

## **APPENDIX – CMA INTERIM MEASURES DIRECTIONS MADE ON 17 SEPTEMBER 2020**

The CMA gives American Airlines Group Inc, British Airways plc, Iberia Líneas Aéreas de España SA and International Consolidated Airlines Group SA the following interim measures directions (the '**Directions**') made pursuant to section 35(2) of the Act:

### **RECITALS**

In view of the expiry of the 2010 Commitments before the CMA has been able to conclude its ongoing investigation into the Atlantic Joint Business Agreement, and having regard to the exceptional circumstances occasioned by the COVID-19 pandemic, the CMA considers that it is necessary for it to act as a matter of urgency to protect the public interest, and has therefore decided to give the Directions for that purpose pending completion of its investigation.

The purpose of these Directions is to protect the public interest in preserving competition on certain city pair routes between London and a number of cities in the United States by having the effect of:

- extending certain Slot Release Agreements entered into by the Parties with third-party airlines under the 2010 Commitments for a duration of two (2) consecutive IATA Seasons commencing with the Summer 2021 IATA Season;
- thereafter further extending their effect for a duration of up to an additional four (4) consecutive IATA Seasons;
- making available for the same duration (six (6) IATA seasons) an additional daily Slot pair on London – Boston which was previously available and used under the 2010 Commitments;
- extending for a duration of up to six (6) IATA Seasons certain existing Special Prorate Agreements entered into by the Parties with third-party airlines under the 2010 Commitments;
- providing for the ongoing availability of new Special Prorate Agreements, Fare Combinability Agreements and Frequent Flyer Programme Agreements to third party airlines;
- ensuring that appropriate dispute resolution clauses are included in all agreements entered into under these directions; and
- providing for the effective monitoring of and compliance with these directions.

The CMA expects to conclude its investigation of the Atlantic Joint Business Agreement ahead of the expiry of the agreements entered into pursuant to these Directions, by which time the extent and duration of the impact of the COVID-19 pandemic on the transatlantic aviation sector should be clearer.

These Directions do not constitute a finding of any infringement of the Chapter I prohibition under the Act or Article 101 Treaty on the Functioning of the European Union.

## DIRECTIONS

The CMA directs the Parties as follows:

*Existing Slot Release Agreements to be replaced by new agreements on the same terms for two IATA seasons*

1. Subject to the agreement of the respective counterparty, and subject to the amendments required by these Directions, to enter into new agreements on the same terms as the existing Slot Release Agreements entered into under the 2010 Commitments in respect of the following city pairs for a duration (at the choice of the respective counterparty) of up to two (2) consecutive IATA Seasons commencing with the Summer 2021 IATA Season: London-Boston; London-Dallas/Fort Worth; and London-Miami. In agreements entered into under this clause 1, references in agreements made under the 2010 Commitments to: (i) the European Commission shall be replaced by references to the CMA; (ii) European Commission decisions or commitments shall be replaced by references to CMA decisions or directions as appropriate; and (iii) the EU Slot Regulation shall be replaced by reference to the equivalent legislation applicable in the UK from time to time given the withdrawal of the UK from the European Union;
2. Pursuant to clause 1 of these Directions, to write to each relevant counterparty within five (5) Working Days from the date of these Directions offering to enter new agreements as outlined in clause 1 above and to promptly execute such new agreement(s) upon the receipt of a confirmation from a counterparty that it agrees to enter into a new agreement(s);

*Second Boston Slot Release Agreement*

3. To make available at London (at the choice of the Prospective Entrant, at either Heathrow or Gatwick) Slots to allow a Prospective Entrant to operate up to seven (7) new or additional round-trips per week on the London-Boston city pair for (at the choice of the Prospective Entrant) up to six (6) consecutive IATA Seasons commencing with the Summer 2021 IATA Season. The following clauses of the 2010 Commitments shall apply *mutatis mutandis* to the award of such Slots, with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) Identified City Pair(s) being read as references to London-Boston:
  - a. clause 1.2 (*Conditions pertaining to Slots*), except sub-clause 1.2.12 regarding duration and with:
    - i. the references to 12 May 2010 in sub-clauses 1.2.2(c)(ii)-(iii) being read as references to 7 May 2020;
    - ii. the reference to the EU Slot Regulation in sub-clauses 1.2.8(b) and (e), given the withdrawal of the UK from the European Union, being read as a reference to the equivalent legislation as applicable in the UK from time to time; and

- iii. the specific provision made as regards New York JFK airport at sub-clauses 1.2.1, 1.2.2(c)(iv), and 1.2.8(e) being read as deleted; and
- b. clause 1.3 (*Selection procedure, role of Monitoring Trustee and approval by Commission*) and with:
  - i. for the purpose of allowing Slot releases for the Summer 2021 IATA Season, the reference to at least seven (7) weeks in sub-clause 1.3.1 being read as a reference to two (2) weeks;
  - ii. the Monitoring Trustee appointed under these Directions having the ability to make, after prior consultation with the CMA and the Parties, reasonable modifications to the deadlines in this clause in order to allow the Slot Release Procedure to be run so as to allow Slot releases for the Summer 2021 IATA Season; and
  - iii. the specific provision made as regards New York JFK airport at sub-clauses 1.3.1, 1.3.4(b), and 1.3.5 being read as deleted;

*Slot Release Procedure for Summer 2022 to Winter 2023/4 IATA Seasons*

- 4. To make available at London (at the choice of the Prospective Entrant, at either Heathrow or Gatwick) Slots to allow a Prospective Entrant to operate up to seven (7) round-trips per week on each of the London-Boston,<sup>1</sup> London-Dallas/Fort Worth and London-Miami city pairs for (at the choice of the Prospective Entrant) up to four (4) consecutive IATA Seasons commencing with the Summer 2022 IATA Season. The following clauses of the 2010 Commitments shall apply *mutatis mutandis* to the award of such Slots, with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) Identified City Pair(s) being read as references to London-Boston, London-Dallas/Fort Worth and London-Miami:
  - a. clause 1.3 (*Selection procedure, role of Monitoring Trustee and approval by Commission*) and with:
    - i. addition of a new clause 1.3.1A: At least fourteen (14) weeks before the Slot Request Submission Deadline, any airline wishing to apply for a Slot or Slots under these Directions, other than those airlines who entered into agreements pursuant to Clause 1 of these Directions, on one or more of the London-Boston, London-Miami and London-Dallas/Fort Worth city pairs, shall inform the Monitoring Trustee of its intention to apply for a Slot or Slots and to request that the CMA considers its eligibility to do so;

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<sup>1</sup> For the avoidance of doubt, these Slots on the London-Boston city pair are to be in addition to the Slots which are the subject of clause 3 of these Directions and their availability shall be subject to the terms of this clause 4.

- ii. addition of a new clause 1.3.1B: The CMA (advised by the Monitoring Trustee and the DOT) shall assess whether the Applicant meets the definition of Prospective Entrant as set out in the definitions of these Directions;
  - iii. addition of a new clause 1.3.1C: If the CMA decides that the Applicant does not meet the Prospective Entrant definition, the CMA shall inform the Applicant and the Parties of that decision at least eleven (11) weeks before the Slot Request Submission Deadline. In parallel, if the Applicant does not meet the Prospective Entrant definition or if there is no applicant, the CMA shall, at least eleven (11) weeks before the Slot Request Submission Deadline, inform the counterparty to the Slot Release Agreement(s) concluded under clause 1 that they can extend those agreements on the same terms for a duration (at the choice of the respective counterparty) of up to four (4) consecutive IATA Seasons commencing with the Summer 2022 IATA Season;
  - iv. Pursuant to clause 4.a.iii of these Directions, the Parties shall, within five (5) Working Days from the date on which the Parties are notified by the CMA that there are no Applicants eligible under the Prospective Entrant definition, write to each relevant counterparty offering to extend the Slot Release Agreements on the same terms as the Slot Release Agreements concluded under clause 1 of these Directions and to promptly execute such extensions upon the receipt of a confirmation from a counterparty that it agrees to an extension; and
  - v. addition of clause 1.3.1D: If the CMA decides the Applicant meets the Prospective Entrant definition, it shall inform the Applicant, the Parties and the counterparty to the existing Slot Release Agreement(s) concluded under clause 1, at least eleven (11) weeks before the Slot Request Submission Deadline. The slot release process outlined at clause 1.2 and clause 1.3 of the 2010 Commitments (as amended by this clause 4) shall then be applied; and
- b. clause 1.2 (*Conditions pertaining to Slots*) applies, except sub-clause 1.2.12 regarding duration and with:
- i. the references to 12 May 2010 in sub-clauses 1.2.2c(ii)-(iii) being read as references to 7 May 2020;
  - ii. the reference to the EU Slot Regulation in sub-clauses 1.2.8(b) and (e), given the withdrawal of the UK from the European Union, being read as a reference to the equivalent legislation as applicable in the UK from time to time;
  - iii. the specific provision made as regards New York JFK airport at sub-clauses 1.2.1, 1.2.2(c)(iv) and 1.2.8(e) being read as deleted;
  - iv. the first and second sentences of sub-clause 1.2.5 being replaced with the following: Subject to the provisions of clause 1.2.6, 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 may, alternatively, require the Prospective Entrant to accept the time of the equivalent Slots made available under the Slot Release Agreement entered into in respect of the relevant city pair under clause 1 of these Directions if offering a different time would create significant disruption to the relevant Party's operations with the CMA, advised by the Monitoring Trustee, having consulted the Parties and the Prospective Entrant, to decide whether such significant disruption will arise; and

- v. if the CMA decides significant disruption will arise under sub-clause 1.2.5 as amended by these Directions, clause 1.2.8(c) being replaced with the following: to transfer, assign, sell, swap, sublease or charge any Slot released by the Parties on the basis of the Slot Release Procedure, except for non-permanent changes to the Slot which are within +/- sixty (60) minutes of the time originally requested by the Prospective Entrant or changes (whether permanent or non-permanent) within +/- sixty (60) minutes of the time of the Slot released by the Parties on the basis of the Slot Release Procedure and provided any such changes have been agreed with the slot coordinator or the FAA or any other relevant U.S. government agency; and

- c. clause 1.3 (*Selection procedure, role of Monitoring Trustee and approval by Commission*) and with:

- i. the specific provision made as regards New York JFK airport at sub-clauses 1.3.1, 1.3.4(b), and 1.3.5 being read as deleted;

- 5. In the event that a relevant counterparty does not choose to enter into a new Slot Release Agreement pursuant to clause 1 of these Directions, a relevant counterparty does not choose to extend any existing Slot Release Agreement pursuant to clause 4.a.iii of these Directions, or a Slot Release Agreement entered into pursuant to clauses 1, 3, or 4 of these Directions is terminated (or otherwise ceases to have effect) before the end of the Winter 2023/2024 IATA Season, to make available at London (at the choice of the Prospective Entrant, at either Heathrow or Gatwick) the number of Slots released under the relevant Slot Release Agreement to a Prospective Entrant to allow it to operate a service on the relevant city pair for (at the choice of the Prospective Entrant) up to six (6) consecutive IATA Seasons commencing with the Summer 2021 IATA Season at the earliest and finishing no later than the Winter 2023/2024 IATA Season. The following clauses of the 2010 Commitments shall apply *mutatis mutandis* to the award of such Slots, with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) Identified City Pair(s) being read as references to London-Boston, London-Dallas/Fort Worth and/or London-Miami as applicable:

- a. clause 1.2 (*Conditions pertaining to Slots*), except sub-clause 1.2.12 regarding duration and with:

- i. the references to 12 May 2010 in sub-clauses 1.2.2(c)(ii)-(iii) being read as references to 7 May 2020;
  - ii. the reference to the EU Slot Regulation in sub-clauses 1.2.8(b) and (e), given the withdrawal of the UK from the European Union, being read as a reference to the equivalent legislation as applicable in the UK from time to time;
  - iii. the specific provision made as regards New York JFK airport at sub-clauses 1.2.1, 1.2.2(c)(iv), and 1.2.8(e) being read as deleted;
  - iv. the first and second sentences of sub-clause 1.2.5 being replaced with the following: Subject to the provisions of clause 1.2.6, 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 may, alternatively, require the Prospective Entrant to accept the time of the equivalent Slots made available under the Slot Release Agreement in existence on the date of these Directions or, as applicable, entered into in respect of the relevant city pair under clause 1, 3 or 4 of these Directions (as applicable) if offering a different time would create significant disruption to the relevant Party's operations with the CMA, advised by the Monitoring Trustee, having consulted the Parties and the Prospective Entrant, to decide whether such significant disruption will arise; and
  - v. if the CMA decides significant disruption will arise under sub-clause 1.2.5 as amended by these Directions, clause 1.2.8(c) being replaced with the following: to transfer, assign, sell, swap, sublease or charge any Slot released by the Parties on the basis of the Slot Release Procedure, except for non-permanent changes to the Slot which are within +/- sixty (60) minutes of the time originally requested by the Prospective Entrant or changes (whether permanent or non-permanent) within +/- sixty (60) minutes of the time of the Slot released by the Parties on the basis of the Slot Release Procedure and provided any such changes have been agreed with the slot coordinator or the FAA or any other relevant U.S. government agency; and
- b. clause 1.3 (*Selection procedure, role of Monitoring Trustee and approval by Commission*) and with:
- i. the specific provision made as regards New York JFK airport at sub-clauses 1.3.1, 1.3.4(b), and 1.3.5 being read as deleted;

#### *Other agreements*

- 6. At the request of the respective counterparty, and subject to the amendments required by these Directions, to replace with a new agreement on the same terms any existing Special Prorate Agreement currently in effect and which was entered into under the 2010 Commitments for a duration (at the choice of the respective counterparty) which extends to a date up to the start of the

Summer 2024 IATA Season. In agreements entered into under this clause 6, references in agreements made under the 2010 Commitments to: (i) the European Commission shall be replaced by references to the CMA; (ii) European Commission decisions or commitments shall be replaced by references to CMA decisions or directions as appropriate; and (iii) the EU Slot Regulation shall be replaced by reference to the equivalent legislation as applicable in the UK from time to time given the withdrawal of the UK from the European Union. The replacement Special Prorate Agreements entered into under this clause 6 may, with the agreement of the Monitoring Trustee, be subject to annual renegotiation. Clause 3.10 (in conjunction with the other clauses referred to therein), clause 3.13, and clause 3.14 of the 2010 Commitments shall apply *mutatis mutandis* to any annual renegotiation (with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) 12 May 2010 being read as references to the date that these Directions were made). Clause 3.12(a) of the 2010 Commitments shall apply *mutatis mutandis* to the replacement Special Prorate Agreements entered into under this clause 6;

7. Pursuant to clause 6 of these Directions, to write to each relevant counterparty within five (5) Working Days from the date of the Directions notifying the counterparty of the possibility of replacing with new agreements as outlined in clause 6 the relevant Special Prorate Agreements and to promptly execute such new agreements upon the receipt of a confirmation from a counterparty that it wishes to enter into the relevant agreement;
8. If requested by an airline which, at the time of the request, satisfies the eligibility criteria set out in clause 2 (*Fare Combinability*), clause 3 (*Special Prorate Agreements*) or clause 4 (*Frequent Flyer Programmes*) of the 2010 Commitments, to enter into a relevant agreement provided for in these clauses for a duration (at the choice of the requesting airline) ending on a date before the start of Summer 2024 IATA Season under the terms provided for in the respective clauses of the 2010 Commitments, which shall apply *mutatis mutandis* (with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) 12 May 2010 or the Effective Date being read as references to the date that these Directions were made), except the sub-clauses regarding duration (sub-clauses 2.5, 3.11 and 4.2(b) of the 2010 Commitments);

#### *Dispute resolution*

9. In any agreement concluded to implement clauses 1, 3, 4, 5, 6, or 8 of these Directions, to provide for a Fast-Track Dispute Resolution Procedure as described in clause 6 (*Fast-Track Dispute Resolution Procedure*) of the 2010 Commitments, which shall apply *mutatis mutandis* (with references to: (i) the Commission being read as references to the CMA; (ii) the Commitments being read as references to these Directions; and (iii) Regulation 1/2003 being read as references to the Act);

### *Monitoring and compliance*

10. To extend the appointment of the current Monitoring Trustee under the 2010 Commitments on the same terms (in any such extension, references to: (i) the European Commission shall be replaced by references to the CMA; and (ii) European Commission decisions or commitments shall be replaced by references to CMA decisions or directions as appropriate), but with any amendment necessary to ensure that the Monitoring Trustee's remuneration continues to be sufficient to guarantee the effective and independent execution of its mandate, or to appoint a new Monitoring Trustee under the terms provided for in clause 5.1 (*Appointment of a Monitoring Trustee*) of the 2010 Commitments, which shall apply *mutatis mutandis* (with references to: (i) the Commission being read as references to the CMA; and (ii) the Commitments being read as references to these Directions), in either case with clauses 5.2 (*Monitoring Trustee's Mandate*) and 5.3 (*Termination of Mandate*) of the 2010 Commitments continuing to apply *mutatis mutandis* (with references to: (i) the Commission being read as references to the CMA; and (ii) the Commitments being read as references to these Directions) in respect of the agreements entered into under these Directions. In the event that the mandate of a Monitoring Trustee appointed in accordance with these Directions is terminated, a new Monitoring Trustee shall be appointed by the Parties under the terms provided for in clause 5.1 (*Appointment of a Monitoring Trustee*) of the 2010 Commitments, which shall apply as described above in this Clause 10;
11. To promptly provide to the CMA such information as the CMA may from time to time require for the purpose of ascertaining whether these Directions are being or will be complied with;

### *Effective date*

12. These Directions are effective from the date they are made; and

### *Definitions*

13. For the purposes of these Directions the following definitions are adopted:

2010 Commitments	means the commitments accepted in Case COMP/39.596 – BA/AA/IB, dated 14 July 2010 Directions
AA	means American Airlines Group Inc
the Act	means the Competition Act 1998
BA	means British Airways plc
the Chapter I prohibition	means the prohibition contained in section 2 of the Act
CMA	means the Competition and Markets Authority
the Directions	means these interim measures directions



Fare Combinability Agreement	means an agreement that arranges for fare combinability
Frequent Flyer Programme Agreement	is as 'FFP Agreement' is defined in the 2010 Agreements
IAG	means International Consolidated Airlines Group SA
IATA	means International Air Transport Association
IATA Season	means the Summer and Winter Seasons defined by IATA. 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	Iberia, Líneas Aéreas de España SA
Parties	means AA, BA, Iberia and IAG
Prospective Entrant	is as defined in the 2010 Commitments, but, with the following added at the end of sub-part (b) of the definition: (for the avoidance of doubt, any services operated on the basis of Slots acquired as a result of the 2010 Commitments will not be taken into account when determining a Prospective Entrant's regular operations)
Slot	means the 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 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). In the context of UK withdrawal from the EU, any equivalent UK legislation applicable in the UK from time to time shall apply in place of Council Regulation (EEC) No 95/93
Slot Release Agreement	is as defined in the 2010 Commitments
Slot Release Procedure	is as defined in the 2010 Commitments, as modified by these Directions
Special Prorate Agreement	is as defined in the 2010 Commitments

TFEU	means Treaty on the Functioning of the European Union
Working Day	means any day other than a Saturday, Sunday or any other day which is a public holiday in England

**Annex 1** – Commitments in Case COMP/39.596 – *BA/AA/IB*, dated 14 July 2010 available at [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39596/39596\\_3882\\_2.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39596/39596_3882_2.pdf)