

RYANAIR/AER LINGUS INQUIRY

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

RESPONSE BY RYANAIR TO THE NOTICE OF POSSIBLE REMEDIES

NON-CONFIDENTIAL VERSION

June 11, 2013

CLEARY GOTTlieb STEEN & HAMILTON LLP

Ryanair/Aer Lingus Inquiry
Ryanair's Response to the Notice of Possible Remedies

This Response contains Ryanair's views on the Notice of Possible Remedies published by the Competition Commission (the "CC") on May 30, 2013 (the "Remedies Notice"). Ryanair will submit a separate response to the CC's Provisional Findings Report. The fact that Ryanair has provided this Response, and has addressed specific questions posed in the Remedies Notice, does not in any way imply that Ryanair accepts the CC's Provisional Findings. On the contrary, Ryanair disagrees profoundly with the preliminary conclusions reached in the Provisional Findings, which it considers to be misguided, unproven, inconsistent with the evidence, and incorrect.

I. Overview

1. The CC is prevented from imposing any divestment remedy in this Inquiry at least until such time as the investigation of Ryanair's public bid for Aer Lingus (including review by the European Courts) has been completed.
2. The Provisional Findings Report provides no basis for the imposition of remedies. The CC has not shown that Ryanair's minority shareholding has or will result in a substantial lessening of competition in the UK (an "SLC"), and its conclusions fly in the face of clear, unambiguous, and overwhelming evidence to the contrary.
3. Even if the CC's conclusions on the competitive effects of the minority shareholding are accepted, which they should not be, any remedies must be both appropriate and proportionate in addressing those specific findings.
4. The Remedies Notice proposes only the most onerous remedies available (*i.e.*, divestment). It does not propose any other remedies for comment, stating that "*none appears to be effective in addressing the SLC.*" No explanation is given as to how or why the CC reached this conclusion. This represents a serious omission, consistent with Ryanair's belief that it has not been afforded a fair hearing. The CC should have consulted on the effectiveness of other possible remedies.
5. The CC's theories of harm do not relate to the integration of competing businesses or to any lessening of the parties' incentives to compete. They are limited to speculation about ways in which Ryanair could exercise voting rights in future. The speculative concerns expressed in the Provisional Findings Report could be fully addressed by less intrusive measures than those contemplated. More specifically:
 - Any concern that Ryanair could prevent Aer Lingus from being acquired by another airline could be removed by an undertaking (or order) preventing Ryanair from voting against an acquisition of Aer Lingus, including by means of a Scheme of Arrangement or a transaction under the Cross-Border Mergers Directive, by another EU airline, as proposed by the Aer Lingus Board.
 - Any concern that Ryanair could prevent Aer Lingus from acquiring another airline could be removed by an undertaking (or order) preventing Ryanair from voting against an acquisition, including by public offer or a

Scheme of Arrangement involving another airline (if put to a vote), as proposed by the Aer Lingus Board.

- Any concern arising from Ryanair’s ability to prevent Aer Lingus from issuing new shares other than on a pre-emptive basis could be removed by an undertaking (or order) preventing Ryanair from voting against a disapplication of pre-emption rights outside the EU.
 - Any concern that Ryanair may have the ability to block the disposal of Aer Lingus’ slots at London Heathrow could be removed by an undertaking (or order) preventing Ryanair from voting against Aer Lingus’ Board on this issue in future.
6. Undertakings of this type would raise no specification, circumvention, or enforcement risks. Similarly, as the minority shareholding involves no integration (or even co-operation) of the two businesses, there is no risk of behavioural undertakings distorting market outcomes.

II. Timing And Conditions Of A Divestment Remedy

A. Implications Of The General Court Appeal

7. The Remedies Notice seeks views 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.*”¹
8. This question does not properly lend itself to consultation. It is a simple matter of law. The on-going review of Ryanair’s bid to acquire full control of Aer Lingus under the European Merger Regulation, now before the General Court, prevents the CC from imposing any remedy that could conflict with a finding of the European Commission (following remittal of the case by the Court). This includes any remedy requiring Ryanair to divest its minority shareholding, or part of that shareholding.
9. The CC has accepted that its powers are limited in this way before the UK courts. In its Observations of January 7, 2013, on Ryanair’s application for permission to appeal to the Supreme Court, the CC states: “*[t]he CC has the ability to revisit the legal consequences of any decision ... Thus, if there were to arise a real issue of potential conflict with the EU after the conclusion of the CC procedure, the CC could await the subsequent EU proceedings and not take any remedial steps. That would in practice enable the CC to revisit its position if required.*”² It was on this basis that the Supreme Court dismissed Ryanair’s application for permission to appeal (see the Order of the Supreme Court dated April 24, 2013). In fact, the Supreme Court expressly stated that the CC “*has on the face of it sufficient powers to react to any Court of Justice decision over-ruling the European Commission and permitting a 100% bid,*” confirming that remedies cannot be enforced by the CC until the resolution of Ryanair’s appeal of the EU Decision to the European Courts.

¹ Remedies Notice, paragraph 9. Ryanair has already submitted its views on this question in its response of June 4 to the CC’s letter of May 30.

² CC Observations, January 7, 2013, paragraph 15.

10. As Ryanair's appeal is pending, it is open to the General Court (or subsequently the Court of Justice) to annul the European Commission's prohibition decision of February 27, 2013, on the grounds that Commission erred in its assessment, and remit the case to the Commission for further investigation. In those circumstances it will be open to Ryanair to make a fresh bid for the entirety of Aer Lingus' shares with the benefit of the favourable competition analysis in the Court's judgment. It is likely that a fresh bid for Aer Lingus would succeed and any question as to the competitive implications of the minority stake would disappear. At the very least, the CC cannot rationally exclude this possibility.
11. A divestiture or any other remedy that might frustrate a fresh bid for Aer Lingus following a successful outcome of the EU merger review ordered by the CC in the interim would directly contradict upcoming decisions of the European Courts and the Commission, potentially depriving them of their effectiveness. Further, any such decisions of the European Court and the Commission could well contain findings contradicting the CC's analysis that led it to order such a remedy. Again, at the very least, the CC cannot rationally exclude this possibility. In the event that a divestment had already been ordered, or that Ryanair's ability to make a fresh bid for Aer Lingus was frustrated in another way, the damage caused by the CC's error could not be undone.
12. The CC accepted in the course of the UK litigation that it would respect the duty of sincere cooperation under Article 4(3) TEU and avoid taking a final decision which could conflict with a decision of the European Commission.³ This must include any appeals from the decision of the Commission.
13. As divestiture is an irrevocable and irremediable step, with the potential for conflict with decisions of the European Courts and the European Commission, the CC must desist from imposing any divestment remedy, or any other remedy that might frustrate Ryanair's ability to make a fresh bid for Aer Lingus following a successful outcome of the EU merger review, at least until after the investigation of Ryanair's public bid for Aer Lingus (including review by the Courts) is completed.

B. No Justification For Special Conditions

14. The Remedies Notice also seeks views more generally on the timing and process of any divestment remedy.⁴ For the reasons set out in this Response, any divestment remedy would be unjustified and disproportionate. Without prejudice to this position, Ryanair makes the following observations.
15. The CC's Guidelines state that a divestiture should be carried out quickly enough to minimise "asset risks." Asset risks are defined as:

³ Judgment of the CAT of August 8, 2012, [2012] CAT 21, paragraph 84; and the CC's skeleton argument before the Court of Appeal, paragraph 82.

⁴ Remedies Notice, paragraph 7.

“risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss of customers or key members of staff.”⁵

16. In the present case, there is no prospect of the businesses being integrated or the Aer Lingus business being undermined. As the CC accepts, Ryanair acquired the shareholding as part of its attempt to acquire full control of Aer Lingus by means of a public bid. It has now been in place for six and a half years without any loss of competitiveness between the two airlines. The CC itself affirms the findings of the European Commission and concludes that:

“competition between Ryanair and Aer Lingus had remained intense since 2006, and that the extent of overlap between the operations of the two airlines had increased ...”⁶

17. In any event, Ryanair is now subject to an interim order preventing it from exercising voting rights in Aer Lingus other than in very limited circumstances. There is therefore no asset risk and no reason for accelerating any forced divestment.
18. By contrast, there would be a significant cost to Ryanair if it were required to divest shares too quickly. It could also undermine orderly trading and the value of Aer Lingus shares more generally if a significant volume of shares had to be sold quickly. For these reasons the deadline for any forced divestment should be [CONFIDENTIAL]. Any such deadline should naturally be confidential and known only to Ryanair and the CC.
19. There is similarly no basis for imposing any specific implementation conditions on a forced disposal of Aer Lingus shares. Since the shares are publicly traded, they can be easily transferred. As to the need for a monitoring mechanism, it would be readily apparent to Aer Lingus whether or not Ryanair had complied with any order to divest shares.
20. As to potential purchasers, one of concerns identified by the CC is that other airlines are currently dissuaded from acquiring Aer Lingus shares (even though Etihad has recently acquired a stake in Aer Lingus). In those circumstances, it is unclear why any purchaser requirements would be justified: the CC’s objective (and that of Aer Lingus) is to ensure that Aer Lingus shares can be acquired by another airline.
21. The obligation on the CC to impose remedies that are proportionate extends also to the manner in which those remedies must be implemented. In the present case, there is no reason for imposing any additional criteria on a divestment remedy or additional cost on Ryanair, and good reasons for allowing sufficient time for an orderly divestment following the completion of the EU merger review process (if unsuccessful).

⁵ Merger Remedies (CC8), November 2008, paragraphs 3.3 and 3.24.

⁶ Summary of Provisional Findings, paragraph 9.

III. The Provisional Findings Provide No Basis For Remedies

22. There is no basis for imposing any remedies in this Inquiry. The preliminary conclusions reached in the Provisional Findings Report are based on three entirely speculative theories of harm concerning ways in which Ryanair *could* vote its shares. In each case, the CC has been able to adduce no evidence (still less, prove on the balance of probabilities) that doing so *would* result in an SLC.
23. The Provisional Findings Report also flies in the face of clearly discernible facts. This is a highly unusual case. Ryanair’s minority shareholding was acquired in the context of a public bid to acquire Aer Lingus and has been in place for six and a half years. There is abundant evidence of its effect (if any) on competition – far more evidence than is typically available in merger investigations.
24. Over that six and a half year period, there has been no lessening of competition between the two airlines. This is not simply assertion on the part of Ryanair. The European Commission carried out a detailed investigation in assessing the public bid, concluding in February this year that:

“the competitive relationship between Ryanair and Aer Lingus has at least persisted, if not increased, since 2007.”⁷

25. The Provisional Findings Report reaches the same conclusion:⁸

“competition between Ryanair and Aer Lingus had remained intense since 2006, and that the extent of overlap between the operations of the two airlines had increased ...”⁹

26. Despite these unambiguous findings, the CC has inexplicably concluded that the minority shareholding has or could result in an SLC, and is proposing a forced divestment of Ryanair’s minority shareholding, either in whole or in part.

IV. Remedies Must Be Proportionate

27. The Remedies Notice proposes a full or partial divestment of Ryanair’s minority shareholding. It does not consider other possible remedies (other than in conjunction with a possible partial divestment). Even if the CC’s conclusions on the effect of the minority shareholding are maintained, which they should not be, this approach is inconsistent with the CC’s duty to consider and impose proportionate remedies.
28. The need to ensure proportionality is well established. The Guidelines state that:

⁷ European Commission Decision, paragraph 496.

⁸ The CC is, in any event, prevented by Article 4(3) of the Treaty on European Union from reaching conclusions that conflict with the findings of the European Commission.

⁹ Summary of Provisional Findings, paragraph 9.

*“the CC will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective.”*¹⁰

29. The Guidelines reflect case law of the Competition Appeal Tribunal and Court of Appeal, which require any remedy imposed by the CC to be proportionate. In *BAA v. CC*, the Court of Appeal set out the test of proportionality as follows:

*“... the measure: (1) must be effective to achieve the legitimate aim in question (appropriate), (2) must be no more onerous than is required to achieve that aim (necessary), (3) must be the least onerous, if there is a choice of equally effective measures, and (4) in any event must not produce adverse effects which are disproportionate to the aim pursued ...”*¹¹

30. The remainder of this response explains why a divestment remedy would be disproportionate.

V. The Procedural Unfairness In The Remedies Notice

31. The Remedies Notice proposes that Ryanair be required to divest its minority shareholding in whole or in part.

32. It is insufficient for the purposes of ensuring procedural fairness for the CC to focus solely on the most intrusive remedies possible. At the very least, the CC must consult on the effectiveness of other remedies which might achieve its objectives. The Remedies Notice is the first stage in the CC’s consideration of remedies; it is described in the CC’s Guidelines as *“a starting point for discussion of remedies.”*¹²

33. A general statement that the CC will consider any other remedies proposed is an insufficient substitute for genuine consultation. Lawful consultation requires the decision-maker to provide sufficient information regarding its own intentions.¹³ In any event, the CC appears already to have ruled out any remedies other than those expressly proposed in the Remedies Notice, stating that *“none appears to be effective in addressing the SLC.”*¹⁴

34. In fact, a divestment remedy would be a disproportionate response to each of the theories of harm set out by the CC.

¹⁰ Merger Remedies Guidelines (CC8), November 2008, paragraph 1.7.

¹¹ *BAA Limited v. Competition Commission* [2012] EWCA Civ 1077, paragraph 4.

¹² Merger Remedies Guidelines (CC8), November 2008, paragraph 1.23.

¹³ *R (Greenpeace Ltd) v Secretary of State for Trade and Industry* [2007] EWHC 311 (Admin), paragraph 116.

¹⁴ Remedies Notice, paragraph 8.

VI. The Proposed Remedies Are Disproportionate

A. Aer Lingus' Ability To Participate In A Combination With Another Airline

35. The CC has inexplicably concluded that Ryanair's minority shareholding in Aer Lingus has resulted, or will result, in an SLC between the two airlines on routes between Great Britain and the Republic of Ireland by "*limiting [Aer Lingus'] ability to be acquired by, merge with or acquire another airline.*"¹⁵ For the reasons set out in Ryanair's response to the Provisional Findings Report, this conclusion is flawed.
36. It is nevertheless relevant to the consideration of possible remedies that the CC's analysis confuses the counterfactual and the assessment of competitive effects. The CC is required to carry out a two-stage analysis:
- The CC must first show that, absent Ryanair's minority shareholding, Aer Lingus would have merged with another airline or will do so in future. This is a decision the CC must reach on the balance of probabilities.¹⁶
 - Only then can the CC consider whether the *status quo* represents a less competitive outcome.
37. The CC has not determined that Aer Lingus would have merged with another airline. Nor has it concluded that Aer Lingus would in the future merge with another airline absent the minority shareholding. On the contrary, it has found that, absent the minority shareholding, Aer Lingus would pursue broadly the same commercial strategy "*either as an independent company or in combination with another airline.*"¹⁷ Accordingly, the CC reasons that, even in the event of a merger, which is highly uncertain to occur, Aer Lingus' conduct on the market would be unchanged. It is simply not tenable in this circumstance to maintain that Ryanair's rights are capable of giving rise to (still less that they have given rise to) an SLC, since the counterfactual is unchanged market behaviour on the part of Aer Lingus. Nevertheless, the CC is inexplicably considering a forced divestment of Ryanair's minority shareholding.
38. The evidence the CC has adduced of a possible Aer Lingus merger relates to combinations that, the CC has been told, may have taken place in the past. For the

¹⁵ Provisional Findings Report, paragraph 7.159.

¹⁶ Merger Assessment Guidelines (OFT1254/CC2), September 2010. See paragraph 4.3.6: "*As a Phase 2 body, the CC takes a different approach [from the OFT] since it has to make an overall judgement on whether or not an SLC has occurred or is likely to occur. To help make this judgement on the likely future situation in the absence of the merger, the CC may examine several possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual. When it considers that the choice between two or more scenarios will make a material difference to its assessment, the CC will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual. However, the CC will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight.*"

¹⁷ Provisional Findings Report, paragraph 6.21.

purposes of assessing the effectiveness of remedies that the CC may now impose, the possibility (or even likelihood) that a merger would have taken place in the past is irrelevant.¹⁸ A remedy requiring Ryanair to sell some or all of its shareholding would have no effect on these past events, and would therefore be ineffective for the purposes of the test set out by the CAT and Court of Appeal in *BAA v. CC*.

39. In any event, in order to address fully its concern about Aer Lingus' ability to be acquired by another airline, it would be open to the CC to accept an undertaking from Ryanair, or to impose an order, guaranteeing that Ryanair would not oppose an acquisition of Aer Lingus, including by Scheme of Arrangement or a transaction under the Cross-Border Mergers Directive, by another EU airline, as recommended by the Aer Lingus Board.
40. As to the possibility of Aer Lingus acquiring another airline, the CC's concern could be fully addressed by an undertaking (or order) guaranteeing that Ryanair would not oppose a Board recommendation with respect to an acquisition, including by public offer or a Scheme of Arrangement (if put to vote by Aer Lingus' Board).
41. There is therefore no basis for requiring Ryanair to divest its shareholding to address a concern that it may have limited, or may in future limit, Aer Lingus' ability to undertake a merger with another airline.

B. Aer Lingus' Ability To Raise Capital

42. The CC has provisionally concluded that Ryanair's ability to prevent the disapplication of statutory pre-emption rights to new share issues will lead to an SLC between the two airlines on routes between Great Britain and the Republic of Ireland. In the CC's view, the additional administrative steps associated with offering shares on a pre-emptive basis to shareholders in certain non-EU countries would be sufficiently onerous to dissuade Aer Lingus from doing so.
43. For the reasons set out in Ryanair's Response to the Provisional Findings Report, this conclusion is flawed. Specifically, it is evident that Aer Lingus does not need to raise the small sums of capital possible through a rights issue and, even if Aer Lingus did carry out a rights issue on a pre-emptive basis, the small difference in time and cost involved would not result in an SLC between the two airlines on routes between Great Britain and the Republic of Ireland.
44. Moreover, Ryanair has repeatedly explained that its only objective in opposing the disapplication of pre-emption rights is to ensure that its percentage shareholding is not diluted. To that end, Ryanair has committed to subscribing to its proportion of new shares offered under a pre-emptive rights issue.
45. However, even if the CC's conclusion is accepted, the concern identified could readily be addressed without requiring Ryanair to divest its shareholding. The CC acknowledges in the Provisional Findings Report that Aer Lingus is already able to avoid the difficulties it perceives with offering shares in certain non-EU countries, while at the same time addressing Ryanair's legitimate concern to prevent the dilution

¹⁸ Even if it could be shown that such a merger would have resulted in a more competitive outcome.

of its shareholding. Specifically, Aer Lingus could propose a special resolution that disapplied pre-emption rights to shareholders outside the EU, which Ryanair would not oppose.¹⁹

46. If the CC is unconvinced that Ryanair would not oppose such a resolution (despite there being no evidence to suggest it would), it is open to the CC to accept an undertaking from Ryanair, or to impose an order, guaranteeing that Ryanair would not oppose any resolution to disapply pre-emption rights outside the EU. Such a remedy would be less intrusive and less onerous than requiring Ryanair to divest its shareholding. A divestment remedy would therefore be disproportionate.

C. Disposal Of London Heathrow Slots

47. Finally, the CC inexplicably concludes that Ryanair may have the ability to block the disposal by Aer Lingus of slots at London Heathrow and that this possibility has or will result in an SLC. This conclusion is flawed, for the reasons set out in Ryanair's Response to the Provisional Findings Report. Even if the CC's conclusion is accepted, which it should not be, a divestment of Ryanair's shareholding would be disproportionate and unfair. This is primarily because that remedy is unnecessary to secure any legitimate aim the CC may have.
48. As the CC itself acknowledges, the relevant provisions in the Aer Lingus Articles of Association were included at the insistence of the Irish Government.²⁰ The Irish Government believes that maintaining frequent daily flights between Dublin and Heathrow is of strategic importance to the Irish economy. The provisions in the Articles of Association were therefore included to allow the Irish Government to prevent the disposal of Aer Lingus slots at Heathrow, and the Government has repeatedly threatened to exercise its rights in this respect. Ryanair did not seek these rights and has never exercised them.
49. If the CC nevertheless remains concerned that Ryanair will seek to block the disposal of Heathrow slots in future, and believes this would result in an SLC on routes between Great Britain and the Republic of Ireland, it is open to the CC to accept an undertaking from Ryanair, or to impose an order, guaranteeing that Ryanair would not exercise the rights set out in the Articles of Association or oppose Aer Lingus' Board in respect of a disposal of Heathrow slots.
50. Such a remedy would be less intrusive and less onerous than requiring Ryanair to divest its shareholding. A divestment remedy would therefore be disproportionate and unnecessary.

¹⁹ Provisional Findings Report, paragraph 7.68.

²⁰ Provisional Findings Report, paragraphs 4.35 and 4.36.

VII. No Design, Monitoring, Or Enforcement Risks

51. The CC's Guidelines on Merger Remedies state that when considering non-structural remedies, the CC will seek to ensure that four types of risk are avoided.²¹ None of these risks arises in the present case. In particular:

- **Specification Risk.** Specification risks may arise where the mandated or prohibited conduct cannot be specified with sufficient clarity (*e.g.*, where a party must act on "fair and reasonable terms"). In the present case, the matters on which Ryanair might undertake not to exercise voting rights could be clearly and unambiguously specified.
- **Circumvention Risk.** Circumvention risks describe a situation where one form of adverse behaviour arises because another is restricted (*e.g.*, where prices are capped but the merged parties are able to reduce product quality). Such risks arise in particular where behavioural measures are too complex to monitor. No circumvention risks arise in the present case, as the matters in question are simple and binary.
- **Distortion Risk.** Distortion risks arise where behavioural remedies do not allow the merged parties to respond efficiently to normal market signals. In the present case, the possible remedies in question do not relate to either party's behaviour on the market, so no distortion risks could arise.
- **Monitoring and Enforcement Risks.** Monitoring and enforcement risks arise where it is difficult or expensive to monitor compliance with behavioural remedies (*e.g.*, on account of the volume and complexity of information required to monitor compliance). The CC's Guidelines also explain that for behavioural remedies to be effective, there must be adequately resourced arrangements in place to ensure that non-compliance is detected.²² In the present case, Aer Lingus would immediately identify any instance of non-compliance by Ryanair. There would therefore be no meaningful monitoring cost and no risk that non-compliance would go undetected.

VIII. Any Divestment Remedy Would Be Disproportionate

52. The Remedies Notice seeks views on whether divestment would be an appropriate remedy.²³ In Ryanair's view, a divestment remedy would be an entirely disproportionate response, resulting in considerable cost to Ryanair.

53. A forced divestment necessarily entails obvious and significant prejudice. Under a forced sale, it is highly unlikely that the seller will obtain full or fair value for the asset. By contrast, any prospective purchaser has every incentive to game the disposal process to acquire the asset at an undervalue.

²¹ Merger Remedies (CC8), November 2008, paragraph 4.2.

²² Merger Remedies (CC8), November 2008, paragraph 4.3.

²³ Remedies Notice, paragraph 5.

54. As the CC itself notes, when Ryanair acquired its shareholding Aer Lingus its value was more than €400 million. At today's market value, the shareholding is worth around half that figure (a loss of around €200 million), while one year ago it was worth only around €150 million (a loss of over €250 million), indicating the volatility in Aer Lingus' share price.²⁴ A forced sale would depress market values, which would also impact directly on other shareholders in Aer Lingus.
55. For a divestiture remedy to be considered proportionate, the CC must explain why it has dismissed other possible remedies that would be effective in addressing the theories of harm identified, a clear breach of duty by the CC.
56. The theories of harm set out in the Provisional Findings Report do not allege that there has been a distortion of competitive behaviour in the market or a distortion of the parties' incentives to compete. Rather, the CC has based its adverse finding on speculation that Ryanair could exercise its voting rights in a way that discouraged merger activity, prevented Aer Lingus from disapplying pre-emption rights to shareholders outside the EU, or limited its ability to dispose of London Heathrow slots. Even if such theories are accepted, each can be addressed by effective but less intrusive measures (as set out above).
57. The Remedies Notice also seeks views on whether Ryanair should be required to divest all or part of its minority shareholding and, if so, what level of divestment would be proportionate.²⁵ No divestment would be a proportionate response to the theories set out in the Provisional Findings Report.

IX. Conclusion

58. In conclusion, the Provisional Findings Report provides no basis for the imposition of remedies. However, even if the CC's conclusions on the competitive effects of the minority shareholding are accepted, which they should not be, a forced divestment would be unjustified, unfair, and manifestly disproportionate.

²⁴ Summary of Provisional Findings, paragraph 4.

²⁵ Remedies Notice, paragraphs 5 and 6.