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## **KOREAN AIR LINES / ASIANA AIRLINES**

**Case No. COMP/M. 10149**

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### **COMMITMENTS TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 8 (2) OF REGULATION (EC) No 139/2004**

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**9 January 2024**

## Case M.10149 – Korean Air / Asiana

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), Korean Air Co., Ltd. (“**Korean Air**”) and Asiana Airlines Inc. (“**Asiana**”, and, together with Korean Air, the “**Parties**”) hereby enter into the following commitments (the “**Cargo Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition of sole control by Korean Air over Asiana within the meaning of Article 3(1)(b) of the Merger Regulation (the “**Transaction**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Transaction compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), 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 (the “**Remedies Notice**”).

These Cargo Commitments shall take effect upon the date of adoption of the Decision. Korean Air commits to ensuring that these Cargo Commitments will be binding on any successor company arising from the Transaction.

## Section A Definitions

(1) For the purpose of these Cargo Commitments, the terms below shall have the following meaning:

<b>Affiliated Undertakings</b>	Undertakings controlled by any of the Parties and/or the ultimate parents of any of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004
<b>AOC</b>	Air Operator Certificate
<b>Asiana</b>	Asiana Airlines Inc., incorporated under the laws of the Republic of Korea, with its registered office at 443-83, Ojeong-ro, Gangseo-gu, Seoul, Republic of Korea, and registered with the Commercial/Company Register under number 110111-0562804
<b>Asiana Business</b>	The full scope of activities currently performed by Asiana
<b>Asiana Designated Representative</b>	[...], designated by Asiana as the primary point of contact for the Monitoring Trustee, that shall assist the Monitoring Trustee in collecting and providing information for the planning of the Spin-Off that will be implemented after Completion
<b>Asiana IDT</b>	Asiana IDT Inc., incorporated under the laws of the Republic of Korea, with its registered office at Centropolis A, 23 & 25th Floor, 26, Ujeongguk-ro, Jongno-gu, Seoul, 03161 and registered with the Commercial/Company Register under number 110111-0801848
<b>Assets</b>	The assets that contribute to the current operation or are necessary to ensure the operation, viability and competitiveness of the Divestment Business as indicated in Section B, and described more in detail in the Schedule
<b>BCN</b>	Josep Tarradellas Barcelona-El Prat Airport in Barcelona, Spain
<b>Binding Sale and Purchase Agreement</b>	The binding master agreement to be concluded between Korean Air and the Purchaser, to be differentiated from the draft sale and purchase agreement between Asiana and the Purchaser, which will be annexed to the master agreement
<b>BSA</b>	Block Space Agreement
<b>Cargo Commitments</b>	The commitments described in this document
<b>CDG</b>	Paris Charles de Gaulle Airport in Roissy-en-France, France
<b>Commission</b>	European Commission
<b>Completion</b>	The closing of the Transaction
<b>Confidential Information</b>	Any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain
<b>Conflict of Interest</b>	Any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Cargo Commitments
<b>Decision</b>	The decision pursuant to Article 8(2) of the Merger Regulation by the European Commission
<b>Divestiture Trustee</b>	One or more natural or legal person(s) who is/are approved by the Commission and appointed by Korean Air and who has/have received from Korean Air the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price

<b>Divestment Business</b>	The business as defined in Section B and in the Schedule which Korean Air commits to divest
<b>Divestment Closing</b>	The transfer of the legal title to the Divestment Business to the Purchaser
<b>Effective Date</b>	The date of adoption of the Decision
<b>EU</b>	European Union
<b>FCO</b>	Leonardo da Vinci International Airport in Fiumicino, Metropolitan City of Rome, Italy
<b>FRA</b>	Frankfurt Airport in Frankfurt, Germany
<b>First Divestiture Period</b>	The period of [...] from the Effective Date
<b>GPA</b>	Global Partnership Agreement
<b>Hold Separate Manager</b>	The Asiana Designated Representative, that will be appointed by Korean Air after Completion (unless the Commission accepts, after Korean Air submits a reasoned proposal, that a different member of the Key Personnel is appointed) to manage the day-to-day operation of the Divestment Business under the supervision of the Monitoring Trustee. This individual will remain in charge of the management of the cargo business of Asiana until Divestment Closing
<b>ICN</b>	Incheon International Airport in Incheon, Korea
<b>ICN-BCN</b>	Flight routes between ICN and BCN
<b>ICN-CDG</b>	Flight routes between ICN and CDG
<b>ICN-FCO</b>	Flight routes between ICN and FCO
<b>ICN-FRA</b>	Flight routes between ICN and FRA
<b>Independent Advisor</b>	Mazars LLP, a limited liability partnership organised under the laws of England and Wales, with its registered office at 30 Old Bailey, London, EC4M 7 AU
<b>Key Personnel</b>	All personnel necessary to maintain the operation, viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager
<b>Korean Air</b>	Korean Air Co., Ltd., incorporated under the laws of the Republic of Korea, with its registered office at 260 Haneul-Gil, Gangseo-Gu, Seoul and registered with the Commercial/Company Register under number 110111-0108484
<b>MOLIT</b>	Korean Ministry of Land, Infrastructure and Transport
<b>Monitoring Trustee</b>	One or more natural or legal person(s) who is / are approved by the Commission and appointed by Korean Air after the Effective Date, and who has / have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision
<b>MRO</b>	Maintenance, repair and overhaul services
<b>Newco</b>	A new legal entity to which the Divestment Business is transferred pursuant to paragraph (12) of these Cargo Commitments
<b>Parties</b>	Korean Air and Asiana
<b>Passenger Remedy Route(s)</b>	Each of ICN – BCN; ICN – CDG; ICN – FCO; and ICN – FRA
<b>Personnel</b>	All staff currently employed by the Divestment Business, including staff seconded to the Divestment Business
<b>Purchaser</b>	The entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D

<b>Purchaser Criteria</b>	The criteria laid down in paragraph (21) of these Cargo Commitments that the Purchaser must fulfil in order to be approved by the Commission
<b>Schedule</b>	The schedule to these Cargo Commitments describing in more detail the Divestment Business
<b>Slot(s)</b>	The permission (as defined by clause 1.6.1 of the IATA Worldwide Airport Slot Guidelines as amended) for an aircraft operator to land and take-off on a specific date and time in order to operate an air service at the airport, to be used in combination with the full range of airport infrastructure parking and access to gates at the airport that are necessary to operate such service
<b>Spin-off</b>	The spin-off of the Divestment Business from the Asiana Business
<b>Transaction</b>	The proposed acquisition of control of Asiana by Korean Air
<b>Trustee(s)</b>	The Monitoring Trustee and/or the Divestiture Trustee as the case may be
<b>Trustee Divestiture Period</b>	The period of [...] from the end of the First Divestiture Period

## **Section B      The commitment to divest and the Divestment Business**

### Commitment to divest

- (2) In order to maintain effective competition, Korean Air commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph (22) of these Cargo Commitments. To carry out the divestiture, Korean Air commits to find a Purchaser and to enter into a Binding Sale and Purchase Agreement for the sale of the Divestment Business within the First Divestiture Period. If Korean Air has not entered into such an agreement at the end of the First Divestiture Period, Korean Air shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph (35) within the Trustee Divestiture Period.
- (3) The Transaction shall not be implemented before Korean Air or the Divestiture Trustee has entered into a Binding Sale and Purchase Agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph (22). The Divestment Closing will only take place if, and after, the Transaction is implemented. In the event that the Transaction lapses, these Cargo Commitments shall lapse.
- (4) Korean Air shall be deemed to have complied with this commitment if:
  - (a) by the end of the Trustee Divestiture Period, Korean Air or the Divestiture Trustee has entered into a Binding Sale and Purchase Agreement, and the Commission approves the proposed purchaser and the terms of sale as being consistent with these Cargo Commitments in accordance with the procedure described in paragraph (22); and
  - (b) the Divestment Closing takes place within [...].
- (5) In order to maintain the structural effect of these Cargo Commitments, Korean Air shall, for a period of [...] after Divestment Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Korean Air showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph (73) of these Cargo Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

### Structure and definition of the Divestment Business

- (6) The Divestment Business consists of the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities, as detailed below. The Divestment Business does not include any assets solely related to belly space cargo operations. The legal and functional structure of the Divestment Business is described in more detail in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the operation, viability and competitiveness of the Divestment Business as a provider of air cargo services in the hands of a purchaser, in particular:
  - (a) the necessary tangible and intangible assets;
  - (b) the necessary licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;<sup>1</sup>

<sup>1</sup> Some permits/licences are common to Asiana's passenger and cargo businesses or are linked to Asiana Airlines as specific corporate entity and are therefore either not practically or legally transferable. Depending on the preferred structuring of the Divestment by the Purchaser, either

- (c) the necessary contracts, leases, commitments and customer orders of the Divestment Business;
  - (d) the necessary customers, credit and other records of the Divestment Business;
  - (e) the necessary Personnel, including the Key Personnel.
- (7) A substantial part of the assets currently used by Asiana for its global cargo freighter activities is also used for Asiana's passenger and/or belly space cargo operations, and cannot be transferred as such to the Divestment Business. This relates in particular to shared licences and shared supplier contracts that will need to be duplicated, amended or newly entered into specifically for the Divestment Business. Korean Air commits to undertake, in coordination with the Hold Separate Manager and the Purchaser, all best efforts to ensure that the Divestment Business has obtained all necessary licences and supplier contracts before the Divestment Closing, unless agreed otherwise with the Purchaser, particularly in view of existing licences and supplier contracts already held by the Purchaser.
- (8) Following Completion and before the Divestment Closing, Korean Air also commits to ensure, in coordination with the Purchaser and the Hold Separate Manager, that the Divestment Business has suitable office space for its head office, unless agreed otherwise with the Purchaser, particularly in view of existing office space already available to the Purchaser.
- (9) In addition, the Divestment Business includes the benefit, for a transitional period of up to [...] after Divestment Closing, of the current arrangements under which Asiana or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Such services shall be offered on terms [...]. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such arrangements will not be shared with, or passed on to, anyone outside the divisions providing the relevant services as set out in the Schedule. For any of these individual services, the transitional period can be extended by [...], at the request of the Purchaser, showing good cause, at least [...] before the expiration. Such extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.
- (10) The Divestment Business further includes the benefit of a BSA for a transitional period of [...] after Divestment Closing, if requested by the Purchaser and [...]. Such BSA shall be [...]. The BSA shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

Structuring of the Spin-Off and sequencing of corporate steps

- (11) The Spin-Off will be structured as a vertical spin-off under Korean corporate law combined with a merger, in a single corporate transaction, between the Divestment Business and the business of the Purchaser. The Parties provide an overview of the expected sequencing and timeline of the steps to implement the Spin-Off as **Appendix 4**.
- (12) If agreed with the Purchaser, and subject to the review by the Monitoring Trustee and approval by the Commission, as an alternative to the Spin-Off as described in paragraph (11) and Appendix 4, the Spin-Off may be structured as a transfer of the Divestment Business to a new legal entity (**Newco**) through a vertical spin-off under Korean corporate law, followed by a purchase of the shares in Newco by the Purchaser.

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the to be established NewCo will have to obtain its own licences, or the existing licences of the Purchaser will have to be modified to cover Asiana's cargo activities.

## Section C      **Related commitments**

### Preservation of viability, marketability and competitiveness

- (13) Asiana, from the Effective Date and until Completion, and Korean Air, from Completion until Divestment Closing, shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Parties undertake, under their respective obligations during the relevant period:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
  - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, [...], to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Korean Air's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.
- (14) [...] from the Effective Date, Korean Air undertakes to present a plan to the Monitoring Trustee on the steps to be taken until Completion to prepare for the carve-out and Spin-Off process. Korean Air commits to take the preparatory steps as set out in this plan, and shall report on the progress to the Monitoring Trustee on a monthly basis. Asiana undertakes, through the Asiana Designated Representative [...], to assist Korean Air and the Monitoring Trustee as from the Effective Date and until Completion in collecting and providing information for the planning of the implementation of the carve-out and Spin-Off after Completion.

### Hold-separate obligations

- (15) Asiana commits, from the Effective Date and until Completion, to procure that the Asiana Business is kept separate from Korean Air. Immediately after Completion, Korean Air shall appoint a Hold Separate Manager. The Hold Separate Manager shall be the same person as the Asiana Designated Representative ([...]), unless the Commission accepts on the basis of a reasoned proposal by Korean Air that a different member of the Key Personnel is appointed. The Hold Separate Manager shall oversee the process of the Spin-off and shall manage the Divestment Business independently and in the best interest of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Korean Air. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee, and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph (13)(c) of these Cargo Commitments. The Commission may, after having heard Korean Air, require Korean Air to replace the Hold Separate Manager. Before the appointment of the Asiana Designated Representative as Hold Separate Manager by Korean Air after Completion (or another member of the Key Personnel, as agreed with the Commission), the Asiana Designated Representative will already be the primary point of contact for the Monitoring Trustee, in relation to the Divestment Business as of the Effective Date. Asiana undertakes, through the Asiana Designated Representative who is in charge of the management of the cargo business of Asiana until

Divestment Closing, to assist Korean Air and the Monitoring Trustee as from the Effective Date and until Completion in collecting and providing information for the planning of the Spin-Off that will be implemented after Completion.

#### Ring-fencing

- (16) Korean Air shall implement, or procure to implement, all necessary measures to ensure that Korean Air does not, after Completion, obtain any Confidential Information relating to the Divestment Business. Any such Confidential Information obtained by Korean Air will be eliminated and not be used by Korean Air. This includes measures vis-à-vis Korean Air's appointees on the supervisory board and/or board of directors of Asiana. Korean Air may obtain or keep information relating to the Divestment Business (i) which is reasonably necessary for the divestiture of the Divestment Business; (ii) which is reasonably required to maintain the viability of the Divestment Business until Divestment Closing; (iii) or the disclosure of which to Korean Air is required by law.

#### Non-solicitation clause

- (17) Korean Air undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, any member of the Key Personnel or the flight crew transferred with the Divestment Business for a period of [...] after Divestment Closing.

#### Due diligence

- (18) In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

#### Reporting

- (19) Korean Air shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten (10) days after the end of every month following the Effective Date (or otherwise at the Commission's request). Korean Air shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five (5) days of their receipt.
- (20) Korean Air shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

### **Section D      The Purchaser**

- (21) In order to be approved by the Commission, the Purchaser must fulfil the following criteria at the moment of the Commission's approval:
- (a) The Purchaser shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
  - (c) The Purchaser shall be [...];
  - (d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of these Cargo Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
- (22) The Binding Sale and Purchase Agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Korean Air has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one (1) week to the Commission and the Monitoring Trustee. Korean Air must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and these Cargo Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with these Cargo Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the operation, viability and competitiveness of the Divestment Business after the sale, taking account of the Purchaser.
- (23) The approval by the Commission of the Purchaser and the terms of sale in accordance with paragraph (22) shall be conditional upon the Commission:
- (a) [...];
  - (b) [...]; and
  - (c) [...].

## Section E Trustee

### Appointment procedure

- (24) Korean Air shall appoint a Monitoring Trustee to carry out the functions specified in these Cargo Commitments for a Monitoring Trustee. The Parties commit not to close the Transaction before the appointment of a Monitoring Trustee.
- (25) If Korean Air has not entered into a Binding Sale and Purchase Agreement regarding the Divestment Business one (1) month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Korean Air at that time or thereafter, Korean Air shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
- (26) The Trustee shall:
- (a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
  - (b) be familiar with the airline industry, and possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor in the air transport sector; and
  - (c) neither have nor become exposed to a Conflict of Interest.
- (27) The Trustee shall be remunerated by Korean Air in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

### *Proposal by Korean Air*

- (28) No later than two (2) weeks after the Effective Date, Korean Air shall submit the name or names of one or more natural or legal persons whom Korean Air proposes to appoint as the Monitoring Trustee to the Commission for approval. Korean Air undertakes to propose the Independent Advisor as one of the candidates for the position of Monitoring Trustee. No later than one (1) month before the end of the First Divestiture Period or on request by the Commission, Korean Air shall submit a list of one or more natural or legal persons whom Korean Air proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph (26) and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Cargo Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

### *Approval or rejection by the Commission*

- (29) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Korean Air shall appoint or cause to be appointed the person

or persons concerned as Trustee in accordance with the mandate approved by the Commission. If more than one name is approved, Korean Air shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Korean Air*

- (30) If all the proposed Trustees are rejected, Korean Air shall submit the names of at least two more natural or legal persons within one (1) week of being informed of the rejection, in accordance with paragraphs (24) and (29) of these Cargo Commitments.

*Trustee nominated by the Commission*

- (31) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Korean Air shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee

- (32) The Trustee shall assume its specified duties and obligations in order to ensure compliance with these Cargo Commitments. The Commission may, on its own initiative or at the request of the Trustee or Korean Air, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

- (33) The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (b) oversee, in close co-operation with the Asiana Designated Representative, who will become, as of Completion, the Hold Separate Manager (unless the Commission accepts, after Korean Air submits a reasoned proposal, that a different member of the Key Personnel is appointed), the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
    - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by Korean Air, in accordance with paragraphs (13)-(15) of these Cargo Commitments;
    - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph (15) of these Cargo Commitments;
    - (iii) with respect to Confidential Information:
      - (A) determine all necessary measures to ensure that Korean Air does not after the Effective Date obtain any Confidential Information relating to the Divestment Business, other than as permitted by paragraph (16) of these Cargo Commitments,
      - (B) in particular, after Completion, strive for the severing of the Divestment Business' participation in a central information technology network to the

extent possible without compromising the viability of the Divestment Business,

- (C) make sure that any Confidential Information relating to the Divestment Business obtained by Korean Air before the Effective Date is eliminated and will not be used by Korean Air, and
  - (D) decide whether such information may be disclosed to or kept by Korean Air as the disclosure is reasonably necessary to allow Korean Air to carry out the divestment or as the disclosure is required by law;
- (iv) monitor, after the Effective Date, the planning of the Spin-Off, and after Completion, the splitting of assets and the allocation of Personnel between the Divestment Business and Asiana or its Affiliated Undertakings;
- (c) 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, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business, the planning of the Spin-Off, and the non-disclosure of competitively sensitive information;
- (d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and
  - (ii) potential purchasers are granted reasonable access to the Personnel;
- (e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to these Cargo Commitments;
- (f) provide to the Commission, sending each of the Parties a non-confidential copy at the same time, a written report within fifteen (15) days after the end of every month that shall cover the operation and management of the Divestment Business as well as the planning of the Spin-Off, the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with these Cargo Commitments and the progress of the divestiture process as well as potential purchasers;
- (g) promptly report in writing to the Commission, sending each of the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Cargo Commitments;
- (h) within one (1) week after receipt of the documented proposal referred to in paragraph (22) of these Cargo Commitments, submit to the Commission, sending Korean Air a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the Purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the Purchaser; and
- (i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

- (34) If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

#### Duties and obligations of the Divestiture Trustee

- (35) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the Binding Sale and Purchase Agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs (21) and (22) of these Cargo Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale of the Divestment Business. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the unconditional obligation to divest at no minimum price.
- (36) In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within fifteen (15) days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Korean Air.

#### Duties and obligations of the Parties

- (37) The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under these Cargo Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- (38) The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to the purchaser, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Korean Air shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- (39) Korean Air shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the Spin-Off, sale (including ancillary agreements) and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Divestment Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Korean Air shall cause the documents required for effecting the sale and the Divestment Closing to be duly executed. This obligation does not affect the ability for the Parties to retain their discretion to abandon the Transaction prior to Completion, as a result of which these Cargo Commitments terminate and, consequently, the power of attorney to the Divestiture Trustee immediately terminates, and the Divestiture Trustee immediately ceases to perform its functions under these Cargo Commitments.

- (40) Korean Air shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Korean Air for any liabilities arising out of the performance of the Trustee's duties under these Cargo Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
- (41) At the expense of Korean Air, the Trustee may appoint advisors (in particular for technological, corporate finance or legal advice), subject to Korean Air's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Korean Air refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Korean Air. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph (40) of these Cargo Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Korean Air during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
- (42) The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.
- (43) Korean Air agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
- (44) For a period of [...] from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Cargo Commitments.

#### Replacement, discharge and reappointment of the Trustee

- (45) If the Trustee ceases to perform its functions under these Cargo Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and Korean Air, require Korean Air to replace the Trustee; or
  - (b) Korean Air may, with the prior approval of the Commission, replace the Trustee.
- (46) If the Trustee is removed according to paragraph (45) of these Cargo Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs (24) to (31) of these Cargo Commitments.
- (47) Unless removed according to paragraph (45) of these Cargo Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all these Cargo Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

## Section F      **Fast Track Dispute Resolution**

- (48) In the event that the Purchaser claims that Korean Air is failing to comply with the requirements of these Cargo Commitments, the fast-track dispute resolution procedure as described in this Section shall be available to the Purchaser.
- (49) If the Purchaser wishes to avail itself of the fast-track dispute resolution procedure, it must notify Korean Air and the Monitoring Trustee in writing setting out in detail the reasons leading the Purchaser to believe that Korean Air is failing to comply with the requirements of these Cargo Commitments (the “**Notice**”). The Purchaser and Korean Air 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 exceeding fifteen (15) working days after receipt of the Notice, which may be extended by mutual consent.
- (50) The Monitoring Trustee shall present its own proposal (the “**Monitoring Trustee Proposal**”) for resolving the dispute within eight (8) working days after receipt of the Notice, specifying in writing the action, if any, to be taken by Korean Air in order to ensure compliance with these undertakings vis-à-vis the Purchaser, and shall be prepared, if requested, to facilitate the settlement of the dispute.
- (51) Should the Purchaser and Korean Air fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph (49), the Purchaser shall serve a request (the “**Request**”), in the sense of a request for arbitration, to the Korean Commercial Arbitration Board (the “**KCAB**” or the “**Arbitral Institution**”), with a copy to be sent to Korean Air.
- (52) The Request shall set out in detail the dispute, difference or claim (the “**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 Request shall also contain a detailed description of the action to be undertaken by Korean Air and the Monitoring Trustee Proposal, including a comment as to its appropriateness.
- (53) Korean Air shall, within ten (10) working days from receipt of the Request, submit its answer (the “**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 Korean Air proposes to undertake vis-à-vis the Purchaser (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Monitoring Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

### Appointment of the Arbitrators

- (54) The arbitral tribunal shall in principle consist of three (3) persons. The Purchaser shall nominate its arbitrator in the Request; Korean Air shall nominate its arbitrator in the Answer.
- (55) The arbitrators nominated by the Purchaser and Korean Air shall, within five (5) working days of the nomination of the latter, nominate a chairman, making such nomination known to the Parties and the Arbitral Institution which shall forthwith confirm the appointment of all three (3) arbitrators. Should the Purchaser wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Request. In this case, the Purchaser and Korean Air 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 Korean Air fail to nominate an arbitrator, or if the two (2) arbitrators fail to agree on the chairman or should the parties to the arbitration 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

- (56) The Dispute shall be finally resolved by arbitration under the rules of the KCAB, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “**Rules**”). The arbitration shall be conducted in Seoul, Korea in Korean.
- (57) 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 parties to the arbitration shall consent to the use of e-mail for the exchange of documents.
- (58) 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 timetable 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.
- (59) 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 Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.
- (60) The Arbitral Tribunal shall not disclose Confidential Information. 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 Monitoring Trustee, the Commission and outside counsel and experts of the opposing party.
- (61) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Purchaser must produce evidence of a prima facie case and (ii) if the Purchaser produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Purchaser unless Korean Air produces evidence to the contrary.

### Involvement of the Commission

- (62) 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 the terms of reference and procedural timetable);
  - (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.
- (63) The Arbitral Tribunal shall forward or shall order the parties to the arbitration to forward the documents mentioned to the Commission without delay via the use of e-mail.
- (64) In the event of disagreement between the parties to the arbitration regarding the interpretation of these Cargo Commitments, the Arbitral Tribunal may seek the Commission’s interpretation of these Cargo

Commitments before finding in favour of any party to the arbitration and shall be bound by the interpretation.

#### Decisions of the Arbitral Tribunal

- (65) The Arbitral Tribunal shall decide the dispute on the basis of these Cargo Commitments and the Decision. Issues not covered by these Cargo 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.
- (66) Upon request of the Purchaser, 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.
- (67) 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.
- (68) The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by Korean Air in order to comply with these Cargo Commitments vis-à-vis the Purchaser (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.
- (69) 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.
- (70) The parties to the arbitration shall prepare a non-confidential version of the final award, without Confidential Information. The Commission may publish the non-confidential version of the award.
- (71) Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to these Cargo Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

**Section G      Review clause**

- (72) The Commission may extend the time periods foreseen in these Cargo Commitments in response to a request from Korean Air or, in appropriate cases, on its own initiative. Where Korean Air requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one (1) month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties, and to Korean Air only after Completion. Only in exceptional circumstances shall Korean Air be entitled to request an extension within the last month of any period.
- (73) The Commission may further, in response to a reasoned request from Korean Air showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Cargo Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties, and to Korean Air only after Completion. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section H      Entry into force**

(74)    These Cargo Commitments shall take effect on the Effective Date.

9 January 2024

[...]

Duly authorised for and on behalf of Korean Air Co., Ltd.

Signed for the purposes of the obligations applicable to Asiana in Sections C and E of these Cargo Commitments

[...]

Duly authorised for and on behalf of Asiana Airlines Inc.

## SCHEDULE

(1) The Divestment Business consists of all the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities that are necessary to ensure the operation, viability and competitiveness of the Divestment Business as a provider of air cargo freighter services. Asiana’s business relating to air passenger services, as well as its belly space operations, will remain with Asiana. The organisational chart of the Divestment Business is attached as **Appendix 1**.

(2) The Divestment Business shall include, but is not limited to:

(a) the following main tangible Assets:

Tangible Assets	Number
Aircraft <sup>2</sup>	[10-12] aircraft
On-wing engines	[...]
Spare engines	[...]
Unit load devices	[...]
Miscellaneous cargo-related equipment	[...]

(b) the following main intangible Assets:

Intangible Assets	Number
Slots	[...] <sup>3</sup>
Traffic rights	[...] <sup>4</sup>
TSR overflight rights	[...]

(c) the following main licences and permits:

- (i) The airworthiness certificates, noise certificate and operation limitations specification (issued by MOLIT or the Head of the Korean Regional Aviation Administration) of the aircraft that are included in the Divestment Business.
- (ii) All other licences and permits that are necessary for the operation, viability and competitiveness of the Divestment Business, for which Korean Air commits to undertake all best efforts to ensure that the Divestment Business has obtained such licences before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing licences and permits already held by the Purchaser.

(d) the following main contracts, agreements, leases, commitments and understandings:

- (i) The lease agreements for the [...] currently leased by Asiana, and [...];<sup>5</sup>
- (ii) The lease agreements of the cargo terminals at [...];
- (iii) The lease agreements of the branch offices at [...];
- (iv) The lease (or sublease) rights contained in ground handling agreements relating to offices at [...];
- (v) Agreements with other airlines on the use of the ICN cargo terminal;

<sup>2</sup> [...]. The manufacturing date of the aircraft is provided in **Appendix 5**. [...]

<sup>3</sup> These correspond to all Slots currently used by Asiana for its global cargo freighter activities.

<sup>4</sup> [...]. These correspond to all traffic rights used by Asiana for its global cargo freighter activities.

<sup>5</sup> If [...], the mechanism described in paragraph (23)(a) of these commitments would apply.

- (vi) The freighter-exclusive ground handling contracts,<sup>6</sup> subject to consent by the other contracting party, if required;
  - (vii) The freighter-exclusive MRO service agreements,<sup>7</sup> subject to consent by the other contracting party, if required;
  - (viii) Airline-to-airline BSA agreements and cargo storage agreements subject to consent by the other contracting party, if required;
  - (ix) The freighter-exclusive supplier contracts and ancillary and miscellaneous contracts, subject to consent of the other contracting party, if required;
  - (x) All other supplier contracts that are necessary for the operation, viability and competitiveness of the Divestment Business, for which Korean Air commits to undertake all best efforts to ensure that the Divestment Business has obtained such contracts before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing supplier contracts to which the Purchaser is a party; and
  - (xi) Korean Air commits to ensure, in coordination with the Purchaser and the Hold Separate Manager, that the Divestment Business has suitable office space for its head office before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing office space already available to the Purchaser.
- (e) the following customers, credit and other records:
- (i) The Parties will transfer as part of the Divestment Business all Asiana's air cargo customer contracts (incl. GPAs) existing at the moment of Divestment Closing that can practically be served by the Divestment Business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft), subject to the consent of the customer if required;
  - (ii) All historic customer data, full customer lists and records related to the Divestment Business that can practically be served by the Divestment Business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft) will be transferred to the Purchaser. The Parties may retain a copy of such records to the extent that these are required for legal compliance purposes.<sup>8</sup> The Parties will not use customer information, which is obtained through such retained copies, for commercial purposes.
- (f) the following Personnel as further described in **Appendix 2**:
- (i) Approximately [...] employees will be transferred to the Divestment Business, subject to applicable labour laws and subject to review by the Purchaser, the Parties, the Monitoring Trustee and the Commission in the light of the ongoing negotiations and the Purchaser's resources and capabilities. The actual number of employees that will

<sup>6</sup> The freighter-exclusive ground handling service agreements represent approximately [...]% of all ground handling services agreements used by Asiana, with the remainder being used by both the existing passenger / belly space cargo operations, and the air cargo freighter business of Asiana.

<sup>7</sup> The freighter-exclusive MRO service agreements represent approximately [...]% of all MRO services agreements used by Asiana, with the remainder being used by both the existing passenger operations, and the air cargo freighter business of Asiana.

<sup>8</sup> This includes obligations under Korean commercial, tax, and customs law. For instance, companies need to keep ledgers and evidentiary documents for all transactions for a period of five (5) years after the statutory reporting period for the tax applicable to the transaction in question. Companies also need to keep export declaration certificates, return declaration certificates, documents on the price determination of exported/returned goods, contracts related to export/return transactions, etc. for a period of three (3) years from the date of the relevant declaration. These documents may contain customer data, especially in relation to the air waybill number, the goods transported (pieces, weight, size), the itinerary (flight date), the price, billing information, the shipper, the consignee, customs declaration, etc. However, the Parties will not use such data for commercial purposes.

ultimately be transferred to the Divestment Business may deviate compared to what is indicated in **Appendix 2**.

- (g) the Key Personnel, as listed in **Appendix 3**.
- (h) The arrangements for the continued supply by the Parties, [...], with the following services for a transitional period of up to [...] after Divestment Closing:
  - (i) IT support (maintenance and repair) to be provided by Asiana IDT;
  - (ii) Ground handling support at ICN;
  - (iii) Access to simulators; and
  - (iv) Access to hangars.

For any of these individual services, the transitional period can be extended by [...] in total after Divestment Closing, at the request of the Purchaser, showing good cause, at least [...] before the expiration. Such extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

- (i) A BSA if requested by the Purchaser, and unless [...]. The BSA will apply to passenger flights operated by Korean Air and/or Asiana on the Passenger Remedy Routes for a maximum of [...]% of the belly space capacity of each such flight [...], Such BSA shall be [...]. The BSA shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(3) The Divestment Business shall not include:

- (a) The intellectual property rights related to the Asiana and Asiana Cargo brands;
- (b) The assets, rights (notably including Slots, traffic rights, TSR overflight rights) and contracts exclusively related to or exclusively used by Asiana's passenger and/or belly space operations;
- (c) The lease agreement for the main office building of Asiana in Osoe-Dong, Seoul, South Korea;
- (d) The lease agreements for the branch offices located in [...];<sup>9</sup>
- (e) Existing rights and contracts shared between (i) Asiana's passenger and/or belly space operations and (ii) Asiana's freighter operations. These will need to be replicated or renegotiated to specifically serve the Divestment Business, e.g., shared licences, contracts related to the supply of fuel, non-freighter exclusive ground handling or MRO services, etc.<sup>10</sup>
- (f) The licences and permits that are tied to Asiana and are not individually transferable. These licences notably include the air operator certificate, air transport business licence and permission for overflight of Asiana issued by MOLIT, foreign air carrier permits (also known as third country operator permits) issued by the relevant authorities in [...], as well as maintenance organisation certifications in [...], which are each tied to Asiana.

(4) If there is any asset or personnel which is not covered by paragraph (2) of this Schedule but which is both used for Asiana's global cargo business and necessary for the continued operation, viability and

<sup>9</sup> As noted under paragraph (2)(d)(iii) of this Schedule, above, the lease agreements relating to the offices at the airports at [...] are included in the Divestment Business, [...]. However, there are also [...].

<sup>10</sup> These represent approximately [...]% of the supply of fuel agreements used by Asiana, approximately [...]% of the ground handling services agreements used by Asiana, and approximately [...]% of the MRO services agreements used by Asiana.

competitiveness of the Divestment Business as a provider of air cargo services, that asset, personnel or an adequate substitute will be offered to the Purchaser.

**APPENDIX 1**  
**ORGANISATIONAL CHART**

[...]

## **APPENDIX 2**

### **PERSONNEL**

[...]

**APPENDIX 3**  
**KEY PERSONNEL**

[...]

## **APPENDIX 4**

### **INDICATIVE TIMELINE OF KEY MILESTONES AND SEQUENCING OF THE DIVESTMENT**

[...]

**APPENDIX 5**

**FLEET AGE**

[...]