



EUROPEAN COMMISSION
DG Competition

Case M.6447 - IAG/bmi

Only the English text is available and authentic.

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

Decision under remedy review clause (Art. 6(1)b in conjunction
with 6(2))
Date: 17/06/2016



EUROPEAN COMMISSION

Brussels, 17.06.2016
C(2016) 3893 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

IMPLEMENTATION OF
COMMITMENTS

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.6447 – IAG / bmi**

Assessment of the viability of Applicants and evaluation of their formal bids pursuant to Clause 1.4.9 of the Commitments attached to the Decision in the above-mentioned case following the Monitoring Trustee's opinion of 10 June 2016 – Winter 2016/2017 IATA Season

1. FACTS AND PROCEDURE

- (1) By decision of 30 March 2012 ("the Decision") based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004,¹ the Commission declared the concentration by which the undertaking International Consolidated Airlines Group ("IAG", United Kingdom) acquired sole control of the undertaking British Midlands Limited ("bmi", United Kingdom) compatible with the internal market subject to conditions and obligations (the "Commitments").
- (2) Pursuant to the Commitments, IAG procures *inter alia* that slots are made available at London Heathrow airport ("Heathrow") in order to allow one or more pro-

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.

spective entrant(s)² to operate or increase their services on the following city pairs identified as routes of concern in the Decision:

- the "Identified UK City Pairs": London-Aberdeen and London-Edinburgh and;
 - the "Identified City Pairs": London-Aberdeen, London-Edinburgh, London-Nice, London-Cairo, London-Riyadh and London-Moscow.
- (3) The number of slots to be made available enables prospective entrant(s) to operate up to a total of 7 frequencies per day in total on the Identified UK City Pairs and in addition, up to five frequencies per day in total on the Identified City Pairs (including the Identified UK City Pairs). The Commitments do not foresee a maximum number of slots for each individual route of concern. Instead, it results from the Commitments that there are only global limits allowing for some flexibility in the way in which slots can be allocated to the various routes of concern: a maximum of 12 daily slot pairs³ (hereafter: "slots") available for all these routes, and within that global limit, a maximum of 5 daily slot pairs available for London–Nice, London–Moscow, London–Cairo and London–Riyadh.
- (4) Aeroflot and Flybe ("the Applicants") informed the Monitoring Trustee of proposed slot requests under the Commitments for the Winter 2016/2017 IATA Season in accordance with Clause 1.4.1 of the Commitments.
- (5) On 15 April 2016, the Monitoring Trustee provided the Commission with its assessment of whether the Applicants fulfilled the eligibility criteria set out in Clause 1.4.4 of the Commitments. The Monitoring Trustee's assessment was updated on 29 April following the receipt of further information from Aeroflot and Heathrow airport.
- (6) On 19 May 2016, the Slot Request Submission Deadline for the Winter 2016/2017 IATA Season, the Monitoring Trustee received the formal bids for slots from each of the Applicants pursuant to Clause 1.4.7 of the Commitments.
- (7) Table 1 below provides a summary of the slot requests and compensation offered by the Applicants which will be assessed in the remainder of this decision:

² Defined in the Commitments as "*Any Applicant that is not a member of the oneworld Alliance or affiliated with any member of that alliance, able to offer a Competitive Air Service individually or collectively by codeshare and needing a Slot or Slots to be made available by IAG in accordance with the Commitments in order to operate a Competitive Air Service*" (i.e. a scheduled passenger air transport service on one or more of the routes concerned by the slot release

³ The Commitments require the release of a further 2 slots to Transaero for the London-Moscow route, pursuant to an agreement already entered into by IAG and Transaero before the adoption of the Decision. The Commitments provide that in the event that Transaero did not make use of these two slots and these would become available to IAG, IAG would undertake to procure that these slots will be made available to other prospective entrants such that total number of slots to be released on the various routes of concern would be increased from 12 to 14.

Table 1: Summary of slot requests and compensation offers

Identified City Pair	Applicant	Number of requested weekly frequencies	Compensation offered Yes / No
London–Moscow ⁴	Aeroflot	7	No
London–Aberdeen	Flybe	18	No
London–Edinburgh	Flybe	25	No

- (8) For the purpose of this decision, the Relevant City Pairs are to be understood as being London-Moscow, London-Aberdeen, and London-Edinburgh.

2. REPORTS OF THE MONITORING TRUSTEE ON SLOT APPLICATIONS FOR WINTER 2016/2017

2.1. Conditions pertaining to slots and independence

- (9) On 15 April 2016, the Monitoring Trustee provided the Commission with a report containing its assessment of the eligibility of the Applicants, their independence and the question whether they have exhausted their slot portfolio. The Monitoring Trustee concluded that both Aeroflot and Flybe are eligible and independent and have exhausted their slot portfolio at Heathrow.

2.1.1. Aeroflot's application

- (10) The Monitoring Trustee submits that the Memorandum of Understanding between the aeronautical authorities of the United Kingdom of Great Britain and Northern Ireland and the Russian Federation dated 2 June 2010 to the Air Services Agreement between these two countries of 19 December 1957 (hereafter "the ASA") includes a requirement for airlines to enter into commercial agreements. In particular, under the ASA the first carrier from each country (currently British Airways and Aeroflot) must enter into a commercial agreement. British Airways and Aeroflot first instated a commercial agreement for the London-Moscow route on 20 January 1974 which was superseded by a commercial agreement of 30 October 1980 (hereafter referred to as the "Commercial Agreement").
- (11) Following discussion with IAG and Aeroflot the Monitoring Trustee has verified that *[CONFIDENTIAL]*.
- (12) Furthermore, the Monitoring Trustee submits that Aeroflot does not have any London Heathrow slots out on lease.
- (13) As a consequence of the Monitoring Trustee's assessment in relation to the issues of eligibility, exhaustion of slots and independence, the Monitoring Trustee concludes that the application from Aeroflot for slots for Winter 2016/2017 IATA Season is valid.

⁴ Operations would be to Sheremetyevo airport (SVO).

2.1.2. *Flybe's application*

- (14) The Monitoring Trustee notes that Flybe has a small number of commercial arrangements with British Airways, including code share arrangements on the London Gatwick to Newquay service and with British Airways' subsidiary Loganair on operations between the Scottish mainland (Glasgow, Aberdeen, Edinburgh) and its islands. Aer Lingus has an arm's length codeshare with Flybe pursuant to which Aer Lingus places the Aer Lingus code on certain Flybe operated flights as part of a connecting journey on Aer Lingus' flights (i.e. not on point-to-point).
- (15) However, the Monitoring Trustee's assessment is that these arrangements do not breach the independence requirements of the Commitments as they do not affect the operations on the Relevant City Pairs.
- (16) In addition, Flybe does not have any London Heathrow slots.
- (17) As a consequence of the Monitoring Trustee's assessment in relation to the issues of eligibility, exhaustion of slots and independence, the Monitoring Trustee concludes that the application from Flybe for slots for Winter 2016/2017 IATA Season is valid.

2.2. **Assessment pursuant to Clause 1.4.9(a) of the Commitments**

- (18) In its report of 10 June 2016, the Monitoring Trustee assesses (pursuant to Clause 1.4.9(a) of the Commitments) whether each Applicant is a viable existing or potential competitor with the ability, resources and commitment to operate the proposed services in the long term as a viable and active competitive force. To this end, the Monitoring Trustee looked at a number of criteria, including:
 - (i) Financial health & regulatory approvals:
 - The financial health and robustness of the airline – through evaluation of the financial statements, current and planned access to capital;
 - The airline's regulatory approvals to operate in the territories relevant to the routes requested; and
 - Any key risks to long term viability
 - (ii) Operations and on-board offers:
 - Whether the slot times in the business plan are consistent with those offered by IAG and are operationally robust;
 - Whether the business plan demonstrates that sufficient aircraft and crew are available to the Applicant, or that it has a credible plan to obtain the aircraft and crew within the timescale indicated;
 - Whether the business plan demonstrates that sufficient ground handling, catering and engineering support are available, and appropriate check-in and lounge facilities; and

- Whether the proposed on-board product is competitive with that offered by IAG, and whether it is consistent with achieving similar yields to those achieved by IAG.

2.2.1. Flybe

- (19) Concerning Flybe's financial health, the Monitoring Trustee considers that *[CONFIDENTIAL]*, according to last five annual financial statements, it recorded a full-year positive result only in 2013/14, for the first time since 2009/10. However, this *[CONFIDENTIAL]* by the position reported in 2014/15 with a loss before tax of GBP (35.6) million mainly due to Flybe's fuel hedging policy and from surplus capacity costs associated with Embraer 195 jets (only in 2014/15 reported a cost of GBP (26) million). Moreover, Flybe is warning that the airline industry environment will continue to be challenging in the coming months.⁵
- (20) However, Flybe's recent restructuring *[CONFIDENTIAL]*. One of these actions was completed in October 2015, when Flybe announced that it had resolved a legacy issue through the redeployment of all its remaining surplus Embraer E195 aircraft. Completion of this redeployment delivered a GBP 40 million mitigation versus Flybe's previously indicated obligation of GBP 80 million over the remaining term of the aircraft leases.⁶
- (21) *[CONFIDENTIAL]*.
- (22) For these reasons the Monitoring Trustee considers *[CONFIDENTIAL]*.
- (23) According to the Monitoring Trustee, Flybe has all the necessary approvals to start operating on the London Heathrow–Edinburgh and Aberdeen routes.
- (24) Moreover, the Monitoring Trustee states that Flybe's business plan includes slot times that are consistent with those offered by IAG and *[CONFIDENTIAL]*. Concerning availability of ground facilities, the Monitoring Trustee notes that Flybe currently operates services at Edinburgh and Aberdeen and it already has access to ground facilities there. *[CONFIDENTIAL]*.
- (25) Concerning the competitiveness of Flybe's on-board service offering, the Monitoring Trustee argues that *[CONFIDENTIAL]*.

⁵ As stated by Flybe's CEO during the presentation of Flybe's 2015/16 results: "*These include the threat of terrorist activity, industrial unrest in France which accounts for [around] 12% of Flybe's seat capacity, consumer uncertainty fuelled in part by macro-economic volatility and in part by anxiety ahead of the EU referendum, and the highest level of seat capacity growth in the European short-haul market for six years*".

⁶ Furthermore, the decision to sell Flybe's Finnish loss-making joint venture in 2014, although it resulted in a one-off cost of GBP (12) million in 2014, *[CONFIDENTIAL]*. In addition, Flybe will take ownership of a further 10 Q400 aircraft, which it previously held on lease, expected to generate a positive impact through a reduction in operating costs of circa GBP 4 million in 2016/17 and circa GBP 8 million annually thereafter.

- (26) Flybe will operate a single cabin strategy; BA has a similar one-cabin approach. [CONFIDENTIAL].
- (27) In a composite score on Flybe, the Monitoring Trustee concludes about Clause 1.4.9(a) that concerns in one or more areas could, in the event of adverse circumstances, be material to the effectiveness of the implementation of the Commitments.

2.2.2. Aeroflot

- (28) Concerning Aeroflot's financial health, the Monitoring Trustee considers that Aeroflot [CONFIDENTIAL]. The Monitoring Trustee argues that Aeroflot's financial performance is also likely [CONFIDENTIAL].
- (29) The Monitoring Trustee considers that Aeroflot has all the necessary approvals to continue operating the London–Moscow route [CONFIDENTIAL]. In the recent bilateral negotiations between the UK and Russian governments on traffic rights (Memorandum of Understanding dated 26 May 2016), the Russian and UK governments have agreed to allow the first designated carrier to fly up to 35 services per week on the London–Moscow route. Aeroflot will therefore be able to operate the slots requested.
- (30) Furthermore, the Monitoring Trustee [CONFIDENTIAL] in relation to Aeroflot's proposed operations relating to requested slot times, availability of aircraft and crew as well as availability of ground facilities.
- (31) The Monitoring Trustee also considers that [CONFIDENTIAL] concerning operations and on-board offering.
- (32) In a composite score, the Monitoring Trustee concludes about Clause 1.4.9(a) that no significant concerns are raised about the viability of Aeroflot with respect to effective implementation of the Commitments.

2.3. The Monitoring Trustee's route-by-route assessment

- (33) In its report of 10 June 2016, the Monitoring Trustee assesses the slot applications for Winter 2016/2017 IATA season with regard to each route on which slots are requested by Aeroflot and Flybe.
- (34) Given that applications have been received from only Aeroflot and Flybe for Winter 2016/17, for less than the full portfolio of 14 slots under the Commitments,⁷ the Monitoring Trustee considers that it is necessary for the Commission to assess whether each Applicant is a viable existing or potential competitor pursuant to Clause 1.4.9(a) of the Commitments, but it is not necessary for the Commission to rank the Applicants in order of preference pursuant to Clause 1.4.9(b). Clause 1.4.10 provides the criteria to guide the Commission's assessment of formal bids under Clause 1.4.9. In this context, the Monitoring Trustee

⁷ See also footnote 3.

tee has conducted its analysis of the merits of the formal bids of Applicants in this applications process.

- (35) The Monitoring Trustee assesses (pursuant to Clause 1.4.10 of the Commitments) the level of effective competitive constraint that each of Aeroflot and Flybe may be expected to impose on IAG. For this assessment, the Monitoring Trustee looked at:
- The promise of a year round service and the intended use of the slots in future years, as well as the total number of services/frequencies and total additional capacity proposed over the summer and winter seasons combined;
 - The pricing structure proposed, taking account of the expected service offering;
 - The network characteristics offered by the Applicant, including feed onto Relevant Long-haul Destination/ Origin cities;
 - Passenger loadings, yield and revenue projections;
 - Cost projections;
 - Net profit projections; and
 - Sensitivity analysis
- (36) Moreover, the Monitoring Trustee has reviewed the collective slot requests of the Applicants and assessed that, based on the arrival times offered by IAG, no combination of awards of slots which could be awarded under the Commitments violate the condition of Clause 1.4.10 that no more than 5 arrival slots should be awarded before 12.00 local time, no more than 5 between 12.00 and 16.00 and no more than 5 after 16.00.

2.3.1. *Aberdeen*

- (37) The Monitoring Trustee notes that Flybe demonstrates its viability and effectiveness with regard to slot use, frequency, capacity, the pricing and service level of its proposed offering as well as the cost projections of its business plan. With regard to network and long-haul feed, loadings, yield and revenue projections as well as profitability, the Monitoring Trustee considers that Flybe weakly⁸ demonstrates its viability and effectiveness.

⁸ The Monitoring Trustee has scored each Applicant on a five point scale:

- 5 Outstanding demonstration of being a viable and effective competitor;
- 4 Strongly demonstrates being a viable and effective competitor
- 3 Demonstrates being a viable and effective competitor
- 2 Weakly demonstrates being a viable and effective competitor
- 1 Does not demonstrate being a viable and effective competitor.

(38) In its overall assessment, the Monitoring Trustee concludes that Flybe weakly demonstrates that it would be a viable and effective competitor on the London–Aberdeen route.

(39) *[CONFIDENTIAL]*.

2.3.2. *Edinburgh*

(40) The Monitoring Trustee notes that Flybe demonstrates its viability and effectiveness with regard to slot use, frequency, capacity, the pricing and service level of its proposed offering as well as the cost projections of its business plan. With regard to network and long-haul feed, loadings, yield and revenue projections as well as profitability, the Monitoring Trustee considers that Flybe weakly demonstrates its viability and effectiveness.

(41) In its overall assessment, the Monitoring Trustee concludes that Flybe weakly demonstrates that it would be a viable and effective competitor on the London–Edinburgh route.

(42) *[CONFIDENTIAL]*.

2.3.3. *Moscow*

(43) In the Monitoring Trustee's view, in an overall assessment, Aeroflot strongly demonstrates that it would be a viable and effective competitor on the London Heathrow–Moscow route.

3. COMMISSION'S ASSESSMENT

3.1. Conditions pertaining to slots and independence

(44) Pursuant to clause 1.1.1 of the Commitments, an applicant must have the intention to operate new or additional frequencies on the Relevant City Pairs. This is the case for both Aeroflot and Flybe with respect to their respective slot applications.

(45) Moreover, an applicant must be independent of the Parties. The criteria for an applicant to be considered independent are set out in the definition of a "Prospective Entrant". The Commission notes that Aeroflot and Flybe are not associated carriers belonging to the same group as IAG. They do not have common ownership with British Airways (or IAG) and they do not belong to the oneworld alliance.

(46) Based on the information gathered by the Monitoring Trustee, the Commission notes that *[CONFIDENTIAL]* since 26 September 2012, when the Commission had issued a decision concluding that Aeroflot does not fulfil the criteria in Clause 1.4.4. of the Commitments in that it is not independent of and unconnected to IAG.⁹ *[CONFIDENTIAL]* Overall, the Commission considers that British Air-

⁹ Commission decision of 26 September 2012, C(2012) 6904, recital 44.

ways (and thus IAG) and Aeroflot do not cooperate on the Relevant City Pair in the meaning of the Commitments.

- (47) Based on the above, neither Aeroflot nor Flybe has a codeshare agreement with IAG on the Relevant City Pairs nor do they cooperate with IAG on the Relevant City Pairs in the provision of passenger air transport services. In line with the Trustee's assessment, the Commission thus considers that both Aeroflot and Flybe meet the independence criteria set out in the Commitments definition of the term "Prospective Entrant".
- (48) Besides, the Commission considers that both Aeroflot and [CONFIDENTIAL] Flybe have exhausted their own slot portfolio at Heathrow.

3.2. Assessment of the applications

- (49) Pursuant to Clause 1.4.9(a) of the Commitments, the Commission shall assess whether each applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Relevant City Pairs in the long term as a viable and active competitive force.
- (50) In accordance with Clause 1.4.10, among the viable applicants the Commission shall give preference to the applicant (or combination of applicants) which will provide the most effective competitive constraint on the routes of concern. Given however that firstly for each of the London Heathrow–Moscow, London Heathrow–Edinburgh and London Heathrow–Aberdeen routes there was only a single applicant, namely Aeroflot for London–Moscow and Flybe for London–Edinburgh and London–Aberdeen respectively, and secondly, there are enough slots available under the Commitments against the number of slots requested by the applicants, there is no need to proceed to a ranking of applicants.

3.2.1. Flybe

- (51) Flybe is one of Europe's major regional carriers and has a long track record of operating regional services throughout Europe and in particular in the UK.¹⁰
- (52) Flybe holds a valid operating certificate.
- (53) The 2015/16 year (which ended 31st march 2016) was the second full financial year of Flybe's three year transformation plan. Material progress appears to have been achieved. In its results for the year ended 31 March 2016, Flybe reported GBP 5.5 million adjusted profit before tax (GBP 25.4 million loss in 2014/2015¹¹). Group revenue increased by 8.7% to GBP 623.8 million

¹⁰ In Year 2015/16, Flybe had a 51.2% UK Regional Domestic Sector Share (+0.4 ppts increase vs Year 2014/15), Full Year Results –Year ended 31 March 2016, Analyst and Investor Presentation, 9 June 2016 (retrieved 9 June 2016). Year 2015/16 information and figures used in this Decision are set out in FLYbe's "Annual Results 2015-16" note, which does not constitute the company's statutory accounts for the years ended 31st March 2016 or 2015, but is derived from those accounts.

¹¹ Reported PBT for 2014/15 was £(35.6)m. Adjusted PBT for 2014/15 was £(25.4)m excluding £(10.2)m USD revaluation of aircraft loans.

(GBP 574.1 million in 2014/15). On the balance sheet Flybe reported net funds of GBP 62.2 million (i.e. funds offset by debt) and total cash of GBP 171.4 million.¹²

- (54) Flybe considers in this context that "*Flybe resolved its final key legacy issue through re-deployment of the remaining E195 jets, returned to revenue growth and achieved profitability after five years of losses. Flybe is now in its final year of turnaround and focused on delivering profitable growth.*"¹³
- (55) There was indeed a 8.2% increase in passenger revenue and 5.9% increase in passenger numbers; total revenue per seat was close to year 2014/15 (GBP 53.23 vs GBP 53.51 in 2014/15); seat capacity grew by 9.7%, and yields improved by 1.7% while the load factor was reduced by 2.6ppts to 72.6%. Moreover, 52 new routes were launched, and 47 existing business routes had additional daily frequencies. Cost per seat was reduced by 2.2% (excluding fuel, at constant currency). New codeshares were signed, in particular with Emirates and Virgin Atlantic. Finally, Flybe was named Best Short Haul Airline at the 2016 Business Travel Awards (January 2016).¹⁴
- (56) Despite returning to profit, Flybe is warning that the airline industry environment will continue to be challenging in the coming months.
- (57) Flybe is already present in Edinburgh and Aberdeen where it has access to the necessary ground facilities. Moreover, Flybe is expected to be able to make the requisite arrangements at London Heathrow.
- (58) Flybe intends to operate the London Heathrow–Edinburgh and Aberdeen routes with Q400 aircraft configured in a single cabin with 78 seats.¹⁵
- (59) Flybe intends to operate the service throughout the year (both IATA summer and winter seasons) and to continue the service indefinitely on the two routes.

¹² Flybe Annual Results 2015-16, released 9 June 2016, <http://otp.investis.com/clients/uk/flybe/rns/regulatory-story.aspx?cid=59&newsid=738890> (retrieved 9 June 2016). It is also recalled that the cash increase recorded in 2013/14 was a result of a GBP 150.1 million net equity issue (12 March 2014) and the proceeds of a GBP 10.5 million sale of Gatwick slots.

¹³ Flybe considers in particular that "*with the redeployment of the E195s, all of the Company's key legacy issues have been resolved with circa GBP 750m of liabilities eliminated.*"

¹⁴ Flybe Annual Results 2015-16, released 9 June 2016, <http://otp.investis.com/clients/uk/flybe/rns/regulatory-story.aspx?cid=59&newsid=738890> (retrieved 9 June 2016).

¹⁵ Flybe has a fleet of over 50 of these aircraft. Flybe has agreements in place to take an additional 10 aircraft deliveries between April 2016 and October 17, made up of 1 ATR-72 and 9 Bombardier Q400 aircraft.

3.2.1.1. London Heathrow–Aberdeen

- (60) Flybe intends to operate around three daily frequencies on the London Heathrow–Aberdeen¹⁶ route to be compared with the 8 frequencies planned to be offered by BA¹⁷. The frequencies are spread across the day. In terms of annual capacity, Flybe would offer 1 874 flights and 146 172 total seats on this route.
- (61) While a lower frequency than that operated by BA, the Commission is of the view that this is a reasonable level of service in the context of the slots intended for UK domestic use available under the Commitments.
- (62) In terms of capacity and frequency, Flybe would therefore appear to have the ability to act as a significant competitive force on the market.
- (63) Flybe will offer a single cabin product available through all channels with an offering towards multiple services. Furthermore, Flybe will offer [CONFIDENTIAL]. Fares will usually be available as non-refundable, non-changeable one-way fares (with return fares at twice the one-way fare). [CONFIDENTIAL].¹⁸ Furthermore, change of date, time, route, or even the name of the passenger is possible at a fee.
- (64) Besides, it is likely that Flybe's service offered will be more comparable in the future [CONFIDENTIAL].
- (65) Flybe will have [CONFIDENTIAL], [CONFIDENTIAL],¹⁹ [CONFIDENTIAL] Overall, the Commission therefore concludes that the service offering and the pricing offered by Flybe are competitive.
- (66) Flybe stated that "[CONFIDENTIAL]. Furthermore, on 2 April 2016 Virgin Atlantic and Flybe launched a new codeshare that involved a number of short haul routes operated by Flybe, both domestic UK and international.²⁰ Flybe may however be at some disadvantages in comparison to BA's flights, e.g. with a lower frequency, [CONFIDENTIAL].

¹⁶ The minimum number of frequencies is four per day between days one to five, two on day six and three on day seven.

¹⁷ IAG would use a mix of Airbus 319 and Airbus A320 aircraft.

¹⁸ However, [CONFIDENTIAL].

¹⁹ The total amount of time a flight takes from pushing back from the departure gate ("off-blocks"), to arriving at the destination gate ("on-blocks") is called "block time", and airline block times vary for the same routes.

²⁰ Flybe signed a codeshare agreement with Virgin Atlantic in March, giving travellers the opportunity to fly from 18 UK and European airports served by Flybe, connecting onto a Virgin Atlantic flight at Manchester, Glasgow and London Gatwick; see Flybe press release "*Virgin Atlantic boosts its regional presence with new routes and codeshare partnership*", <http://www.flybe.com/corporate/media/news/1603/30.htm> (retrieved 9 June 2016).

- (67) Overall, the Commission considers that with three rotations per day, Flybe passengers will be able to connect to a range of Flybe partners' flights at Heathrow Airport.
- (68) In terms of projected performance on the route, Flybe expects an average load factor *[CONFIDENTIAL]*. During the same period, Flybe projects the average yield by passengers *[CONFIDENTIAL]*. Taking into account *[CONFIDENTIAL]*.
- (69) The Monitoring Trustee considers that Flybe's assumptions concerning load factor, yield and the extent of connecting passengers *[CONFIDENTIAL]*.
- (70) *[CONFIDENTIAL]* the Commission considers in particular the following.
- (71) As concerns load factor, Flybe achieved a *[CONFIDENTIAL]* capacity utilisation on the London City–Aberdeen route from February 2015 to January 2016, and Flybe's overall UK domestic network load factor was *[CONFIDENTIAL]*. Taken against these figures Flybe's projections for London Heathrow–Edinburgh seem to be reasonably achievable, with a possibly higher number of point-to-point passengers compensating at least partially for an optimistic number of connecting passengers.²¹ This would however have an effect on average yield,*[CONFIDENTIAL]*.
- (72) In addition, *[CONFIDENTIAL]*, the Commission considers that Flybe, as one of the major European regional carriers with a long-standing track record of providing air transport services, possesses the necessary business expertise to provide strong reliable estimates of its projected costs.
- (73) Moreover, in particular in case of adverse developments (identified for instance in the sensitivity analyses conducted by the Monitoring Trustee), Flybe's current financial situation, for instance with net funds of GBP 62.2 million and total cash of GBP 171.4 million according to its latest annual results 2015-16, is such that Flybe *[CONFIDENTIAL]*.
- (74) To mitigate any risk that Flybe would not operate on the route as envisaged in its application, and in particular in case of risk of Misuse, the Monitoring Trustee should closely and regularly monitor Flybe's performance activities on the London Heathrow–Aberdeen route under the relevant provisions of the Commitments, in particular Clause 1.3.6.²²

²¹ On the comparative London City–Aberdeen route, there would likely be a lower number of connecting passengers. It is also considered that Flybe is the only operator active on the London City–Aberdeen route; and it would face a disadvantage against the incumbent, IAG, in terms of frequency number on the London Heathrow–Aberdeen route. Risk of lower load factor is also assessed as part of the sensitivity analysis.

²² When Little Red, which had been awarded slots to operate on the London Heathrow–Aberdeen and London Heathrow–Edinburgh routes, decided to cease operations on those routes, the appropriate application of the Commitments and the slot release agreement between Virgin and IAG lead to an orderly hand-back of slots.

- (75) Based on the above, the Commission considers that Flybe is a viable potential competitor of IAG on the London Heathrow–Aberdeen route, with the ability, resources and commitment to operate services on this route in the long term as a viable and active competitive force.

3.2.1.2. London Heathrow–Edinburgh

- (76) Flybe intends to operate around 4 daily frequencies on the London Heathrow–Edinburgh route²³ to be compared with the 11 frequencies planned to be offered by IAG²⁴. The frequencies are spread across the day. In terms of annual capacity, Flybe would offer 2 604 flights and 203 112 total seats on this route.
- (77) While a lower frequency than that operated by BA, the Commission is of the view that this is a reasonable level of service in the context of the slots intended for UK domestic use available under the Commitments.
- (78) In terms of capacity and frequency, Flybe would therefore appear to have the ability to act as a significant competitive force on the market.
- (79) Flybe will offer a single cabin product available through all channels with an offering towards multiple services. Furthermore, Flybe will offer [CONFIDENTIAL]. Fares will usually be available as non-refundable, non-changeable one-way fares (with return fares at twice the one-way fare). [CONFIDENTIAL].²⁵ Furthermore, change of date, time, route, or even the name of the passenger is possible at a fee.
- (80) Besides, it is likely that Flybe’s service offered will be more comparable in the future [CONFIDENTIAL].
- (81) Flybe will have [CONFIDENTIAL], [CONFIDENTIAL]. Overall, the Commission therefore considers that the service offering and the pricing offered by Flybe are competitive.
- (82) As stated in section 3.2.1.1, Flybe will [CONFIDENTIAL]; on 2 April 2016 Virgin Atlantic and Flybe launched a new codeshare that involved a number of short haul routes operated by Flybe, both domestic UK and international.²⁶ Flybe may however be at some disadvantages in comparison to BA's flights, e.g. with a lower frequency, [CONFIDENTIAL].

²³ The minimum number of frequencies is four per day between days one to five, two on day six and three on day seven.

²⁴ IAG would use a mix of Airbus 319 and Airbus A320 aircraft.

²⁵ However, [CONFIDENTIAL].

²⁶ Flybe signed a codeshare agreement with Virgin Atlantic in March, giving travellers the opportunity to fly from 18 UK and European airports served by Flybe, connecting onto a Virgin Atlantic flight at Manchester, Glasgow and London Gatwick; see Flybe press release "*Virgin Atlantic boosts its regional presence with new routes and codeshare partnership*", <http://www.flybe.com/corporate/media/news/1603/30.htm> (retrieved 9 June 2016).

- (83) Overall, the Commission considers that with four rotations per day, Flybe passengers will be able to connect to a range of Flybe partners' flights at Heathrow Airport.
- (84) In terms of projected performance on the route, Flybe expects an average load factor [CONFIDENTIAL]. During the same period, Flybe projects the average yield by passengers [CONFIDENTIAL]. Taking into account [CONFIDENTIAL].
- (85) Similarly to the London Heathrow–Aberdeen route, the Monitoring Trustee also considers that Flybe's assumptions concerning load factor, yield and the extent of connecting passengers [CONFIDENTIAL].
- (86) [CONFIDENTIAL] the Commission considers in particular the following.
- (87) As concerns load factor, Flybe achieved a [CONFIDENTIAL] capacity utilisation on the London City–Edinburgh route from February 2015 to January 2016 [CONFIDENTIAL]. Flybe's overall UK domestic network load factor was [CONFIDENTIAL]. Taken against these figures Flybe's projections for London Heathrow–Edinburgh seem to be reasonably achievable, with a possibly higher number of point-to-point passengers compensating at least partially for an optimistic number of connecting passengers.²⁷ This would however have an effect on average yield, [CONFIDENTIAL].
- (88) In the same vein, [CONFIDENTIAL], the Commission considers that Flybe, as one of the major European regional carriers with a long-standing track record of providing air transport services, possesses the necessary business expertise to provide strong reliable estimates of its projected costs.
- (89) Moreover, in particular in case of adverse developments (identified for instance in the sensitivity analyses conducted by the Monitoring Trustee), Flybe's current financial situation, for instance with net funds of GBP 62.2 million and total cash of GBP 171.4 million according to its latest annual results 2015-16, is such that Flybe [CONFIDENTIAL].²⁸
- (90) To mitigate any risk that Flybe would not operate on the route as envisaged in its application, and in particular in case of risk of Misuse, the Monitoring Trustee should closely and regularly monitor Flybe's performance activities on the London Heathrow–Edinburgh route under the relevant provisions of the Commitments, in particular Clause 1.3.6.²⁹

²⁷ On the comparative London City–Edinburgh route, there would likely be a lower number of connecting passengers. It is also considered that Flybe has a frequency advantage on the London City–Edinburgh route over its competitor IAG; and on the London Heathrow–Edinburgh route it would face a disadvantage against the incumbent, IAG, in terms of frequency number. Risk of lower load factor is also assessed as part of the sensitivity analysis.

²⁸ In the view of the Commission, this assessment extends to temporary losses, which would be made on the two routes at stake (London Heathrow–Edinburgh and London Heathrow–Aberdeen).

²⁹ When Little Red, which had been awarded slots to operate on the London Heathrow–Aberdeen and London Heathrow–Edinburgh routes, decided to cease operations on those routes, the appropriate ap-

- (91) Based on the above, the Commission considers that Flybe is a viable potential competitor of IAG on the London Heathrow–Edinburgh route, with the ability, resources and commitment to operate services on this route in the long term as a viable and active competitive force.

3.2.2. Aeroflot – London Heathrow–Moscow

- (92) Aeroflot holds a valid operating certificate.
- (93) Aeroflot's fleet comprises 170 aircraft [*CONFIDENTIAL*]. It plans to operate the service with new A321 aircraft and A330 aircraft.
- (94) In 2015 Aeroflot reported loss of EUR 21.3 million before tax although the company significantly improved its passenger revenue performance, reflecting its almost unchallenged position after competitor Transaero went bankrupt in 2014, the results reflected the weakness of the RUB against the USD resulting in an increased cost base. Aeroflot posted a significant growth of 29.5% in scheduled passenger revenues, compared to 2014. In 2014, Aeroflot reported loss of EUR 223.4 million. Aeroflot's performance in earlier years was profitable: EUR 579.9 million profit before tax in 2013 and EUR 482 million in 2012.
- (95) Aeroflot has been successfully operating the London–Moscow route in the past and will be able to build on existing infrastructure and expertise.
- (96) Aeroflot has concluded ground handling agreements at London Heathrow with Swissport Ltd. to provide ground handling services; Heathrow Cargo Handling Ltd. to provide terminal cargo handling; and Currier Facilities Limited (sub-contractor of Heathrow Cargo Handling Ltd.) to provide courier shipments handling. Aeroflot self-handles at SVO.
- (97) Aeroflot intends to increase its existing service by one daily frequency on the London Heathrow–Moscow route offering 28 weekly frequencies in the summer and 25 weekly frequencies in the winter seasons. These are higher frequencies than that currently offered by BA (3 per day advertised in Winter 2016/17).³⁰ Aeroflot intends to operate the service throughout the year (both IATA summer and winter seasons) and to continue the service indefinitely. It would offer 581 068 seats per year, an increase of 145 280 seats.
- (98) Aeroflot plans to operate the Moscow service using a mix of Airbus A330-300 and Airbus A321-200 aircraft, providing two classes of service. In relation to fares, [*CONFIDENTIAL*].
- (99) Therefore, the Commission considers that the service offering and pricing offered by Aeroflot would be competitive.

plication of the Commitments and the slot release agreement between Virgin and IAG lead to an orderly hand-back of slots.

³⁰ easyjet exited from the route at the end of Winter 2015/16.

- (100) The Commission thus considers that Aeroflot is committed to the route for a long period (and in any case at least six consecutive IATA seasons).
- (101) Aeroflot does not have other long haul operations at Heathrow airport apart from the London to Moscow route. However, Aeroflot recognises that some marginal traffic is expected beyond London [*CONFIDENTIAL*]. At the Russian end of the route, the new proposed daily service with its earlier and more consistent slot time will enable some new and better connections at SVO airport, which can be expected to generate additional passengers on the Aeroflot London-Moscow services. The Commission thus considers that Aeroflot will be able to benefit from its ability to offer connecting passengers onwards travel to destinations beyond Moscow.
- (102) The projection data provided by Aeroflot show that the number of passengers, the average load factor, the yield and revenues [*CONFIDENTIAL*]. Based in particular on the Monitoring Trustee's assessment, the Commission considers these projections to be reasonable.
- (103) While Aeroflot's costs are [*CONFIDENTIAL*].
- (104) In light of the above, the Commission concludes that Aeroflot is a viable competitor with the ability, resources and commitment to operate services on the London Heathrow–Moscow route in the long term as a viable and active competitive force.

3.2.3. *Conclusion*

- (105) In the light of the above, taking into account the relevant evidence and the analyses of the Monitoring Trustee, the Commission concludes that both Applicants meet the criteria in Clause 1.4.9 (a) above in that they are viable competitors with the ability, resources and commitment to operate services in the long term as a viable and active competitive force on the Relevant City Pairs.

4. **OVERALL CONCLUSION**

- (106) The Commission considers that Aeroflot and Flybe are independent of and unconnected to IAG and have exhausted their own slot portfolios at Heathrow within the meaning of Clause 1.4.4 of the Commitments.
- (107) Furthermore, the Commission considers that Aeroflot and Flybe are viable potential competitors of IAG on each route for which they respectively request slots under the Commitments, with the ability, resources and commitment to operate services on each of these routes in the long term as viable and active competitive forces.
- (108) This decision is adopted pursuant to Clause 1.4.9 of the Commitments.

For the Commission,

Signed
Johannes LAITENBERGER