EUROPEAN COMMISSION
DG Competition

Case No COMP/M.6796 – AEGEAN/ OLYMPIC II

Only the English text is authentic.

MERGER PROCEDURE REGULATION (EC) No 139/2004

Article 8 (1) Regulation (EC) 139/2004
Date: 9/10/2013

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EUROPEAN
COMMISSION

Brussels, 9.10.2013
C(2013) 6561 final

PUBLIC VERSION

COMMISSION DECISION

of 9.10.2013

addressed to:
AEGEAN AIRLINES S.A.
declaring a concentration to be compatible with the internal market and the EEA Agreement

(Case No COMP/M.6796 - AEGEAN/ OLYMPIC II)

(Text with EEA relevance)

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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,[1] and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 23 April 2013 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. NOTIFICATION AND PROCEDURE

(1) On 6 November 2012, the competition authorities of the Hellenic Republic and of the Republic of Cyprus referred to the Commission pursuant to Article 22(1) of Council Regulation (EC) No 139/2004 (the "Merger Regulation") a proposed concentration by which Aegean Airlines S.A. ("Aegean" or the "Notifying Party") intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Olympic Air S.A. ("Olympic"; together with Aegean – the "Parties" or the "Merged

[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 ...,...200. , page...

[3] OJ C ...,...200. , page...

Entity") by way of purchase of shares (the "Transaction"). The Commission accepted the requests for referral by decisions dated 3 December 2012.[4]

(2) On 28 February 2013, the European Commission received a notification of the Transaction.

(3) On 25 March 2013, the Notifying Party submitted a package of formal commitments pursuant to Article 6(2) of the Merger Regulation. These commitments were not market tested.

(4) After examination of the notification and based on the first phase market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 23 April 2013 (the "Decision opening proceedings").

(5) Following a request by Aegean of 29 April 2013, a non-confidential version of certain key submissions of third parties collected during the first phase investigation was provided to Aegean on 30 April 2013.

(6) On 3 May 2013, the Notifying Party requested an extension of the time period for the second phase investigation by 16 working days pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(7) On 14 May 2013, the Notifying Party submitted its written comments to the Decision opening proceedings (the "Response to the Decision opening proceedings").

(8) On 8 July 2013, a Statement of Objections ("SO") was sent to the Notifying Party by the Commission pursuant to Article 18 of the Merger Regulation.

(9) The Notifying Party submitted its response to the SO ("SO Response") on 23 July 2013.

(10) In order to address competition concerns identified in the SO, the Notifying Party submitted a package of formal commitments on 8 August 2013 pursuant to Article 8(2) of the Merger Regulation. These commitments were not market tested.

(11) The Advisory Committee was convened on 25 September 2013.

2. THE PARTIES

(12) **Aegean** is a publicly listed[5] Greek airline providing air transport of passengers and, to a more limited extent, cargo services. Since 1999, the company has been offering scheduled flights on Greek domestic routes and international short-haul routes and in particular at present operates flights to approximately 50 international and domestic short-haul destinations. The company has a fleet of 29 jet aircraft from the Airbus A320 family. Aegean has its main base at Athens International Airport ("AIA"), as well as bases at other Greek and Cypriot airports, including Thessaloniki, Heraklion, and Larnaca.[6] Aegean is a member of the Star Alliance airline network.

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[4] See section 0 of the present Decision.

[5] Aegean is listed on the Athens Stock Exchange and its main shareholders include the Vassilakis group of companies (38%) and the Laskaridis group of companies (19%).

[6] Form CO, paragraph 157.

(13) **Olympic** is a Greek airline active in air transport of passengers and cargo. It is fully owned by Marfin Investment Group ("Marfin"), a Greek investment group with investments in a number of sectors.[7] Olympic started its operations on 1 October 2009 following the privatisation of former Olympic Airlines in the course of which Marfin acquired the brand, slots and licenses of Olympic Airlines. Olympic operates its main base at AIA and a secondary base with one aircraft at Rhodes airport. Olympic serves a number of short-haul destinations, mainly within Greece. Amongst them, 15 Greek destinations constitute routes fulfilling a Public Service Obligation ("PSO routes").[8] Olympic currently operates a fleet of 17 aircraft (three Airbus of the A320 family,[9] 10 Bombardier Dash 8 Q400 and four Bombardier Dash 8 Q100). In the near future, Olympic […]* to operate a single aircraft type fleet of Bombardier Q Series turboprop aircraft. Olympic is not a member of any airline alliance network.

(14) Aegean and Olympic have previously attempted to merge their operations. Following an in-depth investigation in the case *Olympic / Aegean Airlines (*"*Olympic/Aegean I*"*)* the Commission, by decision dated 26 January 2011, prohibited the proposed merger between Aegean and Olympic.[10]

3. THE TRANSACTION

(15) The Transaction entails the acquisition of sole control by Aegean over Olympic, by way of purchase of 100% of Olympic's shares. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(16) The Notifying Party submits[11] that the continued and unprecedented Greek recession and the dramatic decline in demand for passenger air transport services within Greece have forced the Parties to restructure and to downsize their respective operations over the last three years. In light of this economic environment, the Parties deem the Transaction necessary in order to sustain their current operations at a level of activity that provides the minimum required scale to operate efficiently.

(17) The Notifying Party further submits that the Transaction is necessary to allow the Parties to maintain their (currently minimal) ability to compete against substantially larger and stronger European and non-European rivals as well as to stem continued losses and further marginalisation of their respective networks and activities. Post-Transaction, the administrative, technical, financial, commercial and network planning functions will be integrated within Aegean's organisation so as to achieve the targeted cost.

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7 Marfin has investments in aviation, shipping, healthcare, IT and telecoms, tourism and leisure, and the food and beverages sectors.

8 Form CO, paragraph 65.

9 […]* (Olympic's response of 12 September 2013 to Commission's RFI of 10 September 2013).

10 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*. For a summary of the previous case, see section 0 of this Decision.

11 Form CO, paragraph 3.

4. UNION DIMENSION

(18) The operation does not have an EU dimension within the meaning of Article 1 of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover below EUR 2 500 million (Aegean: EUR 580 million, Olympic: EUR 222 million).

(19) On 6 November 2012, the proposed concentration was referred to the Commission by the competition authorities of the Hellenic Republic and the Republic of Cyprus pursuant to Article 22(1) of the Merger Regulation. The Commission accepted the requests for referral by decisions dated 3 December 2012 and therefore decided to examine the proposed concentration under the Merger Regulation pursuant to Article 22(3) of the Merger Regulation.

5. COMMISSION DECISION IN *OLYMPIC/AEGEAN I*

(20) In its decision concerning the previous attempted merger between Aegean and Olympic (*Olympic/Aegean I*), the Commission identified concerns relating to 10 Greek domestic routes out of Athens, with the creation of quasi-monopolies on nine of these routes (Athens to Thessaloniki / Heraklion / Chania / Rhodes / Santorini / Mytilene / Chios / Kos and Samos) and loss of potential competition on one route (Athens–Corfu).

(21) In *Olympic/Aegean I*, the Commission found that the parties were each other's closest competitors, in particular in view of their operations (both from a base at Athens) and similarities in the level of frequencies, size and scope of networks, business model, use of frequent flyer programmes ("FFPs"), level of service on board, punctuality, type of aircraft, customer groups targeted and brand recognition.

(22) Furthermore, a number of barriers to entry/expansion were identified, which affected the likelihood of timely and effective entry/expansion post-merger. In particular, it was found that to compete effectively on the routes of concern an entrant would need to establish a base in Athens. High airport charges at Athens airport were found to be a strong deterrent for establishing such a base, in particular for low cost carriers. Other difficulties faced by a potential new entrant included the development of brand awareness similar to the one of the Parties' brands, coping with significant sunk costs, combined with high risk of non-recoupment, need for access to connecting traffic, and development of a distribution network similar to the one of the Parties. Taken together, in addition to the fact that no carrier indicated credible plans to enter the Greek domestic routes, these elements weighed against the likelihood of timely and sufficient entry/expansion by competitors.

(23) The slot remedies proposed by the parties were not considered sufficient to render the concentration compatible with the internal market given that slot constraints were not a barrier to entry in that case and given that those slot remedies as such would not be liable to generate entry of a scale and scope sufficient to exert sufficient competitive pressure on the merged entity post-merger. Also, the other proposed remedies, such as access to the Parties' FFPs and interlining agreements, were found to be insufficient to entice a credible new player to create a base at the Athens airport and exert an effective competitive constraint on the routes affected.

(24) For these reasons the Commission prohibited the transaction which had been proposed. Aegean and Marfin brought an action for annulment (under Article 263 TFEU) against this Decision before the General Court. On 17 July 2013, Aegean and Olympic informed the Commission that they had instructed their lawyers to withdraw their action for annulment of the 2011 prohibition decision before the General Court. An application for discontinuance of the annulment action was lodged by Aegean and Marfin on 22 July 2013. On 10 September 2013, the General Court ordered the removal of that case from its register.

(25) While *Olympic/Aegean I* is relevant as background information, the Commission's investigation and assessment of the Transaction were conducted exclusively on the own merits of the present case.

6. MARKET DEFINITION

(26) There are no markets affected by the Transaction other than those relating to passenger air transport services on PSO routes and passenger air transport services on non-PSO routes, analysed below.[12]

6.1. Public Service Obligation routes

6.1.1. Legal framework

(27) PSO routes in Greece are governed by Regulation (EC) 1008/2008[13] ("PSO Regulation") which provides that PSOs may be imposed in respect of certain routes to reflect the special characteristics and constraints of the outermost regions, in particular their remoteness, insularity and small size and the need to link them adequately with the central regions of the EU.

(28) Under Article 16 of the PSO Regulation, a PSO may be imposed in respect of "*scheduled air services between an airport in the [EU] and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves.*" A PSO shall be imposed only to the extent necessary to ensure, on that route, the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest.

(29) In Greece, when a route is awarded to a specific air carrier, no other air carrier can serve that route. Thus, an air carrier is assigned to be the only operator of an air transport service for a specified period of time for a given subsidy.[14] There are

12 The Transaction also encompasses the acquisition by Aegean of Olympic's cargo business. However, as both Parties' cargo activities are very modest, the Transaction does not give rise to any affected market in respect of this business activity.

13 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, 31.10.2008, pages 3–20.

14 Olympic has not offered to operate any PSO routes for zero subsidy. Although Aegean and Astra have previously offered to serve certain PSO routes on a zero subsidy basis, this does not equate to offering to operate these routes on a commercial basis nor does it deprive those routes of their PSO character. Carriers serving those routes, even on a zero subsidy basis, continue to enjoy the main benefits applicable to PSO routes in general, such as exemption from airport development fund levy on passenger tick-

minimum requirements applicable for each route in terms of frequencies and capacity offered.

(30) For each PSO route, the Hellenic Civil Aviation Authority ("HCAA") imposes a maximum fare that the operator may charge. This maximum price will be set at the level the HCAA considers reasonable and will reflect the stage length and the current assumed cost structure. PSO routes are awarded pursuant to a tender procedure, where all EEA carriers are allowed to bid. During the bidding process for the PSO route, the ultimate subsidy requested by each candidate PSO operator, which is per route on a monthly basis, takes this maximum price into account. The decision to award a PSO route to a particular air carrier is highly dependent on the subsidy required by the candidate airline.

(31) While each PSO route is considered as an individual contract and tendered on an individual basis, tenders generally take place at the same time for most routes and cover the same tender period. However, tenders for a small minority of routes do take place at different times. For example, of the 28 PSO routes currently in operation in Greece, tenders for 26 of them all took place at the same time and cover the same tender period, i.e. from 1 April 2012 to 31 March 2016. However, for an additional 2 PSO routes[15] tenders took place in 2010 and cover a different four year period.[16]

(32) Since 2009 there have been two main PSO bidding rounds: one in 2010 and one in 2012. Prior to the 2010 bidding round, all PSO tenders were awarded to the State-owned Olympic Airlines. Currently, out of the 28 PSO routes in operation in Greece Olympic operates 15 PSO routes,[17] while Aegean operates 1 PSO route.[18]

6.1.2. The view of the Notifying Party

(33) The Notifying Party argued that "*[t]here is no market as such for bidding for PSO routes*". However, the Notifying Party also stated that, if necessary for assessing the effect of the Transaction on competition for PSO routes, the market definition should cover all carriers able to participate in the tender procedure, including all Greek carriers and carriers from other Member States having appropriate aircraft.[19] Thus, the Notifying Party provides its views on the competitive assessment of "*the hypothetical market for PSO routes in Greece*".[20] (see section 7).

ets and the right to serve the given PSO route exclusively for a specified time period defined in the tender procedure. However, prices remain regulated and the carrier serving the relevant PSO route cannot charge fares in excess of the applicable cap imposed by the HCAA for that specific route.

15 That is Athens–Kozani–Kastoria and Thessaloniki–Limnos–Ikaria.

16 That is from 1 July 2010 to 31 May 2014 for Athens–Kozani–Kastoria and from 1 September 2010 to 31 August 2014 for Thessaloniki–Limnos–Ikaria.

17 That is Athens–Astypalea, Athens–Ikaria, Athens–Kalymnos, Athens–Karpathos, Athens–Kithira, Athens–Leros, Athens–Milos, Athens–Naxos, Athens–Paros, Athens–Skiathos, Athens–Siros, Athens–Zakynthos, Rhodes-Kastelorizo, Rhodes-Karpathos-Kasos-Sitia, and Rhodes-Kos-Kalymnos-Leros-Astypalea.

18 That is Athens–Skyros.

19 Form CO, paragraph 182.

20 Form CO, paragraph 209.

6.1.3. *Relevant product market*

(34) In Greece, PSO routes are operated as an exclusive concession by the airline selected, and thus no other airline can operate on a commercial basis on the same route until the end of the concession period.

(35) Therefore, the operation of PSO routes should be considered distinct from the commercial air transport of passengers, as no competition can take place on PSO routes conceded to a single airline. Rather, competition takes place for the market at the tender stage.[21] The total amount of annual subsidies received by all operators of the current 28 Greek PSO routes is EUR 44.3 million.[22]

(36) The current 28 PSO routes are diverse in terms of the requirements by the HCAA as regards frequencies, number of seats available and fares. For example, on the Athens–Karpathos PSO route (currently operated by Olympic) the HCAA set as a requirement for 1 000 weekly seats to be available in the summer season, while for the same season on the Thessaloniki–Skyros PSO route (currently operated by Sky Express) the HCAA required 90 weekly seats to be available.[23]

(37) In any event, the precise definition of the relevant product market can be left open as the Transaction is unlikely to significantly impede effective competition with respect to PSO routes tendered in Greece, irrespective of whether the market at the tender stage is defined as encompassing tenders for all Greek PSO routes or different segments of tenders delineated on the basis of supply-side criteria.[24]

6.1.4. *Relevant geographic market*

(38) In accordance with the PSO Regulation, non-Greek (but still EEA) airlines must be allowed to participate on equal terms with Greek airlines on tenders for PSO routes. However, the fact that airlines not active in the Greek domestic market can participate on equal terms does not necessarily lead to the conclusion that the geographic market is wider than the national market.[25]

(39) In any event, the precise definition of the relevant geographic market can be left open as the Transaction is unlikely to significantly impede effective competition with respect to PSO routes tendered in Greece, irrespective of the geographic scope of the market.

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21 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 in Case COMP/M.5557 - *SNCF-P/ CDPQ/ KEOLIS/ EFFIA*, paragraph 17; Commission Decision of 11 August 2010 in Case COMP/M.5855 - *DB/ARRIVA*), or in the engineering sector (Commission Decision of 13 January 2010 in Case COMP/M.5697 - *ALSTOM HOLDINGS/ ALSTOM HYDRO HOLDING*, paragraphs 10 and 17). See also Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 279–294.

22 Form CO, Table 29.

23 Form CO, table 27.

24 For example, routes that require aircraft with a certain passenger capacity, or technical characteristics like short take-off and landing capabilities.

25 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 in Case COMP/M.5557 - *SNCF-P/ CDPQ/ KEOLIS/ EFFIA*, paragraphs 43–46). See also Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 295–297.

6.2. Air transport of passengers (non-PSO routes)

6.2.1. Introduction

(40) Aegean and Olympic both provide scheduled passenger air transport services within the European Union and beyond. They operate domestic and international flights to and from destinations in Greece, mainly Athens. In the summer 2013 season, their direct flights overlapped on 10 domestic routes[26] and are expected to overlap on four domestic routes[27] in the winter 2013/14 season, following several announced exits.[28]

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

6.2.2.1. Commission precedents

(41) In its decisional practice, the Commission has 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.[29] Such a market definition reflects the demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination and while they do not generally consider such city-pair substitutable to a different city-pair. As a result, every combination of a point of origin and a point of destination is considered as a separate market from a customer viewpoint.

(42) Under the O&D approach to market definition both the point of origin and the point of destination include all airports that are substitutable in the eyes of passengers as passengers beginning or ending their journey in the catchment area of two or more airports can choose between flights offered to any of those airports.[30] However, in the present case the issue of airport substitutability is not relevant since none of the origin/destination cities in the relevant Greek domestic O&D pairs is served by more than one airport.

(43) In the past, the Commission has also taken into consideration supply-side elements such as network competition between airlines based on the hub-and-spoke structure of traditional carriers.[31] However, the Commission considered the degree of supply-side substitutability between different O&Ds to be limited and, in line with the

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[26] Athens–Alexandroupolis, Athens–Chania, Athens–Corfu, Athens–Heraklion, Athens–Kos, Athens–Mykonos, Athens–Mytilene, Athens–Rhodes, Athens–Santorini, and Athens–Thessaloniki.

[27] Athens–Chania, Athens–Mykonos, Athens–Mytilene and Athens–Santorini.

[28] Olympic announced its exit from Athens–Thessaloniki, Athens–Heraklion, and Athens–Rhodes, while Aegean announced its exit from Athens–Alexandroupolis, Athens–Corfu (seasonal exit), and Athens–Kos (seasonal exit).

[29] For example, Commission Decision of 27 February 2013 in Case COMP/M.6663 – Ryanair/Aer Lingus III (not yet published), Commission Decision of 30 March 2012 in Case COMP/M.6447 – IAG/bmi paragraphs 31–34; Commission Decision of 27 July 2010 in Case COMP/M.5889 – *United Air Lines/Continental Airlines*, paragraphs 9–12; Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 41–44. The O&D approach was confirmed by the General Court: see Case T-342/07 *Ryanair Holdings plc v Commission* [2010] ECR II-3457, paragraph 99; Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 56; Case T-2/93 *Air France v Commission* [1994] ECR II-323 paragraph 84.

[30] Commission Decision of 22 June 2009 in Case COMP/M.5335 – *Lufthansa/SN Airholding*, paragraph 13; see also Commission Decision of 11 February 2004 in Case COMP/M.3280 – *Air France/KLM*, paragraph 11.

[31] Commission Decision of 11 February 2004 in Case COMP/M.3280 – *Air France/KLM*, paragraphs 9–18.

Commission's notice on market definition,[32] gave pre-eminence to demand-side substitution.

6.2.2.2. The view of the Notifying Party

(44) Aegean does not object to the O&D approach[33] and submits that the effect of the Transaction should be assessed on the basis of the relevant markets defined as scheduled passenger air transport services on the basis of the O&D city-pair approach used by the Commission in the previous cases.[34]

6.2.2.3. The Commission's investigation and assessment

(45) On the basis of the market investigation, the Commission considers that in the present case the O&D approach is the appropriate approach. The large majority of the respondents, notably the overwhelming majority of travel agents and corporate customers, agree that the O&D approach is the most appropriate means of defining markets in this case.[35]

6.2.2.4. Conclusion

(46) In light of the above, for the purpose of the present Decision, the effects of the Transaction will be assessed on the basis of the O&D city-pair approach.

6.2.3. Time sensitive vs. non-time sensitive passengers[36]

6.2.3.1. Commission precedents

(47) The Commission has traditionally found that a distinction may be drawn between time sensitive ("TS") and non-time sensitive passengers ("NTS"). TS passengers tend to travel for business purposes, require significant flexibility of their tickets (such as cost-free cancellation and modification of the time of departure) and tend to pay higher prices for this flexibility. NTS customers travel predominantly for leisure purposes or to visit friends and relatives, book a long time in advance, do not require flexibility with their booking and are generally more price-sensitive.[37]

6.2.3.2. The view of the Notifying Party

(48) Aegean argues[38] that the "time sensitivity" of travellers in Greece is diminishing in importance and that the relevance of the distinction is now increasingly doubtful, even more than it was two years ago at the time of the investigation in case

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32 Commission Notice on the definition of the relevant market, paragraph 13 (OJ C 372, 09.12.1997, pages 5 and following).

33 Form CO, section 6, paragraphs 123–127.

34 Form CO, section 6, paragraphs 123–127.

35 Q2 – Questionnaire to corporate customers – replies to question 7; Q3 – Questionnaire to travel agents – replies to question 5.

36 In the present case, in the absence of the Marketing Information Data Tapes (MIDT) data in the Parties' possession, TS and NTS passengers were identified on the basis of the data from passenger surveys carried out by AIA (Form CO, Annex 1.8).

37 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*; Commission Decision of 28 August 2009 in Case COMP/M.5440 – *Lufthansa/Austrian Airlines;* Commission Decision of 9 January 2009 in Case COMP/M.5364 – *Iberia/Vueling/Clickair*; Commission Decision of 22 June 2009 in Case COMP/M.5335 – *Lufthansa/SN Airholding;* Commission Decision of 4 July 2005 in Case COMP/M.3770 – *Lufthansa/Swiss;* Commission Decision of 11 February 2004 in Case COMP/M.3280 – *Air France/KLM*.

38 Form CO, section 6, paragraphs 128–134.

Olympic/Aegean I.[39] Aegean submits that, among other factors, the price sensitivity of business customers has increased over time while the significance of time convenience has decreased. Companies are continuously looking for ways to reduce travel costs. The vast majority of passengers travelling in business class are very price sensitive. To back up its assertion, Aegean refers to the Commission's observation in the *Ryanair/Aer Lingus I* Decision that "*the formerly clear distinction between time sensitive and non-time sensitive passengers has become more and more blurred in recent years*",[40] a trend which was also confirmed in the *IAG/bmi* Decision.[41] Aegean stresses that this trend is set to continue in the globally challenging economic environment. This is particularly relevant to Greek air travel markets due to the continuing crisis Greece is facing.

6.2.3.3. The Commission's investigation and assessment

(49) In the present case, the Commission considers, on the basis of the market investigation, that the distinction between TS and NTS passengers remains relevant. A large majority of respondents (competitors, travel agents and corporate customers) confirmed the existence of two clearly identifiable groups of passengers mainly based on the different needs and preferences of each group. The majority of corporate customers classified themselves as TS passengers on Greek domestic routes, indicating that ticket flexibility and flight schedule are important parameters for them. Also, travel agents highlighted a number of elements that distinguish TS from NTS passengers, such as the greater importance of the high number of frequencies on a route, ability to return on the same day, ticket flexibility and a shorter time period for buying the ticket before the flight.[42]

(50) At the same time, however, a clear line of responses to the market investigation shows that, despite their time-sensitivity, Greek corporate/business travellers increasingly seek low prices and also fly in restricted economy class. There is evidence that businesses are adopting a more cost-conscious approach to travel.

6.2.4. Conclusion

(51) It may be left open for the purpose of this Decision whether TS and NTS passengers belong to two separate markets or whether one market encompassing all passengers should be defined, as this would not change the outcome of the competitive assessment in the case at hand.

6.2.5. Intermodal competition: substitutability of ferry and train services with air services

6.2.5.1. Commission precedents

(52) When defining the relevant O&D markets for air transport services, the Commission examined in the past other transport alternatives so as to assess whether they could be regarded as a substitute for a flight in the eyes of passengers travelling on

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39 In *Olympic/Aegean I*, it was ultimately left open whether TS passengers are in a separate market from NTS passengers, see Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 92–93.

40 Commission Decision of 27 June 2007 in Case COMP/M.4439 – *Ryanair/Aer Lingus*, recital 316.

41 Commission Decision of 30 March 2012 in Case COMP/M.6447 – *IAG/bmi*, paragraph 39.

42 Q2 – Questionnaire to corporate customers – replies to questions 11–16; Q3 – Questionnaire to travel agents – replies to questions 6–15.

individual routes (intermodal competition),[43] in particular in cases where alternative modes of transport could be regarded as viable alternatives by customers in terms of price, quality, and (aggregate) travel time.

(53) More specifically, in *Olympic/Aegean I*[44] the Commission considered that pricing strategies and price levels of seats of airlines and ferry companies differed substantially on Greek domestic routes.[45] Moreover, the Commission's investigation showed that aggregate travel times by air and ferry services on most Greek domestic routes differed markedly[46] and that frequencies of air and ferry services on most Greek domestic routes were significantly different.[47]

(54) In *Olympic/Aegean I*[48] the Commission concluded that:

– As concerns the segment of TS passengers, ferry services and air services formed part of two separate markets, except for the Athens–Mykonos route. On the latter route, air services and ferry services were part of the same product market as concerns TS passengers.

– As concerns the segments of NTS passengers and all passengers, the question whether air services and ferry services belonged to the same market was, with the exception of the Athens–Mykonos and Athens–Rhodes routes, left open, as the competitive assessment remained the same irrespective of whether ferry services were included or not into the relevant market. This was because ferry services were only distant substitutes to air services on the routes of concern. On the Athens–Mykonos route, air and ferry services were found to be part of the same product market for NTS passengers and for all passengers. On the Athens–Rhodes route, air and ferry services were considered not to be part of the same product market as concerns the possible markets for NTS passengers and for all passengers.

– Finally, for the Athens–Thessaloniki route, train services were considered not to be in the same market as air services for any category of passengers.

6.2.5.2. The view of the Notifying Party

(55) The Notifying Party considers that other forms of transport (notably ferries) may exert competitive pressure on air transport services on a number of Greek routes.[49]

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43 Commission Decision of 26 January 2011 in Case COMP/5830 – *Olympic/Aegean Airlines;* Commission Decision of 17 June 2010 in Case COMP/M.5655 – *SNCF/LCR/Eurostar*; Commission Decision of 27 June 2007 in Case COMP/M.4439 – *Ryanair/Aer Lingus;* Commission Decision of 22 December 2005 in Case COMP/M.3940 – *Lufthansa/Eurowings;* Commission Decision of 4 July 2007 in Case COMP/M.3770 – *Lufthansa/Swiss;* Commission Decision of 11 February 2004 in Case COMP/M.3280 – *Air France/KLM*.

44 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*.

45 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 103 and following.

46 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 107 and following.

47 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 113 and following.

48 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 94–271.

49 Form CO, section 6, paragraph 143.

The Notifying Party considers, in particular, that there is a competitive constraint exerted by ferries on the Athens–Mykonos and the Athens–Santorini routes.[50]

(56) As regards the Athens–Mykonos route, the Notifying Party refers[51] to the market definition as established by the Commission in *Olympic/Aegean I*.[52] In that Decision, the Commission concluded that, as concerns the segments of TS passengers, NTS passengers and all passengers on the Athens–Mykonos route, ferry services and air services formed part of the same product market.

(57) Equally, the Notifying Party is of the view[53] that ferries constitute a competitive constraint also on the Athens–Santorini route, in particular in light of the level of frequencies and travel duration of ferry trips that would be comparable to the flexibility and travel duration of air transport services. The Notifying Party stresses that this intermodal competition on Athens–Santorini may increase further in 2013 with the introduction of a new fast ferry (Seajet 2 from Sea Jets Lines) from Rafina port[54] which offers both short travel time and competitive prices.[55] In the SO Response, the Notifying Party claims that on the basis of responses by travel agents and corporate customers in particular the Commission should have concluded that ferries exert a significant competitive constraint on the Parties with respect to TS passengers, NTS passengers and all passengers.[56]

(58) As regards the Athens–Rhodes route, the Notifying Party refers[57] to the market definition as established by the Commission in *Olympic/Aegean I*.[58] In that Decision, the Commission concluded that ferry services are not to be included in the relevant market for any segment of passengers (TS, NTS, all passengers) on this route.

(59) Overall, with respect to intermodal competition of ferries and trains, the Notifying Party adopts the relevant product markets identified by the Commission in *Olympic/Aegean I*[59] and does not dispute the market definitions adopted in the SO, with the sole exception of the Athens–Santorini route where Aegean claimed that ferries and air services are part of the same relevant market.

6.2.5.3. The Commission's investigation and assessment

Differences between ferry and air services

(60) While it is complex to come to general conclusions with regard to ferry services on Greek domestic routes, the Commission considers that ferry and air transport services differ substantially in several dimensions of competition on the routes of concern.[60]

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50 The Notifying Party has not substantiated its allegations taking into account a possible segmentation between TS and NTS passengers.

51 Form CO, section 6, paragraph 143.

52 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 94–271.

53 Aegean's response of 30 May 2013 to Commission RFI of 8 May 2013, answer to question 15.

54 The port of Rafina is located 30-40 kilometres (driving) distance from Athens.

55 Aegean's response of 30 May 2013 to Commission RFI of 8 May 2013, answer to question 15.

56 SO Response, paragraphs 562–575.

57 Form CO, section 6, paragraph 143.

58 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 94–271.

59 Form CO, paragraphs 142–143.

60 See section 0. of this Decision.

(61) First, ferry services generally take much longer than air services in terms of travel time. For the purpose of illustration, a flight from Athens to Rhodes takes a little more than one hour, a ferry trip on the contrary extends to more than 15 hours. Even for destinations that are closer to Athens, like Santorini, the transport time on a ferry is generally substantially longer.

(62) Second, air services operate in general much more frequently than ferry services. Aegean and Olympic typically offer a frequent service on the routes they operate.[61] Ferries on the other hand typically serve those routes much less frequently.[62] For example, on the Athens–Rhodes route in May 2013 airlines had 51 weekly flights whereas ferry companies only offered 10 weekly crossings.[63]

(63) Third, ferry services are generally much cheaper than air services. As discussed in the following section, ferry operators charge much less for their standard transportation services and typically do not price-differentiate between groups of customers (such as TS or NTS passengers).

(64) Fourth, ferry services cater to passengers who are interested in taking their car with them or bringing heavy luggage, both of which is either impossible or very expensive on air services.

(65) These differences between air and ferry services mean that they generally tend not to be substitutable with each other. For TS passengers, they are generally not substitutable. However, also for NTS passengers they constitute at best only a remote competitive constraint on the routes of concern discussed in this Decision.

(66) The Parties do not appear to monitor the fares of the ferry operators. Olympic claims that it monitors the ferry operators' fares on the domestic overlap routes but failed to provide the Commission with any credible proof of such monitoring.[64] Aegean was requested twice to identify the exact routes where it monitors ferry prices (if any) and to provide the Commission with relevant examples, but only replied that it "*will provide the answer to this question in the near future*".[65]

(67) All ferry operators stated that they do not monitor air fares in the domestic overlap routes of the Parties and that they do not take them into account in setting their ferry prices, with the only exception of Blue Star Ferries, which is owned by Marfin Group.[66] However, although Blue Star Ferries claimed that it monitors and adjusts prices for all domestic overlap routes of the Parties, upon further request, it was

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61 See section (419) for a route-by-route analysis.

62 See section (419) for a route-by-route analysis.

63 See the three schedules on the website of Blue Star Ferries, available at: http://www.bluestarferries.com/site/routes.asp?rid=399&loc=2 (retrieved 31 July 2013), http://www.bluestarferries.com/site/routes.asp?rid=405&loc=2 (retrieved 31 July 2013), http://www.bluestarferries.com/site/routes.asp?rid=411&loc=2 (retrieved 31 July 2013).

64 Olympic's response of 31 May 2013 to Commission RFI of 24 May 2013, answer to question 25. As proof of monitoring, Olympic only provided a Word document and an Excel spreadsheet, compiling print-screens of one web search per domestic overlap route for the random dates of 2 and 4 August 2013 on the website of a travel agency (www.petas.gr).

65 Aegean's response of 19 June 2013 to Commission RFI of 12 June 2013, answer to question 13. The question merely repeated the unanswered/pending question 13 of Commission RFI of 8 May 2013.

66 R5 – Questionnaire to ferry operators – replies to questions 17–18.

unable to provide any internal documents that would demonstrate such monitoring and/or adjustments.[67]

(68) In addition, more than two-thirds of the ferry operators indicated that they have never observed any change in demand for their services following a significant increase of air fares on the overlap routes, and most of them explained that, in any event, changes in air fares are not relevant for their ferry services.[68] Moreover, all ferry operators agreed that their capacity is decided irrespective of the capacity offered by airlines in the overlap routes.[69]

(69) Furthermore, ferry operators have radically different pricing levels, price-setting mechanisms and pricing environment, as compared with airlines.

(70) In terms of pricing levels, ferries' average passenger fares[70] range between EUR 17 and EUR 57,[71] while Aegean's and Olympic's average final fares[72] on their domestic overlap routes is of a significantly higher order of magnitude, for example, […]* for Aegean on the Athens–Santorini route in summer 2012.[73] Therefore, ferries are likely to attract the consumers who are not willing to pay the higher fares charged by airlines.

(71) In terms of price-setting mechanism, contrary to air fares, ferry prices remain generally stable for a given travel type and they are pre-determined and published well in advance. Air fares, on the contrary, strongly depend on the individual flight's load factor as the time of the departure approaches. Therefore, price differences between air and ferry services for a given category of passengers may vary from one day to another, depending on the load factor of the aircraft and the time tickets are purchased. In addition, contrary to airlines, none of the ferry operators responded that it can price-differentiate between TS and NTS customers in the sense that it can charge different prices on those two groups travelling in the same vessel.[74]

(72) In terms of pricing environment, Aegean and Olympic operate their domestic flights in a liberalised market where they have full freedom to set their prices and reductions. By contrast, ferries operate in a much more regulated environment. According to Blue Star and Superfast Ferries, Greek law allows the Minister of Marine and Aegean Sea to set a maximum fare for economy class for all domestic routes, thus "*[a]t any given time the Minister has the ability to intervene in the pricing of a company if he feels that the fares are 'against public interest'*". Blue Star and Superfast Ferries added that "*during winter ferry companies cannot set their prices as per their judgment and commercial policy, instead they are under the obligation not to exceed fare prices of last summer under whatever circumstances*"

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67 Blue Star and Superfast Ferries' response of 19 June 2013 to Commission RFI of 12 June 2013, answer to question 2.

68 R5 – Questionnaire to ferry operators – reply to question 19.

69 R5 – Questionnaire to ferry operators – reply to question 20.

70 This refers only to simple passenger fares that do not include a cabin or car.

71 R5 – Questionnaire to ferry operators – reply to question 8.

72 Final fare in the sense that it includes also the taxes and fees that the customer has to pay when travelling by airplane, i.e. EUR 33.64 for airport charges, EUR 3 for service fee and 13% VAT.

73 Aegean's response of 30 May 2013 to Commission RFI of 8 May 2013, reply to question 15.

74 R5 – Questionnaire to ferry operators – replies to question 21. The two respondents that ticked "yes" merely meant that they operate faster vessels so they are in a position to price higher than other conventional vessels. See also Seajet's response of 17 June 2013 to Commission RFI of 12 June 2013, reply to question 1.

and "*the Ministry by another Ministerial Decision sets obligatory reductions of 100% or 50% on fares of ferries in favour of 20 (!) categories of population and public servants and vehicles, for which ferry companies are not compensated*". Moreover, according to Blue Star and Superfast Ferries, such regulation[75] leaves the ferry operator "*with no possible defence mechanisms against unforeseen circumstances e.g. extreme increase of fuel prices like the ones we have been witnessing in recent years*". This regulatory environment, which does not only restrict ferry pricing but also "*almost every aspect of ferry operation, ranging from manning rules and obligatory routing for 10 months/year to how wide a chair is onboard, does not allow ferry companies to operate under market conditions. Instead, they distort the market to an extent that it is not possible to say that ferry operations in Greece is a fully liberalized market*".[76]

(73) In addition, airlines offer comfort mainly in the sense that travelling time is short, whereas ferries offer a different type of comfort. For instance, for a long trip, ferry passengers can choose to have a cabin (different types are available); they can also decide to travel with their car. In such cases, the fare can increase substantially. For example, on Piraeus-Chania, ANEK ferries charges EUR 35 for simple passenger tickets, but from EUR 57 to EUR 86 for different types of non-lux category cabins and EUR 83 for car transport.[77]

(74) Ferry operators also stated that, in general, ferries and airlines have different customer groups. According to the responses to the market investigation, ferry customers prefer trips purchased on short notice but cheaply, they often travel with their car, family and/or excess luggage, they may suffer from flight fear/stress and they prefer travelling in particularly comfortable surroundings.[78]

(75) Finally, the vast majority of the ferry operators considered that the Transaction would not have any effect on their operations on any of the domestic overlap routes of the Parties.[79]

(76) Therefore, it appears that overall in the domestic overlap routes of the Parties, airlines and ferries do not monitor each other, they do not seem to interact when changes in prices or capacity on a given route take place, they have different pricing levels, price-setting mechanisms and pricing environment and they satisfy generally different customer groups.

(77) The role of ferries on each domestic route where the Parties are actual or potential competitors is also analysed in the route by route analysis of this Decision. Nevertheless, in the three sub-sections below, the Commission applies the general considerations mentioned in recitals (60)-(76) of the present Decision to three individual routes: Athens–Mykonos (where the market definition encompasses ferries for TS, NTS and all passengers), Athens–Rhodes (where the market definition does not encompass ferries for TS, NTS and all passengers), and Athens–Santorini

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75 See indicatively Law 2932/2001 on Maritime Transport, Official Gazette A' 145/27.6.2001.

76 Blue Star and Superfast Ferries' response of 19 June 2013 to Commission RFI of 12 June 2013, answer to question 1.

77 Website of ANEK ferries, available at: http://web.anek.gr/portal/page/portal/ANEK_prod/Fares_Offers.

78 R5 – Questionnaire to ferry operators – replies to questions 22–23.

79 R5 – Questionnaire to ferry operators – replies to question 25.

(the only route where the Notifying Party decided not to adopt the market definitions found in *Olympic/Aegean I*).

Athens–Mykonos

(78) The inclusion of ferries and air transport into one market seems appropriate only when an island destination is so close to Athens that, when served by high-speed ferries, the total travel time from city centre to city centre by airplane or ferry is comparable. This appears to be the case for the Athens–Mykonos route. Ferries operating that route may, on the basis of the market investigation, be regarded as offering a substitute for all categories of passengers, in particular in view of the relatively short distance, the availability of high-speed boats, and the adequate frequency of services available.[80] By way of example, Sea Jets operates high-speed ferries from Rafina port (close to Athens) to Mykonos with a travel time of two and a quarter hours and making 7–11 crossings weekly.[81] Coincidentally, On the Athens–Mykonos route, ferry services were found to be substitutable to air services also in *Olympic/Aegean I.*[82]

(79) Ferry services should therefore be included in the same market as air services for all segments of passengers (TS, NTS, all passengers) on this route.

Athens–Rhodes

(80) With respect to the Athens–Rhodes route, the Commission considers on the basis of the market investigation that the conclusion regarding the non-substitutability of ferries reached in *Olympic/Aegean I*[83] remains valid.

(81) The large majority of the respondents to the market investigation (whatever the segments) indicated that they would not switch to ferries in case of a theoretical 5–10% increase in air fares.[84]

(82) Furthermore, for the sake of illustration, the following information depicts how significantly ferry and air services differ on the route. Blue Star Ferries, the main operator on the route, offered six weekly crossings in summer 2013 with an average travel time of 15 to 16 hours (not taking account of travel time from the city centre to the port).[85] Aegean and Olympic offered around 5 daily crossings with an average travel time of one hour[86] in the 2013 summer season.[87] Even taking travel time from city centre to city centre, the difference in total travel time remains very significant.

(83) Ferry services are therefore not to be included in the same market as air services for any segment of passengers (TS, NTS, all passengers) on this route.

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80 Q2 – Questionnaire to corporate customers – replies to question 20; Q3 – Questionnaire to travel agents – replies to question 19; R6 – Questionnaire to corporate customers – replies to question 1.6; R7 – Questionnaire to travel agencies - replies to question 1.6.

81 Form CO, table 62; Aegean's response to the Commission's RFI from 10 September 2013, page 8, table 9.

82 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 94–271.

83 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 94–271.

84 R6 – Questionnaire to corporate customers – replies to question 1.8; R7 – Questionnaire to travel agencies – replies to question 1.8.

85 R5 – Questionnaire to ferry operators – reply of Blue Star Ferries to question 5, Annex I.

86 Form CO, paragraph 389.

87 Aegean Route Analysis: Athens–Rhodes, page 1.

Athens–Santorini

(84) In the Form CO the Notifying Party adopted the relevant product markets identified by the Commission in *Olympic/Aegean I*.[88] The Commission recalls that in that Decision it accepted that ferries represented an effective competitive restraint to scheduled air transport on the Athens–Mykonos route, but rejected the argument that alternative modes of transport formed part of the Greek O&D markets, at least for TS passengers, in other routes for the domestic market.[89]

(85) However, during the Phase II investigation, the Notifying Party argued for the first time that ferries and air services are substitutable also on the Athens–Santorini route due in particular to the use of high-speed vessels. The Notifying Party provided[90] information on frequency and travel time in order to demonstrate that the level of flexibility and travel time of ferry trips between Athens and Santorini are comparable to the flexibility and travel duration of air transports services. In the SO Response, the Notifying Party further claimed that the responses of travel agents and corporate customers show that ferries exert a significant competitive constraint on the Parties with respect to TS passengers, NTS passengers, and all passengers.[91]

(86) The views of corporate customers and travel agents regarding substitutability between ferries and air services constitute only one of several elements that the Commission took into account in the present case in order to define the relevant product market. Furthermore, regarding the views of travel agents it should be noted that these constitute an indirect proxy for the views of their customers and are economically dependent on the Parties.

(87) First, the responses of corporate customers to the Commission's questionnaires point rather towards non-substitutability between ferries and air services on the Athens–Santorini route. The majority of corporate customers replied that indeed they do not purchase ferry tickets on any Greek domestic route for their employees travelling on business trips.[92] Even amongst the minority of corporate customers that replied positively to that question, almost none indicated Athens–Santorini as a route where ferry tickets are purchased for business trips.[93] When asked specifically in relation to the route Athens–Santorini during Phase II, the clear majority of corporate customers replied that they would not switch to ferry services in case prices of airline services were to increase by 5 to 10%.[94] Chipita, Hellenic Steel, Novartis and Lidl Stiftung explained that the duration of ferry travel is too long, while Alpha Vita Vassilopoulos referred to disruptions of ferry services in winter due to weather conditions.[95]

(88) Second, travel agents' views do not lead to the conclusion that ferries and air services are substitutable for both segments of TS and NTS passengers on the Athens–

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[88] Form CO, paragraph 143.

[89] Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 271.

[90] Aegean's response of 30 May 2013 (updated 6 June 2013) to Commission RFI of 8 May 2013, answer to question 15.

[91] SO Response, paragraphs 562–575.

[92] Q2 – Questionnaire to corporate customers – replies to question 19.

[93] Q2 – Questionnaire to corporate customers – replies to question 19.

[94] R6 – Questionnaire to corporate customers – replies to question 1.1.

[95] R6 – Questionnaire to corporate customers – replies to question 1.1.

Santorini route. Travel agents' responses were divided as to whether their TS passengers would switch to ferry services in case prices of airline services were to increase by 5 to 10%.[96] Several respondents who replied to that question in the negative, such as American Express, Samiotis Tours and Sea&Sky Travel, referred to the length of travel time that ferry services entail.[97] Regarding NTS passengers, as Aegean states in the SO Response, "*89% of the travel agents responded that non-time sensitive passengers would switch in case of an increase of the air services price*".[98] However, the Commission will examine below several other elements and will on that basis ultimately leave the market definition open with respect to the segments of NTS passengers and all passengers on the Athens–Santorini route.

(89) The Commission performed a detailed analysis of the information provided by the Notifying Party and found that it does not demonstrate the alleged substitutability between ferries and air services on the Athens–Santorini route. Travelling by ferry takes significantly longer than travelling by plane and the presence of high-speed vessels is overestimated by the Notifying Party.

(90) In the summer season, a trip by ferry from Athens (Piraeus or Rafina port) to Santorini port takes from 3:30 hours to 7:50 hours.

(91) The 3:30 hours taken by the ferry "Seajet 2" from Rafina port is rather exceptional since it operates only once a week (Monday early morning) and only for the period between 7 June and 15 September.[99] Even leaving aside the low frequency of this ferry, the travel time is in reality significantly longer than it appears. Rafina is located at a 30-40 kilometres distance from Athens and can be reached in around 40 minutes by car or in 60 minutes by public transport (bus).[100] Although AIA is also located at a 40 kilometres drive from Athens, it is served by better road network and public transport, so that it can be reached in around 30 minutes by car or in 40 minutes by public transport (metro).[101] Thus, "Seajet 2" will permit a travel time of around 4:35 hours (by car to Rafina port)[102] or around 4:55 hours (by public transport to Rafina port)[103] from Athens city centre to Santorini city centre, while by airplane it would take around 2:30 hours (by car to AIA)[104] or around 2:40 hours (by metro to AIA).[105] It follows that "Seajet 2" is significantly less attractive for travellers when compared to the services of Aegean and Olympic, since it operates only once a week

96 R7– Questionnaire to travel agencies – replies to question 1.1.1.

97 R7– Questionnaire to travel agencies – replies to question 1.1.3.

98 SO Response, paragraph 569.

99 Aegean's response of 30 May 2013 (updated 6 June 2013) to Commission RFI of 8 May 2013, answer to question 15.

100 See the website of the bus operator KTEL Attikis, available at: http://www.ktelattikis.gr/tickets.php.

101 See the website of the metro operator STASY, available at: http://www.stasy.gr/index.php?id=70.

102 This includes 40 minutes from Athens city to Rafina port by car, 10 minutes for ferry boarding, 3:30 hours of ferry trip, and 15 minutes by car from Santorini port to the city of Santorini.

103 This includes 60 minutes from Athens city to Rafina port by public transport, 10 minutes for ferry boarding, 3:30 hours of ferry trip, and 15 minutes by car from Santorini port to the city of Santorini.

104 This includes 30 minutes from Athens city to AIA by car, 45 minutes for check-in, 50 minutes of flight, 15 minutes for terminal related procedures upon arrival, and 10 minutes by car from Santorini airport to the city of Santorini.

105 This includes 40 minutes from Athens city to AIA by metro, 45 minutes for check-in, 50 minutes of flight, 15 minutes for terminal related procedures upon arrival, and 10 minutes by car from Santorini airport to the city of Santorini.

for 1/3 of the year and, in any event, its city-centre-to-city-centre travel time is considerably longer than that of an airplane.

(92) The next fastest ferry with more than one frequency per week from Rafina/Piraeus to Santorini is "Superjet", which takes 4:15 hours from Piraeus port to Santorini port and operated 7 weekly crossings from 17 June to 15 September 2013.[106] "Superjet" offers traveling time of 5:00 hours (by car to Piraeus port)[107] or 5:10 hours (by public transport to Piraeus port)[108] from Athens city centre to Santorini city centre, while by airplane it would take 2:30 hours (by car to AIA)[109] or 2:40 hours (by metro to AIA).[110] It follows that "Superjet" is significantly less attractive for travellers when compared to the services of Aegean and Olympic, since its city-centre-to-city-centre travel time is roughly twice as long as that of an airplane.

(93) Therefore, even in the high summer season (June-September), total traveling time from Athens city centre to Santorini city centre by airplane would be around 2:30 or 2:40 hours, while by ferry it would, be in the best case, be roughly twice as long – around 5:00 or 5:10 hours. In addition, the summer frequencies of air transport on the Athens–Santorini route reach a peak of 9 daily flights.[111]

(94) In the winter season, the substitutability as between airplanes and ferries is even more remote on the Athens–Santorini route, since the fastest ferries from Piraeus to Santorini take 7:30 hours (7 weekly) and 7:40 hours (2 weekly),[112] not counting the travel time from city centre to city centre.[113] In comparison, that route is covered by 12 weekly services in the same season.[114]

(95) Besides, on the basis of even the fastest travel times, ferries to Santorini would not allow a return on the same day (in contrast to air travel), which is often important for TS passengers.

(96) Furthermore, on the basis of Aegean's data[115] almost 50% of roundtrip passengers from Athens stayed in Santorini 6 days or less in the period April-October 2012. On

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[106] Aegean's response of 30 May 2013 (updated 6 June 2013) to Commission RFI of 8 May 2013, answer to question 15.

[107] This includes 20 minutes from Athens city to Piraeus port by car, 10 minutes for ferry boarding, 4:15 hours of ferry trip, and 15 minutes by car from Santorini port to the city of Santorini.

[108] This includes 30 minutes from Athens city to Piraeus port by public transport, 10 minutes for ferry boarding, 4:15 hours of ferry trip, and 15 minutes by car from Santorini port to the city of Santorini.

[109] This includes 30 minutes from Athens city to AIA by car, 45 minutes for check-in, 50 minutes of flight, 15 minutes for terminal related procedures upon arrival, and 10 minutes by car from Santorini airport to the city of Santorini.

[110] This includes 40 minutes from Athens city to AIA by metro, 45 minutes for check-in, 50 minutes of flight, 15 minutes for terminal related procedures upon arrival, and 10 minutes by car from Santorini airport to the city of Santorini.

[111] That is 4 daily flights by Aegean and 5 daily flights by Olympic in summer 2012 (see Form CO, paragraph 398). In summer 2013, Aegean and Olympic operated respectively 23 and 21 weekly frequencies on the Athens–Santorini route (see recital (531) of this Decision).

[112] By contrast, the fastest ferries from Athens to Mykonos during winter take 4:25 hours from Rafina port to Mykonos port and run 14 weekly frequencies (see Form CO, table 61).

[113] Aegean's response of 30 May 2013 (updated 6 June 2013) to Commission RFI of 8 May 2013, answer to question 15.

[114] That is 6 weekly flights by Aegean and 6 weekly flights by Olympic in winter 2012/2013 (see Form CO, paragraph 398).

[115] Aegean's response of 19 June 2013 to Commission RFI of 12 June 2013, answer to question 1.

the basis of Olympic's data,[116] more than 50% of passengers stayed in their destination (Athens or Santorini) for less than 4 days in the period March-October 2012 and less than 3 days for the remainder of 2012.

(97) Given the rather short duration of stay of air passengers in Athens and in Santorini, it appears that travellers would not be inclined to endure a long travel time on that route.

(98) Finally, with respect to the long travel time of ferries in winter, the Notifying Party claimed that the competitive analysis should mainly focus on the summer season because 85% of passengers travel during that season.[117]

(99) However, as stated in *Olympic/Aegean I* consumers need to be protected the whole year round.[118] Indeed, the approximately 1 500 weekly seats offered by Olympic and Aegean in the winter season 2012/2013[119] cannot be considered insignificant and do constitute a substantial part of the internal market in the sense of Article 2(3) of the Merger Regulation. As operating conditions vary significantly between the winter and summer seasons (in particular in terms of frequency and ferry travel time), the analysis has to be conducted and conclusions drawn on a seasonal basis.

(100) In view of the above, it is concluded that ferry services do not form part of the same market as air services for TS passengers on the Athens–Santorini route. With respect to substitutability between ferry and air services for NTS passengers and all passengers on the Athens–Santorini route, the precise market definition can ultimately be left open, since it would not alter the assessment of the Transaction.

Other routes

(101) As regards TS passengers, in light of all available evidence, the Commission considers that there is no substitutability between air services and ferries on all the domestic overlap routes of the Parties, with the exception of the Athens–Mykonos route.

(102) Corporate customers, who constitute a proxy for TS passengers,[120] indicated that they would not switch to ferries in case of a theoretical 5–10% increase in air fares, with the exception of the Athens–Mykonos route. The majority of corporate customers stated that they would switch to ferries on the Athens–Mykonos route; the majority of corporate customers stated that they would not switch to ferries on the Athens–Santorini route; the large majority of corporate customers stated that they would not switch to ferries on the Athens–Chania and Athens–Heraklion routes; and the

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116 Statements by Marfin, paragraph 1; Marfin's and Olympic's responses of 14 June 2013 to Commission RFI of 12 June 2013, answer to question 1.

117 Aegean's response of 10 June 2013 (updated 12 June 2013) to Commission RFI of 7 June 2013, answer to question 16.

118 Article 2.1(b) of the Merger Regulation, Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 497, Commission Decision of 10 December 2003 in Case COMP/D2/38.479 – *British Airways/Iberia/GB Airways,* recitals 30-31, Commission Decision of 27 June 2007 in Case COMP/M.4439 *Ryanair / Aer Lingus*, recitals 297–298.

119 Aegean's "Counterfactuals" Athens–Santorini, page 1).

120 The majority of corporate customers classified themselves as TS passengers on Greek domestic routes, indicating that in particular ticket flexibility and schedule are important parameters to them (Q2 – Questionnaire to corporate customers – replies to questions 11–16). The fact that corporate customers are TS customers is also acknowledged by the Notifying Party (see, for example, the SO Response, paragraph 570).

overwhelming majority of corporate customers stated that they would not switch to ferries on the Athens–Kos, Athens–Mytilene and Athens–Rhodes routes.[121]

(103) Moreover, all travel agents stated that their TS customers would not switch to ferries in case of a theoretical 5–10% increase in air fares on the route from Athens to Kos. The overwhelming majority of travel agents also indicated that their TS customers would not switch on the routes from Athens to Mytilene and Rhodes.[122]

(104) Furthermore, in practice, ferries do not allow for a same-day return trip on all the domestic overlap routes of the Parties, except for Athens–Mykonos.[123] Travelling time by ferry from the ports of Athens[124] to the ports of Chania, Heraklion, Kos, Mytilene and Rhodes is generally longer than 6 hours.[125]

(105) As regards NTS passengers, the majority of travel agents that responded to the market investigation indicated that their NTS customers would switch to ferries in case of a theoretical 5–10% increase in air fares, on the routes from Athens to Chania, and Heraklion. However, the large majority of travel agents indicated that even their NTS customers would not switch to ferries on the routes from Athens to Kos, Mytilene and Rhodes.[126]

(106) In view of the above, it is concluded that ferry services do not form part of the same market as air services for TS passengers on the Athens–Heraklion, Athens–Chania, Athens–Kos and Athens–Mytilene routes. With respect to substitutability between ferry and air services for the segments of NTS passengers and all passengers on the Athens–Heraklion, Athens–Chania, Athens–Kos and Athens–Mytilene routes, the precise market definition can ultimately be left open, since it would not alter the assessment of the Transaction.

Conclusion on ferry substitutability

(107) In view of the above, it is concluded that ferry services do not form part of the same market as air services for TS passengers on all the domestic overlapping routes of the Parties, except for the Athens–Mykonos route. With respect to substitutability between ferry and air services for NTS passengers and all passengers on all the domestic overlapping routes of the Parties (except for the Athens–Mykonos and the Athens–Rhodes routes), the precise market definition can ultimately be left open, since it would not alter the assessment of the Transaction.

Train and air services on the Athens–Thessaloniki route

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121 R6 – Questionnaire to ferry operators – replies to question 1. The overwhelming majority of corporate customers also stated that they would not switch to ferries on the Athens–Samos and Athens–Chios routes.

122 R7 – Questionnaire to travel agencies – replies to question 1. The overwhelming majority of travel agents also stated that their TS customers would not switch to ferries on the Athens–Samos and Athens–Chios routes.

123 Form CO, paragraphs 340-355.

124 From Piraeus port or from Rafina port.

125 Indicatively, ferries from Athens (Piraeus/Rafina) to Heraklion take approximately 6 hours, 7 hours or 9 hours; to Chania ferries take approximately 9 hours; and to Mytilene, Kos and Rhodes ferries take generally more than 10 hours.

126 R7 – Questionnaire to travel agencies – replies to question 1. The large majority of travel agents also stated that their NTS customers would not switch to ferries on the Athens–Samos and Athens–Chios routes.

(108) In Case M.5830 – *Olympic/Aegean I*, the Commission found that air services and train services differed significantly from each other in terms of travel time, level of frequency and prices. As a result train services were excluded from the analysis of the relevant market for all categories of passengers.[127]

(109) For the present Transaction, the Notifying Party does not claim that there is intermodal competition between train and air services on the Athens–Thessaloniki route.[128] The Notifying Party did not provide any market shares for a hypothetical market encompassing both train services and air services.

(110) The Commission's market investigation confirmed that train services do not compete in the same market as air services on Athens–Thessaloniki for TS passengers.[129] With respect to all passenger segments (i.e. TS, NTS passengers and all passengers), trains between Athens and Thessaloniki appear to take now longer than 5 hours.[130] This is even longer than the fastest train identified in *Olympic/Aegean I* (which was 4.5 hours),[131] where it was concluded that train services should not be included in the relevant market for any segment of passengers on route Athens–Thessaloniki.[132]

(111) Therefore, for the purposes of this Decision, the Commission sees no reason to depart from the conclusion it reached in *Olympic/Aegean I* regarding the absence of substitutability between air services and train services on the Athens–Thessaloniki route.

6.2.5.4. Conclusion

(112) In light of the above, and as further explained in the competitive assessment for each route, for the purposes of this Decision, the Commission sees no reason to depart from its conclusions reached in *Olympic/Aegean I*. Moreover, in its SO Response the Notifying Party did not contested further[133] the Commission's assessment in this regard.

(113) To recapitulate, the Commission considers that:

- As concerns the segment of TS passengers, with the exception of the Athens–Mykonos route, 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 form part of the same product market as concerns TS passengers.
- As concerns the segments of NTS passengers and all passengers, the question whether air services and ferry services belong to the same market can be left open, except for the Athens–Mykonos and Athens–Rhodes routes, as the

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127 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 1383 and following.

128 Form CO, paragraph 143.

129 Q2 – Questionnaire to corporate customers of 28 February 2013, replies to question 21; Q1(A) – Questionnaire to actual competitors of 28 February 2013, replies to question 70.

130 See the train schedules available on the website of Greek train operator TRAINOSE: http://www.trainose.gr/sites/default/files/news/uploads/ethniko_diktyo.pdf.

131 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 1363.

132 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 1383.

133 Except for the Athens–Santorini route, as analysed in paragraphs (84) to (100) of this decision.

competitive assessment remains the same irrespective of whether ferry services are included or not into the relevant market. On the Athens–Mykonos route, air and ferry services form part of the same product market as concerns the markets for NTS passengers and for all passengers. On the Athens–Rhodes route, air and ferry services are considered not to form part of the same product market as concerns the markets for NTS passengers and for all passengers.

– Finally, for the Athens–Thessaloniki route, train services are not considered to be in the same market as air services for any category of passengers, as analysed further in the route-specific analysis.

7. COMPETITIVE ASSESSMENT OF PSO ROUTES

7.1. Introduction

(114) In this section, the Commission presents the results of its competitive assessment of PSO routes. The Commission's assessment is aimed at verifying whether the combination of Aegean's and Olympic's positions in the Greek PSO markets is likely to significantly impede effective competition in the present case.

7.2. The view of the Notifying Party

(115) The Notifying Party submits that Aegean and Olympic are no longer close competitors in respect of competition for PSO routes, as Aegean's fleet is ill-suited to operate PSO routes.[134] The two other incumbents, Sky and Astra, and Minoan, a third Greek carrier with appropriate fleet, will exert significant constraint in future tenders.[135]

(116) The Notifying Party argues that it is not able to compete in all PSO routes, as its fleet of jet aircraft only allows it to operate 12 out of the currently existing 28 PSO routes. The low level of demand and the size of its aircraft reduce further the number of routes, in which Aegean can have a commercial interest in bidding.[136]

(117) In fact, Aegean has been unsuccessful in its attempts to stimulate demand in the PSO routes it has so far operated. In the last bidding rounds of 2010 and 2012, the Notifying Party participated in the calls for tenders of 8 routes out of the 28 and was the minimum bidder in only one of them (Athens–Skyros), having made higher requests for subsidy than its competitors, which operated in most cases turboprop aircraft with lower seat capacity. The unsuccessful attempts of Aegean to stimulate demand in the PSO routes it operated before the 2012 tender, made the company more circumspect in view of future calls[137].

7.3. The Commission's investigation and assessment

(118) Aegean and Olympic are both among the carriers operating PSO routes in Greece. After the last calls for tenders organised by HCAA in 2010 and 2012, 28 PSO routes have been attributed in Greece, out of which 15 were awarded to Olympic, 7 to Sky Express, 5 to Astra and 1 to Aegean, corresponding to a share of 54% for Olympic, 25% for Sky, 18% for Astra and 4% for Aegean, as shown below in Table 1. 26 out

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134 Form CO, paragraph 203.
135 Form CO, paragraph 202.
136 Form CO, paragraph 203.
137 Form CO, paragraph 205.

of the current 28 PSO contracts will expire in 2016, with a call for tenders for only two of the routes expected within the next year.[138]

(119) As analysed above in section 6.1.3, the operation of PSO routes should be considered distinct from the commercial air transport of passengers, as no competition can take place on PSO routes conceded to a single airline. Rather, competition takes place for the market at the tender stage.[139]

(120) Aegean and Olympic have a combined share of 58% of the current 28 PSO routes, with the Transaction accounting for a limited increment of 4%. This increment is in reality even more limited given that (contrary to Olympic, Sky, Minoan and Astra) technically, Aegean's jets are only able to operate on 12 of the current 28 PSO routes. The low level of demand and the structure of Aegean's fleet has resulted in a significant reduction in the number of routes operated by the airline after the last call for tenders. Olympic's fleet, which is planned to consist exclusively of turboprop aircraft, is more suitable for the operation of PSO routes. Although market shares provide useful first indications of the market structure, they are not entirely indicative of market power, especially on PSO routes, where competition takes place *for* the market. The Commission thus examines also other elements of the competitive interaction between Aegean, Olympic and their (actual and potential) competitors on Greek PSO routes.

(121) In particular, prior to the 2012 bidding process Aegean used to operate 4 PSO routes. Aegean had won these routes with zero subsidy, as the airline thought it could stimulate demand and be profitable. However, this did not turn out to be the case, as demonstrated by Aegean's financial results. In the 2012 bidding process Aegean lost all 4 of its previously held PSO routes and was only granted 1 PSO route (with subsidy) previously operated by Sky Express. This reduction is largely due to the fact that Aegean does not have aircraft sufficiently small to operate profitably the majority of PSO routes. From a commercial perspective, it is undesirable to operate large jet aircraft on such small routes. Even though Aegean could technically operate 12 of the 28 PSO routes with jet aircraft, it would not make sense from a commercial perspective given the low level of demand on these routes.[140]

(122) Thus, of the current 28 PSO routes Aegean participated in tenders for 8 routes, but it was the minimum bidder on only one route (Athens–Skyros) for which it won the tender. Aegean did not win the tender for the rest of the routes it had bid for, because the subsidy requested was higher than that of its competitors. The reason for such higher requests was that the Notifying Party had to participate in the tender with A320 aircraft that have double (or even triple) seat capacity per flight in comparison to the turboprops with which other participants competed in the tender. Aegean could not repeat the costly loss-making experience of the 2010-2012 period, when Aegean attempted to stimulate demand in the 4 PSO routes that it had offered to operate without any subsidy.[141]

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138 Form CO, Table 27; Q6 – Questionnaire to HCAA – reply to question 19.

139 See recitals (31)-(36) of this Decision.

140 Form CO, paragraphs 197 and 203. It is indicative that HCAA's minimum requirements of seats per flight is typically between 20 and 50 seats per flight for most PSO routes, whereas Aegean's jet fleet makes available between 138 and 196 seats per flight.

141 Form CO, paragraph 205.

(123) Moreover, the Parties' competitors have been increasing their presence in Greek PSO routes. Sky increased significantly its share of total subsidies in the last call for tenders. Astra's share expanded from 4% to 18% of the current 28 PSO routes, by winning the routes previously operated by Aegean. Finally, Minoan Air, although not already operating a PSO route, participated in the last bidding round and expressed its interest in continuing to do so in the coming years.[142]

Table 1: Evolution of the number of PSO routes

	PSO routes in 2010		**PSO routes in 2012**	
	No. of routes	% of all PSO routes	No. of routes	% of all PSO routes
Aegean	4	15	1	4
Astra	1	4	5	18
Olympic	13	50	15	54
Sky	8	31	7	25
Total	**26**	**100**	**28**	**100**

Source: Form CO

Table 2: Share of subsidies for all 28 PSO routes

	2010		**2012**		
	Subsidy (€m)	**% of total**	**Subsidy (€m)**	**% of total**	**% change**
Aegean	0	0	0.8	2	+2%
Astra	0	0	2.3	5	+5%
Olympic	24.3	78	29.1	66	-12%
Sky	6.8	22	12.1	27	+5%
Total	31.1	100	44.3	100	

Source: Form CO

(124) The results of the Commission's market investigation confirmed the Notifying Party's claim that Aegean and Olympic are not each other's closest competitors on the current 28 PSO routes. The HCAA[143] and Minoan Air consider all carriers currently operating in PSO routes equally close competitors with the exception of Aegean, which due to its fleet cannot compete in most cases on the same routes as Olympic and the other PSO bidders.[144] Furthermore, none of the questioned Greek airports considered that the Transaction would have any impact on the competition for PSO routes.[145]

(125) The vast majority of airlines active in Greece considered that there is high competition for tenders for Greek PSO routes. Furthermore, none of them identified any significant barriers to entry in that regard and their vast majority expressed their interest to participate in future tenders.[146]

7.4. Conclusion

(126) In view of the above, it is concluded that the Transaction would not significantly impede effective competition in the market for PSO routes in Greece, regardless of the exact definition of the relevant market.

[142] Q1(A) – Questionnaire to actual competitors – reply of Minoan to question 51.
[143] Q6 – Questionnaire to HCAA – reply to questions 22–23.
[144] Q1(A) – Questionnaire to actual competitors – replies to questions 54–55.
[145] Q4 – Questionnaire to airports – reply to question 29.
[146] Q1(A) – Questionnaire to actual competitors – replies to questions 51, 53 and 56 and reply of Sky to question 56.

8. ANALYTICAL FRAMEWORK OF THE COMPETITIVE ASSESSMENT OF AIR TRANSPORT OF PASSENGERS (NON-PSO ROUTES)

(127) In the sections below, the Commission presents the results of its competitive assessment of non-PSO routes, with a particular focus on the arguments raised by the Notifying Party. The Commission's assessment is aimed at verifying whether by combining Aegean's and Olympic's strong positions in the Greek markets the Transaction will fulfil the criterion laid down in Article 2(3) of the Merger Regulation, that is whether this concentration would significantly impede effective competition.

(128) In order to carry out such an assessment, the Commission must perform a prospective analysis. This analysis consists of an examination of how the Transaction might alter the factors determining the state of competition on a given market in order to establish whether it would give rise to a serious impediment to effective competition. Such an analysis makes it necessary to envisage various chains of causality and effect with a view to ascertaining the most likely effects of the Transaction.[147]

(129) The Commission must therefore compare the competitive conditions on the relevant markets that are likely to prevail without the concentration with the conditions that would result from the concentration.[148] In most cases, the competitive conditions actually existing at the time of the notification constitute the relevant starting point for the comparison for evaluating the effects of a merger.

(130) However, although the assessment of a concentration's compatibility with the internal market must be carried out by comparing the likely situation post-merger with the situation existing at the time of notification of that transaction, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. [149]

(131) Of particular relevance may be whether, without the concentration, the relevant assets would exit the market. Where the assets would in the near future be forced out of the market if not taken over by another undertaking and where there is no prospect of a less anti-competitive alternative purchase than the notified concentration, a deterioration of the competitive structure that follows the concentration is not caused by the concentration, since the competitive structure of the market would in any event deteriorate to at least the same extent without the concentration.[150]

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147 See Case T-310/01 *Schneider Electric SA v Commission of the European Communities* [2002] ECR II-4071, paragraph 443; Case C-12/03 P *Commission of the European Communities v Tetra Laval BV* [2005] ECR I-987, paragraph 43; Case C-413/06 P *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)* [2008] ECR I-4951, paragraphs 47 and 52.

148 Horizontal Merger Guidelines ("Horizontal Merger Guidelines" or "HMG"), (OJ C 31, 5.2.2004, p 5), paragraph 9.

149 Horizontal Merger Guidelines, paragraph 9; Cases T-310/01 *Schneider Electric SA v Commission* [2002] ECR II-4071, paragraph 443; C-12/03 P *Commission v Tetra Laval BV* [2005] ECR I-987, paragraph 43; C-413/06 P *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)* [2008] ECR I-4951, paragraphs 47, 52.

150 See joined cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraphs 109 to 124. See also paragraphs 89 and 90 of the Horizontal Merger Guidelines. See also Commission Decision of 21 July 1994 in Case No IV/M.308 – *Kali+Salz/MdK/Treuhand,* recital 71; Commission Deci-

(132) In the sections below the Commission examines the likely effect on competition if the Transaction went ahead: the scope of the Parties' actual and potential overlaps (section 9.1), the closeness of competition between the Parties (section 9.2), the recent entry and exit of Cyprus Airways into/from the Greek domestic market (section 9.3), the claimed constraint exerted by direct international flights to Greece (section 9.4), the likelihood of entry/expansion by other competitors (section 9.5), the competitive effects of the Transaction on the routes where the Parties are actual or potential competitors (sections 9.6 to 9.7) and the effects on consumers (section 9.8). The Commission analysed also the Notifying Party's arguments regarding the efficiencies arising from the Transaction (section 9.10).

(133) The Commission concludes by assessing the question set out in recital (131) above (section 10).[151]

9. COMPETITIVE ASSESSMENT OF AIR TRANSPORT OF PASSENGERS (NON-PSO ROUTES)

9.1. The scope of the actual and potential overlaps between the Parties

(134) In sections 9.6 and 9.7, the Commission will assess in detail the post-merger competitive situation on each relevant route in terms of both actual and potential competition. This section (section 9.1) provides a general overview of the overlaps between the Parties.

9.1.1. The view of the Notifying Party

(135) The Notifying Party submits[152] that since 2010, in response to the drop in revenue, the Parties have shut down a number of routes. Today they operate fewer domestic routes than ever previously. In January 2010, the Parties overlapped on 31 routes: 19 domestic and 12 international, but in *Olympic/Aegean I*, the Commission identified 9 domestic routes on which it concluded that the transaction would give rise to an impediment of effective competition.

(136) In January 2011, at the time of the adoption of the Decision in *Olympic/Aegean I*, the Parties' operations overlapped on 15 domestic and 8 international routes according to the Notifying Party.[153] Since then, the number of overlaps has been decreasing steadily. In early 2012, the actual overlaps were reduced to 13 domestic and 3 international.

(137) In October 2012, the Notifying Party notes,[154] Olympic closed down its base at Thessaloniki and exited an additional overlap route Thessaloniki–Mytilene.

(138) In the first half of 2013, due to deteriorating demand according to the Notifying Party,[155] the Parties continued adapting their business models in order to contain

sion of 11 July 2001 in Case COMP/M. 2314 - *BASF/Eurodiol/Pantochim*, recitals 136–143; Commission Decision of 10 May 2007 in Case COMP/M. 4381 - *JCI / FIAMM*, recitals 689–690; Commission Decision of 26 January 2011 in Case COMP/M.5830 - *Olympic/Aegean Airlines*, recital 1811; Commission Decision of 30 March 2012 in Case COMP/M. 6447 - *IAG/bmi*, paragraphs 608–610.

151 Horizontal Merger Guidelines, paragraph 91.

152 SO Response, paragraph 71.

153 SO Response, paragraph 72.

154 SO Response, paragraph 73.

155 SO Response, paragraph 74.

losses. Aegean, as a jet-operating hub carrier, […]*. […]* started exiting loss-making domestic routes […]* (such as Athens–Alexandroupolis). It also decided to cease operating in winter on Athens–Corfu and Athens–Kos.

(139) The Notifying Party submits[156] that Olympic, on the other hand, exited a number of loss-making international routes (in 2011 and early 2012) and closed down its ex-Thessaloniki operations at the end of 2012. It was also forced to continue cutting loss-making domestic routes such as Athens–Rhodes, which Olympic decided to exit from September 2013. The SO recognised these exits and noted that the domestic routes of concern, where the Parties actually competed against each other, had fallen to 7.

(140) In July 2013, the Notifying Party reports that[157] Olympic decided to exit the two most important domestic routes, Athens–Thessaloniki and Athens–Heraklion. from October 2013. Thus by October 2013, the Parties' operations will overlap on 3 routes (that is, Athens–Chania/Santorini/Mytilene). In summer 2014, provided there will be no additional exits, the operations will overlap on 5 domestic routes (in addition to the 3 afore-mentioned routes, Athens–Corfu and Athens Kos).

(141) Furthermore, the Notifying Party submits[158] that the number of passengers travelling on domestic routes on which the Parties overlapped is projected to drop by 84%, from 4 million O&D passengers on the 19 overlap routes in January 2010 to 650 000 O&D passengers on 5 overlap routes in July 2014. The Notifying Party observes a similar decline if the comparison involves the 9 domestic routes for which the Commission concluded in *Olympic/Aegean I* that the notified merger would significantly impede effective competition. In that case, the number of passengers impacted at the time amounted to 3 million, whereas the Notifying Party projects that in July 2014 only 650 000 O&D passengers would travel on the 5 actual overlap routes. As a result, the number of O&D passengers travelling on the routes of concern is reduced by 79%.

(142) According to the Notifying Party,[159] the reduction in the size of the overlap can be measured by estimating Olympic's capacity on the actual overlap routes in 2010 and the projection of its capacity on the 5 overlap routes in 2014. In comparison with 2010, depending of which benchmark is used, Olympic is projected to supply either 88% or 84% fewer seats in competition with Aegean on the 5 overlap routes in 2014.

9.1.2. The Commission's assessment

(143) The following section provides an overview of the actual overlaps between the Parties and their respective and overall market shares. As analysed in section 9.6, the Parties have recently exited from several routes which has decreased their mutual overlaps. The Commission considers that the exit of Aegean from Athens–Alexandroupolis and the exit of Olympic from Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes are likely to take place. However, these routes are assessed as potential overlaps, together with routes Athens–Chios and Athens–Samos.

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156 SO Response, paragraph 75.
157 SO Response, paragraph 76.
158 SO Response, paragraphs 77 and following.
159 SO Response, paragraphs 81 and following.

(144) It follows that this Decision concerns in particular the following five Greek domestic routes on which both Parties are providing competing direct services, hereinafter referred to (together with the potential overlaps) as the "routes of concern". The table below provides an overview of the competitive situation on the routes of concern with an actual overlap.[160]

Table 3: Routes of concern with an actual overlap[161]

No	Route	Total pax (2012)	O&D pax (2012)	Weekly frequencies (winter 2012/13)	Parties' share for O&D pax (YTD Winter 2012/13)		
					TS	NTS	All
1.	ATH–CHQ (Chania)	[300 000 - 400 000]*	[200 000 – 300 000]*	A3: 15 (47%) OA: 17 (53%)	100% (A3: [50-60]*%, OA: [40-50]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)
2.	ATH–JTR (Santorini)	[300 000 – 400 000]*	[200 000 – 300 000]*	A3: 6 (50%) OA: 6 (50%)	100% (A3: [70-80]*%, OA: [20-30]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)
3.	ATH–MJT (Mytilene)	[200 000 – 300 000]*	[100 000 – 200 000]*	A3: 10 (43%) OA: 13 (57%)	100% (A3: [50-60]*%, OA: [40-50]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)	100% (A3: [60-70]*%, OA: [30-40]*%)
4.	ATH–CFU (Corfu)	[200 000 – 300 000]*	[100 000 – 200 000]*	A3: 7 (35%) OA: 13 (65%)	100% (A3: [30-40]*%, OA: [60-70]*%)	100% (A3: [80-90]*%, OA: [50-60]*%)	100% (A3: [40-50]*%, OA: [50-60]*%)
5.	ATH–KGS (Kos)	[100 000 – 200 000]*	[100 000 – 200 000]*	A3: 6 (30%) OA: 14 (70%)	100% (A3: [40-50]*%, OA: [50-60]*%)	100% (A3: [40-50]*%, OA: [50-60]*%)	100% (A3: [40-50]*%, OA: [50-60]*%)

Source: Form CO and Updated Annex 1.7 to the Form CO

(145) 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.[162]

(146) 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.[163]

(147) In the *Ryanair/Aer Lingus* judgement, the General Court also held 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*".[164]

160 Amongst the routes listed in this table, the Notifying Party provided market shares that include ferry services only on the route Athens–Santorini for a possible market including all passengers, i.e. without distinction between TS and NTS passengers. These market shares are presented in Table 29 and in Table 30. Moreover, regarding the distinction between TS and NTS air passengers, the Notifying Party provided the respective market shares set out in Table 3 on the basis of the methodology explained in Annex 1.8 of the Form CO.

161 In Table 2 the following abbreviations are used: A3 for Aegean and OA for Olympic.

162 Horizontal Merger Guidelines, paragraph 14.

163 Horizontal Merger Guidelines, paragraph 17.

164 Case T-342/07 – *Ryanair Holdings plc v Commission* [2010] ECR II-3457, paragraph 41.

(148) Considering TS passengers, the Transaction would lead to a situation of monopoly on all of the current overlap routes.

(149) As regards NTS passengers and all passengers, the Transaction would lead to monopoly on Athens–Corfu, and either to monopoly (should ferries be excluded from the respective relevant markets) or at least to the elimination of the two closest competitors (should ferries be included in the respective relevant markets) on Athens–Chania, Athens–Kos, Athens–Mytilene and Athens–Santorini.[165]

(150) Furthermore, the Transaction would lead to the elimination of potential competition on several routes because the Parties would cease to exert a threat of entry on each other.[166]

(151) In order to take due account of the particularities of each route, the Commission 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.

9.2. Closeness of competition

9.2.1. The view of the Notifying Party

(152) In the Form CO the Notifying Party claimed that, on the domestic routes where Cyprus Airways had entered, Cyprus Airways was Aegean's closest competitor, while Olympic had been increasingly becoming a more distant competitor.[167] According to Aegean, this is mainly due to the type of the aircraft operated on the overlap routes which makes customers see Aegean and Olympic as offering different products. As of April 2013 Olympic would be operating exclusively turboprop aircraft whereas Aegean has in its fleet exclusively jet aircraft.[168] Similarly to Aegean, Cyprus Airways also operates exclusively jet aircraft, which made it, according to Aegean, a much closer competitor than Olympic on the three Greek domestic overlap routes where it was active.

(153) On the supply side, turboprop aircraft burn less fuel than jets, and have a lower seat capacity. Hence, Olympic's Q400 turboprop aircraft have 78 seats compared to Aegean's A320s offering 168 seats. While the operating costs per seat of a turboprop aircraft are higher than that of a jet aircraft, a critical factor regarding whether a route can be more economically served by jet or turboprop aircraft is the thickness, or traffic density, of the route and the resulting load factor that can be achieved. On thin routes with low traffic density, turboprop operations have a cost advantage over using Airbus A320s as the turboprop aircraft can be operated at higher load factors and/or allow greater frequency of services. As routes become thicker, such that multiple daily services using Airbus A320s can be justified with sufficiently high load factors,[169] operations with jet aircraft become more efficient than turboprop operations.

(154) On the demand side, Aegean submits that passengers perceive jet aircraft as more comfortable than turboprops. Jets are larger aircraft with encased fan engines

165 See section 0 of this Decision.
166 See section 0.
167 Form CO, paragraphs 18, 37 and 613.
168 See also the SO Response, paragraphs 61 and following.
169 As is the case on the four largest Greek domestic routes, namely Athens–Thessaloniki/ Heraklion/ Rhodes/ Chania.

typically mounted on wings which are below the fuselage, whereas turboprop aircraft have un-encased fan engines mounted on wings which are above the fuselage. Since the fan engine of a turboprop is un-encased, it creates more drag and thus more vibration and noise than a jet aircraft. Aegean claims that, all other circumstances being equal on a route, passengers prefer carriers flying jet aircraft rather than turboprop aircraft.

(155) In view of these supply and demand side characteristics, Aegean is of the opinion that: (i) on the thick routes[170] it seems highly unlikely that in the medium term Olympic would continue to operate an effective competitive service against Aegean and Cyprus Airways, both of which fly Airbus jet aircraft; whereas (ii) on thin routes it is unlikely that Aegean will be able to maintain profitable services, since Olympic has a significant cost advantage. As a result, the complementarity of Olympic's and Aegean's operations on Greek domestic routes is bound to be even more pronounced in the future.

(156) In the SO Response, the Notifying Party claimed that the fact that the Parties are the two closest competitors does not mean that they are sufficiently close competitors. According to the Notifying Party, Olympic is no longer the airline it used to be two to three years ago and it is developing into a distant competitor.[171]

(157) The Notifying Party argues that Olympic and Aegean have developed differently in the last three years.[172] While for Aegean international routes have become significantly more important over the last few years, Olympic has focused on domestic operations. Between 2010 and 2012, the share of Aegean revenue that stems from international routes increased from […]*% to […]*%, and this share is budgeted to increase to […]*%. At the same time, Olympic's share of revenue from international routes fell from […]*% to […]*%, and is expected to fall to […]*%.

(158) The Notifying Party further claims[173] that between the beginning of 2010 and the end of 2013, the Parties will have become dissimilar in terms of equipment and capacity. In the beginning of 2010, their fleet was the same size, with 32 aircraft each. Aegean's fleet currently includes larger aircraft[174] and its overall seat capacity has risen by 29% since the beginning of 2010, whereas Olympic's fleet now comprises smaller aircraft and reduced overall seat capacity.[175]By the end of 2013, Aegean will have […]* aircraft, a reduction by […]* aircraft, while Olympic's fleet will be […]*, with only […]* aircraft.[176] Aegean is currently a jet-only carrier operating almost exclusively Airbus A 320,[177] whereas by the end of 2013 Olympic's fleet will include only turboprops (8 Q400 and 4Q100), according to the Notifying Party.[178]

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170 Such as Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes.

171 SO Response, paragraphs 461–487.

172 SO Response, paragraphs 60 and following.

173 SO Response, paragraphs 65–68.

174 The average seat per aircraft increased from 154 to 170 seats.

175 […]*

176 Olympic currently operates 15 aircraft (14 turboprop and 1 jet). […]*

177 At the beginning of 2010, Aegean's fleet was a mix of 24 jet (Airbus and Boeing), 6 small regional RJ and 2 small turboprops.

178 At the beginning of 2010, Olympic's fleet was also a mix of 17 jets and 15 turboprops.

9.2.2. The Commission's investigation and assessment

(159) According to the Horizontal Merger Guidelines,[179] "[*p]roducts may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. […] Thus, the fact that rivalry between the parties has been an important source of competition on the market may be a central factor in the analysis*."

(160) The concept of "closeness of competition" may play an important role in better understanding the competitive constraint exerted by different competitors on each other in differentiated markets.[180] In airline markets, there are elements that differentiate the air transport services provided by different airlines, based on prices, schedules, frequency of service, on-board and off-board service, etc.

(161) In the present case, the Parties are currently the only two competitors in the possible markets for TS passengers on the routes Athens–Santorini, Athens–Kos, Athens–Chania and Athens–Mytilene, as well as in the possible markets for TS passengers, for NTS passengers and for all passengers on the routes Athens–Corfu.

(162) The only three domestic routes where another airline provided until recently a competitive service are Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes. On all these routes Cyprus Airways was active from March/November 2012 through June 2013.[181] In addition, on Athens–Heraklion, also Sky Express operates a limited service (five weekly flights with a 30-seat airplane).

(163) Following the exit of Olympic from Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes, Aegean and Olympic are currently the only airlines operating on all five routes of concern.

(164) Aegean and Olympic have similar business models. They both operate their main base at AIA, where they also make available to their customers three lounges: "Olympic Handling - Aristotelis Onassis", "Olympic Handling - Melina Merkouri" and "Aegean Airlines – Club".[182] The two airlines offer different travel classes, for example "economy" and "premium economy" by Olympic[183] and "economy" and "business" by Aegean.[184]

(165) In the SO Response, the Notifying Party stated that services in Olympic's lounges are charged separately and are not included in the ticket price for "premium economy" passengers.[185] However, such payment arrangements do not alter the similarity between the two airlines' business models: both Aegean and Olympic make available

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179 Horizontal Merger Guidelines, paragraphs 28–30.

180 Horizontal Merger Guidelines, paragraphs 28–30.

181 See section 0 of this Decision regarding the recent entry and exit of Cyprus Airways into/from Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes.

182 See AIA website, available at: http://www.aia.gr/traveler/airport-information/business-facilities/lounges/.

183 See Olympic's website, available at: https://www.olympicair.com/el/Info/OnBoard/Economy and https://www.olympicair.com/el/Info/OnBoard/Premium.

184 See Aegean's website, available at: http://en.aegeanair.com/travel-information/on-board/economy-class/ and http://en.aegeanair.com/travel-information/on-board/business-class/.

185 SO Response, footnote 357.

business lounges to their customers, who pay for that service either separately or through the ticket purchase.

(166) Furthermore, in the SO Response, the Notifying Party stated that Aegean's "business class" offers a higher level of services than Olympic's "premium economy", because it includes access to Aegean's lounge, a rental car for one day and in-flight services (refreshing hot towel and aperitif).[186] However, Olympic also offers lounge access, the only difference being that Olympic charges for it separately while with Aegean such access is bundled into the price of the ticket. The mere fact that Aegean also offers some extra amenities does not alter the similarity between the two airlines' business models: both Aegean and Olympic distinguish and price-differentiate between two categories of passengers, i.e. those who are more price-sensitive and purchase their tickets relatively early, and those who are less price-sensitive, are willing to pay extra for convenience and comfort and purchase their tickets last-minute. Both airlines' pricing policy is based on this distinction.

(167) During the investigation, the Commission sought information regarding the purchasing behaviour of corporate customers and customers of travel agents, in order to assess the closeness of competition between Aegean, Olympic, Cyprus Airways and, when applicable, other competitors.[187] The views of corporate customers and travel agents represent only one of several elements that the Commission takes into account in order to assess the closeness of competition between Aegean, Olympic and other competitors.

(168) Even when Cyprus Airways was present on the Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes routes, corporate customers generally regarded Olympic as the closest competitor to Aegean on those routes and *vice versa*, on the basis of criteria such as pricing, frequency of flights, service on board and at the airport and business model. This was in particular due to similar quality of services, reliability, brand recognition, frequency of flights and variety of schedules offered.[188]

(169) Travel agents, on the other hand, considered that Olympic and Cyprus Airways competed at approximately the same level of closeness with Aegean and that Aegean was Olympic's closest competitor on the routes Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes, where all three of them operated until June 2013.[189]

(170) With respect to the claimed differentiation between jet and turboprop aircraft, most corporate customers indicated that they take into account the type of aircraft when booking tickets for their employees travelling on business trips, as it may affect the duration and the level of comfort during the trip. Nevertheless, almost the entirety of corporate customers stressed that this is not the decisive criterion for their choice of a carrier on a specific route: price and flight schedule matter most. When asked

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[186] SO Response, paragraph 476.

[187] For example, Sky on Athens–Heraklion or Astra which used to operate together with the Parties on the past overlap route of Thessaloniki–Mykonos.

[188] Q2 – Questionnaire to corporate customers – replies to questions 27 and 28. On other routes for which the Parties' activities overlapped until recently, such as Thessaloniki–Thessaloniki–Mykonos, Olympic is also largely considered the closest competitor to Aegean and *vice versa* by corporate customers.

[189] Q3 – Questionnaire to travel agents – replies to question 25; R7 – Questionnaire to travel agencies – replies to question 11. On other domestic routes where the Parties' activities overlapped until recently, such as Thessaloniki–Mykonos, Olympic is largely considered the closest competitor to Aegean and *vice versa* by travel agents.

whether they would pay a premium of more than 5–10% of the price of the ticket to travel on a jet aircraft rather than on a turboprop, the majority of corporate customers replied in the negative.[190]

(171) Similar responses were given by travel agents almost all of whom considered that consumers give much more importance to the price and flight schedule, rather than to the type of aircraft, when booking their tickets. When asked whether consumers would pay a premium of more than 5–10% of the price of the ticket to travel on a jet aircraft rather than on a turboprop, the majority of travel agents that provided a response to this question answered in the negative.[191]

(172) In addition, the distances on Greek domestic routes are short and flight duration is almost identical irrespective of whether jet or turboprop aircraft is used.[192] For instance, when comparing Olympic's schedule with that of Aegean for winter 2012–2013,[193] on the routes of concern Olympic's turboprops appear to take exactly the same time or only 5 minutes longer than Aegean's jets.

(173) Furthermore, both Aegean and Olympic have brands with strong recognition which makes customers consider them as close competitors. Corporate customers almost unanimously regard the brands of Aegean and Olympic as strong, ahead of Cyprus Airways and significantly ahead of the brand recognition of the Parties' other actual or potential competitors.[194] Similarly, travel agents agree that consumers regard the brands of Aegean and Olympic as strong, again ahead of Cyprus Airways and significantly ahead of the brand recognition of the Parties' other actual or potential competitors.[195]

(174) In the SO Response, the Notifying Party claimed that the replies by travel agents and corporate customers were uninformative on the current and future closeness of competition between the Parties,[196] because they do not reflect the present situation of a downsized Olympic. However, Olympic's downsizing has been a gradual process that started three years ago,[197] which is more than sufficient time for travel agents and corporate customers to realise the trend of Olympic's business.[198] Olympic's domestic focus, network decrease, capacity reduction and turboprop composition had already been implemented almost entirely at the time that travel agents and corporate customers provided their replies.[199]

190 Q2 – Questionnaire to corporate customers – replies to question 35.

191 Q3 – Questionnaire to travel agents – replies to questions 41 and 43.

192 A jet does not have a significant advantage in flight duration over a turboprop on short routes since on such routes an aircraft operates at its cruising speed only for a relatively short period, while a relatively large proportion of time is spent on ascent and descent.

193 Annexes 6.4 and 6.6 of the Form CO.

194 Q2 – Questionnaire to corporate customers – replies to question 36; R6 – Questionnaire to corporate customers – replies to questions 2, 3, 5 and 6.

195 Q3 – Questionnaire to travel agents – replies to question 40; R7 – Questionnaire to travel agencies – replies to questions 2, 3, 5 and 6.

196 SO Response, paragraphs 480-483.

197 SO Response, paragraphs 60 and following.

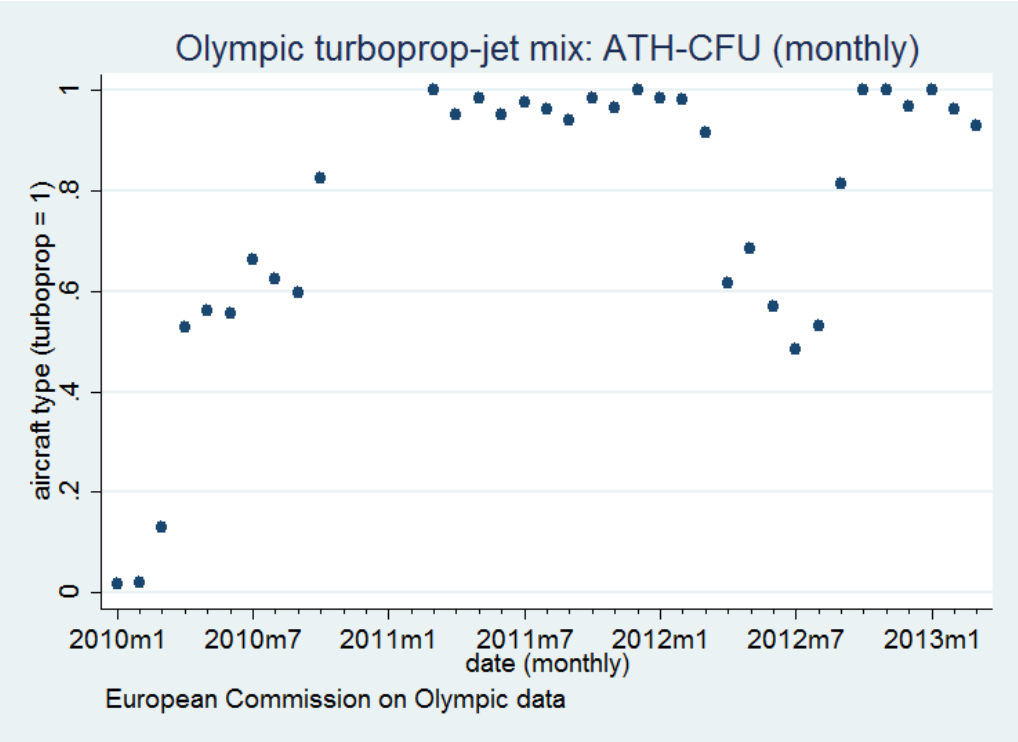
198 The Notifying Party itself states that *"the market realities quickly change the perception on the brand of Olympic"* (SO Response, paragraph 481).

199 In any event, as noted in recital (167) of this decision, the views of corporate customers and travel are only one of several elements that the Commission takes into account in order to assess the closeness of competition between Aegean, Olympic and other competitors.

(175) One element which was quoted by the Notifiying Party as reducing the closeness between Aegean and Olympic is Olympic's almost exclusive reliance on turboprop aircraft. However, with respect to Olympic's turboprop fleet, customers are well aware of this element of Olympic's service. Olympic has been extensively using turboprop aircraft on several domestic routes since 2010, as the following examples demonstrate:[200]

– On the Athens–Corfu route, already in 2010 Olympic was using approximately 50% turboprop aircraft and since the beginning of 2011 Olympic is using almost exclusively turboprop aircraft on the route,[201] despite competition from Aegean's jets.

Figure 1: Olympic turboprop/jet mix: Athens–Corfu

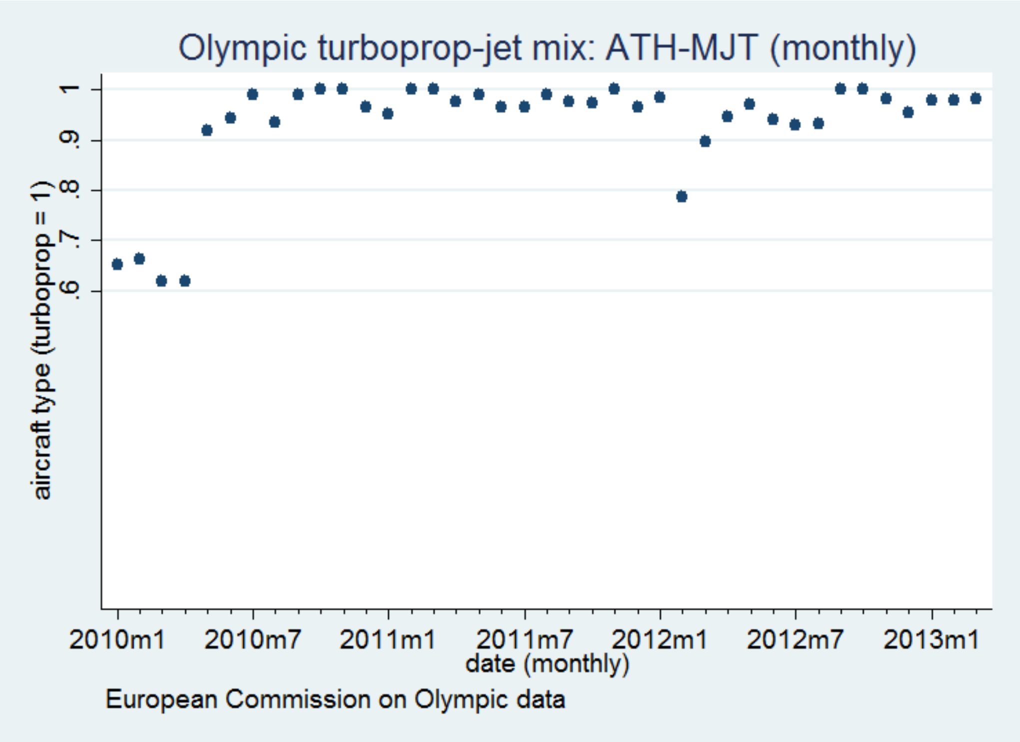


– On the Athens–Mytilene route, since mid-2010 Olympic has been using almost exclusively turboprop aircraft, despite competition from Aegean's jets.

200 The tables below are based on data provided by the Parties. The figures on the vertical axis represent the percentage of flights operated by turboprop aircraft (figure "1" means that 100% of flights were operated with turboprop aircraft, while figure "0" means that 0% of flights were operated with turboprop aircraft), while the figures on the horizontal axis represent the respective (monthly) dates from 2010 to 2013.

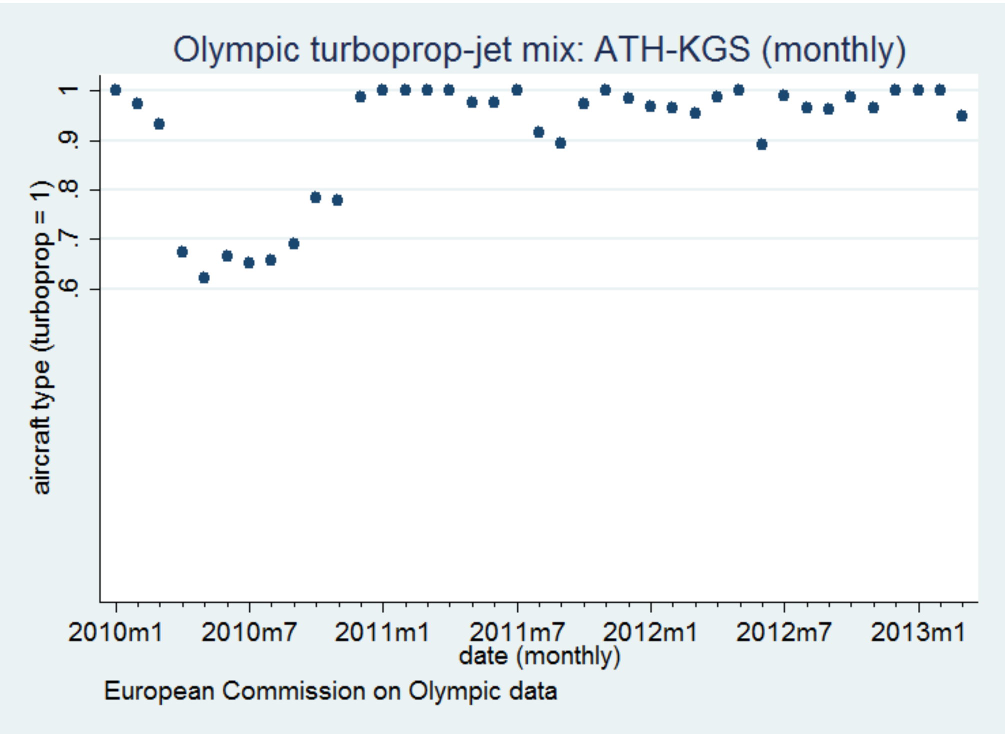
201 With an exception of approximately 50% turboprop use for part of the year 2012.

Figure 2: Olympic turboprop/jet mix: Athens–Mytilene



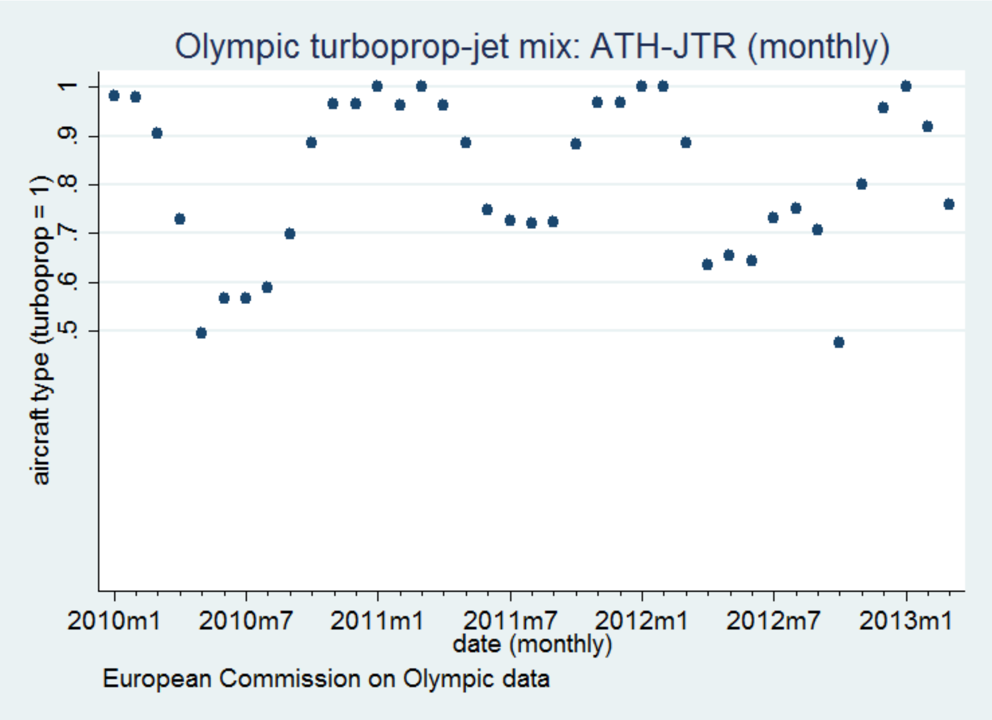
– On the Athens–Kos route, during 2010 Olympic's use of turboprop ranged between 60% and 100% and since the beginning of 2011 Olympic has been using almost exclusively turboprop aircraft on that route, despite competition from Aegean's jets.

Figure 3: Olympic turboprop/jet mix: Athens–Kos



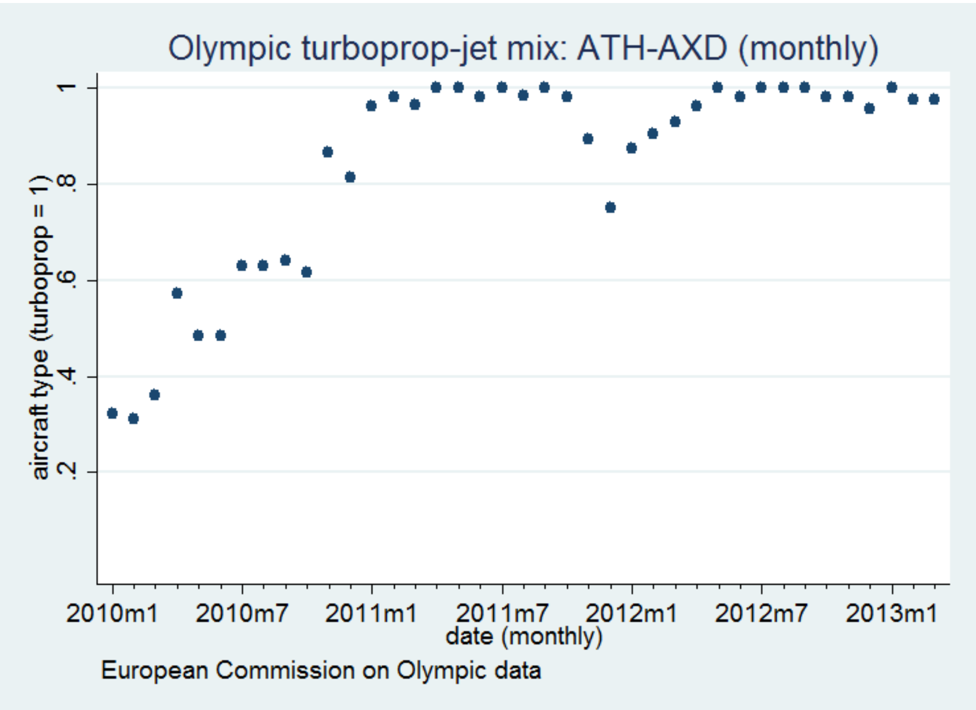
– On the Athens–Santorini route, since 2010 Olympic's use of turboprop aircraft has been ranging between 50% and 100%, despite competition from Aegean's jets.

Figure 4: Olympic turboprop/jet mix: Athens–Santorini



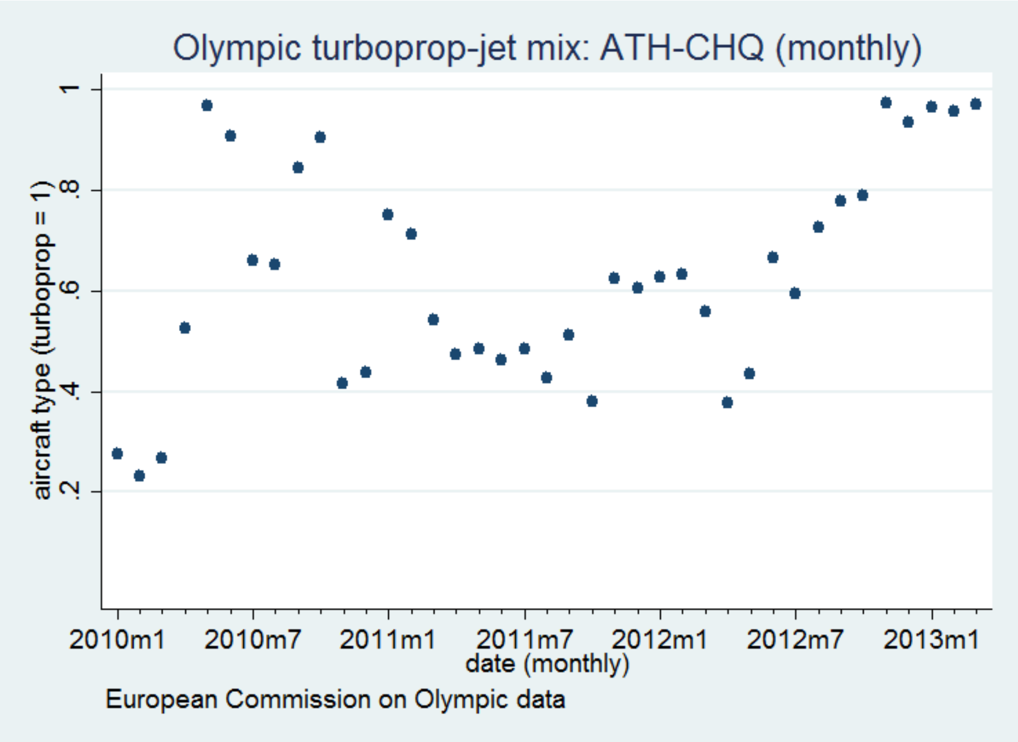
– On the Athens–Alexandroupolis route, already in 2010 Olympic was using approximately 50% turboprop aircraft and since the beginning of 2011 Olympic is using almost exclusively turboprop aircraft on the route, despite competition from Aegean's jets.

Figure 5: Olympic turboprop/jet mix: Athens–Alexandropoulis



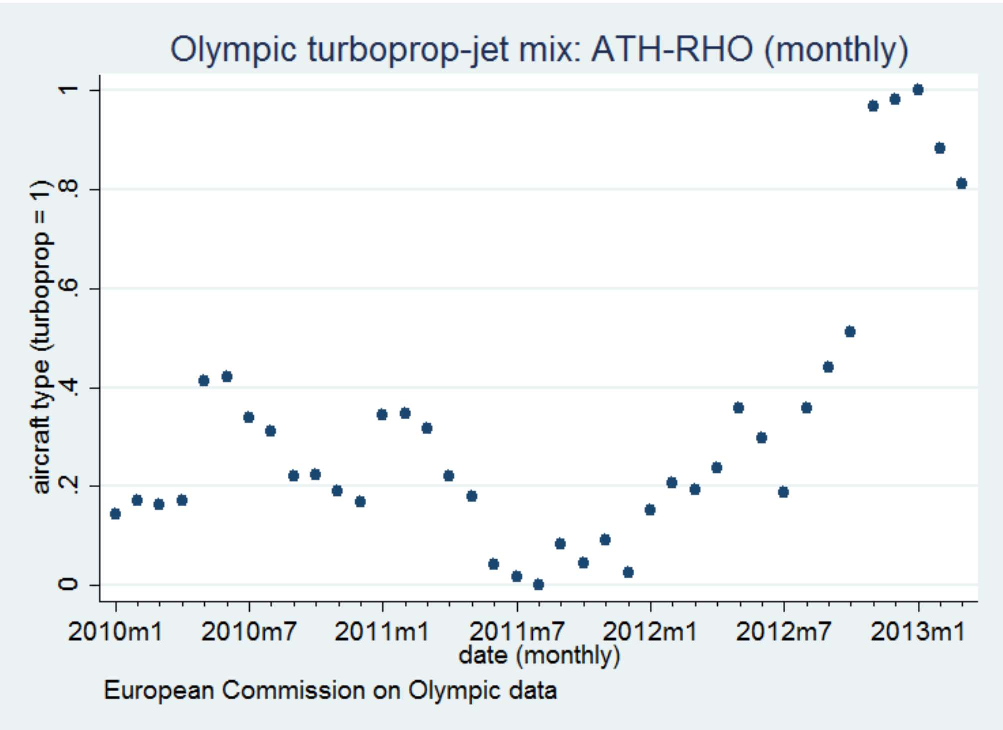
– On the "thick" Athens–Chania route, since 2010 Olympic's use of turboprop aircraft has been ranging mainly between 40% and 80%, despite competition from Aegean's jets.

Figure 6: Olympic turboprop/jet mix: Athens–Chania



– On the "thick" Athens–Rhodes route, during 2010 and the first half of 2011 Olympic's use of turboprop aircraft ranged between 20% and 40%. Although during the second half of 2011, Olympic's use of turboprop aircraft fell below 20% on that route, as of the beginning of 2012 it rose again gradually to 20% and then above 40% during that year.

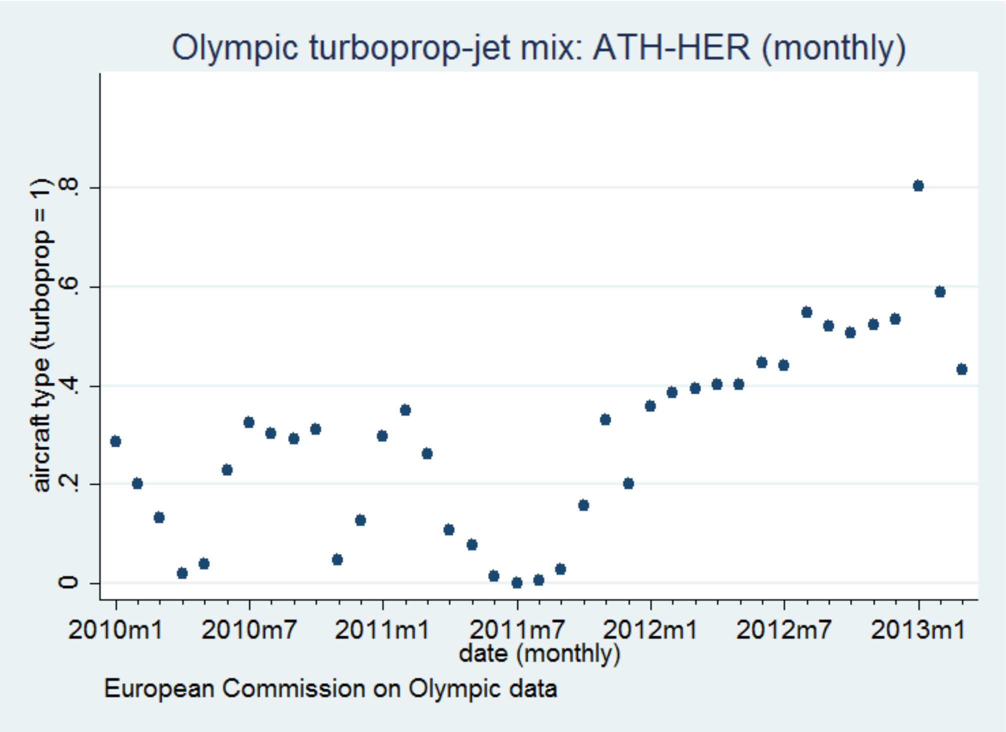
Figure 7: Olympic turboprop/jet mix: Athens–Rhodes



– On the "thick" Athens–Heraklion route, during 2010 and 2011 Olympic's use of turboprop aircraft was approximately 30% for significant periods of time.

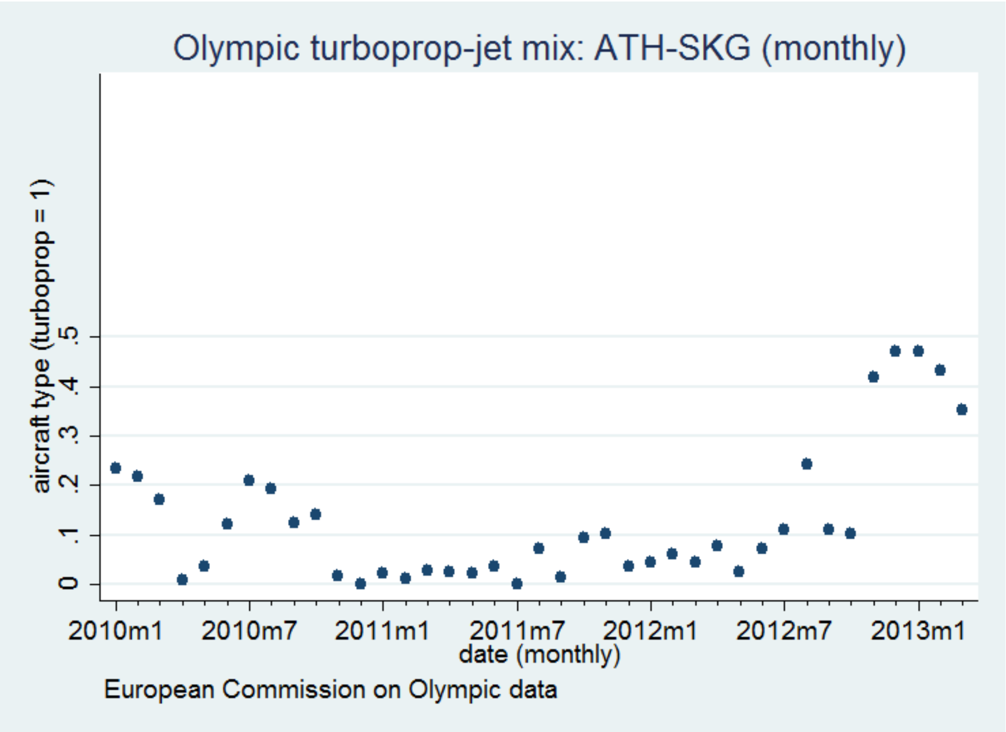
Since the beginning of 2012, Olympic's use of turboprop aircraft gradually exceeded 40% and then 50%, despite competition from Aegean's jets.

Figure 8: Olympic turboprop/jet mix: Athens–Heraklion



– On the "thick" Athens–Thessaloniki route, the use of turboprop aircraft has not been entirely excluded. Since 2010 there have been several months in respect of which turboprop aircraft were used for up to 20% of the flights.

Figure 9: Olympic turboprop/jet mix: Athens–Thessaloniki



(176) Moreover, Aegean and Olympic are also close competitors in terms of their ability to serve Greek domestic routes from Athens due to the fact that they both have a base at Athens airport. In contrast, the three Cyprus Airways' aircraft that used to fly on the Greek domestic routes were based in Thessaloniki, Heraklion and Rhodes which, amongst other things, limited Cyprus Airways' ability to offer early morning flights from Athens. For example, on the route Athens–Heraklion, Aegean and Olympic depart from Athens respectively at 7:00 am and 8:05 am according to their summer 2013 schedule, whereas the earliest flight of Cyprus Airways departed from Athens only at 10:40 am. Similarly, on the route Athens–Rhodes, in the peak summer months Aegean and Olympic depart from Athens respectively at 5:10 am and 5:55 am according to their summer 2013 schedule, whereas the earliest flight of Cyprus Airways departed from Athens only at 11:35 am.

(177) As regards the domestic markets where ferry services might be considered as a travel alternative,[202] as explained in section 6.2.5 of this Decision, the services of each of Aegean and Olympic are in any event 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. Moreover, Aegean and Olympic engage in very similar pricing and seat inventory control mechanism, in particular when compared to ferry operators. The Commission has described, above in section 6.2.5, the differences in pricing strategies between airlines, which use yield management, and ferry operators.

9.2.3. Conclusion

(178) In view of the above, and in particular given that the Parties essentially have a duopoly on all routes of concern with ferries constituting at best only remote substitutes, the Parties are close and essentially each other's closest competitors on the routes of concern.[203]

9.3. The recent entry and exit of Cyprus Airways

(179) Cyprus Airways has been operating on the Heraklion–Rhodes route since 2007, with an aircraft that flew from Larnaca to Athens.[204] On 26 March 2012, Cyprus Airways entered its second Greek domestic route, Athens–Thessaloniki. In October 2012, Cyprus Airways added to its schedule four new routes: Athens–Heraklion, Athens–Rhodes, Thessaloniki–Heraklion and Thessaloniki–Rhodes

(180) Cyprus Airways operated in Greece three Airbus A320s, which offer 152 seats each and were based at the airports of Thessaloniki, Rhodes and Heraklion. Since its entry on the routes Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes Cyprus Airways gained a significant market share ranging between 25% and 39%.

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202 In the routes of actual competition, these markets would be the possible markets for NTS passengers and for all passengers on the routes Athens–Heraklion, Athens–Chania, Athens–Kos, Athens–Mytilene and Athens–Santorini.

203 For an overview of the routes of concern see section 0 of this Decision.

204 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 20 March 2013, paragraph 9.

(181) On 13/14 June 2013, Cyprus Airways announced that, in the process of restructuring, it had decided to exit from the Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes routes as of 1 July 2013.[205]

9.3.1. The view of the Notifying Party

(182) In the Form CO, Aegean claimed that the competitive landscape on the Greek domestic market had changed substantially, due to Cyprus Airways' recent entry into some domestic overlapping routes. According to Aegean, this was the most significant development distinguishing the level of competition on the passenger air transport market in Greece which, *inter alia*, illustrated the absence of the barriers to entry into the Greek domestic market.[206]

(183) According to the Notifying Party, since Cyprus Airways' entry on the Athens–Thessaloniki route, the Parties' average fares had dropped significantly. Aegean stated that "[…]*".[207]

(184) Aegean also argued that Cyprus Airways would most likely further expand on other domestic routes. In Aegean's view, Cyprus Airways has sufficient excess capacity to do so. Such an expansion would also be vital for Cyprus Airways' restructuring plan. Further, Aegean claimed that Cyprus Airways could operate an additional four to five daily frequencies on domestic routes from Athens (up from its current seven) without any additional aircraft investment and without affecting its schedule. These additional frequencies could be used to either increase Cyprus Airways' capacity on flights to or from Thessaloniki, Heraklion or Rhodes, or alternatively, to enter additional domestic routes, such as routes to and from Chania, Santorini or Mykonos.

(185) Moreover, on the basis of a code share agreement with Qatar Airways, Aegean claimed that as of June/July 2013 Cyprus Airways would become the only carrier operating domestically in Greece to offer single-stop flights (via Athens) from the Greek islands to New York.

(186) With respect to Cyprus Airways' financial situation, Aegean claimed that the airline would restructure itself and overcome its financial difficulties, which Aegean attributed mainly to […]*. According to Aegean, Cyprus Airways was increasing its share capital, which would secure enough cash flow to continue and restructure its operations.

9.3.2. The Commission's investigation and assessment

(187) Although the entry of Cyprus Airways was a new market development since the Commission's assessment in *Olympic/Aegean I,* in light of the market investigation there are serious questions as to whether Cyprus Airways would be a viable competitor that would exert sufficient competitive constraint on the Merged Entity on Greek domestic routes post-Transaction so as to discipline the Merged Entity's behaviour.

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205 See Cyprus Airways' press releases available at: <http://cyprusair.com/893,1,0,4445,1744,2-default.aspx> and http://cyprusair.com/872,1,0,6733,1742,1-default.aspx.

206 Form CO, paragraphs 621 and following.

207 Form CO, paragraph 416.

9.3.2.1. Cyprus Airways' financial situation

(188) According to its annual reports,[208] Cyprus Airways' key financial data since 2009 are as follows:

Table 3: Cyprus Airways' key financial data 2009-H1 2012 (in EUR million)				
	2009	2010	2011	H1 2012 (first semester)
Turnover	247.5	236.3	212.8	71.3
EBT	−3.2	−2.9	−23.8	−34.2
Registered capital	35.2	35.2	35.2	35.2
Own equity	9.4	7.7	−15.9	−48.6

(189) Based on the information above, Cyprus Airways has had diminishing turnover and increasing losses since 2009, whereas its own equity has been negative since 2011.

(190) In its most recent public report (first semester of 2012), Cyprus Airways had a negative equity of EUR 48.6 million, while turnover continued to decrease significantly from previous years. Furthermore, the indication of results for the Cyprus Airways Group for the year ended 31 December 2012 is a loss after tax of EUR 55.8 million in comparison to a loss of EUR 23.9 million in 2011.[209] These figures[210] suggest that the airline is in need of financial support to avoid insolvency. Although in 2012 Cyprus Airways received a capital increase of EUR 31.3 million from the Cypriot State, its main shareholder,[211] the airline's equity would remain negative by at least EUR 17.3 million.[212] A loan of EUR 73 million to Cyprus Airways[213] would not alone improve the viability prospects of the airline, since that same amount (plus interest) would have to be paid back to the lender. To the Commission's knowledge, to date no other private or public financial support is foreseen in favour of Cyprus Airways.

9.3.2.2. Progress of Cyprus Airways' restructuring

(191) In November 2012, Air France Consulting ("AFC") prepared a business plan for Cyprus Airways which concluded that "*Cyprus Airways is in a critical financial position, experiencing unsustainable losses and displaying a terrifying negative 30% EBIT margin*".[214] AFC proposed a series of restructuring measures such as:

– establishment of a base in Athens International Airport to open fully in summer 2013 IATA season;

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208 Cyprus Airways' public annual reports at: <http://cyprusair.com/869,0,0,0,2-Annual-Reports.aspx> and <http://cyprusair.com/870,0,0,0,2-default.aspx>.

209 Document dated 4 March 2013 and entitled as "INDICATION OF RESULTS CYPRUS AIRWAYS PUBLIC LTD FOR THE YEAR ENDED 31 DECEMBER 2012", available at: <http://cyprusair.com/872,1,0,6733,1705,2-default.aspx>.

210 In particular, the negative earnings before taxes and the negative own equity during the last years.

211 See recital (195) of this Decision.

212 That is EUR 48.6 million (H1 2012) minus EUR 31.3 million.

213 See recital (195) of this Decision.

214 Non-confidential summary of the relevant parts of the Turnaround Plan as confirmed by Cyprus Airways by e-mail entitled "RE: M.6796 - Aegean/Olympic II", received on 16 April 2013 at 15:01.

– exclusive use of A320 aircraft (single type carrier) and early termination of lease contracts for A319 and A321 aircraft;

– termination of redundant staff;

– enactment of new collective agreements and pay scales;

– outsourcing of non-core business activities, such as catering, A-check maintenance, cargo and call centre; and

– adoption of single class business model (all economy).

(192) At the time of the business plan, the total required investment had been estimated at EUR 90 million.

(193) In March 2012, most of the above-mentioned restructuring measures still had not been implemented and Cyprus Airways acknowledged publicly that "*[n]o plan and no measure has been implemented to the desired degree during 2012*".[215]

(194) In this regard, AFC stated that it had already urged Cyprus Airways to start the implementation of the restructuring plan from mid-December 2012. However, the implementation was delayed because of both financial issues and national elections in Cyprus, since the restructuring plan called for significant redundancies. This idle phase is increasing the overall cost of the implementation of the restructuring plan. AFC also noted that Cyprus Airways had not implemented any aspect of the restructuring plan and seemed to be doing the contrary of what was recommended.[216]

9.3.2.3. Cyprus Airways' State aid investigation

(195) Moreover, Cyprus Airways is subject to an in-depth State aid investigation opened on 6 March 2013 by the Commission. The investigation concerns:

– A capital increase in 2012, whereby the Cypriot State contributed EUR 31.3 million to the airline. The private participation was minimal, since in view of the company's financial difficulties and viability prospects the majority of private shareholders decided not to participate in the capital increase; and

– A rescue aid loan of EUR 73 million to Cyprus Airways in December 2012. The airline had already received rescue and restructuring aid in 2007. According to EU State aid rules, companies in difficulty can receive rescue and restructuring aid only once over a period of ten years (according to the so-

[215] Unofficial translation, see Cyprus Airways press release of 6 March 2013 available at: <http://cyprusair.com/data/Announcements/%CE%91%CE%A0%CE%91%CE%9D%CE%A4%CE%97%CE%A3%CE%97%20%CE%A3%CE%95%20%CE%94%CE%97%CE%9C%CE%9F%CE%A3%CE%99%CE%95%CE%A5%CE%9C%CE%91%CE%A4%CE%91%20%CE%91%CE%9D%CE%91%CE%A6%CE%9F%CE%A1%CE%99%CE%9A%CE%91%20%CE%9C%CE%95%20%CE%A4%CE%97%CE%9D%20%CE%95%CE%9D%CE%94%CE%95%CE%99%CE%9E%CE%97%20%CE%91%CE%A0%CE%9F%CE%A4%CE%95%CE%9B%CE%95%CE%A3%CE%9C%CE%91%CE%A4%CE%9F%CE%A3%20%CE%A4%CE%A9%CE%9D%20%CE%9A%CE%A5%CE%A0%CE%A1%CE%99%CE%91%CE%9A%CE%A9%CE%9D%20%CE%91%CE%95%CE%A1%CE%9F%CE%93%CE%A1%CE%91%CE%9C%CE%9C%CE%A9%CE%9D.pdf>.

[216] Non-confidential minutes of the telephone conference between the Commission and AFC on 27 March 2013, paragraphs 3–4.

called "one time last time" principle). The Commission also doubts whether there is a credible restructuring plan for Cyprus Airways.[217]

(196) The Cypriot authorities have not yet notified a restructuring plan to the Commission. The Commission has in any event expressed doubts as to the compatibility of the capital increase and the rescue aid loan. However, even in case a hypothetically positive decision on a restructuring plan is taken in the near future, it is rather questionable that Cyprus Airways would return to the three domestic overlap routes of the Parties.[218]

9.3.2.4. Cyprus Airways' future operations

(197) The Cypriot State, Cyprus Airways' almost exclusive shareholder,[219] has indicated increasing reluctance to support the airline. According to the national media,[220] the Cypriot Finance Minister Haris Georgiades stated on 9 April 2013 that the prospects for the Cyprus' national carrier were dismal and that the company could come down any minute. He also stated that the company would need additional State support, even if the aircraft of the company were reduced to seven, the personnel cut by half and salaries of the rest of the staff reduced. As regards public financing, Mr Georgiades stated that it was very doubtful whether Cyprus Airways could be legitimately subsidised and added that letting the company go down was among the options under consideration.

(198) According to press reports, on 10 April 2013, the Cypriot Government decided to keep Cyprus Airways flying at least throughout the 2013 summer period, while continuing the search for a strategic investor. Moreover, it was reported that during that period Cyprus Airways would substantially decrease its fleet from 11 aircraft to 6 aircraft and reduce the work force by up to 50%.[221] According to the Cypriot Government's spokesman, Christos Stylianides, the decision was taken for specific reasons mainly relating to the summer tourism season and the protection of tens of thousands of tourists who had pre-booked holidays on the Mediterranean island.[222,]

(199) Given Cyprus Airways' diminishing turnover, its increasing losses during the past three years and the lack of implementation of any restructuring measures, already during phase I the Commission expressed significant doubts regarding the solvency and future viability of the airline.

(200) On 27 May 2013, Cyprus Airways stated that the continuation of its operations within the Greek domestic market would be decided by its new board of directors

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217 Europa Press Release "State aid: Commission opens in-depth inquiry into a €31.3 million capital increase and a rescue aid package for Cyprus Airways", available at: http://europa.eu/rapid/press-release_IP-13-190_en.htm.

218 Email by Cyprus Airways entitled "RE: M.6796 - confirmation of accuracy and non-confidentiality of CY statement", received on 14 June 2013 at 12:18.

219 The Cypriot State currently holds 93,67% of the shares in Cyprus Airways (source: <http://cyprusair.com/871,0,0,0,2-Shareholder-StructureCapital.aspx>.

220 Press article "Cyprus Airways prospects are dismal and may collapse any minute", dated 9 April 2013, available at RIK (Radiofoniko Idryma Kyprou) website: <http://www.cybc.com.cy/en/index.php/cyprus-news/item/2789-1>.

221 Press article "CY to keep flying for now", dated 10 April 2013, available at Cyprus Mail website: <http://www.cyprus-mail.com/cyprus/new-cy-keep-flying-now/20130410>.

222 Press article "Near-bankrupt Cyprus airways to keep flying – for now", dated 10 April 2013, available at Kathimerini (English version) website: <http://www.ekathimerini.com/4dcgi/_w_articles_wsite2_1_10/04/2013_492986>.

and referred to the Cypriot Government as regards possible discussions with new investors for the airline.[223]

(201) During its in-depth investigation, the Commission communicated with the Ministry of Finance of the Republic of Cyprus for further insight into the future of Cyprus Airways. The Ministry stated that "*[t]here is no plan on how to proceed in case the State aid decision is negative. However, the Cypriot Government cannot keep putting money into CY indefinitely. Nevertheless, even in case of a positive decision, it would still be necessary to obtain an approval for the financial support by the Troika. A final decision in this matter will be taken in September/October 2013*".[224]

(202) According to the Ministry, the restructuring plan which was originally designed by Air France Consulting did not take into account State aid regulations, and thus had to be amended accordingly to a new "framework restructuring plan". This new plan is still quite general and rather aims at giving a direction: it includes the reduction of the workforce of Cyprus Airways by half, as well as salary cuts and a reduction of the fleet to six aircraft (plus one extra standby aircraft).[225] The Ministry intends to further elaborate and implement the new plan in collaboration with Lufthansa consultants until the end of this year. The new board of Cyprus Airways is in charge of implementing the restructuring plan in order to achieve the turnaround for the airline. This new restructuring plan has been confirmed by the Cypriot Government. However, according to the Ministry, "*the ultimate decisions greatly depend on the State aid case and the Troika*".[226]

(203) In parallel, the Cypriot Government and Cyprus Airways are looking for a strategic investor. Some early discussions occurred between the Cypriot Government and Middle East Airlines of Lebanon about potential investments in Cyprus Airways, but these were informal and very general talks. In the end, Middle East Airlines did not express any specific interest in Cyprus Airways. Currently, there are no discussions with other potential investors, except for some interested parties who have received information about the airline and their response is pending.[227] [228]

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223 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 27 May 2013.

224 Non-confidential minutes of the telephone conference between the Commission and the Cypriot Ministry of Finance on 31 May 2013, paragraph 2. The term "Troika" refers to the tripartite committee led by the European Commission with the European Central Bank and the International Monetary Fund which organised loans to the Republic of Cyprus during the latter's sovereign debt crisis.

225 In the context of this plan, on 18 June 2013, Cyprus Airways announced the redundancy of 203 employees and that 220 more employees would be made redundant by the end of September 2013 (source: http://cyprusair.com/872,1,0,6733,1746,1-default.aspx).

226 Non-confidential minutes of the telephone conference between the Commission and the Cypriot Ministry of Finance on 31 May 2013, paragraphs 3–5.

227 Non-confidential minutes of the telephone conference between the Commission and the Cypriot Ministry of Finance on 31 May 2013, paragraph 6.

228 On 5 April 2013, Cyprus Airways stated that a Chinese company "Beijing Yi Xiang Da Investment Co Ltd" has expressed an interest in acquiring the airline although no specific agreement could be announced (see Cyprus Airways press release available at: <http://cyprusair.com/872,1,0,6733,1723,2-default.aspx>). Given the present uncertainty over the realization of such a transaction, it cannot alter the assessment concerning the viability of Cyprus Airways' viability. Besides, any such acquisition by a Chinese investor would only concern a minority stake and thus may not dispel the serious doubts over the Cyprus Airways' viability (under EU rules, an EU carrier must be more than 50% owned and effectively controlled by EU Member States and/or nationals of EU Member States (see Article 4(f) of Regu-

(204) The Cypriot Ministry hopes that after the implementation of the restructuring plan and the salary cuts Cyprus Airways might become more attractive to potential investors while at the moment it is still too early to foresee decisions in this regard. The current plan is to support Cyprus Airways until the end of the summer season, hope that the downsizing will make the company viable (at least in the short term) and try to find a strategic investor until the end of the tourism season.[229]

(205) In this context, the Cypriot Government decided not to cease Cyprus Airways' activities entirely, at least until the end of the 2013 summer season.[230]

9.3.2.5. Cyprus Airways' recent exit from the Parties' overlapping routes

(206) On 13 June 2013, Cyprus Airways announced its exit from the three routes Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes as of 1 July 2013.[231] According to Cyprus Airways, the exit took place "*[i]n the framework of the restructuring plan implemented by the Board of Directors of Cyprus Airways*" and because of "*the intense competition in the market of the Greek domestic network which manifest itself in low yields and consequently poor financial results*".[232]

(207) Cyprus Airways stated that it would reconsider its decision to exit these three routes only in the hypothetical situation that the final Decision on the proposed acquisition of Olympic by Aegean would include remedies that create encouraging conditions for new entrants on Greek domestic routes.[233]

(208) Therefore, during the (most profitable) high-season of Greek domestic air transport Cyprus Airways decided to exit for the foreseeable future from the Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes routes. Thus, in terms of actual competition, Cyprus Airways has been clearly removed as a competitive constraint on the Merged Entity post-Transaction.

9.3.3. Conclusion

(209) In view of the above and without prejudice to the outcome of the State aid proceedings, Cyprus Airways cannot be considered in a position to exert a sufficient competitive constraint on the Merged Entity post-Transaction, especially given Cyprus Airways' recent exit from the Parties' overlapping domestic routes.[234]

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lation (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 (OJ L293, 31.10.2008, pages 3–20)).

229 Non-confidential minutes of the telephone conference between the Commission and the Cypriot Ministry of Finance on 31 May 2013, paragraph 7.

230 Non-confidential minutes of the telephone conference between the Commission and the Cypriot Ministry of Finance on 31 May 2013, paragraph 7.

231 See Cyprus Airways' press releases available at: <http://cyprusair.com/893,1,0,4445,1744,2-default.aspx> and http://cyprusair.com/872,1,0,6733,1742,1-default.aspx.

232 Email by Cyprus Airways entitled "RE: M.6796 - confirmation of accuracy and non-confidentiality of CY statement", received on 14 June 2013 at 12:18.

233 Email by Cyprus Airways entitled "RE: M.6796 - confirmation of accuracy and non-confidentiality of CY statement", received on 14 June 2013 at 12:18. With respect to the absence of competitive constraint on the Parties post-Transaction by Cyprus Airways also in terms of potential competition, see as well section 0 of this Decision.

234 Cyprus Airways' current situation also clearly militates against the likelihood of Cyprus Airways' re-entry on routes Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes or entry on other Greek domestic routes. The likelihood of Cyprus Airways' expansion is further discussed in detail in paragraphs (404)-(408) of this Decision.

9.4. Constraint by direct international flights

9.4.1. The view of the Notifying Party

(210) According to the Notifying Party, since 2011, foreign airlines, in particular low cost carriers ("LCCs") have significantly increased the number of direct international routes to Greek regional airports, as well as the number of frequencies they operate on such routes.[235] As a result, the Notifying Party argues that "*although direct international flights offered by LCCs clearly do not fall within the same market for individual domestic routes, they nevertheless impose a competitive constraint on the Parties' activities on domestic routes. Put another way, when competing for the business of international passengers connecting onto domestic flights, the Parties must consider direct international flights operated by LCCs (and other third party carriers).*"[236]

(211) In support of this claim, the Notifying Party argues that foreign passengers are likely to find the prospect of a direct flight from a European city to a Greek island destination more attractive than having to fly via Athens. As a result, the Notifying Party is of the view that at least a proportion of the foreign passengers flying on indirect routes to Greek destinations via Athens may consider direct routes offered by LCCs as an alternative in their purchase decisions.[237]

(212) According to the Notifying Party, Aegean and Olympic both monitor the available prices of airlines (including LCCs) that operate direct, non-stop international flights to Greek destinations. […]*.[238]

9.4.2. The Commission's investigation and assessment

(213) The number of direct international flights to Greek regional airports appears to have increased in recent years, in particular during the summer season.[239] However, the Commission considers that the evidence adduced is insufficient to demonstrate that direct international flights exert an effective competitive constraint on fares on domestic routes operated by the Parties for the following reasons.

(214) First, as the Notifying Party acknowledges, direct international flights are not in the same market as domestic flights. Nevertheless, the Notifying Party argues that when competing for "international passengers connecting onto domestic flights", that is when competing for passengers traveling on international routes on which the Parties operate indirect flights, the Parties compete with airlines offering direct international flights. However, the Notifying Party's arguments about such passengers being likely to prefer direct flights and about the Parties' monitoring of direct international fares on routes where the Parties offer indirect flights relate to competition on international routes and not on domestic routes.

(215) Second, despite the fact that competition for "international passengers connecting onto domestic flights" may affect demand for indirect international flights offered by

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[235] Form CO, paragraphs 668 and following.

[236] Form CO, paragraph 681.

[237] Form CO, paragraph 682.

[238] Aegean's response of 15 February 2013 to Commission comments on the first draft Form CO, question 38.

[239] For example, the following airlines have increased the number of their international flights to Greece since August 2009: easyJet from 21 to 52, Ryanair from zero to 69, Transavia from 2 to 29 and Norwegian from 9 to 31 (Form CO, paragraph 669).

the Parties and hence may constrain the Parties' fares for such indirect flights, it will not have a direct constraining effect on standalone domestic O&D fares, because there is no direct link between the standalone domestic O&D fare and the implicit fare for the domestic leg for an international connecting passenger.

(216) Therefore, for direct international flights to constrain standalone domestic O&D fares, they would have to affect demand for standalone flights. This may be the case for passengers traveling from international destinations to Greek regional airports via Athens on separate tickets which they bought independently from one another ("self-ticketed" passengers). The Notifying Party indeed argues that self-ticketed passengers constrain the Parties' ability to increase fares on the domestic routes from Athens to Chania,[240] Kos,[241] Mykonos,[242] and Santorini.[243] However, the Notifying Party has not substantiated its argument regarding the constraint from direct international flights.[244]

(217) In particular, while the Notifying Party argues that Aegean and Olympic monitor possible competition from direct international flights, it provides no explanation or concrete examples as to how the alleged competitive pressure from direct international flights has affected the Parties domestic fares. In these circumstances, it is unclear whether the Parties are able to effectively compete effectively (for example by lowering their domestic fares) for international passengers who have an alternative to fly directly to Greek destinations (rather than to self-connect at Athens). For example, […]*.[245] Also, during the market investigation, a number of international airlines operating direct flights to Greek islands considered that their passengers are unlikely to consider one-stop flights via Athens.[246] Thus, post-Transaction the direct international flights would not appear to impose any significant pricing constraint on the Merged Entity regarding the domestic routes of concern.

(218) The extent to which there are self-ticketed international passengers among the Parties' domestic O&D passengers that could choose direct flights – and consequently the extent of indirect competitive constraint on domestic fares from direct international flights – is unclear. According to the Notifying Party, there must be a significant proportion of self-ticketed passengers on the Athens routes to Santorini (and Mykonos) because, […]* on these routes.[247] However, even if this were the case, it remains unclear what fraction of such self–ticketed passengers has an alternative of direct international flights available to them. The Notifying Party has provided no evidence in this respect. Furthermore, with regard to the routes from Athens to Chania and Kos, for which the Parties also advance the argument, […]*.[248]

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240 Form CO, paragraphs 269 and following.

241 Form CO, paragraphs 324 and following.

242 Form CO, paragraphs 338 and following.

243 Form CO, paragraphs 402 and following.

244 When asked by the Commission to substantiate or provide evidence of the impact that the entry of LCCs on international routes to Greece has on Greek domestic routes (in terms of passenger numbers, prices, etc.), Aegean responded "*Aegean is considering the answer to this question and will provide a response in due course*" (answers to questions 36 and 37 of the Commission's comments of 16 January 2013 on the first draft of the Form CO). However, no such information has been subsequently provided.

245 Olympic's response of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 26.

246 Q1(B) – Questionnaire to potential competitors – replies to question 7.

247 Form CO, paragraphs 338 and 402. […]*

248 […]* (Form CO, Annex 78 and Annex 81).

Therefore, on these routes there is no indication that self-ticketed passengers would account for a substantial part of domestic O&D (that is non-connecting) passengers. Nor is there any indication of what fraction of self-ticketed passengers on these routes would have the option of direct international flights. Therefore, based on the evidence provided, the fraction of domestic O&D passengers that could choose direct international flights is at best unclear on the route Athens–Santorini and likely insignificant on the routes Athens–Chania and Athens–Kos.

(219) In addition, the Notifying Party's argument regarding the negative impact of the increasing number of direct international flights on the Parties' domestic traffic implies that the share of foreign passengers on domestic flights (that is those connecting or self-connecting at Athens) should decrease, because foreign passengers would increasingly prefer direct international flights. However, this appears to be at odds with the AIA's data provided by the Notifying Party which shows that the share of foreign passengers on domestic flights has actually increased in 2012.[249]

9.4.3. Conclusion

(220) Overall, the Commission considers that direct international flights from international destinations to Greek islands would not exert competitive pressure on domestic flights from Athens, in particular on the routes of concern.

9.5. The likelihood of timely and sufficient entry

(221) Within the framework of its analysis, the Commission examined the likelihood, timeliness and scale of entry by any other airline into the Greek domestic market post-Transaction.

(222) Section 9.5.1 presents the analytical framework of countervailing entry under the Horizontal Merger Guidelines. The Commission's assessment of the elements relevant for the likelihood of sufficient entry, taking into account the views of the Notifying Party, is then presented in general in section 9.5.2. The likelihood of entry by specific airlines is assessed in section 9.5.3.

9.5.1. Analytical framework for the assessment of entry

9.5.1.1. Analytical framework under the Horizontal Merger Guidelines

(223) In order to assess the possible impact the merger may have on the affected markets, the Commission takes account of the competitive constraints from entry by actual or potential competitors. For entry to be a countervailing factor against competition concerns it is not sufficient to argue that competitors *could* enter post-Transaction or that barriers to entry are not "insurmountable", as the Notifying Party does on several occasions in the Form CO[250] and in the SO Response.[251] Instead, it must be established that entry *would* be likely to occur post-Transaction in a timely fashion and on a sufficient scale to compensate for the Transaction-induced loss in competition between the merging parties.[252]

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[249] Presentation "Aegean/Olympic II – Additional information", submitted on 10 March 2013, slide 15.

[250] See for instance paragraphs 252, 272, 287, 299, 337 and 401 of the Form CO.

[251] See for instance paragraphs 224, 244, 252, 272, 287, 301, 321, 337, 357, 372, 401 and 432 of the SO Response.

[252] Horizontal Merger Guidelines, paragraph 68.

(224) In particular in a situation such as the present case, where the Parties hold very large market shares and are considered close competitors on relevant markets, the possibility of countervailing entry cannot be sufficient to dismiss competition concerns without clear evidence that entry would occur in a timely and sufficient manner. The Commission therefore assessed the likelihood of individual potential entrants to enter the Greek domestic market post-Transaction. In this assessment, the responses of potential entrants regarding their entry plans (or the lack thereof) represent a key element.

<u>The likelihood of entry</u>

(225) The *likelihood* of entry is affected by a number of factors, related both to the incentives and ability of potential competitors to enter post-Transaction. First, the expected profitability following entry is key to any entry decision. This is in accordance with paragraph 69 of the Horizontal Merger Guidelines, which states that "*For entry to be likely, it must be sufficiently profitable taking into account the price effects of injecting additional output into the market and the potential responses of the incumbents*". Thus the Commission assesses different factors associated with the risks and costs of entry and, hence, affecting the likelihood of entry.

(226) In this context the Commission examines factors that give incumbents advantages over potential entrants. Such barriers to entry can take various forms (for example, sunk costs of entry or advantages stemming from the established position of the incumbents).[253] Sunk costs of entry are important because they affect the profitability of entry and because they cannot be recouped in case the entry strategy fails. However, sunk costs and other barriers to entry need to be considered in combination with other relevant factors affecting the profitability of entry.

(227) Additional relevant factors for the profitability and therefore the likelihood of entry include the expected evolution of the market (entry is likely to be more profitable in a growing market than in a mature or declining market) as well as features of the market such as scale economies or network effects.[254]

(228) The risk of failed entry may make entry less likely.[255] Uncertainty about post-entry profitability implies a risk that the entry decision will turn out to be unprofitable and that the entrant's investments in a market (in particular in the form of sunk costs of entry) will be lost or that exit costs will have to be paid to reverse the entry decision. The entrant can avoid or reduce this risk by delaying the entry decision until the uncertainty about the profitability of entry has been resolved or reduced. In such a setting even low sunk costs of entry can provide a powerful incentive to delay entry decisions. The presence of uncertainty about the evolution of the market further implies that entrants will require a higher risk premium (in terms of expected post-entry profitability) than in the absence of uncertainty.

<u>The timeliness of entry</u>

(229) The timeliness of entry means that entry should be sufficiently swift and sustained to deter or defeat the exercise of market power post-Transaction. Entry is normally considered timely if it occurs within two years, although the appropriate time period

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253 Horizontal Merger Guidelines, paragraph 71.
254 Horizontal Merger Guidelines, paragraph 72.
255 Horizontal Merger Guidelines, paragraph 69.

depends on the characteristics and dynamics of the markets concerned and the specific capabilities of potential entrants.[256]

The sufficiency of entry

(230) The entry must not only be likely and timely but also of a *sufficient* scope and magnitude to deter or prevent the anticompetitive effects ensuing from the Transaction.[257] As held by the General Court, "*the mere 'threat' of an entry […] is not sufficient. […] What counts is the prospect of an entrant which offsets the anti-competitive effects specifically established in the contested decision at that stage of the assessment*."[258]

(231) In the present case, the scale of entry must be sufficient to compensate for the loss of competitive constraint that Olympic and Aegean exert on each other. An entry in the Greek domestic market which is not on the routes of concern or a limited entry on only some of the routes of concern would not compensate for the loss of the competitive constraint.

Other considerations

(232) The extent to which individual factors affecting the likelihood of timely and sufficient entry are among the elements relevant for each potential entrant is likely to differ. This may depend, for example, on a carrier's presence in a particular airport or on its business model (for example, low-cost versus full-service). Moreover, it is not necessary for each of the factors to render entry impossible on its own, nor is it necessary for all of them to affect an airline in order to conclude that sufficient and timely entry is unlikely. It is sufficient that either individually or taken together they hinder timely entry, capable of constraining the Merged Entity.

(233) Finally, each airline's incentive to invest assets, such as aircraft and crew, on Greek domestic routes is determined also by the alternative uses of these assets across the airline's current network or on other new routes. In addition, the launch of new routes cannot be evaluated in isolation solely based on their expected operating performance since there are common costs and other interdependencies across the network. In other words, both relative performance but also network and other strategic considerations are relevant for the assessment of the entry decisions of potential competitors.

9.5.1.2. The view of the Notifying Party

(234) With respect to the analytical framework, the Notifying Party agrees that, according to the Horizontal Merger Guidelines, for entry to be a sufficient competitive constraint, it must be likely, timely and sufficient to deter or defeat any potential anticompetitive effect.

(235) The Notifying Party notes that the correct test for entry is whether entry would be likely post-merger in the event of a price increase by the Merged Entity.

(236) According to the Notifying Party, if in the present case the Commission had applied the correct test, the Commission would have concluded that entry would have been

[256] Horizontal Merger Guidelines, paragraph 74.
[257] Horizontal Merger Guidelines, paragraph 75.
[258] Case T-342/07 *Ryanair Holdings plc v Commission* [2010] ECR II-3457, paragraph 239.

profitable in the event of a post-merger increase in fares.[259] The Notifying Party submits that the absence of concrete or likely entry plans of potential competitors in the pre-Transaction situation as well as the level of demand pre-Transaction are irrelevant for the question of whether entry would be likely post-Transaction.

(237) According to the Notifying Party, for evaluating the likelihood of entry, in practice, the Commission identifies and assesses barriers to entry, which are defined as features that give incumbents an advantage over potential entrants.[260] The Notifying Party considers that there are no barriers to entry in the Greek domestic market. The only reason why competitors do not consider entry on Greek domestic routes today is the lack of sufficient demand and the corresponding uncertainty about future yield which do not constitute barriers to entry, since they affect all market participants, including the Parties. The Notifying Party further argues that the Commission "*confuses the current unwillingness of competing carriers to enter into the Greek domestic market because of low demand with their ability to do so because of the absence of barriers to entry*."[261]

(238) Similarly, the Notifying Party considers that the following factors are irrelevant for assessing the likelihood of entry: airport charges, access to connecting traffic and congestion at regional airports. The reason they are considered irrelevant is the fact that they are borne both by the incumbents and the new entrants.[262]

(239) Finally, the Notifying Party argues that in the present case a time period longer than two years should be considered for entry assessment, given that the Greek economy is not expected to start growing in the immediate future.[263]

9.5.1.3. The Commission's assessment

(240) The Commission agrees with the Notifying Party that entry has to be assessed in the likely situation post-Transaction. However, the Commission disagrees with the view expressed by the Notifying Party that it had not applied this test in its assessment. During its investigation, the Commission specifically sought evidence regarding the likely development of the market *post-Transaction* and made a prospective analysis on the basis of such evidence, including a prospective assessment of concrete or likely entry plans by potential entrants post-Transaction.[264]

(241) The Commission further considers that the level of pre-merger market demand is one of the factors relevant in determining the likely post-merger market demand evolution. The Commission therefore takes those elements into account, together with other evidence, when assessing prospects for entry post-Transaction.

(242) The Commission also disagrees with the Notifying Party's view that there are no significant barriers to entry since, as explained in section 9.5.2.1, the Commission concludes that there are significant sunk costs of entry. Importantly, and as explained at the beginning of section 9.5.1 above, the assessment of post-Transaction entry is

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259 Response to the Decision opening proceedings, paragraph 122.
260 SO Response, paragraph 224, Response to the Decision opening proceedings, paragraph 125.
261 Response to the Decision opening proceedings, paragraph 121.
262 SO Response, paragraph 229.
263 SO Response, paragraphs 235–236.
264 See, for example, question 1 of R12 – Questionnaire to competitors: "*Assuming Aegean acquires Olympic and, all other things being equal, the merged entity raises prices on Greek domestic routes where no other competitor is operating, would your airline enter into any of these domestic routes*?"

not limited to an assessment of the existence or the level of entry barriers and hence whether entrants would have the ability to enter. Instead the Commission assesses both the ability and the incentives of potential competitors to enter post-Transaction. Such an assessment of the likelihood of entry also takes into account other factors such as the level of demand, costs, and uncertainty that affect the profitability and risk post-entry and hence the incentives for potential entrants to enter post-Transaction. Jointly with the level of sunk costs, which cannot be recovered in case of failed entry, these factors will determine the profitability and risk associated with post-Transaction entry which determines whether entry is likely post-Transaction. The relevant analysis is therefore not whether sunk costs of entry are high in absolute terms. Rather the relevant question is how in the present case sunk costs of entry compare relative to the prospect of profits post-entry taking into account both the expected level of post-entry profit as well as considerations relating to risk.

(243) Furthermore, the Commission does not see any reason to depart from the general two-year period for assessment of entry, as set in the Horizontal Merger Guidelines. First, if anything, in difficult economic times, such as the ones prevailing in Greece, consumers require protection from anticompetitive effects without undue delay. Given that airfares can change within a short period of time, the potential negative effect of the merger is expected to materialise without delay. Therefore, allowing for a longer time period for the assessment of entry would imply a longer period during which customers will have no choice of airline and will have to pay higher prices. Moreover, as the Notifying Party acknowledges in the SO Response, in the airline industry, carriers can expand quickly in a relatively short time period once the decision to expand is taken.[265] Thus, the characteristics of the airline industry suggest applying the standard two-year time period since deciding on the likelihood of entry within a longer time frame would increase uncertainty. Indeed, in recent airline cases the time period for assessment of timely entry did not exceed two years.[266] In any event, even if a longer time period is adopted for reference in the present case, the conclusions on the likelihood of entry set out below would not change.

(244) With respect to the scale of entry, the Commission notes that Aegean and Olympic operate the only sizeable Greek domestic (and international, in the case of Aegean) networks from their bases at AIA, which remains an important origin and destination point for domestic travel and an important distribution point for international traffic to and from Greece.

(245) As acknowledged in previous Commission Decisions, operating from a base confers certain advantages to airlines, such as cost savings due to economies of scale and scope and the ability to deploy the assets in a flexible manner, in particular by reacting swiftly to changing demand or supply conditions.[267] Each of the Parties currently benefits and the Merged Entity will also benefit from the cost and flexibility advantages stemming from a base presence in Athens. Achieving a certain scale in operations would allow a potential entrant to enjoy similar advantages.

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265 SO Response, paragraph 233.

266 Commission Decision in Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 673, 675; Judgment of 6 July 2010 in Case T-342/07 *Ryanair v. Commission* [2010] ECR II-03457, paragraphs 289–297.

267 These advantages are described in detail in Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean* Airlines, section 1.5.1.1. See also Commission Decision of 27 June 2007 in Case COMP/M.4439 – *Ryanair/Aer Lingus*, section 7.3.4.1.

Advantages such as scale operations, combined with the advantage derived from operating early morning flights out of Athens, the benefits of Athens in terms of connecting traffic, as well as a location of strategic importance from a marketing perspective, would ensue from setting up a base in Athens. This would allow an adequate coverage of the Greek domestic market and an ability to exert adequate competitive pressure on the Merged Entity.

(246) For entry or expansion to be of sufficient scope and scale to compensate for the loss of competitive constraint between the Parties, it would need to occur on all overlap routes, with a sufficient number of frequencies and with an attractive schedule. For these purposes, the setting up of a base at AIA would be important for new entrants or small airlines present on the market.

(247) The Notifying Party argues that the sufficiency requirement could be easily met since the capacity offered by Olympic on overlap routes only corresponds to one or two jet aircraft.[268] The Commission does not consider this to be a relevant comparison. As Olympic currently operates the overlap routes to a large extent by turboprop aircraft with lower seat capacity than a jet aircraft, an entrant would appear to be unlikely to be able to replicate Olympic's frequency schedule with only one jet aircraft.

(248) The Commission therefore disagrees with the Notifying Party's above criticisms of the analytical framework it applied in its assessment of entry.

9.5.2. General assessment of entry on Greek domestic routes

(249) Based on an extensive market investigation and in line with the analytical framework outlined in the above section, the Commission carefully assessed all relevant factors for both the incentives and the ability of potential competitors to enter post-Transaction.

9.5.2.1. Sunk costs of entry

(250) When deciding to enter a market, carriers take into account barriers to entry in the form of sunk costs that such entry would entail. Amongst these, in the present case the most important sunk costs of an entry into the Greek domestic market in general and on the routes of concern in particular, are the initial losses stemming from the introductory pricing and marketing costs.

(251) Some of these costs are not directly proportionate to the number of routes entered in a sense that they need to be incurred irrespective of whether one or several routes are entered. A new entrant has to factor this in when deciding whether an isolated entry (as opposed to an entry with a base for instance) would be profitable.

<u>Initial losses to penetrate the market</u>

The view of the Notifying Party

(252) The Notifying Party acknowledges that an airline starting up on a route may incur initial losses.[269] However, Aegean considers that these initial losses would not significantly affect post-entry profitability for most potential entrants.

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[268] SO Response, paragraphs 238–241.

[269] SO Response, paragraph 245.

(253) [Aegean's calculations of initial losses for a potential entrant in Greek domestic routes]*. The Notifying Party believes that, therefore, initial losses do not impact significantly a decision to enter.[270]

(254) Moreover, the Notifying Party contends that low cost carriers can undercut the profitably of the Merged Entity merely due to their business model and costs advantages. For LCCs, low fares are not a cost but the very essence of their business model and are derived from other advantages that LCCs have. According to the Notifying Party, this removes the need for low cost carriers to set excessively low fares that could generate losses.[271]

(255) Furthermore, the Notifying Party submits that the carriers already active in Greece (for example, Cyprus Airways, easyJet, Ryanair, Lufthansa, etc.) would not require significant initial sunk investments to build market share and reputation in Greece and that the Commission confuses such sunk costs of entering a new route with costs of setting up a new airline.

(256) Moreover, according to the Notifying Party low introductory prices do not seem to have caused any additional losses to Cyprus Airways' during its entry on Greek domestic routes in 2012. For other carriers, initial costs for promotional fares may be short-lived and form only a small proportion of the actual operating costs on a route.[272]

The Commission's investigation and assessment

(257) In the airline industry start-up operations by new entrants are often loss making for an initial period of time[273] and profitability is often expected only after 2−4 IATA seasons. Such losses, for instance, from introductory pricing to build up market share represent a clear sunk cost of entry for any potential entrant. This was also confirmed during the market investigation in the case at hand.

(258) Thus, Astra considers that the ability to "*out-finance the incumbent with respect to fare prices over at least six months*" represents the most important sunk cost associated with entry.[274] Astra estimates such a cost to amount to a net loss of around EUR 700 000 per route per 6 month period.[275] The Decision in Olympic/Aegean I provides evidence illustrating the importance of an airline's ability to absorb the losses incurred during the initial period of market penetration.[276] The experience of Olympic's entry in 2009 is particularly relevant in this respect as it shows that even an airline with highly recognised brand in the Greek domestic market is likely to face significant start-up losses in order to establish itself in the market.[277]

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270 SO Response, paragraphs 252–253.

271 SO Response, paragraphs 254–255.

272 Response to the Decision opening proceedings, paragraphs 144–148.

273 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 646.

274 Q1(A) – Questionnaire to actual competitors – reply of Astra to question 25.

275 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraph 5.

276 See for example Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines* recitals 646, 687, 1932.

277 In particular, Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 1932 states that "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 in-

(259) Similarly to Olympic in 2009/2010, Cyprus Airways appears to have engaged in aggressive pricing upon entry into the Greek domestic routes. According to Olympic, Cyprus Airways "*... very quickly penetrated the market achieving high market shares due to the attractive fares*".[278] Moreover, Cyprus Airways achieved sizeable market shares despite substantially lower average fares by the Parties resulting from "*a more aggressive pricing strategy implemented by the Parties*".[279]

(260) In Cyprus Airways' view,[280] given that it started operating in the less profitable winter season, making losses at this phase was normal. According to Cyprus Airways, airlines usually invest in a new route for at least a couple of years before it turns profitable (2 years is considered the "rule of thumb"). Not many airlines can afford to cover the losses for such a long period and Cyprus Airways is one of those companies, which could not afford it, as confirmed by the recent exit of Cyprus Airways' from the three largest Greek domestic routes.

(261) Competitive reactions from incumbents to introductory pricing by a new entrant further increase the costs of building market share. An illustrative example was provided by Astra.[281] In October 2012, Astra attempted to enter the Athens–Thessaloniki route on which Aegean and Olympic provided services with an approximate fare of EUR 90. Astra saw an opportunity and entered with lower fares of EUR 50 and EUR 30. Immediately upon Astra's entry, Aegean lowered its fares to EUR 23. Olympic also reduced its prices. Astra did not have financial resources to operate with such low fares and was forced to withdraw from the route. Aggressive reactions by incumbents to low introductory prices of a new entrant hence further increase the initial losses an entrant has to incur in order to establish itself in the market.

(262) Regarding the Notifying Party's argument that the Commission confuses the costs incurred in the establishment of a new route with the initial costs associated with starting up an entirely new carrier, the Commission notes that the statements made by Astra, Minoan, easyJet, Lufthansa, Wizz Air and Cyprus Airways all relate to entry on new routes rather than to the costs of setting up a new airline. The Commission also does not accept that the initial losses of Olympic reflect the costs of setting up an "entirely new carrier". While after privatisation Olympic incurred certain expenses for hiring staff, setting up administration and IT systems, setting up the headquarters, etc.,[282] the fact remains that Olympic was already well-established and recognised in Greece prior to its change of ownership and re-launch in October 2009. Nevertheless, Olympic still had to incur significant initial losses to establish itself, despite the market recognition it enjoyed from its predecessor, even though legally it was a different entity.

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efficiencies and costs […]. 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. [T]he financial performance of Olympic Air has been improving almost continuously since the beginning of its commercial operations."

278 Olympic's response of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 24.

279 Form CO, paragraphs 641–642.

280 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 20 March 2013, paragraph 18.

281 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraph 13.

282 SO Response, paragraph 251.

(263) Moreover, the Notifying Party's argument that low fares are the core of LCC's business model does not imply that low introductory pricing does not entail costs in the form of low initial returns. For example, Ryanair's practice to launch new routes with seat sales at exceedingly low prices is a form of costly introductory pricing. Ryanair marks the launch of new routes with seat sales either across its entire network (as was the case with the launch of Ryanair's services on Chania-Thessaloniki)[283] or specifically on those new routes.[284] Both types of promotion imply costs or lower initial returns for Ryanair. Promotional sales to celebrate the launch of new routes are also made by other LCCs.[285]

(264) The Notifying Party's argument that Cyprus Airway's entry in the Greek domestic market did not cause additional losses despite low promotional pricing cannot be accepted as it appears solely based on aggregate operating results of Cyprus Airways which do not allow an assessment of the profitability of its Greek domestic routes.

(265) Furthermore, the Notifying Party's view that initial promotional pricing by other local airlines may be very short and only entail limited costs is contradicted by the statements of such airlines as outlined in paragraphs (258) and following above.

(266) Finally, the Notifying Party's argument that start-up costs for a new domestic route represent only a small portion of the actual operating costs of the same route that the incumbent carriers also incur cannot be accepted. The Commission has never disputed that certain costs, such as fuel and aircraft leasing, may represent the bulk of the operational costs of a route. However, the relevant comparator for sunk costs of entry such as initial losses is not the level of operating costs. Rather, whether sunk costs in the form of initial losses can be justified, depends on the level of the expected post-entry profits in combination with the risk associated with entry. The evidence above indicates that initial losses can be substantial and last for a prolonged period of time.

Conclusion

(267) On the basis of the above considerations, it is concluded that sunk costs in the form of initial losses as a result of low introductory pricing to penetrate the market appear significant and relevant for the likelihood of entry on the routes of concern.

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283 When launching the new Chania–Thessaloniki route, Ryanair announced a sale of 100 000 seats across its European network at EUR 22.99 (see Ryanair press release "Ryanair Celebrates 1st Greek Domestic Chania–Thessaloniki Flight", dated 4 June 2013, available at: http://www ryanair.com/en/news/ryanair-celebrates-1st-greek-domestic-chania-Thessaoniki–Thessaoniki–flight).

284 For example, when launching flights from Budapest after Malev's exit, Ryanair announced fares from EUR 9.99 (see Ryanair's press release "Ryanair to open Budapest base in two weeks with 31 new routes […]", dated 3 February 2012, available at: http://www.ryanair.com/en/news/ryanair-to-open-budapest-base-in-two-weeks-with-31-new-routes (retrieved 1 August 2013)). Similarly, to celebrate the inauguration of the Vilnius–Düsseldorf Weeze route, Ryanair launched a special seat sale for LTL 31 on this specific route (see "Ryanair celebrates the start of Vilnius – Düsseldorf Weeze route with a 31LTL seat sale", available at http://airsoc.com/articles/view/id/514dbe3cc6f8fa4a7d00002e/ryanair-celebrates-the-start-of-vilnius-dusseldorf-weeze-route-with-a-31ltl-seat-sale#.UfohrkFzrd4 (retrieved 1 August 2013)).

285 For example, Wizz Air announced a release of seats from GBP 23.99 when launching two new routes from Poland to Glasgow (see Wizz Air's press release "Wizz Air's low fares arrive in Glasgow", date 28 January 2013, available at: http://wizzair.com/en-GB/about us/news/Wizen151 (retrieved 4 August 2013)).

<u>Brand awareness and marketing costs</u>

The view of the Notifying Party

(268) The Notifying Party submits that a strong brand is not necessary to enter the Greek domestic market. The Notifying Party acknowledges the importance of a brand for marketing the airlines' product. However, Aegean does not consider that building brand awareness presents any kind of difficulty or barrier to entry for potential entrants.[286]

(269) In particular, since all the potential entrants are already present in Greece, they would not have to invest significant resources to raise further their brand awareness. Thus, major European network carriers and LCCs (such as easyJet, Ryanair, Vueling, Air Berlin and Wizz Air) already fly extensively to Greece. The smaller domestic carriers, Astra and Sky Express, are already present on Greek domestic routes. Hence, according to the Notifying Party, potential entrants already enjoy varying degrees of brand awareness and would not have to start from scratch.[287]

(270) Furthermore, the Notifying Party states that at times of economic downturn passengers on Greek domestic routes increasingly focus on the price, rather than the brand and would opt for flying with any carrier offering low fares.[288] In particular, the Notifying Party states that during the market investigation 59% of corporate customers indicated that they would be willing to buy tickets on LCCs.[289]

(271) Moreover, the Notifying Party submits that marketing expenditure represent only a small portion of operating costs and are unlikely to influence airline profitability significantly. Also for LCCs marketing costs are typically not a significant expenditure, especially in view of the LCCs' cost advantages over the Parties. In the Notifying Party's view, marketing expenditures cannot represent a barrier to entry.[290]

The Commission's investigation and assessment

<u>Importance of brand awareness</u>

(272) In order to establish domestic presence and to compete effectively against the Merged Entity post-Transaction an entrant would need to develop brand awareness and reputation in the Greek domestic market. Establishing brand awareness is important in order for potential customers to become aware of the alternative services offered by the competitor. An established brand projects an image of reliability, quality, affordable price or other characteristics, depending on the airline's positioning, which attract passengers to a particular carrier.

(273) In light of the market investigation, the Commission considers that airline brand and reputation remain important for travellers in Greece, in particular for a large number of corporate customers, even under the current economic conditions.[291] Also Minoan states that possessing a reputable brand is among the most important factors to attract

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286 SO Response, paragraphs 266–268.

287 SO Response, paragraphs 267–268.

288 SO Response, paragraph 269.

289 SO Response, paragraph 270.

290 SO Response, paragraphs 272–273; Response to the Decision opening proceedings, paragraphs 140-142.

291 Q2 – Questionnaire to corporate customers – replies to question 15.5.

corporate customers in Greece.[292] The travel agents also indicate that airline's brand recognition plays an important role for all groups of passengers in Greece, and especially for TS travellers, even though, predictably, price is a more important consideration.[293]

(274) Cyprus Airways, Sky Express and Minoan[294] indicated that building reputation and consumers' brand loyalty is important for becoming an effective competitor on the Greek domestic market. According to Cyprus Airways, its brand image was a crucial factor for penetrating the market.[295] Indeed, even the press releases of Cyprus Airways provided by the Notifying Party, emphasise Cyprus Airways' long-term presence in Greece and its established reputation among Greek passengers.[296]

(275) The relevance of brand awareness for effective competition is further illustrated by Olympic's comment when asked to assess the viability and prospects of smaller Greek competitors, such as Astra or Sky Express, as competitors (or potential competitors) of Olympic on overlap routes. In its response Olympic mentions that "*ASTRA airlines presents limited brand awareness and distribution channels and Olympic does not consider it as an important competitor for scheduled services.*"[297]

(276) The value of possessing a brand name is also demonstrated by the fact that the licence to use Olympic's brand […]*.[298] The importance of Olympic's brand name is also indicated by the fact that post-Transaction Aegean intends to maintain Olympic's brand for operations on Greek domestic routes.

(277) In market investigation, all 14 international airlines responding to the Commission's questionnaire agreed that in their experience raising customer awareness and brand image is important for establishing a sustainable presence on a new route.[299] Thus, for Vueling brand awareness is an important factor to be taken into account because it has direct bearing on the demand Vueling is able to capture from the market.[300] Germanwings also mentioned that when setting up a base an airline has to invest heavily in order to establish brand awareness.[301] Also, low cost airline, Wizz Air, notes that establishing a competitive brand is crucial in a new market in order to be known to customers.[302] The Commission disagrees with the Notifying Party who tries to reject the importance of marketing costs for Wizz Air.[303] While this carrier states that marketing investment and effort do not represent an *absolute* barrier to

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292 Q1(A) – Questionnaire to actual competitors – reply of Minoan to question 32.3.

293 Q3 – Questionnaire to travel agents – replies to question 39.

294 Replies to question 31 actual competitors – Q1(A).

295 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 20 March 2013, paragraph 11.

296 Form CO, footnotes 334 and 335.

297 Reply of 1 March 2013 to question 28 Olympic, dated 19 February 2013.

298 Financial Statements of Olympic for the Financial Year 2012, page 1, email "M.6796 - AEGEAN /OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

299 R12 – Questionnaire to airlines – replies to question 10.

300 R12 – Questionnaire to airlines – reply of IAG (Vueling) to question 10.

301 R12 – Questionnaire to airlines – replies to question 4.

302 R12 – Questionnaire to airlines – reply of Wizz Air to question 10; non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013.

303 In the SO Response the Notifying Party states: "Wizz Air has explicitly stated that marketing costs do not represent a barrier to entry for them" (SO Response, paragraph 264).

entry,[304] Wizz Air nevertheless explicitly mentions these factors among the most important deterrents for entry on Greek domestic routes.[305]

(278) The Commission acknowledges that attaining the required brand awareness in Greece may be less difficult for easyJet or Ryanair, which likely have some brand awareness already at least among certain customer groups. However, attaining the required brand awareness to compete effectively on a sufficient scale with the Merged Entity on the routes of concern would require significant expenditure by other potential entrants, in particular those without a significant presence in Athens.

(279) The Notifying Party's argument that certain carriers (such as Air Berlin, Vueling and Wizz Air) already operate extensively in Greece[306] obviates the fact that these airlines offer international flights which are unlikely to confer sufficient brand awareness among the passengers travelling on Greek domestic routes. Most of these passengers are likely to be different from those travelling on international routes to/from Greece. LCCs appear to be mostly focussed on bringing tourists to Greece. This is confirmed by the fact that none of Air Berlin, Vueling, Wizz Air or even Ryanair currently has a web-site in the Greek language.

(280) Therefore, the Commission considers that brand awareness is an important factor for entry onto the domestic market in Greece and that most potential entrants do not have such awareness to a degree sufficient to compete effectively with the Merged Entity on the routes of concern.

Marketing costs

(281) In order to develop a brand, an entrant would have to incur certain marketing costs to raise awareness about its operations and build up reputation among travellers. This is all the more important (and costly) in the Greek domestic market which is geographically fragmented with customers spread around the islands. Marketing costs is a type of sunk costs which cannot be recouped upon discontinuation of operations.[307] As such, they affect the initial decision to enter a route.

(282) Indeed, a number of carriers identified marketing costs as the most important sunk costs of entry on new routes. Also, a number of carriers submitted that marketing costs are among the most significant sunk costs required for establishing a base and launching operations from this base.[308]

(283) Specifically, marketing costs to develop brand and product recognition are considered to be the most important sunk entry costs by Cyprus Airways and Sky Express.[309] easyJet also notes that "*in general* […] *marketing costs are likely to be significant if an airline needed to establish a presence*".[310] According to Minoan,

304 Non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013, paragraph 22.

305 Non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013, paragraph 10.

306 SO Response, paragraphs 267–268.

307 Moreover, as explained in recital 632 of the *Olympic/Aegean I* Decision, unlike other entry costs, advertising costs are endogenous sunk costs. This means that such costs may increase with demand, increasing the cost of entry as demand grows.

308 R12 – Questionnaire to airlines – replies to question 4.

309 Q1(A) – Questionnaire to actual competitors – replies to question 25 of Cyprus Airways and Sky Express.

310 Q1(A) – Questionnaire to actual competitors – reply of easyJet to question 37.

there are considerable start-up costs for entrants in the Greek domestic market, which include advertising costs.[311] Germanwings explains that a new route requires a substantial amount of marketing investment because, due to the high fixed costs of aircraft, an airline needs to fill the seats quickly; otherwise the route may be cancelled after a short period of time.[312] Wizz Air considers high marketing costs to be among the main deterrents for entry into the Greek domestic market. Wizz Air expects that it would have to make a significant marketing investment and effort for several years in order to establish a competitive brand in Greece.[313] Also, in Flybe's opinion, brand awareness and reputation in new routes are crucial and "*establishing these can be extremely expensive*".[314] Therefore, according to Flybe, expansion into new routes that are contiguous to existing operations is less risky and less expensive than into completely new markets.

(284) Vueling confirms the importance of a well-recognised brand and notes that it is costly to achieve it when operating outside the core market. Vueling considers that considerable marketing investment would be needed for it to penetrate the Greek domestic market, given that it is not Vueling's core market. Hence, Vueling estimates the costs of establishing a recognised brand to be in the range of several million EUR per aircraft, if establishment of a base were involved.[315]

(285) Astra estimated that an airline wishing to operate 6–8 domestic routes from Athens would have to undertake at least two months advertising campaign on national television, which would cost around EUR 300 000 per month. Furthermore, according to Astra, other marketing activities would be necessary, such as for example presence at various events.[316]

(286) Cyprus Airways explained that it had to incur significant costs to market its domestic flights in Greece despite the fact that it enjoys wide brand recognition in Greece. Cyprus Airways had launched an extensive advertising campaign in major Greek media including a TV campaign.[317] Cyprus Airways' initially planned marketing budget for entry into the Greek domestic market was in the range of a million euros.[318] The Notifying Party, however, estimates that Cyprus Airways however spent approximately […]* on marketing since its entry in Greece.[319] According to Cyprus Airways, marketing costs would be much higher for a company not well known to Greek passengers.[320]

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311 Non-confidential minutes of the telephone conference between the Commission and Minoan on 3 April 2013, paragraph 20.

312 R12 – Questionnaire to airlines – reply of Germanwings to question 10.1.

313 Non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013, paragraphs 10 and 22.

314 R12 – Questionnaire to airlines – reply of Flybe to question 10.1.

315 Non-confidential minutes of the telephone conference between the Commission and Vueling on 7 June 2013, paragraph 9; R12 – Questionnaire to airlines – reply of IAG (Vueling) to question 4.

316 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraph 6.

317 Olympic's response of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 24.

318 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 27 May 2013, paragraph 9.

319 Response to the Decision opening proceedings, paragraph 141.

320 Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 20 March 2013, paragraphs 9 and 11.

(287) Marketing appears to be important also for Olympic. Hence, a strategic development plan prepared for revamped Olympic by external consultants in May 2011 advises that "[…]*".[321] The consultants recommend […]*,[322] […]*. Marketing costs are also among the few expenses which the consultants' report does not recommend to cut (but in fact to increase), thus confirming their importance.

(288) The Commission considers that the marketing expenditure required will likely vary depending on the pre-existing brand recognition of the potential entrant and will be less relevant for the likelihood of entry of carriers which are already well-known in Greece (for example, Ryanair or easyJet). However, based on the results from the market investigation the Commission considers that for smaller airlines that do not have sufficient brand recognition in Greece, such sunk expenditure represents a significant item in itself. The same applies to foreign airlines and low cost carriers which are less well-known in Greece, such as Air Berlin, Vueling or Wizz Air.

(289) Moreover, also for other larger airlines and low cost carriers, sunk marketing expenditure contributes to the overall sunk costs of entry and as such will affect incentives for entry, in particular in view of the low demand and profitability on the Greek domestic market. This is consistent with a statement from easyJet that "*the Greek domestic market is not in itself difficult to enter; the issue is whether entry would be sufficiently profitable for a new entrant in view of low demand for domestic air travel*".[323]

Conclusion

(290) On the basis of the above, it is concluded that establishing a well-recognised brand is important for the ability of airlines to compete with the Merged Entity post-Transaction. Furthermore, the sunk costs related to marketing expenditures are relevant for the likelihood of entry in the Greek domestic market insofar as they contribute to the overall sunk costs of entry. The Commission recognises that the level of required marketing expenditures is likely to vary depending on the potential entrant.

Conclusion on sunk costs of entry

(291) In light of the above considerations, the Commission concludes, that entry on Greek domestic routes would entail significant sunk costs of entry. The most important of such sunk costs take the form of initial losses on a route which result from low introductory pricing to penetrate a Greek domestic route. Other sunk costs include the marketing expenditure required to establish brand recognition.

(292) Sunk costs on Greek domestic routes are not such that they would preclude a well-resourced entrant from market entry. However, the Commission considers that such sunk costs are relevant for the incentives to enter as a potential entrant will weigh such sunk costs of entry against post-entry profitability and risk.

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321 "Operational Evaluation and Strategic Development Plan" prepared by INTRO Aviation (May 2011), page 49; see Olympic's reply of 14 May 2013 to Commission's RFI of 8 May 2013, Annex to the answer to question 9.

322 "Operational Evaluation and Strategic Development Plan" prepared by INTRO Aviation (May 2011), page 49; see Olympic's reply of 14 May 2013 to Commission's RFI of 8 May 2013, Annex to the answer to question 9.

323 Non-confidential minutes of telephone conference between the Commission and easyJet dated 14 March 2013, paragraph 21.

9.5.2.2. Factors affecting post-entry profitability and risk of entry

(293) The incentives for entry on individual routes and, consequently, the likelihood of having new entrants in the market are largely linked to the assessment of the profitability that could be expected from the new operations. In this respect, new entrants need to take into account a number of cost-side and demand-side elements.

Low level of demand and uncertainty about the market

(294) Demand in the Greek domestic market has been declining in recent years. According to the Notifying Party's own estimates, the value of domestic traffic will decline further by 10-15% in 2013 but is expected to stabilise in the following two years.[324] This has generally been confirmed by the analysis of the information gathered during the market investigation.

(295) The level of demand is a key factor affecting airline profitability for both incumbents and potential entrants and therefore affects the decision to enter or expand operations on a particular route. The Notifying Party itself argues that "*the continuing weakness of domestic demand*" is the reason for which LCCs have focused on international incoming traffic to Greek islands rather than on domestic routes.[325] Indeed, easyJet confirms that the low demand for domestic travel affects the profitability and, hence, the incentive to enter.[326] A number of other respondents identify the lack of sufficient demand as relevant for the likelihood of entry in the Greek domestic market.[327]

(296) The recent decline in domestic demand and the current low level of demand indicate that an entrant would be unlikely to access to the Greek domestic market sufficiently attractive post-Transaction.[328] This is particularly relevant in the uncertain economic environment prevailing in Greece. As discussed in Section 9.5.1 above, the uncertainty over whether entry will turn out to be profitable post-Transaction provides an incentive for potential entrants not to enter even when sunk costs are low in absolute terms. This is because by waiting until the uncertainty about demand is reduced and profitability prospects are sufficiently good, the entrant can improve its expected profits and reduce the risk of failed entry.

(297) In light of the information gathered during the market investigation the Commission considers that the uncertainty about how the Greek market will develop represents a relevant factor for the entry decision of airlines on Greek domestic routes. Specifically, the majority of the responding airlines, among which are all domestically active carriers, consider the prevailing uncertainty about the market relevant for entry.[329]

(298) On the basis of the above, in the SO the Commission came to the preliminary conclusion that the current low demand as well as the prevailing uncertainty about

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324 Form CO, paragraph 603.
325 Form CO, paragraph 35.
326 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraph 21.
327 Q1(A) – Questionnaire to actual competitors – replies to question 23; Q1(B) – Questionnaire to potential competitors – replies to question 8.
328 This is in line with paragraph 72 of the Horizontal Merger Guidelines.
329 Q1(A) – Questionnaire to actual competitors – replies to question 23; Q1(B) – Questionnaire to potential competitors – replies to question 8.

the evolution of the Greek market reduces the likelihood of entry onto domestic routes post-Transaction.

(299) The Notifying Party does not disagree with this conclusion. In fact, the Notifying Party considers that low demand is the sole reason for which airlines are not considering the launch of Greek domestic services.[330] Furthermore, the Notifying Party seems to agree with the economic principles which drive delays in entry decisions in the presence of uncertainty. Moreover, in the SO Response the Notifying Party argues that there is no prospect of demand improvement for several years to come[331] and that "*if LCCs do not find it profitable to enter today, they will not find it profitable to enter tomorrow either*".[332]

(300) The Commission concludes that the low level of demand coupled with uncertainty about demand going forward will negatively affect the likelihood of timely entry into the Greek domestic market. This conclusion is consistent with the evidence gathered during the market investigation, which revealed no concrete entry plans.

Airport charges

(301) Airport charges are directly relevant for the post-entry profitability of operations and therefore on the incentive of airlines to start operating on routes from/to Athens. Alongside low and uncertain demand conditions in Greece, high airport charges therefore diminish prospects of profitability prospects on Greek domestic routes from/to Athens.

(302) The impact of airport charges on the expected profitability of entry is of primary relevance for smaller domestic operators and for LCCs, whose business models rely on generating traffic through low prices (while still allowing for profitable operations due to low costs). Per passenger airport charges are passed on by airlines to passengers as airport taxes and hence affect the level of traffic.[333] The analysis of the data collected during the market investigation confirmed that airlines view airport charges as an important consideration for their decision to operate routes from and to Athens.[334] The relevance of such charges for entry decisions may differ depending on the business model of the airline and may therefore affect different airlines' entry decision to a different extent. For instance, the same cost line can be acceptable for a carrier like Aegean while it may be prohibitive for an airline like Ryanair.

(303) The analysis of the data collected during the market investigation also confirmed that AIA charges are high, both on a comparative level and in the eyes of competitors. Hence, the data provided by Athens airport shows that the charges for Airbus A320 aircraft at Athens airport are the fourth highest in Europe, only behind London

[330] SO Response, paragraph 280.
[331] In paragraph 282 of the SO Response The Notifying Party states that "…*the current forecast does not anticipate any economic recovery on the domestic market this year or next year*" and refers to the Quarterly Report of the Greek Economy, published on 9 July by the Greek research organisation IOBE. In paragraph 456 of the SO Response the Notifying Party further states that "*…domestic passenger demand in Greece will remain at low levels low this year and in the next several years*".
[332] SO Response, paragraph 456.
[333] Non-confidential minutes of the telephone conference between the Commission and AIA on 18 June 2013, paragraph 10.
[334] Q1(B) – Questionnaire to potential competitors – replies to question 10; Q1(A) – Questionnaire to actual competitors – replies to questions 26 and 27.

Heathrow, Vienna and London Gatwick.[335] A comparison based on IATA data indicates that AIA is the second most expensive European airport based on charges for Airbus A320 aircraft, just behind London Heathrow.[336] Also airlines regard AIA as an expensive airport.[337]

(304) As concerns the prospective evolution of AIA charges, the Notifying Party claimed that the Greek State is in the process of agreeing with AIA the extension of duration of the current concession agreement, which could result in a decrease of airport charges at AIA.[338] However, the market investigation showed that at present it is uncertain whether and when such an extension will be agreed upon and if so whether it will result in a sufficient decrease of AIA charges.

(305) During the market investigation, the Hellenic Republic Assets Development Fund ("HRADF") indicated that the Greek State and HRADF (together holding a 55% shareholding in AIA) were planning to initiate negotiations with the private shareholders of AIA (who collectively hold 45% in AIA) regarding the extension of the duration of the current concession agreement by 20 years until 2046, and the sale of the State's 55% shareholding in AIA. In October 2011, similar negotiations had taken place on a possible extension of the concession agreement until 2046, but failed.[339] According to the evidence available to the Commission, no new negotiations have yet begun.[340]

(306) In any event, even if the above-mentioned extension were to take place, the decrease in airport charges would likely be limited,[341] in particular due to the existing debt obligations of AIA. Given the terms of the existing loan facility agreement with the European Investment Bank, the possibility for renegotiating terms, such as the terms of the loan, is considered limited.[342] Furthermore, the incentives to negotiate a significant decrease in airport charges are also limited, since as noted by HRADF "*[t]he level of future airport charges will have an influence on the attractiveness of AIA for potential investors*".[343]

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335 Q4 – Questionnaire to airports – reply of AIA, Annex.

336 Q1(B) – Questionnaire to potential competitors – reply of Air France to question 9. These rankings also provide a proxy for charges calculated for Boeing B737 aircraft which is operated by, for example, Ryanair.

337 Q1(B) – Questionnaire to potential competitors – replies to question 9; non-confidential minutes of a telephone call between the Commission and Cyprus Airways on 20 March 2013, paragraph 4; Q1(A) – Questionnaire to actual competitors – reply of Minoan to question 27.2; R12 – Questionnaire to airlines – reply of Wizz Air to question 14; see also recitals (358) and (372) on views of easyJet and Ryanair, respectively.

338 Form CO, paragraphs 714–715.

339 Non-confidential minutes of the telephone conference between the Commission and HRADF on 19 March 2013, paragraphs 3–4.

340 Email from HRADF to the Commission of 13 May 2013; non-confidential minutes of the telephone conference between the Commission and AIA on 18 June 2013, paragraph 12.

341 Non-confidential minutes of the telephone conference between the Commission and AIA on 13 March 2013, paragraphs 3–4. See also non-confidential minutes of the telephone conference between the Commission and the HRADF on 19 March 2013.

342 Non-confidential minutes of the telephone conference between the Commission and AIA on 13 March 2013, paragraphs 3–4.

343 Non-confidential minutes of the telephone conference between the Commission and HRADF on 19 March 2013, paragraph 9.

(307) In addition, the extension of the concession agreement may only reduce a part of the total charges paid by airlines at AIA. A significant proportion of the charges is levied by the State[344] and would not depend on the concession extension.

(308) Consequently, the Commission concludes that high charges at AIA affect the incentive of airlines to enter on Greek domestic routes, in particular in the context of low demand and uncertainty about its evolution. Airport charges at AIA are mainly relevant for entry considerations of low cost carriers such as Ryanair, whose business model is not compatible with operations at airports with such charges. This is discussed further in section 9.5.3.1below.

<u>Access to connecting traffic</u>

(309) Through their domestic and international operations and/or code-share agreements Aegean and Olympic currently have access to significant connecting traffic. The profitability of domestic operations depends partly on connecting traffic. Access to connecting traffic is therefore relevant for the likelihood of sufficient entry in the Greek domestic market.

(310) While emphasising that international traffic at AIA has decreased, the Notifying Party itself characterises international traffic as being "*of crucial importance to the Parties*".[345] In 2012, […]*% of Aegean's domestic passengers were transfer passengers. The transfer share was lower for Olympic ([…]*% on routes where Aegean is not active and […]*% where Aegean is present) but still not insignificant. Also, the proportion of connecting traffic of […]*% on Olympic's flights on the five overlap routes cannot be considered a negligible amount, contrary to what is suggested by the Notifying Party.

(311) Furthermore, the data from AIA provided by the Notifying Party shows that the share of foreign passengers on domestic flights (that is, those connecting or stopping over at Athens) increased in 2012.[346] Hence, connecting passengers are likely to represent a valuable contribution to the achievement of a sustainable load factor in the Greek domestic market where local traffic is declining.

(312) The importance of connecting traffic for domestic routes is demonstrated by a number of arguments made by the Notifying Party in the Form CO. First, the revenue synergies that are put forward rely on the re-optimisation of the joint network so that more connecting passengers are fed into Olympic domestic flights. Secondly, the Notifying Party argues that the reported code-share agreement between Cyprus Airways and Qatar Airways will allow Cyprus Airways to be the only domestic carrier to offer single-stop flights (via Athens) from the Greek islands to New York. "*Therefore, the code share agreement will further facilitate the establishment of Cyprus Airways in Greece*".[347] Furthermore, in support of its claim that the Athens–Santorini route is a "*natural candidate for further expansion by Cyprus Airways*", the

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344 Hence, Greece has an Airport Development Fund ("ADF") fee, which amounts to EUR 12 for departing passengers to EU destinations and applies at all Greek airports. Any reduction of the ADF would have to be authorised by a joint ministerial decision (that is, by the Minister of Finance and the Minister of Transport and Communications). Also, the Greek State imposes a Terminal Navigation Aid charge amounting to approximately EUR 240 per flight. The market investigation revealed no indications that these charges imposed by the State are likely to be lowered.

345 Form CO, paragraph 607.

346 Presentation "Aegean/Olympic II – Additional information", submitted on 10 March 2013, slide 15.

347 Form CO, paragraph 638.

Notifying Party explains that the feeder traffic generated by the codeshare agreement negotiated between Cyprus Airways and Air France, KLM and Alitalia "*would be particularly important in respect of connecting flights to Santorini where traffic largely comprises of foreign tourists*".[348]

(313) In line with the Notifying Parties' statements, the airlines responding to the Commission's requests for information also emphasised the importance of connecting traffic. Hence, Cyprus Airways considers connecting traffic to be important for an airline in order to maintain sustainable operations in the Greek domestic market. Similarly, Air Berlin considers connecting traffic to be important since it helps to maximise load factor.[349] To Germanwings it seems unreasonable to suggest that a competitor would be able to survive solely on local traffic on the Greek domestic routes from Athens, in circumstances where the Parties have the benefit of feeder traffic from their networks.[350] SAS states that international connecting traffic may be a welcome contribution, even if the bulk of the traffic is local.[351]

(314) The Commission agrees that access to connecting traffic is likely to be a less relevant consideration for entry of LCCs since LCCs do not offer connections (that is, passengers are required to arrange their own connecting flights). However, as explained in section 9.5.2.2, creating sufficient local demand, and not relying on connecting traffic, is currently difficult for LCCs in view of high charges at AIA and the low level of demand on the Greek domestic market.

(315) Therefore, the Commission concludes that, relative to the Parties, potential entrants without their own extensive network are less likely to be able to feed their domestic flights with connecting traffic. This is likely to reduce the profitability of domestic routes post-entry for such potential entrants (excluding LCCs) and is hence liable to affect the likelihood of entry and of establishing sustained competitive operations in the Greek domestic market.

<u>Congestion at regional airports at peak times</u>

(316) The market investigation in the present case confirmed that AIA, being only a schedules facilitated airport, has sufficient capacity for new airlines at all times of the day. Ensuring ample capacity at AIA is also an obligation set out in the AIA's airport development agreement.[352]

(317) However, according to the market investigation, problems regarding slot and infrastructure availability arise at some Greek regional airports in peak times of the summer season.

(318) Hence, some airlines indicated that slot availability at Greek regional airports constitutes a barrier to entry. For example, Lufthansa and Germanwings stated that slot availability at most regional airports is "critical". The Thomas Cook Group noted that there are slot and operational constraints at Greek airports in the peak times of the summer season. Also, Minoan considered the availability of slots in some Greek regional airports (such as Heraklion, Rhodes, Kos, and Corfu) to pose a serious problem during the peak times in summer due to the high number of charter

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348 Form CO, paragraph 401.
349 R 12 – Questionnaire to potential competitors – reply of Air Berlin to question 11.
350 R 12 – Questionnaire to potential competitors – reply of Germanwings to question 11.
351 R 12 – Questionnaire to potential competitors – reply of SAS to question 11.
352 Q4 – Questionnaire to airports – reply of AIA to question 4.

flights.[353] Vueling stated that it experienced problems with obtaining slots at Santorini in summer season.[354]

(319) However, other carriers did not consider Greek airports to be slot constrained.[355] In particular, easyJet and Ryanair had no difficulties in obtaining slots at the regional airports in which they operate.[356]

(320) All the relevant regional airports are slot-coordinated during the summer season. These airports indicated that they have limitations or constraints for airlines to obtain access to slots. Such limitations relate mainly to the runway and apron capacity (for example, at the airports of Chania, Thessaloniki and Rhodes) and to terminal capacity (for example, at the airports of Corfu, Chania, Heraklion, Kos, Mytilene, Rhodes and Thessaloniki).

(321) The congestion of regional airports in the summer season does not appear to be so severe that these airports are not able to accommodate the flights of requesting airlines. However, the market investigation indicates that there are instances when airlines are not able to obtain slots and infrastructure at their desired time during specific days and times of the summer season.

(322) In the airline industry, scheduling is one of the key parameters of competition. Having a slot at a particular time is important since it may significantly affect demand and flight revenue. First, early morning and late evening flights are particularly important for higher-yielding TS passengers who are willing to pay more to maximise the day time spent at the destination.[357] Second, an airline may need to operate flights during a specific hour to adjust to its own or partner airline's connecting flights. Third, a potential entrant may want to provide flights during a specific niche timing not yet covered by the incumbents or to avoid 'wingtip-to-wingtip' operations with the incumbent.

(323) In light of the above, the evidence from the market investigation shows the likely existence of slot and infrastructure constraints at Greek regional airports. Although such constraints arise only during peak times in summer, they may nevertheless affect the ability of some competitors to operate flights at desired times during the busiest travel period, and consequently may impact upon the profitability of these flights.

9.5.2.3. Opportunity costs

(324) When considering whether entry is sufficiently profitable to justify incurring sunk costs of entry, a potential entrant will take into account all the relevant factors. These include not only uncertainty and hence the risk of failed entry, but also whether potential entrants have more profitable and less risky opportunities elsewhere. Forgoing such opportunities in other markets represent an opportunity cost of entering the Greek domestic market which will be relevant for entry decisions.

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353 Non-confidential minutes of the telephone conference between the Commission and Minoan on 3 April 2013, paragraph 15.

354 Vueling's response to the Commission's RFI of 14 August 2013, answer to question 3.3.

355 Q1(B) – Questionnaire to potential competitors – replies to 8.

356 Q1(A) – Questionnaire to actual competitors – reply of easyJet to question 33; Q1(C) – Questionnaire to Ryanair – reply of Ryanair to question 34.

357 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraph 7.

(325) The General Court confirmed that the existence of more profitable routes should be taken into account when assessing the likelihood of entry by competing airlines.[358]

(326) In the present instance, available opportunities on international routes or routes outside Greece are an important factor in airlines' decisions as regards which routes to serve and whether to serve Greek domestic routes. For example, easyJet considers the opportunity costs of maturing routes when entering a new market to be the most important cost of establishing presence.[359] Moreover, Ryanair also confirms that the decision to enter Greek routes is made with due regard to the availability of profitable alternatives.[360] The relevance of opportunity costs for airlines' decisions regarding the scope of their operations is also confirmed by the Notifying Party's statement that […]*.[361] The Notifying Party itself acknowledges that "*Whereas accounting margins do not include opportunity cost, they matter no less in the decision-making.*"

(327) The Notifying Party considers however that opportunity cost considerations are largely irrelevant for the LCC's entry decisions. The Notifying Party argues that, […]*, LCCs are not constrained in terms of their capacity, have the ability to expand at relatively short notice and can easily mitigate the risk of failed entry, due to their large portfolio of destinations. Moreover, easyJet and Ryanair have fleet of significant size and plans to expand it further in the next several years. Hence, the two jet aircraft, which according to the Notifying Party would suffice to replace the capacity offered by Olympic on the overlap routes of concern, represent only very small part of the fleet of easyJet or Ryanair.

(328) The Commission cannot accept the Notifying Party's claim that opportunity costs are irrelevant for LCC airlines such as easyJet and Ryanair. First, such a largely hypothetical argument is contradicted by the statements of easyJet and Ryanair (see recital (326)). Secondly, what matters is not the absolute size of the fleet but its size relative to the opportunities these airlines have to employ their aircraft. Both Ryanair and easyJet seem to have sufficient expansion opportunities relative to the size of their fleet.

(329) The Commission therefore considers that opportunity costs are relevant for the entry decisions, including of LCCs, especially in a context of uncertainty and low return such as the one prevailing in the Greek domestic market.

(330) The opportunities of potential entrants in other markets will, however, vary depending on the identity of the potential entrant. For example, international carriers such as easyJet or Ryanair, would have very different opportunities outside the Greek domestic market than smaller local airlines. Therefore, the issue is further discussed in the assessment of individual potential entrants in Section 9.5.3 below.

9.5.3. Entry/expansion of individual potential and actual competitors

(331) While the evolution of demand as well as the uncertainty about future profitability is likely to affect all potential entrants to a similar extent, some of the other factors

358 Case T-342/07 *Ryanair Holdings plc v Commission* [2010] ECR II-3457, paragraph 298–303.
359 Q1(A) – Questionnaire to actual competitors – reply of easyJet to question 37.
360 Non-confidential minutes of the telephone conference between the Commission and Ryanair on 14 June 2013, paragraphs 12–13.
361 Response to Decision opening proceedings, paragraph 112.

relevant for the likelihood of entry are likely to have differential impact on different competitors, depending on the extent to which they might have sunk certain entry costs but also depending on their business model and their operational strategy. The likelihood and timeliness of entry and the extent to which it could sufficiently constrain the Merged Entity within a short enough time frame is likely to depend on the identity of the potential entrant.

(332) The Commission therefore assessed the likelihood and timeliness of entry by individual airlines and the extent to which such entry (or entries) would be sufficient to defeat the anticompetitive effects of the Transaction. The data collected during the market investigation did not reveal any timely or likely entry plans by either LCCs, local airlines or other European competitors.

9.5.3.1. Entry by LCCs

<u>The Notifying Party's view</u>

(333) The Notifying Party acknowledges that low demand and the presence of uncertainty are the reasons why LCCs may not have an incentive to enter Greek domestic routes pre-Transaction. However, if the Merged Entity were to raise prices, LCCs would enter. According to the Notifying Party, there is hence a credible threat of entry which would prevent the Merged Entity from increasing prices post-Transaction.

(334) In support of this argument, the Notifying Party points to the fact that easyJet and Ryanair have significantly increased their presence on international routes to Greece in recent years which, according to the Notifying Party, shows these carriers' "*great interest in Greece which also implies the likelihood of their entry*".[362]

(335) Moreover, the Notifying Party argues that Ryanair's actions including the establishment of a base in Chania, the opening of a domestic route from Chania to Thessaloniki, and the "Tourism Rescue Proposal" make clear Ryanair's expansion plans in the Greek market including domestic routes between regional airports.

(336) In the Response to the Decision opening proceedings, in two subsequent submissions (the "first" and "second economic submissions")[363] and in the SO Response, the Notifying Party further submits that LCCs do not face significant sunk costs and that efficiency advantages by LCCs suggest that LCCs "*could achieve profit*"[364] on Greek domestic routes. […]*.[365] […]*.[366] […]*.[367]

(337) In the economic submissions, the Notifying Party further argues that for large LCCs, such as easyJet or Ryanair, there is no need to consider the opportunity cost of expansion into the Greek market since these carriers are sufficiently flexible with respect to the size of their fleet (including recently announced orders) and since

362 Response to Decision opening proceedings, paragraph 187; SO Response, paragraphs 348–354.

363 "LCC's profitability of operating in the Greek domestic markets", RBB Economics, 20 May 2013 ("first economic submission"), and "The growth of the low cost carriers' presence in Greece and the credible threat of additional entry from these carriers into the Greek domestic market", RBB Economics, 21 June 2013 ("second economic submission", jointly "economic submissions").

364 Response to Decision opening proceedings, paragraph 179.

365 Response to Decision opening proceedings, paragraphs 183 to 185.

366 The Notifying Party assumes that […]*. Moreover, similarly to its earlier submissions, the Notifying Party presents a range of load factors and fare reductions. […]*. Unlike in the second economic sub-mission, the Notifying Party does not present calculations of profit per seat.

367 The Notifying Party considers though that these results could be interpreted to apply to any LCC.

penetrating the Greek domestic market would require only relatively small investment. As the number of aircraft required to serve the overlap routes would only correspond to a small proportion of LCC's total fleet, the Notifying Party argues that opportunity costs would be insignificant for these carriers so that absolute profitability should be a sufficient indicator for the likelihood of entry of LCCs.

(338) Moreover, since easyJet is already flying to many international routes to different Greek destinations including Athens, it is already present at both ends of many Greek domestic routes. According to the Notifying Party, this would allow easyJet to respond swiftly to any change in capacity on domestic routes making it a credible potential entrant, even without having a base at Athens.

(339) The Notifying Party further states that the fact that it monitors LCCs evidences Aegean's awareness of the threat they pose.

(340) Furthermore, the Notifying Party argues that the Commission incorrectly relies on the fact that the market investigation did not reveal any concrete or likely plans by LCCs.[368] Instead, the Notifying Party submits that the Commission should have carried out a prospective analysis of entry for such carriers.

<u>The Commission's investigation and assessment</u>

(341) The Commission carried out a detailed investigation of the prospects of entry by LCCs, in particular by easyJet and Ryanair. The Commission agrees with the Notifying Party that the assessment of entry is a prospective analysis. The Commission disagrees with the Notifying Party that the Commission did not perform such an analysis.

(342) The Commission also disagrees with the Notifying Party's argument that responses from potential entrants should not be relied upon in the assessment of entry. Responses from the market investigation are an important source of evidence which the Commission routinely relies upon in its assessment together with other elements.

(343) In particular, regarding the issue of entry on Greek domestic routes, features such as strategic priorities in terms of core markets, choice of business model, alternative business opportunities, etc. are key determinants which, jointly with other factors such as sunk costs of entry, profitability and risk, will determine whether a specific entrant is likely to enter post-Transaction. Furthermore, in the present case, the potential entrants are well informed, have provided coherent and consistent responses and the Commission has no grounds for suspecting that entrants responses would be biased.

(344) The Commission therefore considers that, in the present case, responses from potential entrants represent an important source of evidence on the likelihood, sufficiency and timeliness of entry as well as on opportunities of these entrants elsewhere.

easyJet

(345) easyJet is a UK-based airline, operating a fleet of approximately 200 Airbus A319 and A320 jet aircraft. easyJet's turnover in 2012 was EUR 3.8 billion. easyJet currently operates a number of international services to destinations in Greece,

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368 Decision opening proceedings, paragraph 188.

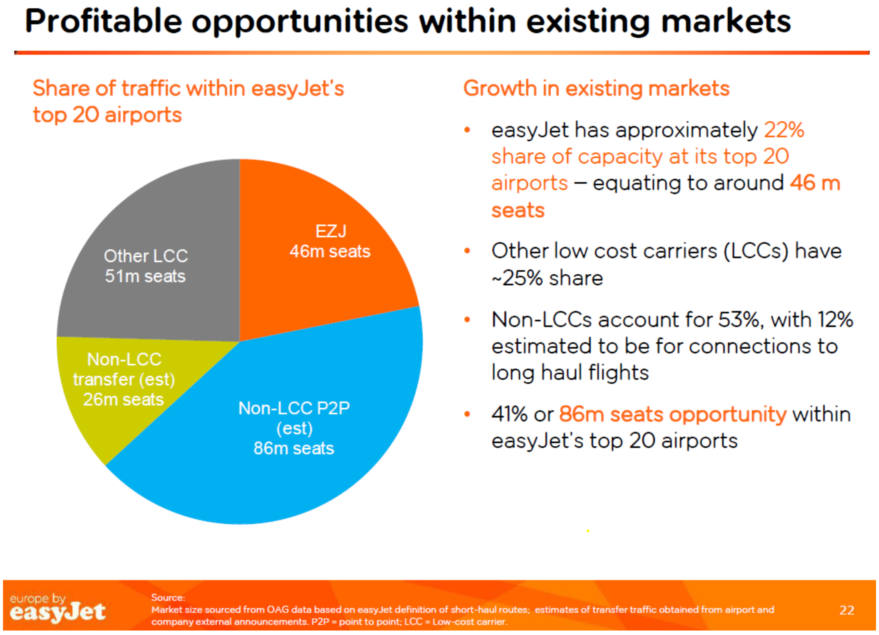
including eight international routes to Athens, but does not have any Greek domestic flights nor a base in Greece.

(346) When asked concerning entry on Greek domestic routes, easyJet stated that it "*has no plans to enter this market and it is very unlikely that it would do so*" under a scenario that post-Transaction the Merged Entity raises prices or the domestic demand in Greece improves.[369] Furthermore, in contradiction to the Notifying Party's argument, also after the announced exit of Cyprus Airways easyJet maintained that it would be unlikely to enter any domestic routes post-Transaction. In fact, when questioned on this point, easyJet was not even aware of Cyprus Airways' exit, since easyJet was not monitoring the Greek domestic market.[370]

(347) easyJet explained its lack of interest in Greek domestic routes by the fact that its business strategy is to focus on its core markets, which are the United Kingdom, Germany, Switzerland, France, Italy and Spain. Therefore, if easyJet were to contemplate opening new domestic routes, this would likely be in those countries.[371]

(348) easyJet's public statements also support the conclusion that the carrier sees sufficient growth opportunities in its existing markets. easyJet's investor presentation relating to its first half-year results for 2013 focussed on "*profitable opportunities within existing markets*" (see the slide below[372] presenting easyJet's growth opportunities at its top 20 airports (which excludes Athens[373])):

Figure 10: easyJet's profitable opportunities within existing markets



369 R10 – Questionnaire easyJet – replies to questions 2 and 3; non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013.

370 Email from easyJet to the Commission of 18 June 2013.

371 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraph 3.

372 EasyJet's presentation "Half Year Results Analyst and Investor Presentation", dated 13 May 2013, slide 22; available at: http://corporate.easyjet.com/~/media/Files/E/Easyjet-Plc-V2/pdf/investors/results-centre/2013/2013-half-year-results-analyst-presentation.pdf.

373 For the list of easyJet's main airports and bases see here: http://2012annualreport.easyjet.com/overview/our-presence.aspx.

(349) When commenting on the above slide, easyJet's Chief Executive, Ms. Carolyn McCall, stated: "*86m of these seats, the blue section of this chart, serves point-to-point demand currently flown by non-LCC carriers. And we believe we have a significant cost advantage against these competitors, and this is our primary focus for profitable growth*" (emphasis added).[374]

(350) In this context, it has to be noted that easyJet's stated capacity growth rate is 3–5% per year. Given easyJet's current capacity of 65.9 million seats and assuming a 5% annual growth, in 3 years easyJet will increase its capacity by 10.4 million seats. The 86 million non-LCC seats from easyJet's existing airports, which are contestable according to Ms. McCall, appear to provide ample room for accommodating such a growth.

(351) Furthermore, also on other recent occasions easyJet's Chief Executive pledged the carrier would continue to expand in the markets in which it was already active. For example, when addressing the European Aviation Club in October 2012, Ms. McCall stated: "*We will continue to grow modestly, we are quite pragmatic about that, but it is growth. There is still a lot more low-fares airlines can do in the market. EasyJet can continue to grow in markets we are already in, which is much lower risk. We don't need new markets to grow*"[375] (emphasis added).

(352) While these statements were clearly made in a context that is unrelated to the Transaction, they nevertheless indicate the general approach of easyJet towards expansion and cannot be disregarded. They are in line with and corroborate easyJet's statements made during the investigation that easyJet is unlikely to enter intra-Greece post-Transaction (recital (346)).[376]

(353) easyJet's strategy of expanding its operations from its current bases is also confirmed by the recent business decisions taken by this carrier. Thus, in May 2013 easyJet acquired 25 slots from Flybe at the UK's second largest airport and easyJet's largest base, London Gatwick.[377] Using these slots, easyJet plans to offer additional services on its existing routes as well as to add new destinations from Gatwick.[378] easyJet viewed the Gatwick slot acquisition as a profitable opportunity, even considering the significant price of GBP 20 million it had to pay to Flybe. Similarly, it was recently announced that easyJet plans to double its traffic from its other existing base, London Stansted airport, in the next five years.[379] Another example is the nine-year agreement signed by easyJet with Liverpool John Lennon airport on 4 July 2013, which will see easyJet launching new routes from this existing base.[380]

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374 Transcript of the Analyst Presentation of 2013 Interim Results, page 5; available at http://corporate.easyjet.com/~/media/Files/E/Easyjet-Plc-V2/pdf/investors/results-centre/2013/2013-Half-Year-Results-Call-Transcript.pdf.

375 "European Budget Airlines: EasyJet chief eyes modest growth; new aircraft", available at: http://eu-digest.blogspot.be/2012/10/european-budget-airlines-easyjet-chief.html.

376 R10 – Questionnaire to easyJet – replies to questions 2 and 3; non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013.

377 Financial Times article "EasyJet to buy Gatwick slots from Flybe", 23 May 2013.

378 easyJet's press release "easyJet announced proposed exchange of Gatwick slots", 23 May 2013.

379 Reuters article "EasyJet's London Stansted traffic to double over five years" (13 June 2013), available at: http://uk reuters.com/article/2013/06/13/uk-easyjet-manchesterairportsgroup-idUKBRE95C03820130613.

380 Liverpool John Lennon Airport's press release "easyJet celebrate new long term deal with JLA by announcing new route to Cyprus", 4 July 2013.

(354) With respect to the increased presence of LCCs, including easyJet, in Greece, the Commission considers that the Notifying Party confuses the interest that LCCs see in Greece as an international touristic destination and the appeal that Greece carries for them as a domestic market. This is especially evident in the case of easyJet. It is not very common for easyJet to operate domestic air services. Currently it provides domestic flights only in three countries – the United Kingdom, France and Italy. easyJet does not fly domestically in such countries as, for example, Spain or Germany, where it has significant presence, including base airports. It would seem plausible for easyJet to first launch domestic operations in these countries, where passenger volumes and yield are likely to be significantly greater than in Greece, before entering the Greek domestic market.

(355) Concerning the increase of airport charges in other South European countries, easyJet does not see this as affecting its likelihood of entry in Greece. In particular, easyJet explains that while the recent increase in airport charges in Spain led to a certain decrease of easyJet's operations in this Member State, this will not lead to a redeployment of its aircraft to Greek domestic routes. Rather, easyJet would switch its aircraft to its bases in the core markets.[381]

(356) Moreover, according to easyJet, entering the Greek domestic market would be a significant long term decision, while aircraft redeployment from a particular market due to certain unfavourable conditions is a short term choice. In easyJet's view, the expected return in Greece is not of such a nature that it would prompt easyJet to invest into entering that market.[382]

(357) Furthermore, easyJet considers that overnighting an aircraft at AIA is necessary for domestic operations out of Athens.[383] This is in particular important in order to be able to provide attractive schedule (early morning and late evening flights). Operating W-flights (that is, flights without a base at least at one end of the route)[384] is unlikely to be feasible and is very rare for easyJet.[385] easyJet gave only "*very basic consideration*" to a base at AIA in the past "*but this did not result into anything concrete*".[386]

(358) With respect to airport charges, easyJet notes that "*charges at Athens are relatively high*".[387] In the carrier's opinion, while the charges are not noticeably higher than at other primary airports of capital cities, they are high enough to affect the volume of traffic from Athens, given the weak demand and poor economy in Greece. Airport charges are "*a key factor*" in easyJet's entry decisions and are assessed relative to the

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381 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraphs 5–6.

382 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraphs 4–6.

383 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, as well as Q1(A) – Questionnaire to actual competitors – easyJet's reply to question 34.

384 Non-base point-to-point flights are so-called "W" or "triangular" flights. On such a W-flight, the aircraft first flies from its base to a non-base destination. Instead of returning to the base, the aircraft then flies one or several times to another non-base destination (for example a destination a shorter distance away to use the weak demand over lunchtime) during the day and only returns to the base in the evening.

385 Non-confidential minutes of the telephone conference between the Commission and easyJet on 14 March 2013, paragraph 7.

386 Q1(A) – Questionnaire to actual competitors – easyJet's reply to question 44.1.

387 Q1(A) – Questionnaire to actual competitors – reply of easyJet to question 27.2.

expected yield of a route.[388] easyJet's current eight international flights to Athens (that is from Germany, France, Italy, Switzerland and the UK) are supported to a large extent by demand from these foreign destinations, where the travellers' purchasing power is likely to be higher than within Greece (and thus the relative importance of AIA charges is likely to be lower on those routes). Hence, easyJet's existing international flights to Greece cannot serve as evidence that AIA charges would not deter easyJet's entry on Greek domestic routes.

(359) In summary, based on the information collected during the investigation, easyJet has no strategic interest in the Greek domestic market and no entry plans, has profitable growth opportunities elsewhere and is unlikely to consider entering Greek domestic routes post-Transaction.

(360) The Commission disagrees that opportunity cost considerations are irrelevant or insignificant for easyJet's (or any other LCC's) decision to enter a new market. Opening a new route requires committing resources, such as aircraft and crew, at least for one IATA season (and probably for more, until the route matures), which means that other profitable opportunities are relinquished. The fact that the available alternatives to which the company's resources could be allocated represent an important business consideration is supported by the evidence from easyJet above regarding the existence of profitable opportunities in its core markets (see recital (347) *et al*). This also appears to be acknowledged by the Notifying Party.[389]

(361) […]*

(362) Furthermore, the Notifying Party's calculations of post-entry EBT margins are simple exercises which are based on hypothetical assumptions regarding easyJet's achievable average fare and average load factors on Greek domestic routes. Such exercises are necessarily of a hypothetical nature and it is unclear whether the assumptions reflect post-Transaction competition between easyJet and the Merged Entity.[390] Moreover, the Notifying Party's calculations abstract from many important factors, such as, for example, sunk costs, uncertainty or strategic considerations by airlines.

(363) In the SO Response the Notifying Party disagrees with the conclusion that its calculations cannot indicate whether entry is likely. According to the Notifying Party its analysis shows that […]*. In the absence of significant sunk cost this implies that entry is likely. Furthermore, in response to the criticism expressed by the

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388 Q1(A) – Questionnaire to actual competitors – reply of easyJet to question 26.

389 With the margin calculation exercise, the Notifying Party essentially illustrates a situation where easyJet will not have an incentive to enter, as the expected margin from operating in the Greek domestic market is lower than its average margin, but might have such an incentive if prices and, therefore, margins are higher post-merger. In that context, the Notifying Party states that *"This is in line with what easyJet stated to the Commission, i.e. that there are more attractive opportunities elsewhere than entering in Greece at the moment"* (Response to Decision opening proceedings, paragraph 185).

390 In particular, it is not clear how the scenario presented in the Response to the Decision opening proceedings was chosen. There is no substantiation of why this is considered the most plausible scenario by the Notifying Party. The Notifying Party's sensitivity analyses include scenarios in which, by the reasoning of the Notifying Party, easyJet would have an incentive to enter even pre-Transaction or, for that matter, should have already entered. Indeed, since the Notifying Party's average fare was much higher in the previous years, by the logic of the Notifying Party's calculations, easyJet should have entered in the past. This indicates that the Notifying Party's hypothetical calculations shed little light on actual entry incentives.

Commission that some of the Notifying Party's scenarios imply that LCC's should have entered in the past, the Notifying Party argues that the profitability calculations do not provide any indication about the profitability level easyJet could achieve in competition with both Aegean and Olympic. Instead a higher fare reduction would need to be assumed for the calculations to provide an indication of easyJet's profitability in case of pre-merger entry. Moreover, the Notifying Party claims that LCCs have not entered so far in the Greek domestic market because they were less active on international routes to Greece in the last few years but also, because of the crisis which started in 2009, which created overcapacity and rendered entry unattractive.

(364) The Commission cannot accept these arguments. As already noted in recital (362), simplistic calculations such as the one presented by the Notifying Party are based on abstractions of many important factors relevant for entry decisions. The Notifying Party's argument that easyJet was less present at Greek airports in the past illustrates this point and implicitly acknowledges that factors such as strategic considerations regarding presence in certain markets, evolution of demand and uncertainty which continue to be relevant today matter for entry decisions. The response of easyJet to the Commission's market investigation that it does not consider entry on any overlap route post-Transaction corroborates this point.

(365) Furthermore, while the Commission agrees that post-entry prices will likely be lower if entry occurs pre-Transaction than if it occurs post-Transaction, at the fare reduction suggested by the Notifying Party to simulate post-entry price levels if entry occurs before the Transaction, […]*. Despite this easyJet, which is flying international routes to Athens, has not entered this route. This further illustrates the Commission's view that the Notifying Party's simple calculations are of little value for predicting entry.

(366) For the reasons outlined above, the Commission considers that the calculations presented by the Notifying Party do not provide a reliable indication of the entry incentives of easyJet.

(367) Finally, the Commission considers it unlikely that the threat of entry by LCCs alone would prevent the Merged Entity from increasing prices post-Transaction[391]. As explained in Section 9.5.1 a remote possibility of entry is not sufficient. Entry must 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 appears highly unlikely that the mere threat of entry from LCCs would achieve this.

(368) In the Commission's assessment actual entry by LCC's on Greek domestic routes from Athens is unlikely. Therefore the threat of potential entry from LCC's is likely to be remote too.[392]

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391 Response to Decision opening proceedings, paragraph 52.

392 The Notifying Party's second economic submission mentions a paper by Austen Goolsbee and Chad Syverson (Goolsbee & Syverson, "How do incumbents respond to the threat of entry? Evidence from major airlines", Quarterly Journal of Economics, November 2008, pages 1611–1633). This paper provides an empirical analysis of price reductions by incumbents to the presence of the US low cost carrier South West Airlines (SW) on both ends of a route before actual entry on the route. As SW is a U.S. carrier, presence at both ends of a route means that SW already operates other U.S. domestic routes between two points but does not yet operate a domestic route connecting the same two points. The paper finds that the mere threat of entry accounts for slightly over half of the effect of actual entry. In the

(369) Consequently, it is unlikely that post-Transaction easyJet would enter the Greek domestic routes of concern in a timely fashion to deter any potential anticompetitive effects of the Transaction.

Ryanair

(370) Ryanair is the largest European low cost carrier with operations in 28 countries. It has a fleet of over 300 Boeing 737-800 jet aircraft. Ryanair launched its first international route to Greece in May 2010. Currently it operates around 80 routes (many seasonal) from European destinations to Greek regional airports, but none to Athens. On 4 June 2013, Ryanair launched its first, and so far the only, Greek domestic route, Chania–Thessaloniki, operating six weekly frequencies.

(371) During the market investigation, Ryanair indicated that while it did not rule out operating on any Greek domestic routes, such a decision would depend on a number of factors including the level of airport charges, aircraft availability and length of sectors.[393] Subsequently, Ryanair submitted that it would be interested in expanding its operations on Greek domestic routes (mainly from Athens or from Thessaloniki), but only if it is able to negotiate lower airport charges.[394]

(372) The level of airport charges appears to be the main and a very strong factor deterring Ryanair from entry on routes to or from Athens (as described in section 9.5.2.2). In particular, Ryanair referred to AIA charges as being "*historically excessive*", "*inconsistent with Ryanair's business model*" and "*far in excess of what we would tolerate for operation at AIA*".[395] The current average charge at AIA of EUR 30–35 per passenger would make Ryanair's total fare from Athens substantially above Ryanair's current average fare of EUR 48 in its total network, considering the need to add fuel, crew and other expenses.[396] Ryanair does not find AIA's incentive schemes to provide sufficient cost reductions, stating that "*if they were attractive enough […] we would have already entered Athens*".[397]

(373) Ryanair emphasised in several responses that its business model is predicated upon the existence of low airport charges which allows it to stimulate demand through low fares.

(374) On 25th April 2013, Ryanair met the Greek Minister of Development and Transport, Mr Kostas Hatzidakis, and held a press conference, making a presentation entitled "Tourism Rescue Proposal". In this presentation, Ryanair offered to bring 10 million passengers per annum (out of which 4 million to Athens airport) subject to a substantial reduction in Greek airport charges.[398] In particular, Ryanair put forward

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Commission's view the results from this paper are not informative for the effects of a threat of entry by LCCs on the Parties, mainly because, in contrast to SW in the U.S., LCCs focus on international routes to Greece and not on domestic routes within Greece.

393 Q1(C) – Questionnaire to Ryanair – reply to question 12.1.

394 Non-confidential minutes of the telephone conference between the Commission and Ryanair on 14 June 2013, paragraphs 3.

395 Q1(C) – Questionnaire to Ryanair – reply to questions 5 and 24.

396 Non-confidential minutes of the telephone conference between the Commission and Ryanair on 14 June 2013, paragraphs 5.

397 Q1(C) – Questionnaire to Ryanair – reply to question 3.

398 See Ryanair press release of 25 April 2013, available at: http://www ryanair.com/en/news/ryanair-proposes-10m-pax-and-4-5bn-euro-tourism-revenue-p-a-in-a-plan-to-rescue-greek-tourism-and-aviation.

the following conditions: (i) reduction of the Airport Development Fund to EUR 0 at all Greek airports (from the current level of EUR 12); (ii) reduction by EUR 5 of the Passenger Service Charge ("PSC") at AIA (from the current PSC level of EUR 8.51 per departing domestic passenger and EUR 12.16 per departing international passenger).[399]

(375) Two days later, AIA issued a firm statement rejecting Ryanair's overtures under such terms. In particular, AIA stated that its business model relies on development of long term relationships with airlines which does not match the practices of Ryanair of "*not investing on a long term business relationship*".[400] Furthermore, AIA referred to its targeted incentives policy on airport charges and offered Ryanair to take advantages of these incentives. Providing special conditions to particular carriers would be contrary to AIA's non-discrimination policy. Moreover, AIA noted that is has no control over the amount of the Airport Development Tax and Terminal Navigation Fee which are imposed by the Hellenic State. Finally, in a private response, AIA offered to Ryanair a reduced per passenger charge (by including various incentive schemes), which was still considerably higher than what requested by Ryanair.

(376) With respect to the Ryanair's proposal to rescue tourism in Greece, the Commission notes the following.

(377) First, Ryanair's presentation contains no reference to Ryanair's possible entry on Greek domestic routes, which are relevant for the assessment of the present case. Rather, the focus of Ryanair's proposal is on bringing international tourists to Greece. Hence, the presentation is rather indicative of Ryanair's interest in launching new or expanding capacity on its existing international routes to Greece.

(378) Second, Ryanair's proposal is conditional upon significant reduction of airport charges, in particular at AIA. Such reduction would have to apply to all carriers, in line with AIA's non-discrimination policy.

(379) The Notifying Party itself acknowledges that Ryanair's demands are "rather unrealistic".[401]

(380) As explained in the section describing the charges at AIA, at this stage there is no indication that AIA's charges are likely to be reduced to a significant extent and in a timely manner as the result of the extension of the concession agreement.

(381) Significant reduction of AIA charges appears to be an essential requirement for Ryanair to enter on routes from Athens. Without such a reduction, Ryanair considers that there are "*sufficient opportunities at other airports in Europe to render entry at the currently high-cost Athens Airport unattractive*".[402]

(382) Indeed, there appear to be sufficient other opportunities for Ryanair to grow. In announcing its results for financial year 2013, Ryanair pointed to "*significant opportunities opening up in Germany, Scandinavia and central Europe*", where

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[399] Non-confidential minutes of the telephone conference between the Commission and Ryanair on 14 June 2013, paragraphs 6.

[400] "Athens International Airport announcement on Ryanair's allegations" of 27 April 2013, available at: http://www.atn.aero/article.pl?mcateg=&id=43143.

[401] Response to the Decision opening proceedings, paragraph 199.

[402] Ryanair's reply of 27 May 2013 to Commission's RFI of 17 May 2013, answer to question 17.

incumbent airlines continue restructuring.[403] It also stated that its "*new route teams continue to handle more growth opportunities than our current fleet expansion allows*".[404] On Ryanair's fleet expansion, it should be noted that Ryanair's fleet is expected to grow only from 2016, while in 2014 and 2015 it is expected to shrink by 7 aircraft as a result of lease returns and disposals.[405] In these circumstances, entering additional routes within Greece is unlikely to be high on Ryanair's agenda, in particular in light of the elevated AIA charges and other opportunities for growth.

(383) Based on the above, Ryanair's entry on flights to Athens do not seem likely, unless there is a substantial decrease in AIA airport charges, which, as explained in the section describing the charges at AIA, is unlikely. Low airport charges are of key importance for Ryanair's business model as they allow generating traffic through low fares. Historically Ryanair avoided major airports with high airport charges, primarily flying to cheaper secondary airports.

(384) Consequently, it is unlikely that post-Transaction Ryanair would enter the Greek domestic routes of concern in a timely fashion to deter or defeat any potential anticompetitive effects of the Transaction.

9.5.3.2. Entry by other individual actual or potential entrants

Astra

(385) Astra is a Greek airline which began operations in summer 2008. Astra has a base at Thessaloniki and a technical base[406] at Athens. Astra mainly focusses on charter flights (to Russia and Ukraine), but also operates services on five PSO routes and seasonal scheduled services on five Greek domestic routes from Thessaloniki (none of which are the routes of concern). Astra's turnover in 2012 was EUR […]* million.[407] Astra currently provides services with three jet aircraft: two BAe-146-300 (each with a seating capacity of 112 passengers) and one Airbus A320 (with a seating capacity of 170 passengers).[408] The Airbus aircraft is primarily used for international operations.

(386) From May to October 2012, Astra provided four weekly flights between Thessaloniki and Athens. Astra's rationale behind the entry on this route was to minimise the cost of transferring a plane from Thessaloniki to Athens (in order to operate the Athens–Sitia PSO route) through revenues from low-priced tickets on Thessaloniki–Athens. However, Astra was forced to exit this route after a short period of time due to the incumbents (namely Aegean and Olympic) undercutting Astra's prices upon Astra's entry (see paragraph (261)). Being a small company, Astra was not able to withstand such pricing pressure from the much stronger incumbents.[409]

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403 http://www.ryanair.com/doc/investor/2013/q4_2013_doc.pdf.

404 http://www.ryanair.com/doc/investor/2013/q4_2013_doc.pdf.

405 Ryanair Investor Day presentation, available at: http://www ryanair.com/doc/investor/Ryanair-raises-its-growth-plans-from-100m-to-110m-pax-by-Mar-2019-Presentation.pdf.

406 Technical base is where an airline carries out maintenance and repair of its aircraft.

407 Q1(A) – Questionnaire to actual competitors – reply of Astra to question 4.

408 Form CO, paragraph 690.

409 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraphs 12–15.

(387) Astra stated that post-Transaction it would be impossible for it to enter any of the domestic routes from Athens where currently both Aegean and Olympic are present, even if the Merged Entity were to increase prices by 5–10%. As its experience on Thessaloniki–Athens showed, being a small family-owned company, Astra does not have sufficient financial resources to counter the pricing reaction that its entry would trigger from the Merged Entity.[410] During the market investigation, Astra stated that it only considers entry on […]* Greek domestic routes from its base at Thessaloniki to Greek islands in summer only.[411]

(388) In addition to a potential price war with the incumbents, Astra identified a number of other factors negatively affecting entry on Greek domestic routes, including airport charges at Athens, lack of sufficient demand and uncertainty about its evolution, and slot constraints at Greek regional airports.

(389) The Commission notes that Astra does not have any plans for launching services on the routes where both Aegean and Olympic are present. Astra does not have a history of operations on any of the routes of concern, except for a short-lived presence on Athens–Thessaloniki. However, Astra operated on Athens–Thessaloniki primarily in order to transfer its aircraft for operations on the Athens–Sitia PSO route and the viability aspect was secondary for Astra.[412] Moreover, Astra's presence on Athens–Thessaloniki was limited and, as noted by Olympic, "*had no actual competitive effect as the number of frequencies offered was low and resulted into capturing a market share of around 1%*".[413] In the end, Astra was not able to counter the aggressive pricing reaction of the Parties.

(390) Furthermore, the market investigation revealed that Astra has [Discussion of Astra's competitive standing]* (for example several travel agents are only able to book Astra's tickets through their website and not through the global distribution systems ("GDS")).[414] Moreover, Astra's limited financial resources indicate that it might not be able to finance initial losses to penetrate routes that are operated by the Merged Entity. These weaknesses would make it more difficult for Astra to compete with the Merged Entity on the same routes.

(391) Consequently, it is unlikely that post-Transaction Astra would enter the Greek domestic routes of concern in a timely and sufficient manner to deter or defeat any potential anticompetitive effects of the Transaction.

Sky Express

(392) Sky Express is a regional airline based in Heraklion, Crete, having started its operations in 2005. Sky Express operates four British Aerospace Jetstream 41

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410 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraph 17.

411 Non-confidential minutes of the telephone conference between the Commission and Astra on 27 May 2013, paragraph 16; Q1(A) – Questionnaire to actual competitors – reply of Astra to questions 13 and 13.1.

412 This was also Olympic's opinion (see Olympic's reply of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 28).

413 Olympic's reply of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 28.

414 Q3 – Questionnaire to travel agents – replies to question 22.3.2; Q2 – Questionnaire to corporate customers – replies to question 26; Olympic's reply of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 28.

aircraft, each with a capacity of 30 seats.[415] Sky Express' total turnover in 2012 was EUR […]* million,[416] the majority of which was generated from subsidies on PSO routes.[417]

(393) Sky Express positions itself as a niche player focussed on PSO routes. Currently it operates seven PSO routes. In addition, Sky Express operates 6 commercial routes from Heraklion,[418] among which one is a route of concern – Heraklion–Athens. The latter route is however operated "*in order to connect (mainly) the PSO route Athens–Kozani–Kastoria*".[419] Sky Express' service on Heraklion–Athens is of a very limited scope, in particular because of a small aircraft used for such a thick route and because only one daily service is operated. Indeed, Sky Express' market share on this route was only around 1% in 2012.

(394) On the basis of the results from the market investigation, the Commission does not have sufficient evidence to conclude that Sky Express would be likely to enter the routes of concern in a timely and sustainable manner in competition with the Merged Entity.

(395) Even assuming, for the sake of argument, Sky Express' entry on to the routes of concern, it is apparent that this carrier's operations would have only a negligible effect on the Merged Entity, since it is not of a sufficient scale to countervail the exercise of market power post-Transaction. As mentioned above, Sky Express has four small aircraft and modest financial means. The market investigation also revealed that Sky Express is [Disscussion of Sky Express' competitive standing]*.[420] Similarly, Olympic does not consider Sky Express to be a strong competitor on Athens–Heraklion and considers the 30-seat aircraft of Sky Express to be "*inefficient to justify their presence in the route*".[421]

(396) Consequently, it is unlikely that post-Transaction Sky Express would enter the Greek domestic routes of concern in a timely and sufficient manner to deter or defeat any potential anticompetitive effects of the Transaction.

Minoan

(397) Minoan is a regional airline based in Heraklion, Crete, which launched its first flight in June 2012. Minoan focusses on scheduled, charter and ACMI (Aircraft, Crew, Maintenance, Insurance included – also called 'wet-lease') flights on behalf of other operators. Minoan operates a fleet of four Fokker 50 turboprop aircraft, each having a capacity of 50 seats. Minoan's total turnover in 2012 was EUR […]* million.

(398) Minoan used to operate three domestic routes in Greece: Heraklion–Rhodes, Heraklion–Mykonos and Heraklion–Santorini. However, Minoan ceased its operations on Greek domestic routes as of the summer season 2013 and relocated its aircraft outside of Greece. Subsequently it based two aircraft in Oxford (operating Oxford-Edinburgh and Oxford-Dublin), one aircraft in Lugano (operating Lugano–Rome and Lugano–Vienna) and one aircraft in Kristianstad (operating Kristianstad–

415 Form CO, paragraph 694.
416 Q1(A) – Questionnaire to actual competitors – reply of Sky Express to question 4.
417 Form CO, table 25.
418 Heraklion–Rhodes/ Kos/ Kithyra/ Sitia/ Athens/ Ikaria.
419 Q1(A) – Questionnaire to actual competitors – reply of Sky Express to question 5.
420 Q3 – Questionnaire to travel agents – replies to question 22.8.2.
421 Olympic's response of 1 March 2013 to Commission RFI of 19 February 2013, answer to question 28.

Stochkolm on behalf of Flyglinjen). Minoan then announced that it would suspend scheduled services from Oxford to Edinburgh and Dublin as of 4 August 2013.[422]

(399) According to Minoan, it is interested in entering a number of Greek domestic routes.[423] However it is not able to enter those routes due to non-availability of adequate aircraft. Minoan explained that for its commuter operations it would require small propeller aircraft such as the 50-seat Fokker 50 aircraft. However, Minoan stated that Fokker 50 aircraft are not easily available for lease and that they are relatively expensive in terms of spare parts.[424]

(400) Furthermore, Minoan mentioned a number of other factors negatively affecting entry, including the dominant market position of the incumbents, frequency advantage of the Parties, uncertainty about Greek demand going forward, and airport charges in Athens. Moreover, Minoan pointed to the seasonality of traffic as a major source of costs that would have to be absorbed upon entry.[425] Minoan indicated that it has only limited economic means.[426]

(401) The Commission notes that Minoan expressed only conditional plans to enter Greek domestic routes subject to overcoming a number of important hurdles. Minoan is experiencing difficulties in sourcing the appropriate aircraft on appropriate terms which may be connected to its limited financial means. It is doubtful whether a carrier such as Minoan which operates on a small scale and with limited financial resources would be likely to enter the routes of concern from Athens in a timely and sustainable manner in direct competition with the Merged Entity.

(402) In any event, even assuming such an entry, Minoan's operations would be likely to have only a negligible effect, not being of a sufficient scale to countervail the exercise of market power by the Merged Entity post-Transaction. Minoan has only four small aircraft and modest financial means. The market investigation also revealed that Minoan is [Discussion of Minoan's competitive standing]* (for example Minoan's tickets are only available through its web-site and not in the global distribution systems ("GDS")) and general unsuitability for TS passengers.[427] These weaknesses would make it more difficult for Minoan to compete with the Merged Entity on the same routes.

(403) Consequently, it is unlikely that post-Transaction Minoan would enter the Greek domestic routes of concern in a timely and sufficient manner to deter or defeat any potential anticompetitive effects of the Transaction.

Cyprus Airways

(404) Cyprus Airways is a national airline of Cyprus with the main base at Larnaca airport. The majority shareholder of Cyprus Airways is the Cypriot State. Cyprus Airways has a fleet of 11 Airbus jet aircraft (2 Airbus A319, 7 Airbus A320, and 2 Airbus A321). It operates short and medium haul flights under a full service airline model.

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422 SO Response, paragraph 413.

423 […]*

424 Non-confidential minutes of the telephone conference between the Commission and Minoan Air on 3 April 2013, paragraph 9.

425 Q1(A) – Questionnaire to actual competitors – reply of Minoan to question 25.

426 Non-confidential minutes of the telephone conference between the Commission and Minoan Air on 3 April 2013, paragraphs 2, 16, 22.

427 Q3 – Questionnaire to travel agents – replies to question 22.6.2.

As mentioned in section 9.3, until recently Cyprus Airways has operated six Greek domestic routes (Athens–Thessaloniki, Athens–Heraklion, Athens–Rhodes, Thessaloniki–Heraklion Thessaloniki–Rhodes and Heraklion–Rhodes). Cyprus Airways' turnover in 2012 was approximately EUR […]* million.

(405) During the market investigation, Cyprus Airways initially indicated that in addition to its six routes within Greece it had considered entering a number of other routes. However, "*the evaluation of the operation of these routes was not encouraging to proceed and enter these routes*".[428] Cyprus Airways stated that it did not have any definitive plans for entry within Greece in the next 2 to 3 years, whether absent or following the Transaction.[429]

(406) In addition, Cyprus Airways estimated that theoretically, if it were to expand on a larger scale on other Greek domestic routes, it would need to concentrate its fleet in Athens, as this is most practical and would enable operations of early domestic flights. Moreover, Cyprus Airways noted that the deployment of additional aircraft on Greek routes involves an opportunity cost, since Cyprus Airways would have to withdraw a plane from the routes from Cyprus.[430] Furthermore, Cyprus Airways mentioned a number of factors negatively affecting entry, including high charges at Athens airport, the position of the incumbents and fear of their retaliation, and lack of sufficient demand.

(407) Subsequently Cyprus Airways decided to drastically downsize its presence in Greece, exiting the three thickest Greek domestic routes (Athens–Thessaloniki/Heraklion/Rhodes) from 1 July 2013. This confirmed the significant concerns, expressed by the Commission in the Decision opening proceedings, regarding the viability and continued presence of Cyprus Airways on the Greek domestic market. Moreover, Cyprus Airways began to implement significant cost-cutting measures which include substantial decrease in its fleet from 11 aircraft to six plus one aircraft and reduction of the work force by up to 50%.[431] In these circumstances, and in light of these recent events, to consider that Cyprus Airways is likely to enter or expand on Greek domestic routes of concern would be highly speculative and not credible.

(408) Consequently, it is unlikely that post-Transaction Cyprus Airways would enter the Greek domestic routes of concern in a timely and sufficient manner to deter or defeat any potential anticompetitive effects of the Transaction.

Vueling

(409) During the market investigation, Vueling, a Spanish carrier, stated that it could consider opening a base at Athens in case the conditions are right. However, Vueling submitted that it "*has no formal business plan to open a base in Athens. Rather as we have explained Vueling like any carrier who is expanding continuously looks at new*

[428] Q1(A) – Questionnaire to actual competitors – reply of Cyprus Airways to question 13.1.
[429] Q1(A) – Questionnaire to actual competitors – reply of Cyprus Airways to questions 14 and 15.
[430] Non-confidential minutes of the telephone conference between the Commission and Cyprus Airways on 20 March 2013, paragraph 13.
[431] Press article dated 10 April 2013 and entitled as "CY to keep flying for now", available at Cyprus Mail website: <http://www.cyprus-mail.com/cyprus/new-cy-keep-flying-now/20130410>.

opportunities".[432] Vueling has yet to conduct a full business plan and take it through the executive committee for approval.[433]

(410) For Vueling, opening of such a base post-Transaction would depend on whether and what remedies will be offered in this case. According to Vueling, it has not so far considered entry into the Greek domestic market in detail. The main deterrent for Vueling's entry in Greece is the unattractiveness of the Greek domestic market due to the lack of demand.[434]

(411) The Commission notes that Vueling's entry plans are tentative and, as Vueling itself puts it, "*somewhere in the pipeline but rather at the end*".[435] It appears that Vueling monitors the market, as usual in the airline industry, without having any concrete entry intentions at this stage. Moreover, Vueling's potential interest is conditional upon obtaining a hypothetical commitment package to be submitted of the Notifying Party.

(412) Consequently, it is unlikely that post-Transaction Vueling would enter the Greek domestic routes of concern in a timely manner to deter or defeat any potential anticompetitive effects of the Transaction.

Other international competitors

(413) The Commission also investigated the likelihood of entry of other international competitors, in particular major European airline groups, regional airlines and charter airlines, most of which operate international flights to/from Greece.

(414) The market investigation revealed that none of the approached airlines had analysed the opportunity of entry on any Greek domestic route.[436] In addition, the vast majority of airlines indicated that they would not consider entering any Greek domestic routes in the next two-three years either in the absence of or following the Transaction.[437]

(415) The lack of interest of these foreign airlines was mainly explained by the fact that operations on Greek domestic routes would not fit their business model and would fall outside of their core markets.[438] Virtually none of the respondents was able to identify any foreseeable changes in the market conditions (in terms of demand, cost, competition, etc.) that would make them consider entry on Greek domestic routes.[439] Also, as described in the section on market entry, the respondents identified a number of factors deterring entry on a sufficient scale on Greek domestic routes.[440]

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432 Vueling's response to the Commission's RFI of 14 August 2013, answer to question 1.

433 Vueling's response to the Commission's RFI of 14 August 2013, answer to question 1.

434 Non-confidential minutes of the telephone conference between the Commission and Vueling on 7 June 2013.

435 Non-confidential minutes of the telephone conference between the Commission and Vueling on 7 June 2013, paragraph 1.

436 Q1(B) – Questionnaire to potential competitors – replies to question 1.

437 Q1(B) – Questionnaire to potential competitors – replies to questions 2 and 3; R12 – Questionnaire to airlines – replies to question 1.

438 Q1(B) – Questionnaire to potential competitors – replies to question 4; R12 – Questionnaire to airlines – replies to question 1.2

439 Q1(B) – Questionnaire to potential competitors – replies to questions 5.

440 Q1(B) – Questionnaire to potential competitors – replies to questions 8.

(416) In response to Commission's questionnaire, Wizz Air, indicated that it "*may consider entering if the merger were to* […]*".[441] In a subsequent conference call, Wizz Air explained that it is unlikely to enter Greek domestic routes from Athens with the current high AIA charges.[442] Similarly to Ryanair's, Wizz Air's business model requires a low cost base. Wizz Air has operated to Athens previously but had to withdraw due to the high airport charges. Wizz Air does not expect AIA charges to be lowered in the foreseeable future. Wizz Air could however consider operations at other Greek airports. Furthermore, Wizz Air noted that it has a number of alternative markets where entry would be easier (for example in terms of transferring the brand) and more profitable than intra-Greece.[443]

(417) Based on the above, the Commission considers that the potential interest of Wizz Air in relation to Greek domestic routes post-Transaction is very preliminary. Wizz Air's consideration of routes from Athens is subject to a significant condition of lowering AIA charges, which currently seems unlikely to a sufficient degree to result in LCC entry. Consequently, it is unlikely that post-Transaction any of the other international competitors would enter the Greek domestic routes of concern in a timely and sufficient manner to deter or defeat any potential anticompetitive effects of the Transaction.

9.5.4. Conclusion on entry/expansion

(418) In markets in which Aegean and Olympic reach very large market shares or even become monopolists post-Transaction, a merely hypothetical possibility of entry cannot be sufficient to dismiss the Commission's competition concerns.

(419) The Commission's assessment is that there are barriers to entry in the Greek domestic market, including, in particular, sunk costs in the form of initial losses which an entrant needs to finance while penetrating the market by means of introductory pricing. Such sunk costs of entry are not prohibitive as such in that they do not imply that for a well-resourced entrant it would be impossible to enter. However, the Greek domestic routes offer limited profitability prospects for an entrant because of a combination of low demand, uncertainty about the evolution of demand, and relatively high costs. These factors suggest that an entrant would face a substantial risk that entry would turn out to be unprofitable. In the Commission's assessment, these elements, in particular, imply that entry in the short-term is unlikely post-Transaction. Moreover, as these market conditions are unlikely to change substantially in the near future, it is unlikely that entry, if any, would be timely. Finally, the Commission's prospective assessment of entry by individual potential entrants confirmed that entry is unlikely to occur in a timely fashion and on sufficient scale to deter or defeat any potential anticompetitive effects of the Transaction.

9.6. Assessment of the routes where the Parties are actual competitors

(420) The Parties are currently the only carriers present on the five routes of concern where there is an actual overlap (see Table 3 above). Consequently, the Transaction leads to a monopoly for air transport in relation to all groups of passengers (TS, NTS and all

441 R12 – Questionnaire to airlines – reply of Wizz Air to question 1.

442 Non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013, paragraphs 4–5.

443 Non-confidential minutes of the telephone conference between the Commission and Wizz Air on 14 June 2013, paragraphs 4–5, 11.

passengers), who will no longer have any alternative air travel options on these routes. Even when taking potential competition from ferries into account on those routes where there are ferry connections available, the Transaction would lead to a significant deterioration of the competitive situation, as will be shown for each route separately. The Commission analyses the removal of actual competition on the relevant routes of concern below.

9.6.1. Competitive analysis of the Athens–Chania (ATH–CHQ) route

9.6.1.1. Route characteristics

(421) This route connects the Greek capital with the second biggest city in Crete – the largest Greek island. In 2012, almost [200 000 – 300 000]* O&D passengers travelled on this route. Total traffic on the Athens–Chania route has declined by [10-20]*% since 2010, in line with the overall domestic traffic decline due to the economic crisis. However, since 2009 the traffic on this route has fallen by [30-40]*%.[444]

(422) Chania is the first Ryanair base in Greece, and is used by Ryanair for a large number of international flights, and from June 2013, for its first domestic flight (Chania-Thessaloniki).

Table 4: Market data Athens–Chania

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[300 000 – 400 000]*	[200 000 - 300 000]*	[20-30]*%	[20-30]*%

Source: Updated Annex 1.7 to the Form CO

(423) In summer 2013, Aegean operated 19 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). Aegean plans to have […]*.

(424) In summer 2013, Olympic operated 12 weekly frequencies with, as of winter 2012, turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). The Notifying Party expects Olympic to […]*.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	15	19	[…]*
Olympic	17	12	[…]*

Source: Aegean Route Analysis – Athens–Chania

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	2,520	3,192	[…]*
Olympic	1,326	936	[…]*

444 Form CO, paragraph 256.

Source: Aegean Route Analysis – Athens–Chania

9.6.1.2. Relevant market

(425) The Commission's market investigation confirmed that ferry services do not compete in the same market as air services on Athens–Chania for TS passengers.[445]

(426) However, it is not necessary to decide whether or not ferry services are to be included in the relevant market for NTS passengers and for all passengers, because, even if hypothetically ferries were included as part of the relevant market, the assessment of the Transaction would not change substantially. This is because ferries are at best only remote substitutes to air services for these passenger groups.

9.6.1.3. Time sensitive passengers

(427) As shown in Table 5 below, on a possible market for TS passengers on the Athens–Chania route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 5: Market shares for time sensitive passengers on Athens–Chania

Market shares time sensitive passengers	
Summer 2012	**winter 2012/13**
100% (A3:[50-60]*%, OA: [40-50]*%)	**100%** (A3: [50-60]*%, OA: [40-50]*%)

Source: Updated Annex 1.7 to the Form CO

(428) It follows that the Transaction leads to the creation of a monopoly for TS passengers on the Athens–Chania route.

9.6.1.4. Non-time sensitive passengers

(429) As shown in Table 6 below, on a possible market for NTS passengers on the Athens–Chania route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 6: Market shares for non-time sensitive passengers on Athens–Chania

Market shares non-time sensitive passengers	
summer 2012	**winter 2012/13**
100% (A3: [60-70]*%, OA: [30-40]*%)	**100%** (A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

(430) It follows that the Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Chania route if the relevant market is comprised only of air services.

445 See section 0 of the present Decision.

(431) Ferry operators could at best be regarded as remote competitors on this route. Anek, the only ferry operator active on the route, offers one daily trip from Athens to Chania with an average duration of 9 hours on boat (not taking account of travel time from the city centre to the harbour).[446] This service is in stark contrast to around 4 daily frequencies with an average travel time of 55 minutes[447] offered by Aegean and Olympic in the summer 2013 season. Even if such factors as travelling time from Athens city centre to the airport, check-in time and likely waiting time at Athens airport are added to those 55 minutes, it is still clear that the total travelling time by plane to Chania will be far less than if the ferry were taken.

(432) The remote constraint of ferries on air services is also confirmed by other characteristics described in section 6.2.5 on intermodal competition, such as the absence of monitoring of each other's prices by airlines and ferry operators different pricing and different customer groups.

(433) Anek, the only ferry operator active on the route, submitted that "*the passengers who prefer to travel by ferries would like to spend less money in ferry tickets and travel with their cars and they appear to have no high priority for the time spending in the boats because the time schedule is fixed a long time before the traveling. In opposite the passengers of the airplanes prefer to spend much more money in tickets in order to travel faster spending less time in traveling*".[448]

(434) Anek further explained that it was not possible to compare ferry services with air services in terms of the following parameters: quality of service on board, reliability (including possible delays and likelihood of adverse events), travel time, other factors.[449]

(435) Anek further submitted that it did not distinguish between TS and NTS customers[450] and that it neither monitored nor took much account of airline ticket prices due to the large difference in price between airline and ferry tickets.

(436) On the other hand, the competitive parameters illustrate that Aegean and Olympic are each other's closest competitors on the Athens–Chania route. In particular, the services of each of Aegean and Olympic 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 described in section 9.2 on closeness of competition, the analysis of the data collected during the market investigation confirmed that the Parties are each other's closest competitors due to their base at AIA, their strong recognised brands, high number of operated frequencies and their similarities in terms of business model.

(437) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Chania route.

(438) As a result, as far as NTS passengers are concerned, the Transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic and thus to eliminate the important competitive constraint that both airlines

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446 Anek's response to the Commission's Questionnaire R5 to Ferry Operators, answer to question 5.

447 Form CO, paragraph 273.

448 Anek's response to the Commission's Questionnaire R5 to Ferry Operators, answer to question 23.

449 Anek's response to the Commission's Questionnaire R5 to Ferry Operators, answer to question 22.

450 Anek's response to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.

exert upon each other pre-Transaction on the Athens–Chania 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.

9.6.1.5. All passengers

(439) As shown in Table 7 below, on a possible market for all passengers (that is, TS and NTS) on the Athens–Chania route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 7: Market shares for all passengers on Athens–Chania

Market shares all passengers	
summer 2012	**winter 2012/13**
100% (A3: [60-70]*%, OA: [30-40]*%)	**100.0%** (A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

(440) It follows that the Transaction would result in the creation of a monopoly for all passengers on the Athens–Chania route if the relevant market is comprised only of air services.

(441) Given that the Commission investigation found that ferry services are excluded from the relevant market for TS passengers and could only be regarded as fairly remote competitors for NTS passengers, ferries could also be at best considered as remote competitors in the hypothetical market comprising all passengers (that is, TS and NTS ones).

(442) Moreover, Aegean and Olympic are each other's closest competitors on Athens–Chania, based on such competitive parameters as the travel time and frequency of services as explained in the section on closeness of competition.[451]

(443) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Chania route.

(444) 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 and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-Transaction on the Athens–Chania 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.

9.6.1.6. Entry/expansion

(445) The Notifying Party argued that no competition concerns arise on the Athens–Chania route due to the absence of barriers to entry and because of the presence of Ryanair.

(446) The Notifying Party underlines that Ryanair has a base at Chania and has the highest market share of all carriers at that airport. Furthermore, the Notifying Party contends

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[451] See section 0 of this Decision.

that despite Ryanair's statement that it would not enter any routes from or to Athens, unless charges at AIA are significantly reduced, Ryanair would enter if the Merged Entity increased prices. Moreover, taking into account that easyJet already flies to both ends of the Athens–Chania route, the Notifying Party concludes, easyJet poses a credible threat of entry.

(447) Additionally, the Notifying Party submits that LCCs, such as easyJet, would face minimal sunk costs if they decide to enter the Greek domestic market and that easyJet could achieve an […]*% profit margin on the route if it had an […]*% load factor. LCC entry would therefore take place if the Merged Entity raised prices following the Transaction.

(448) The Commission considers that, as explained in section 9.5, several elements impeding the likelihood of entry and expansion exist which are also present on the Athens–Chania route.

(449) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects on this route for any category of passengers post-Transaction.

(450) More specifically as regards Ryanair, it is clear for the reasons explained in section 9.5 that any possible entry on the Athens–Chania route by this airline is conditional upon AIA meeting Ryanair's demand for substantially lower airport charges. As explained above, the Commission considers it unlikely that AIA would meet this demand in the foreseeable future.

(451) Therefore, the Commission considers that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the Transaction on the Athens–Chania route.

9.6.1.7. Overall conclusion

(452) It is concluded that the Transaction is likely to significantly impede effective competition on the Athens–Chania route, irrespective of whether the effects of the Transaction are assessed on separate markets for TS and NTS 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.

9.6.2. Competitive analysis of the Athens–Corfu (ATH–CFU) route

9.6.2.1. Route characteristics

(453) The Athens–Corfu route, which connects the Greek capital with the capital of the Ionian Islands, is a highly seasonal route. In 2012, around [100 000 – 200 000]* O&D passengers travelled on this route. [30-40]*% of passengers were TS and [20-30]*% connecting. The total traffic on this route has declined by [20-30]*% since 2009 as a result of the crisis.[452]

[452] Form CO, paragraph 291 [ID 470]; updated Annex 1.7 to the Form CO.

Table 8: Market data Athens–Corfu (2012)

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[200 000 – 300 000]*	[100 000 – 200 000]*	[30-40]*%	[20-30]*%

Source: Updated Annex 1.7 to the Form CO

(454) In summer 2013, Aegean operated 14 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). Aegean […]*.

(455) In summer 2013, Olympic operated 11 weekly flights on this route (and will operate 14 between July and September) with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). In winter 2013/2014, Olympic plans to […]*.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Summer 2013 (Jul-Sep)	Winter 2013/2014
Aegean	7	14	14	[…]*
Olympic	13	11	14	[…]*

Source: Aegean Route Analysis – Athens–Corfu; e-mail from A. Komninos to the Commission of 1 July 2013 received at 20:49

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Summer 2013 (Jul-	Winter 2013/201
Aegean	1,176	2,352	2,352	[…]*
Olympic	1,014	858	1,092	[…]*

Source: Aegean Route Analysis – Athens–Corfu

9.6.2.2. Relevant market

(456) There are no ferry services provided between Athens and Corfu. Therefore, only air services are included in the relevant market for the purpose of the competitive analysis on Athens–Corfu.

9.6.2.3. Time sensitive passengers

(457) As shown in Table 9 below, on a possible market for TS passengers on the Athens–Corfu route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 9: Market shares for time sensitive passengers on Athens–Corfu

Market shares time sensitive passengers	
Summer 2012	**winter 2012/13**
100% (A3: [50-60]*%, OA: [40-50]*%)	**100%** (A3: [30-40]*%, OA: [60-70]*%)

Source: Updated Annex 1.7 to the Form CO

(458) It follows that the Transaction leads to the creation of a monopoly for TS passengers on the Athens–Corfu route.

9.6.2.4. Non-time sensitive passengers

(459) As shown in Table 10 below, on a possible market for NTS passengers on the Athens–Corfu route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 10: Market shares for non-time sensitive passengers on Athens–Corfu

Market shares non-time sensitive passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [60-70]*%, OA: [30-40]*%)	(A3: [40-50]*%, OA: [50-60]*%)

Source: Updated Annex 1.7 to the Form CO

(460) Since there are no ferry services provided between Athens and Corfu, the question of substitutability between ferry and air services is not relevant for the Athens–Corfu route. It follows that the Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Corfu route. As a result, customers' choices of travelling options would therefore be substantially reduced.

(461) It follows that the Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Corfu route.

9.6.2.5. All passengers

(462) As shown in Table 11 below, on a possible market for all passengers on the Athens–Corfu route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 11: Market shares for all passengers on Athens–Corfu

Market shares all passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [60-70]*%, OA: [30-40]*%)	(A3: [40-50]*%, OA: [50-60]*%)

Source: Updated Annex 1.7 to the Form CO

(463) Since there are no ferry services provided between Athens and Corfu, the question of substitutability between ferry and air services is not relevant for the Athens–Corfu route. It follows that the Transaction leads to the creation of a monopoly for all passengers on the Athens–Corfu route. As a result, customers' choices of travelling options would therefore be substantially reduced.

(464) It follows that the Transaction leads to the creation of a monopoly for all passengers on the Athens–Corfu route.

9.6.2.6. Entry/expansion

(465) The Notifying Party argued that no competition concerns arise on the Athens–Corfu route due to the absence of significant barriers to entry and the likely entry in particular by Cyprus Airways, Astra, easyJet and Ryanair.[453]

(466) According to the Notifying Party, LCCs, in particular easyJet and Ryanair, will rapidly increase their market shares at Corfu airport and are likely to establish a base at Corfu airport for the purpose of operating domestic routes.

(467) Furthermore, the Notifying Party contends that despite Ryanair's statement that it would not enter any routes from or to Athens, unless charges at AIA are significantly reduced, Ryanair would enter if the Merged Entity increased prices.

(468) Additionally, the Notifying Party submits that LCCs, such as easyJet, would face minimal sunk costs if they decide to enter the Greek domestic market and that easyJet could achieve a […]*% profit margin on the route if it had an […]*% load factor. LCC entry would therefore take place if the Merged Entity raised prices following the Transaction.

(469) As explained in section 9.5, several elements impeding the likelihood of entry and expansion exist, which are also present on the Athens–Corfu route.

(470) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects on this route for any category of passengers post-Transaction. More specifically, as explained in section 9.5.3.2, Astra is unlikely to have the scale or financial resources to undertake entry that would impose a sufficient competitive constraint on the Merged Entity. Also, Cyprus Airways has recently significantly reduced its presence in the Greek domestic market and there are no indications of this carrier's likely expansion on the Athens–Corfu route post-Transaction. Finally, easyJet focuses its expansion plans on its existing markets and Ryanair will not operate on this route in the near future given the relatively high airport charges at Athens airport which are unlikely to decrease.[454]

(471) Therefore, the Commission considers that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the Transaction on the Athens–Corfu route.

9.6.2.7. Overall conclusion

(472) It is concluded that the Transaction is likely to significantly impede effective competition on the Athens–Corfu route, irrespective of whether the effects of the Transaction are assessed on separate markets for TS and NTS passengers or on a combined market that encompasses all passengers.

9.6.3. Competitive analysis of the Athens–Istanbul (ATH–IST) route

9.6.3.1. Route characteristics

(473) The Athens–Istanbul route connects the Greek capital with the largest city and business capital of Turkey. In 2012, almost [400 000 – 500 000]* passengers (including both O&D and transfer passengers) travelled on this route per aircraft.

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[453] Form CO, paragraphs 301–302; SO Response, paragraphs 539 and following.
[454] Recitals (341) and following of this Decision.

Total traffic on the route has increased on the route by [10-20]*% since 2010 and by [5-10]*% in 2012.

Table 12: Market data Athens–Istanbul (2012)

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[400 000 – 500 000]*	[300 000 – 400 000]*	[40-50]*%	[10-20]*%

Source: Updated Annex 1.7 to the Form CO

(474) In 2013, Aegean operated 7 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats).

(475) In 2013, Olympic operated 13 weekly flights on this route. In November 2012, Olympic switched to operating this route with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats) from an A319 or A320 aircraft.

(476) In 2013, Turkish Airlines operated 21 weekly flights on this route with its jet aircraft (Airbus A320 with 168 seats).

Frequencies (weekly)

Airline	2013
Aegean	7
Olympic	13
Turkish Airlines	21

Source: Form CO, paragraph 232, table 32.

Seats (weekly)

Airline	2013
Aegean	2,352
Olympic	2,028
Turkish Airlines	7,056

Source: Form CO, paragraph 232, table 33.

9.6.3.2. Relevant market

(477) There are no ferry services provided between Athens and Istanbul. Therefore, only air services are included in the relevant market for the purpose of the competitive analysis on Athens–Istanbul. The Notifying Party did not claim either that there was any kind of intermodal competition on this route.

9.6.3.3. Competitive analysis

(478) As shown in

(479) Table 13 below, on a possible market for all passengers on the Athens–Istanbul route, Olympic and Aegean had a combined share of [30-40]*% in the summer season 2012 and of [40-50]*% in the winter 2012/2013 season, whereas Turkish Airlines had a market share of [60-70]*% and [50-60]*% respectively.

Table 13: Market shares for all passengers on Athens–Istanbul

Market shares all passengers		
	summer 2012	**winter 2011/2012**
Aegean	[10-20]*%	[10-20]*%
Olympic	[20-30]*%	[20-30]*%
Aegean & Olympic combined	[30-40]*%	[40-50]*%
Turkish Airlines	[60-70]*%	[50-60]*%
TOTAL	100.00%	100.0%

Source: Form CO, Annex 1.8

(480) On a possible market for TS passengers on the Athens–Istanbul route, Olympic and Aegean had a combined share of [30-40]*% in the summer season 2012 and of [40-50]*% in the winter 2012/2013 season, whereas Turkish Airlines had a market share of [60-70]*% and [50-60]*% respectively.

Table 14: Market shares for time sensitive passengers on Athens–Istanbul

Market shares time sensitive passengers		
	summer 2012	**winter 2011/2012**
Aegean	[5-10]*%	[10-20]*%
Olympic	[20-30]*%	[30-40]*%
Aegean & Olympic combined	[30-40]*%	[40-50]*%
Turkish Airlines	[60-70]*%	[50-60]*%
TOTAL	100.0%	100.0%

Source: Form CO, Annex 1.8

(481) On a possible market for NTS passengers on the Athens–Istanbul route, Olympic and Aegean had a combined share of [40-50]*% in the summer season 2012 and of [40-50]*% in the winter 2012/2013 season, whereas Turkish Airlines had a market share of [50-60]*% and [50-60]*% respectively.

Table 15: Market shares for non-time sensitive passengers on Athens–Istanbul

	Market shares non-time sensitive passengers	
	summer 2012	**winter 2011/2012**
Aegean	[10-20]*%	[10-20]*%
Olympic	[20-30]*%	[20-30]*%
Aegean & Olympic combined	[40-50]*%	[40-50]*%
Turkish Airlines	[50-60]*%	[50-60]*%
TOTAL	100.00%	100.0%

Source: Form CO, Annex 1.8

(482) It follows that, although the Transaction leads to a reduction from three to two competitors on the route Athens–Istanbul, the market share of Turkish Airlines would still be considerably larger than the market share of the Merged Entity in the segments of all passengers, TS passengers and NTS passengers. The Merged Entity would face rigorous competition against Turkish Airlines. Turkish Airlines operates 21 weekly frequencies which is one more than the Merged Entity would provide. Its average load factor in December 2012 was on a relatively high level of […]*%, whereas Aegean and Olympic had a load factor of only […]*% and […]*%, respectively.[455]

9.6.3.4. Overall conclusion

(483) It is concluded that the Transaction is not likely to significantly impede effective competition on the Athens–Istanbul route due to the competitive constraint that Turkish Airlines will exert on the Merged Entity.

9.6.4. Competitive analysis of the Athens–Mykonos (ATH–JMK) route

(484) The Athens–Mykonos route which connects the Greek capital with a Greek island located in the central Aegean Sea is a highly seasonal route. In 2012, approximately [200 000 – 300 000]* passengers (including both O&D and transfer passengers) travelled on this route. [10-20]*% of passengers were TS and [30-40]*% connecting. Along with the Athens–Santorini route, this is the only domestic route where traffic has not declined since 2010, but there has been a [5-10]*% decline since 2009.[456]

455 Form CO, paragraphs 227–228.
456 Form CO, paragraph 329; updated Annex 1.7 to the Form CO.

Table 16: Market data Athens–Mykonos (2012)

Air Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[200 000 – 300 000]*	[100 000 – 200 000]*	[10-20]*%	[30-40]*%

Source: Updated Annex 1.7 to the Form CO

(485) In summer 2013, Aegean operated 21 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). Aegean plans to have […]* weekly flights during the 2013/2014 winter season.

(486) In summer 2013, Olympic operated 14 weekly flights on this route with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). In winter 2013/2014, Olympic plans to have […]* weekly flights.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	3	21	[…]*
Olympic	5	14	[…]*

Source: Aegean Route Analysis – Athens–Mykonos

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	504	3,528	[…]*
Olympic	390	1,092	[…]*

Source: Aegean Route Analysis – Athens–Mykonos

9.6.4.1. Relevant market

(487) As analysed above in section 6.2.5, the Athens–Mykonos route is the only route where air services and ferry services are considered substitutable for the segments of TS, NTS and all passengers. This is in particular due to the relatively short distance between Athens and Mykonos, the availability of high-speed boats and the adequate level of frequencies.[457] Thus, on this route air services and ferry services are part of the same product market.

9.6.4.2. Competitive analysis

(488) As shown in Table 16 below, in 2011 and 2012, Olympic's and Aegean's combined market share on a possible market encompassing both ferry and air services for TS passengers was [30-40]*% and [40-50]*%, respectively.[458] As a possible market encompassing both ferry and air service for TS passengers does not include ferry services with trip duration of considerably more than around 2 hours, besides the air

[457] See paragraph (78)-(79) of this Decision.
[458] Aegean's response to the Commission's RFI from 10 September 2013, page 9, table 10.

services only the high speed ferry services of Sea Jets and Hellenic Seaways with a trip duration of 2:00 – 2:15[459] are relevant.

Table 16: Market shares for time sensitive passengers on Athens–Mykonos

Market shares time sensitive passengers		
	2011	**2012**
Aegean	[20-30]*%	[20-30]*%
Olympic	[10-20]*%	[20-30]*%
Aegean & Olympic combined	[30-40]*%	[40-50]*%
Hellenic Seaways (from Rafina)	[10-20]*%	[0-5]*%
Sea Jets	[40-50]*%	[50-60]*%
TOTAL	100.00%	100.00%

Source: Aegean's response to the Commission's RFI from 10 September 2013, page 9, table 10

(489) On a possible market encompassing both ferry and air services for NTS passengers, Olympic's and Aegean's combined market share in 2011 and 2012 was [10-20]*% and [10-20]*%, respectively, as shown in Table 17 below.[460]

Table 17: Market shares for non-time sensitive passengers on Athens–Mykonos

Market shares non-time sensitive passengers		
	2011	**2012**
Aegean	[10-20]*%	[10-20]*%
Olympic	[5-10]*%	[5-10]*%
Aegean & Olympic combined	[10-20]*%	[10-20]*%
Blue Star Feries	[20-30]*%	[30-40]*%
Hellenic Seaways (from Piraeus)	[10-20]*%	[5-10]*%
Fast Ferries	[10-20]*%	[10-20]*%
Agoudimos	[10-20]*%	[10-20]*%
Golden Star Ferries	[10-20]*%	[10-20]*%
Various	[0-5]*%	[0-5]*%
TOTAL	100.00%	100.00%

Source: Aegeans's response to Commission's RFI from 10 September 2013, page 10, table 11

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459 Form CO, table 62; Aegeans's Response to the Commission's RFI from 10 September 2013, page 8, table 9.

460 Aegean's response to the Commission's RFI from 10 September 2013, page 9, table 10.

(490) On a possible market encompassing both ferry and air services for all passengers, Olympic's and Aegean's combined market share in 2011 and 2012 was [20-30]*%, as shown in Table 18 below.[461]

Table 18: Market shares for all passengers on Athens–Mykonos

Market shares all passengers		
	2011	**2012**
Aegean	[10-20]*%	[10-20]*%
Olympic	[5-10]*%	[5-10]*%
Aegean & Olympic combined	[20-30]*%	[20-30]*%
Bluestar Ferries	[10-20]*%	[20-30]*%
Hellenic Seaways (from Piraeus)	[10-20]*%	[0-5]*%
Fast Ferries	[10-20]*%	[10-20]*%
Agoudimos	[10-20]*%	[10-20]*%
Golden Star Ferries	[10-20]*%	[10-20]*%
Sea Jets	[0-5]*%	[0-5]*%
Various	[0-5]*%	[0-5]*%
TOTAL	100.00%	100.00%

Source: Aegean's response to the Commission's RFI from 10 September 2013, page 7, table 8

(491) The competitors of Aegean and Olympic on this route are the ferry operators on the ferry lines Piraeus-Mykonos and Rafina-Mykonos. On Piraeus-Mykonos, besides Blue Star Ferries controlled by Marfin holding a traffic-share of 80.13% in 2012, the main competitor of Aegean and Olympic was Hellenic Seaways with a traffic-share of 19.07%.[462] On Rafina-Mykonos, the main competitors in 2012 were Fast Ferries, Golden Star Ferries and Agoudimos with a traffic-share of 29.65%, 26.06% and 20.40%, respectively. Sea Jets, holds a traffic-share of 7.64% on Rafina-Mykonos.[463]

461 Aegean's response to the Commission's RFI from 10 September 2013, page 7, table 8.
462 Aegean's response to the Commission's RFI from 10 September 2013, page 2, table 2.
463 Aegean's response to the Commission's RFI from 10 September 2013, page 2, table 1.

Table 19: Shares of traffic on ferry line Piraeus-Mykonos

	Passengers			
	2012		2011	
Blue Star Ferries	473.886	80.13%	498.931	63.58%
Hellenic Seaways	112,768	19.07%	244,700	31.18%
Aegean Speedrunner	0	0.00%	41,149	5.24%
Various	4,757	0.80%	0	0.00%
TOTAL	591,411	100.00%	784,780	100.00%

Source: Form CO, paragraph 350, table 65; Aegean's response to the Commission's RFI from 10 September 2013, page 2, table 2

Table 20: Shares of traffic on ferry line Rafina-Mykonos

	Passengers			
	2012		2011	
Fast Ferries	389,877	29.65%	369,433	27.99%
Golden Star Ferries	342,714	26.06%	397,753	30.13%
Agoudimos	268,296	20.40%	373,249	28.28%
Blue Star Ferries	211,934	16.12%	0	0.00%
Sea Jets	100,494	7.64%	122,630	9.29%
TOTAL	1,315,094	100.00%	1,319,950	100.00%

Source: Form CO, paragraph 349, table 64; Aegean's response to the Commission's RFI from 10 September 2013, page 2, table 1

(492) As explained above in section 6.2.5, the Commission´s market investigation demonstrated that, on this specific route, there is a considerable degree of substitutability between air and ferry services which is significantly higher than on the other routes of concern. From a demand-side perspective ferry services are a credible alternative to air services on this route, even in the segment of TS passengers due to the operation of high-speed ferries from Rafina port.

(493) In the segment of TS passengers, even though the Transaction leads to a reduction of competitors from four to three, the market share of Sea Jets would still be considerably larger than the market share of the Merged Entity.

(494) In the segment of NTS and all passengers, the Merged Entity would have a limited market share as Aegean's and Olympic's combined market share was approximately [10-20]*% and [20-30]*% respectively, in 2012. The increment in market shares of the Merged Entity brought by the Transaction was approximately [5-10]*% and [5-10]*%, respectively, in 2012.

(495) Furthermore, the Merged Entity would face significant competitors in terms of market shares, such as Blue Star Ferries (80% of traffic on Piraeus-Mykonos and 16% of traffic on Rafina-Mykonos), Hellenic Seaways (19% of traffic on Piraeus-Mykonos).

(496) In terms of closeness of competition, although Aegean and Olympic are the only providers of air services on this route, ferry services would exercise a sufficient competitive constraint on the Merged Entity. In particular, Sea Jets would be in close

competition with the Merged Entity as it operates high-speed ferries from Rafina port to Mykonos in 2:00-2:15 hours and with 7–11 weekly frequencies.

9.6.4.3. Overall conclusion

(497) It is concluded that the Transaction is not likely to significantly impede effective competition on the Athens–Mykonos route due to the competitive constraint exercised by the ferry services on that route.

9.6.5. Competitive analysis of the Athens–Mytilene (ATH–MJT) route

9.6.5.1. Route characteristics

(498) Athens–Mytilene connects the Greek capital with the island of Lesbos, the third largest Greek island which is located in the north Aegean Sea. In 2012, approximately [100 000 – 200 000]* O&D passengers travelled on this route. Total traffic on the route has declined by [30-40]*% since 2009; the largest decline among all the currently overlapping routes.[464]

Table 21: Market data Athens–Mytilene (2012)

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[200 000 – 300 000]*	[100 000 – 200 000]*	[20-30]*%	[10-20]*%

Source: Updated Annex 1.7 to the Form CO

(499) In summer 2013, Aegean operated 8 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). In winter 2013/14, Aegean intends to […]* weekly frequencies, […]*.

(500) In summer 2013, Olympic operated 19 weekly flights on this route with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). The Notifying Party expects Olympic to […]* weekly flights in winter 2013/2014.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	10	8	[…]*
Olympic	13	19	[…]*

Source: Aegean Route Analysis – Athens–Mytilene

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	1,680	1,344	[…]*
Olympic	1,014	1,482	[…]*

Source: Aegean Route Analysis – Athens– Mytilene

464 Form CO, paragraph 359.

9.6.5.2. Relevant market

(501) The Commission's market investigation confirmed that ferry services do not compete in the same market as air services on Athens–Mytilene for TS passengers.[465]

(502) However, it is not necessary to decide whether or not ferry services are to be included in the relevant market for NTS passengers or for all passengers because, even if hypothetically they were regarded as forming part of the relevant market, the assessment of the Transaction would not change substantially. This is because ferries are at best only remote substitutes to air services for these passenger groups, as explained in recitals (504) - (526) below.

9.6.5.3. Time sensitive passengers

(503) As shown in Table 22 below, on a possible market for TS passengers on the Athens–Mytilene route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 22: Market shares for time sensitive passengers on Athens–Mytilene

Market shares time sensitive passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [50-60]*%, OA: [40-50]*%)	(A3: [50-60]*%, OA: [40-50]*%)

Source: Updated Annex 1.7 to the Form CO

(504) It follows that the Transaction leads to the creation of a monopoly for TS passengers on the Athens–Mytilene route.

9.6.5.4. Non-time sensitive passengers

(505) As shown in Table 23 below, on a possible market for NTS passengers on the Athens–Mytilene route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 23: Market shares for non-time sensitive passengers on Athens–Mytilene

Market shares non-time sensitive passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [60-70]*%, OA: [30-40]*%)	(A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

(506) It follows that this Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Mytilene route if the relevant market is comprised only of air services.

465 See section 0 of this Decision on intermodal competition.

(507) Ferry operators could at best be regarded as remote competitors on this route. Hellenic Seaways, Bluestar Ferries and NEL Ferries, the ferry operators active on the route, offer trips from Athens to Mytilene with an average duration of 11 to 12.5 hours on boat (not taking account of travel time from the city centre to the harbour).[466] In the summer season 2013, these ferry companies have the following schedules. Hellenic Seaways operates four weekly frequencies from Athens to Mytilene *via* Chios with a return trip on the following day.[467] Blue Star Ferries offers six weekly frequencies from Athens to Mytilene *via* Chios.[468] NEL Ferries has three weekly frequencies from Athens to Mytilene *via* Chios.[469] This service is in stark contrast to around 4 daily frequencies with an average travel time of 50 minutes[470] offered by Aegean and Olympic in the summer 2013 season.

(508) The remote constraint of ferries on air services is also confirmed by other characteristics described in section 6.2.5 on intermodal competition, such as the absence of monitoring by airlines and ferry operators of each other's prices, different pricing and different customer groups**.**

(509) Blue Star Ferries submitted that "*ferry services – especially conventional ferry services - are substantially slower than airplanes, therefore they do not appeal to time sensitive passengers. Ferry services on the other hand appeal to passengers who can allow more time for their travelling; also to passengers who have to travel on a short notice as prior reservation is not necessary for ferries due to large available capacity throughout the year (with limited exceptions during peak summer period). They are also preferred by passengers and families who travel with their car and/or travel for longer periods (i.e. longer holidays in contrast to weekend passengers). Ferry services are as reliable as air services and they offer a wider range of onboard services as well as greater variety of accommodation and comfort. Moreover they are the preferred choice for price sensitive passengers, who in any case are the majority of our passengers*".[471]

(510) Hellenic Seaways pointed out the following advantages of ferry services in comparison to air services: lower prices, reliability, possibility to carry on a vehicle, possibility to carry on lots of luggage for free and comfort inside the ferry.[472]

(511) Hellenic Seaways, Blue Star Ferries and NEL Ferries further submitted that they did not discriminate in pricing as between TS and NTS customers.[473] Hellenic Seaways and NEL Ferries stated that they neither monitored nor took into account airline ticket prices in their own pricing strategy.[474] Blue Star Ferries submitted that "*air*

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466 Responses of Hellenic Seaways, Bluestar Ferries and NEL Ferries to the Commission's Questionnaire R5 to Ferry Operators, Annex 1.

467 Response of Hellenic Seaways to the Commission's Questionnaire R5 to Ferry Operators, Annex 1.

468 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, Annex 1.

469 http://www.nel.gr/routes/dromologia/en/piraeus-chios-mytilene_en html (retrieved 24 June 2013).

470 Form CO, paragraph 373.

471 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 22.

472 Response of Hellenic Seaways to the Commission's Questionnaire R5 to Ferry Operators, answer to question 22.

473 Response of Hellenic Seaways, Bluestar Ferries and NEL Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.1.

474 Response of Hellenic Seaways and NEL Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 17.

fares are in direct competition with sea fares. Before taking their final decision passengers take into account the final cost of the trip in conjunction with total time needed to reach their destination. Departure and/or arrival time are also important factors that may influence passengers choice".[475] However Blue Star Ferries also stated that it did not take into account airline capacity on its routes.[476] Furthermore it should be noted that Blue Star Ferries belongs to Attica Group in which Marfin holds an 89.4% stake. Blue Star Ferries' answers differ materially from those of its competitors on the route. Given that Marfin has an interest in seeing the Transaction being cleared, Blue Star Ferries' answers have to be considered with caution.

(512) Hellenic Seaways, Blue Star Ferries and Sea Jets unanimously stated that the Transaction if implemented would not affect their operations in any way.[477] This is further evidence that airline services and ferry services are remote competitors at best.

(513) On the other hand, the competitive parameters illustrate that Aegean and Olympic are each other's closest competitors on the Athens–Mytilene route. In particular, the services of each of Aegean and Olympic 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 described in section 9.2 on closeness of competition, the analysis of the data collected during the market investigation confirmed that the Parties are each other's closest competitors due to their base at AIA, their strong recognised brands, high number of operated frequencies and their similarities in terms of business model.

(514) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Mytilene route.

(515) As a result, as far as NTS passengers are concerned, the Transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-Transaction on the Athens–Mytilene route. Customers' 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.

9.6.5.5. All passengers

(516) As shown in

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475 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 19.

476 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 20.

477 Response of Hellenic Seaways, Bluestar Ferries, and Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 25.

(517) Table 24 below, on a possible market for all passengers (that is, TS and NTS) on the Athens–Mytilene route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 24: Market shares for all passengers on Athens–Mytilene

Market shares all passengers	
summer 2012	**winter 2012/13**
100%	**100.0%**
(A3: [60-70]*%, OA: [30-40]*%)	(A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

(518) It follows that the Transaction leads to the creation of a monopoly for all passengers on the Athens–Mytilene route if the relevant market is comprised only of air services.

(519) Given that the Commission investigation found that ferry services are excluded from the relevant market for TS passengers and could only be regarded as fairly remote competitors for NTS passengers, ferries could also be at best considered as remote competitors in the hypothetical market comprising all passengers (that is, TS and NTS ones).

(520) On the other hand, Aegean and Olympic are each other's closest competitors on Athens–Mytilene, based on such competitive parameters as the travel time and frequency of services as explained in the section on closeness of competition.[478]

(521) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Mytilene route.

(522) 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 and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-Transaction on the Athens–Mytilene 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.

9.6.5.6. Entry/expansion

(523) The Notifying Party argued that no competition concerns arise on the Athens–Mytilene route due to the absence of significant barriers to entry and the likely entry by Astra and Cyprus Airways as well as by a LCC.[479]

(524) According to the Notifying Party, for a carrier which already has a base at Athens, entry could make commercial sense. Additionally, the Notifying Party contends that LCC entry could be at least in theory profitable.

(525) As explained in section 9.5, several elements exist which diminish the likelihood of entry and expansion of competing carriers onto the Greek domestic market, including the Athens–Mytilene route.

(526) Furthermore, the data collected during the market investigation did not reveal any likely, timely, and sufficient entry projects on this route for any category of

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[478] See section 0 of this Decision.

[479] Form CO, paragraph 372; SO Response, paragraph 558.

passengers post-Transaction. More specifically, as explained in section 9.5.3.2, Astra is unlikely to have the scale or financial resources to undertake entry that would impose a sufficient competitive constraint on the Merged Entity. Also, Cyprus Airways has recently significantly reduced its presence in the Greek domestic market and there are no indications of this carrier's likely entry on Athens–Mytilene post-Transaction. Finally, for the reasons already explained above in section 9.5.3.1, LCC entry is not likely.

(527) Therefore, the Commission considers that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the Transaction on the Athens–Mytilene route.

9.6.5.7. Overall conclusion

(528) It is concluded that the Transaction is likely to significantly impede effective competition on the Athens–Mytilene route, irrespective of whether the effects of the Transaction are assessed on separate markets for TS and NTS 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.

9.6.6. Competitive analysis of the Athens–Santorini (ATH–JTR) route

9.6.6.1. Route characteristics

(529) Athens–Santorini connects the Greek capital with an island located in the south Aegean Sea that is arguably Greece's best-known island. In 2012, around [200 000 – 300 000]* O&D passengers travelled on this route. This is one of the two routes where passenger traffic has not declined since 2010 (although there has been a [5-10]*% fall since 2009). According to the Notifying Party, this is due to this route's low dependence on Greek passengers and international recognition of the Santorini brand (that is independent of Greece's image). Santorini is popular not only in Europe but also in the U.S. and Asian markets. Indeed, AIA conducted surveys show that [70-80]*% of passengers flying to Santorini are non-Greek residents.[480]

Table 25: Market data Athens–Santorini (2012)

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[300 000 – 400 000]*	[200 000 – 300 000]*	[10-20]*%	[30-40]*%

Source: Updated Annex 1.7 to the Form CO

(530) In summer 2013, Aegean operated 21 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). In winter 2013/14 Aegean intends to […]* weekly frequencies, […]*.

(531) In summer 2013, Olympic operated 23 weekly flights on this route with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). The Notifying Party expects Olympic to […]* weekly flights in winter 2013/2014.

480 Form CO, paragraph 392; Aegean Route Analysis – Athens–Santorini, page 5.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	6	21	[…]*
Olympic	6	23	[…]*

Source: Aegean Route Analysis – Athens–Santorini

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	1,008	3,906	[…]*
Olympic	468	1,794	[…]*

Source: Aegean Route Analysis – Athens–Santorini

9.6.6.2. Relevant market

(532) In Case M.5830 – *Olympic/Aegean I*, the Commission found that air services and ferry services differed significantly from each other in terms of travel time, level of frequencies and prices. As a result ferry services were excluded from the relevant market for TS passengers. However, with respect to NTS passengers and all passengers, it was ultimately left open whether or not ferry services are to be included in the relevant market.[481]

(533) In this case, the Notifying Party claims that there is intermodal competition between ferries and air services on the Athens–Santorini route.[482] The Notifying Party provided market shares for a hypothetical market encompassing both air services and ferry services for all passengers (but not for NTS passengers separately).

(534) The Commission's market investigation confirmed that ferry services do not compete in the same market as air services on Athens–Santorini for TS passengers.[483]

(535) However, it is not necessary to decide whether or not ferry services are to be included in the relevant market for NTS passengers or for all passengers because, even if hypothetically they were to be regarded as forming part of the relevant market, the assessment of the Transaction would not change substantially. Even if no concerns were found on the market for NTS passengers, there would still remain concerns on the market for TS customers and consequently on the overall market.

9.6.6.3. Time sensitive passengers

(536) As shown in

[481] Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 1121 and following.

[482] Aegean's response to the Commission's RFI of 8 May 2013, answer to question 15.

[483] See section 0 on intermodal competition.

(537) Table 26 below, on a possible market for TS passengers on the Athens–Santorini route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 26: Market shares for time sensitive passengers on Athens–Santorini

Market shares time sensitive passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [50-60]*%, OA: [40-50]*%)	(A3: [70-80]*%, OA: [20-30]*%)

Source: Updated Annex 1.7 to the Form CO

(538) It follows that the Transaction leads to the creation of a monopoly for TS passengers on the Athens– Santorini route.

9.6.6.4. Non-time sensitive passengers

(539) As shown in Table 27 below, on a possible market for NTS passengers on the Athens– Santorini route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 27: Market shares for non-time sensitive passengers on Athens–Santorini

Market shares non-time sensitive passengers	
summer 2012	**winter 2012/13**
100%	**100%**
(A3: [50-60]*%, OA: [40-50]*%)	(A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

(540) It follows that the Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Santorini route if the relevant market is comprised only of air services.

(541) The Notifying Party has not submitted market shares for NTS only passengers on a hypothetical market comprising both air and ferry services. Due to the fact that the majority of ferry operators do not distinguish between TS and NTS passengers,[484] market shares for NTS passengers cannot be reconstructed from the market.

(542) The Commission's market investigation has demonstrated that ferries do not constitute a competitive constraint in terms of frequencies and trip duration for air services on the route Athens–Santorini. For a detailed analysis refer to section 6.2.5.

(543) The remote nature of the competitive constraint exercised by ferry companies over air services in relation to the route at issue is also confirmed by other characteristics described in section 6.2.5 on intermodal competition, such as the absence of monitoring by airlines and ferry operators of each other's prices, different pricing and different customer groups.

(544) Sea Jets submitted that the price of air services was much higher except if there was an early booking or a last minute booking or a special offer; only in that case could

[484] Response of Hellenic Seaways, Bluestar Ferries and Anek to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.

ferry operators have a similar price. Furthermore Sea Jets stated that only high speed boats could match the travel time of aircraft.[485]

(545) Hellenic Seaways, Blue Star Ferries and Anek further submitted that their prices did not discriminate between TS and NTS customers.[486] Hellenic Seaways, Sea Jets and Anek stated that they neither monitored nor took into account airline ticket prices in their own pricing strategy.[487]

(546) Blue Star Ferries submitted that it monitored air fares,[488] but did not take into account airline capacity on its routes.[489]

(547) Ferry operators almost unanimously stated that the Transaction, if implemented, would not affect their operations in any way.[490] This constitutes further evidence that airline services and ferry services are remote competitors at best.

(548) On the other hand, the competitive parameters illustrate that Aegean and Olympic are each other's closest competitors on the Athens–Santorini route. In particular, the services of each of Aegean and Olympic 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 described in section 9.2 on closeness of competition, the analysis of the data collected during the market investigation confirmed that the Parties are each other's closest competitors due to their base at AIA, their strong recognised brands, high number of operated frequencies and their similarities in terms of business model.

(549) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Santorini route on a market for NTS passengers.

9.6.6.5. All passengers

(550) As shown in Table 28 below, on a possible market for all passengers (that is, TS and NTS) on the Athens–Santorini route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 28: Market shares for all passengers on Athens–Santorini

Market shares all passengers	
summer 2012	**winter 2012/13**
100% (A3: [50-60]*%, OA: [40-50]*%)	**100.0%** (A3: [60-70]*%, OA: [30-40]*%)

Source: Updated Annex 1.7 to the Form CO

485 Response of Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 22.

486 Response of Hellenic Seaways, Bluestar Ferries and Anek to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.1.

487 Response of Hellenic Seaways, Anek and Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 17.

488 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 17.

489 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 20.

490 Response of Hellenic Seaways, Bluestar Ferries, Anek and Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 25.

(551) It follows that the Transaction leads to the creation of a monopoly for all passengers on the Athens–Santorini route if the relevant market is comprised only of air services.

(552) If ferry operators were to be included in the relevant market for all passengers, Aegean and Olympic's share would amount to [40-50]*% and [40-50]*% in 2011 and 2012 respectively.

Table 29: O&D passengers air and ferry full years 2011 and 2012 Athens–Santorini

	O&D Passenger numbers		**Market shares**	
	2011	**2012**	**2011**	**2012**
Air total passengers	[200 000 – 300 000]*	[200 000 – 300 000]*	[40-50]*%	[40-50]*%
Ferries total passengers	[300 000 – 400 000]*	[300 000 – 400 000]*	[50-60]*%	[50-60]*%
Total passengers	[600 000 – 700 000]*	[500 000 – 600 000]*	100%	100%

Source: Aegean's response to the Commission's RFI of 8 May 2013, answer to question 15

(553) Besides Blue Star Ferries controlled by Marfin and holding a market share of [40-50]*% (or 77.51% of the ferry-only market) in 2012, the main competitors of Aegean and Olympic on the Athens–Santorini route are relatively minor players: Hellenic Seaways with a market share of [10-20]*% (or 20.41% of the ferry-only market) and Anek with a market share of [0-5]*% (1.17% of the ferry-only market) in 2012. Seajet, which operates faster ferries, had a negligible market share of [0-5]*% (0.9% of the ferry-only market) in 2012.

Table 30: Passengers and market shares ferries-only Athens–Santorini

	Passengers			
	2012		**2011**	
	NUMBER	**MARKET SHARE**	**NUMBER**	**MARKET SHARE**
Blue Star	[1 000 000 – 2 000 000]*	[70-80]*%	[1 000 000 – 2 000 000]*	[70-80]*%
Hellenic Seaways	[200 000 – 300 000]*	[20-30]*%	[400 000 – 500 000]*	[20-30]*%
ANEK	[10 000 – 20 000]*	[0-5]*%	[10 000 – 20 000]*	[0-5]*%
Sea Jets	[10 000 – 20 000]*	[0-5]*%	[0 – 10 000]*	[0-5]*%
Aegean Speedlines	[0 - 10 000]*	[0-5]*%	[40 000 -500 000]*	[0-5]*%
VARIOUS	[90-100]*	[0-5]*%	[0 – 10 000]*	[0-5]*%
TOTAL	**[1 000 000 – 2 000 000]***	**100.00%**	**[1 000 000 – 2 000 000]***	**100.00%**

Source: Aegean's response to the Commission's RFI of 8 May 2013, answer to question 15

(554) The Commission's market investigation has demonstrated that ferries do not constitute a competitive constraint in terms of frequencies and trip duration for air services on the route Athens–Santorini. For a detailed analysis refer to section 6.2.5.

(555) The remote constraint of ferries on air services is also confirmed by other characteristics described in section 6.2.5 on intermodal competition, such as the absence of monitoring of each other's prices by airlines and ferry operators, different pricing and different customer groups.

(556) Hellenic Seaways, Blue Star Ferries and Anek further submitted that they did not price-discriminate between TS and NTS customers.[491] Hellenic Seaways, Sea Jets and Anek stated that they neither monitored nor took into account airline ticket prices in their own pricing strategy.[492]

(557) Blue Star Ferries submitted that it monitored air fares,[493] but did not take into account airline capacity on its routes.[494]

(558) Ferry operators almost unanimously stated that the Transaction if implemented would not affect their operations in any way.[495] This is further evidence that airline services and ferry services are remote competitors at best.

(559) On the other hand, the competitive parameters illustrate that Aegean and Olympic are each other's closest competitors on the Athens–Santorini route. In particular, the services of each of Aegean and Olympic 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 described in section 9.2 on closeness of competition, the market investigation confirmed that the Parties are each other's closest competitors due to their base at AIA, their strong recognised brands, high number of operated frequencies and their similarities in terms of business model.

(560) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Santorini route on a market for all passengers.

9.6.6.6. Entry/expansion

(561) The Notifying Party argued that no competition concerns arise on the Athens–Santorini route in particular due to the absence of significant barriers to entry and the likely entry in particular by Cyprus Airways, Astra, Minoan, easyJet and Ryanair.[496]

(562) The Notifying Party underlines that Ryanair has a base at Chania, plans to set up a base in Thessaloniki and is increasing its market share in Greece. The Notifying Party contends that despite Ryanair's statement that it would not enter any routes

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491 Response of Hellenic Seaways, Bluestar Ferries and NEL Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.1.

492 Response of Hellenic Seaways, Anek and Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 17.

493 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 19.

494 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 20.

495 Response of Hellenic Seaways, Bluestar Ferries, Anek and Sea Jets to the Commission's Questionnaire R5 to Ferry Operators, answer to question 25.

496 Form CO, paragraph 401; SO Response, paragraphs 581 and following.

from or to Athens unless charges at AIA are significantly reduced, Ryanair has a growing interest in the Greek market.

(563) Additionally, the Notifying Party submits that LCCs, such as easyJet, would face minimal sunk costs if they decided to enter the Greek domestic market and that easyJet could achieve a […]*% profit margin on the route if it had an […]*% load factor […]*. LCC entry would therefore take place if the Merged Entity raised prices following the Transaction.

(564) Moreover, according to the Notifying Party, Minoan is in the process of negotiating the acquisition of new aircraft and will have free aircraft capacity available due to its exit from its Oxford routes. As a consequence, it is likely to enter the route since the lack of free aircraft capacity is Minoan's only barrier to entering the route according to the Notifying Party.

(565) Finally, the Notifying Party states that Astra is likely to enter the route as it has to use aircraft operating from Athens to serve its ex-Athens PSO route (Athens–Sitia) for the next 3 years (2012 to 2016) and as it has already been present at Santorini airport. According to the Notifying Party, Astra could exert a sufficient competitive constraint on the Merged Entity in spite of the fact that it operates on a small scale.

(566) As explained in section 9.5, several elements impeding the likelihood of entry and expansion exist, which are also present on the Athens–Santorini route.

(567) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects on this route for any category of passengers post-Transaction. More specifically, as explained in the section on market entry, Astra is unlikely to have the scale or financial resources to undertake entry that would impose a sufficient competitive constraint on the Merged Entity. Also, Cyprus Airways has recently significantly reduced its presence in the Greek domestic market and there are no indications of this carrier's likely expansion on Athens–Santorini post-Transaction. Minoan expressed only conditional plans to enter Greek domestic routes subject to overcoming a number of significant hurdles. Finally, easyJet is focusing its expansion plans on its existing markets and Ryanair is unlikely to operate on this route in the near future given the relatively high airport charges at Athens airport which are unlikely to decrease.[497]

(568) Therefore, the Commission considers that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the Transaction on the Athens–Santorini route.

9.6.6.7. Overall conclusion

(569) It is concluded that the Transaction is likely to significantly impede effective competition on the Athens–Santorini route, irrespective of whether the effects of the Transaction are assessed on separate markets for TS and NTS 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.

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[497] Paragraphs (341) and following of this Decision.

9.6.7. *Competitive analysis of the Athens–Kos (ATH–KGS) route*

9.6.7.1. Route characteristics

(570) Athens–Kos, which connects the Greek capital with the Greek island in the south Sporades group of the Dodecanese (just 4 kilometres from the Turkish coast), is highly seasonal. In 2012, almost [100 000 – 200 000]* passengers travelled on this route. Total traffic on the route has declined by [20-30]*% since 2009 as a result of the crisis.[498]

Table 31: Market data Athens–Kos (2012)

Traffic			
Total pax	**O&D pax**	**% TS**	**% connecting pax**
[100 000 – 200 000]*	[100 000 – 200 000]*	[20-30]*%	[20-30]*%

Source: Updated Annex 1.7 to the Form CO

(571) In summer 2013, Aegean operated 7–8 weekly flights on this route with jet aircraft (Airbus A320 with 168 seats). In winter 2013/14, Aegean intends […]* on this route.

(572) In summer 2013, Olympic operated 12 weekly flights on this route with turboprop aircraft (Bombardier Dash 8 – Q400 with 78 seats). In winter 2013/2014, […]*, Olympic intends to […]* weekly frequencies on Athens–Kos.

Frequencies (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	6	7/8	[…]*
Olympic	14/13	12	[…]*

Source: Aegean Route Analysis – Athens–Kos; e-mail from A. Komninos to the Commission of 1 July 2013 received at 20:49

Seats (weekly)

Airline	Winter 2012/2013	Summer 2013	Winter 2013/2014
Aegean	1,008	1,176	[…]*
Olympic	1,092	936	[…]*

Source: Aegean Route Analysis – Athens– Kos

9.6.7.2. Relevant market

(573) The Commission's market investigation confirmed that ferry services do not compete in the same market as air services on Athens–Kos for TS passengers.[499]

(574) However, it is not necessary to decide whether or not ferry services are to be included in the relevant market for NTS passengers and for all passengers because even if, hypothetically, they were to be regarded as forming part of the relevant market, the assessment of the Transaction would not change substantially. This is because ferries are at best only remote substitutes to air services for these passenger groups, as explained below.

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498 Form CO, paragraph 306.

499 See section 0 of this Decision on intermodal competition.

9.6.7.3. Time sensitive passengers

(575) As shown in Table 32 below, on a possible market for TS passengers on the Athens–Kos route, Olympic and Aegean had a combined share of 100% in the IATA summer 2012 and winter 2012/2013 seasons.

Table 32: Market shares for time sensitive passengers on Athens–Kos

Market shares time sensitive passengers	
Summer 2012	**winter 2012/13**
100% (A3: [40-50]*%, OA: [50-60]*%)	**100%** (A3: [40-50]*%, OA: [50-60]*%)

Source: Updated Annex 1.7 to the Form CO

(576) It follows that the Transaction leads to the creation of a monopoly for TS passengers on the Athens–Kos route.

9.6.7.4. Non-time sensitive passengers

(577) As shown in Table 33 below, on a possible market for NTS passengers on the Athens–Kos route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 33: Market shares for non-time sensitive passengers on Athens–Kos

Market shares non-time sensitive passengers	
summer 2012	**winter 2012/13**
100% (A3: [40-50]*%, OA: [50-60]*%)	**100%** (A3: [40-50]*%, OA: [50-60]*%)

Source: Updated Annex 1.7 to the Form CO

(578) It follows that the Transaction leads to the creation of a monopoly for NTS passengers on the Athens–Kos route if the relevant market is comprised only of air services.

(579) Ferry operators could at best be regarded as remote competitors on this route. Blue Star, the only ferry operator active on the route, offers six weekly trips from Athens to Kos with an average duration ranging from 10 to 12 hours by boat (excluding travel time from the city centre to the harbour).[500] This service is in stark contrast to approximately 3 daily frequencies with an average travel time of 55 minutes[501] offered by Aegean and Olympic in the summer 2013 season.

(580) The remote nature of the constraint imposed by ferries on air services is also confirmed by other characteristics described in section 6.2.5 on intermodal competition, such as the absence of monitoring of each other's prices by airlines and ferry operators, different pricing and different customer groups.

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[500] Response of Blue Star to the Commission's Questionnaire R5 to Ferry Operators, answer to question 5.

[501] Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 326.

(581) Blue Star Ferries submitted that in setting prices it did not discriminate between TS and NTS customers.[502] Blue Star Ferries claimed that it monitored air fares,[503] but did not take into account airline capacity on its routes.[504]

(582) Furthermore Blue Star stated that the Transaction if implemented would not affect its operations in any way.[505] This is further evidence that airline services and ferry services are remote competitors at best.

(583) On the other hand, the competitive parameters illustrate that Aegean and Olympic are each other's closest competitors on the Athens–Kos route. In particular, the services of each of Aegean and Olympic 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 described in section 9.2 on closeness of competition, the analysis of the data collected during the market investigation confirmed that the Parties are each other's closest competitors due to their base at AIA, their strong recognised brands, high number of operated frequencies and their similarities in terms of business model.

(584) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Kos route.

(585) As a result, as far as NTS passengers are concerned, the Transaction is likely to result in the elimination of the very close competitive relationship between Aegean and Olympic and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-Transaction on the Athens–Kos 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.

9.6.7.5. All passengers

(586) As shown in Table 34 below, on a possible market for all passengers (that is, TS and NTS) on the Athens–Kos route, Olympic and Aegean had a combined share of 100% of air services in the IATA summer 2012 and winter 2012/2013 seasons.

Table 34: Market shares for all passengers on Athens–Kos

Market shares all passengers	
summer 2012	**winter 2012/13**
100% (A3: [40-50]*%, OA: [50-60]*%)	**100.0%** (A3: [40-50]*%, OA: [50-60]*%)

Source: Updated Annex 1.7 to the Form CO

502 Response of Bluestar Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 21.1.

503 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 19.

504 Response of Blue Star Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 20.

505 Response of Bluestar Ferries to the Commission's Questionnaire R5 to Ferry Operators, answer to question 25.

(587) It follows that the Transaction would result in the creation of a monopoly for all passengers on the Athens–Kos route if the relevant market is comprised only of air services.

(588) Given that the Commission investigation found that ferry services are excluded from the relevant market for TS passengers and could only be regarded as remote competitors for NTS passengers, ferries could also be at best considered as remote competitors in the hypothetical market comprising all passengers (that is, TS and NTS ones).

(589) On the other hand, Aegean and Olympic are each other's closest competitors on Athens–Kos, based on such competitive parameters as the travel time and frequency of services as explained in the section on closeness of competition.[506]

(590) It follows that the Transaction leads to the elimination of the closest competitor of each of Olympic and Aegean on the Athens–Kos route.

(591) 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 and thus to eliminate the important competitive constraint that both airlines exert upon each other pre-Transaction on the Athens–Kos 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.

9.6.7.6. Entry/expansion

(592) The Notifying Party argues that no competition concerns arise on the Athens–Kos route in particular due to the absence of significant barriers to entry and the likely entry of competitors. [507]

(593) In particular, the Notifying Party considers that Ryanair, which is the largest operator in Kos ([10-20]*% of traffic) may establish a base at that airport and launch flights on Athens–Kos. Moreover, taking into account that easyJet already flies to both ends of the Athens–Kos route, the Notifying Party concludes, easyJet could easily enter the route.

(594) The Notifying Party submits that LCCs, such as easyJet, would face minimal sunk costs if they decide to enter the Greek domestic market and that easyJet could achieve an […]*% profit margin on the route if it had an […]*% load factor. LCC entry would therefore take place if the Merged Entity raised prices following the Transaction.

(595) Moreover, the Notifying Party submits that Astra, Sky Express and Cyprus Airways are among the potential entrants on this route, at least on a seasonal basis.

(596) As explained in section 9.5, there exist several elements diminishing the likelihood of entry and expansion into the Greek domestic market, which are equally applicable with respect to the Athens–Kos route.

(597) Furthermore, the market investigation has not revealed any likely, timely, and sufficient entry projects on this route for any category of passengers post-

506 See section 0 of this Decision.
507 Form CO, paragraphs 321–323; SO Response, paragraphs 612 and following.

Transaction. More specifically, as explained in the section on market entry, Ryanair is unlikely to enter routes operating from Athens unless there is a significant reduction of AIA charges, which appears unlikely. easyJet has opted to focus its expansion plans on its existing markets. Furthermore, Astra and Sky Express are unlikely to have the scale or financial resources to undertake entry that would impose a sufficient competitive constraint on the Merged Entity. Finally, Cyprus Airways has recently significantly reduced its presence in the Greek domestic market and there are no indications of this carrier's likely expansion on Athens–Kos post-Transaction.

(598) Therefore, the Commission considers that potential entry is not likely, timely and sufficient to deter or defeat the anti-competitive effects of the Transaction on the Athens–Kos route.

9.6.7.7. Overall conclusion

(599) It is concluded that the Transaction is likely to significantly impede effective competition on the Athens–Kos route, irrespective of whether the effects of the Transaction are assessed on separate markets for TS and NTS 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.

9.7. Potential competition

(600) Competition on the routes of concern currently operated by both Aegean and Olympic from their base at Athens cannot be regarded in isolation. Potential competition is an important parameter of competition between Aegean and Olympic due to their vast network in Greece and as evidenced by past experience of entry events.[508]

(601) Both carriers have the necessary flexibility to shift and add routes from their base at Athens in reaction to changes in the competitive structure of the different routes. The analysis therefore cannot only be static, that is to say, focusing only on the actual overlap routes. Indeed, the analysis must also be dynamic examining to what extent the disappearance of one carrier's closest and most important competitor might eliminate potential competition that would have constrained the other carrier in the absence of the Transaction.

(602) By way of illustration, in *Olympic/Aegean I*, the Commission found that Olympic exerted a competitive constraint on Aegean on the Athens–Corfu route, where Olympic was not present at the time, as the likely potential entrant.[509] Indeed, Olympic did enter in the meantime and today both Aegean and Olympic operate on Athens–Corfu in competition with each other. Also, while in *Olympic/Aegean I* the Commission accepted that Olympic would exit the Athens–Alexandroupolis route and a number of routes from Thessaloniki (that is to Chania, Heraklion, Mytilene and Rhodes) absent the transaction, Olympic never withdrew from Athens–Alexandroupolis and re-entered the routes from Thessaloniki in the IATA summer season 2011 in competition with Aegean. This shows the importance of dynamic

[508] See paragraph (602) of this Decision.

[509] Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 1470-1502.

competitive assessment, including on the routes where only one party is currently present.

(603) According to 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 possesses assets that could easily be used to enter the market without incurring significant sunk costs.*"[510]

(604) Paragraph 60 of the Horizontal Merger 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.*"

(605) In previous cases, the Commission has 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 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*".[511]

9.7.1. Aegean and Olympic are very close competitors that constrain each other and are capable of entering into each other's routes

(606) The first condition set out at paragraph 60 of the Horizontal Merger Guidelines for establishing loss of potential competition is that 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.

(607) Aegean and Olympic are very close competitors to each other (see the section on closeness of competition above). In particular, the Parties are the main carriers in Greece, each having an extensive domestic network, well-known brands, access to distribution channels and local market knowledge. Both of them operate a hub at Athens airport, basing a significant number of aircraft each at that airport, adjusting their schedules and capacity depending on market conditions.

(608) The Commission therefore considers that Aegean and Olympic are the most likely potential competitors to each other on the Greek domestic routes from Athens which only one of them currently serves since:

– the base at Athens gives Aegean and Olympic the necessary flexibility to shift capacity and add/switch routes in reaction to changes in the competitive structure of the different routes;

– due to, *inter alia*, base advantages and a strong city presence, entry on a new route by Aegean or Olympic would not involve significant sunk costs, unlike for other carriers;

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510 Horizontal Merger Guidelines, paragraph 59.

511 Case T-342/07 *Ryanair Holdings plc v Commission* [2010] ECR II-3457, paragraph 162.

– Aegean and Olympic are aware that the other Party would be able to move capacity to a route operated only by one of them if prices were to increase on that route;

– both Aegean and Olympic have a deep knowledge and experience in the Greek passenger air transport market;

– Aegean and Olympic are the only two airlines for which Greek domestic routes form a core part of their business and which have sizeable domestic operations in Greece.

(609) The Parties' historical operations provide an indication of the routes where elimination of potential competition would likely occur. For example, at the time of the decision in *Olympic/Aegean I*, both Parties were operating in competition on the Athens–Samos and Athens–Chios routes. Aegean exited these routes in October 2011. It is likely that Aegean would re-enter these routes, even if on a seasonal basis, if demand were to increase. The likelihood of such re-entry exerts a competitive constraint on Olympic and on Olympic's pricing strategy.

9.7.2. Entry by other competing airlines on these routes is significantly less likely

(610) As regards the second limb of the test set out at paragraph 60 of the Horizontal Merger Guidelines, it is necessary to demonstrate that entry by other competing airlines on these routes is less likely and that they would not provide sufficient competitive pressure on the merged entity.

(611) As discussed extensively in the section on market entry, the market investigation did not identify any likely carriers that could enter in a timely and sufficient manner on Greek domestic routes (please see the section on market entry for a detailed overview of the positions of past entrants and future potential entrants).

(612) The Commission considers that the Parties are generally each other's closest competitors. In particular, Aegean and Olympic have large bases in Athens. Both Aegean and Olympic can relatively easily adjust their schedule to react to new route opportunities and enjoy considerable brand awareness.

(613) In contrast, potential entry of third party carriers would be more costly, risky and, hence, less likely to materialise than a potential entry by the Parties on new domestic routes, given that the Parties will have fewer sunk costs, due to their established position in Greece. Moreover (as discussed in the entry section) large international carriers, including LCCs, are likely to have better opportunities for expansion elsewhere than in Greece and have no strategic interest in the Greek domestic market.

(614) In light of the above, potential competition from third party carriers is unlikely to exert a sufficient competitive pressure on the Merged Entity post-Transaction to compensate for the loss of actual or potential competition between the Parties on Greek domestic routes.

9.7.3. Routes where the Transaction will lead to an elimination of potential competition

9.7.3.1. Athens–Chios and Athens–Samos

(615) In October 2011, Aegean exited the Athens–Chios and Athens–Samos routes. However, the Commission considers that Aegean could easily re-enter any time once demand picks up again given that it has an established base at AIA.

9.7.3.2. Athens–Alexandroupolis

(616) Aegean is also planning to exit the Athens–Alexandroupolis route after summer 2013. Aegean submitted its schedule for the winter season 2013/2014, where the route Athens–Alexandroupolis no longer features among Aegean's operated routes. [Analysis of the reasons for Aegean's exit from Athens-Alexandroupolis]*. The Commission also recognises that [Analysis of the reasons for Aegean's exit from Athens-Alexandroupolis]*.

9.7.3.3. Athens–Rhodes, Athens–Heraklion and Athens–Thessaloniki

(617) Olympic signalled its intention to exit the Athens–Rhodes after summer 2013, as well as the Athens–Thessaloniki and Athens–Heraklion routes in October 2013. [Analysis of the reasons for Olympic's exit from Athens-Rhodes, Athens-Heraklion and Athens-Thessaloniki]*.

(618) Thus, Olympic's schedule for winter 2013/14 does not list services on Athens–Rhodes. Olympic explained to the Commission that it decided to cease operating on this route "[Analysis of the reasons for Olymic's exit from Athens-Rhodes]*".[512] In particular, since December 2012 Olympic's revenue per flight fell to approximately [Analysis of the reasons for Olympic's exit from Athens-Rhodes]*. Internal e-mails of Olympic have confirmed the poor performance of Athens–Rhodes.[513]

(619) [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[514] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[515] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.

(620) [Analysis of the reasons for Olympic's exit from Athens-Heraklion and Athens-Thessaloniki]*.[516] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[517] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[518] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[519]

(621) [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[520] [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*.[521]

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512 Olympic's response of 6 June 2013 to Commission's RFI of 5 June 2013, answer to question 3.

513 [Analysis of reasons for Olympic's exit from Athens-Rhodes]* (Olympic's response of 6 June 2013 to Commission's RFI of 5 June 2013, answer to question 3).

514 Olympic "OPCO July 1 2013".

515 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 8.

516 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 2.

517 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 3.

518 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 2.

519 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 3.

520 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 6.

(622) [Analysis of the reasons for Olympic's exit from Ahtens-Heraklion and Athens-Thessaloniki]*. Olympic publicly announced the cancellation of Athens–Heraklion and Athens–Thessaloniki on 22 July 2013. However, on 24 July 2013, Olympic issued a press release containing the following reservation regarding its exit: "*Obviously, Olympic Air's decisions are dictated by the significantly reduced demand and, if future changes in market conditions show that demand for air transport services is not covered because of Olympic's reduced or stopped flights, Olympic Air will possibly re-examine its decisions.*"[522]

(623) On the three routes Athens–Heraklion, Athens–Thessaloniki and Athens–Rhodes, Aegean and Olympic are generally considered to be each other's closest competitors. Aegean and Olympic have historically been the main competitors on this route (with a brief interlude of Cyprus Airways' presence). Both airlines have bases in Athens. Aegean also has a base in Heraklion and in Thessaloniki. Olympic has a history of basing aircraft in Heraklion, in particular during summer seasons until 2013.[523] Olympic had a base at Thessaloniki since October 2009 until March 2013[524] and currently has one aircraft parked there overnight 5 days per week.[525]

(624) The Athens–Heraklion, Athens–Thessaloniki and Athens–Rhodes routes are the thickest domestic routes in Greece and have traditionally been served by all domestic carriers. Serving these three routes is also important for any carrier positioning itself as a major Greek domestic airline for image considerations and customer loyalty. In addition, as already mentioned in recital (599), there have been precedents in the past when Olympic's exit decisions were reversed, in particular on Athens–Alexandroupolis and several routes operating from Thessaloniki.

9.7.3.4. Conclusion

(625) As a consequence of the historical competition patterns with each other and the very limited impact of entry by other carriers on the Parties, Aegean and Olympic exert a potential competitive constraint on each other.

(626) The Commission therefore concludes that the Transaction is likely to significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, by eliminating the most credible potential entrant on the following routes on which Aegean and Olympic respectively exert a significant constraining influence and on which there is an insufficient number of other potential competitors capable of maintaining sufficient competitive pressure on the Merged Entity post-Transaction: Athens–Alexandroupolis, Athens–Rhodes, Athens–Thessaloniki, Athens–Heraklion, Athens–Chios and Athens–Samos.

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521 Olympic "Recommendation to OPCO to Discontinue ATH–SKG & ATH–HER" dated 27 June 2013, page 6.

522 Olympic press statement of 24 July 2013, "Είναι προφανές ότι οι αποφάσεις της Olympic Air υπαγορεύονται από την σημαντικά μειωμένη ζήτηση και εάν στο μέλλον, λόγω αλλαγής συνθηκών της αγοράς, φανεί ότι από την μείωση ή διακοπή δρομολογίων δεν καλύπτεται η υπάρχουσα ζήτηση αερομεταφορικών υπηρεσιών η Olympic Air ενδεχομένως θα επανεξετάσει τις αποφάσεις της."

523 Olympic's response of 29 January 2009 to Commission's RFI of 23 January, Annex 3.

524 Olympic's response of 29 January 2009 to Commission's RFI of 23 January, Annex 3.

525 Olympic's "Counterfactuals" Athens–Thessaloniki, Annex 7.5K to the Form CO.

9.8. Effects on consumers

(627) A merger leading to high market shares is likely to lead to price increases when customers of the merging parties have difficulties or are unable to switch to other suppliers, because there are few or no alternative suppliers. Such customers are, according to the Horizontal Merger Guidelines, 'particularly vulnerable to price increases'.[526]

(628) This would be the case after the Transaction, since: (i) for TS passengers, the Transaction would eliminate any alternative on all the monopoly routes; and (ii) for NTS passengers, (should ferries not be included in the respective relevant markets) the Transaction would eliminate any alternative on all the monopoly routes, or at least (should ferries be included in the respective relevant markets) it would eliminate the two closest competitors.[527] Therefore, consumers would have very limited choice when deciding to travel. Moreover, the Transaction would also eliminate potential competition on several other non-overlapping routes, which would lead to the removal of competitive pressure to the detriment of consumers.

9.9. Conclusion on the competitive assessment of the Transaction

(629) The very large market shares achieved by the Merged Entity are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position.[528] In addition, the Parties are each other's closest potential competitors on a number of routes operating from Athens.

(630) Given the circumstances currently prevailing in the Greek domestic market and the existence of elements that affect the incentives of new entrants to penetrate the Greek domestic market, such as low level of demand and uncertainty about the market, high airport charges at AIA, sunk marketing costs and initial losses to penetrate the market, as well as other (sunk) entry costs and the presence of base advantages, it is unlikely that a countervailing entry (that is entry that would be timely and sufficient to discipline the Merged Entity) would occur in the foreseeable future. In markets in which Aegean and Olympic would reach a large combined market share or would even create a monopoly, a remote possibility of entry or a mere threat of entry cannot be sufficient to dismiss the Commission's concerns relating to the absence of competition.

(631) Therefore, the Commission concludes that the Transaction as such would lead to a significant impediment of effective competition in particular as a result of the creation or strengthening of a dominant position as concerns the following routes, where the Transaction gives rise to very high combined market shares, and eliminates the important competitive constraint exerted by the Parties on each other in their quality as each other's close (and in most instances the closest) competitors:

(a) Athens–Chania

(b) Athens–Corfu

(c) Athens–Mytilene

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[526] Commission Decision of 27 June 2007 in Case COMP/M.4439 *Ryanair / Aer Lingus*, paragraph 541; Horizontal Merger Guidelines, paragraph 31.

[527] On routes Athens–Corfu and Athens–Thessaloniki, where there are no ferry services, the Transaction would in any event lead to monopoly and eliminate any alternative even for NTS passengers.

[528] Case T-210/01 *General Electric v Commission* [2005] ECR II-5575, paragraph 115.

(d) Athens–Kos

(e) Athens–Santorini

(632) Moreover, the Commission concludes that the Transaction as such is likely to significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, by eliminating the most credible potential entrant on the following routes:

(a) Athens–Alexandroupolis

(b) Athens–Rhodes

(c) Athens–Thessaloniki

(d) Athens–Heraklion

(e) Athens–Chios

(f) Athens–Samos

9.10. Efficiencies

(633) According to the Merger Regulation[529] and the Horizontal Merger Guidelines,[530] under certain conditions, the anticompetitive effects of a merger can be partially or totally outweighed by efficiencies that the merger would generate. It is for the merging parties to demonstrate 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.

(634) The Notifying Party submits that the Transaction would generate significant efficiencies of around EUR […]* million.[531] This total consists of EUR […]* million of variable cost savings on ground handling, catering and distribution; fixed cost savings of EUR […]* million from reduced headcount and consolidation of administrative functions; EUR […]* million from fleet utilisation benefits; and EUR […]* million of "revenue synergies" stemming from improved connectivity of networks on overlap and non-overlap routes. The Notifying Party claims that the efficiencies it puts forward are substantial, merger-specific, and verifiable and will benefit consumers.

(635) The Commission has assessed the various categories of claimed synergies during its investigation. In the SO, the Commission expressed concerns, in particular, about the magnitude of estimated variable cost savings as well as on whether fixed cost savings and claimed revenue synergies would benefit consumers. In the SO, the Commission's preliminary conclusion was that the claimed efficiencies were unlikely to be sufficient to offset the likely competitive harm resulting from the Transaction. Since, however, any likely competitive harm to the markets in questions would not be caused by the Transaction, because the Commission considers that Olympic is a failing firm which absent the Transaction would most likely exit the market, it is not

529 Merger Regulation, Article 2(1)(b) and recital 29.

530 Horizontal Merger Guidelines, paragraphs 76–88.

531 Aegean Budget Correction 2014, email "M.6796 – RFI to Aegean – joint budget for 2014 CORRECTION & Slides on remaining overlaps/joint budget" sent by Assimakis Komninos on 3 July 2013. In the Form CO estimated efficiencies were somewhat lower at EUR […]* million. Form CO, Table 166.

necessary for the Commission to assess in every detail the Notifying Party's efficiency claims.

9.11. Commitments

(636) In order to remove serious doubts arising from the Transaction, the Notifying Party submitted commitments under Article 6(2) of the Merger Regulation on 25 March 2013.

(637) The Commission assessed the first proposed commitments extensively in the Decision opening proceedings.

(638) The Commission considered that the first proposed commitments did not meet the standard for an acceptable remedy in phase I and did not market-test them. None of the first proposed commitments alone, or in combination with the other commitments, would have been likely effective in practice so that timely and sufficient entry would be triggered in the Greek domestic market and in particular on the routes of concern. The Commission therefore considered that the first proposed commitments did not remove the Commission's serious doubts as to compatibility of the Transaction with the internal market and with the EEA Agreement.

(639) On 8 August 2013, the Notifying Party submitted a second package of commitments under 8(2) of the Merger Regulation. This commitment package consisted of a cap on fare prices and an aircraft sub-lease offer to potential entrants at favourable conditions according to the Notifying Party.

(640) The Commission assessed the second package of proposed commitments and considered that, *prima facie*, they still did not meet the standard for an acceptable remedy, independently or combined with each other. While there generally seems to be no scarcity in the type of potentially sub-leased aircraft in the aviation sector (which makes this remedy likely to be ineffective), there is a more fundamental problem with the remedy consisting of a cap on fare prices. Imposing restrictions on a firm's pricing conduct undermines a key function of competitive markets, namely to ensure efficient outcomes in terms of prices, output and quality. A price cap would only address the price component and aims at replacing a market mechanism for determining prices by an administrative procedure. Moreover, the price cap remedy is behavioural in nature. In merger cases, behavioural remedies may be acceptable only exceptionally in very specific circumstances,[532] which were not shown to exist in the present instance. In addition, the price cap remedy raises the difficulty of monitoring compliance given the complexity of fare setting in the airline industry.

(641) The remedies submitted did not therefore sufficiently address the competition concerns raised. As a result, the Commission did not market-test them and found that the Second Proposed Commitments were not capable of removing the Commission's competition concerns.

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[532] See paragraph 17 of the Horizontal Merger Guidelines: "*Commitments relating to the future behaviour of the merged entity may be acceptable only exceptionally in very specific circumstances. In particular, commitments in the form of undertakings not to raise prices […] will generally not eliminate competition concerns resulting from horizontal overlaps. In any case, those types of remedies can only exceptionally be accepted if their workability is fully ensured by effective implementation and monitoring […].*"

(642) It was however not necessary in any event to conduct a detailed analysis of the submitted commitments because the Commission came to the conclusion that Olympic would ultimately leave the market absent the Transaction (see the following section on failing firm analysis) and, therefore, the Transaction would not result in any harm to competition. Consequently, there is no need for remedies in this case.

10. FAILING FIRM ANALYSIS

(643) In the following section, the Commission will analyse the competitive situation likely to prevail if the Transaction is not implemented. As set out in section 8, the Commission takes into account, when doing this analysis, likely future developments on the markets in question.

(644) A merger that is found to give rise to a significant impediment to effective competition may be found compatible with the internal market if it can be established to the requisite legal standard that without the merger competition would deteriorate at least to the same extent. 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*"[533] (see also section 8 above).

(645) The Notifying Party submits that given Olympic's financial needs and inability to access funds, absent the Transaction, Olympic would cease operating and as a result cease to be a competitor to Aegean.[534] Consequently, with or without the Transaction, it argues that Aegean would become the only operator on those overlap routes where the Commission found competition concerns, and the Transaction should be cleared.

(646) Accordingly, an analysis will be conducted below to determine whether the financial situation of Olympic is such that it is to be deemed a failing firm[535] within the meaning of the Horizontal Merger Guidelines.

(647) The following section first gives a general overview of the macroeconomic situation in Greece and the state of the Greek passenger air transport market**,** which provides the context for this analysis. Next, the Commission assesses the financial situation of Olympic and its parent, Marfin. Finally, the Commission discusses the specific criteria of the failing firm argument raised by the Notifying Party.

10.1. Overall conditions on the Greek passenger air transport market

10.1.1. The view of the Notifying Party

(648) According to the Notifying Party, the Greek economy has been in a profound crisis for a number of years.[536] The Greek economy has contracted more than any other

[533] Horizontal Merger Guidelines, paragraph 89. See also above section 0.

[534] Aegean's submission of 24 August 2013.

[535] It is not necessary to assess the financial situation of Aegean given that no likelihood of Aegean's failure was raised. In the first half of 2013 Aegean reported net earnings after tax of EUR 16.5 million (see Aegean's press release "Return to profitability on positive international network performance" of 30 August 2013).

European economy in post-WWII history and is expected to contract again substantially in 2013. If so, Greece would then be in recession for the sixth consecutive year. The deep economic recession has significantly affected the Greek air transport market.[537]

(649) In this respect, the Notifying Party submits that the Greek economic crisis is disproportionately affecting the travel sector in Greece as 74% of Greeks consider travel to be an expense that needs to be cut in times of crisis.[538] According to Aegean, Greek passengers have consequently become more price-sensitive and air travel demand more elastic.[539] Aegean argues that it has been forced to reduce prices in past years despite a considerable increase in fuel prices.[540] Additionally, a gradual increase in VAT levels over the past five years from 8% to 13% has exacerbated the situation. Aegean submits that, since 2007, Aegean's average fares net of taxes on domestic routes have fallen from EUR […]* to EUR […]*.[541]

(650) Domestic point-to-point passenger numbers decreased from 5.6 million in 2009 to 4.3 million in 2012, which represents a decrease of 24%. The total value of revenues generated by travel agents from domestic travellers diminished by […]*% between 2009 and 2012.[542] Aegean suffered a corresponding fall in revenues generated by domestic traffic from approximately EUR […]* million in 2009 to an estimated EUR […]* million in 2012.[543]

(651) Furthermore, there has been a substantial decline in the total number of passengers at AIA: from 16.5 million in 2008 to less than 13 million in 2012. The crisis has also seen a fall in passengers on domestic routes from Athens in general[544] from 6.1 million in 2009 to 4.5 million in 2012 – a drop of 26%.[545] Furthermore, the number of "pure" domestic passengers travelling to/from Athens (excluding connecting/transfer passengers) has fallen to 3.6 million.[546]

(652) The decline in passenger demand has continued in the first half of 2013.[547] Compared to the preceding year, traffic from Athens has dropped by 6.3% in the first six months of 2013.[548] The value of domestic sales through travel agents has decreased by a further 13% in the first half of 2013 in comparison to the same period in 2012. However, for the two years following 2013, the Notifying Party considers

536 SO Response, paragraphs 50 and following; Form CO, paragraphs 3 and following.
537 Form CO, paragraph 594; SO Response, paragraphs 50 and following.
538 Form CO, paragraph 595.
539 Form CO, paragraph 596.
540 Form CO, paragraph 596.
541 Form CO, paragraph 596; [Evolution of Aegean's average fares – 2009/2013]*, see SO Response, paragraph 59.
542 SO Response, paragraph 57.
543 Form CO, paragraph 608 referring to data from the Hellenic Civil Aviation Authority ("HCAA"); SO Response, paragraph 57.
544 Form CO, Annex 8.6; these figures are therefore larger than the domestic point-to-point passenger numbers quoted in this Decision.
545 Form CO, paragraph 602 referring to AIA Passenger traffic development 2012; SO Response, paragraph 57.
546 SO Response, paragraph 57.
547 SO Response, paragraph 58.
548 Aegean's submission of 24 August 2013.

that domestic demand will stabilise with approximately a 2 to 3% annual change in traffic if consolidation measures take hold.[549]

(653) In addition, the Notifying Party submits that the importance of AIA as a base hub has decreased as a result of an increasing number of long-haul international carriers abandoning flights to and from Athens. This trend is accelerated by the Greek economic crisis, which reduces the number of Greek passengers willing and able to pay a premium for a direct connection to and from Athens.

(654) According to the Notifying Party,[550] carriers withdrew their flights from Athens to Brussels, Budapest, Madrid, Milan, Prague and Warsaw during 2012 and in early 2013. In 2012, AIA observed an 11% drop in international passengers in comparison to 2011. At the same time, the sum of international traffic to and from the top 10 regional Greek airports[551] (excluding AIA) increased by 13% since 2009. According to the Notifying Party, this deprives domestic carriers of passengers to be connected from Athens to the islands.

(655) Moreover, international leisure passengers increasingly have more direct options, notably from low cost carriers ("LCCs") like easyJet or Ryanair, when flying to and from the Greek islands without the need to connect in Athens. The Notifying Party submits that international traffic at 9 out of the aforementioned top 10 Greek regional airports has increased, while at Athens airport it has fallen by 16% since 2009. In this period, in particular, international traffic has increased by as much as 48% at Mykonos, 28% at Kos, and 22% at Rhodes.[552] All these facts lead Aegean to conclude that the volume of domestic traffic is at best only stabilizing around its current low level and also that the importance of domestic flights from Athens has diminished substantially and will in all likelihood not improve to any significant extent.

10.1.2. The Commission's assessment

(656) The Notifying Party's statements were largely confirmed by the analysis of the data collected during the market investigation. According to the estimates of the Hellenic Civil Aviation Authority ("HCAA"), the Greek domestic market in terms of passengers has diminished by 18% since 2010.[553] According to the HCAA, however, while the demand on Greek domestic routes is decreasing in the short term, it is expected to stabilise in the medium term.[554] AIA also considers that following the expected further traffic decline in 2013, as of the second half of 2014 a gradual upward trend in terms of flight frequencies is expected, mainly due to the stabilisation of international traffic (in 2014), as well as slow recovery of both domestic and international traffic (as of 2015).[555]

(657) The Commission nevertheless acknowledges that a situation of low demand in the Greek domestic passenger air transport market has prevailed since 2008. The future

549 Form CO, paragraph 603.
550 Form CO, paragraph 605.
551 "Top 10" refers to the Greek airports (with the exception of AIA) with the highest number of passengers per year.
552 Form CO, paragraph 607.
553 Q6 – Questionnaire to HCAA – reply to question 3.
554 Q6 – Questionnaire to HCAA – reply to question 15.1.
555 Non-confidential minutes of the telephone conference between the Commission and AIA on 13 March 2013, paragraph 17.

evolution of demand is subject to considerable uncertainty. Demand in the Greek domestic passenger air transport market is expected to remain low in the next two to three years.

10.2. The overall financial situations of Olympic and Marfin

10.2.1. The financial situation of Olympic

(658) Following the prohibition of the merger between Aegean and Olympic in January 2011 in *Olympic/Aegean I*, Olympic repositioned itself as a regional carrier and launched a turnaround plan.[556] Olympic thus contained its losses at EUR −38 million in 2011 (losses in 2010: EUR −81 million).[557]

(659) Marfin injected fresh capital into Olympic twice until the end of 2011 through a capital increase of EUR 40 million on 31 December 2009 and a further capital increase of EUR 120 million in July 2011.[558] As a result, at the end of 2011, Olympic had no bank debt.

(660) In 2012, Olympic took further measures to withstand the weakening Greek economy. It stopped serving several international routes (Athens–Amsterdam, Athens–Cairo and Thessaloniki–Tirana) and reduced frequencies on several large domestic routes due to decreased demand and lower yield (Athens–Chania, Athens–Heraklion, Athens–Rhodes and Athens–Thessaloniki).[559]

(661) In June 2012, Olympic received another capital increase of EUR 12.5 million from Marfin. Marfin also gave Olympic […]*. For 2012, Olympic accrued a negative net income of about EUR −17 million.[560] Marfin granted […]*[561] […]*.[562] […]*.

(662) The Financial Statements of Olympic for the financial year of 2012[563] show Olympic's total assets valued at EUR […]* million while its liabilities amounted to EUR […]* million (with long-term borrowing liabilities at EUR […]* million to suppliers and its parent company). Olympic's equity therefore stood at EUR […]* million at the end of 2012.[564]

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556 Olympic's response to RFI of 20 December 2012, page 14 and following.

557 Olympic's response to RFI of 20 December 2012, answer to question 16.

558 Olympic's response to RFI of 19 February 2013, answer to question 11.

559 Olympic's response to RFI of 23 January 2013, page 6.

560 Recurring net income after interest payments to minority shareholders according to Marfin's presentation on financial results for the full year 2012 of 2 April 2013, page 9; available at: <http://www marfininvestmentgroup.com/dm_documents/ MIG_Investor_Release_FY2012_hQBHe.pdf> (retrieved 30 May 2013). [Detailed description of Olympic's financial information]*; see Financial Statements of Olympic for the Financial Year 2012, page 6; Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013; Olympic's reply of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 6; Response to the Decision opening proceedings, paragraph 35.

561 Financial Statements of Olympic for the Financial Year 2012, page 5; Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

562 [Description of clauses of the Pre-SPA and implications for Aegean]*; Form CO, paragraph 14. See also the Response to the Decision opening proceedings, paragraphs 29–30.

563 Financial Statements of Olympic for the Financial Year 2012, page 1, Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

564 Financial Statements of Olympic for the Financial Year 2012, page 5; Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

(663) [Information on Olympic's assets]*.[565] [Information on Olympic's assets]*.[566] [Information on Olympic's assets]*.[567] [Information on Olympic's assets]*.[568]

(664) [Information on Olympic's assets]*[569]

(665) As concerns the remaining assets, Olympic reports net real assets of EUR […]* million at the end of 2012 which are composed of fixed assets (equipment and tools, EUR […]* million), guarantees (EUR […]* million), stock/inventory (EUR […]* million), receivables (EUR […]* million), other assets (EUR […]* million which notably include State VAT to be reimbursed by the Greek State of EUR […]*)[570] and unrestricted cash (EUR […]* million).[571]

(666) Moreover, from 31 December 2011 until 31 December 2012 Olympic's cash reserves fell from […]* million to […]* million.[572] Olympic submits that cash outflows amounted to EUR […]* million in 2012[573] (EUR […]* million (cash balance at the end of 2011) minus EUR […]* million (cash balance at the end of 2012) plus EUR […]* million (loan repayments) minus EUR […]* million (capital increase June 2012)).[574]

(667) At the end of 2012, Olympic's unrestricted cash amounted to EUR […]* million. Olympic expects unrestricted cash to be EUR […]* million by the end of 2013 (with considerable fluctuations during the year).[575]

(668) According to Olympic, [Reasons of Olympic's difficult financial situation]*.[576] [Reasons of Olympic's difficult financial situation]*.[577] [Reasons of Olympic's difficult financial situation]*.[578] Consequently, [Reasons of Olympic's difficult financial situation]*. According to Olympic's 2013–2015 business plan an overall amount of [Reasons of Olympic's difficult financial situation]*. Olympic explains

565 Financial Statements of Olympic for the Financial Year 2012, page 1, Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

566 Olympic's response of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 20.

567 See, in that sense, in particular articles 6.4 and 17 of the Licence Agreement.

568 See in particular Art. 13.2 a, b and d of the Licence Agreement.

569 Financial Statements of Olympic for the Financial Year 2012, page 1; Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

570 Statements by Marfin, paragraph 2. As of 30 June 2013 these VAT receivables amounted to EUR 7,587,166.72; Marfin's response to the Commission's RFI of 13 September 2013, answer to question 2.

571 Olympic's reply of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 4.

572 Financial Statements of Olympic for the Financial Year 2012, page 1, Email "M.6796 - AEGEAN / OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

573 Note that this calculation omits […]*; compare the Response to the Decision opening proceedings, paragraph 28.

574 Olympic's response of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 2.

575 Statements by Marfin, paragraph 3. Marfin's response to the Commission's RFI of 28 August 2013, answer to question 1; Olympic's response of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 3.

576 Olympic's response to RFI of 20 December 2012, answer to question 16; Response to the Decision opening proceedings, paragraph 27.

577 Email from Kostas Klitsakis to John Papagiotopoulos of 31 January 2013 entitled "FW: OLYMPIC AIR LIQUIDITY Nov-Dec 2012".

578 Statements by Marfin, paragraph 4; Marfin's response to the Commission's RFI of 4 September 2013, answer to question 6 (list of Olympic's cash collaterals).

that during the first quarter of 2013, [Reasons of Olympic's difficult financial situation]*.[579]

(669) In light of these data there can be little doubt that Olympic has so far only survived due to the continuous funding of its parent company Marfin and, more particularly, has not once been profitable since 2009 when Marfin re-launched the company without liabilities following the tender by the Greek government. Olympic will incur a loss in excess of EUR […]* million according to its current business plan also in 2013.

10.2.2. The financial situation of Marfin

(670) 2012 was a year of substantial financial losses for Marfin according to the company's financial annual report for 2012.[580] Marfin's net loss increased from EUR 415 million in 2011 to EUR 1 295 million in 2012.[581] Marfin attributes the bulk of the losses to the complete write-off of its investment in Cyprus Laiki Popular Bank (EUR 824 million) and other impairments, asset revaluations and losses from discontinued operations.[582]

(671) Marfin's EBITDA losses from continuing operations increased from EUR −46.4 million in 2011 to EUR −49.2 million in 2012. Marfin's net asset value stood at EUR 1 297.1 million in 2012 (compared to EUR 1 740.4 million at the end of 2011); the company had EUR 113.8 million left in cash reserves at the end of 2012 (EUR 148.7 million at the end of 2011). Out of the EUR 113.8 million EUR 92.8 million were restricted (meaning that it is serving as collateral or unavailable for some other reason).[583] Marfin's unrestricted cash therefore amounted to EUR 21 million.

(672) Overall, almost all of Marfin's subsidiaries continued to report losses in 2012 (except Flight Ambulance International and Sunce Bluesun).[584]

(673) At the end of 2012, Marfin's debt as a group exceeded its assets by approximately EUR 1 052.2 million.

(674) The certified accountants that audited Marfin's annual account for 2012 noted that Marfin's current financial situation indicated the existence of uncertainty regarding Marfin's ability to continue as a group by making the following statement in their report:[585] "*[…] Moreover, explanatory note 51.6 of the annual financial statements*

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579 Olympic's response of 31 May 2013 to the Commission's RFI of 24 May 2013, answer to question 5.

580 Annual Report according to Article 4 of Law 3556/2007 for the Financial Year from January 1st, 2012 to December 31st, 2012, <http://www marfininvestmentgroup.com/dm_documents/MIG_Notes_311212_En_BO8Hr.pdf> (retrieved 31 May 2013).

581 At Marfin's parent company level net loss stands at EUR […]* million in 2012 compared to EUR […]* million in 2011.

582 Press release of 29 March 2013 available at: <http://www marfininvestmentgroup.com/dm_documents/290313_PressRelease_FY2012_En_X8OB4.pdf> (retrieved 31 May 2013).

583 Annual Report according to Article 4 of Law 3556/2007 for the Financial Year from January 1st, 2012 to December 31st, 2012, page 124 <http://www marfininvestmentgroup.com/dm_documents/MIG_Notes_311212_En_BO8Hr.pdf> (retrieved 31 May 2013).

584 Marfin Investor Release Financial Results: Full Year 2012, pages 4 and 5, available at: http://www.marfininvestmentgroup.com/dm_documents/MIG_Investor_Release_FY2012_hQBHe.pdf (retrieved 11 June 2013).

585 Annual Report according to Article 4 of Law 3556/2007 for the Financial Year from January 1st, 2012 to December 31st, 2012, page 8 <http://www marfininvestmentgroup.com/dm_documents/MIG_Notes_311212_En_BO8Hr.pdf> (retrieved 31 May 2013).

makes reference to the fact that Group's current liabilities exceeded its current assets by approximately € 1.052,2 mil., a fact that may indicate the existence of uncertainty regarding Group's ability to continue as a going concern, which is dependent on existing borrowings restructuring. As stated in explanatory note 51.6, Group's Management has planned appropriate actions in order to enhance Group's financial position and going concern assumption. Our Opinion paragraph does not express any qualification regarding this issue."

(675) On 1 November 2011, Marfin announced that it would be launching an exercise for the issuance of convertible bond loans for up to EUR 660 301 281 in two tranches.[586] The first tranche of up to EUR 408 625 335 through the issuance of 408 625 335 common bonds with a nominal value of EUR 1.00 each, maturity of 6 years, annual coupon of 7% and Conversion Price of EUR 0.54 per share), was aimed at raising new capital. The second tranche for up to EUR 251 655 966 (through the issuance of 251 655 966 common bonds having a nominal value of EUR 1.00 each, maturity of 7 years, annual coupon of 6.3% and conversion price of EUR 0.99 per share) was intended to cover the roll-over of Marfin's outstanding convertible bond loans. The conditions attaching to the issuance of bonds were set in November 2011 and could not be changed anymore prior to May 2013 when the bond was issued to the market.[587] This second tranche does therefore not yield new or in any way additional capital for the group (although the nominal value of the second tranche exceeds the existing bond loans expiring in March 2015 by some EUR […]* million). This operation is to be completed by the end of 2013, depending on market conditions. Current shareholders were granted pre-emption and pre-subscription rights.[588] The pre-emption and pre-subscription rights exercise period was extended on 27 June 2013 until 26 July 2013[589] […]*. Interested new investors still have until December 2013 to purchase bonds if the deadline is not extended.[590]

(676) Although Marfin managed to extend the maturity of the bulk of its existing bond loans through sufficient subscriptions of the second tranche of the new bond issuance until 2020 (about 91.5% of existing bonds were extended leaving EUR 22 million unextended),[591] Marfin failed to raise significant new capital in the first tranche (only about EUR 3 million were subscribed to).

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586 Prospectus for the Public Offering and the Listing for Trading on the Athens Exchange of Bonds by Issuing a Convertible Bond Loan, < http://www.marfininvestmentgroup.com/Detail.aspx?amid= 12701http://www.marfininvestmentgroup.com/Detail.aspx?amid= 12701 > (retrieved 31 May 2013).

587 Statements by Marfin, paragraph 5; Marfin's response to the Commission's RFI of 4 September 2013, answer to question 3 including annexes.

588 Prospectus for the Public Offering and the Listing for Trading on the Athens Exchange of Bonds by Issuing a Convertible Bond Loan, < http://www.marfininvestmentgroup.com/Detail.aspx?amid= 12701 > (retrieved 31 May 2013), page 334.

589 Marfin Investment Group "ANNOUNCEMENT Extension to the pre-emption and pre-subscription rights exercise period" dated 27 June 2013.

590 Prospectus for the Public Offering and the Listing for Trading on the Athens Exchange of Bonds by Issuing a Convertible Bond Loan, < http://www.marfininvestmentgroup.com/Detail.aspx?amid= 12701 > (retrieved 31 May 2013), page 333.

591 Marfin's announcement on "Final subscription amount of Convertible Bond Loan ("CBL") issued by the Company", dated 29 July 2013, http://www.marfininvestmentgroup.com/dm_documents/MIG_Announcement_CBL_subscription_amount_ENG_290713_NBNIm.pdf (retrieved on 30 July 2013).

(677) The limited interest may be ascribed in particular to the fact that, on 31 May 2013 the Nicosia District Court issued interim orders against Messrs. Andreas Vgenopoulos, Efthimios Bouloutas, Kyriakos Magiras and Marfin Investment Group Holdings SA following the bankruptcy of Cyprus Laiki Bank in which Marfin had held a controlling stake. These orders were issued in the course of proceedings in the District Court of Nicosia, No. 8400/2012, and have been served on the persons referred to above. They consist of imperative orders for the global freezing of assets totalling EUR 3 790 million against Messrs Vgenopoulos and Bouloutas and EUR 1 500 million against Mr Magiras. They also include orders for the disclosure of all the assets of the three aforementioned individuals as well as orders prohibiting Marfin Investment Group Holdings SA from making any payment or transfer in favour of the three aforementioned individuals.[592] The central bank did not elaborate on the reason for the asset freeze. Marfin publicly rejected the legality of the court orders[593] and intends to take legal action.

(678) Whatever the outcome of any such legal disputes, the bankruptcy of Cyprus Laiki bank has not only resulted in high financial impairments by Marfin but also in significant uncertainties in the financial markets about the creditworthiness of Marfin […]*.

(679) On 29 August 2013, Marfin published its results for the first half of 2013. According to this financial report, Marfin recorded losses of EUR 208.8 million and its unrestricted cash reserves plunged to EUR 10.1 million. In an introductory remark to this report, Marfin's statutory auditors state:[594] "*We would like to draw your attention […] to the fact the Group is in discussions with financial institutions for the restructuring of existing borrowing liabilities. Moreover, […] the Group's current liabilities exceeded its current assets by approximately € 978.5 m., a fact that may indicate the existence of uncertainty regarding Group's ability to continue as a going concern, which is dependent on existing borrowings restructuring.*" As of 3 September 2013, Marfin's unrestricted cash has fallen further to below EUR 8 million.[595]

(680) The combination of the failed bond issue, which despite repeated prolongations of the subscription period only raised EUR 3 million of fresh capital, and the continued cash drain are likely to leave Marfin no choice but to revise its strategy *vis-à-vis* its subsidiaries. […]*.[596]

(681) Taking into account these findings, the Commission considers that Marfin is indeed, as argued by the Notifying Party, […]*.

10.3. The criteria of the failing firm analysis

(682) According to the Horizontal Merger Guidelines and the case law, the Commission may decide that an otherwise problematic merger is nevertheless compatible with the

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592 Central Bank of Cyprus, Media & Publications, http://www.centralbank.gov.cy/nqcontent.cfm?a_id=12823&lang=en (retrieved 11 June 2013).

593 Marfin's announcement on "Continuation of the legal dispute with the Republic of Cyprus", dated 31 May 2013, http://www.marfininvestmentgroup.com/dm_documents/MIG_Announcement_Legal_dispute_310513_ENG_gvtg1.pdf (retrieved 11 June 2013).

594 Marfin's six-month financial report for the period ended 30 June 2013, page 7.

595 Statements by Marfin, paragraph 6.

596 Statements by Marfin, paragraph 7. See section 0.

internal market if one of the merging parties is a failing firm. On the basis of those guidelines and the relevant case-law, the basic requirement is that the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger.[597] This will arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger.[598]

(683) According to the Horizontal Merger Guidelines and the relevant case law, three criteria are relevant in determining whether an entity is to be regarded as a "failing firm":

– First, 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 (first criterion of the failing firm analysis).

– Second, there is no less anti-competitive alternative purchase than the notified merger (second criterion of the failing firm analysis).

– Third, in the absence of a merger, the assets of the failing firm would inevitably exit the market (third criterion of the failing firm analysis).[599]

(684) It is for the notifying parties to provide in due time all the relevant information necessary to demonstrate that the expected deterioration of the competitive structure that follows the merger would not be caused by the merger.[600]

(685) In the present case, the additional question arises as to whether Olympic should be considered a failing firm or a failing division of Marfin, and what the consequences of such a qualification should be. In line with its findings in *Olympic/Aegean I*,[601] the Commission considers that Olympic should be assessed as a failing division of Marfin.

(686) In past cases, the legal status of the failing business has been of limited importance for its classification as a failing firm or a failing division.[602] Similarly, in the present case the question whether Olympic should be considered a failing division or failing

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597 Joined Cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraph 110; Horizontal Merger Guidelines, paragraph 89.

598 Joined Cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraph 114. See also Commission Decision in Case COMP/M.2314 – *BASF/Pantochim/Eurodiol*, recitals 157–160; Horizontal Merger Guidelines, paragraph 89.

599 Horizontal Merger Guidelines, paragraph 90. The inevitability of the assets of the failing firm leaving the market in question may, in particular in a case of merger to monopoly, underlie a finding that the market share of the failing firm would in any event accrue to the other merging party. See Joined Cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraphs 115–116.

600 Horizontal Merger Guidelines, paragraph 89.

601 Commission Decision of 26 January 2011 in Case COMP/M.5830 *Olympic/Aegean Airlines*, recital 1986. Also, in Case COMP/M.6447 *IAG/bmi* the Commission considered bmi to be a division of Lufthansa (paragraph 613 of the decision).

602 While in Case COMP/M.4381 *JCI/Fiamm* the problematic business constituted merely a division (without separate legal personality) of a wider legal person (company), in Cases COMP/M.993 *Bertelsmann/Kirch/Premiere*, *COMP/*M.2876 *NewsCorp/Telepiù*, and COMP/M.1221 *Rewe/Meinl* the problematic business constituted a separate legal person of a wider group of companies. Nevertheless, in all the above-mentioned cases the problematic business was qualified as a failing division.

firm depends not so much on Olympic's legal status, but rather on the *rationale* behind the concept of failing division.

(687) Olympic constitutes a failing division in the sense that it is sufficient to establish that Marfin would no longer be able to support Olympic. This would form part of the first criterion of the failing firm analysis, relating namely to the question of whether Olympic would be forced out of the market because of financial difficulties if not taken over by Aegean.

(688) By contrast, it does not also have to be established that Olympic would endanger the viability of the whole Marfin Group. Such an approach would not correspond to the *rationale* underlying the failing firm analysis, namely that because of the failure of the acquired company (and not necessarily of its parent) the competitive situation post-merger would not be worse than absent the merger.

(689) Nevertheless, even if the non-viability of the whole Marfin group does not have to be proven as such, it becomes apparent that Marfin's ability and incentive to support Olympic is conditioned by its own financial situation, and thus the latter must be taken into account when assessing the first criterion of the failing firm analysis.

(690) Furthermore, since Olympic forms part a group of companies controlled by Marfin, Olympic's financial results must be assessed by applying cost allocation rules that reflect Olympic's true economic costs and cannot be attributed to intra-group arrangements that would present Olympic more loss-making than it would be as an independent company. Finally, Marfin's decision to let Olympic “fail” must make sense for the group as a whole, namely Olympic's negative financial results need not be economically justified for Marfin by other benefits (if any) possibly brought by Olympic to the group.

(691) It is in the light of the foregoing considerations that the three criteria of the failing firm analysis raised by the Notifying Party on 24 August 2013 are assessed in the following sections.[603]

10.4. First criterion: 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

(692) To fulfil the first criterion, the Notifying Party is required to demonstrate that in the near future Olympic would be compelled to exit the market entirely because of financial difficulties, for example, as a result of having to file for bankruptcy, absent the takeover by Aegean.

10.4.1. The view of the Notifying Party

(693) In the course of the phase-II investigation the Notifying Party claimed that Olympic will discontinue its operations in the near future if the Transaction does not take place (if the merger is not declared compatible with the internal market) on the basis of the following arguments:

(a) the continued loss-making nature of Olympic as evidenced by its financial data and its forecasts for the next several years;

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603 It is noted that the following sections use indistinctively both terms "failing firm" and "failing division". The use of the term "failing firm" does not imply that Olympic is not a failing division of Marfin.

(b) Marfin's unwillingness and inability to support Olympic financially; and

(c) the cost-benefit analysis, which shows that Marfin has an economic incentive to close down Olympic rather than keeping it afloat despite any further restructuring or cost-cutting that Olympic might try, in vain, to achieve.

(694) As regards (a), the Notifying Party argues[604] that Olympic has been loss making since its inception in 2009 and has been supported by capital injections only from Marfin. Even under Olympic's own optimistic financial projections, it is clear that, in the absence of the Transaction, Olympic would continue to require external funding to continue its operations. Under each of its financial projections, it would cost Marfin more to keep Olympic afloat than to close it down.[605]

(695) The Notifying Party further submits that given that it will no longer receive financial support from Marfin, absent the Transaction Olympic would stop operating and as a result cease to be a competitor to Aegean. It argues that it makes no difference to the competitive assessment whether the Transaction goes forward or not because very soon Olympic will cease to be a competitive constraint to Aegean and the overlaps between the Parties, which have already dramatically decreased, will further decrease and eventually disappear.

(696) As regards (b) the Notifying Party argues that Marfin's [Aegean's view on Marfin's prospective financial developments]* (as shown by the failure of the recent convertible bond issuance); thus [Aegean's view on Marfin's prospective financial developments]*.

(697) Finally, as regards (c) the Notifying Party submits that, [Assessment of Marfin's financial options]*. As a result, Marfin has decided that it would no longer support Olympic.[606]

10.4.2. The Commission's assessment

(698) On the basis of the information gathered by the Commission also after the adoption of the SO, and taking into account the responses of the Parties and the information collected from them, the Commission will assess in the following paragraphs (i) Olympic's financial viability, (ii) the ability of Marfin to further support Olympic, and (iii) the costs for Marfin of shutting down Olympic and Marfin's strategic and financial incentives to further support Olympic.

10.4.2.1. The financial viability of Olympic

(699) As described in section 10.2.1, Olympic has always been a heavily loss-making company and has never recorded any profits. Olympic has continued operating solely due to its shareholder's substantial equity capital injections and shareholder loans. Overall Marfin has supported Olympic, since its acquisition in 2009, with some EUR 180 million since 2009.

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604 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, page 4 and following.

605 See section 0.

606 See section 0.

Olympic's restructuring efforts to date

(700) Since its launch in 2009, Olympic has shrunk considerably and reduced its aircraft fleet by one third. While Olympic had 23 aircraft in June 2012, it intends to reduce its number of operated aircraft to just 15 by September 2013.[607] The table below provides an overview.

Table 35: Olympic's operated aircraft by type

	Jun-12	Sep-13
A320	5	0
A319	3	1
DH4 (Q400)	10	10
DH8 (Q100)	5	4

Source: Olympic's response to the Commission's RFI of 24 May 2013

(701) At the same time, Olympic cut staff numbers. As is shown in the Table below, in March 2013, Olympic's headcount was […]*, which is a reduction of almost […]*% when compared to June 2012. Most of the staff reductions occurred in the departments related directly to the operation of the airline – crew, ground staff and call centres. Despite these cuts Olympic remains a loss-making company.

Table 36: Olympic's headcount

	JUNE 2012	MARCH 2013	DIFF. %
TOTAL HEADCOUNT	[…]*	[…]*	[…]*
CREW	[…]*	[…]*	[…]*
GROUND (incl. CATERING)/CALL	[…]*	[…]*	[…]*
TECHNICAL SUPPORT	[…]*	[…]*	[…]*
OTHER	[…]*	[…]*	[…]*

Source: Olympic's response to the Commission's RFI of 24 May 2013

(702) Olympic submits that the proportion of costs which are not directly related to flight activity amounted to approximately […]*% for 2012 and is estimated at […]*% in 2013 according to the business plan. By comparison, Aegean's own overhead costs amounted to […]*% in 2012. [608]

(703) In parallel, Olympic's passenger numbers and flights decreased substantially from 2012 to 2013. Overall, Olympic's passenger numbers on non-PSO domestic routes were 438 755 in the first quarter of 2012 and decreased to 294 345 in the first quarter of 2013, namely a drop of 33%.[609] Domestic traffic at AIA declined by more than 20% in the first quarter 2013 in comparison to the same period of 2012. At the same time, Olympic's domestic passenger numbers fell even more, namely by 29%.

607 [Information on the terms of Olympic's lease and sub-lease contracts]*

608 Response to the Decision opening proceedings, paragraph 48.

609 Olympic's response to the Commission's RFI of 24 May 2013, answer to question 14.

Table 37: Olympic's activity at AIA (Q1 of 2012 and 2013)

Flights	Q1 2012	Q1 2013	Diff. %
Domestic	4 270	3 448	−19.25%
International	1 010	607	−39.90%
Total	**5 280**	**4 055**	**−23.20%**

Passengers	Q1 2012	Q1 2013	Diff. %
Domestic	220 312	156 893	−28.79%
International	68 198	36 340	−46.71%
Total	**288 510**	**193 233**	**−33.02%**

Source: Olympic's response to the Commission's RFI of 24 May 2013

(704) During the proceedings, the Notifying Party affirmed that Olympic would be forced to exit further routes due to the fact that its turboprop aircraft were less competitive on "thick routes" (that is those with many passengers), the reason being a higher cost per seat of the turboprop compared to the jet when the jet is operated at a high load factor. Especially on the routes where Olympic was competing with Aegean's and Cyprus Airways' jet aircraft (Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes), Olympic would be forced to exit.

(705) Indeed, Olympic has meanwhile decided to exit from the three above-mentioned routes effective as of winter 2013/2014 due to their negative financial performance even after the exit of Cyprus Airways.

(706) [Olympic's future plans on specific routes]*.[610]

(707) However, despite the extreme shrinkage of the airline and the many exits, Olympic has not been able to become profitable and has only continued to generate losses.

(708) [Information on Olympic's financial difficulties]*.[611] [Information on Olympic's financial difficulties]*.[612]

(709) Finally, Olympic's losses cannot be attributed to intra-group arrangements that would present Olympic more loss-making than it would be as a stand-alone company. In order to explore whether Olympic's losses could be affected by transfer pricing to other entities that form part of Marfin, the Commission requested information on the share of costs represented by services offered by other subsidiaries of Marfin to Olympic and on their comparison to market prices. Such costs do not represent a significant share of Olympic's total costs and have been decreasing over time. In particular, Olympic's costs from intra-group suppliers accounted only for […]*%, […]*% and […]*% of its total operating expenses during 2011, 2012 and 2013 (first half) respectively. Furthermore, the greatest proportion of Olympic's intra-group

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610 Olympic OPCO meeting minutes of 12 July 2013.

611 Email from Kostas Klitsakis to Christophe Vivien of 16 November 2012 entitled "RE: OLYMPIC AIR LIQUIDITY Nov-Dec 2012 - OLYMPIC HANDLING CAPITAL INCREASE".

612 *"The 2013 budget is almost ready and we have the first indications that are: 2013 will be a heavily loss making year. During 2013 the company will require significant funding which for the time being is highly unsecured as to the funding sources mainly due to our shareholders liquidity squeeze and the banks inability to give loans since their recapitalization is yet not defined and without any visibility as to the timeframe";* email from Kostas Klitsakis to Dennis Malamatinas *et al*, of 2 November 2012 entitled "FW: YEAR 2013 Olympic Air BUDGET PROCESS INITIATION".

costs concerns […]*,[613] whose prices appear to be in line with average prices offered by competitors […]*.[614]

Olympic's business scenarios for the next three years

(710) During its in-depth investigation, the Commission investigated whether Olympic could restructure its operations and shrink to a point that it may become profitable, that is by exiting additional loss making commercial routes. Olympic asserted in this [Olympic's views on its restructuring under potential and existing contractual obligations]*.[615]

(711) The Commission then requested Olympic to assess its profitability going forward under three possible restructuring scenarios, namely:

(a) a scenario in which Olympic continues operations at current size, i.e. the currently operated routes minus Athens–Thessaloniki, Athens–Heraklion and Athens–Rhodes ("Scenario A");

(b) a scenario in which Olympic gradually shrinks and operates only its 15 PSO routes plus the […]* routes Athens–Mykonos, Athens–Santorini, Athens–Chios and Athens–Samos, ("Scenario B"); and

(c) an intermediate scenario between Scenario A and Scenario B that Olympic would deem commercially reasonable; Olympic presented a scenario whereby Olympic operates its 15 PSO routes but discontinues Athens–Tirana/Bucharest/Istanbul/Belgrade (January 2014), Athens–Kefalonia/Ioannina/Kavala/Limnos, (October 2014) and Athens–Chania (October 2015), ("Scenario C").

(712) Olympic's business scenarios[616] differ from Olympic's current business plan by evaluating further route exits (except Scenario A) and aircraft redeliveries. Olympic replied that under all three scenarios "*Olympic Air would need external financial support in order to continue operating. Absent such support, the company would not be viable*".

(713) It is noteworthy that under Scenario B pursuant to which Olympic would exit most overlap routes and would return the highest number of aircraft creates the most funding requirements (in the best case EUR […]* million until 2016 vs. […]* million in Scenario A encompassing no further route exits or aircraft redeliveries except the ones already announced). Olympic explained that this is due to [Reasons of high funding requirements under scenario B]*.[617]

(714) The Commission furthermore asked Olympic if there was another scenario under which Olympic would not be loss-making or in which its losses would be less than in Scenarios A to C.

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[613] Specifically, […]*%, […]*% and […]*% of Olympic's total operating expenses during 2011, 2012 and 2013 (first half) respectively.

[614] Statements by Marfin, paragraph 8. See Marfin's response to the Commission's RFI of 4 September 2013, answer to question 8 and respective Annexes.

[615] Olympic's response to the Commission's RFI of 24 May 2013, answer to question 19.

[616] Olympic's response to the Commission's RFI of 10 July 2013.

[617] Olympic's response to the Commission's RFI of 10 July 2013.

(715) Olympic replied that Scenarios A to C were based on the current company structure, Olympic's way of doing business and its existing contracts. Olympic submitted that "[Olympic's views on more specific aspects under restructuring scenario D]*." [618]

(716) Such a restructuring scenario, called Scenario D, would consist of two pillars according to Olympic:[619]

- [Parameters of Olympic's restructuring under scenario D]*
- Cost cutting initiatives which include in particular renegotiations with suppliers to ensure Olympic's survival:
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*;
  - [Parameters of Olympic's restructuring under scenario D]*.

(717) Scenario D would result in an overall cash flow deficit of EUR […]* million until 2016 (if PSO routes are included in Olympic's business in 2016).[620] Olympic's cash flow deficits do not contain any interest payments to Marfin for the shareholder loans it has granted to Olympic (these payments would add another EUR […]* million annually to the figures below).[621]

(718) In an email of 30 August 2013,[622] Marfin explained that Olympic's cash flow deficits would necessitate the following total amounts[623] of new shareholder loans for the four discussed scenarios:[624]

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[618] Olympic's response to the Commission's RFI of 22 July 2013.

[619] Olympic's response to the Commission's RFI of 22 July 2013.

[620] The Notifying Party estimates that between 2014 and 2018, Scenario A would imply a total funding requirement of EUR […]* million, Scenario B EUR […]* million, Scenario C EUR […]* million, and Scenario D EUR […]* million. However, Scenario D, under which the annual and cumulative funding requirements are lower, ignores the seasonality of the airline industry and the fact that Olympic will need extra funding to bridge the winter season according to the Notifying Party; Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraph 36.

[621] Statements by Marfin, paragraph 9; Marfin's response to the Commission's RFI of 4 September 2013, answer to question 9.

[622] Marfin notes that *"[Marfin's statement on Olympic's cash and debt balance – 2014]*";* Statements by Marfin, paragraph 11; Marfin's response to the Commission's RFI of 28 August 2013, answer to question 1.

[623] In late 2012, Olympic's funding requirements for 2012 and 2013 were estimated to amount to about EUR […]* million. These funding requirements seem therefore to be of a similar order of magnitude as the funding requirements put forth in the four business scenarios; Statements by Marfin, paragraph 12; Email from Thimios Bouloutas to Joseph Iskander of 11 September 2012 entitled "RE: OA Queris".

[624] Statements by Marfin, paragraph 10; Email from G. Koulouris of 30 August 2013, Annex - Q1_Aug28.

Table 38: Total funding requirements of Olympic (2014–2016)

in EUR	*2014*	*2015*	*2016 including PSO*	*Total*
Scenario A	[…]*	[…]*	[…]*	[…]*
Scenario B	[…]*	[…]*	[…]*	[…]*
Scenario C	[…]*	[…]*	[…]*	[…]*
Scenario D	[…]*	-	[…]*	[…]*

Source: Email from G. Koulouris of 30 August 2013, Annex - Q1_Aug28 [ID 3371].

(719) Under Scenario D, Olympic's cash flow funding requirements […]*. Due to significant seasonal fluctuations caused by the usually weak business during winter Olympic will have a cash need at that time amounting to EUR […]* million. Similarly, Scenario A presents a cash flow funding requirement of EUR […]* million at the end of May 2014.[625] See Figure 11 and Figure 12 below for more detail.

Figure 11: Short term cash flow funding requirements under <u>Scenario D</u>

[…]*

Source: Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenario D.

Figure 12: Short term cash flow funding requirements under <u>Scenario A</u>

[…]*

Source: Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenario A.

(720) Scenarios A and D, as the two least loss-making scenarios, were subsequently audited by Grant Thornton, an auditing firm. With regard to these scenarios, Grant Thornton stated that their assumptions provide a reasonable basis for the projections made under these scenarios and that these projections have been properly prepared in accordance with International Financial Reporting Standards. Moreover, the model used under these scenarios is coherent with Olympic's previous models and its historical information, according to Grant Thornton.[626]

(721) Grant Thornton also notes that these business scenarios contain a number of uncertainties such as hypothetical assumptions regarding negotiations with various parties and main contractors which have not commenced yet, a fixed currency exchange rate of 1.3 EUR/USD, a constant fuel price or VAT receivables from the Greek state.[627]

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[625] Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenarios A and D.

[626] Statements by Marfin, paragraph 13; Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenarios A and D.

[627] Statements by Marfin, paragraph 14.

(722) Although Scenario D would cause the company fewer absolute losses than Scenarios A to C, it is very unclear whether Olympic would be capable of implementing it. Olympic also notes that this scenario is based on a fundamental shift of Olympic's business model. Not only would Olympic need time to implement such drastic changes, but moreover any delay would further increase the costs given that Olympic cannot switch from one day to another to a different business model but would need in-depth restructuring including the renegotiation with suppliers, the adaptation of its systems, the adjustment of the size of its operations, etc.

(723) More specifically, Scenario D is based on a number of unrealistic assumptions. Although certain of the optimistic assumptions under Scenario D are also made under the other three scenarios, the level of unrealistic assumptions under Scenario D renders it an implausible way forward for Olympic. [Marfin's assessment of Scenario D]*[628] [Marfin's assessment of Scenario D]*. These high risks and their substantial impact on Olympic's costs and funding requirements were also highlighted by Olympic's auditors, Grant Thornton. In particular:

(a) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(b) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(c) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(d) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(e) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(f) [Assumptions under scenario D as highlighted by Olympic's auditors]*.

(g) [Assumptions under scenario D as highlighted by Olympic's auditors]*.[629]

(h) [Assumptions under scenario D as highlighted by Olympic's auditors]*.[630]

(i) [Assumptions under scenario D as highlighted by Olympic's auditors]*.[631]

(j) [Assumptions under scenario D as highlighted by Olympic's auditors]*.[632] [Assumptions under scenario D as highlighted by Olympic's auditors]*.[633]

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628 Statements by Marfin, paragraph 18; Marfin's response to the Commission's RFI of 14 August 2014, page 1 and following.

629 Statements by Marfin, paragraph 15; Olympic's "American Express Card Agreement 30_09_2009", clause 6 of section Tier 2 Trigger Event (page 8); Marfin's response to the Commission's RFI of 13 September 2013, answer to question 4; Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenario A, page 5.

630 In relation to extraordinary maintenance events occurred in the past 12 months, Marfin submitted a list of such events exceeding USD […]* million in value noting that there were numerous other events with lower value: ([…]*; Statements by Marfin, paragraph 16; Marfin's response to the Commission's RFI of 13 September 2013, answer to question 5.

631 Statements by Marfin, paragraph 17; Marfin's response to the Commission's RFI of 13 September 2013, answer to question 2.

632 European Commission, Second Economic Adjustment Programme for Greece, Third Review, July 2013, page 120.

633 Moreover, at the airport of Paros a longer runway is currently being constructed which may lead to Paros being dropped from the list of PSO routes in the future; http://www.intrakat.gr/en/news/press-releases/signature-of-the-contract-for-the-new-paros-airport/ (retrieved on 6 September 2013). The Athens–Paros PSO subsidy currently accounts for EUR 4.2m annually, which corresponds to 14.4% of the total PSO subsidies received by Olympic Air annually; Marfin's response to the Commission's RFI of 4 September 2013, answer to question 5.

(724) In the light thereof, there is a very high risk that some of the abovementioned assumptions of Scenario D would fail to materialise.

(725) Thus, it is highly likely that the funding requirements under Scenario D would become higher than the currently projected funding requirements under that scenario. If anything, Scenario D merely demonstrates that, even under extremely unrealistic assumptions in favour of Olympic, the airline would remain loss-making in the near-future.

(726) The Commission understands that no specific steps have been undertaken to implement Scenario D and that Olympic for the moment continues operating essentially in accordance with its current business plan which closely resembles Scenario A. This is further evidenced by the fact that Olympic currently does not envisage any more exits on domestic overlap routes, […]*. There is no evidence that Olympic would base its future strategy on Scenario D.

(727) Indeed, when the Commission inquired about the far-reaching and very optimistic assumptions underlying Scenario D, Marfin replied as follows:[634] "[…]*"

(728) Moreover, the termination of Olympic's PSO licences in 2016 and the existing aircraft leases make a scenario of Olympic as a mere PSO operator with few additional routes improbable in the short term. All costs of downsizing would have to be amortised until 2016 when Olympic's PSO licenses expire. This is due to the fact that Olympic cannot be certain that it would be operating a sufficient number of PSO routes following the expiry of the licences in 2016. As of now it is neither clear that the Greek State would retender these licences in 2016, nor that Olympic would be successful in bidding for them. In view of Olympic's current state and its past losses, the Commission considers it unlikely that Olympic would be able to recoup the costs of downsizing until 2016. Therefore Scenario A is considered the more likely projection because it does not solely rely on PSO routes with uncertain prospects following their expiry in 2016.

(729) Some (but not all) of the optimistic assumptions of Scenario D are also present in Scenario A, which implies that funding requirements and losses could become even greater. These optimistic assumptions of Scenario A include […]*, a favourable EUR/USD exchange rate, relatively low fuel prices, the PSO projections post-2016 and non-PSO revenues on domestic routes.[635]

(730) Concerning the assumption that an amount of […]* should be reserved at any time as minimum required cash, Grant Thornton notes:[636] "[…]*."

(731) Furthermore, Grant Thornton states that under Scenario A,[637] "*Management has made an assumption that revenues (other than those derived from PSO subsidies) will remain stable for the years 2015 & 2016. Given the current economic condition in Greece and the contraction of OA operations, this assumption is considered to be rather optimistic*."

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[634] Statements by Marfin, paragraph 19; Marfin's response to the Commission's RFI of 22 August 2013, answer to question 5.

[635] See recital (723).

[636] Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenarios A and D; page 5, point 10.

[637] Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenarios A; page 5, point 8.

(732) Finally, Grant Thornton states with regard to the overall business outlook of Olympic:[638] "*According to management and the assumptions used, this prospective financial information indicates that the company would need external funding by 2014 and also in 2015 and 2016 in order to be able to continue its activities and remain viable. Taking into account that* [the assumptions made] *could significantly affect, independently or in combination, prospective financial information outcome, we note that the need for external funding could occur sooner rather than later as it is presented in the model. In case OA fails to receive external funding, management's going concern assumption will be in doubt.*"

(733) The Notifying Party also considers[639] that all four scenarios are too optimistic in particular because they do not seem to take into account the consistent and continuous decline of revenues per route due to the economic crisis and they substantially overestimate the number of PSO routes and the level of subsidies that HCAA will award and the number of PSO routes that Olympic can reasonably win post-2016. These issues will, according to the Notifying Party, cause substantial deterioration of the projected results and will therefore increase the projected cash needs far beyond the ones estimated in the submitted scenarios by Olympic.

(734) However, it is not necessary to assess individually whether the potentially exacerbating factors that the Notifying Party quotes really increase the risk of further funding needs. This is because it can already be regarded as sufficiently established in light of the observations made by Grant Thornton that the various business scenarios rely on the simultaneous realisation of many optimistic assumptions. The Commission understands that the various business scenarios outline minimum funding requirements which may further increase, should any of the assumptions change to the detriment of Olympic.

(735) Furthermore, regardless of whether Olympic follows Scenario A or D, it will face short term funding needs in […]* of EUR […]* to […]* million which Olympic will itself in all likelihood not be able to meet without the support from its sole shareholder.

(736) The Commission therefore considers that, based also on the information collected post-SO, it is very likely that Olympic will need further funding of at least[640] EUR […]* million in the coming three years until 2016.[641] Olympic's short term funding needs will likely peak in […]* already with requirements of about EUR […]* million.[642]

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[638] Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenarios A; page 6, point 11.

[639] Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraph 37.

[640] The amount of EUR […]* million is considered as Olympic's minimum funding requirements until 2016 given that Scenario A is based on a number of optimistic assumptions, which (if not materialised) could significantly increase the currently projected funding requirements.

[641] See total funding requirements under Scenario A in Table 38 of the present Decision.

[642] Grant Thornton review on Olympic Air projective financial information for the forthcoming 18 months Scenario A.

10.4.2.2. Marfin's new strategy for Olympic

(737) In the SO, the Commission took the preliminary view that the evidence submitted at that stage was insufficient to conclude that Marfin did not have the financial means to support Olympic for the following reasons:[643] "*First of all, Marfin itself states that it will continue to support Olympic unless unforeseen circumstances should arise. Second, Marfin is in the process of raising fresh capital through the issuing of convertible bonds. While the extension of the subscription period for the bond issuance can be taken as a sign of very little interest among shareholders to further support Marfin with fresh money, the Commission does not have sufficient evidence to conclude that the capital ultimately raised would be insufficient to meet Olympic's expenses. Third, Olympic's estimated financial needs of approximately a further EUR* […]* *do not seem to be out of reach for Marfin* […]*."

(738) However, following the adoption of the SO, the Commission gathered new evidence that changed the Commission's assessment of Marfin's ability and incentive to support Olympic. This evidence led the Notifying Party, in line with the position of Marfin, to state that "*Marfin simply cannot and is unwilling to support Olympic*".[644] To underpin this statement, Marfin addressed a letter to the Commission's Vice-President Joaquín Almunia signed by CEO Mr Bouloutas and by deputy CEO Mr Koulouris declaring that "*in the presence of a need of any external funding for Olympic Air, permanently ceasing operations will become the only possible alternative for Olympic Air. Moreover, all the scenarios audited by external auditors and submitted to DG Comp on the possible evolution of Olympic Air's profitability and capital needs show a continuation of losses and a requirement of further capital support despite the continuous aggressive downsizing of the company and its activity. Consequently, it is clear that absent the transaction Olympic Air will indeed have to permanently cease operations and enter into liquidation as per the provisions of Law 2190/1920 (Company Law).*"[645]

(739) In fact, in the light of the newly acquired evidence, none of the above-cited three reasons stated in the SO is valid anymore. This is discussed in sections 10.4.2.3 to 10.4.2.5 of the present Decision.

10.4.2.3. Marfin's inability to support Olympic

(740) Marfin's statements in recital (735) of the present Decision are confirmed by the facts in the file which demonstrate, that Marfin lacks the ability to continue funding Olympic. After the failure of its bond issuance which yielded only EUR 3.1 million of fresh capital, Marfin is in a difficult financial situation […]*.

(741) [Assessment of Marfin's financial situation]*. As has been established in section 10.4.2.1, Olympic has short term cash flow funding needs of about EUR […]* to […]* million until […]*. It may need more cash earlier […]*. [Assessment of Marfin's financial situation]*, as will be discussed in the following sections.

643 SO, paragraphs 161 and following.

644 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraphs 12 and following.

645 Statements by Marfin, paragraph 20; Letter sent on 3 September 2013 to Vice-President Joaquín Almunia signed by CEO Mr Bouloutas and by deputy CEO Mr Koulouris and titled "Case M.6796 - *Aegean/Olympic II*".

(742) [Assessment of Marfin's financial situation]*.[646]

(743) Even assuming that Marfin would be able to obtain an amount of cash [Assessment of Marfin's financial situation]*. As will be explained below when discussing the situation of Marfin's other core subsidiaries, it is reasonable to assume that in view of its generally worse performance and perspectives than the other core-subsidiaries, Olympic does not appear to be among the core subsidiaries that Marfin would most likely continue supporting with its limited funds.[647]

Financial requirements of Marfin as a holding company

(744) Marfin as a holding company (hereinafter referred to as "Marfin Holding")[648] was left with unrestricted cash reserves of approximately EUR […]* in June 2013.[649] According to Marfin, [Assessment of Marfin's financial situation]*.[650]

(745) [Assessment of Marfin's financial situation]*.[651]

(746) [Assessment of Marfin's financial situation]*.[652]

(747) [Assessment of Marfin's financial situation]*[653] [Assessment of Marfin's financial situation]*.

Refinancing possibilities

(748) Marfin estimates that its liabilities as a group currently [Assessment of Marfin's financial situation]*. Its net debt amounts to EUR […]*, which is owed mainly to [Assessment of Marfin's financial situation]*. Against the background of the economic crisis and the currently illiquid Greek banking sector, [Assessment of Marfin's financial situation]*.[654]

(749) [Assessment of Marfin's financial situation]*[655] [Assessment of Marfin's financial situation]*.[656]

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646 Statements by Marfin, paragraph 21; Marfin's response to the RFI of 3 September 2013, answer to question 1 including annex of cross collateralisations.

647 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraphs 23 and following.

648 For the avoidance of confusion with Marfin, which in the present Decision refers to the whole group.

649 Statements by Marfin, paragraph 22; submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraphs 14–15; Marfin's presentation to DG COMP of 4 September 2013, page 5.

650 Statements by Marfin, paragraph 22; Marfin's response to the Commission's RFI of 13 September 2013 (email from George Koulouris of 13 September 2013, sent at 19:22).

651 Statements by Marfin, paragraph 23; Marfin's presentation to DG COMP of 4 September 2013, page 20; Marfin's response to the RFI of 4 September 2013, answer to question 2 and Annex "Q2 – MIG and core debt repayments".

652 Statements by Marfin, paragraph 24; Marfin's presentation to DG COMP of 4 September 2013, page 20; Marfin's response to the RFI of 4 September 2013, answer to question 2 and Annex "Q2 – MIG and core debt repayments".

653 [Assessment of Marfin's financial situation]*

654 Statements by Marfin, paragraph 25; Marfin's presentation to DG COMP of 4 September 2013, page 22.

655 Statements by Marfin, paragraph 26 and 27. See also Marfin's response to the RFI of 4 September 2013, answer to question 6 concerning the […]*. However, it is noted [Assessment of Marfin's financial situation]*.

656 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraph 16b.

(750) The EUR […]* million that Marfin could collect on the basis of the most optimistic assumptions in the next […]* years are less than the minimum of EUR […]* million [Assessment of Marfin's financial situation]*. If the EUR […]* million of minimum financial support for 2014 to Marfin's […]* core subsidiaries are added, the difficult financial situation of the group becomes even more evident.[657]

Conclusion on Marfin's inability to support Olympic

(751) In the light of the above considerations and taking into account Marfin's most recent business plans, the Commission concludes that Marfin is most likely not able to continue financing Olympic.

10.4.2.4. Marfin's lack of strategic incentives to support Olympic

(752) As will be established in the following paragraphs, Marfin has no incentive to keep funding Olympic any further because any investment in Olympic is unreasonable from a business perspective, and also because Marfin's other subsidiaries equally have funding requirements but seem to offer much better investment opportunities than Olympic.

The prospects of funding Olympic further

(753) As Olympic is not in a position to continue operating without Marfin's support according to all possible business plans,[658] any decision to keep it afloat would result in additional financing requirements to be borne by Marfin Holding. Satisfying these requirements does not appear possible without jeopardising […]* and thus would not make economic sense for Marfin. According to the audited business plans for 2014–2016 which were presented above, and under various scenarios relating to the company's structure (from *status quo* to significant restructuring and downsizing), Olympic would require up to an estimated additional EUR […]* million in the next […]* to remain functioning; this amount would have to be withheld from other divisions in order to be diverted to the rescue of Olympic ([Assessment of Marfin's financial situation]*).[659] [Assessment of Marfin's financial situation]*.

(754) Furthermore, a decision to continue supporting Olympic could have a hampering effect on Marfin's attempts at debt restructuring. [Assessment of Marfin's financial situation]*,[660] [Assessment of Marfin's financial situation]*.

(755) Apart from the fact that Olympic has been heavily loss-making over the last several years and is unlikely to become profitable in the near future, the uncertainty about the PSO routes is another disincentive from keeping Olympic operating. Olympic's PSO contracts will expire in 2016. In the last few years, the profitability of the PSO routes has already not been sufficient to outweigh the losses on the commercial routes and to make Olympic a profitable company. It is uncertain whether Olympic will be able to obtain PSO routes in the new tender for operations from 2016 onwards and whether PSO routes would offer significant revenues given that the Greek government has committed to reducing PSO expenditure in the coming

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657 Statements by Marfin, paragraph 28.
658 Olympic's response to the Commission's RFI of 10 July 2013.
659 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraph 24.
660 Statements by Marfin, paragraph 29; Marfin's response to the Commission's RFI of 4 September 2013.

years.[661] Hence, the expected commercial value of Olympic is likely to decrease the closer the expiry date of the PSO routes is. [Assessment of the sale of Olympic]*.[662]

(756) Furthermore, Marfin does not expect any benefit from supporting Olympic even in case it were to keep Olympic afloat only for the purpose of selling it in a few years' time; in particular in order to take advantage of the value of the brand.[663] In view of Olympic's tense economic situation, there seems to be no prospect of finding an acquirer even in a few years' time. The Commission's market investigation demonstrates that, except for Aegean, there has been no other substantiated interest in acquiring Olympic. [Assessment of the sale of Olympic]*.[664] Equally, competitors expressed no substantiated interest in acquiring the brand. As confirmed in the same email, Marfin informed its shareholder that it has "*actively*" explored other European airlines as well but that "*there is no tangible interest by any of the other European airlines, regional or global*". [665]

(757) In addition, not only in a scenario where Olympic would be involved in bankruptcy, insolvency or similar proceedings, but also in a scenario where it would simply discontinue operations (without being involved in bankruptcy, insolvency or similar proceedings), the brand, which represents one of the main reasons why there may be interest in the acquisition of Olympic, could be immediately taken back by the Greek State according to the Trademark License Agreement.[666] Hence, it would not be commercially reasonable to discontinue operations, but still keep Olympic as a shell company with the intention of benefitting from the value of the brand when selling Olympic in a few years' time. The trademark would still in all likelihood return to the Greek State in this scenario.

Prospects of Marfin's core subsidiaries

(758) Once the needs of Marfin Holding would be covered, Marfin would likely prioritise its resources towards the financing requirements of […]* subsidiaries: […]*. All these […]* divisions are currently loss-making [Assessment of Marfin's financial

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661 As concerns the PSO subsidies, it is stated in the Supplemental Memorandum of Understanding between the European Commission and the Hellenic Republic that *"in the transportation sector, we will […] streamline public service obligations (PSO) for regional flights to bring down costs (i.e., reducing frequency in the winter and removing PSO in the tourist season when existing contracts expire) (October 2013)"* (European Commission, Second Economic Adjustment Programme for Greece, Third Review, July 2013, page 120). Moreover, at the airport of Paros a longer runway is currently being constructed which may lead to Paros being dropped from the list of PSO routes in the future; http://www.intrakat.gr/en/news/press-releases/signature-of-the-contract-for-the-new-paros-airport/ (retrieved on 6 September 2013). The Athens–Paros PSO subsidy currently accounts for EUR 4.2 million annually, which corresponds to 14.4% of the total PSO subsidies received by Olympic Air annually. See Marfin's response to the Commission's RFI of 4 September 2013, answer to question 5.

662 Statements by Marfin, paragraph 30; email from Thimios Bouloutas to Joseph Iskander of 11 September 2012 entitled "RE: OA Queries".

663 Statements by Marfin, paragraph 31; Marfin's response to the Commission's RFI of 3 September 2013 in view of the meeting with DG COMP on 4 September 2013, answer to question 1d.

664 Statements by Marfin, paragraph 32. See section 0 of this Decision. The absence of interested purchasers (other than Aegean) for Olympic is also demonstrated by the email from Thimios Bouloutas to Joseph Iskander of 11 September 2012 entitled "RE: OA Queries"

665 Statements by Marfin, paragraph 33. See also section 0 of this Decision.

666 Only if Olympic continues to provide air travel services without using the Olympic brand could Olympic keep the brand without expressly using it for three more years according to the Licence Agreement; see paragraph (821) of this Decision.

situation]*.[667] According to Marfin, a decision to divest any of these divisions would entail significant opportunity costs [Assessment of Marfin's financial situation]*.[668] Indeed, according to Marfin's business plan, these companies constitute its core subsidiaries and will continue to be supported by the parent company, as they are market leaders in their respective sector, have growth and profitability prospects, significant asset base and international exposure. Moreover, they have no history of substantial additional cash support by Marfin in the previous years.[669]

(759) More concretely, Vivartia is one of the leading diversified food companies in Greece and South East Europe [Assessment of Marfin's financial situation]*.[670]

(760) Attica Group is among the leading passenger ferry operators in the Eastern Mediterranean with a fleet of […]* ferries having a net bookvalue of EUR […] million in 2013 and […]* employees. [Assessment of Marfin's financial situation]*.[671]

(761) The next core subsidiary is Hygeia Group, the largest hospital group in Greece with […]* employees. [Assessment of Marfin's financial situation]*.[672]

(762) […]* is Singular Logic, leader in the Greek business software market […]*.[Assessment of Marfin's financial situation]*.[673] [Assessment of Marfin's financial situation]*.[674]

(763) Overall, the abovementioned […]* subsidiaries of Marfin account for […]*% of the group's sales, are leaders in their markets and are expected […]*. By contrast, Olympic has no tangible or valuable assets,[675] it is gradually shrinking its operations and it is not expected to return to profitability in the foreseeable future, even on the basis of extremely optimistic assumptions.[676]

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667 Statements by Marfin, paragraph 34; Marfin's presentation to DG COMP of 4 September 2013, p. 12, 14, 16, 18.

668 Statements by Marfin, paragraph 34; Marfin's response to the RFI of 3 September 2013 in view of the meeting with DG Comp on 4 September 2013, answer to question 1d.

669 Statements by Marfin, paragraph 34; Marfin's presentation to DG COMP of 4 September 2013, page 7; submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraph 16c.

670 Statements by Marfin, paragraph 35; Marfin's presentation to DG COMP of 4 September 2013, pages 11–12.

671 Statements by Marfin, paragraph 36; Marfin's presentation to DG COMP of 4 September 2013, pages 13–14.

672 Statements by Marfin, paragraph 37; Marfin's presentation to DG COMP of 4 September 2013, pages 15–16.

673 According to the Task Force for Greece's Quarterly Report of April 2013, *"The Greek Authorities have initiated a process to finalize a new version of their ICT/e-Government strategy. This strategy, setting out the major priorities of the government in terms of IT infrastructure and services and encompassing an implementation plan, should soon be presented, and discussed during a dedicated workshop with the principal stakeholders in the Greek Administration"*, page 28, http://ec.europa.eu/commission_2010-2014/president/pdf/qr4_en.pdf (retrieved on 13 September 2013). [Assessment of Marfin's financial situation]*; Statements by Marfin, paragraph 39; Marfin's response to the Commission's RFI of 13 September 2013, answer to question 3. [Assessment of Marfin's financial situation]*.

674 Statements by Marfin, paragraph 38; Marfin's presentation to DG COMP of 4 September 2013, pages 17–18.

675 Except for the Olympic brand, which however belongs to the Greek State and neither Marfin nor Olympic can dispose of it.

676 Statements by Marfin, paragraph 40. See section 0 of this Decision.

Conclusion on Marfin's strategic incentives to support Olympic

(764) In the light of the above considerations, the Commission concludes that Marfin would most likely have no strategic incentive to continue financing Olympic.

10.4.2.5. Marfin's lack of financial incentives to support Olympic

Relevant benchmarks

(765) The Notifying Party essentially argues that the costs of shutting down Olympic are much lower than the costs of keeping Olympic afloat under all plausible business scenarios.[677]

(766) According to the Notifying Party, Marfin will disregard past investments in its decision to stop funding Olympic because, according to standard economic principles, sunk costs represent cash that was already spent and should not affect future investment decisions. A rational investor should only consider the future returns of its investment decision against its future cash costs, and not the value of past investments. The investor would also consider the opportunity costs, especially in case of limited resources. According to the Notifying Party, Marfin will only compare future costs of keeping Olympic afloat with the actual cost of shutting it down.

(767) Furthermore, the Notifying Party notes that the potential exit costs, borne by Olympic in the event of its failure, should not be confused with costs that Marfin would incur in this event. For instance, the impairment of the brand, potential severance payments, as well as Olympic's bank guarantees concerning the operation of PSO routes would not burden Marfin in the event of Olympic's bankruptcy. Their effect is limited to Olympic according to the Notifying Party.

(768) The Commission considers that although in the present case Marfin has already invested substantial amounts of money into Olympic, Marfin cannot indefinitely cover Olympic's losses if the airline has no prospects of profitability in the foreseeable future. A rational investor would take into account the future returns of any investment necessary to save Olympic and would disregard past investments as sunk costs. In order to decide whether to continue financing Olympic or closing it down going forward, Marfin would compare the expected future returns of the two options. Any past investments in Olympic which are not recoverable in the future will rationally not affect that decision. Likewise the Commission also considers that for Marfin only its own exit costs matter and not the costs that would accrue to Olympic.

(769) However, the Commission considers that if exit costs were prohibitively high for Marfin, it would seem to be less likely that Marfin would cease its support of Olympic even if there were no or limited future returns on its investment. Therefore it will be necessary to compare Olympic's future funding needs and any possible returns which those might yield with Marfin's costs of exit from its investment in Olympic.

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[677] Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraphs 48 and following.

The view of the Notifying Party

(770) The Notifying Party expects[678] that Marfin would not incur any additional direct cash outflows in the near future if Olympic were to shut down. [Aegean's views on Marfin's cash outflows]*. Most importantly, the Notifying Party notes, [Aegean's views on Marfin's cash outflows]*. Each of these suppliers would have to take separate court actions, invest considerable time and money into the proceedings, obtain a positive decision, and then attempt to obtain payment of any court-awarded claims from Marfin's balance sheet.

(771) The Notifying Party points out that all Olympic's scenarios are based on the assumption that [Assumption of Olympic's restructuring scenarios]*.

(772) [Information on Olympic's and Marfin's guarantees]*.

(773) Finally, Olympic currently leases 14 aircraft from Nordic Aviation Capital ("NAC") – four Dash 8 Q100 and ten Q400. [Agreements between NAC and Marfin]*.[679]

(774) [Aegean's views on the agreements between NAC and Marfin on exit costs]*.

(775) [Aegean's views on the agreements between NAC and Marfin on exit costs]*.

(776) [Aegean's views on the agreements between NAC and Marfin on exit costs]*.

(777) [Aegean's views on the agreements between NAC and Marfin on exit costs]*

(778) [Aegean's views on the agreements between NAC and Marfin on exit costs]*

(779) [Aegean's views on the agreements between NAC and Marfin on exit costs]*

(780) [Aegean's views on the agreements between NAC and Marfin on exit costs]*

(781) The Notifying Party has submitted Table 39 which compares the cost of maintaining Olympic afloat with the cost of shutting down the airline. Scenario D, which is highly unlikely to materialise, is excluded from this comparison. As indicated above, [Aegean's views of Marfin's ability and incentives regarding the agreements between Marfin and NAC]*.

Table 39: Cash needs for maintaining Olympic compared to cash needs for shutting it down

In EUR	*Cash need for maintaining Olympic afloat under Scenarios A–C*	*Cash need for shutting down Olympic*
2014	[…]* million + opportunity costs	[…]* million
2015	[…]* million + opportunity costs	
2016	[…]* million + opportunity costs	
2017	[…]* million + opportunity costs	[…]* million
2018	[…]* million + opportunity costs	

678 Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, paragraphs 51 and following.

679 Statements by Marfin, paragraph 41.

Total	[…]* million + opportunity costs	[…]* million

Source: Submission of the Notifying Party pursuant to paragraphs 89–91 of the HMG of 24 August 2013, Table 3.

(782) For the Notifying Party, a review of this table shows that over a 5 year-planning horizon, maintaining Olympic would cost a total of EUR […]* to […]* million, while the cost of shutting down Olympic would be around EUR […]* million. Most importantly, the short term ([…]*) cash costs of closure would be negligible for Marfin (i.e. […]*), while the short term cost of supporting Olympic would range between EUR […]* ([…]*). Beyond these cash needs, Marfin would also incur significant opportunity cost by depriving required funds from its core subsidiaries; such opportunity cost cannot be accurately calculated, but it is assumed to be substantially higher than the actual cash needs for funding Olympic.

The view of Marfin

(783) Marfin confirms that its decision to shut down Olympic would not entail any direct additional cash outlays (cash costs) to Marfin, […]*.[680] In case of a shutdown of Olympic, Marfin would only be liable to the various Olympic counterparties to which Marfin has provided guarantees ([…]*).[681]

(784) In the case of […]*, Marfin claims that the costs to Marfin would be negligible, if any at all. However, Marfin anticipates that […]* there would be no additional cash costs to Marfin, certainly not in the short to medium term, if any at all. [Information on NAC's security deposit]*.[682]

(785) It is Marfin's view that the aircraft could be subleased, partially at a somewhat lower rental price. As such, NAC would only lose the lease differential for the remainder of the period of 4 years and, therefore, it could not justify a claim substantially higher than the retained deposit.[683]

(786) According to Marfin, [Discussion of potential interest from third parties]*.[684]

(787) It is Marfin's estimation that Marfin and NAC would settle the guarantee issue. [Discussion of a potential settlement]*.[685]

(788) […]*,[686] rather than paying the additional amount of the guarantee immediately, it would let NAC resort to judicial proceedings in Greece and thus postpone the time of the payment.[687]

680 Marfin's response to the Commission's RFI of 4 September 2013, pages 1 and following.

681 Marfin's response to the Commission's RFI of 14 August 2013, pages 2 and following; Statements by Marfin, paragraph 42.

682 Statements by Marfin, paragraph 43.

683 Statements by Marfin, paragraph 44.

684 Communication between Olympic and […]*, forwarded to the Commission by A. Komninos on 16 July 2013 and Minutes of the telephone conference between the Commission and […]* on 19 July 2013; Statements by Marfin, paragraph 45.

685 Statements by Marfin, paragraph 46.

686 Marfin's response to the Commission's RFI of 4 September 2013, page 2; Statements by Marfin, paragraph 47.

687 [Assessment of potential cash outflows to Marfin due to return of Olympic's aircraft]*; Marfin's response to the Commission's RFI of 13 September 2013, answer to question 1. See also Statements by Marfin, paragraph 48.

(789) Marfin submits that judicial proceedings are expected to last a considerable amount of time. [Discussion of Marfin's guarantees vis-à-vis NAC]*.[688]

(790) In addition, there is, according to Marfin, no other relationship between NAC and any other of Marfin's subsidiaries or businesses to suffer from the potential dispute. Any additional requirement for cash outlay, if indeed awarded, would come at a time that would not affect Marfin's current strong liquidity restrictions which are threatening its business.[689]

The Commission's assessment

(791) The Commission considers that [Details on Marfin's disbursements in the event it decided to shut down Olympic]* appear to be the primary substantial cash disbursement that Marfin would have to face if it finally decided to shut down Olympic**.** Marfin's decision on whether or not to close down Olympic does not appear to be conditioned or influenced by other guarantees given by Marfin as these can be deemed negligible.[690]

(792) [Analysis of Marfin's potential liability issues]*

(793) [Analysis of Marfin's potential liability issues]*

(794) [Analysis of Marfin's potential liability issues]*,[691] [Analysis of Marfin's potential liability issues]*.

(795) [Analysis of Marfin's potential liability issues]*

(796) [Analysis of Marfin's potential liability issues]*

(797) [Analysis of Marfin's potential liability issues]*.[692] [Analysis of Marfin's potential liability issues]*.

(798) In such a scenario, Marfin's financial exposure concerning additional cash would therefore indeed be of little significance for the foreseeable future and a closure of Olympic would by far be the least costly option[693] available to Marfin. Indeed, all other plausible business scenarios would likely entail significantly higher funding needs which could be by far in excess of the maximum EUR […]* of non-lease related costs as estimated by the Notifying Party.

(799) [Analysis of Marfin's potential liability issues]*. The estimates of Olympic's funding requirements in the various scenarios referred to above are based on optimistic assumptions however (as described in the section dealing with Olympic's business scenarios (707)–(733). With regard to a potential liability to […]*, Marfin has predicted that its maximum exposure would be around […]* and very likely much less [Analysis of Marfin's potential liability issues]*.[694] Marfin however cannot be certain that the minimum funding requirements of Olympic will remain at the low

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688 Statements by Marfin, paragraph 49.
689 Statements by Marfin, paragraph 50.
690 Nevertheless, the respective figures of all guarantees are taken into account in the cost/benefit analysis of shutting down Olympic in this Decision.
691 Non-confidential minutes of the telephone conference between the Commission and Nordic Aviation Capital on 28 May 2013.
692 Statements by Marfin, paragraph 51.
693 [Marfin’s likely strategy with regard to its payment obligations]*
694 Statements by Marfin, paragraph 52.

levels estimated. Supporting Olympic further therefore appears to be the riskier option for Marfin.

(800) The Commission considers that the estimated cost [Analysis of Marfin's potential liability issues]*. However, the Commission believes that it is [Analysis of Marfin's potential liability issues]*.

(801) [Analysis of Marfin's potential liability issues]*

(802) Based on the evidence in the file, the Commission considers that Marfin would most likely not be able to sell Olympic to an alternative purchaser in the coming two to three years.[695] Hence, the benefit for Marfin of keeping Olympic going for a few more years seems to be low while the costs (in terms of funding requirements) are likely to be significant. In other words, it would be less costly for Marfin to shut Olympic down than to keep operating it, since any further investment in Olympic in the foreseeable future until 2016 is not expected to generate any profits but will in all likelihood only lead to further losses.

(803) Therefore, it is reasonable to assume that Marfin would act rationally if it were to cease supporting Olympic and close it down completely.

Conclusion on Marfin's financial incentives to support Olympic

(804) In the light of the above considerations, the Commission concludes that Marfin would most likely have no financial incentive to continue funding Olympic.

10.4.3. Conclusion on the first criterion

(805) In light of the above, the Commission concludes that it is more likely than not that in the near future Olympic would be forced out of the market because of financial difficulties if not taken over by Aegean.

10.5. Second criterion: there is no less anti-competitive purchase than the notified merger

10.5.1. The views of the Notifying Party and Marfin

(806) The Notifying Party argues that it is unlikely that any other potential buyer would be interested in acquiring the assets of Olympic, in particular that the Greek Government has already made several unsuccessful attempts to sell the airline in the past and the current adverse market conditions.

(807) In a similar vein, Marfin submits that "*there has been no expression of interest whatsoever regarding the acquisition of Olympic Air over the last 2 years from any third party*" and argues that [Information on the sale of Olympic]*. According to Marfin, "*All advisors have been advised that should any interest exist or arise this should be communicated to Marfin in order to be further explored. During the last 2 years, no such interest has been communicated by any of the advisors to Marfin*".[696]

(808) Marfin stresses that "*even during the period 2008–2009 when the Greek economic conditions were substantially superior to the current and the company sold by the Greek government was a new SPV, with the Olympic Air brand, some assets (slots and traffic rights) but without any liabilities or commitments whatsoever (aircraft*

[695] See sections 0 and 0.

[696] Statements by Marfin, paragraph 53; Marfin's response to the Commission's RFI of 26 July 2013, page 1.

leases etc.), again there was no interest by any party for the acquisition of Olympic Air".[697]

10.5.2. The Commission's assessment

(809) Prior to the privatisation process carried out in 2008, there have been at least four attempts by the Greek State to sell Olympic Airlines, namely in 1999, 2001, 2002 and 2004–2005.[698] None of those attempts proved successful. In 2005, Aegean submitted an offer to buy the assets of Olympic Airlines; however this transaction was never implemented. In the privatisation process in 2008, very few bids were presented, which were all below the estimated value of Olympic Airlines and many of which did not comply with the terms of the tender process.[699] This demonstrates that also in the past there was only rather limited credible interest in this airline from alternative purchasers. Selected assets of State-owned Olympic Airlines were finally sold to Marfin following a public bid procedure in 2009.[700]

(810) To verify Marfin's statements regarding the lack of alternative interest in the acquisition of Olympic, the Commission examined a large number of internal emails which it had requested from Marfin. This exercise did not result in the identification of any credible alternative purchaser.

(811) Moreover, on 9 August 2013, the Commission sent out questionnaires to 24 European[701] airlines in order to establish whether there is any interest in acquiring Olympic. None of the 20 airlines which responded indicated any interest in purchasing the carrier.

(812) During the investigation, one third party, Chrysler Aviation, submitted to the Commission that it had potential interest in acquiring Olympic. Chrysler Aviation is an aircraft charter and management company with U.S. domestic and international operations out of California's Van Nuys airport. Chrysler Aviation owns 7–8 jet aircraft and is also active in purchase and resale of aircraft.[702] The company does not currently operate scheduled services but only business and charter flights, mainly out of its base in the west coast of the USA. Chrysler Aviation does not have a detailed business plan for Olympic so far.[703]

(813) Despite several requests from the Commission, Chrysler Aviation did not provide any indication of its most recent annual turnover. From information publically

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697 Statements by Marfin, paragraph 54; Marfin's response to the Commission's RFI of 26 July 2013, page 1.

698 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 337–338.

699 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 347.

700 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 348–355.

701 Under Article 4 of the Regulation (EC) No 1008/2008 of the European Parliament and the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, page 3–20) the majority of shares in and effective control of EU airlines must be held by a member State or an EU national. This limits the pool of potential alternative purchasers of majority stake in Olympic to EU nationals.

702 Non-confidential minutes of the telephone conference between the Commission and Chrysler Aviation on 27 August 2013; S1 – Questionnaire to competitors – reply of Chrysler Aviation.

703 Non-confidential minutes of the telephone conference between the Commission and Chrysler Aviation on 27 August 2013, paragraph 12.

available, the company's turnover appears to be USD 4.7 million (EUR 3.6 million),[704] which is around 66 times smaller than the turnover of Olympic in 2012.

(814) Chrysler Aviation already submitted a bid for Olympic Airlines during the privatisation process in 2008. However, its bid did not reach the final stages and was dismissed. According to Marfin, this was due to the failure of Chrysler Aviation to produce any evidence of substantial financial backing or banking support or to get engaged in a binding fashion.[705] Chrysler Aviation also had been in preliminary contact with the CEO of Olympic in 2010 regarding their interest in the airline, after the first proposed merger with Aegean was announced.[706] Chrysler Aviation did not contact Marfin subsequently.[707] The fact that Chrysler Aviation did not approach Marfin after the announced merger with Aegean fell through and when Marfin was likely to be a willing seller further puts in doubt the seriousness of Chrysler Aviation's intentions with regard to the acquisition of Olympic. In general, [Information on the sale of Olympic]*.[708] Finally, it is not clear how the potential transaction would be implemented, given that as a U.S. company Chrysler Aviation would not itself be able to acquire a majority stake in or control of Olympic.[709]

(815) In light of the above, the Commission considers that Chrysler Aviation does not represent a credible alternative purchaser of Olympic for Marfin.

(816) Although the Commission found in *Olympic/Aegean I* that the parties had not convincingly demonstrated that there was no interested alternative purchaser, in the present case this condition is met. This is due to the facts that (i) between 1999 and 2009 the Greek State sought to divest Olympic four times and found no credible interested party except Marfin and Aegean which may serve as a historic fact from which some inference for future interest in Olympic may be drawn. Moreover, the current and foreseeable market conditions are unlikely to be more conducive to Olympic's sale, (ii) Marfin would have had an incentive to find an alternative purchaser given that Olympic's first merger with Aegean was prohibited by the Commission, and (iii) the data collected during the market investigation did not reveal the likelihood of any credible alternative purchaser of Olympic.

10.5.3. Conclusion on the second criterion

(817) In light of the above, the Commission concludes that, absent the proposed merger, emergence of an alternative purchaser for Olympic in the immediate future is unlikely.

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704 See http://companies.findthecompany.com/l/10336856/Chrysler-Aviation-Inc-in-Van-Nuys-CA (retrieved on 5 September 2013).

705 Email from G. Koulouris (Marfin) to the Commission of 30 August 2013, received at 16:53.

706 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 2083.

707 Email from G. Koulouris (Marfin) to the Commission of 30 August 2013, received at 16:53.

708 Statements by Marfin, paragraph 55.

709 Under Regulation 1008/2008, an EU carrier must be more than 50% owned and effectively controlled by EU Member States and/or nationals of EU Member States (see Article 4(f) of 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 (OJ L293, 31.10.2008, pages 3–20)).

10.6. Third criterion: in the absence of a merger, the assets of the failing firm would inevitably exit the market

10.6.1. The views of the Notifying Party

(818) The Notifying Party claims that absent the Transaction Olympic's assets would inevitably exit the market. In particular, Olympic's main asset is its brand. According to the Notifying Party, should Olympic discontinue operations, the Olympic brand would remain in its hands for three more years until it returns to the Greek State.[710] Alternatively, should Olympic be involved in bankruptcy, insolvency or any other similar proceedings, the brand can immediately return to the Greek State.[711] In any event, no actual or potential competitor would be interested in acquiring it from the Greek State and thus the Olympic brand would inevitably exit the market, at least for the next three to five years.

10.6.2. The Commission's assessment

(819) Olympic has the following main assets: (i) the Olympic brand, (ii) bilateral traffic rights to non-EU countries, and (iii) its leased aircraft.

10.6.2.1. The Olympic brand

(820) The "Olympic" brand (and logo) does not as such belong to Olympic. Olympic has licenced the brand from the Greek State for a period of 25 years, which is automatically extended for consecutive terms of 25 years thereafter, unless terminated by one of the parties. The Olympic brand was the main asset bought by Marfin during the privatisation, as it represented more than 67% of the total value invested by Marfin in Olympic initially.[712] [Information relating to the value of the Olympic brand]*.[713]

(821) Under the Trademark License Agreement, the Licensor has the right to terminate the agreement, following which the brand would immediately return to the Greek State, in particular in the following situations: (i) in case Olympic would be involved in bankruptcy, insolvency or any other similar proceedings,[714] or (ii) in case Olympic would simply decide to discontinue its flight operations.[715] The only delay in returning the brand could occur if Olympic does not normally use the brand in the ordinary course of business for three consecutive years (i.e., if Olympic continues to provide flight services but does not use the Olympic brand), following which the agreement can be terminated and the brand would return to the State.[716]

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710 Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Article 13.2(i).

711 Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Article 13.2(a), (b), (c).

712 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recital 2091.

713 Financial Statements of Olympic for the Financial Year 2012, page 1, Email "M.6796 - AEGEAN /OLYMPIC II - OA FY2012" from John Panagiotopoulos of 16 April 2013.

714 Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Article 13.2(a), (b), (c).

715 Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Article 13.2(d).

716 Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Article 13.2(i). Under the Trademark License Agreement, the brand cannot be used for other activities

(822) Based on the Commission's market investigation none of the responding 20 European airlines stated that they had any interest in acquiring the Olympic brand in the event it were made available following Olympic's full exit from the market.

(823) One respondent, the U.S. firm Chrysler Aviation, stated that it would be potentially interested in acquiring Olympic's brand, if the valuation of the brand were in line with prevailing market value. However, as explained in recitals (809)–(812), there are considerable doubts regarding the credibility and seriousness of Chrysler Aviation's interest, which was already dismissed by the Greek State during the 2008 privatisation process. It appears unlikely that the Greek State would be willing to license the Olympic's brand to Chrysler Aviation.

10.6.2.2. Olympic's bilateral traffic rights and Q100 turboprop aircraft

(824) With respect to Olympic's bilateral traffic rights to non-EU countries and its four leased Q100 turboprop aircraft, the question whether these assets would exit the market is of limited relevance since they are not used on the routes of concern. In particular, Olympic's bilateral traffic rights concern international routes (where no competition concerns were identified in the present case) and not the domestic routes of concern. In the event of Olympic's exit, Aegean in any event would be the prime candidate for the released traffic rights. Also, Olympic's leased Q100 fleet is exclusively deployed in PSO routes (where no competition concerns were identified in the present case) and not in the non-PSO routes of concern.

(825) Olympic's bilateral traffic rights and Q100 aircraft could only be relevant for the analysis of the failing firm analysis to the extent these assets enable entry on the routes of concern. However, no third party substantiated an interest for taking over Olympic's bilateral traffic rights nor its leased Q100 turboprop fleet and entering the routes of concern in case of Olympic's exit.[717]

10.6.2.3. Olympic's Q400 turboprop aircraft

(826) [Rates under Olympic's lease agreements]*. Air Baltic described the current market situation with regard to leases of turboprop Q400 aircraft as a market where the leasing prices at present move downwards: for example, Q400 aircraft are currently price lower than they were two years ago. Air Baltic explained that there are many possibilities to lease Q400 aircraft, not only from NAC but also directly from Bombardier at attractive conditions.[718] This indicates that if any party were interested in Olympic's turboprop aircraft, it would be likely to be able to source the same aircraft on the market under better terms than under Olympic's contracts.

(827) Furthermore, none of the 20 airlines (ranging from traditional EU airlines to LCCs and local Greek carriers) responding to the Commission's questionnaire expressed interest in taking over Olympic's Q400 aircraft.[719]

(828) One exception was Chrysler Aviation which expressed a theoretical interest in taking over Olympic's aircraft, but on the condition that it would not be above market

than flight operations and ancillary services and operations (see Trademark License Agreement between the Greek State and Olympic regarding the Olympic brand, Articles 1 and 3).

717 S1 – Questionnaire to competitors.

718 Non-confidential minutes of the telephone conference between the Commission and Air Baltic on 19 July 2013, paragraphs 4 and 8.

719 S1 – Questionnaire to competitors – replies to question 4.

rates,[720] […]*. Furthermore, Chrysler Aviation's interest in Olympic's aircraft appears to be conditional upon acquisition of Olympic which would be unlikely given the doubtful credibility and seriousness of this company's interest.

(829) In addition, unlike many other production assets, aircraft are inherently mobile assets which can be easily deployed on different markets (i.e. routes). Even if following Olympic's exit some airlines could be interested in leasing Olympic's Q400 aircraft (e.g. Air Baltic expressed potential interest subject to favourable market conditions),[721] these aircraft are likely to be used on routes other than the routes of concern. Indeed, the market investigation has not revealed sufficient likelihood of entry on the routes of concerns neither in the hypothetical situation of Olympic's bankruptcy,[722] nor post-merger.[723] Therefore, Olympic's Q400 aircraft are likely to exit the relevant markets, i.e. the routes of concern.

10.6.2.4. Additional considerations

(830) Moreover, according to the case law,[724] if the market share of the failing firm accrued to the other merging party, in particular in a case of merger to monopoly, this may at the same time imply that the assets of the failing firm would inevitably leave the market in question. In the present case, it appears that all of Olympic's market shares in domestic non-PSO routes would in any event accrue to Aegean, since all of the remaining overlap routes of concern are (quasi-)duopolies between Aegean and Olympic and entry by third airlines in the immediately foreseeable future is unlikely.

10.6.3. Conclusion on the third criterion

(831) Overall, although the Commission found in *Olympic/Aegean I* that the parties had not convincingly demonstrated that Olympic's assets would inevitably exit the market,[725] in the present case the prerequisites of this condition are met. Olympic's assets would inevitably exit the market, since no party substantiated an interest for taking over Olympic's assets, in particular the brand and the leased Q400 aircraft, and using them on the routes of concern.

(832) In light of the above, the Commission concludes that Olympic's assets would inevitably exit the market.

10.7. Conclusion on the failing firm analysis

(833) Based on the above, and under the particular and exceptional circumstances of the present case, which is characterised by the protracted adverse economic conditions in Greece, significant decline in passenger numbers on Greek domestic routes, historic unprofitability of Olympic without conceivable prospects for reversal in the near future, difficult finances of the parent company and its limited ability and incentive to further financially support Olympic, the Commission concludes that Olympic

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720 S1 – Questionnaire to competitors – reply by Chrysler Aviation to question 4.1.

721 Non-confidential minutes of the telephone conference between the Commission and Air Baltic on 19 July 2013.

722 S1 – Questionnaire to competitors – replies to question 1.2 and 1.3.

723 See section 0 of this Decision on entry.

724 See Joined Cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraphs 115–116.

725 Commission Decision of 26 January 2011 in Case COMP/M.5830 – *Olympic/Aegean Airlines*, recitals 2088–2119.

meets the requirements of the failing firm within the meaning of the Horizontal Merger Guidelines.

11. Comparison of the likely competitive structure following the Transaction and absent the Transaction

(834) Under the Horizontal Merger Guidelines, the expected deterioration of the competitive structure of the market that would follow the merger cannot be said to be caused by the merger if the competitive structure would deteriorate to at least the same extent in the absence of the merger.[726]

(835) In the present case, as explained in section 8, the Transaction as such would lead to a monopoly on the five routes of concern, where the Parties are currently competing. Furthermore, on the six additional routes of concern, where only one of the Parties is present, the Transaction would eliminate the most likely potential competitor. With ferries constituting at best only remote substitutes, the Parties are close and essentially each other's closest competitor on the routes of concern. Countervailing entry post-Transaction is unlikely due to the presence of a number of elements dissuading such entry and in view of the lack of expression of interest by competitors.

(836) However, the above-mentioned effects of the Transaction are very similar to those which would in any event occur in the absence of the Transaction.

(837) In particular, absent the Transaction, Olympic is likely to exit the market completely, as explained in section 10. It is unlikely that any third party, except Aegean, would be interested in acquiring Olympic's assets, including its brand. As a result, on the five routes of concern, where the Parties are currently competing, even without the Transaction Aegean would probably become the only service provider and capture Olympic's current market shares. On the six additional routes of concern, where only one of the Parties is present, Olympic's exit would eliminate the most likely potential competitor.

(838) It appears that countervailing entry, absent the Transaction and post-Olympic's exit, would not become any more likely than following Olympic's acquisition by Aegean. In particular, the main elements dissuading entry would be similar under both scenarios (such as low demand and uncertainty about its evolution, significant sunk costs, etc.). By way of example, Ryanair, the carrier which the Notifying Party views as the main prospective entrant, does not regard Olympic's presence or absence to be decisive for its entry decision: the main obstacle for Ryanair seems to be the high AIA charges, which would be similar with or without the Transaction.[727]

(839) On the basis of the considerations set out above, it is concluded that the deterioration of the competitive structure of the market would be at least the same in its extent as without the Transaction, and therefore cannot be considered to be caused by it.

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726 Horizontal Merger Guidelines, paragraph 90. See also Joined Cases C-68/94 and C-30/95, *France and Société commerciale des potasses et de l'azote et Entreprise minière et chimique / Commission* [1998] ECR I-1375, "*Kali & Salz*", paragraphs 100-114; Commission Decision of 11 July 2001 in Case COMP/M.2314 - *BASF/Pantochim/Eurodiol*, recitals 157–160.

727 Hence, Ryanair states: "*Olympic's presence on these routes is not the key factor prohibiting Ryanair from entering these routes. It is primarily an issue with exorbitant charges at Athens airport*" (S1 – Questionnaire to competitors – reply of Ryanair to question 1.2.1).

12. CONCLUSION

(840) In the absence of the notified Transaction, Olympic's assets will most likely exit the market, which would result in the same competitive structure of the relevant markets where the Commission has identified competition concerns as the reasonably foreseeable effects of the Transaction.

(841) The Commission concludes, therefore, that the Transaction will not significantly impede effective competition and should be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(1) of Regulation (EC) No 139/2004 and Article 57 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Aegean Airlines S.A. acquires sole control of Olympic Air within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Aegean Airlines S.A.
31 Viltanioti Str.
145 64 Kifissia
Greece

Done at Brussels, 9.10.2013

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President