

**IN THE MATTER OF A REFERENCE TO THE COMPETITION
COMMISSION DATED 15 JUNE 2012 CONCERNING THE
COMPLETED ACQUISITION BY RYANAIR HOLDINGS PLC OF A
MINORITY SHAREHOLDING IN AER LINGUS GROUP PLC**

**Notice inviting comments on the provisional decision on material
changes of circumstances**

Background

1. On 15 June 2012, the Office of Fair Trading (OFT) made a reference (the Reference) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Ryanair Holdings plc (Ryanair) of a minority shareholding in Aer Lingus Group plc (Aer Lingus) (the Acquisition).
2. The CC published [its report](#) entitled *Ryanair Holdings plc and Aer Lingus Group plc, A report on the completed acquisition by Ryanair Holdings plc of a minority shareholding in Aer Lingus Group plc*, on 28 August 2013 (the Report).
3. The Report concluded that:
 - (a) the acquisition of the minority shareholding by Ryanair in Aer Lingus constitutes a relevant merger situation;
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in the market for the supply of air passenger services between Great Britain and Ireland;
 - (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
 - (d) that the CC should require Ryanair to reduce its shareholding in Aer Lingus to 5% of Aer Lingus's issued ordinary shares, that this obligation should be accompanied by obligations on Ryanair not to seek or accept board representation or acquire further shares in Aer Lingus (unless a clearance is given under the European Union Merger Regulation for a concentration between Ryanair and Aer Lingus), and that a Divestiture

Trustee should be appointed from the outset to sell the Divestment Shares to suitable purchasers as described in paragraph 8.126 and Appendix K of the Report.

4. On 23 September 2013 Ryanair filed an application to the Competition Appeal Tribunal (the Tribunal) challenging findings in the Report. The Tribunal delivered its judgment on 7 March 2014 dismissing Ryanair's application.
5. On 1 April 2014 the CC was replaced by the Competition and Markets Authority (CMA). Under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014, the remaining functions of the CC in relation to the Reference were transferred to the CMA.
6. On 23 April 2014 the Tribunal granted Ryanair permission to appeal its judgment on two grounds and on 17 July 2014 the Court of Appeal granted permission on a further third ground.
7. On 12 February 2015 the Court of Appeal dismissed all three of Ryanair's grounds of appeal and refused Ryanair permission to appeal to the Supreme Court.
8. On 12 March 2015, Ryanair lodged a request with the Supreme Court seeking leave to appeal on all three grounds. The Supreme Court's decision on permission is pending.

Invitation to comment on the CMA's provisional decision on material changes of circumstances

9. The CMA is under a duty pursuant to section 41 of the Act to take remedial action where it has published a decision that there is an anti-competitive outcome. Pursuant to section 41(3) of the Act, the remedial action taken by the CMA must be consistent with the 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.
10. On 5 November 2013 [the CC published](#) its *notice of and consultation on the proposed Final Order pursuant to section 84 of and Schedule 10 to the Enterprise Act 2002*. However, the CMA did not impose the Final Order whilst the litigation in the Tribunal and the Court of Appeal was in progress.
11. On 12 February 2015, following the Court of Appeal's judgment, Ryanair filed an application with the CMA requesting it to consider whether there has been a material change of circumstances since the Report. A non-confidential

version of Ryanair's submission was published on [the case page](#) on 3 March 2015, alongside a notice inviting comments on material change of circumstances and/or special reason within the meaning of section 41(3) of the Act. Responses were received from Aer Lingus, IAG and the Irish Department of Transport, Tourism and Sport. These responses have also been [published on the CMA webpages](#). The CMA also [received a further two responses](#) from Ryanair setting out developments which it said had taken place since its original submission and commenting on the responses the CMA received.

12. Accordingly, the CMA has considered the submissions received in order to determine whether it should exercise its discretion and depart from the findings on remedial action set out in the Report. The CMA's provisional decision examines the submissions made by Ryanair and third parties and sets out the CMA's assessment of whether there is any material change of circumstances or special reason for the CMA to depart from its conclusions on remedies set out in the Report.
13. Any person wishing to comment on the CMA's provisional decision on material changes of circumstances is now invited to do so.
14. Representations concerning these issues should be sent in writing by no later than **11 May 2015** and should be addressed to:

Alice Cole Roberts
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

or by email to: alice.coleroberts@cma.gsi.gov.uk

15. The CMA inquiry group will have regard to any such representations in making its final decision on remedial action.

Simon Polito
Group Chair
17 April 2015