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Subject: State Aid SA.60165 – Portugal – Restructuring aid to TAP SGPS – Evaluation and ranking of proposals submitted in the implementation of the commitment to transfer slots

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Excellency,

1 FACTS AND PROCEDURE

- (1) On 21 December 2021,¹ the Commission decided that the restructuring aid notified by Portugal on 10 June 2021 in the form of measures amounting to EUR 2 550 million for the benefit of Transportes Aéreos Portugueses SGPS S.A. (“TAP SGPS”), Transportes Aéreos Portugueses S.A. (“TAP Air Portugal”) and all their controlled subsidiaries is compatible with the internal market, subject to conditions.
- (2) Those conditions, corresponding to the commitments submitted by the Portuguese authorities, include measures limiting the distortions of competition, namely the divestiture of the stakes held by TAP SGPS in non-core businesses, a cap on the aircraft fleet, the transfer of up to 18 daily slots to one actual or potential competitor at Lisbon airport (the “commitment to transfer slots”), an acquisition ban and an advertising ban.² As part of the commitment to transfer slots, the competitor to which TAP Air Portugal would transfer the slots is subject to prior Commission approval.³ For that purpose, a monitoring trustee (the “Monitoring Trustee”) would be appointed to assist the Commission.⁴
- (3) Portugal agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958⁵ and to have this decision adopted and notified pursuant to Article 297 TFEU in English.

1.1 The call for proposals under the commitment to transfer slots

- (4) Under the commitment to transfer slots⁶, Portugal committed that TAP Air Portugal would transfer a slot package of up to 18 daily slots (winter and summer) (the “remedy slots”) to another air carrier (an actual or potential competitor) to allow it to establish a new base or to expand its existing base at Lisbon airport (the “remedy taker”).⁷
- (5) Portugal set out that the remedy taker would be approved by the Commission following a transparent and non-discriminatory selection procedure (call for proposals). The call for proposals would be published by the Monitoring Trustee

¹ Commission decision C(2021)9941 final of 21 December 2021 in Case SA.60165 ((2021/C) (ex 2021/N)) – Portugal – Restructuring aid to TAP SGPS, published on 9 February 2022 on the Commission’s website: <https://ec.europa.eu/competition> (the “TAP Decision”).

² TAP Decision, Article 2(2).

³ TAP Decision, recital 89.

⁴ TAP Decision, recital 90. On 4 February 2022, the Commission approved the appointment of Alcis Advisers GmbH (“Alcis”) as the Monitoring Trustee. On 8 February 2022, TAP Air Portugal and Alcis entered into a Monitoring Trustee Mandate.

⁵ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

⁶ As set out in section 3.3.3 (recitals 81 to 97) of the TAP Decision.

⁷ TAP Decision, recital 82.

sufficiently in advance of the beginning of the general slot allocation procedure for each IATA Season until the Commission approves a remedy taker, and would be granted adequate publicity.⁸

- (6) On 25 February 2022, the Monitoring Trustee published the terms of the call for proposals referred to in the commitment to transfer slots. In accordance with its mandate, the Monitoring Trustee organised the procedure for the submission of proposals in two steps. As a first step, potential remedy takers were invited to express their interest in the remedy slots and to submit information demonstrating their eligibility by the deadline for the submission of expressions of interest. In accordance with its mandate, the Monitoring Trustee set the deadline for the submission of expressions of interest for 24 March 2022, at least four weeks before the IATA Slot Request Submission Deadline for Winter 2022/2023 IATA Season (19 May 2022). As a second step, potential remedy takers that had expressed their interest and demonstrated that they comply with the eligibility criteria were invited to submit their full proposals by the set deadline. In accordance with its mandate, the Monitoring Trustee set the deadline for 12 May 2022, one week prior to the IATA Slot Request Submission Deadline.
- (7) By the deadline of 24 March 2022 for the submission of the expressions of interest, the Monitoring Trustee received expressions of interest from the following five air carriers: Air Dolomiti S.p.A (“Air Dolomiti”), easyJet Europe Airline GmbH (“easyJet”), Eurowings GmbH (“Eurowings”), Ryanair DAC (“Ryanair”), and Vueling Airlines S.A. (“Vueling”). All five air carriers requested and were granted anonymity vis-à-vis TAP Air Portugal.⁹ The Monitoring Trustee forwarded the five expressions of interest to the Commission on 24 March 2022. The Monitoring Trustee informed TAP Air Portugal that five air carriers had expressed interest in the slots on 25 March 2022.
- (8) By the deadline of 12 May 2022 for the submission of full proposals, the Monitoring Trustee received proposals from the following three air carriers: easyJet, Ryanair, and Vueling. The Monitoring Trustee forwarded to the Commission the three proposals on 12 May 2022.¹⁰ Further exchanges between the Monitoring Trustee and the potential remedy takers took place to clarify certain aspects of the submitted proposals.

1.2 Evaluation framework under the commitment to transfer slots

- (9) Under the commitment to transfer slots, the Commission, advised by the Monitoring Trustee, will evaluate the proposals received following the call for proposals. For that purpose, the commitment to transfer slots provides for three types of evaluation criteria, pertaining to: (i) the eligibility of the potential remedy takers, (ii) the economic and financial credibility of their proposals, and compliance with EU competition law, and (iii) the level of capacity that the potential remedy takers would offer through the aircraft based at Lisbon airport

⁸ TAP Decision, recitals 89 and 91.

⁹ The Monitoring Trustee served as the intermediary for any communication or correspondence between TAP Air Portugal and all five potential remedy takers, ensuring the protection of their anonymity.

¹⁰ In accordance with its mandate, the Monitoring Trustee is required to forward the proposals to the Commission (not to TAP Air Portugal, TAP SGPS or Portugal).

using the remedy slots, complemented, as necessary in case of similar proposals in terms of capacity, by the level of direct connectivity that the potential remedy takers would offer.

- (10) More specifically, pursuant to the commitment to transfer slots, and as indicated in recital 88 of the TAP Decision, to be eligible, a potential remedy taker must:
- a. be an air carrier holding an operating licence issued by an EU/EEA Member State;
 - b. be independent of and unconnected with TAP Air Portugal (“eligibility criterion b.”);
 - c. not be subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million (“eligibility criterion c.”);
 - d. commit to operate the number of aircraft based at Lisbon airport using the remedy slots until the end of the restructuring plan (end of 2025). Potential remedy takers indicate in their proposals the number of aircraft to be based at Lisbon airport using the remedy slots. For the purpose of committing to base aircraft using the remedy slots, a potential remedy taker must commit to comply with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts.
- (11) In addition, under the commitment to transfer slots and as indicated in recital 92 of the TAP Decision, the Commission may reject the proposals if they are not credible from an economic or operational point of view, or in respect of EU competition law.
- (12) Finally, pursuant to the commitment to transfer slots and as indicated in recital 93 of the TAP Decision, in case of competing proposals, the Commission will give preference, in decreasing order, to potential remedy takers that in particular: (i) will provide the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (end of 2025); and (ii) will serve the greatest number of destinations by direct flights operated by the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (direct connectivity, without taking account of the frequencies, until the end of 2025).¹¹
- (13) In that context, the Commission will first assess (section 2) whether the potential remedy takers that expressed interest in the remedy slots comply with the requirements set out in the commitment to transfer slots in terms of eligibility. Second, the Commission will assess whether the proposals received from eligible potential remedy takers are (i) credible from an economic and operational point of view (section 3), and (ii) comply with EU competition law (section 4). Third, the Commission will rank (section 5) the proposals that comply with the abovementioned criteria, by (i) first giving priority to proposals submitted by

¹¹ Given that the Commission has not given the same evaluation to several proposals (tied bids) upon assessment of those two criteria, it has not been necessary to rely on the procedure applicable in the specific situation of tied bids, as referred to in recital 94 of the TAP Decision.

potential remedy takers that will provide the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (end of 2025); and (ii) then, in case of similar proposals in terms of capacity, giving priority to potential remedy takers that will serve the greatest number of destinations by direct flights operated by the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (direct connectivity, without taking account of the frequencies, until end of 2025).

2 ELIGIBILITY OF THE POTENTIAL REMEDY TAKERS

- (14) The Commission will assess in turn the eligibility of each of the following five potential remedy takers that expressed their interest in the remedy slots by the set deadline: Air Dolomiti, easyJet, Eurowings, Ryanair, and Vueling. In doing so, the Commission will take account of the views expressed by the potential remedy taker concerned and by the Monitoring Trustee in its report on the eligibility of potential remedy takers provided on 7 April 2022.¹²

2.1 Eligibility of Air Dolomiti

- (15) Air Dolomiti (Italy) began operations in 1991, with the aim of developing connections from smaller Italian cities to the rest of Europe. It was acquired in 2003 by the Lufthansa Group (“LH Group”). Air Dolomiti represents the Italian branch of LH Group, flying out of Italy’s main airports to Germany, notably to Munich and Frankfurt airports.¹³

2.1.1 Air Dolomiti’s views

- (16) Air Dolomiti submits that it complies with all the eligibility requirements set out in the commitment to transfer slots.
- (17) In particular, Air Dolomiti confirms that it is independent of and unconnected with TAP Air Portugal. It further specifies that “*Air Dolomiti does not have any agreement with TAP group; however other Lufthansa Group carrier(s) do have minor commercial relations in the form of interline agreements and code-sharing only. Moreover, Lufthansa, Brussels Airlines, Swiss and Austrian Airlines are members of Star Alliance [of which TAP Air Portugal is also a member].*”¹⁴ As a conclusion, Air Dolomiti considers that it complies with eligibility criterion b.
- (18) Air Dolomiti confirms that it is not subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million. In that respect, Air Dolomiti acknowledges that it belongs to Lufthansa Group and is ultimately controlled by Deutsche Lufthansa AG (“DLH”), which has received such an aid. However, Air Dolomiti notes that “*the recapitali[s]ation instrument granted by Germany to Air Dolomiti’s ultimate shareholder Deutsche Lufthansa AG in 2020 (see the decision of the European Commission dated 25*

¹² Monitoring Trustee’s report entitled ‘TAP Air Portugal – Slot transfer procedure – Assessment of the eligibility of Potential Remedy Takers’, dated 7 April 2022.

¹³ See: <https://www.airdolomiti.eu/history>

¹⁴ Air Dolomiti’s Expression of Interest, p.2.

June 2020, Case no. SA.57153)¹⁵ is below the amount [of] EUR 250 million at the date of this application.”¹⁶ Therefore, Air Dolomiti considers that it complies with eligibility criterion c.

2.1.2 *The Monitoring Trustee’s opinion*

- (19) The Monitoring Trustee considers that Air Dolomiti, as a subsidiary of DLH, does not fulfil eligibility criteria b. (being independent of and unconnected with TAP Air Portugal) and c. (not being subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million).
- (20) First, the Monitoring Trustee concludes that the membership of Air Dolomiti’s sister companies in LH Group (Lufthansa, Brussels Airlines, Swiss and Austrian Airlines) in the same alliance as TAP Air Portugal (Star Alliance) substantiates a finding that Air Dolomiti should not be deemed independent of and unconnected with TAP Air Portugal.
- (21) Second, the Monitoring Trustee is of the opinion that pursuant to the Lufthansa Decision, Air Dolomiti, as a subsidiary of DLH, (i) has benefitted from a COVID-19 recapitalisation measure of more than EUR 250 million, and (ii) is subject to the additional measures to preserve effective competition as referred to in point 72 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)¹⁷.
- (22) Therefore, the Monitoring Trustee concludes that Air Dolomiti, while complying with two out of four criteria listed in the commitment to transfer slots, is not eligible.

2.1.3 *The Commission’s assessment*

- (23) Air Dolomiti is an air carrier holding an operating licence issued by an EU/EEA Member State. Air Dolomiti commits to base up to [...] aircraft at Lisbon airport using the remedy slots until the end of 2025 and to comply for that purpose with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts.
- (24) However, in line with the Monitoring Trustee’s assessment and for the reasons set out in recital 25 and following, the Commission considers that Air Dolomiti is not an eligible potential remedy taker.

¹⁵ Commission Decision C(2020) 4372 final of 25 June 2020 in Case SA.57153 (2020/N) – Germany – COVID-19 – Aid to Lufthansa, published on 27 October 2020 on the Commission’s website: <https://ec.europa.eu/competition> (the “Lufthansa Decision”).

¹⁶ Air Dolomiti’s Expression of Interest, p. 3.

¹⁷ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

Assessment of compliance with eligibility criterion b.

- (25) The commitment to transfer slots provides that to be eligible, a potential remedy taker must be independent of and unconnected with TAP Air Portugal (eligibility criterion b.).
- (26) The requirement of independence and lack of connection is a standard eligibility criterion in remedies in the form of slot releases in antitrust and merger cases.¹⁸ The Commission has also clarified in recent State aid decisions that the conditions for compliance with eligibility criterion b. should be established in line with the Commission's established merger and antitrust decisional practice.¹⁹
- (27) In this context, the Commission considers that, to be considered as independent of and unconnected with TAP Air Portugal, a potential remedy taker must comply with the following three conditions:
- a. it is not an associated carrier belonging to the same group as TAP Air Portugal;
 - b. it is not a member of Star Alliance to which TAP Air Portugal belongs; and
 - c. it does not cooperate with TAP Air Portugal in the provision of passenger air transport services to/from Lisbon airport, except if that cooperation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis.
- (28) Air Dolomiti does not belong to the same group as TAP Air Portugal, is not a member of Star Alliance, and does not cooperate with TAP Air Portugal in the provision of passenger air transport services to/from Lisbon airport.
- (29) However, as acknowledged by Air Dolomiti and pointed out by the Monitoring Trustee, four airlines of LH Group to which Air Dolomiti belongs are members of Star Alliance. Considering the possibility of intra-group transfers of slots under the Slot Regulation,²⁰ Air Dolomiti could transfer the remedy slots to members of Star Alliance, which are deemed not to compete as effectively with TAP Air Portugal as airlines that have no relationship with the latter. As a consequence,

¹⁸ See for example commitments annexed to the Commission decisions in Cases AT.39595 – Continental/United/Lufthansa/Air Canada; AT.39596 – British Airways/American Airlines/Iberia; M.6447 – IAG/bmi; and M.7541 – IAG/Aer Lingus

¹⁹ See recital 49 of Commission Decision C(2021) 6930 final of 20 September 2021 in Case SA.59913 – France – COVID-19 – Recapitalisation of Air France and the Air France-KLM Holding – Evaluation and ranking of proposals submitted in the implementation of structural commitments, published on 10 February 2022 on the Commission's website: <https://ec.europa.eu/competition> (the "Air France Evaluation Decision"); see also recital 16 of Commission Decision C(2020) 7743 final of 5 November 2021 in Case SA.57153 – Germany – COVID-19 – Aid to Lufthansa – Evaluation, pursuant to the competition remedies, of the formal bid submitted by MHS Aviation, published on 24 January 2022 on the Commission's website: <https://ec.europa.eu/competition>.

²⁰ Pursuant to Article 8a(1)(b)(i) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (the "Slot Regulation"), slots may be transferred between parent and subsidiary companies, and between subsidiaries of the same parent company.

the membership of other LH Group airlines to Star Alliance raises doubts as to the independence and lack of connection of Air Dolomiti with TAP Air Portugal.

- (30) In any case, as further explained in recital 31 and following, Air Dolomiti does not comply with eligibility criterion c., so that it is not necessary to formally conclude on its compliance with eligibility criterion b.

Assessment of compliance with eligibility criterion c.

- (31) The commitment to transfer slots provides that to be eligible, a potential remedy taker must not be subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million (eligibility criterion c.). A potential remedy taker, therefore, would not comply with eligibility criterion c. if it is a beneficiary of a COVID-19 recapitalisation measure of more than EUR 250 million approved by the Commission subject to competition remedies in accordance with point 72 of the Temporary Framework.²¹
- (32) As indicated in the Air France Evaluation Decision, the Commission considers, for the purposes of the applicability of the eligibility criterion c., that (i) Air Dolomiti, as part of the LH Group, is a beneficiary of a COVID-19 recapitalisation measure of more than EUR 250 million notified by Germany under Article 107(3)(b) TFEU;²² and (ii) Air Dolomiti, as the other airlines of LH Group, is subject to the commitment by Germany that LH Group will divest slots and assets to a competing carrier.²³
- (33) Furthermore, it is undisputed that DLH has actually received more than EUR 250 million in recapitalisation aid.²⁴ The Commission considers that the argument put forward by Air Dolomiti, according to which it complies with eligibility criterion c. because at the time of its application, the amount of the recapitalisation aid granted by Germany to DLH is below EUR 250 million, is neither consistent with the letter nor the spirit of that criterion.

²¹ According to point 72 of the Temporary Framework, “[i]f the beneficiary of a COVID-19 recapitalisation measure above EUR 250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. In proposing such measures, Member States may in particular offer structural or behavioural commitments foreseen in Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.”

²² Air France Evaluation Decision, recital 33.

²³ Air France Evaluation Decision, recital 36.

²⁴ See description of DLH stabilisation packages (emphasis added): “With the completion of the capital increase, which was executed under Authorised Capital C resolved by the Annual General Meeting 2021 and closed on October 11, 2021, Deutsche Lufthansa AG has fully repaid **the drawn amount of the [German Economic Stabilization Fund] Silent Participation I in the amount of EUR 1.5 billion. The Silent Participation II of EUR 1.0 billion was repaid in full** and the undrawn remaining part of Silent Participation I of around EUR 3 billion was terminated in November 2021” (<https://investor-relations.lufthansagroup.com/en/corporate-governance/stabilization-packages.html>, last accessed on 13 June 2022). See also Lufthansa’s Group Management Presentation on the 2020 Results, 4 March 2021, page 19, showing notably that Silent Participation II (EUR 1 billion) had been fully drawn down in 2020 (<https://investor-relations.lufthansagroup.com/fileadmin/downloads/en/charts-speeches/LH-APC-2021-charts-Spohr-Steenbergen.pdf>, last accessed on 13 June 2022).

- (34) On the one hand, eligibility criterion c. refers to the potential remedy taker “*having received*” a recapitalisation aid under the Temporary Framework of more than EUR 250 million. It does not refer to any specific date (such as the date of the application) for the receipt of the recapitalisation aid or for the determination of the amount of the recapitalisation aid received. There is thus no ground in the text of eligibility criterion c. for interpreting it as requiring that the recapitalisation aid to DLH still exceeds EUR 250 million at the time of the application.
- (35) On the other hand, the period of implementation of the competition remedies referred to in eligibility criterion c. does not depend on the refunding of the recapitalisation instrument and is not waived if the recapitalisation aid is repaid in part or in full. As recalled in the Lufthansa Decision, DLH’s mandatory commitment to divest the slots and other assets pursuant to point 72 of the Temporary Framework will apply for six full consecutive IATA seasons after the last season for which the “use-it-or-lose-it rule” does not apply in full, unless they are divested earlier.²⁵ Considering that the “use-it-or-lose-it rule” is still partially waived in Summer 2022 IATA Season²⁶ and that no divestment has been completed, DLH and its subsidiaries, notably Air Dolomiti, are still subject to the competition remedies referred to in eligibility criterion c.
- (36) As a consequence, the Commission finds that Air Dolomiti does not comply with eligibility criterion c.

Conclusion

- (37) Considering the assessment of the Monitoring Trustee, and since Air Dolomiti does not comply with at least one of the eligibility criteria set out in the commitment to transfer slots (eligibility criterion c.), the Commission concludes that Air Dolomiti is not an eligible potential remedy taker.

2.2 Eligibility of easyJet

- (38) easyJet (Austria) is an air carrier belonging to the easyJet Group, a low-cost European point-to-point airline. The easyJet Group is the seventh largest airline in the world (based on passengers, 2019 data). It operates 927 routes across 34 countries and 153 airports with 308 aircraft.²⁷

2.2.1 easyJet’s views

- (39) easyJet submits that it complies with all the eligibility requirements set out in the commitment to transfer slots.

²⁵ Lufthansa Decision, recital 72.

²⁶ Commission Delegated Regulation (EU) 2022/255 of 15 December 2021 amending Council Regulation (EEC) No 95/93 as regards the extension of measures for temporary relief from the slot utilisation rules due to the COVID-19 crisis, C/2021/9105, OJ L 42, 23.2.2022, p. 1.

²⁷ See: <https://corporate.easyjet.com/about/what-we-do>, last accessed on 3 June 2022.

2.2.2 *The Monitoring Trustee's opinion*

- (40) The Monitoring Trustee considers that easyJet complies with all four eligibility criteria set out in the commitment to transfer slots and is therefore an eligible potential remedy taker, as defined in the commitment to transfer slots.

2.2.3 *The Commission's assessment*

- (41) easyJet is an air carrier holding an operating licence issued by an EU/EEA Member State. easyJet is independent of and unconnected to TAP Air Portugal, stating that it has no existing or planned relationship with TAP Air Portugal or any of its affiliated undertakings. The Commission has no elements to put that statement into doubt. Neither easyJet nor any other subsidiary of the easyJet Group are subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million. easyJet commits to base aircraft at Lisbon airport using the remedy slots until the end of 2025 and to comply for that purpose with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts. In that respect, as part of its full proposal, easyJet indicates that it would base at Lisbon airport three additional aircraft using the remedy slots as from the start of Winter 2022/2023 IATA Season until 31 December 2025.
- (42) In light of the above, considering the assessment of the Monitoring Trustee, the Commission concludes that easyJet complies with all the eligibility criteria set out in the commitment to transfer slots and easyJet is an eligible remedy taker.

2.3 **Eligibility of Eurowings**

- (43) Eurowings (Germany) is Lufthansa Group's low-cost airline. Eurowings has a current fleet of 139 aircraft and specialises in low-cost direct flights within Europe. It currently offers more than 100 destinations in over 50 countries, making it the third-largest European point-to-point carrier.²⁸

2.3.1 *Eurowings' views*

- (44) Eurowings submits that it complies with all the eligibility requirements set out in the commitment to transfer slots.
- (45) In particular, Eurowings confirms that it is independent of and unconnected with TAP Air Portugal. It further specifies that "*Eurowings does not have any agreement with TAP group; however other Lufthansa Group carrier(s) do have minor commercial relations in the form of interline agreements and code-sharing only. Moreover, Lufthansa, Brussels Airlines, Swiss and Austrian Airlines are members of Star Alliance.*"²⁹ As a conclusion, Eurowings considers that it complies with eligibility criterion b.
- (46) Eurowings confirms that it is not subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million. In that respect, Eurowings acknowledges that it belongs to Lufthansa Group and is

²⁸ See: <https://www.eurowings.com/en/information/about-us/company.html>, last accessed on 3 June 2022.

²⁹ Eurowings' Expression of Interest, p.2.

ultimately controlled by DLH, which has received such an aid. However, Eurowings notes that “*the recapitali[s]ation instrument granted by Germany to Eurowings’ ultimate shareholder Deutsche Lufthansa AG in 2020 (see the decision of the European Commission dated 25 June 2020, Case no. SA.57153 [the Lufthansa Decision]) is below the amount [of] EUR 250 million at the date of this application.*”³⁰ Therefore, Eurowings considers that it complies with eligibility criterion c.

2.3.2 *The Monitoring Trustee’s opinion*

- (47) For reasons similar to the ones developed in Section 2.1.2 on Air Dolomiti’s eligibility, the Monitoring Trustee considers that Eurowings, as a subsidiary of DLH, only complies with two out of four criteria listed in the commitment to transfer slots and is therefore not eligible.

2.3.3 *The Commission’s assessment*

- (48) Eurowings is an air carrier holding an operating licence issued by an EU/EEA Member State. Eurowings commits to base up to [...] aircraft at Lisbon airport using the remedy slots until the end of 2025 and to comply for that purpose with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts.
- (49) Like Air Dolomiti, Eurowings belongs to LH Group and ultimately to DLH. In this context, for reasons similar to those set out in relation to Air Dolomiti (Section 2.1.3), there are doubts about Eurowings’ independence and lack of connection with TAP Air Portugal (eligibility criterion b.), since four airlines of LH Group are members of Star Alliance, as is TAP Air Portugal. Furthermore, Eurowings, as a subsidiary of DLH, is subject to the competition remedies imposed on DLH for having received a COVID-19 recapitalisation aid of more than EUR 250 million. Eurowings is therefore in breach of eligibility criterion c.
- (50) Considering the assessment of the Monitoring Trustee, and for reasons similar to the ones developed in Section 2.1.3 on Air Dolomiti’s eligibility, the Commission concludes that Eurowings is not an eligible potential remedy taker because it does not comply with at least one of the eligibility criteria set out in the commitment to transfer slots (eligibility criterion c.).

2.4 **Eligibility of Ryanair**

- (51) Ryanair (Ireland) is an air carrier belonging to the Ryanair Group, together with Ryanair UK, Buzz, Lauda and Malta Air. The Ryanair Group is Europe’s largest airline (based on passengers, 2019 data). It operates over 2 500 routes across 36 countries and 225 airports (including 89 bases).³¹

³⁰ Eurowings’ Expression of Interest, p.4.

³¹ <https://investor.ryanair.com/wp-content/uploads/2022/05/FY22-Ryanair-Powerpoint.pdf>, last accessed on 3 June 2022.

2.4.1 *Ryanair's views*

- (52) Ryanair submits that it complies with all the eligibility requirements set out in the commitment to transfer slots.

2.4.2 *The Monitoring Trustee's opinion*

- (53) The Monitoring Trustee considers that Ryanair complies with all four eligibility criteria set out in the commitment to transfer slots and is therefore an eligible potential remedy taker, as defined in the commitment to transfer slots.

2.4.3 *The Commission's assessment*

- (54) Ryanair is an air carrier holding an operating licence issued by an EU/EEA Member State. Ryanair is independent of and unconnected with TAP Air Portugal, confirming that it has no existing or planned relationship with TAP Air Portugal or any of its affiliated undertakings. The Commission has no elements to cast doubt on that confirmation. Neither Ryanair nor any subsidiary of the Ryanair Group are subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million. Ryanair commits to base aircraft at Lisbon airport using the remedy slots until the end of 2025 and to comply for that purpose with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts. In that respect, as part of its full proposal, Ryanair indicates that it would base at Lisbon airport [...] additional aircraft using the remedy slots as from the start of Winter 2022/2023 IATA Season until 31 December 2025.
- (55) In light of the above, considering the assessment of the Monitoring Trustee, the Commission concludes that Ryanair complies with all the eligibility criteria set out in the commitment to transfer slots and Ryanair is an eligible remedy taker.

2.5 Eligibility of Vueling

- (56) Vueling (Spain) is one of Europe's leading low-cost airlines, with special relevance in the Spanish domestic market, as well as in France and Italy. Vueling belongs to International Airlines Group (IAG), which also includes Aer Lingus, British Airways, Iberia and Level.³²
- (57) Vueling serves Lisbon airport from other destinations, but does not operate a base there.

2.5.1 *Vueling's views*

- (58) Vueling submits that it complies with all the eligibility requirements set out in the commitment to transfer slots.

2.5.2 *The Monitoring Trustee's opinion*

- (59) The Monitoring Trustee considers that Vueling complies with all four eligibility criteria set out in the commitment to transfer slots and is therefore an eligible potential remedy taker, as defined in the commitment to transfer slots.

³² See: <https://www.iairgroup.com/en/our-brands>, last accessed on 3 June 2022.

2.5.3 *The Commission's assessment*

- (60) Vueling is an air carrier holding an operating licence issued by an EU/EEA Member State. Vueling is independent of and unconnected with TAP Air Portugal, confirming that it has no existing or planned relationship with TAP Air Portugal or any of its affiliated undertakings. The Commission has no reasons to doubt that confirmation. Neither Vueling nor any other subsidiary of IAG are subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million. Vueling commits to base aircraft at Lisbon airport using the remedy slots until the end of 2025 and to comply for that purpose with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts. In that respect, as part of its full proposal, Vueling indicates that it would newly base at Lisbon airport [...] aircraft using the remedy slots as from the start of Winter 2022/2023 IATA Season until 31 December 2025.
- (61) In light of the above, considering the assessment of the Monitoring Trustee, the Commission concludes that Vueling complies with all the eligibility criteria set out in the commitment to transfer slots and Vueling is an eligible remedy taker.

2.6 Conclusion on eligibility of the potential remedy takers

- (62) The Commission concludes that the following potential remedy takers are eligible: (i) easyJet, (ii) Ryanair, and (iii) Vueling.
- (63) The Commission concludes that the following potential remedy takers are not eligible: (i) Air Dolomiti, and (ii) Eurowings, both for failure to comply at least with the requirement of not being subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million (eligibility criterion c.).

3 CREDIBILITY OF THE PROPOSALS FROM AN ECONOMIC AND OPERATIONAL POINT OF VIEW

- (64) Three eligible potential remedy takers submitted full proposals by the set deadline: (i) easyJet, (ii) Ryanair, and (iii) Vueling.
- (65) According to the commitment to transfer slots, the Commission may reject proposals if they are not credible from an economic or operational point of view. For the purposes of assessing the credibility of the proposals submitted by the eligible potential remedy takers, the Commission will take account of the views expressed by the Monitoring Trustee in its reasoned opinion on evaluation of proposals provided on 7 June 2022.³³
- (66) The Monitoring Trustee's approach to assessing credibility in its reasoned opinion consists in assessing the plausibility of the proposals from an economic and operational point of view, looking specifically at the proposed route plan, operational plan and financial plan. The Monitoring Trustee also considered

³³ Monitoring Trustee's Reasoned Opinion on evaluation of proposals, Case SA.60165 – Portugal's restructuring aid to TAP Group, dated 7 June 2022 and submitted on the same day. The Monitoring Trustee's assessment is based on the proposals and on responses to the Monitoring Trustee's further queries.

relevant experience and financial robustness of each of the eligible potential remedy takers. In addition, the Monitoring Trustee analysed the comprehensiveness and consistency of the information provided, as well as plausibility of the set of assumptions and of the resulting plans.

- (67) The Commission will assess in turn the credibility of the proposal submitted by each of easyJet, Ryanair, and Vueling, to determine whether the Commission should reject any of those proposals for failure to pass the credibility threshold. The Commission's assessment will consist in determining whether (i) any of the route plan, operational plan or financial plan submitted by easyJet, Ryanair, or Vueling contains any material weakness; or (ii) the overall financial situation of either of those air carriers appears *prima facie* too weak to implement the proposed business plan. For the purpose of point (i), the Commission will aim at identifying any material weakness, *inter alia* in terms of rationale of the proposed strategy; consistency of the strategic, operational and financial components; plausibility of the underlying assumptions; or implementability, including taking account of the experience of the air carrier. For the purpose of point (ii), the Commission will aim at ascertaining whether any of the eligible potential remedy takers has failed to demonstrate that it has sufficient access to the financial resources needed to invest in the new or expanded based operations at Lisbon airport or to guarantee the medium- to long-term viability of its operations.
- (68) If the Commission determines that any of the proposals contains such a material weakness, the Commission will consider that the economic and operational credibility of the proposal cannot be established with a sufficient degree of confidence and will reject it in its entirety. If the Commission does not identify any such material weakness, the Commission will approve the proposal and continue its assessment against the other criteria. For the avoidance of doubt, in accordance with the commitment to transfer slots, the Commission will not evaluate the relative degree of credibility between the different proposals or use the overall credibility assessment for the ranking of the proposals.

3.1 Credibility of easyJet's proposal

- (69) easyJet requests the transfer by TAP Air Portugal of 18 daily slots that easyJet would use to expand its based operations at Lisbon airport from five to eight aircraft as from the start of Winter 2022/2023 IATA Season. easyJet would use the remedy slots at Lisbon airport to serve a total of 32 destinations (24 in Winter IATA Seasons and 24 in Summer IATA Seasons, including 16 year-round destinations and eight seasonal destinations, with weekly frequencies ranging from [...]), using A321neo aircraft (235 seats).

3.1.1 The Monitoring Trustee's opinion

- (70) First, the Monitoring Trustee considers that easyJet has submitted credible explanations for its overall flight plan, its choice of destinations and its planned frequencies. The Monitoring Trustee notes in particular that easyJet would use the remedy slots to complement and strengthen its existing Lisbon base and finds the rationale behind easyJet's selection of destinations ([...] already served destinations and [...] newly served destinations) convincing.
- (71) Second, the Monitoring Trustee considers, based on the assessment of both the operational input parameters submitted by easyJet and the resulting operational

plan, that easyJet's operational plan is very well documented and explained, achievable and plausible. In particular, the Monitoring Trustee notes that easyJet has [...] to cope with potential delays. The Monitoring Trustee also considers that easyJet's crew concept is credibly underpinned and realistically achievable. Furthermore, easyJet has foreseen the possibility that its operations at Lisbon airport would initially be split between [...], which the Monitoring Trustee finds manageable in view of easyJet's experience with split operations across its network.

- (72) Third, the Monitoring Trustee deems that the overall set of assumptions applied by easyJet for its financial plan is plausible and the outcome credible. While easyJet expects to achieve profitability [...], which may *prima facie* appear [...], the Monitoring Trustee notes that, according to easyJet, its existing base has [...] and significant synergies could be expected. Furthermore, overall, the Monitoring Trustee judges the assumed yields and their development over time as plausible.
- (73) Fourth, in terms of experience, the Monitoring Trustee considers that easyJet has provided convincing evidence of its capability to maintain and further expand its existing operation at Lisbon airport and has not identified any weakness.
- (74) Fifth, the Monitoring Trustee scores easyJet's financial robustness as satisfactory, considering that it shows clear signs of recovery from the consequences of the COVID-19 pandemic.
- (75) As a conclusion, overall, the Monitoring Trustee considers that easyJet's proposal is credible both from an economic and operational point of view.

3.1.2 *The Commission's assessment*

- (76) The Commission concurs with the Monitoring Trustee's assessment that easyJet's proposal does not contain any material weakness that would call into question its economic or financial credibility.
- (77) In particular, the Commission agrees with the Monitoring Trustee as to the soundness of easyJet's explanations supporting its route plan. The Commission finds notably that easyJet has paid particular attention to [...] so as to ensure the sustainability of its expanded operations and competitiveness against TAP Air Portugal.
- (78) Furthermore, the Commission notes that easyJet convincingly demonstrates that the risks associated with the implementation of its operational plan are limited, not only by providing for mitigating measures in case of adverse circumstances (e.g. [...]), but also by making full use of its existing assets (e.g. [...]) and of its existing based operations at Lisbon airport (e.g. [...]).
- (79) With regard to easyJet's financial plan, the Commission considers, together with the Monitoring Trustee, that easyJet's planned profitability plan over the 2022-2025 period is credible. easyJet forecasts to achieve profitability [...], which will [...] thanks to [...] yields and load factors. As pointed out by the Monitoring Trustee, the actual load factors assumed by easyJet for the flights using the remedy slots are [...], while the forecast ancillary revenues are deemed rather [...]. The Commission also notes that, according to the Monitoring Trustee, the margin expected to be achieved by easyJet in 2025 is [...], which is still credible in view

of the synergy potential. Finally, the sensitivity analysis provided by easyJet shows that, while [...] on the main value drivers ([...]) would materially impact the total contribution in 2025, this contribution would nevertheless remain [...].

- (80) Finally, in terms of financial robustness, the series of financing operations carried out by easyJet over the last two years has enabled it to secure strong liquidity. Furthermore, easyJet has demonstrated its ability to optimise its network and to take full benefit from demand rebound thanks to its positioning at primary airports. Therefore, following the detailed assessment carried out by the Monitoring Trustee, the Commission considers that easyJet has satisfactorily demonstrated its ability to, on the one hand, finance its expanded based operations at Lisbon airport and, on the other hand, to return to profitability following the COVID-19 pandemic.

3.1.3 Conclusion

- (81) In view of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that easyJet's proposal is credible from an economic and operational point of view.

3.2 Credibility of Ryanair's proposal

- (82) Ryanair requests the transfer by TAP Air Portugal of a weekly average of 18 daily slots (18 daily slots on Mondays, Tuesdays and Wednesdays, 16 daily slots on Thursdays and Saturdays, 20 daily slots on Fridays and Sundays).³⁴ Ryanair would use the remedy slots to expand its based operations at Lisbon airport from four to [...] aircraft as from the start of Winter 2022/2023 IATA Season. Ryanair would use the remedy slots at Lisbon airport to serve a total of [...] destinations,³⁵ all year-round, with [...] frequencies (except [...]), using [...] aircraft ([...] seats).

3.2.1 The Monitoring Trustee's opinion

- (83) First, the Monitoring Trustee notes that Ryanair's flight plan lacks detailed route-specific arguments. However, the Monitoring Trustee considers that Ryanair has submitted fairly reasonable explanations for its overall flight plan and the foreseen frequencies.
- (84) Second, the Monitoring Trustee considers that Ryanair's operational plan is overall credible and achievable. In particular, the Monitoring Trustee believes that Ryanair is capable of recruiting the personnel needed for its extended operations at Lisbon airport, perhaps temporarily complemented by personnel from [...]. The Monitoring Trustee also considers that Ryanair would be able to manage split operations at Lisbon airport [...], should its preferred option (operating entirely [...]) not be feasible due to capacity constraints. In addition, the Monitoring Trustee finds Ryanair's marketing approach credible.
- (85) Third, although the Monitoring Trustee was not in a position to carry out a fully-fledged analysis due to the limited information provided by Ryanair, the

³⁴ Ryanair has also submitted an alternative route plan in case TAP Air Portugal would only accommodate a transfer of 18 daily slots each day.

³⁵ Under the alternative route plan, Ryanair would serve [...] destinations.

Monitoring Trustee considers that, overall, Ryanair's financial plan for the operation of the remedy slots appears credible. The Monitoring Trustee notes that the key performance indicators assumed by Ryanair (notably the [...] using the remedy slots) are [...]. Likewise, the operating profit expected by Ryanair in 2025 for its expanded operations at Lisbon airport is [...]. Nevertheless, the Monitoring Trustee assesses the expected profit as [...] due to a [...] set of cost assumptions.

- (86) Fourth, in terms of experience, the Monitoring Trustee notes that Ryanair had in fact crewed and operated seven based aircraft at Lisbon airport during Winter 2021/2022 IATA Season,³⁶ which gave Ryanair confidence that the Lisbon market can support [...] level of based operations. More generally, the Monitoring Trustee considers that Ryanair did demonstrate and is known to be able to successfully launch new routes and expand existing operations.
- (87) Fifth, the Monitoring Trustee's scores Ryanair's financial robustness as satisfactory, especially considering the positive developments in full year 2022 (1 April 2021-31 March 2022).
- (88) As a conclusion, overall, the Monitoring Trustee considers that Ryanair's proposal is credible both from an economic and operational point of view.

3.2.2 *The Commission's assessment*

- (89) In line with the Monitoring Trustee's assessment, the Commission notes that the initial business plan submitted by Ryanair, based on 20 flights on two days per week (Fridays and Sundays), raises an issue of implementability, given the daily 18-slot ceiling set out in the commitment to transfer slots. However, considering the corrected business plan submitted by Ryanair, based on 18 flights per day throughout the week, and the limited impact of the correction on the route plan, the Commission deems that this issue of implementability does not cast doubt upon the overall credibility of Ryanair's proposal. In this context, the Commission concurs with the Monitoring Trustee's assessment that Ryanair's proposal does not contain any material weakness that would call into question its economic or financial credibility.
- (90) In particular, the Commission, together with the Monitoring Trustee, considers that Ryanair has provided convincing arguments supporting the sustainability of the proposed route plan using the remedy slots, in terms notably of [...].
- (91) In addition, the Commission considers that Ryanair's operational plan raises no substantial concern. Following the Monitoring Trustee's assessment, the Commission notes that the ground and turnaround times may be [...] for the [...] seat aircraft to be deployed by Ryanair, without nevertheless jeopardising the overall rotation plan. Furthermore, the Commission views Ryanair's successful operations at Lisbon airport and its attempt to turn its short-term expanded operations at the airport during the COVID-19 pandemic times into long-term growth as proof of the reliability of its operational plan, despite the lack of detailed information on certain specific operational aspects (e.g. [...]).

³⁶ Ryanair submits that it was not possible to continue operating seven based aircraft in Summer 2022 IATA Season due to lack of available slots.

- (92) Furthermore, in terms of financial plan, while acknowledging the reservations of the Monitoring Trustee on Ryanair’s forecast [...], the Commission notes that Ryanair’s planned path to profitability for the operations at Lisbon airport using the remedy slots is relatively [...], with [...]. The assumptions underlying the forecast operational expenses are certainly [...] considering the current inflationary environment. Nevertheless, Ryanair’s latest results tend to support Ryanair’s ability to contain costs in stressed market circumstances, notably thanks to its new [...] aircraft, [...] of which would be deployed at Lisbon airport.³⁷ More generally, the Commission agrees with the Monitoring Trustee that Ryanair has extensive experience with similar expansions³⁸, and has demonstrated its ability to stimulate demand and to profitably operate routes once they reach maturity.
- (93) Finally, in terms of financial robustness and following the assessment carried out by the Monitoring Trustee (notably based on public information), the Commission considers that Ryanair has satisfactorily demonstrated its ability to, on the one hand, finance its expanded based operations at Lisbon airport and, on the other hand, to return to profitability at company level following the COVID-19 pandemic.

3.2.3 Conclusion

- (94) In view of the above, and in line with the Monitoring Trustee’s assessment, the Commission finds that Ryanair’s proposal is credible from an economic and operational point of view.

3.3 Credibility of Vueling’s proposal

- (95) Vueling requests the transfer by TAP Air Portugal of 18 daily slots that Vueling would use to newly base [...] aircraft at Lisbon airport as from the start of Winter 2022/2023 IATA Season. Vueling would use the remedy slots at Lisbon airport to serve a total of [...] different destinations ([...] ³⁹ and [...], with weekly frequencies ranging from [...]), using first [...] ⁴⁰ aircraft ([...] seats) and then [...] ⁴¹ aircraft ([...] seats).

3.3.1 The Monitoring Trustee’s opinion

- (96) First, the Monitoring Trustee considers that Vueling has submitted reasonable explanations for its overall flight plan, its choice of destinations and its planned frequencies. In particular, the Monitoring Trustee finds that Vueling’s route and

³⁷ See Full Year 2022 Corporate Report “Ryanair Reports Full Year Loss Of €355m”, dated 16 May 2022 (<https://corporate.ryanair.com/news/ryanair-reports-full-year-loss-of-e355m/?market=en>, last accessed on 5 June 2022): “While sectors increased almost 200% and traffic rose 253%, operating costs rose just 113% to €5.27bn (incl. a notable 237% increase in fuel to €1.83bn), driven primarily by lower variable costs such as airport & handling, route charges and lower fuel burn as 61xB737 Gamechangers entered the fleet (offset by the higher cost jet fuel). Lower costs, coupled with rising load factors, saw FY22 (ex-fuel) unit cost per passenger reduce to €35.”

³⁸ According to Ryanair, it launches approximately [...] new routes across Europe each year and churns approximately [...] % of its route network (approximately [...] routes across Europe) each year.

³⁹ [...]

⁴⁰ [...]

⁴¹ [...]

flight plans are thoughtfully and carefully calibrated in line with standard industry practice and taking account of seasonality and demand profile, while acknowledging that Vueling's growth plan for a new base at Lisbon airport is equally challenging.

- (97) Second, the Monitoring Trustee considers Vueling's operational plan as very well documented and explained, overall credible and achievable. Although Vueling does not currently operate a base at Lisbon airport, the Monitoring Trustee is of the view that Vueling has credibly submitted that it does not see any particular challenges or constraints to achieve operational readiness by the start of Winter 2022/2023 IATA Season. The Monitoring Trustee notably finds the staff plan realistic and reasonable, and the marketing and communication strategies likely to be effective.
- (98) Third, the Monitoring Trustee considers that Vueling has submitted a well-qualified, substantiated and plausible financial plan for the based operations at Lisbon airport using the remedy slots. In particular, the Monitoring Trustee deems Vueling's expected path to profitability [...], with overall [...] load factors and [...] cost assumptions.
- (99) Fourth, in terms of experience, the Monitoring Trustee considers that Vueling has demonstrated very strong capabilities in both ramping up existing operations and developing new routes in market circumstances similar to those of Lisbon airport.
- (100) Fifth, the Monitoring Trustee considers that Vueling's financial robustness is still under pressure, but with clear signs of recovery. The Monitoring Trustee thus scores Vueling's financial robustness as satisfactory.
- (101) As a conclusion, overall, the Monitoring Trustee considers that Vueling's proposal is credible both from an economic and operational point of view.

3.3.2 *The Commission's assessment*

- (102) The Commission concurs with the Monitoring Trustee's assessment that Vueling's proposal does not contain any material weakness that would call into question its economic or financial credibility.
- (103) On the one hand, the Commission notes the two reservations expressed by the Monitoring Trustee. First, the checks performed by the Monitoring Trustee on Vueling's proposal show that TAP Air Portugal does not systematically hold slots at the exact times requested by Vueling and used for its route and flight plans. However, the Commission notes that, according to the Monitoring Trustee, only a limited proportion of the requested slots is concerned by this mismatch ([...]).⁴² In this context, the Commission is of the opinion that Vueling's route and flight plans may have to be adjusted to match TAP Air Portugal's slot portfolio. Those adjustments would nevertheless be marginal, so that they do not undermine the overall robustness of the plans.

⁴² As indicated in recital 83 of the TAP Decision, "[t]he slots made available by TAP Air Portugal to the remedy taker at the time of signing the slot transfer agreement, would correspond to the slot times requested by the remedy taker within +/- 20 minutes for short-haul flights."

- (104) Second, the Monitoring Trustee underlines some of the challenges that Vueling, as a newly based carrier at Lisbon airport, would have to overcome to meet its operational and financial targets, especially in view of the proportion of routes [...] ([...] of the [...] routes planned by Vueling). Nevertheless, as pointed out by the Monitoring Trustee, Vueling appears to have factored in those challenges in its proposal, notably by providing for significant ramp-up and marketing investments, and [...] load factors during the first seasons of use of the remedy slots.
- (105) On the other hand, the Commission finds, together with the Monitoring Trustee, that the rationales behind Vueling's proposed route strategy (i.e. [...]) and the proposed frequencies (depending e.g. on [...]) are sound. They show a well-balanced strategy aimed at [...].
- (106) Furthermore, the Commission shares the Monitoring Trustee's views about the quality of Vueling's operational plan, including the ramp-up phase and longer-term staff plan⁴³, and of the relevance of Vueling's track record at Lisbon airport, where it had steadily grown before the COVID pandemic, and at other major airports, notably at Orly airport in 2021 using the slots made available by Air France following its recapitalisation by France.
- (107) In view of Vueling's extensive experience in the launch of operations of such a scale, which provide relevant benchmarks for the assessment of Vueling's financial plans, the Commission also considers that Vueling's financial plan for its new base at Lisbon airport is both realistic and solid.
- (108) Finally, in terms of financial robustness, the Commission favourably notes Vueling's cautious liquidity position, focus on cost reduction and operational efficiencies, and forecast return to a positive operating profit in 2022. Therefore, following the detailed assessment carried out by the Monitoring Trustee, the Commission considers that Vueling has satisfactorily demonstrated its ability to, on the one hand, finance its newly based operations at Lisbon airport and, on the other hand, to recover from the crisis induced by the COVID-19 pandemic.

3.3.3 Conclusion

- (109) In view of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that Vueling's proposal is credible from an economic and operational point of view.

⁴³ [...]

Considering the conditions set out in the commitment to transfer slots in relation to employment matters (i.e. that the potential remedy taker commits to base aircraft at Lisbon airport using the remedy slots in compliance with the applicable EU and national labour laws, and that its operational plan – including staff plan – is credible), the Commission considers, in line with the Monitoring Trustee's approach, that the evaluation of a proposal submitted by a potential remedy taker should not involve an in-depth assessment of whether its proposed staff plan complies with the applicable labour laws. Instead, the Commission, advised by the Monitoring Trustee, should determine whether (i) the staff plan proposed by a potential remedy taker for its based operations using the remedy slots at Lisbon airport is consistent with its commitment to comply with the applicable labour laws; and (ii) its proposed staff plan does not contain any material weakness that would call into question the economic or financial credibility of its proposal.

The Commission considers that Vueling fulfils those two conditions, as do easyJet and Ryanair.

3.4 Conclusion

- (110) In view of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that each of easyJet's, Ryanair's and Vueling's proposals is credible from an economic and operational point of view. The Commission therefore does not reject any of the proposals received by the set deadline for lack of credibility.

4 COMPLIANCE WITH EU COMPETITION LAW

- (111) According to the commitment to transfer slots, the Commission may reject proposals if they are not credible in respect of EU competition law. For the purposes of assessing the compliance of the proposals submitted by the eligible potential remedy takers with EU competition law, the Commission will take account of the views expressed by the Monitoring Trustee in its reasoned opinion on evaluation of proposals provided on 7 June 2022.⁴⁴
- (112) For the reasons indicated in the Air France Evaluation Decision, the Commission will consider that a proposal is credible in terms of compliance with EU competition law if the transfer of slots to the potential remedy taker does not raise *prima facie* competition concerns, that is to say if the slot holding of the potential remedy taker post-transfer does not represent a significant share of the airport capacity.⁴⁵

4.1 The Monitoring Trustee's opinion

- (113) The Monitoring Trustee notes that TAP Air Portugal has been found to have a significant market position for the supply of passenger air transport services at Lisbon airport and no other carrier, including the potential remedy takers, holds a market position close to that of TAP Air Portugal. The Monitoring Trustee therefore concludes that granting the remedy slots to any of the potential remedy takers would in fact increase competition between carriers operating at the airport and *vis-à-vis* TAP Air Portugal in particular, as confirmed by the Monitoring Trustee's assessment of the slot holdings of the potential remedy takers resulting from the slot transfer.
- (114) On that basis, the Monitoring Trustee concludes that none of easyJet's, Ryanair's or Vueling's proposals would cause *prima facie* competition concerns. As a consequence, according to the Monitoring Trustee, all three proposals are credible in terms of compliance with EU competition law.

4.2 The Commission's assessment

- (115) The Commission concurs with the Monitoring Trustee's assessment that none of easyJet's, Ryanair's or Vueling's proposals raise *prima facie* competition concerns.

⁴⁴ Monitoring Trustee's Reasoned Opinion on evaluation of proposals, Case SA.60165 – Portugal's restructuring aid to TAP Group, dated 7 June 2022 and submitted on the same day. The Monitoring Trustee's assessment is based on the proposals and on Ryanair's response to the Monitoring Trustee's further query.

⁴⁵ Air France Evaluation Decision, recital 166.

- (116) As indicated in recital 43 of the decision to initiate the formal investigation procedure⁴⁶, in Summer 2019 IATA Season, TAP Air Portugal's slot holding at Lisbon airport exceeded 50%, while each of Ryanair's and easyJet's average slot holdings at the airport in 2019 was below 10% and Vueling's average slot holding was below 5%. Data submitted by the three air carriers on their slot portfolios and information published on the website of the Portuguese slot coordinator (Navegação Aérea de Portugal – NAV Portugal) for Winter 2021/2022⁴⁷ and Summer 2022⁴⁸ broadly confirm those estimates, with nevertheless a slight increase for Ryanair between 2019 and 2022. However, Ryanair's slot holding remains below 15% at Lisbon airport. As a consequence, any potential remedy taker would hold less than 20% of the available slots post-transfer,⁴⁹ which would be far below TAP's slot holding.
- (117) In view of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that the transfer of the remedy slots to either of easyJet, Ryanair, or Vueling would not result in any of them holding a high enough share of the available slot capacity at Lisbon airport to have the ability to foreclose competitors post-transfer. As a consequence, the Commission finds that no *prima facie* competition concerns arise as a result of the transfer of the remedy slots to either of easyJet, Ryanair, or Vueling.

4.3 Conclusion

- (118) In view of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that each of easyJet's, Ryanair's and Vueling's proposals is credible in terms of compliance with EU competition law. The Commission therefore does not reject any of the proposals received by the set deadline for non-compliance with EU competition law.

5 RANKING OF COMPETING PROPOSALS

- (119) In accordance with the commitment to transfer slots, in case of competing proposals that are credible from an economic and operational point of view and in respect of EU competition law, the Commission will give preference, in a decreasing order:

⁴⁶ Commission Decision C(2021) 5278 final of 16 July 2021 in Case SA 60165 (2021/C) – Portugal – Restructuring aid to TAP SGPS (OJ C 317, 6.8.2021, p. 13), published on 30 July 2021 on the Commission's website: <https://ec.europa.eu/competition>.

⁴⁷

https://slotsapi.nav.pt/uploads/slotsnavpt/1648660152037_SLOTSW21_sosReportSlotAllocationListbyAirlineLISW21.pdf, last accessed on 6 June 2022.

⁴⁸

https://slotsapi.nav.pt/uploads/slotsnavpt/1652267568702_SLOTSS22_ReportSlotAllocationListbyAirlineLISS22.pdf, last accessed on 6 June 2022.

⁴⁹ Based on the runway capacity at Lisbon airport of 913 movements per day in Summer 2022 (https://slotsapi.nav.pt/uploads/slotsnavpt/1641403465438_slots_Airports-Lisbon-Declared-Capacity-2022.pdf) and Winter 2022/2023 IATA Seasons (https://slotsapi.nav.pt/uploads/slotsnavpt/1652192575771_SLOTScp_LISW22.pdf), the transfer of 18 daily slots at Lisbon airport corresponds to an increase in the recipient's slot holding of approximately 2%.

- i. first to potential remedy takers that will provide the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (end of 2025), and
 - ii. then to potential remedy takers that will serve the greatest number of destinations by direct flights operated by the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (direct connectivity, without taking account of the frequencies, until the end of 2025).
- (120) For the sake of transparency, the circumstances in which the Commission would take account of the level of direct connectivity to rank proposals have been clarified in the published terms of the call for proposals.⁵⁰ More specifically, it was explained that the number of destinations served by the potential remedy takers using the remedy slots would only become a relevant ranking criterion if two or more potential remedy takers submit similar proposals in terms of capacity (number of seats in respect of the based aircraft using the remedy slots). Similar proposals in terms of capacity would mean that the total number of seats foreseen by the proposals would be supported by similar operational assumptions and plans. For instance, the similar proposals would in principle foresee that: (i) the based aircraft will operate the same number of daily flights using the remedy slots, (ii) the based aircraft will start operating using the remedy slots at the same time (e.g. from the start of Winter 2022/2023 IATA Season), and (iii) the based aircraft are of models with similar seat capacity and have similar layouts/density arrangements.
- (121) As explained in recitals 110 and 118, the Commission finds that the proposals submitted by the following three eligible potential remedy takers are credible from an economic and operational point of view and comply with EU competition law: easyJet, Ryanair, and Vueling. As a consequence, in order to rank those proposals, the Commission will first compare the levels of seat capacity offered in the three proposals. If the levels of seat capacity offered by two or more proposals are similar, the Commission will then compare the levels of direct connectivity offered by the proposals with similar levels of seat capacity.
- (122) For that purpose, the Commission will take account of the views expressed by the Monitoring Trustee in its reasoned opinion on evaluation of proposals provided on 7 June 2022.⁵¹ In particular, for the sake of comparability of the proposals, the Commission will adopt the seat capacity calculation method proposed by the Monitoring Trustee and validated by easyJet, Ryanair and Vueling. That method consists in calculating the total seat capacity proposed by a potential remedy taker as follows:

⁵⁰ See the Frequently Asked Questions section of the call for proposals: https://web.tresorit.com/l/GdZ5B#QfZ_4qFZUFY129nbZ7GFsQ&viewer=Jqa3BBmItYz33bSZxYTJWsO0tGllfhdp, last accessed on 6 June 2022 (also available in Annex V to the Monitoring Trustee's Reasoned Opinion).

⁵¹ Monitoring Trustee's Reasoned Opinion on evaluation of proposals, Case SA.60165 – Portugal's restructuring aid to TAP Group, dated 7 June 2022 and submitted on the same day. The Monitoring Trustee's assessment is based on the proposals and on responses to the Monitoring Trustee's further queries.

Total seat capacity = number of flights operated by aircraft based at Lisbon airport using the requested remedy slots from the start of the operations until the end of the restructuring plan X seat capacity of aircraft

in which

Number of flights = number of days from the start of the operations until the end of the restructuring plan X number of requested daily remedy slots used by aircraft based at Lisbon airport

5.1 Proposed seat capacity

- (123) easyJet proposes to base at Lisbon airport three A321neo aircraft (235 seats) [...] from the start of Winter 2022/2023 IATA Season until the end of 2025. All the 18 requested slots would be used for flights operated by the three A321neo aircraft based at Lisbon airport. Therefore, the capacity provided by easyJet in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan reaches 4 902 570 seats.⁵²
- (124) Vueling proposes to base at Lisbon airport [...] aircraft ([...] seats) [...] from the start of Winter 2022/2023 IATA Season until [...], replaced by [...] aircraft ([...] seats) until the end of 2025. All the 18 requested slots would be used for flights operated by the [...] aircraft based at Lisbon airport. Therefore, the capacity provided by Vueling in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan reaches [...] seats.⁵³ In case of unavailability of [...] aircraft, Vueling would continue using the [...] aircraft already in service. The total capacity offered by Vueling would reach [...] seats.⁵⁴
- (125) Ryanair proposes to base at Lisbon airport [...] aircraft ([...] seats) [...] from the start of Winter 2022/2023 IATA Season until the end of 2025. All the 18 requested slots would be used for flights operated by the [...] aircraft based at Lisbon airport. Therefore, the capacity provided by Ryanair in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan reaches [...] seats.⁵⁵

⁵² Corresponding to 1 159 days (from 30 October 2022 – first day of operations of the based aircraft using the remedy slots – to 31 December 2025) multiplied by 18 flights per day (18 daily remedy slots to be transferred by TAP, all used by aircraft based by easyJet at Lisbon airport year-round) multiplied by 235 seats (seat capacity of the based A321neos).

⁵³ Corresponding to [...] days (from 30 October 2022 – first day of operations of the based aircraft using the remedy slots – to [...]) multiplied by 18 flights per day (18 daily remedy slots to be transferred by TAP, all used by aircraft based by Vueling at Lisbon airport year-round) multiplied by [...] seats (seat capacity of the based [...]) plus [...] days (from [...] to 31 December 2025) multiplied by 18 flights per day (18 daily remedy slots to be transferred by TAP, all used by aircraft based by Vueling at Lisbon airport year-round) multiplied by [...] seats (seat capacity of the based [...]).

⁵⁴ Corresponding to 1 159 days (from 30 October 2022 – first day of operations of the based aircraft using the remedy slots – to 31 December 2025) multiplied by 18 flights per day (18 daily remedy slots to be transferred by TAP, all used by aircraft based by Vueling at Lisbon airport year-round) multiplied by [...] seats (seat capacity of the based [...]).

⁵⁵ Corresponding to 1 159 days (from 30 October 2022 – first day of operations of the based aircraft using the remedy slots – to 31 December 2025) multiplied by 18 flights per day (18 daily remedy slots to be

5.2 The Monitoring Trustee's opinion

- (126) The Monitoring Trustee considers that easyJet provides the largest seat capacity of all three potential remedy takers in respect of the based aircraft using the remedy slots from the start of operations until the end of 2025. More specifically, easyJet's proposal includes a seat capacity that is approximately [...] seats ([...]%) larger than Vueling's seat capacity and approximately [...] seats ([...]%) larger than Ryanair's seat capacity.
- (127) In addition, the Monitoring Trustee notes that the aircraft that the potential remedy takers plan to base at Lisbon airport are in fact not models with similar seat capacity and do not have similar layouts and density arrangements. The Monitoring Trustee therefore concludes that the proposals of the three potential remedy takers are not similar in terms of capacity.
- (128) Consequently, the Monitoring Trustee takes the view that easyJet's proposal should be ranked highest in terms of seat capacity.

5.3 The Commission's assessment

- (129) As a preliminary comment, the Commission notes that easyJet, Ryanair and Vueling plan to base the aircraft using the remedy slots at Lisbon airport as from the start of Winter 2022/2023 IATA Season. As explained in Section 3, the Commission finds that, for all three air carriers, such a start date for the based operations using the remedy slots is credible. Likewise, the Commission also finds it credible that all three air carriers would operate 18 daily flights thanks to the additional or newly based aircraft at Lisbon airport throughout the reference period (i.e. until the end of 2025). More generally, the Commission has not identified any implausible assumption in any of the three proposals that should lead to the downward correction of the planned number of seats to be deployed at Lisbon airport.
- (130) In that context, while the total seat capacity offered by Ryanair is significantly lower than that offered by easyJet and Vueling and, consequently, Ryanair should be ranked third,⁵⁶ the question arises as to whether the seat capacity criterion alone is sufficient to decide on the respective ranking of easyJet and Vueling.

transferred by TAP, all used by aircraft based by Ryanair at Lisbon airport year-round) multiplied by [...] seats (seat capacity of the based [...]).

The total seat capacity declared by Ryanair is [...] seats, since Ryanair typically does not operate flights on Christmas day and has thus assumed 1 155 operating days until 31 December 2025. Although neither easyJet nor Vueling have excluded Christmas days from the number of operating days, according to Ryanair and as confirmed by the Monitoring Trustee, not offering flights or very materially reducing supply on certain public holidays is common practice in aviation. Therefore, for the sake of comparability, the Commission, in line with the Monitoring Trustee's approach, has applied the same number of operating days (1 159 days) to the three potential remedy takers.

⁵⁶ The Commission notes that the difference in the seat capacities of Ryanair's [...] and easyJet's or Vueling's [...] is significant ([...]%). Therefore, even if, as claimed by Ryanair, the other airlines were to actually operate fewer flights than Ryanair despite purporting to offer a similar number of flights, the difference in the aircraft seat capacity is such that the ranking of Ryanair would not change where taking account of a reasonably higher number of flights for Ryanair than for easyJet or Vueling.

- (131) On that question, the Commission notes, in line with the Monitoring Trustee's assessment, that the conditions for finding that two proposals are similar in terms of capacity are not fulfilled. Specifically, the difference by more than [...] seats between easyJet's and Vueling's proposed capacity results from two differences. First, during [...], the seat capacity in high-density arrangements of the aircraft operated respectively by easyJet and Vueling would be different (easyJet's A321neo aircraft are [...] % larger than Vueling's [...] aircraft in terms of seat capacity). Second, the documents (seat maps) provided by easyJet and Vueling concerning the versions of the [...] aircraft that they would base at Lisbon airport using the remedy slots confirm that the high-density layouts of the aircraft vary between easyJet and Vueling (easyJet would offer [...] more seats than Vueling [...]).⁵⁷
- (132) Therefore, the Commission considers that easyJet and Vueling have not submitted similar proposals in terms of capacity and that it is neither appropriate nor necessary to apply the second ranking criterion (i.e. the number of direct destinations served).
- (133) In light of the above, and in line with the Monitoring Trustee's assessment, the Commission finds that easyJet would deploy the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan. Vueling would deploy the second largest seat capacity, and Ryanair the third largest seat capacity.

5.4 Conclusion

- (134) In light of the above, and considering the Monitoring Trustee's assessment, the Commission concludes that easyJet's proposal is ranked first, Vueling's proposal is ranked second, and Ryanair's proposal is ranked third.

6 CONCLUSION

- (135) Under the commitment to transfer slots, the Commission, advised by the Monitoring Trustee, evaluated the expressions of interest and proposals received following the call for proposals and considers that:
- i. Air Dolomiti and Eurowings are not eligible potential remedy takers;
 - ii. easyJet, Ryanair, and Vueling are all eligible potential remedy takers; and
 - iii. the proposals submitted by easyJet, Ryanair, and Vueling are all credible from an economic and operational point of view and in respect of EU competition law.
- (136) easyJet's proposal is ranked first. Vueling's proposal is ranked second. Ryanair's proposal is ranked third. This means that, for the aid to be covered by the TAP Decision, TAP Air Portugal should give priority to easyJet over Vueling and over Ryanair for the signature of the slot transfer agreement foreseen under the commitment to transfer slots. Furthermore, Vueling should have priority over

⁵⁷ As the seat capacity of Vueling's aircraft would be lower than that of easyJet for both the [...] and the [...] used by Vueling, Vueling's ranking is not sensitive to the date of entry into service of its [...] (assumed to replace the [...] based at Lisbon airport at the latest on [...]).

Ryanair for the signature of the slot transfer agreement foreseen under the commitment to transfer slots.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President