

**COMPLETED ACQUISITION BY
RYANAIR HOLDINGS PLC OF A MINORITY SHAREHOLDING IN
AER LINGUS GROUP PLC**

**Notice of possible remedies issued under Rule 11 of the
Competition Commission Rules of Procedure**

Introduction

1. On 15 June 2012 the Office of Fair Trading referred the acquisition by a subsidiary of Ryanair Holdings plc (Ryanair) of 29.82 per cent of the shares in Aer Lingus Group plc (Aer Lingus) to the Competition Commission (CC) for investigation and report. The reference was made under section 22(1) of the [Enterprise Act 2002](#) (the Act). The CC's statutory deadline for publishing its final report was subsequently extended to 11 July 2013.¹
2. In its provisional findings on the reference, notified to Ryanair and Aer Lingus (the main parties) on 30 May 2013, the CC concluded that the acquisition by Ryanair of a 29.82 per cent stake in Aer Lingus had resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC).
3. This notice sets out the actions that the CC considers it might take, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings, and invites comments on possible remedies by 11 June 2013 (see note).

Criteria

4. In choosing appropriate remedial action, the CC is required to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.² When deciding on an appropriate remedy, the CC will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality.

Possible remedies on which views are sought

5. The CC invites views on whether divestiture of all or part of the shareholding in Aer Lingus acquired by Ryanair would be effective in addressing the SLC it has provisionally identified. Options being considered by the CC are:
 - (a) *Divestiture of the whole of Ryanair's shareholding in Aer Lingus (full divestiture).* This would remove any ownership link between Ryanair and Aer Lingus. Consequently it is likely to be an effective remedy to all aspects of the SLC we have provisionally identified. Views are invited on this remedy option.

¹ www.competition-commission.org.uk/assets/competitioncommission/docs/2012/ryanair-aer-lingus/120718_ryanair_notice_of_extension.pdf.
www.competition-commission.org.uk/assets/competitioncommission/docs/2012/ryanair-aer-lingus/130301_notice_of_termination_of_extension.pdf.

² Section 35(4) of the Act.

- (b) *Divestiture of part of Ryanair's shareholding in Aer Lingus (partial divestiture).* Views are invited on this remedy option and in particular as to the level of divestiture that would be necessary in this case in order to achieve a comprehensive solution to the SLC we have provisionally identified.
- (c) *Behavioural remedies to accompany a partial divestiture remedy.* Views are invited as to whether a partial divestiture would need to be accompanied by any behavioural remedies in order to remedy the SLC effectively. Such behavioural remedies might include measures relating to aspects of Ryanair's conduct as a shareholder in Aer Lingus, such as voting behaviour and the solicitation or acceptance of board representation, and potential restrictions on the ability to acquire further shares in the future.
6. In relation to the partial divestiture option, we would be particularly interested in views on the following issues:
- (a) what principles should guide our consideration of a suitable threshold for any partial divestiture? For example, should we seek to identify a threshold below which Ryanair would be unable to block a special resolution, to prevent Aer Lingus entering into combinations with other airlines, to prevent the sale of slots at Heathrow airport and/or to influence Aer Lingus's commercial policy and strategy in other ways?
- (b) whether a reduction of Ryanair's shareholding in Aer Lingus that reduced its effective voting power to below 25 per cent (after taking account of the historical and expected voting participation of other shareholders) would be sufficient to remove its ability to block special resolutions and/or schemes of arrangement and/or disposal of slots at Heathrow airport; and
- (c) whether there are other specific thresholds for Ryanair's remaining shareholding in Aer Lingus that should be considered (including, for example, a 10 per cent threshold corresponding to 'squeeze-out' in relation to a potential public offer for Aer Lingus, a 5 per cent threshold relevant to the requisitioning of a shareholder meeting, or a 3 per cent threshold relevant to the tabling of resolutions to shareholder meetings).
7. Views are also sought on any aspect of remedy design and implementation that may be needed to make effective either a full or partial divestiture of Ryanair's shareholding in Aer Lingus and to ensure that no further competition concerns would arise. These may include:
- (a) whether the method or process by which the divestiture is undertaken should be prescribed, and if so, what factors are relevant to determining the appropriate implementation process;
- (b) the appropriate timescale that Ryanair should be permitted to undertake the divestiture itself, and how the CC should balance the need to achieve a prompt solution to the SLC with any other relevant consideration, for example maintaining an orderly market for the Aer Lingus shares;
- (c) whether responsibility for who will manage the divestiture should be prescribed, including for example, whether a divestiture trustee should be appointed to manage the sale process on behalf of Ryanair, and what milestones would trigger such an appointment, should it be necessary; and

(d) whether specific criteria should be applied to the assessment of the suitability of the purchaser(s) of the Aer Lingus shares to be sold by Ryanair, and if so, what these criteria should be and how this assessment should be applied.

8. The CC is not, at this stage, proposing behavioural remedies on their own for discussion as none appears to be effective in addressing the SLC. However, the CC remains willing to consider any practical alternative remedies that the main parties or other persons would like to propose which they consider would remedy the SLC identified.
9. Views are also sought on what, if any, implications the appeal by Ryanair to the General Court has for the design, timing and implementation of any remedies the CC may require.³

Cost of remedies and proportionality

10. In order to be reasonable and proportionate, the CC will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CC will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. In relation to completed mergers, the CC will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.⁴ At this stage the CC notes that if both full and partial divestiture remedies were found to be effective, a partial divestiture would be the less intrusive of the two remedy options.
11. The CC invites views on what costs are likely to arise in implementing each remedy option.

Relevant customer benefits

12. The CC will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods and services. The CC welcomes views on the nature, scale and likelihood of such benefits. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

Next steps

13. The main parties and interested parties are requested to provide any views in writing, including any practical alternative remedies it wishes the CC to consider, by 11 June 2013 (see note).

³ Ryanair filed an appeal to the General Court on 8 May 2013 seeking the annulment of the European Commission's prohibition decision of 27 February 2013 (Case COMP/M.6663 – Ryanair/Aer Lingus), of Ryanair's proposed acquisition of a further 70 per cent shareholding in Aer Lingus (Case T-260/13).

⁴ [CC merger remedies guidelines \(CC8\)](#), paragraph 1.10.

14. A copy of this notice will be posted on the CC website.

(signed) SIMON POLITO
Group Chairman
30 May 2013

Note:

This Notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the CC's provisional findings announced on 30 May 2013. The main parties have until 20 June 2013 to respond to those provisional findings and comments are also welcomed by that date from other interested parties. In the light of any responses by the main parties, or by other interested or affected third parties, the CC's findings may alter, in which case the CC may consider other possible remedies, if appropriate.