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KOREAN AIR LINES / ASIANA AIRLINES

Case No. COMP/M. 10149

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

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**”) hereby enters into the following commitments (the “**Passenger Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition of sole control by Korean Air over Asiana Airlines Inc. (“**Asiana**”, and, together with Korean Air, the “**Parties**”), 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 Passenger Commitments shall take effect upon the date of adoption of the Decision. Korean Air commits to ensuring that these Passenger Commitments will be binding on any successor company arising from the Transaction.

PASSENGER COMMITMENTS

Section A Definitions

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

Affiliated Undertakings	A company 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
Appropriate Use	Use of Slots in accordance with the EU Slot Regulation and other applicable Slot regulations
Asiana	Asiana Airlines Inc., incorporated under the laws of the Republic of Korea, with its registered office at 443-83, Ojeong-ro, Gangseo-gu, Seoul and registered with the Commercial/Company Register under number 110111-0562804
BCN	Josep Tarradellas Barcelona-El Prat Airport in Barcelona, Spain
Business Days	Any day except Saturdays, Sundays and public holidays in the Republic of Korea
Cargo Remedy Taker	Entity approved by the European Commission as acquirer of the cargo business, which Korean Air commits to divest pursuant to the Cargo Commitments
CDG	Paris Charles de Gaulle Airport in Roissy-en-France, France
Commitments	The Passenger Commitments and the Cargo Commitments
Competitive Air Service	A non-stop scheduled passenger air transport service operated on the Remedy Route(s)
Confidential Information	Any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain
Conflict of Interest	Any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Passenger Commitments
Crew Support Agreement	The term has the meaning given to it in paragraph (40)
Decision	The decision pursuant to Article 8(2) of the Merger Regulation by the European Commission
Effective Date	The date of adoption of the Decision
Entry	The term has the meaning given to it in paragraph (5)
Entry Commitment Agreement	The Entry Commitment Agreement between Korean Air and the Passenger Remedy Taker setting out the terms and conditions of the commitment by Korean Air to transfer or exchange Slots, traffic rights, TSR overflight rights, aircraft, crew and MRO support, necessary for the Passenger Remedy Taker to operate on the Remedy Routes and the commitment of the Passenger Remedy Taker to enter and operate on the Remedy Routes
Entry Schedule	The agreed schedule for entry and increase of weekly frequencies by the Passenger Remedy Taker on the Remedy Routes as set out Annex 1 to the Passenger Commitments
EU	European Union
EU Airport(s)	BCN, CDG, FCO and FRA
EU Slot Regulation	EU Regulation 95/93 on common rules for the allocation of slots at Community airports, as amended
FCO	Leonardo da Vinci International Airport in Fiumicino, Metropolitan City of Rome, Italy
FRA	Frankfurt Airport in Frankfurt, Germany

Frequency(-ies)	A round trip on any of the Remedy Routes
General Slot Allocation Procedure	The Slot allocation procedure as set out in the EU Slot Regulation (if applicable), applicable domestic legislation and the IATA Worldwide Airport Slot Guidelines
IATA	The International Air Transport Association
IATA Initial Submission Deadline	The relevant deadline in the IATA calendar of coordination activities
IATA Season	The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March
IATA Slot Conference	The twice-yearly conference relating to airport Slots organised by IATA that takes place in June and November
ICN	Incheon International Airport in Incheon, Korea
ICN-BCN	Flight routes between ICN and BCN
ICN-CDG	Flight routes between ICN and CDG
ICN-FCO	Flight routes between ICN and FCO
ICN-FRA	Flight routes between ICN and FRA
Indemnified Party	The term has the meaning given to it in paragraph (59)
Independent Advisor	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
KFTC	Korea Fair Trade Commission
Korean Air	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
Merger Regulation	Council Regulation (EEC) No. 139/2004
Minimum Period	Four (4) IATA Seasons from the start of the IATA Winter Season 2024/2025 until the last day of the IATA Summer Season 2026
MOLIT	Korean Ministry of Land, Infrastructure and Transport
Monitoring Trustee	One or more natural or legal person(s) who is / are approved by the Commission and appointed by Korean Air, and who has / have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision
MRO	Maintenance, repair and overhaul services
MRO Support Agreement Parties	The term has the meaning given to it in paragraph (45) Korean Air and Asiana
Passenger Commitments	The commitments described in this document
Passenger Remedy Taker	The entity approved by the Commission as beneficiary of the Passenger Commitments
Remedy Aircraft	The term has the meaning given to it in paragraph (34)
Remedy Aircraft Lease	The term has the meaning given to it in paragraph (34)
Remedy Route(s)	Each of ICN – BCN; ICN – CDG; ICN – FCO; and ICN – FRA
Requested TSR Overflight Rights	The term has the meaning given to it in paragraph (29)
Requested Traffic Rights Slot(s)	The term has the meaning given to it in paragraph (24) 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
Sublease	The term has the meaning given to it in paragraph (37)

Subleased Aircraft	The term has the meaning given to it in paragraph (37)
T'way	T'way Air Co., Ltd., incorporated under the laws of the Republic of Korea, with its registered office at 10th Floor, KT Daegu Tower, 167, Dongdeok-ro, Jung-gu, Daegu and registered with the Commercial/Company Register under number 110111-2782046
Time Window	The period of 60 minutes either side of the Slot time requested by the Passenger Remedy Taker in respect of ICN and the EU Airports
Transaction	The proposed acquisition of control of Asiana by Korean Air
(Transaction) Completion	The closing of the Transaction between Korean Air and Asiana
TSR	Trans-Siberian Route

Section B Passenger Commitments

- (2) In order to maintain effective competition, Korean Air commits to procure the entry and the launch of viable and sustainable operations by the Passenger Remedy Taker on the four (4) Remedy Routes by providing the Passenger Remedy Taker with all the necessary elements, including Slots, traffic rights, TSR overflight rights, aircraft, crew and MRO support. The commitments of Korean Air are set out in these Passenger Commitments.
- (3) The corresponding commitments of the Passenger Remedy Taker under the Passenger Commitments are set out in the Entry Commitment Agreement. The Entry Commitment Agreement in particular provides for the commitment by the Passenger Remedy Taker to enter on the Remedy Routes in accordance with the Entry Schedule and the commitment to operate on the Remedy Routes until the end of the Minimum Period.
- (4) Korean Air commits to take any and all steps necessary to seek the enforcement of the commitments of the Passenger Remedy Taker under the Entry Commitment Agreement to continue to operate on all Remedy Routes during the Minimum Period, in particular by using the fast-track arbitration procedure foreseen in Section E.
- (5) Completion of the Transaction can only take place after the Passenger Remedy Taker has entered on all Remedy Routes. Entry on all Remedy Routes shall be defined as:
 - (a) the Passenger Remedy Taker operating (i.e., taking off and landing) [...] weekly frequencies on the ICN-FRA route for four (4) weeks after the start of operations on this route, as well as [...] weekly frequencies on the ICN-CDG route, [...] weekly frequencies on the ICN-FCO route and [...] weekly frequencies on the ICN-BCN route as of the month foreseen in the Entry Schedule for the respective route up until the end of the first four (4) weeks of flight operations on the ICN-FRA route, whereby on each individual Remedy Route the Slots are used for at least 80% of the time during the period from the initial start of operations on the respective Remedy Route until the end of the first four (4) weeks of flight operations on the ICN-FRA route, unless exceptions or waivers to the use-it-or-lose-it rule would apply to the operations by the Passenger Remedy Taker on the respective Remedy Route(s) on the basis of the EU Slot Regulation; and
 - (b) the Passenger Remedy Taker selling tickets for the frequencies envisaged under the Entry Schedule in relation to all Remedy Routes for at least the ongoing IATA Season, the IATA Winter Season 2024/2025 and the IATA Summer Season 2025.

The fulfilment of the Completion condition shall be subject to approval of the Commission, advised by the Monitoring Trustee.

- (6) Korean Air shall be deemed to have complied with these Passenger Commitments if and when (i) the Passenger Remedy Taker receives the necessary assets to operate 23 weekly frequencies in IATA Summer Seasons and 20 weekly frequencies in IATA Winter Seasons on the Remedy Routes and (ii) Korean Air has - to the extent that this was necessary within the Minimum Period - taken the enforcement steps against the Passenger Remedy Taker as set out in paragraph (4).

Slots

- (7) Korean Air commits to make available, either via a transfer to or an exchange with the Passenger Remedy Taker (or to make its Affiliated Undertakings transfer to or exchange with the Passenger Remedy Taker, as the case may be) Slots at ICN and the relevant EU Airports (BCN, CDG, FCO and FRA) to allow the Passenger Remedy Taker to operate 23 weekly frequencies during IATA Summer Seasons and 20 weekly frequencies during IATA Winter Seasons on the Remedy Routes in accordance with the Entry Schedule.

- (8) In particular, Korean Air commits to make available:
- ICN and FRA Slots to allow the Passenger Remedy Taker to operate seven (7) weekly frequencies on the ICN-FRA route;
 - ICN and CDG Slots to allow the Passenger Remedy Taker to operate five (5) weekly frequencies on the ICN-CDG route;
 - ICN and BCN Slots to allow the Passenger Remedy Taker to operate four (4) weekly frequencies on the ICN-BCN route; and
 - ICN and FCO Slots to allow the Passenger Remedy Taker to operate seven (7) weekly frequencies on the ICN-FCO route during IATA Summer Season and four (4) weekly frequencies on the ICN-FCO route during IATA Winter Season.
- (9) Korean Air commits to make available the Slots identified by the Passenger Remedy Taker or Slots within the same Time Window as the Slots identified and applied for by the Passenger Remedy Taker, unless (i) these Slots are not available to Korean Air or its Affiliated Undertakings, or (ii) after Completion, these Slots are not available to Korean Air or Asiana or their Affiliated Undertakings. In case they are not available, Korean Air will make available the Slots closest in time to those requested by the Passenger Remedy Taker.
- (10) For the IATA Summer Season 2024, to the extent that the Passenger Remedy Taker has already obtained under the General Slot Allocation Procedure any Slots within the Time Window to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, the number of Slots to be made available by Korean Air shall be reduced accordingly.¹
- (11) For the IATA Winter Season 2024/2025 and the IATA Summer Season 2025, the procedure set out in paragraphs (12) to (16) shall be followed.
- (12) The Passenger Remedy Taker shall first apply for Slots under the General Slot Allocation Procedure to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments. To this end, the Passenger Remedy Taker shall, by the IATA Initial Submission Deadline of the relevant IATA Season, apply to the relevant Slot coordinators for the necessary Slots through the General Slot Allocation Procedure. In the event that the Passenger Remedy Taker is able to obtain any of the necessary Slots through the General Slot Allocation Procedure, the number of Slots to be made available by Korean Air shall be reduced accordingly.
- (13) The Passenger Remedy Taker shall only be eligible to obtain the Slots under the Passenger Commitments if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary Slots to operate on the Remedy Routes through the normal workings of the General Slot Allocation Procedure. For this purpose, the Passenger Remedy Taker shall be deemed not to have exhausted all reasonable efforts to obtain the necessary Slots if:
- (a) Slots were offered through the General Slot Allocation Procedure within the Time Window, but such Slots have not been accepted by the Passenger Remedy Taker; or
 - (b) Only in case of EU Airports, Slots were obtained through the General Slot Allocation Procedure outside the Time Window and the Passenger Remedy Taker did not give Korean Air the opportunity to exchange those Slots for Slots within the Time Window out of the portfolio from Korean Air and its Affiliated Undertakings.

¹ Even if the Passenger Remedy Taker has obtained Slots within the requested Time Window via the General Slot Allocation Procedure, the Passenger Remedy Taker can still request a Slot exchange with Korean Air for the IATA Summer Season 2024. Such voluntary Slot exchanges will require the mutual consent between the Passenger Remedy Taker and Korean Air, such consent not to be unreasonably withheld by Korean Air.

- (14) For the purposes of paragraph (13), the Passenger Remedy Taker agrees to provide to the Monitoring Trustee the information required to demonstrate its exhaustion of the General Slot Allocation Procedure for obtaining the necessary Slots when requesting Slots from Korean Air under these Passenger Commitments.
- (15) If the Passenger Remedy Taker is not granted the necessary Slots under the General Slot Allocation Procedure, it shall inform the Monitoring Trustee and notify it of its request for preferred Slots to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments before the end of the IATA Slot Conference of the relevant IATA Season.
- (16) Following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall inform the Monitoring Trustee within one (1) week after the end of the IATA Slot Conference of the relevant IATA Season about the availability of Slots to be transferred or exchanged.
- (17) The transfer to or exchange of Slots with the Passenger Remedy Taker for the IATA Summer Season 2024, the IATA Winter Season 2024/2025 and the IATA Summer Season 2025, respectively, will be requested by the Passenger Remedy Taker before the IATA Historic Baseline date of the relevant IATA Season, such request to be communicated to Korean Air by the Monitoring Trustee. Within one (1) week from the request by the Passenger Remedy Taker, the Monitoring Trustee shall notify for approval or confirmation, as needed, the relevant Slot coordinators and airport managers of the requested transfer or exchange of Slots on behalf of Korean Air and the Passenger Remedy Taker.² These will decide in principle within 72 hours about such a request after which the Monitoring Trustee shall confirm the transfer/exchange to Korean Air and the Passenger Remedy Taker.
- (18) After approval or confirmation of the transfer or exchange requested by the Passenger Remedy Taker, Korean Air commits to transfer the Slots at ICN in accordance with the procedures to be established by MOLIT and the Slots at EU Airports via a transfer or exchange in accordance with the EU Slot Regulation and the applicable local regulations.
- (19) The transfer or exchange shall take effect on the day of the envisaged start of operations by the Passenger Remedy Taker, to allow the Passenger Remedy Taker to use the Slots as of entry or expansion in accordance with the Entry Schedule. In the event that the Passenger Remedy Taker prefers to accelerate the use of the Slots for operations on the Remedy Routes ahead of the envisaged Entry Schedule, it shall request this at the latest by the last day of the IATA Slot Conference for the IATA Season during which the change is set to take place.³ Korean Air shall accommodate such requests, except where it can demonstrate to the satisfaction of the Monitoring Trustee that this is not practically feasible.⁴ Any flexibility granted on this basis shall not lead to a delay in the Entry Schedule or in the increase of frequencies on another Remedy Route.
- (20) As a general rule, the Slots obtained by the Passenger Remedy Taker from Korean Air shall be used only to provide a Competitive Air Service on the relevant Remedy Route for which the Slots were requested, in accordance with the EU Slot Regulation and other applicable Slot regulations (“**Appropriate Use**”). These Slots cannot be used on another route until the expiry of these Passenger

² The approval of a transfer or exchange of Slots for the IATA Summer Season 2024 may not be possible one (1) week after the Historic Baseline Date of 31 January 2024 because the application can only be submitted to the Slot coordinators and airport managers after the Effective Date (for Slots at EU Airports) and after MOLIT’s amendments to the Rules for Adjustment and Allocation, Etc. of Slots (expected a few months after the Effective Date – for ICN Slots). The obligation for the Passenger Remedy Taker to request a transfer or exchange of Slots for the IATA Summer Season 2024 before the Historic Baseline Date of 31 January 2024 shall therefore be waived. For the IATA Summer Season 2024, the Passenger Remedy Taker shall share the request for the transfer or exchange of Slots with the Monitoring Trustee as soon as possible after the Effective Date (for Slots at EU Airports) and as soon as possible after MOLIT’s amendments to the Rules for Adjustment and Allocation, Etc. of Slots (expected a few months after the Effective Date – for ICN Slots).

³ It will not be possible to accelerate the use of Slots ahead of the envisaged Entry Schedule already during IATA Summer Season 2024.

⁴ It will not be practically feasible to accommodate such a request if (i) the accelerated timeline does not allow for sufficient time to follow the procedures in place to make available the necessary traffic rights and TSR overflight rights; and/or (ii) the accelerated timeline does not allow for sufficient time to follow the procedures to make available the necessary aircraft and crew needed to support the accelerated operations.

Commitments pursuant to paragraph (95). If, before the expiry of these Passenger Commitments, the Passenger Remedy Taker ceases to appropriately use the obtained Slots on the Remedy Routes in accordance with the EU Slot Regulation and other applicable Slot regulations, it shall return the Slots to the relevant Slot coordinators.

- (21) Until the expiry of these Passenger Commitments pursuant to paragraph (95), the Passenger Remedy Taker shall not be entitled to transfer, assign or sell in breach of these Passenger Commitments any Slots obtained from the Parties under these Passenger Commitments. The Passenger Remedy Taker shall be allowed to obtain a retiming of the Slots, e.g., through a swap or change, subject to an advance notification of the Monitoring Trustee, who will verify whether the new Slot time still allows the Passenger Remedy Taker to offer a Competitive Air Service on the Remedy Routes, and confirmation by the relevant Slot coordinators.

Traffic rights

- (22) Korean Air commits to transfer (or make its Affiliated Undertakings transfer, as the case may be) the traffic rights to allow the Passenger Remedy Taker to operate on the Remedy Routes set out in paragraph (8) in accordance with the Entry Schedule.⁵
- (23) The Passenger Remedy Taker shall request and take up the necessary traffic rights in accordance with the Entry Schedule. The Passenger Remedy Taker shall first apply to MOLIT for any unallocated traffic rights available under the relevant ASA in accordance with the regular traffic rights' allocation procedure. The Passenger Remedy Taker shall apply to MOLIT either within two (2) weeks after MOLIT initiates the regular traffic rights' allocation procedure or earlier if MOLIT sets a specific earlier date.⁶ If the Passenger Remedy Taker obtains any of these unallocated traffic rights, the number of traffic rights that Korean Air is required to transfer to the Passenger Remedy Taker shall be reduced accordingly.
- (24) To the extent that the Passenger Remedy Taker is not granted the necessary traffic rights for the operation of the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, it shall inform the Monitoring Trustee and notify it of its request for the necessary traffic rights to operate the Remedy Routes within five (5) Business Days after the results of the regular traffic rights' allocation procedure have been announced (the "**Requested Traffic Rights**").
- (25) Within five (5) Business Days following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall apply to MOLIT for a traffic right transfer.⁷ Subsequently, the transfer of traffic rights to the Passenger Remedy Taker shall be approved, so that they will be available for use by the Passenger Remedy Taker as of the entry or expansion in accordance with the Entry Schedule.
- (26) Korean Air commits to transfer and the Passenger Remedy Taker shall obtain the Requested Traffic Rights in accordance with the procedures to be established by MOLIT.

TSR overflight rights

- (27) Korean Air commits to transfer (or to make its Affiliated Undertakings transfer, as the case may be) TSR overflight rights to allow the Passenger Remedy Taker to operate on the Remedy Routes set out

⁵ I.e., traffic rights for the operation of up to seven (7) weekly frequencies on ICN-FRA, for up to seven (7) weekly frequencies on ICN-FCO, and for up to five (5) frequencies (...) on ICN-CDG (...).

⁶ MOLIT's regular traffic rights' allocation procedure has no fixed time schedule. However, it typically takes place at the beginning of each year (January/February).

⁷ This is based on the assumption that the "International Traffic Rights and Overflight Rights Allocation Rules" will be revised by that time, given that Korean Air will only be able to submit a request for a transfer of the Slots based on the revised rules. In addition, in case compliance with this obligation would not be possible under the revised rules, e.g., if the revised rules include a deadline of three (3) Business Days instead of five (5) Business Days, the revised rules will take precedence.

in paragraph (8) in accordance with the Entry Schedule, upon the request of the Passenger Remedy Taker.

- (28) The Passenger Remedy Taker shall request and take up the relevant TSR overflight rights in accordance with the Entry Schedule.⁸ The Passenger Remedy Taker shall first apply to MOLIT in accordance with the regular overflight rights' allocation procedure. The Passenger Remedy Taker shall apply to MOLIT either within two (2) weeks after MOLIT initiates the regular overflight rights' allocation procedure or earlier if MOLIT sets a specific earlier date.⁹ If the Passenger Remedy Taker obtains any TSR overflight rights, the number of TSR overflight rights that Korean Air is required to transfer to the Passenger Remedy Taker shall be reduced accordingly.
- (29) To the extent that the Passenger Remedy Taker is not granted the relevant TSR overflight rights for the operation of the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, it shall notify the Monitoring Trustee of this request for the relevant TSR overflight rights to operate the Remedy Routes within five (5) Business Days after the results of the regular overflight rights' allocation procedure have been announced (“the **Requested TSR Overflight Rights**”).
- (30) In case the regular overflight rights' allocation procedure does not take place, the Passenger Remedy Taker shall submit the request for the transfer of TSR overflight rights to the Monitoring Trustee together with the request for traffic rights as set out in paragraph (24).
- (31) Within five (5) Business Days following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall apply to MOLIT for a TSR overflight right transfer.¹⁰ Subsequently, the transfer of the Requested TSR Overflight Rights to the Passenger Remedy Taker shall be approved, so that they will be available for use by the Passenger Remedy Taker as of the entry or expansion in accordance with the Entry Schedule.
- (32) Korean Air commits to transfer and the Passenger Remedy Taker shall obtain the Requested TSR Overflight Rights in accordance with the procedures to be established by MOLIT.
- (33) At the request of the Passenger Remedy Taker, Korean Air commits to facilitate a discussion between the Passenger Remedy Taker and Aeroflot to negotiate an agreement to be entered into between those two parties on the conditions and fees payable by the Passenger Remedy Taker to Aeroflot for using the TSR.

Aircraft

- (34) Korean Air (as lessor) commits to conclude with the Passenger Remedy Taker (as lessee) a dry lease agreement for [*number and model of aircraft*] (the “**Remedy Aircraft**”) for a transitional period of [*duration of transitional period*] years as of delivery (the “**Remedy Aircraft Lease**”) at [*commercial terms of commercial agreement between Korean Air and the Passenger Remedy Taker*].¹¹ An extension of the duration of the Remedy Aircraft Lease with [*duration of the extension of the transitional period*] additional years is possible upon the request of the Passenger Remedy Taker, showing good cause,¹² at least [*notice period of extension request*] before the expiration. Such

⁸ The continuation of the war in Ukraine shall not render the transfer of TSR overflight rights unnecessary.

⁹ MOLIT's regular overflight rights' allocation procedure has no fixed time schedule. However, if it takes place, it typically happens at the beginning of each year (January/February).

¹⁰ This is based on the assumption that the “International Traffic Rights and Overflight Rights Allocation Rules” will be revised by that time, given that Korean Air will only be able to submit a request for a transfer of the Slots based on the revised rules. In addition, in case compliance with this obligation would not be possible under the revised rules, e.g., if the revised rules include a deadline of three (3) Business Days instead of five (5) Business Days, the revised rules will take precedence.

¹¹ [*Terms of the commercial agreement between Korean Air and the Passenger Remedy Taker*].

¹² Good cause in the context of these Passenger Commitments means “denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action”. Circumstances that could be considered good cause in the context of paragraph (34) include inter alia, the Passenger Remedy Taker demonstrating that the Remedy Aircraft Lease from Korean Air will be required for a longer period due to the

extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

- (35) The Remedy Aircraft Lease will provide for the reconfiguration/renovation by Korean Air of the Remedy Aircraft, prior to the delivery to the Passenger Remedy Taker, as requested by the Passenger Remedy Taker for it to offer a Competitive Air Service on the Remedy Routes. In addition, the Remedy Aircraft Lease will provide for the delivery of the Remedy Aircraft at the latest [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] before the start of operations with the aircraft in line with the Entry Schedule.
- (36) The Remedy Aircraft Lease shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within eight (8) weeks after the Effective Date, thereby taking into account the criteria listed in paragraphs (34)-(35) and incorporating the key terms set out in Schedule 3 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the Remedy Aircraft Lease shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Remedy Aircraft Lease are fair and reasonable.¹³
- (37) Korean Air also commits to sublease (as dry lease) to the Passenger Remedy Taker, upon the Passenger Remedy Taker's request after Completion, up to [*number and model of aircraft*] aircraft (the "**Subleased Aircraft**") at [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] and for a transitional period (the "**Sublease**"). The Passenger Remedy Taker can make such request to the extent that it considers the use of [*aircraft model*] to be required for the operation of the Remedy Routes during the Minimum Period in accordance with the Entry Schedule, but it has failed to independently procure the [*aircraft model*]. If required, the Passenger Remedy Taker shall request the negotiation of a Sublease by [*date*].¹⁴ The duration of such a Sublease shall not be limited to the rest of the Minimum Period. The exact duration of the Sublease shall be discussed and agreed between Korean Air and the Passenger Remedy Taker at the time of concluding the Sublease.
- (38) The Sublease will provide for the delivery of the Subleased Aircraft in as-is condition at the latest [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] before the start of operations with the [*aircraft model*] in line with the Entry Schedule.
- (39) The Sublease shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within [*term*] after the Passenger Remedy Taker's request, thereby taking into account the criteria listed in paragraphs (37)-(38). The conclusion of the Sublease shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Sublease are fair and reasonable.¹⁵

Crew

- (40) Korean Air commits to conclude with the Passenger Remedy Taker a flight crew support agreement for a transitional period of [*duration of transitional period*] (the "**Crew Support Agreement**"). An extension of the duration of the Crew Support Agreement with [*duration of the extension of the transitional period*] is possible upon the request of the Passenger Remedy Taker, showing good cause,¹⁶ [*notice period for extension request*] before the expiry of the agreement, subject to the approval by the Monitoring Trustee, in consultation with the Commission.

Passenger Remedy Taker's inability to free aircraft from its existing fleet and/or attract aircraft on the market at reasonable terms for the operation on the Remedy Routes.

¹³ The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

¹⁴ Provided that Completion takes place before [*date*]. This date will allow for delivery by IATA Summer Season 2025.

¹⁵ The terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

¹⁶ Good cause in the context of these Passenger Commitments means "denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action". Circumstances that could be considered good cause in the context of paragraph (40) include inter alia,

- (41) The Crew Support Agreement will effect the temporary secondment, in accordance with the specific request by the Passenger Remedy Taker, of up to [...] flight crew members ([...]) with a licence to operate [*aircraft model*] models to the Passenger Remedy Taker. The secondment fee payable by the Passenger Remedy Taker will consist of [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*]. Korean Air commits to ensure that the employment conditions of the seconded crew will not be worse than if they would not have been seconded.
- (42) In addition, the Crew Support Agreement will provide for paid rental support, upon the request of the Passenger Remedy Taker, to the seconded flight crew for access to [*aircraft model*] flight simulators for training to operate the Remedy Routes, until the Passenger Remedy Taker is able to train the flight crew for the operation of the Remedy Routes itself, but not later than the end of the Crew Support Agreement. The flight simulator access will be provided by Korean Air to the Passenger Remedy Taker at [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] and Korean Air commits to prioritise the Passenger Remedy Taker over any other new customers seeking flight simulator access. Korean Air shall consult with the Passenger Remedy Taker and offer sufficient flight simulator access to ensure that there will not be any delay or issue with the training of seconded crew.
- (43) The Crew Support Agreement will enter into force sufficiently in advance before the start of operations by the Passenger Remedy Taker on the Remedy Routes and in any event four (4) weeks before the start of operations by the Passenger Remedy Taker on the Remedy Routes.
- (44) The Crew Support Agreement shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within eight (8) weeks after the Effective Date, thereby taking into account the criteria listed in paragraphs (40)-(43) and incorporating the key terms set out in Schedule 4 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the Crew Support Agreement between Korean Air and the Passenger Remedy Taker shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Crew Support Agreement are fair and reasonable.¹⁷

MRO support

- (45) Korean Air commits to conclude with the Passenger Remedy Taker an agreement to provide MRO support for the Remedy Aircraft during the leasing period (the “**MRO Support Agreement**”) at [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*].
- (46) The MRO Support Agreement shall be negotiated between Korean Air and the Passenger Remedy Taker and concluded within eight (8) weeks after the Effective Date thereby taking into account the criteria listed in paragraph (45) and incorporating the key terms set out in Schedule 5 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the MRO Support Agreement between Korean Air and the Remedy Taker shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the MRO Support Agreement are fair and reasonable.¹⁸

the Passenger Remedy Taker demonstrating that it has not yet been able to attract sufficient flight crew itself to operate on all Remedy Routes in accordance with the Entry Schedule without crew support by Korean Air.

¹⁷ The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

¹⁸ The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

Section C Passenger Remedy Taker Criteria

- (47) In order to be approved by the Commission, the Passenger Remedy Taker must fulfil the following criteria:
- (a) The Passenger Remedy Taker shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the implementation of these Passenger Commitments).
 - (b) The Passenger Remedy Taker shall have the financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes;
 - (c) The Passenger Remedy Taker shall be an existing airline with the ability to operate a hub and spoke network from ICN; and
 - (d) The operations on the Remedy Routes by the Passenger Remedy Taker 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 the Commitments will be delayed. In particular, the Passenger Remedy Taker must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the operations on the Remedy Routes.
- (48) Korean Air has selected T'way as the proposed Passenger Remedy Taker. Korean Air requests the Commission to approve T'way as the Passenger Remedy Taker and to approve the Entry Commitment Agreement concluded between Korean Air and T'way in the Decision. Korean Air has appointed an independent external advisor, the costs of which will be borne by Korean Air, to assist the Commission in the assessment of: (i) the viability and suitability of the proposed Passenger Remedy Taker; (ii) the suitability and feasibility of the Passenger Commitments and the obligations and procedures included in the Entry Commitment Agreement; (iii) the alignment of the Passenger Commitments and the Entry Commitment Agreement with MOLIT's processes and the KFTC remedies' implementation; and (iv) upon further instruction by the Commission, the proposed carve-out in relation to the Cargo Commitments. The Commission may on its own initiative or at the request of the Independent Advisor or Korean Air, give any orders or instructions to the Independent Advisor.

Section D Monitoring Trustee

Appointment procedure

- (49) Korean Air shall appoint a Monitoring Trustee to carry out the functions specified in these Passenger Commitments for a Monitoring Trustee. The Parties commit(s) not to close the Transaction before the appointment of a Monitoring Trustee.
- (50) The Monitoring 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, consultant or auditor in the air transport sector; and
 - (c) neither have nor become exposed to a Conflict of Interest.
- (51) The Monitoring Trustee shall be remunerated by Korean Air in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Korean Air

- (52) 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. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph (50) and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Passenger Commitments; and
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

- (53) The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring 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 Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved by the Commission, Korean Air shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring 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

- (54) If all the proposed Monitoring Trustees are rejected, Korean Air shall submit the names of at least two (2) more natural or legal persons within one (1) week of being informed of the rejection, in accordance with paragraphs (49) to (53) of these Passenger Commitments.

Monitoring Trustee nominated by the Commission

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

Functions of the Monitoring Trustee

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

Duties and obligations of the Monitoring Trustee

- (57) 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) monitor the performance of the Passenger Commitments by Korean Air;
 - (c) inform Korean Air promptly about any request or notification by the Passenger Remedy Taker;

- (d) propose to Korean Air such measures as the Monitoring Trustee considers necessary to ensure Korean Air's compliance with the conditions and obligations attached to the Decision;
- (e) review and assess the agreements and the requests for extension of agreements submitted by Korean Air for approval by the Monitoring Trustee, in consultation with the Commission;
- (f) advise and make a written recommendation to the Commission as to the fulfilment of the Completion condition under paragraph (5);
- (g) review and assess the progress of the procurement of the entry by the Passenger Remedy Taker and verify that, dependent on the stage of the process, the Passenger Remedy Taker receives sufficient and correct information relating to the Remedy Routes;
- (h) provide to the Commission, sending Korean Air a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Remedy Routes as well as the facilitation of entry so that the Commission can assess the progress of the process until the moment of Entry on all Remedy Routes by the Passenger Remedy Taker, in accordance with the Entry Schedule, whereby after the moment of Entry on all Remedy Routes by the Passenger Remedy Taker, the Monitoring Trustee shall provide its reports on a IATA seasonal instead of a monthly basis;
- (i) promptly report in writing to the Commission, sending Korean Air a non-confidential copy at the same time, if it concludes on reasonable grounds that Korean Air is failing to comply with these Passenger Commitments;
- (j) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

Duties and obligations of Korean Air

- (58) Korean Air shall provide and shall cause their advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of Korean Air's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Passenger Commitments and Korean Air shall provide the Monitoring Trustee upon request with copies of any document. Korean Air shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- (59) Korean Air shall indemnify the Monitoring 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 Monitoring Trustee's duties under the Passenger Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
- (60) At the expense of Korean Air, the Monitoring Trustee may appoint advisors (in particular for technological, intellectual property, corporate finance or legal advice), subject to Korean Air's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring 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 Monitoring Trustee are reasonable. Should Korean Air refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard Korean Air. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph (59) of these Passenger Commitments shall apply *mutatis mutandis*.

- (61) Korean Air agrees that the Commission may share Confidential Information proprietary to Korean Air with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
- (62) 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 the Passenger Remedy Taker and interested third parties of the identity and the tasks of the Monitoring Trustee.
- (63) For a period of 10 years from the Effective Date the Commission may request all information from Korean Air that is reasonably necessary to monitor the effective implementation of these Passenger Commitments.

Replacement, discharge and reappointment of the Monitoring Trustee

- (64) If the Monitoring Trustee ceases to perform its functions under the Passenger Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Monitoring Trustee and Korean Air, require Korean Air to replace the Monitoring Trustee; or
 - (b) Korean Air may, with the prior approval of the Commission, replace the Monitoring Trustee.
- (65) If the Monitoring Trustee is removed according to paragraph (64) of these Passenger Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs (49) to (55) of these Passenger Commitments.
- (66) Unless removed according to paragraph (64) of these Passenger Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Passenger Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section E Fast-track dispute resolution procedure

- (67) In the event that (i) the Passenger Remedy Taker claims that Korean Air is failing to comply with the requirements of the Passenger Commitments and/or the Entry Commitment Agreement, vis-à-vis the Passenger Remedy Taker, or (ii) Korean Air claims that the Passenger Remedy Taker is failing to comply with its obligations under the Entry Commitment Agreement, in particular the obligation to continue to operate on the Remedy Routes until the end of the Minimum Period, the fast-track dispute resolution procedure as described in this Section shall be available to the Passenger Remedy Taker or Korean Air, respectively.
- (68) If the Passenger Remedy Taker or Korean Air wishes to avail itself of the fast-track dispute resolution procedure, it must notify the Monitoring Trustee in writing setting out in detail the reasons leading it to believe that the other party is failing to comply with the requirements of the Passenger Commitments or the Entry Commitment Agreement (the “**Notice**”). The Passenger Remedy Taker 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 15 working days after receipt of the Notice, which may be extended by mutual consent.

- (69) 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 or the Passenger Remedy Taker in order to ensure compliance, and shall be prepared, if requested, to facilitate the settlement of the dispute.
- (70) Should the Passenger Remedy Taker and Korean Air fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph (68), the claimant 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 the accused party and the Monitoring Trustee.
- (71) 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 the accused party and the Monitoring Trustee Proposal, including a comment as to its appropriateness.
- (72) The accused party shall, within 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 it proposes to undertake vis-à-vis the claimant (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

- (73) The Arbitral Tribunal shall in principle consist of three (3) persons. The claimant shall nominate its arbitrator in the Request; the accused party shall nominate its arbitrator in the Answer.
- (74) The arbitrators nominated by the Passenger Remedy Taker and Korean Air shall, within five (5) working days of the nomination of the last appointment, 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 Passenger Remedy Taker or Korean Air wish to have the Dispute decided by a sole arbitrator they shall indicate this in the Request. In this case, the Passenger Remedy Taker 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 either party 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

- (75) 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.
- (76) 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.
- (77) 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.

- (78) 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.
- (79) 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.
- (80) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the claimant must produce evidence of a *prima facie* case and (ii) if the claimant produces evidence of a *prima facie* case, the Arbitral Tribunal must find in favour of this party unless the accused party produces evidence to the contrary.

Involvement of the Commission

- (81) 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.
- (82) 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.
- (83) In the event of disagreement between the parties to the arbitration regarding the interpretation of the Passenger Commitments or the Entry Commitment Agreement, the Arbitral Tribunal may seek the Commission's interpretation of the Passenger Commitments or the Entry Commitment Agreement before finding in favour of any party to the arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

- (84) The Arbitral Tribunal shall decide the dispute on the basis of the Passenger Commitments, the Decision and the Entry Commitment Agreement. Issues not covered by the Passenger Commitments, the Decision or the Entry Commitment Agreement 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.
- (85) Upon request of either party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal.

The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.

- (86) 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.
- (87) The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by the accused party in order to comply with the Passenger Commitments or the Entry Commitment Agreement. 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.
- (88) 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.
- (89) 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.
- (90) Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Passenger Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

Section F Review clause

- (91) The Commission may extend the time periods foreseen in the Passenger 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 Korean Air. Only in exceptional circumstances shall Korean Air be entitled to request an extension within the last month of any period.
- (92) 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 Passenger 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 Korean Air. 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 G Sunset clause

- (93) In the event that the Transaction lapses, these Passenger Commitments shall lapse. In this case, both Korean Air and the Passenger Remedy Taker can prematurely terminate the Entry Commitment Agreement and the Passenger Remedy Taker shall without undue delay: (i) return to Korean Air any Remedy Aircraft or crew made available pursuant to these Passenger Commitments, (ii) return to the ICN Slot coordinator, any ICN Slots made available pursuant to these Passenger Commitments, (iii) return to Korean Air (via a transfer or an exchange) any Slots at EU Airports made available pursuant

to these Passenger Commitments, and (iv) return to MOLIT, any Requested Traffic Rights and Requested TSR Overflight Rights made available pursuant to these Passenger Commitments.

- (94) The obligation of Korean Air to transfer (or exchange) Slots, Requested Traffic Rights and Requested TSR Overflight Rights pursuant to Section B, shall cease to apply once the Passenger Remedy Taker receives the rights to operate 23 weekly frequencies in IATA Summer Seasons and 20 weekly frequencies in IATA Winter Seasons on the Remedy Routes. The obligation of Korean Air to take any necessary enforcement steps against the Passenger Remedy Taker as set out in paragraph (4) shall cease to apply after the end of the Minimum Period.
- (95) If and when the Passenger Remedy Taker has demonstrated Appropriate Use of the Slots on the Remedy Routes (i) in accordance with the Entry Schedule during the Minimum Period, and (ii) up until five (5) years after initial entry on all Remedy Routes as defined in paragraph (5) in accordance with applicable Slot regulations, these Passenger Commitments shall cease to apply. For the avoidance of doubt, this will not affect the validity of the underlying agreements entered into pursuant to these Passenger Commitments. As long as such agreements continue to apply, the provisions in these Passenger Commitments that concern those agreements also continue to apply.

Section H Entry into force

- (96) The Passenger Commitments shall take effect upon the Effective Date, with the exception of Section C (Passenger Remedy Taker Criteria) which shall take effect upon the date of entering into these Passenger Commitments.

9 January 2024

[...]

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

ANNEX 1
TW ENTRY SCHEDULE

[...]