

## **Appendix: CMA INTERIM MEASURES DIRECTIONS MADE ON 4 APRIL 2022**

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

### **Recitals**

1. The CMA's investigation into the Atlantic Joint Business Agreement is ongoing. In view of the expiry of the commitments given to the European Commission in case COMP/F-1/39.596 - BA/AA/IB (the **2010 Commitments**) before the CMA could conclude its investigation, and having regard to the exceptional circumstances occasioned by the COVID-19 pandemic, the CMA considered it necessary to issue interim measures directions on 17 September 2020 (the **2020 Directions**). The exceptional circumstances occasioned by the COVID-19 pandemic have persisted for longer than was anticipated in September 2020. The CMA therefore considers it necessary to give the present directions (the **2022 Directions**) for further interim measures as a matter of urgency to protect the public interest in preserving competition on certain city pair routes between London and cities in the United States until the mid- to longer-term impact of the COVID-19 pandemic on the transatlantic aviation sector is sufficiently clear for the CMA to conclude its ongoing investigation into the Atlantic Joint Business Agreement.
2. Under the 2020 Directions the following remedy Slots were awarded or extended until the end of the IATA Winter Season 23/24:
  - (a) Boston - London: One Slot pair to United;
  - (b) Boston - London: One Slot pair to Delta;
  - (c) Dallas/Fort Worth - London: One Slot pair to Delta; and
  - (d) Miami - London: One Slot pair to Virgin Atlantic.
3. These four slot pairs are together referred to as the **Interim Remedy Slots**. To implement these Slot awards the respective third-party airlines (the **Current Remedy Slot Holders**) entered into Slot Release Agreements with the Parties.
4. These 2022 Directions require the Parties to:

- (a) Offer Slot Release Agreements for the Interim Remedy Slots to a Prospective Entrant nominated by the CMA for a duration of four (4) consecutive IATA Seasons (from Summer 2024 to and including Winter 25/26). The CMA will determine in Autumn 2023 which airline to nominate, in accordance with the tender process prescribed in these directions;
  - (b) Provide for the ongoing availability to third party airlines of Special Prorate Agreements, Fare Combinability Agreements and Frequent Flyer Programme Agreements ;
  - (c) Offer the relevant Interim Remedy Slot until the end of IATA Season Winter 25/26 to any Prospective Entrant nominated by the CMA following the tender process prescribed in these directions if a holder of an Interim Remedy Slot relinquishes, ceases to operate, or loses the right to operate, an Interim Remedy Slot; and
  - (d) Provide for the effective monitoring of, and compliance with, the 2022 Directions.
5. 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 2022 Directions.
6. These 2022 Directions do not constitute a finding of any infringement of the Chapter I prohibition under the Act.

## **Directions**

The CMA directs the Parties as follows:

### ***Slot Release Procedure for the IATA Seasons Summer 2024 to Winter 2025/26 (both inclusive) - Clauses 1.2 and 1.3 of the 2010 Commitments as modified***

1. To make available at London (at the choice of a Prospective Entrant nominated by the CMA, at either Heathrow or Gatwick) Slots to enable a Prospective Entrant to operate up to seven (7) round-trips per week on each of the London-Dallas/Fort Worth and London-Miami City pairs and to enable a Prospective Entrant or Prospective Entrants to operate up to fourteen (14) round-trips per week on the London-Boston City Pair for (at the choice of the Prospective Entrant) up to four (4) consecutive IATA Seasons commencing with the IATA Season Summer 2024.
2. In the event that a holder of an Interim Remedy Slot awarded under these 2022 Directions relinquishes, ceases to operate, or loses the right to operate,

an Interim Remedy Slot, to make that Slot available until the end of IATA Season Winter 25/26 to any Prospective Entrant nominated by the CMA following the tender process prescribed in these directions.

3. Subject to the amendments set out in these 2022 Directions, the following clauses of the 2010 Commitments shall apply to the award of such Slots:

(a) **Clause 1.2 (Conditions pertaining to Slots)**, but with:

- (i) 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;
- (ii) The references to 12 May 2010 in sub-clauses 1.2.2c(ii)-(iii) being read as references to 15 February 2022;
- (iii) sub-clause 1.2.4 being replaced with the following:

Without prejudice to the 2022 Directions the Parties shall not be obliged to honour any agreement to make available the Slots to the Prospective Entrant if:

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

The Prospective Entrant has been found to be in a situation of Misuse (as described in Clause 1.2.8 of the 2010 Commitments).

- (iv) the first and second sentences of sub-clause 1.2.5 being replaced with the following:

If the CMA nominates a Current Remedy Slot Holder to renew the agreements in relation to an Interim Remedy Slot, then the Parties shall offer a Slot at the same time as that already held by the Current Remedy Slot Holder.

In relation to a Prospective Entrant which is not the Current Remedy Slot Holder, 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 Interim

Remedy Slot with the Current Remedy Slot Holder 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;

- (v) 1.2.6 being replaced with the following: The Parties may refuse to offer any arrival Slots at Heathrow before 06:20 (local time). If a Prospective Entrant requests an arrival Slot at Heathrow for a time before 06:20, the Parties may offer a Slot between 06:20 and 07:20. In addition the Parties shall not be obliged to release a daily arrival Slot at Heathrow in the period prior to 08:20 (local time) unless the Current Remedy Slot Holder holds such a Slot.
- (vi) If the CMA decides significant disruption will arise under sub-clause 1.2.5 as amended by these 2022 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;
- (vii) the references to Articles 10(2) and 14(4) of the EU Slot Regulation in sub-clauses 1.2.8(b) and (e) being read as a reference to the relevant provisions of the UK legislation equivalent to the EU Slot Regulation as applicable in the UK from time to time given the withdrawal of the UK from the European Union;
- (viii) sub-clause 1.2.12 regarding duration being deleted; and

**(b) clause 1.3 (Selection procedure, role of Monitoring Trustee and approval by Commission) but with:**

- (i) The specific provision made as regards New York JFK airport at sub-clause 1.3.1 being deleted;
- (ii) 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 the 2022 Directions shall inform the

Monitoring Trustee of its intention to apply for a Slot or Slots and request that the CMA considers its eligibility to do so;

- (iii) 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;
- (iv) 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 Current Remedy Slot Holder is the only Applicant which meets the Prospective Entrant definition, the CMA shall, at least eleven (11) weeks before the Slot Request Submission Deadline, inform the Current Remedy Slot Holder that they can extend the agreements relating to the relevant Interim Remedy Slot 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 IATA Season Summer 2024. The Parties shall, within five (5) Working Days from the date on which the Parties are notified by the CMA that there are no other Applicants eligible under the Prospective Entrant definition, write to each relevant counterparty offering to extend the relevant Slot Release Agreements on the same terms as the Slot Release Agreements previously concluded for the relevant Interim Remedy Slot and 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 an Applicant other than the Current Remedy Slot Holder meets the Prospective Entrant definition, it shall inform the Applicant, the Parties and the Current Remedy Slot Holder, 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 these 2022 Directions) shall then be applied; and
- (vi) 1.3.11 being replaced with the following: Following confirmation of the CMA's approval pursuant to Clause 1.3.9, 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 1.3.8. The Key Terms may only be changed after such date by mutual agreement between the Applicant and the Parties if the CMA (advised by the Monitoring Trustee and having consulted and taken due consideration of the opinion of the DOT) approves the changes.

***Other agreements (Fare Combinability Agreements, Special Prorate Agreements and Frequent Flyer Programmes) – Clauses 2, 3 and 4 of the 2010 Commitments as modified***

4. In relation to each Interim Remedy Slot, at the request of the respective counterparty, and subject to the amendments required by these 2022 Directions, to replace with a new agreement on the same terms any existing Special Prorate Agreement currently in effect pursuant to the 2010 Commitments as amended by the 2020 Directions, for a duration (at the choice of the respective counterparty) which extends at least to the end of the IATA Season Winter 25/26. The replacement Special Prorate Agreements entered into under this clause 4 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 12 May 2010 being read as references to the date on which these 2022 Directions are published). Clause 3.12(a) of the 2010 Commitments shall apply mutatis mutandis to the replacement Special Prorate Agreements entered into under this clause;
5. To write to each relevant counterparty within five (5) Working Days from the date on which these 2022 Directions are published notifying the counterparty of the option of replacing the relevant Special Prorate Agreements with new 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;
6. 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 of the 2010 Commitments, under the terms provided for in the respective clauses, for a duration (at the choice of the requesting airline) which extends at least to the end of the IATA Season Winter 25/26. The relevant clauses of the 2010 Commitments shall apply mutatis mutandis (with definitions being amended as set out in these 2022 Directions and references to 12 May 2010 or the Effective Date being read as references to the date on which these 2022 Directions are published), except the sub-clauses regarding duration (sub-clauses 2.5, 3.11 and 4.2(b) of the 2010 Commitments), which shall not apply.

### ***Monitoring and compliance – Clause 5 of the 2010 Commitments as modified***

7. To extend the appointment of the current Monitoring Trustee appointed under the 2020 Directions on the same terms, 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, 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 in respect of the agreements entered into under these 2022 Directions. In the event that the mandate of a Monitoring Trustee appointed in accordance with these 2022 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;
8. To provide promptly to the CMA such information as the CMA may from time to time require for the purpose of ascertaining whether these 2022 Directions are being, or will be, complied with.

### ***Dispute resolution – Clause 6 of the 2010 Commitments***

9. In any agreement concluded to implement these 2022 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:
  - (a) references to Regulation 1/2003 being read as references to the Act;
  - (b) 6.15 of the 2010 Commitments being replaced with the following: The Arbitral Tribunal shall decide the dispute on the basis of the 2010 Commitments and the 2022 Directions. Issues not covered by the 2010 Commitments and the 2022 Directions shall be decided (in the order as stated) by reference to The Act and general principles of English law. The Arbitral Tribunal shall take all decisions by majority vote;
  - (c) 6.21 of the 2010 Commitments being replaced with the following: Nothing in the arbitration procedure shall affect the powers of the CMA to take decisions in relation to the 2022 Directions in accordance with its powers under the Act.

## **Effective date**

These 2022 Directions are effective from the date they are published.

## **Definitions**

For the purposes of these 2022 Directions the definitions in the 2010 Commitments are adopted except as supplemented or modified in the definitions section of these 2022 Directions; with references to the European Commission being read as references to the CMA except in 1.2.10 of the 2010 Commitments; and references to the Commitments or Commitment Decision being read as references to these 2022 Directions except in 3.5.d and 3.13 of the 2010 Commitments.

<b>Defined term</b>	<b>Meaning</b>
2010 Commitments	The commitments accepted in Case COMP/39.596 – BA/AA/IB, dated 14 July 2010, and annexed to these Directions
2020 Directions	The interim measures directions imposed by the CMA on 17 September 2020
2022 Directions	The present interim measures directions
Act	Competition Act 1998
Applicant	Any airline interested in obtaining Slots from the Parties in accordance with these 2022 Directions
Chapter I prohibition	The prohibition contained in section 2 of the Act
CMA	Competition and Markets Authority
Current Remedy Slot Holder	In relation to the London-Boston city pair means each of United and Delta; in relation to the London-Dallas/Fort Worth city pair means Delta; and in relation to the London-Miami city pair means Virgin Atlantic
Delta	Delta Air Lines, Inc
Europe	The European Union, the United Kingdom, Iceland, Norway and Switzerland
Fare Combinability Agreement	An agreement that arranges for fare combinability

General Slot Allocation Procedure	The Slot allocation procedure as set out in the UK legislation equivalent to the EU Slot Regulation as applicable in the UK from time to time and IATA Procedure Worldwide Scheduling Guidelines (including participation at the IATA Scheduling Conference to try to improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline)
IAG	International Consolidated Airlines Group SA
Identified City Pairs	Boston-London; Miami-London and Dallas/Fort Worth-London; except that in clauses 2, 3 and 4 of the 2010 Commitments it shall also include Identified City Pairs governed by the 2010 Commitments as originally drafted.
Interim Remedy Slots	The four Slot pairs (two pairs on Boston- London; one pair on Miami-London and one pair on Dallas/Fort Worth-London) originally awarded under the 2020 Directions and re-awarded under the 2022 Directions
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 the 2022 Directions
New Non-Stop Air Services Provider	An airline that is not a member of the <b>oneworld</b> Alliance or affiliated with any member of that alliance 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 the 2022 Directions
Parties	AA, BA, Iberia and IAG
Prospective Entrant	Is as defined in the 2010 Commitments, but with reference to the "Commitments" being amended to "the 2022 Directions" and 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 2020 Directions will not be taken into account when determining a Prospective Entrant's regular operations)

Slot	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	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 the 2010 Commitments as modified by the 2022 Directions. For the avoidance of doubt, the Slot Release Agreement shall abide by any UK legislation applicable in the UK from time to time in place of Council Regulation (EEC) No 95/93. Any exchange pursuant to this agreement shall be confirmed by the slot coordinator
Slot Release Procedure	Is as defined in clause 1.2.1 of the 2010 Commitments, as modified by the 2022 Directions
United	United Airlines, Inc
Virgin Atlantic	Virgin Atlantic Airways Limited
Working Day	Any day other than a Saturday; Sunday; or 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)