



**RYANAIR / AER LINGUS MERGER INQUIRY
RESPONSE TO CONSULTATION BY THE
COMPETITION AND MARKETS AUTHORITY**

NON-CONFIDENTIAL VERSION

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RYANAIR / AER LINGUS MERGER INQUIRY

Response to Consultation by the Competition and Markets Authority

This submission, filed on behalf of Ryanair to the Competition and Markets Authority (the “CMA”), responds to the CMA’s consultation issued on March 3, 2015, concerning a material change of circumstances in the context of the *Ryanair/Aer Lingus* Merger Inquiry, and highlights developments that have taken place since Ryanair submitted its Application on February 12, 2015 (the “Application”).

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 in the UK (an “SLC”). The critical determination in the Final Report was a finding by the Competition Commission that Ryanair’s shareholding prevented Aer Lingus from merging with, being acquired by, or otherwise entering into combinations with other airlines.¹
2. In its Application, Ryanair explained the significance of events following the Final Report – in particular the proposed bid for Aer Lingus by International Airlines Group (“IAG”) and how this proves 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. IAG’s proposed takeover of Aer Lingus demonstrates that the Competition Commission’s central finding can no longer be sustained and that, in light of this material change of circumstances, it would be inappropriate for the CMA to impose a divestment remedy.
3. Ryanair also explained in its Application that a divestment remedy in the form proposed by the Competition Commission and now by the CMA would be unworkable during a public offer period or when such an offer is expected.
4. Since Ryanair submitted its Application, there have been a number of further developments that reinforce the submissions Ryanair has already made. In particular:
 - IAG has reaffirmed its commitment to acquire Aer Lingus if the Irish Government is prepared to accept such an offer on reasonably commercial terms. IAG also continues to offer concessions aimed at addressing the Irish Government’s political objectives.
 - The Board of Aer Lingus continues to support a takeover by IAG.

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.

- The Irish Government has continued to make clear that no transaction can occur without its approval. Its position, which has made it more difficult for IAG to proceed with a takeover bid, has underlined what Ryanair has always said, namely that the Irish Government, and not Ryanair, represented the only obstacle to Aer Lingus' combination with any other airline, and reinforced this clear message to any other potential bidder for Aer Lingus.
 - Ryanair has at no point acted in any way to deter or frustrate IAG's bid, nor has it been accused of doing so. Ryanair's position is exactly the same as it has been for the past four years: Ryanair will consider any offer for its shareholding in Aer Lingus if the price offered is attractive.²
5. These on-going developments, which are set out more fully in this Response, provide further evidence that Ryanair's shareholding does not deter other airlines from combining with Aer Lingus. Rather, it is the Irish Government that has placed obstacles in the way of the proposed takeover and which deters potential merger partners. Ryanair has enclosed with this Response copies of relevant public statements and press reports that provide the CMA with further evidence on each of these submissions.

II. IAG AND AER LINGUS REMAIN COMMITTED TO A MERGER

6. IAG remains committed to making a public bid for Aer Lingus, provided the Irish Government is prepared to support its bid on terms that do not undermine the commercial rationale for the transaction. As set out in Ryanair's Application, IAG has offered a series of commitments about the future operation of Aer Lingus to address the political concerns of the Irish Government.
7. The Chief Executive of IAG, Willie Walsh, reaffirmed this position in a public statement issued on February 27, 2015, at the time IAG published its annual results. Willie Walsh stated:

*"This is not a must do deal, it's an attractive deal but we will only do it on terms that are acceptable to us. We will have no hesitation about not proceeding if the terms are not acceptable."*³

² Irish Independent: *Ryanair may dump Lingus stake if Brussels blocks bid*, September 22, 2012, available at: <http://www.independent.ie/irish-news/ryanair-may-dump-lingus-stake-if-brussels-blocks-bid-28812712.html> and The Telegraph: *Ryanair hangs 'for sale' sign on Aer Lingus stake*, July 23, 2013, available at: <http://www.telegraph.co.uk/finance/newsbysector/transport/10196844/Ryanair-hangs-for-sale-sign-on-Aer-Lingus-stake.html>

³ The Telegraph: *IAG flies high but Aer Lingus deal no certainty*, February 27, 2015, available at: <http://www.telegraph.co.uk/finance/newsbysector/transport/11440010/IAG-flies-high-but-Aer-Lingus-deal-no-certainty.html>

8. On March 12, 2015, a press report in the Financial Times suggested that “[IAG] and the Irish government are closer to agreement than they have ever been.”⁴ This has been followed by a number of further press reports indicating that an agreement between IAG and the Irish Government could be reached imminently:
- On March 13, 2015, the Irish Independent reported that “*IAG is understood to have substantially addressed most of the Government's concerns regarding a possible €1.4bn sale of Aer Lingus, paving the way for a decision to be made by Cabinet within the next two to three weeks.*”⁵
 - On March 15, 2015, the Irish Independent reported that “*Three developments now point to a deal being struck on the IAG/Aer Lingus takeover. Firstly, discussions taking place around the detail of things like the landing charges regime. Secondly, trade unions having to deny they are warming to a deal. Thirdly, the share price is around €2.40 and has climbed back up towards the offer price.*” The report concluded that “*The odds on a deal are shortening by the day.*”⁶
9. The Board of Aer Lingus continues to support the proposed takeover by IAG. On February 13, 2015, Aer Lingus announced that the takeover offer was at a level that the Board of Aer Lingus would be willing to recommend to shareholders, subject to being “*satisfied with the manner in which IAG proposed to address the interests of relevant parties,*” which Ryanair understands to refer to the Irish Government.⁷
10. Aer Lingus Chairman, Colm Barrington, has confirmed his support for a combination:
- “The strong view of the Board of Aer Lingus is that the prospect of Aer Lingus being part of the IAG Group has a compelling commercial logic for Aer Lingus, has significantly positive benefits for Ireland and is strongly supportive of the Irish Government's two airline policy.”*⁸

⁴ The Financial Times: *IAG and Dublin ‘close’ to agreement on Aer Lingus takeover*, March 12, 2015, available at: <http://www.ft.com/cms/s/0/ffa66fd4-c80c-11e4-8210-00144feab7de.html#axzz3UB1RGEYA>

⁵ Irish Independent: *Decision on €1.4bn Aer Lingus takeover expected in weeks*, March 13, 2015, available at: <http://www.independent.ie/irish-news/decision-on-14bn-aer-lingus-takeover-expected-in-weeks-31063107.html>

⁶ Irish Independent: *Airport charges deal could end the Aer Lingus saga*, March 15, 2015, available at: <http://www.independent.ie/business/irish/airport-charges-deal-could-end-the-aer-lingus-saga-31066823.html>

⁷ See: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/12249267.html>.

⁸ See: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/12249267.html>

11. His statement also indicated that the Board saw IAG’s proposal as a “*significantly positive opportunity*” for Aer Lingus that would, amongst other things, create new jobs and strengthen connectivity to and from Ireland.

12. On his first day as Chief Executive of Aer Lingus, Stephen Kavanagh sent an email to all Aer Lingus staff stating that, if the transaction goes ahead:

*“We would retain our brand, location and independence as an operating company within IAG, while benefiting from all the cost advantages of scale that such a combination will deliver.”*⁹

13. Myles Worth, Secretary of the Central Representative Council of Aer Lingus (the “CRC”), a group of staff representatives from the company's trade unions, issued a statement supporting the proposed takeover in light of the commitments offered by IAG as to the future operation of Aer Lingus. He noted that the CRC was originally opposed to the deal because of feared job cuts. (As explained below, some members of the CRC remain opposed to the merger.) However, Myles Worth commented that Aer Lingus could find itself in a worse position without the merger, saying:

*“The danger of this [bid] going away is that the company could eventually go into a downward spin and who knows going forward what would happen if that was the case.”*¹⁰

14. He added:

“There doesn't seem an immediate threat to the company but if this bid was to fail and the share price goes down, there's a likelihood that the new CEO would have to put together a very aggressive cost-cutting plan.”

15. Further evidence of the continued commitment of IAG and Aer Lingus to a takeover bid can be found in the following statements and press reports. Copies of these are provided at Annex 1.

- In a statement from IAG, Willie Walsh said, “*we remain very interested in acquiring Aer Lingus.*”¹¹
- Stephen Kavanagh said in an internal memo to staff “*over the coming weeks I will continue to dedicate time to meet with you and other*

⁹ The Irish Times: *Aer Lingus unions fear for staff conditions if takeover goes ahead*, March 2, 2015, available at: <http://www.irishtimes.com/business/transport-and-tourism/aer-lingus-unions-fear-for-staff-conditions-if-takeover-goes-ahead-1.2123091>

¹⁰ Reuters: *IAG win over trade union in boost to Aer Lingus bid*, February 22, 2015, available at: <http://uk.reuters.com/article/2015/02/22/uk-aerlingus-m-a-iag-idUKKBN0LQ00MY20150222>

¹¹ Sunday Business Post: *Talks On Jobs Key To Aer Lingus Sale*, March 1, 2015.

*stakeholders and communicate what I believe is the compelling rationale for a combination with IAG.*¹²

- Willie Walsh has said that, “*a deal would secure and strengthen Aer Lingus’s brand and long-term future, while offering “significant benefits” to both the Irish company and its customers.*”¹³
- The fact that IAG’s potential takeover of Aer Lingus has been “*recommended*” by the board of Aer Lingus “*must now soothe Irish government concerns to win approval.*”¹⁴
- It has been reported that “*Stephen Kavanagh tried to reassure staff that if the IAG bid succeeds, any new opportunities will be delivered under current employment term and conditions.*”¹⁵
- At a meeting with the Oireachtas Joint Committee on February 17, 2015, Stephen Kavanagh said the potential takeover would lead to “*significant increases in employment potential.*”¹⁶ Colm Barrington also told the Committee that the deal “*is about accelerated growth. It provides real; prospects for long-term economic growth, for growth in global connectivity, for growth in international trade, for growth in employment.*”¹⁷
- Following a meeting where Willie Walsh outlined IAG’s plans for Aer Lingus, Walsh said that that IAG has “*people dedicated to working on this without distracting the team working for the respective operating companies*” and that IAG is “*nowhere near*” the point that would it would consider walking away from its bid.¹⁸
- It has reported that “*The board of Aer Lingus has thrown in the towel, recommending that shareholders (including the Irish Government) take [Willie] Walsh’s money.*”¹⁹

¹² Irish Daily Mail: *Aer Lingus chief throws his weight behind IAG deal*, March 3, 2015.

¹³ The Scotsman: *Aer Lingus supports IAG offer*, January 28, 2015.

¹⁴ The Guardian: *Aer Lingus backs £1bn takeover offer from IAG*, January 28, 2015.

¹⁵ Irish Examiner: *Have the courage to face reality*, March 3, 2015.

¹⁶ Irish Independent: *Aer Lingus boss says airline ‘vulnerable’ if it’s not bought by IAG*, February 18, 2015.

¹⁷ *Ibid.*

¹⁸ Irish Times: *Walsh determined to complete takeover of Aer Lingus*, February 12, 2015.

¹⁹ Sunday Independent Business: *Government should buy Ryanair stake in Aer Lingus*, February 1, 2015.

- The Aer Lingus board are “*still in favour*” of the potential takeover and “*continues to believe that the financial terms...are in the best interests of Aer Lingus.*”²⁰
- The Board of Aer Lingus have urged the Irish Government to “*support*” the takeover bid by IAG, saying that the “*offer would accelerate the Irish airline’s growth plans and enhance Ireland’s positions as a hub for trans-Atlantic travel.*”²¹

16. There is therefore no doubt that both IAG and Aer Lingus remain in favour of a merger, and are both working towards achieving that objective. As noted in the Application, this fundamentally contradicts one of the central planks of the findings in the Final Report, namely that Ryanair’s minority shareholding in Aer Lingus deters rival airlines from entering into, pursuing, or concluding discussions regarding an acquisition of Aer Lingus. For instance, the CMA can no longer rely on the following statements in the Final Report:

- “*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.*”²²
- “*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.*”²³
- “*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 European carriers (IAG, Air France/KLM and Lufthansa) was relatively unlikely, as they were occupied with recent acquisitions.*”²⁴

²⁰ Sunday Business Post: *The Aer Lingus takeover bid rhetoric versus reality*, February 15, 2015.

²¹ The International New York Times: *Aer Lingus asks Dublin to back takeover offer*, February 14, 2015.

²² The Final Report, paragraph 7.30. See also Appendix F, paragraph 22.

²³ The Final Report, paragraph 7.34(a).

²⁴ The Final Report, paragraph 7.46.

III. THE ROLE OF THE IRISH GOVERNMENT

17. Despite the willingness of the Aer Lingus Board to recommend IAG's proposed offer, the Irish Government (which holds a 25.1% stake in Aer Lingus) has not publicly supported the proposed takeover, and continues to present a significant obstacle to a successful bid. The Government has not stated that it would oppose a bid on any terms, but has indicated that it would not accept an offer unless IAG is prepared to offer substantial and lasting further commitments about the future operation of Aer Lingus that meet the Government's political objectives.
18. The Irish Labour Party, a member of the ruling coalition Government, passed a motion opposing the sale of Aer Lingus to IAG if its concerns about the current terms of IAG's offer are not addressed.²⁵ Labour delegates stressed that they would find any bid unacceptable unless it included the following:
- *“An independent valuation of Aer Lingus assets, including a valuation of the 23 Heathrow slots;*
 - *A firm commitment in the form of registered employment agreements preventing outsourcing of jobs, compulsory redundancies, and cuts to contract conditions;*
 - *Meaningful and reliable long-term guarantees on connectivity and Heathrow slots;*
 - *A clear plan on how Cork and Shannon airports will continue to be promoted should any sale take place, taking into account “impact on their individual regions.”²⁶*
19. In a statement on the Irish Government's position, the Minister for Transport, Tourism and Sport, Paschal Donohoe, reiterated that:
- “[the] minority holding which the State has in Aer Lingus would not be sold unless the market conditions were favourable, the terms of the sale were satisfactory to the Government and an acceptable price could be secured.”²⁷*

²⁵ The Irish Times: *Labour delegates oppose Aer Lingus sale under current terms*, March 1, 2015, available at: <http://www.irishtimes.com/news/politics/oireachtas/labour-delegates-oppose-aer-lingus-sale-under-current-terms-1.2121821> and RTE News: *Labour backs motion rejecting IAG's Aer Lingus bid*, March 2, 2015, available at: <http://www.rte.ie/news/2015/0301/683616-labour-conference>

²⁶ Irish Examiner: *LABOUR CONFERENCE: Delegates reject Aer Lingus sale plan*, March 2, 2015, available at: <http://www.irishexaminer.com/ireland/labour-conference-delegates-reject-aer-lingus-sale-plan-315453.html>

²⁷ See: <http://www.dttas.ie/press-releases/2015/statement-minister-donohoe-government%E2%80%99s-position-iag%E2%80%99s-proposal-make-offer-aer>

20. He added that:

*“the information and commitments that have been provided to date do not at present provide any basis on which the government could give an irrevocable commitment to accept an offer to dispose of its shares, should one be made by IAG.”*²⁸

21. Ryanair is not in a position to know whether IAG will be prepared to meet the Irish Government’s demands. Recent press reports suggest that IAG may offer further assurances to the Irish Government in the hope of reaching an agreement.²⁹ It is in any event clear that the assurances being sought by the Government go far beyond the concerns of any normal shareholder and, with one exception (*i.e.*, on valuation), are motivated by political objectives.

22. The position taken by the Government presents a significant obstacle to the proposed bid. It also sends a strong deterrent message to any other airline that might consider merging with Aer Lingus. Based on its present stance, it is clear to any potential merger partner that the Government will oppose (and effectively block) any merger with Aer Lingus that does not satisfy its political objectives, regardless of the commercial position.

23. It is notable that the Irish Government’s current position is at odds with previous statements it has made, including at the time of the Competition Commission’s investigation. For example, in 2012, the Irish Government stated that it would sell its 25% stake in Aer Lingus as part of an asset disposal process. On May 9, 2012, the Irish Government confirmed that it:

*“has decided that the State’s remaining shareholding in Aer Lingus will be sold at an appropriate time, but only when market conditions are favourable and at an acceptable price to be agreed by Government”.*³⁰

24. The Competition Commission relied on this evidence from the Irish Government in its Final Report, noting that *“The Irish Government has announced its intention to sell its*

²⁸ The Financial Times: *Irish government rebuffs IAG bid for Aer Lingus*, February 24, 2015, available at: <http://www.ft.com/cms/s/0/957ce2d4-bc43-11e4-b6ec-00144feab7de.html?siteedition=uk#axzz3Tt3aCcs2>

²⁹ The Financial Times, *IAG and Dublin close to an agreement on Aer Lingus takeover*, March 12, 2015, available at: <http://www.ft.com/cms/s/0/ffa66fd4-c80c-11e4-8210-00144feab7de.html#axzz3UB1RGEYA> and Irish Independent: *Airport charges deal could end the Aer Lingus saga*, March 15, 2015, available at: <http://www.independent.ie/business/irish/airport-charges-deal-could-end-the-aer-lingus-saga-31066823.html>

³⁰ See: <http://debates.oireachtas.ie/dail/2012/05/09/00018.asp>

shares in Aer Lingus, although it said that the disposal of its shares would only take place at the right time, under the right conditions and at the right price”.³¹

25. On June 19, 2012, in Ryanair’s announcement of the cash offer for Aer Lingus, it was Ryanair’s understanding that “*the Irish Government has committed to the Troika (of the European Union, the European Central Bank and the International Monetary Fund), to raise funds from the sale of State assets*” and that it was likely that the Irish Government would seek to dispose of its 25.1% stake in early 2013.³² This change in the Government’s position is another relevant change of circumstances that the CMA must consider.
26. Further evidence of the Government’s reaction to IAG’s proposed offer for Aer Lingus can be found in the following statements and press reports. Copies of these are provided at Annex 1.
- Paschal Donohoe has said that the Irish government’s “*Aer Lingus shares will be given very careful examination before the government takes any decision.*”³³
 - Paschal Donohoe has also said that the “*Government will consider the value placed on the State’s stake in Aer Lingus following any formal offer*” but policy matters such as competition and connectivity will be “*carefully considered before any decision is made on the future of the State’s shareholding in Aer Lingus.*”³⁴
 - Opposition transport spokesman, Timmy Dooley, has said that, “*the government must act to ensure that it does not allow Aer Lingus management to cave to any bid from IAG.*”³⁵ He added, “*dumping this stock in order to raise some short-term cash to fund election promises would be a major mistake that the travelling public will quickly regret.*”³⁶

³¹ Final Report, paragraph 7.57. See also Appendix C, paragraph 31 (“*We note that the Irish Government intends to sell its shares as part of its commitment to sell state assets following the 2010 fiscal support package from the Troika*”).

³² See: <http://www.ise.ie/app/announcementDetails.aspx?ID=11238604>

³³ The Daily Telegraph: *Political considerations threaten IAG’s takeover bid for Aer Lingus*, January 28, 2015.

³⁴ Irish Independent: *Ireland Inc ‘must come first with any bid for Aer Lingus,’* January 21, 2015.

³⁵ The Financial Times: *IAG will need Dublin’s support to land Aer Lingus with €1.3bn bid*, January 26, 2015.

³⁶ Irish Independent Business: *Hands off Aer Lingus, says Finna Fail as shares fall*, January 22, 2015.

- Labour Party TDs have indicated that holding onto the Government’s stake is a “*red line issue*” for the party and that concerns over a potential takeover bid by IAG are “*felt by all levels.*”³⁷
- Cork TD, Jerry Buttimer has said that he “*was vehemently opposed to the sale*” and Dublin North-East TD, Sean Kenny has indicated that “*the party is united in its opposition to the sale of the stake.*”³⁸
- “*Labour TDs fear that the deal will lead to the loss of hundreds of jobs in their Dublin stronghold.*”³⁹

27. Press reports nevertheless suggest that, if IAG is prepared to accede to the Irish Government’s demands, a deal may yet be possible.

- “*Former minister Pat Rabbitte said on Saturday that Labour opposition to the sale had softened and the party was likely to ultimately agree to the deal.*”⁴⁰
- “*Sale of the airline is still likely, despite the Labour Party vote calling on the Government to reject the bid as it stands.*”⁴¹
- “*North TD Brendan Ryan described the present offer from IAG as “a bad deal”, but he did not rule out support for a better offer.*”⁴²
- “*There is little doubt in Fine Gael that [Minister for Finance, Michael] Noonan would be happy to sell off the remaining state shareholding in Aer Lingus.*”⁴³

28. Whatever the outcome of this process, it is clear that Ryanair’s shareholding has played no part whatsoever in IAG’s decision to advance its bid for Aer Lingus or in the prospects of IAG’s proposed offer being accepted.

³⁷ Irish Independent: *Aer Lingus sale in jeopardy as Coalition unease grows*, January 30, 2015.

³⁸ Irish Independent: *Opposition to takeover intensified in Coalition*, January 30, 2015.

³⁹ The Times: *Irish man barricades over Aer Lingus bid*, February 9, 2015.

⁴⁰ Irish Independent: *Aer Lingus deal kept alive by Labour vote*, March 2, 2015.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Sunday Business Post: *Agreement on sale of Aer Lingus now closer*, March 1, 2015.

IV. OPPOSITION FROM TRADE UNIONS

29. As mentioned above, the Secretary of the CRC recently issued a statement in support of a takeover approach by IAG. This support followed a speech by IAG's Chief Executive, Willie Walsh, in which he explained that cost-cutting at Aer Lingus would be minimal and would be exceeded by new roles resulting from the merger. Nevertheless, key trade union bodies (including members of the CRC) have been reluctant to support a potential takeover from IAG, despite the Board of Aer Lingus giving assurances that, should IAG's bid go ahead, new opportunities will be governed by "*existing collective agreements and delivered under current employment terms and conditions.*"⁴⁴ In particular:
- SIPTU has sought further guarantees on employment, confirmation that there are no plans to outsource jobs, and raise questions about how IAG would interact with unions.⁴⁵
 - The Irish Congress of Trade Unions has set out a list of demands and concerns in relation to the potential takeover attempt in the hopes of achieving "*an open-ended agreement.*"⁴⁶
 - Impact has also voiced its concerns surrounding the potential takeover in a letter to Aer Lingus saying, "*Impact still asserts that this takeover is bad for Aer Lingus staff, threatens their jobs, and the connectivity assurances stated publicly are bad for Ireland.*"⁴⁷
30. This trade union opposition poses another obstacle to a successful bid by IAG and acts as an additional deterrent to other airlines who might be considering a combination with Aer Lingus.
31. Further evidence of trade union opposition to IAG's proposed bid for Aer Lingus can be found in the following statements and press reports. Copies of these are provided at Annex 1.

⁴⁴ RTE: *SIPTU sceptical over Aer Lingus assurances*, March 2, 2015, available at: <http://www.rte.ie/news/2015/0302/683785-aer-lingus>

⁴⁵ RTE: *SIPTU sceptical over Aer Lingus assurances*, March 2, 2015, available at: <http://www.rte.ie/news/2015/0302/683785-aer-lingus/> and Reuters: *Aer Lingus trade unions split over IAG offer*, February 23, 2015, available at: <http://uk.reuters.com/article/2015/02/23/uk-aerlingus-m-a-iag-idUKKBN0LR0TJ20150223>

⁴⁶ Irish Independent, *Aer Lingus union seeks open-ended deal from IAG*, March 3, 2015, available at: <http://www.independent.ie/business/irish/aer-lingus-union-seeks-openended-deal-from-iag-31035562.html>

⁴⁷ The Irish Times: *Aer Lingus unions step back from IAG bid support*, February 23, 2015, available at: <http://www.irishtimes.com/business/transport-and-tourism/aer-lingus-unions-step-back-from-iag-bid-support-1.2113087>

- Siptu General President, Jack O’Connor “*did not know if there was any possibility of the union backing the sale of Aer Lingus to IAG.*”⁴⁸
- “*Ground staff in particular are extremely nervous that an IAG takeover will see outsourcing to non-unionised companies such as Sky Handling and Swissport.*”⁴⁹
- “*There are also political implications with trade union SIPTU calling on Ireland not to sell its shares of the airline unless there are guarantees on jobs.*”⁵⁰
- “*Aer Lingus’s trade union, Impact, and other tourism bodies have warned that a deal would significantly hurt Ireland’s connectivity.*”⁵¹
- “*The Irish trade unions Impact and Siptu have called on the government to block the sale unless job guarantees are secured. Impact has said a takeover could lead to the loss of up to 1,200 jobs.*”⁵²
- SIPTU organiser, Owen Reddy has said that “*trade unionists remain to be convinced that there would not be large-scale job losses.*”⁵³
- According to a spokesperson for Impact, “*in the event where IAG takes over Aer Lingus, job losses at the airline are inevitable, and that remains the case.*”⁵⁴
- “*At least publicly, unions continue to oppose the deal that’s been offered by IAG. New Trade Congress of Trade Unions secretary general, Patricia King insisted yesterday that selling Aer Lingus would be a bad idea.*”⁵⁵

⁴⁸ Sunday Business Post: *Talks On Jobs Key To Aer Lingus Sale*, March 1, 2015.

⁴⁹ *Ibid.*

⁵⁰ Daily Mail: *Ireland mulls IAG offer for Aer Lingus*, January 27, 2015.

⁵¹ The Daily Telegraph: *Political considerations threaten IAG’s takeover bid for Aer Lingus*, January 28, 2015.

⁵² The Guardian: *Aer Lingus backs £1bn takeover offer from IAG*, January 28, 2015.

⁵³ Daily Irish Mail: *We’ll guarantee slots at Cork and Shannon*, February 13, 2015.

⁵⁴ Irish Independent: *Walsh offers sweetener on Cork and Shannon airports*, February 13, 2015.

⁵⁵ Irish Independent: *Decision on €1.4bn Aer Lingus takeover expected in weeks*, March 13, 2015, available at: <http://www.independent.ie/irish-news/decision-on-14bn-aer-lingus-takeover-expected-in-weeks-31063107.html>.

- *“Union leaders were forced to deny suggestions that they were warming to the deal, despite emerging from a face-to-face meeting with IAG’s Willie Walsh recently saying he had no new assurances to give.”⁵⁶*
- *“Trade union concern also remains over the bid, with Willie Quigley, Unite regional officer saying he was not aware of any softening in union opposition to the IAG bid.”⁵⁷*

32. The position taken by the trade unions combined with the position of the Irish Government confirms that the Government and employee shareholdings represent the most significant obstacle to any transaction involving Aer Lingus. Again, there is no suggestion that Ryanair’s shareholding has had any impact on the likelihood of a bid proceeding.

V. RYANAIR’S POSITION

33. As explained in the Application, Ryanair has in no way acted as an obstacle to IAG’s proposed bid. Consistent with this, Ryanair’s Chief Executive, Michael O’Leary, confirmed publicly during an interview in 2013 that Ryanair would entertain any reasonable offer for its shares and said:

“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. We haven’t had a call yet.”⁵⁸

34. Ryanair’s position has not changed one iota in this respect from the position it has consistently taken since 2011. As reported recently by the Irish Times Business, Michael O’Leary said that Ryanair’s board would “very carefully” consider any offer it receives for its stake in Aer Lingus.⁵⁹

35. Further evidence of Ryanair’s position is provided at Annex 1.

⁵⁶ Irish Independent: *Airport charges deal could end the Aer Lingus saga*, 15 March 2015, available at: <http://www.independent.ie/business/irish/airport-charges-deal-could-end-the-aer-lingus-saga-31066823.html>

⁵⁷ The Irish Times: *Progress on IAG’s Aer Lingus bid but unions remain ‘unconvinced,’* March 17, 2015, available at: <http://www.irishtimes.com/business/progress-on-iag-s-aer-lingus-bid-but-unions-remain-unconvinced-1.2142138>

⁵⁸ The Telegraph: *Ryanair hangs ‘for sale’ sign on Aer Lingus stake*, July 23, 2013, available at: <http://www.telegraph.co.uk/finance/newsbysector/transport/10196844/Ryanair-hangs-for-sale-sign-on-Aer-Lingus-stake.html>

⁵⁹ Irish Times Business: *Ruling expected on Ryanair stake in Aer Lingus*, February 6, 2015.

VI. CONCLUSION

36. Ryanair has consistently stated that if anything deters other airlines from considering a combination with Aer Lingus, it is the position of the Irish Government and not Ryanair's minority shareholding. The recent events described in Ryanair's Application and in this Response provide yet further evidence that this is true.
37. The CMA therefore cannot maintain the findings in the Final Report that Ryanair's minority shareholding impedes another airline from entering into a combination with Aer Lingus. In particular, the CMA cannot rely upon the following statements in the Final Report:
- *“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.”*⁶⁰
 - *“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.”*⁶¹
 - *“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*

⁶⁰ The Final Report, paragraph 7.80.

⁶¹ The Final Report, paragraph 7.127.

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 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.”⁶²

38. The material change of circumstances described in Ryanair's Application and in this response has made it abundantly clear that the Competition Commission's findings and proposed divestment remedy can no longer be sustained. The CMA should therefore revisit its remedies decision and confirm that it is no longer appropriate.

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

⁶² The Final Report, paragraph 7.178.