

NON-CONFIDENTIAL VERSION

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

COMPETITION COMMISSION

**AER LINGUS RESPONSE TO CONSULTATION ON POSSIBLE
REMEDIES**

11 JUNE 2013

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1. Introduction

1. Aer Lingus welcomes the opportunity to respond to the CC's Notice of Possible Remedies issued on 30 May 2013.
2. In submitting views on the Notice Aer Lingus will also need at points to include observations on the Provisional Findings issued the same day (PFs), although it will also respond separately in relation to the PFs.
3. Aer Lingus submits that **full divestiture** is the only clearly satisfactory remedy. A partial divestiture, even one supported by behavioural remedies, is inherently less likely to be effective, in the circumstances of the case. In saying this Aer Lingus refers – on the one hand – to the evidence of Ryanair's actual conduct over the last six years and the demonstrated harm that it has inflicted; and on the other hand, to the incentive that Ryanair has, clearly identified by the Group, to harm Aer Lingus.¹ These elements provide a clear basis to differentiate this merger from *Sky/ITV* in which the view was formed that a partial divestiture was equally effective.
4. Of fundamental importance is that **Ryanair should have no right to a role in the destination of the shares to be divested**. To give it any say in this matter would be to empower it to influence or even determine Aer Lingus' future strategic positioning to its own advantage and to the detriment of competition. This is the "gatekeeper" concern recognised by the Group in paragraph 7.18 of the PFs.
5. Further, Aer Lingus respectfully – but vigorously – submits that the appropriate solution is a return of the shares to a diverse public holding via the company's public listing, rather than a sale to any one individual purchaser. It is evident that the universe of potential buyers for the stake as a whole is extremely limited. Indeed part of the harm already inflicted by Ryanair, as the Group has established, is the exclusion of Aer Lingus from any prospect of participating in the recent round of consolidation in the industry, such that the major airline alliances are not, at present, likely to be actively interested in a combination with Aer Lingus. There may be potential buyers but it is for Aer Lingus, and Aer Lingus alone, to determine whether it seeks such a relationship, and if so the identity of the counterparty. To give Ryanair any right to have the slightest influence in the matter would be to reward it for the SLC which it has already succeeded in maintaining since late 2006 – and indeed potentially to perpetuate that SLC into the future, through the selection of a strategic investor who is liable to influence Aer Lingus' strategy in ways causing it to compete less intensely with Ryanair.

¹ CC Provisional Findings, paragraph 18.

6. Accordingly Aer Lingus wishes to establish a **large free-float and widely diverse shareholding**, as was intended following the IPO. This would put Aer Lingus on a par with other industry players.² The advice of Aer Lingus' investment banking advisors - who will be present and available to the Group at the forthcoming Hearing - is that a placing of the shares with institutional investors is possible and desirable, and that this can and should be done quickly, so as to avoid any overhang of shares being drip-fed into the market over a prolonged period.
7. This process can be managed in such a way as to build a conventional and secure shareholder base of long-term investors. Again Ryanair should have no right to influence the identification of the relevant institutions; the shares should not be placed with its allies, nor still with short-termist arbitrageurs or leveraged private equity investors. Accordingly Aer Lingus advocates the **immediate appointment of a divestiture trustee** who would be under direction from the CC and from Aer Lingus, to the exclusion of Ryanair.
8. While the CC is not required to have regard to the question of potential loss of value to Ryanair, it is very far from Aer Lingus' interests to see such loss. Rather, it is interested in an orderly process in which the Aer Lingus share price is well supported. Accordingly Ryanair's interest in realising a satisfactory value for its shares will be simultaneously protected in this way.
9. Aer Lingus further welcomes the letter of 30th May 2013 from the CC, addressing **post-provisional findings** and issues of implementation and sincere co-operation. We have previously submitted our memorandum of 24th April 2013 on these matters, jointly from Cadwalader, Wickersham & Taft LLP and Brick Court Chambers, and invite the Group to read that memorandum in conjunction with the present submission. Aer Lingus' view, expressed in paragraph 7 of that memorandum, is that Ryanair should be ordered to divest its shares in Aer Lingus and should be prohibited from re-acquiring them other than (a) with the CC's prior consent or (b) as part of a concentration that has already been approved by the European Commission.
10. Addressing specifically the **immediate steps** that the Group may wish to consider, Aer Lingus notes two salient elements relevant to the Group's consideration:
 - Ryanair has already stated its intention to appeal against the forthcoming Report, and
 - Ryanair has made no secret that it intends to use every possible device at its disposal, including multiple appeals, to delay the enforcement process for the indefinite future.

² Bloomberg as at 10 June 2013 - average free-float of the following peer airlines is approximately 70%: Ryanair, IAG, Air France-KLM, Lufthansa, Air Berlin, easyJet, Norwegian Air Shuttle and Flybe

Press cuttings evidencing these points are appended.³

11. A further key consideration is Ryanair's freedom to launch a fourth bid as early as 29 August 2013.⁴
12. Against this background it can be safely assumed that Ryanair will not come forward with voluntary undertakings to give effect to the Report, but it is to be expected that it will seek to drag out discussions. Mindful that it may seek to delay matters until it is able to rebid - and then argue that the new bid somehow suspends implementation of the Report - Aer Lingus asks the Group to proceed promptly with
 - the adoption of a more restrictive Interim Order, and
 - a definitive Order.
13. This submission will address the need for **extensions to the existing Interim Order**. The Interim Order may remain in effect for a considerable period of time, pending the appeal process. It has therefore an unusually great importance in the present case: the burden of minimising the continuing SLC will rest on this extended Interim Order for some time to come.
14. Aer Lingus asks the Group to proceed to **adoption of a definitive Order without delay**, and specifically without awaiting the outcome of the process of appeal against the Report. [CONFIDENTIAL] a prompt adoption of a final Order will necessarily require Ryanair to bring an early application to the CAT against the Order, and in that way the CAT will be able to join the two applications, so enabling it to give judgement simultaneously in relation to the Report and the Final Order.
15. The alternative – plainly unsatisfactory – position will be that Ryanair's application to the CAT, and appeals potentially up to the Supreme Court and even across to the European Court of Justice, will have to run to their ultimate end, before the matter comes back to the CC⁵ for adoption of a final Order. [CONFIDENTIAL].⁶
16. Regrettably the **restoration of effective competition** cannot be achieved immediately, recognising the rights of appeal available to Ryanair. Equally, though, the statutory purpose of ensuring effective competition will not be achieved until the

3 Please refer to **Annex 1** for recent press articles.

4 Aer Lingus has brought judicial review proceedings against the Irish Takeover Panel, contesting its interpretation of the rules to the effect that a re-bid may be made at the end of August. It is Aer Lingus' view that the 12 month embargo on rebids should run from the prohibition decision on 27 February 2013, since until that moment the Takeover Panel kept Aer Lingus in an "offer period" for purposes of the rules, subjecting it to (for example) to the rule against frustrating action. The judicial review proceedings were lodged by Aer Lingus in May 2013. Aer Lingus will inform the Group promptly of developments in this litigation.

5 Or by then its successor, the CMA.

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moment of actual enforcement arrives. Having regard to the unprecedented duration of the current investigation since the OFT began work in September 2010⁷, Aer Lingus invites the Group to organise matters such that Ryanair's scope for delay is minimised in all possible ways.

7 To say nothing of the time elapsed since the stake-building began in late 2006.

2. Applicable General Principles

17. The following brief summary of principles reflects the CC's own guidance, deriving from the underlying law, and provides the backdrop to Aer Lingus' submission.
18. The solution should be comprehensive.
19. It should deal with any adverse effects: thus the requirement is not merely to remove the relevant merger situation, but to ensure that there is no continuing SLC.
20. The CC should seek to re-establish structures expected in the absence of the merger: this principle is germane to the Aer Lingus view that the shares should be restored to a widely held public listing and not sold to an individual buyer.⁸
21. Remedies should ideally avoid the need for elaborate monitoring:⁹ this principle has an impact on the possibility of attaching behavioural remedies to a partial divestment. Ryanair's conduct since 2006 leaves no room to doubt that it will seek to exploit every possible opportunity to make its presence felt, and so the monitoring task would be a real and challenging one.
22. Remedies should target a "high degree of certainty of achieving the intended effect".¹⁰ The evidence of Ryanair's conduct to date allows no scope for any assumption on the part of the Group that Ryanair will desist from its efforts to impede Aer Lingus management. Indeed quite the opposite is likely to hold true: Ryanair is likely to interpret anything less than a full divestiture as being an invitation to continue as before.
23. While the Group is not in any event bound by the views of the Group in *Sky/ITV*, the evidence available to the present Group provides a solid basis for distinguishing this case from *Sky/ITV* in which there was no evidence of a campaign being waged by Sky against ITV management.

⁸ Competition Commission Merger Remedies Guidelines (2008), paragraph 1.8 (a).

⁹ Competition Commission Merger Remedies Guidelines (2008), paragraph 1.8 (c).

¹⁰ Competition Commission Merger Remedies Guidelines (2008), paragraph 1.6 (d).

3. Full Divestiture

24. Aer Lingus entirely agrees that full divestiture is likely to be an effective remedy to all aspects of the SLC.
25. The focus, rather, must be on the issue whether a partial divestment is likely to be equally effective. Aer Lingus has considered closely the *Sky/ITV* report and subsequent litigation, in which the same point arose, and the Group in that case formed the view that a partial divestiture would be equally effective. The CAT, in its judgment of 29th September 2008, expressed some apparent surprise at this view, stating as follows:
- “Given that the partial divestiture would still leave Sky, a major competitor, with the largest and a not insubstantial shareholding in ITV, we recognise that more than one view could reasonably be held about the equal effectiveness of such divestiture. Be that as it may, in our view the Commission and the Secretary of State as the decision-makers were entitled to reach the conclusion they reached. That conclusion cannot be regarded as irrational”.*¹¹
26. Thus the CAT upheld the view formed by that Group, but seems to have gone out of its way to indicate that it would readily have supported the view that full divestiture was likely to be more effective. While it was not irrational of the Group in that case to form the view that a partial divestiture could be equally effective, it would equally not have been irrational to form the view that only full divestiture could with certainty provide a comprehensive resolution of SLC concerns. The CAT would not have overturned that view.
27. Aer Lingus recognises that the Group in this case will be mindful of the view formed by the Group in *Sky/ITV*, and the interest in explaining the adoption of a different view on this occasion, even recognising that there is no formal precedent value from former Reports. Aer Lingus has no doubt, though, that the factual circumstances of the present case provide ample explanation and justification for rejecting the partial divestiture approach.
28. The CAT in *Sky/ITV* noted that the shareholding to be retained by Sky would leave it as the largest shareholder, and so – having quoted that paragraph – it is right to acknowledge that the Irish Government would likely be a larger shareholder following a partial divestiture. However as noted in the PFs, the Government is seeking to sell its shareholding and is likely to do so once Ryanair has been forced to divest. There is therefore the possibility that the Government shareholding will be split across smaller shareholders notwithstanding the Government’s stated preference that it sell its shares

11 Paragraph 320.

as a block. Accordingly the point made by the CAT as to Sky being the largest shareholder is *de facto* equally applicable here.

29. Moreover, the surprise expressed by the CAT was on the basis that Sky was a major competitor to ITV. That point applies with still greater force here: the competitive relationship between Ryanair and Aer Lingus is altogether closer and more intense than that between Sky and ITV, who have many other competitors. By contrast, on many of the routes in question in this case there are simply no other competitors at all.
30. In the following section we will examine the pertinence of the different possible levels of a partial divestiture. Before doing so, though, Aer Lingus wishes to address the consequence of leaving Ryanair with even a nominal shareholding. What consequences can be expected to ensue from Ryanair having even a handful of shares?¹²
31. First, Aer Lingus firmly dissents from the notion (paragraph 13(e) of the PFs) that Ryanair is equally able to lobby against Aer Lingus regardless of being a shareholder. A shareholder has standing to attend general meetings of the company and to litigate for (alleged) disregard of its shareholder rights. The campaigns mounted by Ryanair, around Shannon, Hangar 6, directors' remuneration and, currently, pensions, are all firmly rooted in Ryanair's invocation of its rights and interests as a shareholder. Removing that platform will deprive Ryanair of a key element of its lobbying campaign against Aer Lingus management. Ryanair will doubtless continue its public campaigns to demean its competitor, and to lobby the government against Aer Lingus' interests: that is a normal and natural part of the competitive process. But it is no part of that process to concede to Ryanair the advantage of adopting the guise of a shareholder and asserting that its rights as such are being violated.
32. By extension, Aer Lingus submits that the Group should acknowledge at least some level of competitive impact arising from these lobbying campaigns. It is (fortunately) true that Aer Lingus has, to date, succeeded in resisting Ryanair's lobbying campaigns, defeating litigation and obtaining the rejection of regulatory complaints. It is however not pre-ordained that it will always be able to do so.
33. Indeed the pensions situation is still unresolved, and the Group will have observed the ferocity of Ryanair's response to Aer Lingus' proposed resolution of the issue by a financial contribution to the settlement.¹³ While market reaction towards that proposal has been favourable, with shareholders pragmatically recognising that the greater

¹² At paragraph 6.23 of the *Sky/ITV* report, it was noted that a full divestiture entailed the risk of unintentional infringement, e.g. in the event of share acquisition by a pension fund. This seems, with respect, an insubstantial objection. Appropriate wording can readily be found to immunise such a situation.

¹³ See Ryanair press release titled "Spineless Aer Lingus Board roll over again and against at cost of €600m and rising" dated 31 May 2013. A copy of the press release was forwarded to the CC on 31 May.

interest of Aer Lingus lies in removing the pensions uncertainty, even at the cost of a financial contribution, Ryanair has continued its campaign against the use of shareholder money, even at this critical juncture of the Group's examination. If it is willing to act in that way while under regulatory scrutiny, one can only wonder what it would be willing to do if ultimately left to its own devices as a shareholder. Ryanair is likely to interpret anything less than a full divestiture as being an official sanction of its right to continue to take action aggressively against Aer Lingus in its capacity as a shareholder of the Company.

34. There is thus no basis for the CC to assume that Ryanair would desist, if left holding even one share, from the sort of actions which have been witnessed in this last period:
- Requesting confidential information from Aer Lingus
 - Complaining to regulators, and litigating, for alleged disregard of its shareholders rights
 - Threatening directors with claims for breach of fiduciary duties
 - Attending (and disrupting) shareholder meetings and investor meetings
 - Canvassing support of other shareholders
 - Complaining publicly about alleged management misjudgements, value destruction, poor dividends and low share price, etc.
35. Regardless in any event of the respective weight which the Group attaches to these individual devices deployed by Ryanair, it must in any event be clear that Ryanair's actions directly raise its rival's costs. A minority shareholding, however small, provides Ryanair with a device to increase Aer Lingus' costs – with no material effects on its own. The strategic use of the shareholding, interfering with Aer Lingus' operations, creates a direct cost for Aer Lingus arising from the need to respond and deal with the interference; this in turn affords Ryanair with an effective means to reduce the competitiveness of its main rival. The bulk of any reduction in Aer Lingus' profits due to such cost-raising action by Ryanair is not borne by Ryanair, but by Aer Lingus. The economic literature has long identified the possibility that a firm with a minority interest in a rival can reduce the latter's competitiveness by raising its costs, and will use this strategy more aggressively the lower the share of the cost of the strategy that it bears itself.¹⁴ The commitment of resource – both internal and external

¹⁴ For a broad discussion of how the financial interest and corporate control elements of minority shareholdings interact see O'Brien, D. P. and S. Salop (2000), "Competitive Effects of Partial Ownership: Financial Interest and Corporate Control", *Antitrust Law Journal*, 67: 559-614. See also OFT, *Minority interests in competitors*, March 2010, available online at www.offt.gov.uk/shared_offt/economic_research/oft1218.pdf.

- to combatting Ryanair’s litigation and other stratagems, and the distraction of management time, are all factual realities that are part of the SLC arising in this case.
36. Aer Lingus respectfully submits that these actions in aggregate certainly contribute materially to the SLC. In order to deal comprehensively with this SLC, it is necessary to separate Ryanair from the entirety of its shareholding.
37. Moreover, allowing Ryanair to remain on the share register will entail the continuation of the concern identified in Paragraph 7.18 of the PFs citing Aer Lingus’ experience that Aer Lingus has become known as the company constantly besieged by Ryanair, rather than as a successful and profitable airline. The PFs here reflect the comments made by Christoph Mueller at the recent Hearing. For so long as Ryanair retains any shareholding, and is able to continue its noisy posturing as such, Aer Lingus will not shake itself free of that reputation. Indeed Ryanair has acknowledged to the CC and is now publicly on record that the rationale for keeping a minority stake in Aer Lingus is because it still wants to acquire Aer Lingus. In this way it actively advertises its continuing ambitions and, at the same time, deters other potential investors.
38. The point here is related to, but distinct from, the concern recognised at paragraph 7.102(c) of the PFs, that a minority shareholding held by Ryanair increases the likelihood of it mounting a full bid. No doubt there is a de minimis level beneath which the effectiveness of the stake as a platform for a new bid is significantly reduced. There is, though, no de minimis level at which a Ryanair shareholding loses all potency as a basis for interference, and for maintaining the cloud over Aer Lingus’ head as the company with the troublesome shareholder. The only level of shareholding at which all such potency disappears is zero.
39. There is additionally the concern identified by Christoph Mueller at the Aer Lingus Hearing, that a counterparty in an M&A transaction with Aer Lingus may be concerned at importing Ryanair onto its shareholder register.¹⁵ Industry players who have witnessed the harassment of Aer Lingus by Ryanair may understandably be reluctant to enter into a transaction by which they import Ryanair as a shareholder.
40. Any retained shareholding is further relevant to the question of a squeeze-out. Aer Lingus addresses squeeze-out more generally in sections 63-64 but notes here that even one share retained by Ryanair will entail the ability for it to oblige an acquirer to go through a costly squeeze-out process. Even if all other shareholders were willing to consent their shares to a hypothetical takeover, Ryanair’s resistance would allow it to

¹⁵ As would be the case for example in a transaction where Aer Lingus shareholders receive shares in the counterparty as consideration for the sale of their Aer Lingus shares.

impose delay and expense as well as presenting any bidder with a more than de minimis risk that a squeeze out of Ryanair's minority holding may be unsuccessful.¹⁶

41. Similarly, in relation to a combination being proposed under a scheme of arrangement, any shareholder has the right to appear in court and oppose the scheme.¹⁷ In fact, so long as Ryanair is allowed to retain any shares in Aer Lingus, all of its behaviour since 2006 indicates that it is likely to oppose the cancellation of its shares as part of a scheme of arrangement and can even be expected to argue before an Irish Court that it should be allowed to continue as a shareholder in Aer Lingus for the reason that it would have been able to block the scheme of arrangement were it not for the fact that it had been unfairly required by a foreign regulator to divest part of its shareholding in the Company.¹⁸
42. Even if Ryanair were to be unsuccessful with this line of argument before the Irish High Court, any bidder seeking to acquire control of Aer Lingus through a scheme of arrangement would be concerned about the prospect that Ryanair would most likely appeal such a decision of the Irish High Court to the Irish Supreme Court. For bidders, such uncertainty usually presents an unacceptable risk given the delay and costs involved.
43. The Group has invited views on behavioural remedies that might accompany a partial divestiture. The time and patience of any agency required to monitor Ryanair's behaviour is likely to be tested to the extreme. The Group will recall that, early in its process, Ryanair deliberately (and in Aer Lingus' view provocatively) tested the limits of the Interim Order in place. There can be no reason for the Group to assume that Ryanair would become suddenly more compliant in future when under new behavioural constraints. The task of monitoring is liable to be a demanding one: whatever the degree of care and foresight put into the crafting of behavioural obligations, Ryanair may be expected to rise to the challenge and to invite confrontation and litigation. The Group cannot, Aer Lingus submits, safely assume that this will not be so, in view of Ryanair's track record.

¹⁶ While Ryanair might not in practice be the only shareholder to be squeezed out – there is also the phenomenon of the dead register, see paragraph 51 – it could prolong the agony through litigation and appeals. Given Ryanair's propensity to litigate, this possibility must be given due weight.

¹⁷ See *In the Matter of Readymix Plc and in the Matter of the Companies Acts 1963 – 2009* [2012] IEHC 170, where the Irish High Court considered the objections made by two objecting shareholders who had 0.0000047% of the shares affected by the scheme and 0.00063% of the shares affected by the scheme, respectively. Before the Irish High Court can approve any scheme, it must be satisfied that the approval of the scheme is reasonable. The test which the court has applied when determining the reasonableness of the scheme is whether it is satisfied that: *"the proposal is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interests, might reasonably approve."*

¹⁸ Such an argument would be consistent with Ryanair's public criticism of the CC's provisional findings – see Ryanair's announcement to the London and Irish Stock Exchanges on 30 May 2013 where it called the CC's preliminary decision "bizarre and manifestly wrong" and "in breach of EU law".

44. Accordingly Aer Lingus does not believe that behavioural commitments can adequately serve as a complement to a partial divestiture in a way that the Group could confidently judge to provide equal certainty of removing the SLC, as compared to the alternative of a simple and outright full divestiture.
45. Aer Lingus invites the Group to consider, by way of comparative practice, the decision of the European Commission in the *Tetra/Sidel* case. Following its prohibition of that completed merger, the European Commission proceeded to a further decision requiring the divestment of the entire 100% of the shares acquired. The European Commission concluded that:
- “On the basis of the factual information currently available, Tetra should not be allowed to retain a minority shareholding in Sidel. Such a retention would be likely to impede the restoration of effective competition as it could hinder the prospect of a successful divestiture...”*¹⁹
46. This decision may be considered alongside the contemporaneous decision of the European Commission, in *Schneider/Legrand*,²⁰ which also involved the prohibition of a completed merger. In that case the European Commission was content to allow retention of a shareholding of less than 5%.²¹ The reasons it gave in that case were based around consideration of a modified HHI calculation, which pertained specifically to the theory of harm which underlay the prohibition. It addressed additionally the concern to maximise the number of potentially interested buyers, by driving the retained shareholding down to a very low level. The *Tetra/Sidel* reasoning has though the greater bearing on the present case, given that the principal SLC finding related to impediment to M&A activity.²²

¹⁹ European Commission Decision under Article 8(4) of the EUMR in Case COMP M.2416 *Tetra Laval/Sidel*, dated 30 January 2002, paragraph 4.

²⁰ European Commission Decision under Article 8(4) of the EUMR in Case COMP M.2283 *Schneider/Legrand*, dated 30 January 2002, paragraph 29 – 31.

²¹ The Commission took the view that restoring effective competition would only be achieved if Schneider reduced its stake in Legrand to below a level that could give rise to adverse effects on competition. Primarily based on the HHI analysis the Commission concluded that the level of shareholding that would not give rise to competition concerns was close to 4% therefore Schneider could only keep a stake of less than 5%.

²² Since the CFI overturned the underlying prohibitions in both *Tetra* and *Schneider*, neither divestment was enforced, and the appeals against the separate divestment decisions became moot.

4. Partial Divestiture

47. Aer Lingus contributes here its views on levels of partial divestiture on which the Group has consulted in the Notice. It does so entirely without prejudice to its view that any level of partial divestiture cannot have the same certainty of providing a comprehensive and equally effective solution as a full divestiture.
48. Later in this section, Aer Lingus will address the numerical thresholds which flow from Irish company law. The more important point, though, is the recognition in paragraph 7.101 and 7.102 (c) of the PFs that the minority shareholding “would increase the likelihood of further bids by Ryanair relative to a situation in which Ryanair had not owned the shares”; and that it entails “a reduced likelihood of a counter bidder”. Further, bids by Ryanair have been and would continue to be “a significant disruption to Aer Lingus’ commercial strategy”.
49. These findings relate specifically to the minority shareholding at the level of 29.82%. In the context of a remedies discussion, however, they invite an investigation of the level to which the shareholding would need to be reduced in order for the Group to conclude, with certainty, that the minority shareholding no longer increases the likelihood of further bids, or deters counter bidders. That is a matter for expert advice and opinion and Aer Lingus has to that end consulted its investment banking advisors. These advisors will be available to the Group at the planned Hearing. The two points of reference arising in this discussion are 3% and 5%.
50. 3% is the level at which a company accumulating a stake is required to reveal this fact.²³ Legislation imposing the disclosure requirement at this level reflects the view that market participants should be aware of the possible predatory intent of a stake-builder, from this starting level of significance. Conversely, a shareholding maintained beneath that level is considered not material enough to warrant attention being given to it.
51. 5% is the level at which investment banking advisers to Aer Lingus consider that a bid from an alternative acquirer is likely to be discouraged. This view is formed by reference to the statutory squeeze-out level of 90% which a bidder must achieve if it is to be able to enforce squeeze-out and obtain full control of the company.²⁴ While 10% is the strict statutory level, there is the phenomenon – noted in paragraph 6.35 of the Report in *Sky/ITV* – of a certain level of dead register, namely shareholders who may have died or who, for whatever reason, simply fail to react to papers soliciting a

²³ Transparency (Directive 2004/109/EC) Regulations 2007. The stake-builder is required to inform the company, which in turn must make the matter public.

²⁴ The Takeover Rules require bidders to state the acceptance level on which the bid is conditional. Most bids are made (at least initially) with a 90% acceptance condition with a view to (1) the bidder obtaining full control of the target, and/or (2) as a result of a requirement of the bidder’s financing banks so as to ensure that they can take security over the assets of the target company.

response. The table included in [Annex 2](#)²⁵ shows that, even when a recommended offer is left open for a significant period of time and has been accepted by over 90% of shareholders, on average 5% of shareholders are squeezed out – and in a number of recent transactions up to 9% have been squeezed out. Allowing for the existence of this dead register, a minority shareholder needs in practice significantly less than 10% to be potentially able to prevent an acquirer from achieving a squeeze-out of minority shareholders. As a result, a bidder may identify a shareholding block of 5% as a significant deterrent to making a bid, and in some circumstances a smaller block may also have that effect.

52. Even if the dead register may not be sufficient to bridge the gap fully to 10%, a basic 5% shareholding is seen as a level from which additional shares may readily be added so as to reach the point where de facto or de jure squeeze-out will not be possible.
53. It might be argued that the hypothetical 5% level, if accompanied by a restriction on acquiring further shares, rules out the ability of additional stake building to achieve a level preventing a squeeze-out. The concern which must, though, be addressed is that a future bid by Ryanair would itself come under the EU Merger Regulation, and that such a bid might be accompanied by a stake building – as was the original 2006 bid. The Group will recall that the original EU Prohibition addressed a “concentration” defined as comprising both the stake-building and the public offer. It differed in that respect from the most recent bid, where the “concentration” under review was clearly limited to the public bid. In the hypothesis that Ryanair would be reduced to a minor shareholding, it might be expected to build a further stake at the time of launching a fourth bid, and assert that the combined commercial initiative falls under the exclusive jurisdiction of the European Commission.
54. It is with this in mind that Aer Lingus has previously proposed to the Group that a divestiture order should be accompanied by an obligation on Ryanair not to acquire further shares without the consent of the CC, or unless authorised by a clearance decision under the EU Merger Regulation. Aer Lingus hopes that the Group will be astute to possible circumvention by Ryanair of a commitment put on it not to reacquire shares, in the circumstances identified.
55. Aer Lingus turns next to specific numeric thresholds on which views are invited.
56. 3%. In the preceding paragraph Aer Lingus has already noted that this is an important threshold as regards the obligation to disclose stake building.
57. Further, and as noted by the Group, 3% is the level at which under Irish company law a shareholder is entitled to add an item to the agenda of a General Meeting, or table a resolution. Aer Lingus notes the provisional finding (paragraph 7.102 (b)) that this

²⁵ The table in [Annex 2](#) sets out the levels at which squeeze-out has been invoked in recent UK recommended public offers.

ability is not thought likely “materially to affect Aer Lingus’ effectiveness”. Aer Lingus does not argue that this right of a 3% shareholder is in isolation the cause of an SLC. It is however a component part of the harm to competition which has already flowed from the Ryanair shareholding: it will be recalled that Ryanair tabled resolutions in relation to non-executive directors’ and chairman’s fees at the General Meeting held in 2009, and that while the Government supported the Board in resisting that resolution, it linked its support to changes of the kind advocated by Ryanair.²⁶ The ability to inject itself in this way into Aer Lingus’ affairs, specifically in that instance in relation to director fees, is surely a material consideration. In order to deal comprehensively with all aspects of the identified SLC, Aer Lingus submits that the 3% shareholder rights cannot be regarded as immaterial to the point that the Group can simply disregard them.

58. Any bidder seeking to acquire control of Aer Lingus through a scheme of arrangement would be concerned about the fact that Ryanair could attempt to undermine the terms of the merger by proposing additional resolutions at the shareholders meetings required to implement the scheme.
59. 5% At 5% a shareholder is able to requisition a General Meeting. In the *BP/KIO* case (dating from the period of the MMC), removing the ability to requisition a General Meeting was the key benchmark by which the level of divestiture was set.²⁷ Under applicable company law at the time, the requisitioning level was 10%, so that divestiture was set at 9.9%. Irish company law,²⁸ in line with the requirements of the Shareholders Rights Directive, has lowered the requisitioning level to 5%. While Aer Lingus does not suggest that the previous MMC decision binds the Group in this case, it is a case on similar facts which we invite the Group to consider.
60. Further, and without repeating at length points made earlier in relation to 3% rights, we do not think the Group should lightly dismiss the significance of requisitioning meetings. It is not a given that the basis will always be found to always resist a requisition²⁹; and there are costs involved even where this proves to be possible. The frequency with which this requisitioning tool has been used by Ryanair is unprecedented in Irish PLCs,³⁰ and this has been a material contributor to the Aer-

26 [CONFIDENTIAL]

27 Para 8.123.

28 Section 132(1A) Companies Act, 1963.

29 See CC transcript of Aer Lingus hearing of 19 April 2013, p17-18.

30 As noted at the Aer Lingus hearing of 19 April 2013, the number of Aer Lingus EGMs which Ryanair has tried to convene is more than all other Irish PLCs have faced cumulatively over the last 10 years. See CC transcript of Aer Lingus hearing of 19 April 2013, page 18.

Lingus-under-siege phenomenon described by Mr Mueller. Ryanair should be prevented from further such use.

61. Additionally under Irish company law,³¹ shareholders holding at least 5% of the issued share capital of the company may apply to the court to set aside a resolution authorising re-registration of the company as a private company. The possibility of Ryanair delaying or even successfully resisting the squeeze-out of its minority shareholding would therefore be a real concern for any bidder seeking to acquire control of Aer Lingus, because it will want to be sure that it can change the status of Aer Lingus from a public company into a private company once it acquires control of the company.
62. 7.5% This level is mentioned here since it was the divestiture level selected in *Sky/ITV*. It was determined by the Group in that case by reference to a de facto ability to block a special resolution. Clearly the calculation in that case was specific to the factual circumstances as to the level of turnout, voting and behaviour of other shareholders. Aer Lingus' submissions following the equivalent method of calculation are set out in section 5 below.
63. 10% This level is mentioned in the Notice as relevant to a possible squeeze-out. Aer Lingus refers to its observations earlier in this submission at paras 51 and 52 concerning the phenomenon of the dead register and the lower level at which a minority shareholder de facto may be able to resist a squeeze-out. There are however some more general observations which are germane here.
64. A first point is to refer to *Sky/ITV*, in which the significance of the squeeze-out was, in Aer Lingus' respectful view, much understated.³² In particular the Report in that case proceeded on the basis that squeeze-outs were likely relevant only in relation to a hostile takeover bid, which would then be a reflection of the bidder's strategy, rather than ITV's strategy. This, with respect, does not take all relevant circumstances into account: in many instances an agreed combination may proceed by way of a recommended bid, with the target being a part of the strategic plan. And many bids that are originally unsolicited become agreed and recommended, and so a matter of joint strategy of the two parties. And in a reverse takeover, the "target" is in practice the driver of the strategy.
65. It might be objected in this context that agreed takeovers may often nowadays proceed by way of scheme of arrangement, so avoiding any question of squeeze-out; and that the level of shareholding needed to block a scheme is the higher level of 25% of shareholders (excluding from the calculation any shares already held by the bidder).

³¹ Section 15 Companies (Amendment) Act, 1983.

³² *Sky/ITV* report, paragraph 6.36.

Certainly it is true that such schemes are sometimes used, and indeed may offer taxation advantages. However, as explained in paragraph 42 above, there is still a risk that if Ryanair retains any shares in Aer Lingus, it will seek to object to the scheme of arrangement: for bidders, the resulting uncertainty usually presents an unacceptable risk given the delay and costs involved.

66. Schemes of arrangements are also less flexible as a form of transaction, given the need for fixing Court Hearings, and a statistical analysis³³ prepared for Aer Lingus indicates that 70% of takeovers in Ireland in the period 2002-2012 proceeded by way of agreed takeover rather than by way of scheme. Accordingly the squeeze-out mechanism is an important one, and should be accorded more weight in this case than in *Sky/ITV*.

33 See [Annex 3](#).

5. Blocking of special resolutions and Heathrow slot resolutions

67. While the considerations set out earlier in this submission point to specific levels of divestiture at 0%, 2.9% or 4.9%, the Group has also consulted on the level of divestiture required to ensure that Ryanair is not in a position (either by itself or in conjunction with other shareholders) to block a special resolution or a resolution in respect of a Disposal Transaction relating to Heathrow slots.
68. As noted in the PFs, the majority currently required to approve a Disposal Transaction is 69.89%. However, as the required majority could increase to 75% if the Government's shareholding were reduced to 20% or less, the relevant threshold for blocking a Disposal Transaction for the purpose of determining the appropriate level of divestiture should be considered to be 25%, the same as for special resolutions.
69. In *Sky/ITV*, the CC considered the level of shareholding at which Sky would not be able to block a special resolution. In doing so, it considered the "lowest realistic effective turnout" and the "highest realistic level of votes against" a special resolution by other shareholders, such that these assumptions were "at the outer realistic limits", in deriving the relevant threshold.³⁴ It considered that this "removes any realistic prospect"³⁵ of Sky defeating a special resolution. The CAT concurred that "the Commission was clearly entitled to consider whether and if so at what level a partial divestiture would ensure there would be *no realistic prospect ...*", and that "the Commission was entitled to adopt a cautious, conservative approach to future turnout" and to make a "conservative" assumption on the highest realistic percentage of votes against a special resolution by other shareholders.³⁶ Aer Lingus submits that the Group should follow a similarly conservative approach here in order to ensure that there is *no realistic prospect* that Ryanair will, in the future, be able to block a special resolution or a Disposal Transaction.
70. We therefore address in turn the issues of turnout and opposition.

Turnout

71. As noted by the Group, the overall participation by shareholders has fallen in recent years, and the average turnout for the period 2011 to 2013 was 71.7%.³⁷ However, such a level of turnout is primarily driven by the two largest shareholders – Ryanair and the Irish Government – which between them account for 55% of Aer Lingus' share capital. Given the stated intention of the Government to sell down its stake, as

34 *Sky/ITV* report, paragraph 6.34.

35 *Sky/ITV* report, Paragraph 6.74.

36 [2008] CAT 25, paragraphs 293-296.

37 CC provisional findings, Appendix C, paragraph 2.

well as a possible divestment remedy to be imposed by the CC on Ryanair's stake, there will be major changes to Aer Lingus' shareholder register in the foreseeable future. Historical levels of turnout cannot for that reason be considered representative for future votes.

72. Whilst the Government has stated that it is "unlikely" to sell its shareholding to multiple buyers, preferring to sell to a group that would drive effective competition on routes between the UK and Ireland,³⁸ this may not prove possible and Aer Lingus believes that it remains a realistic possibility that the Government would dispose of its shareholding to a number of smaller buyers. Indeed Aer Lingus management would support the placing of the Government's shareholding with a range of institutional investors. Moreover, the PFs note that the incentives of the Government are likely to change over time as it reacts to current events, implying that - despite its current preference - the Government may sell its shareholding to multiple buyers.³⁹ In addition, the PFs find that a scenario in which the Irish Government were to sell its shareholding to multiple buyers – even against a backdrop of Ryanair retaining a shareholding of 29.82% – could not be dismissed altogether.⁴⁰
73. Given that a potential sell-down of Ryanair's shareholding can only make such a scenario more likely, in order to ensure there is "no realistic prospect" of Ryanair being able to defeat a special resolution, Aer Lingus submits that the Group must allow for the possibility that the Irish Government sells to multiple buyers – with consequent reductions in turnout.
74. Aer Lingus advocates in this submission that the appropriate remedy entails Ryanair's shares being dispersed among multiple holders. Should such dispersion be envisaged, the Group must also take into account the consequent reductions in turnout. The pertinent question is then what levels of turnout can be expected after the dispersal of the Government and Ryanair's stakes.
75. The CC has already examined participation by current Aer Lingus shareholders other than Ryanair and the Irish Government. Table 1 in Appendix C of the PFs shows that, post-ESOT dispersal, this has averaged 37.2%, with a minimum of 23.4% and a maximum of 41.4%. In other words, of the 45% of shares not held by Ryanair/Irish Government, the turnout was in the range of 23.4% - 41.4%. These are strikingly low figures – and indeed are only as high as they are thanks to the proxy solicitation campaigns undertaken by Aer Lingus, in order to reduce the chances that Ryanair might succeed in blocking an ordinary resolution. Clearly if the new holders of shares

38 CC provisional findings, paragraph 4.26.

39 CC provisional findings, paragraph 4.26.

40 CC provisional findings, paragraph 4.28.

divested by Ryanair and the Irish Government were to follow a similar voting pattern, turnout would fall significantly.⁴¹

76. It might of course be that the motivation of other shareholders to vote may evolve, once the large existing blocks have dissipated. That remains though a matter of speculation, and the Group will, on the *Sky/ITV* model, likely wish to err on the side of caution rather than assuming a sudden and reliable upswing in turnout.
77. Given the uncertainties in foreseeing the likely turnout levels, the Group may also wish to consider average turnout patterns of other Irish PLCs: if the Government and Ryanair were to dispose of all or a significant portion of their respective shareholdings, Aer Lingus' share register would more closely resemble that of other Irish PLCs. Of course by their very nature such *averages* across resolutions and across companies encompass turnouts both above and below the stated figure. Given that the Group, if following the *Sky/ITV* approach, should consider the *lowest* realistic effective turnout, these averages cannot be seen as providing relevant benchmarks; instead they represent upper bounds.
78. Analysis by ISS⁴² indicates that the average turnout at shareholder meetings at Irish PLCs during the period 2008 – 2012 was 56.4%⁴³, with the lowest annual average being 51.2% in 2010. OECD research also indicates average turnouts of 56.5% in Irish company AGMs, whilst EGM turnout was lower such that average turnout was 54.6% including EGMs.⁴⁴
79. Alternatively, for so long as the Government retains its current level of shareholding, it is possible that circumstances could arise in which it might abstain. While the Government has to date been supportive of resolutions proposed by the Aer Lingus Board, this might not always be the case, particularly where a resolution was politically controversial. For instance, in the event of a resolution being proposed relating to the disposal of a large number of Heathrow slots, the Government could choose to abstain from voting if it considered that connectivity via Heathrow from Ireland was adversely affected.⁴⁵ This would significantly decrease turnout, without

41 Just as the dissipation of the former ESOT block to individual employees and ex-employees entailed a sudden drop in voter turnout, an additional continuing decline in voting of these shares may be expected. This is because the new employee-shareholders are progressively selling-on, with the new holders of those shares likely not having the same interest or motivation to participate in Aer Lingus' affairs. The former ESOT beneficiary shares in the hands of individual current/former employees has fallen from 62,543,947 in December 2010 (i.e. 11.71% of the issued share capital) to 54,424,651 in June 2012 (i.e. 10.2% of the issued share capital) to 49,994,876 as of 7 February 2013 (i.e. 9.36%) to 47,591,455 as of 4 June 2013 (i.e. 8.9%).

42 ISS, 2012 Voting Results Report Europe, 27 September 2012, attached as **Annex 4**.

43 Computed as the simple average of the annual figures given in Graph 2 of the ISS report.

44 Page 15 of Hewitt, P. (2011), "The Exercise of Shareholder Rights: Country Comparison of Turnout and Dissent", OECD Corporate Governance Working Papers, No. 3, OECD Publishing. <http://dx.doi.org/10.1787/5kg54d011lvf-en>

45 The Irish Government would also be unable to vote on related party transactions: see PFs paragraph 7.90.

any compensating increase coming from a proportion at least of new shareholders using their votes.

80. Against this background there are multiple difficulties in predicting the turnout to be expected at general meetings of an Aer Lingus with a largely new and revamped shareholder base. The cautiously estimated figure likely lies somewhere in the following range:
- a low-water mark of 23.4% (see para 75 above, i.e. the lowest level of turnout among the 45% of existing shareholders after excluding Ryanair and the Government from the denominator)
 - 37.2% (again see para 75 above, i.e. the average level of turnout among those 45% of shareholders)
 - 51.2% (see para 78, i.e. the average turnout among Irish PLCs in 2010 noted by ISS)
 - 55%, the approximate average among Irish PLCs during the period 2008 – 2012 (see para 78).

Opposition by other shareholders

81. In *Sky/ITV*, the CC made an allowance for the possibility that other shareholders may also vote against management recommendations. It considered that the highest realistic percentage of votes against a special resolution other than those of Sky would be 7.5%, based on previous experience of the levels of shareholders voting against specific resolutions, and recognising Sky's ability to influence other shareholders.⁴⁶ Similar considerations apply here.
82. Table 3 of Appendix C of the PFs indicate that up to 3.14% of Aer Lingus shareholders have opposed the management recommendation in resolutions also opposed by Ryanair.⁴⁷ In addition, up to 4.71% of Aer Lingus shareholders have opposed the management recommendation in other votes (in which Ryanair voted in favour).⁴⁸ Whilst these represent relatively low levels of shareholders supporting Ryanair in its opposition to specific resolutions, it cannot be assumed that this will remain the case in the future given Ryanair's standing within the industry and its

⁴⁶ *Sky/ITV* report, paragraph 6.33.

⁴⁷ 3.14% of shareholders supported Ryanair in its opposition to the re-election of David Begg in 2012.

⁴⁸ Specifically, the re-election of Laurence Crowley was opposed by 3.91%, 4.71%, and 3.48% of Aer Lingus shareholders in 2011, 2012 and 2013 respectively. See Annex 1 to Aer Lingus' response to the CC's questionnaire of 9 August 2012 on minority shareholding and financial information, as updated with information for the 2013 AGM.

vocal campaigns. Indeed, analysis by ISS shows that average levels of dissent have ranged between 4.1% and 5.7% for Irish PLCs between 2008 and 2012.⁴⁹

83. It should be noted that other strategic investors, who own stakes ranging from 1.2% to 3.8%, are not guaranteed to support management recommendations. Notably Etihad, Tailwind Nominees, the Irish Airlines (Pilots') Superannuation Scheme or Denis O'Brien may on given topics have their own strongly held views on resolutions affecting their individual interests. Should one or more of these investors oppose resolutions, the opposition figures are likely to be significantly greater.

The relevant threshold

84. In view of the above, Aer Lingus submits that the lowest realistic turnout, cautiously estimated, is in the range **40-55%**⁵⁰ and the highest realistic opposition by other shareholders is at least **6%**.⁵¹ This would mean a shareholding of greater than **4%** (on a 40% turnout) or **7.75%** (on a 55% turnout) would be sufficient to block a special resolution or Disposal Transaction:

$$\text{Shareholding threshold} = (25\% * \text{turnout}) - \text{opposition}^{52}$$

85. The Group will certainly apply its own judgment as to the appropriate assumptions, and Table 1 may assist in calculating the effect of differing assumptions for turnout and opposition levels:

49 Graph 4 of ISS analysis, attached as **Annex 4**. In addition, the OECD report cited in footnote 44 above finds average dissent of 3.6% in Irish shareholder meetings and 4.6% at Irish EGMs.

50 As noted above, the average turnout among Irish PLCs over a period of years was approximately 55%, which forms the upper bound of the range. To derive the lower bound of the range, we consider a situation in which the shares currently held by Ryanair and the Government are dispersed, and the new holders of these shares have that average turnout rate, i.e. 55%. We then assume that the original shareholders (i.e. those already holding shares alongside Ryanair and the Government) display the lowest turnout actually observed amongst them, i.e. 23.4%. This gives total turnout of around 40% (55% Ryanair and Government shareholding * 55% turnout, plus 45% remaining shares * 23.4% turnout).

51 It will be observed that this assumption is *more favourable to Ryanair* than the assumption which was made in relation to Sky.

52 So e.g. one illustrative calculation of the shareholding threshold would be $(25\% * 40\%) - 6\% = 4\%$. This formula derives from the fact that the effective vote share is equal to $(\text{Ryanair's share} + \text{opposition}) / \text{effective turnout}$.

Table 1: Threshold levels for Ryanair's shareholding depending on turnout and opposition by other shareholders

Opposition	4%	5%	6%	7%	8%
Turnout					
25%	2.25%	1.25%	0.25%	0.00%	0.00%
30%	3.50%	2.50%	1.50%	0.50%	0.00%
35%	4.75%	3.75%	2.75%	1.75%	0.75%
40%	6.00%	5.00%	4.00%	3.00%	2.00%
45%	7.25%	6.25%	5.25%	4.25%	3.25%
50%	8.50%	7.50%	6.50%	5.50%	4.50%
55%	9.75%	8.75%	7.75%	6.75%	5.75%
60%	11.00%	10.00%	9.00%	8.00%	7.00%
65%	12.25%	11.25%	10.25%	9.25%	8.25%
70%	13.50%	12.50%	11.50%	10.50%	9.50%

6. Behavioural remedies

86. Aer Lingus has laid out its view that behavioural remedies are likely to be inherently unsatisfactory in the face of Ryanair's likely conduct. There may even so be a number of bright line behavioural rules which may be of service.
87. Board representation: Clearly Ryanair's presence on the board would be disruptive, and even absent disruptive behaviour a conduit for competitively sensitive information between principal competitors. Ryanair should therefore neither solicit nor accept board representation.
88. Restrictions on acquisition of further shares: it is a natural corollary of a sell-down that the shares should not be re-acquired, and such a restriction will naturally accompany also a full divestiture. The potential exception to this restriction, already considered above, is that shares could be reacquired following (hypothetical) receipt of a clearance under the EU Merger Regulation.
89. Restrictions on voting: The Notice invites views on this, but Aer Lingus would cast this restriction more broadly, namely in terms of exercise of all rights deriving from the shareholding. This would e.g. extend to requisitioning of meetings, tabling of resolutions, and litigation in (supposed) vindication of shareholder rights. Ryanair has used all of these tools vexatiously, but we do not extend this submission by recalling the details of its long running harassment of Aer Lingus management. If any shares are to be retained, Ryanair should be inhibited from exercise of these rights, save where it obtains the monitor's consent.
90. Aer Lingus recalls that Sky, in the *Sky/ITV* case, advocated that its shares be transferred into a trust arrangement so as to insulate Sky from exercise of those rights. While that mechanism was deemed insufficient and inappropriate in that case as the sole form of remedy, the attention given in that case to the possible detail of such a structure may be of service here, if the Group is minded to attach behavioural limitations to a partial divestiture. Aer Lingus will wish, if useful following the imminent hearing, to make further submissions in this regard.

7. Remedy design and implementation

91. As anticipated in the introduction, in Aer Lingus' view it is fundamental to the divestiture in this case that Ryanair have no right to a say in the identification of a purchaser. If Aer Lingus were to desire a new strategic shareholder, it would not ask Ryanair to help select it.⁵³
92. Nor should anyone else be given the task of selecting a strategic shareholder for Aer Lingus: Aer Lingus does not presently seek a new strategic investor, and it should not be the outcome of this process that it be obliged to take one.
93. Rather, a "restoration of the structures expected in the absence of the merger" requires that the shares originally floated by the Irish Government should be widely held through the exchange; and that it be Aer Lingus' own future strategic thinking, or other market forces, which determine the identity of any significant new strategic shareholder. Ryanair has no rightful seat at this table.
94. This is not merely by way of excluding Ryanair from discussions, but more fundamentally because its selection may not be benign. The strategy of a new partner might well imply some alteration to the manner in which Aer Lingus presently competes with Ryanair. Ryanair could be expected to favour a buyer which would want to move Aer Lingus away from its present intensity of competition with Ryanair. Indeed Ryanair has said that a purchaser would be likely to break up Aer Lingus⁵⁴, and Ryanair might indeed favour such an outcome.
95. Accordingly Aer Lingus advocates a market-based process by which the Ryanair shares are dispersed among multiple holders. Aer Lingus will wish to seek out institutional shareholders interested in forming a long-term stable shareholder base. The long term competitive capacity of Aer Lingus will be best safeguarded in this way.
96. Ryanair should have no right to play a role in building this new and diversified shareholder base, any more than it should in identifying a hypothetical individual buyer. Ryanair might contrive to place shares with its allies; with its own shareholders (who might be pre-disposed to accept a further hostile offer); with short termist arbitrageurs; or with private equity interests employing a leveraged structure. There is no need for recourse to any such purchasers, and indeed obvious risks and disadvantages in doing so.
97. It is the view of Aer Lingus' professional investment banking advisors that an institutional placing of 30% can be readily undertaken, without the need to resort to a

⁵³ Indeed doing so would in other circumstances likely itself be an infringement of competition rules.

⁵⁴ See Irish Examiner article dated 30 March 2012 "State could sell its Aer Lingus stake to Ryanair" (included in [Annex 5](#)).

formal secondary public offering. Investor sentiment towards Aer Lingus is positive, in particular with the prospect of Ryanair's departure from the scene, and with the prospect of removal of the pensions overhang. An institutional placing would be supported by investor road-shows by Aer Lingus management. Clearly Ryanair should have no part in that exercise – not least recalling its conduct at the Aer Lingus investor road-show in 2011, of which a recording has previously been submitted to the Competition Commission.⁵⁵ It should indeed be constrained from undermining the exercise.

98. Accordingly it is Aer Lingus' strongly held view that the divestiture process should, from the outset, be put in the hands of an independent third party, mandated to work in cooperation with Aer Lingus management and in isolation from Ryanair. Ryanair's interest in realising a satisfactory price for its shares accords precisely with Aer Lingus' interest in maintaining an orderly market and a buoyant share price. If though, and to the extent that, the price realised for the shares is inferior to Ryanair's ambitions, this is in any event a matter that need not be of concern to the Group, as observed in paragraph 10 of the Notice.⁵⁶
99. The Group invites views on the costs that are likely to arise in implementing each remedy option. Aer Lingus understands that the placing fee typically paid to financial advisors is in the range of 0.5 – 1% of the value of the shares.
100. Regarding the costs of possible behavioural remedies, clearly simple and bright line rules are liable to generate lower costs than complex mechanisms inviting differences of interpretation. The costs of a detailed monitoring and enforcement regime are potentially significant, not only for Aer Lingus which would inevitably be drawn into the process, but also for the Competition Commission/OFT/CMA which would be drawn into adjudication and litigation on issues of consent, and not least for Ryanair itself since it would have to bear the costs of the monitoring system.

⁵⁵ A recording of the exchange was submitted to the CC on 1 May 2013.

⁵⁶ Ryanair cannot in any event aspire to a control premium, if the Group accepts Aer Lingus' premise that an institutional placing is the appropriate way forward.

8. Early adoption of final order and extension of existing interim order

101. Ryanair has made no secret that it intends to appeal against the Report, and to ensnare and delay any divestiture process for many years to come

“...Ryanair argues that the Competition Commission won’t be able to force a sale of its stake until the appeals process in Europe has been exhausted, meaning the regulatory battle could roll on for years to come. It could go on for another 10 years yet, says O’Leary”⁵⁷

102. [CONFIDENTIAL], Aer Lingus submits to the Group that it should move with determination to early adoption of an Order carrying into effect the decisions in the report. Aer Lingus assumes that Ryanair will not be forthcoming with undertakings to give effect to the Report [CONFIDENTIAL].⁵⁸
103. Further, early adoption of an order will compel Ryanair to make its inevitable application to the CAT without delay, and the CAT can then be expected to combine the applications against the Report and the Order. This course would be doubly satisfactory: it would be efficient in terms of the overlapping issues arising; and it would avoid the need for the CC (or CMA) to re-engage at the end of a lengthy appeals process in relation to the Report, so as to adopt an Order, [CONFIDENTIAL].
104. Aer Lingus recognises that, even if this course is followed, the date for ultimate enforcement of the divestiture requirement is liable to be pushed far into the future. For that reason Aer Lingus asks the Group to consider a material reinforcement of the existing interim order: reconsideration of the interim protection is in line with the CC’s stated practices.⁵⁹ Aer Lingus invites the Group to refer to the submissions made by Aer Lingus early in the process as to the desirable content of the Interim Order.
105. Aer Lingus notes respectfully that the existing Interim Order is limited to the specific aspect of exercising voting rights; but the rights attaching to shares are far more extensive - shareholder litigation, requisitioning, tabling resolutions, etc. A simple and clear mechanism, well justified in the light of the PFs, would be to require Ryanair to transfer its shares to a third party, for exercise of all such rights.
106. Aer Lingus will be glad to formulate more detailed views on the terms of such an arrangement, if so invited.

⁵⁷ The Sunday Telegraph, “Ryanair’s row over Aer Lingus? It’s like a Monty Python script”, dated 1 June 2013. See [Annex 1](#).

⁵⁸ [CONFIDENTIAL]

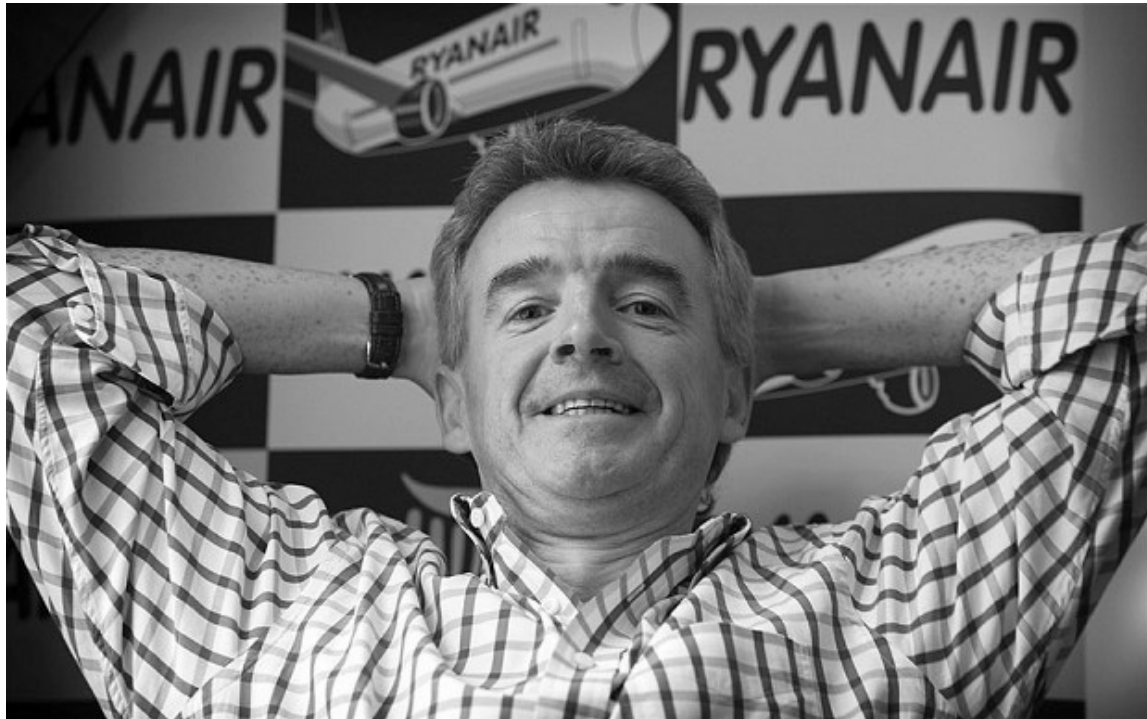
⁵⁹ Competition Commission Merger Remedies Guidelines, paragraph 3.22 & Appendix A, paragraph 3.

07/06/13

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script - Telegraph

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script

Ryanair's CEO invokes Monty Python as he talks about the latest episode in the airline's battle with the competition authorities over its stake in Aer Lingus .



Ryanair chief executive Michael O'Leary called Aer Lingus a a 'Mickey Mouse airline' Photo: Geoff Pugh

By Nathalie Thomas

10:00PM BST 01 Jun 2013

“Dimwits”, “environmental loonies”, “regulatory nincompoops”.

Michael O'Leary is at his bombastic best. Barely 20 minutes into our conversation, the boss of Ryanair has already laid into the UK Competition Commission, climate change campaigners, the Office of Fair Trading, Aer Lingus, Irish unions and the European competition authorities.

Haranguing people who seemingly want to thwart the continued march of Ryanair is a sport for O'Leary. And today he is at the top of his game, hitting volley after volley, as he mulls over a report issued the previous day by the Competition Commission, which **suggests it will force the self-styled “ultra low-cost carrier” to sell down all or part of its near 30pc stake in Aer Lingus.**

07/06/13

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script - Telegraph

“There’s more jokes in it than a Monty Python script,” O’Leary trills in his high-pitched Irish accent. The commission is like the “People’s Front of Judea”, he proclaims, referring to the shambolic protest movement from the film *The Life of Brian*. Aer Lingus is a “Mickey Mouse airline” and Christoph Mueller, its chief executive, is “smoking dope” if he thinks institutional investors are interested in buying stakes in the carrier, O’Leary spits out at the speed of light.

It’s a dizzying experience to keep up with his diatribes, delivered at 100 miles an hour and peppered with more jokes than a stand-up comedy act.

The airline boss, who has been at the helm of Ryanair since 1994, plays the buffoon (asked where he lives, the reply is “Bethlehem”) and loves nothing more than stoking controversy. If it didn’t have it already, Ryanair gained notoriety in 2009 when O’Leary suggested passengers would have to “pay per pee” on flights.

But beneath the clownish facade is a steely intellect that unleashes its full force when anyone dares to stand in Ryanair’s way. And the organisation currently in the Eye of Sauron is the Competition Commission.

Last Thursday, the commission published the preliminary findings of an investigation into Ryanair’s 29.8pc stake in Aer Lingus and warned O’Leary’s carrier that it would be forced to reduce its holding – potentially to as little as 3pc.

The stake could reduce competition on routes between Britain and the Republic of Ireland, the commission said, and could potentially prevent Aer Lingus from merging with another carrier in an industry where airlines are increasingly having to join forces to survive recession and high fuel bills.

Ryanair’s stake, which was built up in 2006 during the carrier’s first failed takeover bid for Aer Lingus, could also hinder its rival from issuing shares, raising capital or making other strategic decisions such as selling valuable Heathrow take-off and landing slots, the commission said. A final ruling won’t be delivered until July 11 but the commission’s remedy document makes it clear that at this stage, officials are only considering potential solutions that involve Ryanair having to sell at least part of its holding.

O’Leary takes a brief pause before deciding how best to describe the UK’s competition authorities. “What would I call them, be nice to them,” he says to himself, before settling on “dimwits” and “people in a basement in London who apparently have been cut off from all ***** reality for the last six and a half years”.

07/06/13

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script - Telegraph

Thursday's report was the latest episode in Ryanair's long-running battle with competition authorities in this country. In 2010, **the airline tried to prevent the Office of Fair Trading (OFT) from investigating its Aer Lingus stake.**

The Court of Appeal threw out Ryanair's claim that the OFT was "out of time" to investigate the historic holding, before the case was referred to the Competition Commission.

O'Leary has a riposte for every single claim made in the commission's preliminary report.

How can UK authorities raise concerns over a handful of flights between Britain and Ireland when the European Commission ruled, just three months ago in a separate inquiry, that competition between the two carriers had in fact intensified since 2007?

He lists countless occasions when Ryanair has sought to block Aer Lingus from making certain decisions only to be "ignored" – one particular bone of contention is Aer Lingus's payments towards a pension deficit for which the airline claims to have no further liability.

Ryanair's holding in Aer Lingus didn't prevent Etihad, the Middle Eastern airline, from building up a 3pc stake in Aer Lingus last year, O'Leary argues. Other major European carriers such as Air France have also told the commission that Ryanair's holding would not be a "deterrent" to another airline acquiring Aer Lingus.

O'Leary also points out the Irish airline recently sold a pair of Heathrow slots to British Airways. But at the root of the aviation boss's argument is the question why UK competition authorities should be investigating a six-and-a-half-year-old stake in an Irish airline at all.

"I can understand the complaint about BSkyB and ITV," he says, referring to the 2007 inquiry into a proposed merger between the two broadcasters. "It affects the lives of probably most British consumers. Aer Lingus affects the lives of no British consumers. I doubt if even 1pc of the UK population has ever flown on, or ever will fly on, Aer Lingus.

"You can see UK consumers across the length and breadth of the country can't sleep in their beds at night for fear of what might happen to Aer Lingus – without which they will be pinned on the island of Great Britain, unable to travel," he says sarcastically. "God help us. I mean talk about the People's Front of Judea."

Ryanair is currently fighting a regulatory battle on two fronts. The airline has also challenged the **European Commission's decision in February to block its latest €694m takeover bid for Aer**

07/06/13

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script - Telegraph

Lingus – its third since 2006.

The €1.30-a-share approach, launched last June, surprised the markets. Analysts thought O'Leary had given up on his pre-occupation with Aer Lingus after two previous attempts were thwarted on competition grounds.

Analysts were even more surprised when Ryanair offered a set of remedies, which involved handing bases in Ireland to BA and Flybe €100m of cash to operate half of Aer Lingus's short-haul routes in Europe.

O'Leary protests against the idea he is obsessed with Aer Lingus: "We've been sitting on this thing for six-and-a-half years. This idea that I run around obsessed with Aer Lingus is a bit mad."

He points out that in almost every other European country, the dominant airline or national flag-carrier has been allowed to swallow up its second or third biggest competitor as the airlines are forced to consolidate to remain in the air.

"You go to Germany, Lufthansa is allowed to buy Germanwings and a bundle of other German airlines. And you go to the UK, BA was allowed to buy British Caledonian and British Midland (bmi). You have, at least to some degree, national champions there."

Ryanair argues that the Competition Commission won't be able to force a sale of its stake until the appeals process in Europe has been exhausted, meaning the regulatory battle could roll on for years to come.

"It could go on for another 10 years yet," says O'Leary.

Even if Ryanair is ultimately forced to sell, he questions who will step up to the plate and buy the stake.

Aer Lingus claims there are institutional investors who are interested in buying stakes of as much as 10pc in the airline, which last year grew revenue by 8.2pc to €1.4bn, although pre-tax profit more than halved to €40.6m.

O'Leary begs to differ, pointing out the decline in Aer Lingus's shares over the past six years from more than €3 a share in 2007 to €1.60 today, although they have gained almost 78pc over the past year.

07/06/13

Michael O'Leary: Ryanair's row over Aer Lingus? It's like a Monty Python script - Telegraph

“I went out publicly about two years ago or so and said if somebody wants to approach us and make an offer for our shares, we'd be very happy to listen,” O'Leary says. “We haven't had a call.”

And with that the human whirlwind moves on.

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07/06/13

irishtimes.com - Ryanair warns it will challenge any attempt to force it to sell Aer Lingus stake - Fri May 31 01:05:00 IST 2013

Ryanair warns it will challenge any attempt to force it to sell Aer Lingus stake

Barry O'Halloran

Last Updated: Thursday, May 30, 2013, 22:13

Ryanair will challenge any attempt by the UK authorities to force it to sell part or all of its 29.8 per cent stake in Aer Lingus, the airline warned yesterday.

The UK's Competition Commission has provisionally ruled that Ryanair's stake is likely to "weaken" Aer Lingus, its main rival on routes between Ireland and Britain, and lessen competition between the pair.

It proposed a series of remedies to this, should a final decision in July confirm its finding, including ordering Ryanair to sell all or part of its shareholding, or a partial disposal accompanied by other measures likely to enhance competition between the two.

In response, Ryanair said that should yesterday's provisional ruling be confirmed, it would "appeal that decision to the UK Competition Appeals Tribunal and thereafter, if necessary, to the Court of Appeal".

'Manifestly wrong'

Chief executive Michael O'Leary called the decision "bizarre and manifestly wrong" and argued that last February, the European Commission found that competition between the pair has intensified since 2007.

Along with direct competition concerns, the commission found that Ryanair's stake allows it to block special resolutions, potentially hinder any bid to raise capital and to prevent its rival from selling its valuable slots at Heathrow Airport.

Competition Commission deputy chairman Simon Polito, who led its 11-month inquiry into the relationship between the two, said that while not giving it total control, Ryanair's minority stake could influence strategic decisions crucial to Aer Lingus's future as an airline on the Ireland-Britain and other routes.

"We were particularly concerned about Ryanair's influence over Aer Lingus's ability to be acquired by, merge with, or acquire another airline," Mr Polito said, adding that the commission thought that such a move would be necessary to allow the smaller airline to remain competitive in the future.

He said that the commission recognised that there had been competition between the two since 2006, when Ryanair took its stake in Aer Lingus, but argued that it might otherwise have been more intense.

Mr O'Leary dismissed the commission's warning that other airlines could be discouraged from buying into Aer Lingus, saying that Etihad's purchase of 3 per cent of the company, and submissions from other carriers confirming that the Ryanair stake would not dissuade other investors, disproved this.

Aer Lingus welcomed the commission's provisional finding yesterday.

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11/06/13

Aer Lingus better off being owned by Ryanair, says Willie Walsh - Independent.ie

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Aer Lingus better off being owned by Ryanair, says Willie Walsh

IAG chief queries motives of rival Etihad



Willie Walsh, the chief executive of International Airlines Group

John Mulligan - 03 June 2013

Aer Lingus would be better off being owned by Ryanair than Abu Dhabi-based carrier Etihad, according to Willie Walsh, the chief executive of International Airlines Group (IAG).

Mr Walsh has questioned the motives of Etihad's interest in Aer Lingus. The Gulf carrier owns just under 3pc of the [Irish](#) airline and its chief executive, James Hogan, has said he'd be interested in increasing that.

"If somebody thought Etihad is a better shareholder than Ryanair, I'd love for them to explain why and how that would be the case," Mr Walsh told the *Irish Independent*.

"I see it as quite the opposite. Ryanair wants Ireland and, whatever you say about Michael O'Leary, he's proud to be an Irishman, lives here and has created one of the most valuable airlines in the world. How is that less attractive to Ireland than Abu Dhabi?"

Mr Walsh said he didn't believe Aer Lingus would ever be approached by potential buyers while the Government and Ryanair remained shareholders.

Mr Walsh, whose IAG owns British Airways and Spain's Iberia, has previously indicated that he is not interested in acquiring Aer Lingus, in which the State owns a 25.1pc stake.

His comments come as Britain's Competition Commission prepares this week to release further details of its preliminary finding that Ryanair exerts "material influence" over Aer Lingus through its near 30pc shareholding in its smaller rival.

STAKE

In a final determination due in July, the watchdog is almost certain to instruct Ryanair to substantially reduce its Aer Lingus stake - a move that Ryanair said it intended to appeal.

Mr O'Leary slammed the watchdog's preliminary finding yesterday.

"Aer Lingus affects the lives of no British consumers," he said in an interview with a British newspaper. "I doubt if even 1pc of the UK population has ever flown on, or will ever fly on, Aer Lingus."

Under existing European rules, companies from outside the trading bloc can't currently acquire more than 49pc of a European airline. "He (James Hogan) can never own Aer Lingus, so therefore if he has a stake in it he will always be competing with it, exactly the same as Ryanair," said Mr Walsh.

Etihad - founded 10 years ago - also owns a 29pc stake in Air Berlin, 10pc of Virgin Australia, 24pc of India's Jet Airways and 40pc of Air Seychelles.

"His job is to develop Abu Dhabi and Etihad (which is owned by the Abu Dhabi emirate)," added Mr Walsh. "What he has done with the investments he has made is to use those airlines to flow traffic over Abu Dhabi. What James would want is to take traffic over Ireland to Abu Dhabi. I don't think that's necessarily aligned with what Ireland would want to do."

Both Etihad and its larger Dubai-based rival Emirates have developed successful routes from Dublin to the United Arab Emirates, with the bulk of passengers from Ireland flying on to destinations in Asia and Australia.

Irish Independent

www.independent.ie/business/irish/aer-lingus-better-off-being-owned-by-ryanair-says-willie-walsh-29314956.html

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Aer Lingus better off being owned by Ryanair, says Willie Walsh - Independent.ie



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Analysis of non-accepting shareholders*

Parties	Type of offer	Date of squeeze out announcement	Number of days since posting	% of shares
Pattington Limited offer for FFastFill plc	Recommended cash offer - £106.1 million	3 April 2013	41	94.1
Motorola Solutions, Inc. offer for Psion plc	Recommended cash offer - £129.3 million	1 November 2012	112	95.29
Titan International Inc. offer for Titan Europe plc	Recommended share offer - £118.4 million	19 October 2012	35	97.06
PTT Exploration and Production Public Company Limited offer for Cove Energy plc	Recommended cash offer - £1.22 billion	23 August 2012	83	97.82
SS&C Technologies Holdings, Inc. offer for GlobeOp Financial Services S.A.	Recommended cash offer - £572 million	11 June 2012	77	97.4**
CGNPC Uranium Resources Co., Ltd. offer for Kalahari Minerals plc	Recommended cash offer - £632 million	17 February 2012	43	94.8
Müller Dairy (U.K.) Limited offer for Robert Wiseman Dairies PLC	Recommended cash offer - £279.5 million	15 February 2012	30	93.9
Hewlett-Packard Company offer for Autonomy Corporation plc	Recommended cash offer - £7.09 billion	25 October 2011	68	Figure not provided
AREA Property Partners (UK) Limited and Delancey Real Estate Asset Management Limited offer for Minerva plc	Recommended cash offer - £202.6 million	19 August 2011	50	91.15
Median			60	95.1
Mean			50	95.0

* based on recommended UK public offers over £100m in the 2 years to May 2013

** 99.95 as at offer close

Source: Rothschild

#	Year	Acquirer	Target acquired	Recommended transaction	Acquisition method		
					Scheme	Offer	
1	2012	Eaton Corporation	Cooper Industries	✓	✓		
2	2012	Cemex SA de CV	Readymix	✓	✓		
3	2012	Aravis Therapeutics	AGI Therapeutics	✓		✓	
4	2011	C. R. Bard	ClearStream Technologies Group	✓		✓	
5	2011	BAE Systems	Norkom Group PLC	✓		✓	
6	2010	Spectrum Equity Investors	Trintech Group plc	✓	✓		
7	2010	San Leon Energy	Island Oil and Gas	✓	✓		
8	2010	Berkshire, Advent and Bain Capital Partners	Skillsfot Limited	✓	✓		
9	2010	Duke Street	Payzone	✓		✓	
10	2009	Petrominerales	Pan Andean Resources	✓	✓		
11	2009	LearnVantage	ThirdForce	✓		✓	
12	2009	JPMorgan Chase & Co	Eco Securities Gorup	✓	✓		
13	2009	Gold Fields Metals BV	Glencar Mining Plc	✓		✓	
14	2008	Progress Software	Iona Technology	✓	✓		
15	2008	Avnet	Horizon Technology	✓		✓	
16	2008	HemCon Medical Technologies	Alltracel Pharmaceuticals	✓	✓		
17	2007	Centroferve	Celtic Resources	X		✓	
18	2007	Stornoway	Calyx Group	✓		✓	
19	2007	Corporate Travel Holdings	CNG Travel Group	✓		✓	
20	2007	Newcourt Group	Ely Property Group	✓		✓	
21	2006	BCMIH	Eircom Gorup	✓	✓		
22	2005	JDH Acquisitions plc	Jurys Doyle	✓		✓	
23	2005	Lundin Mining Corporation	ARCON International	✓		✓	
24	2004	Waren Acquisitions	Warner Chilcott	✓		✓	
25	2004	EastChase Limited	Transware	✓		✓	
26	2004	Grafton	Heiton	✓		✓	
27	2004	Precinct Investments	Gresham Hotel Group	✓		✓	
28	2004	Sarcon	Barlo Group	✓		✓	
29	2003	RBS	First Active	✓	✓		
30	2003	Nesbitt Acquisitions	Arnotts	✓		✓	
31	2003	Renlin	Sherry Fitzgerald	✓		✓	
32	2003	Hertal Acquisitions	Riverdeep	✓		✓	
33	2002	Rendina	Alphya Group	✓		✓	
34	2002	Kandel	Conduit	✓		✓	
35	2002	Rambridge	Dunloe Ewart	✓		✓	
36	2002	Rodinheights	Green Property	✓		✓	
37	2002	MDCP Acquisitions	Smurfit Kappa	✓		✓	
Totals						11	26
Total (as a percentage)						30%	70%

2012 Voting Results Report

Europe

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Key Takeaways

- Participation at shareholder meetings across the European sample has increased over the past five years with the most substantial year-on-year increase measured for 2012. This is partly due to initiatives encouraging shareholder engagement, such as the UK Stewardship Code and the UCITS IV Directive. It also increased in markets that have been less open to non-domestic shareholders, coinciding with the removal of certain practices as required by the EU Shareholder Rights Directive.
 - Progress in increasing the detailed disclosure of vote results continued in 2012, with the highest ever recorded and more markets improving than those regressing.
 - Overall average dissent reached its highest level in the last five years, returning to the peak seen in 2009.
 - Remuneration-related proposals and the approval of share plans remain the most contentious items, recording the highest dissent on average for 2012.
 - The number of companies with shareholder proposals on the ballot has increased this year, however the proportion of 'successful' proposals has declined.
-



2012 Voting Results Report: Europe

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2012 Voting Results Report: Europe

1 Introduction

This is the fifth year in which ISS has published its European Voting Results Report, with the aim of capturing current and longer-term trends surrounding voting at shareholder meetings in Europe¹. Over the past five years the global economy has experienced unprecedented levels of distress, with this year being no exception. The wave of bleak economic news and resulting pessimism that plagued global financial markets in 2011, firmly quashing any optimism that had lingered in the previous year, only deepened in 2012. Although the slowdown has continued to be global in terms of its impact, Europe drew the most attention with fears over the ability of its members to maintain their sovereign debt.

Conversely, 2012 was the year in which the public discourse claimed that investors, previously branded by commentators as 'absentee landlords', had stirred from their slumber and embraced their influence to enforce change in the management of the companies they owned. This was concluded after the departure of several CEOs following shareholder pressure, alongside several high profile protest votes at widely held blue chip stocks. This was soon encapsulated by the press as the year of the 'Shareholder Spring'.

This supposed awakening amongst shareholders is not out of step with behaviour that has been encouraged by authorities in Europe in recent years. This year marked the second anniversary of the introduction of the UK Stewardship Code, which encourages signatories to engage with the

companies they hold and have a clear and informed voting strategy at shareholder meetings. Shortly after, the Dutch investor body Eumedion released similar guidance in 2011. Such behavior has also been encouraged by the implementation of the UCITS (Undertakings for Collective Investment in Transferable Securities) Directive IV in 2011. Under this Directive, funds must request their investment manager to adopt, apply and maintain an effective and adequate strategy for the exercise of voting rights (in line with stated investment principles) and then provide a summary of its enactment.

A milestone was also passed in 2012 in terms of the implementation of the Shareholder Rights Directive. Although adopted in 2007, it has taken up until this year to be fully implemented in all of the EU Member States. The aim of the Directive was to reduce barriers to cross-border voting by removing obstructive local practices as well as increasing transparency by requiring the disclosure of vote results. As concluded in previous reports, although the barriers to cross-border voting still exist, these developments are considered to be significant.

In analysing these topics this year, key emphasis is placed upon Europe wide trends across the last five years, continuing the focus directed into three specific areas; the disclosure of vote results; turnout at shareholder meetings and the level of dissent. The sample used covers shareholder meetings that took place between 1 January and 30 June over the past five years in 17 key European markets (see Appendix 2 for further details on the methodology).

¹ For the purposes of this study "Europe" is defined as the following markets: Austria (AT), Belgium (BE), Denmark (DK), Finland (FI), France (FR), Germany (DE), Greece (GR), Ireland (IE), Italy (IT), Luxembourg (LU), the Netherlands (NL), Norway (NO), Portugal (PT), Spain (ES), Sweden (SE), Switzerland (CH) and the United Kingdom (GB).



2012 Voting Results Report: Europe

2 Voting Results Disclosure

Although it is common for companies to publish whether resolutions are passed, it is not always possible to obtain the proportion of the company's shares that were voted at the meeting (turnout), or what level of support may have been received for each proposal. The disclosure of this information is considered to be essential in aiding shareholders to understand the implications of their voting stance at individual meetings and gauge overall shareholder sentiment on different proposals.

Encouraged by the EU Shareholder Rights Directive, this is the first year in which the Directive has been implemented in all national jurisdictions in Europe and a degree of disclosure is legally required in all of the markets surveyed (other than Switzerland). The Directive states that companies should disclose the number of votes cast and how they were voted, although there is an exception in certain Member States whereby if no shareholder requests a full account of the voting or it is considered 'relevant' by the Company, it is sufficient to only disclose if resolution are passed or rejected.

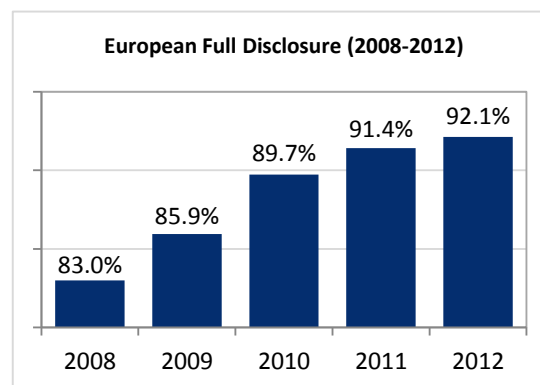


Table 1: Implementation of the Shareholder Rights Directive in the markets surveyed

	Disclosure of voting results (after meeting)	Disclosure of turnout	Disclosure if passed/rejected	Disclosure of number of shares cast For/Against/Abstain	Notes
AT	2 days	No	Yes	Yes	
BE	15 days	Yes	Yes	Yes	
DK	14 days	No*	No*	No*	*Only required to the extent that this is relevant for the outcome of the vote.
FI	14 days	No*	Yes	No*	*Only required if a full count of votes was carried out at the meeting.
FR	15 days	Yes	Yes	Yes	
DE	7 days	No*	Yes	No*	*Only required if requested by a shareholder.
GR	5 days	Yes	Yes	Yes	
IE	15 days	No*	Yes	No*	*Only required if requested by a shareholder.
IT	5 days	Yes	Yes	Yes	
LU	15 days	Yes	Yes	Yes	
NL	15 days	Yes	Yes	Yes	
NO**	15 days	No*	No*	No*	*Only required to the extent that this is relevant for the outcome of the vote. **Not in EU but inside of the Directive.
PT	15 days	Yes	Yes	Yes	
ES	5 days	Yes	Yes	Yes	
SE	14 days	No	Yes	No*	*Only the outcome of the vote is required.
CH**	n/a	n/a	n/a	n/a	**Not in EU and outside of the Directive.
GB	16 days	Yes	Yes	Yes*	*Only need to be disclosed when a poll is conducted.



2012 Voting Results Report: Europe

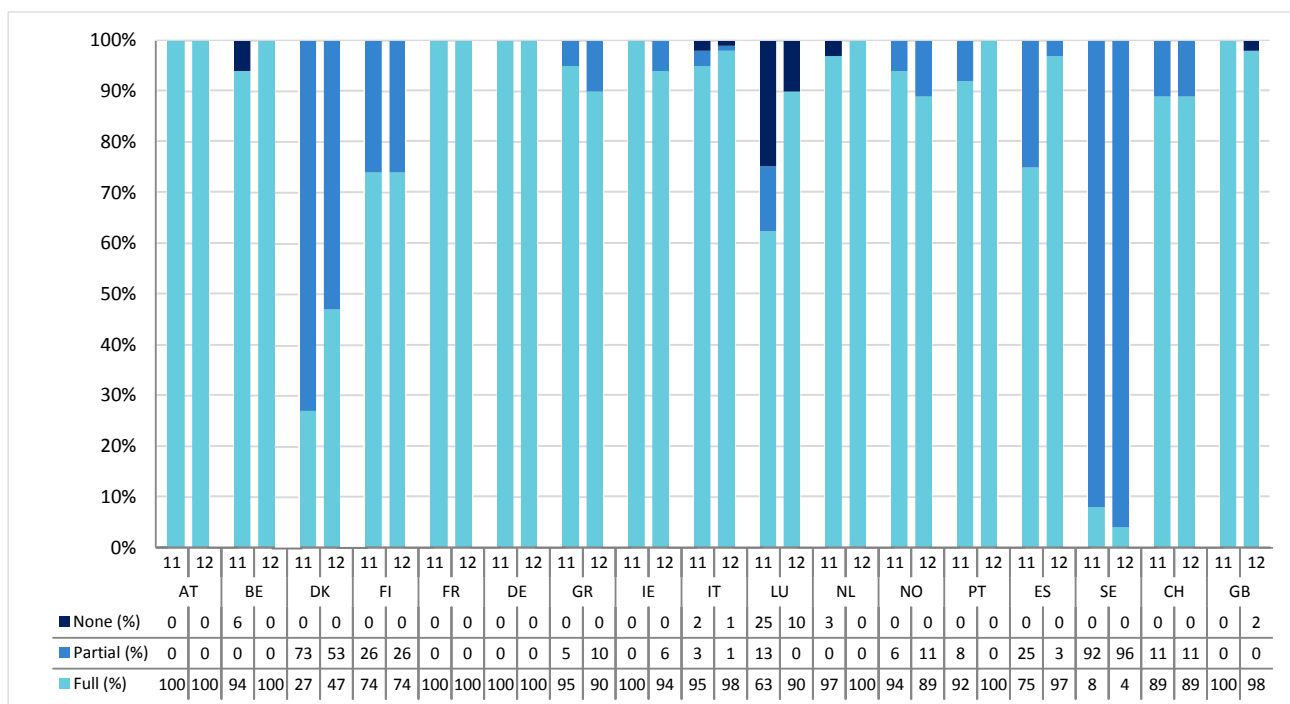
Despite the Directive's aim to harmonise disclosure across the Member States, the following figures demonstrate that the degree of disclosure regarding participation at shareholder meetings continues to widely differ across European markets.

Table 2: Disclosure of voter turnout for 2011 and 2012

	AT	BE	DK	FI	FR	DE	GR	IE	IT
2012	5.9%	100%	68.8%	100%	98.1%	56.8%	100%	94.1%	91.3%
2011	5.9%	94.4%	60.0%	100%	96.2%	60.3%	100%	100%	84.8%
	LU	NL	NO	PT	ES	SE	CH	GB	Europe
2012	80.0%	100%	100%	100%	100%	29.6%	88.9%	98.1%	87.8%
2011	62.5%	97.5%	100%	83.3%	87.5%	34.6%	77.8%	100%	86.4%

At the same time, the graph below shows that the degree of disclosure regarding vote results also continues to differ across European markets. Companies in certain markets provide full details on the voting outcomes per item, with the number of votes pledged in favour and against each item at each shareholder meeting (defined as **full disclosure**). However, issuers in other markets disclose information on a more sporadic basis or refrain from doing so altogether. In some cases the information that is made available is limited to whether items were accepted or rejected, rather than providing a complete breakdown of the voting results (defined as **partial disclosure**).

Graph 1: Voting results disclosure for 2011 and 2012





2012 Voting Results Report: Europe

Key Observations

- It is largely common place that companies within Europe publicly disclose which resolutions are passed, however fewer disclose the level of meeting turnout and the actual number of votes cast for and against a proposal.
- There has been a steady increase in the level of full disclosure of vote results and meeting attendance in the European sample over the past five years, with both areas of disclosure improving in more markets than those regressing in 2012. The implementation of the Shareholder Rights Directive into local company law has been steadily rolled out across those countries in the EU since 2008, which in turn is considered to one of the main forces behind the steady increase in the level of full disclosure since that time.
- However, it is disappointing to note that only six out of the 17 markets surveyed achieved full disclosure for all the companies in those markets and that the level of disclosure is declining in four other countries.
- As noted in previous years, there remain two markets that distinguish themselves with comparatively low levels of voting results disclosure, namely the two Nordic markets Denmark and Sweden. This is due to these markets only implementing into local law the minimum requirements of the Shareholder Rights Directive concerning the disclosure of voting results. Similar to last year, the Austrian market stands out as having the lowest level of disclosure regarding turnout.

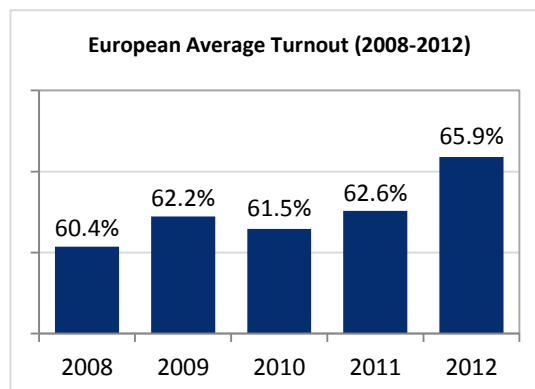


2012 Voting Results Report: Europe

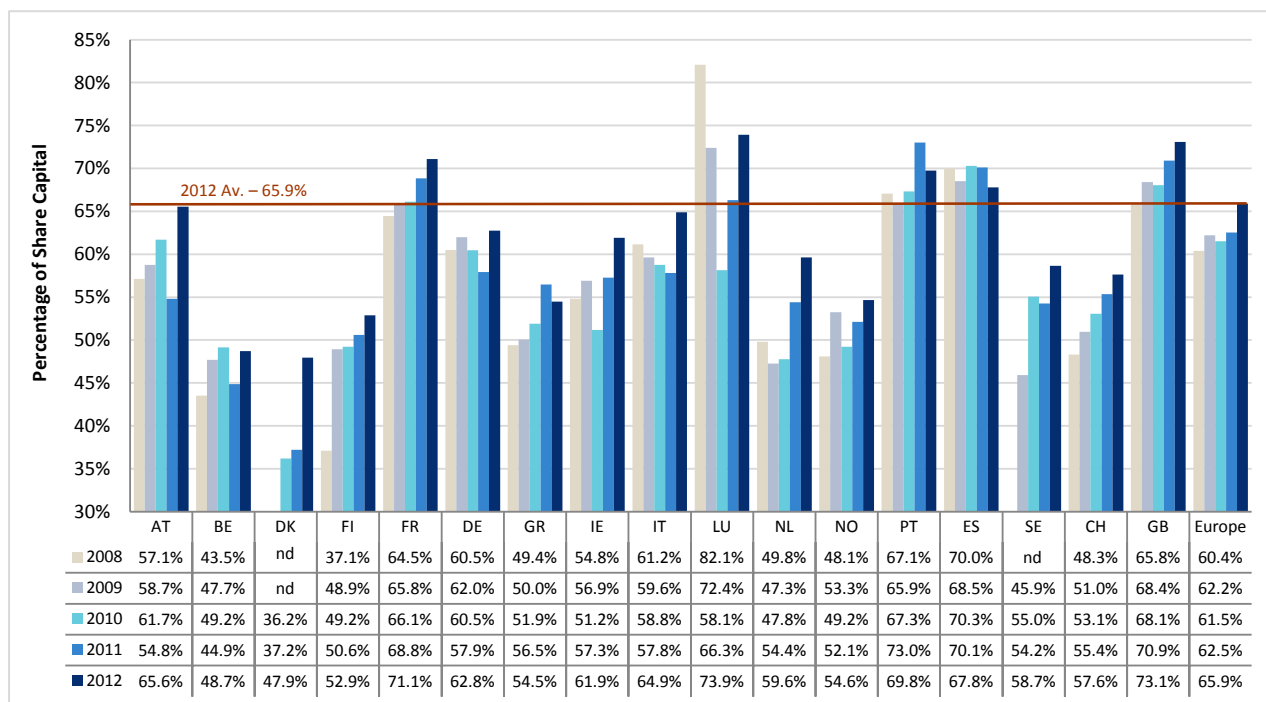
3 Voter Turnout

The level of turnout is defined as the proportion of a company's issued shares that are voted and reflects the extent to which shareholders participated at meetings for the companies in which they are invested.

In prior reports, ISS outlined a series of variables, such as restrictive record dates, that increased the cost and decreased the effectiveness of participating at meetings. As a result, this inhibited cross-border voting across European markets. The roll out of the Shareholder Rights Directive, which was adopted by the EU in 2007, was intended to eliminate many of these obstructions; however, it had previously been noted that delays in its implementation had led to a slowing in momentum in increasing participation since its adoption. As referenced above, 2012 marks the first year in which the Directive has been implemented into all of the markets surveyed, which could account in part, for the surge in turnout this year. At the same time as reducing the resistance to participating, the trend in encouraging shareholders to actively exercise their voting rights has continued, with the introduction of the Stewardship Code in the UK in 2010, the 'Best Practice Guidance on Engaged Share-Ownership' released by the Dutch investor body Eumedion in 2011 and the recent implementation of the UCITS IV Directive.



Graph 2: Voter turnout at shareholder meetings (2008-2012)





2012 Voting Results Report: Europe

Key Observations

- Europe wide turnout has significantly increased since last year to the highest level recorded in the past five years.
- In 2012 turnout increased in 14 out of the 17 countries sampled. This included several markets where it has previously been more difficult for non-domestic shareholders to vote, such as Italy which replaced its share-blocking system with a record-date system in order to comply with the Shareholder Rights Directive.
- There were also similar increases in less obstructive markets, reflecting overall rising shareholder participation encouraged by the UK Stewardship Code and other guidelines encouraging active share ownership, as well as the implementation of the UCITS IV Directive. In particular it is noted that the UK recorded its highest ever turnout over the past five years at over 73%.



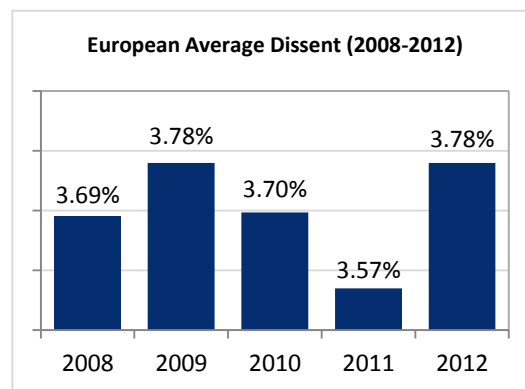
2012 Voting Results Report: Europe

4 Voting Results

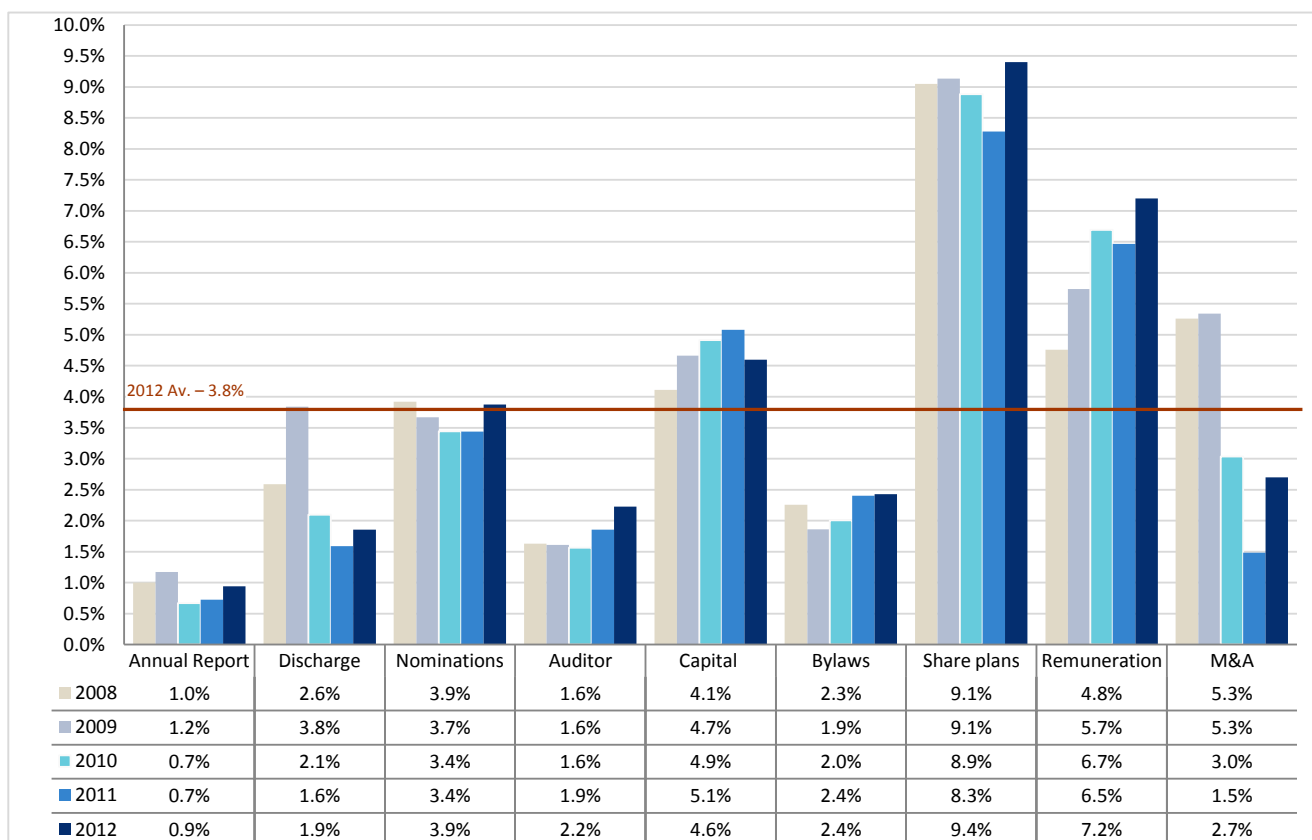
Although analysing disclosure is useful in assessing the significance that the market attaches to the outcomes of voting, and examining the level of turnout provides a picture of the motivation and ease by which shareholders can vote, the results themselves demonstrate the main purpose of the shareholders' vote, whereby they make their views known.

Accordingly, one key focus in examining voting results is the level of dissent registered, which shows the percentage of shares voted that are not in line with the management recommendation (typically votes either against or abstaining). This statistic is considered to be an effective way of gauging whether or not shareholders find management proposals to be aligned with their own interests and preferences.

Trends in dissent indicate a development in both shareholder sentiment on different corporate governance themes and local market practice. Accordingly the examination of dissent is sorted by both theme and country.



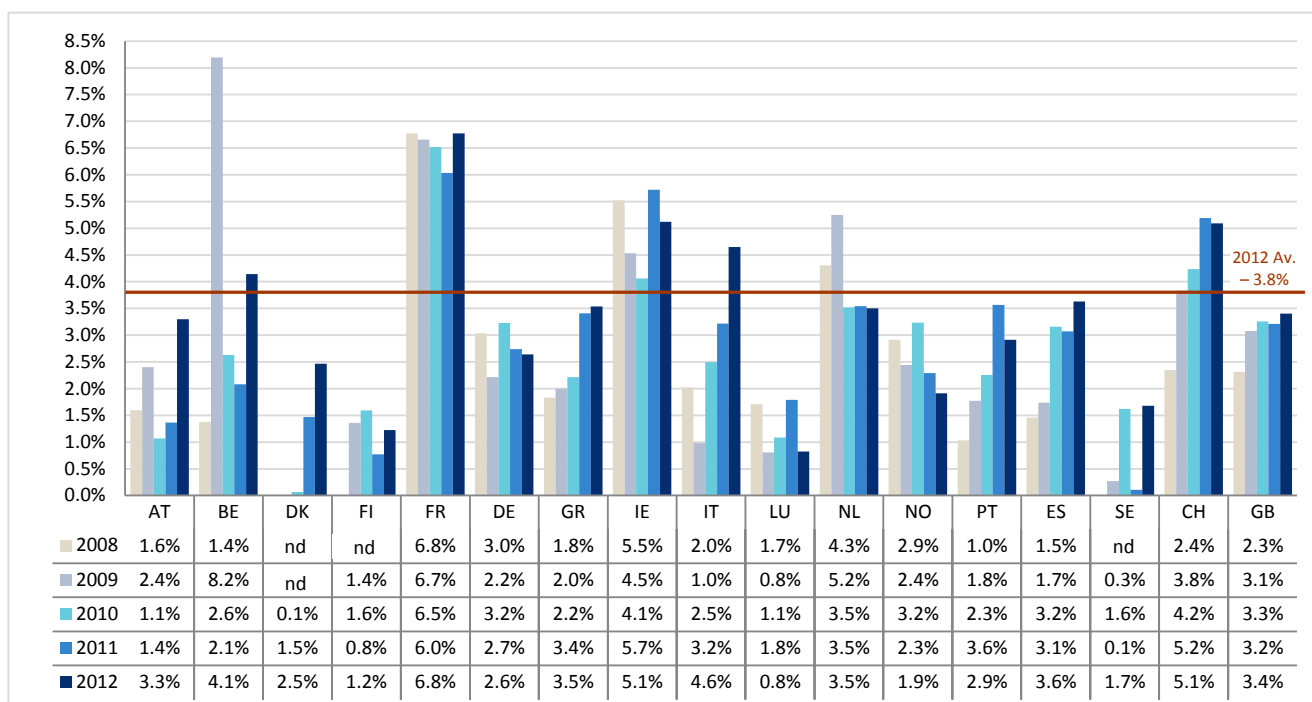
Graph 3: European dissent by theme (2008-2012)





2012 Voting Results Report: Europe

Graph 4: European dissent by country (2008-2012)



Key Observations

- The level of Europe wide dissent has returned to the previous peak of 3.78% last recorded in 2009 and for 2012 it has increased in the majority of individual markets compared to the previous year.
- This is also reflected for each type of proposal, with there being a year-on-year increase in the level of dissent across all themes, other than capital-related proposals. For the discharge of directors, director nominations and M&A activity, this was contrary to the longer-term trend, whereby these areas had seen a decline in dissent over the previous four years.
- In keeping with previous years, voting on remuneration proposals and the introduction of share plans on average registered the highest level of overall dissent.
- In Belgium, Italy, and Spain the level of dissent increased significantly, mainly due to the introduction of mandatory say-on-pay resolutions for certain companies in these markets, which tend to receive greater levels of dissent.
- France consistently registers a higher level of dissent than other countries in the European sample.



2012 Voting Results Report: Europe

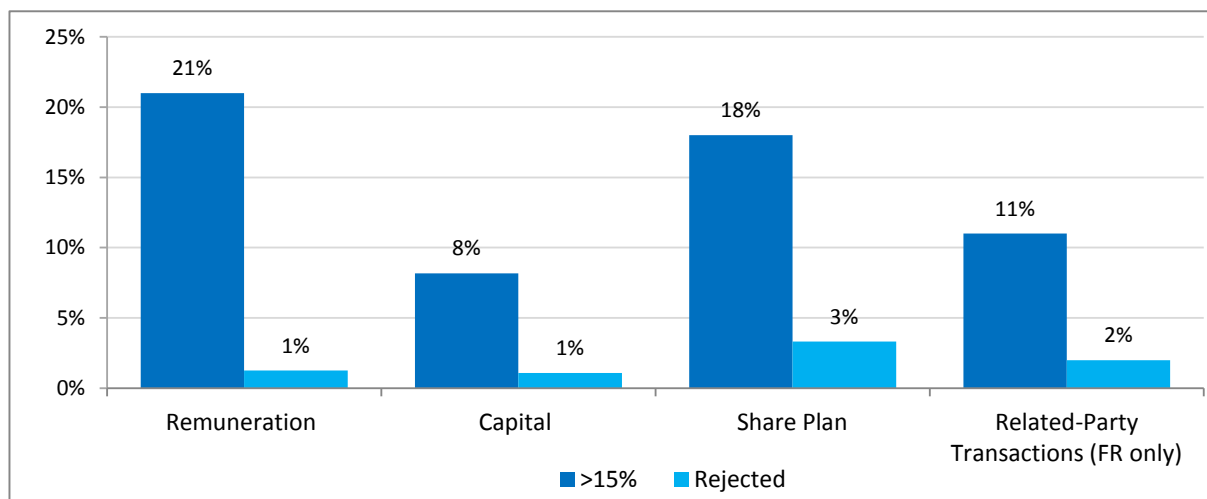
In addition to the level of dissent registered by shareholders, it is also worth analysing those management proposals where the opposition was so significant that they were actually rejected.

Table 3: Number of management proposals rejected in 2012 (and 2011)

	Annual Report	Discharge	Nomination	Audit	Capital	Articles	Share Plans	Remuneration	M&A	Other	Total
AT	0	0	0	0	1(0)	0	0	0	0	0	1(0)
BE	0	0	0	0	0(2)	0	0	0	0	0	0(2)
DK	0	0	0	0	0	0	0	0	0	0(2)	0(2)
FI	0	0	0	0	0	0	0	0	0	0	0(0)
FR	0	0	15(3)	0	14(10)	0	14(18)	2(0)	0	3(3)	48(34)
DE	0	0	0	0	0	0(1)	0	0(1)	0	0	0(2)
GR	0	0	0	0	0	0	0	0	0	0	0(0)
IE	0	0	2(1)	0	2(1)	1(1)	0	1(0)	0	0(1)	6(4)
IT	0(1)	0	0	1(0)	0(1)	1(1)	0	1(0)	0	0	3(3)
LU	0	0	0	0	0	0	0	0	0	0	0(0)
NL	0	0(1)	0	0	0	0(1)	0	0	0	1(0)	1(2)
NO	0	0	0	0	0	0	0	0	0	0(1)	0(1)
PT	2(0)	0	0	0	0(1)	0(1)	0	0	0	1(0)	3(2)
ES	0	1(0)	0	0	0	0	0	0	0	0	1(0)
SE	0	0	0	0	0	0	0	0	0	0	0(0)
CH	0	0(1)	0	1(0)	0	0	1(0)	0	0	0	2(1)
GB	0	0	0(2)	0	5(3)	0(1)	0	4(2)	0	1(2)	10(10)
Europe	2(1)	1(2)	17(6)	2(0)	22(18)	2(6)	15(18)	8(3)	0	6(9)	76(63)

Finally there are certain themes that typically receive a high level of dissent (greater than 15% of votes cast), but not to the extent that they are routinely rejected. Below demonstrates the proportion of those types of resolutions that are most commonly rejected that receive high dissent, namely remuneration-related proposals and capital authorisations, as well as related party transactions in France.

Graph 5: Percentage of proposals per theme with high dissent (2012)





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Key Observations

- The number of management proposals rejected has increased this year. Items relating to remuneration, director nominations, capital authorisations and the approval of share plans are typically the most rejected by shareholders.
- In line with previous years, more proposals are rejected in France than all of the other markets combined. This is partly due to proposals in this market relating to the election of representatives of employee shareholders and introduction of employee share plans, which are management proposals, but do not actually receive the endorsement of management. At the same time, excluding these types of proposals, France nevertheless remains one of the markets with the highest level of proposals rejected.
- Across the entire European sample proposals concerning remuneration received the highest proportion of accepted proposals that also registered a high level of dissent (greater than 15% of votes cast). Related-party transactions in France are most likely to be accepted with significant dissent due to the nature and typical content of these proposals.

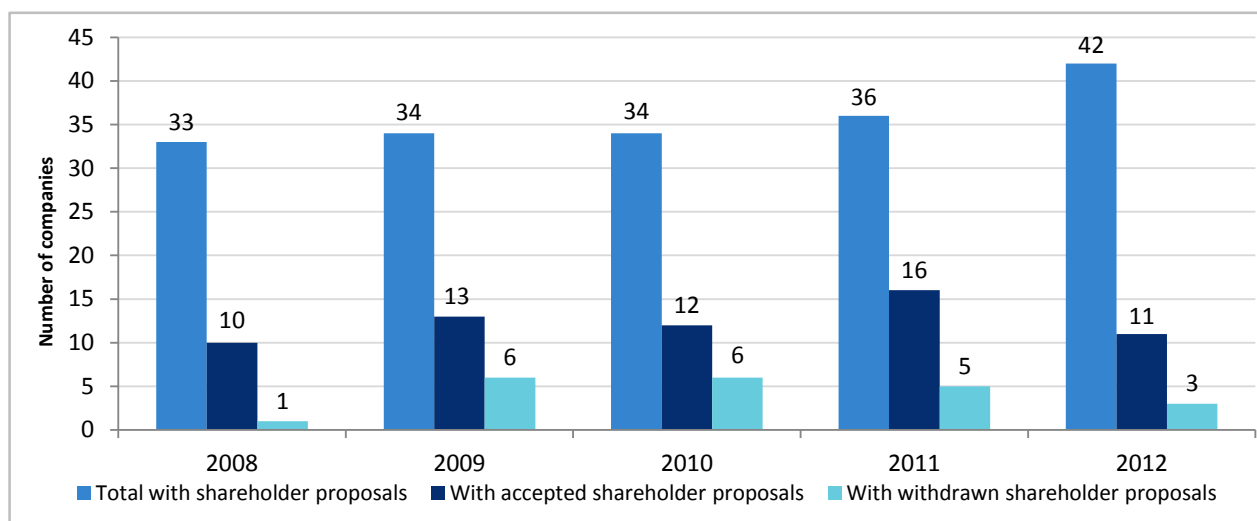


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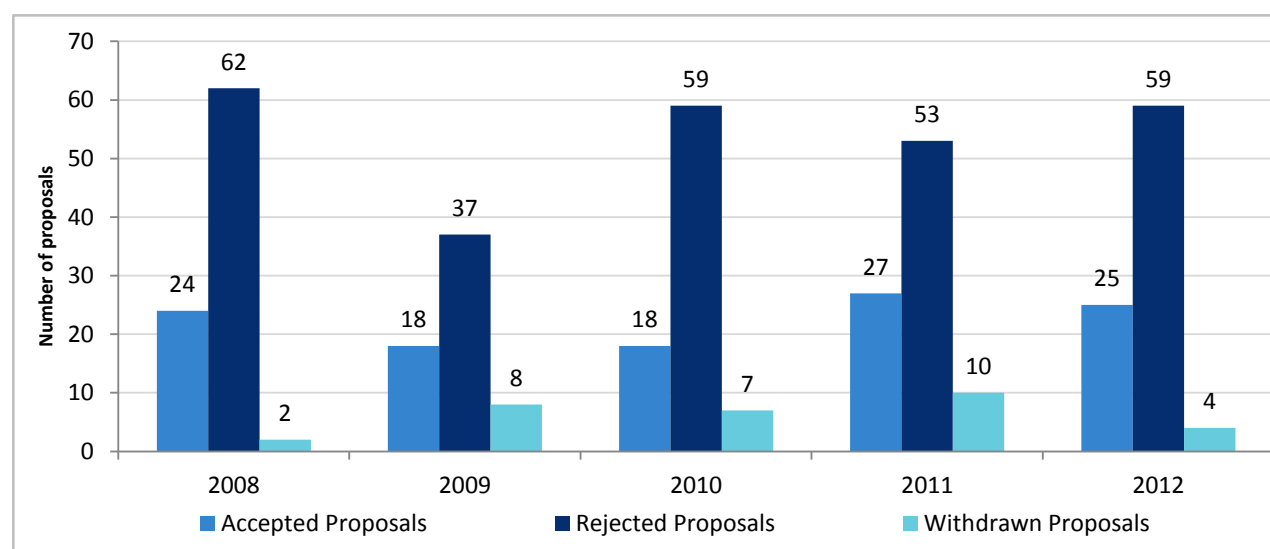
5 Shareholder proposals

As an alternative approach to not supporting company proposals, investors can adopt a strategy of putting forward their own proposals as a method of expressing their dissent against established management practices. Consistent with previous years, given that in certain markets several shareholder proposals can be lodged at one particular company meeting, the analysis below focuses on the number of companies that had shareholder proposals on the ballot as well as the number of proposals themselves.

Graph 6: Number of companies with shareholder proposals (2008-2012)



Graph 7: Number of accepted, rejected and withdrawn shareholder proposals (2008-2012)





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Table 4: Number of companies with shareholder proposals per sector for 2012 (and 2011)

Financials	Industrials	Energy	Materials	Utilities
14 (11)	5 (9)	6 (5)	1 (3)	2 (3)
Telecommunications Services	Information Technology	Health Care	Consumer Staples	Consumer Discretionary
5 (2)	3 (1)	1 (1)	2 (1)	2 (0)

Table 5: Number and type of shareholder proposals per sector (2012)

	Election/ Board	Remuneration	Shareholder Rights	Environ- mental	Human Rights	Liability/ Discharge	Other	TOTAL
Financials	17	2	1	0	0	3	7	30
Industrials	1	0	0	1	0	0	3	5
Energy	1	2	1	4	6	0	1	15
Materials	1	0	0	0	0	0	0	1
Utilities	1	1	0	0	0	0	0	2
Telecommunications Services	8	0	2	0	1	0	7	18
Information Technology	3	0	0	0	0	0	0	3
Health Care	1	0	0	0	0	0	0	1
Consumer Staples	0	3	0	0	0	2	1	6
Consumer Discretionary	2	0	4	0	0	0	1	7
TOTAL	35	8	8	5	7	5	20	88

Key Observations

- The number of companies with shareholder proposals on their ballots has increased this year. However, the number of 'successful' proposals (those that are either accepted or withdrawn) has decreased this year.
- As in previous years, there were more companies in the Financial sector that had shareholder proposals on their ballot than any other sector, followed by the Industrials, Energy and Telecommunications Service sectors.
- The most common theme of those resolutions proposed by shareholders in 2012 was the election of directors and other board-related matters. Proposals relating to either environmental matters or human rights were almost exclusively limited to the Energy sector, which is not unexpected given the nature of their business.



6 Conclusions

Voting Results Disclosure

- There has been a steady increase in the level of disclosure of vote results and meeting attendance in the European sample over the past five years, with 2012 being no exception as disclosure in both areas improved in more markets than those regressing. However, it is disappointing to record that in only six markets have all companies in the indexes sampled disclosed their results in full.
- Improvement in this area is considered to be a key stepping stone in encouraging shareholders to participate at meetings as it helps them to understand the implications of their voting stance at individual meetings, as well as gauging overall market sentiment on different proposals.

Voter Turnout

- Europe wide turnout has increased over the previous five years with 2012 exhibiting the highest level of participation recorded.
- In 2012 turnout increased in 14 out of the 17 countries sampled. This included several markets that have previously been more difficult for non-domestic shareholders to vote in, such as Italy which replaced its share-blocking system with a record-date system in order to comply with the EU Shareholder Rights Directive.
- There were also similar increases in less obstructive markets, reflecting overall rising shareholder participation as encouraged by the UK Stewardship Code, Eumedion guidance and the implementation of the UCITS IV Directive. In particular it is noted that the UK recorded its highest turnout over the past five years.

Voting Results

- The level of Europe wide dissent has returned to the peak of last recorded in 2009 and 2012 saw a year-on-year increase in dissent across all themes, other than capital-related proposals.
- Remuneration-related proposals and the approval of share plans remain the most contentious items recording the highest dissent on average for 2012. This is consistent with high profile shareholder protests highlighted in coverage of the 'Shareholder Spring'.
- The number of company proposals defeated has also increased this year, with capital authorisations and share plans being the most rejected items.
- The number of companies with shareholder proposals on their ballots has significantly increased for 2012, however the number of successful proposals has declined.



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1 Appendix: Detailed Voting Results

The various items of business that appear on a meeting agenda establish the specific parameters for the decisions to be taken, with each item typically reflecting a separate issue related to some aspect of a company's governance.

For reference purposes, the specific details regarding the number of proposals, average dissent and vote outcome for each type of proposals in each market surveyed are given below.

Type of proposal	2011	2012
Annual Report .etc	1,425 (12.6%)	1,445 (13.0%)
Discharge	621 (5.5%)	705 (6.3%)
Nominations	3,195 (28.2%)	3,582 (32.1%)
Auditor	866 (7.6%)	824 (7.4%)
Capital authorisations	1,923 (17.0%)	1,755 (15.7%)
Bylaws	665 (5.9%)	388 (3.5%)
Share plans	487 (4.3%)	361 (3.2%)
Remuneration policy	728 (6.4%)	785 (7.0%)
M&A	50 (0.4%)	38 (0.3%)
Shareholder proposals	90 (0.8%)	89 (0.8%)
Other	1,295 (11.4%)	1,172 (10.5%)
TOTAL	11,330	11,144

Table 6: Voting Results - Annual report, dividend, and profit allocation

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	17	99.9%	0.0%	0.1%	0.1%	17	0	0
BE	24	99.8%	0.1%	0.1%	0.2%	24	0	0
DK	30	97.8%	0.0%	2.2%	2.2%	30	0	0
FI	47	100.0%	0.0%	0.0%	0.0%	47	0	0
FR	328	99.4%	0.4%	0.2%	0.6%	328	0	0
DE	74	99.7%	0.2%	0.1%	0.3%	74	0	0
GR	28	98.7%	0.0%	1.3%	1.3%	28	0	0
IE	24	99.8%	0.1%	0.1%	0.2%	24	0	0
IT	136	98.4%	0.8%	0.7%	1.6%	136	0	0
LU	25	99.8%	0.0%	0.1%	0.2%	25	0	0
NL	77	98.9%	0.0%	1.1%	1.1%	77	0	0
NO	22	99.6%	0.3%	0.0%	0.4%	22	0	0
PT	45	96.6%	3.3%	0.1%	3.4%	42	2	1
ES	89	98.6%	0.5%	0.9%	1.4%	89	0	0
SE	52	100.0%	0.0%	0.0%	0.0%	52	0	0
CH	40	98.5%	1.2%	0.3%	1.5%	40	0	0
GB	387	99.3%	0.2%	0.5%	0.7%	387	0	0
Europe	1445	99.1%	0.4%	0.4%	0.9%	1442	2	1



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Table 7: Voting Results - Discharge

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	45	99.8%	0.1%	0.2%	0.2%	45	0	0
BE	61	99.3%	0.4%	0.3%	0.7%	61	0	0
DK	4	99.7%	0.1%	0.2%	0.3%	4	0	0
FI	23	99.8%	0.2%	0.0%	0.2%	23	0	0
FR	2	99.1%	0.9%	0.0%	0.9%	2	0	0
DE	362	98.2%	1.4%	0.4%	1.8%	362	0	0
GR	17	97.0%	0.8%	2.2%	3.0%	17	0	0
IE	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
IT	1	99.9%	0.0%	0.0%	0.1%	1	0	0
LU	13	99.3%	0.5%	0.1%	0.7%	13	0	0
NL	83	97.0%	1.8%	1.2%	3.0%	83	0	0
NO	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
PT	21	99.8%	0.1%	0.0%	0.2%	20	0	1
ES	24	94.1%	0.7%	5.2%	5.9%	23	1	0
SE	26	99.0%	0.1%	0.9%	1.0%	26	0	0
CH	17	94.5%	4.2%	1.3%	5.5%	17	0	0
GB	6	99.1%	0.9%	0.0%	0.9%	6	0	0
Europe	705	98.1%	1.2%	0.7%	1.9%	703	1	1

Table 8: Voting Results - Nominations

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	22	93.9%	5.7%	0.4%	6.1%	22	0	0
BE	50	94.5%	5.2%	0.3%	5.5%	50	0	0
DK	117	96.0%	1.7%	2.3%	4.0%	117	0	0
FI	47	99.7%	0.3%	0.0%	0.3%	47	0	0
FR	429	90.5%	9.1%	0.4%	7.5%	412	15	1
DE	149	95.0%	4.6%	0.3%	5.0%	149	0	0
GR	16	91.0%	5.3%	3.7%	9.0%	16	0	0
IE	153	93.7%	5.3%	1.0%	6.2%	150	2	1
IT	163	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LU	49	99.4%	0.5%	0.1%	0.6%	49	0	0
NL	109	98.0%	1.0%	1.0%	2.0%	106	0	3
NO	105	99.2%	0.7%	0.0%	0.8%	105	0	0
PT	22	93.0%	2.6%	4.4%	7.0%	21	0	1
ES	120	92.7%	4.9%	2.4%	7.3%	118	0	2
SE	26	97.0%	3.0%	0.1%	3.0%	26	0	0
CH	82	95.6%	3.3%	1.1%	4.4%	82	0	0
GB	1923	97.1%	1.8%	1.1%	2.9%	1919	0	4
Europe	3582	91.5%	3.0%	1.0%	3.7%	3389	17	12



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Table 9: Voting Results – Audit-related

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	17	98.9%	1.0%	0.0%	1.1%	17	0	0
BE	5	99.8%	0.1%	0.1%	0.2%	5	0	0
DK	16	99.7%	0.1%	0.2%	0.3%	16	0	0
FI	46	98.7%	1.3%	0.1%	1.3%	46	0	0
FR	68	97.9%	1.8%	0.3%	2.1%	68	0	0
DE	74	98.6%	1.2%	0.1%	1.4%	74	0	0
GR	18	94.1%	3.1%	2.8%	5.9%	18	0	0
IE	15	98.8%	1.0%	0.2%	1.2%	15	0	0
IT	50	97.2%	1.4%	1.5%	2.8%	49	1	0
LU	7	99.7%	0.1%	0.2%	0.3%	7	0	0
NL	28	98.2%	0.5%	1.2%	1.8%	28	0	0
NO	19	99.8%	0.1%	0.0%	0.2%	19	0	0
PT	5	99.9%	0.1%	0.0%	0.1%	5	0	0
ES	28	98.4%	0.5%	1.1%	1.6%	28	0	0
SE	33	100.0%	0.0%	0.0%	0.0%	33	0	0
CH	21	93.8%	5.2%	1.0%	6.2%	20	1	0
GB	374	97.8%	1.2%	1.0%	2.2%	374	0	0
Europe	824	98.0%	1.3%	0.7%	2.0%	822	2	0

Table 10: Voting Results - Capital authorisations

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	18	95.0%	3.2%	1.8%	5.0%	17	1	0
BE	43	95.6%	4.3%	0.1%	4.4%	43	0	0
DK	18	n/a	n/a	n/a	n/a	18	0	0
FI	28	99.5%	0.5%	0.0%	0.5%	28	0	0
FR	486	92.2%	7.6%	0.2%	7.8%	472	14	0
DE	79	95.1%	4.4%	0.2%	4.9%	79	0	0
GR	6	99.7%	0.0%	0.3%	0.3%	6	0	0
IE	54	95.4%	3.8%	0.8%	4.6%	52	2	0
IT	79	94.4%	4.6%	1.0%	5.6%	79	0	0
LU	9	99.1%	0.7%	0.1%	0.9%	9	0	0
NL	124	94.9%	4.6%	0.5%	5.1%	124	0	0
NO	36	97.0%	2.8%	0.2%	3.0%	36	0	0
PT	46	99.2%	0.6%	0.2%	0.8%	43	0	3
ES	57	96.2%	3.0%	0.8%	3.8%	57	0	0
SE	25	99.8%	0.2%	0.0%	0.2%	25	0	0
CH	10	98.4%	1.2%	0.4%	1.6%	10	0	0
GB	636	96.7%	2.4%	0.9%	3.3%	631	5	0
Europe	1754	94.2%	4.2%	0.6%	4.7%	1729	22	3



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Table 11: Voting Results - Amendments to articles of association

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	16	98.9%	1.1%	0.0%	1.1%	16	0	0
BE	22	98.7%	1.3%	0.0%	1.3%	22	0	0
DK	11	99.8%	0.1%	0.1%	0.2%	11	0	0
FI	3	100.0%	0.0%	0.0%	0.0%	3	0	0
FR	69	94.3%	5.7%	0.0%	5.7%	69	0	0
DE	31	99.2%	0.7%	0.1%	0.8%	31	0	0
GR	9	99.3%	0.1%	0.6%	0.7%	9	0	0
IE	18	92.7%	7.2%	0.1%	7.3%	17	1	0
IT	32	96.9%	2.5%	0.5%	3.1%	31	1	0
LU	8	99.7%	0.0%	0.3%	0.3%	8	0	0
NL	12	98.1%	1.2%	0.7%	1.9%	12	0	0
NO	11	99.6%	0.3%	0.1%	0.4%	11	0	0
PT	15	96.3%	2.6%	1.1%	3.7%	15	0	0
ES	84	99.0%	0.2%	0.7%	1.0%	84	0	0
SE	3	100.0%	0.0%	0.0%	0.0%	3	0	0
CH	5	99.3%	0.4%	0.3%	0.7%	5	0	0
GB	39	98.0%	0.8%	1.3%	2.0%	39	0	0
Europe	388	97.5%	2.0%	0.4%	2.5%	386	2	0

Table 12: Voting Results - Share incentive plans

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	3	96.6%	3.4%	0.1%	3.4%	3	0	0
BE	13	72.5%	26.6%	0.9%	27.5%	13	0	0
DK	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
FI	1	99.6%	0.4%	0.0%	0.4%	1	0	0
FR	162	87.4%	12.3%	0.2%	12.2%	147	14	1
DE	1	97.8%	2.1%	0.2%	2.2%	1	0	0
GR	5	93.9%	4.9%	1.2%	6.1%	5	0	0
IE	7	95.6%	2.7%	1.6%	4.4%	7	0	0
IT	43	92.6%	6.1%	1.3%	7.4%	43	0	0
LU	4	89.1%	10.1%	0.7%	10.9%	4	0	0
NL	6	96.1%	3.5%	0.4%	3.9%	5	0	1
NO	9	91.8%	8.2%	0.0%	8.2%	9	0	0
PT	5	99.8%	0.2%	0.0%	0.2%	3	0	2
ES	15	94.5%	4.7%	0.8%	5.5%	15	0	0
SE	36	95.2%	4.8%	0.0%	4.8%	36	0	0
CH	1	62.1%	34.9%	3.0%	37.9%	0	1	0
GB	50	95.6%	3.8%	0.7%	4.4%	49	0	1
Europe	361	90.5%	9.0%	0.5%	9.4%	341	15	5



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Table 13: Voting Results – Remuneration Report / Policy

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	11	99.9%	0.1%	0.0%	0.1%	11	0	0
BE	29	93.9%	4.9%	1.1%	6.1%	29	0	0
DK	22	99.5%	0.4%	0.1%	0.5%	22	0	0
FI	23	100.0%	0.0%	0.0%	0.0%	23	0	0
FR	91	85.5%	13.7%	0.8%	14.5%	89	2	0
DE	27	93.2%	6.2%	0.6%	6.8%	27	0	0
GR	18	96.7%	0.3%	3.0%	3.3%	18	0	0
IE	12	92.8%	6.9%	0.4%	7.2%	11	1	0
IT	130	92.5%	6.1%	1.4%	7.5%	128	1	1
LU	9	98.9%	0.6%	0.6%	1.1%	9	0	0
NL	13	91.8%	8.1%	0.2%	8.2%	13	0	0
NO	60	96.4%	3.3%	0.3%	3.6%	60	0	0
PT	22	98.3%	0.5%	1.3%	1.7%	21	0	1
ES	49	93.6%	4.7%	1.7%	6.4%	49	0	0
SE	38	90.6%	9.4%	0.0%	9.4%	38	0	0
CH	15	81.7%	16.3%	2.0%	18.3%	15	0	0
GB	216	89.1%	8.1%	2.8%	10.9%	212	4	0
Europe	785	91.7%	6.8%	1.4%	8.3%	775	8	2

Table 14: Voting Results - M&A

	#	FOR	AGAINST	ABSTAIN	Dissent	Accepted	Rejected	Withdrawn
AT	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
BE	3	nd	nd	nd	nd	nd	nd	nd
DK	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
FI	1	98.2%	0.5%	1.3%	1.8%	1	0	0
FR	2	92.5%	7.5%	0.0%	7.5%	2	0	0
DE	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
GR	3	100.0%	0.0%	0.0%	0.0%	3	0	0
IE	1	99.7%	0.1%	0.1%	0.3%	1	0	0
IT	7	99.2%	0.5%	0.3%	0.8%	7	0	0
LU	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NL	0	0.0%	0.0%	0.0%	0.0%	0	0	0
NO	1	100.0%	0.0%	0.0%	0.0%	1	0	0
PT	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
ES	7	100.0%	0.0%	0.0%	0.0%	7	0	0
SE	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
CH	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a
GB	13	98.3%	1.3%	0.4%	1.7%	7	0	0
Europe	38	98.7%	1.0%	0.3%	1.3%	29	0	0



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Table 15: Voting Results - Shareholder proposals

	#	FOR	AGAINST	ABSTAIN	Accepted	Rejected	Withdrawn
AT	3	73.2%	26.8%	0.0%	2	0	1
BE	0	n/a	n/a	n/a	n/a	n/a	n/a
DK	5	0.0%	99.9%	0.1%	0	5	0
FI	3	89.4%	10.6%	0.0%	3	0	0
FR	21	71.2%	26.9%	1.9%	15	5	0
DE	9	1.1%	98.9%	0.0%	0	9	0
GR	1	91.1%	8.5%	0.4%	1	0	0
IE	0	n/a	n/a	n/a	n/a	n/a	n/a
IT	12	19.8%	75.4%	4.9%	2	8	2
LU	0	n/a	n/a	n/a	n/a	n/a	n/a
NL	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NO	5	5.8%	92.6%	1.6%	0	5	0
PT	1	84.1%	0.0%	15.9%	1	0	0
ES	4	0.1%	50.7%	49.3%	0	4	0
SE	22	n/d	n/d	n/d	1	20	1
CH	0	n/a	n/a	n/a	n/a	n/a	n/a
GB	3	8.9%	85.1%	6.1%	0	3	0
Europe	89	36.7%	58.2%	5.1%	25	59	4



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Table 16: Management proposals rejected in the 2012 sample

Company	Country	Theme	Resolution	FOR	AGAINST	ABSTAIN
Conwert Immobilien Invest SE	AT	Capital	Approve Creation of EUR 426.8 Million Pool of Capital without Preemptive Rights	64.2%	35.9%	0.0%
Cap Gemini	FR	Audit	Renew Appointment of Pierre Hessler as Censor	42.8%	57.1%	0.1%
Cap Gemini	FR	Audit	Renew Appointment of Geoff Unwin as Censor	43.7%	56.3%	0.0%
Altran Technologies	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights Under Item 17	65.6%	34.4%	0.0%
CFAO	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights	58.9%	41.1%	0.0%
Ingenico SA	FR	Capital	Authorize Issuance of Equity or Equity-Linked Securities without Preemptive Rights up to Aggregate Nominal Amount of EUR 15 Million	58.1%	41.9%	0.1%
Ingenico SA	FR	Capital	Approve Issuance of up to 20 Percent of Issued Capital Per Year for a Private Placement, up to Aggregate Nominal Amount of EUR 15 Million	64.6%	35.4%	0.0%
Ingenico SA	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights under Items 21 and 22 Above	57.5%	42.5%	0.0%
Ingenico SA	FR	Capital	Authorize Board to Increase Capital in the Event of Additional Demand Related to Delegation Submitted to Shareholder Vote Above under Items 20 to 22 Above	61.7%	38.3%	0.0%
Edenred	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights	62.5%	37.5%	0.0%
Legrand	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights	49.0%	51.0%	0.0%
Publicis Groupe SA	FR	Capital	Authorize Board to Set Issue Price for 10 Percent Per Year of Issued Capital Pursuant to Issue Authority without Preemptive Rights	63.7%	36.2%	0.1%
Television Francaise 1 TF1	FR	Other	Approve Transactions with Bouygues	36.3%	63.7%	0.0%
Axa	FR	Nomination	Elect Fewzia Allaouat as Representative of Employee Shareholders to the Board	1.8%	96.5%	1.7%
Axa	FR	Nomination	Elect Olivier Dot Representative of Employee Shareholders to the Board	1.8%	96.5%	1.7%
Axa	FR	Nomination	Elect Herbert Fuchs Representative of Employee Shareholders to the Board	1.8%	96.5%	1.7%
Axa	FR	Nomination	Elect Denis Gouyou Beauchamps Representative of Employee Shareholders to the Board	1.8%	96.5%	1.7%
Axa	FR	Nomination	Elect Thierry Jousset Representative of Employee Shareholders to the Board	2.2%	96.1%	1.7%
Axa	FR	Nomination	Elect Rodney Koch Representative of Employee Shareholders to the Board	1.8%	96.5%	1.7%
Axa	FR	Nomination	Elect Emmanuel Rame Representative of Employee Shareholders to the Board	1.3%	97.0%	1.7%
Cap Gemini	FR	Nomination	Elect Carla Heimbigner as Representative of Employee Shareholders to the Board	9.2%	88.7%	2.0%
Schneider Electric SA	FR	Nomination	Elect Manfred Brill as Representative of Employee Shareholders to the Board	24.0%	67.0%	9.0%
Schneider Electric SA	FR	Nomination	Reelect Claude Briquet as Representative of Employee Shareholders to the Board	24.0%	66.9%	9.1%
Schneider Electric SA	FR	Nomination	Elect Thierry Jacquet as Representative of Employee Shareholders to the Board	25.9%	65.0%	9.1%
Air France KLM	FR	Other	Approve Auditors' Special Report on Related-Party Transactions	19.4%	78.8%	1.8%



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Publicis Groupe SA	FR	Other	Allow Management Board to Use All Outstanding Capital Authorizations in the Event of a Public Tender Offer or Share Exchange Offer	51.6%	48.3%	0.1%
Safran	FR	Other	Approve Severance Payment Agreement with Jean-Paul Herteman	44.0%	55.3%	0.7%
Safran	FR	Other	Approve Additional Pension Scheme Agreement with the CEO and Vice CEOs	43.1%	56.4%	0.5%
Altran Technologies	FR	Share Plan	Approve Employee Stock Purchase Plan	50.0%	49.9%	0.0%
Areva	FR	Share Plan	Approve Employee Stock Purchase Plan	14.5%	85.5%	0.0%
Arkema	FR	Share Plan	Authorize up to 2.5 Percent of Issued Capital for Use in Stock Option Plan	61.5%	38.5%	0.0%
Arkema	FR	Share Plan	Authorize up to 3 Percent of Issued Capital for Use in Restricted Stock Plan	63.1%	36.9%	0.0%
Carrefour	FR	Share Plan	Authorize up to 0.5 Percent of Issued Capital for Use in Stock Option Plan	66.3%	32.4%	1.3%
Carrefour	FR	Share Plan	Authorize up to 1 Percent of Issued Capital for Use in Restricted Stock Plan	66.5%	31.2%	2.3%
Ingenico SA	FR	Share Plan	Authorize up to 2 Percent of Issued Capital for Use in Stock Option Plan	58.2%	41.8%	0.0%
Ingenico SA	FR	Share Plan	Authorize up to 5 Percent of Issued Capital for Use in Restricted Stock Plan	56.0%	44.0%	0.0%
Eurofins Scientific SE	FR	Share Plan	Approve Employee Stock Purchase Plan	21.0%	79.0%	0.0%
Faurecia	FR	Share Plan	Approve Employee Stock Purchase Plan	13.2%	86.8%	0.0%
PPR	FR	Share Plan	Approve Employee Stock Purchase Plan	28.5%	71.4%	0.1%
Rubis	FR	Share Plan	Authorize up to 5 Percent of Issued Capital for Use in Stock Option Plan	65.8%	34.2%	0.0%
Technicolor	FR	Capital	Subject to Approval of Items 8, 9, 11 to 14, Approve Issuance of Shares without Preemptive Rights up to EUR 72,3 Million Reserved for Specific Beneficiaries	3.6%	95.6%	0.8%
Technicolor	FR	Capital	Subject to Approval of Items 8 to 11, 13 and 14 , Authorize Issuance of Equity or Equity-Linked Securities with Preemptive Rights up to Aggregate Nominal Amount of EUR 26,9 Million	3.6%	95.6%	0.8%
Technicolor	FR	Nomination	Subject to Execution of Authorization Granted Under Item 10, Elect Norma Corio as Director	3.1%	89.6%	7.3%
Technicolor	FR	Nomination	Subject to Execution of Authorization Granted Under Item 10, Elect David Walsh as Director	9.7%	89.5%	0.8%
Technicolor	FR	Capital	Subject to Approval of Items 8, 9, 10, 12, 13 and 14, Eliminate Preemptive Rights Pursuant to Item 10 Above in Favor of Jesper Cooperatief UA	3.6%	95.5%	0.8%
Technicolor	FR	Capital	Subject to Approval of Items 8 to 12 and 14, Approve Terms of Reserved Issuance	3.6%	95.6%	0.8%
Technicolor	FR	Capital	Subject to Approval of Items 10 to 13 Cancellation of the Authorizations Granted under Items 8 to 11 Approved by the June 8, 2011 AGM	3.6%	95.6%	0.8%
Virbac	FR	Share Plan	Approve Employee Stock Purchase Plan	25.1%	74.9%	0.0%
Aer Lingus Group plc	IE	Articles	Amend Articles Re: Receipt of Resolutions for General Meetings	56.2%	43.8%	0.0%
Aer Lingus Group plc	IE	Capital	Authorise Issuance of Equity or Equity-Linked Securities without Preemptive Rights	58.4%	41.6%	0.0%
Dragon Oil plc	IE	Capital	Authorize Issuance of Equity or Equity-Linked Securities without Preemptive Rights	33.6%	66.4%	0.1%
Independent News & Media plc	IE	Nomination	Elect J. Osborne as Director	22.0%	59.2%	18.8%
Independent News & Media plc	IE	Nomination	Reelect D. Buggy as Director	41.5%	58.5%	0.0%



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Independent News & Media plc	IE	Remuneration	Approve Remuneration Report	43.8%	56.1%	0.1%
Impregilo SpA	IT	Articles	Amend Articles Re: 20 and 29 (Board-Related)	60.6%	39.3%	0.1%
Impregilo SpA	IT	Remuneration	Approve Remuneration Report	48.3%	51.5%	0.1%
PARMALAT SPA	IT	Remuneration	Approve Internal Auditors' Remuneration	42.8%	49.8%	7.4%
Mediq NV	NL	Other	Approve Continuation of Large Company Regime	18.3%	40.4%	41.3%
Brisa Auto-Estrada de Portugal S.A	PT	AR	Approve Allocation of Income	28.6%	71.4%	0.0%
Brisa Auto-Estrada de Portugal S.A	PT	AR	Approve Allocation of Reserves	28.6%	71.4%	0.0%
REN - Redes Energeticas Nacionais, SGPS, S.A.	PT	Other	Approve Suspension of Voting on Item 9	21.7%	73.0%	5.3%
Bankia SA	ES	Discharge	Approve Discharge of Directors	2.8%	3.9%	93.4%
Swisscom AG	CH	Audit	Request for Special Audit	0.1%	92.8%	7.1%
UBS AG	CH	Share Plan	Increase Pool of Conditional Capital by CHF 15.1 Million for Issuance of Stock Options and Other Equity Awards to Employees, Senior Executives, and Members of the Board	62.1%	34.9%	3.0%
Anglo Pacific Group plc	GB	Capital	Authorise Issue of Equity without Pre-emptive Rights	66.7%	31.4%	1.9%
easyJet plc	GB	Capital	Authorise Issue of Equity without Pre-emptive Rights	57.3%	42.6%	0.1%
Mitchells & Butlers plc	GB	Capital	Authorise Market Purchase	37.4%	31.3%	31.3%
Mondi plc	GB	Capital	Authorise Board to Issue Shares for Cash up to a Maximum of Five Percent of Issued Share Capital	64.6%	35.4%	0.0%
Mondi plc	GB	Capital	Authorise Issue of Equity without Pre-emptive Rights	63.4%	36.6%	0.0%
easyJet plc	GB	Other	Authorise the Company to Call EGM with Two Weeks' Notice	55.9%	44.0%	0.1%
Aviva plc	GB	Remuneration	Approve Remuneration Report	41.4%	49.4%	9.1%
Cairn Energy plc	GB	Remuneration	Approve Remuneration Report	29.9%	60.9%	9.2%
Centamin plc	GB	Remuneration	Approve Remuneration Report	35.9%	61.0%	3.1%
WPP plc	GB	Remuneration	Approve Remuneration Report	40.2%	59.1%	0.8%



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2 Appendix: Methodology

Overview

This study aims to examine voting turnout, disclosure and dissent at shareholder meetings in 17 key markets throughout Europe. The data gathered for this report have been taken from both annual as well as extraordinary general meetings held between 1 January and 30 June over the last five years, the peak of proxy voting season at companies listed in Europe.

Market coverage

The report has singled out key markets in Europe with established indices at their respective national stock exchanges. Additionally, the countries included in the scope of the study are core markets for which ISS has established its position as an expert in voting research and governance rating services. The countries and corresponding indices included in this

AT	ATX 20	LU	LuxX
BE	BEL 20	NL	AEX 25 & AMX 25
DK	OMXC 20	NO	OBX 25
FI	OMX-H 25	PT	PSI 20
FR	SBF 120	ES	IBEX 35
DE	DAX 30 & MDAX 50	SE	OMXS 30
GR	ASE 20	CH	SMI 20
IE	ISEQ General	GB	FTSE 350
IT	FTSE MIB & MIDCAP		

study are presented as follows:

Coverage gaps

The total number of companies in the 2012 sample is 767, which is lower than the number of companies in the indices above. This difference is partly due to the fact that some companies in these indices have a different country of incorporation than the index, and therefore were excluded. In some cases, companies in the indices listed here have been omitted from the sample because they have not held a general meeting during the time span dealt with in this study.

Voter turnout

When calculating voter turnout, we have taken the total number of votes cast/shares represented at a given shareholder meeting as a percentage of total voting rights as well as a percentage of shares outstanding. This provision allows us to capture any distortions resulting from double voting rights or multiple voting rights.

Dissent levels

When considering the dissent rate against certain items, we have taken into account all votes not cast in line with management proposals. Under this definition, dissent includes not only outright votes against a proposal but also any abstentions from voting.

Data irregularities

During the data collection phase, researchers had to confront irregularities and variations in the level of disclosure specific to each market. In the case of Ireland, for instance, most companies disclose voting results only for those votes cast by proxy. In other markets, hardly any companies disclose a breakdown of voting results by each issue. Rather, companies in these countries simply report on whether or not a given item was accepted or rejected.

It is also worth noting that in several markets, shareholders regularly proposed items at the meeting itself. As a result, proxy voters were only able to decide on proposals in the initial meeting notice and not on the additional business raised by shareholders at the general meetings. For this study, ISS has taken the final agenda including any shareholder proposals raised at the time of the meeting.



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3 Appendix: Legal Requirements overview

	QUORUM				(a) Shareholding to call a meeting	Are abstain votes a valid vote?	Record date (prior to meeting)	Disclosure of voting results (after meeting)
	Structural quorum		Functional quorum		(b) Shareholding to file an item			
	Ordinary business	Extraordinary business	Ordinary business	Extraordinary business				
AT	No quorum required	No quorum required	50%+1	75%	(a) 5% and ownership for at least 3 months prior to the submission of the meeting convocation (lower ceilings may be set in the bylaws) (b) 5% and ownership for at least 3 months prior to the submission of the meeting convocation (lower ceilings may be set in the bylaws)	Yes	10 days (cal)	2 days
BE ¹	No quorum required	1 st call: 50% 2 nd call: no quorum required	50%+1	50%+1	(a) 20% (b) 3%	Yes	14 days (cal)	15 days
DK ²	No quorum required	No quorum required	50%+1	50%+1	(a) 10% (lower ceilings may be set in the bylaws) (b) One share	Yes	7 days (cal)	14 days
FI ³	No quorum required	No quorum required	50%+1	50%+1	(a) 10% (lower ceilings may be set in the bylaws) (b) One share	Yes	8 days (bus)	14 days
FR	1 st call: 20% 2 nd call: none	1 st call: 25% 2 nd call: 20%	50%+1	66.7%	(a) 5% (b) From 0.5% to 5% depending on market capitalisation (maximum 20 days after the release of the meeting notice or 25 days prior to the meeting, depending if the meeting notice was released before or after 45 days prior to the meeting itself)	Yes ⁴	3 days (bus)	15 days
DE	No quorum required	No quorum required	50%+1	75%	(a) 5% (b) 5% or EUR 500,000	No	21 days (cal)	7 days
GR	1 st call: 20% 2 nd call: no quorum required	1 st call: 67% 2 nd call: 50% 3 rd call: 33% 4 th call: 20%	50%+1	66.7%	(a) 5% (b) 5% (15 days prior to the meeting)	Yes	5 days (cal)	5 days
IE	Three members, if not differently stated in the bylaws	Three members, if not differently stated in the bylaws	50%+1	75%	(a) 5% of votes (b) 3% of votes	No	2 days (bus)	15 days

1 Belgian law requires a special majority of 75% of the votes cast in case of amendment of articles of association, limitation of pre-emptive rights, mergers and spin-off; 75% of each category of securities is required when modifying rights attached to these securities. For some items, a majority of 4/5 of the votes cast is required: change the corporate purpose, approve share repurchase proposals, transformation of the company. In the event of the winding-up of the company if its net assets are below 1/4 of the company's registered capital, a majority of 1/4 of the votes cast is required. It should be noted that the 5 percent shareholding requirement to file an item is not a legal requirement (which sets it at 20%), it is however a recommendation by the Belgian corporate governance code.

2 Bylaws amendments, mergers, and resolutions to waive shareholders' preferential rights need to be approved by 2/3 of the votes cast, provided that less than 25% vote against it. The following proposals require nine-tenths of votes cast as well as share capital represented at the meetings: that right to dividend is limited to the benefit of other shareholders or companies employees, that the transferability of shares is limited, that shares are subject to an obligatory redemption, that voting ceilings are established, that shareholders do not receive the same relative ownership in a spun-off company as in the mother company.

3 Bylaws amendments, mergers, and resolutions to waive shareholders' preferential rights need to be approved by 2/3 of the votes cast and shares represented at the meeting. If there are classes of shares with different voting rights, mergers must be approved by 2/3 of shares present at the meeting within each share class. Further restrictions apply in case of proposals which may have an impact on shareholder rights.

4 Certain French Companies on the SBF 120 Index have the statute of European company ("SE"), thereby at these companies' general meetings, the "Abstain" vote cannot be considered valid pursuant to Article 58 of the EU 2157/2001 Regulation of October 8, 2001 on the Statute for a European company.



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	QUORUM				(a) Shareholding to call a meeting	Are abstain votes a valid vote?	Record date (prior to meeting)	Disclosure of voting results (after meeting)
	Structural quorum		Functional quorum		(b) Shareholding to file an item			
	Ordinary business	Extraordinary business	Ordinary business	Extraordinary business				
IT	1st call: 50%+1	1st call: 50%+1	50%+1	66.7% of votes cast	(a) 5%	Yes	7 days (bus)	5 days
	2nd call: none required	2nd call: 33.3%			(b) 2.5% (10 days after release of meeting notice)			
		3rd call: 20%						
LU	None required	50%+1	50%+1	66.7% of votes cast	(a) 10%	No	14 days (cal)	15 days
		2nd call: none required			(b) 5% (22 days prior to the meeting)			
NL	None required	None required	50%+1	66.7% if attendance rate is lower than 50%	(a) 10%, if lower amount is not fixed by the bylaws (b) 1% or EUR 50 million, if lower amount is not fixed by the bylaws	Yes	28 days (cal)	15 days
NO ⁵	None required	None required	50%+1	50%+1	(a) 5% (unless lower threshold set in the bylaws) (b) one share	Yes	5 days (bus)	15 days
PT	None required	1st call: 33.3%	50%+1	1st call: 66.67%	(a) 1st call: 66.67%	No	5 days (bus)	15 days
		2nd call: none required		2nd call: 66.67% ⁶	(b) 2nd call: 66.67% ⁶			
ES	1st call: 25%	1st call: 50%	50%+1	1st call: 50%+1	(a) 5%	Yes	5 days (bus)	5 days
	2nd call: none required	2nd call: 25%		2nd call: 66.67%	(b) 5% (5 days within the publication of the meeting notice, and no later than 15 days prior to the meeting)			
SE ⁷	None required	None required	50%+1	50%+1	(a) 10% (unless lower threshold set in the bylaws)	Yes	5 days (bus)	14 days
					(b) One share			
CH	None required	None required	50%+1	66.67% and 50%+1 of the par value of shares represented	(a) 10%	Yes	n/a	n/a
					(b) CHF 1 million holding			
GB	None required	None required	50%+1	50%+1	(a) 5%	No	2 days (bus)	16 days
					(b) 5% or 100 shareholders			

5 Article amendments require two-thirds of votes cast as well as share capital represented at the meeting. Article amendments that reduce a given share class' privileges require support from owners representing two-thirds of the share capital in the affected share class, as well as support from two-thirds of votes cast by shareholders who do not own shares in any other class. The articles of association may provide for stricter majority requirements in these situations. Most proposals that would reduce the right to dividends require support of nine-tenths of share capital represented at the meeting, as well as having the same requirements as for article amendments. This majority requirement is also applicable for proposals to require the company's consent for shares to be transferred between parties, or proposals that would require shareholders to have certain properties. Certain proposals reducing or changing certain shareholder rights require the unanimous support of all shareholders.

6 The quorum falls down to 50%+1 if at least half of the share capital is present at the meeting.

7 Bylaws amendments, mergers, and resolutions to waive shareholders' preferential rights need to be approved by 2/3 of the votes cast. Further limitations apply when reducing or changing certain shareholder rights (2/3 of the votes cast and 90 percent of the share capital represented at the meeting, or even unanimity). The issuance or transfer of shares, subscription rights, or convertible bonds to board members or employees of a listed company require the support of 9/10 of both votes cast and shares represented at the meeting.



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4 Appendix: Say on pay overview

	Approval Type	Frequency	Remarks
AT	n/a	n/a	
BE	Binding*/ Advisory**	Annual	*In 2010 Belgium introduced a binding say-on-pay on severance payments in excess of 12 months' pay, or if motivated by the remuneration committee in excess of 18 months' pay. In the same year a binding say-on-pay was also introduced on any variable pay to independent directors. **As of 2012, companies are requested to implement a yearly advisory say-on-pay for executives' variable pay.
DK	Binding*	When changed**	*There is a legal requirement to obtain shareholder approval for guidelines for incentive pay for executives in listed companies. **If a company has adopted a remuneration policy, it has to be voted on when it is amended.
FI	n/a*	n/a	*Finland does not maintain a mandatory vote on executive pay policies. However the Finnish Code of Corporate Governance recommends that the company shall describe the principles and decision-making process concerning the remuneration policy covering executives.
FR	n/a	n/a	
DE	n/a*	n/a	*Effective from August 2009, a new act allowed companies to introduce an advisory vote on executive remuneration, but it is still voluntary. 15 (2011: 32; 2010: 55) companies voluntarily submitted their remuneration report for shareholder approval in the sample this year.
GR	n/a	n/a	
IE	n/a*	Annual	*Non-mandatory annual advisory ex-post remuneration report vote. 12 (2011: 14; 2010: 7) companies voluntarily submitted their remuneration report for shareholder approval in the sample this year.
IT	Binding*/ Advisory**	Annual	*Shareholder's vote on remuneration reports of financial institutions is binding. **Shareholder's vote on remuneration reports of non-financial institutions is advisory.
LU	n/a*	n/a	*Should a company tables a remuneration report on a meeting agenda as per listing rules, shareholder's vote would be binding.
NL	Binding	When changed	
NO	Binding*/ Advisory**	Annual	*In Norway a general meeting has to adopt a binding vote on the incentive pay part of the executive pay policy if it is share-based or if the grants are linked to the share price development. **The other parts of the executive pay policy are adopted under an advisory vote.
PT	Advisory	Annual	
ES	Advisory	Annual	Law of Sustainable Economy of March 4, 2011 introduced article 61.ter in the Stock Market Law which makes say on pay annual and advisory.
SE	Binding	Annual	
CH	n/a*	n/a	*Annual advisory say on pay has been recommended best practice since 2007. 15 (2011: 15; 2010: 13) companies voluntarily submitted their remuneration report for shareholder approval in the sample this year.
GB	Advisory*	Annual	*Mandatory annual advisory ex-post remuneration report vote.



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O'Leary: State could sell its Aer Lingus stake to Ryanair

By Ann Cahill, Europe Correspondent

Friday, March 30, 2012

Ryanair boss Michael O'Leary said he has been approached by companies interested in buying the State's 25% share in Aer Lingus.

He said he believes Ryanair might end up purchasing the State's holding.

The low-cost airline has a 29.8% stake in the national airline but was refused permission to take it over in 2007 because it would have given it a near monopoly on flights out of the country.

At least two airlines are known to be interested in buying into Aer Lingus — Ethiad from the Middle East and JetBlue from the US. The State hopes to net around €118m from the sale which is part of an agreement with the troika on €3bn worth of state assets.

Mr O'Leary said Ryanair is happy to work with whoever buys the State's share or they could talk to them about selling their stake. "We have ruled out that we will not sell our stake with the Irish Government's, so whoever buys the stake will either have to work with us or buy our stake if they want to get control of it."

He said Ryanair had been approached by about three different airlines and consortia interesting in buying the Government's stake.

"All want to break up Aer Lingus because they want the Heathrow slots or and the trans Atlantic

— the good bits — and don't want the bits that lose money — the flights to the UK and Europe, which lose money because they cannot compete with Ryanair," he said.

TCH Group » ... would be that a sale would result in the break-up of Aer Lingus.

He also believed the sale could be agreed this year, and added, "I would not rule out the possibility that the Government could sell its 25% stake to Ryanair".

Mr O'Leary, at a press conference in Brussels, got involved in a row the Belgian airline SNBrussels is having with the country's main airport at Zaventem over charges.

They have told the government they need a subsidy to compete with Ryanair flying out of Charleroi which is about 50 minutes drive away.

Mr O'Leary advised them to move to Ireland, register their aircraft there, and Irish employment terms and conditions will apply to their workforce.

"There is an EU law that applies to transport workers. Our employees operate on Irish land, you are flying on Irish territory, we pay our taxes in Ireland, the employees get paid in an Irish bank, they pay their taxes they pay their social whatever-it-is in Ireland — what's wrong with that? It's called the EU, at the heart of the EU which is about the free movement of goods and labour," he said.

Low-cost ban dispute

The European Commission hit back at Ryanair claims that it bans employees from using the low-cost airline.

The commission said the problem lay with Ryanair's policy of preventing travel agents from booking flights.

To get around Ryanair's ban on travel agents, the commission refunds employees who book with the airline.

Spokesman Antonio Gravili said: "It is not the case that we ban low-cost carriers. AmEx, the travel agent contracted to arrange employees travel, has it written into their contract that they must offer the best value means of transport.

"AmEx has 70 low-cost carriers in their system . . . but Ryanair does not allow AmEx to book flights, so they are complaining about an obstacle they themselves have created."

The issue arose when the commission invited Michael O'Leary to address a conference on innovation, but said they could not collect him from Charleroi Airport and offered to pay him the cost of an Aer Lingus flight from Dublin and collect him from Zaventem Airport.

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