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***Case No COMP/M.6828 - DELTA AIR LINES/ VIRGIN
GROUP/ VIRGIN ATLANTIC LIMITED***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6828 – Delta Air Lines/ Virgin Group/ Virgin Atlantic Limited
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004**

- (1) On 15 May 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Delta Air Lines, Inc ("Delta", the United States of America) and Virgin Group Holdings Limited ("Virgin Group", the British Virgin Islands) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Virgin Atlantic Limited ("Virgin Atlantic", the United Kingdom) by way of purchase of shares ("the Transaction").²

1. THE PARTIES

- (2) Virgin Group is the holding company of a group of companies active in a wide range of products and services worldwide, such as gyms, health care, mobiles and transport. Virgin Group already owns 51 per cent of the shares of Virgin Atlantic Airways Limited ("Virgin").
- (3) Virgin flies to 34 destinations worldwide, including locations across North America, the Caribbean, Africa, the Far East and Australia. Some of its most recent additions to its flying network include in particular Cancun. Virgin does not have any integrated joint venture and is not a member of any global airline alliance.

OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). 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 Publication in the Official Journal of the European Union No C 143, 23.5.2013, p.7.

- (4) Delta serves more than 160 million customers each year. Delta and the Delta Connection carriers offer service to nearly 357 destinations in 66 countries on six continents. Headquartered in Atlanta, Delta employs 80,000 employees worldwide and operates a mainline fleet of more than 700 aircraft. A founding member of the SkyTeam global alliance, Delta participates in the trans-Atlantic joint venture with Air France-KLM and Alitalia. Including its worldwide alliance partners, Delta offers customers more than 13,000 daily flights, with hubs in Amsterdam, Atlanta, Cincinnati, Detroit, Memphis, Minneapolis-St. Paul, New York-LaGuardia, New York-JFK, Paris-Charles de Gaulle, Salt Lake City, and Tokyo-Narita.

2. CONCENTRATION

- (5) By the Transaction, Delta together with Bluebottle Investments (UK) Limited, an indirect subsidiary of the Virgin Group acquire joint control over Virgin Atlantic within the meaning of Article 3(1)b for the purpose of Article 3(2) of the EU Merger Regulation by way of a purchase of shares. Virgin Atlantic is the indirect holding company of Virgin and Virgin Holidays Limited (VHols). Virgin Atlantic is currently for the purposes of Article 3(2) of the EU Merger Regulation jointly controlled by the Virgin Group and Singapore Airlines Limited (Singapore Airlines).
- (6) Delta is acquiring the 49% shareholding in Virgin Atlantic which is currently held by Singapore Airlines while the remaining 51% of Virgin Atlantic will continue to be held by the Virgin Group. Virgin and VHols are wholly owned indirect subsidiaries of Virgin Atlantic and therefore under Virgin Atlantic's ultimate control. Delta and Virgin Atlantic also agreed to enter into a metal neutral³ profit sharing joint venture in relation to services between the UK and the US, Canada and Mexico. For the purpose of the assessment of the Transaction under the EU Merger Regulation, account is taken of both the acquisition of the 49% shareholding in Virgin Atlantic and the creation of the metal-neutral profit sharing joint venture.
- (7) In the Commission's Decision in case COMP/M.1855 *Singapore Airlines/Virgin Atlantic* concerning the situation of control over Virgin, the Commission found that although the Virgin Group controlled a majority of shares in Virgin and nominated the majority of the members on the board, Singapore Airlines had joint control of the Virgin through its veto rights and the arbitration procedure which was provided for the case of disagreement in certain strategic business decisions. The Commission concluded that considering those rights as a whole, Singapore Airlines and the Virgin Group exercised joint control over Virgin.
- (8) The Parties claim that Delta will have materially the same rights as Singapore Airlines currently has⁴ and that therefore Delta and the Virgin Group will jointly control Virgin Atlantic and hence Virgin. In particular, the Parties explain that Delta will have veto rights over (i) the employment of key personnel and (ii) the appointment of executive directors as well as (iii) the right to force an independent review of the budget and business plan. In the Parties view, this will oblige Delta and the Virgin Group to cooperate in respect of key strategic governance decision for Virgin Atlantic.

³ Metal neutrality indicates that partners in the joint venture are indifferent as to which operates the "metal"(ie. the aircraft) when they jointly market services.

⁴ Section 3, paragraph 3 of the Form CO. [Information regarding other Virgin Group businesses]

- (9) Under paragraph 65 of the Commission Consolidated Jurisdictional Notice (the Jurisdictional Notice)⁵, joint control may exist even where there is no equality between the two parent companies in votes or in representation in decision-making bodies. This is the case where minority shareholders have additional rights which allow them to veto decisions which are essential for the strategic commercial behaviour of the joint venture. Such veto rights must be related to strategic decisions on the business policy of the joint venture and must go beyond the veto rights normally accorded to minority shareholders in order to protect their financial interests as investors. Veto rights which confer joint control typically include decisions on issues such as the budget, the business plan, major investments or the appointment of senior management.
- (10) Under the shareholders' agreements between Delta and the Virgin Group, Virgin Atlantic cannot undertake various matters without the prior written consent of Delta and the Virgin Group. These rights include for instance the appointment of key personnel which includes the executive directors and persons with ultimate responsibility for amongst others the following divisions: commercial, finance, flight operations and corporate services. If there is no agreement on these issues, the matter in question is suspended and the issue is referred to the CEO's of Delta and the Virgin Group for consideration⁶. It therefore appears that Delta will indeed have a veto right as regards the appointment of senior management.
- (11) The decision making process on the approval of the annual budget is as follows. [Information regarding Virgin Atlantic's governance structures]
- (12) However, under paragraph 82 of the Jurisdictional Notice, there can be joint control even if only one of the parent companies has a casting vote and "*if the mutual interdependence of the parent companies would make the exercise of the casting vote unlikely.*"
- (13) The Commission considers that the commercial context in which the Parties would operate in particular in view of Delta's acquisition of the shareholding in Virgin Atlantic as well as the fact that Delta and Virgin will establish a contractual joint venture for air transport services (metal neutral joint venture), Delta and the Virgin Group will be mutually interdependent. Indeed the joint venture agreement is part of the notified concentration and, as explained in paragraph 37 of the Form CO, the Parties intend to "*cooperate across the board on routes in the joint venture, for example, in relation to network planning, sales, marketing, pricing and passenger services (e.g. frequent flyer programmes). The parties will reach consensus decisions in relation to aspects of the joint venture such as network and capacity planning.*"
- (14) Taking into account the joint venture agreement, the Commission concludes that the transaction confers joint control on the Parties over Virgin Atlantic⁷. The Transaction

⁵ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C95, 16.04.2008 p. 1.

⁶ Clause 4.1 and 4.5 of the Shareholder's Agreement relating to Virgin Atlantic.

⁷ Regarding the EU air transport licensing provisions, the Parties consider that "*it is not unusual for different tests of control to be applied under different legal measures, for example, under the EU Merger Regulation and the air transport licensing provisions.*" (Form CO, paragraph 89). Pursuant to paragraph 23 of the Jurisdictional Notice, "*The concept of control under the Merger Regulation may be different from that applied in specific areas of Community and national legislation concerning, for example, prudential rules, taxation, **air transport** or the media.*"

thus constitutes a merger within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (15) The undertakings concerned Delta, Virgin Group and Virgin Atlantic, have a combined aggregate world-wide turnover of more than EUR 5 000 million.⁸ Each of them has a Union-wide turnover in excess of EUR 250 million. [Explanation why the "two-thirds rule" is not met]. The methodology used by the Parties to calculate their turnover is the "point of sale" methodology, although in any event the thresholds would also be met under the "point of origin" or "50/50 split" methods.⁹ The notified concentration therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

- (16) The activities of Virgin and Delta overlap in air transport of passengers, air transport of cargo, supply of seats to tour operators¹⁰ and maintenance, repair, and overhaul services ("MRO").¹¹

4.1. Air transport of passengers

4.1.1. O&D approach

- (17) 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.¹² Such market definition reflects the demand-side perspective whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination which they do not consider substitutable to a different city-pair. As a result, every combination of a point of origin and a point of destination is considered to be a separate market.
- (18) The Parties do not object to the O&D approach. They however claim that the market for scheduled passenger air transport services increasingly has a network dimension, particularly on the demand-side for corporate customers, frequent flyer program customers and connecting passengers on transatlantic routes. According to the Parties, on the supply-side, carriers with larger networks can optimize their operations in response to price differentials across different O&D routes. In particular, the Parties submit that a substantial hub presence at London Heathrow is a significant competitive advantage in the context of access to connecting passengers.

The interpretation of 'control' in other areas is therefore not necessarily decisive for the concept of control under the Merger Regulation [emphasis added]."

⁸ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

⁹ These three methodologies are explained in COMP/M.4439 - Ryanair/Aer Lingus, 27 June 2007, recitals 13 et seq. As regards the sale of seats to tour operators in the UK, the Parties estimate that Virgin has a share around [10-20]% while Delta has a share well below [0-5]%. Consequently, the Commission will further analyse this market.

¹¹ The overlaps in maintenance, repair, and overhaul services do not give rise to any horizontal or vertical affected market. According to the Parties, their combined market shares remain indeed below 15% regardless of the precise market segmentation.

¹² COMP/M.5889 - United Air Lines/Continental Airlines, COMP/M.5440 - Lufthansa/Austrian Airlines; COMP/M.5335 - Lufthansa/SN Airholding; COMP/M.5364 - Iberia/Vueling/Clickair; COMP/M.3280 - Air France/KLM; COMP/M.3770 - Lufthansa/Swiss.

- (19) The Commission has in the past taken into consideration the network competition between airlines. This is particularly relevant on the supply-side, as network carriers build their network and decide to fly almost exclusively on routes connecting to their hubs.¹³ In line with the Commission's notice on market definition and with the case law, the Commission has given pre-eminence to demand-side substitution, whereby it considered that customers still need transportation from one point to another and that competition still takes place on an O&D city-pair basis.¹⁴
- (20) A large majority of respondents to the market investigation have confirmed this approach in the present case, and confirmed that it was relevant for the purpose of analysing the competitive effects on the overlap routes¹⁵.
- (21) While in particular the Parties, some network carriers and some charter airlines tend to believe competition between carriers wield network-based aspects, the O&D approach best reflects the demand-side perspective according to which both the point of origin and the point of destination should include all airports that are substitutable in the eyes of passengers.
- (22) In light of the above, the effects of the Transaction will be assessed on the basis of the city-pair O&D approach, while all substitutable airports will be included in the respective points of origin and destination provided that they are perceived as substitutable by travellers. The question of airport substitutability will be examined for those O&D routes in Section 4.1.4.

4.1.2. *Premium vs. non premium passengers*

- (23) The Commission has traditionally found that a distinction may be drawn between time sensitive/premium and non-time sensitive/non-premium passengers.
- (24) Premium passengers tend to travel for business purposes, require significant flexibility with their tickets (such as cost-free cancellation and modification of the time of departure, etc.) and tend to pay higher prices for this flexibility. Non-premium customers travel predominantly for leisure purposes or to visit friends and relatives, book long time in advance, do not require flexibility with their booking and are generally more price-sensitive.¹⁶
- (25) The Parties do not object with this distinction. They moreover adopt a distinction between premium and non-premium based on restricted Economy fares falling into the latter category and all other fares falling into the former for the purpose of the market definition and the calculation of the market shares. The Parties claim that this

¹³ On the network approach, see CMP/M.6447 - IAG/bmi, COMP/M.5889 - United Air Lines/Continental Airlines, COMP/M.5830 - Olympic/Aegan Airlines, COMP/M.5747 - Iberia/British Airways. The O&D approach was confirmed by the General Court, most recently in Case T-342/07 Ryanair Holdings plc v European Commission [2010 ECR], paragraph 53.

¹⁴ Commission's Notice on the definition of the relevant market, paragraph 13 (OJ C 372, 09.12.1997, p.5), COMP/6447 IAG/bmi, recital 31 and following.

¹⁵ See responses to questions 5 and 6 of Q1 – Questionnaire to Competitors, responses to questions 4 and 5 of Q2 – Questionnaire to Corporate Customers, responses to question 4 and 5 of Q3 – Questionnaire to Travel Agencies. For the sake of the present decision, "Transatlantic routes" stands for the 12 routes to and from New York, Boston, Washington, Chicago, Los Angeles, San Francisco, Cancun, Miami, Las Vegas, and Orlando, from and to London and Manchester.

¹⁶ COMP/M.5889 - United Air Lines/Continental Airlines, COMP/M.5440 - Lufthansa/Austrian Airlines; COMP/M.5335 - Lufthansa/SN Airholding; COMP/M.5364 - Iberia/Vueling/Clickair.

delineation is conservative. If the boundary between premium and non-premium had been set up otherwise, the Parties' markets shares would indeed dilute.

- (26) A large majority of respondents to the market investigation confirmed this approach, acknowledging that the distinction between premium and non-premium passengers was relevant for the assessment of the Transaction.¹⁷
- (27) Some respondents amongst the Parties' competitors nonetheless indicated that the distinction between premium and non-premium passengers has become blurred, and that there is a chain of substitution between these two broad categories rather than a clear-cut distinction.¹⁸
- (28) However, for the assessment of the Transaction, the conclusion on whether premium and non-premium passengers belong to the same market can be left open as no competition concerns arise under any alternative market definition.

4.1.3. *Non-stop (direct) vs. one-stop (indirect) flights*¹⁹

- (29) The Commission has in its practice considered that with respect to long-haul routes (more than 6 hours flight duration), one-stop flights constitute a competitive alternative to non-stop services under certain conditions (for example if they are marketed as connecting flights on the O&D pair in the computer reservation system).²⁰
- (30) The Parties claim that one-stop services can in certain circumstances present a competitive alternative to non-stop services. According to the Parties, this competitive constraint would be greater the shorter the additional duration is relative to that of non-stop services.
- (31) A large majority of respondents to the market investigation confirmed that one-stop services could constitute competitive alternatives to non-stop services as identified above. A majority of the respondents also confirmed that one-stop services with a greater difference in duration constituted a smaller competitive constraint to non-stop services than one-stop services with a shorter difference in duration.²¹ Nevertheless, a majority of the corporate customers stated that they would not buy one-stop tickets for their employees, emphasizing the fact that the distinction is more relevant as far as premium passengers are concerned.²²

¹⁷ See responses to question 7 of Q1 – Questionnaire to Competitors, responses to question 6 of Q3 – Questionnaire to Travel Agencies.

¹⁸ See responses to question 7 of Q1 – Questionnaire to Competitors.

¹⁹ "Non-stop" flights are flights that take off at airport A and land at airport B, where they offload passengers, and that are constantly in the air from their origin airport and to their final destination airport. By contrast, "direct" flights may entail a refuelling stop and/or a disembarking/re-embarking stop, but are marketed under a single flight code and are flown with a single aircraft. "One-stop" flights include direct flights that do not qualify as "non-stop", as well as indirect flights which are journeys that require a change of aircraft or a change of flight code. Unless indicated otherwise, the terms "non-stop/one-stop" and "direct/indirect" are used interchangeably in the present decision as this terminology does not have an effect on the outcome of the competitive assessment in the present case.

²⁰ COMP/M.5440 - Lufthansa/Austrian Airlines, COMP/M.2041 - United/US Airways, COMP/M.2672 - SAS/Spanair.

²¹ See responses to question 11 to 16 of Q1 – Questionnaire to Competitors, question 11 of Q2 – Questionnaire to Corporate Customers, question 8 to 11 of Q3 – Questionnaire to Travel Agencies, question 5 to 8 of Q4 – Questionnaire to Consumer Associations.

²² See responses to question 10 of Q2 – Questionnaire to Corporate Customers.

(32) However, for the assessment of the Transaction, the conclusion on whether or not non-stop/direct and one-stop/indirect flights belong to the same market can be left open as no competition concerns arise under any alternative market definition.

4.1.4. *Airport substitutability*

(33) The Commission has found that flights from and to airports which have sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers. Such airport substitution has often been found where several airports are located in the same city. In order to correctly capture the competitive constraint that flights from and to two different airports exert on each other, a detailed analysis taking into consideration the specific characteristics of the case at hand is necessary.²³

(34) In the present case, such airport substitutability is particularly relevant for London and New York, as well as for Orlando, Washington, Chicago, and Miami.

4.1.4.1. London airports

(35) London has six airports, namely London Heathrow, London Gatwick, London City, Stansted, Luton and Southend²⁴.

(36) Table 1 summarises the following: (i) the distance from the London airports to London city centre (in km and time):

Table 1: London airports

Airports	Heathrow (LHR) Gatwick (LGW) London City (LCY)
Distance and travel times to London city centre	LHR – 28 km LGW – 46 km LCY – 14 km Car: LHR – 65 mins; LGW – 85 mins; LCY – 20 mins. Bus: LHR – 65 mins; LGW – 90 mins. Rail: LHR – 55 mins; LGW – 60 mins; LCY – 22 mins.

Source: Form CO (paragraph 226 – Table 5)

(37) Previous Commission decisions determined that a certain degree of substitutability exists between the London airports, at least for non-premium passengers.²⁵ Also, the Commission found in the past that at least the airports of London Heathrow, London Gatwick, and London City were considered substitutable for both premium and non-premium passengers flying from London to Madrid and to Barcelona²⁶ and that the

²³ COMP/M.5747 Iberia/British Airways; COMP/M.5440 Lufthansa/Austrian Airlines; COMP/M.5335 Lufthansa/SN Airholding; COMP/M.3280 Air France/KLM.. See also judgment of the General Court of 6 July 2010 in case T-342/07 Ryanair v Commission paras. 99 et seq.

²⁴ According to the data collected during the market investigation, there are no flights to and from Stansted, Luton and Southend relevant for the assessment of the Transaction.

²⁵ COMP/M.4439 – Ryanair/Aer Lingus, paragraph 109 and following; COMP/M.5747 – Iberia/British Airways; COMP/M.5889 – United Air Lines / Continental Airlines; COMP/M.6447 – IAG/bmi;

²⁶ COMP/M.5747 – Iberia/British Airways, paragraph 30.

airports of London Heathrow and London Gatwick were considered substitutable for both premium and non-premium passengers flying between London and Athens.²⁷

- (38) In the recent *IAG/Bmi* case²⁸, the Commission assessed each of the relevant routes on the narrowest possible market, namely a market comprising flights to and from London Heathrow only. In line with the approach adopted in the decision relating to *COMP/M.5747-Iberia/British Airways*, the effects of the concentration were examined on a wider "*London(three)*" market comprising flights to and from London Heathrow, London Gatwick and London City and also on a wider "*London(five)*" market comprising flights to and from London Heathrow, London Gatwick, London City, Luton, and Stansted.
- (39) The Parties contend that no competition concern will arise as a result of the Transaction, regardless of the precise London airport market definition. However, the Parties consider that there is support for the following possible London airport market definitions: (i) London Heathrow only market²⁹, (ii) London Heathrow and London City market for premium passengers³⁰, and (iii) a "*London (three)*" market encompassing London Heathrow, London Gatwick and London City³¹.
- (40) The results of the market investigation are blurred, both for premium and non-premium passengers.
- (41) Indeed, a large majority of respondents to the market investigation considers that a significant proportion of premium passengers would not switch to another London airport, should the prices of fares on the Transatlantic routes to and from London Heathrow would increase by 5-10%. However, the Parties' main competitors on the Transatlantic routes to and from London disagree and deem that premium passengers would switch under some circumstances³².
- (42) As concerns the non-premium passengers, market participants' opinions are rather mixed. A majority of competitors³³, including American Airlines, US Airways and United, considers that in case of price increase by 5-10% of the Transatlantic flights to and from London Heathrow, a significant proportion of non-premium passengers would switch to either London Gatwick and/or London City. *A contrario*, a large majority of corporate customers contends that non-premium passengers would continue to fly from London Heathrow, in spite of such price increase³⁴. As concerns the travel agencies, a majority of respondents considers that passengers would switch from London Heathrow. However, there is no clear trend as to whether passengers would switch to either London Gatwick and/or London City or to any other London airport. As explained by Thomas Cook: "*Our non-premium paxs are very price*

²⁷ COMP/M.5830 – Olympic/Aegean Airlines, paragraph 1644.

²⁸ COMP/M.6447 – IAG/bmi.

²⁹ The Parties consider that London Heathrow is a critical airport for the provision of transatlantic services and that it cannot be excluded from any possible London airport market definition.

³⁰ The Parties argue that London City airport provides some competitive constraint on London Heathrow for premium passengers. In particular, British Airways offers two daily direct Business class only services between London City and New York (JFK airport). These services would be substitutable for services to and from London Heathrow for premium passengers who value the direct access to the City of London which this service offers.

³¹ The Parties take account in this respect of the transatlantic services to and from Gatwick. Delta does not offer any services to and from Gatwick.

³² Responses to question 19.1 of Q1 – Questionnaire to competitors.

³³ Responses to question 20 of Q1 – Questionnaire to competitors.

³⁴ Responses to question 17 of Q2 – Questionnaire to corporate customers.

*sensitive and we do see them swapping to airports to get themselves a cheaper deal*³⁵.

- (43) Therefore, the effects of the Transaction for the relevant routes to and from London will be examined on a market comprising flights to and from Heathrow only, and on a wider market comprising flights to and from Heathrow, Gatwick and London City.

4.1.4.2. New York airports

- (44) New York has three airports, namely John F. Kennedy International Airport ("JFK"), Newark Liberty International Airport ("Newark") and La Guardia³⁶. JFK is located 31 kilometres i.e. 30 minutes by car, 52 minutes by bus and 75 minutes by rail away from the New York City centre. Newark is located 21 kilometres i.e. 22 minutes by car and 24 minutes by rail away from the New York City centre.

- (45) The Parties consider that transatlantic services between JFK or Newark and London should be considered to be part of the same market³⁷. They submitted a quantitative study to support this finding³⁸. In that study, the Parties compared Virgin's London Heathrow-JFK and London Heathrow-Newark fares and conducted both stationary and correlation analyses. According to the Parties, those analyses follow the method applied by the Commission itself in previous air transport cases. [Outcome of Virgin Atlantic's fare analysis]. Besides, the Parties referred to previous decisions where the Commission found that transatlantic services between London and JFK or Newark were part of the same market³⁹.

- (46) The market investigation has not yielded unequivocal results as to the extent to which London-JFK and London-Newark services are regarded as substitutable by passengers⁴⁰, notably within the premium category⁴¹. In particular, many corporate travelers (who often fall within the premium category) may be inclined to choose between JFK and Newark on the basis of the location of their final place of destination or place of origin in the New York area rather than on the basis of developments in fares for services between London and each of those airports.

- (47) In any event, since the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London-New York route under any possible market definition, the question of whether London-JFK and London-Newark services belong to the same market can be left open.

4.1.4.3. Orlando airports

- (48) Orlando has two airports: (i) Orlando International (20 kilometres/24 minutes⁴² away from the city center) and (ii) Sanford International (37 kilometres/27 minutes⁴³ away from the city center). Both Delta and Virgin operate from London and Manchester to Orlando International, while Sanford International is mainly used by charter carriers.

³⁵ Responses to question 15 of Q3 – Questionnaire to travel agencies.

³⁶ There are no flights to and from La Guardia relevant for the assessment of the Transaction.

³⁷ Form CO, paragraph 224 (b).

³⁸ Form CO, Annex 76.

³⁹ Case COMP/39.596 BA/AA/IB, paragraphs 29 and 30, Case COMP/M.3280 Air France / KLM, paragraph 34.

⁴⁰ In the sense that an increase in fares of 5-10% for one of these two categories of services would entice a significant number of passengers to switch to the other category.

⁴¹ See responses to questions 18 of Q3 – Travel Agents, responses to question 20 of Q2 – Corporate Customers, responses to questions 23 of Q1 – Competitors, Air Transport of Passengers.

⁴² By car.

⁴³ *Ibid.*

- (49) The Parties submit that both airports are substitutable as (i) Orlando is a holiday destination, where non-premium passengers make up the vast majority of the passenger numbers⁴⁴; (ii) Sanford International airport is 37 kilometres miles away from Orlando city centre, and Orlando International airport is around 20 kilometres away from Orlando city centre; and (iii) such non-premium leisure passengers are unlikely to be concerned about whether the airport is 20 or 37 kilometres from the Orlando city centre (or relevant tourist destination at which they are staying, e.g. Disney World).
- (50) On the London-Orlando route, a majority of competitors considers that should the fares on the London-Orlando International route increase, premium customers would not switch to Sanford International. As explained by Aer Lingus: "*While we consider these airports to be substitutable, Premium passengers are not so price sensitive. Consequently, such a price increase would not result in switching from their preferred airport*"⁴⁵. As regards non-premium passengers, a majority of competitors and of travel agencies deems that non-premium passengers would switch to Sanford International in such situation. For instance, Brussel Airlines' response reads as follows: "*Non-Premium passengers are looking at the price (in first instance)*"⁴⁶.
- (51) On the Manchester-Orlando route, a large majority of competitors, corporate customers and travel agencies as well as the manager of the Manchester airport contend that premium passengers would not switch to Sanford International, should fares on Manchester-Orlando International increase by 5-10%⁴⁷. As stated by Carlson Wagon lit: "*Generally, Sanford International Airport is only serviced by charter companies, offering only non-flexible, economy service. Business travellers appreciate the flexibility of Orlando International, the distance to Orlando and its facilities, and a 5-10% price increase will likely not be sufficient to make them switch to a carrier serving Sanford International*"⁴⁸. Conversely, the same market players consider that non-premium passengers would switch from Orlando International to Sanford International, should the fares on the Manchester-Orlando International route increase by 5-10%.
- (52) As a consequence, for the purpose of the present case, the two Orlando airports appear to be substitutable for non-premium passengers only.

4.1.4.4. Washington airports

- (53) Washington DC has two airports, namely Dulles International Airport (42 kilometres/30 minutes⁴⁹ away from the city centre) and Ronald Reagan Washington National Airport (7 kilometres/12 minutes⁵⁰ from the city centre).⁵¹ According to the

⁴⁴ According to a CAA survey data from 2012 put forward by the Parties, 95 per cent of passengers travelled for leisure on the London-Orlando route.

⁴⁵ Response to question 23.1 of Q1 – Questionnaire to competitors.

⁴⁶ Response to question 23.2 of Q1 – Questionnaire to competitors.

⁴⁷ Responses to question 18 of Q2 – Questionnaire to corporate customers.

⁴⁸ Response to question 16.1 of Q3 – Questionnaire to travel agencies.

⁴⁹ By car.

⁵⁰ *Ibid.*

⁵¹ The Parties state that for the assessment of the impact of the Transaction on the London-Washington route, the relevant airports are Dulles International Airport and Ronald Reagan Washington National Airport, although Baltimore-Washington International Airport may be considered by some passengers to and from Washington DC as a substitute for these two airports. Given that Virgin only connects to Dulles International Airport and Delta mainly to Ronald Reagan Washington National Airport, including Baltimore-Washington International airport in the competitive assessment will not alter the outcome of the assessment of the Transaction.

Parties no competition concerns will arise from the Transaction regardless the precise Washington DC airport market definition.

- (54) The market investigation revealed mixed results on the substitutability of the two airports for premium and non-premium passengers. Subsequently, no firm conclusions can be drawn on the substitutability of the two airports of Washington DC.
- (55) For the assessment of the Transaction, the conclusion on the substitutability of the two Washington DC airports can be left open as no competition concerns arise under any alternative market definition.

4.1.4.5. Chicago airports

- (56) Chicago has two airports, namely O'Hare International Airport (29 kilometres/24 minutes⁵² away from the city centre) and Midway International Airport (17 kilometres/18 minutes⁵³ away from the city centre). According to the Parties no competition concerns will arise from the Transaction regardless the precise Chicago airport market definition.
- (57) The market investigation revealed mixed results on the substitutability of the two airports for premium and non-premium passengers. Subsequently, no conclusions can be drawn on the substitutability of the two airports of Chicago.
- (58) For the assessment of the Transaction, the conclusion on the substitutability of the two Chicago airports can be left open as no competition concerns arise under any alternative market definition.

4.1.4.6. Miami airports

- (59) Miami has two airports, namely Miami International (7 kilometres/11 minutes⁵⁴ away from the city centre) and Fort Lauderdale International (39 km kilometres/30 minutes⁵⁵ away from the city centre). According to the Parties no competition concerns will arise from the Transaction regardless the precise Miami airport market definition.
- (60) The market investigation revealed mixed results on the substitutability of the two airports for premium and non-premium passengers. Subsequently, no conclusions can be drawn on the substitutability of the two airports of Miami.
- (61) For the assessment of the Transaction, the conclusion on the substitutability of the two Miami airports can be left open as no competition concerns arise under any alternative market definition.

4.1.5. *Inclusion of charter services*

- (62) Charter flights, as opposed to scheduled flights, are usually defined as air transport services that take place outside normal schedules, normally through a hiring arrangement with a particular customer (in particular a tour operator). Charter companies often fly to destinations where no scheduled airline is active and usually operate on a seasonal basis with a relatively low frequency of flights, in response to

⁵² By car.

⁵³ *Ibid.*

⁵⁴ By car.

⁵⁵ *Ibid.*

the requirements of tour operators (for example, once a week on Saturday, only during the summer or only during the ski season).

- (63) Indeed, charter companies did not traditionally sell tickets directly to passengers. They sold seats on their aircraft to tour operators which included the flight in a holiday package. As such, the flight (air transport) is part of a package holiday, the price of which includes flights, accommodation and other services. However, charter companies now sell to some extent so-called "dry seats" directly to passengers (that is to say seats only without other services), in addition to sales of seats to tour operators for inclusion in package holidays.
- (64) The Commission has previously held that most of the services offered by charter companies (package holiday sales, seat sales to tour operators) are not in the same market as scheduled point-to-point air transport services⁵⁶. As concerns the sale of "dry seats", the Commission recently left open whether they are part of the same relevant market noticeably for long-haul flights⁵⁷.
- (65) The Parties consider that they face a meaningful competition from charter airlines on five routes: (i) London-Orlando, (ii) Manchester-Orlando, (iii) London-Las Vegas, (iv) Manchester-Las Vegas and (v) London-Cancun.
- (66) Indeed, the Parties submit that leisure destinations, such as Orlando, Las Vegas and Cancun, where the overwhelming majority of passengers even on scheduled airlines are non-premium passengers travelling for leisure purposes, are the kind of destinations where the scheduled airlines have regard to competition from charter airlines.
- (67) Respondents to the market investigation confirm the Commission's precedents. As concerns the package holiday sales and seat sales to tour operators, the majority of the respondents consider that they are not substitutable with scheduled passenger air transport services in the eyes of customers on the overlap routes.
- (68) As a consequence, for the assessment of the Transaction, the Commission concludes that most of the services offered by charter companies (package holiday sales, seat sales to tour operators) are not in the same market as scheduled air transport services.
- (69) As concerns the competitive constraint exerted by charter carriers selling dry seats, on the five routes referred to by the Parties, a large majority of respondents to the market investigation do not see the charter airlines as credible alternatives to scheduled airlines for premium services.
- (70) However, for non-premium services, a majority of travel agencies deem that, facing such fare increase, some of their customers would switch to buying dry seats from charter carriers.
- (71) Therefore, the relevance of dry seats offered by charter carriers to non-premium passengers will be considered by the Commission in the competitive assessment in the route- by-route analysis where relevant (Section 6.1).

⁵⁶ COMP/M.4439 - Ryanair/Aer Lingus, COMP/M.5141 - KLM/Martinair, COMP/M.6663 – Ryanair/Aer Lingus III.
⁵⁷ COMP/M.574 – Iberia/British Airways, paragraphs 34 and 35.

4.2. Air transport of cargo

4.2.1. Relevant product market

- (72) In line with previous Commission decisions, the Parties submit that the O&D approach to the market definition is inappropriate for the air transport of cargo, given that cargo is generally less time sensitive than passengers and is usually transported by trans-modal means of transport "behind" and "beyond" the points of origin and destination.⁵⁸ Therefore, the relevant market should be defined more broadly.
- (73) A majority of the respondents to the market investigation confirmed that a wider market for air transport of cargo exists as, unlike passengers, cargo can be transported with a higher number of stopovers and therefore any one-stop route is a substitute for any non-stop route.⁵⁹ Besides, while some market players argued that that a separate market could be identified including only non-stop flights used to transport specific goods, such as livestock, perishable products, lifesaving drugs, etc., a large majority of respondents indicated that such a distinction would not be material.⁶⁰
- (74) Furthermore, the Parties submit that, as supported by previous Commission decisions⁶¹, there is a single market for air transport of cargo and it is not appropriate to sub-divide that market by type of air cargo carrier or by the nature of the goods transported.
- (75) The evidence collected through the market investigation indicates that there is no reason to further sub-divide the market according to the type of provider. Even though some market players argued that integrators⁶² would have a specific market segment as they focus on the express small packages market, a large majority of respondents considered that all four types of air cargo carriers, namely (i) cargo airlines with dedicated freighter airplanes; (ii) carriers with only belly space cargo capacity on passenger flights; (iii) combination airlines (that is to say airlines with both dedicated freighter airplanes and belly space cargo capacity); and (iv) integrators, compete with each other for the same business in so far as they offer air transport of cargo services.⁶³
- (76) In previous decisions, the Commission considered a market for air transport of cargo including all kinds of transported goods.⁶⁴ The market investigation in the present case largely supports such approach. Whilst some respondents indicated that dangerous goods require special handling for safety and security reasons, the large majority of competitors indicated that they transport all kinds of goods in the same aircraft.⁶⁵ Likewise, the majority of respondents to the market investigation (competitors and customers) confirmed that the market for air transport of cargo should not be further

⁵⁸ COMP/M.5747 – Iberia/British Airways, recital 36; COMP/M.6447 – IAG/bmi, recital 87.

⁵⁹ See responses to question 5 of Q8 – Questionnaire to Cargo Competitors and responses to question 6 of Q9 – Questionnaire to Cargo Customers.

⁶⁰ See responses to questions 6 and 6.1 of Q9 – Questionnaire to Cargo Customers.

⁶¹ COMP/M.5747 – Iberia/British Airways, recitals 38 and 40; COMP/M.6447 – IAG/bmi, recitals 89 and 91.

⁶² Integrators offer not only airport to airport services, but also handle cargo from the point of origin to the airport and from the airport to the final destination, including legal formalities such as customs clearance. Examples of integrators are DHL, UPS, FedEx and TNT.

⁶³ See responses to questions 8 and 8.1 of Q8 – Questionnaire to Cargo Competitors and responses to questions 8 and 8.1 of Q9 – Questionnaire to Cargo Customers.

⁶⁴ COMP/M.5747 – Iberia/British Airways, recital 40; COMP/M.6447 – IAG/bmi, recitals 91-92.

⁶⁵ See responses to question 6 of Q8 – Questionnaire to Cargo Competitors.

sub-divided according to the nature of the transported items, mainly because different kinds of cargo can be transported in the same aircraft. Some respondents also pointed to the use of standardized forms of packaging and to the fact that no different handling is required for loading and unloading the cargo.⁶⁶

- (77) Finally, in line with previous Commission decisions, the Parties submit that the markets for air transport of cargo are inherently unidirectional, due to differences in demand at each end of the route, and must therefore be assessed on a unidirectional basis.⁶⁷ The majority of respondents to the market investigation confirmed this approach, mainly because of differences in terms of demand, products being shipped, rate structure, customer base and deployed capacity.⁶⁸
- (78) Therefore, the competitive assessment will be based on a broader market for air transport of cargo encompassing all types of air cargo carriers and including all kinds of transported goods on a unidirectional basis.

4.2.2. *Relevant geographic market*

- (79) In line with previous Commission decisions, the Parties submit that for intercontinental routes, catchment areas at each end of the route broadly correspond to continents for those continents where local infrastructure is adequate to allow for onward connections (for instance by road, train, or inland waterways, etc.), such as Europe and North America. However, in respect of continents where local infrastructure is less developed, the catchment area corresponds to the country of destination.⁶⁹
- (80) The evidence collected through market investigation confirms that in areas where transport infrastructure allows for smooth onward connections the catchment area for air transport of cargo can be broader than a country and can correspond to continents.⁷⁰ This is particularly the case for Europe (encompassing the EEA area)⁷¹ and North America (encompassing the United States and Canada)⁷². However, with regard to Mexico, a large majority of respondents to the market investigation indicated that transport infrastructure in this country is less developed and thus insufficient to consider Mexico as part of a wider area.⁷³ Consequently, air transport of cargo from Europe to Mexico (and *vice versa*) must then be assessed on a continent (Europe) to country basis (and *vice versa*).
- (81) Therefore, for the assessment of the Transaction, the relevant cargo markets are the ones for air transport of overall cargo on a continent-to-continent (Europe - North

⁶⁶ See responses to questions 7 and 7.1 of Q8 – Questionnaire to Cargo Competitors and responses to question 7 of Q9 – Questionnaire to Cargo Customers.

⁶⁷ COMP/M.5747 – Iberia/British Airways, recital 39; COMP/M.6447 – IAG/bmi, recital 90.

⁶⁸ See responses to questions 9 and 9.1 of Q8 – Questionnaire to Cargo Competitors and responses to questions 9 and 9.1 of Q9 – Questionnaire to Cargo Customers.

⁶⁹ COMP/M.5440 – Lufthansa/Austrian Airlines, recital 30; COMP/M.5747 – Iberia/British Airways, recital 42; COMP/M.6447 – IAG/bmi, recital 94.

⁷⁰ See responses to question 10 of Q8 – Questionnaire to Cargo Competitors and responses to question 10 of Q9 – Questionnaire to Cargo Customers.

⁷¹ See responses to question 13 of Q8 – Questionnaire to Cargo Competitors and responses to question 13 of Q9 – Questionnaire to Cargo Customers.

⁷² See responses to question 11 of Q8 – Questionnaire to Cargo Competitors and responses to question 11 of Q9 – Questionnaire to Cargo Customers.

⁷³ See responses to questions 10 and 12 of Q8 – Questionnaire to Cargo Competitors and responses to questions 10 and 12 of Q9 – Questionnaire to Cargo Customers.

America and *vice versa*) and continent-to-country basis (Europe – Mexico and *vice versa*) as the case may be.

5. CONCEPTUAL FRAMEWORK FOR THE ASSESSMENT OF THE PRESENT TRANSACTION

(82) Prior to assessing the impact of the Transaction on the relevant markets, the conceptual framework for the assessment of the Transaction must be determined. In this respect, the Transaction raises one main conceptual issue: the treatment of Delta's alliance and JV partners for the purposes of both the determination of affected markets and the competitive assessment of the Transaction.

5.1. Alliances and profit-sharing joint ventures – passenger air transport services

(83) Delta is a founding member of the Skyteam alliance and participates in a profit-sharing transatlantic joint venture with Air France/KLM and Alitalia (the "Air France/KLM/Alitalia joint venture").⁷⁴

(84) In accordance with previous cases⁷⁵, the assessment of the Transaction will be carried out on the routes operated directly by Delta as well as by Delta's partners in the Air France/KLM/Alitalia joint venture to the extent that they fall within the scope of the JV agreement.

(85) [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia]

(86) [Scope of the JV arrangements between Delta and Virgin Atlantic]

(87) Similarly, there are two other revenue-sharing joint ventures covering air passenger services on transatlantic routes, namely the oneworld Alliance Transatlantic Joint Business of IAG (British Airways and Iberia) and American Airlines and the Star Alliance A++ Joint Venture of United, Lufthansa and Air Canada. Their market positions will be analysed as being a single one on all relevant routes.

5.2. Alliances and profit-sharing joint ventures – air transport of cargo

(88) Delta provides air transport of cargo services in the context of the Air France/KLM/Alitalia joint venture and is a member of the SkyTeam Cargo alliance, which provides for less integrated cooperation between SkyTeam members in transporting cargo across the SkyTeam global network.⁷⁶

(89) For the purpose of the present case, the assessment will be carried out on the cargo routes operated directly by Delta as well as by Delta's joint venture partners (Air

⁷⁴ Delta's transatlantic joint venture with Air France/KLM/Alitalia covers routes between Europe and North America (Canada, the US and Mexico) including points beyond Europe and beyond US entry points into Delta's US domestic network. The Air France/KLM/Alitalia joint venture also covers services between Amsterdam and India and between North America and Tahiti.

⁷⁵ See for instance COMP/M. 5747 – Iberia/British Airways, 14 July 2010.

⁷⁶ [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia]. SkyTeam Cargo alliance comprises Aeroflot, Aeromexico Cargo, Air France – KLM Cargo, Alitalia Cargo, China Airlines, China Southern Cargo, Czech Airlines Cargo, Delta Cargo, Korean Air Cargo.

France/KLM/Alitalia) to the extent that they fall within the scope of the joint venture revenue-sharing arrangements.

6. COMPETITIVE ASSESSMENT

6.1. Air transport of passengers

(90) The Transaction gives rise to horizontal overlaps on (i) two non-stop/non-stop routes: London-New York and London-Boston, and (ii) ten non-stop/one-stop overlap routes: London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun, London-Miami, London-Orlando, London-Las Vegas, Manchester-Orlando and Manchester-Las Vegas.⁷⁷ These routes will be analysed in turn below.

6.1.1. Methodology for calculating market shares

(91) The Commission regularly⁷⁸ endorses the use of Marketing Information Data Tapes (MIDT) data as the best available proxy to estimate market shares. The Parties therefore submitted data on market size and market share on the basis of MIDT data for each relevant O&D route.

(92) MIDT data capture the booking of airline tickets made through Global Distribution System (GDS); however MIDT data does not contain the bookings made directly via the airline web-sites and charter sales.

(93) The Commission proceeded to a market reconstruction, asking the Parties and their competitors to provide actual passenger numbers on each relevant O&D route. This data encompasses the bookings through GDS as well as the bookings made directly via the airline web-sites⁷⁹.

(94) The market shares as calculated on the basis of the market reconstruction are within similar ranges as the market shares calculated using MIDT data.

(95) The Commission uses data calculated through the market reconstruction for the purpose of conducting the competitive assessment of the Transaction⁸⁰.

(96) For the assessment of the Transaction, all one-stop flights are taken into account without applying a cut-off at a certain maximal duration of the connection time. The Commission takes the view that the competitive analysis can include all booked one-

⁷⁷ No competition concerns are deemed to arise on all affected non-stop/one-stop overlaps where throughout the last four IATA seasons (for Delta this included Delta's integrated transatlantic joint venture partners Air France/KLM and Alitalia to the extent that the routes in question were within the scope of the joint venture): (i) the Parties' combined market share was below 25%, or (ii) one of the Parties had a market share below 2%. There were no non-stop/one-stop overlap routes for which at least one end of the city pair was outside the EU and on which the total annual traffic was below 30,000 passengers. Similarly, no competition concerns are deemed to arise on all affected one stop/one-stop overlaps where throughout the last four IATA seasons (i) the Parties' combined market share was below 25% or (ii) one of the Parties had a market share below 2% or (iii) where the total annual traffic was below 30,000 passengers.

⁷⁸ Commission's Decisions of 30 March 2012 in Case No COMP/M.6447 – IAG/ BMI; 27 July 2010 in Case No COMP/M.5889 – United Airlines/ Continental Airlines; 14 July 2010 in Case No COMP/M.5747 – Iberia/ British Airways.

⁷⁹ A limited number of minor market participants did not respond. However, they would likely represent a small number of the passengers flying on the affected routes. In any event, their inclusion would have reduced the Parties' market shares.

⁸⁰ However, the market reconstruction achieved in the present case confirms the possibility to rely on MIDT data for similar cases.

stop tickets because the low popularity of very long one-stop flights will be reflected in the booking data in that they will only account for a very small part of the relevant market.

6.1.2. Congestion at relevant airports

6.1.2.1. UK airports

(a) London Heathrow

(97) Heathrow is a fully coordinated airport under the EU Slot Regulation (Level 3)⁸¹, meaning that each business and general aviation movement requires the prior allocation of a slot. At Heathrow there are constraints on airline access to slots across the whole operating day on every day of the week across all months of the year. It is therefore not currently possible for an airline to rely on the slot pool at Heathrow to launch or extend services and each season there is either very limited availability or no availability at all, as explained by the London Heathrow slot coordinator, ACL⁸².

(98) According to the Parties⁸³, 56.6 % of all Heathrow slots are currently held by BA, American Airlines, and Iberia, compared to 3.3% by Virgin⁸⁴ (and only 0.3% for Delta (with 7% for all of the members of the SkyTeam alliance). The next largest slot holders at Heathrow are Lufthansa with 5.6%, and Aer Lingus with 3.3%.

(b) London Gatwick

(99) Like Heathrow, Gatwick is designated as a fully coordinated airport under the EU Slot Regulation (Level 3). Demand currently exceeds capacity throughout most or all of the day at Gatwick⁸⁵. According to ACL, the slot coordinator at Gatwick: "*Gatwick's capacity limitations are runway movement and terminal passenger throughput constraints. Runway capacity is the dominant constraint on airline access to slots. Access to slots is limited by available capacity for much of the operating day, particularly in the morning period and during summer seasons. London Gatwick is also governed by environmental limits on the number of night movements and night noise points permitted between 2300 – 0600 local time. Significant entry or growth in the key morning and evening peak times of day is likely to be limited by slot availability, although a secondary market for slots exists and slots at other times (eg, afternoon/late evening) can be available from the pool*"⁸⁶.

(100) Virgin held 2% of the slots at Gatwick during the Winter 2012 IATA season⁸⁷.

⁸¹ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1–6 and Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports.

⁸² See ACL's response to Q5 – Questionnaire to slot coordinators.

⁸³ Form CO, paragraph 373.

⁸⁴ Virgin has recently obtained 9 slots pursuant to the remedies taken by the Parties in the IAG/bmi case. These 9 slots amount to 1.3% of the Heathrow slots.

⁸⁵ *Impact assessment of revisions to Regulation 95/93 Final report* (Steer Davies Gleave, March 2011 available at: <http://ec.europa.eu/transport/air/studies/doc/airports/2011-03-impact-assessment-revisions-regulation-95-93.pdf>

⁸⁶ See ACL's response to question 6 of Q7 – Questionnaire to slot coordinators.

⁸⁷ Delta does not operate ex Gatwick.

(c) Manchester airport

(101) Manchester is a level 3 coordinated airport. Manchester Airport is however broadly not capacity or slot constrained, but is subject to a limited supply at the peaks.

6.1.2.2. North-American airports

(a) New York airports

(102) In the New York urban area, both JFK and Newark are subject to slot control. The Parties indicated that for both airports, while availability of slots was limited in the late afternoon and evening (from 1:00 pm to 9:59 pm), slots were generally available in the morning and early afternoon (from 6:00 am to 1:00 pm)⁸⁸.

(103) The United States' Federal Aviation Administration ("the FAA"), which acts as a slot coordinator for these two airports, indicated that they both had slot constraints from 6:00 am to 10:59 pm daily and that the peak hours were generally from 7:00 am to 9:29 am and from 1:00 pm to 9:29 pm. The FAA also indicated that there had been several instances during each of the last four IATA seasons where it was unable to satisfy slot requests at each of those airports. In addition, the FAA does not expect capacity to change at those airports in the next three to five years⁸⁹.

(104) These elements point to a fairly high level of congestion at both airports during most of the day, resulting in high barriers to entry and expansion on routes from or to these airports, unless for carriers which already hold a substantial portfolio of slots at one of them. Indeed, the more slots a carrier holds at a given congested airport, the easier it is for that carrier to find a set of slots the use of which it can modify (in terms of routes), so as to be in a position to add frequencies on certain routes.

(b) Other North American airports

(105) The information submitted by the Parties and collected during the market investigation shows that no significant congestion would exist at other relevant US airports and at Cancun airport.

6.1.3. *Non-stop-non-stop long-haul overlaps: London-New York and London-Boston*

(106) The Transaction gives rise to non-stop-non-stop overlaps on two routes, namely London-New York and London-Boston.

6.1.3.1. General arguments put forward by the Parties

(107) The Parties put forward a number of arguments applying to both routes, as to why they believe that the Transaction does not raise competition concerns⁹⁰.

(108) They first argue that their transatlantic services are predominantly complementary and that this complementarity would allow them to build a more significant UK / US network, in particular thanks to their respective domestic networks in the United States and the United Kingdom. The Parties consider that such a stronger network could help them act as a more effective competitive constraint on the Transatlantic Joint Business of British Airways and American Airlines ("BA / AA"), [...]. In this

⁸⁸ Form CO, paragraph 382.

⁸⁹ See FAA's responses to questions 7 to 9 of Q5 – Questionnaire to Slot Coordinators.

⁹⁰ Form CO, paragraphs 350 to 451.

respect, the Parties stress the importance of connecting traffic to sustain operations on transatlantic O&D routes. Indeed, by offering more connecting opportunities, a carrier can attract further connecting passengers and increase its load factors on the trunk routes. This, in turn, strengthens its performance on the route and enables it to compete more aggressively on price for O&D passengers.

- (109) The Parties also referred to London Heathrow, stressing its importance for UK / US transatlantic routes, its very high level of congestion and the large share of slots held at that airport by British Airways. [...].
- (110) Furthermore, the Parties stress that the ability to attract premium passengers is critical to an airline's ability to compete effectively on transatlantic routes and argue that the Transaction would reinforce this ability by providing them with a more extensive network and the opportunity to offer more frequencies.
- (111) [The Parties' views on relevant factors to compete effectively and closeness of competition]
- (112) [The Parties' views on relevant factors to compete effectively and closeness of competition]⁹¹
- (113) [The Parties' views on the American Airlines/US Airways merger]

6.1.3.2. Closeness of competition between the Parties – general considerations

- (114) The Parties have provided data on the share of passengers originating in Europe and North America among their respective passengers on the London-New York and London-Boston routes, distinguishing between premium and non-premium passengers⁹². [The Parties' views on closeness of competition]⁹³.
- (115) [The Parties' views on closeness of competition]^{94 95 96}
- (116) [The Parties views on closeness of competition]⁹⁷
- (117) These various elements, whether taken individually or together, do not lead to firm conclusions as regards closeness of competition between the Parties. However, they constitute useful initial indications, hinting in general at a limited degree of substitutability between Delta and Virgin on the London-New York and London-Boston routes. These indications will be complemented below by the outcome of the market investigation on a route-by-route basis.

6.1.3.3. London-New York

- (118) According to the Parties, the London-New York route is the most-travelled international long-haul service in the world. In the Winter 2011 IATA season, a total of [500,000-1 million] passengers (among whom [300,000-400,000] premium passengers) travelled on that route on a point-to-point basis. In the Summer 2012 IATA season, [1.5 million - 2 million] passengers (among whom [500,000 - 1 million] premium passengers) travelled on that route. For each of these seasons and

⁹¹ Form CO, Annex 74.

⁹² Form CO, paragraphs 429 and 438.

⁹³ [The Parties' views on closeness of competition]

⁹⁴ Form CO, Exhibits D, F and G, Parties' separate responses to request for information Q7 of 16 May 2013.

⁹⁵ Form CO, Exhibit D *Delta Benchmarking Strategy*

⁹⁶ Parties' separate responses to request for information Q7 of 16 May 2013.

⁹⁷ Form CO, Exhibit I, page 2.

within each category of passengers (premium and non-premium), [90-100]% of these passengers travelled non-stop⁹⁸.

- (119) Delta offers both non-stop and one-stop services on the London-New York route while Virgin only offers non-stop services. Since the Parties' activities do not overlap in the one-stop segment and since one-stop passengers account for a very minor proportion of all passengers for all the relevant combinations of airports and both for premium and non-premium passengers, the inclusion of one-stop services in the analysis would not lead to alter the conclusions of the competitive assessment for the London-New York route.
- (120) In the Winter 2012 and in the Summer 2013 IATA seasons, Delta offered three daily non-stop services between London Heathrow and JFK. Over the same period, Virgin offered four daily non-stop services between London Heathrow and JFK and two daily non-stop services between London Heathrow and Newark.
- (121) Over the same period, BA / AA offered a total of 11-12 daily non-stop services between London Heathrow and JFK (depending on the season). Moreover, they offered three daily non-stop services between London Heathrow and Newark. In addition, British Airways offered a Business class only service between JFK and London City with 1-2 daily frequencies (depending on the season). This service is non-stop in the US – UK direction and one-stop in the opposite direction. Since none of the Parties offers non-stop services between London City and New York, disregarding British Airways' services between London City and New York is a conservative approach, which will be followed in the the remainder of this analysis.
- (122) In the Winter 2012 and Summer 2013 IATA Seasons, United offered five daily non-stop services between London Heathrow and Newark.
- (123) Finally, Kuwait Airways offered three non-stop weekly frequencies between London Heathrow and JFK over the same period.
- (124) In view of these characteristics, and since the market definition has been left open with respect to the substitutability of JFK and Newark, it is appropriate to assess the effects of the Transaction on the following possible markets for non-stop services on the London-New York route: London Heathrow-JFK and London Heathrow –New York (including JFK and Newark). Moreover, for each of these possible markets, sub-segmentations must be considered with respect to the type of passengers (premium and non-premium).
- (125) The market position of the Parties and their competitors on these markets is as follows:

⁹⁸ For the various routes under assessment, the numbers of passengers stem from the Commission's market reconstruction. They correspond to one-way travels, meaning that a passenger who flies roundtrip is counted twice as much as a passenger who flies inbound (or outbound) only.

Table 2: Market shares on London-New York (non-stop services only)

London Heathrow- JFK						
Carrier	Winter 2011			Summer 2012		
	Premium	Non-premium	All passengers	premium	Non-premium	All passengers
Delta	[5-10]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Virgin	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Delta + Virgin	[30-40]%	[50-60]%	[40-50]%	[30-40]%	[50-60]%	[40-50]%
BA / AA	[60-70]%	[40-50]%	[50-60]%	[60-70]%	[40-50]%	[50-60]%
Kuwait Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
London Heathrow- New York (JKF + Newark)						
Carrier	Winter 2011			Summer 2012		
	Premium	Non premium	All passengers	premium	Non-premium	All passengers
Delta	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Virgin	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Delta + Virgin	[30-40]%	[50-60]%	[40-50]%	[30-40]%	[50-60]%	[40-50]%
BA / AA	[50-60]%	[30-40]%	[40-50]%	[50-60]%	[30-40]%	[40-50]%
United	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Kuwait Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(a) Parties' arguments

- (126) In addition to the general arguments summarised in Section 6.1.3.1 above, the Parties adduced route-specific justifications as to why the proposed Transaction does not raise competition concerns. [Delta's plans regarding the London-New York route]⁹⁹.
- (127) Besides, the Parties argue that post-Transaction, the combined entity will be clearly constrained by BA / AA and United. The Parties underline in particular the high market shares of BA / AA, notably in the premium segment, and their significant advantage in terms of number of frequencies, capacity and ability to increase both capacity and frequencies due to British Airways' substantial slot portfolio at London Heathrow. The Parties also claim that United and Kuwait Airways' non-stop services as well as the various one-stop services offered on the route would constrain the combined entity.

(b) Commission's assessment

(i) London Heathrow - JFK (non-stop services)

- (128) BA / AA is likely to retain a very strong position in the premium segment post-merger, with a market share currently higher than 60%. Moreover, BA / AA has a significant frequency advantage with 11 daily frequencies in the Summer 2013 IATA season, as opposed to seven for the combined entity. Premium passengers usually attach value to high frequency services. In addition, in light of the general elements mentioned in Section 6.1.3.2 and the outcome of the market investigation, the Parties are rather distant competitors and BA / AA are closer to each of them than the other Party. Indeed, a large majority of both travel agents and corporate customers took the view that BA / AA was clearly a closer competitor to each Party than the other Party with respect to premium passengers¹⁰⁰. Respondents notably referred to reasons relating to frequency and schedules, brand and frequent flyer programmes. Most competitors took a similar view. This suggests that should the combined entity raise prices, a large proportion of customers is likely to switch to BA / AA, which is the closest competitor to each of the Parties.
- (129) [Outcome of quantitative analysis]
- (130) In view of the above and of the other available evidence, the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on the market for air transport services for premium passengers on the London Heathrow-JFK airport pair.
- (131) On the non-premium segment, the Parties have higher combined market shares than on the premium segment. However, BA / AA's will remain a strong competitor, with market shares above 40%. Moreover, as regards closeness of competition between the Parties on the non-premium segment, the same findings emerge from the market investigation as on the premium segment: BA / AA is clearly a closer competitor to

⁹⁹ Form CO, paragraph 540 and Confidential Annex 1.

¹⁰⁰ See responses to questions 24 and 25 of Q3 – Travel Agents, responses to questions 27 and 28 of Q2 – Corporate Customers, responses to questions 26 and 27 of Q1 – Competitors, Air Transport of Passengers.

each Party than the other Party¹⁰¹, which is also borne out by the elements mentioned in Section 6.1.3.2. In particular, it should be noted that whilst Delta's brand appears to be strong in the United States and less so in Europe and Virgin faces the opposite situation, BA / AA benefits from the existence of strong brands both in the United States and Europe. This is a further element suggesting that BA / AA is a closer competitor to Virgin than Delta for passengers booking or originating in Europe and a closer competitor to Delta than Virgin for passengers booking or originating in the United States. It is also noted that there are potential one-stop alternatives on the route. It is also noted that there are potential one-stop alternatives on the route: 15 daily one-stop services between London Heathrow and JFK are offered by various carriers.

- (132) In addition, as already pointed out with respect to premium passengers, BA / AA have a significant frequency advantage over the combined entity. Even though such advantage is not as crucial as for premium passengers, it is nevertheless an important aspect also in the eyes of non-premium passengers which further contributes to positioning BA / AA as a closer competitor to each Party than the other Party.
- (133) Furthermore, while slot constraints at both London Heathrow and JFK constitute in general high barriers to entry on the London Heathrow – JFK route, this does not apply to British Airways and American Airlines. Indeed, within the IAG group, British Airways and Iberia hold together more than 50% of all slots at London Heathrow and American Airlines holds around 14% of all slots at JFK. British Airways and American Airlines have indicated that slots would be available at both airports to expand operations on the route and that, in addition, they would be able and willing to increase capacity on the route if demand were to increase¹⁰². The ability of BA / AA to increase frequencies and capacity in case of a price rise is a further factor allowing BA / AA to exert significant constraint on the combined entity post-merger on the non-premium segment.
- (134) In view of the above and of the other available evidence, the Transaction does not raise serious doubts as to its compatibility with the internal market on the market for air transport services for non-premium passengers on the London Heathrow-JFK airport pair.
- (135) Moreover, since the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment, it does not raise serious doubts with respect to the "all-passenger" London Heathrow – JFK market.

(ii) London Heathrow – New York (JFK and Newark) (non-stop services)

- (136) BA / AA is likely to retain a very strong position in the premium segment post-merger, with a market share higher than 50%. Moreover, as on the London Heathrow – JFK market, BA / AA has a significant frequency advantage, with 14 daily frequencies in the Summer 2013 IATA Season, as opposed to 9 for the combined

¹⁰¹ See responses to questions 24 and 25 of Q3 – Travel Agents, responses to questions 27 and 28 of Q2 – Corporate Customers, responses to questions 26 and 27 of Q1 – Competitors, Air Transport of Passengers.

¹⁰² See British Airways and American Airline's joint responses to questions 35 and 36 of Q1 – Competitors, Air Transport of Passengers.

entity. Moreover, the findings reached concerning the London Heathrow – JFK premium market as regards closeness of competition between Parties also apply to the London Heathrow – New York premium market. In addition, on that market, the Parties face competition from United, even though its market share on the premium segment is limited.

- (137) Therefore, the Transaction does not raise serious doubts as to its compatibility with the internal market on the London Heathrow-New York market for premium passengers.
- (138) On the non-premium segment, the Parties' combined market shares are higher than 50%. However, BA / AA and, to a lesser extent, United will remain strong competitors, with market shares respectively above 30% and 10%.
- (139) Moreover, the findings reached concerning the London Heathrow – JFK non-premium market as regards closeness of competition between the Parties, and BA / AA's ability to increase frequencies and capacity if prices were to go up post-merger also apply to the London Heathrow – New York non-premium market. It is also noted that there are potential one-stop alternatives on the route; in particular BA / AA offered three daily one-stop services between London Heathrow and Newark.
- (140) In view of the above and of the other available evidence, the Commission considers that the the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on the London Heathrow – New York market for non-premium passengers.
- (141) Moreover, since the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment, the Commission considers that it also does not raise serious doubts with respect to the London Heathrow-New York "all-passengers" market.

(c) Conclusion

- (142) In light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London-New York route on any possible relevant market.

6.1.3.4. London-Boston

- (143) In the Winter 2011 IATA season, a total of [100,000-200,000] passengers (among whom [50,000-100,000] premium passengers) travelled on that route on a point-to-point basis. In the Summer 2012 IATA season, [400,000-500,000] passengers (among whom [100,000-200,000] premium passengers) travelled on that route. For each of these seasons and within each category of passengers (premium and non-premium), [90-100]% of these passengers travelled non-stop.
- (144) Delta offers both non-stop and one-stop services on the London-Boston route while Virgin only offers non-stop services. Since the Parties' activities do not overlap in the one-stop segment and since, in addition, one-stop passengers account for a limited proportion of all passengers and Delta accounts for a limited proportion of one-stop passengers, for all the relevant combinations of airports and both for premium and

non-premium passengers, the inclusion of one-stop services in the analysis would not lead to alter the conclusions of the competitive assessment for the London-Boston route.

- (145) Delta launched non-stop services on the London Heathrow-Boston route as of the Summer 2011 IATA Season with two daily frequencies, using two daily slot pairs at London Heathrow obtained on the basis of the slot commitment in the *BA/AA/IB* Antitrust case¹⁰³. As of the Winter 2011 IATA Season, Delta reduced its service to one daily frequency, which it maintained throughout subsequent seasons¹⁰⁴.
- (146) In the Winter 2012 and in the Summer 2013 IATA seasons, Virgin also offered one daily service between London Heathrow and Boston.
- (147) Over the same period, BA / AA, offered four daily non-stop services between London Heathrow and Boston.
- (148) The market position of the Parties and BA / AA on this markets is as follows:

Table 3: Market shares on London-Boston (non-stop services only)

London Heathrow- Boston						
Carrier	Winter 2011			Summer 2012		
	Premium	Non-premium	All passengers	premium	Non-premium	All passengers
Delta	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Virgin	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Delta + Virgin	[20-30]%	[40-50]%	[30-40]%	[20-30]%	[40-50]%	[30-40]%
BA / AA	[70-80]%	[50-60]%	[60-70]%	[70-80]%	[50-60]%	[60-70]%

Source: Market reconstruction

(a) Parties' arguments

- (149) In addition to the general arguments summarised in Section 6.1.3.1 above, the Parties adduced route-specific justifications as to why the proposed Transaction does not raise competition concerns. [Delta's plans regarding the London-Boston route]¹⁰⁵.
- (150) Moreover, according to the Parties, although the Transaction would reduce the number of providers of non-stop services from three to two, this would not lead to an anti-competitive outcome [...]. The Parties refer to the strength of BA / AA in terms

¹⁰³ Case COMP/39.596 *BA/AA/IB*.

¹⁰⁴ However, as of the Winter 2012 IATA season, Delta reduced its capacity on the London-Boston route by switching from a Boeing 767-400 to a Boeing 767-300 aircraft. This resulted in a [10-20]% reduction in the number of seats in the Business class cabin and a [10-20]% reduction in the number of seats in the Economy class cabin.

¹⁰⁵ Form CO, paragraph 540 and Confidential Annex 1.

of feed traffic, capacity, frequency¹⁰⁶ and ability to increase both capacity and frequencies due to British Airways' substantial slot portfolio at London Heathrow. The Parties also refer to BA / AA's high market shares on the point-to-point market, notably on the premium segment. They claim that the Transaction would allow them to increase their penetration of premium passengers through a better network and increased frequencies. They take the view that this would result in more effective competition because BA / AA would face a stronger rival.

(151) [Outcome of Virgin Atlantic's load factor and fare analysis]¹⁰⁷

(152) Besides, the Parties stress the role of one-stop services, which would exert a significant competitive constraint on their non-stop services. They note that one-stop fares are usually the cheapest available fares through booking websites, especially during peak travel periods.

(153) In addition, they emphasize the "availability" of one daily slot pair at London Heathrow for entry on the London-Boston route under the slot commitment in the antitrust *BA/AA/IB* case¹⁰⁸. Indeed, since Delta handed back one of the two daily slot pairs it had obtained for its London-Boston operations in March 2011, another carrier could, provided that it satisfies relevant eligibility conditions, apply for one daily slot pair to launch operations on that same route. According to the Parties, this would result in one of the usual barriers to entry on transatlantic routes from London – that is, the scarcity of slots at London Heathrow – being absent on that particular route. The Parties further underline that each of them only operates with one daily frequency, so that the competitive constraint lost as a result of the Transaction could be restored with one daily frequency (and therefore one daily slot pair).

(b) Commission's assessment

(154) BA / AA is likely to retain a very strong position in the premium segment post-merger, with a market share currently higher than 70%. Moreover, BA / AA enjoys a significant frequency advantage with four daily frequencies in the Summer 2013 IATA season, as opposed to two for the combined entity. As already indicated, premium passengers usually attach value to high frequency services. In addition, in light of the general elements mentioned in Section 6.1.3.2 and the outcome of the market investigation, the Parties are not particularly close competitors and BA / AA is clearly closer to each of them than the other Party. Indeed, a large majority of both travel agents and corporate customers took the view that BA / AA was a closer competitor to each Party than the other Party with respect to premium passengers¹⁰⁹. Respondents notably referred to reasons relating to capacity, frequency, schedules and service. Most competitors took a similar view. This suggests that should the combined entity raise prices, a large proportion of customers is likely to switch to BA / AA, which is the closest competitor to each of the Parties.

¹⁰⁶ The Parties note that BA / AA has made plans to reduce overall services for the Summer 2013 IATA season compared to previous years but underline that this is partially compensated by the use of a larger aircraft, namely a Boeing 747 instead of three Boeing 767 aircraft. According to the Parties, this change would result in a net increase in premium seat capacity of 41% in spite of a lower number of frequencies.

¹⁰⁷ Form CO, paragraph 500.

¹⁰⁸ Case COMP/39.596 *BA/AA/IB*.

¹⁰⁹ See responses to questions 29 and 30 of Q3 – Travel Agents, responses to questions 32 and 33 of Q2 – Corporate Customers, responses to questions 28 and 29 of Q1 – Competitors, Air Transport of Passengers.

- (155) [Outcome of quantitative analysis]
- (156) In view of the above and of the other available evidence, the Commission considers that the the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on the market for air transport services for premium passengers on the London Heathrow-Boston route.
- (157) On the non-premium segment, the Parties have higher combined market shares than on the premium segment. However, BA / AA will remain a very strong competitor, with market shares above 50%. Moreover, as regards closeness of competition between the Parties on the non-premium segment, the same findings emerge from the market investigation as on the premium segment: BA / AA is clearly a closer competitor to each Party than the other Party¹¹⁰, which is also borne out by the elements mentioned in Section 6.1.3.2. In particular, it should be noted that whilst Delta's brand appears to be strong in the United States and less so in Europe and Virgin faces the opposite situation, BA / AA benefits from the existence of strong brands both in the United States and Europe. This is a further element suggesting that BA / AA is a closer competitor to Virgin than Delta for passengers booking or originating in Europe and a closer competitor to Delta than Virgin for passengers booking or originating in the United States. [Information about Delta's price benchmarking].¹¹¹ These are further factors pointing to BA / AA being a closer competitor to each Party than to the other Party. It is also noted that there are potential one-stop alternatives on the route: 4 daily one-stop services between London and Boston are offered by various carriers.
- (158) In addition, as already pointed out with respect to premium passengers, BA / AA has a significant frequency advantage over the combined entity. Even though such advantage is not as crucial as for premium passengers, it is nevertheless an important aspect also in the eyes of non-premium passengers, which further contributes to positioning BA / AA as a closer competitor to each Party than the other Party.
- (159) The Commission also assessed the empirical evidence provided by the Parties on the London-Boston route, [Outcome of quantitative analysis]. Moreover, as the quantitative analysis for this route took into account Delta's past entry with an additional frequency added on the market, the predicted effects post-Transaction would be even more limited as the qualitative assessment has shown that the Parties would be very likely to continue to operate the same number of frequencies on the route post-Transaction (1 by Delta and 1 by Virgin).¹¹² In any event, the Commission considers that the quantitative assessment of potential price effects should be viewed in the context of the qualitative assessment.
- (160) Furthermore, while slot constraints at London Heathrow constitute in general a high barrier to entry on the London Heathrow – Boston route¹¹³, this does not apply to British Airways and American Airlines. Indeed, within the IAG group, British Airways and Iberia hold together more than 50% of all slots at London Heathrow. British Airways and American Airlines have indicated that slots would be available

¹¹⁰ See responses to questions 29 and 30 of Q3 – Travel Agents, responses to questions 32 and 33 of Q2 – Corporate Customers, responses to questions 28 and 29 of Q1 – Competitors, Air Transport of Passengers.

¹¹¹ Form CO, Exhibit D.

¹¹² [The Parties' rationale for the transaction]

¹¹³ As already indicated, Boston Logan International Airport, unlike London Heathrow, is not congested.

at both airports to expand operations on the London-Boston route and that in addition, they would be able and willing to increase capacity on the route if demand were to increase¹¹⁴. The ability of BA / AA to increase frequencies and capacity in case of a price rise is a further factor allowing BA / AA to exert constraint on the combined entity post-merger on the non-premium segment.

- (161) As regards the "availability" of one daily slot pair under the slot commitment in the antitrust *BA/AA/IB* case for a potential new entrant, on which the Parties put significant emphasis, it is first noted that if a carrier applied for a slot to enter into the London-Boston route, its application would be assessed against the criteria laid down in the *BA / AA / IB* commitment. Moreover, even though the mere fact that a slot would be available for entry into the London-Boston route would reduce the overall level of the barriers to entry on that route, it is recalled that "*for entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger*"¹¹⁵. However, in this case, there is no indication that a carrier might be willing to apply for a slot to start operations on the London-Boston route, even if the Parties were to increase prices post-Transaction.
- (162) Nevertheless, in view of all the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for air transport services for non-premium passengers on the London Heathrow-Boston airport pair.
- (163) Moreover, since the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment, the Commission considers that it does not raise serious doubts with respect to the all-passenger London Heathrow – Boston market.

(c) Conclusion

- (164) In light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the London– Boston route under any possible market definition.

6.1.4. *Non-stop/one-stop overlap routes*

- (165) The Transaction gives rise to horizontal overlap on ten long-haul routes on which Virgin offers a non-stop service while Delta only offers a one-stop service. These routes are: London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun, London-Miami, London-Las Vegas, London-Orlando, Manchester-Las Vegas, and Manchester-Orlando.
- (166) The Commission will first assess the closeness of competition between Virgin's non-stop services and Delta's one-stop services, before assessing the effects of the Transaction on these routes.

¹¹⁴ See British Airways and American Airline's joint responses to questions 35 and 37 of Q1 – Competitors, Air Transport of Passengers.

¹¹⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5), paragraph 68

- (167) For the reasons explained below the overlap between Virgin's non-stops services and Delta's one-stop services will not give rise to competition concerns. If non-stop and one-stop flights were to be considered as two separate markets there would be no overlap between Virgin and Delta. Subsequently, it is not necessary to reach a definitive conclusion on whether non-stop and one-stop passenger air transport services are part of the same market as it would not change the conclusion of the competitive assessment, as already indicated in Section 4.1.3 above.
- 6.1.4.1. Closeness of competition between Virgin's non-stop services and Delta's one-stop services
- (168) 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 such as airline markets¹¹⁶. It is therefore relevant to assess whether Virgin's non-stop services and Delta's one-stop services would be considered as close substitutes on the ten non-stop/one-stop overlap routes.
- (169) [Parties' views on one-stop services]
- (170) [Parties' views on one-stop services]
- (171) The Parties however argue that Virgin and Delta are not each other's closest competitors on the ten non-stop/one-stop overlap routes, given that Delta only offers a one-stop service and Virgin offers a non-stop service while there are other competitors which offer non-stop services on all but two of the ten non-stop/one-stop overlap routes¹¹⁷.
- (172) The majority of respondents to the Commission's market investigation stated that they would be ready to consider buying one-stop tickets instead of non-stop tickets on the ten non-stop/one-stop overlap routes¹¹⁸. However, corporate customers consider that one-stop flights are not an alternative to non-stop flights save under specific circumstances such as if there is no alternative, if the costs are (significantly) lower and the one-stop does not significantly increase the total travel duration.
- (173) When asked which criteria would make them choose a non-stop flight over a one-stop flight, respondents to the Commission's market investigation¹¹⁹ identified most frequently the price difference followed closely by the schedules of the respective flights. Conversely, competitors, corporate customers and travel agents identified most frequently travel duration as a criterion for passengers when it comes to choosing a non-stop flight over a one-stop flight¹²⁰.
- (174) On the ten non-stop/one-stop overlap routes, the difference in the fastest travel time on non-stop flights and the fastest-travel time on one-stop routes is in general more than two hours and thirty minutes¹²¹.
- (175) The majority of respondents to the market investigation (competitors, travel agents, corporate customers) indicated that they do not consider Virgin and Delta as each

¹¹⁶ See paragraphs 28-30 of the Horizontal Merger Guidelines.

¹¹⁷ The two routes are Manchester-Orlando and Manchester-Las Vegas.

¹¹⁸ See responses to question 12 of Q1, question 10 of Q2 and question 9 of Q3.

¹¹⁹ See responses to question 14.2 of Q1, question 11.2 of Q2 and question 10.2 of Q3.

¹²⁰ See responses to question 14.1 of Q1, question 11.1 of Q2 and question 10.1 of Q3.

¹²¹ With the exception of some routes on which the difference is of around two hours: London-Chicago, London-Los Angeles, and London-Las Vegas, Form CO, table 3 pages 72-73.

other's closest competitor on the ten non-stop/one-stop overlap routes. In the majority of cases, BA / AA Airlines or United are identified as Virgin's or Delta's closest competitor. Indeed on eight overlap routes BA / AA offers non-stop flights compared to Delta which offers one-stop flights. Even on the two routes on which Virgin is the only non-stop operator and Delta is offering a one-stop service, respondents identified other one-stop carriers as closer to Delta than Virgin.

- (176) In addition, the share of passengers that actually chose one-stop services during the Winter 2011 and Summer 2012 IATA seasons on these ten non-stop/one-stop overlap routes remains rather limited. If no distinction by passenger type is made, more than two thirds of all passengers chose non-stop services over one-stop services on these routes, with the exception of the Manchester-Las Vegas route on which the share was [40-50]%.
(177) In the light of the above, the Commission considers that Delta and Virgin are not each other's closest competitors, and are not close competitors on the ten non-stop/one-stop overlap routes.

6.1.4.2. Description of the routes

(a) London-Washington

- (178) In the Winter 2012 and Summer 2012 IATA seasons a total of [500,000 - 1 million] passengers travelled between London and Washington DC, of which [90-100]% travelled between London Heathrow and Dulles International Airport.
(179) In total [90-100]% of the passengers on this route travelled using non-stop services. In addition, [60-70]% of the passengers travelling on this route during the Winter and Summer 2012 IATA seasons were non-premium passengers
(180) Virgin offers for the Summer 2013 IATA season a daily non-stop service between London Heathrow and Dulles International Airport while Delta only offers one-stop services from London Heathrow via its hubs in the United States to Ronald Reagan Washington National Airport.¹²² In addition, Delta's Skyteam partners Air France and KLM offer one-stop services between London Heathrow/London City to Dulles International Airport.
(181) Non-stop services on the London-Washington route during the Summer 2013 IATA season are also provided by British Airways, with two daily flights and six weekly flights, and United Airlines with 3 daily flights from London Heathrow to Dulles International Airport. Both carriers also provide one-stop services between London and Washington DC as well as other carriers.
(182) Table 4 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-Washington route. On the basis of the market reconstruction, the cases whereby the airports at London and Washington are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

¹²² The only exception is Delta's daily service between London Heathrow – John F Kennedy International Airport – Dulles International Airport.

Table 4: Market shares on London-Washington

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
Virgin (non-stop)	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%
Delta (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Delta + Virgin	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%
BA / AA (non-stop)	[40-50]%	[20-30]%	[30-40]%	[50-60]%	[20-30]%	[30-40]%
BA / AA (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
United (non-stop)	[20-30]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
United (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(b) London-Chicago

- (183) In the Winter 2012 and Summer 2012 IATA seasons a total of [400 000 - 500 000] passengers travelled between London and Chicago, of which [90-100]% passengers travelled between London Heathrow and O'Hare International Airport.
- (184) In total [90-100]% of the passengers on this route travelled using non-stop services. In addition, [60-70]% of the passengers travelling on this route during the Winter and Summer 2012 IATA were non-premium passengers.
- (185) Virgin only offers a service between London Heathrow and Chicago O'Hare International Airport during the Summer IATA season. The frequency of this service for the 2013 Summer IATA season varies between three flights per week to a daily service. Delta only offers one-stop services from and to London Heathrow via its hubs in the United States mainly connecting to Midway International Airport. In addition, Air France and KLM offer one-stop services between London Heathrow/London City to O'Hare International Airport.

- (186) Non-stop services on the London-Chicago route during the Summer 2013 IATA season are also provided by British Airways/American Airlines, with in total six daily flights, and United Airlines, with three daily flights, between London Heathrow and O'Hare International Airport. These carriers also provide one-stop services between London and Chicago as well as other carriers.
- (187) Table 5 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-Chicago route. On the basis of the market reconstruction, the cases whereby the airports at London and Chicago are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

Table 5: Market shares on London-Chicago

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
<i>Virgin (non-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%
<i>Delta (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Delta + Virgin</i>	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%
<i>BA / AA (non-stop)</i>	[60-70]%	[50-60]%	[50-60]%	[60-70]%	[40-50]%	[40-50]%
<i>BA / AA (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>United (non-stop)</i>	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[20-30]%	[20-30]%
<i>United (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Others (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(c) London-Los Angeles

- (188) In the Winter 2011 and Summer 2012 IATA seasons a total of [500 000- 1 million] passengers travelled by air between London and Los Angeles, of which [90-100]% travelled between London Heathrow and Los Angeles.
- (189) In total [90-100]% of the passengers on this route travelled using non-stop services. In addition, [60-70]% of the passengers travelling on this route during the Winter and Summer 2012 IATA were non-premium passengers.
- (190) Virgin offers two daily non-stop services between London Heathrow and Los Angeles. Delta only offers one-stop services between London Heathrow and Los Angeles.

Angeles (LAS) via its hubs in the United States. In addition, Air France and KLM offer one-stop services between London Heathrow/London City and Los Angeles.

- (191) Non-stop services on the London-Los Angeles route during the Summer 2013 IATA season are also provided by British Airways/American Airlines with in total three daily flights, United Airlines with one daily flight and Air New Zealand with one daily flight between London Heathrow and Los Angeles. Emirates provides a daily non-stop service between London Gatwick and Los Angeles. British Airways/American Airlines and United Airlines also provide one-stop services between London and Los Angeles as well as other carriers.
- (192) Table 6 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-Los Angeles route. On the basis of the market reconstruction, the cases whereby the airports at London are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

Table 6: Market shares on London-Los Angeles

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
Virgin (non-stop)	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
Delta (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Delta + Virgin	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
BA / AA (non-stop)	[40-50]%	[20-30]%	[30-40]%	[50-60]%	[20-30]%	[30-40]%
BA / AA (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
United (non-stop)	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
United (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Air New Zealand (non-stop)	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Others (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(d) London-San Francisco

- (193) In the Winter 2011 and Summer 2012 IATA seasons a total of [500 000 – 1 million] passengers travelled by air between London and San Francisco, of which [90-100]% travelled between London Heathrow and San Francisco.
- (194) In total [90-100]% of the passengers on this route travelled using non-stop services. In addition, [60-70]% of the passengers travelling on this route during the Winter and Summer 2012 IATA were non-premium passengers.
- (195) Virgin offers one daily non-stop service between London Heathrow and San Francisco. Delta only offers one-stop services between London Heathrow and San Francisco via its hubs in the United States. In addition, Air France and KLM offer one-stop services between London Heathrow/London City and San Francisco.
- (196) Non-stop services on the London-San Francisco route during the Summer 2013 IATA season are also provided by British Airways with two daily flights and United Airlines with one daily flight and five weekly flights¹²³ between London Heathrow and San Francisco. These carriers also provide one-stop services between London and San Francisco as well as other carriers.
- (197) Table 7 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-San Francisco route. On the basis of the market reconstruction, the cases whereby the airports at London are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

¹²³ Five times a week UK origin and six times a week US origin.

Table 7: Market shares on London-San Francisco

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
Virgin (non-stop)	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Delta (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Virgin + Delta	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
BA / AA (non-stop)	[40-50]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
BA / AA (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
United (non-stop)	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%
United (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(e) London-Cancun

- (198) In the Winter 2011 and Summer 2012 IATA seasons a total of [100,000-200 000] passengers travelled by air between London and Cancun¹²⁴, of which [80-90]% travelled between London Gatwick and Cancun.
- (199) In total [80-90]% of the passengers on this route travelled using non-stop services. In addition, [80-90]% of the passengers travelling on this route during the Winter and Summer 2012 IATA were non-premium passengers.
- (200) Virgin offers 3 weekly non-stop services between London Gatwick and Cancun. Delta only offers one-stop services between London Heathrow and Cancun its hubs in the United States. In addition, Air France offers one-stop services between London Heathrow and Cancun
- (201) Non-stop services on the London-Cancun route during the Summer 2013 IATA season are also provided by British Airways with three weekly services between

¹²⁴ Including passengers carried by charter airlines via "dry seats".

London Gatwick and Cancun. British Airways also provides one-stop services between London and Cancun as well as other carriers.

- (202) Table 8 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-Los Cancun route. On the basis of the market reconstruction, the cases whereby the airports at London are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

Table 8: Market shares on London-Cancun

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
Virgin (non-stop)	[0-5]%	[0-5]%	[0-5]%	[40-50]%	[40-50]%	[40-50]%
Delta (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Delta + Virgin	[0-5]%	[0-5]%	[0-5]%	[40-50]%	[40-50]%	[40-50]%
BA / AA (non-stop)	[80-90]%	[60-70]%	[70-80]%	[50-60]%	[40-50]%	[40-50]%
BA / AA (one-stop)	[5-10]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[5-10]%
United (one-stop)	[0-5]%	[10-20]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Others (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

- (f) London-Miami
- (203) In the Winter 2012 and Summer 2012 IATA seasons a total of [500 000 - 1 million] passengers travelled by air between London and Miami, of which [90-100]% passengers travelled between London Heathrow and Miami International Airport.
- (204) In total [90-100]% of the passengers on this route travelled on this route using non-stop services. In addition, [60-70]% of the passengers travelling on this route during the Winter and Summer 2012 IATA were non-premium passengers
- (205) Virgin offers a daily service between London Heathrow and Miami International Airport during the Summer 2013 IATA season. As of April 2012 Delta stopped its non-stop service between London and Miami and Delta currently only offers one-stop services from and to London Heathrow via its hubs in the United States mainly connecting to Fort Lauderdale-Hollywood International Airport. In addition, Air France offers a one-stop service between London Heathrow and Miami International Airport.

- (206) Non-stop services on the London-Miami route during the Summer 2013 IATA season are also provided by British Airways/American Airlines with in total three daily flights between London Heathrow and Miami International Airport. These carriers also provide one-stop services between London and Miami as well as other carriers.
- (207) Table 9 below displays the market shares of the Parties and their competitors for premium, non-premium and for all-passengers on the London-Miami route. On the basis of the market reconstruction, the cases whereby the airports at London and Miami are considered separate markets will result in market shares of a similar magnitude or in no overlap between Virgin and Delta. The Transaction on this route is therefore assessed on the city-pair market.

Table 9: Market shares on London-Miami

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>	<i>Premium</i>	<i>Non Premium</i>	<i>Total</i>
<i>Virgin (non-stop)</i>	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%
<i>Delta (one-stop)</i>	[0-5]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[5-10]%
<i>Delta + Virgin</i>	[30-40]%	[50-60]%	[50-60]%	[30-40]%	[40-50]%	[40-50]%
<i>BA / AA (non-stop)</i>	[50-60]%	[30-40]%	[40-50]%	[60-70]%	[40-50]%	[40-50]%
<i>BA / AA (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
<i>United (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Others (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Market reconstruction

(g) London-Orlando

- (208) In the Winter 2011 and Summer 2012 IATA seasons, [500 000 - 1 million] passengers¹²⁵ travelled by air between London and Orlando (Orlando International-MCO and Orlando Sanford-SFB). In the Winter 2011 and Summer 2012 IATA seasons, [90 000-100 000] passengers travelled from London Heathrow to Orlando (MCO).
- (209) [80-90]% of the passengers on this route travelled via non-stop services. Both in Winter 2011 and in Summer 2012 IATA seasons, [80-90]% of the passengers travelled on non-premium services.
- (210) Virgin offers a two daily non-stop service between London Gatwick and Orlando (MCO). It also offers a four weekly one-stop service with a UK origin (London Heathrow to Orlando International) and a two daily one-stop service with a US origin (Orlando International to London Heathrow).
- (211) Delta for its part offers only one-stop services between London Heathrow and Orlando (MCO) via Atlanta (ATL), New York (JFK), Detroit (DTW) and Minneapolis (MSP). It offers 16 daily services with a UK origin and 27 daily frequencies with a US origin.
- (212) Other operators on this route offer both non-stop and one-stop services. BA / AA offer between one and two daily non-stop services from London Gatwick to Orlando (MCO) and between 27¹²⁶ and 43¹²⁷ daily one-stop services between London Heathrow and Orlando (MCO) via Dallas (DFW), New York (JFK), Los Angeles (LAX), Miami (MIA) and Chicago (ORD). United¹²⁸, US Airways¹²⁹, and Aer Lingus¹³⁰ also offer one-stop services from London Heathrow and London Gatwick¹³¹ to Las Vegas (LAS) via various cities in the United States, Canada, Mexico or Ireland, such as New York (EWR), San Francisco (SFO), Toronto (YYZ), Mexico (MEX) and Dublin (DUB).
- (213) In addition, the charter companies Thomson Airways, Thomas Cook Airlines and Monarch offer non-stop flights between London and Orlando (SFB).
- (214) As regards the UK end of this route, in light of the Parties' and their competitors' operations on the London-Orlando route, the effects of the Transaction will be assessed on a market comprising services from London Heathrow, Gatwick and City¹³². Virgin only recently started operating one-stop services from London Heathrow via Manchester to Orlando and Delta only operates from Heathrow. In any event even if only services from Heathrow were considered, the Parties would face a significant competitive constraint from BA / AA's non-stop and one-stop services to Orlando from Heathrow.

¹²⁵ Including passengers carried by charter airlines via "dry seats".

¹²⁶ UK origin.

¹²⁷ US origin.

¹²⁸ Between 25 and 26 daily UK origin, between 36 and 37 daily US origin.

¹²⁹ Between 5 and 6 daily UK origin and 8 daily US origin.

¹³⁰ Five daily services two days per week at the UK end and four daily services two days per week at the US end.

¹³¹ Through its codeshare agreement with Lufthansa, United offers a non-stop service ex. London City to Orlando (MCO) via Frankfurt (FRA).

¹³² BA / AA have a UK bound flight between Las Vegas and London City (via New York).

- (215) As concerns the Orlando end, as mentioned above in Section 4.1.4.3, Orlando has two airports, namely Orlando International (MCO) and Sanford International (SFB). Both Delta and Virgin fly solely to Orlando International. . The Commission's assessment will focus on the London – Orlando (MCO) route as concerns premium passengers and on the London-Orlando (MCO and SFB) as concerns non-premium passengers.
- (216) Table 10 displays the market shares of the Parties and their competitors on all-passengers, premium and non-premium air services markets on the London -Orlando (MCO) route¹³³:

Table 10: Market shares on London - Orlando

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non-Premium</i>	<i>All passengers</i>	<i>Premium</i>	<i>Non-Premium</i>	<i>All passengers</i>
Virgin (non-stop)¹³⁴	[50-60]%	[60-70]%	[60-70]%	[50-60]%	[60-70]%	[60-70]%
Delta (one-stop)	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Virgin+Delta	[60-70]%	[70-80]%	[70-80]%	[60-70]%	[70-80]%	[60-70]%
BA / AA (non-stop)	[30-40]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[10-20]%
BA / AA (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
United (one-stop)	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
US Airways (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Market reconstruction

¹³³ If flights from Orlando SFB were included on the non-premium and all passenger segments, the ranges would be the same.

¹³⁴ Virgin also offers one-stop flights on both routes via Manchester through a code share agreement with BA / AA. However, the number of passengers carried on this route is insignificant.

(h) London-Las Vegas

- (217) In the Winter 2011 and Summer 2012 IATA seasons, between [400 000-500 000] passengers travelled by air between London (Heathrow, Gatwick and City) and Las Vegas (McCarran International Airport - LAS). In the Winter 2011 and Summer 2012 IATA seasons, [100 000-200 000] passengers travelled from London Heathrow to Las Vegas.
- (218) [80-90]% of the passengers on this route travelled via non-stop services. Both in Winter 2011 and in Summer 2012 IATA seasons, [80-90]% of the passengers travelled on non-premium services on a London-Las Vegas route.
- (219) Virgin offers a daily non-stop service between London Gatwick and Las Vegas (LAS) and a two weekly one-stop service between London Gatwick and London Heathrow and Las Vegas (LAS) via Manchester (MAN).
- (220) Delta for its part offers only one-stop services between London Heathrow and Las Vegas (LAS) via Atlanta (ATL), New York (JFK), Detroit (DTW) and Minneapolis (MSP). It offers 11 daily services with a UK origin and 13 daily services with a US origin.
- (221) Other operators on this route offer both non-stop and one-stop services. BA / AA offer one daily non-stop services from London Gatwick and London Heathrow to Las Vegas (LAS) and between 100 and 200 weekly one-stop services¹³⁵ between London Heathrow and Las Vegas (LAS) via Dallas (DFW), New York (JFK), Los Angeles (LAX), Miami (MIA) and Chicago (ORD). United¹³⁶, US Airways¹³⁷ and Aeromexico¹³⁸ also offer one-stop services from London Heathrow to Las Vegas (LAS) via various cities in the United States, Canada or Mexico, such as New York (EWR), San Francisco (SFO), Montréal (YUL) and Mexico (MEX).
- (222) As regards the UK end of this route, in light of the Parties' and their competitors' operations on the London-Las Vegas route, the effects of the Transaction will be assessed on a market comprising services from London Heathrow, Gatwick and City¹³⁹. Virgin only recently started operating one-stop services from London Heathrow via Manchester to Las Vegas and Delta only operates from Heathrow. In any event even if only services from Heathrow were considered, the Parties would face a significant competitive constraint from BA / AA's non-stop and one-stop services to Las Vegas from Heathrow.
- (223) As concerns the Las Vegas end, there is only one airport, namely McCarran International Airport (LAS). As a consequence, the Commission's assessment will focus on the London - Las Vegas (LAS) route.
- (224) Table 11 displays the market shares of the Parties and their competitors on all-passengers, premium and non-premium air services markets on the London -Las Vegas (LAS) route:

¹³⁵ 167 weekly UK origin and 242 weekly US origin.

¹³⁶ 155 weekly UK origin, 176 weekly US origin.

¹³⁷ 21 weekly UK origin and 14 weekly US origin.

¹³⁸ 3 weekly US origin only.

¹³⁹ BA / AA have a UK bound flight between Las Vegas and London City (via New York).

Table 11: Market shares on London - Las Vegas

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non-Premium</i>	<i>All passenger s</i>	<i>Premium</i>	<i>Non-Premium</i>	<i>All passenger s</i>
Virgin (non-stop)¹⁴⁰	[50-60]%	[60-70]%	[60-70]%	[50-60]%	[60-70]%	[60-70]%
Delta (one-stop)	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Virgin+Delta	[50-60]%	[70-80]%	[70-80]%	[60-70]%	[70-80]%	[70-80]%
BA / AA (non-stop)	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[10-20]%
BA / AA (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
United (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
US Airways (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Market reconstruction

(i) Manchester-Las Vegas

- (225) In the Winter 2011 and Summer 2012 IATA seasons, [100 000-200 000] passengers¹⁴¹ travelled by air between Manchester and Las Vegas (McCarran International Airport - LAS).
- (226) [60-70]% of the passengers on this route travelled via non-stop services. Both in Winter 2011 and in Summer 2012 IATA seasons, [80-90]% of the passengers travelled on non-premium services between Manchester and Las Vegas.
- (227) Virgin offers two weekly non-stop services between Manchester and Las Vegas¹⁴².
- (228) Delta for its part offers only one weekly one-stop services between Manchester and Las Vegas (LAS) via Atlanta (ATL).
- (229) Other scheduled airlines active on this route only offer one-stop services. BA / AA offer between three and four daily one-stop services from Manchester (MAN) to Las Vegas (LAS) via London Heathrow, London Gatwick, New York (JFK) and Chicago (ORD). United¹⁴³ and US Airways¹⁴⁴ also offer one-stop services from Manchester (MAN) to Las Vegas (LAS) via respectively New York (EWR) and Washington (IAD) and Philadelphia (PHL).

¹⁴⁰ Virgin also offers one-stop flights on both routes via Manchester through a code share agreement with BA/AA. However, the number of passengers carried on this route is insignificant.

¹⁴¹ Including dry seats sold by charter airlines.

¹⁴² Virgin entered the route in Summer 2011.

¹⁴³ Between one and two daily services.

¹⁴⁴ 2 daily services.

- (230) In addition, the charter company Thomas Cook Airlines offers non-stop services on this route.
- (231) As regards the UK end of this route, Manchester has only one airport, namely International Manchester Airport (MAN)¹⁴⁵.
- (232) As concerns the Las Vegas end, there is only one airport, namely McCarran International Airport (LAS). As a consequence, the Commission's assessment will focus on the Manchester - Las Vegas (LAS) route.
- (233) Table 12 displays the market shares of the Parties and their competitors on all-passengers, premium and non-premium air services markets on the Manchester – Las Vegas (LAS) route:

Table 12: Market shares on Manchester - Las Vegas

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non-Premium</i>	<i>All passenger s</i>	<i>Premium</i>	<i>Non-Premium</i>	<i>All passenger s</i>
Virgin (non-stop)	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[60-70]%	[60-70]%
Delta (one-stop)	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Virgin+Delta	[80-90]%	[60-70]%	[70-80]%	[80-90]%	[60-70]%	[70-80]%
BA / AA (one-stop)	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
United (one-stop)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
US Airways (one-stop)	[0-5]%	[10-20]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%
Total	100%	100%	100%	100%	100%	100%

Source: Market reconstruction

- (234) The Parties argue that charter carriers provide a meaningful competitive constraint on certain routes, specifically on leisure routes with a preponderance of non-premium passengers on which charter operators sell seats directly to the public, without requiring the public to purchase other services such as accommodation (i.e. dry seats only). Some competitors and travel agents indicated in the market investigation that charter companies in particular offering dry seats are credible alternatives to scheduled airlines for non-premium passengers on this route.

¹⁴⁵

In the case COMP/M.4439 - Ryanair/Aer Lingus, the Commission has considered that flights between Dublin and Manchester may be considered substitutable to flights between Dublin and Liverpool or Leeds airports. However, in the present case, there are no relevant non-stop services from these airports on any of the relevant affected markets (Manchester-Orlando and Manchester-Las Vegas). Therefore, the Commission will focus its assessment on Manchester International Airport only.

- (235) If sale of dry seats were included in the relevant market the Parties' and their competitors' market shares on the non-premium segment would be as follows:

Table 12(a) Market shares including sale of dry seats by charter airlines

	<i>Winter 2011</i>	<i>Summer 2012</i>
	<i>Non-Premium</i>	<i>Non-Premium</i>
Virgin (non-stop)	[60-70]%	[50-60]%
Delta (one-stop)	[5-10]%	[5-10]%
Virgin+Delta	[60-70]%	[60-70]%
BA / AA (one-stop)	[10-20]%	[5-10]%
United (one-stop)	[0-5]%	[5-10]%
UA (one-stop)	[10-20]%	[10-20]%
Charters (non-stop)	0%	[5-10]%
Total	100%	100%

Source: Market reconstruction

- (j) Manchester-Orlando
- (236) In the Winter 2011 and Summer 2012 IATA seasons, [400 000-500 000] passengers¹⁴⁶ travelled by air between Manchester (MAN) and Orlando (Orlando International-MCO and Sanford International-SFB).
- (237) [80-90]% of the passengers on this route travelled via non-stop services. Both in Winter 2011 and in Summer 2012 IATA seasons, [80-90]% of the passengers travelled on non-premium services.
- (238) Virgin offers a between 1 and 2 daily non-stop services between Manchester and Orlando (MCO).
- (239) Delta for its part offers only one-stop services between Manchester and Orlando (MCO) via Atlanta (ATL). It offers between one and 2 daily services with a UK origin and between two and three daily frequencies with a US origin.
- (240) Other scheduled airlines active on this route offer only one-stop services. BA / AA offer two daily one-stop services between Manchester and Orlando (MCO) via New York (JFK), Chicago (ORD) and London Gatwick (LGW). United offers between two and three daily one-stop services between Manchester and Orlando (MCO) via New York (EWR), Frankfurt (FRA) and Washington (IAD). US Airways offers a daily service between Manchester and Orlando (MCO) via Philadelphia (PHL). Finally, Aer Lingus and Air Transat offer weekly services between Manchester and Orlando (MCO) via respectively Dublin (DUB) and Toronto (YYZ).
- (241) In addition, charter companies Thomson Airways, Thomas Cook Airlines and Monarch also offer non-stop flights between Manchester and Orlando (SFB).
- (242) As regards the UK end of this route, Manchester has only one airport, namely International Manchester Airport (MAN)¹⁴⁷.

¹⁴⁶ Including dry seats sold by charter airlines.

¹⁴⁷ In the case COMP/M.4439 - Ryanair/Aer Lingus, the Commission has considered that Manchester may be considered substitutable by Liverpool and Leeds airports. However, in the present case, neither of these offer non-

- (243) As concerns the Orlando end, as mentioned above in Section 4.1.4.3, Orlando has two airports, namely Orlando International (MCO) and Sanford International (SFB). Both Delta and Virgin fly solely to Orlando International (MCO). Looking at a market for scheduled air passenger transport services between both airports in Orlando and Manchester (excluding sale of dry seats by charter airlines) would lead to a minor decrease of the Parties' combined market shares. As a consequence, the Commission's assessment will focus on the Manchester – Orlando (MCO) route from the premium passengers and all passengers segment and on Manchester-Orlando (MCO and SFB) for the non-premium segment.
- (244) Table 13 displays the market shares of the Parties and their competitors on all-passengers, premium and non-premium air services markets on the Manchester – Orlando (MCO)¹⁴⁸.

Table 13: Market shares on Manchester - Orlando

	Winter 2011/2012			Summer 2012		
	<i>Premium</i>	<i>Non-Premium</i>	<i>All passengers</i>	<i>Premium</i>	<i>Non-Premium</i>	<i>All passengers</i>
<i>Virgin (non-stop)</i>	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[80-90]%	[80-90]%
<i>Delta (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Virgin+Delta</i>	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%
<i>BA / AA (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>United (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>US Airways (one-stop)</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Total</i>	100%	100%	100%	100%	100%	100%

Source: Market reconstruction

6.1.4.3. Competitive assessment

- (a) London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun and London-Miami
- (245) Tables 4 to 8 above show that on the London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun, the Parties' combined market shares are below 50% and on each of these routes the increment is very low i.e. [0-5]%. The combined market shares of the Parties on the these non-stop/one-

stop services on any of the relevant affected markets (Manchester-Orlando and Manchester-Las Vegas). Therefore, the Commission will focus its assessment on Manchester International Airport only.

¹⁴⁸ If flights from Orlando SFB were included on the non-premium and all passenger segments, the ranges would be the same.

stop overlap routes do not exceed [40-50]% for the premium segment, [40-50]% for the non-premium segment and [40-50]% for the all-passengers segment during the Summer 2012 IATA season and the Winter 2012 IATA season¹⁴⁹.

- (246) On the London-Miami route (Table 9), the Parties' combined market shares for the Summer 2012 IATA season¹⁵⁰ are [30-40]% on the premium segment with an increment below 5% while on the non-premium segment the Parties' combined market shares are up to [40-50]% with an increment of up to [5-10]%. *Post* Transaction Virgin and Delta will however continue to face a significant competitive constraint from other non-stop carriers among them BA / AA and United Airlines on all these six routes. Indeed BA / AA which offers non-stop services on these routes will enjoy quite high market shares on the routes. In addition, as discussed above, Virgin and Delta are not considered to be close competitors.
- (247) The Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to these routes.
- (248) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on these routes. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on these routes.
- (249) Considering all the above and the other available evidence, the Transaction does not raise serious doubts as to its compatibility with the internal market on the London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun, London-Miami routes, under any possible market definition.

(b) London-Orlando

- (250) On the segment for premium passengers on London-Orlando (MCO) route, Virgin had a market share of [50-60]% in Winter 2011 and Summer 2012 while Delta had a market share below 10% in both these seasons. On the segment for non-premium passengers on the London -Orlando (MCO and SFB) route, Virgin has a market share of [60-70]% for both IATA seasons while Delta has a market share below 10% in both these seasons. *Post* transaction, the Parties will reach a combined market share up to [70-80]%.
- (251) However the increment brought about by the Transaction is limited and the Parties will continue to face a significant competitive constraint from BA / AA. Indeed, in both the premium and the non-premium segments, BA / AA had a significant market share [10-20]% on the premium segment and and [30-40]% on the non-premium segment in Winter 2011 and Summer 2012 with its non-stop services. In addition, BA / AA, United, and US Airways also offer one-stop services on the route.
- (252) As explained above in Section 6.1.4.1 relating to closeness of competition on non-stop/one stop routes, as Delta operates one-stop services and Virgin non-stop services they are not each other's closest competitors on the London-Orlando route.

¹⁴⁹ The market shares pertaining to the Winter 2011 IATA season on London-Chicago and London-Cancun are not taken into account as Virgin did not provide non-stop services during that season. The market shares pertaining to the Winter 2011 IATA season on London-Miami are also not taken into account as Delta offered non-stop services during that season, which it stopped as of April 2012 and therefore do not reflect the current market situation.

¹⁵⁰ Delta stopped its non-stop service between London and Miami in April 2012 so that the Winter 2011/2012 data do not reflect the current market situation.

While some respondents to the market investigation identified Delta or Virgin as the other one's closest competitor, the majority of respondents to the Commission's market investigation indicated that BA / AA or United are a closer substitute to each of Virgin and Delta on the London-Orlando routes irrespective of the passenger segmentation into premium or non-premium.

- (253) Some competitors and travel agents indicated that charter companies in particular offering dry seats are credible alternatives to scheduled airlines for non-premium passengers. If such sales of dry seats by charter airlines were included, the Parties' combined market shares would decrease to [70-80]% in Winter 2011 on this segment on London - Orlando (MCO and SFB) while in Summer 2012 they would decrease to [60-70]%. Charter operators reached with their sale of dry seats a share of [0-5]% in Winter 2011 and a higher share of [5-10]% in Summer 2012.
- (254) Furthermore, [80-90]% of the non-premium passengers preferred non-stop services over one-stop services on this route. BA / AA compete head-to-head with Virgin's non-stop services from London-Gatwick on London-Orlando.
- (255) The Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to the London-Orlando route.
- (256) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on this route. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on this route.
- (257) Considering all the above and the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the London-Orlando route, under any possible market definition.

(c) London-Las Vegas

- (258) On the segment for premium passengers on the London – Las Vegas route, Virgin had a market share of [50-60]% in Winter 2011 and Summer 2012 while Delta had a market share below 10% in both these seasons. On the segment for non-premium passengers on the London – Las Vegas route, Virgin had a market share of [60-70]% in Winter and Summer 2012 while Delta had a market share below 10% for both IATA seasons. *Post* transaction, the Parties will reach a combined market share up to [70-80]%.
- (259) However the increment brought about by the Transaction is limited and the Parties will continue to face a significant competitive constraint from BA / AA which held, operating non-stop services, a significant share of [10-20]% on the non-premium segment and up to [30-40]% on the premium segment.
- (260) As explained above in Section 6.1.4.1 relating to closeness of competition on non-stop/one stop routes, as Delta operates one-stop services and Virgin non-stop services they are not each other's closest competitors on the London-Las Vegas route. While some respondents to the market investigation identified Delta or Virgin as the other one's closest competitor, the majority of respondents to the Commission's market investigation indicated that BA / AA or United are a closer competitor to each of Virgin and Delta on the London-Las Vegas route irrespective of the passenger segmentation into premium or non-premium.

- (261) Furthermore, [80-90]% of the non-premium passengers preferred non-stop services over one-stop services on this route. BA / AA only recently started (November 2012) to operate a non-stop service from London-Gatwick to Las Vegas and competes head-to-head with Virgin's non-stop services from London-Gatwick on this route.
- (262) In addition, BA / AA also offer one-stop services from London-Heathrow. Moreover, there are also other carriers which offer one-stop services. United achieved market shares up to [0-5]% in Winter 2011 and up to [5-10]% in Summer 2012. In addition, US Airways operate one-stop services on this route.
- (263) The Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to the London-Las Vegas route.
- (264) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on this route. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on this route.
- (265) Considering all the above and the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the London-Las Vegas route, under any possible market definition.
- (d) Manchester-Las Vegas
- (266) On the segment for premium passengers on the Manchester – Las Vegas route, Virgin had a market share of [70-80]% in both Winter 2011 and in Summer 2012 while Delta had a market share below 10% in both Winter 2011 and Summer 2012. In each of these two seasons, BA / AA achieved a share of [10-20]% while United and US Airways each had a share of [0-5]%. On the segment for non-premium passengers, Virgin had a market share of [60-70]% in both Winter 2011 and in Summer 2012 while Delta had a market share of [5-10]% in both seasons Winter 2011 and Summer 2012. The Parties reached a combined market share of [80-90]% on the premium segment and of [60-70]% on the non-premium segment in both IATA seasons.
- (267) The Parties will continue to face a significant competitive constraint on this route (on both the premium and the non-premium segments) from other carriers such as BA / AA, United and US Airways. Indeed, BA / AA achieved a market share higher than or equal to the increment in both seasons and on both the premium and the non-premium segments while US Airways and United also achieved market shares between [0-5]% and [10-20]% depending on the season and the passenger segment.
- (268) The majority of respondents to the Commission's market investigation indicated that other competitors such as BA / AA are a closer competitor to each of Virgin and Delta on the Manchester-Las Vegas route.
- (269) If sale of dry seats by charter airlines were included the Parties would reach a combined market share of [60-70]% in both IATA seasons on the non-premium segment. Charter operators were only active in Summer 2012 and their share reached [5-10]%. In addition, Thomas Cook has its largest operations from Manchester airport and where it has its maintenance base. Thomas Cook intends to include one extra non-stop frequency to Las Vegas during the summer seasons and starting with

Summer 2014 (to three per week instead of the current two per week). Dry seats on services on these routes will be available through the in-house websites of Flythomascook.com, Thomascook.com and Condor.com, as well as on GDS systems and websites of the travel agents around the world who sell Thomas Cook flights. Considering the specificities of the route at stake and in particular the fact that it is almost entirely a non-premium route and that the majority of non-premium passengers preferred non-stop services over one-stop services on this route ([50-60]%), the Commission is of the view that sales of dry seats by charter carriers will provide some constraint on the combined entity post Transaction.

- (270) In addition, other competitors offer non-stop services from Manchester to their respective hubs in the United States such as AA (to New York and Chicago), United (to New York and Washington) and US Airways (to Philadelphia). Air Transat also offers non-stop services from Manchester to its hubs in Canada (to Toronto, Vancouver and Calgary).
- (271) The Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to the Manchester-Las Vegas route.
- (272) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-premium segment on this route. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on this route.
- (273) Considering all the above and the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the Manchester-Las Vegas route, under any possible market definition.
- (e) Manchester-Orlando
- (274) On the segments for premium and non-premium passengers on the Manchester-Orlando route, Virgin had a market share of [90-100]% in Winter 2011. In Summer 2012 Virgin had a market share of [90-100]% on the premium segment and of [80-90]% on the non-premium segment. In both these seasons and on both passenger segments Delta had a market share of [0-5]%. The Parties' combined market shares would be [90-100]% on both segments of the Manchester-Orlando route in both seasons. BA / AA, United and US Airways each held a share of [0-5]% in both Winter 2011 and Summer 2012 and on both passenger segments.
- (275) The increment brought about by the Transaction is very small as Delta had a market share of [0-5]% in both seasons and on both passenger segments. US Airways, BA / AA and United reached market shares similar to the ones of Delta.
- (276) The majority of respondents to the Commission's market investigation indicated that other competitors such as AA/BA are a closer competitor to each of Virgin and Delta on the Manchester-Orlando route.
- (277) The Commission notes that the replies to the market investigation did not reveal any substantiated competition concerns with respect to the Manchester-Orlando route.
- (278) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the premium segment and on the non-

premium segment on this route. Therefore, it does not raise serious doubts with respect to the "all-passengers" market on this route.

- (279) Considering all the above and the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the Manchester-Orlando route, under any possible market definition.

6.1.4.4. Conclusion

- (280) In light of the above and of the other available evidence, the Commission considers that the Transaction does not raise any serious doubts as to its compatibility with the internal market on the following routes: London-Washington, London-Chicago, London-Los Angeles, London-San Francisco, London-Cancun, London-Miami, London-Orlando, London-Las Vegas, Manchester-Orlando, and Manchester-Las Vegas, under any possible market definition.

6.1.5. Overall conclusion air transport of passengers

- (281) In the light of all the above and of the other available evidence, the Commission concludes that the Transaction does not raise any serious doubts as to its compatibility with the internal market on the two non-stop/non-stop overlap routes and on the ten non-stop/one-stop overlap routes under any possible market definition.

6.2. Air transport of cargo

- (282) The Parties' air cargo operations are restricted to cargo carried in the belly-hold space of their passenger aircraft. Neither Delta nor Virgin has dedicated cargo-only freighters on any routes.
- (283) Delta also provides air transport of cargo services in the context of the Air France/KLM/Alitalia joint venture and is a member of the SkyTeam Cargo alliance. [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia].¹⁵¹
- (284) As indicated in Section 5.2, the Commission will assess the effects of the Transaction on the cargo routes operated directly by Delta as well as by Delta's joint venture partners to the extent that they fall within the scope of the joint venture revenue-sharing arrangements, [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia].
- (285) The Transaction gives rise to four affected markets with respect to air transport of cargo, namely on the routes from: (i) Europe (EEA) to North America (the United States and Canada); (ii) North America to Europe; (iii) Europe to Mexico; and (iv) Mexico to Europe.
- (286) The Parties submit that their combined market shares in any of the relevant air cargo market do not give rise to competition concerns in that they are generally below 25%. The Parties also submit that, even when their combined market shares would be above 25%, this is mainly due to the activities of Delta's joint venture partners and, in any event, the increment arising from the Transaction regarding the affected cargo markets is small. Moreover, the competitive characteristics of the air cargo markets

¹⁵¹ [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia]

are such that the Transaction will not give rise to any competition concerns, in particular because of the low switching costs, the lack of closeness of competition, the expected future market growth and the constraint exercised by other airlines *post* Transaction.

(287) Table 14 below shows the Parties' and their main competitors' estimated market shares on the affected routes in 2012.

Table 14: Air transport of cargo market share estimates based on RTMs¹⁵²

	Europe to North America	North America to Europe	Europe to Mexico	Mexico to Europe
	YE May 2012	YE May 2012	YE May 2012	YE May 2012
Virgin	[0-5]%	[0-5]%	*	*
SkyTeam JV (including Delta)	[10-20]%	[10-20]%	[20-30]%	[20-30]%
Delta	[5-10]%	[5-10]%	**	**
Air France	[5-10]%	[0-5]%	[5-10]%	[10-20]%
KLM	[5-10]%	[0-5]%	[10-20]%	[10-20]%
Alitalia	[0-5]%	[0-5]%	-	-
Combined SkyTeam JV / Virgin	[20-30]%	[10-20]%	[20-30]%	[20-30]%
Lufthansa	[10-20]%	[10-20]%	[5-10]%	[5-10]%
British Airways	[5-10]%	[10-20]%	[0-5]%	[5-10]%
FedEx	[5-10]%	[5-10]%	-	-
American Airlines	[5-10]%	[5-10]%	-	-
United	[5-10]%	[5-10]%	-	-
UPS	[5-10]%	[5-10]%	-	-
Cargolux	[0-5]%	[5-10]%	[10-20]%	-
AeroMexico	-	-	[5-10]%	[10-20]%
Iberia	[0-5]%	[0-5]%	[5-10]%	[10-20]%
Air Europa	-	-	-	[5-10]%
Thomson Airways	-	-	-	[5-10]%
Other airlines ¹⁵³	[20-30]%	[30-40]%	[40-50]%	[20-30]%
Total¹⁵⁴	100%	100%	100%	100%

Source: Parties' estimates inter alia on the basis of data from the United States Department of Transportation T100 data

** Virgin started operating passenger operations to Mexico in June 2012 and therefore the figures based on T100 data do not show the increment arising from the transaction. However, according to the Parties its share is no more than [0-5]% based on Seabury dataset and less than [0-5]% on the basis of IATA CASS billing data.*

*** Delta only operates via the United States and therefore has no market share based on T100 data. Based on IATA CASS billing data, Delta's market share is below [0-5]%.*

¹⁵² The estimated market shares are based on "revenue ton miles" (RTMs), the product of the weight of cargo carried in US tons and the distance that the cargo was flown.

¹⁵³ [Information regarding the scope of Delta's joint venture with Air France/KLM/Alitalia]

¹⁵⁴ The figures may not sum to total due to rounding.

- (288) As can be seen from Table 14, the Parties' combined market share will remain below 25% with small increments not higher than [0-5]% in all affected routes with the exception of the Mexico to Europe route, where the Parties will have a combined market share of [20-30]%.¹⁵⁵ However, the increment brought about by the Transaction in this route would be very small (not more than [0-5]%). In addition, on all affected routes, there are several credible and well-established competitors capable of imposing a significant competitive constraint on the Parties *post* Transaction, such as Lufthansa, British Airways, American Airlines, Iberia, AeroMexico, Cargolux, FedEx, UPS, etc.
- (289) The majority of respondents to the market investigation considered that neither Delta nor Virgin is each other's closest competitor on any affected route.¹⁵⁶
- (290) The majority of the respondents to the market investigation also indicated that switching between air cargo service suppliers is easy, given the limited costs and time frame required for a customer to switch to another cargo supplier and the fact that cargo service contracts are normally concluded for one year and do not contain exclusivity clauses.¹⁵⁷
- (291) Moreover, respondents to the market investigation did not raise any material concern as regards the effects of the Transaction in terms of prices or levels of services on the four air transport of cargo markets.¹⁵⁸
- (292) Therefore, the Commission concludes that, given the rather limited combined market shares of the Parties and of the marginal increment arising from Virgin's transatlantic cargo activities, the strong presence of other competitors, the easiness of switching between air cargo service suppliers for customers, the lack of closeness of competition as well as the absence of concerns on the part of market participants, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for air transport of cargo services.

¹⁵⁵ Regardless of the dataset used, for instance even using World ACD or IATA CASS data, the competitive assessment would not change.

¹⁵⁶ See responses to questions 15, 15.1 and 15.2 of Q8 – Questionnaire to Cargo Competitors and responses to questions 14, 14.1 and 14.2 of Q9 – Questionnaire to Cargo Customers.

¹⁵⁷ See responses to questions 16 and 21 of Q8 – Questionnaire to Cargo Competitors and responses to questions 15 and 16 of Q9 – Questionnaire to Cargo Customers.

¹⁵⁸ See responses to question 24 of Q8 – Questionnaire to Cargo Competitors and responses to question 22 of Q9 – Questionnaire to Cargo Customers.

7. CONCLUSION

- (293) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,

(signed)

Joaquín ALMUNIA

Vice-President