



**RYANAIR / AER LINGUS MERGER INQUIRY
APPLICATION TO THE COMPETITION AND MARKETS AUTHORITY**

NON-CONFIDENTIAL VERSION

February 12, 2015

CLEARY GOTTlieb STEEN & HAMILTON LLP

RYANAIR / AER LINGUS MERGER INQUIRY

Application to the Competition and Markets Authority

This Application, submitted on behalf of Ryanair to the Competition and Markets Authority (the “CMA”), concerns the *Ryanair/Aer Lingus* Merger Inquiry.

I. SUMMARY

1. The Competition Commission’s Final Report of August 28, 2013 (the “Final Report”), mistakenly concluded that Ryanair’s minority shareholding in Aer Lingus resulted in a substantial lessening of competition (an “SLC”) in the UK. The critical determination in the Final Report concerned the Competition Commission’s erroneous finding that a “*mechanism of particular significance*” resulting in this SLC was that Ryanair’s shareholding prevented Aer Lingus from merging with, being acquired by, or otherwise entering into combinations with other airlines.¹
2. The Competition Commission further found that, although Aer Lingus was keen to pursue a strategy of inorganic growth, other airlines were deterred from combining with Aer Lingus because of Ryanair’s shareholding. This theory of harm was central to the Competition Commission’s decision that a divestment remedy was required,² including because the other theories of harm identified by the Competition Commission could easily have been addressed without the divestiture of any of Ryanair’s shareholding.
3. Ryanair argued strongly before the Competition Commission that these findings were unsubstantiated and incorrect. As will be explained in this Application, events over the past two months have vindicated Ryanair’s view and shown that the theory of harm central to the Competition Commission’s principal finding was wrong.
4. In reaching its conclusion – now shown to be wrong – the Competition Commission relied on submissions by International Consolidated Airlines Group, S.A. (“IAG”) that it did not propose to acquire Aer Lingus and that it would “*not usually contemplate buying a controlling interest in an airline with a significant ongoing minority shareholder.*” The evidence of IAG was especially significant because IAG is one of the three major airline groups in Europe, operates extensively in the UK and Ireland, has substantial resources and network, and is an important competitor to

¹ The Competition Appeal Tribunal (the “CAT”) recognised the significance of this theory of harm, stating: “*The main mechanism relied upon by the CC was in relation to a possible combination.*” *Ryanair v. CMA* [2014] CAT 3, paragraph 159.

² The Competition Commission mistakenly concluded that the only effective remedy to address the impact Ryanair’s shareholding allegedly had on possible combinations with Aer Lingus was a forced divestment of Ryanair’s shares in Aer Lingus, to no more than 5% of the issued share capital.

Ryanair. The competitive and commercial implications of a merger with IAG would therefore be very different from a combination between Aer Lingus and most other airlines.

5. The findings in the Final Report have now been contradicted and disproven by events, which demonstrate conclusively that Ryanair's shareholding in Aer Lingus does not prevent Aer Lingus from merging with, being acquired by, or otherwise entering into combinations with other airlines, and which fatally undermine the lawfulness of the proposed divestment remedy. As the CMA should be aware, IAG has made an approach to acquire Aer Lingus, notwithstanding Ryanair's presence as a minority shareholder. The Aer Lingus Board has issued a statement saying that it is willing to recommend IAG's most recent proposal. Finally, the reaction of the Irish Government to these announcements has confirmed what Ryanair always said (and the Competition Commission dismissed), namely that the Irish Government, and not Ryanair, represented the only obstacle to Aer Lingus' combination with any other airline.
6. These developments are highly significant because they are inconsistent with and fundamentally contradict the mistaken findings reached by the Competition Commission. As set out more fully in this Application, the fact that IAG is now willing to bid for Aer Lingus, and that Aer Lingus is ready to recommend that its shareholders accept that bid, means that:
 - The CMA is obliged to investigate these developments, which have materially changed the environment assessed by the Competition Commission in ways that contradict its conclusions, and to reach a reasoned decision on their implications before imposing remedies on Ryanair – particularly where the remedy in question would be irreversible.
 - Circumstances have changed materially since the Competition Commission published the Final Report in August 2013, meaning that the CMA no longer has the power to impose a divestment remedy.
 - Whatever the CMA's conclusion on whether a divestment remains appropriate, a Final Order in the form currently envisaged (requiring a Trustee to sell Ryanair's shares in a pre-determined manner) would be unworkable. It is highly doubtful whether any Trustee would be prepared to accept the CMA's mandate at this time and, even if it did, it is inconceivable that the mandate could be fulfilled.
7. In short, IAG's announcement, together with the reactions of Aer Lingus and the Irish Government, have comprehensively called into question the robustness and correctness of the conclusions reached by the Competition Commission, along with the "facts" on which they were said to be based, in ways that require a full re-examination of the determinations reached and remedy order in the Final Report. Ryanair is confident that any such re-examination will vindicate its position and cause the CMA to set aside the Competition Commission's findings.

II. THE LEGAL FRAMEWORK

8. Under section 35 of the Act, the CMA must decide what (if any) action should be taken to remedy any SLC it has identified, or any effects flowing from that SLC. It has been clearly established that the CMA's powers under this section require it to impose remedies that are proportionate, *i.e.*, the least onerous remedy that would be effective.³
9. The CMA's powers to impose a remedy are also limited by section 41(3) of the Act. Section 41(3) states that the CMA's decision on remedies must be consistent with the decisions included in the Final Report "*unless there has been a material change of circumstances since the preparation of the report or the CMA otherwise has a special reason for deciding differently.*" Where there has been a material change of circumstances, as in the present case, the CMA must consider whether the remedies identified in the Final Report continue to be reasonable and practicable (for the purposes of section 41(4)). If they are not, the CMA no longer has the power to impose the remedies in question.
10. The CMA's obligation to consider material changes of circumstances – including those which affect its original substantive conclusions – has been recognised in a number of previous cases:
 - The Competition Commission examined whether there had been a material change in circumstances before imposing remedies following its Market Investigation into *BAA*.⁴
 - The CMA investigated whether there had been material changes of circumstances affecting its findings in the *Eurotunnel/Sea France* Merger Inquiry following remittal by the CAT.⁵
 - Most recently, the CAT confirmed in relation to the *Private Healthcare* Market Investigation that, on remittal, the CMA must not only revisit the quashed decisions, but must also "*take account of the impact of any material changes in circumstances upon the decisions that have been made*

³ See, for example, *Tesco v. Competition Commission* [2009] CAT 6, paragraph 137. See also Competition Commission Guidelines on Merger Remedies (CC8), November 2008 (adopted by the CMA Board), paragraph 1.9 ff.

⁴ *Competition Commission*, "BAA Market Investigation: Consideration of possible material changes of circumstances," July 19, 2011.

⁵ *Competition and Markets Authority*, "Eurotunnel/SeaFrance merger inquiry remittal: Final decision on the question remitted to the Competition and Markets Authority by the Competition Appeal Tribunal on 4 December 2013 and consideration of possible material change of circumstances under section 41(3)," June 27, 2014. The consideration of material change of circumstances in this case extended to the finding of an anticompetitive outcome, even though the CMA's original decision was quashed on a question of jurisdiction (*i.e.*, whether the target constituted an "enterprise" for the purposes of the Act).

(and are not disturbed by the quashing order now being made) or future decisions which may be made.”⁶

11. Finally, it is clear from the CAT’s judgment in *Skyscanner* that the CMA must undertake a proper investigation of the evidence and cannot simply dismiss plausible submissions made to it, without first undertaking such an investigation.⁷ Thus, where Ryanair (or any other interested party) raises plausible concerns, the CMA is under a duty to investigate those concerns.
12. Taken together, if there is plausible evidence of a material change of circumstances, the CMA is obliged to carry out a full and proper investigation of that evidence. Where, following investigation, the CMA concludes there has been a material change of circumstances since the Final Report, the CMA may only impose remedies that are necessary and proportionate in light of those changed circumstances.

III. THE MATERIAL CHANGE OF CIRCUMSTANCES

13. On January 26, 2015, IAG announced that it had submitted a revised proposal to make an offer for Aer Lingus.⁸ The Board of Aer Lingus confirmed, in a statement the following day, that it was willing to recommend an offer on the terms proposed.⁹ This followed two earlier approaches by IAG, on December 18, 2014, and January 9, 2015, both of which were rejected by the Board of Aer Lingus.¹⁰
14. On January 27, 2015, IAG issued a statement setting out its intentions for Aer Lingus, saying:

“It is IAG’s intention that under its ownership, Aer Lingus would:

- *operate as a separate business with its own brand, management and operations, continuing to provide connectivity to Ireland, while benefitting from the scale of being part of the larger IAG group;*
- *join the oneworld alliance, of which British Airways and Iberia are key members; and*

⁶ *HCA and others v. CMA* [2014] CAT 23, Ruling of December 23, 2014, paragraph 88(b).

⁷ *Skyscanner v. CMA* [2014] CAT 16, paragraphs 90 to 100.

⁸ See: <http://www.ise.ie/app/announcementDetails.aspx?ID=12226320>.

⁹ See: <http://www.ise.ie/app/announcementDetails.aspx?ID=12227777>.

¹⁰ See: www.londonstockexchange.com/exchange/news/market-news/market-news-detail/12190323.html and <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/12210606.html>.

- *join the joint business that IAG operates over the North Atlantic with American Airlines, leveraging the natural traffic flows between Ireland and the US and the advantageous geographical position of Dublin for serving connecting flows.*

IAG believes that the proposal would secure and strengthen Aer Lingus's brand and long term future within a successful and profitable European airline group, offering significant benefits to both Aer Lingus and its customers.

IAG recognises the importance of direct air services and air route connectivity for investment and tourism in Ireland and intends to engage with the Irish Government in order to secure its support for the transaction.”¹¹

15. A copy of the statements issued by IAG and Aer Lingus are attached at Annex 1.
16. IAG's bids, and the Aer Lingus Board's recommendation, contradict a central plank of the findings in the Final Report, fatally undermining the basis for a forced divestment of Ryanair's shares. The Final Report repeatedly states that Ryanair's minority shareholding in Aer Lingus deters rival airlines from entering into, pursuing, or concluding discussions regarding an acquisition of Aer Lingus. IAG's successive approaches are clear evidence that these fundamental, operative conclusions in the Final Report can no longer be sustained. In particular, the Final Report contains the following statements, which the CMA can no longer rely on in light of IAG's offer:
 - *“Third parties told us that any acquirer of Aer Lingus would be likely to be concerned by Ryanair's minority shareholding. IAG told us that it would not usually contemplate buying a controlling interest in an airline with a significant ongoing minority shareholder.”¹²*
 - *“Ryanair's influence, combined with its incentives as a competitor to Aer Lingus, would create significant execution risk for airlines considering Aer Lingus as a potential partner, and would therefore be likely to deter some airlines from entering into, pursuing, or concluding discussions with Aer Lingus.”¹³*
 - *“Several parties, including Aer Lingus, told us that, in the short to medium term, a transaction involving Aer Lingus and one of the three large*

¹¹ See: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/12227782.html>.

¹² Paragraph 7.30. See also Appendix F, paragraph 22.

¹³ Paragraph 7.34(a).

European carriers (IAG, Air France/KLM and Lufthansa) was relatively unlikely, as they were occupied with recent acquisitions.”¹⁴

- *“We found that as a consequence of its minority shareholding Ryanair would be able to impede another airline from acquiring full control of Aer Lingus, and that its shareholding would be likely to be a significant impediment to Aer Lingus’s ability to merge with, enter into a joint venture with or acquire another airline. This would be likely to act as a deterrent to other airlines considering combining with Aer Lingus. The more significant the transaction being contemplated (all other things being equal), the more likely Ryanair’s shareholding would be to impede—or give Ryanair the ability to prevent—the combination from taking place.”¹⁵*
- *“In reaching our conclusion, we formed the view that the potential for Ryanair’s minority shareholding to impede or prevent Aer Lingus from being acquired by, merging with, entering into a joint venture with or acquiring another airline was of particular significance... We found that absent Ryanair’s shareholding, it was likely that Aer Lingus would have been involved in the period since 2006 or would be involved in the foreseeable future in the trend of consolidation observed across the airline industry through an acquisition, merger or joint venture. By impeding or preventing Aer Lingus from combining with other airlines, Aer Lingus’s ability to increase the scale of its operations and reduce its unit costs would be limited. This would be likely to have reduced or to reduce the effectiveness of the competitive constraint Aer Lingus could impose on Ryanair on routes between Great Britain and Ireland relative to the counterfactual.”¹⁶*
- *“We formed the view that one mechanism of particular significance that would affect Aer Lingus’s commercial policy and strategy was the potential for Ryanair’s minority shareholding to impede or prevent Aer Lingus from being acquired by, merging with, entering into a joint venture with or acquiring another airline. We identified a number of ways in which the minority shareholding might impede or prevent Aer Lingus from combining with another airline, including by acting as a deterrent to other airlines considering combining with Aer Lingus, or by allowing Ryanair to block a special resolution, restricting Aer Lingus’s ability to issue shares (which might be required for a corporate transaction or to optimize its capital structure). We found that absent Ryanair’s shareholding, it was likely that Aer Lingus would have been involved in the period since 2006, or would be involved in the foreseeable future, in the trend of*

¹⁴ Paragraph 7.46.

¹⁵ Paragraph 7.80.

¹⁶ Paragraph 7.127.

consolidation observed across the airline industry. Such consolidation has the potential to provide significant benefits to Aer Lingus by increasing its scale and reducing its unit costs, thus enabling it to become a stronger and more effective competitor with Ryanair in the relevant market relative to the counterfactual.”¹⁷

17. These statements, upon which the Final Report’s conclusions on both the SLC and remedies depend, have been fatally undermined and, in places, flatly contradicted by recent events. Notwithstanding Ryanair’s existing shareholding, IAG has made successive bids to acquire Aer Lingus, something which the Competition Commission concluded would not happen for as long as Ryanair held its existing shareholding. The Competition Commission also relied on IAG’s evidence at the time to support its conclusion that other airlines might also be deterred from taking similar action.
18. There is no suggestion that Ryanair’s shareholding has played (or would play) any part in the prospects of IAG’s attempt to acquire Aer Lingus. To the best of Ryanair’s knowledge, neither IAG nor Aer Lingus has made any statement to this effect, nor is there any basis for doing so. Put bluntly, Ryanair’s position has been entirely irrelevant to the events currently unfolding.
19. In contrast, and consistent with Ryanair’s submissions to the Competition Commission, the position of the Irish Government has appeared critical. Reports suggest that the Irish Government will not sell its shares in Aer Lingus without (as a minimum) a series of assurances as to the future operation of Aer Lingus. IAG has reportedly offered commitments that would allow the Irish Government to retain influence over key strategic decisions after Aer Lingus had been acquired. This not only demonstrates the role of the Irish Government as “king maker” in the context of a possible IAG bid, but also highlights the deterrent effect the Irish Government would likely have on any other airline considering a transaction with Aer Lingus.
20. Since IAG’s bids to acquire Aer Lingus and the Aer Lingus Board’s recommendation are hard facts, they carry significant weight against the speculative assertions and predictions that were submitted to the Competition Commission by Aer Lingus and other airlines during its investigation. Although Ryanair has been denied access to information about many of the airlines that submitted views to the Competition Commission, there is apparently no clear evidence of potential airline combinations being prevented by Ryanair or by the fact of its shareholding. Set against this is the fact that another airline has now repeatedly bid for Aer Lingus and the Aer Lingus Board has recommended that a bid be accepted, notwithstanding Ryanair’s shareholding, and the fact that this approach has been made by IAG, one of the largest airline groups in Europe, with significant activities in the UK and Ireland.
21. If IAG’s attempt to acquire Aer Lingus is ultimately unsuccessful, the CMA will also have to reconsider its mistaken conclusion that the impediment to a merger is Ryanair’s shareholding, rather than other facts (for example, the policy objectives of

¹⁷ Paragraph 7.178.

the Irish Government). On the other hand, if the offer proceeds, this will provide yet more evidence that Ryanair's minority shareholding does not deter potential combinations between Aer Lingus and other airlines. Either way, it is impossible for the CMA to sustain the findings in the Final Report.

IV. A DIVESTMENT REMEDY WOULD BE DISPROPORTIONATE

22. In light of these developments, the CMA must now consider this material change in circumstances and determine what, if any, remedy is necessary and proportionate. This obligation is particularly compelling where the remedy in question (*i.e.*, a forced divestment) would be irreversible. On any reasonable view, the CMA must conclude that the change in circumstance entailed by IAG's bid is a material one.
23. In so doing, the CMA must afford all interested parties, including Ryanair, a fair opportunity to comment on the CMA's reconsideration of its findings and any remedy, including through the publication of provisional findings. Such an approach is necessary to respect Ryanair's rights of defence, and would be consistent with the approach adopted in the *BAA* and *Eurotunnel/SeaFrance* cases.
24. While reserving the right to make further detailed submissions as part of the CMA's process of reconsideration, Ryanair makes the following observations now:
 - The Competition Commission's insistence on a divestment remedy, as opposed to a behavioural remedy, was irrationally motivated by its unjustified concerns regarding Ryanair's shareholding on the likelihood of future combinations involving Aer Lingus. IAG's successive approaches show that this concern was misconceived or, at least, no longer holds true. The other theories of harm in the Final Report are, by the Competition Commission's own admission, more readily addressed by undertakings not to vote Ryanair's shares on certain matters.¹⁸ It follows that a divestment remedy can no longer reasonably be considered necessary or proportionate.
 - The conclusions in the Final Report were based on predictions and hypotheses both about the likelihood of future combinations and Aer Lingus's ability to compete with Ryanair as a minority shareholder. In addition to the IAG bids, the CMA is now able to draw on more than 17 months of real-world evidence and experience following the Final Report to assess the necessity and appropriateness of a divestment remedy against Aer Lingus's actual performance with Ryanair as a minority shareholder (restricted in its voting ability in accordance with the interim order in place). The availability of real evidence in place of predictions

¹⁸ See, for example, Remedies Working Paper, paragraph 37: "*We had fewer concerns about the [Ryanair's remedies] proposals relating to airport slots and voting against pre-emption rights ... which we considered might be effective in restricting Ryanair's ability to prevent Aer Lingus from implementing its strategy in relation to these particular issues.*"

and hypotheses must reasonably be regarded as a material change of circumstances relative to the position at the time of the Final Report.

V. **THE CMA'S ORDER CANNOT BE IMPLEMENTED**

25. As stated, IAG's pursuit of Aer Lingus and the Aer Lingus Board's recommendation to accept IAG's proposed bid constitute a material change of circumstances from the findings in the Final Report. The CMA is, as a minimum, obliged to investigate these new facts and consider their implications for the remedy decision.
26. Whatever the CMA's conclusion on whether a divestment remains appropriate, it would be impossible for the CMA to impose a divestment Order in the form currently envisaged while IAG, and potentially other airlines, are making public offers for Aer Lingus. The CMA's proposed Order would require that a Trustee be appointed to sell approximately 25% of the shareholding in Aer Lingus in a manner prescribed by the CMA. This would involve a dispersal of the shares, or the sale to a purchaser approved by the CMA.¹⁹
27. In circumstances where Aer Lingus continues to be the subject of takeover bids, it is unlikely that any Trustee would be prepared to accept a mandate in the form suggested by the CMA. Even if a Trustee could be found, it will be impossible for the mandate to be fulfilled. There are a number of reasons for this.
 - A Trustee (and, in effect, the CMA, given the need for the Trustee to obtain its consent) could find itself in the invidious position of determining the fate of Aer Lingus; *i.e.*, determining whether Aer Lingus is taken over or not, which of several competing bids is successful, and at what price.
 - The Trustee may, along with the CMA, have to take the decision whether or not to sell Ryanair's shares to IAG (or any other bidder) at a time when Aer Lingus shareholders have not decided whether or not to accept the offer in question.
 - A Trustee would somehow have to balance the obligations and timing under the Irish Takeover Code (for example, the time limits for accepting or rejecting an offer) with the CMA's process for obtaining consent (as well as the overall Divestiture Period).
 - The Trustee would have to fulfil its mandate while also respecting the requirements of EU merger control rules (and potentially other merger control rules). For example, if the proposed acquisition by IAG triggered a lengthy investigation under the EU Merger Regulation, the operation of EU law could prevent the Trustee from selling the shares in a way consistent with the CMA Order.

¹⁹ Ryanair in any event reserves the right to comment on the form of the proposed Final Order if and when it becomes appropriate to do so.

- A Trustee may be reluctant to take responsibility for a significant shareholding in Aer Lingus in circumstances where, in the role envisaged for it by the CMA, it could come into possession of information which would raise insider trading concerns. The Trustee (including its representatives) would be subject to, for example, the UK market abuse regime and the Criminal Justice Act 1993, which contain strict rules against insider dealing with the threat of heavy sanctions for breach. This risk would be exacerbated if the Trustee were engaged while Aer Lingus continues to be the subject of takeover bids.

28. In addition, requiring the divestment of Ryanair's shareholding while Aer Lingus is potentially the subject of a takeover is likely to be create significant obstacles to a successful public bid:

- There would be material difficulties for IAG (or any other bidder) to complete a public bid if it had to acquire shares from a Trustee before the formal offer period. Any shares acquired in this way would be deemed to constitute a separate class of shares from those that are the subject of the bid. That means that any shares that the bidder is required to obtain from the Trustee first would be discounted for the purposes of reaching the shareholder majorities needed to approve a scheme of arrangement. They would similarly be discounted for the purposes of obtaining the majority of shares necessary for the purposes of compulsory acquisition (*i.e.*, for a squeeze out).
- If the bidder were unable to acquire Ryanair's shares from the Trustee, the disposal of those shares to someone else would make it considerably more difficult to assess the risk involved in making an offer. In normal circumstances, bidders are able to make informed decisions about the likely success of an offer at any given price from understanding the existing shareholder register of the target company. In circumstances where a quarter of the company's shares are about to be sold to unknown third parties, it would be difficult to make any reliable assessment.
- Further, in those circumstances, a bidder would be unable to seek usual irrevocable assurances from existing shareholders to sell their shares, increasing the risk profile of making a bid. A bidder would not know who the relevant shareholders are likely to be. Further, if the shares are then dispersed amongst institutional shareholders, it would be more difficult in practice to obtain sufficient irrevocable undertakings to have confidence in proceeding with a bid. Finally, a bidder could have no confidence that new shareholders in the company would be likely to accept an immediate offer for their shares.

29. A more detailed explanation of these matters is set out in Annex 2, which contains an opinion prepared by the Davy Group, a leading provider of wealth management, asset management, capital markets and financial advisory services.²⁰
30. For all of these reasons, it would be impossible for a divestment Order in the form currently envisaged to be executed. This is yet another reason why the CMA must now investigate the change in circumstances since the Final Report, and the implications for its remedy decision.

VI. CONCLUSION

31. IAG's successive attempts to acquire Aer Lingus, and the Aer Lingus Board's recommendation to accept the latest proposed offer, undermine a central plank of the SLC finding in the Final Report and its conclusions on remedies. The CMA is therefore under a duty to conduct a full and proper investigation into this change of circumstances, as it did in *BAA* and *Eurotunnel/SeaFrance*, allowing a proper opportunity for all affected parties to comment, including through the publication of provisional findings. The Act places the CMA under a legal duty to undertake this formal assessment before it imposes remedies. A failure to do so would be procedurally unfair and *ultra vires*, and would result in the CMA imposing an Order that is incapable of being implemented.
32. The CMA now has hard evidence against which to test the predictions and hypotheses in the Final Report. Specifically, the proposed takeover by IAG demonstrates that the Competition Commission was wrong to conclude that a divestment remedy is necessary and proportionate, or that the situation has changed since that finding was made. The CMA must now reconsider the legality of the proposed divestment remedy, in accordance with its duties under the Act in light of these materially changed circumstances, and conclude that a divestment remedy is not required.

* * *

Ryanair would be happy to provide any further information that the CMA would find useful in considering this Application.

²⁰ <http://www.davy.ie/davy-group>

ANNEX 1

Announcements by IAG and Aer Lingus

Company name **Aer Lingus Group PLC**
Headline **Possible Offer Update**

RNS Number : 0894D
Aer Lingus Group PLC
26 January 2015

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION, DIRECTLY OR INDIRECTLY (IN WHOLE OR IN PART) IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION

FOR IMMEDIATE RELEASE

26 January 2015

Aer Lingus Group plc ("Aer Lingus" or the "Company")

ISE: EIL1

LSE: AERL

Possible Offer Update

The Board of Directors of Aer Lingus (the "Board") confirms that it has received a revised proposal from International Consolidated Airlines Group, S.A. ("IAG") which values each Aer Lingus share at €2.55 comprising an all cash offer for the Company of €2.50 per share and a cash dividend of €0.05 per share (the "Revised Proposal"). The Revised Proposal remains conditional on, amongst other things, confirmatory due diligence, the recommendation of the Board of Aer Lingus and the receipt of irrevocable commitments from Ryanair Limited and the Minister for Finance of Ireland to accept the offer.

The Board is considering the Revised Proposal.

This statement is being made by Aer Lingus without the prior agreement or approval of IAG. There can be no certainty that any offer will be made nor as to the terms of any offer. Shareholders are strongly advised to take no action.

For further information please visit www.aerlingus.com or contact:

**Investors &
Analysts**

Declan Murphy Aer Lingus Investor Tel: +353 1 886 2228 
Relations

Media

Declan Aer Lingus Tel: +353 1 886 3662 
Kearney Communications

Goldman Sachs International

Anthony Financial Advisor Tel: + 44 20 7774 1000
Gutman
Eduard van
Wyk
Nick Harper

The directors of Aer Lingus Group plc accept responsibility for the information contained in this announcement relating to Aer Lingus, the Aer Lingus Group, the directors of Aer Lingus and members of their immediate families, related trusts and persons connected with them. To the best of the knowledge and belief of the directors of Aer Lingus (who have taken all reasonable care to ensure that such is the case) the information contained in this announcement is in accordance with the facts and does not omit anything likely to affect the import of such information.

The release, publication or distribution of this announcement in or into certain jurisdictions may be restricted by the laws of those jurisdictions. Accordingly, copies of this announcement and all other announcements relating to the combination are not being, and must not be, released, published, mailed or otherwise forwarded, distributed or sent in, into or from any restricted jurisdiction. Persons receiving such announcements (including, without limitation, nominees, trustees and custodians) should observe these restrictions. Failure to do so may constitute a violation of the securities laws of any such jurisdiction. To the fullest extent permitted by applicable law, the companies involved in the combination disclaim any responsibility or liability for the violations of any such restrictions by any person.

Goldman Sachs International, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority in the United Kingdom, is acting exclusively for Aer Lingus and no one else in connection with the matters referred to in this announcement and will not be responsible to anyone other than Aer Lingus for providing the protections afforded to clients of Goldman Sachs International, or for providing advice in connection with the matters referred to in this announcement.

Under the provisions of Rule 8.3 of the Irish Takeover Rules, if any person is, or becomes, "interested" (directly or indirectly) in 1% or more of any class of "relevant securities" of Aer Lingus, all "dealings" in any "relevant securities" of Aer Lingus (including by means of an option in respect of, or a derivative referenced to, any such "relevant securities") must be publicly disclosed by not later than 3:30 p.m. (Irish time) on the "business day" following the date of the relevant transaction. This requirement will continue until the date on which the Scheme becomes effective or on which the "offer period" otherwise ends. If two or more persons co-operate on the basis of any agreement either express or tacit, either oral or written, to acquire an "interest" in "relevant securities" of Aer Lingus, they will be deemed to be a single person for the purpose of Rule 8.3 of the Irish Takeover Rules. Under the provisions of Rule 8.1 of the Irish Takeover Rules, all "dealings" in "relevant securities" of Aer Lingus by IAG or "relevant securities" of IAG by Aer Lingus, or by any person "acting in concert" with either of them must also be disclosed by no later than 12 noon (Irish time) on the "business day" following the date of the relevant transaction.

A disclosure table, giving details of the companies in whose "relevant securities" "dealings" should be disclosed can be found on the Irish Takeover Panel's website at www.irishtakeoverpanel.ie. "Interests in securities" arise, in summary, when a person has long economic exposure, whether conditional or absolute, to changes in the price of securities. In particular, a person will be treated as having an "interest" by virtue of

the ownership or control of securities, or by virtue of any option in respect of, or derivative referenced to, securities. Terms in quotation marks are defined in the Irish Takeover Rules, which can be found on the Irish Takeover Panel's website.

If you are in any doubt as to whether or not you are required to disclose a "dealing" under Rule 8, please consult the Irish Takeover Panel's website at www.irishtakeoverpanel.ie or contact the Irish Takeover Panel on telephone number +353 1 678 9020; fax number +353 1 678 9289.

This information is provided by RNS
The company news service from the London Stock Exchange

END

OFDUNRURVUAAURR

Close window

Company name **Aer Lingus Group PLC**
Headline **Possible Offer Update**

RNS Number : 1894D
Aer Lingus Group PLC
27 January 2015

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION, DIRECTLY OR INDIRECTLY (IN WHOLE OR IN PART) IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION THERE CAN BE NO CERTAINTY THAT ANY OFFER WILL BE MADE EVEN IF THE PRE-CONDITIONS REFERRED TO ARE SATISFIED OR WAIVED, IN WHOLE OR IN PART

FOR IMMEDIATE RELEASE

27 January 2015

Aer Lingus Group plc ("Aer Lingus" or the "Company")

ISE: EIL1

LSE: AERL

Possible Offer Update

On 26 January 2015, the Board of Directors of Aer Lingus (the "Board") announced that it had received a revised proposal from International Consolidated Airlines Group, S.A. ("IAG") which values each Aer Lingus share at €2.55 comprising an all cash offer for the Company of €2.50 per share and a cash dividend of €0.05 per share (the "Revised Proposal"). The Revised Proposal remains conditional on, amongst other things, confirmatory due diligence, the recommendation of the Board of Aer Lingus and the receipt of irrevocable commitments from Ryanair Limited and the Minister for Finance of Ireland to accept the offer, all of which may be waived in whole or in part by IAG.

IAG has indicated that it would only proceed with its third proposal with an indication from the Board of Aer Lingus that it would be willing to recommend the financial terms of the Revised Proposal.

Having considered this request, the Board has indicated to IAG that the financial terms are at a level at which it would be willing to recommend, subject to being satisfied with the manner in which IAG proposes to address the interests of relevant parties.

The Board notes IAG's intentions regarding the future of the Company, in particular that Aer Lingus would operate as a separate business with its own brand, management and operations, continuing to provide connectivity to Ireland, while benefitting from the scale of being part of the larger IAG group.

This statement is being made by Aer Lingus with the consent of IAG. There can be no certainty that any offer will be made.

For further information please visit www.aerlingus.com or contact:

Investors & Analysts

Declan Murphy Aer Lingus Investor Relations Tel: +353 1 886 2228 

Media

Declan Kearney Aer Lingus Communications Tel: +353 86 617 2702 

Goldman Sachs International

Anthony Gutman Financial Advisor Tel: + 44 20 7774 1000
Eduard van Wyk
Nick Harper

The directors of Aer Lingus Group plc accept responsibility for the information contained in this announcement relating to Aer Lingus, the Aer Lingus Group, the directors of Aer Lingus and members of their immediate families, related trusts and persons connected with them. To the best of the knowledge and belief of the directors of Aer Lingus (who have taken all reasonable care to ensure that such is the case) the information contained in this announcement is in accordance with the facts and does not omit anything likely to affect the import of such information.

The release, publication or distribution of this announcement in or into certain jurisdictions may be restricted by the laws of those jurisdictions. Accordingly, copies of this announcement and all other announcements relating to the combination are not being, and must not be, released, published, mailed or otherwise forwarded, distributed or sent in, into or from any restricted jurisdiction. Persons receiving such announcements (including, without limitation, nominees, trustees and custodians) should observe these restrictions. Failure to do so may constitute a violation of the securities laws of any such jurisdiction. To the fullest extent permitted by applicable law, the companies involved in the combination disclaim any responsibility or liability for the violations of any such restrictions by any person.

Goldman Sachs International, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority in the United Kingdom, is acting exclusively for Aer Lingus and no one else in connection with the matters referred to in this announcement and will not be responsible to anyone other than Aer Lingus for providing the protections afforded to clients of Goldman Sachs International, or for providing advice in connection with the matters referred to in this announcement.

Under the provisions of Rule 8.3 of the Irish Takeover Rules, if any person is, or becomes, "interested" (directly or indirectly) in 1% or more of any class of "relevant securities" of Aer Lingus, all "dealings" in any "relevant securities" of Aer Lingus (including by means of an option in respect of, or a derivative referenced to, any such "relevant securities") must be publicly disclosed by not later than 3:30 p.m. (Irish time) on the "business day" following the date of the relevant transaction. This requirement will continue until the date on which the Scheme becomes effective or on which the "offer period" otherwise ends. If two or more persons co-operate on the basis of any agreement either express or tacit, either oral or written, to acquire an "interest" in "relevant securities" of Aer Lingus, they will be deemed to be a single person for the

purpose of Rule 8.3 of the Irish Takeover Rules. Under the provisions of Rule 8.1 of the Irish Takeover Rules, all "dealings" in "relevant securities" of Aer Lingus by IAG or "relevant securities" of IAG by Aer Lingus, or by any person "acting in concert" with either of them must also be disclosed by no later than 12 noon (Irish time) on the "business day" following the date of the relevant transaction.

A disclosure table, giving details of the companies in whose "relevant securities" "dealings" should be disclosed can be found on the Irish Takeover Panel's website at www.irishtakeoverpanel.ie. "Interests in securities" arise, in summary, when a person has long economic exposure, whether conditional or absolute, to changes in the price of securities. In particular, a person will be treated as having an "interest" by virtue of the ownership or control of securities, or by virtue of any option in respect of, or derivative referenced to, securities. Terms in quotation marks are defined in the Irish Takeover Rules, which can be found on the Irish Takeover Panel's website.

If you are in any doubt as to whether or not you are required to disclose a "dealing" under Rule 8, please consult the Irish Takeover Panel's website at www.irishtakeoverpanel.ie or contact the Irish Takeover Panel on telephone number +353 1 678 9020 ; fax number +353 1 678 9289 .

This information is provided by RNS
The company news service from the London Stock Exchange

END

OFDUNUURVAAAUR

Close window

Opening up a new world of bond trading...



Regulatory Story

[Go to market news section](#)



International Cons Airlines Group - IAG Statement on possible offer for Aer Lingus
Released 15:25 18-Dec-2014



RNS Number : 2243A
International Cons Airlines Group
18 December 2014

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OR REGULATIONS OF THAT JURISDICTION.

THIS ANNOUNCEMENT IS NOT AN ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER UNDER RULE 2.5 OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES 2013 ("IRISH TAKEOVER RULES") AND THERE CAN BE NO CERTAINTY THAT AN OFFER WILL BE MADE, NOR AS TO THE TERMS ON WHICH ANY OFFER WILL BE MADE.

FOR IMMEDIATE RELEASE

STATEMENT ON POSSIBLE OFFER FOR AER LINGUS PLC ("Aer Lingus" or the "Company")

International Consolidated Airlines Group, S.A. (IAG) notes the recent movement in the share price of Aer Lingus and confirms it submitted a proposal to make an offer for the Company, which has been rejected by the Board of Aer Lingus.

There can be no certainty that any further proposal or offer will be forthcoming.

A further statement will be made if and when appropriate.

ends

Enquiries:

Andrew Barker (Head of Investor Relations, IAG): +44 208 564 2901

For media enquiries, contact the IAG press office on: +44 208 564 2810

The Directors of IAG accept responsibility for the information contained in this announcement. To the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in this announcement for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information.

This announcement does not constitute an announcement of a firm intention to make an offer under Rule 2.5 of the Irish Takeover Panel Act, 1997, Takeover Rules 2013 (Irish Takeover Rules). A person interested in (as defined in the Irish Takeover Rules) 1% or more of any class of relevant securities of Aer Lingus may have disclosure obligations under Rule 8.3 of the Irish Takeover Rules, effective from the date of this announcement.

A copy of this announcement will be available on the IAG website at www.iagshares.com.

This information is provided by RNS
The company news service from the London Stock Exchange

END

OFDQKFDBPBDDDBD

CLOSE

Learning Centre
Our educational programme aims to provide investors with an understanding of how the products and services offered by LSEG can be used in practice
[find out more](#)

FINANCIAL PUBLICATIONS PROVIDED BY DIANOMI 

	Share Tips for Year 2015 Which shares will excel in the new year - find out here Request Free Report		Growing Income Top 5 income-yielding shares Request Magazine		Day Trade Shares Discover the Professional Secrets of Day Trading Download Free Report
---	---	---	---	---	---

London Stock Exchange plc is not responsible for and does not check content on this Website. Website users are responsible for checking content. Any news item (including any prospectus) which is addressed solely to the persons and countries specified therein should not be relied upon other than by such persons and/or outside the specified countries. [Terms and conditions](#), including restrictions on use and distribution apply.

©2014 London Stock Exchange plc. All rights reserved

Statement on possible offer for Aer Lingus - RNS

Welcome to
London Stock Exchange Portfolio

It's free & easy to use

[CLICK HERE](#)

Regulatory Story

[Go to market news section](#)



International Cons Airlines Group - IAG Statement on possible cash offer for Aer Lingus
Released 18:22 09-Jan-2015



RNS Number : 8405B
International Cons Airlines Group
09 January 2015

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OR REGULATIONS OF THAT JURISDICTION.

THIS ANNOUNCEMENT IS NOT AN ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER UNDER RULE 2.5 OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES 2013 ("IRISH TAKEOVER RULES") AND THERE CAN BE NO CERTAINTY THAT AN OFFER WILL BE MADE, NOR AS TO THE TERMS ON WHICH ANY OFFER WILL BE MADE.

STATEMENT ON POSSIBLE CASH OFFER FOR AER LINGUS GROUP PLC

International Airlines Group (IAG) notes recent press speculation and confirms it submitted a revised proposal to make an offer for Aer Lingus on 29 December 2014, which has been rejected by the Board of Aer Lingus. The revised proposal consisted of a cash offer of €2.40 per Aer Lingus share, subject to certain pre-conditions, representing an improvement to the €2.30 per Aer Lingus share that IAG had originally submitted.

There can be no certainty that any further proposal or offer will be forthcoming. A further statement will be made if and when appropriate.

ends

Investor Relations

9 January 2015

IAG01

The Directors of IAG accept responsibility for the information contained in this announcement. To the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in this announcement for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information.

This announcement does not constitute an announcement of a firm intention to make an offer under Rule 2.5 of the Irish Takeover Panel Act, 1997, Takeover Rules 2013 (Irish Takeover Rules). A person interested in (as defined in the Irish Takeover Rules) 1% or more of any class of relevant securities of Aer Lingus may have disclosure obligations under Rule 8.3 of the Irish Takeover Rules, effective from the date of this announcement. A copy of this announcement will be available on the IAG website at www.iagshares.com.

This information is provided by RNS
The company news service from the London Stock Exchange

END

SPCMMGGMRLRGKZM

CLOSE

Welcome to
London Stock Exchange Portfolio

It's free & easy to use
[CLICK HERE](#)

FINANCIAL PUBLICATIONS PROVIDED BY DIANOMI



Share Tips for Year 2015
Which shares will excel in the new year - find out here

[Request Free Report](#)



Growing Income
Top 5 income-yielding shares

[Request Magazine](#)



Day Trade Shares
Discover the Professional Secrets of Day Trading

[Download Free Report](#)

London Stock Exchange plc is not responsible for and does not check content on this Website. Website users are responsible for checking content. Any news item (including any prospectus) which is addressed solely to the persons and countries specified therein should not be relied upon other than by such persons and/or outside the specified countries. [Terms and conditions](#), including restrictions on use and distribution apply.

©2014 London Stock Exchange plc. All rights reserved

Statement on possible cash offer for Aer Lingus - RNS

Learning Centre

Our educational programme aims to provide investors with an understanding of how the products and services offered by LSEG can be used in practice

[find out more](#)

Regulatory Story

[Go to market news section](#)



International Cons Airlines Group - IAG Statement on possible cash offer for Aer Lingus
Released 07:00 27-Jan-2015



RNS Number : 2137D
International Cons Airlines Group
27 January 2015

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OR REGULATIONS OF THAT JURISDICTION. THIS ANNOUNCEMENT IS NOT AN ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER UNDER RULE 2.5 OF THE IRISH TAKEOVER PANEL ACT, 1997, TAKEOVER RULES 2013 ("IRISH TAKEOVER RULES") AND THERE CAN BE NO CERTAINTY THAT AN OFFER WILL BE MADE, NOR AS TO THE TERMS ON WHICH ANY OFFER WILL BE MADE.

STATEMENT ON POSSIBLE CASH OFFER FOR AER LINGUS GROUP PLC ("AER LINGUS")

International Consolidated Airlines Group, SA ("IAG") confirms it has submitted an improved proposal to make an offer for Aer Lingus. The proposal consists of an offer of €2.55 per share, structured as a cash payment of €2.50 per share, payable upon completion, in addition to an ordinary dividend of €0.05 per share. The proposal is subject to certain pre-conditions.

The Board of Aer Lingus has indicated to IAG that the financial terms of the proposal are at a level at which it would be willing to recommend to Aer Lingus shareholders, subject to being satisfied with the manner in which IAG proposes to address the interests of relevant parties. Accordingly the Board of Aer Lingus has granted IAG access to perform a limited period of confirmatory due diligence.

It is IAG's intention that under its ownership, Aer Lingus would:

- operate as a separate business with its own brand, management and operations, continuing to provide connectivity to Ireland, while benefitting from the scale of being part of the larger IAG group;
- join the oneworld alliance, of which British Airways and Iberia are key members; and
- join the joint business that IAG operates over the North Atlantic with American Airlines, leveraging the natural traffic flows between Ireland and the US and the advantageous geographical position of Dublin for serving connecting flows.

IAG believes that the proposal would secure and strengthen Aer Lingus's brand and long term future within a successful and profitable European airline group, offering significant benefits to both Aer Lingus and its customers.

IAG recognises the importance of direct air services and air route connectivity for investment and tourism in Ireland and intends to engage with the Irish Government in order to secure its support for the transaction.

A further statement will be made if and when appropriate.

IAG Investor Relations
27 January 2015

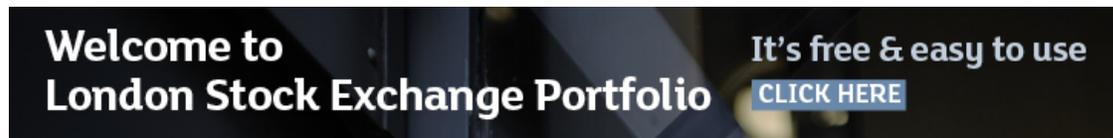
The Directors of IAG accept responsibility for the information contained in this announcement. To the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in this announcement for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information. This announcement does not constitute an announcement of a firm intention to make an offer under Rule 2.5 of the Irish Takeover Panel Act, 1997, Takeover Rules 2013 (Irish Takeover Rules). A person interested in (as defined in the Irish Takeover Rules) 1% or more of any class of relevant securities of Aer Lingus may have disclosure obligations under Rule 8.3 of the Irish Takeover Rules, effective from the date of this announcement. A copy of this announcement will be available on the IAG website at www.iagshares.com.

This information is provided by RNS
The company news service from the London Stock Exchange

END

MSCFMGZMVNLGKZG

CLOSE



Welcome to
London Stock Exchange Portfolio

It's free & easy to use
[CLICK HERE](#)

FINANCIAL PUBLICATIONS PROVIDED BY DIANOMI



Share Tips for Year 2015
Which shares will excel in the new year - find out here

[Request Free Report](#)



Growing Income
Top 5 income-yielding shares

[Request Magazine](#)



Day Trade Shares
Discover the Professional Secrets of Day Trading

[Download Free Report](#)

London Stock Exchange plc is not responsible for and does not check content on this Website. Website users are responsible for checking content. Any news item (including any prospectus) which is addressed solely to the persons and countries specified therein should not be relied upon other than by such persons and/or outside the specified countries. [Terms and conditions](#), including restrictions on use and distribution apply.

©2014 London Stock Exchange plc. All rights reserved

Statement on possible cash offer for Aer Lingus - RNS

ANNEX 2

Opinion of the Davy Group



Competition and Markets Authority

In the matter of the minority shareholding of Ryanair Holdings plc in Aer Lingus Group plc

12 February, 2015

- We understand that the Competition and Markets Authority (“CMA”), having determined that the minority shareholding of Ryanair Holdings plc (“Ryanair”) in Aer Lingus Group plc (“Aer Lingus”), *“has resulted, or may be expected to result, in a substantial lessening of competition in the market for the supply of air passenger services between Great Britain and Ireland”*, has determined that remedial action should take the form of the appointment of a divestiture trustee (“Divestiture Trustee” or “Trustee”) to sell shares held by Ryanair in Aer Lingus (“Divestment Shares”) so as to reduce Ryanair’s shareholding to 5% of Aer Lingus’s issued ordinary shares (the “Transaction”).
- We note that the obligations of such a Divestiture Trustee would be to sell the Divestment Shares to “suitable purchasers”.
- The following sets out a number of difficulties and complexities which we believe could arise in the event of any proposed sale of the Divestment Shares by the Divestiture Trustee in the lead up to a possible offer period, or during an offer period (as such term is defined under the Irish Takeover Panel Act, 1997 Takeover Rules, 2013 (“Takeover Rules”)):

(1) Position of the Trustee

- (a) The Trustee may, along with the CMA, have to take the decision whether or not to sell Ryanair’s shares to International Consolidated Airlines Group, S.A. (“IAG”) (or any other bidder) at a time (i) when the full terms and conditions on which IAG may make any offer are not known; (ii) while IAG continues to have flexibility on the terms on which it would make (if making) any such offer; (iii) when Aer Lingus shareholders have not had the opportunity to decide whether to accept an offer from IAG ; and (iv) before any Aer Lingus shareholders have indicated whether or on what terms they would be willing to accept an offer from IAG. Alternatively the Trustee may (along with the CMA) decide to sell the shares in a market transaction resulting in a greater dispersal of the Divestment Shares. Either outcome would have significant implications for the prospect of any offer being made and for the success or otherwise of any offer if made, as well as for the longer term ownership profile of Aer Lingus (see section 2 below).
- (b) By default, the Trustee (and, in effect, the CMA, given the need for the Trustee to obtain its consent) could find itself, by directing or influencing the destination of the Divestment Shares, in the invidious position of determining the fate of Aer Lingus; i.e., determining whether Aer Lingus is taken over or not, which of several competing bids is successful, and at what price, etc. In any event is not unlikely that the Trustee would become the subject of significant lobbying by interested parties (both those in favour of an offer and those against), inevitably exposing the Trustee to allegations of bias in relation to how it fulfils its mandate. In this context, and given the consensus among analysts and other market commentators in relation to the material adverse impact on the Aer Lingus share price of an aborted change of control transaction (and the consequent likely ebbing of shareholder support for the Company), the role of the Trustee becomes a very unattractive one.

- (c) Even assuming a Trustee proceeded to seek to execute the Transaction, it would face considerable complexities associated with the CMA's process for obtaining consent (as well as the overall Divestiture Period) in the context of prescribed timeframes for offers under the Irish Takeover Rules and, in particular, the uncertainty associated with early aspects of those timeframes. For example, Aer Lingus could at any time privately apply to the Irish Takeover Panel (the "Panel") for a 'put up or shut up' deadline within which IAG would either be required to confirm its intention to make an offer or be precluded (subject to certain exceptions) from making any offer for a 12 month period. It would be up to the Panel to decide what 'put up or shut up' deadline would be imposed on IAG, with no scope for input from the Trustee into this process and typically no visibility on the occurrence of this process until the issue of an announcement by the Panel stating that a deadline has been imposed and identifying that deadline. In such a situation the Trustee may have set out to fulfil its mandate in one context and suddenly find itself in another very different context, with the potential for a material difference in both the volume and nature of likely demand for Divestment Shares, and in the likely value to be realised pursuant to the Transaction, then arising. It would clearly be challenging for the Trustee to construct (and the CMA to approve) the steps in a divestiture process which could anticipate all and any such developments.
- (d) The Trustee would have to fulfil its mandate while also respecting the requirements of EU merger control rules (and potentially other merger control rules). For example, if the proposed acquisition by IAG triggered an investigation under the EU Merger Regulation, the operation of EU law could prevent the Trustee from selling the shares in a way consistent with the CMA Order.
- (e) The Trustee may be reluctant to take responsibility for a significant shareholding in Aer Lingus in circumstances where, in the role envisaged for it by the CMA, it could come into possession of information which would raise insider trading concerns. The Trustee (including its representatives) would be subject to, for example, the Irish market abuse regime, the UK market abuse regime and the Criminal Justice Act 1993, which contain strict rules against insider dealing with the threat of heavy sanctions for any breach. This risk would be exacerbated if the Trustee were engaged while Aer Lingus is the subject of takeover bids and while its shares remain subject to a heightened sensitivity to the behaviour of shareholders in Aer Lingus.
- (f) It is understood that the obligation on the Trustee would be to procure the best available price in the market. What this price is and how it can be evidenced is extremely challenging to ascertain in an environment of heightened and exceptional price volatility of Aer Lingus shares. For example, there are circumstances where a delay by the Trustee (or by the CMA) in effecting its mandate during an offer period would have a very material deleterious effect on the value realized. It therefore becomes very difficult for the Trustee to be confident in its ability to fulfil its mandate.
- (g) It is possible that a condition of any offer by IAG (or of any undertaking to accept an offer by the Irish Government) will be the approval by independent shareholders (excluding the Irish Government) of specific aspects of the IAG proposal. Such a condition may be required under Takeover Rule 16 (which precludes special arrangements (such as the types of commitments on connectivity being proposed by IAG) with a shareholder in an offeree company save with the consent of the Panel (see section 2(d) below)). In such a circumstance, the nature and number of owners of the shares held other than by the Irish Government becomes extremely important.

As well as having a role in whether the IAG offer is successful therefore, the Trustee (and by extension the CMA) would have a role in whether the Irish State is in a position to receive and benefit from key commitments in relation to connectivity etc. This would seem far in excess of the normal remit of a Trustee or, we suggest, of the CMA.

(2) Impact on the IAG Possible Offer

- (a) IAG have stated that they will (*inter alia*) require an irrevocable commitment from Ryanair and from the Irish Government to accept an offer before they make such an offer. De-risking a transaction is usually paramount to an offeror before it makes a commitment to proceed to make an offer and seeking such irrevocable commitments from significant shareholders would be consistent with this approach. Were the Divestment Shares to be sold to conventional market participants (institutional and retail investors), IAG would need to identify and collate irrevocable commitments from a larger number of investors each with their own investor perspective and value realization (price and timing) expectations. Moreover it is not unusual for institutional investors to be unable or unwilling to give hard irrevocable commitments to accept an offer, particularly one entailing competition related conditionality and a resultant uncertain timeframe to completion. The prospect of IAG being able to procure irrevocable commitments from a sufficient number of shareholders in a reasonable timeframe prior to a formal offer being made and having regard to the limitations on engagement with such shareholders under the Takeover Rules, must be much diminished as a result of a dispersal of the Divestment Shares relative to the status quo.

Accordingly it is not unlikely that a sale of the Divestment Shares through a market transaction would seriously compromise the prospect of an offer being made and/or if made (assuming IAG was willing to incur a higher degree of execution risk at an earlier stage), the prospect of it being successful.

Such a Transaction by the Trustee could therefore operate to deny the shareholders in Aer Lingus the opportunity to consider the merits of an offer, which would we believe, represent an intrusion of the CMA process beyond its remit and to the detriment of Aer Lingus and its shareholders as a whole.

- (b) In the event that the Divestment Shares were sold to IAG or to any other potential offeror, this would also heighten the execution risk associated with an offer, impacting on all of the key stakeholders in Aer Lingus. For example, were an IAG subsequent offer to be implemented by way of a scheme of arrangement, precedent would suggest that the Irish High Court would consider shares already held by IAG in Aer Lingus as a separate class (see RBS acquisition of First Active) requiring the scheme approval threshold to be calculated with reference to the non-IAG shareholding only. Were an offer to be implemented by way of a conventional offer, the ability of IAG to compulsorily acquire minorities could also be jeopardized as a result of its holding of shares not acquired pursuant to an offer as, in order to rely on section 23 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (right to buy out dissenting security holders), the offeror must have acquired pursuant to an offer 90% of the securities affected (from which shares that the offeror has acquired, or unconditionally contracted to acquire outside an offer, are excluded).

- (c) Completion of the Transaction in the current context of the offer period may also be of relevance to IAG in the event that it was to consider setting (or waiving down to) an acceptance condition of 50.1% rather than 90% (as it would be entitled to do in the case of a voluntary offer). A lower acceptance condition, accommodating the possibility of retention of a stock exchange listing for Aer Lingus shares and of minority shareholders in the Company (the option of compulsory acquisition no longer arising for the offeror), materially changes the dynamic for undecided shareholders. This is another example of how the Transaction could have a material impact on the outcome for IAG and for Aer Lingus and its shareholders, with there being no obvious connection or rationale in favour of such an outcome in the context of the CMA seeking to impose a remedy to a perceived '*substantial lessening of competition in the market for the supply of air passenger services between Great Britain and Ireland*'.
- (d) In addition and as alluded to at paragraph 1(g) above, IAG have proposed that "*to secure the support of the Irish Government*" it will "*offer legally binding commitments that go well beyond the protections currently available to the Government and would give it an important role in securing the future of Aer Lingus*".

Rule 16 of the Takeover Rules prohibits, except with the consent of the Panel, any arrangement with any shareholder which involves a dealing in, or acceptance of an offer for, or otherwise relates to, shares in the offeree if there would be attached to such arrangement a term favourable to such shareholder or intending shareholder or any other person which is not being extended under the offer to all shareholders of the offeree.

In the event that the Panel agree to the types of commitments proposed to be given by IAG to the Irish Government and also imposes a condition of independent shareholder approval (which would be a customary basis on which a Rule 16 matter is resolved), the nature of the independent shareholders, as that cohort exists and evolves during the offer period, becomes paramount.

Clearly a dramatic change in the status quo to a situation where, for example, only shareholders other than the Irish Government and other than the owner of the Divestment Shares were eligible to vote (as would be the case if IAG purchased the Divestment Shares) on such a resolution, would mean the CMA and the Trustee being closely involved in a process which put the deliverability of connectivity and other protections negotiated by the Irish Government on behalf of the Irish people in the hands of financial investors in Aer Lingus. We believe this would be an extremely invidious position for the Trustee and the CMA and would exceed the remit of the CMA with respect to Ryanair's shareholding in Aer Lingus.

(3) Impact on other possible offers

- (a) Takeover Rule 6.1 provides that where an offeror or any person acting in concert with an offeror acquires shares in the company that is the subject of the offer in the 3 month period (or, at the discretion of the Panel, 12 month period) prior to the commencement of an offer period, the value of the consideration per share under the offer must be not less than the highest value of the price per share paid for such acquisition in the prior three month period (or, at the discretion of the Panel, 12 month period).

Takeover Rule 11.1 provides that where an offeror or any person acting in concert with an offeror acquires in the 12 month period prior to the commencement of an offer period or during an offer period shares in the company that is subject to the offer and which represent in the aggregate 10% or more of the issued share capital of the class (or at the discretion of the Panel less than 10%), consideration under an offer must be in cash or accompanied by a cash alternative.

While both these minimum price and form of consideration rules apply equally outside an offer period, they are clearly of more significance during an offer period and at a time when, due to the proportion of the Divestment Shares, the destination of those shares may cause Rules 6 or 11 to be engaged.

(4) Other Points

- (a) In the event that the board of Aer Lingus was to have some involvement in the Transaction (at the request of the Trustee or otherwise), the implications of the Takeover Rules General Principles and of Takeover Rule 21 (a prohibition on frustrating action without Panel and/or shareholder consent) would need careful consideration. The General Principles include that all holders of securities of an offeree of the same class must be afforded equivalent treatment and that the board of an offeree must act in the interests of the Company as a whole and must not deny the holders of securities the opportunity to decide on the merits of an offer.
- (b) There is accelerated public notification of dealings in securities in Aer Lingus during an offer period under Takeover Rule 8. This would need to be considered in the context of a process for implementing a Transaction.
- (c) We understand there are qualifying criteria in relation to the Trustee role. During the current offer period, given the multiplicity of advisers engaged by IAG, Aer Lingus, and the Irish Government, there would obviously be a significantly diminished range of parties eligible to conduct the role of Trustee.
- (d) Under the Takeover Rules, during an offer period, brokers, advisers to, or other persons acting in concert with an offeror or offeree withdraw published forecast, valuations and other forward looking data with respect to the parties involved in a possible offer. There is therefore less complete information and analysis available in the public domain with respect to the target than would be the case in normal market conditions. This would also be expected to impact on a Trustee in the conduct of its role.
- (e) Engagement by Aer Lingus with its shareholders, other person interested in relevant securities, analysts, stockbrokers or others engaged with investment management or advice is severely curtailed during an offer period (and must be chaperoned by a financial adviser and reported on to the Panel). This would also be expected to impact on a Trustee in the conduct of its role.

EUGENÉE MULHERN
Director
Davy Corporate Finance