Summary of Commission Decision

of 27 February 2013

declaring a concentration incompatible with the internal market and the EEA Agreement

(Case COMP/M.6663 — Ryanair/Aer Lingus III)

(notified under document C(2013) 1106 final)

(Only the English version is authentic)

(Text with EEA relevance)

(2013/C 216/07)

On 27 February 2013, the Commission adopted a decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(3) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address:*

http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

(1) Ryanair is a low-fares carrier operating point-to-point scheduled air services essentially in Europe. The company has a fleet of 294 aircraft and 51 bases across Europe, with the most important bases being London Stansted, Brussels Charleroi, Milan Bergamo and Dublin. In the IATA summer season 2012, Ryanair operated in particular 62 short-haul routes ex Dublin.

(2) Aer Lingus is an Irish-based carrier. It offers essentially point-to-point scheduled air transport services. Aer Lingus is based principally at Dublin Airport wherefrom it operates a substantial portion of its scheduled flights. In the summer season 2012, Air Lingus (including Aer Arann) operated 66 short-haul routes ex Dublin. Aer Lingus is not a member of any airline alliance and develops a concept of 'open network architecture', whereby its neutrality allows it to partner across alliances and offer connectivity through major hubs to worldwide destinations in addition to carrying point-to-point traffic.

(3) Ryanair's minority shareholding in Aer Lingus represents 29,82 % of Aer Lingus' total issued share capital and makes Ryanair the largest shareholder in Aer Lingus. The Irish Government (Minister for Finance) is the next largest shareholder with a stake of around 25,1 %.

II. THE OPERATION

(4) On 24 July 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Ryanair Holdings plc ('Ryanair', Ireland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Aer Lingus Group plc ('Aer Lingus', Ireland) by way of public bid announced on 19 June 2012 ('the transaction').

III. SUMMARY

(5) After the first phase market investigation, the Commission concluded that the Transaction fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the internal market and with the EEA Agreement. As a result, on 29 August 2012, the Commission initiated proceedings in accordance with Article 6(1)(c) of the Merger Regulation.

(6) The second phase market investigation confirmed the existence of competition concerns on a number of markets leading to the issuance of a statement of objections ('SO') on 13 November 2012. The parties had the opportunity to make their views known through a written response to the SO. On 14 December 2012, the Commission sent a letter of facts, to which Ryanair replied on 20 December 2012.

(7) Pursuant to Article 8(2) of the Merger Regulation, Ryanair submitted a first formal set of commitments on 17 October 2012. The Commission decided that no market test was warranted, as the commitments of 17 October 2012 did not cover all routes on which the SO preliminarily concluded that the transaction would significantly impede effective competition.

[1] OJ L 24, 29.1.2004, p. 1. ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

(8) On 7 December 2012, Ryanair submitted a revised version of the commitments. Further to the submission of these commitments, the Commission launched a market test. Following the result of the market test, Ryanair submitted a modified set of commitments on 15 January 2013. In view of the results of the second market test, Ryanair submitted a revised set of commitments on 1st February 2013 (hereinafter 'final set of commitments'). A third market test was launched.

(9) The market investigation revealed that the final set of commitments offered by Ryanair were not able to remedy the identified significant impediment to effective competition.

(10) Therefore, on 27 February 2013, the Commission adopted pursuant to Article 8(3) of the Merger Regulation a decision declaring the transaction to be incompatible with the internal market and the EEA agreement (the 'Decision').

IV. EXPLANATORY MEMORANDUM

A. The relevant product markets

(11) Ryanair and Aer Lingus both provide scheduled passenger air transport services within the EEA and their activities overlap on 46 routes to/from Ireland. There were no other markets affected by the transaction other than those relating to passenger air transport services.

1. *Traditional point of origin/point of destination (O&D) pair approach*

(12) In line with its decisional practice, the Commission assessed the transaction on the basis of the 'point of origin/point of destination' (O&D) city-pair approach, which reflected demand-side substitutability. As a result, every combination of a point of origin and a point of destination was considered a separate market.

(13) In addition, in the case at hand, the Commission considered that connecting passengers were not part of the same market as O&D passengers and that it was not appropriate to define an overall market for short-haul flights from/to Ireland, given the limited degree of supply-side substitutability between different O&D, nor a market for 'destination insensitive customers', given that for the vast majority of passengers a flight from Ireland to one destination was not simply substitutable with a flight to another destination.

2. *Airport substitutability*

(14) In line with its previous decisional practice, when defining the relevant O&D markets for passenger air transport services, the Commission examined whether flights from or to airports which had sufficiently overlapping catchment areas could be considered as substitutes in the eyes of passengers.

(15) In its assessment of airport substitutability, the Commission relied on the following qualitative and quantitative sources of evidence: (i) the Commission's precedents and in particular the 2007 Decision, where airport substitutability to/from Ireland was assessed in depth, (ii) a 'first proxy' airport catchment area of 100 km/1 hour driving time to the relevant city centre, for determining whether airports appear prima facie as substitutable, (iii) the outcome of the market investigation, (iv) price monitoring behaviour of Aer Lingus and Ryanair, (v) the way in which Ryanair marketed its services and (vi) a price correlation analysis, which provided quantitative support to the conclusions reached by the Commission on market definition. The Commission reached its conclusions by bundling the evidence.

(16) In the present case, substitutability of scheduled air transport services from different airports was relevant for three reasons: (i) for the determination of whether the activities of the Parties overlap, (ii) for the assessment of competition constraints of airlines operating at other airports and (iii) for the assessment of entry prospects at the relevant additional airports.

(17) The activities of Ryanair overlapped with Aer Lingus on 16 routes [1] on which Aer Lingus and Ryanair fly between the two same airports and on which there were no issue of airport substitutability because there were no other identified relevant airports.

(18) On additional 10 routes [2], although there was more than one airport in the origin or destination city, Ryanair and Aer Lingus fly to the same airport ('airport pair' approach). For some routes, the other airport was equally served by one of the Parties or by another airline. For these routes, airport substitutability was relevant in particular for the assessment of entry projects of the Parties' potential competitors. However, as the Commission did not identify any entry/expansion plans, which would lead to timely, likely and sufficient entry/expansion to dispel the competition concerns identified for the relevant routes, it was not necessary to reach a definitive conclusion as regards the substitutability of these airports for routes from Dublin, Cork and Shannon as relevant.

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[1] Dublin–Berlin, Dublin–Budapest, Dublin–Faro, Dublin–Fuerteventura, Dublin–Gran Canaria, Dublin–Ibiza, Dublin–Lanzarote, Dublin–Madrid, Dublin–Malaga, Dublin–Marseille, Dublin–Nice, Dublin–Palma, Cork–Malaga, Cork–Faro, Cork–Lanzarote, Cork–Palma.

[2] Dublin–Barcelona El Prat/Girona/Reus, Dublin–Alicante/Murcia, Dublin–Tenerife South/Tenerife North, Dublin–Manchester/Liverpool/Leeds Bradford, Dublin–London Heathrow/Gatwick/Luton/Stansted/City/Southend, Cork–London Heathrow/Gatwick/Stansted, Dublin–Birmingham/East Midlands, Dublin–Edinburgh/Glasgow, Cork–Alicante/Murcia, Cork–Tenerife South/Tenerife North.

(19) On 19 routes ('city pairs') [1], Ryanair and Aer Lingus fly from Ireland to different destination airports. For these routes, airport substitutability was relevant for establishing whether there was an overlap between the Parties. The Decision assesses substitutability for a substantial proportion of Aer Lingus' and Ryanair's passengers who travel from/to 17 airports [2] to/from Dublin, Cork, Shannon or Knock.

(20) For the remaining one additional route, Dublin–Bristol/Cardiff/Exeter, the question of airport substitutability was relevant only for ascertaining whether the Parties would face competition constraints from flights from Exeter to Dublin (as the Parties fly to the same airport (Bristol), the question was not relevant for ascertaining whether there was an overlap).

(21) The Decision concludes that the following airports are substitutable on the routes to/from Dublin, Cork, Shannon or Knock whereas the question whether scheduled point-to-point passenger air transport services between Dublin or Cork as relevant and some [3] airport pairs belong to the same market, was left open as it did not have any consequences on the competitive assessment:

Barcelona El Prat, Girona and Reus	London Airports (Heathrow, Gatwick, Stansted, Luton and City)	Stockholm Arlanda and Skavsta
Bilbao and Santander	Manchester and Liverpool (for Cork and Shannon)	Toulouse and Carcassonne
Birmingham and East Midlands (for Knock)	Milan Linate, Malpensa and Bergamo	Venice and Treviso
Brussels and Charleroi	Munich and Memmingen	Vienna and Bratislava
Glasgow and Prestwick	Paris CDG, Beauvais and Orly	Warsaw and Modlin
Frankfurt and Hahn	Rome Fiumicino and Ciampino	

3. *Market for direct flights and indirect flights*

(22) According to the Commission's previous decisional practice, the level of substitutability of indirect flights to direct flights largely depends on the duration of the flight. As a general rule, the longer the flight, the higher the likelihood that indirect flights exert a competitive constraint on direct flights.

(23) The Commission considered that, because the overlap routes in the case at hand are short-haul (i.e. below six hours flights duration) or medium-haul flights (routes of more than three hours where direct flights normally do not provide the option of one-day return trips), indirect flights are unlikely to exercise a competitive constraint on direct flights. However, the Decision concludes that the question whether indirect flights would belong to the same market can be left open, as it would ultimately not change the outcome of the competitive assessment.

4. *Distinction between groups of passengers*

(24) In the 2007 Decision, the Commission concluded that it was not appropriate to define separate markets for different categories of passengers, in particular on the basis of the finding that both airlines did not discriminate between different types of passengers by opting for one-way restricted tickets only on short-haul routes. Ryanair, Aer Lingus and a large majority of respondents to the market investigation upheld the same conclusion in the case at hand.

(25) The Commission concluded that it was not appropriate to define separate markets for different categories of passengers, whether according to the time sensitive/non-time sensitive distinction, the business/leisure passenger distinction or the 'time between booking and departure' approach.

5. *Substitutability between charter services and scheduled flights*

(26) Ryanair claimed that in particular on leisure routes, charter airlines provided significant competitive constraints to the services of the Parties. Besides, Ryanair pointed out that the decline in the charter business ex-Ireland was a direct consequence of Ryanair's expansion into several charter-type routes.

[1] Dublin–Bilbao/Santander, Dublin–Brussels/Charleroi, Dublin–Milan Malpensa/Milan Linate/Bergamo, Dublin–Frankfurt/Frankfurt Hahn, Dublin–Rome Ciampino/Rome Fiumicino, Dublin–Vienna/Bratislava, Dublin–Paris CDG/Paris Beauvais/Orly, Dublin–Toulouse/Carcassonne, Dublin–Glasgow/Prestwik, Dublin–Venice/Treviso, Dublin–Munich/Memmingen, Dublin–Warsaw/Warsaw–Modlin, Dublin–Stockholm Arlanda/Skavsta, Cork–Barcelona El Prat/Girona/Reus, Cork–Manchester/Liverpool/Leeds Bradford, Knock–Birmingham/East Midlands, Knock–London Heathrow/Gatwick/Luton/Stansted/City/Southend, Shannon–Manchester/Liverpool/Leeds Bradford, Shannon–London Heathrow/Gatwick/Luton/Stansted/City/Southend.

[2] Note that while there are 19 routes on which the question of airport substitutability was relevant, there are only 17 airport pairs. These are: Barcelona El Prat, Girona and Reus; Bilbao and Santander; London Airports (Heathrow, Gatwick, Stansted, Luton and City); Stockholm Arlanda and Skavsta; Manchester, Liverpool and Leeds Bradford (for Cork and Shannon); Toulouse and Carcassone; Birmingham and East Midlands (for Knock); Milan Linate, Malpensa and Bergamo; Venice and Treviso; Brussels and Charleroi; Munich and Memmingen; Vienna and Bratislava; Glasgow and Prestwick; Paris CDG, Beauvais and Orly; Warsaw and Modlin; Frankfurt and Hahn; Rome Fiumicino and Ciampino;

[3] London Southend and the London Airports, Edinburgh and Glasgow, Manchester, Liverpool, Leeds Bradford (for Dublin), Birmingham and East Midlands (for Dublin), Bristol/Cardiff/Exeter, Alicante and Murcia, Tenerife North/South.

(27) In line with its previous decisional practice, the Commission distinguished three types of charters' activities:

(i) *The sales of package holidays.* The sales of seats included in 'package holidays' could not be considered as substitutable for seats on scheduled flights offered by Ryanair and Aer Lingus on the affected routes. This finding was upheld by the majority of the respondents to the market investigation. Most passengers purchase seats only and not package holidays.

(ii) *The sales of seats to tour operators.* From a demand-side perspective, this market is upstream to the market for seat sales to individuals and thus it is characterised by different competitive conditions. Therefore, the Commission upheld the conclusion reached in its previous decisions that 'wholesale' sales of seat packages to tour operators are not in the same market as scheduled air transport services for end customers.

(iii) *The sales of dry seats to end customers.* The Commission considers that on the same O&D route, the 'dry seat' sales of charter airlines are similar to the sale of scheduled air transport passenger transport services. However, some respondents to the market investigation pointed out that charter flights are of inferior quality when compared to scheduled flights not least because of the limited capacity of dry seats and the limited visibility to consumers (in addition to the frequencies and fare price). In any event, the Decision concludes that the question can be left open, as it would ultimately not change the outcome of the competitive assessment.

B. **Competitive assessment**

1. *General framework*

(28) Changes in market circumstances since 2007 were analysed by the Commission. In a broad overview, the main changes appeared to be: (i) the financial and economic crisis that since 2008 has affected many Member States, including Ireland; (ii) the further consolidation in the air transport sector; (iii) the drop in the number of scheduled airlines operating at Dublin airport; (iv) the increased number of routes on which Ryanair and Aer Lingus compete compared to the 2007 Decision, and the concentration levels; (v) the decreased operations of charter companies out of Dublin; (vi) the development of new infrastructure at Dublin airport.

2. *Treatment of Aer Arann*

(29) The Commission considered Aer Arann as a competitor of Ryanair, but not of Aer Lingus. Indeed, Aer Arann is closely linked to and dependent of Aer Lingus through the franchise agreement. Therefore, in the competitive assessment, the market shares of Aer Arann (operating under the Aer Lingus Regional brand) were attributed to Aer Lingus.

3. *Market shares and concentration levels*

(30) The Parties would have very high market shares on all 46 routes on which their activities overlap.

(31) The transaction would create a monopoly on 28 routes: Dublin–Alicante/Murcia; Dublin–Berlin; Dublin–Bilbao/Santander; Dublin–Birmingham/East Midlands; Dublin–Brussels/Charleroi; Dublin–Budapest; Dublin–Edinburgh/Glasgow; Dublin–Fuerteventura; Dublin–Glasgow/Prestwick; Dublin–Manchester/Liverpool/Leeds; Dublin–Marseille; Dublin–Milan/Bergamo; Dublin–Nice; Dublin–Rome; Dublin–Tenerife; Dublin–Toulouse/Carcassonne; Dublin–Venice/Treviso; Dublin–Vienna/Bratislava; Dublin–Warsaw/Modlin; Cork–Alicante; Cork–Faro; Cork–London; Cork–Manchester/Liverpool; Cork–Tenerife; Knock–Birmingham/East Midlands; Knock–London; Shannon–Manchester/Liverpool; and Shannon–London.

(32) On 18 overlap routes, the merged entity would operate alongside other carriers.

(33) On 11 of these 18 routes, the other operating carrier(s) is a charter company. The Parties' combined market shares on each of these routes would exceed 80 %.

(34) On six other routes of the 18 routes, the competitors of the Parties are scheduled carriers, whose business model is different from those of the Parties. On these six routes, the combined market shares of Ryanair and Aer Lingus would be above 50 %.

(35) On the last remaining route, Dublin–Bristol/Cardiff/Exeter, if flights between Dublin and Exeter are included in the relevant market, the Parties' competitor is Flybe, a scheduled regional carrier with a marginal market share between (5-10 %) [1].

4. *Closeness of competition between Ryanair and Aer Lingus*

(36) The Commission's investigation indicated that Ryanair and Aer Lingus compete actively on all the overlap routes.

(37) On the majority (28 out of 46) of the overlap routes, Ryanair and Aer Lingus are the only operating carriers. On these routes, Ryanair and Aer Lingus are by nature each other's closest competitor.

(38) Even on those routes on which Ryanair and Aer Lingus face one or more competitors, the Parties are most often by far the largest competitors, as indicated, inter alia, by the significant distance in market share between the competitor(s) and each of the Parties. The Parties are each other's closest competitors considering also the routes where a charter company operates, where each of the Parties are by far the largest competitors.

[1] However this route would be a monopoly if the market would only comprise air transport services between Dublin and Bristol airport.

(39) Furthermore, Ryanair and Aer Lingus have similar business models which are different from most of their competitors. In particular, both Ryanair and Aer Lingus offer (primarily) point-to-point services, which are different from 'feeder-oriented' services of network carriers. They both apply true one-way pricing models, operate a single class cabin on their short-haul flights and realise most of their bookings on their website rather than via travel agents, unlike network carriers. Besides, unlike other competitors, they enjoy very high brand recognition in Ireland and they both operate significant bases in Ireland, in particular at Dublin Airport.

(40) The Commission's regression analysis confirmed the existence of a significant competitive interaction between Ryanair and Aer Lingus.

(41) The Decision concludes that Aer Lingus and Ryanair are very close, if not each other's closest competitor on all overlap routes. The transaction would therefore result in the elimination of this very close competitive relationship and of the important competitive constraint that both carriers exert upon each other pre-transaction. Customers' choices of travelling options would be substantially reduced and it is unlikely that competitors would be able to sufficiently constrain the merged entity in its market behaviour, especially concerning fare setting.

5. *Entry/Barriers to entry*

(42) The Commission's investigation confirmed that there are high barriers to entry which would make difficult any new entry to the routes where the activities of the Parties overlap.

(43) These barriers to entry related to Ryanair's and Aer Lingus' strong market positions in Ireland and, in particular, to the following factors:

(i) the strong market position of the Parties in Dublin, Cork and Shannon as a result of their established bases;

(ii) the merged entity would have the two strongest brands in Ireland and a new entrant would need considerable time and investment to upgrade its brand. Indeed, due to the announced dual branding strategy, the merged entity would have a strong market position in two different market segments (namely in the no-frills segment with the lowest fares as well as in the segment with higher service level). This entry barrier was equally relevant for routes to and from Dublin, Shannon, Cork and Knock;

(iii) the fear of aggressive retaliation by the merged entity in case of entry. This entry barrier was equally relevant for routes to and from Dublin, Shannon, Cork and Knock;

(iv) the fact that new entrants may face difficulties in obtaining early morning peak hour slots and parking stand at Dublin airport. Besides, capacity constraints at certain destination airports would contribute to the already high barriers to entry;

(v) the level of airport charges and taxes at Dublin airport was likely to deter new entrants from opening routes from or to Dublin;

(vi) the Irish market is not considered by many competitors as an attractive market and the economic downturn in Ireland (but also in other Member States such as Spain) have further deteriorated the attractiveness of the Irish market compared to in 2007;

(vii) finally, the ability of the Parties to influence decision making at the Irish airports for example as regards slot coordination issues (in Dublin), operational issues, the use and development of airport infrastructure at the airports of Dublin, Cork and Shannon.

(44) The conclusion that the entry barriers in this case are high was corroborated by the fact that in recent years only limited entry events took place (by airlines other than Ryanair of Aer Lingus) on the overlap routes.

6. *Forms of entry/expansion*

(45) The results of the market investigation indicated that, in order to be an effective competitor with the merged entity at each of Dublin, Cork and Shannon airports, a new entrant would need to establish a base in each of these respective airports. Without a large number of routes over which to spread these fixed costs, it would be difficult to achieve the same level of cost-efficiency enjoyed by both Ryanair and Aer Lingus. Moreover, a base allows for having an interesting schedule with early morning departures and late evening arrivals and sufficient operations and accordingly market presence and brand awareness.

(46) The Decision concludes that a base in Ireland (at Dublin in particular) would thus appear crucial for carriers in order to be able to provide adequate coverage of the Irish market and exert adequate competitive pressure on the merged entity.

7. *Entry plans by actual and potential competitors*

(47) The Commission analysed whether potential competitors would have entry and expansion plans on an individual basis or an aggregate level, which would be sufficient to offset the anti-competitive effects of the transaction on the routes of concern.

(48) Besides, in the case at hand, competing entry would have to occur on 32 overlap routes where Ryanair have bases at both ends of the routes. Entry in such circumstances appeared even more difficult. In addition, according to the majority of competitors, the mere possibility of entry would not discipline the merged entity post-transaction.

(49) The Decision concludes that the anti-competitive effects of the transaction would not be sufficiently compensated by entry on an isolated route or expanded entry by carriers operating some routes to and from their home bases.

8. *Actual competition* (1)

(50) The Decision concludes that the transaction would likely significantly impede effective competition in particular as a result of the creation of a dominant position on the following 28 routes, where the merged entity would enjoy a monopoly post-transaction: Dublin–Alicante/Murcia; Dublin–Berlin; Dublin–Bilbao/Santander; Dublin–Birmingham/East Midlands; Dublin–Brussels; Dublin–Budapest; Dublin–Edinburgh/Glasgow; Dublin–Fuerteventura; Dublin–Glasgow International/Prestwick; Dublin–Manchester/Liverpool/Leeds; Dublin–Marseille; Dublin–Milan; Dublin–Nice; Dublin–Rome; Dublin–Tenerife; Dublin–Toulouse/Carcassonne; Dublin–Venice/Treviso; Dublin–Vienna/Bratislava; Dublin–Warsaw/Modlin; Cork–Alicante; Cork–Faro; Cork–London; Cork–Manchester/Liverpool; Cork–Tenerife; Knock–Birmingham/East Midlands; Knock–London; Shannon–Manchester/Liverpool and Shannon–London.

(51) The Decision concludes that the transaction is likely to significantly impede effective competition as a result of the creation of a dominant position on the following seven routes where other scheduled carriers operate: Dublin–Bristol/Cardiff/Exeter (irrespective of the precise market definition); Dublin–Frankfurt; Dublin–London; Dublin–Madrid; Dublin–Munich; Dublin–Paris, and Dublin–Stockholm. Moreover, the transaction is also likely to result in the elimination of the very close competitive relationship between Ryanair and Aer Lingus and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on each of these routes. Customers' travelling options would therefore be substantially reduced and it is unlikely that the other competitor(s) active on each of these routes would be able to constrain the merged entity's market behaviour sufficiently, especially with regard to fare setting on each of these routes.

(52) The Decision concludes that the transaction would likely significantly impede effective competition in particular as a result of the creation of a dominant position on the following 11 routes, where charter companies operate: Dublin–Barcelona, Dublin–Faro, Dublin–Gran Canaria, Dublin–Ibiza, Dublin–Lanzarote, Dublin–Malaga, Dublin–Palma, Cork–Barcelona, Cork–Lanzarote; Cork–Malaga and Cork–Palma. Moreover, the transaction is also likely to result in the elimination of the very close competitive relationship between Ryanair and Aer Lingus and thus to eliminate the important competitive constraint that both carriers exert upon each other pre-transaction on these routes. Customers' travelling options therefore would be substantially reduced and it is unlikely that charter airlines would be able to constrain the merged entity's market behaviour sufficiently, especially with regard to fare setting, on these routes.

9. *Potential competition*

(53) Competition on the routes currently operated by both Ryanair and Aer Lingus ex Dublin, Shannon, and Cork, where both carriers have bases, cannot be regarded in isolation. Such an isolated analysis would imply that the respective product markets are entirely independent from each other. Both carriers have the necessary flexibility to shift and add routes from their existing bases at these airports in reaction to changes in the competitive structure of the different routes operated from their bases. The analysis therefore must also be dynamic looking at what extent the disappearance of one carrier's closest and most important competitor might eliminate potential competition that would have constrained Ryanair and Aer Lingus in the absence of the transaction.

(54) The Commission analysis pointed out that as a consequence of the dynamic pattern of entry in competition with each other and the very limited impact of entry by other carriers on the Parties, Ryanair and Aer Lingus exert a potential competitive constraint on each other.

(55) Following a cautious approach, the Decision concludes that the transaction would likely lead to a significant impediment to effective competition, in particular as a result of the creation or strengthening of a dominant position, by eliminating the most credible potential entrant on the following six routes: (i) Ryanair routes of potential competition: Dublin–Bologna, Dublin–Bordeaux, Cork–Paris/Beauvais, Cork–Munich/Memmingen, Cork–Birmingham; (ii) Aer Lingus route of potential competition: Dublin–Newcastle.

C. **Efficiencies**

(56) Ryanair claimed that the transaction would generate substantial efficiencies, which would benefit all customers. Ryanair would apply its cost-cutting expertise to improve Aer Lingus' efficiency, lower its costs and air fares, and enhance its competitiveness against other airlines at primary airports.

(1) The Commission concluded that all the routes exited by the Parties following the announcement of the transaction are not transaction-specific and are not treated as an overlap between the Parties for the purpose of the competitive assessment. These routes are: Dublin–Krakov, Dublin–Verona and Dublin–Vilnius.

(57) Ryanair did not provide relevant information intended to prove that the efficiencies were verifiable, merger specific and likely to be passed on consumers, nor has the Commission found verifiable evidence that Ryanair could reduce Aer Lingus costs without offsetting reductions in other elements beneficial to consumers, such as quality of service or airport location. Furthermore, a number of efficiencies claimed by Ryanair were likely to be not merger specific (such as staff reduction costs, fuel costs, and distribution costs).

(58) Therefore, the claimed efficiencies did not meet the three cumulative conditions set out in the Horizontal Merger Guidelines. In addition, given the extremely high combined market shares and the absence of timely, sufficient, and likely entry, it appeared that any sufficient pass-on of alleged efficiencies to consumers would not take place.

D. **Commitments**

1. *Description of the final set of commitments*

1.1. Divestiture of Aer Lingus' operations on 43 overlap routes to Flybe

(59) Ryanair offered to transfer to Flybe a new and stand-alone company (hereinafter the Divestment Business, possibly to be called 'Flybe Ireland'), to which it would transfer a number of assets, including inter alia cash of EUR 100 million, a lease for at least nine Airbus A 320, airport slots (at origin and destination), personnel, a royalty-free, non–exclusive, non-sub-licenceable and non-transferable license to the 'Aer Lingus' trademark for three years. This trademark would be used in conjunction with the 'Flybe' brand name.

(60) Ryanair committed to develop, in consultation with Flybe, a business plan for the Divestment Business for the first year, reflecting an agreed amount of projected annual pre-tax profits.

(61) Flybe would operate an agreed schedule on 43 routes during a minimum period of six IATA seasons. Provided that the aggregate weekly frequencies per season scheduled by the Divestment Business on all routes to/from Ireland remained unchanged, Flybe was only required to schedule flights on: (i) 90 % of the Flybe Routes in the third and fourth IATA Season of the first six IATA seasons and (ii) 85 % of the Flybe Routes in the fifth and sixth IATA Season of the first six IATA seasons.

(62) In case of misuse of slots, a penalty mechanism was set on a sliding scale that reflected the importance of the route and whereby the penalties diminishes progressively over the duration of the first six IATA seasons.

(63) During the first six IATA seasons, Flybe would set up base at Dublin Airport, and would operationally base one aircraft at Cork airport.

(64) During the first three IATA seasons, the welcome screen of Aer Lingus's website would be divided into two halves bearing the trade names and logos of Aer Lingus and the Divestment Business respectively, both being hyper-linked to their respective booking websites. After the first three IATA seasons, a banner would be put at the top of the Aer Lingus Website with a web link to the Divestment Business' website.

(65) With respect to six routes operated by Aer Arann, Flybe was intended to satisfy its obligation to operate on these routes by assuming the Aer Arann franchise agreement or by entering into a new franchise agreement with Aer Arann.

1.2. Divestiture to IAG (British Airways) of slots on three overlap routes to London

(66) During six IATA seasons, Ryanair undertook that IAG would operate on the Dublin–London, Cork–London and Shannon–London routes, using Airbus A319 or equivalent aircraft, using its own slots in combination with those divested by Ryanair:

(i) IAG and Ryanair would have entered into a Gatwick Lease Agreement or a Heathrow — Gatwick Transfer Agreement, depending on whether and when the so-called Heathrow Transfer Condition was satisfied, which consisted in the determination by both Ryanair and IAG that giving effect to the Heathrow — Gatwick Transfer Agreement would not have violated Article 10 of the Aer Lingus' Articles of Association (or other successor provision) or any other applicable law or regulation;

(ii) in case the Gatwick Lease Agreement was in effect, IAG would have operated (i) 68 weekly frequencies on the Dublin–London Gatwick route, 13 weekly frequencies on the Cork–London Gatwick route and seven weekly frequencies on the Shannon–London Gatwick route using airport slot pairs owned by Ryanair and (ii) an additional two weekly frequencies on the Dublin–Gatwick Route, one weekly frequency on the Cork–Gatwick Route and seven weekly frequencies on the Shannon–Gatwick Route using slots owned or to be acquired by IAG;

(iii) in addition to operation of Gatwick slots, IAG would have operated seven weekly frequencies on the Dublin–Heathrow route using slots that IAG would have leased from Ryanair. According to a revised IAG Agreement, IAG would also have entered into an additional Heathrow Lease Agreement;

(iv) if the Heathrow Transfer Condition was satisfied, IAG might have exercised its right to terminate the Gatwick Lease Agreement (and the Heathrow Lease Agreement, if it was in force) and give effect to the Heathrow — Gatwick Transfer Agreement (IAG Call Option). In particular, IAG would have transferred its Gatwick slots (as identified above) to operate on Dublin — Gatwick and seven additional Gatwick slots in exchange for slots owned by Aer Lingus at London Heathrow for IAG to operate: (a) 70 weekly frequencies on the Dublin Heathrow route, (b) 14 weekly frequencies on the Cork — Heathrow route and (c) 14 weekly frequencies on the Shannon–Heathrow route. A revised IAG Agreement added a new Heathrow Lease Agreement and modified the number of Gatwick slots which Ryanair would have obtained in exchange for the Heathrow slots.

1.3. Additional slot divestitures on London–Ireland routes

(67) Pursuant to a slot transfer procedure, and during six IATA seasons, Ryanair committed to transfer, or to cause Aer Lingus to transfer to any interested carrier sufficient slots to operate frequencies with its own aircraft on the Dublin–London, Cork–London and/or Shannon–London routes, provided that the number of slots transferred did not exceed the route overlap difference on the relevant route.

1.4. Potential competition

(68) During the first six IATA seasons and at all times thereafter, Ryanair committed to transfer, or to cause Aer Lingus to transfer, slots for the potential competition routes to any interested carrier.

2. *Assessment of the final set of commitments*

2.1. Flybe was not a suitable purchaser

(69) The Commission considered that Flybe was not a suitable purchaser in whose hands the Divestment Business would become an active competitive force in the market.

(70) First, the Commission considered that, in the absence of specifically defined assets to be divested as part of the Flybe Ireland business, there was insufficient evidence to conclude that the Divestment Business would possess the necessary assets in order to be a viable and competitive business.

(71) Second, with respect to Flybe's business model, the Commission considered that while operations of routes connecting Ireland to the United Kingdom would fit in Flybe's current business model, depending on the aircraft used, other routes, especially leisure routes with longer sector lengths, would not fit in Flybe's current business model. The Commission moreover noted that Flybe did not have experience with operating with Airbus A320 aircraft and would thus face a challenge in understanding the market in which it would operate.

(72) Third, the Commission considered that the arrangement whereby Ryanair would prepare a one year business plan for Flybe Ireland, and the arrangement whereby Ryanair would proceed to the (re-)structuring of the cost base of the Divestment Business, even though not leading to a lasting relationship between the merged entity and the Divestment Business, did not seem reconcilable with the concept of independent competitors.

(73) Fourth, given that Flybe's previous experiences in operating in new markets were rather different from the proposed acquisition of Flybe Ireland, given that Flybe only had limited experience in the Irish market, and given that Flybe, unlike Aer Lingus, had only limited experience and track record in competing with Ryanair, the Commission considered that these elements did not provide sufficient evidence to support the conclusion that Flybe had the proven relevant experience to maintain and develop Flybe Ireland as a viable and active competitive force in competition with the merged entity.

(74) Fifth, the Commission concluded that Flybe did not possess the financial resources to maintain and develop Flybe Ireland as a viable and active competitive force in competition with the merged entity in the medium-term.

(75) Sixth, in terms of its ability to compete with the merged entity post-transaction, the Commission considered that, despite the proposed trademark licence, website publicity measures, and capital injection in Flybe Ireland, it was uncertain whether Flybe would be in a position to establish a sufficiently strong brand, in particular as regards passengers originating from Ireland, which would allow it to effectively constrain the merged entity so as to remove the competition concerns identified by the Commission. Furthermore, Flybe Ireland's ability to effectively constrain the merged entity so as to remove the competition concerns identified by the Commission was likely to be affected by the proposed limited base operations and the proposed number of divested frequencies and implied capacities. Lastly, the Commission considered it unlikely that Flybe Ireland's revenues and cost base would enable it to operate profitably on the 43 routes.

(76) Seventh, the Commission concluded that Flybe would not have a sufficient incentive to continue to operate on a lasting basis, at least on a substantial part of the 43 Flybe Routes.

(77) Moreover, the Commission also concluded that the Commitments with respect to Flybe were not likely to be implemented in a timely manner as far as the franchise agreement was concerned. Also, the Commission could not clearly determine that the proposed Commitments, once implemented, would fully and unambiguously resolve the competition concerns identified in this Decision as regards the Aer Arann routes.

(78) Lastly, the Commitments were not clear cut and raised doubts as to whether they would be implemented in a timely manner.

2.2. Uncertainties as regards the three London routes — IAG

(79) The Commission was not able to conclude with the requisite degree of certainty that the new commercial structures resulting from the final set of commitments as regards the three London routes were sufficiently workable and lasting to ensure that the significant impediment to effective competition on the three London routes did not materialise during and after the Minimum Period.

(80) Irrespective of whether the Gatwick Lease Agreement or the Heathrow Gatwick Transfer Agreement would be in effect, the overall capacity on the routes was likely to decrease and the merged entity would remain dominant in terms of frequencies and capacity on the three London routes (Dublin, Cork and Shannon). Furthermore, IAG has a different business model focusing more on business and connecting passengers (relevant if the Heathrow Gatwick Transfer Agreement is in effect). Therefore, the Commission considered that IAG would not sufficiently constrain the merged entity post-transaction during the Minimum Period.

(81) The Commission considered that it was most likely that IAG would exit these three routes from Gatwick and significantly scale back the operations on these three routes from Heathrow at the end of the Minimum Period. The Commission had also not identified any sufficient, likely and timely entry on these routes during its market investigation.

(82) Lastly, the complexity of the Commitments, the inconsistencies between the Commitments, the Form RM and the IAG Agreement and the dispute resolution mechanism, raised doubts as to whether the Commitments would be implemented in a timely manner.

2.3. Conclusion

(83) Based on all available evidence, including the results of the market test, the Commission considered that the final set of commitments would not likely lead to the entry of new competitors able to exert sufficient competitive constraint on the merged entity.

(84) The final set of commitments did not allow the Commission to conclude, with the requisite degree of certainty, that it would be possible to implement them in a timely manner and that they would be sufficiently workable and lasting to ensure that the impairment of effective competition which those commitments were intended to remove would not be likely to materialise in the relatively near future.

(85) The Commission could not clearly determine that the final set of commitments, once implemented, fully and unambiguously resolved the competition concerns identified in the Decision.

(86) It was therefore concluded that the commitments offered by Ryanair were not able to remedy the identified significant impediment to effective competition, and, thus, could not render the transaction compatible with the internal market.

V. **CONCLUSION**

(87) For the reasons mentioned above, the Decision concludes that the proposed concentration would have significantly impeded effective competition in the internal market or in a substantial part of it.

(88) Consequently the concentration was declared incompatible with the internal market and the EEA Agreement.