IN THE MATTER OF THE REFERENCE CONCERNING THE
COMPLETED ACQUISITION BY RYANAIR HOLDINGS PLC OF A
MINORITY SHAREHOLDING IN AER LINGUS GROUP PLC

Explanatory Note

The Ryanair Holdings PLC and Aer Lingus Group PLC Inquiry
Order 2015

This note is not a part of the Order

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).


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. The Ryanair Holdings PLC and Aer Lingus Group PLC Inquiry Order 2015 dated 11 June 2015 (the Order) gives effect to these remedies. The Order will come into force on the day it is made, being 11 June 2015. Unless otherwise stated, it is not intended that there should be any further transitional period in relation to any of the provisions contained within the Order.

Possible consequences of not complying with the Order

5. Section 94 of the Act places a duty on any person to whom this Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.

6. Section 94 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

7. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.

8. Section 87 of the Act provides that, if there is a failure to comply with a direction under the Order, the CMA can seek to enforce the direction in court and may recover the costs or expenses of such enforcement.

Review of this Order

9. The CMA has a duty under section 92 of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances.

Status of this Explanatory Note

10. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

11. This Explanatory Note deals with each of the articles in the Order.
General

12. Article 1 includes definitions of various terms used in the Order, some of which were not defined in the Report.

13. Article 2 provides that the Order will come into force on the day the Order is made by the CMA.

14. Article 11 provides that if any provision in the Order is deemed contrary to law or invalid both Ryanair and Aer Lingus will continue to be bound by the remaining provisions.

15. Article 13 sets out the procedure for service of communications between the CMA and Ryanair or Aer Lingus.

16. Article 14 provides that each of Ryanair and Aer Lingus will provide a compliance certificate to the CMA on a particular date each month.

17. Article 15 provides that the CMA may give directions to any person for the purpose of ensuring compliance with the Order.

18. Article 16 confirms that the laws of England and Wales apply to this Order.

19. Article 17 provides that the Order will remain in force until varied or revoked.

Obligations

20. Article 3 sets out the obligations on Ryanair under the Order. These include:

   (a) Article 3.1 – Ryanair shall divest the ordinary shares it holds in Aer Lingus down to 5% as per the Report.

   (b) Article 3.2 – Ryanair shall not acquire shares in Aer Lingus except where clearance has been given to do so pursuant to the provisions of the European Union Merger Regulation.

   (c) Article 3.3 – Ryanair shall not appoint or accept the appointment of a person associated with Ryanair as a director of Aer Lingus.

   (d) Article 3.4 – Ryanair shall comply with written directions from the CMA.

   (e) Article 3.5 – Ryanair shall comply with any written instructions given by the Divestiture Trustee or any Monitoring Trustee.

   (f) Article 3.6 – Ryanair shall appoint a Divestiture Trustee in accordance with the procedures set out in Article 5 and on the terms of the Divestiture Trustee Mandate set out in Annex 1.
(g) Articles 3.9 and 3.10 provide that Ryanair shall not, without the prior consent of the CMA, take any steps to exercise the voting rights attached to its shareholding before the effective disposal of its shares.

21. Article 4 sets out the obligations on Aer Lingus. These include:

(a) Article 4.1 – Aer Lingus shall comply with written directions from the CMA.

(b) Article 4.2 – Aer Lingus shall comply with written instructions given by the Divestiture Trustee.

(c) Article 4.4 – Aer Lingus shall notify the CMA if it receives an enquiry about the sale of Ryanair’s shareholding.

22. Article 8 describes the obligations of Ryanair and Aer Lingus in relation to the Divestiture Trustee.

The Divestiture Trustee

23. Article 5 sets out the appointment procedure of the Divestiture Trustee. In particular, it provides that:

(a) Article 5.1 – Ryanair shall provide to the CMA within five working days of the date of the Order, or whichever other date the CMA may determine, a list of two or more potential divestiture trustees.

(b) Article 5.2 – The CMA must approve the identity of the Divestiture Trustee and the applicable terms and conditions before appointment.

(c) Article 5.4 – Aer Lingus will provide any objections to one or more proposed divestiture trustees to the CMA within the time specified in this Article.

(d) Article 5.9 sets out the procedure for the appointment of a Divestiture Trustee where Ryanair has failed or been unable to nominate persons or those proposed persons are rejected by the CMA.

(e) Article 5.12 sets out the procedure where the appointment of the Divestiture Trustee is terminated.

24. Article 6 describes that the function of the Divestiture Trustee is to give effect to the Trustee Obligation as set out in the Divestiture Mandate.

25. Article 7 provides that the Divestiture Trustee may be replaced on the direction of the CMA. Both Ryanair and Aer Lingus are required to inform the
CMA if they have reason to believe the Divestiture Trustee needs to be replaced or the terms and conditions of the appointment need to be modified.

**Monitoring Trustee**

26. Article 9 sets out the procedure applicable for the appointment of a Monitoring Trustee by Ryanair should the CMA consider it appropriate.

**Provision of information and ancillary matters**

27. Article 10 provides that where Ryanair or Aer Lingus seek the CMA’s consent, it shall be sought by way of a Notice and contain full disclosure of every fact and matter that the CMA may hold to be relevant to its decision on such an application. This Article also provides the procedure to be followed by Ryanair and Aer Lingus when making such an application.

28. Article 12 provides that Ryanair and Aer Lingus shall provide any information the CMA reasonably requires for the purpose of performing its functions.