

11 May 2015

Simon Polito
Group Chair
Competition and Markets Authority
Victoria House
37 Southampton Row
London, WC1B 4AD
United Kingdom

By e-mail only

Re: Ryanair/Aer Lingus Inquiry

Dear Mr Polito,

I am writing to rebut the untenable and erroneous Provisional Decision on a Material Change of Circumstances published by the Competition and Markets Authority (the "CMA") on April 17, 2015.

The CMA's discredited August 2013 Divestment Decision was based entirely on secret / redacted "evidence" submitted by Aer Lingus which claimed that Ryanair's minority shareholding in Aer Lingus acted as a deterrent to other airlines who were or may in the future wish to bid for Aer Lingus. The CMA used this secret "evidence" to construct an entirely fictitious "theory of harm" that Ryanair's 29.8% stake in Aer Lingus was or would prevent other airlines from bidding for Aer Lingus. This bogus Divestment Decision, and the secret / redacted "evidence" upon which it was based has now been shorn of any credibility by the ongoing IAG bid process for Aer Lingus (which commenced in December 2014). The CMA's latest claim that this IAG bid process does not constitute a material change of circumstances and / or that the August 2013 Divestment Decision can be maintained is absurd, irrational and will fail judicial scrutiny when the CMA's only basis for the Divestment Decision has now been exposed as entirely untrue.

It is now self-evident that your 2013 claim that no airline would bid for Aer Lingus for so long as Ryanair maintained its minority shareholding has been proven to be totally and hopelessly wrong by IAG's announcements that it wishes / intends to acquire Aer Lingus. The entire factual and legal basis for your August 2013 Divestment Decision has been fatally undermined and exposed as a dishonest charade. There is simply no legal or evidential basis for your Provisional Decision that the IAG bid for Aer Lingus is not a material change of circumstances when a bid such as this is what your August 2013 Divestment Decision concluded would not occur while or for so long as Ryanair held a minority stake in Aer Lingus.

The facts are as follows:

- In your August 2013 Divestment Decision, the CMA claimed, on the basis of secret / redacted "evidence" produced by Aer Lingus, that Aer Lingus wanted to merge with

another airline, but that Ryanair's 29.8% minority shareholding was somehow deterring potential merger partners. When the CMA made this claim, there was no verifiable evidence that any other airline was even considering making a bid for Aer Lingus. On the contrary, there was ample evidence that no airline was willing to purchase Ryanair's minority stake in Aer Lingus.

- Critical evidence which the CMA claimed to have relied upon to support its Divestment Decision was redacted and withheld from Ryanair and its advisors, and is still being withheld. Neither Ryanair nor its advisors have ever seen any of the evidence, which the CMA claimed to possess, that Ryanair's minority shareholding was preventing an Aer Lingus merger.
- Even though Ryanair rejected the CMA's invented (and now disproven) claims, it offered a binding commitment to vote Ryanair's shares in favour of any offer for Aer Lingus that the Aer Lingus Board might recommend. The CMA irrationally rejected this (and other) offers by Ryanair and proceeded to impose a disproportionate divestment order solely on the now discredited basis that no other airline would bid for or merge with Aer Lingus owing to Ryanair's minority shareholding.
- The sole basis for the CMA's Divestment Decision (which was itself based on secret / redacted "evidence") has now proven to have been totally and hopelessly false, since Aer Lingus is now not only the subject of a takeover bid by IAG, but this offer has even been recommended by Aer Lingus' Board, even while Ryanair continues to hold a minority stake in Aer Lingus. These market developments have therefore exposed and disproven the entire secret basis for the CMA's discredited Divestment Decision.
- Finally, competition between Ryanair and Aer Lingus, which the European Commission has twice determined is so intense as to exclude a combination of the two airlines, has intensified still further since August 2013, an outcome which again exposes and disproves the CMA's original but unsubstantiated claim that Ryanair's minority shareholding was anti-competitive.

The CMA simply cannot hide behind its utterly discredited 2013 Divestment Decision and clearly cannot (in light of current evidence of the IAG bid) determine that this IAG bid for Aer Lingus (which the CMA said could not happen) is "immaterial" to its assessment or that "nothing" has changed since the Divestment Decision was taken almost two years ago. The CMA's original invented claim that Ryanair's shareholding continues to prevent potential airline partners from approaching Aer Lingus, is now proven to be false and irrational in the light of IAG's proposed takeover bid for Aer Lingus.

Your "conclusions" in the CMA's Provisional Decision are manifestly incorrect, devoid of any evidential support, and are unsustainable. It is irrational and unlawful to contend that IAG's takeover offer is not material (or a change in circumstances) to the CMA's 2013 Divestment Decision. The very thing that the CMA said could not / would not happen is now in reality taking place. The IAG proposed takeover bid has therefore fatally undermined the CMA's discredited Divestment Decision even while Ryanair remains a 29.8% shareholder of Aer Lingus. Had the CMA known in August 2013 what it knows now (that IAG would bid for Aer Lingus), it could not (and cannot) have claimed that Ryanair's shareholding was somehow preventing Aer Lingus from merging with another airline. The CMA's Provisional Decision is therefore wrong, irrational, at odds with reality, and indicates a clear and premeditated anti-Ryanair bias inherent in the CMA.

It is not just the fact of IAG's bid that is relevant and conclusively proves that a material change in circumstances has taken place since the CMA's 2013 Divestment Decision. There is also a

wealth of other evidence that is inconsistent with, and undermines, the irrational and discredited Divestment Decision:

- The obstacles to IAG's bid created by the Irish Government contradict the evidence it gave during the CMA's investigation (that it is open to sell its stake).
- The trade unions have put up significant opposition to the proposed IAG bid. This is also new evidence that the CMA failed to consider at the time of its original investigation.
- There is new evidence that it was the resolution of the Aer Lingus pension deficit, and not Ryanair's minority shareholding, which was the key trigger for IAG's willingness to launch its takeover bid for Aer Lingus in December 2014.

All of these facts are highly relevant and unavoidable in the CMA's assessment, yet have been completely ignored by the CMA in its irrational and untenable Provisional Decision. Any non-biased, dispassionate and objective review of these facts compels only one conclusion, namely that, because the facts have changed significantly and materially, the discredited 2013 Divestment Decision must now be reversed. To find otherwise, as the CMA has provisionally and incorrectly done, is untenable, unlawful, irrational, and will fail on appeal.

The CMA's obligation is not to defend your manifestly absurd and discredited 2013 Divestment Decision. The law requires the CMA to reach a new decision in light of the facts (namely IAG's proposed bid for Aer Lingus) that exist today. It is inconceivable that any competition authority can today reasonably or rationally determine that Ryanair's minority shareholding was preventing Aer Lingus from merging with another airline when the Board of Aer Lingus itself is recommending just such a merger with IAG even while Ryanair holds the minority shareholding. To do so is irrational, hopelessly wrong and contrary to the real world evidence. Accordingly, we now call on the CMA to review these matters fully, dispassionately and impartially, recognise that the irrational and bogus claims made by Aer Lingus in its secret and redacted evidence two years ago were utterly false, and have now been conclusively disproven, and your Group has no alternative when confronted by this evidence other than to reverse its perverse Provisional Decision.

We stand ready to meet with the Inquiry Group to discuss the immediate withdrawal of your discredited 2013 Divestment Decision which is the only course of action open to you as Group Chair, and the CMA, now that the sole basis for its 2013 Divestment Decision has been shattered by the IAG offer for Aer Lingus which has now been recommended by the Board of Aer Lingus to its shareholders.

Yours sincerely,

Michael O'Leary
Chief Executive

Cc: Adam Land, CMA Senior Director of Remedies, Business & Financial Analysis