

Case No COMP/M.7333 - ALITALIA / ETIHAD

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 14/11/2014

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EUROPEAN COMMISSION

Brussels, 14.11.2014
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PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case M.7333 – ALITALIA/ ETIHAD
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2)
of Council Regulation No 139/2004¹**

¹ 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.

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- (1) On 29 September 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Alitalia Compagnia Aerea Italiana S.p.A. ("Alitalia", Italy) and Etihad Airways PJSC ("Etihad", the United Arab Emirates) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of New Alitalia (Italy), a newly incorporated joint venture which will receive [...] Alitalia's operating business as a going concern, by way of purchase of shares (the "Transaction").² In the context of the Transaction, Etihad will acquire sole control over Alitalia Loyalty S.p.A. ("Alitalia Loyalty", Italy), a subsidiary of Alitalia active in the management of Alitalia's frequent flyer programme ("FFP"). Alitalia and Etihad are jointly referred to as the "Notifying Parties".

1. THE PARTIES

- (2) Alitalia is Italy's national carrier active in domestic and international air transport. Alitalia is a member of the SkyTeam Airline Alliance ("SkyTeam") and part of a transatlantic joint venture together with Delta and Air France/KLM (the "Transatlantic Joint Venture"). Alitalia has its hub at the Leonardo Da Vinci airport in Fiumicino, Rome, and in 2013 it transported 24 million passengers. Alitalia's current shareholders include Air France/KLM, Atlantia, Intesa Sanpaolo, Poste Italiane,³ and UniCredit.
- (3) Alitalia Loyalty is a wholly owned subsidiary of Alitalia fully dedicated to the operation and development of Alitalia's FFP, the "MilleMiglia Programme".
- (4) Etihad is the national airline of Abu Dhabi. As at June 2014, Etihad had a fleet of 102 aircraft serving 103 destinations. In 2012 and 2013 Etihad transported 10.3 and 11.5 million passengers respectively.⁴ In 2012, Etihad achieved a turnover of approximately EUR 3.6 billion, an EBIT of EUR 125 million and net profits of EUR 25 million. In 2013 Etihad's turnover amounted to EUR 4.5 billion, EBIT was EUR 157 million, and net profits EUR 47 million.⁵
- (5) The Etihad group includes Air Serbia (formerly Jat Airways),⁶ the flag carrier and main airline of Serbia, which Etihad jointly controls together with the Serbian Government.⁷ Etihad

² OJ C 352, 7.10.2014, p. 16.

³ Poste Italiane became a shareholder of Alitalia in 2013 when it subscribed Alitalia's EUR 300 million capital increase (the "2013 Capital Increase"). The Commission has been assessing whether Poste Italiane's participation in the 2013 Capital Increase would constitute State aid. However, the State aid investigation in case SA.37491 (2013/CP) – *Italy – Alleged Aid To Alitalia* only concerns "Old Alitalia", a company that through the Transaction will become a holding company for certain of the shareholders of New Alitalia. Therefore, any decision regarding a possible State aid would have no direct effects on New Alitalia or on the assessment of the Transaction under the Merger Regulation.

⁴ Using a common metric in the air transport sector, Etihad had Revenue Passenger Kilometres (representing passenger journeys) of 55.5 billion in 2013 and 47.7 billion in 2012.

⁵ The Notifying Parties' reply to RFI 18 of 21 October 2014, question 1.

⁶ <http://www.airserbia.com/en/company-profile> (Retrieved on 6 November 2014).

⁷ Form CO, paragraph 2.2.28; Presentation from the Parties to the case team "Case M.7333 – Project Alba", 11 July 2014.

holds a 49% interest in Air Serbia and [...] the Government of Serbia, which owns the remaining 51% of Air Serbia's equity.⁸

- (6) Alitalia, Etihad, and Air Serbia are referred to as the "Parties".

2. THE OPERATION

- (7) In the context of the Transaction, Alitalia will transfer [...] the assets and certain liabilities relating to its existing airline operations to New Alitalia. Etihad will subscribe 49% of New Alitalia's share capital against a contribution of EUR 388 million, the remaining New Alitalia shares will be held by Alitalia through Alitalia MidCo, a newly incorporated holding company. Alitalia will be Alitalia MidCo's only shareholder.
- (8) Furthermore, Etihad will purchase from New Alitalia 75% of the shares in Alitalia Loyalty. The remaining 25% of the share capital of Alitalia Loyalty will be held by New Alitalia. Etihad will also purchase five slots at the London Heathrow Airport which will be leased back to New Alitalia.

3. THE CONCENTRATION

3.1. New Alitalia

- (9) The Transaction consists in the acquisition of joint control by Alitalia and Etihad over New Alitalia, a newly incorporated company which will receive [...] Alitalia's operating business as a going concern.
- (10) Etihad's voting rights at New Alitalia's shareholders meeting will be capped at 49.9% of the total votes cast at each meeting and all votes in excess will be discarded.⁹ As a result, Alitalia will always hold the absolute majority at New Alitalia's shareholders meeting.
- (11) The Board of Directors of New Alitalia will consist of [Details regarding New Alitalia's Board of Directors]¹⁰
- (12) The Board of Directors will be responsible for the management of New Alitalia.¹¹[Information regarding the appointment of New Alitalia's CEO and CFO and the approval of its budget, business plan, and major expenditures]^{12 13}
- (13) Furthermore, Etihad will hold a number of veto rights aimed at the protection of its interest as a minority shareholder of New Alitalia.

⁸ The Commission recalls that 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. The interpretation of 'control' in other areas is therefore not necessarily decisive for the concept of control under the Merger Regulation.*"

⁹ Form CO, Annex 5.1(c), New Alitalia agreed by-laws, paragraph 11.2.

¹⁰ Form CO, Annex 5.1(c), New Alitalia agreed by-laws, paragraph 16.1.

¹¹ Form CO, Annex 5.1(c), New Alitalia agreed by-laws, paragraph 12.1.

¹² [...].

¹³ [...].

- (14) Joint control over a joint venture may exist even where there is no equality between the two parent companies in votes or in representation in decision-making bodies.¹⁴ Furthermore, joint control may occur on a *de facto* basis where strong common interests exist between shareholders to the effect that they would not act against each other in exercising their rights in relation to the joint venture.¹⁵
- (15) Post-Transaction a commonality of interests is likely to exist between Alitalia and Etihad regarding the operation of New Alitalia. A commonality of interests among the shareholders of a joint venture is more likely when they purchase their shareholdings in the joint venture "by means of a concerted action".¹⁶ In the present case, the Transaction was preceded by intense negotiations between the Notifying Parties which lasted several months. Furthermore, the commercial strategy and corporate structure of New Alitalia reflect the common understanding of Alitalia and Etihad. Therefore, the Transaction is the result of a "concerted action" of Alitalia and Etihad.
- (16) [Information regarding the appointment of New Alitalia's CEO and CFO]^{17 18 19 20}
- (17) [Information regarding New Alitalia's governance structure]^{21 22}
- (18) [...]. This is a strong indication that the Notifying Parties have a common vision regarding New Alitalia's commercial strategy and are likely to jointly implement it. Furthermore, it also suggests that post-Transaction Alitalia will likely cooperate with Etihad and use Etihad's expertise and knowledge of the airline sector to develop New Alitalia's commercial strategy.
- (19) Finally, Etihad will represent an important financial and commercial partner of Alitalia. Etihad, together with Alitalia, will finance the start-up phase of New Alitalia which will last at least until 2017 when the Notifying Parties expect New Alitalia to become profitable. Furthermore, Alitalia and Etihad have entered into a Commercial Cooperation Agreement (the "CCA") which will be transferred to New Alitalia in the context of the Transaction. The CCA aims at developing synergies between New Alitalia and Etihad and its equity partners²³. [...]. New Alitalia will use Abu Dhabi as the hub for [...]. Furthermore, it is envisaged that [...].²⁴ This will expand the range of destinations served by New Alitalia and allow it to rationalise

14 Commission Consolidated Jurisdictional Notice (the "Jurisdictional Notice"), paragraph 65, OJ C95, 16.04.2008, page 1.

15 Jurisdictional Notice, paragraph 76.

16 Jurisdictional Notice, paragraph 79.

17 Form CO, Annex 5.1(b), Shareholders Agreement, paragraph 3.1.

18 Form CO, Annex 5.1(b), Shareholders Agreement, paragraph 3.3.

19 Form CO, Annex 5.1(b), Shareholders Agreement, paragraph 3.4.

20 Form CO, Annex 5.1(b), Shareholders Agreement, paragraph 5.1.

21 Form CO, Annex 5.1(b), Shareholders Agreement, schedule 2, point C; Form CO, Annex 5.1(c), New Alitalia agreed by-laws, section 13.

22 Form CO, Annex 5.1(c), New Alitalia agreed by-laws, section 13.

23 Aer Lingus, airberlin, Air Serbia, Air Seychelles, Jet Airways, Virgin Australia, and Darwin Airline (Etihad Regional). A description of Etihad's main partners is provided in Section 5 of this decision.

24 [...].

the destinations it serves and to create network synergies.²⁵ In addition, the CCA provides that New Alitalia and Etihad will implement joint procurement initiatives which are expected to generate significant cost synergies.

- (20) Based on the foregoing, there is a strong indication that the Notifying Parties will act jointly in New Alitalia as they share a common strategic view regarding the future of the company and of its commercial cooperation with Etihad. Furthermore, Alitalia and Etihad will have an important role in the financing of New Alitalia's operations.
- (21) Taking into account the elements described in the preceding recitals and notably (i) the concerted action between the Notifying Parties that lead to the entry of Etihad in New Alitalia, (ii) New Alitalia's corporate governance, which seems to facilitate the reaching of a common position between the Notifying Parties on the strategic decisions, (iii) the Notifying Parties' common vision on the future business strategy of New Alitalia and (iv) the financial links described above, the Commission considers that a commonality of interests is likely to exist between Alitalia and Etihad regarding the operation of New Alitalia so that they will not vote against each other in exercising their rights in New Alitalia.
- (22) Therefore, New Alitalia will be *de facto* jointly controlled by Alitalia and Etihad for the purposes of the Merger Regulation.
- (23) Finally, the Commission recalls that, regarding the EU air transport licensing provisions, 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. The interpretation of 'control' in other areas is therefore not necessarily decisive for the concept of control under the Merger Regulation.*" [emphasis added].

3.2. **Alitalia Loyalty**

- (24) Post-Transaction, Etihad will hold the majority of the voting rights at Alitalia Loyalty's shareholders' meeting [...].
- (25) Therefore, Alitalia Loyalty will be solely controlled by Etihad.

3.3. **Interrelated transaction**

- (26) Pursuant to the Jurisdictional Notice, the acquisition of joint control of one part of an undertaking and sole control of another part is in principle regarded as two separate concentrations under the Merger Regulation. However, those transactions constitute one concentration if they are interdependent and if the undertaking acquiring sole control is also acquiring joint control.²⁶

²⁵ Form CO, Annex 5.4(b).13, Proposed Alitalia Investment Board Paper No 36.

²⁶ Jurisdictional Notice, paragraph 42.

- (27) In the present case, both conditions are satisfied. Etihad will acquire joint control over New Alitalia and sole control over Alitalia Loyalty. [The link between Etihad's acquisition of shareholdings in Alitalia Loyalty and New Alitalia]²⁷
- (28) Therefore, Etihad's acquisition of sole control over Alitalia Loyalty and joint control over New Alitalia constitute one concentration under the Merger Regulation and will be assessed together in the present decision.

4. EU DIMENSION

- (29) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Etihad: EUR 4 647 million; Alitalia: EUR 3 521 million). They have an EU-wide turnover in excess of EUR 250 million (Etihad: EUR [...] million; Alitalia: EUR [...] million) and they do not achieve more than two-thirds of their aggregate EU-wide turnover within the same EU Member State. Therefore, the notified operation has an EU dimension according to Article 1(2) of the Merger Regulation.²⁸

5. ETIHAD'S INVESTMENTS IN OTHER CARRIERS

- (30) Over the recent years Etihad acquired the following shareholdings in other carriers:²⁹
- (a) 29.21% in airberlin (Germany);³⁰
 - (b) 4.99% in Aer Lingus (Ireland);³¹
 - (c) 24.0% in Jet Airways (India);³²
 - (d) 21.24% in Virgin Australia (Australia); and
 - (e) 40% in Air Seychelles (Seychelles).
- (31) In addition, Etihad has provided financing to Darwin Airline (Switzerland) which, subject to regulatory approvals, could be converted into a 33% shareholding in Darwin Airline.

5.1. airberlin

- (32) airberlin is the second largest airline in Germany and serves 128 destinations worldwide. It carried more than 31.5 million passengers in 2013 and offers a global route network through several bilateral partnerships and through its membership of the oneworld airline alliance.
- (33) airberlin offers both scheduled and charter flights as a full service carrier in a hub network system. It has two German hubs, Dusseldorf and Berlin-Tegel as well as two hubs abroad, Vi-

²⁷ Form CO, Annex 5.1(a), Transaction Implementation Agreement, paragraph 5.1.4; Form CO, Annex 5.1(a)(i), Alitalia Loyalty Sale and Purchase Agreement, paragraph 4.2.

²⁸ Alitalia is the only party that achieved more than two-thirds of its EU-wide turnover in Italy. The Parties' turnover meets the thresholds set in Article 1(2) of the Merger Regulation under each of the "point of sale", "point of origin", and "50/50 split" methods.

²⁹ In addition to the acquisition of 49% of Air Serbia.

³⁰ Etihad holds also 70% of airberlin's loyalty programme, Topbonus.

³¹ Form CO, paragraph 2.2.36.

³² Etihad holds also 50.1% in Jet Airways' loyalty program, Jet Privilege.

enna and Palma de Mallorca. The airberlin group includes Niki, a carrier based in Austria, which is solely controlled by airberlin.³³

- (34) airberlin's net worth generated with Etihad accounted for [0%–5%] of airberlin's total revenues generated in 2013 and first half 2014; over the same period, airberlin's net worth generated with the oneworld alliance partner airlines amounted to a similar range of Air Berlin's total revenues. airberlin's net worth to be generated with Alitalia is estimated to amount to [0%–5%] of airberlin's total revenues to be generated in 2015. Finally, airberlin's total net worth to be generated with Etihad, the oneworld alliance partner airlines and Alitalia is estimated to account for [5%–10%] of airberlin's total revenues to be generated in 2015.³⁴
- (35) The Notifying Parties submit that airberlin will continue to determine its commercial strategy independently of Etihad and therefore there is no actual or potential reduction of competition on the routes served by airberlin brought about by the Transaction.
- (36) However, Etihad is airberlin's single biggest shareholder and the two carriers also have a [...] commercial cooperation agreement. Therefore, the Commission assessed the overlaps between the activities of Alitalia and airberlin in section 7.4 and following of this decision.

5.2. Jet Airways

- (37) Jet Airways is the second largest Indian airline. Its main hub is Mumbai, India, with secondary hubs at Delhi, Kolkata, Chennai and Bengaluru (all in India).
- (38) The Notifying Parties submit that Etihad has neither sole nor joint control over Jet Airways, which remains majority owned by Indian nationals.
- (39) Nonetheless, Etihad has entered into a commercial cooperation agreement with Jet Airways [...]. Therefore, the Commission assessed the overlaps between the activities of Alitalia and Jet Airways in section 7.4 and following of this decision.

5.3. Darwin Airline

- (40) Darwin Airline is a regional carrier with its main operating base at Geneva Airport, Switzerland and currently operating under the trade mark "Etihad Regional" under a license agreement with Etihad. Darwin Airline operates mainly scheduled flights and to a limited extent charter flights using a fleet with limited range and capacity.³⁵
- (41) For the last financial year (2013) Darwin Airline's worldwide turnover was CHF [...] million (approx. EUR [...] million).³⁶ [Description of the commercial position of Darwin Airline]³⁷.
- (42) Etihad entered into a financing agreement with Darwin Airlines and it is envisaged that Etihad's credit would convert at some point into a 33% shareholding in Darwin Airlines. The

³³ Form CO, paragraph 6.3.204; airberlin annual report 2013, page 27.

³⁴ airberlin's email of 11 November 2014.

³⁵ Darwin Airline operates ATR 72-500 (68 seats) with a range of ca. 1,450km and Saab 2000 (50 seats) with a range of approximately ca. 2 200 km.

³⁶ The Notifying Parties' reply to RFI 2 of 27 August 2014, question 11.

³⁷ Form CO, Annex 2.2(a) EEP 10 Darwin Investment Summary.

contemplated conversion of the loan into equity is subject to regulatory clearance from the Swiss Civil Aviation Authority (FOCA).³⁸

- (43) [The Parties' views on the extent to which Darwin Airline competes with the Parties].
- (44) Etihad and Darwin Airline entered into a licence agreement [...] ^{39 40 41 42}
- (45) The Commission was already confronted in the past with franchise agreements between airlines⁴³ in which the franchisor had no shareholding in the franchisee; in those cases the Commission considered that the airline under a franchising contract was not a competitor of the franchisor.
- (46) In the case at hand, [description of the several factors relating to Etihad and Darwin Airline], indicate that Darwin Airline cannot be considered as fully independent from Etihad.
- (47) Therefore, the Commission assessed the overlaps between Alitalia and Darwin Airline in section 7.4 and following of this decision.

5.4. **Air Seychelles, Aer Lingus, and Virgin Australia**

- (48) Air Seychelles is not present with its own aircraft on the routes on which Alitalia operates. Furthermore, Air Seychelles sells an insignificant number of tickets as marketing carrier on some routes on which it codeshares with Etihad. Thus, including Air Seychelles in the overlap assessment did not result in any additional relevant overlap with Alitalia.⁴⁴
- (49) Furthermore the Transaction does not give rise to any overlap with Virgin Australia.⁴⁵
- (50) Regarding Aer Lingus, Etihad's shareholding is minor, less than 5%, and Etihad does not have (i) any specific rights attached to its shareholding, or (ii) any financial commitments, loans, or other financial contributions to or with Aer Lingus.⁴⁶
- (51) Therefore, the positions of these three carriers will not be analysed any further in this decision.

5.5. **"Etihad Airways Partners"**

- (52) "Etihad Airways Partners" is a new brand⁴⁷ launched by Etihad in October 2014 to bring together six airlines in which Etihad holds equity. The current participant airlines are Etihad

³⁸ [FOCA's preliminary view on the current financial arrangements between Etihad and Darwin Airline].

³⁹ The Notifying Parties' reply to RFI 2 of 27 August 2014, question 8.

⁴⁰ [Term of the licence agreement between Etihad and Darwin Airline].

⁴¹ Form CO, Annex 2.2(a), EEP 10 Darwin Investment summary, page 4.

⁴² Form CO, Annex 2.2(a), EEP 10 Darwin Investment summary, page 6.

⁴³ See treatment of Air Nostrum in M.5364 – *Iberia / Vueling / Clickair* and Aer Arann M.6663 – *Ryanair/ Aer Lingus III*.

⁴⁴ Form CO, paragraph 2.2.33.

⁴⁵ Form CO, paragraph 2.2.35.

⁴⁶ The Notifying Parties' reply to RFI 25 of 6 November 2014, question 1.

Airways, airberlin, Jet Airways, Air Serbia, Air Seychelles and Darwin Airline (Etihad Regional). According to the Notifying Parties, the brand concept is an umbrella for bilateral airline cooperation between Etihad and its equity partners and between those equity partners themselves and will not change any of the existing cooperations.

- (53) The Etihad Airways Partners scheme includes extensive marketing, ongoing network alignment between the various hubs and maximising flight connectivity. It will also concern interior design, catering, inflight entertainment and customer service.
- (54) Partner airlines of Etihad (including Air Serbia, airberlin, Darwin Airline, Jet Airways, Air Seychelles, Aer Lingus, Virgin Australia, and also 47 codeshare partners) contributed 21 percent of Etihad Airways' total passenger revenues in 2013, a rise of 30 percent vs 2012.

5.6. Conclusion

- (55) Based on the foregoing, the Commission included airberlin and Jet Airways in its competitive assessment of the Transaction. In the following, airberlin and Jet Airways are referred to collectively as Etihad's Equity Partners ("EEP"). Darwin Airline is also included in the Commission's competitive assessment of the Transaction, whereas the position of Air Seychelles, Aer Lingus, and Virgin Australia is not material in the Commission's competitive assessment.

6. MARKET DEFINITION

6.1. Overview of Parties' activities

- (56) The Notifying Parties submit that the relevant product markets for the purpose of the Transaction are (i) air passenger services, (ii) air cargo services, (iii) maintenance, repair and overhaul (MRO), (iv) flight simulator training, (v) ground handling and (vi) loyalty programmes.

6.1.1. Air transport of passengers

- (57) The Parties' activities primarily overlap in the area of air transport of passengers. Alitalia's domestic and international air passenger services are carried out through mainly offering scheduled flights through its home hub Rome – Fiumicino, its secondary hub at Milan – Linate and other airports in Italy by Alitalia, Alitalia Cityliner and Air One. Etihad's air passenger services are carried out primarily through offering scheduled flights from its home hub in Abu Dhabi (the United Arab Emirates), which includes short and medium-haul services within Middle East as well as long-haul services to North America, Europe, Africa, Australia and Asia.
- (58) In addition, according to the Air Services Agreement in place between Italy and the United Arab Emirates,⁴⁸ Alitalia is one of the designated carriers entitled to operate flights on the routes between Italy (Rome and/or Milan) and airports in the United Arab Emirates.⁴⁹ Reciprocally, under the terms of the same agreement, Etihad can provide scheduled air transport services between airports in the United Arab Emirates and Rome and/or Milan airports. How-

⁴⁷ The Notifying Parties' reply to RFI 12 of 13 October 2014, question 2(a).

⁴⁸ Form CO, Annex 2.2.5(a) Air Service Agreement between the UAE and Italy.

⁴⁹ Form CO, paragraph 2.2.8.

ever Etihad is not entitled to provide air transport services within Italy or between EU airports.⁵⁰

6.1.2. *Air transport of cargo*

- (59) The Parties offer air transport of cargo services. Alitalia carries cargo in the belly hold of its passenger aircraft, as well as in the aircraft of its codeshare partners. Alitalia does not operate regular dedicated cargo flights.⁵¹ Most sales of cargo capacity on international and intercontinental flights are handled by the dedicated Air France/KLM⁵² offices (except for some countries where sales are handled by qualified local agents). Sales of cargo capacity on domestic flights are handled by AirCargo.⁵³
- (60) Etihad operates through its Etihad Cargo brand (on Etihad Cargo dedicated flights). Additionally, since 2004, Etihad Cargo has carried cargo in the belly hold of its own passenger aircraft, as well as in the aircraft of its code-share partners. Etihad Cargo also offers worldwide Air Cargo charter flights.
- (61) The overlap in the Parties' activities in the provision of air transport of cargo services does not lead to any affected market⁵⁴ and will, therefore, not be discussed any further.

6.1.3. *Other activities*

- (62) The Parties are active to a limited extent on other markets such as ground-handling, maintenance, repair and overhaul (MRO) services, flight simulator training, catering, and loyalty programs. However, none of these activities lead to an affected market under any plausible market definition and will, therefore, not be discussed any further in this market definition section (but see Section 7.8 for the assessment of possible vertical relationships).

⁵⁰ Form CO, paragraph 2.2.27.

⁵¹ [...].

⁵² Form CO, paragraph 6.3.103 and following [description of the main terms of the agreement with Air France/KLM].

⁵³ The Notifying Parties' reply to RFI 18 of 21 October 2014, question 14. Air Cargo Srl is an Italian company founded in 1986 based in Fiumicino–Rome and other two branches are in the North of Italy: at Malpensa airport and at Linate airport. Air Cargo Srl is a supplier of General Sales and Services Agency (GSSA) services, being itself an authorised handler and an air charter brokerage and offering cargo consultancy and ad-hoc consignment. Air Cargo provides a comprehensive coverage of the Italian commercial area and it serves a number of airline clients in addition to Alitalia. As regards Alitalia, Air Cargo set up dedicated office in FCO and in others main Italian airports (LIN and MXP), and offers services such as post holder, ramp handling, warehouse handling and control on claims.

⁵⁴ Even considering the narrowest plausible market definition (that is to say the markets for air transport of cargo from Europe to the United Arab Emirates and vice versa), as confirmed by the market investigation the Parties combined market share would be below 20%. See Replies to Q4 – Questionnaire to cargo competitors, questions 10-11; Replies to Q5 – Questionnaire to cargo customers, questions 9-10.

6.2. Air transport of passengers

6.2.1. Origin and destination approach (O&D)

6.2.1.1. Demand-side considerations

- (63) In its decisional practice, the Commission has traditionally defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" ("O&D") city-pair approach.⁵⁵ Such a market definition reflects the demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable for a different city pair. As a result, every combination of a point of origin and a point of destination is considered a separate market.
- (64) The Notifying Parties do not object to this approach.⁵⁶ However, the Notifying Parties submit⁵⁷ that in the case of network carriers, and in particular for O&D's where significantly more passengers are connecting passengers rather travelling on the O&D, the O&D analysis needs to be balanced. The Notifying Parties argue that this approach does not allow distinguishing the situation of O&D routes connecting hub and non-hub airports from that of routes connecting two hubs (hub-to-hub connection). In the first case, the number of passengers travelling on an O&D between the non-hub and hub airports might be insufficient to warrant direct flights, absent the presence of passengers connecting to other flights at the hub. According to the Notifying Parties, while on these routes their market share might appear high, the number of passengers transported on the O&D is very low and operating on certain O&D's is only viable because of the presence of a significant number of connecting passengers on each flight. This situation is to be distinguished from the case of O&D's where the majority of passengers travel specifically on that O&D only and not behind and beyond routes.
- (65) However, it follows from the O&D approach that connecting passengers are not part of the same market as O&D passengers.
- (66) In addition, a large majority among all groups of respondents to the market investigation has confirmed the relevance of the O&D approach for the purpose of analysing the competitive effects on the overlap routes.⁵⁸ A large majority of respondents to the market investigation has also confirmed that this approach is appropriate to capture the competition effects between the Notifying Parties, Etihad's Equity Partners, and their competitors.⁵⁹

⁵⁵ M.6663 – *Ryanair/Aer Lingus III*, recital 50; M.6447 – *IAG/bmi*, recital 31; M.6607 – *US Airways/American Airlines*, recital 8; M.5889 – *United Air Lines/Continental Airlines*, recital 9; M.5440 – *Lufthansa/Austrian Airlines*, recital 11; M.5335 – *Lufthansa/SN Airholding*, recital 12.

⁵⁶ Form CO, paragraph 6.3.3.

⁵⁷ Form CO, paragraph 6.3.3 and following.

⁵⁸ Replies to Q1 – Questionnaire to competitors, question 4; Replies to Q2 – Corporate customers, question 5; Replies to Q3 – Questionnaire to travel agents, question; Replies to Q7 – Questionnaire to airport managers, question 6; Replies to Q8 – Questionnaire to Civil aviation authorities, question 5; Replies to Q10 – Questionnaire to corporate customers II, question 5; Replies to Q11 – Questionnaire to travel agents II, question 5.

⁵⁹ Replies to Q1 – Questionnaire to competitors, question 5; Replies to Q2 – Corporate customers, question 6; Replies to Q3 – Questionnaire to travel agents, question 6; Replies to Q7 – Questionnaire to airport managers,

6.2.1.2. Supply-side considerations

- (67) The Commission has in its practice taken into consideration the network competition between airlines.⁶⁰ This is particularly relevant on the supply-side, as network carriers build their network and decide to fly essentially on routes connecting to their hubs. While some network carriers argued that competition between carriers takes place on the network level,⁶¹ in line with the Commission's notice on market definition and with the Commission's decision practice,⁶² 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.
- (68) Some respondents to the market investigation have taken the view that network competition should be taken into account too.⁶³

6.2.1.3. Conclusion

- (69) In light of the above, the effects of the Transaction will be primarily 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 relevant O&D routes in Section 6.2.4. Network competition will be taken into account in the Commission's analysis of Etihad's minority shareholdings in Section 7.7.

6.2.2. Distinction between groups of passengers

- (70) The Commission has traditionally found that a distinction may be drawn between time sensitive ("TS" or premium) passengers and non-time sensitive ("NTS" or non-premium) passengers.⁶⁴ Time sensitive 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-time sensitive 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.
- (71) While the Notifying Parties do not explicitly object to the Commission's approach of distinguishing between TS and NTS passengers, they consider⁶⁵ that the range of services offered does not reflect time sensitivity but instead reflects particular customers' travel preferences,

question 7; Replies to Q8 – Questionnaire to Civil aviation authorities, question 6; Replies to Q10 – Questionnaire to corporate customers II, question 6 ; Replies to Q11 – Questionnaire to travel agents II, question 6.

⁶⁰ M.6607 – *US Airways/American Airlines*, recital 10; M.6447 – *IAG/bmi*, recital 31.

⁶¹ Replies to Q1 – Questionnaire to competitors, question 4.

⁶² M.6663 – *Ryanair/Aer Lingus III*, recital 50; M.6447 – *IAG/bmi*, recital 31; M.6607 – *US Airways/American Airlines*, recital 8; M.5889 – *United Air Lines/Continental Airlines*, recital 9; M.5440 – *Lufthansa/Austrian Airlines*, recital 11; M.5335 – *Lufthansa/SN Airholding*, recital 12.

⁶³ For example Air France's, Austrian Airlines', Delta Airlines', Lufthansa's, GermanWings' and United Airlines' replies to Q1 – Questionnaire to competitors, question 4.

⁶⁴ M.6663 – *Ryanair/Aer Lingus III*, recital 382; M.6607 – *US Airways/American Airlines*, recital 8; M.6447 – *IAG/bmi*, recital 36; M.6607 – *US Airways/American Airlines*, recital 8.

⁶⁵ Form CO, Section 6.3.6.

ability to pay, and need or desire for greater space and comfort. The ticket flexibility would therefore be the only parameter indicating time sensitivity and in any event many time sensitive passengers might purchase a fixed outbound and a flexible return date.

- (72) A large majority of respondents in the market investigation has confirmed the Commission's approach of distinguishing between time sensitive and non-time sensitive passengers, acknowledging that this distinction was relevant for the assessment of the Transaction.⁶⁶
- (73) Some respondents⁶⁷ have nonetheless indicated that the distinction between time sensitive and non-time sensitive passengers has become blurred; passengers are becoming increasingly price-sensitive in times of slow economic growth⁶⁸ and more corporate customers apply lowest fare policies.⁶⁹
- (74) However, for the assessment of the Transaction, the conclusion on whether TS passengers and NTS passengers belong to the same market can be left open as the outcome of the Commission's competitive assessment would not change under any alternative market definition.

6.2.3. *Markets for direct flights and indirect flights*

- (75) On a given O&D pair, passengers can travel either by way of a direct⁷⁰ flight between the point of origin and the point of destination or by way of an "indirect" flight on the same O&D pair but via an intermediate destination.⁷¹
- (76) The level of substitutability of indirect flights for direct flights largely depends on the duration of the flight. As a general rule, the longer the flight, the higher the likelihood that indirect flights exert a competitive constraint on direct flights.⁷²

⁶⁶ Replies Q1 – Questionnaire to competitors, question 6; Replies to Q2 - Questionnaire to corporate customers, question 7; Replies to Q3 – Questionnaire to travel agents, question 7; Replies to Q7 – Questionnaire to airport managers, question 7; Replies to Q8 – Questionnaire to civil aviation authorities, question 7; Replies to Q10 – Questionnaire to corporate customers II, question 7; Replies to Q11 – Questionnaire to travel agents II, question 7.

⁶⁷ For example Aer Lingus', airberlin's, Air France's, Brussels Airlines, Jet Airways' (India), IAG's, Scandinavian Airlines', TUI Deutschland GmbH's, United Airlines' replies to Q1 – Questionnaire to competitors, question 6.1; Replies to Q2 – Questionnaire to corporate customers, question 10.1; Replies to Q3 – Questionnaire to travel agents, question 8.1; Replies to Q7 – Questionnaire to airport managers, question 8.1 ; Replies to Q8 – Questionnaire to Civil aviation authorities, question 7.1; Replies to Q10 – Questionnaire to corporate customers II, question 10.1; Replies to Q11 – Questionnaire to travel agents II, question 8.1.

⁶⁸ Air France's reply to Q1 – Questionnaire to competitors, question 6.1.

⁶⁹ Air France's, Jet Airways' (India), IAG's, TUI Deutschland GmbH's, United Airlines' replies to Q1 – Questionnaire to competitors, question 6.1; ABB ASEA Brown Boveri Ltd's reply to Q2 - Questionnaire to corporate customers, question 10.1; Carlson Wagonlit Travel's reply to Q3 - Questionnaire to travel agents, question 8.1.

⁷⁰ "Non-stop" flights are flights that take off at airport A and land at airport B where they load off passengers without any stops in between. 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.

⁷¹ M.6663 – *Ryanair/Aer Lingus III*, recital 373.

⁷² M.6663 – *Ryanair/Aer Lingus III*, recital 374; M.6447 – *IAG/bmi*, recital 68.

- (77) When defining the relevant O&D markets for air transport services, the Commission has considered in previous decisions⁷³ that with respect to short-haul routes (generally below 6 hours flight duration) indirect/indirect flights do not generally provide a competitive constraint to direct/direct flights absent exceptional circumstances (for example the direct connection does not allow for a one-day return trip or the share of indirect flights in the overall market is significant).
- (78) The Commission has in its practice⁷⁴ considered that, with respect to long-haul routes (more than 6 hours flight duration), indirect flights constitute a competitive alternative to direct services under certain conditions (for example if they are marketed as connecting flights on the O&D pair in the computer reservation system).
- (79) The Notifying Parties submit⁷⁵ that where short-haul routes are served by less than two flights per day, indirect routes are considered to be substitutable and will exercise a competitive constraint to direct flights.
- (80) The respondents in the market investigation have demonstrated strong support for the distinction between direct and indirect flights for both short and long haul flights.⁷⁶ A large majority of respondents to the market investigation confirmed that indirect services could constitute competitive alternatives to direct services as identified above.⁷⁷ A majority of the respondents also confirmed that indirect services with a greater difference in duration constituted a smaller competitive constraint to direct services than indirect services with a shorter difference in duration.⁷⁸
- (81) However, for the assessment of the Transaction, the conclusion on whether or not direct and indirect flights belong to the same market can be left open as the outcome of the Commission's competitive assessment would not change under any plausible alternative market definition.

⁷³ M.6663 – *Ryanair/Aer Lingus III*, recital 375; M.5440 – *Lufthansa/Austrian Airlines*, recital 25 and following; M.5403 – *Lufthansa/bmi*, recital 17; M.5335 – *Lufthansa/SN Airholding*, recital 37 and following.

⁷⁴ M.6607 – *US Airways/American Airlines*, recital 19; M.5440 – *Lufthansa/Austrian Airlines*, recital 27.

⁷⁵ Form CO, Section 6.3.8.

⁷⁶ Replies to Q1 – Questionnaire to competitors, questions 7 and 8; Replies to Q2 – Questionnaire to corporate customers, questions 11 and 12; Replies to Q3 – Questionnaire to travel agents, questions 9 and 10; Replies to Q7 – Questionnaire to airport managers, questions 9 and 10; Replies to Q8 – Questionnaire to civil aviation authorities, questions 8 and 9; Replies to Q10 – Questionnaire to corporate customers II, questions 11 and 12; Replies to Q11 – Questionnaire to travel agents II, questions 9 and 10.

⁷⁷ Replies to Q1 – Questionnaire to competitors, questions 7 and 8; Replies to Q2 – Questionnaire to corporate customers, questions 11 and 12; Replies to Q3 – Questionnaire to travel agents, questions 9 and 10; Replies to Q7 – Questionnaire to airport managers, questions 9 and 10; Replies to Q8 – Questionnaire to civil aviation authorities, questions 8 and 9; Replies to Q10 – Questionnaire to corporate customers II, questions 11 and 12; Replies to Q11 – Questionnaire to travel agents II, questions 9 and 10.

⁷⁸ Replies to Q1 – Questionnaire to competitors, questions 9 and 10; Replies to Q2 – Questionnaire to corporate customers, questions 13 and 14; Replies to Q3 – Questionnaire to travel agents, questions 11 and 12; Replies to Q7 – Questionnaire to airport managers, questions 11 and 12; Replies to Q8 – Questionnaire to civil aviation authorities, questions 10 and 11; Replies to Q10 – Questionnaire to corporate customers II, questions 13 and 14; Replies to Q11 – Questionnaire to travel agents II, questions 11 and 12.

6.2.4. Airport substitutability

6.2.4.1. Framework of assessment

- (82) When defining the relevant O&D markets for air transport services, the Commission previously found that flights from or to airports which have sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers.
- (83) In order to correctly capture the competitive constraint that flights from and to two (or more) different airports exert on each other, a detailed analysis is necessary by taking into consideration the specific characteristics of the case at hand.⁷⁹ Passengers take into account a number of elements like travel time, travel costs, flight times/schedules/frequencies and the quality of service when it comes to choosing between air transport services to and from different airports. The passenger's choice for one or the other airline service will ultimately be driven by a combination of these elements.
- (84) The Commission's approach is to analyse the question of airport substitutability from the perspective of customers using the technique of bundling evidence.
- (85) The evidence used to characterise airport substitutability includes *inter alia* a comparison of distances and travelling times to the indicative benchmark of 100 km/1 hour driving time,⁸⁰ the outcome of the market investigation (views of the airports, the competitors, and other market participants), and any other relevant element), and the Notifying Parties' practices in terms of monitoring.
- (86) Airport substitutability cannot be assessed in the abstract but can only be determined taking into account the characteristics of the passengers travelling on the routes at stake.
- (87) In the present case, airport substitutability is particularly relevant for the routes to and from Rome (Fiumicino and Ciampino), Milan (Linate and Malpensa) and New York (JFK and Newark) and Abu Dhabi (substitutability with Dubai airports).

6.2.4.2. Airport-by-airport assessment

6.2.4.2.1. Rome airports

- (88) Rome is served by two main airports: Fiumicino (FCO) and Ciampino (CIA). FCO is Italy's largest airport with 36.2 million passengers served in 2013. In terms of passenger numbers FCO is Europe's sixth busiest airport and the world's 34th busiest airport in 2013. CIA is a joint civilian, commercial and military airport and had passenger traffic of 4.7 million in 2013.
- (89) The notifying parties submit that the two airports are substitutable for both TS and NTS passengers.⁸¹

⁷⁹ M.6663 – *Ryanair/Aer Lingus III*, recital 65 and following; M.4439 – *Ryanair/Aer Lingus*, recital 73 and following.

⁸⁰ M.6663 – *Ryanair/Aer Lingus III*, recital 56.

⁸¹ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 5.23.

- (90) CIA is located 15 kilometres i.e. 26 minutes by car and 40 minutes by bus away from the Rome city centre. FCO is located 32 kilometres i.e. 32 minutes by car and 32 minutes by rail away from the Rome city centre.
- (91) On the basis of the 100 km or 1 hour driving time benchmark,⁸² FCO and CIA appear *prima facie* to be substitutable from the demand side for point-to-point scheduled passenger air transport services.
- (92) In the *Ryanair/Aer Lingus I & III* cases,⁸³ the Commission concluded that these two airports were substitutable for Ryanair and Aer Lingus passengers from Dublin.⁸⁴
- (93) The Commission's market investigation showed that a majority of competitors operating on the affected route share the view that the two airports are substitutable for TS and NTS point-to-point passengers.⁸⁵ Customers and travel agencies responding to the market investigation questionnaire were tied on whether FCO and CIA were substitutable for NTS and TS passengers.⁸⁶
- (94) However, given that the assessment of the Transaction would not change materially regardless of whether FCO and CIA are considered to be part of the same market or not, the question of substitutability between these airports can be left open.

6.2.4.2.2. Milan airports

- (95) Milan is served by three airports: Malpensa (MXP), Linate (LIN) and Bergamo Orio Al Serio (BGY).
- (96) MXP is the busiest and largest airport of Milan and has a capacity of handling 28 million passengers annually. In 2012 it served 18 million passengers. It is the second busiest airport in Italy in terms of passenger transit services (after FCO). MXP acts as a base for long-haul flights and low-cost carriers, with 76 operating airlines offering flights to a number of destinations across Europe, Africa, America and Asia.
- (97) LIN is the city airport of Milan, serving 9 million passengers in 2012. LIN has one operational passenger terminal, handling predominantly domestic and short-haul international flights to destinations within Europe.
- (98) BGY served about 12 million passengers in 2012 and is predominantly served by low cost carriers ("LCCs") and charter airlines.

⁸² M.6663 – *Ryanair/Aer Lingus III*, recital 56.

⁸³ M.4439 – *Ryanair/Aer Lingus*, recital 254 and following; M.6663 – *Ryanair/Aer Lingus III*, recital 280 and following.

⁸⁴ The Italian national competition authority has held that there was substitutability between FCO and CIA for international flights. Decision No. 23496 of 11 April 2012, C9812B – *Monitoraggio post-concentrazione/Compagnia Aerea. Italiana/Alitalia-Linee Aeree Italiana-Air One*, recital 120 and following.

⁸⁵ Replies to Q1 – Questionnaire to competitors, question 12.2.

⁸⁶ Replies to Q1 – Questionnaire to competitors, question 12.2; Replies to Q3 – Questionnaire to travel agents, question 14.2; Replies to Q11 – Questionnaire to travel agents II, question 14.2.

- (99) The Notifying Parties submit that the three airports are substitutable for both TS and NTS passengers.⁸⁷
- (100) LIN is located 11 kilometres i.e. 25 minutes by car and 20 minutes by bus away from the Milan city centre. MXP is located 45 kilometres i.e. 50 minutes by car and 40 minutes by rail away from the Milan city centre. BGY is located 54 kilometres i.e. 52 minutes by car away from the Milan city centre.⁸⁸
- (101) On the basis of the 100 km or 1 hour drive time benchmark,⁸⁹ LIN, MXP and BGY appear *prima facie* to be substitutable from the demand side for point-to-point scheduled passenger air transport services.
- (102) In the *Ryanair/Aer Lingus I & III* cases,⁹⁰ the Commission concluded that the three airports are substitutable for Ryanair and Aer Lingus passengers from Dublin.⁹¹
- (103) The market investigation has unequivocally confirmed that LIN and MXP are substitutable for NTS passengers, e.g. on flights from/to Milan to/from Abu Dhabi.⁹² For TS passengers, results were more mixed with respondents being tied on the question of whether TS passengers would switch from LIN to MXP; respondents confirmed however that TS passengers would switch from MXP to LIN.⁹³
- (104) However, given that the assessment of the Transaction would not change materially regardless of whether LIN and MXP are considered to be part of the same market or not, the question of substitutability between these airports can be left open.
- (105) The substitutability of BGY with the other airports in Milan can be left open given that the assessment of the Transaction would not change materially regardless of whether BGY is considered to be part of the same market.

⁸⁷ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 4.26.

⁸⁸ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 4.1; M.6663 – *Ryanair/Aer Lingus III*, recital 242 and following.

⁸⁹ M.6663 – *Ryanair/Aer Lingus III*, recital 56.

⁹⁰ M.4439 – *Ryanair/Aer Lingus*, recital 262 and following; M.6663 – *Ryanair/Aer Lingus III*, recital 242 and following.

⁹¹ The Italian national competition authority has held that there was substitutability between LIN and MXP for international flights. Decision No. 23496 of 11 April 2012, C9812B – *Monitoraggio post-concentrazione/Compagnia Aerea. Italiana/Alitalia-Linee Aeree Italiana-Air One*, paragraph 128.

⁹² Replies to Q1 – Questionnaire to competitors, question 13; Replies to Q2 – Corporate customers, question 17; Replies to Q3 – Questionnaire to travel agents, question 15; Replies to Q7 – Questionnaire to airport managers, question 15; Replies to Q8 – Questionnaire to Civil aviation authorities, question 14; Replies to Q10 – Questionnaire to corporate customers II, question 17; Replies to Q11 – Questionnaire to travel agents II, question 15.

⁹³ Replies to Q1 – Questionnaire to competitors, question 13; Replies to Q2 – Corporate customers, question 17; Replies to Q3 – Questionnaire to travel agents, question 15; Replies to Q7 – Questionnaire to airport managers, question 15; Replies to Q8 – Questionnaire to Civil aviation authorities, question 14; Replies to Q10 – Questionnaire to corporate customers II, question 17; Replies to Q11 – Questionnaire to travel agents II, question 15.

6.2.4.2.3. New York airports

- (106) New York has three airports, namely John F. Kennedy International Airport ("JFK"), Newark Liberty International Airport ("Newark") and La Guardia. There are no flights to and from La Guardia relevant for the assessment of the Transaction.
- (107) The Notifying Parties consider that transatlantic services between JFK or Newark and Brussels should be considered to be part of the same market.⁹⁴ Besides, the Notifying Parties referred to previous decisions where the Commission found that transatlantic services between London and JFK or Newark were part of the same market.⁹⁵
- (108) 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.⁹⁶
- (109) The market investigation has unequivocally confirmed that JFK and Newark are substitutable for NTS passengers.⁹⁷ For TS passengers, results were more mixed with respondents being tied on the question of whether TS passengers would switch from JFK to Newark; a majority of the respondents confirmed however that TS passengers would switch from Newark to JFK.⁹⁸
- (110) However, given that the assessment of the Transaction would not change materially regardless of whether JFK and Newark are considered to be part of the same market or not, the question of substitutability between these airports can be left open.

6.2.4.2.4. Abu Dhabi and Dubai airports

- (111) The Notifying Parties submit that there are various airports servicing customers travelling to Abu Dhabi, namely Abu Dhabi Airport ("AUH"), Dubai International ("DXB"), and Dubai World Central⁹⁹ ("DWC").¹⁰⁰
- (112) AUH is the primary airport of the Emirate of Abu Dhabi, which is the capital of the United Arab Emirates. AUH is the second largest airport in the UAE (after DXB) and served over 16

⁹⁴ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 8.19.

⁹⁵ M.3280 – *Air France / KLM*, recital 34.

⁹⁶ M.6828 – *Delta/Virgin*, recital 44 and following.

⁹⁷ Replies to Q1 – Questionnaire to competitors, question 12.1; Replies to Q2 – Corporate customers, question 16.1; Replies to Q3 – Questionnaire to travel agents, question 14.1; Replies to Q7 – Questionnaire to airport managers, question 14.1; Replies to Q8 – Questionnaire to Civil aviation authorities, question 13.1; Replies to Q10 – Questionnaire to corporate customers II, question 16; Replies to Q11 – Questionnaire to travel agents II, question 14.1.

⁹⁸ Replies to Q1 – Questionnaire to competitors, questions 12.1; Replies to Q2 – Corporate customers, question 16.1; Replies to Q3 – Questionnaire to travel agents, question 14.1; Replies to Q7 – Questionnaire to airport managers, question 14.1; Replies to Q8 – Questionnaire to Civil aviation authorities, question 13.1; Replies to Q10 – Questionnaire to corporate customers II, question 16; Replies to Q11 – Questionnaire to travel agents II, question 14.1.

⁹⁹ There are no flights to and from DWC relevant for the assessment of the Transaction.

¹⁰⁰ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 3.1.

million passengers in 2013.¹⁰¹ Currently the majority of its terminal spaces are used by Etihad which is the UAE's second largest carrier after Emirates.¹⁰² It currently has 42 operating airlines to 93 destinations across 6 continents. AUH was ranked 102nd largest airport in the world in 2013.¹⁰³

- (113) DXB is the main airport for Dubai and a major airline hub in the Middle East. In 2013 DXB handled 66 million passengers making it the 7th busiest airport in the world by passenger traffic and the busiest airport in the world by international passenger traffic. According to the Notifying Parties, between 2012 and 2013, passenger numbers increased by approximately 8.7 million. DXB is operated by the Dubai Airports Company and is the home base of Dubai's international airlines: Emirates, FlyDubai, and Emirates SkyCargo.
- (114) The Notifying Parties are of the view that all competitors providing services between Italy and UAE from AUH and DXB can and do represent a competitive restraint on the Notifying Parties' own services.¹⁰⁴ They consider that a significant proportion of the Dubai population does not live in Dubai city centre itself but lives around Dubai Marina, for whom the distance and driving time to AUH would be 99 km and approximately 54 minutes. For those passengers it would take half an hour longer to get to AUH than DBX (which is situated north east of Dubai city centre) and passengers would therefore consider flying from either airport.
- (115) The Notifying Parties add that the area between Abu Dhabi and Dubai is relatively sparsely populated,¹⁰⁵ which may increase the catchment area of both AUH and DXB. In their view, in addition to the geographical factor such as distance, the excellent road connection should be taken into account when assessing the substitutability of two airports, which is clearly easier and faster than across-town connections like in London.¹⁰⁶
- (116) The Notifying Parties note¹⁰⁷ that the geography between the AUH and DXB airports is significantly different from nearly all other previous cases where substitutability was examined by the Commission insofar as there is a major 6 lane (and 140km/h high speed) highway connecting the cities which was only recently completed. This highway is straight, well-conditioned and unconstrained by high density urban and metropolitan feeder roads. Traffic flows are much higher than for motorways connecting similar sized cities around the world. In view of the airport parking facilities and services and/or chauffeur services, the ease of road connection will be particularly relevant for time-sensitive passengers.
- (117) The Notifying Parties also submit that the catchment area for long-haul flights is larger than on short-haul flights.¹⁰⁸ Furthermore, DXB is the largest airport in the UAE and the most significant hub, offering passengers more routes and more frequencies. It therefore exercises a

¹⁰¹ Moreover, AUH forecasts more than 20 million passengers for 2014; AUH's reply to Q7 – Questionnaire to airport managers, question 2.

¹⁰² [Parties' estimate for passengers travelled through AUH in 2013].

¹⁰³ The Notifying Parties' reply to RFI 16 of 16 October 2014, question 1(a)(ii).

¹⁰⁴ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraph 1.9.

¹⁰⁵ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.19.

¹⁰⁶ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.10.

¹⁰⁷ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.11.

¹⁰⁸ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.12.

clear competitive constraint on AUH. The Notifying Parties have sought to demonstrate the impact on Etihad from competing airlines operating from DXB, in particular Emirates.¹⁰⁹ Two routes between the UAE and Europe have been identified where Etihad was the incumbent operator from AUH and Emirates the subsequent entrant (from DXB): Abu-Dhabi–Dublin (AUH–DUB) and Abu Dhabi–Geneva (AUH–GVA).

Chart 1: Evolution of fares on AUH–GVA¹¹⁰

[...]

Chart 2: Evolution of fares on AUH–DUB¹¹¹

[...]

(118) The Notifying Parties considered that Charts 1 and 2 show that, as soon as Emirates entered the route (June 2011 for the AUH–GVA route and January 2012 for the AUH–DUB route), a significant drop in Etihad's average fares took place, for both TS and NTS passengers. In particular, for TS passenger (for which business class fares represent the bulk of the purchased fares:

- a. On AUH/DXB–Dublin: average prices for business class passengers dropped by [10-20]% in the 12 months following Emirates' entry compared to the 12 months before entry.
- b. AUH/DXB–GVA: while the Notifying Parties do not have the data before 2011, a 12 month comparison cannot be made, but the chart would strongly suggest that the drop was of an approximately equivalent magnitude as for AUH/DXB–Dublin.

(119) A distinction between time-sensitive and non-time sensitive passengers does not apply to the AUH and DXB airports according to the Notifying Parties because both airports are served by the same type of carrier (no low cost carriers or charter carriers) and they offer the same quality of airport and airline services to time-sensitive and non-time sensitive passengers. Time-sensitive passengers should therefore not be treated any different from non-time sensitive passengers when assessing the airport substitutability for AUH and DXB.¹¹²

(120) The Notifying Parties conclude that both airports should be considered as substitutable for all categories of passengers.¹¹³

(121) The Commission has not previously assessed the substitutability of AUH and DXB airports.

¹⁰⁹ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.6 and following; The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.7; The Notifying Parties' reply to RFI 21 of 30 October 2014.

¹¹⁰ The Notifying Parties' reply to RFI 21 of 30 October 2014.

¹¹¹ The Notifying Parties' reply to RFI 21 of 30 October 2014.

¹¹² The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, paragraphs 1.5.

¹¹³ Form CO, Annex 6.3(a), Airport Substitutability Analysis; The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI 18.6, 18.7 and 18.9.

- (122) Regarding the 100 km or 1 hour drive time first proxy used to assess airport substitutability from the demand side for point-to-point scheduled passenger air transport services,¹¹⁴ while the distance between AUH and Abu Dhabi city centre is approximately 35 km and has a driving time of approximately 30 minutes; the distance between DXB and Abu Dhabi city centre is approximately 153 km and has a driving time of approximately 1 hour 30 minutes.¹¹⁵ However, it has to be considered that for the proportion of the Dubai population which lives South-West of Dubai, the distance and driving time to AUH would be around 100 km and approximately 50–60 minutes. For those passengers it would take half an hour longer to get to AUH than DBX (which is situated north east of Dubai city centre) and passengers would therefore consider flying from either airport. Furthermore, the road between Dubai and AUH is a 6 lane 140km/h speed highway, which would not cross high density urban and metropolitan feeder roads.¹¹⁶
- (123) Abu Dhabi is well connected with AUH and DXB. In particular, Etihad offers bus and chauffeur services between Dubai and AUH airport. The bus services are provided free of charge to anyone with a valid Etihad or EEP ticket and passengers do not need to have booked them as part of the ticket booking process. In addition, for economy-class passengers regular complementary shuttle bus services are provided between Dubai International Airport and Abu Dhabi by Emirates.¹¹⁷ As for other connections to DXB, there is a FlyDubai bus service which connects passengers between Abu Dhabi and DXB which departs at 6.30am and 3.00pm each day and has a journey time of two hours. These services appear convenient at least for NTS passengers.
- (124) Moreover, as regards TS passengers, Etihad provided free chauffeur services to around 206,000 of its first and business class customers which travelled to Abu Dhabi, as well as Dubai and elsewhere in the UAE.¹¹⁸ Of those services, [20-30]% of the chauffeured journeys were to Dubai (approx. [40 000 - 50 000] passengers).¹¹⁹ Similarly, Emirates also provides a complementary private driver service for its first class and business class passengers to anywhere in Dubai and Abu Dhabi.
- (125) Besides, a significant proportion of passengers flying on Etihad originate from Dubai, as indicated e.g. by the fact that some [10-20]% of Etihad's UAE frequent flyer programme members are based in Dubai.
- (126) In a route-specific manner, based on MIDT data, as many as [20-30]% of the UAE sales on the DXB–FCO route would originate from the Emirate of Abu Dhabi.¹²⁰

114 M.6663 – *Ryanair/Aer Lingus III*, recital 56.

115 The Notifying Parties contend that the overall travel time between Abu Dhabi city centre and DXB amounts to only 65 minutes given the 140 km/h speed limit on the motorway connecting the city and airport.

116 See Google Maps.

117 http://www.emirates.com/be/english/plan_book/to_and_from_airport/free_shuttle_service_dubai.aspx (retrieved on 21 October 2014).

118 <http://www.etihad.com/en-be/experience-etihad/etihad-chauffeur/> (retrieved on 23 October 2014).

119 [60-70]% of journeys and passengers travelled to Abu Dhabi with the remaining [5-10]% to other UAE destinations; Form CO Annex 6.3(a), Airport Substitutability Analysis.

120 Form CO, Annex 8.4, Etihad business case for Rome flights (2014).

- (127) In the market investigation, a majority of respondents who either operate or book flights to Abu Dhabi or Dubai from Italy have confirmed that AUH and DXB are substitutable for NTS passengers. For TS passengers however, respondents did not in general regard AUH and DXB as substitutable.¹²¹
- (128) Air France/KLM for instance commented that "*a significant proportion of passengers would switch from Abu Dhabi International to both Dubai airports in case of a price increase of 5 to 10%*".¹²² Emirates likewise held that "*when looking at demand substitutability (which has to be done on a case by case basis) this may result in the relevant market being broader than a city pair. For example, the United Arab Emirates is a small country comprising [...] seven emirates with multiple airports within close proximity to one another. There are good roads linking a number of these airports. Therefore in some instances, when looking at Rome to Abu Dhabi, it may be that the relevant market is broader (for example, Rome-Abu Dhabi / Dubai)*".¹²³
- (129) Emirates stated¹²⁴ also that "*AUH and DXB would be substitutable especially when there are more flights being scheduled to/from DXB in comparison with flights being scheduled to/from AUH. In such cases travelling via Dubai and being able to choose among the several daily frequencies available could be considered as a viable option, especially if a passenger has time constraints. Between the UAE and Rome, Etihad /Alitalia are operating 2 flights per day while Emirates operates currently on a double daily basis and will increase its frequencies to three daily flights as of the winter 2014/2015 IATA season*". [The Parties' plans regarding the frequencies on routes to AUH]¹²⁵
- (130) Besides, the Notifying Parties, and Etihad in particular, appear to monitor the relevant routes, especially the frequencies, traffic flows, and pricing of Emirates (operating from DXB) and Qatar Airways (operating indirect services between Rome and Abu Dhabi, via Doha, having sizeable market shares) when operating their services on the Italy–UAE routes.¹²⁶
- (131) Charts 1 and 2 above are also indicative of airport substitutability between AUH and DXB for time-sensitive, non-time sensitive passengers, and all passengers.
- (132) Therefore, the Commission concludes that for NTS and all passengers AUH and DXB are substitutable for long haul flights between Italy (Rome, Milan) and Abu Dhabi.

¹²¹ Replies from competitors operating to AUH or DXB to Q1 – Questionnaire to competitors, questions 13 and 14; Replies of corporate customers buying tickets on the routes Rome–AUH or Milan –AUH to Q2 – Corporate customers, questions 17 and 18; Replies from travel agents purchasing tickets on the routes Rome–AUH and Milan–AUH to Q3 – Questionnaire to travel agents, questions 15 and 16.

¹²² Air France/KLM's reply to Q1 – Questionnaire to competitors, question 13.1.

¹²³ Emirates' reply to Q1 – Questionnaire to competitors, question 4.1.

¹²⁴ Minutes of the Conference call with Emirates held on 13 October 2014, paragraphs 2 and following.

¹²⁵ On FCO–AUH, no changes would be made to their current frequencies; and on MXP–AUH, no change would be made to Etihad's frequencies but Alitalia might start operating daily flights on the route prior to Summer 2015 in connection with Milan EXPO 2015 [...]; the Notifying Parties' reply to RFI 22 of 30 October 2014, question 4

¹²⁶ Form CO, Annex 8.4, Etihad business case for Rome flights (2014); The Notifying Parties' reply to RFI 13 of 17 October 2014, question 2(d).

(133) For the very small number of TS passengers flying on FCO–AUH and MXP–AUH, the market investigation indicates eventually mixed results. The question can however be left open because the outcome of the assessment of the Rome–AUH and Milan–AUH routes would not change regardless of the exact market definition.¹²⁷

7. COMPETITIVE ASSESSMENT

7.1. Methodology for calculating market shares

(134) The Commission has previously used Marketing Information Data Tapes ("MIDT") data as the best available proxy to estimate market shares for air transport of passengers.¹²⁸

(135) However, the Notifying Parties have submitted data on market size and market shares on the basis of IATA data for each relevant O&D route. The data were primarily obtained from the Passenger Intelligence Services tool ("PaxIS") developed by IATA's Business Intelligence Service. Since it does not cover all ticket sales (in particular, "LCCs") and most direct airline sales do not go through the BSP, IATA uses statistical modelling to estimate total passenger numbers for airlines operating on a route ("PaxIS PLUS").

(136) The Commission is of the view that PaxIS Plus data is appropriate for the assessment of the case.¹²⁹

(137) The Notifying Parties submit in particular that ticket flexibility will be the parameter indicating time sensitivity of passengers. Moreover, due to lack of data, the Notifying Parties have estimated the number of TS passengers that fly with LCCs.¹³⁰ The Notifying Parties' approach to estimate the number of TS passengers that fly with LCCs appears appropriate for the assessment of the case.

7.2. Conceptual framework

(138) Prior to analysing the competitive impact of the Transaction, the conceptual framework for the assessment must be determined. In this respect, the Transaction raises the following conceptual issues:

- (a) The first issue concerns the treatment of the joint-ventures to which Alitalia belongs for the purpose of both the determination of affected markets and the competitive assessment.
- (b) The second issue concerns the treatment of the minority shareholdings held by Etihad in the EEP.
- (c) The third issue relates to the treatment of code-share agreements concluded between relevant carriers for the purpose of the determination of the relevant framework for the as-

¹²⁷ For none of the other routes to Abu Dhabi (Abu Dhabi–Paris and Abu Dhabi–Munich) airport substitutability for AUH would affect the Commission's conclusion.

¹²⁸ M.6447 – IAG/bmi; M.5889 – United Airlines/ Continental Airlines; M.5747 – Iberia/ British Airways.

¹²⁹ For instance, the Notifying Parties have submitted a comparison of MIDT data and PaxIS Plus data for selected routes. The comparison confirms that, for the purpose of the present case, PaxIS Plus data has a coverage which is in general at least as extensive as MIDT data.

¹³⁰ Form CO, paragraphs 6.3.6, 6.3.66 and following.

assessment of the effects of the proposed concentration on the numerous routes covered by these code-share agreements.

7.2.1. *Treatment of joint ventures for the assessment of the Transaction*

- (139) Prior to assessing the impact of the Transaction on the relevant markets, a preliminary question must be addressed: the treatment of Alitalia's Joint Ventures with Air France–KLM and Delta (the "JVs") for the purposes of both the determination of affected markets and the competitive assessment of the Transaction.
- (140) Alitalia is a member of the Italy-France Joint Venture and the Italy-Netherlands Joint Venture with Air France–KLM.¹³¹ The parties to these JVs agree on coordination of their network, scheduling, commercial policies and they also share the economic results of the JVs.
- (141) Furthermore, Alitalia is a member of the Transatlantic Joint Venture with Air France–KLM and Delta. Within the framework of the Transatlantic JV¹³² the members fully coordinate their operations with regard to capacity, schedule, pricing and revenue management; moreover members also share profits and losses.
- (142) In accordance with previous cases,¹³³ the assessment of the Transaction will be carried out on the routes operated directly by Alitalia as well as by Alitalia's partners in the JVs to the extent that they fall within the scope of the JVs.

7.2.2. *Minority shareholdings*

- (143) The Commission also assessed whether the links created by the Transaction between New Alitalia, on the one hand, and airberlin, and Jet Airways on the other hand (in which Etihad holds minority shareholdings), would give rise to serious doubts as to the compatibility of the Transaction with the internal market. Furthermore, the Commission took into account the fact that in the future the three carriers, that is New Alitalia, airberlin and Jet Airways, may enter into a commercial cooperation agreement similar to that establishing the framework for the cooperation between Alitalia and Etihad, the competitive impact of which is discussed in Section 7.7 of this decision.
- (144) Acquiring a non-controlling minority shareholding in a competitor may lead to non-coordinated anti-competitive effects because such a shareholding may increase the acquirer's incentive and ability to unilaterally raise prices or restrict output. If a firm has a financial interest in its competitor's profits, it may decide to "internalise" the increase in those profits, resulting from a reduction in its own output or an increase in its own prices. This anti-competitive effect may materialise whether the minority shareholding is passive (giving it

¹³¹ The scope of these JVs covers only certain routes between Italy and France - the Netherlands, it is limited to passenger services and it does not cover cargo activities. Source: Annex 10.(a) to the Form CO.

¹³² Form CO, Annex 10(a), Joint venture agreements between Alitalia and Air France/KLM (AFKL) and Delta Airlines (Delta); The Transatlantic JV covers several intercontinental routes, it includes belly-hold cargo and it excludes charters and cargo-only flights.

¹³³ M.6607 – *US Airways/ American Airlines*, recital 28; M.6828 – *Delta Airlines/Virgin Group/Virgin Atlantic*, recital 84.

no influence in the target's decisions) or active (giving it some influence over the target's decisions).¹³⁴

- (145) The acquisition of a non-controlling minority shareholding may also raise competition concerns when the acquirer uses its position to limit the competitive strategies available to the target, thereby weakening it as a competitive force. The Commission and Member States have found that competition concerns are more likely to be serious when a non-controlling minority shareholding possesses some degree of influence over the target firm's decisions.¹³⁵
- (146) Non-controlling minority shareholdings in competitors may also lead to coordinated anti-competitive effects by impacting a market participant's ability and incentive to tacitly or explicitly coordinate in order to achieve supra-competitive profits.¹³⁶
- (147) The Notifying Parties consider that the EEP will compete vigorously against New Alitalia. The EEP have a responsibility vis-à-vis their shareholders (Etihad is not the majority shareholder) and both airberlin and Jet Airways must operate in their best interests.¹³⁷
- (148) Etihad's position in New Alitalia and as a minority shareholder in airberlin and Jet Airways and the financial interest in the profits of the three carriers that would result from it could arguably create an incentive for Etihad and provide it with the means to induce the three carriers to engage in a unilateral or a coordinated manner in profit maximisation behaviours aimed at raising prices or restrict output.¹³⁸ Furthermore, Etihad's minority shareholding in airberlin and Jet Airways may give rise to serious doubts as to the compatibility of the Transaction with the internal market if Etihad were to have the ability to limit the competitive strategies of airberlin and Jet Airways, thereby weakening each of them as a competitive constraint on New Alitalia.¹³⁹
- (149) However, the Commission considers that Etihad's minority shareholdings in airberlin and Jet Airways do not raise serious doubts as to the compatibility of the Transaction with the internal market for the following reasons.
- (150) First, as explained in greater detail in Section 7.4 of this decision, there are only two routes, Rome–Vienna and Milan–Vienna, on which Alitalia and airberlin both operate, while Alitalia's and Jet Airways' direct operations give rise to only one overlap, that is on the Brussels–New York route. On each of those routes, however, as further explained in Section 7.4 of this decision, the Transaction does not lead to serious doubts as to its compatibility with the

¹³⁴ Commission White Paper, Towards more effective EU merger control, COM(2014) 449 final, 9.7.2014, paragraph 29.

¹³⁵ Commission White Paper, Towards more effective EU merger control, COM(2014) 449 final, 9.7.2014, paragraph 30.

¹³⁶ Commission White Paper, Towards more effective EU merger control, COM(2014) 449 final, 9.7.2014, paragraph 35.

¹³⁷ Form CO, paragraph 6.3.65.

¹³⁸ Commission White Paper, Towards more effective EU merger control, COM(2014) 449 final, 9.7.2014, paragraph 29 and 35.

¹³⁹ Commission White Paper, Towards more effective EU merger control, COM(2014) 449 final, 9.7.2014, paragraph 30.

internal market in particular because the merged entity would face competitive constraints from other competitors active on the routes.

- (151) In addition, a majority of corporate customers and travel agents that have responded to the market investigation have indicated that the Transaction will have a positive effect on passengers travelling on the routes where the activities of Alitalia, airberlin and Jet Airways give rise to direct/direct, direct/indirect as well as indirect/indirect overlaps.¹⁴⁰
- (152) Furthermore, as explained above in recital 150, Alitalia's, airberlin's and Jet Airways' direct operations overlap only on 3 routes. Due to the limited gains that would result from Etihad's possible strategy of trying to align the commercial strategies of New Alitalia, airberlin and Jet Airways only on those routes and the risks that such commercial strategies might not be successful because of the reactions of other competitors on these routes, the Commission considers that Etihad's incentives to induce New Alitalia, airberlin, and Jet Airways to act in a way that may have a material adverse effect on competition are limited.
- (153) Finally, Etihad will only be a jointly controlling shareholder of New Alitalia together with Alitalia and therefore strategic decisions concerning the commercial behaviour of New Alitalia will have to be agreed with Alitalia. In this respect, it must be noted that Alitalia will have the absolute majority of the votes at New Alitalia's shareholders meeting and board of directors and will therefore be in a position to block all initiatives that are not in Alitalia's interest.
- (154) Concerning the routes on which the operations of Alitalia, airberlin and Jet Airways give rise to overlaps between direct and indirect flights as well as between indirect flights, those are unlikely candidates for anti-competitive effects in connection with the minority shareholding held by Etihad. Indirect routes are often established in an opportunistic way by carriers and are modified from one IATA season to the next. Furthermore, price increases or reductions of capacity could be countered by competitors who could start operating on these routes more easily than on direct/direct routes which require the deployment of aircraft dedicated to the O&D route. Therefore, post-Transaction any attempt of New Alitalia, airberlin and Jet Airways to raise prices on such routes on the basis of the minority shareholding held by Etihad would likely be short lived and ineffective.
- (155) In light of the above and the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the minority shareholdings of Etihad in Jet Airways and airberlin. The potential effects on competition that may arise from Alitalia's cooperation with Etihad and the EEP are discussed in Section 7.7 of this decision.

7.2.3. *Treatment of codeshare agreements*

- (156) In computer reservation systems, each airline is identified by a two-letter "airline designator code". Codeshare agreements allow flights operated by one airline to be marketed by its codeshare partner under its own code. In a codeshare, the marketing carrier places its own code on flights operated by the operating carrier and markets them via its own distribution network.

¹⁴⁰ Replies to Q2 – Questionnaire to corporate customers, questions 34.1 and 36, Replies to Q3 – Questionnaire to travel agents, questions 34.1 and 36, Replies to Q10 – Questionnaire to corporate customers II, questions 34.1 and 36 to, Replies to Q11 – Questionnaire to travel agents II, questions 34.1 and 36.

- (157) Codeshares can be unilateral or parallel. The codeshare is unilateral if only one codeshare partner is operating on the route; it is parallel when both codeshare partners fly on the route and codeshare on each other's flights. Unilateral codeshare allows the marketing carrier to expand its network by allowing it to reach destinations to which it does not fly its own aircraft. Through parallel codeshare carriers can increase frequencies without deploying additional aircraft. Parallel codeshare normally allows for fare combinability which enables passengers to fly on each leg of a roundtrip with different carriers. In both unilateral and parallel codeshares, the operating carrier receives indirect access to the distribution network and customer base of the marketing carrier(s).
- (158) Seats on flights operated by a codeshare partner can be sold on a "free flow" (also known as "free-sell") or "blocked space" basis. In a free-flow codeshare, the marketing carrier can sell codeshare seats as long as there are seats available. As it acts as an agent, the marketing carrier does not bear any economic risk. In order to monitor seats availability in each booking class, the marketing carrier has access to the operating carrier's IT system in real time. In a blocked space codeshare, the marketing carrier can purchase a block of seats in advance and resell them under its own code. Blocked space codeshares can be further distinguished in "soft" and "hard" block. In a "soft block" codeshare, the marketing carrier has an option to return some or all of the unsold seats at an agreed number of days before departure. Under this system, the economic risk can lay mainly on the marketing carrier or the operating carrier depending on the specific features of the agreement. In a "hard block" codeshare, the marketing carrier cannot in principle return the tickets it has purchased and therefore the economic risk lies on it.
- (159) Codeshare agreements are a common feature of the air passenger transport industry and it is not unusual for carriers to have in place at any given time a substantial number of agreements with multiple carriers. Alitalia in this respect is no exception and it currently has codeshare agreements with Etihad as well as airberlin, Air Serbia, Darwin Airline, and Jet Airways.¹⁴¹
- (160) On the routes on which the activities of Alitalia, on the one hand, and Etihad, Air Serbia, and the EEP, on the other, overlap due to a unilateral codeshare, the Transaction could give to serious doubts as to its compatibility with the internal market¹⁴² only if (i) despite the codeshare agreements, the operating carrier and the marketing carrier exert a significant constraint on each other as actual competitors for the sales of seats on the operating carrier's flights; or (ii) there is a significant likelihood that the marketing carrier would grow into an effective competitive force, e.g. by starting to operate on the route with its own aircraft.¹⁴³ In particular, anti-competitive effects may occur where the marketing carrier is very likely to incur the neces-

¹⁴¹ In addition to Etihad and its Equity partners, Alitalia has in place code share agreements with several other carriers including members of SkyTeam (such as, Aeroflot, Aerolíneas Argentinas, Aeromexico, Air Europa, Air France, Alitalia, China Airlines, China Eastern, China Southern, CSA Czech Airlines, Delta Air Lines, Garuda Indonesia, Kenya Airways, KLM, Korean Air, MEA, Saudia, Tarom, Vietnam Airlines, and Xiamen Air) as well as other partner carriers (such as, Air Baltic, Air Corsica, Air Seychelles, Azal, Bulgaria Air, Croatia Airlines, Cyprus Airways, GOL, Kuwait Airlines, Luxair, Montenegro Airlines, SriLankan, Tap, and Tarom).

¹⁴² For the purpose of the assessment of the Transaction, the relevant framework of assessment is a situation in which the parties cooperate under the described codeshare agreements.

¹⁴³ M.5403, *Lufthansa/bmi*, recital 43.

sary sunk costs to enter the relevant codeshare route as an operating carrier in a relatively short period.¹⁴⁴

(161) Alitalia entered into free flow codeshare agreements with airberlin, Darwin Airline, Etihad, and Jet Airways. The codeshare between Alitalia and Air Serbia is a blocked space agreement.¹⁴⁵ On all of the routes on which Alitalia codeshares with Etihad, Air Serbia, Darwin Airline, and the EEP, only one of the codeshare partners operates, the sole exceptions being the Rome–Abu-Dhabi, Rome–Belgrade, and Rome–Geneva routes on which the codeshare is parallel. The effects of the Transaction on the Rome–Abu-Dhabi, Rome–Belgrade, and Rome–Geneva routes are assessed in Section 7.4 of this decision. The characteristics of the codeshare agreements between Alitalia, on the one hand, and Etihad, Air Serbia, Darwin Airline, and the EEP, on the other, are summarised in Table 1 below.

Table 1: Codeshare agreements among Alitalia and Etihad, Air Serbia, Darwin Airline, and the EEP

Alitalia codeshare partner	Free Flow / Blocked Space	Parallel / Unilateral
airberlin	Free-flow	Various routes connecting Italy to Germany and Austria as well as certain locations within Italy: unilateral
Air Serbia	Hard-block	Rome–Belgrade: parallel
	Soft-block	Milan–Belgrade: unilateral
Darwin Airline	Free-flow	Rome–Geneva: parallel Florence–Geneva, Venice–Geneva, Rome–Bolzano/Bozen: unilateral
Etihad	Free-flow	Rome–Abu-Dhabi: parallel
		Milan–Abu-Dhabi unilateral
Jet Airways	Free-flow	Rome–Abu-Dhabi: unilateral*

* [...]

Source: Annex 2.2(a) and Annex 6.3(d) to the Form CO

(162) Under the codeshare agreements between Alitalia and airberlin, Darwin Airline, Etihad, and Jet Airways, the marketing carriers receive a commission for each of the tickets it sells.¹⁴⁶ Alitalia and Air Serbia pay instead a fixed fee for each ticket they purchase from one another under their blocked space codeshare agreement.

¹⁴⁴ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Mergers Guidelines") OJ C 31, 05.02.2004, paragraph 59.

¹⁴⁵ Soft block on the Milan–Belgrade route and hard block on the Rome–Belgrade route.

¹⁴⁶ The Notifying Parties' reply to RFI 18 of 21 October 2014, question 2.

- (163) Pursuant to the codeshare agreements between Alitalia and Etihad, Air Serbia, Darwin Airline, and the EEP, the marketing carrier is free to set prices for the tickets it sells. Furthermore, no provision in the agreements limits the marketing carrier's ability to sell tickets at a fare lower than that of the operating carrier. However, in practice the marketing carrier normally sells tickets at a price that is close to or higher than the one of the operating carrier.¹⁴⁷
- (164) Incentives for the marketing carrier to price aggressively are limited. In a free flow codeshare, the commission received from the marketing carrier is normally a percentage of the fare it charges for the tickets it sells. Therefore, the higher the price at which the marketing carrier sells tickets the greater his commission will be. Likewise, in the soft block codeshare between Alitalia and Air Serbia Alitalia purchases tickets from Air Serbia at a fix price and the higher the price at which Alitalia manages to sell its tickets the greater its profit margin will be. In addition, the risk of unsold tickets essentially lies on Air Serbia. Alitalia can return any unsold tickets to Air Serbia up to [...] before the departure of the flight and the likelihood that Alitalia would keep unsold tickets in its inventory so close to the departure date is very low.
- (165) The likelihood that the marketing carrier would represent a material competitive constraint for the operating carrier is further limited by the operating carrier's ability to terminate the codeshare agreement if the marketing carrier started to offer fares substantially lower than the operating carrier, thus depriving the marketing carrier of any benefit of an aggressive pricing policy.¹⁴⁸ A majority of respondents to the market investigation have indicated that indeed competition between Alitalia and Etihad, airberlin, Air Serbia, Darwin Airline, and Jet Airways on the routes on which they are present through an unilateral codeshare is limited, very limited, or nil.¹⁴⁹
- (166) Based on the foregoing, the Commission has come to the view that in the unilateral codeshares between Alitalia and Etihad, airberlin, Air Serbia, Darwin Airline, and Jet Airways the marketing carrier does not exert more than a residual constraint on the operating carrier.
- (167) Furthermore, the Commission's analysis has confirmed that Alitalia would not be a likely entrant on the routes where it markets flights operated by airberlin, Air Serbia, Darwin Airline, and Etihad. Similarly, the Commission's analysis has confirmed that airberlin and Jet Airways would not be likely entrants on the routes where they market flights operated by Alitalia. Moreover, there are no routes on which Air Serbia and Darwin Airlines are marketing carriers in a unilateral codeshare with Alitalia.
- (168) [Alitalia's business plan and plans regarding entry on new routes].¹⁵⁰ Therefore, the loss of potential competition resulting from the unilateral codeshare agreement between Alitalia and Etihad appears at most very limited. Furthermore, airberlin pre-Transaction was not planning

¹⁴⁷ The Notifying Parties' reply to RFI 18 of 21 October 2014, question 2; The Notifying Parties' reply to RFI 20 of 29 October 2014, questions 1 and 2.

¹⁴⁸ The codeshare agreements between Alitalia and airberlin, Air Serbia Darwin, Etihad, and Jet Airways can be terminated with 60 or 90 day notice, depending on the agreement, before the beginning of each IATA season.

¹⁴⁹ Replies to Q1 – Questionnaire to competitors, question 21; Replies to Q2 – Questionnaire to corporate customers, question 27.1; Replies to Q3 – Questionnaire to travel agents, question 26.1; Replies to Q10 – Questionnaire to corporate customers II, question 27.1; Replies to Q11 – Questionnaire to travel agents II, question 26.1.

¹⁵⁰ Form CO, Annex 5 4(a), Alitalia BoD 03 07 2013, Business Plan Board Presentation.

to enter on the routes on which it codeshares with Alitalia nor is Jet Airways likely to become a potential constraint to Alitalia on the Rome–Abu-Dhabi route because operating such route would not be in line with its business model.

(169) Therefore, on the routes on which the activities of Alitalia, Etihad, Air Serbia, Darwin Airline, and the EEP overlap only due to a unilateral codeshare, the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the elimination of potential competition.

(170) The routes on which the activities of Alitalia, Etihad, Air Serbia, Darwin Airline, and the EEP overlap because of codeshares are included in the Commission's assessment conducted in Section 7.4.2 and following.

7.3. Filters

(171) Consistent with its previous practice,¹⁵¹ the Commission has applied the following filters to exclude likely unproblematic routes from the scope of its investigation (all criteria must have been met in the 4 last completed IATA seasons¹⁵² and for all passenger segments for a route to be excluded under the filters):

(a) For *direct/indirect overlaps*:

- (i) the Parties' (including Darwin Airline's and the EEP's) combined market share was below 25%; or
- (ii) one of the Parties (including Darwin Airline and the EEP) had a market share below 2%; or
- (iii) short-haul routes where the total share of indirect operations in the relevant market was below 10%; or
- (iv) at least one end of the city pair is outside the EU and the total annual traffic was below 30 000 passengers;¹⁵³ or
- (v) the route was below the HHI thresholds of paragraph 20 of the Horizontal Merger Guidelines.¹⁵⁴

(b) For *indirect/indirect overlaps*:

- (i) the Parties' (including Darwin Airline's and the EEP's) combined market share was below 25%; or
- (ii) one of the Parties (including Darwin Airline and the EEP) had a market share below 2%; or
- (iii) as regards short-haul routes where the total annual traffic was below 15 000 passengers or as regards long-haul routes where the total annual traffic was below 30 000 passengers; or

¹⁵¹ M.6828 – *Delta/Virgin*, footnote 77; M.6607 – *US Airways/American Airlines*, recital 32; M.5889 – *United/Continental*, footnote 25; M.5830 – *Aegean/Olympic I*, footnote 365; M.5747 – *BA/Iberia*, recital 117; M.5335 – *LH/SN Airholding*, footnote 302.

¹⁵² Summer 2012, winter 2012/13, summer 2013 and winter 2013/14 IATA seasons.

¹⁵³ M.5335 – *BA/Iberia*, recital 117; M.6828 – *Delta/Virgin*, footnote 77.

¹⁵⁴ M.6607 – *US Airways/American Airlines*, recital 32.

(iv) the route was below the HHI thresholds of paragraph 20 of the Horizontal Merger Guidelines.¹⁵⁵

(172) There have been no filters for direct/direct overlaps, therefore the general rules apply (there is no affected market if the Parties' (including Darwin Airline's and the EEP's) combined market share is below 20%).

(173) As a result of the above criteria the Notifying Parties submitted overall that 142 O&D pairs, including direct/direct, direct/indirect and indirect/indirect overlaps, would be affected by the Transaction.

(174) The Commission verified whether the filters were applied consistently and concluded that, in addition to the routes already filtered out by the Notifying Parties, also the Brindisi–Nuremberg and Palermo–Vienna routes could both be classified as indirect/indirect routes and be filtered out because they are short haul routes below 15 000 passengers per year.

(175) Moreover, after having verified the seasonal data submitted by the Notifying Parties, the Commission has reclassified some overlaps from the original classification submitted by the Notifying Parties. Table 2 provides an overview of those changes.

Table 2: Overview of route reclassification

Overlap	Notifying Parties	Commission	Changes
direct/direct	32	34	2 routes added from D/I ¹⁵⁶
direct/indirect	67	59	2 routes moved to D/D, ¹⁵⁷ 5 routes moved to I/I, ¹⁵⁸ 1 filtered out ¹⁵⁹
indirect/indirect	43	47	5 routes added from D/I, ¹⁶⁰ 1 route filtered out ¹⁶¹
Total	142	140	2 routes filtered out ¹⁶²

¹⁵⁵ M.6607 – *US Airways/American Airlines*, recital 32.

¹⁵⁶ Abu Dhabi–Paris, Belgrade–Brussels.

¹⁵⁷ Abu Dhabi–Paris, Belgrade–Brussels.

¹⁵⁸ Nuremberg–Lamezia Terme, Lamezia Terme–Vienna, Palma de Mallorca–Venice, Frankfurt–Lamezia Terme, Frankfurt–Palermo.

¹⁵⁹ Brindisi–Nuremberg.

¹⁶⁰ Nuremberg–Lamezia Terme, Lamezia Terme–Vienna, Palma de Mallorca–Venice, Frankfurt–Lamezia Terme, Frankfurt–Palermo.

¹⁶¹ Palermo–Vienna.

¹⁶² Brindisi–Nuremberg and Palermo–Vienna.

7.4. Direct/direct overlaps

7.4.1. Presentation of the routes

(176) For the last four IATA seasons, the Transaction gives rise to the following 34 direct/direct overlaps:

Table 3: 34 direct/direct overlap routes at city pair

Abu Dhabi–Milan	Belgrade–Brussels	Cambridge–Milan	Milan–New Dehli	Rome–Sofia
Abu Dhabi–Munich	Belgrade–Milan	Florence–Geneva	Milan–Rome	Rome–Tirana
Abu Dhabi–Paris	Belgrade–Rome	Frankfurt–Rome	Milan–Vienna	Rome–Trapani
Abu Dhabi–Rome	Bolzano/Bozen–Rome	Geneva–Rome	Munich–Rome	Rome–Venice
Ancona–Rome	Brussels–New York	Geneva–Venice	Palma de Mallorca–Valencia	Rome–Vienna
Athens–Rome	Bucharest–Rome	La Valetta–Rome	Paris–Berlin	Rome–Zurich
Barcelona–Rome	Budapest–Rome	Lugano–Rome	Rimini–Rome	

Source: Annex 6.3(c)(iii) to the Form CO

(177) The Ancona–Rome, Cambridge–Milan, Lugano–Rome, Rimini–Rome and Rome–Trapani routes have been discontinued for non-merger specific reasons and will not be further assessed.

(178) The Rome–Zurich route is not an affected route under any market segmentation over the last two IATA seasons and will not be further considered in this decision.¹⁶³

(179) The remaining 28 overlaps as detailed in Table 3 above arise as a result of either: (i) Alitalia's (including where relevant its Transatlantic JV partners') and Etihad's (including Air Serbia's and EEP's market shares) market shares; or (ii) Alitalia's (including where relevant its Transatlantic JV partners') and Darwin Airline's market shares; or (iii) Alitalia's (including where relevant its Transatlantic JV partners') and airberlin's or Jet Airways' market shares.

(180) These three categories of overlaps will be assessed in Sections 7.4.2, 7.4.3 and 7.4.4 below.

¹⁶³ The overlap on this route would have led to an affected market in the winter 2012/13 IATA season, in which the Parties' combined market share amounted to [20-30]% for all types of passengers combined and reached [20-30]% if the NTS passengers' segment is considered. However, the increment brought about by the Transaction was minimal and in any event below [0-5]% irrespective of the distinction between TS and NTS passengers. As a result, the Transaction will not lead to material merger specific effects on this route and does not raise serious doubts as to its compatibility with the internal market.

(181) Two competitors considered, without further substantiating their concerns, that there is a risk of not sufficient competition on most of the overlapping routes as a result of the Transaction, as on many of those routes Alitalia, Etihad, Air Serbia, airberlin, Darwin Airline, Aer Lingus and Jet Airways would be the only direct serving airlines and entry barriers for new entrants might be too high.¹⁶⁴ A majority of customers considered, however, that the Transaction would have a positive impact (in terms of prices, level of services, etc.) on the competitive situation on all the overlap routes (that is to say direct/direct, direct/indirect, and indirect/indirect overlapping routes).¹⁶⁵

7.4.2. *Direct/direct overlaps between Alitalia (including where relevant its Transatlantic JV partners) and Etihad (including Air Serbia and EEP)*

(182) The Transaction gives rise to 18 direct/direct overlaps as a result of Alitalia's (including where relevant its Transatlantic JV partners') and Etihad's (including Air Serbia's and EEP's) market shares. Those overlapping routes are: Abu Dhabi–Milan, Abu Dhabi–Munich, Abu Dhabi–Paris, Abu Dhabi–Rome, Athens–Rome, Barcelona–Rome, Belgrade–Brussels, Belgrade–Milan, Belgrade–Rome, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana, and Rome–Venice. On three routes from Abu Dhabi, in addition to Alitalia and Etihad, airberlin, Jet Airways, Virgin Australia and Air Seychelles are also selling tickets, however they only sold a limited number of the tickets. Nonetheless their passengers' numbers have been included in the calculations.

(183) The route-by-route assessment for Abu Dhabi–Milan, Abu Dhabi–Rome, Belgrade–Milan, and Belgrade–Rome routes will be conducted in Sections 7.4.2.1, 7.4.2.2, 7.4.2.3 and 7.4.2.4 respectively.

(184) The remaining 14 routes Abu Dhabi–Munich, Abu Dhabi–Paris, Athens–Rome, Barcelona–Rome, Belgrade–Brussels, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana, and Rome–Venice routes will be assessed together in Section 7.4.2.5.

7.4.2.1. Abu Dhabi–Milan

7.4.2.1.1. Presentation of the route

(185) The overlap between Alitalia and Etihad on this route arises because of operations on the Milan Malpensa (MXP)–Abu Dhabi (AUH) airport pair. The Notifying Parties submit that, at the Milan end, the Linate (LIN) and Malpensa (MXP) airports are substitutable and that, at the other end, the Abu Dhabi (AUH) and the Dubai (DXB) airports are substitutable (see Section 6.2.4). The Parties only operate between Milan Malpensa (MXP) and Abu Dhabi (AUH).

¹⁶⁴ Replies to Q1 – Questionnaire to competitors, question 17.

¹⁶⁵ Replies to Q2 – Questionnaire to corporate customers, question 34.1; Replies to Q10 – Questionnaire to corporate customers II, question 34.1.

- (186) Etihad started its direct operations from Milan Malpensa (MXP) to Abu Dhabi (AUH) in 2007. On 28 March 2010, Etihad and Alitalia entered into a free sell codeshare agreement enabling Alitalia to market the flights as an Alitalia flight (operated by Etihad). This codeshare agreement was expanded in November 2012.
- (187) Alitalia intends to enter on the route as an operating carrier codesharing with Etihad as of the summer 2015 IATA season. [Details of Alitalia's entry plans].¹⁶⁶
- (188) When flights to/from all airports (MXP, LIN and BGY) in Milan and to/from Abu Dhabi/Dubai are included, in the summer 2013 IATA season, a total of [80 000 - 90 000] passengers (among whom significantly less than half, only [20 000 - 30 000], were TS passengers) travelled on the Milan–Abu Dhabi route on a direct O&D basis. In the winter 2013/2014 IATA season, a total of [70 000 - 80 000] passengers (among whom significantly less than half, only [20 000 – 30 000], were TS passengers) travelled on the Milan–Abu Dhabi route. Etihad offered on average one daily flight while Emirates offered three daily flights 7 days a week on this route during these two seasons.
- (189) When only flights between Milan Malpensa (MXP) and Abu Dhabi are included, in the summer 2013 IATA season a total of [10 000 – 20 000] passengers (among whom less than half, only [<3 000], were TS passengers) travelled on the Milan Malpensa (MXP)–AUH route on a direct O&D basis. In the winter 2013/2014 IATA season, a total of [5 000 – 10 000] passengers (among whom less than half, only [<3 000], were TS passengers) travelled on the Milan–AUH route. Etihad offered on average 7 weekly flights.

7.4.2.1.1. Assessment of the route

- (190) On a market which would include flights from all Milan airports (MXP, LIN and BGY) to Abu Dhabi (AUH) and Dubai (DXB), the Transaction would not lead to any affected markets in any of the last four IATA seasons irrespective of the split between TS and NTS passengers. The largest operator on such market was Emirates with market shares above [80-90]%. As mentioned in Section 6.2.4, the Commission concluded that for NTS passengers and all passengers AUH and DXB are substitutable for long haul flights between Italy (Rome, Milan) and Abu Dhabi. Therefore, only flights between Milan Malpensa (MXP) and Abu Dhabi (AUH), and only for the TS passenger segment, will be assessed in the following.
- (191) Set out in Table 4 below is the relevant IATA passenger data and market share calculations relating to direct flights on the Milan–AUH route for the summer 2013 and winter 2013/2014 IATA seasons.

¹⁶⁶ Email from the Parties entitled RE: M.7333 - Alitalia / Etihad - State of play meeting [BEP-ACTIVE.FID685275] of 17 October 2014.

Table 4: Milan (MXP) –Abu Dhabi airport - Direct flights only

Carrier	Itinerary Type	Summer '13			Winter '13/'14		
		All	TS	Non-TS	All	TS	Non-TS
Alitalia	DC	[<1 000] [5-10]%	[<1 000] [5-10]%	[<1 000] [5-10]%	[<1 000] [5-10]%	[<1 000] [0-5]%	[<1 000] [10-20]%
Etihad	DO	[10 000 - 20 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [90-100]%	[5 000 -10 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [80-90]%
Virgin Australia	DC	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
Air Seychelles	DC	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
TOTAL PARTIES		[10 000 - 20 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [90-100]%	[5 000 -10 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [90-100]%
Other Competitors	DC	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
TOTAL COMPETITORS		[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
COMBINED TOTAL		[10 000 - 20 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [90-100]%	[5 000 -10 000] [90-100]%	[<3 000] [90-100]%	[5 000 -10 000] [90-100]%

Key: DO: Direct Operated, DC: Direct Codeshare, IO: Indirect Operated IC: Indirect Codeshare
Source: Annex 6.3.c. (ii) to the Form CO

(192) As can be seen in Table 4 above, that the Notifying Parties had a monopoly on the MXP–AUH route in 2013/2014. If indirect flights are included, the Parties' market shares would decrease and amount to between [80-90]% and [80-90]% across all passengers segments in the summer 2013 and winter 2013/2014 IATA seasons.¹⁶⁷ The biggest competitors which offer indirect services are Qatar Airways (with a market share between [5-10]% and [10-20]% depending on the season and passenger segment considered) and Turkish Airlines (with a market share between [0-5]% and [5-10]% depending on the season and passenger segment considered).

(193) The majority of the respondents to the market investigation considered that there will not remain sufficient competition on this route post-Transaction to prevent the merged entity from raising prices.¹⁶⁸

(194) However, as described in Section 7.2, the codeshare between Etihad and Alitalia on the Milan–Abu Dhabi route is a free flow unilateral codeshare. This means that only Etihad has been operating on the route while Alitalia has been entitled to sell tickets on Etihad's aircraft. In light of the existing codeshare, Alitalia has not run any commercial risk since it was not obliged to purchase a minimum amount of seats from Etihad. However, as also explained in Section 7.2 and as confirmed by the Commission's market investigation, the competitive pres-

¹⁶⁷ See Annex Annex 6.3.c. (ii) to the Form CO.

¹⁶⁸ Replies to Q1 – Questionnaire to competitors, question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18; Replies to Q10 – Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

sure exerted by the marketing partner on the operating partner in the framework of a free flow unilateral codeshare is very limited and not effective. Therefore the Commission considers that already pre-Transaction there was no sufficient competition between Etihad and Alitalia on this route.

(195) In addition, for the TS passenger segment, the increment brought about by the Transaction is limited [0-5]% in the summer 2013 and winter 2013/2014 IATA seasons.

(196) Therefore, the Transaction will not lead to any serious doubts as to its compatibility with the internal market on the Milan (MXP only)–Abu Dhabi (AUH only) route.

7.4.2.1.2. Conclusion

(197) 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 under any possible market definition on the Milan–Abu Dhabi route.

7.4.2.2. Abu Dhabi–Rome

7.4.2.2.1. Presentation of the route

(198) The overlap between Alitalia and Etihad on this route arises because of operations on the Rome Fiumicino (FCO)–Abu Dhabi (AUH) airport pair.

(199) The Notifying Parties submit that flights between Rome and Dubai International airport (DXB) and Dubai World Central airport (DWC) will act as a competitive constraint on flights on the Rome–Abu Dhabi (AUH) route. Both the Notifying Parties and their competitors offer services from Rome Fiumicino (FCO) and there are no other carriers offering services from Rome Ciampino (CIA).

(200) Alitalia has been operating on the Rome–Abu Dhabi route since 1 December 2012. Etihad commenced operating daily flights on this route only in mid-July 2014. Under a free-sell codeshare agreement with Etihad, Etihad can also market flights on this route with Etihad codes. Prior to 2012 there had been no direct daily flights on the route and Alitalia passengers either transited through Paris or Milan.

Rome–Abu Dhabi

(201) Approximately [20 000 – 30 000] O&D passengers travelled¹⁶⁹ on the Rome–Abu Dhabi route in 2013. This represents about a quarter of all passengers travelling on this route, as on average [70-80]% of all passengers were connecting passengers in 2013.¹⁷⁰

(202) In the summer 2013 IATA season, a total of [10 000 – 20 000] O&D passengers¹⁷¹ (among whom [<3 000] TS passengers) travelled direct on that route while [<5 000] travelled on indirect services¹⁷² (representing around [20-30]% of all passengers). In the winter 2013/2014 IATA season, a total of [5 000 – 10 000] O&D passengers (among whom [<1 000] TS pas-

¹⁶⁹ Form CO, Annex 6.3(c)(ii), O&D by airport pair.

¹⁷⁰ Form CO, Annex 6.3(c)(ii), O&D by airport pair.

¹⁷¹ Form CO, Annex 6.3(c)(ii), O&D by airport pair.

¹⁷² Form CO, Annex 6.3(c)(ii), O&D by airport pair.

sengers) travelled direct on that route while [$<5\ 000$] O&D passengers travelled on indirect services (representing around [30-40]% of all passengers).

- (203) In the summer 2013 and winter 2013/2014 IATA seasons Alitalia offered an average of 5 weekly flights between Rome Fiumicino and Abu Dhabi airport. Since July 2014, Etihad offers 7 additional weekly flights (one daily) from Rome Fiumicino to Abu Dhabi airport. Biman Bangladesh Airlines was the only other carrier operating direct services between Rome Fiumicino and Abu Dhabi airport and only during the summer 2013 IATA season.

Rome–Abu Dhabi / Dubai

- (204) If flights between Rome and Dubai International airport (DXB) are included, approximately [100 000 – 200 000] O&D passengers travelled on the Rome–Abu Dhabi/Dubai route in 2013. This represents about a quarter of all passengers travelling on this route, as on average [70-80]% of all passengers were connecting passengers in 2013.
- (205) In the summer 2013 IATA season, a total of [80 000 – 90 000]O&D passengers¹⁷³ (among whom [60 000 – 70 000] NTS passengers)¹⁷⁴ travelled direct on that route while [20 000 – 30 000] travelled on indirect services (representing around [10-20]% of all passengers)¹⁷⁵. In the winter 2013/2014 IATA season, [50 000 – 60 000] O&D passengers (among whom [40 000 – 50 000] NTS passengers) travelled direct on that route while [10 000 – 20 000] travelled on indirect services (representing approximately [20 -30]% of all passengers).¹⁷⁶
- (206) During the summer 2013 and winter 2013/2014 IATA seasons, the major operator on this route was Emirates with about 14 weekly frequencies in each of both seasons.

7.4.2.2.2. Assessment of the route

- (207) On a market which would include flights from Rome Fiumicino to Abu Dhabi (AUH) and Dubai (DXB), the Transaction would not lead to any affected markets in any of the last four IATA seasons irrespective of the split between TS and NTS passengers. The largest operator on such market was Emirates with market shares above [80-90]%. As mentioned above, the Commission concluded that for NTS and all passengers, the AUH and DXB are substitutable for long haul flights between Italy (Rome, Milan) and Abu Dhabi. Therefore, only flights between Rome Fiumicino (FCO) and Abu Dhabi (AUH), and only for the TS passenger segment, will be assessed in the following.
- (208) Table 5 set out the Parties' market shares on this route during the past two IATA seasons: Summer 2013 and Winter 2013/2014.

173 Form CO, Annex 6.3(c)(i), O&D by city pair.

174 Form CO, Annex 6.3(c)(i), O&D by city pair.

175 Form CO, Annex 6.3(c)(i), O&D by city pair.

176 Form CO, Annex 6.3(c)(i), O&D by city pair.

Table 5: Rome Fiumicino–Abu Dhabi airport - Direct only

Carrier	Itinerary Type	Summer '13			Winter '13/'14		
		All	TS	Non-TS	All	TS	Non-TS
Alitalia	DO	[5 000 -10 000] [50-60]%	[<3 000] [60-70]%	[5 000 -10 000] [40-50]%	[5 000 -10 000] [80-90]%	[<1 000] [70-80]%	[5 000 -10 000] [80-90]%
Etihad	DC	[<5 000] [30-40]%	[<1 000] [30-40]%	[<5 000] [30-40]%	[<3 000] [10-20]%	[<1 000] [20-30]%	[<1 000] [10-20]%
TOTAL PARTIES		[10 000 - 20 000] [80-90]%	[<3 000] [90-100]%	[5 000 -10 000] [70-80]%	[5 000 -10 000] [90-100]%	[<1 000] [90-100]%	[5 000 -10 000] [90-100]%
Biman Bangladesh Airlines	DO	[<3 000] [10-20]%	[<1 000] [0-5]%	[<3 000] [20-30]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
Delta Air Lines	DC	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%
TOTAL COMPETITORS		[<3 000] [10-20]%		[<3 000] [20-30]%	[<1 000] [0-5]%		[<1 000] [0-5]%
COMBINED TOTAL		[10 000 - 20 000] [90-100]%	[<3 000] [90-100]%	[10 000 - 20 000] [90-100]%	[5 000 -10 000] [90-100]%	[<1 000] [90-100]%	[5 000 -10 000] [90-100]%

Source: Annex 6.3.c. (ii) to the Form CO

(209) For TS passengers, the substitutability of AUH and DXB airports has been left open (see Section 6.2.7.2.4). On the Rome–AUH route, for TS passengers, the market shares of the Parties is [90-100]% considering only direct flights, and [50-60]% (winter 2013/2014 IATA season)-[70-80]% (summer 2013 IATA season) taking into account indirect flights.

(210) The majority of the respondents to the market investigation considered that there will not remain sufficient competition on this route post-Transaction to prevent the merged entity from raising prices.¹⁷⁷

(211) Nevertheless, in 2013 (if the summer 2013 and winter 2013/2014 IATA seasons are added together),¹⁷⁸ the total number of TS passengers on this route is minimal, around 5 000, corresponding to [<5 000] individuals.¹⁷⁹ This number would even further decrease when focusing only on TS passengers who bought their tickets in the EU.¹⁸⁰ Therefore, the Commission

¹⁷⁷ Replies to Q1 – Questionnaire to competitors, question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18; Replies to Q10 - Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

¹⁷⁸ Figures for 2012 would be lower than those pertaining to 2013.

¹⁷⁹ Considering return tickets ratios of [60-70]% for Etihad, [80-90]% for Alitalia (see the Notifying Parties' reply to RFI 18 of 21 October 2014), and a conservative [50-60]% for indirect competitors. Even considering that the new direct service of Etihad would stimulate the market by 20%, there would be around [<5 000] TS individuals and the Commission's conclusion would remain the same.

¹⁸⁰ The Notifying Parties estimate that around [<5 000] TS passengers purchased tickets in the EU in 2013, meaning that less than [<5 000] individuals would be concerned. See the Notifying Parties' response to RFI15 of 15 October 2014, question 4.

considers that a market comprising only TS passengers on the Rome–Abu Dhabi airport pair would not represent a substantial part of the internal market.

7.4.2.2.3. Conclusion

(212) In the 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 Rome–Abu Dhabi route under any possible market definition.

7.4.2.3. Belgrade–Milan

7.4.2.3.1. Presentation of the route

(213) On the Belgrade–Milan route, direct flights were offered by Alitalia, Air Serbia and their competitors only between Belgrade and Milan Malpensa (MXP). Linate and Bergamo (LIN and BGY) were not serviced on direct routes ex Belgrade.

(214) While Alitalia operated a direct service on the Belgrade–Milan route in the summer 2012 and winter 2012/2013 IATA seasons, it now only offers a direct codeshare on flights operated by Air Serbia. As a non-EEA carrier, Etihad is not entitled to operate flights on this route, nor has it previously marketed this route, so it is not an actual or potential competitor of Alitalia.

(215) [80 000 – 90 000] passengers travelled on the Belgrade–Milan route in the summer 2013 and winter 2013/2014 IATA seasons, of which [90-100]% travelled on the O&D route.¹⁸¹ In the summer 2013 IATA season, a total of [40 000 – 50 000] O&D passengers (among whom [<5 000] TS passengers) travelled direct on that route while [5 000 – 10 000] travelled on indirect services (representing round [10-20]% of all passengers). In the winter 2013/2014 IATA season, a total of [30 000 – 40 000] O&D passengers (among whom [<3 000] TS passengers) travelled direct on that route while [<3 000] O&D passengers travelled on indirect services (representing around [5-10]% of all passengers).

(216) In the summer 2013 and winter 2013/2014 IATA seasons, Air Serbia offered around 4-6 weekly flights on this route while easyJet offered 3-4 weekly flights.

7.4.2.3.2. Assessment of the route

(217) Set out in Table 6 below is the relevant IATA passenger data and market share calculations relating to direct flights on the Belgrade–Milan route for the summer 2013 and winter 2013/2014 IATA seasons.

¹⁸¹ The Notifying Parties' reply to RFI 8 of 1 October 2014, Annex 2.

Table 6: Belgrade–Milan – Direct only

Carrier	Summer '13			Winter '13/'14		
	All	TS	Non-TS	All	TS	Non-TS
Alitalia	[5 000 -10 000] [20-30]%	[<1 000] [5-10]%	[5 000 -10 000] [20-30]%	[<5 000] [10-20]%	[<1 000] [0-5]%	[<5 000] [10-20]%
Air Serbia	[5 000 -10 000] [20-30]%	[<3 000] [50-60]%	[5 000 -10 000] [10-20]%	[5 000 -10 000] [20-30]%	[<1 000] [50-60]%	[5 000 -10 000] [20-30]%
TOTAL	[10 000 - 20 000] [40-50]%	[<3 000] [60-70]%	[10 000 - 20 000] [40-50]%	[10 000 - 20 000] [30-40]%	[<1 000] [50-60]%	[10 000 - 20 000] [30-40]%
EasyJet	[20 000 - 30 000] [50-60]%	[<3 000] [30-40]%	[20 000 - 30 000] [50-60]%	[20 000 - 30 000] [60-70]%	[<1 000] [40-50]%	[20 000 - 30 000] [60-70]%
TOTAL COMPETITORS	[20 000 - 30 000] [50-60]%	[<3 000] [30-40]%	[20 000 - 30 000] [50-60]%	[20 000 - 30 000] [60-70]%	[<1 000] [40-50]%	[20 000 - 30 000] [60-70]%
COMBINED TOTAL	[40 000 - 50 000] [90-100]%	[<5 000] [90-100]%	[30 000 - 40 000] [90-100]%	[30 000 - 40 000] [90-100]%	[<3 000] [90-100]%	[30 000 - 40 000] [90-100]%

Source: Source: Annex 6.3.c. (ii) to the Form CO

(218) As can be seen from Table 6 above, Alitalia's and Air Serbia's combined market shares were smaller than easyJet's market shares in the all passengers and the NTS passenger segment in both the summer 2013 and winter 2013/2014 IATA seasons. For the TS segment, despite the Parties having a higher combined market share, easyJet still managed to attract a significant share. In any event the number of TS passengers is very limited in both seasons.

(219) easyJet is not selling tickets on this route for the summer 2015 IATA season. Therefore Air Serbia and Alitalia would be the only carriers operating on this route.

(220) The responses from the market investigation are mixed as to the question whether there would remain sufficient competition on this route post-Transaction to prevent the merged entity from raising prices.¹⁸²

(221) Nevertheless, as discussed above in Section 7.2., no material competition exists between the Parties pre-Transaction due to the "soft block" codeshare agreement between Alitalia and Air Serbia. Alitalia has a pre-allocated number of seats on Air Serbia operated flights but these can be returned to Air Serbia until [...] prior to departure at no cost to Alitalia.¹⁸³ The unsold

¹⁸² Replies to Q1 – Questionnaire to competitors, question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18; Replies to Q10 - Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

¹⁸³ In terms of the average percentage of tickets sold by Air Serbia within [...] of the departure date, Air Serbia does not have the tools for this type of analysis. However it is estimated that around [5-10]% would be sold within the final [...] period.

seats are managed by Air Serbia, which can sell them until the departure of flight and which will bear the cost of unsold seats. Accordingly, Alitalia in principle does not sell seats within [...] of the departure time. Therefore Alitalia does not run any commercial risk. Alitalia has no material incentive in adopting a more aggressive commercial strategy and charge prices lower than those of Air Serbia. For the tickets that it sells, Alitalia has limited incentives to charge less than a price which consists of the minimum amount per seat that it has to return to Air Serbia (fixed amount) and the airport taxes.¹⁸⁴ In reality, Alitalia would sell tickets above that amount (to include its margin and to capture the different price points of customers) and, in any event, if it did lower its price it would undermine the operating carrier's, that is Air Serbia's, incentive to continue the codeshare. The Commission's market investigation confirmed that the competitive pressure exerted by a unilateral codeshare is not significant in the context of the Transaction, including on the Belgrade-Milan route.¹⁸⁵

7.4.2.3.3. Conclusion

(222) 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 under any possible market definition on the Milan–Belgrade route.

7.4.2.4. Belgrade–Rome

7.4.2.4.1. Presentation of the route

(223) The overlap between the activities of Alitalia and Air Serbia on this route arises because of their operations on the Rome Fiumicino (FCO)–Belgrade (BEG) airport pair. Neither the Notifying Parties, nor their partners or competitors offer direct and indirect flights between Belgrade and Rome Ciampino.

(224) The Rome–Belgrade route is served by both Alitalia and Air Serbia. Etihad entered into a codeshare agreement with Air Serbia which allows it to offer tickets for the Belgrade–Rome route. However, Etihad's sales are negligible for both the summer 2013 and winter 2013/2014 IATA seasons.

(225) Approximately [100 000 -200 000] passengers travelled on the Rome–Belgrade route in the summer 2013 and winter 2013/2014 IATA seasons, of which [50-60]% travelled on the O&D route.¹⁸⁶ In the summer 2013 IATA season, a total of [40 000 – 50 000] passengers, including [<3 000] TS passengers, travelled on the O&D route.¹⁸⁷ In the winter 2013/14 IATA season, [20 000 – 30 000] passengers, including [<3 000] TS passengers, travelled on the O&D

184 The Notifying Parties' reply to RFI 18 of 15 October 2014, question 3(b).

185 Replies to Q1 – Questionnaire to competitors, question 21; Replies to Q2 – Questionnaire to corporate customers, question 27.1; Replies to Q3 – Questionnaire to travel agents, question 26.1; Replies to Q10 – Questionnaire to corporate customers II, question 27.1; Replies to Q11 – Questionnaire to travel agents II, question 26.1.

186 The Notifying Parties' reply to RFI 8 of 1 October 2014, Annex 2.

187 Form CO, Annex 6.3(c)(ii), O&D by airport pair.

route.¹⁸⁸ For each of these seasons and within each category of passengers (NTS and TS), at least [90-100]% of passengers travelled direct.¹⁸⁹

- (226) In the summer 2013 IATA season, Alitalia and Air Serbia operated 7 weekly (roundtrip) frequencies each. In the winter 2013/14 IATA season, Alitalia operated 10 weekly frequencies while Air Serbia operated around 7 weekly frequencies.¹⁹⁰ In the summer 2014 IATA season, Alitalia operated around 11 weekly frequencies while Air Serbia operated around 9 weekly frequencies.¹⁹¹
- (227) Alitalia and Air Serbia have operated a parallel hard block codeshare agreement on the Rome–Belgrade route which allows them to sell tickets for each other's flights.
- (228) Wizzair used to operate on the route but discontinued its operations in September 2012.¹⁹²
- (229) Rome is served by two airports, Rome Ciampino and Rome Fiumicino. As explained above in Section 6.2.7.2.1, the Notifying Parties submit that the two airports are substitutable for both time-sensitive and non-time-sensitive passengers.¹⁹³ Airport substitutability between airports in Rome could only be relevant for the assessment of entry projects by the Parties' potential competitors because the Parties are both flying from Rome Fiumicino and are the only carriers currently active on this route. However, as explained below entry on the route by competitors appears unlikely. Therefore, it is not necessary to determine whether Rome Fiumicino is substitutable with Rome Ciampino.

7.4.2.4.2. Assessment of the route

- (230) Table 7 below illustrates the market position of the Parties in the summer 2013 and winter 2013/2014 IATA seasons.

¹⁸⁸ Form CO, Annex 6.3(c)(ii), O&D by airport pair.

¹⁸⁹ Form CO, Annex 6.3(c)(ii), O&D by airport pair; The Notifying Parties' reply to RFI 8 of 1 October 2014, questions 5 and 6; Indirect flights do not represent a material competitive constraint to the Parties' direct operation on the route.

¹⁹⁰ Form CO, Annex 6.3(c)(ii), O&D by airport pair.

¹⁹¹ The Notifying Parties provided frequency data, considering 1 way flight as 1 frequency. They refer for instance to 21 and 17 weekly frequencies in the summer 2014 IATA season. Figures used in the Decision relate to round-trips.

¹⁹² Form CO, paragraph 8.8.1; Minutes of the conference call with Wizzair held on 6 October 2014.

¹⁹³ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 5.23.

Table 7: Route Rome Fiumicino–Belgrade

Carrier	Itinerary Type	Summer '13			Winter '13/'14		
		All	TS	Non-TS	All	TS	Non-TS
Alitalia	DO, DC	[30 000 - 40 000] [60-70]%	[<1 000] [40-50]%	[30 000 - 40 000] [60-70]%	[10 000 - 20 000] [50-60]%	[<1 000] [20-30]%	[10 000 - 20 000] [60-70]%
Etiihad	DC	[<1 000] [0-5]%	[<1000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5]%	[<1 000] [0-5] 1
Air Serbia	DO, DC	[10 000 - 20 000] [30-40]%	[<3 000] [50-60]%	[10 000 - 20 000] [30-40]%	[5 000 - 10 000] [40-50]%	[<3 000] [70-80]%	[5 000 - 10 000] [30-40]%
TOTAL		[40 000 - 50 000] [90-100]%	[<3 000] [90-100]%	[40 000 - 50 000] [90-100]%	[20 000 - 30 000] [90-100]%	[<3 000] [90-100]%	[20 000 - 30 000] [90-100]%

Source: Amex 6.3.c. (ii) to the Form CO

(231) During the summer 2014 IATA season, easyJet was active on the route and achieved a market share of approximately [30-40]% for the period going from April to July 2014. In the same period, Air Serbia and Alitalia held a share of [30-40]% each and therefore held a combined share of [60-70]%.¹⁹⁴ However, easyJet is no longer selling tickets for flights between Rome and Belgrade and stopped operating on the route in the course of October 2014, so that Air Serbia and Alitalia are the only carriers currently active on this route.

(232) Rome Fiumicino is a coordinated airport with slot shortage during peak times. In the summer 2013 IATA season, peak times at Rome Fiumicino included 05:00 to 06:55, 10:00 to 10:55, and 18:00 to 18:55 for arrivals and 07:00 to 07:55, 11:00 to 11:55, and 19:00 to 19:55 for departures.¹⁹⁵ In the winter 2013/2014 IATA season, peak times at Rome Fiumicino included 12:00 to 12:55 and 19:00 to 19:55 for arrivals and 13:00 to 13:55 and 20:00 to 20:55 for departures.¹⁹⁶ On average, slot requests by new entrants for peak times could only be accommodated within approximately 60 minutes of the initial slot request.¹⁹⁷ The capacity at Rome Fiumicino is expected to increase over the next three years.¹⁹⁸ In the summer 2013 and winter

¹⁹⁴ The Notifying Parties' reply to RFI 18 of 21 October 2014, question 9.

¹⁹⁵ Assoclearance Associazione Italiana Gestione Clearance e Slots' reply to Q9 – Questionnaire to Slots Manager, question 5.2.3.

¹⁹⁶ Assoclearance Associazione Italiana Gestione Clearance e Slots' reply to Q9 – Questionnaire to Slots Manager, question 5.2.3.

¹⁹⁷ Assoclearance Associazione Italiana Gestione Clearance e Slots' reply to Q9 – Questionnaire to Slots Manager, question 9.1.

¹⁹⁸ Rome Fiumicino Airport & Ciampino Airport's reply to Q7 – Questionnaire to Airport Managers, questions 19 and 19.1.

2013/2014 IATA seasons, Alitalia, Etihad and the EEP have been allocated on average approximately [50-60]% of total slots at Rome Fiumicino.¹⁹⁹

(233) A majority of respondents to the market investigation that expressed a view on the degree of competition that would remain on this route post-Transaction raised concerns that competitive constraints on the Parties would be insufficient to prevent them from raising prices.²⁰⁰

(234) Furthermore, assessing the evidence collected in the market investigation, the Commission is of the view that no competitor would have post-Transaction entry projects which could be considered at this stage as likely, timely and sufficient enough to constitute a competitive constraint on the merged entity, and to offset the serious doubts as to its compatibility with the internal market to which the Transaction would give rise.

(235) The number of TS passengers in the summer 2013 and winter 2013/2014 IATA seasons amounted to [$<5\ 000$]. Therefore, the market for TS passengers on the Rome–Belgrade route may not represent a substantial part of the internal market.

7.4.2.4.3. Conclusion

(236) In the light of the above and the evidence available to it, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market on the Rome–Belgrade route, at least for all passengers as well as NTS passengers.

7.4.2.5. Abu Dhabi–Munich, Abu Dhabi–Paris, Athens–Rome, Barcelona–Rome, Belgrade–Brussels, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana, and Rome–Venice

(237) Table 8 below illustrates the market position of the Parties on the Abu Dhabi–Munich, Abu Dhabi–Paris, Athens–Rome, Barcelona–Rome, Belgrade–Brussels, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana and Rome–Venice routes in the summer 2013 and winter 2013/2014 IATA seasons for all types of passengers combined.

¹⁹⁹ Assoclearance Associazione Italiana Gestione Clearance e Slots' reply to Q9 – Questionnaire to Slots Managers, questions 3 and 4. Alitalia, Etihad, and Etihad's Equity Partners do not operate any flights from Rome Ciampino. Rome Ciampino is also somewhat congested due to regulatory and environmental restrictions to the number of movements that can be authorized each day. In the summer 2013 and winter 2013/2014 IATA seasons no slots have been granted to new entrants at Rome Ciampino.

²⁰⁰ Replies to Q1 – Questionnaire to competitors, question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18; Replies to Q10 – Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

Table 8: Other direct/direct overlaps between Alitalia (including where relevant its Transatlantic JV partners) and Etihad (including Air Serbia and EEP) Summer 2013 and Winter 2013/2014 IATA seasons – All passengers

Route	City/air-port pair	Summer '13				Winter '13/'14			
		Passengers	Alitalia market share	Etihad/Air Serbia market share	Combined market share	Passengers	Alitalia market share	Etihad/Air Serbia market share	Combined market share
Abu Dhabi–Munich	ABU–MUC	[200 000 - 300 000]	[0-5]%	[10-20]%	[10-20]%	[100 000 - 200 000]	[0-5]%	[10-20]%	[10-20]%
	AUH – MUC	[20 000 - 30 000]	[0-5]%	[90-100]%	[90-100]%	[20 000 - 30 000]	[0-5]%	[90-100]%	[90-100]%
Abu Dhabi–Paris	ABU–PAR	[200 000 - 300 000]	[0-5]%	[10-20]%	[10-20]%	[100 000 - 200 000]	[0-5]%	[5-10]%	[5-10]%
	AUH –CDG	[20 000 - 30 000]	[0-5]%	[80-90]%	[80-90]%	[10 000 - 20 000]	[0-5]%	[80-90]%	[80-90]%
Athens–Rome	ATH–ROM(FCO)	[100 000 - 200 000]	[30-40]%	[0-5]%	[30-40]%	[90 000 - 100 000]	[30-40]%	[0-5]%	[30-40]%
Barcelona–Rome	BCN–ROM	[400 000 - 500 000]	[20-30]%	[0-5]%	[20-30]%	[200 000 - 300 000]	[10-20]%	[0-5]%	[10-20]%
	BCN–FCO	[300 000 - 400 000]	[20-30]%	[0-5]%	[20-30]%	[100 000 - 200 000]	[20-30]%	[0-5]%	[20-30]%
Belgrade–Brussels	BEG–BRU	[10 000 - 20 000]	[0-5]%	[90-100]%	[90-100]%	[10 000 - 20 000]	[0-5]%	[90-100]%	[90-100]%
Bucharest–Rome	OTP–ROM	[200 000 - 300 000]	[20-30]%	[0-5]%	[20-30]%	[100 000 - 200 000]	[20-30]%	[0-5]%	[20-30]%
	OTP–FCO	[100 000 - 200 000]	[30-40]%	[0-5]%	[30-40]%	[60 000 - 70 000]	[30-40]%	[0-5]%	[30-40]%
Budapest–Rome	BUD–ROM	[100 000 - 200 000]	[20-30]%	[0-5]%	[0-5]%	[90 000 - 100 000]	[10-20]%	[0-5]%	[10-20]%
	BUD–FCO	[90 000 - 100 000]	[40-50]%	[0-5]%	[40-50]%	[50 000 - 60 000]	[30-40]%	[0-5]%	[30-40]%
Frankfurt–Rome	FRA–ROM(FCO)	[100 000 - 200 000]	[20-30]%	[0-5]%	[20-30]%	[70 000 - 80 000]	[30-40]%	[0-5]%	[30-40]%
La Valetta–Rome	MLA – ROM(FCO)	[90 000 - 100 000]	[20-30]%	[0-5]%	[20-30]%	[40 000 - 50 000]	[20-30]%	[0-5]%	[20-30]%
Milan–Rome	MIL–ROM	[1,400,000 - 1,500,000]	[60-70]%	[0-5]%	[60-70]%	[900 000 - 1 000 000]	[60-70]%	[0-5]%	[60-70]%
	MLA –FCO	[200 000 - 300 000]	[40-50]%	[0-5]%	[40-50]%	[100 000 - 200 000]	[30-40]%	[0-5]%	[30-40]%

Munich– Rome	MUC – ROM(FCO)	[100 000 - 200 000]	[30- 40]%	[0-5]%	[30-40]%	[80 000 - 90 000]	[20-30]%	[0-5]%	[20-30]%
Rome– Sofia	ROM(FCO)– SOF	[60 000 - 70 000]	[50- 60]%	[0-5]%	[50-60]%	[30 000 - 40 000]	[30-40]%	[0-5]%	[30-40]%
Rome– Tirana	ROM(FCO)– TIA	[60 000 - 70 000]	[40- 50]%	[0-5]%	[40-50]%	[40 000 - 50 000]	[70-80]%	[0-5]%	[70-80]%
Rome– Venice	ROM(FCO)– VCE	[100 000 - 200 000]	[70- 80]%	[0-5]%	[70-80]%	[80 000 - 90 000]	[90- 100]%	[0-5]%	[90- 100]%

Source: Annexes 6.3.c.(i) and 6.3.c.(ii) to the Form CO

(238) As regards the Athens–Rome, Barcelona–Rome, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana, and Rome–Venice routes, Etihad is directly codesharing on Alitalia's flights, at least during one of the last two completed IATA seasons. The increment brought about by the Transaction is, however, minimal and in all instances below [0-5]% irrespective of the distinction between TS and NTS passengers. Similarly, on the Belgrade–Brussels route, on which Air Serbia is directly operating, Alitalia's market share is below [0-5]% irrespective of the distinction between TS and NTS passengers.²⁰¹ As a result, the Transaction will not lead to serious doubts as to its compatibility with the internal market on these routes.

(239) On the Abu Dhabi–Munich route, no direct/direct overlap would arise in the summer 2013 and winter 2013/2014 IATA seasons. Nonetheless, Alitalia was indirectly operating as well as directly codesharing on Etihad's flights in the summer 2012 and winter 2012/2013 IATA seasons, and only indirectly operating and codesharing on the route in the summer 2013 and winter 2013/2014 IATA seasons. However, the merged entity would not have had, in the summer 2012 and winter 2012/2013 IATA seasons, combined market shares above 20% at city pair level under any market segmentation.²⁰² In addition, even though at airport pair level the Parties' combined market shares would reach [90-100]% in the summer 2012 and winter 2012/2013 IATA seasons for all possible market segmentations, the increment brought about by the Transaction is below [0-5]% as Alitalia codeshared only a minimal number of passengers on Etihad's flights. As a result, the Transaction will not give rise to serious doubts as to its compatibility with the internal market on this route at airport pair level.²⁰³

²⁰¹ Alitalia also offered indirect flights on the Belgrade–Brussels route and carried [<1 000] passengers on this route in the summer 2013 IATA season and [<1 000] passengers in the winter 2013/2014 IATA season. However, even taking into consideration a broader market definition including indirect services, Alitalia's market share is only [0-5]%. In addition, there are also other competitors present on the Belgrade–Brussels route, such as Lufthansa, LOT and Adria Airlines. Therefore, the Commission's competitive assessment would not change even if considering a direct/indirect overlap on the Belgrade–Brussels route.

²⁰² If taking into consideration a direct/indirect overlap at city pair level, the Transaction would not lead to combined market shares above 20% at city pair level under any market segmentation during all four completed IATA seasons.

²⁰³ If taking into consideration a direct/indirect overlap at airport pair level Abu Dhabi International Airport (AUH) and Munich International (MUC), the Parties combined market share is [80-90]% in summer 2013 IATA season and [90-100]% in winter 2013/2014 IATA season for all types of passengers combined and could be higher if other segments are considered. However, the increment brought about by the Transaction is small

(240) As regards the Abu Dhabi–Paris route, the Transaction would not lead to combined market shares above [20-30]% at city pair level under any market segmentation. In addition, there will be no direct/direct overlap at airport pair level as Alitalia offers direct flights exclusively via its codeshare partner Air France/KLM, which directly operates to Dubai International Airport (DXB).²⁰⁴

(241) In addition, no specific concerns have been raised by the respondents to the market investigation with regard to the Athens–Rome, Barcelona–Rome, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana and Rome–Venice routes, except for some competitors who raised unsubstantiated concerns on the Abu Dhabi–Munich, Abu Dhabi–Paris and Belgrade–Brussels routes.²⁰⁵

(242) In the light of the above and the other available evidence, the Commission considers that the Transaction does not raise any serious doubts as to its compatibility with the internal market with respect to the Abu Dhabi–Munich, Abu Dhabi–Paris, Athens–Rome, Barcelona–Rome, Belgrade–Brussels, Bucharest–Rome, Budapest–Rome, Frankfurt–Rome, La Valetta–Rome, Milan–Rome, Munich–Rome, Rome–Sofia, Rome–Tirana and Rome–Venice routes under any possible market definition.

7.4.3. *Direct/direct overlaps between Alitalia (including where relevant its Transatlantic JV partners) and Darwin Airline*

(243) The Transaction gives rise to four direct/direct overlaps as a result of Alitalia's (including where relevant its Transatlantic JV partners)²⁰⁶ and Darwin Airline's operations. These overlapping routes are: Bolzano/Bozen–Rome, Florence–Geneva, Geneva–Rome, and Geneva–Venice.

(below [0-5]%) under any market segmentation considered. Therefore, the Commission's competitive assessment would not change even if considering a direct/indirect overlap at airport pair level.

²⁰⁴ However, Alitalia also offers indirect flights on the Abu Dhabi–Paris route, both operated and via codeshare. Even taking into consideration a broader market definition including indirect services, Alitalia's market share remains below [0-5]% and in any event, considering the overlap at city pair, the Parties' combined market share would be below [20-30]% under any market segmentation. Nonetheless, in relation to the airport pair Abu Dhabi International Airport (AUH) and Paris Charles de Gaulle (CDG), the Parties' combined market share amounted to [70-80]% in the summer 2013 IATA season and [60-70]% in the winter 2013/2014 IATA season for all types of passengers combined and could be higher if other segments were considered. However, the increment brought about by the Transaction would be small (below [5-10]%) under any market segmentation considered and there are a number of other competitors such as Air France-KLM, Qatar, Turkish Airlines as well as Gulf Air present on the route with a higher or similar market share as compared to Alitalia's increment on the respective market segmentations. Therefore, the Commission's competitive assessment would not change even if considering a direct/indirect overlap at airport pair level.

²⁰⁵ Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers question 22; Replies to Q3 – Questionnaire to travel agents, question 20; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

²⁰⁶ The Transaction may give rise to direct/indirect overlaps as a result of Alitalia's, including where relevant its Transatlantic JV partners', and Darwin Airline's operations. However, the Commission's competitive assessment would not change even if considering these direct/indirect overlaps.

7.4.3.1. Florence–Geneva

7.4.3.1.1. Presentation of the route

- (244) Approximately [30 000 - 40 000] passengers travelled on the Florence–Geneva route in the summer 2013 and winter 2013/2014 IATA seasons, of which [70-80]% travelled on the O&D route and [20-30]% were connecting passengers.²⁰⁷ A total of [10 000 – 20 000] and [5 000 – 10 000] passengers travelled on the O&D route in the summer 2013 and winter 2013/2014 IATA seasons respectively if only direct flights are considered.²⁰⁸ A total of [10 000 – 20 000] and [10 000 – 20 000] passengers travelled on the route in the summer 2013 and winter 2013/2014 IATA seasons respectively if indirect flights are included.²⁰⁹
- (245) Alitalia does not operate on this route but offers a direct codeshare flight with Darwin Airline. Alitalia also offers an indirect operated flight along the Florence–Geneva route. In the summer 2013 and winter 2013/2014 IATA seasons, Darwin Airline offered an average of 7 weekly flights between Florence and Geneva.²¹⁰
- (246) Regarding direct and indirect flights combined, Alitalia had [5 000 – 10 000] and [<5 000] passengers respectively on this route in the summer 2013 and winter 2013/2014 IATA seasons, representing [30-40]% and [40-50]% respectively of the total market. Darwin Airline had [5 000 – 10 000] passengers on this route in the summer 2013 IATA season and 4 629 passengers in the winter 2013/2014 IATA season, representing a market share of [50-60]% and [40-50]% respectively on the total market.²¹¹

7.4.3.1.2. Assessment of the route

- (247) Table 9 below illustrates the market positions of Alitalia and Darwin Airline relating to direct flights only on the Florence–Geneva route in the summer 2013 and winter 2013/2014 IATA seasons for all types of passengers combined.

²⁰⁷ The Notifying Parties' reply to RFI 8 of 1 October 2014, Annex RFI-8.2.

²⁰⁸ Form CO, Annex 6.3(c)(i) O&D by city pair.

²⁰⁹ Form CO, Annex 6.3(c)(i) O&D by city pair.

²¹⁰ Form CO, Annex 6.3(c)(i) O&D by city pair.

²¹¹ Lufthansa Group had [<3 000] passengers on this route in the summer 2013 IATA season and [<3 000] passengers in the winter 2013/2014 IATA season, representing a market share of [10-20]% and [10-20]% respectively on the total market.

Table 9: Florence–Geneva route (direct flights only) – All passengers (passenger numbers and respective market shares)

Carrier	Itinerary Type	Summer '13	Winter '13/'14
Alitalia	DC	[5 000-10 000] [30-40]%	[<5 000] [40-50]%
Darwin Airline	DO	[5 000-10 000] [60-70]%	[<5 000] [50-60]%
TOTAL		[10 000-20 000] [90-100]%	[5 000 – 10 000] [90-100]%

Key: DO: Direct Operated, DC: Direct Codeshare Source: Annexes 6.3.c.(i) and 6.3.c.(ii) to the Form CO

- (248) Whilst Alitalia and Darwin Airline have a combined market share of [90-100]% in the summer 2013 and winter 2013/2014 IATA seasons irrespective of the market segment considered, Alitalia markets this route only via an existing free-flow unilateral codeshare with Darwin Airline and there is nothing to prevent Darwin Airline from offering a codeshare to other carriers taking into consideration the fact that the codeshare with Alitalia is not exclusive.
- (249) Even though Alitalia's market share as a result of a codeshare with Darwin Airline appears rather high ([30-40]% and [40-50]% in the summer 2013 and winter 2013/2014 IATA seasons respectively), Alitalia, as Italy's national carrier, has a share of traffic within Italy of approximately [40-50]% in 2013.²¹² In addition, Darwin Airline is approximately ten times smaller than Alitalia in terms of passengers carried in 2013 (whilst Darwin Airline carried approximately [2 000 000 – 3 000 000] passengers, Alitalia carried 24 million passengers during the same year).²¹³ Therefore, the unilateral codeshare with Darwin Airline gives the possibility to Alitalia (as the marketing carrier) to expand its network by allowing it to reach destinations to which it does not fly its own aircraft while Darwin Airline benefits from Alitalia's strong customer base in Italy.²¹⁴
- (250) The market investigation produced inconclusive results with regard to the question of whether there will be sufficient competition to prevent the merged entity from raising prices post-Transaction on the Florence–Geneva route.²¹⁵ However, there has been no material competition between Alitalia and Darwin Airline pre-Transaction due to the codeshare between Alitalia and Darwin Airline on the Florence–Geneva route, which is a free-flow unilateral

²¹² Alitalia's passenger share from Italy towards international and intercontinental destination is estimated at [10-20]% in 2013. See Notifying Parties' reply to RFI 17 of 17 October 2014, question 2.

²¹³ The Notifying Parties' reply to RFI 17 of 17 October 2014, Annex RFI-17.2.

²¹⁴ The Commission's competitive assessment would not change even if considering a rather high market share of Alitalia as a result of a codeshare with Darwin Airline.

²¹⁵ Replies Q1 – Questionnaire to competitors to question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18 of; Replies to Q10 – Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

codeshare.²¹⁶ Due to this code sharing agreement, already pre-Transaction, Alitalia has not run any commercial risk since it was not obliged to purchase a minimum amount of seats from Darwin Airline. As explained in Section 7.2 and supported by information obtained by the Commission in the course of the market investigation carried out in this case, the competitive pressure exerted by a free flow unilateral codeshare is not significant.

7.4.3.1.3. Conclusion

(251) In the 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 with respect to the Florence–Geneva route under any possible market definition.

7.4.3.2. Bolzano/Bozen–Rome, Geneva–Rome, and Geneva–Venice

(252) Table 10 below illustrates the market position of Alitalia and Darwin Airline on the Bolzano/Bozen–Rome, Geneva–Rome and Geneva–Venice routes in the summer 2013 and winter 2013/2014 IATA seasons for all types of passengers combined.

**Table 10: Other direct/direct overlaps between Alitalia and Darwin
Summer 2013 and Winter 2013/14 IATA seasons – All passengers**

Route	City/air port pair	Summer '13				Winter '13/'14			
		Passengers	Alitalia market share	Darwin market share	Combined market share	Passengers	Alitalia market share	Darwin market share	Combined market share
Bolzano/Bozen–Rome	BZO–ROM(FCO)	[20 000 - 30 000]	[60-70]%	[30-40]%	[90-100]%	[20 000 - 30 000]	[80-90]%	[10-20]%	[90-100]%
Geneva–Rome	GVA–ROM(FCO)	[100 000 - 200 000]	[20-30]%	[5-10]%	[30-40]%	[100 000 - 200 000]	[20-30]%	[5-10]%	[20-30]%
Geneva–Venice	GVA–VCE	[50 000 - 60 000]	[5-10]%	[10-20]%	[10-20]%	[20 000 - 30 000]	[0-5]%	[0-5]%	[0-5]%

Source: Annexes 6.3.c.(i) and 6.3.c.(ii) to the Form CO

(253) On the Bolzano/Bozen–Rome route, whilst Alitalia and Darwin Airline have a combined market share of [90-100]% in the summer 2013 and winter 2013/2014 IATA seasons for all types of passengers, Alitalia only operates on this route through a direct codeshare flight with Darwin Airline (see Section 7.2.3). Importantly, Darwin Airline's operations on the route stem from a public service obligation (PSO) contract awarded following a public tender organised by the National Aviation Authority (ENAC). The contract has been awarded in 2013 and Darwin Airline started operations on 30 June 2013 for three years. In previous decisions, the Commission considered that the operation of PSO routes is distinct from the commercial air

²¹⁶ The Notifying Parties' reply to RFI 7 of 30 September 2014; Annex "Code Sharing Free-Flow Agreement between Darwin Airline S.A. and Alitalia effective as from 27 March 2011".

transport of passengers, as no competition can take place on PSO routes awarded to a single airline. Rather, competition takes place for the market at tender stage.²¹⁷

- (254) On the Geneva–Rome route, both Alitalia and Darwin Airline operate and codeshare on each other's flights through a parallel codeshare (see Section 7.2.3) and their combined market share amounted to [30-40]% in the summer 2013 IATA season and [20-30]% in winter 2013/2014 IATA season for all types of passengers combined and could amount to [60-70]% if the TS passengers market segment is considered. However, as detailed in Table 10 above, the increment brought about by the Transaction is small, [5-10]% and [5-10]% in summer 2013 and winter 2013/2014 IATA seasons respectively. In addition, the number of TS passengers carried on the route is limited (below [5 000 – 10 000] passengers in summer 2013 IATA season and below [<3 000] passengers in winter 2013/2014 IATA season). Furthermore, easyJet is likely to retain a strong position on the market, with a market share of [60-70]% and [70-80]% in summer 2013 and winter 2013/2014 IATA seasons respectively for all types of passengers combined and [30-40]% and [30-40]% in relation to the TS passengers segment in the last two IATA seasons, which is higher than the increment brought about by the Transaction.
- (255) On the Geneva–Venice route, Alitalia offers a direct codeshare flight with Darwin Airline (see Section 7.2.3) and their combined market share would reach [40-50]% in the summer 2013 IATA season if the TS passengers market segment is considered. The increment brought about by the Transaction is minimal (below [0-5]%). In addition, there will be no direct/direct overlap as it appears that neither Alitalia nor Darwin Airline directly operated or codeshared on the route during winter 2013/14 IATA season.²¹⁸
- (256) No specific concerns have been raised by respondents to the market investigation with regard to the Bolzano/Bozen–Rome, Geneva–Rome and Geneva–Venice routes.²¹⁹
- (257) In the 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 Bolzano/Bozen–Rome, Geneva–Rome and Geneva–Venice routes under any possible market definition.

7.4.4. *Direct/direct overlaps between Alitalia (including where relevant its Transatlantic JV partners) and airberlin or Jet Airways*

- (258) The Transaction gives rise to six direct/direct overlap routes as a result of Alitalia's (including where relevant its Transatlantic JV partners) and airberlin's or Jet Airways' operations, as detailed in the Table 11 below.

²¹⁷ M.5830 – *Olympic / Aegean Airlines*, recital 278 and following; in addition, the Parties submit that irrespective of their currently operated PSO routes, no overlap arises in the PSO market in Italy in light of the recent enforcement of the bilateral agreement between EU and Switzerland, in particular due to the fact that this agreement does not grant the parties' air carriers the right to provide cabotage services (that is to say internal flights in the territory of a State).

²¹⁸ Alitalia is only indirectly operating and codesharing on the Geneva–Venice route in winter 2013/2014 IATA season.

²¹⁹ Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3 – Questionnaire to travel agents, question 20; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

Table 11: Direct/direct overlaps between Alitalia (including where relevant its Transatlantic JV partners) and airberlin or Jet Airways Summer 2013 and Winter 2013/14 IATA seasons – All passengers

Route	City/airport pair	Summer '13				Winter '13/'14			
		Passengers	Alitalia market share	airberlin or Jet Airways market share	Combined market share	Passengers	Alitalia market share	airberlin or Jet Airways market share	Combined market share
Brussels–New York	BRU–NYC	[100 000 - 200 000]	[30-40]%	[10-20]%	[40-50]%	[70 000 - 80 000]	[20-30]%	[20-30]%	[40-50]%
	BRU–JFK	[80 000 - 90 000]	[50-60]%	[0-5]%	[50-60]%	[40 000 - 50 000]	[50-60]%	[0-5]%	[50-60]%
Milan–New Delhi	MIL(MXP)–DEL	[<1 000]	[0-5]%	[90-100]%	[90-100]%	[<1 000]	[0-5]%	[0-5]%	[0-5]%
Milan–Vienna	MIL–VIE	[100 000 - 200 000]	[0-5]%	[40-50]%	[40-50]%	[100 000 - 200 000]	[20-30]%	[20-30]%	[40-50]%
Palma de Mallorca–Valencia	PMI–VLC	[200 000 - 300 000]	[0-5]%	[20-30]%	[20-30]%	[100 000 - 200 000]	[0-5]%	[10-20]%	[10-20]%
Paris–Berlin	PAR–TXL	[300 000 - 400 000]	[0-5]%	[20-30]%	[20-30]%	[200 000 - 300 000]	[0-5]%	[30-40]%	[30-40]%
Rome–Vienna	ROM(FCO)–VIE	[100 000 - 200 000]	[10-20]%	[50-60]%	[70-80]%	[100 000 - 200 000]	[20-30]%	[50-60]%	[80-90]%

Source: Annexes 6.3.c.(i) and 6.3.c.(ii) to the Form CO

(259) On the Brussels–New York route,²²⁰ Alitalia through its JV partners and Jet Airways offer a direct service on this route and their combined market shares would be [40-50]% in summer 2013 IATA season and [40-50]% in winter 2013/2014 IATA season for all types of passengers combined and could be slightly higher if other market segments (TS/NTS) are considered. However, other competitors are present on the market, such as the Star Alliance members, which together have a comparable if not higher market share of [50-60]% in summer

²²⁰ Etihad itself was also codesharing on this route, however only a minimal number of passengers bought an Etihad ticket (less than [<1 000]).

2013 IATA season and [50-60]% in winter 2013/2014 IATA season for all types of passengers combined.²²¹

- (260) On the Milan–New Delhi route, Alitalia was only directly codesharing on Jet Airways' flights in the summer 2012 and winter 2012/2013 IATA seasons and their combined market share would amount to [90-100]% for all types of passengers combined. However, the increment brought about by the Transaction regarding that period is small (below [5-10]% in the summer 2012 IATA season and below [0-5]% in the winter 2012/2013 IATA season). Even if the increment is slightly higher taking into consideration the TS passengers, it would, nonetheless, in any instances not exceed [5-10]%. Moreover, the number of TS passengers carried by Alitalia during summer 2012 and winter 2012/2013 IATA seasons is very small (<1 000] and [<1 000] respectively). In addition, as set out in Table 11 above, there was no direct/direct overlap in summer 2013 IATA season as Alitalia was only indirectly operating and codesharing on the route.²²² Moreover, neither Alitalia nor Jet Airways was directly operating or codesharing on the route in winter 2013/2014 IATA season.²²³
- (261) On the Milan–Vienna route,²²⁴ Alitalia offers a direct service and airberlin markets this route under a codeshare agreement with Niki and their combined market shares amounted to [40-50]% in the summer 2013 IATA season for all types of passengers combined and could have been higher if other segments (TS/NTS) are considered. However, the increment brought about by the Transaction remains below [0-5]% under any market segmentation. With regard to the winter 2013/2014 IATA season, Alitalia's and airberlin's combined market share amounted to [40-50]% for all types of passengers combined (with an increment of [20-30]%) and [60-70]% if the TS segment is considered (with an increment of [0-5]%). However, the Lufthansa Group is likely to retain a strong position on that route, with a market share of [50-60]% for all types of passengers combined and [30-40]% in relation to the TS segment, which is considerably higher than the increment brought about by the Transaction. Moreover, weekly frequencies operated by Lufthansa were close to the combined frequencies of Alitalia and airberlin in the winter 2013/2014 (respectively 24 and 21, round-trips) and the summer 2014 IATA seasons (respectively 27 and 29).²²⁵
- (262) On the Palma de Mallorca–Valencia and Paris–Berlin routes, Alitalia has been directly codesharing on Air Europa's and Air France/KLM's flights respectively during the last two completed IATA seasons. The increment brought about by the Transaction is minimal and in all instances below [0-5]% irrespective of the distinction between TS and NTS passengers.

²²¹ As regards the Brussels–New York route, the combined market share would be [50-60]% in summer 2013 IATA season for all types of passengers combined at the Brussels-New York (JFK) airport pair. However, the increment brought about by the Transaction is below [0-5]% under any market segmentation considered. In addition, there will be no direct/direct overlap in winter 2013/2014 IATA season at the Brussels-New York (JFK) airport pair as Jet Airways directly operates to Newark Liberty International Airport (EWR).

²²² If taking into consideration a direct/indirect overlap the combined market shares would remain well below 20% under any market segmentation considered during the summer 2013 IATA season.

²²³ In the winter 2013/2014 IATA season there would be an indirect/indirect overlap only, however the combined market shares would remain well below 20% under any market segmentation considered.

²²⁴ Etihad itself was also codesharing on this route, however only a minimal number of passengers bought an Etihad ticket (less than [<1 000]).

²²⁵ The Notifying Parties' reply to RFI 18 of 21 October 2014, Annex RFI-18.2(a).

- (263) On the Rome–Vienna route, Alitalia offers a direct service and airberlin markets this route under a codeshare agreement with Niki and their combined market shares amounted to [70-80]% in the summer 2013 IATA season and [80-90]% in the winter 2013/2014 IATA season for all types of passengers combined, and could be higher if the TS passengers market segment is considered ([90-100]% and [90-100]% respectively). However, the increment brought about by the Transaction on the TS passengers market segment is small (below [5-10]% in the summer 2013 IATA season and below [0-5]% in the winter 2013/2014 IATA season). In addition, the Lufthansa Group is also present on the market with a similar market share to the increment brought about by the Transaction ([20-30]% in the summer 2013 IATA season and [10-20]% in the winter 2013/2014 IATA season for all types of passengers combined, and [5-10]% and [0-5]% respectively if the TS passengers market segment is considered). Finally, the majority of respondents to the Commission's market investigation considered Austrian Airlines as the closest competitor (e.g. in terms of pricing, type of service, quality of services, level of frequencies, service on board and at the airport etc.) of both Alitalia and Etihad.²²⁶
- (264) A majority of respondents to the market investigation considered that there will be sufficient competition to prevent the merged entity from raising prices post-Transaction on the Brussels–New York, Milan–Vienna and Rome–Vienna routes.²²⁷ In addition, no specific concerns have been raised with regard to the Palma de Mallorca–Valencia and Paris–Berlin routes, except for one travel agent who raised an unsubstantiated concern on the Milan–New Dehli route.²²⁸
- (265) In the 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 Brussels–New York, Milan–New Dehli, Milan–Vienna, Palma de Mallorca–Valencia, Paris–Berlin and Rome–Vienna routes under any possible market definition.

7.5. Direct/indirect overlaps

7.5.1. Presentation of the routes

- (266) On the basis of the last four IATA seasons, the Transaction gives rise to 59 direct/indirect overlaps.²²⁹

²²⁶ Replies to Q1 – Questionnaire to competitors, questions 22 and 23; Replies to Q2 – Questionnaire to corporate customers, questions 28 and 29; Replies to Q3 – Questionnaire to travel agents, questions 27 and 28; Replies to Q10 – Questionnaire to corporate customers II, questions 28 and 29; Replies to Q11 – Questionnaire to travel agents II, questions 27 and 28.

²²⁷ Replies to Q1 – Questionnaire to competitors, question 15; Replies to Q2 – Questionnaire to corporate customers, question 20; Replies to Q3 – Questionnaire to travel agents, question 18; Replies to Q10 – Questionnaire to corporate customers II, question 20; Replies to Q11 – Questionnaire to travel agents II, question 18.

²²⁸ Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3 – Questionnaire to travel agents, question 20; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

²²⁹ Amsterdam–Mumbai, Amsterdam–New Delhi, Stockholm–New York, Athens–New York, Barcelona–Los Angeles, Barcelona–New York, Brindisi–Munich, Bari–Munich, Bari–Riga, Brussels–Toronto, Cagliari–Düsseldorf, Cagliari–Munich, Cagliari–Zurich, Chicago–Berlin, Copenhagen–Catania, Copenhagen–New York, Copenhagen–Turin, Catania–Frankfurt, Catania–London, Catania–Moscow, Catania–Munich, Catania–Zurich, Düsseldorf–Los Angeles, Düsseldorf–Miami, Düsseldorf–New York, Düsseldorf–Rome, Düsseldorf–Lamezia Terme, Basel/Mulhouse–Lamezia Terme, Hamburg–Rome, Seoul–Milan, Krakow–Rome, Las Vegas–Munich, Los Angeles–Rome, St. Petersburg–Venice, Lampedusa–Milan, Miami–Milan, Miami–Rome,

(267) In 2014 the Italian Civil Aviation Authority unilaterally revoked the authorisation to Darwin to operate domestic flights in Italy.²³⁰ That decision by the Italian Civil Aviation Authority is unrelated to the Transaction. Therefore the three direct/indirect Lampedusa–Milan, Milan–Pantelleria, and Pantelleria–Rome routes are not considered as overlap routes and will not be analysed in this decision.

(268) Furthermore Alitalia and airberlin's non-merger specific decisions to stop operating²³¹ on the Munich–Palermo route removed the overlap on that route. In fact, airberlin terminated all its operations at Palermo airport as from April 2014,²³² removing also the overlap on the Palermo–Zurich route. In addition airberlin ceased operations on the Basel/Mulhouse–Lamezia Terme route in the summer 2013 IATA season.²³³

(269) The remaining 53 overlaps (six with Etihad and/or Air Serbia and 47 with airberlin and/or Jet Airways) will be assessed in the following sections.

7.5.2. *Direct/indirect overlaps of Alitalia and its Transatlantic JV partners with Etihad and Air Serbia*

(270) Analysing the last four IATA seasons²³⁴, the Transaction gives rise to six direct/indirect overlaps between Alitalia and its Transatlantic JV partners on one hand and Etihad and/or Air Serbia on the other hand, as set out in Tables 12a and 12b below, which contain market share information at city pair and airport pair levels.

(271) On some of the routes assessed in this section, Etihad or the EEP are marketing carrier(s) through codeshare agreements. When the marketing carrier only sold a negligible number of tickets, the marketing carrier is not individually mentioned in this section. However, tickets sold by the marketing carriers have been included in the market shares of the Parties set out below.

Miami–Berlin, Miami–Venice, Milan–Moscow, Milan–New York, Milan–Palma de Mallorca, Milan–Pantelleria, Milan–Tokyo, Moscow–Rome, Munich–Palermo, Munich–Lamezia Terme, Naples–Zurich, Nice–New York, Nuremberg–Rome, New York–Prague, New York–Rome, New York–Berlin, New York–Venice, Palermo–Zurich, Pantelleria–Rome, Riga–Venice, Lamezia Terme–Berlin, Lamezia Terme–Zurich.

²³⁰ The Notifying Parties' reply to RFI 6 of 22 September 2014, question 26. See RFI 6 answer to question 26.

²³¹ The Notifying Parties' reply to RFI 8 of 1 October 2014, question 8; The Notifying Parties' reply to RFI 6 of 22 September 2014, question 27(c).

²³² airberlin's reply to RFI 3 of 10 October 2014, question 2.

²³³ The Notifying Parties' email of 4 November 2014.

²³⁴ Summer 2012, winter 2012/2013, summer 2013 and winter 2013/2014 IATA seasons.

Table 12a: Direct/Indirect overlaps between Alitalia and its Transatlantic JV partners and Etihad and/or Air Serbia – Combined market shares at city pair level

Route City pair	Route Name	Alitalia's and its Transatlantic JV partners' overlap with	Overall summer '13	Overall winter '13/'14	TS summer '13	TS winter '13/'14	NTS summer '13	NTS winter '13/'14
ICN–MIL	Seoul–Milan	Etihad	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
MIL–TYO	Milan–Tokyo	Etihad	[60-70] %	[50-60] %	[40-50] %	[40-50] %	[60-70] %	[30-40] %
AMS–BOM	Amsterdam–Mumbai	Etihad + Jet Airways	[50-60] %	[60-70] %	[60-70] %	[60-70] %	[50-60] %	[60-70] %
AMS–DEL	Amsterdam–New Delhi	Etihad + Jet Airways	[40-50] %	[50-60] %	[40-50] %	[50-60] %	[40-50] %	[40-50] %
MIL–MOW	Milan–Moscow	Air Serbia and airberlin	[30-40] %	[30-40] %	[10-20] %	[10-20] %	[30-40] %	[40-50] %
MOW–ROM	Moscow–Rome	Air Serbia and airberlin	[40-50] %	[40-50] %	[20-30] %	[10-20] %	[40-50] %	[40-50] %

Source: Annexes 6.3.c.(i) to the Form CO

Table 12b: Direct/Indirect overlaps between Alitalia and its Transatlantic JV partners and Etihad and/or Air Serbia – Combined market shares at airport pair level

Route Air-port pair	Route Name	Alitalia's and its Transatlantic JV partners' overlap with	Over all summer '13	Over-all winter '13/'14	TS summer '13	TS winter '13/'14	NTS summer '13	NTS winter '13/'14
ICN–MXP	Seoul–Malpensa	Etihad	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
MXP–NRT	Malpensa–Narita	Etihad	[60-70]%	[50-60]%	[40-50]%	[30-40]%	[60-70]%	[60-70]%
AMS–BOM	Amsterdam–Mumbai	Etihad + Jet Airways	[50-60]%	[60-70]%	[60-70]%	[60-70]%	[50-60]%	[60-70]%
AMS–DEL	Amsterdam–New Delhi	Etihad + Jet Airways	[40-50]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%	[40-50]%
MXP–SVO	Malpensa–Moscow SVO	Air Serbia	[50-60]%	[40-50]%	[20-30]%	[20-30]%	[50-60]%	[40-50]%
SVO–FCO	Moscow SVO–Fiumicino	Air Serbia	[60-70]%	[60-70]%	[30-40]%	[40-50]%	[60-70]%	[60-70]%

Source: Annexes 6.3.c.(i) and 6.3.c.(ii) to the Form CO

(272) On the Seoul–Milan route, one competitor is operating a direct service (Korean Airways) and two competitors have market shares higher than the increment generated by the Transaction (Korean Airways with [30-40]% and [20-30]% and Emirates with [5-10]% and [5-10]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively).

(273) On the Milan–Tokyo route Alitalia is the only carrier operating a direct service and the increments in market share brought about by the Transaction are low ([0-5]% in the summer 2013 and winter 2013/2014 IATA seasons respectively).²³⁵ Moreover, the route presents sizeable competitors operating indirect services with market shares higher than or comparable to the increment generated by the Transaction even under the narrowest market definition

²³⁵ On Milan–Tokyo the yearly average in the last 4 IATA season for overall passengers is below 2% and the highest market share increment in the narrowest market definition is 3% for NTS passengers in summer 2013 IATA season.

(Lufthansa with [10-20]% and [10-20]% or Finnair with [5-10]% and [5-10]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively).

- (274) On the Amsterdam–Mumbai and Amsterdam–Delhi routes, while Alitalia's Transatlantic JV is the only carrier operating direct services, sizeable competitors operate indirect services with market shares higher than the increment generated by the Transaction (on Amsterdam–Mumbai those are Lufthansa with [10-20]% and [10-20]% and Emirates with [10-20]% and [10-20]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively; on Amsterdam–Delhi those are Lufthansa with [10-20]% and [20-30]% and Emirates with [5-10]% and [10-20]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively).
- (275) On the Milan–Moscow and Moscow–Rome routes, one competitor is offering a direct service and at least two competitors have market shares higher than the increment brought about by the Transaction (on Milan–Moscow those are Aeroflot operating directly with [20-30]% and [20-30]% and Transaero with [10-20]% and [10-20]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively; on Moscow–Rome those are Transaero operating directly with [20-30]% and [20-30]% and Aeroflot with [10-20]% and [10-20]%, in the summer 2013 and winter 2013/2014 IATA seasons respectively).
- (276) Furthermore, no concern was raised in the market investigation with regard to any of those routes.²³⁶
- (277) In light of 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 direct/indirect Seoul–Milan, Milan–Tokyo, Amsterdam–Mumbai, Amsterdam–Delhi, Milan–Moscow, and Moscow–Rome routes under any possible market definition.

7.5.3. *Direct/indirect overlaps of Alitalia (including its Transatlantic JV partners) with airberlin and/or Jet Airways*

- (278) The activities of Alitalia and its Transatlantic JV partners overlap on 47 routes with those of airberlin and/or Jet Airways, all of which may be offering either direct or indirect services on these routes.
- (279) As stated in Section 7.2.2, those routes are unlikely to give rise to anti-competitive effects in connection with the minority shareholding held by Etihad. Indirect routes are often established in an opportunistic way by carriers and are modified from one IATA season to the next. Furthermore, price increases or reductions of capacity could be countered by competitors who could start operating on these routes more easily than on direct/direct routes which require the deployment of aircraft dedicated to the O&D route. Therefore, post-Transaction any attempt of New Alitalia, airberlin and Jet Airways to raise prices on such routes on the basis of the minority shareholding held by Etihad would likely be short lived and ineffective.
- (280) On some of the routes assessed in this section, Etihad or the EEP are marketing carrier(s) through codeshare agreements. When the marketing carrier only sold a negligible number of tickets, the marketing carrier is not individually mentioned in this section. However, tickets

²³⁶ No substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, questions 16 and 17; Replies to Q2 – Questionnaire to corporate customers, questions 21 and 22; Replies to Q3 – Questionnaire to travel agents, questions 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, questions 21 and 22; Replies to Q11 – Questionnaire to travel agents II, questions 19 and 20.

sold by the marketing carriers have been included in the market shares of the Parties set out below.

(281) On the 47 routes, serious doubts as to the compatibility of the Transaction with the internal markets can be excluded essentially either because of low combined market shares of the Parties (Section 7.5.3.1), the low market share increment brought about by the Transaction (Section 7.5.3.2), and/or due to significant competitors active on the route (Section 7.5.3.3).

7.5.3.1. Low combined market shares

(282) Out of the 47 direct/indirect overlap routes relating the activities of Alitalia and its Transatlantic JV partners on the one hand and airberlin and Jet Airways on the other hand, the following 15 routes set out in Table 13 do not give rise to serious doubts as to the compatibility of the Transaction with the internal market in view of the low combined market shares held by Alitalia, its Transatlantic JV partners, airberlin and Jet Airways.

Table 13: Direct/indirect overlaps between Alitalia and its Transatlantic JV partners and airberlin and/or Jet Airways – Combined Market share

Route City Pair	Route Name	Alitalia's and its Transatlantic JV partners' overlap with	Over all summer '13	Over all winter '13/'14	TS summer '13	TS winter '13/'14	NTS summer '13	NTS winter '13/'14
ARN–NYC	Stockholm–New York ²³⁷	Airberlin	[10-20]%	[5-10]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%
BCN–LAX	Barcelona–Los Angeles	Airberlin	[30-40]%	[20-30]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%
BCN–NYC	Barcelona–New York	Airberlin	[40-50]%	[30-40]%	[20-30]%	[20-30]%	[40-50]%	[30-40]%
BRI–MUC	Bari–Munich	Airberlin	[40-50]%	[10-20]%	[0-5]%	[0-5]%	[40-50]%	[10-20]%
CPH–NYC	Copenhagen–New York ²³⁸	airberlin + Jet Airways	[20-30]%	[10-20]%	[5-10]%	[0-5]%	[20-30]%	[10-20]%
CPH–TRN	Copenhagen–Turin ²³⁹	Airberlin	n/a	[20-30]%	n/a	[0-5]%	n/a	[30-40]%
HAM–ROM	Hamburg–Rome	Airberlin	[40-50]%	[5-10]%	[20-30]%	[10-20]%	[40-50]%	[5-10]%
LAS–MUC	Las Vegas–Munich	Airberlin	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%
LAX–ROM	Los Angeles–Rome	Airberlin	[40-50]%	[30-40]%	[30-40]%	[20-30]%	[50-60]%	[30-40]%
MIA–	Miami–Milan	Airberlin	[40-	[20-	[20-	[10-	[40-	[20-

²³⁷ In the winter 2013/2014 IATA season the overlap was indirect/indirect.

²³⁸ In the winter 2013/2014 IATA season the overlap was indirect/indirect.

²³⁹ No overlap during summer 2013 IATA season.

MIL			50]%	30]%	30]%	20]%	50]%	30]%
MIA– VCE	Miami– Venice	Airberlin	[40– 50]%	[30– 40]%	[20– 30]%	[20– 30]%	[40– 50]%	[30– 40]%
MIL– PMI	Milan–Palma de Mallor- ca ²⁴⁰	Airberlin	[0– 5]%	[30– 40]%	[5– 10]%	[10– 20]%	[0– 5]%	[30– 40]%
NUE– ROM	Nuremberg– Rome	Airberlin	[10– 20]%	[10– 20]%	[20– 30]%	[40– 50]%	[10– 20]%	[10– 20]%
NYC– PRG	New York– Prague	airberlin + Jet Airways	[40– 50]%	[30– 40]%	[40– 50]%	[30– 40]%	[40– 50]%	[30– 40]%
RIX– VCE	Riga– Venice ²⁴¹	Airberlin	[20– 30]%	[10– 20]%	[5– 10]%	[0– 5]%	[20– 30]%	[10– 20]%

Source: Annexes 6.3.c.(i) to the Form CO

(283) The competitive assessment for the above mentioned routes would not change when looking at the narrowest possible market on the basis of airport pairs, with combined market shares not being above [50-60]% in any given season or segment, with the exception of Barcelona–New York JFK where the overall market share in the summer 2013 IATA season amounted to [50-60]% and where for NTS passengers it reached [50-60]%. On this specific O&D route one competitor is offering a direct service and has a market share higher than the increment brought about by the Transaction under any possible market definition; moreover another competitor offers indirect services and has a market share higher than the increment brought about by the Transaction under any possible market definition.

(284) Furthermore, no concern was raised in the market investigation with regard to any of those routes, except for one competitor who raised unsubstantiated concerns regarding the Copenhagen–Turin route and a Travel Agent who raised unsubstantiated concerns regarding the Miami–Milan and Los Angeles–Rome routes.²⁴²

(285) In light of 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 direct/indirect Stockholm–New York, Barcelona–Los Angeles, Barcelona–New York, Bari–Munich, Copenhagen–New York, Copenhagen–Turin, Hamburg–Rome, Las Vegas–Munich, Los Angeles–Rome, Miami–Milan, Miami–Venice, Milan–Palma de Mallorca, Nuremberg–Rome, New York–Prague, and Riga–Venice routes under any possible market definition.

7.5.3.2. Low increment brought about by the Transaction

(286) Of the remaining 32 direct/indirect overlap routes relating the activities of Alitalia and its Transatlantic JV partners on the one hand and airberlin and Jet Airways on the other hand, the following 13 do not give rise to serious doubts as to the compatibility of the Transaction with

²⁴⁰ In the winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁴¹ In winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁴² No other substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, questions 16 and 17; Replies to Q2 – Questionnaire to corporate customers, questions 21 and 22; Replies to Q3 – Questionnaire to travel agents, questions 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, questions 21 and 22; Replies to Q11 – Questionnaire to travel agents II, questions 19 and 20.

the internal market in view of the low increment in market share brought about by the Transaction.

Table 14: Direct/indirect overlaps Between Alitalia and airberlin group and/or Jet Airways – Increment in market share brought about by the Transaction

Route City Pair	Route Name	Alitalia's and its Transatlantic JV partners' overlap with	Overall summer '13	Overall winter '13/'14	TS summer '13	TS winter '13/'14	NTS summer '13	NTS winter '13/'14
ATH–NYC	Athens–New York	airberlin + Jet Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
BDS–MUC	Brindisi–Munich	airberlin	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
BRI–RIX	Bari–Riga ²⁴³	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
CAG–DUS	Cagliari–Dusseldorf	Airberlin	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
CTA–LON	Catania–London	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
DUS–ROM	Dusseldorf–Rome	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
DUS–SUF	Dusseldorf–Lamezia Terme ²⁴⁴	Airberlin	[0-5]%	n/a	n/a	n/a	[0-5]%	n/a
KRK–ROM	Krakow–Rome	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
MIA–ROM	Miami–Rome	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
MIL–NYC	Milan–New York	Airberlin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
NCE–NYC	Nice–New York	airberlin+ Jet Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
NYC–ROM	New York–Rome	airberlin + Jet Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
SUF–TXL	Lamezia Terme–Berlin ²⁴⁵	Aiberlin	[0-5]%	n/a	[0-5]%	n/a	[0-5]%	n/a

Source: Annexes 6.3.c.(i) to the Form CO

(287) The competitive assessment for the above mentioned routes would not change when looking at the narrowest possible market segmentation on the basis of airport pairs with increments not above [5-10]% in any given season or segment, with three exceptions:

²⁴³ In winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁴⁴ In winter 2013/2014 IATA season the overlap was indirect/indirect and the increment [$<1\ 000$] NTS passengers; in summer 2013 IATA season the increment was [$<1\ 000$] TS passengers.

²⁴⁵ The increment in winter 2013/2014 IATA season was [$<1\ 000$] NTS passengers.

- a. On Milan Malpensa–New York JFK the increments reach [5-10]% overall in summer 2013 IATA season and [5-10]% in NTS passengers in summer 2013 IATA season but the route presents two competitors operating direct services and one of them has a market share higher than the increment brought about by the Transaction under any possible market definition.
- b. On New York JFK–Rome Fiumicino the increment reaches [5-10]% for NTS passengers in the summer 2013 IATA season but the route presents one competitor operating direct services during summer and indirect during winter IATA seasons and having a market share higher than the increment brought about by the Transaction in both seasons under any possible market definition.
- c. On the Brindisi–Munich route, [20 000 – 30 000] passengers travelled in 2013, of which only [<1 000] were TS passengers. Therefore the market for TS passengers on this route would not be a substantial part of the internal market. Moreover, the increment for NTS passengers was below [10-20]% in summer 2013 IATA season and [10-20]% in winter 2013/2014 IATA season; consequently the constraint posed by Alitalia's indirect operations pre-Transaction can be considered moderate. Likewise easyJet poses some competitive constraint on the Parties offering six weekly frequencies *via* Milan although not marketed as a connecting flight. In addition, the majority of the respondents to the market investigation²⁴⁶ indicated that on this route sufficient competition will remain to prevent the merged entity from raising prices post Transaction. Finally, as previously mentioned, direct/indirect overlaps with airberlin are unlikely to give rise to non-coordinated effects (see Section 7.2.2).

(288) No concern was raised in the market investigation with regard to any of the routes set out in Table 14 above with the exception of the Brindisi–Munich, Cagliari–Dusseldorf, Dusseldorf–Rome, Dusseldorf–Lamezia Terme, and Lamezia Terme–Berlin where one competitor raised unsubstantiated concerns and a second competitor raised concerns about the acquisition by the EEP of a strong market position which might increase entry barriers.²⁴⁷ Furthermore one customer raised concerns on the availability of routes beyond the O&D pair Brindisi–Munich; however, this latter concern goes beyond the scope of the O&D analysis.

(289) In light of 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 identified direct/indirect overlap routes Athens–New York, Brindisi–Munich, Bari–Riga, Cagliari–Dusseldorf, Catania–London, Dusseldorf–Rome, Dusseldorf–Lamezia Terme, Krakow–Rome, Miami–Rome, Milan–New York, Nice–New York, New York–Rome and Lamezia Terme–Berlin under any possible market definition.

²⁴⁶ Replies to Q1 – Questionnaire to competitors, question 16; Replies to Q2 – Questionnaire to corporate customers, question 21; Replies to Q3 – Questionnaire to travel agents, question 19; Replies to Q10 – Questionnaire to corporate customers II, question 21; Replies to Q11 – Questionnaire to travel agents II, question 19.

²⁴⁷ No other substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

7.5.3.3. Significant competitor(s)

- (290) Out of the remaining 19 direct/indirect overlaps discussed in this section, none gives rise to serious doubts as to the compatibility of the Transaction with the internal market in view of the presence of significant competitors having a market share comparable or higher than the increment brought about by the Transaction under any possible market definition. Importantly, on many routes those competitors offer direct services, thereby exerting a strong competitive constraint.
- (291) On the Brussels–Toronto route, Jet Airways operate direct services; the Star Alliance Transatlantic JV operates direct services during the summer 2013 IATA season and indirect services during the winter 2013/2014 IATA season and in both seasons has a market share higher than the increment brought about by the Transaction under any possible market definition. Moreover the oneworld Transatlantic JV operates indirect services the whole year with a market share higher than the increment brought about by the Transaction under any possible market definition.
- (292) On the Cagliari–Munich route, [30 000 – 40 000] passengers travelled in 2013, of which only [<3 000] in the winter IATA season, making it a highly seasonal route²⁴⁸. Therefore, in the winter IATA season, the route does not constitute a substantial part of the internal market. [20 000 – 30 000] passengers travelled during the summer 2013 IATA season when airberlin offered a direct service. One competitor raised a concern about the acquisition by EEP of a strong market position which might significantly reduce competition.²⁴⁹ However, the Lufthansa Group offered a direct service which attained a market share higher than the increment brought about by the Transaction under any possible market definition. One customer raised a concern on the availability of routes beyond the O&D pair; however, this latter concern goes beyond the scope of the O&D analysis.
- (293) The Cagliari–Zurich route presents an overlap between Alitalia and airberlin only in the summer IATA season. Over the summer IATA season, the Lufthansa Group operates direct services and has a market share higher than the increment brought about by the Transaction under any possible market definition.
- (294) On the Catania–Frankfurt route, a competitor and a customer raised a concern²⁵⁰ about the acquisition of a strong market position by EEP which might significantly reduce competition. However, the Lufthansa Group operates indirect services in summer and is active to a more limited extent in winter.²⁵¹ Air Malta has also some presence on the route all-year-round. One of the EEP pointed out that an independent competitor holds a strong market position on the

²⁴⁸ [<3 000] passengers travelled on the route in the winter 2012/2013 IATA season.

²⁴⁹ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵⁰ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵¹ In addition, there were only [<3 000] TS passengers on this route in 2013.

route.²⁵² It is also considered that, as previously mentioned, direct/indirect overlaps with airberlin are unlikely to give rise to non-coordinated effects (see Section 7.2.2).

(295) On the Catania–Moscow route²⁵³ [30 000 – 40 000] passengers travelled in 2013, of which only [<5 000] in the winter 2013/2014 IATA season, making it a highly seasonal route.²⁵⁴, Therefore in the winter IATA season that route does not constitute a substantial part of the internal market. Besides, the overlap would occur only if Moscow Sheremetyevo and Moscow Domodedovo airports were to be considered substitutable. However, this question can be left open for the purposes of the present decision. On this route²⁵⁵ one competitor and one customer raised concerns about the acquisition of a strong market position by EEP which might significantly reduce competition, a second competitor raised concerns about the possible limitation on new entrants by the Air Services Agreement with Russia. During summer, Swiss, Blue Panorama Airlines, Air Malta, Aeroflot, and others are offering some indirect services on this route, representing altogether around [5-10]% market share (all passengers)²⁵⁶. Moreover, as regards the summer 2013 IATA season the increment brought about by the Transaction did not exceed [10-20]% under any possible market definition. As previously mentioned, direct/indirect overlaps with airberlin are unlikely to give rise to non-coordinated effects (see Section 7.2.2).

(296) On the Catania–Munich route, while two competitors raised a concern about the acquisition of a strong market position by EEP which might significantly reduce competition,²⁵⁷ Air Dolomiti (fully owned by Lufthansa) and Air Malta offer direct services both in summer and in winter IATA season, thereby exerting a strong competitive constraint.

(297) On the Catania–Zurich route, one of the EEP pointed out that a competitor holds a strong market position.²⁵⁸ In this respect, it should be noted that the Lufthansa Group²⁵⁹ operates a direct service with significant market shares in the summer IATA season²⁶⁰ which gives this

²⁵² Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵³ In winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁵⁴ [<5 000] passengers travelled on the route in the winter 2012/2013 IATA season.

²⁵⁵ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵⁶ In addition, there were only [<1 000] TS passengers on this route in summer 2013 IATA season.

²⁵⁷ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵⁸ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁵⁹ Edelweiss Air, a wholly owned subsidiary of Swiss International Airlines, operates on the route, having a base in Zurich.

²⁶⁰ Competitor's market share increased significantly between summer 2013 and summer 2014 IATA seasons.

competitor a strong position on the route despite their more limited activities during the winter IATA season.

- (298) On the Chicago–Berlin route, both the Star Alliance Transatlantic JV and the oneworld Transatlantic JV offer indirect services and have a market share higher than the increment brought about by the Transaction under any possible market definition with the exception of NTS Passengers in summer 2013 IATA season when the market share of the oneworld Transatlantic JV is equal to the (otherwise low) increment ([5-10]%).
- (299) On the Copenhagen–Catania route²⁶¹ [20 000 – 30 000] passengers travelled in 2013, of which [<3 000] in the winter 2013/2014 IATA season, making it a highly seasonal route.²⁶² Therefore in the winter IATA season that route does not constitute a substantial part of the internal market. In the summer Norwegian Air Shuttle operates a direct service and has a market share higher than the increment brought about by the Transaction under any possible market definition.
- (300) On the Düsseldorf–Los Angeles route, both the Star Alliance Transatlantic JV and the oneworld Transatlantic JV offer indirect services and have a market share higher than the increment brought about by the Transaction under any possible market definition with the exception of NTS passengers in the winter 2013/2014 IATA season when the market share of the oneworld Transatlantic JV is slightly lower than the increment (by 1 point of percentage).
- (301) On the Düsseldorf–Miami route, the oneworld Transatlantic JV offers indirect services over the whole year and has a market share higher than the increment brought about by the Transaction under any possible market definition.²⁶³
- (302) On the Düsseldorf–New York route, at the city pair level Alitalia and airberlin are faced with competition from the Star Alliance Transatlantic JV, which offers a direct service, and the oneworld Transatlantic JV, which offers an indirect service. Each of the Star Alliance Transatlantic JV and the oneworld Transatlantic JV hold a market share higher than the increment brought about by the Transaction. Furthermore, Alitalia and airberlin compete with the Star Alliance Transatlantic JV and the oneworld Transatlantic JV on all airport pairs and on each airport pair either the Star Alliance Transatlantic JV or the oneworld Transatlantic JV hold a market share higher than the increment bought about by the Transaction.
- (303) On the Lamezia Terme–Zurich route, [30 000 – 40 000] passengers travelled in 2013, of which [<5 000] in the winter 2013/2014 IATA season, making it a highly seasonal route.²⁶⁴ Therefore in the winter IATA seasons that route does not constitute a substantial part of the internal market. During the summer Swiss and Helvetic Airways operate direct services and their combined market share is higher than the increment brought about by the Transaction under any possible market definition. On this route²⁶⁵ one customer raised a concern on the

²⁶¹ In winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁶² [<3 000] passengers travelled on the route in the winter 2012/2013 IATA season.

²⁶³ The Star Alliance Transatlantic JV offered a direct service which was terminated during the winter 2013/2014 IATA season and continues to offer indirect services on the route.

²⁶⁴ [5 000 -10 000] passengers travelled on the route in the winter 2012/2013 IATA season.

²⁶⁵ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to

availability of routes beyond the O&D pair; however, this latter concern goes beyond the scope of the O&D analysis.

- (304) On the Miami–Berlin route, the oneworld Transatlantic JV in summer and the Star Alliance Transatlantic JV in winter offer indirect services and have a market share higher than the increment brought about by the Transaction under any possible market definition.
- (305) On the Munich–Lamezia Terme route²⁶⁶ [30 000 – 40 000] passengers travelled in 2013, of which only [<3 000] in the winter 2013/2014 IATA season, making it a highly seasonal route.²⁶⁷ Therefore in the winter IATA season that route does not constitute a substantial part of the internal market. While one competitor raised concerns about the acquisition by EEP of a strong market position which might significantly reduce competition,²⁶⁸ it has to be noted that Lufthansa having a large base in Munich started operating direct services during the summer 2014 IATA season.
- (306) On the Naples–Zurich route the activities between Alitalia and airberlin only overlap in the last two IATA summer seasons. In the summer 2013 IATA season, the Lufthansa Group offered indirect services and has a market share higher than the increment brought about by the Transaction under any possible market definition.
- (307) On the New York–Berlin route, at the city pair level Alitalia and airberlin are faced with competition from the Star Alliance Transatlantic JV, which offers a direct service, and the oneworld Transatlantic JV, which offers an indirect service. Each of the Star Alliance Transatlantic JV and the oneworld Transatlantic JV hold a market share higher than the increment brought about by the Transaction. Furthermore, Alitalia and airberlin compete with the Star Alliance Transatlantic JV and the oneworld Transatlantic JV on all airport pairs and on each airport pair either the Star Alliance Transatlantic JV or the oneworld Transatlantic JV hold a market share higher than the increment brought about by the Transaction.
- (308) On the New York–Venice route, the Star Alliance Transatlantic JV offers indirect services and has a market share higher than the increment brought about by the Transaction under any possible market definition, with the exception of NTS passengers in the summer 2013 IATA season where the increment was [10-20]% and that competitor's share was [5-10]% but other competitors had an aggregate share in excess of [10-20]%.
- (309) On the St. Petersburg–Venice route, the Lufthansa Group and Aeroflot offer indirect services and each has a market share higher than the otherwise low increment (lower than [5-10]% under any possible market definition) brought about by the Transaction under any possible market definition.

Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁶⁶ In winter 2013/2014 IATA season the overlap was indirect/indirect.

²⁶⁷ [<3 000] passengers travelled on the route in the winter 2012/2013 IATA season.

²⁶⁸ Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

(310) No additional concerns were raised in the market investigation with regard to any of those routes.²⁶⁹ Furthermore, the majority of the respondents to market investigation²⁷⁰ indicated that, with the exception of the Catania–Moscow route where the results are mixed, sufficient competition will remain to prevent the merged entity from raising prices post Transaction on the Cagliari–Munich, Catania–Frankfurt, Catania–Zurich, Munich–Lamezia Terme and Lamezia Terme–Zurich routes.

(311) In light of 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 Brussels–Toronto, Cagliari–Munich, Cagliari–Zurich, Catania–Frankfurt, Catania–Moscow, Catania–Munich, Catania–Zurich, Chicago–Berlin, Copenhagen–Catania, Dusseldorf–Los Angeles, Dusseldorf–Miami, Dusseldorf–New York, Lamezia Terme–Zurich, Miami–Berlin, Munich–Lamezia Terme, Naples–Zurich, New York–Berlin, New York–Venice and St. Petersburg–Venice routes under any possible market definition.

7.6. Indirect/indirect overlaps

(312) The Transaction gives rise to 47 overlap routes on which Alitalia or its Transatlantic JV partners, on the one hand, and Etihad, Air Serbia and/or EEP, on the other hand, provide indirect services.²⁷¹

(313) Applying the criterion used to identify direct/indirect routes that are not a substantial part of the internal market²⁷² to indirect/indirect routes, that is because they have one end outside the European Union and have less than [30 000 – 40 000] passengers per year,²⁷³ serious doubts as to the compatibility of the Transaction with the internal market can be excluded with regard to a further ten routes²⁷⁴.

²⁶⁹ No other substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 16 and 17; Replies to Q2 – Questionnaire to corporate customers, question 21 and 22; Replies to Q3 – Questionnaire to travel agents, question 19 and 20; Replies to Q10 – Questionnaire to corporate customers II, question 21 and 22; Replies to Q11 – Questionnaire to travel agents II, question 19 and 20.

²⁷⁰ Replies to Q1 – Questionnaire to competitors, question 16; Replies to Q2 – Questionnaire to corporate customers, question 21; Replies to Q3 – Questionnaire to travel agents, question 19; Replies to Q10 – Questionnaire to corporate customers II, question 21; Replies to Q11 – Questionnaire to travel agents II, question 19.

²⁷¹ These are the following 47 routes: Amsterdam–Thessaloniki, Barcelona–Belgrade, Barcelona–San Francisco, Belgrade–Madrid, Bari–Moscow, Bucharest–Toronto, Budapest–New York, Budapest–Toronto, Cagliari–Moscow, Catania–New York, Catania–Vienna, Copenhagen–Miami, Copenhagen–Naples, Florence–Moscow, Florence–New York, Frankfurt–Lamezia Terme, Frankfurt–Palermo, Hamburg–Miami, Hamburg–New York, Ibiza–Moscow, Kuala Lumpur–Milan, Lamezia Terme–Vienna, Los Angeles–Milan, Los Angeles–Venice, Los Angeles–Vienna, London–Naples, Lyon–New York, Madrid–Naples, Miami–Munich, Miami–Vienna, Milan–Manila, Milan–San Francisco, Milan–Toronto, Moscow–Naples, Moscow–Olbia, Moscow–Palermo, Moscow–Verona, Marseille–New York, Munich–New York, Naples–New York, New York–Stuttgart, New York–Toulouse, Nuremberg–Lamezia Terme, Palma de Mallorca–Venezia, Paris–Thessaloniki, Prague–Toronto, San Francisco–Venice.

²⁷² See Section 7.3 of this decision.

²⁷³ M.5747 – *Iberia/British Airways*, recital 117.

²⁷⁴ These are the following 10 routes: Belgrade–Madrid, Bari–Moscow, Cagliari–Moscow, Catania–New York, Ibiza–Moscow, Moscow–Olbia, Barcelona–Belgrade, Milan–Toronto, Prague–Toronto, Bucharest–Toronto.

- (314) On the Nuremberg–Lamezia Terme route, a total number of [$<1\ 000$] passengers travelled in the summer 2013 and winter 2013/2014 IATA seasons. That route therefore does not constitute a substantial part of the internal market.
- (315) On the Frankfurt–Palermo and Moscow–Palermo routes, airberlin ceased all operations (for reasons unrelated to the Transaction) in April 2014. Therefore, there are no overlaps on those routes anymore.²⁷⁵
- (316) The remaining 34 routes were analysed with respect to market shares and the market share increment brought about by the Transaction. In addition, the presence and position of competitors and the number of passengers on each route were assessed. None of these routes gives rise to serious doubts as to the compatibility of the Transaction with the internal market for the following reasons.

7.6.1. Indirect/indirect overlaps of Alitalia with Etihad and Air Serbia

- (317) Alitalia has the following 4 indirect/indirect overlaps with Etihad, Air Serbia.²⁷⁶

Table 15: Indirect/indirect overlaps of Alitalia with Etihad and Air Serbia

Route	Route Name	Alitalia's overlap with	Combined city pair summer '13	Combined city pair winter '13/'14
AMS–SKG	Amsterdam–Thessaloniki	Air Serbia	[30-40]%	[10-20]%
KUL–MIL	Kuala Lumpur–Milan	Etihad	[10-20]%	[20-30]%
MIL–MNL	Milan–Manila	Etihad	[30-40]%	[20-30]%
PAR–SKG	Paris–Thessaloniki	Air Serbia + airberlin ²⁷⁷	[20-30]%	[10-20]%

Source: Annex 6.3(c)(v) to the Form CO

- (318) Given the relatively modest market shares on these routes, the presence of strong competitors (such as Emirates and Qatar on Kuala Lumpur–Milan, Lufthansa and Aegean on Amsterdam–Thessaloniki, Emirates and Singapore Airlines on Milan–Manila, with market shares significantly higher than the increment on all of these routes) and the fact that no concerns were raised with regard to any of them during the market investigation,²⁷⁸ it is concluded that with

²⁷⁵ airberlin's reply to RFI 3 of 10 October 2014, question 2.

²⁷⁶ There are no reportable indirect/indirect overlaps with Darwin or Alitalia's Transatlantic JV partners.

²⁷⁷ The additional overlap with airberlin is not significant. To avoid double counting the route is excluded from Section 7.6.2.

²⁷⁸ No substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3 – Questionnaire to travel agents, question 20; Replies to Q7 – Questionnaire to airport managers, question 26; Replies to Q8 – Questionnaire to civil aviation authorities, question 16; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

regard to the Amsterdam–Thessaloniki, Kuala Lumpur–Milan, Milan–Manila, and Paris–Thessaloniki routes the Transaction does not raise serious doubts as to its compatibility with the internal market.

7.6.2. *Indirect/indirect overlaps of Alitalia (including its Transatlantic JV partners) with airberlin and Jet Airways*

- (319) The activities of Alitalia and its Transatlantic JV Partners also overlap on several routes with those of airberlin and/or Jet Airways.
- (320) However, as stated in Section 7.2.2, those routes are unlikely to give rise to anti-competitive effects in connection with the minority shareholding held by Etihad. Indirect routes are often established in an opportunistic way by carriers and are modified from one IATA season to the next. Furthermore, price increases or reductions of capacity could be countered by competitors who could start operating on these routes more easily than on direct/direct routes which require the deployment of aircraft dedicated to the O&D route. Therefore, post-Transaction any attempt of New Alitalia, airberlin and Jet Airways to raise prices on such routes on the basis of the minority shareholding held by Etihad would likely be short lived and ineffective.
- (321) In addition, on 22 of those routes,²⁷⁹ the combined market shares of Alitalia, its Transatlantic JV partners, airberlin and Jet Airways are fairly modest and did not exceed [50-60]% in any of the last four IATA seasons in any passenger segment; on all of those 22 routes there will be sizable competitors, such as the Star Alliance Transatlantic JV, the oneworld joint venture, Lufthansa, IAG or Air France-KLM. On none of those routes has the market share of the largest competitor been below [20-30]% in the last two IATA seasons. Those competitors will continue to exert a significant constraint post-Transaction, both in the TS and NTS segments. Furthermore, no concerns were raised in the market investigation with regard to any of those routes.²⁸⁰
- (322) Moreover, on six of the indirect/indirect overlap routes, despite the combined market shares of Alitalia, its Transatlantic JV partners, airberlin and Jet Airways being high (above [50-60]% in at least one segment in any of the past four IATA seasons), the increment brought about the Transaction is low (below [10-20]% in any of the past four IATA seasons): Frankfurt–Lamezia Terme, Florence–New York, Lamezia Terme–Vienna, Madrid–Naples, Naples–New York, Palma de Mallorca–Venice. Furthermore, no concerns were raised in the market investigation with regard to any of those routes.²⁸¹

²⁷⁹ Barcelona–San Francisco, Budapest–New York, Budapest–Toronto, Copenhagen–Miami, Copenhagen–Naples, Florence–Moscow, Hamburg–Miami, Hamburg–New York, Los Angeles–Milan, Los Angeles–Venice, Los Angeles–Vienna, London–Naples, Lyon–New York, Marseille–New York, Miami–Munich, Miami–Vienna, Milan–San Francisco, Milan–Toronto, Moscow–Verona, Munich–New York, New York–Toulouse, San Francisco–Venice.

²⁸⁰ No substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3– Questionnaire to travel agents, question 20; Replies to Q7 – Questionnaire to airport managers, question 26; Replies to Q8 – Questionnaire to civil aviation authorities, question 16; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

²⁸¹ No substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3– Questionnaire to travel agents, question 20; Replies to Q7 – Questionnaire to airport managers, question 26;

(323) Lastly, on the remaining two routes, Catania–Vienna and Moscow–Naples, the combined market shares of Alitalia and airberlin fluctuate considerably between seasons (on Moscow–Naples between [50-60]% and [70-80]% and on Catania–Vienna between [40-50]% and [80-90]%). On both routes, however, there are strong competitors, such as the Lufthansa and Air France–KLM. Furthermore, no concerns have been brought forward in the course of the market investigation.²⁸²

(324) In light of 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 with respect to those indirect/indirect overlap routes²⁸³ under any possible market definition.

7.7. **The integration of New Alitalia with Etihad, Air Serbia, Darwin Airlines, and the EEP**

(325) As discussed above in section 5 of this decision, in recent years Etihad acquired minority shareholdings or otherwise financed in a number of carriers with the aim of building a connecting network and to encourage, where possible, the carriers it has invested in to co-operate on codeshares and joint purchasing.

(326) As a result of the Transaction, New Alitalia would be linked indirectly, through Etihad, with the various carriers of which Etihad is a shareholder. In order to fully take into account the possible effects of Etihad's shareholdings in New Alitalia, Air Serbia, and in the EEP as well as Etihad's influence over Darwin Airline, the Commission assessed all overlaps between Alitalia and airberlin, Air Serbia, Darwin Airlines, and Jet Airways in its O&D analysis.²⁸⁴ On the basis of that analysis the Commission has excluded serious doubts on all routes where the activities of Alitalia (including its Transatlantic JV partners) and Etihad, Air Serbia, Darwin Airline, and/or the EEP overlap, with the exception of the Rome–Belgrade route where the Commission identified serious doubts.

(327) However, some respondents to the market investigation, and in particular certain competitors, raised concerns that the O&D approach to market definition would not allow to fully analyse

Replies to Q8 – Questionnaire to civil aviation authorities, question 16; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

²⁸² No substantiated concerns were raised with regards to these routes; Replies to Q1 – Questionnaire to competitors, question 17; Replies to Q2 – Questionnaire to corporate customers, question 22; Replies to Q3 – Questionnaire to travel agents, question 20; Replies to Q7 – Questionnaire to airport managers, question 26; Replies to Q8 – Questionnaire to civil aviation authorities, question 16; Replies to Q10 – Questionnaire to corporate customers II, question 22; Replies to Q11 – Questionnaire to travel agents II, question 20.

²⁸³ Amsterdam–Thessaloniki, Barcelona–Belgrade, Barcelona–San Francisco, Belgrade–Madrid, Bari–Moscow, Bucharest–Toronto, Budapest–New York, Budapest–Toronto, Cagliari–Moscow, Catania–New York, Catania–Vienna, Copenhagen–Miami, Copenhagen–Naples, Florence–Moscow, Florence–New York, Frankfurt–Lamezia Terme, Frankfurt–Palermo, Hamburg–Miami, Hamburg–New York, Ibiza–Moscow, Kuala Lumpur–Milan, Lamezia Terme–Vienna, Los Angeles–Milan, Los Angeles–Venice, Los Angeles–Vienna, London–Naples, Lyon–New York, Madrid–Naples, Miami–Munich, Miami–Vienna, Milan–Manila, Milan–San Francisco, Milan–Toronto, Moscow–Naples, Moscow–Olbia, Moscow–Palermo, Moscow–Verona, Marseille–New York, Munich–New York, Naples–New York, New York–Stuttgart, New York–Toulouse, Nuremberg–Lamezia Terme, Palma de Mallorca–Venezia, Paris–Thessaloniki, Prague–Toronto, San Francisco–Venice.

²⁸⁴ As explained above in section 5, the Commission has not included in its assessment Air Seychelles, Virgin Australia, and Aer Lingus. For the purpose of this section, Darwin Airlines is treated as an EEP even though Etihad does not hold a minority shareholding in Darwin. Air Serbia is jointly controlled by Etihad and is thus included in the analysis of Etihad's competitive position.

the effects that the Transaction may have on Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP' network and on Abu-Dhabi's role as a hub for flights from Europe to Africa, Asia, and Oceania.

(328) The framework for the cooperation between New Alitalia and Etihad is established in the CCA (see recital **Error! Reference source not found.** above) and will be entered into by the parties in the context of the Transaction. The CCA does not regulate the relationship between New Alitalia, Air Serbia, Darwin Airline and the EEP. [...].²⁸⁵

(329) [...].²⁸⁶

(330) Pursuant to the terms of the CCA, New Alitalia will be using Abu Dhabi airport as [...] hub for scheduled flights to [...]. However, New Alitalia will continue to cooperate with its existing partners and to operate to destinations within the Exclusive Territory that are not served by Etihad, Air Serbia, Darwin Airline, and the EEP. Furthermore, subject to Etihad's consent, New Alitalia will be entitled to enter into new codeshare agreements relating to the Exclusive Territory with third parties.²⁸⁷

(331) In the present section, the Commission will assess the possible impact of the Transaction in addition to what has already been analysed under the O&D approach and relating to (i) the future cooperation among New Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP, (ii) the strengthening of Abu Dhabi's role as a hub for flights from Europe to Asia and Africa, and (iii) other potential issues that the Transaction may raise.

7.7.1. *New Alitalia's cooperation with Etihad, Air Serbia, Darwin Airline, and the EEP*

(332) As mentioned above in Section 7.2.3 of this decision, Alitalia has entered into codeshare agreements with Etihad as well as with Air Serbia, Darwin Airline and Jet Airways. Those agreements pre-date the Transaction and, as such, are unrelated to the Transaction. Furthermore, Alitalia has recently entered into a codeshare agreement with airberlin. Discussions between the two carriers regarding such agreement started at the latest in the first quarter of 2013 and were concluded in August 2014 following Alitalia's release from a restriction under its SkyTeam agreement, which made it possible to finalise the code share agreement.²⁸⁸ Therefore airberlin's and Alitalia's decision to enter into a codeshare agreement does not appear to be linked to the Transaction. However, even assuming that the codeshare agreement between Alitalia and airberlin were related to the Transaction, as discussed in Section 7.2.2 of this decision it is unlikely that agreement would, as a result of the Transaction, have a material impact on competition.

(333) [Description of terms of an agreement between Etihad and New Alitalia]

(334) Indeed, the networks of Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP are to a very large extent complementary. Alitalia, Air Serbia, Darwin Airline and the EEP operate from different hubs and with a different regional focus. Overlaps between Alitalia, on the one hand, and Etihad, airberlin, Air Serbia, Darwin Airlines and Jet Airways, on the other hand, are very

285 [...].

286 Form CO, Annex 5.1(d), Commercial Cooperation Agreement, paragraph 2.2.2.

287 Form CO, Annex 5.1(d), Commercial Cooperation Agreement, paragraph 2.3.7.

288 The Notifying Parties' reply to RFI 9 of 8 October 2014, question 10.

limited. Alitalia currently directly operates on over one hundred and eighty routes and on only five of those Etihad, Air Serbia, Darwin Airline, and/or the EEP are also active through direct flights. Overall the overlaps between Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP represent approximately [0-5]% of the total routes operated by Alitalia.

Table 16: Overlaps among the networks of Alitalia and Etihad, Air Serbia, Darwin Airline, and the EEP

Airline	Total DO Routes	Overlap DO routes with Alitalia	% of DO routes that overlap with Alitalia
Alitalia	[...]	-	
Etihad	[...]	1 (FCO–AUH)	[0-5]%
Air Serbia	[...]	1 (BEG–FCO)	[0-5]%
Darwin Airline	[...]	1 (FCO–GVA)	[0-5]%
airberlin	[...]	2 (FCO–VIE MIL–VIE)	[0-5]%
Jet Airways	[...]	0	0

Source: Notifying Parties' reply to RFI 9 of 8 October 2014, question 2.

- (335) Furthermore, the total number of passengers transported by Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP ([100 000 000 – 200 000 000] passengers) represents only a fraction of those transported by the main alliances among carriers such as SkyTeam ([500 000 000-600 000 000] passengers,) Star Alliance ([600 000 000 – 700 000 000] passengers) and oneworld ([300 000 000 – 400 000 000] passengers). The Notifying Parties estimate that in 2013 Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP together transported approximately [5-10]% of total passengers worldwide. In the same period, Star Alliance transported [30-40]%, Sky Team [30-40]%, and oneworld [10-20]% of total passengers worldwide. Therefore, significant alternative networks are available for passengers in addition to the one that Etihad is in the process of establishing.
- (336) In 2012, Alitalia held an overall share of approximately [40-50]% for domestic flights in Italy, of [10-20]% for flights from Italy to European destinations, and of [10-20]% for flights from Italy to intercontinental destinations.²⁸⁹ When looking at the footprint of the networks of Alitalia, Etihad, Air Serbia, Darwin Airline, and the EEP, most overlaps relate to flights connecting Italy to Austria, Germany, and Switzerland. The Lufthansa Group, one of the main airline groups in the world and the largest in Europe, has a very significant presence in each of Germany, Austria and Switzerland²⁹⁰ and currently represents, and will continue to represent post-Transaction, a strong competitive constraint on Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP.
- (337) It follows that New Alitalia's cooperation with Etihad, Air Serbia, Darwin Airline and the EEP will mainly extend the reach of their respective networks, thus pursuing the same goals

²⁸⁹ Form CO, Annex 5 4(a), Alitalia BoD 03 07 2013, Business Plan Board Presentation.

²⁹⁰ In Italy, the Lufthansa Group also controls Air Dolomiti. Air Dolomiti mainly operates as a feeder carrier for Lufthansa to/from Munich and Frankfurt from/to Italian and other European destinations. Air Dolomiti targets both network and point-to-point passengers. Working on the basis of a "hub-inverse model", its main hub is Munich. Air Dolomiti, reply to Q1 – Questionnaire to competitors, questions 1.1 and following.

and strategy that other bigger carriers pursue (even to a larger extent) by participating in alliances. However, such cooperation is unlikely to have a material impact on competition as a result of the Transaction and will therefore not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

7.7.2. *Strengthening of Abu-Dhabi's role as a hub for flights from Europe to Africa, Asia, and Oceania*

(338) The CCA will strengthen Abu Dhabi airport's position as a hub for flights from Europe to Asia, Africa, and Oceania as it will receive some feeding traffic from New Alitalia. However, European passengers wishing to reach destinations in Asia, Africa, and Oceania have at their disposal a wide range of alternative hubs that they can use, including airports located in Europe and outside of Europe.

(339) In 2013, the Abu Dhabi airport had a total of 16.5 million passengers, of which approximately 9 million were in transit to other destinations. Abu Dhabi airport ranks at number 102 worldwide in terms total passengers handled.²⁹¹ In 2014, the total number of passengers handled by Abu Dhabi airport is expected to increase to 20 million while the total capacity at the airport will double over the next three years.²⁹²

(340) In terms of passengers handled Abu Dhabi is a much smaller airport than the main EU hubs such as London (72 million passengers), Paris (62 million passengers) and Frankfurt (58 million passengers), as well as the main airport in the Middle East, Dubai International²⁹³ (66 million passengers).²⁹⁴ Even if a significant share of Alitalia's 24 million passengers were to transit through Abu Dhabi airport, this would merely bring the number of total passenger handled by the Abu Dhabi airport closer to that of other main hubs in the region and worldwide.

(341) Therefore, any strengthening of the competitive position of the Abu Dhabi airport that may result from the Transaction will not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

7.7.3. *Other issues*

7.7.3.1. Etihad's economic and financial power

(342) Some European carriers made the argument that Etihad is controlled and financed by a state with vast resources (Abu Dhabi). More generally, the issues raised by those European carriers relate overall to the competition with Etihad and with the other Gulf carriers which, those European carriers claim, are subsidised by their home state. However, those European carriers

²⁹¹ The Notifying Parties' reply to RFI 16 of 16 October 2014, question 1.

²⁹² Replies Q7 – Questionnaire to airport managers, question 19.

²⁹³ Form CO, Annex 6.3(a), Airport Substitutability Analysis, paragraph 3.11. Dubai World Central ("DWC"), an airport located in Dubai, opened on 27 June 2010 and initially only operated cargo flights. On 24 February 2011 the airport was certified to handle passenger aircraft with up to 60 passengers. DWC officially opened for international passenger flights on 26 October 2013 with flights from Nas Air and Wizz Air. DWC is expected to have the capacity to handle 160 million passengers once it is completed in 2028. The Parties are of the view that Emirates may move its operations from DXB to DWC from 2020 onwards.

²⁹⁴ Flightglobal. Available at: <http://www.flightglobal.com/news/articles/analysis-middle-east-hubs-drive-airport-growth-in-2013-398172/>.

did not substantiate their concerns by providing evidence of Etihad having received subsidies or Etihad having been able in the past to use these alleged subsidies in an anti-competitive fashion.

- (343) In addition, the outcome of the Commission's assessment of the Transaction under the Merger Regulation would not change when applying “deep pocket” considerations. New Alitalia will be *de facto* jointly controlled by Alitalia and Etihad and therefore Etihad cannot decide on its own that New Alitalia would adopt any particular commercial strategy, let alone a very aggressive or even a short term loss making strategy. Indeed, the Notifying Parties have a common vision regarding New Alitalia's commercial strategy and are likely to jointly implement it. Etihad and Alitalia would jointly have to bear New Alitalia's losses and would each have to contribute to the re-financing of New Alitalia in line with their respective shareholdings. Etihad will contribute to New Alitalia's financing in proportion to its 49% shareholding whereas Alitalia will have to contribute for the remaining 51% of the shareholding.
- (344) Consequently, the economic and financial power of Etihad would not materially alter the competitive analysis of any of the overlap routes.²⁹⁵ In addition, the mere alleged fact that Etihad possesses a strong financial capacity, is not *per se* indicative of competition concerns and does, as such, not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

7.7.3.2. The Linate Decree

- (345) By Ministerial Decree n. 15 of 3 March 2000 ("Decree n. 15"), a scheme for the Milan airport system (that is the airports of Linate, Malpensa and Bergamo Orio al Serio) was introduced. The Decree n. 15 designated Milan Malpensa as the hub airport and identified Linate as the national and Community airport for point to point connections. With that new air traffic distribution, Linate received the specific role of maintaining the Milan–Rome shuttle service, the connections with southern Italy and with the main European Union airports, identified on the basis of traffic volumes developed during the year 1999. In 2001, the Decree n. 15 was modified to allow one daily return flight to capital cities irrespective of the volume of passengers, and two daily return flights to European Union hubs with yearly passenger traffic of more than 40 million.
- (346) On 1 October 2014, the Italian Ministry for Infrastructure and Transport adopted Decree No. 237 (the "Linate Decree") which removes some of these restrictions, mainly those linked to the volume of passengers, the daily limits imposed on traffic to capital cities and hubs, while maintaining the requirement of point-to-point connections, the use of narrow body aircrafts and the geographical limit to destinations in the EU (thus excluding flights from Linate to hubs at non-EU capital cities such as Istanbul or Moscow). The Linate Decree similarly leaves unchanged Linate's current capacity (maximum 18 movements per hour).²⁹⁶
- (347) [Details of information contained in the Transaction Implementation Agreement].²⁹⁷ Certain competitors raised concerns that the Linate Decree favours New Alitalia and, potentially, Etihad, Air Serbia, Darwin Airline and the EEP, as Alitalia currently holds a significant share of

²⁹⁵ Article 2.1(b) of the Merger Regulation.

²⁹⁶ The Notifying Parties' reply to RFI 9 of 8 October 2014, question 12.

²⁹⁷ Form CO, Annex 5.1(a), Transaction Implementation Agreement, Schedule 5: Conditions Precedent, paragraph 3.

total slots at Milan Linate and will thus be the carrier that can launch more rapidly and more easily new intra-European routes to/from Milan Linate, an airport considered more attractive than the other airports serving Milan.²⁹⁸

- (348) However, carriers competing with New Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP will also benefit from the Linate Decree, perhaps with a delay of one IATA season, and will have the possibility of launching new routes to/from Linate. Even assuming that New Alitalia, Etihad, Air Serbia, Darwin Airline and the EEP could launch new routes to/from Linate more easily than their competitors, the Linate Decree will not have a material effect on competition for flights to/from Milan Malpensa and Milan Linate as a result of the Transaction.
- (349) Assuming that Milan Linate were substitutable with Milan Malpensa,²⁹⁹ New Alitalia's competitors would have ample capacity at the latter airport, which is not slot constrained, to initiate the operation of flights competing with those additional flights that New Alitalia may launch from Milan Linate following the adoption of the Linate Decree.³⁰⁰ If instead Milan Linate and Milan Malpensa were part of different geographic markets, any transfer of flights by New Alitalia from Milan Malpensa to Milan Linate would only have the effect of (i) reducing competition on the relevant O&D routes for other carriers operating from Milan Malpensa, and of (ii) launching new flights from Milan Linate towards destinations that were not served from that airport before.
- (350) Therefore, the Commission considers that any competitive impact that may be linked to the Linate Decree, to the extent that it would be related to the Transaction, does not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

7.8. Other markets (vertical relationships)

- (351) As discussed in Section 6.1.3, the Parties are active to a limited extent on markets which are vertically linked with the market for air transport of passengers, including maintenance, repair and overhaul (MRO) services, flight simulator training, ground-handling, catering, and loyalty programs.

7.8.1. Maintenance, repair and overhaul (MRO) services

- (352) Alitalia is active in MRO at the Rome Fiumicino (FCO) and Milan Malpensa (MXP) airports. Alitalia conducts line maintenance for its own aircraft and for a number of third parties (including Etihad in FCO and MXP) and it outsources heavy maintenance services to external suppliers.³⁰¹ Etihad is active in the provision of both line and heavy maintenance. However,

²⁹⁸ Replies to Q1 – Questionnaire to competitors, question 33.1.

²⁹⁹ See section 6.2.7.2.2 of this decision for an assessment of substitutability between Milan Linate and Milan Malpensa.

³⁰⁰ Assoclearance Associazione Italiana Gestione Clearance e Slots' reply to Q9 – Questionnaire to slot managers, questions 3 and 4. Bergamo Orio al Serio and Milan Malpensa are not congested airports and requests for new slots can be accommodated by the slot coordinator of the two airports.

³⁰¹ As regards engine maintenance and component maintenance, Alitalia has a 15% non-controlling shareholding in AMS Holding S.p.A., which controls Alitalia Maintenance Systems S.p.a a provider of engine, Auxiliary Power Units (A.P.U.) and Aeronautical Component maintenance. Neither Etihad, nor ADAT carry out any engine or component maintenance in the EEA or in the United Arab Emirates. None of Etihad's Equity Partners carry out engine or component maintenance.

Etihad does not provide line maintenance services or heavy maintenance services in the EU, the sole exception being the provision of line maintenance at Dublin airport. Etihad's only third party client for light maintenance at Dublin airport is Etihad. Darwin Airline self-supplies line maintenance services at Geneva and Zurich airports and airberlin provides line maintenance services for its own aircraft and third parties at Düsseldorf (DUS), Munich (MUC) and Berlin Tegel (TXL) airports. Air Serbia, Darwin Airline and airberlin outsource heavy maintenance services to external suppliers.

7.8.2. *Flight Training Services*

(353) Alitalia owns three Full Flight Simulators ("FFS") which are located at Rome Fiumicino (FCO). Alitalia also operates FSS owned by CAE Inc. which are used to provide training to third parties. In addition, Alitalia also uses third parties' FFS to ensure its pilots can maintain their licenses or train for aircraft for which it does not own or operate FFS. Etihad owns four FFS all of which are located in the United Arab Emirates. [...]. Etihad provides flight training services in Abu Dhabi (AUH) to its own pilots and those of its EEP. [...].

7.8.3. *Ground Handling Services*

(354) Alitalia performs ground handling services for its own operations (self-handling) at Milan Linate, Reggio Calabria and Rome Fiumicino airports. In addition, Alitalia offers its ground handling services to third parties at Rome Fiumicino. Etihad provides ground handling services in Abu Dhabi (AUH). Air Serbia has a wholly owned subsidiary Su-Port which provides ground handling services at Belgrade (BEG) airport to Air Serbia, Etihad and Darwin Airline. Neither the EEP nor Darwin Airline provide ground-handling services in the EEA.

7.8.4. *In-flight Catering*

(355) Alitalia does not provide any catering services and has outsourced all of its catering requirements to third parties. Etihad does not provide any catering services in the EEA.³⁰² Air Serbia sources catering services and does not offer catering services to third parties. Therefore, the Transaction does not lead to any vertical links in relation to the market for in-flight catering in the EEA.

7.8.5. *Loyalty Programs*

(356) Both Alitalia and Etihad operate FFPs. Alitalia Loyalty is a company dedicated to the operation and development of Alitalia's FFP, the MilleMiglia Programme. On 31 December 2013, MilleMiglia had 1.1 million active members and a total of 4.45 million registered members.³⁰³ Etihad has been operating the Etihad Guest FFP since 2006. Etihad Guest now has more than 2.5 million members. In 2012, Etihad acquired 70% of airberlin's loyalty programme, Top-

³⁰² Etihad does provide catering services to itself and third parties at Abu Dhabi (AUH) airport, through its subsidiary Etihad Airport Services – Catering.

³⁰³ Alitalia Loyalty was established as a wholly owned subsidiary in January 2013 by Alitalia which transferred into it the going concern relating to its loyalty activities and the management of MilleMiglia, and launched a new MilleMiglia programme from 1 January 2013. Alitalia and Alitalia Loyalty have a framework agreement which governs all intra-group services and defines all economic fundamental elements of the services.

bonus³⁰⁴ and in 2014 Etihad acquired 50.1% of Jet Privilege, Jet Airways' loyalty programme.³⁰⁵

7.8.6. *Assessment*

(357) The Transaction does not give rise to any horizontally affected market in relation to MRO services, flight simulator training, ground-handling, catering, and loyalty programs. Likewise, the Transaction does not give rise to any vertically affected market.³⁰⁶

(358) The Notifying Parties were not in a position to provide market share estimates for MRO services provided by airberlin at the Düsseldorf (DUS), Munich (MUC) and Berlin Tegel (TXL) airports. However, it seems very unlikely that airberlin will have the ability and the incentive to engage in input or customer foreclosure. Furthermore, any foreclosure by airberlin in the MRO segment at Düsseldorf (DUS), Munich (MUC) and Berlin Tegel (TXL) airports would not materially affect competition. Lufthansa Technik and other MRO providers are also active at Düsseldorf (DUS), Munich (MUC) and Berlin Tegel (TXL) airports and exercise a significant constraint on airberlin. Furthermore, in addition to airberlin, a number of carriers fly to/from Düsseldorf (DUS), Munich (MUC) and Berlin Tegel (TXL) airports and are potential customers for MRO services.

(359) A majority of competitors that have expressed a view as to whether the Transaction would have an impact on the markets for MRO services, flight-training services, ground handling services and for loyalty programmes have considered such an impact to be limited.³⁰⁷

7.8.7. *Conclusion*

(360) In light of the above and of the 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 MRO services, flight-training services, ground handling services and for loyalty programmes under any plausible market definitions.

8. COMMITMENTS

(361) In order to address the serious doubts raised by the Transaction on the Rome (Fiumicino)–Belgrade route, the Notifying Parties submitted commitments on 27 October 2014. On 28 October 2014, the Commission launched a market test in order to gather the opinion of market participants. Following the market test, an improved version of the commitments was submitted by the Notifying Parties on 10 November 2014 (the "Final Commitments"). As will be shown below, the Commission considers these Final Commitments suitable to entirely remove the serious doubts identified.

³⁰⁴ Which was notified and cleared by the German and Austrian competition authorities.

³⁰⁵ All of the above loyalty programmes are managed by and report into the Global Loyalty Company, a wholly owned subsidiary of the Etihad Group.

³⁰⁶ The Notifying Parties submit that the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged are less than 30%. See the Notifying Parties' reply to RFI 22 of 30 October 2014, question 3.

³⁰⁷ Replies to Q1 – Questionnaire to competitors, questions 39 and 43.

(362) The Final Commitments aim at reducing the barriers to entry and facilitating entry for a prospective entrant on the Rome (Fiumicino)–Belgrade route. Specifically, the Notifying Parties undertake to make available slots to allow the operation of two daily frequencies on the Rome (Fiumicino)–Belgrade route (the "Slot Commitment"). By providing for the release of sufficient slots to operate two daily frequencies on the Rome (Fiumicino)–Belgrade route, the Final Commitments would enable (i) a new entrant to operate daily return flights on the route or (ii) entry by more than one carrier on that route. Moreover, the Final Commitments attempt to make the Slot Commitment very attractive by giving access to the full range of airport infrastructure including parking and access to gates, and by allowing the new entrant to enter into a Special Prorate Agreement ("SPA") with the Parties (New Alitalia, Etihad and Air Serbia) (the "SPA Commitment"), a fare combinability agreement, an interlining agreement, and have access to the Parties' FFPs.³⁰⁸

(363) The main aspects of the Final Commitments are summarised below.

8.1. Description of the main elements of the Final Commitments

8.1.1. Slot release on the route where serious doubts arise

(364) Under the Final Commitments, the Parties will make available slots to allow a prospective entrant to operate two daily frequencies on the Airport Pair (the "Slots"). The "Airport Pair" is defined as the Rome (Fiumicino)–Belgrade airport pair. Slots are defined in the Final Commitments as the permission given to the prospective entrant to use the full range of airport infrastructure including parking and access to gates at the airport that is necessary to operate an air service at the airport on a specific date and time for the purpose of landing or take-off in accordance with the EU Slot Regulation, or equivalent legislation.

8.1.2. The Slot Commitment

(365) The Parties will make Slots available within twenty (20) minutes of either side of the time requested by the prospective entrant. A prospective entrant shall be eligible to obtain Slots from the Parties pursuant to the Final Commitments only if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary slots to operate on the Airport Pair through the normal steps of the general slot allocation procedure. The prospective entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary slots if, among others: (a) slots at Rome (Fiumicino) and Belgrade airport were available for the time requested and were not accepted by the prospective entrant, (b) slots at Rome (Fiumicino) or Belgrade airport were obtained to operate on the Rome (Fiumicino)–Belgrade route outside the 20 minutes time window provided for in the Final Commitments and the prospective entrant did not give the Parties the opportunity to exchange those slots for Slots under the Final Commitments; or (c) the prospective entrant has not exhausted its own slot portfolio at Rome (Fiumicino) and Belgrade airport.

³⁰⁸ When compared with the commitments submitted on 27 October 2014, the Final Commitments provide for the following main amendments (i) an increased number of slots, from 9 weekly slots to 2 daily slots, at Rome Fiumicino (FCO) and at Belgrade (BEG) airport; (ii) access to slots under the commitments is no longer limited to one carrier; (iii) the grandfathering rights are no longer restricted to Europe, once grandfathering rights are acquired on the slots, the latter can be used without any geographic restriction; and (iv) the scope of the SPA is no longer limited to traffic with a true origin/destination in Europe.

8.1.2.1. Grandfathering rights

(366) The Slots obtained by a prospective entrant under the Final Commitments must be used to provide a non-stop scheduled passenger air transport service operated on the Rome (Fiumicino)–Belgrade route and cannot be used on another city pair unless the prospective entrant has operated such service during 4 consecutive IATA seasons (the "Utilization Period"). Once the Utilization Period has elapsed, the prospective entrant will be entitled to use the Slots to operate any O&D route ("grandfathering"). Grandfathering is subject to approval of the Commission, advised by the Monitoring Trustee.

8.1.2.2. Ranking of the prospective entrants applying for Slots

(367) Under the Final Commitments, the Commission, advised by the Monitoring Trustee, will collect bids for the Slots and assess whether an applicant is a viable existing or potential competitor with the ability, resources and commitment to operate services on the Airport Pair in the long term as a viable and active competitive force.

(368) The Commission will rank the bids received and will give preference to the applicant which will exert the most effective overall competitive constraint on the Airport Pair.

8.1.3. *The SPA Commitment*

(369) In addition to the Slot commitment, the Parties will enter into an SPA with any requesting carrier (irrespective of whether such carrier commenced non-stop services on the basis of slots obtained from the Parties under the Final Commitments) for all traffic, provided that part of the journey involves the Airport Pair.

(370) The requesting carrier may select for the Airport Pair up to a maximum of fifteen (15) behind/beyond routes for each of the Parties.

(371) The requesting carrier may select the fare class(es) to which the SPA will apply, provided that that on the Airport Pair each selected fare class is included in at least one existing special prorate agreement which the relevant Party has agreed with any other carrier with regard to the routes concerned (subject to certain exclusions).

(372) The SPA shall be on terms which are at least as favourable as the terms agreed by the relevant Party under an existing special prorate agreement with any other carrier for the same route and in the same fare class (subject to certain exclusions).

8.1.4. *Fare combinability agreements*

(373) The Parties will, at the request of any carrier which operates or has started to operate a non-stop service on Rome (Fiumicino)–Belgrade route (whether or not such service uses Slots released to that carrier pursuant to the Final Commitments), enter into an agreement that arranges for fare combinability on the Airport Pair across all classes of tickets. Such agreement will provide for the possibility for such requesting carrier (or travel agents), to offer a return trip on the Airport Pair comprising a non-stop service provided one way by the Parties and a non-stop service provide the other way by the requesting carrier.

8.1.5. *Interlining agreements*

(374) At the request of any airline operating a new service on the Airport Pair or which increases the number of non-stop frequencies it operates on the Airport Pair in accordance to the Final

Commitments, the Parties will enter into an Interline Agreement concerning the Airport Pair when they offer connection flights.

8.1.6. *Frequent flyer programmes*

(375) At the request of any airline operating a new service on the Airport Pair or which increases the number of non-stop frequencies it operates on the Airport Pair in accordance to the Final Commitments that does not have a comparable FFP of its own and does not participate in any of the Parties' FFPs, the Parties will allow it to be hosted in their FFPs for the Airport Pair on which it has commenced or increased service.

8.1.7. *Monitoring Trustee*

(376) A Monitoring Trustee shall be appointed by the Notifying Parties to monitor the correct execution of the Final Commitments, subject to prior approval by the Commission. The Monitoring Trustee, which shall be independent from the Parties, must be familiar with the airline industry and the slot allocation and exchange procedures, and have the experience and competence necessary for this appointment.

(377) The Parties will be under the obligation to provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate. In particular, the Monitoring Trustee will have full and complete access to any of the Parties' books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under the Final Commitments.

8.1.8. *Fast track dispute resolution*

(378) The Final Commitments also provide that the agreements concluded to implement the Final Commitments will provide for a fast-track dispute resolution procedure as described in the Final Commitments. If the prospective entrant or the requesting carrier has reason to believe that the Parties are failing to comply with the requirement of the Final Commitments vis-à-vis that party, the fast-track dispute resolution procedure in the Final Commitments will apply.

8.2. **Analysis of the Final Commitments**

(379) As set out in the Commission Notice on Remedies,³⁰⁹ the Commission assesses the compatibility of a notified concentration with the internal market on the basis of its effect on the structure of competition in the European Union. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the Parties may seek to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the concentration cleared.

(380) According to the European Union Courts' case law, commitments must be likely to eliminate all competition concerns identified and ensure competitive market structures. In particular, contrary to those entered into after the Commission initiated proceedings, commitments offered prior to the initiation of proceedings are not intended to prevent a significant impediment on effective competition but rather to clearly dispel all serious doubts in that regard. The

³⁰⁹ Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1.

Commission enjoys a broad discretion in assessing whether such commitments constitute a direct and sufficient response capable of dispelling any such doubts.

- (381) In assessing whether or not the Final Commitments will maintain effective competition, the Commission considers *inter alia* the type, scale and scope of the remedies offered by reference to the structure and the particular characteristics of the market in which the Commission's serious doubts as to the compatibility of the Transaction with the internal market arise. It should be highlighted, however, that commitments offered prior to the initiation of proceedings can only be accepted when the competition problem that the concentration gives rise to is readily identifiable and can easily be remedied.
- (382) Concerning the suitability of commitments aiming at facilitating entry of a new competitor, the Commission Notice on Remedies states that "*[o]ften, a sufficient reduction of entry barriers is not achieved by individual measures, but by [...] a commitments package aimed at overall facilitating entry of competitors by a whole range of different measures*".
- (383) In airline cases, commitments are acceptable to the Commission where it is sufficiently clear that actual entry by new competitors would occur and where such entry would eliminate any serious doubts as to the compatibility of the concentration with the internal market. In this respect, account must be taken of the facts existing at the time when the decision is adopted and not in the light of subsequent events.³¹⁰
- (384) The Final Commitments constitute a comprehensive package which takes into consideration past experience with commitments in merger cases in the aviation sector.
- (385) For the reasons set out below and on the basis of the available evidence, the Commission has concluded that the Final Commitments address the serious doubts identified in this decision. As such, the Commission comes to the conclusion that the Final Commitments entered into by the Notifying Parties are sufficient to eliminate any serious doubts as to the compatibility of the Transaction with the internal market.

8.2.1. *The Slot Commitment*

8.2.1.1. Structure and design of the Final Commitments

- (386) The Final Commitments take account of the fact that slot congestion is a material entry barrier on the Rome (Fiumicino)–Belgrade route in particular at Rome (Fiumicino). Rome (Fiumicino) is a coordinated airport with slot shortage during peak times (see Section 7.4.2.4). The Final Commitments do not contain any specific limitation regarding the number of Slots to be released at peak hours. Furthermore, the Final Commitments also provide for access to the relevant airport infrastructure, including parking and gates that are necessary to operate on the Airport Pair.
- (387) Therefore, the Final Commitments are designed to and will effectively remove this entry barrier and foster sufficient, timely, and likely entry on the Rome (Fiumicino)–Belgrade route.

³¹⁰ Cf. point 63 of the Commission Notice on Remedies, and Case T-177/04 *easyJet v Commission* [2006] ECR II-1931, para 197 ff. Point 63, footnote (4), of the Commission Notice on Remedies state that, in air transport mergers, a mere reduction of barriers to entry by a commitment of the parties to offer slots on specific airports may not always be sufficient to ensure the entry of new competitors on those routes where competition problems arise and to render the remedy equivalent in its effects to a divestiture.

- (388) Should Slots (and access to infrastructure) be necessary at Belgrade airport (which for the time being is not congested), the new entrant would also have access to Slots and the relevant infrastructure in that airport under the Final Commitments.
- (389) The Slots offered for free under the Slot Commitment exceed the increment brought about by the Transaction because in the Final Commitments the Parties have taken into account the fact that they codeshare on each other's flights and thus can offer a number of frequencies that is greater than the increment resulting from the Transaction.
- (390) The attractiveness of the Slots at Rome (Fiumicino) airport is enhanced by the Final Commitments due to the prospect of acquiring grandfathering rights without any territorial restriction after four IATA seasons. The Commission considers that the possibility to acquire grandfathering rights after a relatively short period materially improves the incentive of new entrants to operate on the Rome (Fiumicino)-Belgrade route.
- (391) A majority of respondents to the market test expressing an opinion welcomed the commitment to release Slots for the Rome (Fiumicino)-Belgrade route, thereby facilitating new entry.³¹¹
- (392) In addition, it should be noted that some of the Parties' main competitors already have operations at one or even both of the airports concerned.
- (393) Moreover, in the past competitors were able to attain considerable market shares on the Rome (Fiumicino)-Belgrade route with limited frequencies. For instance, easyJet acquired a [30-40]% market share (all passengers) on the route in the summer 2014 IATA season with 3 weekly frequencies– at the same time, the Parties operated 19 weekly frequencies.³¹²

8.2.1.2. Conclusion

- (394) Without the Slot commitments a new entrant at Rome (Fiumicino) would have no guarantee of obtaining the required slot pair at the appropriate times, allowing for an optimised rotation of aircraft on the Rome (Fiumicino)-Belgrade route. By contrast, with the Slot commitment, the Slot allocation mechanism in the Final Commitments ensures that a prospective new entrant will in all probability receive the requested Slots in an appropriate window of +/- 20 minutes from the initial request.
- (395) In light of the above and the available evidence, in particular the market test, during which some airlines expressed an interest in obtaining Slots under the Final Commitments and indicated likely and timely entry on the Rome (Fiumicino)-Belgrade route, the Commission concludes that the Slot commitment is a key element in facilitating timely and likely entry on the Rome (Fiumicino)-Belgrade route. The scope of entry will suffice to dispel the serious doubts identified on that route (on all possible passenger segments).

³¹¹ Responses to R1 – Market test of commitments – competitors, question 1; responses to R2 – Market test of commitments – other market participants, question 1;

³¹² The Notifying Parties' Reply to RFI 18 of 21 October 2014, annex RFI-18.2(a).

8.2.2. *The SPA Commitment*

8.2.2.1. The market test

(396) Under the SPA offered by the Notifying Parties, an applicant can select up to 15 behind / beyond routes. A majority of all respondents expressing an opinion in the market test regarded those terms as appropriate.³¹³ Some respondents indicated that the number of beyond/behind routes foreseen in the Commitments (15) might be arbitrarily chosen.³¹⁴ However the 15 largest connecting routes of the Parties altogether represent a significant proportion (about [50-60]%)³¹⁵ of the Parties' own feed that they currently receive on their Rome (Fiumicino)–Belgrade non-stop services. The Commission therefore deems the number of 15 beyond/behind routes appropriate under these circumstances.

(397) While competitors considered that it would likely not be the determining factor on whether to operate on the route, other respondents expressing an opinion stated that the SPA commitment on the Rome (Fiumicino)–Belgrade route increased the likelihood that new entry would take place on that route.³¹⁶ The Commission therefore considers that the SPA is a relevant element for sustainable operations on that route.

8.2.2.2. Conclusion

(398) In light of the above and of the other available evidence, the Commission concludes that the SPA is likely to increase the likelihood of sustainable entry on the Rome (Fiumicino)–Belgrade route in a timely manner.

8.2.3. *Other Commitments*

(399) As regards other provisions of the Final Commitments, such as the possibility for a new entrant to enter into a fare combinability agreement with the Parties and/or to participate in the Parties' FFPs, respondents to the market test considered those provisions generally as potentially additional, although not critical, incentives for a new entrant.³¹⁷

(400) The Commission considers that such substantial additional elements reinforce the other commitments and further increase the likelihood of sustainable entry on the Rome (Fiumicino)–Belgrade route.

8.3. **Overall conclusion on the Final Commitments**

(401) In this case, several competitors responding to the market test expressed an interest in entering the Rome (Fiumicino)–Belgrade route in the coming four to six IATA seasons.

³¹³ Responses to R1 – Market test of commitments – competitors, question 6; responses to R2 – Market test of commitments – other market participants, question 6.

³¹⁴ Responses to R1 – Market test of commitments – competitors, question 6.1.

³¹⁵ The Notifying Parties' Reply to RFI 24 of 31 October 2014, Table 4.

³¹⁶ Responses to R1 – Market test of commitments – competitors, question 7; responses to R2 – Market test of commitments – other market participants, question 7.

³¹⁷ Responses to R1 – Market test of commitments – competitors, questions 8, 9, and 10; responses to R2 – Market test of commitments – other market participants, questions 8, 9, and 10.

- (402) Overall a large majority of all respondents expressing an opinion in the market test expressed the view that the Final Commitments clearly dispelled the serious doubts the Commission identified as regards the compatibility of the Transaction with the internal market with respect to the Rome (Fiumicino)–Belgrade route.³¹⁸
- (403) Moreover, credible interest concerning likely and timely entry on that route was expressed during the market test of the commitments submitted on 27 October 2014.
- (404) In the light of the above and the available evidence, the Commission therefore considers that the Final Commitments will lead to sufficient, timely and likely entry on the Rome (Fiumicino)–Belgrade route.
- (405) It therefore follows that the Final Commitments are sufficient to eliminate all serious doubts as to the compatibility of the Transaction with the internal market identified in this decision.

9. CONDITIONS AND OBLIGATIONS

- (406) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (407) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Notifying Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (408) In accordance with the distinction described above, the decision in this case is conditioned on the full compliance with the requirements set out in sections 1, 2, 3, 4, and 5 of the Final Commitments (conditions), whereas the other sections of the Final Commitments constitute obligations on the Notifying Parties.
- (409) The detailed text of the Final Commitments is annexed to the present decision. The full text of the Final Commitments forms an integral part to this decision.

10. CONCLUSION

- (410) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the Final Commitments and to declare it compatible with the internal market and with the EEA Agreement, subject to full compliance with the conditions and obligations laid down in the Final Commitments annexed to the present decision. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

³¹⁸ Responses to R1 – Market test of commitments – competitors, question 15; responses to R2 – Market test of commitments – other market participants, question 14.

*For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission*

Case M. 7333 – Alitalia / Etihad
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 ("*Merger Regulation*"), **Alitalia Compagnia Aerea Italiana S.p.A.** ("*Alitalia*") and **Etihad Airways PJSC** ("*Etihad*"), (together with Alitalia, "*Parties*") hereby enter into the following Commitments ("*Commitments*") in order to enable the European Commission ("*Commission*") to declare the acquisition of joint control by the Parties over New Alitalia ("*Concentration*") compatible with the internal market and the functioning of the EEA Agreement by a decision pursuant to Article 6(1)(b) of the Merger Regulation ("*Decision*").

The Commitments shall take effect upon the date of adoption of the Decision and subject to Closing of the Transaction. The Parties commit to procure that the Commitments will be binding on any successor company arising from the Concentration.

This text shall be interpreted in light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("*Remedies Notice*").

Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Airport Pair: The airport pair consisting of FCO-BEG.

Applicant: Any airline interested in obtaining Slots from the Parties in accordance with these Commitments.

BEG: Belgrade Nikola Tesla Airport, Serbia.

Commitment(s): The Slot Commitment for the Airport Pair and/or, as relevant, the commitment relating to Fare Combinability Agreements and/or, as relevant, the commitment relating to Special Prorate Agreements and/or, as relevant, the commitment relating to Interlining Agreements and/or, as relevant, the commitment granting the Prospective Entrant access to the Parties' Frequent Flyer Programme on the Airport Pair.

Competitive Air Service: A non-stop scheduled passenger air transport service operated on the Airport Pair.

Closing of the Concentration: The day on which the Concentration closes. On that date Etihad will subscribe to New Alitalia shares.

Effective Date: The date of the adoption of the Decision pursuant to the Merger Regulation.

Etihad's Equity Partners: Etihad's existing and future equity and strategic partners, currently being Air Serbia, airberlin, Darwin Airlines, Air Seychelles, Jet Airways, Virgin Australia and Aer Lingus.

EU Slot Regulation: Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14 of 22.01.1993), as amended.

Fare Combinability Agreement(s): An agreement by which a New Air Service Provider, or travel agents, is able to offer a return trip on the Airport Pair comprising a non-stop service provided one way by the Parties.

Fast-Track Dispute Resolution Procedure: This term has the meaning given in Clause 7.

FCO: Rome Fiumicino airport, Italy.

FFP Agreement(s): An agreement by which an airline operating a Frequent Flyer Programme allows another airline to participate in that FFP.

Frequency(ies): A round-trip on the Airport Pair.

Frequent Flyer Programme (or FFP): A programme offered by an airline to reward customer loyalty under which members of the programme accrue points for travel on that airline which can be redeemed for free air travel and other products or services, as well as allowing other benefits such as airport lounge access or priority bookings.

General Slot Allocation Procedure: The slot allocation procedure for FCO and, as relevant, BEG as set out in the EU Slot Regulation and IATA Worldwide Slot Guidelines (including participation at the IATA Slot Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline), and equivalent procedures for slot allocation at BEG.

Grandfathering: This term has the meaning given in Clause 1.2.8.

IATA: The International Air Transport Association.

IATA Season: The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March.

IATA Slot Conference: The industry conference of airlines and airport coordinators worldwide to solve scheduling issues where there are discrepancies between the slots requested by the airlines and allocated by the airport coordinators. The IATA Slot Conference for the Winter Season takes place in June, and the one for the Summer Season in November.

ICC: International Chamber of Commerce.

Indemnified Party: This term has the meaning given in Clause 6.2.8.

Interlining Agreement(s): It is an agreement between two or more airlines under which the contracting airlines accept each other's travel documents (*e.g.* tickets).

Key Terms: The following terms that shall be included in the Applicant's formal bid for Slots: timing of the Slot, number of frequencies and IATA Seasons to be operated (year-round service or seasonal).

Miles: The credits awarded by an airline to members of its FFP. Such credits include standard reward points only and do not include tier or status points.

Misuse: This term has the meaning given in Clause 1.2.10.

MITA Manual: Multilateral Interline Traffic Agreements Manual published by IATA.

Monitoring Trustee: An individual or institution, independent of the Parties, who is approved by the Commission and appointed jointly by the Parties and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

New Air Services Provider: An airline that is not an Etihad Equity Partner and which commences a new non-stop service on the Airport Pair or which increases the number of non-stop Frequencies it operates on the Airport Pair in accordance with the Commitments.

New Alitalia: New Alitalia as defined in the Decision and any successor thereof.

Parties: as the case may be, Alitalia New Alitalia, Etihad and Air Serbia, each being referred to as "Party".

Prospective Entrant: Any Applicant that is able to offer a Competitive Air Service on the Airport Pair that is independent and unconnected with the Parties, (and excluding for the avoidance of doubt any Etihad Equity Partner).

For the avoidance of doubt, the Prospective Entrant shall comply with the following requirements:

(a) it must be independent of and unconnected with the Parties.

For the purpose of the Commitments, an airline shall not be deemed to be independent of and unconnected to the Parties when, in particular:

(i) it is an associated carrier belonging to the same holding company as one of the Parties; or

(ii) the airline co-operates with the Parties on the Airport Pair(s) concerned in the provision of passenger air transport services, except if this cooperation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis; and

(b) it must have the intention to begin or increase regular non-stop operations on the Airport Pair; and

(c) to that effect, it needs a Slot or several Slots for the operation of a Competitive Air Service which competes with those of the Parties.

Published Fare: It refers to applicable IATA fares published by the Parties in ATPCo in reservation booking designator (or selling classes): Y and J for European short haul city pairs.

Q/YQ/YR Surcharge: Charges paid in addition to the base fare amount of a ticket which are allocated to the Q, YQ or YR IATA ticket coding and which are used in particular to recover carrier-imposed charges.

Requesting Air Services Provider: This term has the meaning given in Clause 3.1.

Requesting Party: This term has the meaning given in Clause 7.2.

Slot Commitment: This term refers to the commitment set out in Clause 1 to make slots available for the operation of one or more Competitive Air Service on the Airport Pair.

Slot Handback Deadline: 15 January for the IATA Summer Season and 15 August for the IATA Winter Season.

Slot Release Agreement: An agreement between any of the Parties and a Prospective Entrant that provides for the exchange of Slot(s) with the Prospective Entrant according to the principles laid down in Clause 1 of the Commitments. For the avoidance of doubt, with respect to Slots at Rome (FCO) airport, the Slot Release Agreement shall abide by the EU Slot Regulation and any exchange pursuant to this agreement shall be confirmed by the slot coordinator. With respect to Slots at BEG airport, the Slot Release Agreement shall comply with the applicable laws and regulations of Serbia, and shall be subject to approval of the BEG slot coordinator or equivalent.

Slot Release Procedure: This term has the meaning given in Clause 1.2.1.

Slot Request Submission Deadline: The final date for the request for slots to the slot coordinator as set out in the IATA Worldwide Slot Guidelines.

Slot(s): For FCO, and for BEG, the permission given to the Prospective Entrant to use the full range of airport infrastructure including parking and access to gates at the airport that is necessary to operate an air service at the airport on a specific date and time for the purpose of landing or take-off in accordance with the EU Slot Regulation, or equivalent legislation.

Special Prorate Agreement(s): An agreement between two or more airlines on the apportionment of through-fares on journeys with two or more legs operated by different airlines.

Straight Rate Prorate: Method of allocating fares between airlines participating in a connecting passenger itinerary under which fares are allocated between the airlines in proportion to their shares of the prorate mileage for the entire journey.

TFEU: The Treaty on the Functioning of the European Union.

Time Window: The period of twenty (20) minutes either side of the Slot time requested by the Prospective Entrant.

Utilisation Period: The Term has the meaning given in Clause 1.2.7 and shall be four (4) consecutive IATA Seasons.

Working Days: Working days are all days other than Saturdays, Sundays and Commission holidays as published in the Official Journal of the European Union.

1. SLOTS

1.1. Airport Pair

- 1.1.1 The Parties undertake to make Slots available at FCO (and at BEG), to allow one or more Prospective Entrant(s) to operate or increase up to double daily Frequencies on the Airport Pair. For the avoidance of doubt, the airport infrastructure (including gates and parking spaces) related to the Slots used to operate flights on the Airport Pair at FCO airport by the Parties currently is and will reasonably remain in the H zone. Accordingly, the infrastructure the Prospective Entrant(s) will obtain from the airport manager at FCO as a result of the Slot Release Agreement will be at least on the same terms as that of the Parties.
- 1.1.2 If the Prospective Entrant that has obtained Slots under the Slot Release Agreement ceases to meet the conditions set out in paragraph (a) of the definition of a Prospective Entrant (*i.e.* it ceases to be independent of and unconnected to one of the Parties), the Parties shall make slots available to Prospective Entrants pursuant to Clause 1.1.1 of the Commitments as of the next relevant IATA Season.
- 1.2. Conditions pertaining to Slots
 - 1.2.1 Each Prospective Entrant shall comply with the following procedure to obtain Slots from the Parties ("Slot Release Procedure").
 - 1.2.2 The Prospective Entrant wishing to commence/increase a Competitive Air Service on the Airport Pair shall:
 - (i) apply to the relevant slot coordinator for the necessary Slots, where applicable, through the General Slot Allocation Procedure, and
 - (ii) notify its request for Slots to the Monitoring Trustee, within the period foreseen in Clause 1.3.1 below.

The Prospective Entrant shall be eligible to obtain Slots from the Parties pursuant to these Commitments only if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary Slots to operate on the Airport Pair through the normal workings of the General Slot Allocation Procedure.

- 1.2.3 For the purposes of Clause 1.2, the Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:
 - (a) FCO and BEG Slots were available through the General Slot Allocation Procedure within the Time Window but such Slots have not been accepted by the Prospective Entrant; or
 - (b) FCO and BEG Slots for use to operate a Competitive Air Service, were available through the General Slot Allocation Procedure outside the Time Window and the Prospective Entrant did not give the Parties the opportunity to exchange those Slots for Slots within the Time Window; or
 - (c) it has not exhausted its own Slot portfolio at FCO and at BEG. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:
 - (i) If the carrier has Slots at the airport within the Time Window which are being leased-out to or exchanged with other carriers (unless that lease or exchange was concluded before the Effective Date or the carrier can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee) that there are bona fide reasons for this being done rather than its being a pretext to enable the carrier to present itself as needing Slots to operate a Competitive Air Service on the Airport Pair); or
 - (ii) If the carrier has Slots at the airport which are outside the Time Window and which are leased-out to other carriers, in which case the Prospective Entrant shall be entitled to apply for Slots from the Parties, but only if:
 - that lease was concluded before the Effective Date; or

- it can provide reasonable evidence satisfying the Commission (following consultation with the Monitoring Trustee) that there are bona fide reasons for leasing the Slot out in this way rather than using it itself; or
- it gives the Parties an option to become the lessee of the leased-out Slot at the earliest possible time allowed under the applicable lease (on terms substantially the same as that lease and for a duration that runs in parallel with the Slot Release Agreement).

For the purposes of Clause 1.2.3 (i) and (ii), the bona fide reasons for leasing out (or, as relevant, exchanging) Slots by the Applicant shall include, but shall not be limited to, a situation where the Applicant can provide clear evidence of an intention to operate those Slots on a specific route and clear and substantiated evidence of its reasons for not currently doing so;

1.2.4 If the Prospective Entrant obtains Slots through the General Slot Allocation Procedure but after the IATA Slot Conference:

- (a) which are within the Time Window; or
- (b) which (in the case of Slots obtained at both ends of the route) are not compatible with the planned flight duration of the Applicant's operation on the Airport Pair,

the Prospective Entrant shall remain eligible to obtain Slots from the Parties provided that it gives an option to the Parties to use the obtained Slots on terms substantially the same as the terms of the Slot Release Agreement, and for a duration that runs in parallel with the Slot Release Agreement.

1.2.5 Without prejudice to these Commitments (and, particularly, to this Clause 1), the Parties shall not be obliged to honour any agreement to make available the Slots to the Prospective Entrant if:

- (a) The Prospective Entrant has not exhausted all reasonable efforts to obtain the necessary Slots to operate a Competitive Air Service on the Airport Pair with the meaning of Clause 1.2.3; or
- (b) The Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 1.2.10 below).

1.2.6 The Parties undertake to make available Slots within the Time Window. In the event that the Parties do not have Slots within the Time Window, they shall offer to release the Slots (and the rights to use the related airport infrastructure subject to the applicable general conditions at FCO airport and BEG airport) closest in time to the Prospective Entrant's request. The Parties do not have to offer Slots if the Slots which the Prospective Entrant could have obtained through the General Slot Allocation Procedure are closer in time to the Prospective Entrant's request than the Slots that the Parties have. The arrival and departure Slot times shall be such as to allow for reasonable aircraft rotation, taking into account the Prospective Entrant's business model and aircraft utilisation constraints.

Grandfathering of Slots

1.2.7 As a general rule, the Slots obtained by the Prospective Entrant from the Parties as a result of the Slot Release Procedure shall be used only to provide a Competitive Air Service on the Airport Pair for which the Prospective Entrant has requested then from the Parties through the Slot Release Procedure. These Slots cannot be used on another city pair unless the Prospective Entrant has operated the airport Pair for which these Slots have been transferred for a number of full consecutive IATA Seasons ("Utilisation Period").

1.2.8 The Prospective Entrant will be deemed to have grandfathering rights for the Slots once the appropriate use of the Slots has been made on the Airport Pair for the Utilisation Period. In this regard, once the Utilisation Period has elapsed, the Prospective Entrant will be entitled to use the Slots obtained on the basis of these Commitments without restriction ("Grandfathering").

- 1.2.9 Grandfathering is subject to approval of the Commission, advised by the Monitoring Trustee, in accordance with Clause 1.3. The Commission's approval shall be conditional on the Prospective Entrant committing that if it ceases to use the Slots in question for the purposes described in Clause 1.2.7, it will return the Slots in question to the Parties, or if the Parties do not want the return of the Slots, to the slot coordinator.
- 1.2.10 During the Utilisation Period, "Misuse" shall be deemed to arise where a Prospective Entrant which has obtained Slots released by the Parties decides:
- (a) not to commence services on the Airport Pair;
 - (b) to operate fewer weekly Frequencies than those to which it committed in the bid in accordance with Clause 1.3.7 on the Airport Pair or to cease operating on the Airport Pair unless such a decision is consistent with the "use it or lose it" principle in Article 10(2) of the EU Slot Regulation (or any suspension thereof), or in the case of Slots at BEG, any applicable minimum usage requirement imposed by order or regulation by BEG;
 - (c) to transfer, assign, sell, swap, sublease or charge any Slot released by the Parties on the basis of the Slot Release Procedure, except for changes to the Slot which are within the Time Window and which have been agreed with the slot coordinator;
 - (d) not to use the Slots on the Airport Pair, as proposed in the bid in accordance with Clause 1.3.7; or
 - (e) not to use the Slots properly, this situation being deemed to exist where the Prospective Entrant (i) loses the series of Slots at Rome (FCO) as a consequence of the principle of "use it or lose it" in Article 10(2) of the EU Slot Regulation or (ii) misuses the Slot at Rome (FCO) as described and interpreted in Article 14(4) of the EU Slot Regulation or (iii) with respect to Slots at BEG, fails to comply with any conditions imposed by the slot coordinator at BEG upon the use of the Slots.
- 1.2.11 If the Parties or the Prospective Entrant that has obtained Slots under the Slot Release Procedure become aware of or reasonably foresee any Misuse by the Prospective Entrant during the Utilisation Period, they shall immediately inform the other Parties and the Monitoring Trustee. The Prospective Entrant shall have thirty (30) days after such notice to cure the actual or potential Misuse. If the Misuse is not cured, the Parties shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to the Parties. In cases (a) and (b) of Clause 1.2.10, the Parties shall then use their best efforts to re-deploy the Slots in order to safeguard grandfathering or, in the case Slots at BEG, to prevent loss of the Slots pursuant to any applicable minimum usage requirement imposed by order or regulation by BEG. If despite their best efforts, the Parties are not able to retain grandfathering for these Slots, or, in the case Slots at BEG, to prevent loss of the Slots pursuant to any applicable minimum usage requirement imposed by order or regulation by BEG, or in case of a Misuse as defined in cases (c), (d) or (e) of Clause 1.2.10, the Prospective Entrant shall provide reasonable compensation to the Parties as provided for in the Slot Release Agreement.
- 1.2.12 The Slot Release Agreement may:
- (i) contain prohibitions on the Prospective Entrant transferring its rights to the Slots to a third party, making the Slots available in any way to a third party for the use of that third party, or releasing, surrendering, giving up or otherwise disposing of any rights to the Slots,
 - (ii) provide for reasonable compensation to the Parties in case of Misuse during the Utilisation Period. If for any reason (including, but without limitation, the insolvency of the Prospective Entrant) the Parties are unable to receive reasonable compensation for the Slots being either lost or not returned within sufficient time for the Parties to preserve their grandfathering or in the case Slots at BEG, to prevent loss of the Slots pursuant to any applicable minimum usage requirement imposed by order or regulation by BEG, such Slots shall be counted against the maximum number of Slots to be released in accordance with the Commitments.

1.2.13 The Slot Release Agreement shall provide that the Prospective Entrant will be able to terminate the agreement at the end of each IATA Season without penalty, provided the Prospective Entrant notifies the termination of the agreement to the Parties in writing no later than ten (10) working days after the IATA Slot Conference.

1.3. Selection procedure, role of Monitoring Trustee and approval by Commission

1.3.1 At least seven (7) weeks before the Slot Request Submission Deadline, any airline wishing to obtain Slots from the Parties pursuant to the Slot Release Procedure shall:

- (a) inform the Monitoring Trustee of its proposed Slot Request (indicating the arrival and departure times);
- (b) submit to the Monitoring Trustee the list of its leased out or exchanged Slots at any airport for which it seeks Slots, along with the date at which the leases or exchanges were concluded. The Monitoring Trustee or the Commission may also request additional information from the Applicant to enable assessment of its eligibility pursuant to Clause 1.3.4;
- (c) indicate to the Monitoring Trustee if it has any confidentiality concerns which would justify keeping its identity anonymous vis-à-vis the Parties, in which case it must provide a reasoned explanation of those concerns together with its request for anonymity. In the event that such a request is made, the Monitoring Trustee shall:
 - (i) immediately inform the Commission of that request,
 - (ii) within one (1) week of that request advise the Commission whether or not that request should be granted, and
 - (iii) within three (3) weeks of the request, in consultation with the Commission, determine whether or not the Applicant's Slot request may be treated anonymously (and, if so, to what extent, subject to what conditions and for what period).

If the Applicant requests Slots at BEG, it shall at the same time also apply to the BEG slot coordinator in accordance with the applicable rules and procedures.

1.3.2 At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall forward the Slot Request to the Parties and to the Commission. Once informed of the Slot Request, the Parties may discuss with the Applicant the timing of the Slots to be released. The Parties shall copy the Monitoring Trustee on all correspondence between the Parties and the Applicant which relates to the Slot Release Procedure. The Parties shall not share any information about such discussions with other Applicants and may require the Applicant not to share any such information with other Applicants. At least six (6) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall also inform the relevant airport manager and the slot coordinator of the Slot request and, subject to the Applicant's consent, disclose to them any relevant information regarding the Slot request. The Monitoring Trustee shall ask the airport manager and the slot coordinator to inform it of any likely impediments to the satisfaction of the request, in particular due to the availability of terminal facilities and infrastructure.

1.3.3 If the Applicant has made a request for anonymity in accordance with Clause 1.3.1(c), the Monitoring Trustee and the slot coordinator shall not disclose to the Parties the identity of the Applicant. In such a case, the procedure set down in this Clause 1.3 shall apply, save that, until the beginning of the IATA Slot Conference, any communication or correspondence between the Parties and the Applicant shall go through the Monitoring Trustee, who shall ensure the protection of the anonymity of the Applicant.

1.3.4 After being informed of the Slot Request in accordance with Clause 1.3.2, the Commission (advised by the Monitoring Trustee) shall assess whether the Applicant meets the following criteria:

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

- (b) the Applicant has exhausted its own Slot portfolio at any airport for which it seeks Slots in accordance with Clause 1.2.3.

If the Commission decides that the Applicant does not fulfil the above criteria, the Commission shall inform the Applicant and the Parties of that decision at least two (2) weeks before the Slot Request Submission Deadline.

- 1.3.5 At least one (1) week before the Slot Request Submission Deadline, the Parties shall indicate to the Monitoring Trustee and each Applicant which Slots at each airport for which the Applicant seeks Slots they would release, if necessary, during the Time Window.
- 1.3.6 By the Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the Slot Release Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure, or equivalent procedure. .
- 1.3.7 By the Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Monitoring Trustee. The formal bid shall include at least:
- (a) the Key Terms (i.e. timing of the Slot, number of frequencies and IATA Season(s) to be operated).
- (b) a detailed business plan. This plan shall contain a general presentation of the company, including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The detailed business plan shall provide information on the plans that the company has in terms of access to capital, development of its network, fleet etc. and detailed information on its plans for the Airport Pair. The latter should specify in detail planned operations on the Airport Pair over a period of at least two (2) IATA Seasons (size of aircrafts, seat configuration, total capacity and capacity by each class, number of frequencies operated, pricing structure, service offerings, planned time-schedule of the flights) and expected financial results (expected traffic, revenues, profits, average fare by cabin class). The Monitoring Trustee and/or the Commission may also request any additional information and documents from the Applicant required for their assessment, including a copy of all cooperation agreements the Applicant may have with other airlines. Business secrets and confidential information will be kept confidential by the Commission and the Monitoring Trustee and will not become accessible to the Parties, other undertakings or the public.
- 1.3.8 Within ten (10) working days of receiving the applications the Parties may provide the Monitoring Trustee with a ranking of these offers.
- 1.3.9 Having received the formal bid(s), the Commission (advised by the Monitoring Trustee) shall:
- (a) assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Airport Pair in the long term as a viable and active competitive force; and
- (b) evaluate the formal bids of each Applicant, that meets (a) above, and rank these Applicants in order of preference.
- 1.3.10 In conducting its evaluation in accordance with Clause 1.3.9, the Commission shall give preference to the Applicant (or combination of Applicants) which will provide the most effective competitive constraint on the Airport Pair, without regard to the country in which the Applicant(s) is licensed or has its principal place of business. Furthermore, the Commission shall take into account the strength of the Applicant's business plan and in particular give preference to an Applicant meeting one or more of the following criteria:
- year-round service over only IATA Summer or Winter Season service;
 - the greatest total number of Frequencies on the Airport Pair;
 - the largest capacity on the Airport Pair, as measured in seats for the entire IATA Season; and

- a pricing structure and service offerings that would provide the most effective competitive constraint on the Airport Pair.

If, following the Commission's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on the Airport Pair, the Commission shall rank these Applicants following any ranking provided by the Parties under Clause 1.3.8.

- 1.3.11 In advance of the beginning of the IATA Slot Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive Slots within the Time Window) and the slot coordinator:
- whether the Applicant qualifies for the Slots Commitment; and
 - the Applicant's ranking.

In any case, the Applicant shall attend the IATA Slot Conference and try to improve its Slots. Following confirmation of the Commission's approval pursuant to Clause 1.3.9, the Applicants and the Parties shall be deemed to have agreed the Key Terms of the Slot Release Agreement. The Key Terms may only be changed after such date by mutual agreement between the Applicant and the Parties if the Monitoring Trustee confirms that the changes are not material or if the Commission (advised by the Monitoring Trustee) approves the changes.

- 1.3.12 Within two (2) weeks of the end of the IATA Slot Conference, each Applicant shall inform the Monitoring Trustee and the Parties whether it will commit to operate the Slots offered eventually by the Parties in case it has not obtained them through the General Slot Allocation Procedure.
- 1.3.13 Within three (3) weeks of the end of the IATA Slot Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with Clause 1.3.12 that it is entitled to receive Slots from the Parties. The Parties shall offer the dedicated Slots for release to such Applicant. The Slot Release Agreement shall be subject to review by the Monitoring Trustee and approval of the Commission. Unless both the Parties and the relevant Applicant agree to an extension and subject to Clause 1.2.3, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Slot Conference, and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

2. FARE COMBINABILITY AGREEMENTS

- 2.1. At the request of a New Air Services Provider which operates or, after the Effective Date, has started to operate a new Competitive Air Service on the Airport Pair (whether or not such service uses slots released to that carrier pursuant to these Commitments) the Parties shall enter into an agreement that arranges for fare combinability on the Airport Pair across all classes of tickets (i.e., first, business and economy class tickets). This agreement will provide for the possibility for the New Air Services Provider, or travel agents, to offer a return trip on the Airport Pair comprising a non-stop service provided one way by the Parties or Air Serbia and a non-stop service provided the other way by the New Air Services Provider. At the request of the New Air Services Provider, the agreement shall apply in relation to all of the New Air Services Provider's services on the Airport Pair.
- 2.2. Any such agreement shall be subject to the following restrictions:
- it shall provide for fare combinability on the basis of the Parties' Published Fares. Where these provide for a published round-trip fare, the fare can be comprised of half the round-trip fare of the relevant Party and half the round-trip fare of the New Air Services Provider;
 - it shall provide for the appropriate division or recovery of any applicable Q/YQ/YR Surcharges;
 - it shall be limited to true origin and destination traffic on the Airport Pair operated by the New Air Services Provider; and
 - it shall be subject to the MITA rules.

- 2.3. Subject to Clause 2.11, any term included in the agreement (for example, interline service charge, number of booking classes included) can never be less favourable than the corresponding term in any Fare Combinability Agreement which the relevant Party and the New Air Services Provider have in place as at the Effective Date.
- 2.4. Within four (4) weeks of the date of the request for a Fare Combinability Agreement by a New Air Services Provider, the Parties shall propose a draft Fare Combinability Agreement to the Monitoring Trustee in compliance with Clause 2. At the same time, the Parties shall submit supporting evidence, as necessary, in particular with regard to Clause 2.3.
- 2.5. In the light of any comments made by the New Air Services Provider and after having consulted the Commission, the Monitoring Trustee may request clarification and further evidence from the Parties. The Parties shall provide the requested clarification and evidence within three (3) weeks of the request from the Monitoring Trustee, unless the Parties present bona fide reasons for the Commission to extend this deadline.
- 2.6. If the Monitoring Trustee confirms that the clarification and evidence provided are sufficient, the Parties shall revise the draft Fare Combinability Agreement, as necessary, within three (3) weeks of the confirmation from the Monitoring Trustee. If the Monitoring Trustee requests a second round of clarifications and evidence, the Parties shall proceed in accordance with Clause 2.5.
- 2.7. Upon the request of the New Air Services Provider, the draft Fare Combinability Agreement proposed by the Parties under Clause 2.4 may be applied provisionally without prejudice to subsequent negotiations on the Fare Combinability Agreement.
- 2.8. Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a New Air Services Provider for travel on the Airport Pair. The Parties may require that the New Air Services Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the New Air Services Provider if the Parties were not the original ticketed carrier on the Airport Pair. In cases where the New Air Services Provider's fare is lower than the value of the coupon issued by it, the Parties may endorse their coupon only up to the value of the fare charged by the New Air Services Provider. A New Air Services Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by the Parties.
- 2.9. The Fare Combinability Agreement entered into pursuant to this Clause 2 for the particular Airport Pair shall have a duration up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if the New Air Services Provider elects to have a shorter initial duration, it shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing the Parties in writing no later than thirty (30) days before the expiry of the agreement. The New Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.
- 2.10. All agreements entered into pursuant to this Clause 2 for the Airport Pair shall lapse automatically in the event that the New Air Services Provider ceases to operate the new or increased service on that the Airport Pair.
- 2.11. The conclusion of the Fare Combinability Agreement shall be subject to the approval of the Commission, once the Monitoring Trustee has released its advice, in particular as to whether its terms are reasonable.
3. SPECIAL PRORATE AGREEMENTS
 - 3.1. At the request of a New Air Services Provider, irrespective of whether the Competitive Air Service is commenced on the basis of Slots obtained from the Parties under the Commitments, the Parties shall enter into a Special Prorate Agreement with such airline (*Requesting Air Services Provider*) for

traffic provided that part of the journey involves the Airport Pair on which the Competitive Air Service is offered. At the request of the Requesting Air Services Provider, the Special Prorate Agreement shall apply to all of the Requesting Air Services Provider's air services on the Airport Pair on which the Competitive Air Service is offered.

- 3.2. Subject to Clause 3.1, for each of the Parties with whom it proposes to enter a Special Prorate Agreement pursuant to the Commitments, the Requesting Air Services Provider may select up to a maximum of fifteen (15) behind/beyond routes.
- 3.3. The Requesting Air Services Provider may select the fare class(es) to which the Special Prorate Agreement will apply, provided that on the Airport Pair, each selected fare class is included in at least one existing Special Prorate Agreement which the relevant Party has agreed with any other carrier with regard to the routes concerned, excluding any agreements (or terms therein) which are excluded pursuant to Clause 3.7 and any codeshare terms within an existing agreement. Subject to the previous sentence of this Clause 3.3, the number of fare classes that the Requesting Air Services Provider may select shall be up to the maximum number of fare classes per cabin that is granted by the relevant Party under an existing Special Prorate Agreement of the same type to any other carrier.
- 3.4. If the Special Prorate Agreement provides for Straight Rate Prorate terms:
 - (a) straight rate proration shall apply only to published fares;
 - (b) it shall include arrangements for the proration or remittance of any applicable Q/YQ/YR Surcharges; and
 - (c) it shall not prohibit the relevant Party from making adjustments to ATPCo chart 2 in accordance with normal business practices in managing Straight Rate Prorate agreements. Should the Requesting Air Services Provider believe that the relevant Party has made adjustments to ATPCo chart 2 which are not in accordance with normal business practices but rather an attempt by that Party to restrict the Requesting Air Services Provider's inventory access, it may ask the Monitoring Trustee to verify whether the relevant Party's adjustments comply with these Commitments.
- 3.5. Subject to the provisions of the remainder of this Clause 3, the Special Prorate Agreement shall:
 - (a) be on terms (rates and interline service charges) which are at least as favourable as the terms agreed by the relevant Party under an existing Special Prorate Agreement with any other carrier for the same route (including the Airport Pair) and in the same fare class (other than any terms excluded by within existing Special Prorate Agreements and any terms excluded by virtue of Clause 3.7). If the relevant Party does not have an equivalent rate with any other carrier, the rate shall be determined in accordance with Clause 3.8;
 - (b) grant the Requesting Air Services Provider equivalent inventory access to that given to the other Parties; and
 - (c) ensure minimum connection times which are based on standard practices at the airport and terminal in question and which are reasonable.
- 3.6. Subject to Clause 3.17, any term included in the Special Prorate Agreement (for example, rates and interline service charge, number of fare and booking classes included) can never be less favourable than the corresponding term in any Special Prorate Agreement which the relevant Party and the Requesting Air Services Provider have in place as at the Effective Date. To take account of adjustments in fare class usage, for the purposes of Clause 3.3 and Clause 3.5(a), the fare classes selected by the Requesting Air Services Provider need not be the same fare classes as those specified in any Special Prorate Agreement which is in place as at the Effective Date provided that the requested fare classes reasonably correspond to such specified fare classes.
- 3.7. For the purposes of Clause 3.3 and Clause 3.5(a), the relevant Party may exclude any existing Special Prorate Agreement which that Party has with any other carrier which it would be unreasonable to include, for example because:

- (a) the agreement is *de minimis* (e.g. because fewer than 1,000 flights were flown on the relevant Party's metal pursuant to that agreement in the last financial year); or
- (b) the agreement is obsolete.

In addition, the Monitoring Trustee shall exclude any existing Special Prorate Agreements or any individual terms of such agreements which the relevant Party has demonstrated, to the satisfaction of the Monitoring Trustee, that it would be unreasonable to include because, due to exceptional circumstances, the relevant agreements or terms are exceedingly favourable.

3.8. For the purposes of Clause 3.5(a):

- (a) where a route is included in at least one existing Special Prorate Agreement which the relevant Party has with another carrier and which has not been excluded pursuant to Clause 3.7, but is included in a different fare class to the one selected by the Requesting Air Services Provider, the terms will be calculated by applying a ratio of the average difference in fares as between the fare class selected by the Requesting Air Services Provider and the fare class on which terms with another carrier are available;
- (b) where the selected route is not included in any fare class in any existing Special Prorate Agreements which the relevant Party has with other carriers, the rate on that route will be either the rate agreed by the relevant Party and the Requesting Air Services Provider or the most favourable rate that applies to the most comparable route (considering factors such as yield and length of haul) which is included in an existing Special Prorate Agreement of the relevant Party. In the event that the relevant Party can establish that clear and material differences exist between the selection route and the most comparable route, the Monitoring Trustee may make appropriate adjustments to the rate.

3.9. Clauses 3.3 and 3.5(a) in conjunction with Clauses 3.7 and 3.8, shall, subject to Clause 3.17, be applied on the basis of the more favourable (to the Requesting Air Services Provider) of the following:

- (a) Special Prorate Agreements (and the terms therein) between the relevant Party and any other carrier as existing at the Effective Date, subject to reasonable indexation that takes account of standard industry practices (including practices between the Parties); and
- (b) Special Prorate Agreements (and the terms therein) between the relevant Party and any other carrier as existing at the date of the request for negotiation or re-negotiation of the Special Prorate Agreement.

3.10. The Special Prorate Agreement shall have up to five (5) years at the choice of the Requesting Air Services Provider. Thereafter, or if the Requesting Air Services Provider elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 3.10, it shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing the Parties in writing no later than thirty (30) days before the expiry of the agreement. The Requesting Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.

3.11. Within four (4) weeks of the date of the request for a Special Prorate Agreement by a Requesting Air Services Provider, the Parties shall propose a draft Special Prorate Agreement to the Monitoring Trustee in compliance with Clause 3. At the same time, the Parties shall submit supporting evidence, as necessary.

3.12. In the light of any comments made by the Requesting Air Services Provider and after having consulted the Commission, the Monitoring Trustee may request clarification and further evidence from the Parties. The Parties shall provide the requested clarification and evidence within two (2) weeks

of the request from the Monitoring Trustee, unless the Parties present bona fide reasons for the Commission to extend this deadline.

- 3.13. If the Monitoring Trustee confirms that the provided clarification and evidence are sufficient, the Parties shall revise the draft Special Prorate Agreement, as necessary, within two (2) weeks of the confirmation from the Monitoring Trustee. If the Monitoring Trustee requests a second round of clarifications and evidence, the Parties shall proceed in accordance with Clause 3.12.
- 3.14. Upon the request of the Requesting Air Services Provider, the draft Special Prorate Agreement proposed by the Parties under Clause 3.11 may be applied provisionally without prejudice to subsequent negotiations on the Special Prorate Agreement.
- 3.15. All Special Prorate Agreements entered into pursuant to this Clause 3:
 - (a) shall lapse automatically in the event that the Requesting Air Services Provider ceases to operate non-stop Competitive Air Service on the Airport Pair, and
 - (b) may with the agreement of the Monitoring Trustee, be subject to annual re-negotiation. Clause 3.9 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.
- 3.16. Should the Requesting Air Services Provider believe that the terms proposed by the relevant Party do not comply with this Clause 3, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.
- 3.17. The conclusion of the Special Prorate Agreement shall be subject to the approval of the Commission, once the Monitoring Trustee has released its advice, in particular as to whether its terms are reasonable.
- 3.18. For the avoidance of doubt, the Parties shall not deconcur the Requesting Air Services Provider from routes and fare classes covered by the Special Prorate Agreement. The Parties shall also not deconcur the Requesting Air Services Provider from particular fare classes or routes which it currently prorates under the IATA Multilateral Proration Agreement where the Requesting Air Services Provider's rates cover the relevant Party's marginal costs of carriage.

4. INTERLINING AGREEMENTS

- 4.1. At the request of a New Air Service Provider, the Parties shall enter into an Interline Agreement concerning the Airport Pair operated by the New Air Service Provider when they offer connection flights.
- 4.2. Any such interline agreement shall be subject to the following restrictions:
 - (i) it shall apply to the business and economy class only;
 - (ii) it shall provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued;
 - (iii) it shall be limited to true origin and destination traffic on the Airport Pair operated by the New Air Service Provider;
 - (iv) it shall be subject to the MITA rules and/or normal commercial conditions;
 - (v) it shall include the possibility for the New Air Service Provider, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the New Air Service Provider.
- 4.3. Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a New Air Service Provider for travel on the Airport Pair. However, to avoid

abuse, the Parties may require that the New Air Service Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the New Air Service Provider. In cases where the New Air Service Provider's fare is lower than the value of the coupon issued by it, the Parties may endorse its coupon only up to the value of the fare charged by the New Air Service Provider. A New Air Service Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

- 4.4. All interline agreements entered into pursuant to this Section 4 for a particular Identified City Pair shall lapse automatically in the event that the New Air Service Provider ceases to operate that Airport Pair.
- 4.5. The conclusion of the Interlining Agreement with Prospective Entrant is subject to the approval the Commission, once the Monitoring Trustee has released its advice. The Commission will in particular assess whether the financial conditions of the Interlining Agreement are reasonable.

5. FREQUENT FLYER PROGRAMMES

- 5.1. At the request of a New Air Services Provider that does not have a comparable FFP of its own and does not participate in any of the Parties' FFPs, the Parties shall allow it to be hosted in their FFPs for the Airport Pair on which the New Air Services Provider has commenced or increased service. The FFP Agreement with the New Air Services Provider shall be on terms such that the New Air Services Provider shall have equal treatment vis-à-vis the accrual and redemption of Miles on the Airport Pair as compared with the Parties.
- 5.2. Any agreement entered into pursuant to this Clause 5 shall:
 - (a) lapse automatically in the event that the New Air Services Provider ceases to operate non-stop service on the Airport Pair; and
 - (b) have an effective duration of up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if the New Air Services Provider elects to have a shorter initial duration than that to which it is entitled pursuant to this Clause 5.2, it shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided it exercises its right of extension by informing the Parties in writing no later than two (2) weeks after the slot conference preceding the requested extension. The New Air Services Provider also has a right to terminate the agreement, at any time during the initial term or the extensions, upon thirty (30) days' written notice.
- 5.3. Subject to Clause 5.4, any term included in the frequent flyer agreement entered into pursuant to this Clause 5 can never be less favourable than the corresponding term in any FFP Agreement which the relevant Party and the New Air Services Provider have in place as at the Effective Date.
- 5.4. The conclusion of the FFP Agreement shall be subject to the approval of the Commission, once the Monitoring Trustee has released its advice. The Commission will in particular assess whether the financial conditions of the FFP Agreement are reasonable.

6. MONITORING TRUSTEE

6.1. Appointment of Monitoring Trustee

- 6.1.1. *A Monitoring Trustee shall be appointed by the Parties on the terms and in accordance with the procedure described below and, once approved by the Commission, shall perform the functions of monitoring the Parties' fulfillment of the Commitments and further obligations that may be contained in the Commitment Decision.*

- 6.1.2. *The Monitoring Trustee shall be independent of the Parties, must be familiar with the airline industry and the slot allocation and exchange procedures, and have the experience and competence necessary for this appointment (e.g. investment bank, consultant specialised in the air transport sector, or auditor). In addition, it shall not be exposed to any conflict of interest and shall not have had any direct or indirect work, consulting or other relationship with the Parties in the last three (3) years and shall not have a similar relationship with the Parties for three (3) years after completing its mandate. For the avoidance of doubt, the performance of the role of monitoring trustee in other Commission proceedings shall not be an obstacle to the appointment as Monitoring Trustee.*
- 6.1.3. *The Parties shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.*
- 6.1.4. *Within one (1) week of the Effective Date, the Parties shall submit to the Commission for approval a list of one or more persons whom the Parties consider adequate to fulfill the duties of the Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfills the requirements set out above and shall include:*
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfill its duties under these Commitments; and*
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to it.*
- 6.1.5. *The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfill its obligations. If only one name is approved, the Parties shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the Commission, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee should be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.*
- 6.1.6. *If all the proposed Monitoring Trustees are rejected by the Commission, the Parties shall submit the names of at least two more individuals or institutions within one (1) week of being formally informed of the rejection by the Commission.*
- 6.1.7. *If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Parties shall appoint in accordance with the mandate approved by the Commission.*
- 6.2. Monitoring Trustee's Mandate
- 6.2.1. *The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:*
- (a) to monitor the satisfactory discharge by the Parties of the obligations entered into in the Commitments in so far as they fall within the scope of the Commitments;*
 - (b) to propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision;*
 - (c) to advise and make a written recommendation to the Commission as to the suitability of any Slot Release Agreement and Prospective Entrant, Fare Combinability Agreement, Special Pro-rate Agreement, Codeshare Agreements, Interline Agreement, and FFP Agreement submitted for approval to the Commission under Clauses 1 to 5;*
 - (d) to provide written reports to the Commission on the Parties' compliance with the Commitments and the progress of the discharge of its mandate, identifying any respects in which the*

Parties have failed to comply with the Commitments or the Monitoring Trustee has been unable to discharge its mandate;

- (e) to mediate in any disagreements relating to any Slot Release Agreement, if mediation is agreed to by the other party or parties to the agreement in question, and submit a report upon the outcome of the mediation to the Commission; and
 - (f) at any time, to provide to the Commission, at their request, a written or oral report on matters falling within the scope of these Commitments.
- 6.2.2. *For the avoidance of doubt, subject to Clause 6.2.1, there is no requirement for the Monitoring Trustee to be involved in the commercial negotiations between one or more of the Parties and a third party carrier entering into any of the agreements under the Commitments. Any such agreements however remain subject to the Commission's approval.*
- 6.2.3. *Any request made by a third party carrier for the Monitoring Trustee to verify the Parties' compliance with the Commitments must be reasonable. In particular, the Monitoring Trustee may refuse to conduct such a verification where the third party carrier fails to produce any evidence of a suspected breach of the Commitments and/or appears to be making a vexatious request.*
- 6.2.4. *The Parties shall receive simultaneously a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission (as provided for in Clause 6.2.1(c)).*
- 6.2.5. *The reports provided for in Clauses 6.2.1(c) to 6.2.1(f) shall be prepared in English. The reports provided for in Clause 6.2.1(d) shall be sent by the Monitoring Trustee to the Commission within ten (10) working days from the end of every IATA Season following the Monitoring Trustee's appointment or at such other time(s) as the Commission may specify and shall cover developments in the immediately preceding IATA Season. The Parties shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.*
- 6.2.6. *The Parties shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate. The Parties shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.*
- 6.2.7. *The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under these Commitments.*
- 6.2.8. *The Parties shall indemnify the Monitoring Trustee (and, where appropriate, its employees, agents and advisors) (each an Indemnified Party) and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, agents and advisors).*
- 6.2.9. *At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval, if the Monitoring Trustee reasonably considers the appointment of such advisors necessary for the performance of its duties under the mandate, provided that any fees incurred are reasonable and upon which the Parties have been consulted.*
- 6.3. Termination of Mandate
- 6.3.1. *If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:*
- (a) the Commission may, after hearing the Monitoring Trustee, require the Parties to replace the Monitoring Trustee; or

- (b) with the prior approval of the Commission, the Parties may replace the Monitoring Trustee.
- 6.3.2. *If the Monitoring Trustee is removed, it may be required to continue its functions until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Clause 6.1.*
- 6.3.3. *Aside from being removed in accordance with Clause 6.3.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.*

7. FAST-TRACK DISPUTE RESOLUTION PROCEDURE

- 7.1. The agreements concluded to implement the Commitments in accordance with Clauses 1 to 6 shall provide for a fast-track dispute resolution procedure (*Fast-Track Dispute Resolution Procedure*) described in this Clause 7. In the event that a Prospective Entrant, Requesting Air Services Provider, or New Air Services Provider, as relevant, has reason to believe that the Parties are failing to comply with the requirements of the Commitments vis-à-vis that party, this Fast-Track Dispute Resolution Procedure will apply.
- 7.2. Any Prospective Entrant, Requesting Air Services Provider, or New Air Services Provider, as relevant which wishes to avail itself of the Fast-Track Dispute Resolution Procedure ("*Requesting Party*") shall send a written request to the relevant Party (with a copy to the Monitoring Trustee) setting out in detail the reasons leading the Requesting Party to believe that the relevant Party is failing to comply with the requirements of the Commitments ("*Request*"). The Requesting Party and the relevant Party will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time not to exceed fifteen (15) working days after receipt of the Request.
- 7.3. The Monitoring Trustee shall present its own proposal ("*Trustee Proposal*") for resolving the dispute within eight (8) working days, specifying in writing the action, if any, to be taken by the relevant Party in order to ensure compliance with the Commitments vis-à-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.
- 7.4. Should the Requesting Party and the relevant Party fail to resolve their differences of opinion through cooperation and consultation as provided for in Clause 7.2, the Requesting Party shall serve a notice (the *Notice*), in the sense of a request for arbitration, to the ICC ("*Arbitral Institution*"), with a copy of such Notice and request for arbitration to the relevant Party.
- 7.5. The Notice shall set out in detail the dispute, difference or claim ("*Dispute*") and shall contain, *inter alia*, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by the counterparty (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
- 7.6. The relevant Party shall, within ten (10) working days from receipt of the Notice, submit its answer ("*Answer*"), which shall provide detailed reasons for its conduct and set out, *inter alia*, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon (e.g. documents, agreements, expert reports, and witness statements). The Answer shall, if appropriate, contain a detailed description of the action which the counterparty proposes to undertake vis-à-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

- 7.7. The Arbitral Tribunal shall consist of three (3) persons. The Requesting Party shall nominate its arbitrator in the Notice; the relevant Party shall nominate its arbitrator in the Answer.
- 7.8. The arbitrators nominated by the Requesting Party and the relevant Party shall, within five (5) working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators. Should the Requesting Party wish to have the Dispute decided by a sole arbitrator, it shall indicate this in the Notice. In this case, the Requesting Party and the relevant Party shall agree on the nomination of a sole arbitrator within five (5) working days from the communication of the Answer, communicating this to the Arbitral Institution. Should the Requesting Party and counterparty fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the Requesting Party and the relevant Party fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "Arbitral Tribunal".

Arbitration Procedure

- 7.9. The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "*Rules*"). The arbitration shall be conducted in London, England in the English language.
- 7.10. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Requesting Party and counterparty shall consent to the use of e-mail for the exchange of documents.
- 7.11. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the Arbitration. Terms of Reference shall be drawn up and signed by the parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.
- 7.12. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the parties to the Arbitration agree.
- 7.13. The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Trustee, the Commission and outside counsel and experts of the opposing party.
- 7.14. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless the relevant Party can produce evidence to the contrary.

Involvement of the Commission

- 7.15. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made by the parties to the Arbitration;

- (b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the Arbitration (including Terms of Reference and procedural time-table);
- (c) giving the Commission the opportunity to file amicus curiae briefs; and
- (d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the parties to the Arbitration to forward, the documents mentioned to the Commission without delay. In the event of disagreement between the parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favour of any party to the Arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

- 7.16. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
- 7.17. Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal. The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.
- 7.18. The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.
- 7.19. The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by the relevant Party in order to comply with the Commitments vis-à-vis the Requesting Party (e.g. specify a contract including all relevant terms and conditions). The final award shall be final and binding on the parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal.
- 7.20. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
- 7.21. The parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.
- 7.22. Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the TFEU.

8. REVIEW CLAUSE

- 8.1. The Commission may, where appropriate, in response to a request of the Parties showing good cause and accompanied by a report from the Monitoring Trustee:
- (a) grant an extension of the time periods foreseen in the Commitments, or
 - (b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the Commitments.
- 8.2. Where the Parties seek an extension of a time period, they shall submit a request to the Commission no later than one (1) month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

November 2014

(Signed)

duly authorised for and on behalf of Alitalia

(Signed)

duly authorised for and on behalf of Etihad