— It is submitted in this regard that an 'international organisation' for the purpose of Article 4 of Annex VII to the Staff Regulations has been defined with great precision by the case-law. Thus, in its judgment of 30 November 2006 in *J* v *Commission* (in particular paragraphs 42-43), the General Court of the European Union considered that, in order for an organisation to be classified as international for the purpose of the application of Article 4(1)(a) of Annex VII to the Staff Regulations, it is necessary for it to be formally identified and recognised as such by the other States or by other international organisations created by the States. In any event, for the purpose of determining whether an organisation is an international organisation, regard must be had only to its own composition, not whether it is a member of organisations with an international composition. In the light of those strict criteria, neither the EFSA nor the ETF may be regarded as international organisations within the meaning of Article 4.

3. Third ground of appeal, alleging breach of the principle of equal treatment.

— It is submitted that the interpretation given to the provision in question by the court at first instance is illogical and has the effect of giving rise to discrimination between two categories of officials, for which this is no objective basis, by treating the position of a person who has been outside his country of origin simply because he was performing duties in the service of a State or an international organisation (thus not severing contact with his home country) in the same way as that of a person who has left his country of origin for personal reasons, leading to a severing of links with that country, and only subsequently worked for a State or an international organisation. Moreover, according to the judgment under appeal, the situation of two officials who left their respective countries of origin more than ten years ago to raise a new family abroad are to be treated differently simply because one of those individuals, after living in the new country for many years, was employed by an international organisation.

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## Action brought on 14 February 2013 — Aer Lingus v Commission

**(Case T-101/13)**

(2013/C 101/60)

*Language of the case: English*

### Parties

*Applicant:* Aer Lingus Ltd (Dublin, Ireland) (represented by: D. Piccinin, Barrister, and A. Burnside, Solicitor)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission dated 14 November 2012, taken under clause 1.4.9 of the Commitments given by International Consolidated Airlines Group ('IAG') to the Commission as a condition for the Commission's approval of IAG's acquisition of British Midlands Limited ('bmi') under Council Regulation 139/2004 [1], evaluating bids for take-off and landing slots at Heathrow Airport that IAG was required to divest under the Commitments, and ranking the bid submitted Virgin Atlantic Airways ('Virgin') for slots for the London Heathrow — Edinburgh route above the bid submitted by Aer Lingus Limited ('Aer Lingus') for those slots;

— Order that the Commission should pay the applicant's costs.

### Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging an error in the interpretation of the Commitments. The applicant argues that the Commission erred in its interpretation of the criterion for evaluating the bids set out in clause 1.4.10(c) of the Commitments, concerning the bidding airline's plans to offer feed to third party carriers. The Commission interpreted that criterion as encompassing Virgin's plans to carry passengers on the London Heathrow — Edinburgh route on its own connecting flights to long haul origins/destinations, whereas that criterion is in fact limited to the provision of connecting passengers to third party carriers.

2. Second plea in law, alleging failure to take appropriate account of advice from the Monitoring Trustee [2]. The applicant argues that the Commission failed in its duty to take appropriate account of advice from the Monitoring Trustee, and/or to give adequate reasons for departing from that advice in four respects:

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on Aer Lingus' advantages in respect of interlining;

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on Aer Lingus' advantages in respect of operating costs and sensitivity analysis;

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on how the various measures should be analysed in combination to produce an overall ranking; and

— The Commission failed to seek advice from the Monitoring Trustee in relation to the relative advantages of awarding the slots as a single package.

3. Third plea in law, alleging manifest error of assessment. The applicant argues that the Commission manifestly erred in reaching its conclusion that Aer Lingus' bid did not offer competitive constraints that were at least 'essentially similar' to those offered by Virgin's bid. The Commission erred both in its appraisal of the competitive constraints that the competing bids offered on the London Heathrow — Edinburgh route, and in its appraisal of the benefits that would flow from awarding all of the routes to a single carrier rather than awarding the London Heathrow — Edinburgh route to Aer Lingus and the remaining routes to Virgin.

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([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1)

([2]) Person appointed in the framework of the IAG's acquisition of bmi in order to perform the functions of monitoring IAG's fulfilment of the Commitments