

Notice of decision not to accept
commitments offered by International
Consolidated Airlines Group S.A. and
American Airlines Inc, in relation to the
Atlantic Joint Business Agreement

Case number 50616

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1. INTRODUCTION AND RELEVANT BACKGROUND

- 1.1 For the reasons set out in this document the Competition and Markets Authority (the '**CMA**') gives notice under paragraph 4 of Schedule 6A of the Competition Act 1998 (the '**Act**') that it has decided not to accept the commitments offered by American Airlines Group Inc ('**AA**') and International Consolidated Airlines Group S.A. ('**IAG**') in May 2020 (the '**Proposed Commitments**'), as consulted upon in the CMA's Notice of Intention to Accept Commitments published on 7 May 2020 (the '**NIAC**').
- 1.2 In October 2018, the CMA opened an investigation under section 25 of the Act into the Atlantic Joint Business Agreement (the '**AJBA**') between AA, members of IAG (British Airways Plc ('**BA**'), Iberia Líneas Aéreas de España SA ('**Iberia**'), and Aer Lingus Limited) and Finnair OYJ.
- 1.3 The CMA had, and continues to have, competition concerns arising from the operation of the AJBA in relation to the markets on five London to US city-pair routes: London-Boston, London-Chicago (Premium market only),¹ London-Dallas, London-Miami and London-Philadelphia (the '**Routes of Concern**').²
- 1.4 To address these concerns, in May 2020 AA and IAG offered the Proposed Commitments to the CMA.³
- 1.5 The CMA issued the NIAC⁴ on 7 May 2020 and invited responses from interested third parties to the consultation on whether or not the Proposed Commitments should be accepted by the CMA. The consultation closed on 4 June 2020.
- 1.6 The CMA received written responses to the NIAC consultation from the following third parties: Virgin Atlantic Airways, Delta Air Lines Inc, JetBlue Airways, Norwegian Air Shuttle, the JetBlue Pilots Union, Unite the Union, Skyscanner, and Heathrow Airport Holdings Limited.

¹ Premium passengers are, defined as all first class, business class and premium economy passengers as well as economy class passengers with the most flexible economy tickets.

² Set out in more detail in [NIAC](#), Chapter 4.

³ Set out in more detail in [NIAC](#), Chapter 5.

⁴ Pursuant to paragraph 2 of Schedule 6A of the Act.

2. EXCEPTIONAL CIRCUMSTANCES AFFECTING THE AIRLINE INDUSTRY

- 2.1. At the time of issuing the NIAC, the CMA recognised that, as a result of the challenges related to COVID-19, there was some uncertainty about future competition on routes covered by the AJBA and a risk that the Proposed Commitments may not address the CMA's competition concerns.⁵ However, its assessment, at that point, was that it was appropriate to consult on the Proposed Commitments.
- 2.2. Since the CMA issued the NIAC and consulted on the Proposed Commitments, the crisis facing the airline industry has worsened. Estimates issued by the industry body, IATA,⁶ indicated in May 2020 that the transatlantic airline sector was unlikely to return to pre-COVID-19 levels until 2023. IATA's July 2020 forecast is that global passenger traffic is unlikely to return to pre-COVID-19 levels until 2024.⁷
- 2.3. In particular, the impact of the COVID-19 pandemic means that airlines are operating significantly reduced schedules and are likely to continue doing so while measures are in place to restrict the spread of the disease. Moreover, the COVID-19 pandemic will likely have a significant effect on the global economy (including the economies of the UK and the US) for a number of years. Future transatlantic schedules are, therefore, likely to be reduced until restrictions are substantially lifted and the UK and US economies have recovered from the impact of COVID-19.
- 2.4. Most of the NIAC consultation respondents referred to the exceptional circumstances created by the COVID-19 pandemic on the airline industry. Some of the respondents requested that the CMA should, in some way, 'roll-over' the earlier commitments given by AA, BA and Iberia to the European Commission in 2010 (the '**2010 Commitments**') until the sector is in recovery. One respondent requested that the CMA should suspend any 'binding' decision until there is a clearer understanding of the post-COVID-19 market conditions.
- 2.5. Overall, there remains considerable uncertainty about the extent and duration of the impact of COVID-19 on the transatlantic aviation sector. This uncertainty has increased materially since the CMA published the NIAC in May 2020.

⁵ NIAC, paragraph 1.5.

⁶ An IATA [report](#) issued on 13 May 2020 indicates that recovery in the airline sector is expected in 2023 (and is likely to lag two years behind a GDP recovery).

⁷ An IATA [report](#) issued on 28 July 2020 indicates that recovery in long-haul travel is now expected in 2024.

3. THE CMA DECISION NOT TO ACCEPT COMMITMENTS

- 3.1. The CMA has decided that, due to the exceptional circumstances outlined in section 2 of this Notice and having had regard to the responses to the NIAC, it would not be appropriate to accept the Proposed Commitments.
- 3.2. In particular, the CMA considers that, as a result of the uncertainty created by the COVID-19 pandemic, it cannot be confident that the competition concerns it has identified, or the Proposed Commitments, adequately take account of the impact of the pandemic on the state of competition. The CMA therefore considers that it would not be appropriate to accept the Proposed Commitments in the current situation, as it cannot be confident that they would address the competition concerns arising from the operation of the AJBA.
- 3.3. Having decided not to accept the Proposed Commitments and in light of the expiry of the 2010 Commitments, the CMA has decided to issue interim measures directions under section 35 of the Act for the purpose of protecting the public interest pending the completion of the CMA's investigation once the state of competition following the pandemic is clearer. The CMA's detailed reasoning for issuing interim measures directions is set out in the interim measures decision dated 17 September 2020 ('**IMs Decision**').
- 3.4. Accordingly, the CMA's investigation into the AJBA will remain open and the interim measures directions as set out in the IMs Decision will apply.

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Ann Pope
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For and on behalf of the Competition and Markets Authority