the Merger Regulation [ID 7468].

1472 Hellenic Imperial's response to the Commission's Request for information of 15 December pursuant to Article 11(3) of the Merger Regulation [ID 7468].

1473 E-mail sent to the Commission by Hellenic Imperial on 29 December 2010 [ID 7505].

1474 Parties' response to the Statement of Objections, paragraph 8.64. This statement was made in the context of the discussion of market definition for time sensitive passengers.

1475 OJ L 95, 9.4.2009, p. 16.

(2220) Safety concerns have also been referred to in the Greek press.[1476]

(2221) Under such circumstances, it is unlikely that Hellenic Imperial would be able to gain sufficient customer confidence so as to exert credible competitive constraint on the merged entity. Indeed, the safety concerns are likely to have an impact in particular on the brand, reputation and attractiveness of the airline vis-à-vis the Greek domestic travellers rendering a market entry more difficult than under normal circumstances.

(2222) Lastly, a majority of customers that replied to the Commission's market test of the commitments submitted on 6 December 2010 indicated that Hellenic Imperial would not in their view exert sufficient competitive pressure on the merged entity in case it would decide to enter any of the routes of concern.[1477]

(2223) Therefore, entry by Hellenic Imperial cannot be considered likely, even in case of an increase in air fares and/or reduction in capacity in the market.

2.3. The proposed Commitments do not solve the competition problems identified in the present case

2.3.1. The proposed Commitments do not address the barriers to entry identified in the present case

(2224) As concerns airline cases, the Court noted in the *easyJet v. Commission* case[1478] that the Commission has discretion as to the form of accepted commitments as long as these commitments remedy competition concerns identified by the Commission. The Court further noted that in circumstances where classic divestiture of a business remedy is not possible "*the Commission has to determine whether or not other types of remedy may have sufficient effect on the market to restore effective competition.*"[1479] In the context of the assessment of the merger between Air France and KLM[1480], the Commission found that the main barrier to entry was lack of available slots at big airports. The Court gave reason to the Commission for not accepting the commitments,

1476 According to Greek newspaper Eleftherotypia *"Hellas Jet together with Hellenic Imperial Airways (also a Greek company) have been included in EASA's black list. Since February, EASA published the results of the controls which it made for an entire year in 2008. In this 'black list', Hellenic Imperial has the 4th worst safety record place and Hellas Jet the 8th.Both also are included in the very same 'black list' in which are included air carriers from Kazakhstan, S. Africa, Ukraine, Brazil, Ethiopia; Ghana, Madagascar which permanently are characterised as "public dangers" due to big deficits in flight safety rules"*; see http://archive.enet.gr/online/online_text/c=110,dt=27.03.2009,id=60761300 [ID 7459].

1477 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, question 6. A majority of customers and other market participants that provided an unconditional YES/NO answer to this question said that Hellenic Imperial would not be able to exert sufficient competitive pressure on the merged entity post-transaction.

1478 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197.

1479 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 154.

1480 Commission decision of 9 March 2004, M.3280 - *Air France/KLM*.

which did not address that barrier.[1481] It follows that commitments to be appropriate to solve competition concerns identified in this type of cases should aim at removing the barriers to entry identified in the Commission's market investigation in the case at hand.

(2225) In this case, the main barriers to entry relate neither to the availability of slots, nor to the other features addressed by the ancillary commitments. Indeed, given the absence of airport congestion as concerns most airports in the present case, sufficient slots are available free of charge from the relevant airport authorities. The main barriers to entry in the present case notably relate to the ability of new entrants to set up a base at AIA so as to be able to cover Greek domestic market and to the need for a recognized brand to be able to compete with the one of the merged entity.

(2226) Similarly to the *Ryanair/Aer Lingus* case, where the General Court concluded that the case was different from previous airline mergers and thus the Commission was right not to satisfy itself with slot commitments, the Commission cannot be satisfied with commitments focusing on slot releases and some additional ancillary commitments submitted by the Parties in the present case. *"Unlike previous mergers in the passenger air transport sector (such as those which were at issue in Air France/KLM and Lufthansa/Swiss), the Commission could not be satisfied in the present case that mere slots would ensure access to a route. This is not a transaction involving active operators which have a home airport in different countries. Ryanair and Aer Lingus operate from the same airport, Dublin Airport, where they have significant advantages which could not easily be countered by competitors."*[1482]

2.3.2. *The proposed commitments do not lead to timely, likely and sufficient entry*

(2227) On the basis of the replies of market participants to the Commission's market test of the proposed commitments, no entry seems to be likely into Greek domestic market. Except for the three above mentioned local airlines (Athens Airways, Hellas Jet, and Hellenic Imperial) whose entry is highly doubtful and not sufficiently credible, no airline indicated their willingness to enter any of the routes, be it on the basis of the proposed commitments or on their own initiative.

(2228) As concerns the criterion for a timely entry, the Commission, similarly to recent cases, took into account the fact that the air transport industry was facing a dire crisis at the time of the market test. This might indeed lead to more cautious expressions of interest by potential entrants than under normal circumstances.[1483] However, no airline

1481 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 156.

1482 Case T-342/07 *Ryanair Holdings v Commission* [2010] ECR.

1483 See for instance Commission decision of 22 January 2010, M.5440 - *Lufthansa/Austrian Airlines*, paragraphs 384-385, and Commission decision of 4 December 2009, M.5335 - *Lufthansa/SN Airholding*, paragraph 474: *"In its assessment the Commission has also taken into account the fact that the air transport industry was facing a dire crisis at the time of the market test (April-May 2009), which was reputed to have seriously reduced the entry plans of many airlines. In particular the Commission considers that expressions of interest in entering the Identified City Pairs in these particular circumstances are more cautious than they would have been before the crisis or will be when it is over, and that the period necessary to enter on an Identified City Pair is likely to be longer."*

other than Hellas Jet, Athens Airways, and Hellenic Imperial indicated any plans for entry in the next four IATA seasons. Therefore, taking into account the crisis situation, the conclusion of the Commission remains unaffected.

(2229) Lastly, any entry to be considered as having sufficient effect on the market to restore effective competition would have to happen on a sufficient scale, that is with a base at AIA to be able to cover the Greek domestic routes out of Athens and with a brand that is recognizable in Greek market. In this respect, Mytilini airport stated that for the credibility of an entrant "*the brand name of the (entrant) must be recognizable or the (entrant) must share code with the new merged company. Anyway, the above mentioned Greek companies [ie. Astra or Sky Express] are not recognizable enough to compete head to head with*"[1484] the merged entity.

(2230) The Commission's assessment, based on the entire available evidence and the results of the market test, indicates that, considering the Commitments, timely and likely entry of a sufficient scale would not take place.

2.3.3. In the absence of entry, the mere existence of commitments would not discipline the merged entity

(2231) The Commission investigated in the present case to what extent potential entrants may reconsider their decision to enter the affected routes precisely in the circumstances where the merged entity would increase prices post-transaction and in case the entry does not occur, to what extent market participants believe that the mere existence of Commitments would discipline the merged entity's pricing behaviour.

(2232) As concerns the entry plans in case the price levels would increase post-transaction the outcome was the same as most competitors indicated that their decision not to enter the markets in question is independent of the transaction/commitments and of the price levels and is instead related either to their business strategy of focusing on different markets (niche markets, no competition routes, etc.) or to more long-term macroeconomic indicators.[1485]

(2233) While corporate customers and travel agents had mixed feelings about whether mere threat of entry would be sufficient to discipline the merged entity due to the existence of the commitments, a wide majority of these respondents believe that in the absence of entry the prices will increase on the routes where competition will be eliminated as a result of the merger.[1486]

(2234) Therefore the Commission considers that the mere existence of the Commitments would not discipline the merged entity's pricing behaviour, notably because the

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1484 Reply to the Commission's market test of the Commitments of 6 December 2010 [ID 7015].

1485 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to competitors, question 16.

1486 Reply to the Commission's market test of the Commitments of 6 December 2010, questionnaire to customers and other market participants, question 7 a) and b).

commitments based on slot releases (even accompanied by some ancillary measures) are not adequate in the present case, and would not incentivize sufficiently likely entry.

2.4. Conclusion

(2235) Access commitments, like slot releases, may be acceptable in circumstances where it is sufficiently clear that there will be actual entry of new competitors that would exert sufficient competitive pressure on the merged entity so as to prevent any anti-competitive effects post transaction.

(2236) The Commission's assessment, based on the entire available evidence and the results of the market test is that the proposed Commitments are unlikely to solve competition concerns in the present case in a sufficient and timely manner.

(2237) The market test did not allow for identifying any new entrant that would have credible plans to enter the market and compete with the merged entity on the routes where competition concerns were identified to the extent that such entry could be considered likely. As a result, it cannot be ascertained that the proposed Commitments would be effective in practice. In such situation, when it cannot be concluded with the sufficient degree of certainty that the proposed Commitments aimed at lowering barriers to entry would effectively lead to the entry of new competitors able to exert sufficient competitive constraint on the merged entity, the Commission has to reject such a Commitments package.[1487]

(2238) On the basis of the examination of the Commitments of 6 December 2010, it is concluded that those Commitments are not able to remedy the identified significant impediment to effective competition, and, thus, cannot render the proposed concentration compatible with the internal market.

XII. CONCLUSION

(2239) The Commission concludes that the transaction would significantly impede effective competition in the internal market or a substantial part thereof within the meaning of Article 2(3) of the Merger Regulation, in particular as the result of the creation of a dominant position as regards the possible markets for time sensitive passengers on the Athens-Thessaloniki, Athens-Herakleion, Athens-Chania, Athens-Rhodes, Athens-Santorini, Athens-Mytilini, Athens-Chios, Athens-Kos, and Athens-Samos routes, and on the Athens-Rhodes and Athens-Thessaloniki routes as far as the possible markets for non-time sensitive passengers and all passengers are concerned. For those markets where ferry services may be part of the relevant market, namely the possible markets for non-time sensitive passengers and all passengers on the Athens-Herakleion, Athens-Chania, Athens-Santorini, Athens-Mytilini, Athens-Chios, Athens-Kos and Athens-Samos routes, it is not necessary to definitively conclude on the creation of a dominant position, given that, even in the absence of the creation of a dominant position, the transaction would in any event significantly impede effective competition in the internal market as a result of the elimination of the particularly close

1487 Commission Decision of 27 June 2007, M.4439 - *Ryanair/Aer Lingus*, paragraph 1188.

competitive relationship between Aegean and Olympic Air and thus of the important competitive constraints that both airlines exert on each other pre-transaction.

(2240) In addition, the transaction would significantly impede effective competition in the internal market by the elimination of a credible potential entrant on the Athens-Corfu route.

(2241) The transaction must, therefore, be declared incompatible with the internal market and the EEA Agreement pursuant to Article 8(3) of the Merger Regulation and Article 57 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration whereby the Vassilakis Group, Marfin Investment Group, and the Laskaridis Group acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over a newly merged company, including the businesses of Aegean Airlines S.A. and of Olympic Air S.A., Olympic Handling S.A. and Olympic Engineering S.A, is hereby declared incompatible with the internal market and the functioning of the EEA Agreement.

Article 2

This decision is addressed to:

The Vassilakis Group

31 Viltanioti Str.
145 64 Kifissia, Athens
Greece

Marfin Investment Group

24 Kifissias Av.
151 25 Maroussi
Greece

The Laskaridis Group

5 Xenias Str.
145 62 Kifissia, Athens
Greece

For the Commission
(signed)
Vice-President of the Commission

Annex I

1. YIELD MANAGEMENT INDUCES PASSENGERS TO SELF-SELECT THEREBY REVEALING THEIR RELATIVE SENSITIVITY TO PRICE (OR TIME)

(1). As the Parties correctly point out in their replies to the Statement of Objections and Supplementary Statement of Objections, first and third degree price discrimination are each examples where different groups of consumers are directly identified by the airline which charges different prices for the same ticket type (see also recital (82) of this Decision). For example, an airline may offer different prices for adults or children, for a ticket with identical restrictions - or may offer different fares for passengers travelling in a group. By contrast second degree price discrimination refers to a situation where passengers are presented with the same menu of tickets (with different prices and restrictions) and "self-select" into different groups.[1] Thus, in the context of this case the second degree (or indirect) price discrimination refers to a setting where a menu of options is offered to all and prospective passengers purchase the option that is best for them. By varying the restrictions associated with a particular ticket, and the combinations of prices at different times before departure date, airlines can offer all potential passengers the same set of choices, but allow passengers to sort themselves ("self-select") into groups with differing sensitivity to price.[2]

(2). The Parties argue in their reply to the Supplementary Statement of Objections that "*there are no "supportive grounds" for a time sensitive/non-time sensitive differentiation because the Notifying Parties could engage in second degree price discrimination. This is wrong as a matter of economics. In fact, second-degree price discrimination implies the opposite. Since airlines cannot distinguish between time sensitive and non-time sensitive passengers, they cannot engage in outright price discrimination i.e., first degree or third degree price discrimination. Rather they have to set prices for different fare classes so that time sensitive passengers select one fare and non-time sensitive passengers select another. The key fact is that if the difference in fares is too large, all passengers will go for the cheaper fare. In other words, for a second degree price*

1 As explained by Preston McAfee (2008) a more modern and perhaps more useful delineation among the various types of price discrimination designates the old first and third degrees of price discrimination as "direct price discrimination" and the second degree as "indirect price discrimination." While direct price discrimination may use the actual identity of the customer as a basis for price discrimination, more commonly prices are conditioned on customer characteristics, and customers with the same characteristics receive the same prices.

2 Airlines further differentiate their offering along other dimensions allowing inducing price insensitive passengers to reveal their higher willingness to pay, such as offering superior in-flight service in business cabin, preferential check-in and generous baggage restrictions, access to airport lounges, bonus miles, etc. These, however tend to be of greater relevance in long-haul international flights and any one of them taken separately is likely not decisive for the passenger's purchasing decision, in particular in domestic flights in Greece.

discrimination strategy to work, airlines need to set fares for different booking classes jointly recognizing the interrelationship between them, acknowledging that the cheaper fares constrain the more expensive. By claiming second-degree price discrimination, the Commission is contradicting the claim that time sensitive and non-time sensitive passengers belong to separate markets."[3]

(3). The Parties also state that no discrimination is possible "*if the difference in fares is too large, all passengers will go for the cheaper fare"*. That could be correct to some extent (passengers could also stop to purchase tickets). However, in that situation it is also true that one would observe that all tickets actually sell at the same (cheapest) fare. Hence, there would be no reason for airlines to differentiate their tickets in terms of flexibility, time of purchase or otherwise. This is not observed in this case in the routes of concern. At the same time, it is also correct to state that "*for a second degree price discrimination strategy to work, airlines need to set fares for different booking classes jointly recognizing the interrelationship between them"*. Indeed, airlines would not increase their profits if having identified the relatively price insensitive passengers at the time of booking the airline simply charges an incremental price that reflects the incremental costs of differentiation. However, from the above reasoning it does not follow that "*the cheaper fares constrain the more expensive"* as the Parties claim. To the contrary, if this were true, again there would be no obvious reason for airlines to differentiate their tickets to induce passengers to reveal at the time of booking whether they are relatively more price insensitive. That is to say, airlines would not increase their profits by engaging in yield or revenue management.

(4). The evidence indicates, however, that Olympic Air and Aegean do engage in yield management with precisely the goal to discriminate between price and non-price sensitive passengers and thereby increase their average yield. As mentioned in section VI.1.3.3 of this Decision, respondents to the Commission's market investigation have confirmed that airlines (including Olympic Air and Aegean) are able to identify and discriminate between relatively time sensitive and relatively non-time sensitive passengers (or respectively non-price sensitive and price-sensitive passengers) based on their purchasing decisions at the time of booking. For instance, in response to the question whether the time of booking is a relevant parameter to distinguish two categories of passengers willing to pay different prices for their seat, a wide majority of airlines that replied to that question consider that the time of booking is a relevant parameter in that regard.[4]

(5). […]*[5]. […]*[6]. Indeed an effective yield management system is generally considered as an important competitive advantage and lack of experience using a yield management can deter or

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3 Reply to the Supplementary Statement of Objections, paragraph 3.7(c).

4 Replies to question 8 of phase II request for information to competitors of 11 August 2010.

5 […]*.

6 […]*.

delay potential entrants from exerting a competitive constraint on a long-standing incumbent.[7] […]*[8].

(6). As earlier mentioned, price discrimination exists when price differences do not reflect differences in the costs of providing additional services. In the context of this case the extra cost of providing additional convenience appears to be small relative to the observed price difference. Table 1 below shows the price grid for Aegean for April 2010, which includes in particular all the routes of concern[9]. As is readily apparent Aegean offers 8 classes and four types of tickets with different characteristics in particular with regard to flexibility: flexible business (*Business*), flexible economy (*Flex*), semi-flexible economy (*Semi-Flex*) and restricted economy (*Saver*). […]*. The average increment from a lower class to a higher class is around 17-18 Euros with the largest increment being in the high end steps. […]*.

[…]*

Table 1 : Aegean's Domestic Price Grid for April 2010

Source: Response to request for information of 20 August 2010

(7). [*Olympic's domestic pricing strategy*]*[10]

[…]*

Table 2 : Olympic's Domestic Price Grid for August 2010

Source: Response to request for information of 20 August 2010

(8). With respect to the relative cost of differentiating tickets across classes, and in particular with respect to the flexibility regarding changes or cancellations the Commission notes the following: first, besides the administrative costs (which are largely fixed across passengers segments) the main cost to the airline of fully reimbursing a last minute cancellation is the foregone margin that arises when the plane is at full capacity (technically 100% load factor) and no other customer purchases the released seat. Given that most flights operate at load factors significantly below maximum capacity, the effective costs to the airline of differentiating tickets according to flexibility is relatively small. Indeed, the marginal cost of selling a seat at the time

7 In particular, it boils down to the lack o sufficient historical data to feed in the revenue management system.

8 […]*.

9 The Commission requested actual transaction data by date of purchase. However, Olympic argued that such data was not readily available since its data systems do not record that information. Aegean argued that providing that data for the Commission would be costly and time consuming.

10 […]*.

of departure is virtually zero but when the aircraft departs, the unsold seats cannot generate any revenue and thus can be said to have perished.

(9). It could be argued that besides flexibility, higher priced tickets offer additional convenience that is costly to provide for the Olympic Air and Aegean, and this could explain the price differences across classes. In such case, yield management would not lead to price discrimination. Rather, higher prices for differentiated tickets would reflect higher costs of providing additional services. However, the structure of the price grid for both Olympic Air and Aegean strongly suggests this is not the case. In the case of Aegean[11], the Commission notes first there are three different booking classes both for "restricted economy" and for "flexible economy". This implies that a passenger purchasing say a "restricted economy" ticket may pay 19 Euros, 33 Euros or 48 Euros. In other words, on any given flight some passengers may be paying up to 2.5 times more for essentially identical tickets (i.e. with the same restrictions and related services). As regards these tickets, airlines are essentially able to price discriminate. In this case, the ability to price discriminate arises from the fact that some passengers are booking earlier than others, and thus revealing their willingness to pay for delaying their purchasing decision until they can be reasonably certain of their travel plans.

(10). Moreover, even differences in service across any of the four categories of fares can hardly be justified based on costs. The graph below depicts the characteristics of the four ticket categories offered by Aegean (obtained from Aegean's website on 26 November 2010). Besides flexibility in changes and cancellation there is no difference in terms of additional services such as separate check-in counter, access to lounges, priority in baggage handling or baggage allowance. The only two apparent differences are the extra miles (600 for Flex rather than 200 for Saver) and possibly (though it is not explicitly mentioned) higher quality in-flight catering. Such extra amenities are unlikely to fall in the range of 29-95 Euros (the smallest and largest difference, respectively between Flex and Saver fares).[12] […]*.

11 Similar patterns can be observed for Olympic Air.

12 www.aegeanair.com.

Attributes[1]	Saver	Semiflex	Flex	Business
Changes (date/flight, rerouting)	€20.00 + fare difference	€15.00 + fare difference	✓ + fare difference	✓
Refund[2]	–	–	✓	✓
No-Show fee	100% of the fare	€30.00	€30.00	€30.00
Child (2-12) discount	–	33%[3]	33%	33%
Infant (0-2) discount	90%	90%	90%	90%
Separate check-in counter[4]	–	–	–	✓
Priority in baggage handling[4]	–	–	–	✓
Access to Aegean Club Lounges[4]	–	–	–	✓
1 day free car rental with Hertz	–	–	–	✓
Car rental discounts with Hertz	✓	✓	✓	✓
Round trip check in[5]	✓	✓	✓	✓
Advanced seat selection[6]	✓	✓	✓	✓
Baggage allowance (kg)[7]	20	20	20	30
Miles & Bonus accrual	200 miles	500 miles[8]	600 miles	800 miles

[1] Attributes refer to flights operated by Aegean Airlines. If you wish to read more information regarding fares, please click on the «Fare Rules» section.
[2] When refund of either fare or taxes occurs, then a refund fee of €14 will be charged.
[3] Booking classes K, L, S & J have no child discount.
[4] Gold Miles & Bonus members have a dedicated check in counter, priority in baggage handling and access to Aegean Club Lounges.
[5] When flights are operated within the same calendar day and passengers carry only hand baggage.
[6] Advance seat selection is available up to 24 hours before the flight departure.
[7] Blue M&B members are entitled to an extra 5kg allowance Gold M&B members are entitled to an extra 10kg allowance.
[8] Tickets on X & V class accrue 200 miles.

Table 3 : Aegean's fare classes

Source: www.aegeanair.com

(11). [*Practice of yield management and price-differentiation by the Parties*]*[13] [14]

(12). [*Seasonal variation of the number of seats allocated to different price categories*]*[15] [16]

(13). It follows from the above that through their yield management systems the Olympic Air and Aegean are able to identify passengers who book their tickets at very short notice before

13 […]*.

14 […]*.

15 […]*.

16 […]*.

departure and who have a strong need to travel at that specific time and charge them higher prices. In practice, these customers would not and cannot switch in response to a price increase of 5-10% to a restricted fare class as the restricted fare classes might not be available at that time. Indeed, Aegean confirmed that in its yield management system "[…]*".[17] While Olympic Air indicated that "[…]*" it further explained that "[…]*" (this corresponds to dynamic nature of yield management – see the next section). In practice, this means that as the plane fills up close to departure the lowest booking classes become no longer available to the time sensitive passengers often purchasing tickets at a very short notice. Aegean confirmed this point in a response to the Commission's request for information on 20 August 2010: "[…]*".[18] Such passengers can still switch to an alternative airline that has seats available. But if an hypothetical monopolist engaging in yield management were to control all available tickets sold as the departure date approaches the last-minute passenger facing a price increase would not be able to switch to lower fare ticket as such restricted tickets would not be on offer.

(14). Furthermore, it should be stressed that contrary to what the Parties suggest, substitution between flexible and restricted tickets is often asymmetric. For example, at prevailing prices flexible tickets can exert a considerable competitive constraint on the pricing of restricted tickets. That is to say, a price increase for the restricted tickets would trigger substitution towards the flexible ticket whereas the opposite might not be true. This would imply that there are two product markets to consider depending on whether the initial focus is on flexible tickets or instead the initial focus is on restricted tickets: that is one including flexible tickets and another market including both flexible and restricted tickets respectively.[19] Since Olympic Air and Aegean have a strong market position in both segments it is entirely appropriate to seek to delineate markets taking as the initial candidate market on the one hand flexible tickets and, on the other, restricted tickets. Similarly, an increase in the price of tickets purchased a few months before departure may induce price sensitive customers to delay their purchasing decision. On the other hand, an increase in the price of tickets sold one or two days before departure can hardly induce passengers that remain uncertain about their travel plans to purchase their tickets in advance.[20]

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17 Aegean's response to the Request for Information of 20 August 2010, question 6.

18 Aegean's response to the Request for Information of 20 August 2010, question 15.

19 O'Donoghue and Padilla (2006) make essentially the same argument. In page 100 they state "Substitution may be asymmetric, however. For example, it may happen that at prevailing prices the high quality version may exert a considerable competitive constraint on the pricing of a low quality version […]. In this example, there are two separate product markets: one including the low and high quality versions and another one including the high quality version only".

20 In most instances, price insensitive passengers that attach a relatively high value to flexibility with respect to the time or date of purchase will tend to consider flexible tickets purchased some time in advance of departure and tickets purchased soon before departure as relative close substitutes in the sense that such tickets simply offer interchangeable ways of retaining flexibility. As a result the Commission considers that both types of tickets are part of the product market for time sensitive passengers.

(15). As an illustration, in a recent paper, Carl Shapiro and Joseph Farrell (Chief Economists at the United States Department of Justice and the United States Federal Trade Commission, respectively) offer a relatively simple test, which helps, in certain circumstances, to provide insights on the ability of a hypothetical monopolist to impose a SSNIP in differentiated good markets.[21] Although the application of the test requires certain information that is not available to the Commission in this case it is still helpful to invoke some realistic assumptions in order to illustrate the extent to which an hypothetical monopolist controlling all tickets offered by both Aegean and Olympic Air on the *high-fare flexible tickets* (labelled in fact "Business" by Aegean and Olympic Air) could profitably raise prices by a small amount (say 5%).

(16). To simplify consider a situation where passengers are booking a ticket several months in advance. For example, passengers booking a return ticket on 26 November 2010 for travel in the Athens-Chania route on Tuesday 8 February 2011 and return Wednesday 16 February 2011 - in the morning. The firms offer a menu of prices, depending largely on the flexibility regarding changes and cancellations. Table 2 and Table 3 show the prices on offer for this hypothetical passenger for the months of April 2010 for Aegean and August 2010 for Olympic Air respectively. For the sake of comparing pricing for equivalent periods we have searched on the two airlines's website. Aegean and Olympic Air both offer a flexible ticket in a morning flight for exactly the same price 300 Euros (i.e.150 each way) excluding airport and service fees. The next best alternative (in terms of flexibility) is an Aegean "Flex" ticket at 170 or an Olympic "Economy Fully Flexible" also at exactly the same price.[22]

(17). A hypothetical monopolist is to be assumed that receives all revenues (and sets the price) for all the flexible ("business") tickets of both Olympic and Aegean. As explained by Farrell and Shapiro if "*business*" tickets are a relevant market, this is a merger to monopoly. But the merging firms argue that Aegean "*business*" tickets and Olympic "*Business*" tickets are too narrow a range of products and will fail the Hypothetical monopoly test, so that "*Flex*" and "*Economy Fully-Flex*" tickets from Aegean and Olympic Air, respectively should be included in the relevant market. Doing so lowers the measured shares of Olympic Air and Aegean in the market for “*Business*” tickets, and would thus suggest one should be less concerned about the transaction. Yet, as the authors point out this obviously does not change the transaction's true effect.

(18). If before the transaction, as in the scenario above, "*Aegean business*" tickets sell for 300 and "*Olympic business*" tickets also sell for 300. These are prices net of airport taxes and booking fees. Capacity is already fixed for the given travel dates. It is not known what are the

21 See C. Shapiro, J. Farrel (2010) RECAPTURE, PASS-THROUGH, AND MARKET DEFINITION, 76 Antitrust Law Journal.

22 www.aegeanair.com and www.olympicair.com. As the Parties can easily determine by reference to the their price comparison software the Commission notes that very similar, if not identical menu of prices is offered in advanced purchase by both airlines for a range dates and travel duration in the coming months – in Athens-Chania as well as the other affected routes. This is consistent with the evidence that the price grids (as well as the booking limits per fare class – see next section) are very similar. In this respect this can be considered a representative example.

variable costs per passenger travelling at this fare on those particular dates but it shall be assumed, conservatively that it is around 50. This means that each ticket sold generates a profit margin, or contribution towards fixed costs, of 250. It is further to be assumed, again conservatively that the diversion ratio between "*Aegean business*" tickets and "*Olympic business*" ticket is 20 percent, meaning that 20 percent of the sales captured by cutting the price of Aegean's "*Business*" tickets come at the expense of Olympic "*Business*" tickets. In pricing Aegean's "*Business*" tickets, how do the incentives of a hypothetical monopolist controlling both Aegean's and Olympic's "*Business*" tickets differ from those Aegean operating independently? Since the diversion ratio is 20 percent, for every five extra units sold of Aegean's "*Business*" tickets when its price falls, the hypothetical monopolist sells one fewer unit of Olympic's "*Business*" tickets, which had generated a profit margin of 250. Dividing this by the five extra units of Aegean's "*Business*" tickets, the hypothetical monopolist loses 50 of profits appertaining to Olympic's "*Business*" tickets for each extra unit sold Aegean's "*Business*" tickets. These 50 correspond to a marginal cost of Aegean's "*Business*" tickets that the hypothetical monopolist faces but that Aegean did not. This opportunity cost affects pricing incentives for Aegean's "*Business*" tickets, just as would any other marginal cost. Higher marginal costs generally lead to higher prices. It shall be supposed that Aegean passes through higher marginal costs for its "*Business*" tickets to higher prices at a 60 percent rate. Then the 50 extra marginal costs will lead to a price increase for Aegean's "*Business*" tickets of 30, which equals 10% percent of the prevailing price of Aegean's "*Business*" tickets. But this answers precisely the question posed by the Hypothetical Monopolist test: would the Hypothetical Monopolist raise price by at least a SSNIP, usually taken to be 5 percent of the prevailing price? The answer in this simple, yet realistic example is yes.

(19). It is not straightforward to generalise the above example to a situation where firms, such as airlines engage in yield management. However, as Farrell and Shapiro also note "*when a pre-merger firm controls important substitutes or complements that are excluded from the candidate market, HM market definition risks anomalies. In some cases, these anomalies can be avoided by examining the incentives of a hypothetical cartel comprised of the firms selling the products in the candidate market*". This is also a point made in footnote 4 of the 2010 United States Horizontal Merger Guidelines "*If the pricing incentives of the firms supplying the products in the candidate market differ substantially from those of the hypothetical monopolist, for reasons other than the latter's control over a larger group of substitutes, the Agencies may instead employ the concept of a hypothetical profit-maximizing cartel comprised of the firms (with all their products) that sell the products in the candidate market. This approach is most likely to be appropriate if the merging firms sell products outside the candidate market that significantly affect their pricing incentives for products in the candidate market*" In the context of yield management, indeed an hypothetical monopolist over all "*Business*" tickets resulting from the merger of Aegean and Olympic will also control the pricing (and the profits) resulting from more restricted tickets. Not least since all passengers will travel in the same plane. This implies that by lowering its price for Aegean's "*Business*" tickets the hypothetical monopolist not only loses the contribution margin from selling one less Olympic's "*Business*" tickets. It also loses the contribution margin coming from the passengers that switch from Aegean's "Flex" and Olympic's "*Economy Fully-Flex*". Assuming the same costs this is 120 per passenger gained. In that case the implied extra marginal cost is 170 (50+120) and with a 60% pass-on rate this implies an increase for Aegean's "*Business*" tickets of approximately 100. That is, a hypothetical monopolist, engaging in yield management, and controlling all plane tickets (flexible and restricted) on offer, can profitably increase the prices for "Aegean's "*Business*" tickets" over 30%. This price increase is greater, the larger the diversion ratio between Aegean's and Olympic's "*Business*" tickets, and the larger the pass-on rate, which have been assumed to be conservatively low.

(20). In their reply to the Statement of Objections, the Parties contested the relevance of the "*time sensitive / non-time sensitive*" distinction for the purpose of the market definition in this case. According to the Parties, there is no evidence in the file that there would be an identifiable group of passengers who are time sensitive and who can be discriminated against such that the merged entity would be able to impose a price increase on this group of passengers. In response to the Commission's argument that time sensitive passengers can be identified by Olympic Air and Aegean through purchasing flexible tickets, the Parties claimed that the Commission's market investigations showed that according to the file 40% of corporate customers buy "*economy*" class tickets and as a result Olympic Air and Aegean cannot identify these customers as price insensitive and charge them higher prices.

(21). As concerns the Parties' claim that according to the file 40% of all corporate customers having responded to the market investigation buys restricted economy tickets, the Commission makes two observations. First, such unequivocal percentage is difficult to draw from the file as some customers only indicated that they purchase "*economy*" without specifying whether it is "*economy restricted*" or "*economy unrestricted*". Second, the Commission does not contest that, on the basis of the replies of corporate customers and travel agents, some time sensitive passengers buy restricted or partially restricted economy tickets. However, a review of the replies shows that many corporate customers actually buy flexible or business tickets for company managers, who generally travel most often, and at several instances the consideration of the entire reply of a respondent reveals a different picture than the reply to one specific question might suggest. In any case, the Commission notes that some corporate passengers may not be time sensitive passengers and furthermore restricted tickets bought shortly before travelling are subject to higher prices and are primarily purchased by non price sensitive customers.[23] Given that there is not enough evidence in the market investigation of the actual proportion of the two types of tickets purchased by corporate customers, it is impossible to draw conclusions on the actual importance of restricted tickets as compared to flexible tickets actually purchased by corporate customers.

(22). The Parties further argue in their reply to the Statement of Objections that the replies to question 38 of the phase II questionnaire to corporate customers evidence that the majority of corporate customers and certainly more than the critical loss are capable of defeating any price increase by switching to alternative methods of transport, purchasing cheaper tickets and 45% of them by not travelling at all.[24] However, account shall be taken of the fact that question 38

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23 This point is underlined by Athens Airways in paragraph 2.10 of its observations of 26 November 2010 on the Parties' presentation at the oral hearing.

24 Replies to question 38 of the phase II questionnaire to corporate customers.

related to the switching behaviour of customers in response to the current economic environment in Greece and is not necessarily an indication of the reaction of customers to a price increase by 5-10%. Secondly, it is incorrect to state that 45% of the participants are likely to defeat any price increase by not travelling at all. In reality, 45% have indicated that as a result of the crisis they have reduced, mostly to a limited extent, the number of business trips and not that they stopped travelling at all.

(23). In addition, the Parties argue that the Commission did not analyze the proportion of the hypothetical group of time sensitive passengers that would be needed to defeat a SSNIP imposed by the merged entity post transaction on such a group (critical loss). In this respect, during the hearing the Parties explained that in their view there is a chain of substitution of possibilities for time sensitive passengers such as trading down cheap tickets, shifting to alternative modes of transport and otherwise defeating the potential price increase (by for instance not travelling at all and using instead tools such as video conferencing). This question is addressed in the next section covering the second element of yield management: seat inventory control.

2. SEAT INVENTORY CONTROL

(24). As the evidence presented in the previous section shows, both Olympic and Aegean offer tickets for many origin-destination itineraries in various fare classes. These fare classes not only include business and economy class, with "*business class*" passengers typically seated in the front of the plane and "*economy*" passengers behind, but also include fare classes for which the difference in fares is explained by different conditions for e.g. cancellation options or change restrictions. Therefore the seats on a flight are products that can be offered to different customers at different prices. Since the tickets for a flight have to be sold before the plane takes off, the product is perishable and revenue management can be applied.

(25). At the heart of airline revenue management lays the seat inventory control problem. This problem concerns the allocation of the finite seat inventory to the demand that occurs over time before the flight is scheduled to depart. The objective is to find the right combination of passengers on the flights such that revenues are maximized. The optimal allocation of the seat inventory then has to be translated into a booking control policy, which determines whether or not to accept a booking request when it arrives. It is possible that at a certain point in time it is more profitable to reject a booking request in order to be able to accept a booking request of another passenger at a later point in time.

(26). In order to decide whether or not to accept a booking request, the opportunity costs of losing the seats taken up by the booking have to be evaluated and compared to the revenue generated by accepting the booking request. Olympic Air for example (similarly Aegean), offers early-bird bookings and charges lower fares to passengers who book early in advance of flight departure. This gives Olympic Air the possibility of gaining revenue from seats that would otherwise fly empty. However, it introduces the problem of determining the number of seats that should be protected for late booking, full fare passengers. If too few seats are protected, the airline would *spill* full fare passengers; if too many were protected, flights would depart with empty seats. No simple rule, like protecting a *fixed percentage* of capacity, can be applied across all flights because passenger booking behaviour varies widely with relative fares, routes, season, day of week, time of day, and other factors. Effective control of discount seats requires the detailed tracking of booking histories, expansion of information system capabilities, and careful research and development of seat inventory control rules.[25] The table below lists many of the practical complexities involved in yield or revenue management.

TABLE II

Elements of Airline Revenue Management

Customer Behavior and Demand Forecasting	Revenue Factors
Demand volatility	Fare values
Seasonality, day-of-week variation	Uncertainty of fare value
Special events	Frequent flyer redemptions
Sensitivity to pricing actions	Company or travel agent special vouchers
Demand dependencies between booking classes	*Cancellation* penalties or *restrictions*
Return itineraries	Variable Cost Factors
Batch bookings	Marginal costs per passenger
Cancellations	*Denied boarding* penalties
Censorship of historical demand data	*Goodwill costs*
Defections from delayed flights	Fare Products
Diversions	Number of products
Go-Shows	*Fences* (restrictions)
Group bookings	Problem Scale
Interspersed arrivals	Large airline or airline alliance; e.g., United/Lufthansa/SAS ORION System: 4,000 flights and 350,000 passenger itineraries/day [see GARVEY (1997), BOYD (1998)]
No-shows	
Recapture	
Upgrades	Problem Interfaces
Control System	Market strategy
Booking lead time (often 300 days or more)	*Code-sharing* alliances
Number of *controllable booking classes*	Routing
Leg-based, segment-based, or full *ODF* control	Gate acquisition and schedule planning
Distinct *buckets, parallel nesting*, or *full nesting*	*Fleet assignment*
Reservations systems *connectivity*	
Frequency of control updates	
Overbooking	

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Table 4 : Elements of Airline Revenue Management

Source: *McGill and Van Ryzin (1999) "Revenue Management: Research Overview and Prospects" Transportation Science Vol. 33, No. 2*

(27). Despite the many complexities shown in the above table, the main drivers of pricing in the context of this case are as follows: Olympic Air or Aegean, in all the routes of concern, need to keep a specific number of seats in reserve to cater to the probable demand for high-fare seats. The price of each seat varies inversely with the number of seats reserved, that is, the fewer seats that are reserved for a particular category, the higher the price of each seat. This will continue

25 Indeed today, airlines and other transportation companies view revenue management systems and related information technologies as critical determinants of future success. Indeed, expectations of revenue gains that are possible with expanded revenue management capabilities are now driving the acquisition of new information technology. Each advance in information technology creates an opportunity for more comprehensive reservations control and greater integration with other important transportation planning functions. There is now a substantial literature of journal articles, technical reports, and conference proceedings describing the practice and theory of revenue management. For a technical yet accessible survey and bibliography of work in this important area see McGill and Van Ryzin (1999) "Revenue Management: Research Overview and Prospects" Transportation Science Vol. 33, No. 2.

until the price of seat in the premium class equals that of those in the concession class. Depending on this, a floor price (lower price) for the next seat to be sold is set. In practice, the segmentation approach relies on adequate fences between consumers so that not everyone buys at the lowest price offered. […]*.

(28). […]*

[…]*

Table 5 : Olympic's seat allocation by booking class per period of the year for schedules between 23/08/10-31/03/11

Source: Response to request for information of 20 August 2010

(29). […]*[26]

(30). It is clear from the existence of differentiated pricing and the practice of seat inventory control that a direct implementation of the hypothetical monopolist test in this context is of extreme complexity. The hypothetical monopolist test remains a useful conceptual tool (or *speculative experiment* as stated in the Notice on market definition) to focus one's assessment on identifying the primary source of competition faced by Olympic Air and Aegean - in this case on each other as further explained in the competitive assessment in section 1.9). However, when firms compete with respect to a menu of prices and product characteristics, together with the perishable nature of the product, and fixed short-term capacity, it is not straightforward to isolate a particular candidate market and consider how passengers would respond to an increase in price. In any event, the Parties have not provided data concerning the actual fares charged at time of purchase and the number of seats sold per fare class over time, and for each route of concern. Making a more in depth analysis of the yield management behaviour of Olympic Air and Aegean is not possible.

(31). In large part for these reasons the Commission has considered two alternative markets: one including only price sensitive (time-sensitive) passengers – for which market shares are based on the basis of purpose of travel and/or ticket type, in the absence of other reliable data – and another one including all passengers. In the route-by-route analysis in Section IX.1.9 it is shown that under any of these two alternative market definitions the transaction would eliminate the most important competitor in the routes of concern and thus significantly impede effective competition. This confirms that the *actual* future effects of the transaction are independent of where the analyst draws the boundaries of the markets – as should be the case given that market definition is a means to an end, and not an end in itself.

(32). Nevertheless, the Commission stresses that the potential existence of an market including both price sensitive and price insensitive passengers does not mean that there is no differentiation among passengers, or that the firms are not able to successfully differentiate their product offerings in order to discriminate between them. The description of the two airlines'

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26 […]*.

practices in the previous section shows that this simply does not conform to the facts. In particular, "*flexible*" tickets or tickets purchased "*close to departure*" sold by Olympic directly constraint similar[27] tickets sold by Aegean – and vice versa. Such competitive constraint is however, likely to be stronger than the possibility of switching to a lower priced ticket. This conclusion, inter alia, derives from three facts:

i. First, [*Assessment of differentiation between Olympic Air and Aegean in terms of prices and conditions for the high -fare, flexible tickets*]*. Indeed, as also shown above, even the appearance of the web-site as well as the purchasing experience is very similar and the name of the highest fare class is identical.

ii. Second absolute price differences between high-fare classes, an in particular "*Business class*" and lower fare classes are significant across all routes and cannot readily be explained by differences in costs.

iii. Third there are fare differences even between a given category of fares, further confirming the existence of price discrimination across passengers with higher and lower elasticity of demand for air travel.

(33). Furthermore, even if there were a continuum of passengers with different willingness to pay, this does not mean this would result in a single market including all passengers. Such conclusion, implicitly advanced by the Parties in the Reply to the Statement of Objections, the Hearing and the Reply to the Supplementary Statement of Objections rests on the argument that a substantial number of the most price sensitive passenger would switch to a lower priced alternative (in this case to travel by ferry), in the event the price increase of the cheapest "*economy restricted*" tickets. As a result the merged entity would be forced to offer the same level of discounts for these "economy restricted" or for tickets purchased months ahead of departure. But, in that case no price increases can be imposed on the next segment of slightly less price sensitive customers since these would switch to the *still* heavily discounted "economy restricted" tickets. And so on all the way up the point were the price for "*Business*" tickets, cannot be increased either, despite being sold at several times the price of the restricted ticket[28]. The problem with this argument is twofold.

(34). First, to conclude that there is a single market including all passengers, would imply the absence of effective price discrimination, namely the difference in prices across fares reflects only the relative costs of providing differentiated products. As mentioned above it is difficult to compute the actual costs of differentiation and the Commission has not received precise data to

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27 Actually practically identical as shown above.

28 Note that a 5% increase in the price of a "business ticket" for example in the month of April 2010 is around EUR 7.5. The price difference between ferries and "business tickets", for example in the Athens-Chania route for a trip departing on 20 December 2010 is around EUR 160. Indeed, the price for a one way ticket for Aegean and Olympic in business class is EUR 150 before taxes, but EUR 191.31 and 192.31 after taxes respectively, while the cheapest ticket using Anek or Blue Star Ferries is EUR 28 and 27 respectively (Source: the companies' websites).

do so (even Olympic Air and Aegean don't really seem to be able (or care) to make distinctions when accounting for costs across different fare classes –whether in the case of variable costs such as catering or when it comes to allocating fixed costs which is done per seat, irrespective of fare class). However, it is apparent that absolute differences in prices across fare classes do not correspond to differences in costs. In any event, absent significant differences in cost, if the chain of substitution argument were to apply all tickets whether purchased months or only a few days before departure, would tend to converge in price.[29] However, this is not the case, and even less so as a broader market including all passengers results from the fact that there are essentially no differences across the passengers' willingness to pay[30], or if they are, they are immaterial because the merging Parties are not able to identify such differences through first or third degree price discrimination (the only two situations in which according to the Parties and their economic consultants one could conclude on separate markets).

(35). Second, and more importantly, whether a substantial number of very price sensitive passengers would switch to ferries in the event the price increase of the cheapest tickets would only be a critical aspect in this case if Olympic Air and Aegean are present *only* in the segment for tickets to price sensitive customers.[31] The more relevant question here is whether a hypothetical monopolist (or for that matter, the merged entity in virtually all the routes of concern) would be able to profitably increase the price of flexible tickets, or the tickets sold a few days before departure, taking into account the fact that Olympic Air and Aegean (as would the hypothetical monopolist) both sell airline tickets across all segments.

(36). In fact, the main practical consequence of considering a broader market definition that includes both time sensitive and non-time sensitive passengers is that, in the assessment of the effects of the transaction on each individual route, the Commission takes into account the overall pricing strategy of the merged entity across all fare classes. In other words, the Commission acknowledges that the merged entity would control prices and would simultaneously manage the seat inventory of tickets targeted to price insensitive on the one hand and price sensitive passengers on the other. The Commission does not claim that prices offered for all these fare classes are not interrelated. Indeed they must be, primarily in the sense that closing a booking class too late would prompt additional sales to price sensitive customers which happened to book late and closing it too early would lead to empty seats. Solution methods for the seat inventory control problem are concerned with approximating these opportunity costs and

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29 Analogously in the delineation of geographic market definition, in the appropriate circumstances, partially overlapping areas, may all the in the same broad geographic markets with price differences only reflecting differences in transportation costs.

30 According to the Parties even business passengers today are prepared, and occasionally in fact do, purchase restricted tickets, which implies that there are no relevant differences in passenger sensitivity to price, or differences in the value attached to flexibility with respect to date and time of travel (i.e. time sensitivity). But if this were true this would hardly justify the parties' efforts in differentiating their products along these dimensions (yet mimicking each other's strategies). Indeed, according to the overlapping circles logic we would not even observe any significant price differences in terms of time of purchase.

31 As opposed from paying the higher price or even switching to the more expensive but less restricted ticket.

incorporating them in a booking control policy such that expected future revenues are maximized. With single leg seat inventory control, every flight leg is optimized separately. Network seat inventory control is aimed at optimizing the complete network of flight legs offered by the airline simultaneously.[32]

(37). Littlewood (1972) was the first to propose a solution method for the seat inventory control problem for a single leg flight with two fare classes (e.g. "business flexible" and "economy restricted"). The idea of his scheme is to equate the marginal revenues in each of the two fare classes. He suggests closing down the low fare class (economy restricted) when the certain revenue from selling another low fare seat is exceeded by the expected revenue of selling the same seat at the higher fare (business flexible). That is, low fare booking requests should be accepted as long as

$$f_2 \geq f_1 \Pr(D_1 > p_1)$$

(38). Where f_1 and f_2 are the high and low fare levels respectively, D_1 denotes the demand for the high fare class, p_1 is the number of seats to protect for the high fare class and $\Pr(D_1 > p_1)$ is the probability of selling all protected seats to high fare passengers. The smallest value of p_1 that satisfies the above condition is the number of seats to protect for the high fare class, and is known as the *protection level* of the high fare class. The concept of determining a protection level for the high fare class can also be seen as setting a booking limit, a maximum number of bookings, for the lower fare class. Both concepts restrict the number of bookings for the low fare class in order to accept bookings for the high fare class[33].

(39). Comparing now the pricing of a hypothetical monopolist relative to a duopolist applying a pricing strategy following the above formula, prior to the transaction, each of the merging parties faces a (residual) demand curve that reflects for each level of f_1 the number of passengers that would purchase at a high fare rather than purchasing earlier at f_2 *or* switching to the other

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32 The distinction between static and dynamic solution methods is a second partitioning that can be considered. Static solution methods generate an optimal allocation of the seats at a certain point in time, typically the beginning of the booking period, based on a demand forecast at that point in time. The actual booking requests do, however, not arrive at one point in time but occur gradually over the booking period. Therefore, a better solution method would be one that monitors the actual demand and adjusts the booking control policy to it. This would be a dynamic solution method.

33 Belobaba (1987) extends Littlewood's rule to multiple nested fare classes and introduces the term expected marginal seat revenue (EMSR) for the general approach. His method is known as the EMSRa method and produces nested protection levels, i.e. they are defined as the number of seats protected for the fare class and all higher classes. The EMSRa method does, however, not yield optimal booking limits when more than two fare classes are considered.

airline. Hence the demand for "business class" is necessarily lower (i.e. to the left) for a duopolist than for a monopolist. Considering now a merger to monopoly, demand for the hypothetical monopolist is greater than for each of the duopolists pre-merger. There is no reason for the hypothetical monopolist not to continue to pursue a yield management strategy. But now he faces more demand for the high fare class since prospective passengers cannot switch to the other airline. Hence the probability that D_1 is greater than p_1 increases. This raises the value of the left hand side of the above inequality. As a result holding constant the booking limit for the low-fare class, the hypothetical monopolist, can increase f_1. Alternatively, holding constant f_1, the hypothetical monopolist will set a lower booking limit for the low-fare class.

(40). This simple analysis illustrates, on the one hand, the need to take into account the actual pricing behaviour of Olympic Air and Aegean, and on the other, the complexity of applying standard market delineation algorithms such as the SSNIP test in the context of yield management on the part of competing firms. In this respect, the Commission has considered two alternative markets (time-sensitive on the one hand and time-sensitive and non-time sensitive on the other) to ensure that, to the extent possible, the competitive assessment takes account of the ability of the merged entity to more effectively engage in price discrimination through yield management.

(41). The Parties also argue in the reply to the Supplementary Statement of Objections that "time of booking" does not "*in reality allow price discrimination. In any event, as a matter of simple common sense they cannot*". To support this statement the Parties quote the *Ryanair/Aer Lingus* decision at paragraph 326: "*For Ryanair as well as for Aer Lingus, cheap fares remain available on certain flights almost up until departure. This is in particular the case for flights where demand (load-factor) is lower. Conversely on other flights, several weeks ahead of departure, only fairly expensive fares are available for booking. This is the case of flights where demand is high*". The Commission first notes that the fact that cheap fares may remain available on flights where demand (load factor) is lower is precisely a direct consequence of yield management pricing. Likewise, where load factors are high already several weeks ahead of departure implies that passengers that have delayed their purchasing decision are unable to switch to a lower priced (possibly even restricted) ticket. More importantly as argued by the Parties at the Hearing the circumstances of this case and in particular the nature of competition between Olympic and Aegean in the routes of concern differ in important ways from that between Ryanair and Aer Lingus.

(42). The boundaries of the market often depend on the identity of the merging firms and the nature of competition between them. Indeed in the case of Ryanair and Aer Lingus the Commission considered that they did not price discriminate among passengers by offering restricted tickets and unrestricted tickets and they also did not offer a business class. In any event in its conclusion stating that it was not appropriate to define separate markets for different categories of passengers, the Commission makes it clear this was" *without prejudice to the actual existence of different groups of passengers. Any differences between passenger groups are considered as appropriate in the competitive assessment for each of the relevant O & D pairs*".[34] Indeed most importantly, for most of the routes of concern passengers could only rely,

34 See COMP/M.4439 – Ryanair/Aer Lingus, Commission decision of 27 June 2007, paragraph 331.

or had a strong preference for air travel (given that Ireland is in an island). As a result the issue of intermodal competition did not arise. From this perspective and given that both Ryanair and Aer Lingus both followed a similar pricing model based on yield management it was apparent, for similar reasons as presented in this section that a broad market definition was sufficient to capture all the relevant competition constraints exerted by Olympic Air and Aegean on each other and by other competitors (if present on the route).

3. STATIONARITY ANALYSIS SUBMITTED BY THE PARTIES IN SUPPORT OF THE PARTIES ARGUMENTS IN THE REPLY TO THE STATEMENT OF OBJECTIONS

(43). To support their views, the Parties presented on 4 November 2010 results of empirical analyses they conducted for the purpose of this case, namely correlation and co-integration analyses showing that prices for time sensitive and non-time sensitive passengers are stationary.[35] The stationarity study, in contrast with the views expressed by the Commission in the Statement of Objections, argues in favour of the inclusion of time sensitive and non-time sensitive passengers in the same market.

(44). The Study relies on the stationarity analysis of relative fare, i.e. the ratio of the average yield of time sensitive passengers, identified as those buying business or economy fully flexible tickets, and the average yield of non-time sensitive passengers, i.e. those purchasing restricted business or economy tickets. The stationarity Study is based on Aegean's fare data ranging from January 2008 until August 2010.

(45). If the ratio of two prices is deemed stationary, they fluctuate around a given average value, never diverging from it in a non-transitory manner. According to one paper on which the methodology of the stationarity Study is based[36], the stationarity of the ratio between two products indicates that the two products might belong to the same market, or, more precisely, that the hypothesis that they belong to separate markets may reasonably be dismissed. The underlying reasoning for this conclusion relies on the fact that prices move together overtime because of the arbitrage of consumers, which, faced with a price increase of one of the products, would switch to the other. The price of the second product would increase as a consequence of the increase of demand. This process, reiterated overtime, would make the price co-move.

(46). In the stationarity Study, several tests for stationarity are run first, at an aggregate level, on relative price series of the different fare categories, averaged across all the routes. The aim of this part is to show that, if stationarity is detected by tests, this "*suggests that there is a competitive constraint between airline passengers' classes*". In the rest of the stationarity Study, stationarity tests are run on the relative fare of time sensitive and non time sensitive passengers for nine routes affected by the transaction.

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35 Stationarity of relative fare between time sensitive and non time sensitive passengers", LECG project team, 4 November 2010. See also LECG presentation at the hearing of 11 November.

36 See Forni, M. "Using stationarity tests in antitrust market definition", 2004, American Law and Economic Review vol. 6.

(47). The tests used in the stationarity Study are four tests, well established in the econometric practice, used for the detection of stationarity in time series. These are: the Augmented Dickey Fuller test (ADF), the Generalized Least Squared Dickey Fuller test (DFGLS), the Phillips-Perron unit root test (PP) and the Kwiatkowski-Phillips-Schmidt-Shin test (KPSS).

(48). For what concerns the tests run on the average relative fare for all the routes, all the four tests are passed with levels of significance between 5% and 10%. The fact that the average relative fare is found to be stationary provides, according to the Study, "*strong evidence that time sensitive and non time sensitive passenger are in the same market*".

(49). The price stationarity analysis run for the individual routes are also presented. For these routes, stationarity is tested for the relative fare charged on time sensitive and non-time sensitive passengers. Before the implementation of the test, the series for each route is cleaned for a rise in the relative fare period taking place between November 2009 and February 2010. This is done, according to standard econometric practice, first regressing the series on a step dummy taking the value of 1 for the months in question, then implementing the stationarity tests on the series of the residuals from the previous regression.

(50). The four tests run on the modified series for individual routes all conclude in favour of stationarity with 95% confidence level. The Study concludes that *"this is strong evidence that, for each of the nine routes, time sensitive and non time sensitive passengers are part of the same market"*.

(51). The Commission has carefully replicated and analyzed the analysis and came to the conclusion that the stationarity Study, in itself, does not constitute sufficient evidence to draw a conclusion concerning the inclusion of time sensitive and non-time sensitive passengers into the same relevant market.

(52). As a general point, all the main economic literature on the application of stationarity tests for the purpose of market definition agrees on the fact that evidence concerning co-movements in fares, either tested via stationarity tests on the relative fare, or by other econometric means, is not a suitable instrument to prove the inclusion of one or more products into the same market, but rather to disprove the assumption that they belong to separate markets. In other terms, the stationarity in relative fare is a necessary, not a sufficient condition, for the inclusion of the products in the same market.

(53). The fact that fare co-movements could not constitute evidence sufficient to conclude in favour of a common market stems from the difficulty, always encountered in this type of analyses, to disentangle the co-movements due the arbitrage of costumers, from the one due to other sources, also defined as spurious correlation. Spurious correlation is generally factors with affects the cost and/or the demand of two different product and are reflected in the final price.

(54). Spurious correlation might come from the concomitance of various factors, either affecting the demand for two products or their cost structure, a proper identification of which could be extremely difficult in practice.

(55). With respect to the stationarity Study, the possibility of the presence of spurious correlation among fares charged to passengers buying flexible tickets and the one charged to those buying restricted tickets should not be excluded.

(56). In order to test for the possible presence or common factors inducing the stationarity between time sensitive and non-time sensitive fare, the Commission has compared the time sensitive fare charged by Aegean on one route and the non-time sensitive one on another route. If the resulting relative fare would result to be stationary according to the econometric tests conducted in the stationarity Study, this would be an indication that common factors are not inducing the correlation between different type of fares in the same route, but also between different types of fares across routes. If this happen to be case, as shown below, the conclusion that the stationarity found in the stationarity Study is due to arbitrage, and therefore that it supports the delineation of a single market for time sensitive and non-time passengers, is highly questionable, as this would apply, by analogy, also across different routes.

(57). The following table reports results from the four stationarity tests proposed in the stationarity Study, applied to relative fare series obtained from time sensitive and non-time sensitive fares from different routes. As in the stationarity Study, the series were first cleaned by the increase in relative fare taking place between November 2009 and February 2010.

[…]*

Table 6: results of stationarity test for ratios of different routes and types of passengers[37]

(58). As the table above clearly shows, also the relative fares of time sensitive and non-time sensitive belonging to different routes passes in almost all the cases the stationarity tests contained in the stationarity Study. Following the line of reasoning proposed in the stationarity Study, this would imply that passengers flying with a flexible ticket on a given route would, following an increase in the flexible fare for that route, switch to a different route buying a restricted ticket. Fare categories of different routes would belong, in other words, to the same relevant market.

(59). The same test has been run on the relative fare series not controlling for the shift in relative fares taking place in late 2009/early 2010. Even in this case, stationarity in the relative fare from different routes is confirmed in almost all the cases.

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37 For ADF, DF-GLS, PP:***= Non-stationarity rejected at the 99% confidence level; **= Non-stationarity rejected at the 95% confidence level; *= Non-stationarity rejected at the 90% confidence level; no= non-stationarity is not rejected; For KPSS: OK= H0 of stationarity not rejected; H0 of stationarity rejected

Bandwidth in the DF-GLS test selected according to the Schwarz info criterion; Bandwidth in the KPSS and PP selected according to Andrew's criterion and using Barlett kernel.

(60). According to Forni (2004), stationarity might be observed also in prices of products which actually belong to different markets. This is the case when price series are stationary themselves, or affected by common source of non-stationarity during the sample period.

(61). The Commission has therefore run the four stationarity tests on the average fare for time sensitive and non-time sensitive passengers. The detection of stationarity would indeed deem the results obtained in the stationarity Study for the relative fare non-meaningful for the purpose of market definition.

[…]*

Table 7: Stationarity tests for TS and NTS by route[38]

(62). As the table above, at least two out of the four tests implemented detect stationarity in the time sensitive and non-time sensitive fare series for all the routes. All the tests are actually passed for two routes, namely […]* and […]*. This again indicates that the stationarity test proposed in the stationarity Study does not constitute reliable evidence for the delineation of the relevant market.

(63). When single fare series happen to be stationary, an alternative to the stationarity analysis proposed by the Study would be to compute the correlation coefficient of time sensitive and non time sensitive series. In presence on single series that are non-stationary, the advantage of stationarity analysis is that non-transitory shocks in the single series would be removed with computation of the relative fare. This is not the case with transitory shocks induced by factors affecting both the fare series, which could difficultly be detected by standard stationarity tests.

(64). The correlation coefficient measures the extent to which to series co-move overtime on a scale from 0 to 1. While a coefficient of zero would suggest that there is no relation between the two series, a correlation close to one would indeed suggest a high degree of similarity in the overtime fluctuation of two series. Correlation analysis suffers from all the limitations described above concerning stationarity, and it is actually more exposed to problems related to spurious correlation. It is, nevertheless, generally considered a better instrument than stationarity tests when the price series are already stationary themselves.[39]

(65). In order to complement the stationarity analysis proposed by the Parties, the Commission has computed correlation coefficients between fares charged to time sensitive and non time sensitive passengers on the nine routes. Correlation has been first computed on the original tests.

38 For ADF, DF-GLS, PP:***= Non-stationarity rejected at the 99% confidence level; **= Non-stationarity rejected at the 95% confidence level; *= Non-stationarity rejected at the 90% confidence level; no= non-stationarity is not rejected; For KPSS: OK= H0 of stationarity not rejected; H0 of stationarity rejected.

39 See for instance Werden and Froeb: "Correlation, causality, and All that Jazz: The Inherent Shortcoming of Price Tests", Review of Industrial Organization, Vol 8, 1993, page 344.

In addition, in order to control for possible common exogenous factors inducing the co-movement, but not related to arbitrage, correlation coefficients has been computed controlling also for seasonality and for fuel cost, which could be a main driven of the fare charged to both types of passengers.

[…]*

Table 8: Correlation analysis for TS and NTS passengers for the different routes[40]

(66). As it can be seen from the table above, once controlled for common factors, a significant number of routes do not report a positive and significant correlation coefficient which would point in favour of the inclusion of time sensitive and non-sensitive passengers into the same market.

(67). It has to be also noted that the size of the sample, 32 observations, is barely sufficient to draw a meaningful conclusion for market definition from fare analysis. The empirical literature seems indeed to suggest that significantly larger samples would be required for this type of exercise.

(68). Finally, even if the conclusion of the stationarity Study were to be considered correct, they would not constitute sufficient evidence to conclude about the existence of a single market for all types of passengers. In order to reach such a conclusion, additional evidence pointing in the same direction would be necessary. This evidence could come from various sources, and be either of quantitative or qualitative nature. In the absence of such corroborative evidence, the sheer detection of stationarity in the relative fare could not provide meaningful insight into the question concerning the boundaries of the relevant market.

4. REGRESSION ANALYSIS OF THE PRESENCE OF FERRIES ON AIRLINES PRICING SUBMITTED BY THE PARTIES IN SUPPORT OF THE PARTIES ARGUMENTS IN THE REPLY TO THE STATEMENT OF OBJECTIONS

(69). On 23 November 2010, the Parties submitted an additional study presenting in more detail the results introduced during the Oral hearing concerning intermodal competition[41]. The study uses a multiple regression analysis to assess the potential constraint imposed by the presence of ferries on the fare charged by Aegean. In order to assess the presence and the magnitude of this alleged constraint, the study uses a cross-sectional approach, i.e compares routes in which ferry service is available with routes in which it is not. The analysis is performed on data for the 22 Greek destinations to islands to which Aegean flies, either from Athens or Thessaloniki airport. The data set used covers the period from January 2008 until June 2010, and includes for each route and month average monthly fare for each type of passengers, i.e. time

40 ***= correlation coefficient significant at the 99% confidence level; **= correlation coefficient significant at the 95% confidence level; *= correlation coefficient significant at the 90% confidence level.

41 "Analysis of the impact of ferry competition on airline prices", LECG Project Team, 23 November 2010.

sensitive and non time sensitive[42]. The model is first estimated as a panel on this data set, and then replicated taking as dependent variable the weighted average price per route and passenger type over the period 2008-2010.

(70). The econometric model estimated includes, together with a dummy for the presence or absence of ferry, control for the origin of the route, either Athens or Thessaloniki, a dummy for the route being a PSO route or not, two dummy variables for distance[43] In addition, as control variable for demand for air travel, the total number of hotels on the island is included, as well as a control for time-sensitive fares. Monthly and yearly dummies are also included.

(71). The results from the panel regressions show the presence of ferries in routes out of Athens is associated with a decrease in average air fare between […]*% and […]*%, according to the specification. The presence of ferries in routes out of Thessaloniki is indeed associated with a fare increase of […]* to […]*%. The fact that a route is a PSO implies that the fare is on average […]*% lower than if the route it is not. Finally, time sensitive passengers are charged a fare which is 63% higher than non-time sensitivity passengers. Replicating the model, restricting the sample to time sensitive passengers, reports fairly consistent results, with an effect of the presence of ferries in routes out of Athens in the order of […]*% to […]*% and out of Thessaloniki of […]*%. Results from the cross-section are consistent.

(72). The Commission has carefully analyzed the study and replicated the results. Additional robustness tests have also been conducted. With respect to the results presented, it has to be noticed that the magnitude and the statistical significance of the coefficient estimated for the dummy for time sensitive passengers seem to suggest a clear differentiation between the fares charged to these two types of passengers. If this difference, in addition, is compared with the effect of the alleged constraint imposed by ferries on routes out of Athens, 68% against 4-8%, this gives a measure of the relative importance of the two effects.

(73). In addition, the Study does not explain why the constraint is identified to be much lower on routes out of Athens than those out of Thessaloniki, where, contrary to the economic argument put forward by the Parties, ferry presence is associated with a fare *increase* of […]* to […]*%, i.e. up to twice the negative effect reported from Athens.[44] The Commission notes several methodological issues related to the explanatory variable of main interest in the regressions, namely the ferry presence in routes from Athens (since for the purpose of the merger analysis the ferry presence in routes from Thessaloniki has no material effect). The coefficient on this dummy variable on presence of ferry routes ex-Athens compares the routes ex-Athens where ferry is present with all the other routes, i.e. routes with no ferry out of Athens and all the routes ex-Thessaloniki regardless of the presence of ferries or not. Given that, in

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42 Time sensitivity of passengers is proxied by the flexibility of the ticket purchased.

43 Distance is controller for by a set of step dummies: one for routes between 200 and 400 km and another for routes longer than 400 km. The remaining routes, those shorter than 200 km, are considered as the baseline.

44 The Commission notes that the ferry frequencies for the great majority of the routes out of Thessaloniki are very limited in number and some only run for a short period of time.

general, air fares ex-Thessaloniki are higher than those out of Athens, the result is maybe driven by this difference. Therefore, the Commission considers that the approach followed is likely to confound the effect of the presence of ferries with whether the base is Athens or Thessaloniki, since the origin of the route is not explicitly controlled for.

(74). To obtain additional insight on this, the Commission has replicated the regressions on a sample restricted to routes out of Athens only. This is consistent with the competition concerns identified by the Commission in the Statement of Objections and Supplementary Statement of Objections. Once the regressions are performed, the alleged competitive constraint is no longer identifiable, as the coefficient becomes very close to zero and highly insignificant.

(75). Indeed, the Commission considers that it makes little sense to consider routes ex-Thessaloniki in the analysis given the very limited service provided by ferries in these routes.[45] A further issue with the regression presented is that the ferry presence is captured only through a zero/one step dummy. This does not allow to control for the possible marginal effects of the extent of such presence, such as seasonal discontinuities and number of frequencies. Ideally, an additional robustness test should have been considered to take this into account. In this respect, the Parties acknowledge that they do not have information on the number of frequencies and the seasonal presence of ferries in these routes.[46]

(76). Another robustness test was to include the distance in a log-linear fashion, rather than with the three dummies included in the study. The distance, once included, reports a positive and highly significant coefficient of […]*%. This means that, for a […]*% increase in the distance travelled, fare would increase on average by […]*%. Once this is performed, the coefficient of ferry from Athens is no longer significant in the basic regressions, and actually turns positive and significant in the ones on the sample restricted to time sensitive passengers.

(77). This lack of robustness of the main results to minor modifications casts serious doubts on the reliability of the results. This has also to do with difficulty to properly control for the difference across routes in a cross-sectional approach as the one proposed in the study.[47] The

45 Data from the port of Thessaloniki (www.thpa.gr) indicate for example that the number of passengers that embarked from Thessaloniki to Cyclades and Crete were zero in 2009 (and only 3 791 and 957 in 2008), 5 406 for Dodekanisa (that includes Thessaloniki-Rhodes and Thessaloniki-Kos) and 41 085 for East Aegean (which includes Thessaloniki-Mytiline and Thessaloniki-Samos) for the whole 2009. Therefore these figures indicate that the frequencies offered would be very minimal thereby reducing the likelihood of any competitive constraint of ferries.

46 Cfr. "We are not aware of a source of data which would enable us to identify months in which ferries operated for all routes", reply of the Parties to request for information of 01 December 2010. Indeed, the Parties have revised their estimates after correcting for three routes where ferry services were suspended in 2009 out of Thessaloniki, namely Thessaloniki-Mykonos, Thessaloniki-Santorini and Thessalokini-Herakleion and by reclassifying Thessaloniki-Samos as a ferry route, "[…]*". However the Commission notes that these modifications have no influence on the results of the robustness test performed by the Commission, since in any case it. excludes ex-Thessaloniki routes.

47 For another example of unreliability of the cross-section approach in a similar context, see COMP/M.4439 – Ryanair/Aer Lingus, Commission decision of 27 June 2007, Annex IV, section 5.3.

evidence presented in the study therefore does not allow to conclude that ferries exert a competitive constraint on air carriers in routes out of Athens.

Annex II : Analysis of the counterfactual studies submitted by the Parties

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