

RYANAIR/AER LINGUS MERGER INQUIRY

Summary of third party hearing with the Irish Government held on 27 March 2013

Overview of Aer Lingus

1. The representatives of the Irish Government said that Aer Lingus was a very successful company and the turnaround that had taken place in the last number of years had been very gratifying. The Government and the Department of Transport, Tourism and Sport had placed a great deal of importance on Aer Lingus over the years. The Irish Government had confidence in Aer Lingus's future and saw it as providing a critical asset in terms of access to the island of Ireland.
2. Aer Lingus was a strong company with a good management team and the potential to develop. It had the ability to succeed as an independent company in the medium to long term. Although consolidation was taking place in Europe, Ireland should be distinguished from mainland Europe. Ireland had a critical need for airlines operating in and out of the island. The rate at which the Irish population used air travel was higher than the rest of Europe and therefore a smaller airline had the potential to continue to trade. In addition Ireland had a particular access to and connection with the USA.
3. The Irish government had encouraged Dublin Airport Authority (DAA), which was a state company, to increase the number of airlines operating in and out of Dublin. Ryanair and Aer Lingus were the dominant operators at the airport but there were a substantial number of other smaller operations operating in and out of the airport and that kind of development was encouraged. Some of the longer-distance services such as Emirates and Etihad had been particularly successful.
4. There was a recognition that in the future additional runway capacity might be needed at Dublin Airport, and that had been factored into plans over the years. In recent years the level of business at Dublin Airport had declined and the immediate focus was on trying to recover business.

History of the Irish Government's intentions for Aer Lingus

5. The government decision to proceed with the IPO of Aer Lingus was made in May 2005 along with a decision to proceed with the building of a new terminal at Dublin Airport. There had been a number of rescue plans for Aer Lingus following turbulent years in the 1990s and early 2000s, and it was recognized that, in order for the company to continue to grow and expand, access to capital was necessary, which could not come from the state under the European state aid rules. The Government agreed that it would sell a majority shareholding while retaining a significant minority of 25.1 per cent to enable it to protect three particular strategic aviation interests that were identified at the time. Those three interests were identified as: continuing direct transatlantic services; access to Heathrow for onward connectivity; and the continuation of the Aer Lingus brand, which was one of the most iconic Irish brands.
6. It was recognized that under Irish company law the 25.1 per cent shareholding would prevent any takeover of Aer Lingus that would be against the Government's three strategic interests. Ryanair's first bid was successfully defended by Aer Lingus and the Government indicated that it was not prepared to accept the offer that was made

in the first public bid which was subsequently prohibited by the EU Commission. The Irish Government would not support Ryanair's most recent bid, because it was seen as not being to the benefit of passengers, the economy generally or competitiveness in the Irish market.

Current governance arrangements

7. The Irish Minister for Finance was the shareholder in Aer Lingus, but policy on the treatment of the Aer Lingus shareholding fell principally to the Department of Transport, Tourism and Sport. The Minister for Public Expenditure and Reform had responsibility over the expenditure of the departments. Decisions on how the Irish Government chose to vote therefore involved three departments.
8. In answer to a question on why one of the Irish Government shareholder seats was vacant, the Irish Government representatives replied that vacancies could take a little time to fill. The two current directors had been given a mandate by the Minister. Their overriding mandate derived from their fiduciary duties under the Companies Acts; in addition to that, the Minister had mandated the Government-nominated directors to seek to ensure that any decisions that would have an impact on Irish regional development or connectivity be taken at board level.
9. The Government as a shareholder in a company would behave in a way similar to that of a responsible institutional shareholder. It would look at resolutions based on their merits, but would rely on the board of the company to exercise its fiduciary duty.
10. The Minister was keen to see a resolution of the pensions issue as quickly as possible, but ultimately this would be a matter for the trustees to resolve.

The competitive effects of Ryanair's shareholding in Aer Lingus

11. Under Irish company law, the 25.1 per cent shareholding was effectively a blocking minority. The Irish Government agreed that Ryanair could also block special resolutions and had done so with regard to equity issues. It might therefore constrain Aer Lingus in raising capital.
12. Aer Lingus had a very attractive cash position at the moment so the raising of capital would not be an immediate issue. However, the rationale behind the IPO had been to facilitate the raising of capital by the company and the Government would not wish to see that opportunity constrained. Ryanair had diverted Aer Lingus's management attention towards fending off Ryanair's takeover bids rather than focusing on development and growth of the company.
13. The Irish Government said that it could not speculate about the likely voting patterns of shareholders. However, it was concerned that the rationale behind the Government's original IPO had been to enable the company to raise capital, and it would be concerned if any shareholder vote were likely to prevent this.
14. [✂]
15. It was difficult to distinguish between the impact of Ryanair's minority shareholding and Ryanair's actions more generally in, for example, launching full bids for Aer Lingus. However, it said that the minority shareholding was clearly a progression along the track towards a full bid.

Future intentions

16. The Aer Lingus shareholding had, somewhat reluctantly, been identified as a state asset that could be sold along with other assets as part of the Government's assets disposal programme. However, this was not a forced sale and would take place only at an appropriate time. A number of issues would need to be taken into account, including ensuring that it was the right transaction to the right buyer, and recent developments had heightened the sensitivity of Government to its importance in any transaction involving Aer Lingus. There was no intention of selling the Government's stake to Ryanair because of the concern over monopoly provision and connectivity to and from Ireland.