



EUROPEAN COMMISSION

## MEMO

Brussels, 27 February 2013

# Mergers: Commission prohibits Ryanair's proposed takeover of Aer Lingus – frequently asked questions

See also [IP/13/167](#)

## 1. What is the Commission's approach with respect to consolidation in the European air transport sector? Is the decision in this case in line with the Commission's policy?

In recent years, some consolidation has been taking place in the air transport sector in the European Union. The Commission supports consolidation in the sector so long as it does not happen at the expense of consumers.

Many cases have shown that consolidation can be compatible with EU rules on merger control. The Commission examines each merger or acquisition on its own merits and on a case-by-case basis. The Commission verifies that the merger project does not lead to higher prices for passengers.

Including this decision, the Commission has examined 16 mergers in the air transport sector since 2004. In particular, the Commission cleared 12 mergers between air carriers.<sup>1</sup> Sometimes, the clearance was conditional on the implementation of commitments made by the parties (see for example the recent acquisition of bmi by IAG – [IP/12/338](#)).

Among these 16 cases, this decision is only the third prohibition. The first prohibition related to the first attempt by Ryanair to acquire Aer Lingus in 2007 (see [IP/07/893](#)). The General Court upheld the Commission's prohibition in its judgment of 6 July 2010 (see [MEMO/10/300](#)). The second prohibition decision related to the merger between Olympic Air and Aegean Airlines in 2011 (see [IP/11/68](#)). These prohibition decisions were related to transactions involving two airlines having large bases at the same "home" airport. Such scenarios may lead to competition concerns on routes where the two airlines operate.

The 2012 investigation into the proposed acquisition of Aer Lingus by Ryanair clearly showed that this acquisition would lead to the elimination of Ryanair's very close competitor on a large number of routes – 46 in total, including 28 routes where the acquisition would lead to an outright monopoly – and would thus affect a considerable number of passengers who would likely face higher air fares.

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<sup>1</sup> Out of these 16 cases, 12 mergers were cleared; 3 were prohibited (Ryanair/Aer Lingus in 2007, Olympic Air/Aegean in 2011, Ryanair/Aer Lingus in 2013); 1 notification was withdrawn (Ryanair/Aer Lingus in 2009).

## **2. Did Ryanair get a fair treatment from the Commission during the investigation?**

This is the second time that the Commission conducts an in-depth investigation on the proposed takeover by Ryanair of Aer Lingus. In 2007 the Commission had prohibited such an acquisition. The analysis contained in this decision provided useful background for the 2012 investigation. However, the Commission carried out an entirely new investigation, examining the new notification in depth and on its own merits, on the basis of the present circumstances and taking into account the changes in market conditions since 2007.

The Commission used all available means of investigation. Not only did the Commission conduct extensive market tests to get the opinion of other airlines, travel agents, corporate customers, consumers associations, and airports. It also entered into further contacts with these market participants and other third parties such as slot coordinators, civil aviation authorities, and transport authorities. In addition, the Commission analysed a substantial amount of internal documents originating from Ryanair and from other carriers.

In line with our rules of merger control, Ryanair was informed of the Commission's concerns at numerous stages in the proceedings. In particular, a very detailed Statement of Objections was adopted by the Commission and communicated to Ryanair. Ryanair had the opportunity to reply to these objections, make proposals of remedies and improve these proposals several times.

During the proceedings, Ryanair has submitted four different sets of remedies. Ryanair originally proposed slot divestitures on a limited number of routes and block space agreements on the remaining overlap routes. The first set of commitments was not market tested given that it was clear that they were not sufficient to remove the serious competition concerns identified by the Commission.

The second, third and fourth commitment packages proposed by Ryanair have all been market tested. Ryanair was informed of both the results of the market tests and of the Commission's concerns following a preliminary assessment of the successive commitment packages on the occasion of so-called "state of play" meetings between Ryanair and the Commission, organised following each of the market tests.

## **3. Why were the remedies proposed by Ryanair insufficient to remove the competition concerns raised by the Commission?**

The final package of commitments proposed by Ryanair comprised two main parts, a) a divestment to Flybe with respect to operations on 43 routes from and to Ireland and various destinations in Europe – where the activities Ryanair and Aer Lingus overlapped –, and b) slot divestments to IAG/British Airways with respect to operations on three routes connecting Ireland to London.

### **a) Proposed divestment to Flybe**

Ryanair undertook to transfer to Flybe a new and stand-alone company - possibly to be called Flybe Ireland - which would have taken over most of Aer Lingus' present operations on 43 routes where the activities of Aer Lingus and Ryanair overlap (the "Flybe routes"). Ryanair would have transferred to Flybe Ireland assets such as capital, a lease for several Airbus A320 aircraft, airport slots (at origin and destination), a royalty-free, non-sub-licensable, non-exclusive and non-transferable license to the Aer Lingus trademark for 3 years, personnel, contracts, real estate, etc.

Flybe Ireland would have operated on the 43 Flybe routes during a minimum period of 3 years. It would nevertheless have had the right to 'churn' routes to a certain extent. Flybe Ireland would have based the aircraft necessary to operate the routes at Dublin Airport, provided that at least one aircraft was based operationally at Cork airport. Ryanair proposed a number of other measures to provide Flybe Ireland with additional publicity and brand awareness.

After an in-depth assessment, the Commission found that at least some of the routes - for example longer leisure routes - do not correspond to Flybe's current business model. The Commission also noted that, due to the lack of experience with this type of aircraft, Flybe would have faced a challenge in operating Airbus A320.

The Commission also found that Flybe does not appear to have the proven relevant experience to maintain and develop Flybe Ireland as a viable and active competitive force. Furthermore, Flybe has only limited experience in the Irish market and, unlike Aer Lingus, has only limited experience and track record in competing with Ryanair.

In addition, the arrangement whereby Ryanair would prepare for Flybe Ireland a business plan, even though this would not lead to a lasting relationship between the merged entity and the divestment business, was not reconcilable with the concept of independent competitors.

Lastly, despite the important cash injection that Ryanair would have made in Flybe Ireland, the Commission considered that Flybe did not appear to possess the financial resources necessary to maintain and develop Flybe Ireland as a viable and active competitor. The Commission also considered it unlikely that Flybe Ireland's operations on the 43 routes would be profitable and found 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.

The Commission therefore reached the conclusion that Flybe was not a suitable purchaser in the hands of which the divested business could have become and remained a sufficient competitive force against the merged entity.

#### **b) Proposals for the 3 London routes**

Ryanair undertook that for at least 3 years, IAG/British Airways would operate 70 weekly frequencies on the Dublin-London route and 14 weekly frequencies on each of the Cork-Shannon and Shannon-London routes. Ryanair undertook to make available to IAG the necessary slots.

Initially, Ryanair would lease to IAG weekly slots at Heathrow airport, and weekly frequencies at Gatwick airport and IAG would use some of its own slots at Gatwick for all the three routes. If and when Ryanair would be in a position to dispose of Aer Lingus' slots at Heathrow airport, IAG would have the option to acquire these Heathrow slots and the lease with respect to the Gatwick slots would be terminated.

Ryanair also undertook to offer additional slots to any European airline to address the remaining portion of the increment of frequencies brought about by the transaction.

After an in-depth assessment, the Commission found that IAG (British Airways) would not sufficiently constrain the merged entity after the transaction. Indeed, irrespective of whether IAG would have entered on these routes from Heathrow or Gatwick, the merged entity would have remained dominant in terms of numbers of frequencies and seat capacity on these routes. Furthermore, the Commission found that IAG has a different business model focusing more on business and connecting passengers.

Also, the Commission considered that it was most likely that IAG would have exited the three routes or significantly scaled back its operations at the end of the commitment period of 3 years.

Finally, the market investigation did not enable the Commission to identify any sufficient, likely and timely entry by another carrier on these routes.

#### **4. Did the Commission request remedies that were impossible to deliver?**

The Commission can only approve a merger that raises competition concerns if all these concerns are, with the required degree of certainty, removed by the commitments proposed by the notifying parties.

The competition concerns identified by the Commission in this case were communicated to Ryanair by means of a Statement of Objections as well as through the so-called "state of play" meetings between the Commission and Ryanair, as foreseen in our merger control procedure.

In line with the Commission's Notice on remedies, it is for the parties to show that the proposed remedies eliminate the competition concerns. The Commission then assesses whether this is indeed the case. In this investigation, Ryanair had the opportunity to improve its proposed remedies several times (see question 2). The Commission concluded that the remedies proposed did not remove its concerns. The Commission cannot speculate on whether other potential remedies would have been suitable.

#### **5. Why did the Commission refuse remedies which were described several times by Ryanair as "unprecedented"?**

The relevant question is not whether or not similar remedies were offered in previous merger cases that the Commission had to deal with. The question is rather whether the remedies addressed the competition concerns raised by the proposed acquisition.

The competition concerns raised by the contemplated merger were unprecedented. These concerns cover 46 actual overlap short-haul routes and additional short-haul routes where potential competition between the parties would have been eliminated.

The first two packages referred in particular to blocked space agreements ("BSA") through which a marketing carrier reserves a given number of seats on the operating carrier's flights. As explained to Ryanair on several occasions, the Commission was of the view that strong anti-competitive effects would have persisted even with such a remedy. It would not have helped carriers like Flybe to develop their own operations on many of the routes subject to BSAs.

Besides, the first three remedy packages proposed by Ryanair contained measures involving the disposal of slots at London Heathrow. The Commission informed Ryanair early in the process that it considered unlikely that Ryanair would be in a position to dispose of the London Heathrow slots held by Aer Lingus, given the provisions contained in the Articles of Association of Aer Lingus. This was already the case in 2007.

It was only in the last remedy package, submitted very late in the process, that Ryanair proposed commitments related to both Gatwick and Heathrow. However, these late remedies remained insufficient, in particular because their scope did not ensure that the Ryanair/Aer Lingus merged entity would face a sufficient competition constraint.

Furthermore, the proposed commitments suffered from numerous other shortcomings so that it was not possible for the Commission to conclude with the requisite certainty that these commitments would be successfully and timely implemented.

## **6. Would the acquisition by Ryanair of Aer Lingus not have brought benefits to consumers?**

The Commission did not find any significant evidence beyond Ryanair's mere statements that the Aer Lingus acquisition would generate synergies and savings that would benefit all customers. Moreover, the Commission doubts that, even if such synergies and savings would be achieved, their benefits would be passed on to consumers, e.g. through lower fares.

On the contrary, the Commission considers that through the acquisition of Aer Lingus, Ryanair would have eliminated its closest competitor on a significant number of routes.

While passengers now have the ability to choose between flights offered by Ryanair and Aer Lingus, they would no longer have this possibility after the acquisition.

On an important number of routes, passengers would face a monopoly, having no other choice than to fly with the merged entity.

On a number of other routes which are also served by other airlines, the merged entity would still have a very strong market position with limited choice available to passengers. Passengers would thus become particularly vulnerable to price increases.

## **7. What is the list of routes in relation to which the Commission expressed competition concerns?**

The Commission found that the proposed transaction would have created a monopoly on the following 28 routes:

Dublin-Berlin; Dublin-Budapest; Dublin-Fuerteventura; Dublin-Marseille; Dublin-Nice; Cork-London; Cork-Tenerife; Shannon-London; Dublin-Alicante/Murcia; Dublin-Bilbao/Santander; Dublin-Birmingham/East Midlands; Dublin-Brussels/Charleroi; Dublin-Edinburgh/Glasgow; Dublin-Glasgow/Prestwick; Dublin-Manchester/Liverpool/Leeds; Dublin-Milan/Bergamo; Dublin-Rome Fiumicino/Ciampino; Dublin-Tenerife; Dublin-Toulouse/Carcassonne; Dublin-Venice/Treviso; Dublin-Vienna/Bratislava; Dublin-Warsaw/Modlin; Cork-Alicante/Murcia; Cork-Faro; Cork-Manchester/Liverpool; Knock-Birmingham/East Midlands; Knock-London; Shannon-Manchester/Liverpool.

The Commission found that the proposed transaction would have created a dominant position on the following 11 routes which charter companies also operate:

Dublin-Malaga; Dublin-Faro; Dublin-Barcelona; Dublin-Palma; Dublin-Lanzarote; Dublin-Gran Canaria; Dublin-Ibiza; Cork-Barcelona; Cork-Lanzarote; Cork-Malaga and Cork-Palma.

The Commission found that the proposed transaction would have created a dominant position on the following 7 routes which other scheduled carriers operate:

Dublin-Frankfurt; Dublin-London; Dublin-Madrid; Dublin-Munich; Dublin-Paris; Dublin-Stockholm; and Dublin-Bristol/Cardiff/Exeter.