

THE RYANAIR HOLDINGS PLC AND AER LINGUS GROUP PLC INQUIRY ORDER 2015

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. On 27 September 2012, the CC, for the purpose of preventing pre-emptive action in accordance with section 81 of the Act, made an order addressed to Ryanair (the Interim Order).
3. Also on 27 September 2012, Aer Lingus gave Interim Undertakings to the CC pursuant to section 80 of the Act for the purpose of preventing pre-emptive action (the Interim Undertakings).
4. The Interim Order and Interim Undertakings cease to be in force on the date of this Order in accordance with sections 79 and sections 80(8) and 81(8) of the Act.
5. 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).
6. 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) 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.
7. On 23 September 2013, Ryanair filed an application to the Competition Appeal Tribunal (the Tribunal) challenging findings in the Report.
 8. On 5 November 2013, the CC published its notice of and consultation on the proposed final order pursuant to section 84 and schedule 10 of the Act. The CC noted that it would not make a final order while proceedings were before the Tribunal.
 9. The Tribunal delivered its judgment on 7 March 2014 dismissing Ryanair's application.
 10. 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.
 11. 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.
 12. On 12 February 2015, the Court of Appeal dismissed all three of Ryanair's grounds of appeal and refused permission to appeal. Ryanair filed an application with the CMA requesting that it consider whether there had been any material changes of circumstance (MCCs) since the Report.
 13. On 3 March 2015 the CMA published a notice inviting comments on whether there had been any MCCs since the preparation of its Report and/or there was a special reason within the meaning of section 41(3) of the Act for the CMA not to implement the remedies set out in the Report.
 14. On 17 April 2015 the CMA published its provisional decision that there had been no MCCs. The CMA also published a working paper on the comments received on its proposed Final Order and published a notice and consultation

on a modified proposed Final Order setting out the modifications, pursuant to section 84 of and Schedule 10 to the Enterprise Act 2002. No substantive comments were received on the proposed Final Order. The CMA has made some modifications to the proposed Final Order it consulted on that do not differ in any material respect from those consulted on previously.

15. On 11 June 2015 the CMA published its decision that there had been no MCCs since the preparation of its Report.
16. Accordingly, the CMA now issues this Order today, 11 June 2015, to give effect to the remedies identified by the CC at paragraph 8.126 and Appendix K of the Report. The Explanatory Note accompanying the Order provides an explanation of how the Order is expected to operate.

THE ORDER

The CMA makes this Order in performance of its duty under section 41 and in exercise of the powers it has in section 86(1) to (5) and section 87, section 84(1), (2) and (3) and paragraphs 9, 11, 12, 13, 14, 19, 21 and 22 of Schedule 8 to the Enterprise Act 2002, for the purpose of remedying, mitigating or preventing the SLC and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the SLC specified in the Report.

1. Title, application and interpretation

- 1.1 The title of this Order is 'The Ryanair Holdings PLC and Aer Lingus Group plc Inquiry Order 2015'.
- 1.2 The Order applies to Ryanair, Aer Lingus, any person who is an Affiliate with respect to Ryanair or Aer Lingus and to a Divestiture Trustee or Hold Separate Manager appointed under this Order.
- 1.3 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
- 1.4 The Annexes and Schedule form part of this Order.
- 1.5 The purpose of this Order is to give effect to the Report and it shall be construed accordingly.
- 1.6 Any word or expression used in this Order or the recitals to this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.

1.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.

1.8 In this Order:

Act means the Enterprise Act 2002;

Acquisition means the acquisition of a 29.82% minority shareholding in Aer Lingus by Ryanair between 2006 and 2008 which was the subject matter of the Reference;

Aer Lingus means Aer Lingus Group plc and all its Subsidiaries;

Affiliate of a person is another person who satisfies the following condition, namely that any enterprise¹ that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

Approved Purchaser means a purchaser of some or all of the Divestment Shares who, in the CMA's view, satisfies the relevant purchaser suitability criteria set out in paragraph 3.15 of the CC's Merger Remedies Guidelines as adopted by the CMA and Schedule 1 to Annex 1 of this Order;

CC means the Competition Commission;

CMA means the Competition and Markets Authority, which was established on 1 October 2013 under the Enterprise and Regulatory Reform Act 2013 and to which certain functions of the OFT and the CC transferred on 1 April 2014;

Commencement Date means the date on which this Order is made by the CMA;

Compliance Statement means the statement provided by each of Ryanair and Aer Lingus in accordance with Article 14 and Annex 2 of this Order;

Control includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

¹ Enterprise in this context has the meaning given in section 129(1) of the Act.

Divestment Shares means the ordinary shares Ryanair holds in Aer Lingus and which the CC required Ryanair to divest in accordance with paragraph 8.126 of its Report;

Divestiture Trustee means any person appointed in accordance with Article 5;

Divestiture Trustee Mandate means the mandate given by Ryanair to the Divestiture Trustee pursuant to this Order as set out in Annex 1 to this Order;

Divestiture Trustee Obligation means the obligation on the Divestiture Trustee to bring about the Effective Disposal of the Divestment Shares as set out in the Divestiture Trustee Mandate;

Divestiture Trustee Report means the report submitted by the Divestiture Trustee in accordance with paragraph 23 of Annex 1;

Effective Disposal means completed divestment of the Divestment Shares to an Approved Purchaser or Purchasers;

EUMR means Council Regulation (139/2004/EC) of 20 January 2004 on the control of concentrations between undertakings (the European Union Merger Regulation);

Hold Separate Manager means a person independent of Ryanair and Aer Lingus and appointed in accordance with Article 9 and any successors thereto;

Indemnified Person means the Divestiture Trustee its employees, officers, representatives and advisers, and the CMA, its employees, officers, representatives and advisers;

Irish Takeover Rules means the rules made by the Irish Takeover Panel under the powers granted to it by the Irish Takeover Panel Act 1997 and by the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006;

Market Abuse Regulations means the Irish Market Abuse (Directive 2003/6/EC) Regulations 2005;

Merger Clearance means a decision by the European Commission pursuant to Article 6(1)(b), 8(1) or 8(2) of the EUMR;

Merger Remedies Guidelines means the CC's Guidelines, CC8, dated November 2008 as adopted by the CMA;

Monitoring Trustee means a person independent of Ryanair and Aer Lingus and appointed in accordance with Article 9 and any successors thereto;

Notification means a written communication from Ryanair or Aer Lingus to the Relevant Contact at the CMA or from the CMA to the Relevant Contact at Ryanair or the Relevant Contact at Aer Lingus or both, as appropriate, sent by post, personal delivery or, with the prior written agreement of the recipient, email; and Notify, Notified and Notice shall be construed accordingly;

OFT means the Office of Fair Trading;

Order means this order;

Reference means the reference made by the OFT on 15 June 2012 under section 22 of the Act concerning the completed acquisition by Ryanair of a minority shareholding in Aer Lingus;

Relevant Contact means, in the case of the CMA, any person or persons as may be Notified to Ryanair and Aer Lingus by the CMA from time to time, and in the case of Ryanair, [✂], and in the case of Aer Lingus [✂] or such other person or persons as may be Notified to the CMA by Ryanair or Aer Lingus from time to time;

Report means the report of the CC 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*, published on 28 August 2013;

Ryanair means Ryanair Holdings plc and all its Subsidiaries including Ryanair Limited and its Subsidiaries;

Ryanair Holdings plc incorporated in 1996, its registered number is 249885 and it has a registered office at Corporate Head Office, Dublin Airport, County Dublin, Republic of Ireland;

Ryanair Limited is a wholly owned subsidiary of Ryanair incorporated in the Republic of Ireland;

Shares in Aer Lingus means any of the issued share capital of Aer Lingus including the Divestment Shares;

SLC means the substantial lessening of competition identified in the Report;

Subsidiaries, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

Transparency Regulations means the Irish Transparency (Directive 2004/109/EC) (Amendment) Regulations 2010;

Trustee Divestiture Period means a period of [] from the Commencement Date, unless this period is extended by the CMA as it deems necessary or following an extension request from the Divestiture Trustee to be granted or rejected at the sole discretion of the CMA;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland; and

Working day means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

2. Commencement

- 2.1 The obligations in the Order shall come into effect on the Commencement Date.

3. Obligations on Ryanair

- 3.1 Ryanair shall divest the Divestment Shares in a manner approved by the CMA in advance and in writing in accordance with the provisions of this Order.
- 3.2 Ryanair shall not acquire shares in Aer Lingus save where Merger Clearance has been given to Ryanair to do so pursuant to the provisions of the EUMR.
- 3.3 Ryanair shall not seek to appoint or accept the appointment of any Affiliate or associated person of Ryanair as a director of Aer Lingus. This shall include Ryanair nominating or voting for any Affiliate or associated person of Ryanair as a director of Aer Lingus.
- 3.4 Ryanair shall comply so far as is reasonable with such written directions as the CMA may give to it and which may include the appointment of a Monitoring Trustee or any other such person(s) as the CMA deems appropriate for securing compliance with this Order and which would include the appointment of a Hold Separate Manager.
- 3.5 Ryanair shall comply so far as is reasonable with any written instruction given by the Divestiture Trustee for the purpose of giving effect to the Divestiture Trustee Obligation and with any written instruction given by a Monitoring Trustee or any other person or persons appointed pursuant to written directions of the CMA and in accordance with Article 9.

- 3.6 Ryanair shall appoint a Divestiture Trustee approved by the CMA to give effect to its obligations set out in this Order in accordance with the procedures set out in Article 5 and on the terms of the Divestiture Trustee Mandate approved by the CMA. Ryanair shall remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of its appointment (and this may include the appointment of financial or legal advisers to assist with the fulfilment of the Divestiture Trustee Obligation). Such terms of remuneration may include the provision of an incentive to the Divestiture Trustee that does not give rise to any conflict of interest and does not create any impediment to a prompt Effective Disposal.
- 3.7 Ryanair shall not take any steps to hinder the Effective Disposal of the Divestment Shares.
- 3.8 If Ryanair, or any agent, adviser or contractor of Ryanair receives an enquiry about the sale or acquisition of the Divestment Shares (whether oral or written), then Ryanair shall refer that person to the Divestiture Trustee and report the fact of the enquiry to the Divestiture Trustee.
- 3.9 Ryanair shall not, without the prior written consent of the CMA and before the Effective Disposal, exercise voting rights attached to any shares that it holds in Aer Lingus except to maintain its proportion of Aer Lingus's share capital.
- 3.10 Ryanair shall not without the prior written consent of the CMA and before the Effective Disposal dispose of any of its shares or otherwise transfer control in Aer Lingus (or any part thereof) from Ryanair Limited or enter into any agreement or arrangement in relation to such a disposal or transfer save in accordance with the provisions of this Order.
- 3.11 Ryanair shall not seek to obtain from Aer Lingus any confidential information about Aer Lingus save that which is generally made available by Aer Lingus to its shareholders.
- 3.12 Ryanair Holdings plc shall procure that each of its Subsidiaries complies fully with this Order.

4. Obligations on Aer Lingus

- 4.1 Aer Lingus shall comply so far as is reasonable with such written directions as the CMA may give to it or any other such person or persons as the CMA deems appropriate for securing compliance with this Order.

- 4.2 Aer Lingus shall comply so far as is reasonable with any written instruction given by the Divestiture Trustee for the purpose of giving effect to the Divestiture Trustee Obligation.
- 4.3 Aer Lingus shall not take any steps to hinder the Effective Disposal of the Divestment Shares.
- 4.4 If Aer Lingus, or any agent, adviser or contractor of Aer Lingus receives an enquiry about the sale or acquisition of the Divestment Shares (whether oral or written), then Aer Lingus shall refer that person to the Divestiture Trustee and report the fact of the enquiry to the Divestiture Trustee.

5. Divestiture Trustee – appointment procedure

- 5.1 Before the appointment of the Divestiture Trustee, Ryanair shall, within five working days from the Commencement Date or whichever other date the CMA may direct, submit to the CMA for approval a list of two or more persons whom Ryanair proposes to appoint as Divestiture Trustee, accompanied by sufficient information to permit the CMA to verify that each proposed Divestiture Trustee fulfils the requirements set out in Article 5.3, and shall include:
 - 5.1.1 the full terms and conditions on which the Divestiture Trustee is to be appointed, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties in accordance with the Divestiture Trustee Mandate and to enable Ryanair to terminate the appointment in accordance with Article 7; and
 - 5.1.2 a workplan comprising a schedule of the steps to be taken to give effect to the Divestiture Trustee Mandate.
- 5.2 Ryanair shall secure the prior approval in writing of the CMA to both the identity of the Divestiture Trustee and all terms and conditions under which it is proposed the Divestiture Trustee shall be appointed. The terms and conditions of the appointment shall include the provisions set out in the Divestiture Trustee Mandate at Annex 1 to this Order and shall not include any terms or conditions that are inconsistent with those provisions.
- 5.3 Each person on the list referred to in Article 5.1 shall be independent of Ryanair and its Affiliates and to the best of Ryanair's knowledge, also independent of Aer Lingus and its Affiliates, possess the qualifications and resources necessary for the performance of the Divestiture Trustee Mandate, and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms on which it is remunerated. It shall further be a term of the Divestiture Trustee's

appointment that it shall not be offered, nor shall it accept, any other mandate from Ryanair or Aer Lingus or an Affiliate of Ryanair or Aer Lingus for a period of three years following the discharge of the Divestiture Trustee.

- 5.4 The CMA will send to Aer Lingus by way of Notification the list referred to in Article 5.1 and Aer Lingus will confirm to the CMA within two working days of receiving the list whether it has any objections to one or more persons thereon, providing sufficient reasons for any such objection. If the CMA does not receive a response from Aer Lingus within two working days from sending the Notification it will be deemed that Aer Lingus has no objections to any of the persons on the list.
- 5.5 The CMA may meet with and approve or reject any or all of the proposed Divestiture Trustees and may approve the terms and conditions of appointment subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. The CMA will Notify the Relevant Contact at Ryanair and Aer Lingus of its approval or rejection of any or all of the proposed Divestiture Trustees. If only one proposed name is approved, Ryanair shall use its best endeavours to appoint, or cause to be appointed, the person concerned as Divestiture Trustee in accordance with the terms and conditions of appointment approved by the CMA. If more than one person is approved, Ryanair shall be free to choose the Divestiture Trustee from among the persons so approved.
- 5.6 Ryanair shall appoint the Divestiture Trustee as soon as reasonably practicable and in any event within two working days of the Notification of the CMA's approval under Article 5.5. Once the Divestiture Trustee has been appointed, Ryanair shall provide the CMA with a copy of the terms and conditions of appointment within two working days.
- 5.7 If all the proposed Divestiture Trustees are rejected by the CMA, Ryanair shall submit the names of at least two further persons within five working days of being Notified of the rejection, in accordance with the requirements and the procedures set out in Articles 5.1 to 5.6 above.
- 5.8 The provisions of Article 5.9 shall apply if:
 - 5.8.1 Ryanair fails to nominate persons in accordance with Article 5.1 and/or fails to nominate further persons in accordance with Article 5.7; or
 - 5.8.2 those further persons are rejected by the CMA; or
 - 5.8.3 Ryanair is unable for any reason to conclude the appointment within the specified time limit.

- 5.9 The CMA shall nominate one or more persons to act as Divestiture Trustee, and Ryanair shall appoint, or cause to be appointed one such Divestiture Trustee within two working days from Notification of such nomination in accordance with the terms and conditions of appointment approved by the CMA.
- 5.10 Ryanair shall not change any of the terms and conditions of appointment of the Divestiture Trustee without first consulting and obtaining the prior written approval of the CMA.
- 5.11 The appointment of the Divestiture Trustee pursuant to Articles 5.1 to 5.10 above shall be irrevocable save where the CMA has discharged Ryanair from its obligation to appoint a Divestiture Trustee or to the extent permitted under Article 7.
- 5.12 In the event that the appointment of the Divestiture Trustee is terminated pursuant to Article 7, Ryanair shall submit the names of at least two further persons to the CMA within five working days, whereupon the requirements and the procedure set out in Articles 5.1 to 5.10 above shall apply. Where required by the CMA, the outgoing Divestiture Trustee shall continue as Divestiture Trustee until a new Divestiture Trustee is in place and a full handover of all relevant information has taken place.

6. Functions of the Divestiture Trustee

- 6.1 The Divestiture Trustee is to give effect to the Divestiture Trustee Obligation in accordance with its duties as set out in the Divestiture Trustee Mandate attached at Annex 1.
- 6.2 The Divestiture Trustee shall take such steps and measures as it reasonably considers necessary to fulfil the Divestiture Trustee Obligation and to that end the Divestiture Trustee may give written instructions to each of Ryanair and Aer Lingus.
- 6.3 The Divestiture Trustee shall comply with any directions issued to it by the CMA.

7. Replacement, discharge and reappointment of the Divestiture Trustee

- 7.1 If the Divestiture Trustee ceases or is unable to perform its functions under this Order for any reason, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, direct Ryanair to replace the Divestiture Trustee with effect from a date to be determined, which may be immediately.

- 7.2 If Ryanair or Aer Lingus considers for any reason that the Divestiture Trustee is failing to perform its functions under this Order or is otherwise unsuitable to continue to act as Divestiture Trustee, it shall inform the CMA immediately. The CMA may, after consulting the Divestiture Trustee, direct Ryanair to replace the Divestiture Trustee or to modify the terms and conditions of the Divestiture Trustee's appointment as it shall in its absolute discretion determine.
- 7.3 If the Divestiture Trustee is removed in accordance with Articles 7.1 or 7.2 above, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedures referred to in Article 5.

8. Duties and obligations of Ryanair and Aer Lingus in relation to the Divestiture Trustee

- 8.1 Each of Ryanair and Aer Lingus shall at all times keep under consideration what steps it might reasonably take to enable the Divestiture Trustee to fulfil the Divestiture Trustee Obligation and, to the extent that such steps are not expressly required by this Order, shall either undertake them itself or, where appropriate, seek guidance from the Divestiture Trustee as to whether they should be taken or suggest to the Divestiture Trustee that such steps should be taken by others save that the generality of this provision is without prejudice to the further provisions below.
- 8.2 Each of Ryanair and Aer Lingus shall cooperate, and shall use all reasonable endeavours to procure that its employees, officers, agents and advisers acting in their capacity as employees, officers, agents or advisers of Ryanair or Aer Lingus, cooperate fully with the Divestiture Trustee and any advisers appointed by the Divestiture Trustee, in particular by providing the Divestiture Trustee with all assistance and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably require in fulfilling the Divestiture Trustee Obligation, including but not limited to:
- 8.2.1 the provision of such facilities as are necessary for the discharge by the Divestiture Trustee of its functions; and
- 8.2.2 the provision of full and complete access to all personnel (including personnel of agents, advisers and contractors), books, records, communications, documents, facilities and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably

require in accordance with its duty to protect confidential information as set out in the Divestiture Trustee Mandate at paragraph 7.3 of Annex 1.

- 8.3 Each of Ryanair and Aer Lingus shall comply so far as is reasonable with any written instructions given by the Divestiture Trustee for the purpose of discharging the Divestiture Trustee Obligation.
- 8.4 At the written instructions of the Divestiture Trustee, each of Ryanair and Aer Lingus shall draw up and execute any documents required to give effect to the Divestiture Trustee Obligation.
- 8.5 Ryanair shall execute a power or powers of attorney in favour of the Divestiture Trustee granting the Divestiture Trustee authority to take all such steps as are necessary to fulfil the Divestiture Trustee Obligation, including the authority to sell, to give an irrevocable undertaking or consent to sell or otherwise deal with the Divestment Shares including voting the Divestment Shares in Aer Lingus where the CMA has provided its written consent to do so, provided that such power or powers of attorney are strictly limited to circumstances arising where Ryanair, having been given at least two working days in which to execute documents pursuant to the provision in Article 8.4 above has in the CMA's reasonable opinion failed without cause to do so. The power or powers of attorney granted by Ryanair must in addition contain a clause that so long as the Divestiture Trustee Obligation remains undischarged the power of attorney will not be revoked.
- 8.6 Ryanair shall hold each Indemnified Person harmless against any liabilities arising out of the proper performance of the Divestiture Trustee Mandate. An Indemnified Person shall have no liability to Ryanair for any liabilities arising out of the proper performance of the Divestiture Trustee Mandate except to the extent that such liabilities result from actions or omissions that are contrary to law or from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 8.7 Each of Ryanair and Aer Lingus shall not take any steps towards the marketing or sale of the Divestment Shares save at the written instruction of the Divestiture Trustee. Aer Lingus shall inform the Divestiture Trustee of its own ongoing actions pertaining to the marketing of Shares in Aer Lingus and shall obtain the written approval of the Divestiture Trustee before it can carry out any activity which may overlap with the Divestiture Trustee's marketing of the Divestment Shares. This shall not prevent Aer Lingus from carrying out its obligations under the Irish Takeover Rules.
- 8.8 Each of Ryanair and Aer Lingus shall make no objection to the CMA about the conduct of the Divestiture Trustee while carrying out the Divestiture Trustee

Obligation save in the circumstances where the objection is made on the grounds of wilful default, recklessness, negligence or bad faith by the Divestiture Trustee, its employees, agents or advisers or a breach of the Divestiture Trustee Mandate. Where Ryanair or Aer Lingus or both wish to make an objection on such grounds it shall submit a Notice to the CMA setting out its objection within seven working days from the day on which it first became aware of the fact or facts giving rise to its objection and in any event at least three working days prior to the Effective Disposal. The CMA will consider any Notice of objection and take action as it deems appropriate as soon as is reasonably practicable.

9. Monitoring Trustee – appointment and duties

- 9.1 The CMA may give written directions to Ryanair to appoint a Monitoring Trustee or Hold Separate Manager or any other person or persons the CMA deems appropriate for securing compliance with this Order.
- 9.2 Where the CMA directs Ryanair to appoint a Monitoring Trustee or any other person or persons pursuant to written directions, Ryanair must follow the same appointment procedures as set out for the Divestiture Trustee in Article 5 of the Order subject to any specific requirements provided for in the written directions of the CMA.

10. Ancillary Matters

- 10.1 Where Ryanair or Aer Lingus require the consent or approval of the CMA (however that requirement is expressed in this Order) Ryanair or Aer Lingus or both shall seek the prior consent or approval of the CMA by the service of a Notice.
- 10.2 Ryanair or Aer Lingus shall make full disclosure of every fact and matter that the CMA, acting reasonably, may hold to be relevant to its decision when making any application for the CMA's consent or approval. A consent or approval granted by the CMA in default of such disclosure by Ryanair or Aer Lingus of all relevant facts and matters is voidable at the election of the CMA.
- 10.3 In the event that Ryanair or Aer Lingus discovers that an application for consent or approval has been made without full disclosure in accordance with Article 10.2 and is therefore incomplete, Ryanair or Aer Lingus, whichever is applicable, shall:
- 10.3.1 so inform the CMA by Notice identifying the particulars in which the application for consent is incomplete as soon as is reasonably practicable; and

10.3.2 at the same time or as soon as possible thereafter provide to the CMA an application that is complete.

- 10.4 Each of Ryanair and Aer Lingus shall make each application for consent or approval by Notice so that it is received by the CMA at least ten working days (except where this Order provides for a shorter period), or such lesser period as the CMA agrees in writing, before the day on which the CMA's consent or approval is necessary to avoid a breach of this Order.
- 10.5 Where the CMA, the Divestiture Trustee, the Monitoring Trustee or any other person appointed pursuant to written directions of the CMA gives written directions or a written instruction to Ryanair or Aer Lingus or its Subsidiaries or both pursuant to this Order, the CMA, the Divestiture Trustee, the Monitoring Trustee or the person or persons appointed pursuant to the CMA's written directions, as appropriate, shall give written directions or written instructions by serving a Notice upon Ryanair or Aer Lingus pursuant to Article 13.

11. Severability

- 11.1 If any provision of this Order be or become contrary to law or invalid for any reason each of Ryanair and Aer Lingus shall continue to observe the remaining provisions.
- 11.2 Each of Ryanair and Aer Lingus shall not rely on any default or want of authority on the part of Ryanair or Aer Lingus or of any officer or employee of Ryanair or Aer Lingus in the execution of this Order unless directed so to do by the CMA.

12. Provision of information to the CMA

- 12.1 Each of Ryanair and Aer Lingus shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under this Order or under sections 84, 92, 93 and 94 of the Act.
- 12.2 If Ryanair or Aer Lingus have a reasonable suspicion that any provision of this Order has been breached or is likely to be breached, it shall immediately write to the CMA to advise the CMA of the circumstances of such suspicions.

13. Service

- 13.1 Each of Ryanair and Aer Lingus shall authorise their respective Relevant Contacts at Ryanair and Aer Lingus to accept on their behalf all documents

(including any document of any kind which falls to be served on or sent to Ryanair or Aer Lingus in connection with any proceedings in Courts in the United Kingdom), orders, instructions, requests, Notifications or other communications connected with this Order.

- 13.2 Any communication between the CMA and Ryanair or Aer Lingus under this Order shall be addressed to Ryanair at the Relevant Contacts at Ryanair Corporate Head Office, Airside Business Park, Swords, County Dublin Republic of Ireland or such other address as Ryanair may Notify in writing and to Aer Lingus at the Relevant Contacts at Aer Lingus Head Office, Dublin Airport, County Dublin, Republic of Ireland or such other address as Aer Lingus may Notify in writing.
- 13.3 Any document, order, instruction, request, Notification or other communication shall be deemed to have been validly served on Ryanair if it is served on the Relevant Contact at Ryanair and validly served on Aer Lingus if it is served on the Relevant Contact at Aer Lingus; and service or receipt shall be deemed to have been acknowledged by Ryanair or Aer Lingus if it is acknowledged by their Relevant Contact.
- 13.4 Any communication between Ryanair or Aer Lingus and the CMA under this Order shall be addressed to the Remedies Monitoring Team, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other address as the CMA may Notify in writing.

14. Compliance

- 14.1 On 25 June 2015 and subsequently on the 25th day of each month (or where the relevant day of the month does not fall on a working day, the first working day thereafter), or at such times as may be specified by the CMA by Notice, Ryanair shall provide a statement to the CMA:
- 14.1.1 confirming the compliance of Ryanair with all provisions of this Order in the form set out in Annex 2;
 - 14.1.2 providing details of any agreements or arrangements entered into by Ryanair in relation to the Divestment Shares; and
 - 14.1.3 providing details of the steps that Ryanair has taken in order to verify the contents of the Compliance Statement.
- 14.2 On 25 June 2015 and subsequently on the 25th day of each month (or where the relevant day of the month does not fall on a working day, the first working day thereafter), or at such times as may be specified by the CMA by Notice, Aer Lingus shall provide a statement to the CMA:

- 14.2.1 confirming the compliance of Aer Lingus and its Subsidiaries with all provisions of this Order in the form set out in Annex 2;
 - 14.2.2 providing details of any agreements or arrangements entered into by Aer Lingus or its Subsidiaries in relation to the Divestment Shares; and
 - 14.2.3 providing details of the steps that Aer Lingus has taken in order to verify the contents of the Compliance Statement.
- 14.3 The CMA may in its absolute discretion determine that the Compliance Statement may be submitted more or less frequently, including in response to any submissions made by Ryanair or Aer Lingus regarding its own Compliance Statement.

15. Powers of direction

- 15.1 The CMA may give directions falling within this Order to:
- 15.1.1 a person specified in the directions; or
 - 15.1.2 a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- 15.2 Directions fall within this Article if they are written directions:
- 15.2.1 to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with this Order; or
 - 15.2.2 to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- 15.3 The CMA may vary or revoke any directions so given.

16. Governing law

- 16.1 This Order shall be governed by and construed in all respects in accordance with English law.
- 16.2 Disputes arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.

17. Termination

- 17.1 This Order shall be in force until such time as it is varied or revoked under the Act.

17.2 The variation or revocation of this Order shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation or revocation.

ANNEX 1

Divestiture Trustee Mandate

1. The terms and expressions used in the Order shall have the same meaning in this Divestiture Trustee Mandate, save as the context otherwise requires.
2. The Divestiture Trustee Obligation means bringing about the Effective Disposal of the Divestment Shares at the best available price in the market [X] and the performance of all ancillary tasks as are necessary or desirable for the purposes of Effective Disposal promptly and in any event within the Trustee Divestiture Period.
3. The Divestiture Trustee shall fulfil the Divestiture Trustee Obligation and shall undertake such matters preparatory to discharging the Divestiture Trustee Obligation or part thereof as the CMA may specify in the written direction.

Fulfilling the Divestiture Trustee Obligation

4. The Divestiture Trustee shall consider the most appropriate divestiture process for giving effect to the Divestiture Trustee Obligation from one of the following options:
 - 4.1 the sale of the Divestment Shares to an Approved Purchaser via an up-front buyer process (up-front buyer process); or
 - 4.2 the sale of the Divestment Shares to a number of approved independent buyers via a stock market placement (stock market dispersal).
5. The Divestiture Trustee may suggest to the CMA any alternative divestiture process that in its written opinion would be a more effective means of fulfilling the Divestiture Trustee Obligation including (without limitation) consenting the Divestment Shares into any pending or intended public offer for Aer Lingus.
6. The Divestiture Trustee will provide the CMA as soon as is possible and in any case no later than ten working days from appointment with a written report setting out its recommended divestiture process or processes for discharging the Divestiture Trustee Obligation.
7. In order to comply with the requirement in paragraph 6 and to fulfil the Divestiture Trustee Obligation, the Divestiture Trustee shall conduct all reasonable enquiries. In doing so, the Divestiture Trustee shall:
 - 7.1 hold one meeting with Ryanair and separately with Aer Lingus and this shall not preclude the Divestiture Trustee from holding further meetings

with either of Ryanair or Aer Lingus as the Divestiture Trustee deems necessary in order to fulfil the Divestiture Trustee Obligation; and

7.2 request of Ryanair or Aer Lingus or both, where the Divestiture Trustee considers it appropriate, any assistance or information (except for the avoidance of doubt such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably require in fulfilling the Divestiture Trustee Obligation, including but not limited to:

7.2.1 the use of facilities under the control of Ryanair or Aer Lingus as are necessary;

7.2.2 access to full and complete books, records, communications, documents and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably require; and

7.2.3 access to all personnel (including personnel of agents, advisers and contractors) of Ryanair or Aer Lingus or both.

7.3 The Divestiture Trustee shall treat all information obtained pursuant to paragraph 7 in the strictest of confidence and where each of Ryanair or Aer Lingus has identified that any such information is subject to a duty of confidentiality to any third party, the Divestiture Trustee will not disclose such information to any person without first consulting with Ryanair or Aer Lingus as appropriate to enable Ryanair or Aer Lingus to fulfil any obligation they may have towards that relevant third party. To ensure compliance with the Irish Takeover Rules, the Transparency Regulations and the Market Abuse Regulations and to the extent the Divestiture Trustee becomes party to any price sensitive non-public information of Ryanair or Aer Lingus, the Divestiture Trustee shall consult with each of Ryanair or Aer Lingus, as appropriate, prior to the release of or reliance on this information to ensure that Ryanair or Aer Lingus (as the case may be) and the Divestiture Trustee are in full compliance with the applicable regulations. The Divestiture Trustee shall consult with each of Ryanair or Aer Lingus as to the inclusion and terms of any appropriate responsibility statements to be issued.

8. The Divestiture Trustee shall consult with the CMA on the most appropriate divestiture process and shall not take any final action towards discharging the Divestiture Trustee Obligation without the written approval of the CMA.

9. The Divestiture Trustee shall market the Divestment Shares in the manner it considers reasonable and appropriate and may request the assistance of Ryanair or Aer Lingus or both in doing so.

10. The Divestiture Trustee shall consult with the CMA and Aer Lingus in identifying a suitable potential purchaser for the up-front buyer process.
11. Where CMA approval is provided for an up-front buyer process, the Divestiture Trustee shall identify a suitable potential purchaser that could enter into an agreement to acquire the Divestment Shares in their entirety, in accordance with the purchaser approval criteria set out in paragraphs 58 to 63 of Appendix K to the Report and reproduced in Schedule 1 to this Annex. The Divestiture Trustee may invite Aer Lingus to engage directly with a suitable potential purchaser to enable that suitable potential purchaser to discuss commercial or corporate governance matters with Aer Lingus which may be in the purchaser's contemplation in connection with the purchase of the Divestment Shares, *inter alia* where such engagement would facilitate the preparation by the suitable potential purchaser of any supporting documentation required by the Divestiture Trustee.
12. Where CMA approval is provided for an up-front buyer process, the Divestiture Trustee shall submit to the CMA for approval the name or names of suitable potential purchasers identified in accordance with paragraph 11 together with all relevant supporting documentation (including investment appraisals and business plans relating to the purchase and information regarding the financing of the acquisition and the financing of the purchaser's existing business) and any other relevant documentation that the CMA may reasonably require to enable it to consider whether the disposal of the Divestment Shares should be made to a suitable potential purchaser.
13. The Divestiture Trustee shall also submit to the CMA, at the same time as the name or names of suitable potential purchasers, the proposed divestment arrangements to bring about the Effective Disposal of the Divestment Shares pursuant to an up-front buyer process.
14. Where CMA approval is provided for a suitable potential purchaser and divestment arrangements, the Divestiture Trustee shall determine the timing of the sale provided that it is within the Trustee Divestiture Period and the Divestiture Trustee has discretion to conduct the sales process.
15. Where CMA approval is provided for stock market dispersal, the Divestiture Trustee shall have discretion to conduct the sales process but will do so under the supervision of the CMA. In exercising its discretion, the Divestiture Trustee shall ensure that, as far as is reasonably practicable, an orderly market is preserved and that fair market value for the Divestment Shares is obtained. The Divestiture Trustee shall have regard to any written directions of the CMA on the category of suitable purchasers with whom the Divestment Shares may be placed.

16. The Divestiture Trustee shall protect the legitimate financial interests of Ryanair and the legitimate financial and business interests of Aer Lingus subject to the Divestiture Trustee's obligation to give effect to the Divestiture Trustee Obligation.
17. Where the CMA gives its approval for the disposal of the Divestment Shares by either the up-front buyer process, stock market placement or other approved divestiture process, including a public offer as referred to in paragraph 5, the Divestiture Trustee shall:
 - 17.1 subject to paragraph 21, draw up all agreements, deeds, instruments of transfer, granting of consents or irrevocable undertakings or other instruments and documents as are necessary for the performance of the Divestiture Trustee Obligation and include in those agreements such terms and conditions as it considers appropriate;
 - 17.2 submit all such agreements to the CMA for approval once they are in agreed form;
 - 17.3 arrange the process for exchanging contracts and other necessary documentation or agreements in order to give effect to the divestment of the Divestment Shares; and
 - 17.4 supervise the exchange of contracts and other necessary documentation or agreements on the date of completion.
18. The Divestiture Trustee may, where it considers it reasonable and necessary for the fulfilment of the Divestiture Trustee Obligation, issue written instructions to Ryanair or Aer Lingus or both.
19. The Divestiture Trustee may seek written directions from the CMA in order to assist it in the fulfilment of the Divestiture Trustee Obligation and the Divestiture Trustee shall comply with those directions.
20. The Divestiture Trustee may, where it considers it reasonable and necessary for the fulfilment of the Divestiture Trustee Obligation, and following approval from the CMA, appoint financial or legal advisers to assist it in the fulfilment of the Divestiture Trustee Obligation and it shall ensure that all costs incurred are properly incurred in accordance with the terms and conditions of their appointment. Neither Ryanair nor Aer Lingus shall be entitled to issue instructions to these advisers. Ryanair and Aer Lingus shall both cooperate and shall use all reasonable endeavours to procure that its employees, agents or advisers cooperate with any advisers appointed by the Divestiture Trustee. Before giving its approval to the appointment of any such adviser, the CMA shall consult with Ryanair and Aer Lingus save in cases where the CMA

considers it necessary for advisers to be appointed as a matter of urgency. Ryanair shall be entitled to a monthly statement from the Divestiture Trustee of all fees and expenses incurred by the Divestiture Trustee and its advisers (if any). Any individual items of costs or expenses in excess of an amount at a level set in advance by the CMA in consultation with the Divestiture Trustee shall not be properly incurred without the prior written consent of the CMA, Ryanair having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, provided Ryanair shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.

21. The Divestiture Trustee shall instruct Ryanair to draw up and execute any documents required to give effect to the Divestiture Trustee Obligation.
22. The Divestiture Trustee may instruct Ryanair to execute a power or powers of attorney in favour of the Divestiture Trustee granting the Divestiture Trustee authority to take all such steps as are necessary to fulfil the Divestiture Trustee Obligation, including the authority to sell or otherwise deal with the Divestment Shares provided that such power or powers of attorney are strictly limited to circumstances arising where Ryanair, having been given at least two working days in which to execute documents, has in the CMA's reasonable opinion failed without cause to do so. The power or powers of attorney granted by Ryanair must in addition contain a clause that so long as the Divestiture Trustee Obligation remains undischarged the power of attorney will not be revoked.
23. The Divestiture Trustee will report to the CMA fortnightly by means of the Divestiture Trustee Report (or as otherwise agreed with the CMA) providing:
 - 23.1 confirmation of Ryanair's and Aer Lingus's compliance with the obligations set out in the Order;
 - 23.2 details of any meetings the Divestiture Trustee has had with each of Ryanair or Aer Lingus;
 - 23.3 if the Divestiture Trustee has a reasonable suspicion that there has been, or is about to be, a breach of any of the obligations set out in the Order, details of the grounds for that suspicion;
 - 23.4 a list of suitable potential purchasers and a preliminary assessment of each of them against the criteria set out in paragraphs 58 to 63 of Appendix K to the Report and Schedule 1; the state of negotiations with such potential purchasers; and any issues or problems regarding the

sale or marketing of the Divestment Shares or any aspect of the divestiture process;

- 23.5 if the Divestiture Trustee considers that it is necessary or appropriate for it to appoint advisers in order for it to fulfil the Divestiture Trustee Obligation, a statement that is the case together with a list of advisers selected by the Divestiture Trustee for this purpose; and
 - 23.6 such information as the CMA may require, and containing sufficient detail for the CMA to make an assessment of compliance with the Order and progress towards Effective Disposal.
24. The Divestiture Trustee shall, on direction from the CMA, within five working days of having provided the Divestiture Trustee Report to the CMA, provide a copy of the Divestiture Trustee Report to Ryanair or Aer Lingus or both, such copy to be redacted as necessary in whatever way the CMA shall in its absolute discretion determine, including if appropriate in its entirety.
 25. The Divestiture Trustee shall have the sole right to sell (by instructing Ryanair to sell or where appropriate exercising its power of attorney under Article 8.5 of the Order) the Divestment Shares during the period commencing on the Commencement Date and ending on the date the CMA discharges Ryanair from the obligation to appoint and keep appointed a Divestiture Trustee.
 26. The Divestiture Trustee must possess appropriate qualifications and experience to carry out its functions. The Divestiture Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out its functions to the best of its abilities. The Divestiture Trustee must neither have nor become exposed to a conflict of interest that impairs the Divestiture Trustee's objectivity and independence in discharging the Divestiture Trustee Obligation under this Order, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
 27. The Divestiture Trustee Mandate may only be amended in writing and with the CMA's prior approval in writing.
 28. Where under the provisions of Article 9 of the Order a person other than the Divestiture Trustee is appointed to act as a Monitoring Trustee or Hold Separate Manager, the Divestiture Trustee shall consult and cooperate as necessary with the Monitoring Trustee and/or Hold Separate Manager to facilitate the discharge of the respective functions of the Divestiture Trustee, the Monitoring Trustee or the Hold Separate Manager.

29. If the Divestiture Trustee is removed in accordance with Article 7 of the Order, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information.

SCHEDULE 1 TO ANNEX 1

Purchaser Approval Criteria

The Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraphs 58 to 63 of Appendix K of the Report.

1. Independence

The proposed purchaser is independent of and unconnected to Ryanair and any associated person or Affiliate of Ryanair.

2. Absence of further competition concerns

The acquisition of the Divestment Shares raises no competition concerns within any market or markets in the UK.

3. Commitment to the market, and appropriate capability and financial resources

The proposed purchaser has evidenced the fact it has sufficient financial resources to make the whole or partial acquisition of the Divestment Shares and has demonstrated its general intentions as a significant shareholder in Aer Lingus by providing, *inter alia*, any relevant business plans and/or any strategic planning documentation setting out its rationale for acquiring all or a significant portion of the Divested Shares.

ANNEX 2

Compliance Statement for Ryanair and Aer Lingus

I *[insert name]* confirm on behalf of Ryanair/Aer Lingus² that since the Order by the Competition and Markets Authority on 11 June 2015 (the Order):

1. Ryanair/Aer Lingus has complied with the Order in the period from *[insert date]* to *[insert date]*.
2. Ryanair/Aer Lingus's Subsidiaries have complied with the Order in the period from *[insert date]* to *[insert date]*.
3. No action has been taken by Ryanair/Aer Lingus in the period from *[insert date]* to *[insert date]* that will impede the fulfilment of the Divestiture Trustee's Obligation under the Order.
4. Provide details of steps Ryanair/Aer Lingus has taken to bring about an Effective Disposal, including assistance Ryanair/Aer Lingus has provided to the Divestiture Trustee (eg access to facilities, books, records, documents etc):

[Insert detail of steps]
5. Ryanair/Aer Lingus and its Subsidiaries remain in full compliance with the Order.

FOR AND ON BEHALF OF RYANAIR/AER LINGUS

Signature

Name

Title

Date

² Delete Ryanair or Aer Lingus as appropriate throughout the document.