

**Opinion of the Advisory Committee on mergers given at its meeting of 18 February 2013 regarding a draft decision relating to Case COMP/M.6663 — Ryanair/Aer Lingus III**

**Rapporteur: Estonia**

(2013/C 216/05)

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

A minority abstains.

2. The Advisory Committee agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1 of the Merger Regulation.

A minority abstains.

3. The Advisory Committee agrees with the Commission definitions of the relevant markets as stated in the draft decision. In particular,

- (a) the Advisory Committee agrees with the Commission that the effects of the transaction are to be assessed on the basis of an O&D city-pair approach;

- (b) the Advisory Committee agrees with the Commission's assessment on airport substitutability.

A minority abstains.

4. The Advisory Committee agrees with the Commission's assessment that Aer Arann is a competitor of Ryanair, but not of Aer Lingus.

A minority abstains.

5. The Advisory Committee agrees with the Commission's assessment that Aer Lingus and Ryanair are very close, if not each other's closest competitor on all overlap routes.

A minority abstains.

6. The Advisory Committee agrees with the Commission's assessment that the entry barriers in this case are high.

A minority abstains.

7. The Advisory Committee agrees with the Commission's assessment 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 outside of Ireland.

A minority abstains.

8. The Advisory Committee agrees with the Commission's assessment that the notified concentration would lead to a significant impediment of effective competition on 46 routes on which the parties' activities overlap, namely:

— the 28 monopoly 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,

— the 7 routes where the merged entity would operate alongside other scheduled carriers: Dublin–Bristol/Cardiff/Exeter (irrespective of the precise market definition); Dublin–Frankfurt; Dublin–London; Dublin–Madrid; Dublin–Munich; Dublin–Paris, and Dublin–Stockholm, and

— the 11 routes where the merged entity would operate alongside charters: Dublin–Barcelona, Dublin–Faro, Dublin–Gran Canaria, Dublin–Ibiza, Dublin–Lanzarote, Dublin–Malaga, Dublin–Palma, Cork–Barcelona, Cork–Lanzarote; Cork–Malaga and Cork Palma.

A minority abstains.

9. The Advisory Committee agrees with the Commission's assessment as regards the elimination of 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.

A minority abstains.

10. The Advisory Committee agrees with the Commission that the commitments offered by Ryanair on 17 October 2012, 7 December 2012, 15 January 2013, and 1 February 2013 do not address the competition concerns identified by the Commission and will not eliminate the significant impediment to effective competition resulting from the notified transaction.

A minority abstains.

11. The Advisory Committee agrees with the Commission that the IAG commitments are insufficient to address all the competition concerns identified by the Commission.

A minority abstains.

12. The Advisory Committee agrees with the Commission that the Flybe commitments are insufficient to address all the competition concerns identified by the Commission.

A minority abstains.

13. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared incompatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(3) and 8(3) of the Merger Regulation and Article 57 of the EEA Agreement.

A minority abstains.

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