Notice of intention to accept binding commitments offered by International Consolidated Airlines Group S.A. and American Airlines Inc, in relation to the Atlantic Joint Business Agreement

Case number 50616

7 May 2020

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1. Introduction

1.1 In October 2018, the Competition and Markets Authority (the '**CMA**') opened an investigation under the Competition Act 1998 (the '**Act**') into an agreement between American Airlines Group Inc ('**AA**');[1] members of International Consolidated Airlines Group S.A. ('**IAG**'),[2] British Airways plc ('**BA**'),[3] Iberia Líneas Aéreas de España SA ('**IB**'),[4] and Aer Lingus Limited ('**EI**');[5] and Finnair OYJ ('**AY**')[6] (the '**Parties**').[7] The CMA's investigation has considered whether the revenue-sharing joint venture ('**JV**') agreement, known as the Atlantic Joint Business Agreement (the '**AJBA**'), between the Parties covering air transport services between Europe and North America (the Atlantic Joint Business or '**AJB**') amounts to an infringement of the Chapter I prohibition of the Act and/or Article 101(1) of the Treaty on the Functioning of the European Union (the '**TFEU**'). The Parties have offered commitments to bring the investigation to an end. Any decision by the CMA accepting binding commitments will not include any statement as to whether the conduct of any of the Parties has infringed the Act or the TFEU either prior to the acceptance of the commitments or once the commitments are in place.

1.2 In May 2020, AA and IAG (the '**Commitments Parties**') offered commitments aimed at addressing the CMA's competition concerns in this investigation (the '**Proposed Commitments**').

1.3 The CMA hereby gives notice[8] that it proposes to accept the Proposed Commitments and invites representations from interested third parties on this proposed course of action. Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its investigation, with no decision made on whether or not the Chapter I prohibition of the Act or Article 101(1) of the TFEU has been infringed by the Parties. The text of the Proposed Commitments offered is set out at Annex 1 to this document.

1.4 The CMA is mindful of the impact of the Coronavirus (COVID-19) ('**COVID-19**') pandemic on the aviation sector, which potentially affects both the ability of third parties to engage with the CMA's consultation and whether the Proposed Commitments will address the competition concerns arising from

[1] A company incorporated in the state of Delaware, United States, under registration number 0931981.
[2] A company incorporated in Spain under registration number M-492129.
[3] A company incorporated in England and Wales under registration number 01777777.
[4] A company incorporated in Spain under registration number M-491912.
[5] A company incorporated in Ireland under registration number 211168.
[6] A company incorporated in Finland under registration number 0108023-3.
[7] EI is not yet participating in the Atlantic Joint Business pending approval by the US Department of Transportation, but, as a signatory since October 2017, is a party to the Atlantic Joint Business Agreement.
[8] Pursuant to paragraph 2 of Schedule 6A of the Act.

the AJBA in the longer term. In the light of the current exceptional circumstances, the CMA has therefore discussed the appropriate next steps in its investigation with the Parties, third party airlines, and other interested third parties. Given the upcoming expiry of commitments previously accepted by the European Commission (the '**Commission**') in respect of the AJBA,[9] and the need for airlines to have certainty about the availability of take-off and landing slots following the expiry of those commitments, the CMA has decided to proceed with issuing this Notice.

1.5 The CMA recognises that, as a result of the current challenges related to COVID-19, there is some uncertainty about competition on routes covered by the AJBA and a risk that the Proposed Commitments may not address the CMA's competition concerns in the future. The CMA notes, however, that acceptance of the Proposed Commitments would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Proposed Commitments.[10]

1.6 Moreover, the Commitments Parties have agreed that due to the exceptional circumstances resulting from the COVID-19 crisis the CMA may, of its own initiative, review the Proposed Commitments at a point between two and five years after the commitments come into effect. Furthermore, acceptance of the Proposed Commitments would not prevent the CMA from continuing the investigation in the future, making an infringement decision, or giving a direction in circumstances where the CMA had reasonable grounds for:

a. believing that there had been a material change of circumstances since the commitments were accepted;

b. suspecting that a person had failed to adhere to one or more of the terms of the commitments; or

c. suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.[11]

1.7 The CMA invites interested third parties to make representations on the Proposed Commitments, which it will take into account before making its final decision on whether to accept the Proposed Commitments. In order to assist third parties in responding to this consultation, this Notice provides information on the CMA's investigation, the Parties, the relevant market context and the CMA's competition concerns. The document then summarises the Proposed Commitments offered by the Commitments Parties and sets out why the CMA

[9] See 2.2 - 2.3 below.
[10] Section 31B(3) of the Act.
[11] Section 31B(4) of the Act.

provisionally considers that the Proposed Commitments address its competition concerns. Details on how to comment are provided at the end of this document. The closing date for comment is 4 June 2020. As noted above, the CMA is mindful of the impact of the COVID-19 pandemic on the aviation sector, and given the current exceptional circumstances, is allowing an extended period for comments from interested third parties. Where justified, the CMA will also consider any reasonable requests for additional time to comment.

1.8 Certain confidential information in this document is presented in a range format, denoted in square brackets.

2. The CMA's investigation

The investigation

2.1 On 11 October 2018, the CMA launched a formal investigation under section 25 of the Act into the AJBA, having considered the CMA's Prioritisation Principles.[12]

2.2 The Commission conducted an investigation into the AJB between 2009-2010, which was closed when the Commission accepted commitments from the undertakings who were then parties to the AJBA (at that time, AA, BA and IB) to address potential competition concerns in relation to six routes: London-Dallas, London-Boston, London-Miami, London-Chicago, London-New York and Madrid-Miami (the '**2010 Commitments**').[13]

2.3 On expiry of the 2010 Commitments, in July 2020, the Commission may have re-assessed the AJBA. However, as five of the six routes subject to the 2010 Commitments are between the UK and the US, and to prepare for a time when the Commission would no longer have responsibility for competition in the UK after the end of the EU Exit transition period (the '**Transition Period**'), the CMA decided to review the competitive impact of the AJB in anticipation of the expiry of the 2010 Commitments.[14]

2.4 After launching the investigation, the CMA initially considered the competitive impact of the AJB on all seven US-UK city-pair routes where BA's and AA's non-stop services overlap. These were: London-Boston, London-Chicago, London-Dallas, London-Los Angeles, London-Miami, London-New York and London-Philadelphia.

2.5 Having completed an initial review of these seven city-pair routes, the CMA decided not to prioritise further investigation of the London-Los Angeles and London-New York city pair routes, given the competitive constraints faced by the AJB on those routes. In particular, the CMA noted that there were at least

[12] 'CMA Prioritisation Principles' (CMA16), 1 April 2014.

[13] Case COMP/F-1/39.596 – *BA/AA/IB*, Decision of the Commission dated 14 July 2010.

[14] The UK exited the EU on 31 January 2020 subject to the European Union (Withdrawal) Act 2018 (the '**Withdrawal Act**'). The European Union (Withdrawal Agreement) Act 2020 (the '**Withdrawal Agreement Act**') modified the Withdrawal Act in order to preserve the application of EU law until the end of the Transition Period. The Transition Period is the period after 31 January 2020 until EU law ceases to apply, which is currently scheduled to be 1 January 2021. Accordingly, the CMA will continue to apply Article 101 of the TFEU to the investigation into the AJBA for the duration of the Transition Period by virtue of the Withdrawal Act (as amended by the Withdrawal Agreement Act). Section 60 of the Act will also continue to apply during the Transition Period. This means that the CMA must continue to ensure that, so far as possible, questions arising under the Chapter I prohibition are dealt with in a way that is consistent with the treatment of corresponding questions arising under EU law.

three independent competitors to BA/AA on both of these routes, including new entry since the 2010 Commitments were accepted.[15] The CMA also decided not to prioritise further investigation of the Non-premium market on the London-Chicago route, based on the competitive constraints from United Airlines ('**United**') (which operates a major hub at Chicago O'Hare airport) and Norwegian (although its service is seasonal).[16]

Evidence gathering

2.6 During the course of its investigation, the CMA has undertaken a number of investigative steps to gather evidence from the Parties and from third parties.

2.7 The CMA required each of AA, IAG and AY to produce specified documents, and to provide specified information relevant to the investigation under section 26 of the Act.

2.8 The Commitments Parties also provided several joint voluntary submissions to the CMA. The CMA also held a series of information gathering meetings with the Commitments Parties and their legal and economic advisors and attended a site visit at London Heathrow airport ('**LHR**').

2.9 State of play meetings, attended jointly by the Commitments Parties and their advisors, took place on two occasions during the course of the investigation.

2.10 The CMA held meetings and received submissions responding to notices under section 26 of the Act from Mazars LLP who were appointed by the Commission to oversee the operation of the 2010 Commitments ('**Monitoring Trustee**'), third party airlines currently operating, or proposing to launch, air passenger services on UK to US routes, the UK airport slot co-ordinator (Airport Coordination Limited) and Heathrow Airport Limited.

[15] The CMA's assessment and prioritisation in relation to these routes were completed prior to the disruption caused by the COVID-19 pandemic. In terms of potential future CMA review and action, as set out below, at paragraphs 6.27 to 6.29, the Proposed Commitments include a provision for the CMA to review the commitments. This review clause in the Proposed Commitments is, in any case, without prejudice to the provisions in section 31B of the Act which allow the CMA to take action in relation to competition concerns which are not addressed by the Proposed Commitments and, also, to open an investigation, make an infringement decision, or give directions in circumstances where the CMA has reasonable grounds for, among other things, believing that there has been a material change of circumstances since the Proposed Commitments were accepted.

[16] As with the London-New York and London-Los Angeles routes, this assessment and prioritisation was completed prior to the disruption caused by the COVID-19 pandemic. See paragraphs 6.27 to 6.29 below and footnote 15 above for details of the review clause in the Proposed Commitments and the statutory provisions in the Act which provide for potential future CMA review and action in certain circumstances.

2.11 The CMA received voluntary submissions from several third party airlines and one of them submitted an econometric study prepared by their economic advisors to support their submissions.

2.12 The CMA sent notices under section 26 of the Act requesting information from the AJB's top 10 corporate customers on each of the seven London to US city pairs outlined at 2.4 above. In total, the CMA received responses to these requests for information from 57 corporate customers.

Commitments Offer

2.13 Following discussions with the CMA, the Commitments Parties indicated an intention to offer commitments to address the CMA's competition concerns. Accordingly, further to paragraph 10.22 of *Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases* (CMA8) (the '**Procedural Guidance**'), the CMA proceeded to discuss with the Commitments Parties the scope of the commitments which the CMA considered would be necessary to address the competition concerns it had identified.

2.14 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person or persons concerned as it considers appropriate, commitments to take such action (or refrain from such action) as it considers appropriate. The Procedural Guidance describes the circumstances in which it may be appropriate for the CMA to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.

2.15 As outlined in paragraph 10.21 of the Procedural Guidance, a business under investigation can offer commitments at any time during the course of the investigation until a decision on infringement is made. However, the CMA is unlikely to consider it appropriate to accept commitments at a very late stage in an investigation, such as after the CMA has considered representations on a statement of objections.[17] The CMA has broad discretion in determining which cases are suitable for commitments.[18]

2.16 The Commitments Parties offered the Proposed Commitments to the CMA as set out in Annex 1 on 1 May 2020. The offer of the Proposed Commitments does not constitute an admission of an infringement of Chapter I of the Act or of Article 101 of the TFEU by the Parties.

[17] Paragraph 10.21 of the Procedural Guidance.
[18] Paragraph 10.21 of the Procedural Guidance.

2.17 The CMA is currently of the view that the Proposed Commitments offered address its competition concerns and that it is appropriate for the CMA to exercise its discretion to close its investigation by way of a formal decision accepting the Proposed Commitments. Formal acceptance of the Proposed Commitments would result in the CMA terminating its investigation, and not proceeding to a decision on whether or not the prohibitions in Chapter I of the Act or Article 101 of the TFEU have been infringed.

The Parties

2.18 The Parties to the AJBA are as follows:

IAG

2.19 IAG was formed in 2010 by the merger of BA and IB. IAG is the parent company of several airlines: BA, IB, EI, Open Skies SAS (operating as LEVEL) and Vueling Airlines SA. It is one of the world's largest airline groups with 573 aircraft flying to 268 destinations and carrying around 113 million passengers each year. IAG is a Spanish registered company with shares trading on the London and Spanish Stock Exchanges.

BA

2.20 BA is a UK public limited company, and a subsidiary of IAG. BA is a full-service airline operating from hubs at LHR and London Gatwick ('**LGW**') airports. BA flies to more than 170 destinations in 70 countries and carries more than 40 million passengers a year. In 1999, BA became a founding member of the **one**world alliance.

IB

2.21 IB is a full-service network airline registered in Spain and operating a hub in Madrid. IB is a subsidiary of IAG. IB's primary focus is on passenger routes connecting Spain with the rest of Europe and between Europe and Latin America. IB serves around 135 destinations in 47 countries and carries more than 23 million passengers a year. IB was also a founding member of the **one**world alliance in 1999.

EI

2.22 EI is a full-service network airline registered in Ireland, which operates a hub at Dublin. EI is a subsidiary of IAG. EI's primary focus is on passenger routes connecting Ireland with the rest of Europe and between Europe and North America. EI operates over 100 routes, carrying 12 million passengers per

year. In 2015, IAG's acquisition of EI was cleared by the Commission.[19] EI is not a member of the **one**world alliance. As outlined at footnote 7 above, EI is not yet participating in the AJB pending approval by the US Department of Transportation, but, as a signatory since October 2017, is a party to the AJBA.

AA

2.23 AA is a full-service network airline incorporated in the state of Delaware, with its headquarters in Dallas, Texas. It has hubs in Charlotte, Chicago, Dallas/Fort Worth, Los Angeles, Miami, New York, Philadelphia, Phoenix and Washington, D.C. airports. AA serves nearly 350 destinations in more than 50 countries. AA is a founding member of the **one**world alliance.

2.24 American Airlines Group Inc. ('**AAG**') is the holding company of AA. AAG was formed in December 2013 with the merger of AMR Corporation (at that time the parent company of AA) and US Airways Group (the parent company of US Airways). AAG is the largest airline globally, carrying approximately 200 million passengers in 2017.

AY

2.25 AY is a Finnish public limited company. AY is a network airline with a hub in Helsinki operating routes primarily between Asia and Europe. AY has been a member of the **one**world alliance since 1999. AY serves around 65 destinations in 30 countries and in 2018 it carried almost 13.3 million passengers.

[19] Case M.7541 - *IAG / AER LINGUS*, Decision of the Commission dated 14 July 2015.

3. Background

Industry background

Airline business models

3.1 Airlines operating transatlantic services use different business models. Traditionally, airlines are divided into those organised into a network or 'hub-and-spoke' model and those using a 'point-to-point' model. In the 'hub-and-spoke' model, an airline's routes (commonly known as 'spokes') typically pass through the airline's central airport (i.e. the 'hub'), allowing passengers to connect to a number of other flights operated by the same carrier or its partners.

3.2 Transatlantic services are mainly operated to/from a number of large hubs. Many passengers reach their final destination by initially flying to a hub to take a transatlantic flight and/or connecting to another flight after their transatlantic flight. These connecting flights are referred to as 'behind and beyond' flights; with passengers using these short-haul portions of the itinerary often referred to as 'feeder' traffic.

3.3 Operating a 'hub-and-spoke' model may confer a number of advantages on an airline, including:

a. It allows an airline to pool the demand of local and connecting passengers to create more city-pair connections.

b. It allows an airline to offer greater departure frequencies in many markets and more convenient schedules, which can lead to higher market shares.

c. By enabling many markets to be served with fewer flight departures, it may reduce operating costs relative to a complete point-to-point route network.

d. The economies of scale and density generated by pooling local and connecting passengers can lead to lower operating costs and potentially lower fares for both types of passengers flying on hub-to-hub services.

e. Economies of scale may also be achieved at a hub in areas such as aircraft maintenance, catering and ground-handling.

3.4 For the operation of service on a number of transatlantic routes, traffic connecting at either end (i.e. passengers travelling to destinations behind and/or beyond) is of key importance, since it allows carriers to achieve higher

load factors in the large-capacity aircraft used on such routes and/or to provide higher-frequency services than might otherwise be viable.[20]

3.5 Not all airlines operate a 'hub-and-spoke' model. In particular, low-cost carriers typically focus on 'point-to-point' traffic. In recent years, some low-cost carriers, such as Norwegian Air Shuttle ('**Norwegian**'), have launched long-haul services. Some airlines operate business models that fall somewhere between a true 'hub-and-spoke system' model and a 'point-to-point' model, and this may also vary by route, depending on the hub locations of different airlines.

Airline cooperation

3.6 Co-operation between airlines – which may be bilateral or multilateral – ranges from arm's length cooperation (such as interlining)[21] to highly integrated JVs.

3.7 Airlines may develop JVs or joint business agreements which involve revenue/profit-sharing arrangements on specific routes or in specific regions. JVs are contractual arrangements between airlines, implemented through a shared governance structure. In addition to the pooling of revenue or profits, airlines coordinate on pricing, seating capacity, schedules, marketing and distribution. As revenue is pooled, with airlines earning a percentage of revenue regardless of which airline's aircraft (or 'metal') the passenger chooses, parties to the JV sell seats without preference to which airline carries the passenger. This is known as 'metal neutrality'. Metal neutral JVs are the deepest possible form of cooperation between airlines short of a merger (which may not be possible in some jurisdictions under existing foreign ownership rules concerning airlines).

Transatlantic airline competition

3.8 Competition between airlines on transatlantic routes (and on long-haul services more generally) takes place on key parameters, including:

[20] For example, both the London-Dallas route and the London-Philadelphia route are referred to as 'thin' origin and destination traffic routes, with only around [100,000-200,000] origin and destination passengers each (based on Winter 2018/19 and Summer 2019 figures). However, these origin and destination passengers only account for [20-30]% and [30-40]% of total passengers on the route, respectively, with the remaining passengers travelling to destinations behind and/or beyond.

[21] 'Interlining' is when a passenger completes a connecting itinerary using two (or more) different airlines for different legs of the trip. This is in contrast to 'online' itineraries, where a passenger completes the different legs of a connecting itinerary on the services of the same, single carrier. Airlines often have agreements in place to facilitate the sale of tickets that combine the services of more than one carrier in a single itinerary/ticket.

a. pricing;

b. scheduling and frequency;

c. product and service quality and reliability; and

d. network based parameters (such as network coverage and Frequent Flyer Programmes ('**FFPs**')).

3.9 The importance of each parameter may differ between passenger groups, such as Premium and Non-premium passengers.[22] For corporate customers and other time-sensitive customers, schedule convenience, frequency of service, product quality and the scope of an airline's network may play a critical role, whereas those aspects of competition may be less significant for highly price-sensitive travellers who are willing to accept less convenience and fewer service amenities in exchange for a lower price.

Commission investigation and the 2010 Commitments

3.10 As noted above, the Commission conducted an investigation into the AJBA between 2009-2010, which was closed when the Commission accepted the 2010 Commitments from the then parties to the AJBA (AA, BA and IB) to address potential competition concerns in relation to six routes: London-Dallas, London-Boston, London-Miami, London-Chicago, London-New York and Madrid-Miami.[23]

3.11 The 2010 Commitments comprise:

a. **Slot Commitments**: The parties to the 2010 Commitments undertook to make slots available to allow non-stop entrants to operate or increase the number of new or additional frequencies on the following identified city pairs: London-Dallas; London-Boston; London-Miami; and London-New York (the '**2010 Slot Commitments**').

b. **Fare combinability agreement ('FCA') Commitments**: Agreements which allow third party airlines to offer a return trip comprising a non-stop transatlantic service provided by the third party airline and a non-stop service in the other direction by the parties to the 2010 Commitments.

c. **Special prorate agreement ('SPA') Commitments**: Agreements which allow third party airlines to conclude a bilateral agreement with the parties to the 2010 Commitments (on favourable commercial terms). The SPA

[22] See paragraph 4.4b for the CMA's definition, for the purpose of this Notice, of Premium and Non-premium passengers.
[23] See footnote 13 above.

requires the parties to the 2010 Commitments to carry connecting passengers on routes in Europe and North America (and selected other countries) in order to feed third party airlines' transatlantic services on the identified city pairs.

d. **FFP commitments**: The parties to the 2010 Commitments provide access to their FFP, when requested, to non-stop airlines that have commenced or increased services on the identified city pairs. This only applies to airlines that do not have a comparable FFP and do not participate in any of the parties' FFPs.

3.12 The 2010 Commitments remain in effect until 14 July 2020.[24] Pursuant to the 2010 Commitments, AA/BA/IB entered into a number of contractual arrangements with other airlines which provide for the release of slots in accordance with the 2010 Slot Commitments, known as Slot Release Agreements ('**SRAs**') as well as SPAs with other airlines.

US/AA merger investigation and the Merger Commitments

3.13 In addition to the routes covered by the 2010 Commitments, the CMA has also considered the impact of the AJBA on the London-Philadelphia route from at least 5 August 2013, which is the date when the Commission cleared AA's merger with US Airways after it accepted various commitments (the '**Merger Commitments**').[25] Although the Commission's analysis suggested that the merger raised serious doubts as to its compatibility with the internal market on the Premium and Non-premium segments on the London-Philadelphia route,[26] the Commission cleared the merger subject to full compliance with the Merger Commitments, which the Commission found would resolve the serious doubts.[27]

3.14 The Merger Commitments sought to facilitate entry on the route between LHR and Philadelphia International Airport ('**PHL**') by including an agreement to make slots available to allow a prospective entrant to operate one daily frequency (i.e. up to seven frequencies per week) between LHR and PHL.

3.15 Under the terms of the Merger Commitments, after six International Air Transport Association ('**IATA**') seasons (i.e. approximately three years) of using the slots to provide a non-stop service between LHR and PHL and

[24] For completeness, as explained above, the CMA notes that the Commission also accepted commitments in relation to the Miami-Madrid route.
[25] COMP M.6607 - *US Airways/American Airlines*, Decision of the Commission dated 5 August 2013 ('**Commission US/AA Merger Decision**').
[26] Commission US/AA Merger Decision, paragraph 96.
[27] Commission US/AA Merger Decision, paragraph 201.

having satisfied certain conditions, the prospective entrant would be entitled to use the slots on any route (described as the grant of '**Grandfathering Rights**'), subject to approval from the Commission.[28]

3.16 Pursuant to the Merger Commitments, AA released slots at LHR which, starting in Summer 2015,[29] were used by Delta Air Lines ('**Delta**') to provide a competing non-stop service on the route. Delta provided this service for three years before exiting the route at the end of April 2018 after which it has used the slots under the Merger Commitments to service other transatlantic routes, leaving the AJB as the only provider of non-stop services on the London-Philadelphia route. Delta could use the slots released under the Merger Commitments to service other transatlantic routes from the end of April 2018 as Delta's acquisition of Grandfathering Rights was approved by the Commission on 30 April 2018 (the '**Grandfathering Decision**').[30]

3.17 AA subsequently brought an action for annulment of the Grandfathering Decision under Article 263 of the TFEU, which is currently pending before the General Court.[31] In summary, AA's grounds of appeal are that:

a. the Commission committed an error of law in the Grandfathering Decision by applying the wrong legal standard for the acquisition of Grandfathering Rights under the Merger Commitments; and

b. the Grandfathering Decision is vitiated by manifest errors of assessment.[32]

3.18 If the Grandfathering Decision is annulled, there is a possibility that the slots available under the Merger Commitments may once again be used to operate a service between LHR and PHL.

[28] In addition, AA and US Airways committed to enter into: (i) an FCA across all classes of tickets with an airline which operates on the airport pair; (ii) an SPA for traffic with, and at the request of, an airline when part of the journey involves the airport pair; and (iii) an FFP agreement with, and at the request of, a new entrant who does not have a comparable FFP of its own.

[29] The IATA Summer season runs from the last Sunday of March to the last Saturday of October and the IATA Winter season lasts from the last Sunday of October and ends on the last Saturday of March. In this document references to 'Summer' and 'Winter' when capitalised are to the relevant IATA seasons.

[30] Commission decision *US Airways/American Airlines*, COMP M.6607, 30 April 2018.

[31] Case T-430/18 - *American Airlines* v *Commission*.

[32] Application in Case T-430/18 - *American Airlines v Commission*, OJ C 319 from 10.09.2018, p.21.

4. The CMA's competition concerns

4.1 In this chapter, the CMA sets out its preliminary views on the competition concerns it has identified at this stage of its assessment, as arising from the operation of the AJBA. In particular, the CMA has competition concerns in relation to the markets on five London to US city-pair routes: London-Boston, London-Chicago (Premium market only), London-Dallas, London-Miami and London-Philadelphia ('**Routes of Concern**'). The CMA has considered the impact of the operation of the AJBA afresh, where relevant taking into consideration the impact of the 2010 Commitments and the Merger Commitments on competition on the Routes of Concern.

4.2 The CMA's competitive assessment is based on market conditions prior to the COVID-19 pandemic. While the CMA recognises that the COVID-19 pandemic may have an impact on the aviation industry in the longer term, the CMA considers that its current competition concerns in relation to the Routes of Concern, described in this chapter, remain and should be addressed.

4.3 The CMA also recognises that its current competition concerns as regards the AJBA, based on market conditions prior to the COVID-19 pandemic, may change in the future as conditions of competition develop on the Routes of Concern and other routes affected by the AJBA, including due to the effect of the COVID-19 pandemic on the aviation industry. The mechanisms for addressing such potential future change are explained at paragraphs 6.27 to 6.29 below.

The relevant market

4.4 The CMA's view, for the purpose of this Notice, is that:

a. The relevant markets should be defined on the basis of the Point of Origin/Point of Destination ('**O&D**') approach, with each city-pair route considered a separate market, given that, from a demand-side perspective, different city pairs are generally not substitutable for each other.

b. A distinction should be drawn between passenger groups, with separate markets for:

(i) Premium passengers, defined as all first class, business class and premium economy passengers as well as economy class passengers with the most flexible economy tickets ('**Premium**'); and

(ii) Non-premium passengers, defined as those with restricted economy tickets ('**Non-premium**').

c. The factors determining the constraint from one-stop services are likely to vary by route and, as such, should be considered at the route level in a competition assessment. The CMA considers that it is, therefore, unnecessary to reach a conclusion as to whether one-stop services should be included in the relevant market.

4.5 In relation to airport substitutability:

a. Regarding London airports, the CMA has considered the constraint on the AJB's LHR services from competitors' LGW flights on a route-by-route basis in its competition assessment. The CMA considers that it is, therefore, unnecessary to conclude as to whether LHR and LGW are in the same market. The potential constraint from London airports other than LGW on the AJB's LHR services on the Routes of Concern appears to be weak. There are currently no non-stop flights operating on any of the Routes of Concern from London Luton, London Stansted or London City airports, and there are likely to be a number of barriers to launching financially sustainable services on the Routes of Concern from those airports. For the purposes of its competition assessment, the CMA has, where relevant, calculated market shares for non-stop passengers travelling to/from both LHR and LGW.[33] Passenger shares that include one-stop passengers, on the other hand, are based on those travelling to/from all five London area airports (LGW, LHR, London City, London Luton and London Stansted).

b. Regarding US airports, the CMA's view is that it is unnecessary to conclude as to whether Miami International and Fort Lauderdale airports[34] and Chicago O'Hare and Chicago Midway International airports[35] are in the same markets for the purposes of this investigation. In both cases, the CMA's competition assessment has taken into consideration the constraints on the AJB from one-stop and non-stop services that operate to/from Midway and Fort Lauderdale, respectively, in any case. The CMA's view is that PHL and Newark Liberty International Airport are unlikely to be in the same market for the purposes of this investigation.

[33] For some Routes of Concern, where relevant, the market shares calculated by the CMA include passengers travelling on non-stop services from other London area airports where these operated in the past, for example, Primera Air's services from London Stansted airport.
[34] There are no longer any non-stop services between Fort Lauderdale and London, but the CMA's competition assessment includes market share data for the period (pre-Summer 2019) when Norwegian and BA operated services to Fort Lauderdale.
[35] No non-stop services operate to the UK from Midway nor have done so in the period covered by the CMA's investigation.

Barriers to entry

4.6 The CMA has considered the key barriers to entry and expansion in relation to the provision of scheduled air passenger services on the Routes of Concern. The CMA's view is that there are significant barriers to entry and expansion in the operation of flights on the Routes of Concern.

4.7 The CMA considers that the lack of slots available to competitors and new entrants at LHR and LGW is likely to act as a significant barrier to entry and expansion. Slot availability is particularly limited at times suitable for the operation of transatlantic flights. There will be no material increase in slot availability at LHR until airport expansion, if such expansion takes place,[36] and there is no developed proposal to expand capacity at LGW. Slot availability is less constrained at the relevant US airports.

4.8 Where an airline is able to obtain the required slots, it may face a number of other barriers to entry or expansion due to the position of incumbents like BA and AA that benefit from advantages, such as: the increased flow of traffic that results from having hub operations at one or both ends of the route; frequency and scheduling advantages; better access to corporate customers; and loyalty from FFPs.

4.9 The extent of barriers to entry and expansion may vary between airlines and routes. For example, United or the JV between Delta and Virgin Atlantic Airways ('**Virgin Atlantic**') ('**Delta/Virgin Atlantic**') may have greater access to slots and feeder traffic at their own US hubs than a new entrant. As such, these airlines may face lower barriers to entry and expansion on routes where they have a hub location at least at one end of the route. Potential entrants and airlines seeking to expand on a route are also likely to differ in their ability to overcome any benefits enjoyed by the AJB as they will have differing FFPs, schedules and access to corporate customers.

Competition concerns on the Routes of Concern

4.10 The CMA is concerned that, in relation to the Routes of Concern, the AJBA has as its object and effect, the prevention, restriction or distortion of competition.[37]

4.11 The CMA has considered the contractual terms of the AJBA itself; its objectives; and the economic and legal context in which it operates. The

[36] On 27 February 2020 the UK Court of Appeal ruled that the national planning statement, produced by the UK government in support of a third runway at LHR, was illegal. This judgment may be appealed to the Supreme Court.

[37] The CMA's competition concerns in relation to the Routes of Concern are without prejudice to any competition assessment of any other routes that the CMA or any other authority or court may carry out in the future.

competition concerns which the CMA has identified relate to the potential for the AJBA by its very nature to be harmful to the proper functioning of normal competition on the Routes of Concern.

4.12 The express object of the AJBA is to align the Parties' economic incentives. To this end it provides for the co-ordination of:

a. prices;

b. capacity and scheduling, i.e. output on the relevant market and how that output is shared between the Parties; and

c. marketing (including policies on corporate discounting and co-ordination of FFPs).

4.13 The AJBA also provides for the ongoing exchange of commercially sensitive information in relation to these topics, and the sharing of revenues, which removes the ordinary incentive between airlines to compete.

4.14 Accordingly, while the AJBA may have additional, legitimate objectives, the CMA has concerns that, in relation to the Routes of Concern, it substitutes practical cooperation between the Parties for the risks of competition. In doing so, it changes appreciably the structure of the market concerned through the withdrawal of potential competitors, an increase in concentration, and a reduction in the number of undertakings supplying the services on certain routes.

4.15 The CMA has taken into consideration the context in which the AJBA operates across the Routes of Concern, including:

a. legal impediments to cross-jurisdictional airline mergers and restrictions on operating services within and between foreign jurisdictions which affect the real conditions of the functioning and structure of the market in question; and

b. the market power of BA and AA, given that BA and AA remain either the only airlines operating a non-stop passenger service on the Routes of Concern (London-Dallas and London-Philadelphia) or have the largest market share on the Routes of Concern (London-Boston (Premium market), London-Chicago (Premium market) and London-Miami).

4.16 The competition concerns which the CMA has identified also relate to the potential for the AJBA to have an appreciable adverse impact on the parameters of competition, such as the price, quantity and quality of services, on the Routes of Concern. In assessing the agreement, the CMA has

considered on a route-by-route basis the actual context, as of early 2020, in which the AJBA operates, including what would have been likely to occur in the absence of the AJBA and the 2010 Commitments, and taking account of the Merger Commitments.

4.17 In its assessment, the CMA has considered the following:

a. Constraints from one-stop competition;

b. Competition for Non-premium market passengers;

c. Competition for Premium market passengers; and

d. Impact of hubs and connecting traffic on the route.

London – Boston

4.18 In early 2020, there were three non-stop competitors on the London-Boston route: the AJB (only BA since AA's exit in Summer 2013),[38] Delta/Virgin Atlantic and Norwegian.

4.19 In the CMA's view, one-stop services have exercised a very weak constraint on this route: only a small proportion ([5-10]%) of Non-premium passengers and a very small proportion (less than [0-5]%) of Premium passengers travel on one-stop services.[39]

4.20 The Non-premium market appears to be more competitive at present than it was in 2010, although this has been, to an extent, facilitated by the 2010 Commitments currently in place. In particular:

a. The entry of competing Delta and Norwegian services – partially or wholly facilitated by the 2010 Slot Commitments – has resulted in substantial shifts in market share from the AJB to these new operators, with the AJB accounting for [20-30]% since Winter 2018/19;

b. Delta/Virgin Atlantic's launch of an additional service in Summer 2019 led to Delta/Virgin Atlantic further increasing its market share and surpassing the AJB in the Non-premium market (with [40-50]%); and

c. Before the disruption caused by the COVID-19 pandemic, the planned introduction of a LGW service by Delta/Virgin Atlantic on the route in May 2020 and the planned entry by JetBlue Airways ('**JetBlue**') in Summer

[38] In September 2019, AA announced that it would re-enter the route in March 2020. Due to COVID-19 this entry has been delayed. AA is currently selling tickets for the service in Winter 2020/21.
[39] Figures for Winter 2018/19 and Summer 2019.

2021 were expected to increase the competitive constraints on the AJB in the future, although AA's planned re-entry to the route would increase the scale of the AJB's operations.

4.21 However, while with the help of the 2010 Commitments the competitive landscape on the London-Boston route appears to have changed significantly for Non-premium passengers since 2010, in the Premium market, the AJB retains a strong position. Notwithstanding that the Slot Commitments have (partially) facilitated two competitors' services, and that Delta/Virgin Atlantic's recent expansion has resulted in the AJB losing market share, BA still accounted for approximately [40-50]% of Premium passengers in Summer 2019. Planned expansion by Delta on the route in May 2020 and planned entry by JetBlue in 2021 may increase the competitive constraints on the AJB, although, again, the planned re-introduction of AA services on the route would increase the scale of the AJB's own operations.

4.22 Given the importance of hubs and access to connecting passenger traffic, the AJB has a substantial feeder traffic advantage over other carriers on the route, as BA operates a major hub at LHR, while AA is a significant carrier at Boston Logan airport.

4.23 The Commitments Parties submitted econometric evidence which purported to show that fares had fallen on the route as a result of the AJB. However, the CMA has significant doubts about the robustness of the Commitments Parties' econometric evidence.[40] The CMA's econometric analysis (which adopted a different methodology)[41] found some evidence of economy fares[42] having fallen on the route since 2010. However, the CMA's view is that the econometric analysis of fares is unlikely to identify robustly the effect of the AJB on competition as opposed to the effect of the entry facilitated by the 2010 Commitments.

4.24 Overall, competition in the Non-premium market has been, at least to some extent, reliant on the 2010 Commitments in place, while in the Premium market, the AJB has maintained a high market share and a frequency advantage, although this has reduced to some extent with the introduction of

[40] On the robustness of the underlying fare data, the CMA has a number of concerns, including the high level of dispersion of fares, with some unrealistically high and low values reported, and lack of representative information for non-US carriers, including BA. On the robustness of the Parties' methodology, the CMA's assessment indicates that the parallel trends assumption is not met, which may lead the difference-in-difference methodology to give biased and unreliable results.

[41] The CMA adopted a 'synthetic control' methodology which identifies a set of comparator routes which have a similar trend in the pre-AJB period in order to provide an appropriate counterfactual against which the effect of the AJB on fares on each Route of Concern can be compared.

[42] The data set that has been used to examine changes in fares uses a split between economy and business fares, which does not map directly on to the relevant Premium and Non-premium markets that the CMA has defined.

Delta/Virgin's additional services between London and Boston. For these reasons, the CMA currently has competition concerns in relation to both the Premium and Non-Premium markets on this route.

London – Chicago (Premium market)

4.25 In early 2020, there were three non-stop competitors on the route: the AJB (both BA and AA), United and Norwegian. Virgin Atlantic exited the market in Summer 2016. As set out in paragraph 2.5, above, the CMA decided not to prioritise further investigation of the Non-premium market on the London-Chicago route, based on the competitive constraints from United and Norwegian in that market.

4.26 In the CMA's view, one-stop competition has not exercised a material constraint on this route for Premium passengers: only a very low proportion ([0-5]%) of Premium passengers travel on one-stop services.[43]

4.27 In the Premium market, the AJB has maintained a high market share (close to or in excess of [55-65]%) and a frequency advantage over United, but corporate customers tended to see the route as being relatively competitive, with many of these customers noting that United offered an attractive alternative to the AJB.

4.28 Given the importance of hubs and access to connecting passenger traffic, the AJB has a substantial feeder traffic advantage over carriers on the route, as AA and BA operate major hubs at each end of the route, albeit that United also operates its largest hub at Chicago O'Hare airport.

4.29 The Commitments Parties submitted econometric evidence which purported to show that overall fares had fallen on the route as a result of the AJB, but that for business fares there had been no statistically significant effect. However, as set out above at paragraph 4.23, the CMA has significant doubts about the robustness of the Commitments Parties' econometric evidence. The CMA's econometric analysis (which adopted a different methodology) found no statistically significant effect on fares from the AJB.

4.30 Overall, in the Premium market, the AJB maintains a high market share and a frequency advantage, and has a substantial feeder traffic advantage over other carriers on the route. For these reasons the CMA currently has competition concerns in relation to the Premium market on this route.

[43] Figure for Winter 2018/19 and Summer 2019.

London – Dallas

4.31 In early 2020, AA and BA were the only non-stop operators on the route. BA operated a daily service, while AA operated 24 Winter services and 28 Summer services per week. All of these services operate between LHR and Dallas/Fort Worth airports.

4.32 In the CMA's view, AA and BA have an extremely strong position in the Premium market, given that they are the only non-stop carriers on the route, provide four to five daily services, and operate major hubs at each end of the route. The share of Premium O&D passengers that travel on one-stop services is low ([10-20]%).[44] Delta's additional one-stop service (facilitated by the 2010 Slot Commitments) does not appear to have had a material impact on the Premium market, while corporate customers' views confirmed the lack of competitive constraints on the AJB on the route.

4.33 AA and BA also have a strong position in the Non-premium market, given that they are the only non-stop carriers on the route, provide four to five daily services, and operate major hubs at each end of the route. While the share of Non-premium O&D passengers that travel on one-stop services is significant ([30-40]%), the AJB still accounts for more than [70-80]% of all passengers if a combined market for one-stop and non-stop services is considered, given that both AA and BA also provide one-stop services.[45] Additionally, two providers of one-stop services via Reykjavik (with a combined market share of [5-10]% in Summer 2018) stopped serving Dallas in 2019.

4.34 Feeder traffic is likely to be important for the financial viability of services on this route and may represent a significant barrier to entry. AA's largest hub at Dallas/Fort Worth airport combined with BA's hub at LHR means that AA and BA are likely to have a very strong position on the route.

4.35 The Commitments Parties submitted econometric evidence which purported to show that fares had fallen on the route as a result of the AJB. However, as set out above at paragraph 4.23, the CMA has significant doubts about the robustness of the Commitments Parties' econometric evidence. The CMA's econometric analysis (which adopted a different methodology) found that business fares are likely to have increased since the formation of the AJB, while finding no statistically significant effect on economy fares. Given that the 2010 Slot Commitments have been in place since 2011 and the CMA's econometric analysis points towards business fares increasing, this would tend to support the CMA's competition concerns in relation to the route.

[44] Figure for Winter 2018/19 and Summer 2019.
[45] Figures for Winter 2018/19 and Summer 2019.

4.36 As a result of the formation of the AJB and the fact that AA and BA are the only non-stop operators, the CMA currently has competition concerns in relation to both the Premium and Non-Premium markets on this route. Competition introduced by one-stop services, including Delta's services facilitated by the 2010 Slot Commitments, does not appear to have been as strong a constraint as the introduction of non-stop competition would be expected to produce.

London – Miami

4.37 In early 2020, there were three competitors operating non-stop air passenger services on the London-Miami route: the AJB members (AA and BA), Delta/Virgin Atlantic and Norwegian.

4.38 In the CMA's view, one-stop competition is unlikely to exercise a material constraint on this route: only a small proportion ([10-20]%) of Non-premium passengers and a very small proportion ([0-5]%) of Premium passengers travel on one-stop services.[46]

4.39 Partially as a result of the 2010 Commitments, the Non-premium market appears to be slightly more competitive than it was in 2010, with the AJB's market share for non-stop services being slightly lower than in 2010 and there being two (in Summer 2019) to three (in Winter 2018/19) competing non-stop services to the AJB per day (rather than only one in 2010).

4.40 However, the AJB's market share is still substantial, amounting to [40-50]% of Non-premium passengers. Additionally, the constraints from both Delta/Virgin Atlantic and Norwegian need to be seen in the following context:

a. In Winter seasons, one of Delta/Virgin Atlantic's two daily frequencies in Winter is facilitated by the 2010 Commitments, while in Summer seasons (when Virgin Atlantic operates the 2010 Commitments slots as a one-stop service) Delta/Virgin Atlantic's position in the market is relatively weak; and

b. Norwegian has only recently gained significant market share on the route,[47] such that its long-term constraint on the AJB remains somewhat unclear.

[46] Figures for Winter 2018/19 and Summer 2019.
[47] Norwegian accounted for [20-30]% of passengers (non-stop and one-stop combined) in Summer 2019. Norwegian entered the route in Summer 2014, but had a market share averaging only [5-10]% for its first five seasons, gaining market share in more recent seasons as it has increased its frequency and moved its services from Fort Lauderdale to Miami International airport.

4.41 Regarding the Premium market, the competitive landscape does not appear to have changed significantly since 2010:

a. The AJB has consistently maintained a high market share, with its market share in Winter 2018/19 and Summer 2019 amounting to [60-70]%;

b. The temporary entry of Delta in 2011 and the subsequent launch of additional Virgin Atlantic services (non-stop in Winter seasons and one-stop via Atlanta in Summer seasons) – both facilitated by the 2010 Slot Commitments – have had little lasting impact on the AJB's position in the Premium market;

c. While Norwegian has grown its market share in recent years following an increase in its frequency and moving its services from Fort Lauderdale airport to Miami International airport, the fact that it operates from LGW and does not offer a business class service with features comparable to AA or BA's business class offering is likely to limit the competitive constraint it poses on the AJB; and

d. The AJB continues to hold a substantial frequency advantage over other airlines operating services on the route.

4.42 The Commitments Parties submitted econometric evidence which purported to show that fares had fallen on the route as a result of the AJB. As above (at paragraph 4.23), the CMA has significant doubts about the robustness of the Commitments Parties' econometric evidence. The CMA's econometric analysis (which adopted a different methodology) did not find any statistically significant effect on fares on the route. In any case, given that there were the 2010 Slot Commitments in place from Summer 2011 onwards, the econometric analysis of fares is unlikely to identify robustly the effect of the AJB on competition as opposed to the effect of the entry facilitated by the 2010 Commitments.

4.43 Overall, the AJB's market share in the Non-premium market is substantial despite some increase in competition (which was partially facilitated by the 2010 Commitments), while in the Premium market, the AJB has retained its strong position. For these reasons, the CMA currently has competition concerns in relation to both the Premium and Non-Premium markets on this route.

London – Philadelphia

4.44 AA and BA are the only non-stop operators on the route, with AA operating two daily services, while BA operates seven weekly services in Winter and 10 weekly services in Summer.

4.45 The CMA's view is that services serving Newark Liberty International Airport are unlikely to exercise a material constraint on non-stop services on the route given its distance from PHL. One-stop services are also unlikely to exercise a relevant constraint for Premium passengers on the route, with one-stop services accounting for only [5-10]% of Premium passengers, and are likely to exercise only a weak constraint for Non-premium passengers, with one-stop services accounting for [20-30]% of Non-premium passengers.[48]

4.46 The AJB now operates as a monopoly on this route as AA and BA are the only non-stop operators, following Delta's withdrawal of its non-stop service facilitated by the Merger Commitments in May 2018.[49]

4.47 In the CMA's view, there remain significant barriers to non-stop entry due to London-PHL being a relatively 'thin' O&D route,[50] the AJB hubs at both ends of the route, and difficulties in acquiring slots at LHR and LGW.

4.48 Notwithstanding that Delta was able to achieve a [30-40]% share of the Non-premium market in Winter 2016/17, it subsequently exited the route once Grandfathering Rights had been granted by the Commission.

4.49 The Commitments Parties submitted econometric evidence which purported to show that the AJB resulted in higher overall fares on the route, with economy fares increasing and business fares falling. As above (at paragraph 4.23), the CMA has significant doubts about the robustness of the Commitments Parties' econometric evidence. Data availability and consistency issues meant that the CMA did not consider it appropriate to conduct its own econometric study for the London – Philadelphia route.

4.50 While the Merger Commitments slots are no longer used on the route, the remaining Merger Commitments, namely SPAs, FCAs and FFPs, are in place, but can only be used if a competing airline enters the route. As described above, the AJB operates as a monopoly on this route and there are significant

[48] Figures for Winter 2018/19 and Summer 2019. While the share of Non-premium passengers travelling on one-stop services on this route is not insignificant, this share increased significantly with the withdrawal of Delta's direct services in early Summer 2018 (and the consequent drop in non-stop passenger numbers).
[49] Delta is using the LHR slots to operate services to Detroit and Portland.
[50] A 'thin' O&D route is one with relatively small numbers of O&D passengers, such that significant numbers of connecting passengers may be required in order to make substantial frequency and capacity on the route financially viable.

barriers to entry which make new entry unlikely. For these reasons, the CMA currently has competition concerns in relation to this route.

Efficiencies

4.51 The Commitments Parties have argued that the AJBA has generated substantial benefits to consumers, including to those travelling on the Routes of Concern. In particular, they have submitted quantified estimates of such benefits, based on data from a number of sources, which they argued supported three categories of benefits:

a. Scheduling benefits on the Routes of Concern, leading to more convenient schedule options for AJB passengers;

b. The elimination of double marginalisation on connecting services, leading to lower fares for AJB connecting passengers; and

c. The introduction of new non-stop AJB services on a number of US-UK routes that previously had no direct flights, leading to benefits for AJB passengers.

4.52 The CMA has assessed whether these claimed benefits are sufficient to outweigh its competition concerns arising from the AJBA on the Routes of Concern. In particular, the CMA has considered whether on each of the Routes of Concern:

a. the AJBA contributes to improving production or distribution, or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;

b. the AJBA imposes on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and

c. the AJBA affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

4.53 The CMA has assessed the evidence advanced by the Commitments Parties in support of the claimed efficiencies identified above, as well as how this evidence was quantified. While the CMA accepts that categories of benefits identified by the Commitments Parties (described at 4.51 above) are, in principle, relevant, the CMA considers that the claimed benefits are not sufficiently evidenced in respect of any Route of Concern.

4.54 Moreover, the CMA considers that in the case of the London–Philadelphia route (on both the Non-premium and Premium markets) and at least in

respect of the Premium market on the London-Dallas route, the AJBA affords AA and BA the possibility of eliminating competition in respect of a substantial part of those markets.

4.55 In the light of the above, the CMA's current view is that the Commitments Parties have not demonstrated that the claimed benefits are sufficient to outweigh the CMA's current competition concerns on the Routes of Concern.

Conclusion on competition concerns

4.56 The CMA's view is that the AJBA gives rise to competition concerns in respect of the Routes of Concern and that the Parties have failed to demonstrate that the consumer benefits identified are such as to outweigh these.

5. The commitments

5.1 In order to address the CMA's competition concerns (as described in chapter 4), the Commitments Parties have offered the Proposed Commitments to the CMA, which include:

a. slot commitments on certain Routes of Concern;

b. a commitment to maintain a minimum capacity (defined by a certain number of seats) on certain Routes of Concern, in certain circumstances;

c. SPA, FCA and FFP commitments in all Routes of Concern.

5.2 The Proposed Commitments are set out in Annex 1 and analysed below.

The Proposed Commitments

5.3 The Proposed Commitments offered by the Commitments Parties are summarised below.

London-Boston

5.4 On the London-Boston route, the Commitments Parties have offered a daily slot pair to be used for non-stop services.

5.5 The Commitments Parties have also offered an SPA commitment, an FCA commitment and an FFP commitment.

London-Chicago

5.6 On the London-Chicago route, the Commitments Parties have offered an SPA commitment, an FCA commitment and an FFP commitment. Each of these are in respect of business class and first-class cabins and fully flexible economy class tickets only.

London-Dallas

5.7 On the London-Dallas route, the Commitments Parties have offered a daily slot pair to be used for non-stop services.

5.8 Until and unless the offered slot pair is taken up, the Commitments Parties have committed to maintain a minimum capacity (defined by a number of seats) on the route, subject to certain *force majeure* and operational imperative events. On the London-Dallas route, this is a minimum of 870,000 seats per year.

5.9 The Commitments Parties have also offered an SPA commitment, an FCA commitment and an FFP commitment.

London-Miami

5.10 On the London-Miami route, the Commitments Parties have offered a daily slot pair to be used for non-stop services.

5.11 The Commitments Parties have also offered an SPA commitment, an FCA commitment and an FFP commitment.

London-Philadelphia

5.12 On the London-Philadelphia route, the Commitments Parties have offered a daily slot pair to be used for non-stop services subject to the following conditions:

a. AA being successful in ongoing litigation in the General Court referred to at paragraph 3.17 above;

b. Delta returning the daily slot pair to AA in lieu of recommencing non-stop services on the London-Philadelphia route; and

c. the Commission accepting that the Proposed Commitments offered to the CMA would replace the Merger Commitments offered to the Commission in Case COMP M.6607 *US Airways/American Airlines*.

5.13 Until and unless these conditions are met, or if these conditions are met but the offered slot pair is not taken up, the Commitments Parties have committed to maintain a minimum capacity (defined by a number of seats) on the route, subject to certain *force majeure* and operational imperative events. On the London-Philadelphia route, this is a minimum of 635,300 seats per year.

5.14 The Commitments Parties have also offered an SPA commitment, an FCA commitment and an FFP commitment.

General provisions

5.15 The Commitments Parties have agreed to appoint a monitoring trustee to oversee the implementation of the Proposed Commitments and report to the CMA on various matters.

Termination and review

5.16 The Proposed Commitments would be binding on the Commitments Parties for a period of ten years from the date of the formal acceptance of the commitments by the CMA or the date of expiry of the 2010 Commitments.

5.17 The Commitments Parties have agreed that due to the exceptional circumstances resulting from the COVID-19 crisis, the CMA may, of its own initiative, undertake a review of the Proposed Commitments between two and five years after the commitments come into effect. Any such review shall not affect the validity of the SRAs, SPAs, FCAs and FFP agreements already concluded.

6. The CMA's assessment of the Proposed Commitments

6.1 For the reasons set out below, the CMA has reached the provisional view that its competition concerns are addressed by the Proposed Commitments offered. Formal acceptance of the Proposed Commitments would result in the CMA terminating its investigation and not proceeding to a decision on whether the Act or the TFEU has been infringed.

6.2 Accordingly, a decision by the CMA accepting binding commitments will not include any statement as to whether or not the conduct of any of the Parties has infringed the Act or the TFEU either prior to the acceptance of the commitments or once the commitments are in place.

The CMA's Guidance

6.3 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.

6.4 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where (a) the competition concerns are readily identifiable; (b) the competition concerns are addressed by the commitments offered; and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.[51]

6.5 The CMA will not accept commitments where compliance with such commitments or their effectiveness would be difficult to discern and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.[52]

The CMA has reached the provisional view that the competition concerns are readily identifiable

6.6 As explained in chapter 4 above, the CMA has concerns that, in relation to the Routes of Concern, the AJBA substitutes practical cooperation between the Parties for the risks of competition. In doing so, it changes appreciably the structure of the market concerned through the withdrawal of potential competitors, an increase in concentration, and a reduction in the number of undertakings supplying the services on certain routes. The competition concerns which the CMA has identified also relate to the potential for the

[51] Paragraph 10.18 of the Procedural Guidance.
[52] Paragraph 10.20 of the Procedural Guidance.

AJBA to have an appreciable adverse impact on the parameters of competition, such as the price, quantity and quality of services, on the Routes of Concern.

6.7 In assessing the agreement, as outlined in chapter 4, the CMA has considered on a route-by-route basis the effect of the AJBA in the actual context in which it operates, including what would occur in the absence of the AJBA and the 2010 Commitments, and taking account of the Merger Commitments:

a. **Boston**: competition in the Non-premium market has been, at least to some extent, reliant on the 2010 Commitments in place; while in the Premium market, the AJB has maintained a high market share and a frequency advantage, although this has reduced to some extent with the introduction of Delta/Virgin's additional services between London and Boston. The planned introduction of a daily LGW service by Delta/Virgin Atlantic on the route in May 2020 and planned entry by JetBlue in 2021 (if implemented) would likely increase the competitive constraints on the AJB in the future;

b. **Chicago**: in the Premium market, the AJB maintains a high market share and a frequency advantage and has a substantial feeder traffic advantage over other carriers on the route, albeit that United operates its largest hub at Chicago O'Hare airport and offers an attractive alternative to the AJB;

c. **Dallas**: AA and BA are the only non-stop operators on this route, and competition introduced by one-stop services, including Delta's services facilitated by the 2010 Slot Commitments, does not appear to have been as strong a constraint as the introduction of non-stop competition would be expected to produce;

d. **Miami**: the AJB's market share in the Non-premium market is substantial despite some increase in competition (which was partially facilitated by the 2010 Commitments), while in the Premium market, the AJB has retained its strong position; and

e. **Philadelphia**: while the Merger Commitments slots are no longer used to provide services on the route, the remaining Merger Commitments, namely SPAs, FCAs and FFPs, remain in place, but can only be used if a competing airline enters the route. As described above, there are significant barriers to entry which make new entry unlikely.

6.8 Furthermore, as set out in chapter 4, the CMA's current view is that the Parties have failed to demonstrate that the AJBA meets the conditions for an individual exemption.

6.9 The CMA is, therefore, of the provisional view that its competition concerns are readily identifiable.

The CMA has reached the provisional view that the commitments offered by the Commitment Parties, once implemented, would address its competition concerns

6.10 The CMA's provisional view is that the Proposed Commitments, once implemented, will address the CMA's competition concerns with respect to the AJBA on the Routes of Concern, as outlined in chapter 4, by providing the possibility for entry and/or enabling operators to access customers on the Routes of Concern more easily.

6.11 As set out below, the CMA's assessment has looked at each of the Proposed Commitments individually, but these are also intended to work as a package of measures that are likely to support or strengthen effective competition to the AJB on the Routes of Concern. The CMA has carefully considered the implications of the COVID-19 pandemic in provisionally accepting the Proposed Commitments (see paragraphs 6.33 - 6.34 below).

Slot commitments

6.12 The lack of availability of slots at LHR and LGW constitutes one of the main barriers to entry or expansion on the Routes of Concern. The Proposed Commitments address this barrier by making slots at LHR or LGW available to competitors on up to four of the Routes of Concern (namely non-stop services to Boston, Dallas, Miami and, under certain circumstances, Philadelphia) thereby enabling competitors to launch new services or expand existing services.

6.13 The CMA's provisional view is that the release of slots facilitating an additional non-stop competitor service on up to four of the Routes of Concern (London-Boston, London-Miami, London-Dallas and, under certain circumstances, London-Philadelphia), is likely to address the competition concerns it has identified in respect of those routes. This is based on the CMA's assessment of competition on these routes, which examined the effect of the loss of competition between BA and AA as a result of the formation of the AJB, and assessed the extent of competitive constraints imposed on BA and AA by current competitors (where these are present).

6.14 The Proposed Commitments do not allow for the slots to be used to operate one-stop services. The CMA considers that one-stop competition on the Routes of Concern has exercised a weak constraint on the AJB and, therefore, that slots being used to operate non-stop services is preferable. In

the event that the slots are not taken up by competitors for non-stop services on the Dallas and Philadelphia routes, the Proposed Commitments include a requirement on the AJB to maintain a minimum capacity.

6.15 Taking each of the four relevant Routes of Concern:

a. **London-Boston**: Slots released under the terms of the 2010 Commitments are currently being used by two competing carriers (Delta/Virgin Atlantic and Norwegian) to provide non-stop services. Both carriers have further expanded their services using slots in addition to those available under the 2010 Commitments. Moreover, Boston is a hub for Delta and a JetBlue focus city. Therefore, the likelihood that these slots would be taken up by competing airlines and used for non-stop services on this route appears high. As set out above, BA/AA retain a strong position in the Premium market, although this has reduced to some extent with the introduction of Delta/Virgin's additional services between London and Boston. The Proposed Commitments provide for slots to be released for one competing daily non-stop service. This is likely to be sufficient to address the CMA's competition concerns, in the light of recent expansion in Boston by Delta/Virgin Atlantic (which launched a third LHR daily service in Summer 2019), planned further expansion by Delta/Virgin Atlantic (which is now selling tickets for its new LGW service for Summer 2020) and the planned entry of JetBlue on the route in Summer 2021 (with three daily services planned).

b. **London-Miami**: slots released under the terms of the 2010 Slot Commitments are currently being used by Delta/Virgin Atlantic to provide non-stop services in Winter seasons and one-stop services (via Atlanta) in Summer seasons. Delta/Virgin Atlantic and Norwegian also operate year-round non-stop services which do not rely on the 2010 Slot Commitments. Therefore, the likelihood that these slots would be taken up by competing airlines appears high. In terms of effectiveness, the relatively low passenger numbers carried by the one-stop Summer services facilitated by the 2010 Commitments indicate that year-round non-stop services would be preferable in order effectively to constrain the AJB on the route.

c. **London-Dallas**: BA and AA are the only non-stop operators on the route. The 2010 Slot Commitments on this route are currently being used by Delta to provide a year-round one-stop service. The competitive constraint from one-stop services (including Delta's) does not appear to be as strong a constraint as would be generated by the introduction of non-stop competition. Slot commitments facilitating a daily competitor non-stop service would be likely to address the CMA's concerns arising from the loss of competition due to the AJB. However, the fact that this is a

relatively ‘thin’ O&D route, with BA and AA hubs at each end, is likely to make the provision of non-stop services by competing airlines less attractive. If no competing carrier takes up the slot under the Proposed Commitments, then the Commitments Parties have offered to maintain a minimum level of seat capacity on their LHR-Dallas services, as set out below.

d. **London-Philadelphia:** Slots released under the terms of the Merger Commitments were used by Delta to provide a competing non-stop service on the route from Summer 2015 until April 2018 but have subsequently been used by Delta to service other transatlantic routes.[53] As outlined at paragraph 5.12 above, if AA’s appeal is successful and the Grandfathering Decision is annulled, slots available under the Merger Commitments[54] may once again be used to operate a service between LHR and PHL. As with the London-Dallas route, however, this is a relatively ‘thin’ O&D route, with BA and AA hubs at each end. As a result, the provision of non-stop services by competing airlines may not be an attractive prospect, as Delta’s short-lived service on this route appears to demonstrate. As with the London-Dallas route, therefore, until and unless a competing carrier takes up the slot under the Proposed Commitments, then the Parties have offered to maintain a minimum level of seat capacity on their LHR-Philadelphia services, as set out below.

6.16 The CMA’s provisional view is that the release of a slot on the London-Chicago route is not required to address its competition concern on that Route of Concern. United operates its largest hub at Chicago O’Hare airport and acts as a constraint on the AJB. As set out above, the CMA’s competition concerns are limited to the Premium market where the AJB has a higher market share than United. The CMA’s competition concerns are focused on the AJB’s substantial feeder traffic advantage over carriers on the route, with AA and BA operating major hubs at each end of the route and competitors having more limited access to feeder traffic through London. The Proposed Commitments include an SPA commitment, discussed below, to enhance competitor access to feeder traffic on the route.

[53] Delta is able to do so as a result of having been granted Grandfathering Rights pursuant to the Grandfathering Decision, as set out at paragraph 3.16, above.
[54] Alternatively, if the conditions outlined at 5.12 above are met the new slot commitment under the Proposed Commitments would replace the slots available under the Merger Commitments.

Minimum capacity commitments

6.17 As set out at paragraphs 5.8 and 5.13, above, this aspect of the Proposed Commitments is a backstop position which would operate as an alternative to slot commitments:

a. on the London-Dallas route until and unless a competing airline takes up the commitments slots to provide a non-stop service on the route; and

b. on the London-Philadelphia route until and unless the conditions for slot commitments under the Proposed Commitments were met (see paragraphs 5.12 and 5.13, above) and a competing airline was willing to take up the commitments slots to provide a non-stop service on the route.

6.18 As described above, given the nature of these routes, there is a material risk that, even where slot commitments are available under the Proposed Commitments, or (in the case of London-Philadelphia) the Merger Commitments, these may not be attractive to a competing carrier. Non-stop competition would be the most effective way to address the CMA's competition concerns on these routes, but, absent this, the CMA considers that a minimum capacity commitment would mitigate the competitive harm to O&D passengers. In particular, the commitment to maintain seat capacity above a certain level is expected to place a constraint on the Commitments Parties' fares on the routes. The AJB's capacity on these routes has increased in recent years and, by being required to maintain a minimum capacity, the Commitments Parties will have an incentive to fill these seats, putting downward pressure on fares. In addition, at least in relation to the London-Dallas route, additional capacity and frequency on the route is an important source of customer benefits, so a commitment to maintain capacity is also likely to secure those benefits in the future.

SPA commitments

6.19 The SPAs offered in relation to each of the Routes of Concern address the concern that the AJB members have a substantial feeder traffic advantage over other carriers on these routes, as BA operates a major hub at LHR, while AA either operates a hub or has a significant presence at the US end of each of these routes.

6.20 These SPAs will allow competing airlines access to connecting passengers (feeder traffic) on preferential terms, incentivising entry or additional competitor services on these routes and/or increasing the viability of existing non-stop services on the Routes of Concern.

6.21 As with the 2010 Slot Commitments, some competing airlines have made use of the SPA commitments in place as part of the 2010 Commitments. Furthermore, SPAs of this type have been used in a number of merger cases to address comparable competition concerns. As such, it is likely that SPAs of this type will be taken up and used by competing airlines where they are needed.

FCA commitments

6.22 The FCAs offered in relation to each of the Routes of Concern address the concern that the AJB members' frequency advantage on these routes limits the strength of the competitive constraint imposed by competitors' services.

6.23 By allowing competing airlines to sell tickets which combine that carrier's service in one direction and an AJB-operated service in the other, FCAs will increase the attractiveness of a competitor's services even when these provide lower frequency than the AJB Parties. FCAs may be effective in increasing the competitive constraints on the AJB on the Routes of Concern, in combination with the other elements of the overall package contained in the Proposed Commitments.

FFP commitments

6.24 The FFP commitments offered in relation to each of the Routes of Concern address the concern that the AJB members' FFPs represent a barrier to entry or expansion by competing airlines as they disincentivise customers from switching to competing carriers.

6.25 The FFP commitments available under the 2010 Commitments were not taken up by competing airlines, as, like the Proposed Commitments, these were limited to airlines that did not have their own FFP and competitors already had established FFP schemes.

6.26 Nonetheless, the use of the FFP commitment may be effective in increasing the attractiveness of entry for airlines which do not have their own FFP, in combination with the other elements of the overall package of the Proposed Commitment.

Review of commitments

6.27 Due to the exceptional circumstances resulting from the COVID-19 crisis, the Proposed Commitments also make provision for the CMA to undertake a review of the commitments at a point between two and five years after the commitments come into effect.

6.28 This aspect of the Proposed Commitments would allow the CMA to assess the effectiveness of any commitments after they have been in operation for a sustained period, and in the light of any changes to competition that may have arisen since the commitments coming into effect (including any changes arising from the COVID-19 pandemic).

6.29 The review clause in the Proposed Commitments is without prejudice to the fact that any acceptance of the Proposed Commitments would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Proposed Commitments.[55] Similarly, the review clause in the Proposed Commitments is without prejudice to the CMA's ability to open an investigation, make an infringement decision, or give directions in circumstances where the CMA has reasonable grounds for:

a. believing that there had been a material change of circumstances since the commitments were accepted;

b. suspecting that a person had failed to adhere to one or more of the terms of the commitments; or

c. suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.[56]

Conclusion on the overall package of commitments

6.30 The slot commitments included in the Proposed Commitments will remove a key barrier to entry and expansion for competitors at LHR and LGW. A backstop requiring the AJB to maintain a minimum capacity will be put in place on the two Routes of Concern on which there is a material risk that the slot commitments may not be taken up by competitors in order to offer non-stop services.

6.31 In order to support competing services, SPAs will offer competitors access to feeder traffic on preferential terms and FCAs will allow competitors to increase the attractiveness of their services even when these provide lower frequency than the AJB Parties. The FFP commitment offers potential competitors without their own FFP the opportunity to gain access to the FFPs of the AJB Parties on the Routes of Concern.

6.32 Taken together, therefore, the CMA's provisional view is that, once implemented, the package of remedies contained in the Proposed Commitments offered by the Commitments Parties will enhance competition

[55] Section 31B(3) of the Act.
[56] Section 31B(4) of the Act.

on the Routes of Concern and thereby address the CMA's competition concerns.

Impact of the Coronavirus (COVID-19) pandemic

6.33 As noted above, the CMA is mindful of the effect that the COVID-19 pandemic is having on the aviation sector. The CMA's competition assessment and the Proposed Commitments are based on market conditions in early 2020, prior to the outbreak of the COVID-19 pandemic. Whether, and if so how, the pandemic will affect competition on routes between the UK and the US, including the Routes of Concern, in the long term is currently unclear.

6.34 In the meantime, and notwithstanding this uncertainty about the longer-term impact of the COVID-19 pandemic, the CMA considers that the competition concerns it has identified in relation to the Routes of Concern, described in chapter 4 above, remain and should be addressed. The CMA has, therefore, proceeded to publish this Notice and, as noted above, is of the provisional view that the Proposed Commitments, once implemented, would address its current competition concerns. As regards any longer-term impact of the COVID-19 pandemic on the structure of competition on routes between the UK and the US, including the Routes of Concern, the CMA would expect these to become clearer within the next two to five years. At that point the CMA would be able to review the Proposed Commitments under the review clause and/or (if appropriate in the light of the information available to the CMA at the time) may be able to re-open an investigation into the AJBA under the relevant provisions of the Act, for example because the CMA had reasonable grounds for believing that there had been a material change of circumstances since the Proposed Commitments were accepted (as described at 6.27 to 6.29 above).

The CMA has reached the provisional view that the Proposed Commitments offered are capable of being implemented effectively and within a short period of time

6.35 The Proposed Commitments outline how and when each commitment will come into force. Where agreements have been entered into under the terms of the 2010 Commitments and continue to be effective as at this date, it is appropriate that new commitments will only become effective on expiry of those former commitments. The CMA, therefore, provisionally considers that the timing of the implementation of each of the commitments is appropriate and will ensure its effectiveness.

The CMA has reached the provisional view that compliance with such commitments and their effectiveness would not be difficult to discern

6.36 The Commitments Parties have committed to appoint a monitoring trustee to perform the functions of monitoring the Commitments Parties' compliance with the commitments. The monitoring trustee's mandate includes the following obligations and responsibilities:

a. To monitor the satisfactory discharge of the obligations under the Proposed Commitments, to advise and make recommendations to the CMA as to the suitability of any SRA and prospective entrant;

b. To advise and make a written recommendation to the CMA as on FCA, SPA and FFP agreements submitted for approval; and

c. To provide written reports to the CMA on the Commitments Parties' compliance with the commitments.

6.37 The Commitments Parties have offered to comply with a number of reporting obligations, including to:

a. provide to the CMA copies of any material variations, amendments or additions to any agreement entered into pursuant to the commitments; and

b. permit the US Department of Transportation to transmit to the CMA data based on information supplied to it by the Commitments Parties in accordance with the reporting obligations provided for in its Final Order in Case DOT-OST-2008-0252 (or any future amendment thereof).

6.38 The CMA's provisional view is that the appointment of a monitoring trustee and reporting obligations will ensure that the CMA remains at all times in a position to monitor effective compliance by the Commitment Parties and take appropriate enforcement steps if required.

The CMA has reached the provisional view that deterrence would not be undermined by accepting commitments in this case

6.39 The CMA does not consider that accepting the Proposed Commitments in this case would undermine deterrence. The Commitments Parties having to offer a package of commitments (including a number of slot commitments) in order to protect and enhance competition on the Routes of Concern sends a strong signal that the CMA will require appropriate remedies in order to address any competition concerns it identifies on transatlantic air passenger routes.

6.40 The CMA also considers that by accepting the Proposed Commitments in this case it is able to resolve its competition concerns quickly, thus avoiding anti-

competitive effects on the markets concerned, without preventing the AJB from producing relevant customer benefits on the markets concerned.

6.41 The Proposed Commitments do not preclude the CMA taking further enforcement action in relation to other breaches of competition law and/or related markets which raise competition concerns and may harm consumers.

6.42 In the light of the above, the CMA's provisional view is that deterrence would not be undermined by accepting commitments in this case.

7. The CMA's intentions and invitation to comment

7.1 In the light of the above, the CMA provisionally considers that the Proposed Commitments offered by the Commitments Parties as set out in Annex 1 of this document are sufficient to address its current competition concerns, as outlined in chapter 4. of this Notice. Therefore, the CMA intends to accept the Proposed Commitments by means of a formal commitments decision.

7.2 As required by paragraph 2(2)(d) of Schedule 6A of the Act, the CMA now invites interested third parties to make representations on the Proposed Commitments and will take such representations into account before making its final decision whether to accept the Proposed Commitments.

7.3 As noted above, the CMA has not reached a final view and invites all interested parties to submit observations and evidence in order to assist the CMA in its final assessment of the Proposed Commitments offered.

7.4 The CMA will inform the Commission, once it has considered representations from third parties, and no later than 30 days before the adoption of a decision accepting commitments.[57]

Invitation to comment

7.5 Any person wishing to comment on the Proposed Commitments should submit written representations to the email address given below by 5pm on 4 June 2020. The CMA is mindful of the impact of the COVID-19 pandemic on the aviation sector, and given the current exceptional circumstances, is allowing an extended period of four weeks for comments from interested third parties. However, where justified, the CMA will also consider any reasonable requests for additional time to comment.

7.6 Please quote the case reference, 50616, in all correspondence related to this matter and submit written representations:
FAO: April Carr, Assistant Director or James Lambert, Project Director
Competition and Markets Authority
Email: AJB-Response@cma.gov.uk

7.7 Written submissions are welcomed on any aspect of the Proposed Commitments; both as regards the general nature of the Proposed Commitments and their detailed drafting. The CMA notes that aspects of the Proposed Commitments differ from the 2010 Commitments.

[57] In accordance with the requirement under Article 11(4) of Council Regulation (EC) 1/2003 of 16 December 2002.

Confidentiality

7.8 The CMA does not intend to publish the responses to the consultation with any commitments decision or notice provisionally to accept any modified commitments. However, the information contained in the responses may be used or summarised in these documents. If this is the case the CMA will revert to the provider of that information to obtain representations on confidentiality.

7.9 In the event that the Proposed Commitments are not accepted and the CMA is considering disclosing any information contained in the responses (such as in a Statement of Objections), it will similarly revert to the provider of that information to obtain representations on confidentiality.

7.10 The CMA will then consider those representations before deciding whether the information should be disclosed under Part 9 of the Enterprise Act 2002.

Annex 1: The proposed commitments

Commitments given by BA/AA/IB/EI

INTRODUCTION

The CMA is investigating the Atlantic Joint Business ("**AJB**") between American Airlines ("**AA**"), members of International Airlines Group ("**IAG**") (British Airways, Iberia and Openskies) and Finnair under Chapter I of the Competition Act 1998 ("**CA98**") and Article 101 of the TFEU. Aer Lingus (also a member of IAG) intends to join the AJB (subject to approval by U.S. Department of Transportation ("**DOT**")) and has entered into a number of agreements in order to do so.

In the interests of an efficient disposal of the investigation, the Parties agree to provide the following commitments (the "**Commitments**"). These Commitments are being offered under section 31A of the CA98 in order to bring the CMA's investigation to a close by addressing its competition concerns.

The giving of these Commitments does not constitute an admission of any wrongdoing and nothing in these Commitments may be construed as implying that the Parties agree with any concerns identified by the CMA in its investigation.

These Commitments are strictly without prejudice to the Parties' position should the CMA or any other party or authority commence or conduct any proceedings or legal action against the Parties in respect of the AJB or any similar cooperation agreement.

These Commitments are intended to replace the commitments agreed with the European Commission in Case COMP/39.596 – *BA/AA/IB*, dated 14 July 2010 following its investigation into the AJB in so far as they relate to UK-US city-pairs (the "**Old Commitments**"). These Commitments shall only be in force following expiry of the Old Commitments on 14 July 2020.

Taking into account that the DOT granted antitrust immunity to the AJB by virtue of its Final Order 2010-7-8 of 20 July 2010 in Case DOT-OST-2008-0252 and the previous cooperation between the European Commission and DOT regarding the assessment of the AJB, these commitments confirm an ongoing waiver allowing the CMA to share with the DOT confidential information and other materials of the Parties as well as the CMA's internal analysis of the AJB for as long as these Commitments remain in force.

DEFINITIONS

For the purpose of these Commitments, the terms listed below have the following meaning:

AAdvantage	American Airlines' FFP
Aer Lingus (or EI)	Aer Lingus Group DAC
Affiliate Airlines	Includes any airlines that: (i) have at least 25% of their direct or indirect shareholders in common and therefore belong to the same holding company as each other (or where one airline owns a direct or indirect shareholding in the other, that shareholding amounts to at least a 25% share); or (ii) co-operate with each other in the form of a joint business that has been granted antitrust immunity by the DOT on any transatlantic city-pairs in the provision of passenger air transport services
Agreements	All final signed agreements (including all schedules, annexes, addenda, etc.) between the Parties and Finnair, relating to the Existing Alliance. This includes those documents provided to the CMA in Annex 5 of the Parties' Response to the CMA's RFI dated 11 October 2018 and in particular comprises the following agreements: (i) Alliance agreement between BA and AA dated 14 August 2008 (ii) Alliance agreement between BA and Finnair dated on or around 2 July 2013 (iii) Joint Business Agreement ("**JBA**") of 14 August 2008 between the Parties (iv) JBA of 14 August 2008 between the Parties, as amended by the First Amendment to the JBA, dated 30 March 2010 (v) JBA of 14 August 2008 between the Parties, as amended by the First Amendment to the JBA, dated 30 March 2010 and the Second Amendment to the JBA, dated 28 September 2010

(vi) Amended and Restated JBA between AA, BA, IB and Finnair dated 13 July 2013

(vii) Amended and Restated Alliance Settlement Agreement by and among AA, BA, IB, Openskies SASU, Finnair and Aer Lingus dated 23 October 2017

(viii) Alliance agreement between IB and Finnair dated on or around 2 July 2013

Alliance	The Star alliance, the SkyTeam alliance, the **one**world alliance, or any other airline alliance that may be developed
American Airlines (or AA)	American Airlines, Inc.
Applicant	Any airline interested in obtaining Slots from the Parties in accordance with these Commitments
British Airways (or BA)	British Airways Plc
Case T-430/18	Litigation initiated in the General Court of the Court of Justice of the European Union by AA against the European Commission seeking annulment of the European Commission's decision to grant Grandfathering rights (as defined in that case) to Delta Air Lines under the commitments accepted in Case M.6607 – *American Airlines/US Airways* and, as applicable, any appeals of the eventual judgment of the General Court. Case T-430/18 is the case number assigned by the General Court to this litigation
Central America	Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama
Commitment(s)	The Slot commitment for each relevant Identified City Pair and/or, as relevant, the commitment granting the Prospective Entrant access to one of the Parties' Frequent Flyer Programmes on one or more of the Identified City Pairs and/or, as relevant, the commitment relating to fare combinability on one or more of the Identified City Pairs and/or, as relevant, the commitment relating to Special Prorate Agreements on one or more of

	the Identified City Pairs and/or, as relevant, the commitment regarding minimum capacity on London-Dallas and/or London-Philadelphia
Competitive Air Service	Scheduled passenger air transport service operated on one or more of the Identified City Pairs on a non-stop basis (that is, a flight that is constantly in the air between its origin and final destination airports)
Economic Shock	A 10% or more reduction in the total size of passenger bookings in business and first class cabins through business agents, for example travel management companies, taken over the course of the latest week versus the same week in the previous year (using either computer reservation system bookings data, IATA DDS tickets data or any other relevant data source that may apply in the future) between the UK and North America across all airlines and with that reduced level of weekly bookings lasting six (6) weeks
Effective Date	The date of the formal acceptance of these Commitments by the CMA or the date of expiry of the Old Commitments, whichever comes later.
Eligible Air Services Provider	An airline that is not an Affiliate Airline of the Parties which operates a non-stop service on an Identified City Pair (whether or not a New Air Services Provider) and which does not, alone or in combination with its Alliance partners (if applicable) or its Affiliate Airlines, operate a Hub at both ends of the Identified City Pair
EU Slot Regulation	Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14 of 22.01.1993). Given the withdrawal of the UK from the European Union, this term is to be read as a reference to its equivalent legislation as applicable in the UK from time to time
Europe	The European Union (including, for the avoidance of doubt, the United Kingdom), Iceland, Norway and Switzerland
Executive Club	British Airways' FFP

Existing Alliance	The metal neutral and revenue sharing based cooperation presently envisaged by the Agreements, involving (a) transatlantic cooperation between the Parties and (b) cooperation between the Parties and Finnair in connection with the transatlantic cooperation between the Parties
Fast-Track Dispute Resolution Procedure	This term has the meaning given in Clause 7
FFP Agreement	An agreement by which an airline operating a Frequent Flyer Programme allows another airline to participate in that FFP
Frequency(ies)	A round-trip on an Identified City Pair
Frequent Flyer Programme (or FFP)	A programme offered by an airline to reward customer loyalty under which members of the programme accrue points for travel on that airline which can be redeemed for air travel and other products or services, as well as allowing other benefits such as airport lounge access or priority bookings
General Slot Allocation Procedure	For London Heathrow and London Gatwick airports: the Slot allocation procedure as set out in the EU Slot Regulation and IATA Worldwide Slot Guidelines (including participation at the IATA Scheduling Conference to try to improve slots allocated to fit with the desired schedule and by the slot coordinator from the waitlist following the Slot Handback Deadline)
Historic Precedence Rights	The right, as defined in the IATA Worldwide Slot Guidelines and referred to in Article 10(8) of the EU Slot Regulation, to be reallocated a series of slots that were operated at least 80% of the time during the period allocated in the previous equivalent season
Hub	An airport at which an airline concentrates its operations. For the purpose of these Commitments, as of the date of these Commitments, the following cities shall be deemed to have Hubs of the following airlines: Chicago – United, London – Virgin Atlantic, Boston - Delta

IATA	The International Air Transport Association
IATA Scheduling Conference	The industry conference of airlines and airport coordinators worldwide to solve scheduling issues where there are discrepancies between the slots requested by the airlines and allocated by the airport coordinators. The IATA scheduling conference for the Winter Season takes place in June, and the one for the Summer Season in November
IATA Season	The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March
Iberia (or IB)	Iberia Líneas Aéreas de España, S.A
Iberia Plus	Iberia's FFP
ICC	International Chamber of Commerce
Identified City Pair(s)	London-Boston, London-Chicago, London-Dallas, London-Miami, London-Philadelphia
Key Terms	The following terms that shall be included in the Applicant's formal bid for Slots: timing of the Slot, number of weekly frequencies and IATA Seasons to be operated (year-round service or seasonal)
Miles	The credits awarded by one of the Parties to members of its FFP. Such credits include standard reward points only and do not include tier or status points
Misuse	Misuse of the type described at Clause 1.11
MITA	Multilateral Interline Traffic Agreements Manual published by IATA
Monitoring Trustee	An individual or institution, independent of the Parties, who is approved by the CMA and appointed jointly by the Parties and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to these Commitments

New Air Services Provider	An airline that is not an Affiliate Airline of the Parties and which commences a new non-stop service on an Identified City Pair or which increases the number of non-stop Frequencies it operates on an Identified City Pair in accordance with these Commitments
North America	Canada, Mexico and the U.S.
oneworld	The Alliance founded by BA, AA, Cathay Pacific and Qantas in 1999
Openskies	Openskies SAS
Parties	BA, Openskies, AA, IB and, for the purposes of clauses 4 and 6-10 only, Aer Lingus; each a "Party"
Prospective Entrant	Any Applicant that is not an Affiliate Airline of the Parties, able to offer a Competitive Air Service individually or collectively by codeshare and needing a Slot or Slots to be made available by the Parties in accordance with these Commitments in order to operate a Competitive Air Service For the avoidance of doubt, the Prospective Entrant shall comply with the following requirements: (i) it must be independent of and unconnected with the Parties. For the purpose of these Commitments, an airline shall not be deemed to be independent of and unconnected to the Parties when, in particular: (I) it is an associated carrier belonging to the same holding company as one of the Parties; or (II) the airline co-operates with the Parties on the Identified City Pair concerned in the provision of passenger air transport services, except if this co-operation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary

activities entered into on an arm's length basis;

(ii) it must have the intention to begin or increase regular operations on one or more of the Identified City Pairs (for the avoidance of doubt, any services operated on the basis of Slots acquired as a result of the Old Commitments will not be taken into account when determining a Prospective Entrant's regular operations); and

(iii) to that effect, it needs a Slot or several Slots for the operation of a Competitive Air Service which competes with those of the Parties

Published Fares	Fares published by the Parties in ATPCo in reservation booking designator (or selling classes) F, J, W or Y.
Q/YQ/YR Surcharge	Charges paid in addition to the base fare amount of a ticket which are allocated to the Q, YQ or YR IATA ticket coding
Requesting Air Services Provider	This term has the meaning given in Clause 4.1
Requesting Party	This term has the meaning given in Clause 7
Security Payment	This term refers to an amount of money to be determined by the Monitoring Trustee, taking into account the amount of requested Slots, the features of those Slots and the need to deter Applicants from gaming or unnecessary delays
SkyTeam	The Alliance which has developed from the original SkyTeam alliance (founded by Air France, Delta and others) and the Wings alliance (which had involved KLM, Northwest and others)
Slot Handback Deadline	15 January for the IATA Summer Season and 15 August for the IATA Winter Season
Slot Release Agreement	An agreement between any of the Parties and a Prospective Entrant that provides for the exchange of Slot(s) with the Prospective Entrant according to the principles laid down in Clause 1 of these Commitments. For the avoidance of doubt, the Slot Release Agreement

	shall abide by the EU Slot Regulation and any exchange pursuant to this agreement shall be confirmed by the slot coordinator
Slot Release Procedure	This term has the meaning given in Clause 1.4
Slot Request Submission Deadline	The final date for the request for Slots to the slot coordinator as set out in the IATA Worldwide Scheduling Guidelines
Slot(s)	For London Heathrow and London Gatwick airports: permission given by the slot coordinator to use the full range of airport infrastructure necessary to land and take-off in order to operate an air service at the airport on a specific date and time for the purposes of landing or take-off as allocated by the slot coordinator given in accordance with the EU Slot Regulation
Special Prorate Agreement	An agreement between two or more airlines on the apportionment of through-fares on journeys with two or more legs operated by the different airlines
Star	The Alliance which has developed from the alliance established in 1997 between Lufthansa, SAS, United and a number of other carriers
TFEU	The Treaty on the Functioning of the European Union
Viable Competitor	A viable existing or potential competitor, with the ability, resources and commitment to operate services on the Identified City Pair(s) in the long term as a viable and active competitive force

COMMITMENTS

1. SLOTS

Slots for certain Identified City Pairs

1.1 The Parties undertake to make Slots available at London (at the choice of the Prospective Entrant, at either Heathrow or Gatwick) to allow one or more Prospective Entrant(s) to operate or increase the following number of new or additional Frequencies on the following Identified City Pairs:

(i) London-Boston: up to seven (7) Frequencies per week;

(ii) London-Dallas: up to seven (7) Frequencies per week;

(iii) London-Miami: up to seven (7) Frequencies per week; and

(iv) London-Philadelphia: up to seven (7) Frequencies per week (subject to Clause 1.2 below).

1.2 For London-Philadelphia, the Parties shall make Slots available only if (i) AA is successful in its ongoing litigation against the European Commission in Case T-430/18; (ii) Delta Air Lines returns the daily slot pair to AA in lieu of recommencing non-stop services on London-Philadelphia; and (iii) the European Commission accepts that these Commitments replace the commitments in Case M.6607 – *American Airlines/US Airways*.

1.3 If any daily Competitive Air Services are launched by third party carriers on an Identified City Pair, without using Slots made available by the Parties under these Commitments, in any IATA Season (Summer and/or Winter) starting in IATA Season Summer 2021 (or any IATA Season thereafter), the number of such additional services shall be deducted from the number of Slots which the Parties have to make available on the relevant Identified City Pair pursuant to Clause 1.1 in that particular IATA Season, subject to the condition that the CMA (advised by the Monitoring Trustee) has confirmed that the new services are operated by an airline which is independent of, and unconnected to, the Parties and is a Viable Competitor. For the avoidance of doubt:

(i) a subsequent reduction in the aggregate number of Competitive Air Services operated by third party carriers not using a Slot made available by the Parties shall increase the number of Slots to be made available by the Parties accordingly, but only up to the number specified in Clause 1.1;

(ii) an additional Competitive Air Service not using a Slot made available by the Parties shall not affect the Slot Release Agreements already

concluded by the Parties under these commitments other than any renewal provisions which would be terminable in the event that the additional Competitive Air Service continues to operate at the time such renewal rights become exercisable.

Conditions pertaining to Slots

1.4 Each Prospective Entrant shall comply with the following procedure to obtain Slots from the Parties ("**Slot Release Procedure**"):

(i) The Prospective Entrant wishing to commence/increase a Competitive Air Service on one or more of the Identified City Pairs listed at Clause 1.1 shall: (i) apply to the slot coordinator for the necessary Slots through the General Slot Allocation Procedure, and (ii) notify its request for Slots to the Monitoring Trustee, within the period foreseen in Clause 1.19.

(ii) The Prospective Entrant shall be eligible to obtain Slots from the Parties pursuant to these Commitments only if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary Slots to operate on the Identified City Pairs through the normal workings of the General Slot Allocation Procedure.

1.5 For the purposes of Clause 1.4 above, the Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:

(i) Slots at the same airport were available through the General Slot Allocation Procedure within sixty (60) minutes of the times requested but such Slots have not been accepted by the Prospective Entrant; or

(ii) Slots at the same airport (for use to operate a Competitive Air Service on the relevant Identified City Pair) were obtained through the General Slot Allocation Procedure more than sixty (60) minutes from the times requested and the Prospective Entrant did not give the Parties the opportunity to exchange those Slots for Slots within (equal or less than) sixty (60) minutes of the times requested; or

(iii) It has not exhausted its own Slot portfolio at the airport (including the Slot portfolio of its Affiliate Airlines). For the avoidance of doubt, any Slots to which that Prospective Entrant had access as a result of a slot release agreement entered into pursuant to the Old Commitments will not be taken into account when determining whether or not a Slot Portfolio has been exhausted. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:

a. If the carrier was offering a Competitive Air Service (on its own aircraft or those of an Affiliate Airline) on any of the Identified City Pairs less than four (4) consecutive IATA Seasons before the IATA Season for which it is applying for Slots but where it (or its Affiliate Airlines) has subsequently reduced or cancelled that service and reutilised or intends to reutilise the Slots used for that service on another route. In such circumstances, there will be a presumption that the carrier has reutilised or intends to reutilise its Slots in order to present itself as needing Slots to operate a Competitive Air Service on the Identified City Pair. Exceptionally, however, such a carrier will be deemed to have exhausted its own Slot portfolio if:

(i) it can provide detailed compelling evidence satisfying the CMA (following consultation with the Monitoring Trustee and having given the Parties the opportunity to comment) that there are bona fide reasons why it could not utilise the Slot which it was previously using for that service; or

(ii) assuming the relevant Party agrees, it gives the Party holding the Slot covered by the Slot Release Agreement an option to become a lessee of that reutilised Slot at the earliest possible time on reasonable terms and for a duration that runs in parallel with the Slot Release Agreement; or

b. If the carrier (or any of its Affiliate Airlines) have Slots at the airport within sixty (60) minutes of the time requested which are being leased-out to or exchanged with other carriers unless the carrier can provide reasonable evidence satisfying the CMA (following consultation with the Monitoring Trustee and having given the Parties the opportunity to comment) that there are bona fide reasons for this being done rather than it being a pretext to enable the carrier to present itself as needing Slots to operate a Competitive Air Service on an Identified City Pair; or

c. If the carrier (or any of its Affiliate Airlines) have Slots at the airport which are outside the sixty (60) minutes requested and which are leased-out to other carriers, in which case the Prospective Entrant shall be entitled to apply for Slots from the Parties, but only if:

(i) it can provide reasonable evidence satisfying the CMA (following consultation with the Monitoring Trustee and having given the Parties the opportunity to comment) that there are bona fide reasons for leasing the Slot out in this way rather than using it itself; or

(ii) assuming the relevant Party agrees, it gives the Party holding the Slot covered by the Slot Release Agreement an option to become the lessee of the leased-out Slot at the earliest possible time allowed under the applicable lease (on terms substantially the same as that lease and for a duration that runs in parallel with the Slot Release Agreement). If the Slot Release Agreement with the Prospective Entrant does not provide for monetary compensation, then the lease to the Party will likewise not provide for monetary compensation.

d. For the purposes of Clause 1.5(iii)(b) and (c), the bona fide reasons for leasing out (or, as relevant, exchanging) Slots by the Applicant shall include, but shall not be limited to, a situation where the Applicant can provide clear evidence of an intention to operate those Slots on a specific route and clear and substantiated evidence of its reasons for not currently doing so.

1.6 If the Prospective Entrant obtains Slots through the General Slot Allocation Procedure but after the IATA Scheduling Conference:

(i) which are within the +/- 60 minute window; or

(ii) which (in the case of Slots obtained at both ends of the route) are not compatible with the planned flight duration of the Applicant's operation on the route,

the Prospective Entrant shall remain eligible to obtain Slots from the Parties provided that it gives an option to the Parties to use the obtained Slots on terms substantially the same as the terms of the Slot Release Agreement, and for a duration that runs in parallel with the Slot Release Agreement.

1.7 Without prejudice to these Commitments (and, particularly, to this Clause 1), the Parties shall not be obliged to honour any agreement to make available the Slots to the Prospective Entrant if:

(i) The Prospective Entrant has not exhausted all reasonable efforts in the General Slot Allocation Procedure to obtain the necessary Slots to operate a new or increased service on the Identified City Pair; or

(ii) The Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 1.11 below).

1.8 Subject to the provisions of Clause 1.9, the Parties undertake to make available Slots within +/- sixty (60) minutes of the time requested by the Prospective Entrant (if the Parties have Slots within this time-window). In the event that the Parties do not have Slots within the +/- sixty (60) minutes time-window, they shall offer to release the Slots closest in time to the Prospective

Entrant's request. The Parties do not have to offer Slots if the Slots which the Prospective Entrant could have obtained through the General Slot Allocation Procedure are closer in time to the Prospective Entrant's request than the Slots that the Parties have. The arrival and departure Slot times shall be such as to allow for reasonable aircraft rotation, taking into account the Prospective Entrant's business model and aircraft utilisation constraints.

1.9 The Parties may refuse to offer any arrival Slots at Heathrow before 07:20 (local time). If a Prospective Entrant requests an arrival Slot at Heathrow for a time before 07:20, the Parties may offer a slot between 07:20 and 08:20. In addition, the Parties shall not be obliged to release more than two (2) daily arrival Slots at Heathrow in the period prior to 08:20 (local time). In the event that Prospective Entrants request more than two (2) arrival Slots at Heathrow in this period, for each Slot request which cannot be accommodated within the parameters of this Clause 1.9, the Parties shall offer the Prospective Entrant the next closest Slot to the time requested in accordance with Clause 1.4. The Parties shall give priority to any Prospective Entrant on a first come first served basis and shall, in accordance with Clause 1.8, offer the next closest Slot to the time requested to each Prospective Entrant whose request cannot as a result be accommodated within the parameters of this Clause 1.9.

1.10 The Slots obtained by the Prospective Entrant as a result of the Slot Release Procedure shall only be used for the purpose of providing the service proposed in the bid in accordance with Clause 1.26, for which the Prospective Entrant has requested the Slots, and cannot be used on another route.

1.11 Misuse shall be deemed to arise where a Prospective Entrant which has obtained Slots released by the Parties decides:

(i) not to use the Slots on the relevant Identified City Pair(s);

(ii) to operate fewer weekly Frequencies than those to which it committed in the bid in accordance with Clause 1.26 on an Identified City Pair(s) or to cease operating on an Identified City Pair(s) unless such a decision is consistent with the "use it or lose it" principle in Article 10(2) of the EU Slot Regulation (or any suspension thereof);

(iii) to transfer, assign, sell, swap, sublease or charge any Slot released by the Parties on the basis of the Slot Release Procedure, except for changes to the Slot which are within +/- sixty (60) minutes of the time originally requested by the Prospective Entrant and which have been agreed with the slot coordinator and notified to the Parties;

(iv) not to use the Slots on an Identified City Pair(s), as proposed in the bid in accordance with Clause 1.26; or

(v) not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant (i) loses the series of Slots at London airports as a consequence of the principle of “use it or lose it” in Article 10(2) of the EU Slot Regulation or (ii) misuses the Slot at London airports as described and interpreted in Article 14(4) of the EU Slot Regulation.

1.12 If the Parties or the Prospective Entrant which has obtained Slots under the Slot Release Procedure become aware of or reasonably foresee any Misuse by the Prospective Entrant, they shall immediately inform the other and the Monitoring Trustee. The Prospective Entrant shall have 30 days after such notice to cure the actual or potential Misuse unless such a 30 day period could result in Historic Precedence Rights being lost, in which case the Parties shall have the right to terminate the Slot Release Agreement immediately. If the Misuse is not cured, the Parties shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to the Parties. In cases (i) and (ii) of Clause 1.11, the Parties shall then use their best efforts to redeploy the Slots in order to safeguard the Historic Precedence Rights. If despite their best efforts, the Parties are not able to retain the Historic Precedence Rights for these Slots, or in case of a Misuse as defined in cases (iii), (iv) or (v) of Clause 1.11, the Prospective Entrant shall provide reasonable compensation to the Parties as provided for in the Slot Release Agreement.

1.13 The Slot Release Agreement with the Prospective Entrant may provide for monetary and/or other consideration, so long as such provisions are clearly disclosed and comply with these Commitments and all other administrative requirements set out in the applicable legislation.

1.14 The Slot Release Agreement may (i) contain prohibitions on the Prospective Entrant transferring its rights to the Slots to a third party (including to any Airline Affiliate), making the Slots available in any way to a third party for the use of that third party, or releasing, surrendering, giving up or otherwise disposing of any rights to the Slots, (ii) require the Prospective Applicant to supply the Party releasing the Slot with regular information about the actual usage of the Slots together with such other information as the Party may reasonably request to satisfy itself that a situation of Misuse has neither arisen nor become reasonably foreseeable, (iii) require a Prospective Entrant to provide to the Monitoring Trustee regular operational performance reports to enable the Monitoring Trustee to monitor closely and regularly factors such as slot utilisation, load factors, route performance, adherence to the business plan, and adherence to banking covenants and report to the CMA, the Party and the Prospective Entrant if a situation of Misuse can reasonably be foreseen, (iv) provide that at the expiry of the agreement, the Prospective Entrant shall release the Slots back to the Parties by way of an exchange,

and/or (v) provide for reasonable compensation to the Parties in case of Misuse. If for any reason (including, but without limitation, the insolvency of the Prospective Entrant) the Parties are unable to receive reasonable compensation for the Slots being either lost or not returned within sufficient time for the Parties to preserve their Historic Precedence Rights, such Slots shall be counted against the maximum number of Slots to be released in accordance with the Commitments.

1.15 Any Slot Release Agreement agreed in accordance with this Clause 1 shall commence only once all current Slot Release Agreements existing under the Old Commitments, with respect to the same Identified City Pair, have expired.

1.16 The duration of the Slot Release Agreement shall be an initial term of up to five (5) years at the choice of the Prospective Entrant, after which the Prospective Entrant shall have a right to renew the Slot Release Agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as slots on the relevant Identified City Pair continue to be available under these Commitments, provided the Prospective Entrant exercises its right of extension by informing the Parties in writing no later than two (2) weeks after the IATA Scheduling Conference preceding the requested extension. The five (5) year term will not apply, however, to any Eligible Air Service Provider that was previously a party to an agreement pursuant to this Clause 1 and either terminated that agreement or let it lapse or had it terminated for Misuse. In no case shall the term of a Slot Release Agreement exceed by more than one (1) year the date on which these Commitments cease to be in force.

1.17 The Slot Release Agreement shall provide that the Prospective Entrant will be able to terminate the agreement at the end of each IATA season without penalty, provided the Prospective Entrant notifies the termination of the agreement to the Parties in writing no later than two (2) weeks after the IATA Scheduling Conference.

1.18 In accordance with Clause 1.28, the Applicant must be a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Identified City Pair(s) in the long term as a viable and active competitive force (a "**Viable Applicant**"). The Slot Release Agreement shall note that in order for the Slot Release Agreement to remain in force, the Applicant must demonstrate to the Monitoring Trustee that it is still a Viable Applicant as and when requested by the Parties. The Parties shall only make such a request in the event that they reasonably believe that the Applicant is no longer a Viable Applicant and, if a request is made more than once in a calendar year, then the CMA (advised by the Monitoring Trustee) will decide whether the Applicant must again demonstrate it remains a Viable Applicant.

To the extent that the Applicant is at any point deemed not to be a Viable Applicant by the Monitoring Trustee (and confirmed by the CMA), the Parties will be able to terminate the Slot Release Agreement.

Selection procedure, role of Monitoring Trustee and approval by the CMA

1.19 At least ten (10) weeks before the Slot Request Submission Deadline, any airline wishing to obtain Slots from the Parties pursuant to the Slot Release Procedure shall:

(i) inform the Monitoring Trustee of its proposed Slot request (indicating the arrival and departure times);

(ii) submit to the Monitoring Trustee the list of its and its Affiliate Airlines' leased out or exchanged Slots at the relevant London airport, along with the date at which the leases or exchanges were concluded. The Monitoring Trustee or the CMA may also request additional information from the Applicant to enable assessment of its eligibility pursuant to Clause 1.5(iii) and Clause 1.26;

(iii) provide a waiver authorising the CMA and the Monitoring Trustee to share with the DOT any information or documents submitted to either or both of them by the Applicant in accordance with these Commitments; and

(iv) request anonymity in accordance with Clause 1.21, if it so wishes.

1.20 At least nine (9) weeks before the Slot Request Submission Deadline, the Monitoring Trustee shall forward the Slot request to the Parties and to the CMA. Until the beginning of the IATA Scheduling Conference the Monitoring Trustee shall not disclose to the Parties the Identified City Pair for which the Slot is requested. Once informed of the Slot request, the Parties may discuss with the Applicant the timing of the Slots to be released and the types of compensation which could be offered. The Parties shall copy the Monitoring Trustee on all correspondence between the Parties and the Applicant which relates to the Slot Release Procedure. The Parties shall not share any information about such discussions with other Applicants and may require the Applicant not to share any such information with other Applicants.

1.21 Until the beginning of the IATA Scheduling Conference, the Monitoring Trustee shall not disclose to the Parties the identity of the Applicant, if the Applicant so requests in accordance with Clause 1.19(iv). In such a case, the procedure set down in this Clause 1 shall apply, save that, until the beginning of the IATA Scheduling Conference, any communication or correspondence

between the Parties and the Applicant shall go through the Monitoring Trustee, who shall ensure the protection of the anonymity of the Applicant.

1.22 After being informed of the Slot request in accordance with Clause 1.20, the CMA (advised by the Monitoring Trustee) shall assess whether the Applicant meets the following criteria:

(i) the Applicant is independent of and unconnected to the Parties; and

(ii) the Applicant has exhausted its own Slot portfolio (including the Slot portfolio of its Affiliate Airlines) at the relevant London airport in accordance with Clause 1.5(iii).

1.23 If the CMA decides that the Applicant does not fulfil the above criteria, the CMA shall inform the Applicant and the Parties of that decision at least two (2) weeks before the Slot Request Submission Deadline.

1.24 At least one (1) week before the Slot Request Submission Deadline, the Parties shall indicate to the Monitoring Trustee and each Applicant which Slots at the relevant London airport they would release, if necessary, during the time window (+/- sixty (60) minutes of the Applicant's requested time).

1.25 By the Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the Slot Release Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure.

1.26 By the Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Monitoring Trustee. The formal bid shall include at least:

(i) the Key Terms (i.e. timing of the Slot, number of weekly frequencies and IATA Season(s) to be operated); and

(ii) a detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The detailed business plan shall provide information on the plans that the company has in terms of access to capital, development of its network, fleet etc. and detailed information on its plans for the Identified City Pair(s) on which it wants to operate. The latter should specify in detail planned operations on the Identified City Pair(s) over a period of at least two (2) IATA Seasons (size of aircrafts, seat configuration, total capacity and capacity by each class, number of weekly frequencies operated, pricing structure, service offerings, planned time-schedule of the flights)

and expected financial results (expected traffic, revenues, profits, average fare by cabin class). The Monitoring Trustee, and/or the CMA may also request any additional information and documents from the Applicant required for their assessment, including a copy of all cooperation agreements the Applicant may have with other airlines. Business secrets and confidential information will be kept confidential by the CMA and the Monitoring Trustee and will not become accessible to the Parties, other undertakings or the public.

1.27 In parallel, if an Applicant is offering compensation for the Slot(s) it has requested pursuant to these Commitments, it will send the Parties, copying the Monitoring Trustee, a detailed description of the compensation which it is willing to offer in exchange for the release of the Slots for which it has sent bids. Within three (3) weeks, the Parties shall provide the Monitoring Trustee with a ranking of these offers.

1.28 Having received the formal bid(s), the CMA (advised by the Monitoring Trustee) shall:

(i) assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate services on the Identified City Pair(s) in the long term as a viable and active competitive force (as per Clause 1.18, the Monitoring Trustee shall make this assessment at the outset and on an ongoing basis as required). For the avoidance of doubt, an Applicant will not be considered to have the ability, resources and commitment to operate as set out in this Clause 1.28(i), if the Applicant has informed the Monitoring Trustee and the Parties that it commits to operate Slots in accordance with Clause 1.33 and has subsequently withdrawn from the process within the last three years from the date of this formal bid; and

(ii) evaluate the formal bids of each Applicant, that meets (i) above, and rank these Applicants in order of preference.

1.29 In conducting its evaluation in accordance with Clause 1.28, the CMA shall give preference to the Applicant (or combination of Applicants) which will provide the most effective competitive constraint on the Identified City Pair(s), without regard to the country in which the Applicant(s) is licensed or has its principal place of business. Furthermore, the CMA shall take into account the strength of the Applicant's business plan and in particular give preference to Applicants meeting one or more of the following criteria:

(i) year-round service over only IATA Summer or Winter Season service;

(ii) the greatest total number of weekly services/frequencies on the Identified City Pair;

(iii) the largest capacity on the Identified City Pair, as measured in seats for the entire IATA Season(s); and

(iv) a pricing structure and service offerings that would provide the most effective competitive constraint on the Identified City Pair.

1.30 If, following the CMA's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on the Identified City Pair, the CMA shall rank these Applicants following the ranking provided by the Parties under Clause 1.27.

1.31 In advance of the beginning of the IATA Scheduling Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive slots within the time-window of +/- sixty (60) minutes as indicated through the slot allocation list) and the slot coordinator:

(i) whether the Applicant qualifies for the Slots Commitment; and

(ii) the Applicant's ranking.

1.32 In any case, the Applicant shall attend the IATA Scheduling Conference and try to improve its Slots. Following confirmation of the CMA's ranking pursuant to Clause 1.28, the Applicants and the Parties shall be deemed to have agreed the Key Terms of the Slot Release Agreement, as well as any compensation which was offered by the Applicant to the Parties under Clause 1.27. The Key Terms may only be changed after such date by mutual agreement between the Applicant and the Parties if the Monitoring Trustee confirms that the changes are not material or if the CMA (advised by the Monitoring Trustee) approves the changes. In accordance with the Key Terms of the Slot Release Agreement and as soon as possible after the IATA Scheduling Conference, the Parties shall subsequently share a draft Slot Release Agreement with the Applicant confirming:

(i) the Slots offered by the Parties; and

(ii) the applicable penalties in the event of Misuse (as described in Clause 1.11 above). These penalties are to be approved by the Monitoring Trustee and the CMA.

1.33 Within one (1) week of the end of the IATA Scheduling Conference, each Applicant shall:

(i) inform the Monitoring Trustee and the Parties whether it will commit to operate the Slots offered eventually by the Parties in case it has not obtained them through the General Slot Allocation Procedure; and

(ii) submit a formal corporate statement of intent. This document should demonstrate that the board of the Applicant has approved the take-up of the relevant slots.

1.34 Within two (2) weeks of the end of the IATA Scheduling Conference, the Monitoring Trustee shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with Clause 1.33 (the "**Successful Applicant**") that it is entitled to receive Slots from the Parties. The Parties shall offer the dedicated Slots for release to the Successful Applicant. The Slot Release Agreement shall be subject to review by the Monitoring Trustee and approval of the CMA. Unless both the Parties and the Successful Applicant agree to an extension and subject to Clause 1.6, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Scheduling Conference and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

1.35 Within three (3) weeks of the end of the IATA Scheduling Conference, each Applicant shall pay the Security Payment into an escrow account. The Security Payment will not be required in the event that the Slot Release Agreement is signed within three (3) weeks of the end of the IATA Scheduling Conference. In the event that the Security Payment is required, the Security Payment will remain in the escrow account until the Slot Release Agreement is signed. Once the Slot Release Agreement is signed the Security Payment will be returned to the Applicant. In the event that the Slot Release Agreement is not signed within six (6) weeks of the IATA Scheduling Conference as a result of a decision by the Applicant to withdraw its commitment to operate the Slots, the Security Payment will be forwarded to the Parties. In the event of a dispute, the Monitoring Trustee will determine whether the Applicant or the Parties will receive the Security Payment.

1.36 The Parties agree that the Slot Release Procedure can be run in order to allow Slot releases for the Summer 2021 IATA Season. For this purpose and if necessary, the Monitoring Trustee shall be able to make, after prior consultation with the CMA and the Parties, reasonable modifications to the above deadlines in order to allow the process to start (however, such modifications will only be possible for the deadlines that fall in the months of July to October 2020).

2. THE CAPACITY COMMITMENT

2.1 Subject to the provisions of this clause 2, the Parties undertake, on (and in relation to) each of the London-Dallas and London Philadelphia routes, to:

(i) maintain a minimum number of annual seats which is equivalent to the average actual annual seats flown on that Identified City Pair by the Parties in the last three years ending with the Summer 2019 IATA Season (the "**Minimum Capacity Commitment**") this represents on:

a. London-Dallas, a minimum of 870,000 seats combined for the two IATA seasons that commence in a given year (subject to the remainder of this Clause 2); and

b. London-Philadelphia, a minimum of 635,300 seats combined for the two IATA seasons that commence in a given year (subject to the remainder of this Clause 2); and

(ii) continue to operate in the ordinary course of business, including to:

a. use multi-cabin aircraft such that both Economy cabin ("**Non-Premium Cabin**") seats and non-Economy cabin ("**Premium Cabin**") seats are available to passengers on every service;

b. offer seats on every service to both passengers flying non-stop between the relevant Identified City Pair ("**O&D**") and passengers connecting to and/or from other services at one or both ends of the route; and

c. not take any action to reduce artificially either the number of Premium Cabin seats available or the level of access for O&D passengers on London-Dallas or London-Philadelphia (the "**Ordinary Course Commitment**"); and

(iii) report to the CMA, at the end of each IATA Winter Season, on the breakdown, during the preceding two IATA Seasons, between the number of seats flown by the Parties:

a. in Premium Cabins and Non-Premium Cabins; and

b. occupied by O&D and connecting passengers (the "**Reporting Commitment**" and, together with the Minimum Capacity Commitment and the Ordinary Course Commitment, the "**Capacity Commitment**").

2.2 For the avoidance of doubt, the Minimum Capacity Commitment represents an aggregate of both inbound and outbound travel.

2.3 For London-Dallas, the Capacity Commitment will apply until and unless the Slots made available in accordance with Clause 1.1 of these Commitments are taken up by a Prospective Entrant.

2.4 For London-Philadelphia, the Capacity Commitment will apply until and unless:

(i) Slots are made available by the Parties on London-Philadelphia pursuant to these Commitments in accordance with Clause 1.2 and are taken up by a Prospective Entrant; or

(ii) AA is successful in its ongoing litigation against the European Commission in Case T-430/18 but Delta Air Lines restarts its non-stop service on London-Philadelphia using the slot granted in the commitments in Case M.6607 – *American Airlines/US Airways*. For avoidance of doubt, and subject to Clause 2.6, should Delta Air Lines subsequently cease to operate non-stop services on London-Philadelphia, the Capacity Commitment will apply.

2.5 At their own discretion, the Parties may vary the specific Party operating the seat capacity provided the Parties together comply with the Capacity Commitment.

2.6 The Parties shall not be required to operate the Capacity Commitment where the provisions of Clause 1.3 above apply.

2.7 In any event, the Parties shall also not be required to comply with the Minimum Capacity Commitment, provided that the procedure set out in Clause 2.8 or Clause 2.9 (as applicable) is complied with:

(i) if prevented from doing so by fires, floods, volcanic activity, acts of God, riots, thefts, accidents, acts or restraints of governments or public authorities, war, revolution, riot, civil commotion, changes to demand due to a recession or an Economic Shock, any change resulting in a formal relaxation by a regulator of the 80/20 “use it or lose it” principle set out in Article 10(2) of the EU Slot Regulation, public health crises or emergencies or any other cause whatsoever (including, for the avoidance of doubt, any strikes, lock-outs or industrial action by any employee or supplier of the Parties) (a “**Force Majeure Event**”), provided that such cause was beyond the control of the Parties; or

(ii) for material operational reasons which, absent the Minimum Capacity Commitment, would lead to ordinary course adjustment of the seat capacity maintained by the Parties on London – Philadelphia or London – Dallas, including as a result of fleet planning imperatives due to availability of aircraft, ordinary course changes in configuration of aircraft or a reduction in the London Heathrow slot portfolios of the Parties for any reason other than a voluntary transaction (including, for the avoidance of doubt, any slot release commitments required to enable such a voluntary transaction) (an "**Operational Imperative**").

2.8 In the event that the Parties believe that a Force Majeure Event has occurred, such that the Minimum Capacity Commitment will not be met over the then-current year, they shall promptly notify the CMA in writing as to: (a) the nature and extent of the circumstances in question; (b) the proposed quantum and timing of the capacity reduction; and (c) the proposed impact on the Minimum Capacity Commitment (the "**Capacity Notice**"). For the avoidance of doubt, after issuing a Capacity Notice the Parties shall continue to comply with the Minimum Capacity Commitment during the procedure set out in the remainder of this Clause 2.8, except as explicitly allowed for under the procedure.

(i) To the extent the CMA wishes to issue written questions to the Parties in relation to the Capacity Notice, it must do so at the latest on the second business day following receipt of the Capacity Notice.

(ii) To the extent the CMA has objections to the Capacity Notice (whether in relation to the existence of a Force Majeure Event or the degree/quantum of its proposed impact on the Minimum Capacity Commitment), it must formally notify the Parties in writing (the "**CMA Response**") at the latest:

a. if the CMA does not issue written questions to the Parties in relation to the Capacity Notice, three business days following receipt of the Capacity Notice; or

b. two business days following receipt of the Parties' response to the CMA's written questions, issued pursuant to paragraph (i) above.

(iii) If the CMA does not act within the timeframes required by paragraphs (ii)(a) - (b) above, the Parties shall be free to implement the capacity reduction notified under the Capacity Notice.

(iv) If the CMA issues a CMA Response within the required timeframe which raises objections to the Parties' proposal or approves an amended version only, the Parties will comply with the Minimum Capacity Commitment (or as it may be revised by the CMA in the CMA Response) over the then-

current year and, if relevant, will report back to the CMA either to confirm it will implement an approved amended version of the Capacity Notice or with a revised Capacity Notice (thereby re-starting the process outlined above).

2.9 The procedure set out in Clause 2.8 shall apply to the situation of an Operational Imperative with the exceptions that:

(i) the CMA will have ten working days following receipt of the Capacity Notice to issue written questions to the Parties and upon receipt of the Parties' response to those questions, a further ten working days to issue a CMA Response; and

(ii) in the event that the CMA does not issue written questions following receipt of a Capacity Notice, the CMA shall have twenty working days from the date of receipt of that Capacity Notice within which to issue a CMA Response.

2.10 The CMA and Parties agree that the current Covid-19 circumstances qualify as a Force Majeure Event and as such, exceptionally, the Minimum Capacity Commitment in this Clause 2 will not apply until the IATA Season after such time as the total amount of passenger bookings in business and first class cabins through business agents, for example travel management companies, between the UK and North America across all airlines has reached the average levels in 2017 to 2019 for two consecutive equivalent months (using either computer reservation system bookings data, IATA DDS tickets data or any other relevant data source that may apply in the future). For the avoidance of doubt, nothing shall prevent the Parties from adding capacity prior to reaching this level of passenger bookings.

2.11 The Capacity Commitment agreed pursuant to this Clause 2 for a particular Identified City Pair shall apply for a maximum effective duration of ten (10) years from the date of these Commitments (subject to the provisions of this Clause 2).

3. FARE COMBINALITY

3.1 At the request of:

(i) an Eligible Air Services Provider which, after the Effective Date, has started to operate new or increased Competitive Air Service on an Identified City Pair (whether or not such service uses Slots released to that carrier pursuant to these Commitments); or

(ii) an Eligible Services Provider which operates a Competitive Air Service on London-Chicago,

the Parties shall enter into an agreement that arranges for fare combinability on that Identified City Pair. This agreement will provide for the possibility for the Eligible Air Services Provider, or travel agents, to offer a return trip on the Identified City Pair comprising a non-stop service provided one way by one of the Parties and a non-stop service provided the other way by the Eligible Air Services Provider (for the avoidance of doubt, this does not include any services offered by any Affiliate Airline of the Eligible Air Services Provider or any other third party). At the request of the Eligible Air Services Provider, the agreement shall apply in relation to all of the Eligible Air Services Provider's services on the relevant Identified City Pair.

3.2 Any such agreement shall be subject to the following restrictions:

(i) in the case of London-Chicago, it shall apply only to business class, first class and fully flexible economy class tickets;

(ii) it shall provide for fare combinability on the basis of the Parties' Published Fares. Where this provides for a published round-trip fare, the fare can be comprised of half the round-trip fare of the relevant Party and half the round-trip fare of the Eligible Air Services Provider;

(iii) it shall provide for the appropriate division or recovery of any applicable Q/YQ/YR Surcharges;

(iv) it shall be limited to true origin and destination traffic on the Identified City Pair operated by the Eligible Air Services Provider; and

(v) it shall be subject to the MITA rules.

3.3 Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by an Eligible Air Services Provider for travel on an Identified City Pair. The Parties may require that the Eligible Air Services Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the Eligible Air Services Provider if one of the Parties was not the original ticketed carrier on the Identified City Pair. In cases where the Eligible Air Services Provider's fare is lower than the value of the coupon issued by it, the Parties may endorse its coupon only up to the value of the fare charged by the Eligible Air Services Provider. An Eligible Air Services Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

3.4 Any fare combinability agreement agreed in accordance with this Clause 3 shall commence only once all current fare combinability agreements existing under the Old Commitments, with respect to the same Identified City Pair, have expired.

3.5 The duration of the fare combinability agreement entered into pursuant to this Clause 3.5 for a particular Identified City Pair shall be an initial term up to five (5) years at the choice of the Eligible Air Services Provider, after which the Eligible Air Services Provider shall have a right to renew the fare combinability agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided the Eligible Air Services Provider exercises its right of extension by informing the Parties in writing no later than thirty (30) days before the expiry of the agreement. The Eligible Air Services Provider also has a right to terminate the agreement at any time during the initial term or the extensions, upon thirty (30) days' written notice. The five (5) year term will not apply, however, to any Eligible Air Service Provider that was previously a party to an agreement pursuant to this Clause 3 and either terminated that agreement or let it lapse. In no case shall the term of a fare combinability agreement exceed by more than one (1) year the date on which these Commitments cease to be in force.

3.6 All agreements entered into pursuant to this Clause 3 for a particular Identified City Pair shall lapse automatically in the event that the Eligible Air Services Provider ceases to operate the new or increased service on that Identified City Pair. With respect to London-Chicago, any agreement entered into pursuant to this Clause 3 shall lapse automatically in the event that the Eligible Air Services Provider ceases to operate service on that Identified City Pair.

3.7 The conclusion of the fare combinability agreement shall be subject to the approval of the CMA, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

4. SPECIAL PRORATE AGREEMENTS

4.1 At the request of:

(i) a New Air Services Provider, irrespective of whether the Competitive Air Service is commenced on the basis of Slots obtained from the Parties under the Commitments; or

(ii) an Eligible Air Services Provider which operates a Competitive Air Service on London-Chicago,

the Parties shall enter into a Special Prorate Agreement with such airline ("**Requesting Air Services Provider**") for traffic with a true origin/destination in Europe or Israel, and a true destination/origin in North America, the Caribbean, Central America, Venezuela, Colombia, Ecuador or Peru, provided that part of the journey involves the Identified City Pair on which the Competitive Air Service is offered. At the request of the Requesting Air Services Provider, the Special Prorate Agreement shall apply to all of the Requesting Air Services Provider's air services which are both operated and marketed by it on the Identified City Pair on which the Competitive Air Service is offered (excepting with respect to air services on London-Chicago). With respect to London-Chicago, the Special Prorate Agreement shall apply only to the Requesting Air Service Provider's and the Parties' business class, first class and fully flexible economy class air services. For the avoidance of doubt, any Special Prorate Agreement entered into pursuant to these Commitments shall not provide feed traffic or any services for any Affiliate Airline of the Eligible Air Services Provider or any other third party.

4.2 In order to be eligible for a Special Prorate Agreement the Requesting Air Services Provider must not, alone or in combination with its Affiliate Airlines have Hubs at both ends of the Identified City Pair. A Special Prorate Agreement can only apply for connecting services at an airport that is not a Hub of the Requesting Air Services Provider or a Hub of an airline with which the Requesting Air Service Provider has a transatlantic joint venture that has been granted antitrust immunity by the DOT.

4.3 Subject to Clause 4.1, for each relevant Identified City Pair and for each of the Parties with whom it proposes to enter a Special Prorate Agreement pursuant to these Commitments, the Requesting Air Services Provider may select up to a maximum of fifteen (15) behind/beyond routes which are operated by the relevant Party and to which the Special Prorate Agreement will apply, it being understood that, subject to Clause 4.7, the number of routes included for each Identified City Pair cannot be lower than the number of routes that is, at the date of that agreement, included in an existing commercial special prorate agreement between the Requesting Air Services Provider and the same Party and that the Special Prorate Agreement shall only apply to frequencies on the behind/beyond route operated by the relevant Party.

4.4 The Requesting Air Services Provider may also select the fare class(es) to which the Special Prorate Agreement will apply, provided that:

(i) each selected fare class is included in at least one existing special prorate agreement which the relevant Party has agreed with any other carrier with regard to the routes concerned, excluding any agreements (or terms

therein) that have been entered into as a result of other regulatory commitments or which are excluded pursuant to Clause 4.7; and

(ii) in the case of London-Chicago, the Requesting Air Services Provider may only select business, first and fully flexible economy class tickets.

Subject to the rest of this Clause 4.4, the number of fare classes that the Requesting Air Services Provider may select shall be up to the maximum number of fare classes per cabin that is granted by the relevant Party under an existing special prorate arrangement of the same type to any other carrier.

4.5 Subject to the provisions of the rest of this Clause 4, the Special Prorate Agreement shall:

(i) be on terms (rates and interline service charges) which are at least as favourable as the terms agreed by the relevant Party under an existing special prorate agreement with any other carrier for the same route and in the same fare class, other than any agreements or terms excluded by virtue of Clause 4.7. If the relevant Party does not have an equivalent rate with any other carrier, the rate shall be determined in accordance with Clause 4.8;

(ii) grant the Requesting Air Services Provider equivalent inventory access to that given in other Special Prorate Agreements other than those excluded pursuant to clause 4.7; and

(iii) ensure minimum connection times which are based on standard practices at the airport and terminal in question and which are reasonable.

4.6 Subject to Clause 4.7 and Clause 4.14, any term included in the Special Prorate Agreement (for example, rates and interline service charge, number of fare and booking classes included) can never be less favourable than the corresponding term in any special prorate agreement which the relevant Party and the Requesting Air Services Provider have in place as at the date of the new Special Prorate Agreement.

4.7 For the purposes of Clause 4.4, Clause 4.5 and Clause 4.6, the relevant Party may exclude any existing special prorate agreement which that Party has with any other carrier which it would be unreasonable to include, for example because:

(i) the agreement is *de minimis* (in that fewer than 1,000 sectors were flown on the relevant Party's metal pursuant to that agreement in the last financial year);

(ii) the agreement is obsolete (i.e. no longer in force or superseded by new commercial terms);

(iii) the agreement was not negotiated on arms' length commercial terms (including agreements entered into as a result of other regulatory commitments);

(iv) the agreement has been concluded as part of a codeshare relationship; or

(v) the agreement has been concluded with a **one**world Alliance member and is therefore part of a **one**world Alliance relationship.

In addition, the Monitoring Trustee shall exclude any existing special prorate agreements or any individual terms of such agreements which the relevant Party has demonstrated, to the satisfaction of the Monitoring Trustee, that it would be unreasonable to include because, due to exceptional circumstances, the relevant agreements or terms are exceedingly favourable.

4.8 For the purposes of Clause 4.5(i):

(i) where the selected route is included in at least one existing special prorate agreement which the relevant Party has with another carrier and which has not been excluded pursuant to Clause 4.7, but is included in a different fare class to the one selected by the Requesting Air Services Provider, the terms will be calculated by applying a ratio of the average difference in fares as between the fare class selected by the Requesting Air Services Provider and the fare class on which terms with another carrier are available;

(ii) where the selected route is not included in any fare class in any existing special prorate agreements which the relevant Party has with other carriers, the rate on that route will be either the rate agreed by the relevant Party and the Requesting Air Services Provider or the most favourable rate that applies to the most comparable route (considering factors such as yield and length of haul) which is included in an existing special prorate agreement of the relevant Party. In the event that the relevant Party can establish that clear and material differences exist between the selection route and the most comparable route, the Monitoring Trustee may make appropriate adjustments to the rate.

4.9 Clauses 4.4 and 4.5(i) in conjunction with Clauses 4.7 and 4.8, shall, subject to Clause 4.14, be applied on the basis of special prorate agreements (and the terms therein) between the relevant Party and any other carrier as existing at the date of the request for negotiation or re-negotiation of the Special Prorate Agreement.

4.10 Any Special Prorate Agreement agreed in accordance with this Clause 4 shall commence only once all current Special Prorate Agreements existing under the Old Commitments, with respect to the same Identified City Pair, have expired.

4.11 The duration of the Special Prorate Agreement shall be an initial term up to five (5) years at the choice of the Requesting Air Services Provider, after which the Requesting Air Services Provider shall have a right to renew the Special Prorate Agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided the Requesting Air Services Provider exercises its right of extension by informing the Parties in writing no later than thirty (30) days before the expiry of the agreement. The Requesting Air Services Provider also has a right to terminate the agreement at any time during the initial term or the extensions, upon thirty (30) days' written notice. The five (5) year term will not apply, however, to any Requesting Air Services Provider that was previously a party to an agreement pursuant to this Clause 4 and either terminated that agreement or let it lapse. In no case shall the term of a Special Prorate Agreement exceed by more than one (1) year the date on which these Commitments cease to be in force.

4.12 All Special Prorate Agreements entered into pursuant to this Clause 4 for a particular Identified City Pair:

(i) shall lapse automatically in the event that the Requesting Air Services Provider ceases to operate Competitive Air Service on that Identified City Pair or it, or its Affiliate Airlines, have Hubs at both ends of the City Pairs referred to in Clause 4.1 to which the Special Prorate Agreement applies; and

(ii) may with the agreement of the Monitoring Trustee, be subject to annual re- negotiation at the request of either the Requesting Air Service Provider or the relevant Party. Clause 4.9 (in conjunction with the other Clauses referred to therein) shall be applicable to each annual re-negotiation.

4.13 Should the Requesting Air Services Provider believe that the terms proposed by the relevant Party do not comply with this Clause 4, it may ask the Monitoring Trustee to verify whether those terms comply with these Commitments.

4.14 The conclusion of the Special Prorate Agreement shall be subject to the approval of the CMA, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

4.15 For the avoidance of doubt, the Parties shall not deconcur the Requesting Air Services Provider from particular fare classes or routes which it currently prorates under the IATA multilateral proration agreement provided that the relevant Party may apply reasonable commercial rates to such routes and fare classes within the Special Prorate Agreement entered into pursuant to these Commitments.

5. FREQUENT FLYER PROGRAMMES

5.1 At the request of a New Air Services Provider that does not have a comparable FFP of its own and does not participate in any of the Parties' FFPs, the Parties shall allow it to be hosted in their FFPs for the Identified City Pairs on which the New Air Services Provider has commenced or increased service. The FFP agreement with the New Air Services Provider shall be on terms such that the New Air Services Provider shall have equal treatment vis-à-vis the accrual and redemption of Miles on the particular Identified City Pair as compared with members of the **one**world Alliance other than the Parties. For the avoidance of doubt, any FFP agreement concluded pursuant to these Commitments shall apply only to the services of the New Air Services Provider and shall not apply to any services offered by any Affiliate Airline of the New Air Services Provider or any other third party.

5.2 Any agreement relating to a particular Identified City Pair and entered into pursuant to this Clause 5 shall:

(i) in the case of London-Chicago, apply only to passengers travelling in business class and first class cabins or on fully flexible economy class tickets;

(ii) lapse automatically in the event that the New Air Services Provider ceases to operate a non-stop service on that Identified City Pair;

(iii) commence only once all current FFP agreements existing under the Old Commitments, with respect to the same Identified City Pair, have expired; and

(iv) have the following duration: an initial term up to five (5) years at the choice of the New Air Services Provider, after which the New Air Services Provider shall have a right to renew the FFP agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these Commitments are in force, provided the New Air Services Provider exercises its right of extension by informing the Parties in writing no later than thirty (30) days before the expiry of the agreement. The New Air Services Provider also has a right to terminate the

agreement at any time during the initial term or the extensions, upon thirty (30) days' written notice. The five (5) year term will not apply, however, to any New Air Services Provider that was previously a party to an agreement pursuant to this Clause 5 and either terminated that agreement or let it lapse. In no case shall the term of an FFP agreement exceed by more than one (1) year the date on which these Commitments cease to be in force.

5.3 The conclusion of the FFP agreement shall be subject to the approval of the CMA, as advised by the Monitoring Trustee, in particular as to whether its terms are reasonable.

6. MONITORING TRUSTEE

Appointment of Monitoring Trustee

6.1 A Monitoring Trustee shall be appointed by the Parties on the terms and in accordance with the procedure described below and, once approved by the CMA, shall perform the functions of monitoring the Parties' fulfilment of the Commitments. The Monitoring Trustee shall be independent of the Parties and the companies belonging to their respective groups, and must be familiar with the airline industry and have the experience and competence necessary for this appointment (e.g. investment bank, consultant specialised in the air transport sector, or auditor). In addition, it shall not be exposed to any conflict of interest and shall not have had any direct or indirect work, consulting or other relationship with any of the Parties (other than as monitoring trustee) in the last three (3) years and shall not have a similar relationship with the Parties for three (3) years after completing its mandate.

6.2 The Parties shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.

6.3 Within two (2) weeks of the Effective Date, the Parties shall submit to the CMA for approval a list of one or more persons whom the Parties consider adequate to fulfil the duties of the Monitoring Trustee.

6.4 The proposal shall contain sufficient information for the CMA to verify that the proposed Monitoring Trustee fulfils the requirements set out above and shall include:

(i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

(ii) the outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to it.

6.5 The CMA shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the CMA, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee should be appointed within one (1) week of the CMA's approval, in accordance with the mandate approved by the CMA.

6.6 If all the proposed Monitoring Trustees are rejected by the CMA, the Parties shall submit the names of at least two more individuals or institutions within one (1) week of being formally informed of the rejection by the CMA.

6.7 If all further proposed Monitoring Trustees are rejected by the CMA, the CMA shall nominate a Monitoring Trustee, whom the Parties shall appoint in accordance with the mandate approved by the CMA.

Monitoring Trustee's Mandate

6.8 The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:

(i) to monitor the satisfactory discharge by the Parties of the obligations entered into in these Commitments in so far as they fall within the scope of these Commitments;

(ii) to propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Commitments;

(iii) to advise and make a written recommendation to the CMA as to the suitability of any Slot Release Agreement and Prospective Entrant, fare combinability agreement, Special Prorate Agreement and FFP agreement submitted for approval to the CMA under Clauses 1-5;

(iv) to provide written reports to the CMA on the Parties' compliance with these Commitments and the progress of the discharge of its mandate, identifying any respects in which the Parties have failed to comply with these Commitments or the Monitoring Trustee has been unable to discharge its mandate;

(v) to mediate in any disagreements relating to any Slot Release Agreement, if mediation is agreed to by the other party or parties to the agreement in question, and submit a report upon the outcome of the mediation to the CMA; and

(vi) at any time, to provide to the CMA, at their request, a written or oral report on matters falling within the scope of these Commitments.

6.9 For the avoidance of doubt, subject to Clause 6.8, there is no requirement for the Monitoring Trustee to be involved in the commercial negotiations between one or more of the Parties and a third party carrier entering into any of the agreements under the Commitments. Any such agreements, however, remain subject to the CMA's approval.

6.10 Any request made by a third party carrier for the Monitoring Trustee to verify the Parties' compliance with these Commitments (including as described at Clause 4.13) must be reasonable. In particular, the Monitoring Trustee may refuse to conduct such a verification where the third party carrier fails to produce any evidence of a suspected breach of the Commitments and/or appears to be making a vexatious request.

6.11 The Parties shall receive simultaneously a non-confidential version of any recommendation made by the Monitoring Trustee to the CMA (as provided for in Clause 6.8(iii)).

6.12 The reports provided for in Clauses 6.8(iii) to 6.8(vi) shall be prepared in English. The reports provided for in Clause 6.8(iv) shall be sent by the Monitoring Trustee to the CMA within ten (10) working days from the end of every IATA Season following the Monitoring Trustee's appointment or at such other time(s) as the CMA may specify and shall cover developments in the immediately preceding IATA Season. The Parties shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.

6.13 The Parties shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate. The Parties shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.

6.14 The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary to fulfil its duties under these Commitments.

6.15 The Parties shall indemnify the Monitoring Trustee (and, where appropriate, its employees, agents and advisors) (each an "**Indemnified Party**") and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, agents and advisors).

6.16 At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the CMA's prior approval, if the Monitoring Trustee reasonably considers the appointment of such advisors necessary for the performance of its duties under the mandate, provided that any fees incurred are reasonable and upon which the Parties have been consulted.

Termination of Mandate

6.17 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:

(i) the CMA may, after hearing the Monitoring Trustee, require the Parties to replace the Monitoring Trustee; or

(ii) with the prior approval of the CMA, the Parties may replace the Monitoring Trustee.

6.18 If the Monitoring Trustee is removed, it may be required to continue its functions until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Clause 6.1.

6.19 Aside from being removed in accordance with Clause 6.17, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the CMA has discharged it from its duties. However, the CMA may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.

7. FAST-TRACK DISPUTE RESOLUTION PROCEDURE

7.1 The agreements concluded to implement the Commitments in accordance with Clauses 1 to 5 (the "**Relevant Agreements**" and each a "**Relevant Agreement**") shall provide for a Fast-Track Dispute Resolution procedure

("**Fast-Track Dispute Resolution Procedure**") described in this Clause 7. In the event that a Prospective Entrant, Eligible Air Services Provider, Requesting Air Services Provider, or New Air Services Provider, as relevant, has reason to believe that the Parties are failing to comply with the requirements of a Relevant Agreement vis-à-vis that party, this Fast-Track Dispute Resolution Procedure will apply.

7.2 Any Prospective Entrant or Eligible Air Services Provider which wishes to avail itself of the Fast-Track Dispute Resolution Procedure ("**Requesting Party**") shall send a written request to the Parties (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that the Parties are failing to comply with the requirements of the Relevant Agreement (the "**Request**"). The Requesting Party and the Parties will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time not to exceed fifteen (15) working days after receipt of the Request.

7.3 The Monitoring Trustee shall present its own proposal ("**Trustee Proposal**") for resolving the dispute within eight (8) working days, specifying in writing the action, if any, to be taken by the Parties in order to ensure compliance with the Relevant Agreement vis-à-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.

7.4 Should the Requesting Party and the Parties fail to resolve their differences of opinion through cooperation and consultation as provided for in Clause 7.2, the Requesting Party shall serve a notice ("**the Notice**"), in the sense of a request for arbitration, to the International Chamber of Commerce ("**ICC**") (hereinafter the "**Arbitral Institution**"), with a copy of such Notice and request for arbitration to the Parties.

7.5 The Notice shall set out in detail the dispute, difference or claim (the "**Dispute**") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by the Parties (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.

7.6 The Parties shall, within ten (10) working days from receipt of the Notice, submit their answer (the "**Answer**"), which shall provide detailed reasons for their conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g.

documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which the Parties propose to undertake vis-à-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

7.7 The Arbitral Tribunal shall consist of three persons. The Requesting Party shall nominate its arbitrator in the Notice; the Parties shall nominate their arbitrator in the Answer.

7.8 The arbitrators nominated by the Requesting Party and the Parties shall, within five (5) working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators. Should the Requesting Party wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Requesting Party and the Parties shall agree on the nomination of a sole arbitrator within five (5) working days from the communication of the Answer, communicating this to the Arbitral Institution. Should the Parties fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the parties to the arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "**Arbitral Tribunal**".

Arbitration Procedure

7.9 The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The arbitration shall be conducted in London, England in the English language.

7.10 The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The parties to the arbitration shall consent to the use of e-mail for the exchange of documents.

7.11 The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of Reference shall be drawn up and signed by the parties to the arbitration and the Arbitral Tribunal at the

organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.

7.12 In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the parties to the arbitration agree.

7.13 The Arbitral Tribunal shall not disclose confidential information and shall apply the standards applicable to confidential information under Part 9 of the Enterprise Act 2002. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee, the CMA, and outside counsel and experts of the opposing party.

7.14 The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless the Parties can produce evidence to the contrary.

Involvement of the CMA

7.15 The Parties shall put the CMA on notice within five (5) working days of:

(i) the receipt of a Request under clause 7.2;

(ii) the receipt of a Notice under clause 7.4;

(iii) the resolution, without the appointment of an Arbitral Tribunal, of the differences raised by a Request or in a Notice; and

(iv) the appointment of an Arbitral Tribunal.

7.16 The CMA shall be allowed and enabled to participate in all stages of the procedure by:

(i) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration, including Requests under clause 7.2 and Notices under clause 7.4;

(ii) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including Terms of Reference and procedural time-table);

(iii) giving the CMA the opportunity to file amicus curiae briefs; and

(iv) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

7.17 The Arbitral Tribunal shall without delay and in any event within 5 working days of the Arbitral Tribunal receiving the relevant documents forward, or order the parties to the arbitration to forward, the documents mentioned in clause 7.16 to the CMA.

7.18 Without prejudice to the generality of paragraph 7.16 above, in the event that the interpretation of a Commitment is relevant to the disagreement between the parties to the arbitration, the Arbitral Tribunal shall give the CMA the opportunity to provide its interpretation of the relevant Commitment before finding in favour of any party to the arbitration.

Decisions of the Arbitral Tribunal

7.19 The Arbitral Tribunal shall decide the dispute on the basis of these Commitments and the Relevant Agreement. Issues not covered by these Commitments shall be decided by reference to relevant UK legislation and general principles of English common law. The Arbitral Tribunal shall take all decisions by majority vote.

7.20 Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal. The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.

7.21 The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the CMA takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.

7.22 The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by the Parties in order to comply with the Relevant Agreement vis-à-vis the Requesting Party (e.g. specify a contract including all relevant terms and conditions). The final award shall be final and binding on the parties to the arbitration and shall resolve the Dispute and

determine any and all claims, motions or requests submitted to the Arbitral Tribunal.

7.23 The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

7.24 The parties to the arbitration shall prepare a non-confidential version of the final award, without business secrets. The CMA may publish the non-confidential version of the award.

7.25 Nothing in the arbitration procedure shall affect the powers of the CMA to take decisions in relation to the Commitments in accordance with its powers under CA98 (and, to the extent relevant, the TFEU). In particular, nothing in the arbitration procedure shall affect the powers of the CMA to apply to the court for an order in accordance with section 31E of CA98, or to exercise its powers under section 31B(4) of CA98.

8. REPORTING OBLIGATIONS

8.1 The Parties shall promptly provide to the CMA copies of any material variations, amendments or additions to the Agreements.

9. DOT WAIVERS

9.1 For the avoidance of doubt, the Parties confirm their waiver of the confidentiality restrictions which govern the CMA under the Enterprise Act 2002 and other applicable laws (the "**confidentiality rules**") to the extent necessary to permit the CMA to disclose to the DOT, for the purpose of these proceedings concerning the AJB, any information obtained from the Parties during the course of these proceedings. Specifically the Parties agree that the CMA may share with the DOT any documents, statements, data and information supplied by the Parties in the course of the CMA's proceeding concerning the AJB, as well as the CMA's internal analysis that contains or refers to the Parties' materials that would otherwise be prevented by the confidentiality rules. The other terms of the waivers provided by the Parties to the CMA in November 2018 continue to apply and are to be considered included in these Commitments.

9.2 The Parties shall permit the DOT to transmit to the CMA data based on information supplied to it by the Parties in accordance with the reporting obligations provided for in its Final Order in Case DOT-OST-2008-0252 (or

any future amendment thereof). AA shall additionally permit the DOT to transmit to the CMA relevant data based on information previously supplied to it by AA in accordance with applicable legislation.

10. TERMINATION AND REVIEW

10.1 Subject to the remainder of this Clause 10, these Commitments shall be binding on the Parties for a period of ten (10) years from the Effective Date. In addition, due to the exceptional circumstances resulting from the COVID-19 crisis, the CMA may, of its own initiative, undertake a review of these Commitments at a point between two (2) and five (5) years after the Effective Date. For avoidance of doubt, the CMA can only conduct one such review under this Clause 10.1. Such a review shall in any event not affect the validity of the Slot Release Agreements, Special Prorate Agreements, fare combinability agreements and FFP agreements already concluded. This Clause 10.1 is without prejudice to the CMA's powers under CA98.

10.2 If the Existing Alliance is abandoned, unwound, or otherwise terminated including as a result of any regulatory approvals having been withdrawn or expired, then these Commitments shall automatically cease to apply. If the Parties believe that this Clause 10.2 applies or will apply they shall promptly inform the CMA, explaining why they consider that the Existing Alliance has been or will be abandoned, unwound, or otherwise terminated.

10.3 Without prejudice to the CMA's powers under CA98:

(i) in particular sections 31A(3); 31A(5); and the procedures set out in Schedule 6A CA98, the CMA may:

a. grant a variation to these Commitments proposed by the Parties where it is satisfied that the proposed variation will address its competition concerns at the time of variation; or

b. accept new commitments proposed by the Parties in substitution for these Commitments if it is satisfied that the new commitments will address its competition concerns at the time of accepting the new commitments.

(ii) in particular sections 31A (4)(b) and 31B CA98, any of the Parties may request the CMA to release these Commitments where there are reasonable grounds for believing that competition concerns no longer arise on a relevant Identified City-Pair.

10.4 If the approval by another governmental authority of the existence or continuance of the Existing Alliance is made subject to requirements that are

potentially incompatible with these Commitments, the Parties may request the variation, substitution or release of these Commitments in order to avoid such incompatibilities. This clause is without prejudice to:

(i) the CMA's discretion under sections 31A(3) and 31A(4)(b) CA98 to accept or refuse any such request for variation, substitution or release;

(ii) the CMA's power to continue its investigation, make a decision or give a direction in the circumstances set out in section 31B(4)(a); and

(iii) the generality of this Clause 10.

10.5 On becoming aware of any new legislation which would prohibit any of the terms of the Existing Alliance or the Parties' compliance with these Commitments ("**Adverse New Legislation**"), the Parties shall consult in good faith with the Prospective Entrant, Eligible Air Services Provider, Requesting Air Services Provider, or New Air Services Provider (as appropriate) and the Monitoring Trustee about its effect on:

(i) the agreements entered into pursuant to these Commitments; and

(ii) the practicability of making alternative arrangements which would have the same effect as carrying out such agreements,

and as agreed may then, prior to such Adverse New Legislation coming into force:

(iii) enter into supplemental agreements varying the Relevant Agreements to implement the alternative arrangements; or

(iv) elect to terminate the Relevant Agreements.

10.6 Any changes in accordance with Clause 10.5(iii) and Clause 10.5(iv) above shall be subject to prior confirmation of the Monitoring Trustee, following consultation with the CMA on the specific changes proposed, that they are compatible with these Commitments; or prior approval of the CMA (advised by the Monitoring Trustee) under sections 31A(3) and 31A(4)(b) CA98 if they necessitate the variation, substitution or release of these Commitments.

10.7 For the avoidance of doubt, the expiry of these Commitments (e.g. as a result of the expiry or review of the Commitments as a result of Clauses 10.3 – 10.5 above) shall not affect the validity of the Slot Release Agreements, Special Prorate Agreements, fare combinability agreements and FFP agreements already concluded, unless the CMA's review results in a decision explicitly ending such agreements. As long as such agreements continue to apply beyond the expiry of the Commitments, the provisions in these Commitments

that concern these agreements also continue to apply. However, the expiry of these Commitments shall end the Parties' obligation to renew those agreements.

11. NOTICES

11.1 Any notice or communication given to the CMA by the Parties under or in connection with these Commitments shall be in writing and sent to the CMA at both the postal address and email addresses identified in this Clause 11.1, and/or any new or additional postal and/or email addresses which the CMA informs the Parties of from time to time:

(i) Postal address: FAO [To be inserted], RE: Atlantic Joint Business Agreement Commitments, The Competition and Markets Authority, 25 Cabot Square, London E14 4QZ.

(ii) Email addresses: [To be inserted].

Date: [to be inserted]

Place: [to be inserted]

Signed:

…….

duly authorised for and on behalf of IAG

Signed:

…….

duly authorised for and on behalf of American Airlines