

## ACQUISITION BY KOREAN AIR OF ASIANA

### Undertakings given by Korean Air Lines Co., Ltd to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

#### Whereas:

- (a) On 17 November 2020 Korean Air Lines Co., Ltd (“**Korean Air**”) entered into a binding Share Subscription Agreement, pursuant to which Korean Air will subscribe for shares in Asiana Airlines Inc. (“**Asiana**”) representing 63.88% of the total issued and outstanding stock of Asiana (the “**Transaction**”) such that Korean Air and Asiana (together, the “**Parties**”) will cease to be distinct for the purposes of the Enterprise Act 2002 (the “**Act**”);
- (b) Under section 33(1) of the Act the Competition and Markets Authority (the “**CMA**”) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA’s decision of 14 November 2022 (the “**Decision**”), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by Korean Air are appropriate to remedy, mitigate or prevent the substantial lessening of competition in relation to both scheduled air passenger transport services (“**air passenger services**”) and air cargo transport services (“**air cargo services**”), or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision;
- (f) Prior to the acceptance of these undertakings by the CMA, Korean Air entered into a legally binding framework agreement of 24 February 2023 (the

**“Framework Agreement”**) to facilitate entry onto the Relevant Routes via the operation of direct (non-stop) air passenger services and air cargo services on the London-Seoul City Pair by the Proposed Remedy Taker, on terms approved by the CMA. The Framework Agreement is conditional on formal CMA approval of the Proposed Remedy Taker and acceptance by the CMA of these undertakings. The Framework Agreement includes an undertaking that the Proposed Remedy Taker has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and develop services on the Relevant Routes in competition with Korean Air and other competitors on the Relevant Routes. The Framework Agreement includes a commitment by the Proposed Remedy Taker to use reasonable endeavours to operate a Competitive Air Service at up to a daily frequency on the London-Seoul City Pair by the Target Entry Date. For the avoidance of doubt, all agreements referred to in paragraph 3.2 below, to the extent required by the Proposed Remedy Taker, will be on terms approved by the CMA;

- (g) If the Proposed Remedy Taker does not:
- a. notify Korean Air by the Entry Notification Date that it will commence a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date in accordance with the Framework Agreement; or
  - b. operate a Competitive Air Service on the London-Seoul City Pair for the Minimum Period,

Korean Air undertakes to facilitate entry on the Relevant Routes by one or more alternative Prospective Entrant(s).

Korean Air considers that entry on the Relevant Routes by either the Proposed Remedy Taker or one or more alternative Prospective Entrant(s) as facilitated by these undertakings will remedy, mitigate or prevent the substantial lessening of competition specified in the Decision.

NOW THEREFORE Korean Air hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by Korean Air, they are accepted by the CMA.

## **2 ENTRY ON THE RELEVANT ROUTES**

- 2.1 Korean Air shall facilitate entry on the Relevant Routes by the Proposed Remedy Taker or, in the alternative, one or more alternative Prospective Entrant(s).
- 2.2 Korean Air will facilitate entry by the Proposed Remedy Taker by entering into the Framework Agreement with the Proposed Remedy Taker. Under the terms of the Framework Agreement, Korean Air undertakes to take certain steps to facilitate entry by the Proposed Remedy Taker on the Relevant Routes via the operation of a Competitive Air Service on the London-Seoul City Pair, on the terms provided for in Section 3 below.
- 2.3 In the event the Proposed Remedy Taker does not:
- (a) notify Korean Air by the Entry Notification Date that it will commence operations on the London-Seoul City Pair by the Target Entry Date; or
  - (b) operate on the London-Seoul City Pair for the Minimum Period,
- Korean Air will facilitate entry by one or more alternative Prospective Entrant(s) on the Relevant Routes, on the terms provided for in Sections 6 and 7 below.

## **3 ENTRY BY THE PROPOSED REMEDY TAKER**

- 3.1 Korean Air and the Proposed Remedy Taker have entered into the Framework Agreement to facilitate the entry of the Proposed Remedy Taker onto the Relevant Routes. Korean Air undertakes to facilitate entry of the Proposed Remedy Taker onto the Relevant Routes in accordance with the Framework Agreement. The Framework Agreement constitutes all the necessary commercial terms and access rights that are necessary for the Proposed Remedy Taker to operate a viable and competitive service on the Relevant Routes.
- 3.2 In particular, Korean Air undertakes to:
- (a) make available Slots at ICN to allow the Proposed Remedy Taker to operate seven Frequencies per week (i.e. one Frequency per day) at the request of the Proposed Remedy Taker between LHR and ICN, to

the extent any or all of these ICN Slots are not available to the Proposed Remedy Taker through:

- (i) the normal workings of the General Slot Allocation Procedure (to the extent the KFTC Remedies Order requires the Proposed Remedy Taker to apply for Slots at ICN under this procedure);  
or
  - (ii) under the KFTC Remedies Order (through the procedure which is to be determined by the KFTC and MOLIT for new entrants to obtain Slots at ICN from Korean Air (“**KFTC Slot Remedies Procedure**”));
- (b) make available Slots at LHR to allow the Proposed Remedy Taker to operate seven Frequencies per week (i.e. one Frequency per day) at the request of the Proposed Remedy Taker between LHR and ICN (to the extent any or all of these LHR Slots are not available to the Proposed Remedy Taker through the normal workings of the General Slot Allocation Procedure) on the terms provided for in the Framework Agreement. The provisions of paragraphs 6.15 to 6.27 of these undertakings shall apply mutatis mutandis to the Proposed Remedy Taker, subject to any amendments contained in the Framework Agreement;
- (c) enter into a unilateral codeshare agreement for air passenger services with the Proposed Remedy Taker on the terms set out in the Framework Agreement (such terms to be fair and reasonable) allowing the Proposed Remedy Taker to place its code on flights operated by Korean Air on the Relevant Passenger Route until such time as the Proposed Remedy Taker has commenced operations on the Relevant Passenger Route, such agreement to be effective from on or around the date these undertakings are accepted by the CMA and to continue until the Proposed Remedy Taker commences operations on the Relevant Passenger Route;
- (d) enter into a bilateral codeshare agreement for air passenger services with the Proposed Remedy Taker on the terms set out in the Framework Agreement (such terms to be fair and reasonable) allowing the Proposed Remedy Taker to place its code on flights operated by Korean Air on the Relevant Passenger Route, and allowing Korean Air to place its code on flights operated by the Proposed Remedy Taker on the Relevant Passenger Route, such agreement to take effect from when the Proposed Remedy Taker commences operations on the Relevant Passenger Route;

- (e) enter into a unilateral codeshare agreement for air passenger services with the Proposed Remedy Taker (such terms to be fair and reasonable) on any Korean Air routes beyond ICN requested by the Proposed Remedy Taker (including future routes launched by Korean Air for a period of time), such agreement to be effective from on or around the date these undertakings are accepted by the CMA;
- (f) at the request of the Proposed Remedy Taker, enter into a unilateral agreement for air cargo services with the Proposed Remedy Taker (e.g. a blocked space agreement) to provide the Proposed Remedy Taker with capacity on Korean Air flights between LHR and ICN, on fair and reasonable terms;
- (g) enter into a special prorate agreement for air passenger services with the Proposed Remedy Taker (on fair and reasonable terms) to allow interlining by the Proposed Remedy Taker on relevant Korean Air routes beyond ICN;
- (h) to the extent required by the Proposed Remedy Taker, enter into a Frequent Flyer Programme cooperation agreement to allow the Proposed Remedy Taker's frequent flyer members to use and obtain Miles on Korean Air's flights on the Relevant Passenger Route and certain Korean Air routes beyond ICN;
- (i) to the extent required by the Proposed Remedy Taker, enter into a lounge access agreement whereby certain of the Proposed Remedy Taker's passengers will be able to access Korean Air's lounges at ICN; and
- (j) enter into relevant agreements to provide ground handling services for the Proposed Remedy Taker at ICN for air passenger services and, if requested by the Proposed Remedy Taker, for air cargo services, such agreements to be on fair and reasonable terms.

3.3 Under the terms of the Framework Agreement, the Proposed Remedy Taker:

- (a) shall use reasonable endeavours to use the Slots to commence a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date;
- (b) shall, subject to the continued commercial viability of the route, use reasonable endeavours to use the Slots to operate a Competitive Air Service on the London-Seoul City Pair for at least six (6) full consecutive IATA Seasons (the "**Minimum Period**");

- (c) shall use the Slots at ICN only to provide a Competitive Air Service on the London-Seoul City Pair for at least the Minimum Period. The Slots at ICN cannot be used on another route unless the Proposed Remedy Taker has operated a Competitive Air Service on the London-Seoul City Pair for the Minimum Period. If the Proposed Remedy Taker does not use the ICN Slots for at least the Minimum Period, the Proposed Remedy Taker will be obligated to return the ICN Slots to the ICN slot coordinator; and
- (d) undertakes that it has (and will take reasonable steps (insofar as they are within the Proposed Remedy Taker's control) to continue to have) the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and develop services on the Relevant Routes in competition with Korean Air and other competitors on the Relevant Routes. For the avoidance of doubt, this shall not require the Proposed Remedy Taker to treat the LHR-ICN route differently to other routes in its network.

3.4 The undertakings set out in paragraph 3.3 above are subject to the following conditions being met by the Target Entry Date:

- (a) there being no outstanding legal, regulatory or other necessary authorisation, permit or requirement, the receipt of which is outside of the Proposed Remedy Taker's control, that would prevent the Proposed Remedy Taker operating on the Relevant Routes;
- (b) satisfaction of the Russia Overflight Condition by the Entry Notification Date; and
- (c) there being no materially adverse conditions which are outside of the Proposed Remedy Taker's control which have a material adverse effect on the Proposed Remedy Taker's ability to enter onto the Relevant Routes on commercially viable terms.

#### **4 APPROVAL OF PROPOSED REMEDY TAKER AND TERMS OF ENTRY ONTO THE RELEVANT ROUTES**

4.1 For the purposes of the CMA approving the Proposed Remedy Taker and the terms of entry of the Proposed Remedy Taker onto the Relevant Routes in accordance with these undertakings, Korean Air shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the entry onto the Relevant Routes, on the terms set out in the Framework Agreement, remedies, mitigates or prevents the substantial

lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the Proposed Remedy Taker is independent of and has no significant connection to Korean Air and the Group of Interconnected Bodies Corporate to which Korean Air belongs and any Associated Person or Affiliate of Korean Air or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Remedy Taker has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and develop services on the Relevant Routes in competition with Korean Air and other competitors from the Target Entry Date;
- (d) the Proposed Remedy Taker is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority in order to operate on the Relevant Routes; and
- (e) the entry by the Proposed Remedy Taker onto the Relevant Routes does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

4.2 The CMA may require Korean Air to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Remedy Taker will fulfil the requirements in paragraph 4.1 above.

## **5 ENTRY BY ALTERNATIVE PROSPECTIVE ENTRANT(S) AND ALTERNATIVE ULS EFFECTIVE DATE**

5.1 Under the terms of the Framework Agreement, the Proposed Remedy Taker is required to provide a notification to Korean Air by the Entry Notification Date confirming whether it will enter the Relevant Routes via commencing a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date and if so providing details of (i) the anticipated date of such entry, and (ii) its anticipated operating schedule (in particular its anticipated Frequencies and operating times to the extent necessary for the purpose of these undertakings). Korean Air undertakes to provide a copy of this notification to the CMA.

5.2 If the Proposed Remedy Taker:

- (a) fails to provide a notification by the Entry Notification Date that it intends to commence a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date; or
- (b) provides a notification by the Entry Notification Date that it does not intend to commence a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date; or
- (c) commences a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date, but fails to operate for the Minimum Period,

Korean Air must notify the CMA and the Trustee within five (5) Working Days, at which point the undertakings in sections 6 and 7 below shall become effective (the “**Alternative UILs Effective Date**”).

5.3 Except in the circumstances contemplated under paragraph 5.2(c) (i.e. where the Proposed Remedy Taker has commenced a Competitive Air Service on the London-Seoul City Pair by the Target Entry Date and failed to operate for the Minimum Period), for so long as no Prospective Entrant(s) have commenced a Competitive Air Service on the London-Seoul City Pair, the Proposed Remedy Taker will remain able to obtain and receive Slots under the Framework Agreement after the Alternative UILs Effective Date and until the Proposed Remedy Taker Entry End Date. For the avoidance of doubt, nothing in this provision shall operate to obligate Korean Air to grant Slots to both the Proposed Remedy Taker and a Prospective Entrant at any point in time.

5.4 Notwithstanding paragraph 5.2, if the Russia Overflight Condition has not been met by the Entry Notification Date, the Proposed Remedy Taker's commitment under sections 2 to 5 should be postponed to the Extended Entry Notification Date in lieu of the Entry Notification Date (and all references to the Entry Notification Date should be read as referring to the Extended Entry Notification Date) and the Extended Target Entry Date in lieu



of the Target Entry Date as applicable (and all references to the Target Entry Date should be read as referring to the Extended Target Entry Date).

## **6 ENTRY BY ALTERNATIVE PROSPECTIVE ENTRANT(S): SLOTS AT ICN AND LHR**

### **UNDERTAKING TO MAKE AVAILABLE SLOTS AT ICN**

- 6.1 Korean Air undertakes from the Alternative UILs Effective Date to procure that Slots if required are made available at ICN to allow one or more Prospective Entrant(s) to operate or increase up to seven (7) new or additional Frequencies per week on the London-Seoul City Pair.

### **CONDITIONS PERTAINING TO SLOTS AT ICN**

- 6.2 Each Prospective Entrant shall comply with the following procedure to obtain Slots from Korean Air at ICN ("**ICN Slot Release Procedure**").
- 6.3 The Prospective Entrant wishing to commence/increase a Competitive Air Service on the London-Seoul City Pair shall:
- (a) apply to the slot coordinator for the necessary ICN Slots through the General Slot Allocation Procedure; and
  - (b) notify its request for ICN Slots to the Trustee and KFTC Trustee through the KFTC Slot Remedies Procedure, within the period foreseen in paragraph 6.28. For the avoidance of doubt, this notification can be made at any time ahead of the deadlines provided for in paragraph 6.28.
- 6.4 Korean Air undertakes to make available Slots at ICN within the Time Window (if it has such Slots) in accordance with the ICN Slot Release Procedure. In the event that Korean Air does not have Slots within the Time Window, it shall offer to the slot coordinator to release the Slots closest in time to the Prospective Entrant's request. Korean Air does 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 Korean Air 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.

### **GRANDFATHERING OF ICN SLOTS**

- 6.5 As a general rule, and subject to the requirements of the KFTC Slot Remedies Procedure, the Slots at ICN obtained by the Prospective Entrant from Korean Air as a result of the ICN Slot Release Procedure shall be used only to provide a Competitive Air Service on the London-Seoul City Pair. These ICN Slots cannot be used on another city pair unless the Prospective Entrant has operated a Competitive Air Service on the London-Seoul City Pair for which these Slots have been transferred for the Minimum Period.
- 6.6 The Prospective Entrant will be deemed to have grandfathering rights for the ICN Slots once appropriate use of the Slots has been made on the London-Seoul City Pair for the Minimum Period. In this regard, once the Minimum Period has elapsed, the Prospective Entrant will be entitled to use the Slots obtained on the basis of these undertakings to operate services on any route ("**Grandfathering**").
- 6.7 Further details on the procedure and requirements for the Grandfathering of ICN Slots is expected to be provided for under the KFTC Slot Remedies Procedure.
- 6.8 During the Minimum Period, the Prospective Entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of these undertakings any Slots obtained from Korean Air under the ICN Slot Release Procedure, except for changes to any such Slots which are within the Time Window and which have been agreed with the ICN slot coordinator.
- 6.9 During the Minimum Period, ICN Misuse shall be deemed to arise where a Prospective Entrant which has obtained ICN Slots from Korean Air as a result of the ICN Slot Release Procedure decides:
- (a) not to commence a Competitive Air Service on the London-Seoul City Pair;
  - (b) to operate fewer Frequencies than those to which it committed in the bid in accordance with paragraph 6.34 for the operation of a Competitive Air Service on the London-Seoul City Pair or to cease operating a Competitive Air Service on the London-Seoul City Pair or not operate for the Minimum Period;

- (c) to transfer, assign, sell, swap, sublease or charge any Slot released by Korean Air on the basis of the ICN Slot Release Procedure, except for changes to the Slot which are within the Time Window and which have been agreed with the ICN slot coordinator;
- (d) not to use the Slots to operate a Competitive Air Service on the London-Seoul City Pair, as proposed in the bid in accordance with paragraph 6.34; or
- (e) not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant (i) loses the series of Slots at ICN or (ii) misuses the Slots at ICN.

6.10 If Korean Air or the Prospective Entrant which has obtained Slots under the ICN Slot Release Procedure becomes aware of or reasonably foresees any ICN Misuse by the Prospective Entrant during the Minimum Period, it shall immediately inform the other and the Trustee. The Prospective Entrant shall have 30 days after such notice to cure the actual or potential ICN Misuse. If the ICN Misuse is not cured, Korean Air shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to the ICN slot coordinator. In cases (a) and (b) of paragraph 6.9, Korean Air shall then liaise with the KFTC and ICN slot coordinator and use its best efforts to ensure that the Slots are redeployed to another Prospective Entrant to operate a Competitive Air Service on the London-Seoul City Pair.

#### **UNDERTAKING TO MAKE AVAILABLE SLOTS AT LONDON HEATHROW**

- 6.11 Korean Air undertakes to make available at the request of the Prospective Entrant(s) Slots at LHR to allow one or more Prospective Entrant(s) to operate or increase up to seven (7) new or additional Frequencies per week on the London-Seoul City Pair.
- 6.12 The number of Slots at LHR that Korean Air is obligated to provide is capped at the total number of Slots at LHR to allow any Prospective Entrant(s) to operate or increase up to seven (7) new or additional Frequencies per week on the London-Seoul City Pair. Korean Air shall not be required to release additional Slots at LHR if it has already released seven (7) slots to a Prospective Entrant(s) and these Slots have not been returned to Korean Air under the procedure described in paragraph 6.24 below.

## **CONDITIONS PERTAINING TO LHR SLOTS**

- 6.13 Each Prospective Entrant shall comply with the following procedure to obtain Slots from Korean Air at LHR ("**LHR Slot Release Procedure**").
- 6.14 The Prospective Entrant wishing to commence/increase a Competitive Air Service on the London-Seoul City Pair shall:
- (a) apply to the slot coordinator for the necessary LHR Slots through the General Slot Allocation Procedure; and
  - (b) notify its request for LHR Slots from Korean Air to the Trustee, within the period foreseen in paragraph 6.28.
- 6.15 The Prospective Entrant shall be eligible to obtain LHR Slots from Korean Air pursuant to these undertakings only if the Prospective Entrant can demonstrate that it has exhausted all reasonable efforts to obtain the necessary LHR Slots to operate on the London-Seoul City Pair through the normal workings of the General Slot Allocation Procedure.
- 6.16 For the purposes of paragraph 6.15, the Prospective Entrant shall be deemed not to have exhausted all reasonable efforts to obtain necessary Slots if:
- (a) Slots at LHR were available through the General Slot Allocation Procedure within the Time Window but such Slots have not been accepted by the Prospective Entrant; or
  - (b) Slots at LHR (for use to operate a Competitive Air Service on the London-Seoul City Pair) were obtained through the General Slot Allocation Procedure outside the Time Window and the Prospective Entrant did not give Korean Air the opportunity to exchange those Slots for Slots within the Time Window; or
  - (c) it has not exhausted its own Slot portfolio at LHR. For these purposes, a carrier will be deemed not to have exhausted its own Slot portfolio:
    - (i) if the carrier has Slots at LHR within the Time Window which are being leased-out to or exchanged with other carriers (unless that lease or exchange was concluded before the Effective Date or the carrier can provide reasonable evidence satisfying the CMA (following consultation with the Trustee) that there are bona fide reasons for this being done rather than its

being a pretext to enable the carrier to present itself as needing Slots to operate a Competitive Air Service on the London-Seoul City Pair); or

- (ii) if the carrier has Slots at LHR which are outside the Time Window and which are leased-out to other carriers, in which case the Prospective Entrant shall be entitled to apply for Slots from Korean Air, but only if:
  - (A) that lease was concluded before the Effective Date; or
  - (B) it can provide reasonable evidence satisfying the CMA (following consultation with the Trustee) that there are bona fide reasons for leasing the Slot out in this way rather than using it itself; or
  - (C) it gives Korean Air 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 Korean Air will likewise not provide for monetary compensation.

For the purposes of paragraphs 6.16(c)(i) and 6.16(c)(ii), 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.

6.17 Without prejudice to these undertakings (and, particularly, of this paragraph 6), Korean Air shall not be obliged to honour any agreement to make available the Slots at LHR to the Prospective Entrant if:

- (a) 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 London-Seoul City Pair; or

(b) the Prospective Entrant has been found to be in a situation of LHR Misuse.

6.18 Korean Air undertakes to make available Slots at LHR within the Time Window (if it has such Slots) in accordance with the LHR Slot Release Procedure. In the event that Korean Air does not have Slots within the Time Window, it shall offer to release the Slots closest in time to the Prospective Entrant's request. Korean Air does 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 Korean Air has. 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.

### **GRANDFATHERING OF LHR SLOTS**

6.19 As a general rule, the Slots at LHR obtained by the Prospective Entrant from Korean Air as a result of the LHR Slot Release Procedure shall be used only to provide a Competitive Air Service on the London-Seoul City Pair. These LHR Slots cannot be used on another city pair unless the Prospective Entrant has operated the London-Seoul City Pair for which these Slots have been transferred for the Minimum Period.

6.20 The Prospective Entrant will be deemed to have grandfathering rights for the LHR Slots once appropriate use of the Slots has been made on the London-Seoul City Pair for the Minimum Period. In this regard, once the Minimum Period has elapsed, the Prospective Entrant will be entitled to use the Slots obtained on the basis of these undertakings to operate services on any route ("**Grandfathering**").

6.21 Grandfathering is subject to approval of the CMA, advised by the Trustee, at the end of the Minimum Period. The CMA's approval shall be conditional on the Prospective Entrant committing that if it ceases to use the Slots in question it will return the Slots in question to Korean Air or, if Korean Air does not want the return of the Slots in question subject to Korean Air's obligations under paragraph 6.24, to the slot coordinator.

6.22 During the Minimum Period, the Prospective Entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of these undertakings any Slots obtained from Korean Air under the LHR Slot Release Procedure, except for changes to any such Slots which are within the Time Window and which have been agreed with the slot coordinator.

- 6.23 During the Minimum Period, LHR Misuse shall be deemed to arise where a Prospective Entrant which has obtained LHR Slots released by Korean Air decides:
- (a) not to commence a Competitive Air Service on the London-Seoul City Pair;
  - (b) to operate fewer Frequencies than those to which it committed in the bid in accordance with paragraph 6.34 for the operation of a Competitive Air Service on the London-Seoul City Pair or to cease operating a Competitive Air Service on the London-Seoul City Pair or not operate for the Minimum Period;
  - (c) to transfer, assign, sell, swap, sublease or charge any Slot released by Korean Air on the basis of the LHR Slot Release Procedure, except for changes to the Slot which are within the Time Window and which have been agreed with the slot coordinator;
  - (d) not to use the Slots to operate a Competitive Air Service on the London-Seoul City Pair, as proposed in the bid in accordance with paragraph 6.34; or
  - (e) not to use the Slots properly: this situation shall be deemed to exist where the Prospective Entrant:
    - (i) loses the series of Slots at LHR; or
    - (ii) misuses the Slots at LHR.
- 6.24 If Korean Air or the Prospective Entrant which has obtained Slots under the LHR Slot Release Procedure becomes aware of or reasonably foresees any LHR Misuse by the Prospective Entrant during the Minimum Period, it shall immediately inform the other and the Trustee. The Prospective Entrant shall have 30 days after such notice to cure the actual or potential LHR Misuse. If the LHR Misuse is not cured, Korean Air shall have the right to terminate the Slot Release Agreement and the Slots shall be returned to Korean Air. In cases (a) and (b) of paragraph 6.23, Korean Air shall then use its best efforts to redeploy the Slots to operate a Competitive Air Service on the London-Seoul City Pair. If despite its best efforts, Korean Air are not able to redeploy the Slots to operate a Competitive Air Service on the London-Seoul City Pair, or in case of a LHR Misuse as defined in cases (c), (d) or (e) of paragraph 6.23, the Prospective Entrant shall provide reasonable compensation to Korean Air as provided for in the Slot Release Agreement.
- 6.25 For the avoidance of doubt, the Slot Release Agreement may:

- (a) contain prohibitions on the Prospective Entrant transferring its rights to the Slots to a third party, 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; and/or
  - (b) provide for reasonable compensation to Korean Air in case of LHR Misuse during the Minimum Period. If for any reason (including, but without limitation, the insolvency of the Prospective Entrant) Korean Air are unable to receive reasonable compensation for the Slots being either lost or not returned within sufficient time for Korean Air to preserve their grandfathering rights, such Slots shall be counted against the maximum number of Slots to be released in accordance with the undertakings.
- 6.26 To the extent that the Slots released under the LHR Slot Release Procedure are at an airport where secondary trading takes place, the Slot Release Agreement with the Prospective Entrant may provide for monetary and/or other consideration, so long as such Slot Release Agreement provisions are clearly disclosed and comply with these undertakings and all other administrative requirements set out in the applicable legislation.
- 6.27 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 (subject to LHR Misuse), provided the Prospective Entrant notifies the termination of the agreement to Korean Air in writing no later than two (2) weeks after the IATA Slot Conference.

#### **SELECTION PROCEDURE, ROLE OF TRUSTEE AND APPROVAL BY CMA**

- 6.28 Following the Alternative UILs Effective Date, any Prospective Entrant wishing to obtain Slots at LHR from Korean Air pursuant to the LHR Slot Release Procedure and/or Slots at ICN from Korean Air pursuant to the ICN Slot Release Procedure shall at any time, provided such time is at least seven (7) weeks before the IATA Slot Request Submission Deadline:
- (a) inform the Trustee (who must in turn share such information with the KFTC Trustee) of its proposed Slot request (indicating the arrival and departure times), thereby becoming an **“Applicant”**;



- (b) notify the KFTC Trustee of its proposed request for ICN Slots (if applicable), pursuant to the KFTC Slot Remedies Procedure;
- (c) submit to the Trustee (who must in turn share such submission with the KFTC Trustee) the list of its leased out or exchanged Slots at LHR and ICN. The Trustee or the CMA (including in consultation with the KFTC Trustee and KFTC) may also request additional information from the Applicant to enable assessment of its eligibility pursuant to paragraph 6.16(c); and
- (d) indicate to the Trustee if it has any confidentiality concerns which would justify keeping its identity anonymous vis-à-vis Korean Air, in which case it must provide a reasoned explanation of those concerns together with its request for anonymity. In the event that such a request is made, the Trustee shall:
  - (i) immediately inform the CMA, KFTC Trustee and KFTC of that request;
  - (ii) within one (1) week of that request advise the CMA, KFTC Trustee and KFTC whether or not that request should be granted; and
  - (iii) within three (3) weeks of the request, in consultation with the CMA, KFTC Trustee and KFTC, determine whether or not the Applicant's Slot request may be treated anonymously (and, if so, to what extent, subject to what conditions and for what period).

6.29 At least six (6) weeks before the IATA Slot Request Submission Deadline, the Trustee shall forward its updated Slot request(s) to Korean Air, the CMA, KFTC Trustee and KFTC. Once informed of the updated Slot request, Korean Air may discuss with the Applicant the timing of the Slots to be released and the types of compensation which could be offered. Korean Air shall copy the Trustee on all correspondence between it and the Applicant which relates to the LHR Slot Release Procedure or ICN Slot Release Procedure. Korean Air 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. At least six (6) weeks before the IATA Slot Request Submission Deadline, the Trustee shall also inform the managers of LHR and/or ICN and the slot coordinators of the Slot request and, subject to the Applicant's consent, disclose to them any relevant information regarding the Slot request. The Trustee shall ask the managers

of LHR and/or ICN and the slot coordinators to inform it of any likely impediments to the satisfaction of the request, in particular due to the availability of terminal facilities and infrastructure.

- 6.30 If the Applicant has made a request for anonymity in accordance with paragraph 6.28(d), the Trustee shall not disclose to Korean Air the identity of the Applicant for so long as that request is pending or has been granted. In such a case, the procedure set down in these paragraphs 6.28 to 6.42 shall apply, save that, until the beginning of the IATA Slot Conference, any communication or correspondence between Korean Air and the Applicant shall go through the Trustee, who shall ensure the protection of the anonymity of the Applicant.
- 6.31 After being informed of the Slot request in accordance with paragraph 6.29, the CMA (advised by the Trustee) shall assess whether the Applicant meets the following criteria:
- (a) the Applicant is independent of and unconnected to Korean Air; and
  - (b) the Applicant has exhausted its own Slot portfolio at LHR and/or ICN (as applicable).

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

- 6.32 At least one (1) week before the IATA Slot Request Submission Deadline, Korean Air shall indicate to the Trustee and each Applicant which Slots at LHR they would release, if necessary, during the Time Window.
- 6.33 By the IATA Slot Request Submission Deadline, each Applicant shall send its request for Slots (at the same time(s) as those requested through the UK Slot Allocation Procedure and/or ICN Slot Allocation Procedure) to the slot coordinator in accordance with the General Slot Allocation Procedure.
- 6.34 By the IATA Slot Request Submission Deadline, each Applicant shall also submit its formal bid for the Slots to the Trustee (who must in turn share such submission with the KFTC Trustee). The formal bid shall include at least:
- (a) the Key Terms (i.e. timing of the Slots and number of frequencies to be operated on a year-round service);

(b) 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 (2) 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 Competitive Air Service on the London-Seoul City Pair. The detailed information on its plans should specify in detail planned passenger operations on the London-Seoul City Pair over a period of at least two (2) consecutive IATA Seasons (size of aircraft, seat configuration, total capacity and capacity by each class, number of frequencies operated, pricing structure, service offerings, planned time-schedule of the flights), planned cargo operations on the Relevant Cargo Routes over a period of least two (2) consecutive IATA Seasons (total capacity, pricing structure, service offerings), and expected financial results (expected traffic, revenues, profits, average fare by cabin class). The 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. Confidential Information will be kept confidential by the CMA and the Trustee and will not become accessible to Korean Air, other undertakings or the public.

6.35 In parallel, if an Applicant is offering compensation for any of the Slot(s) it has requested pursuant to these undertakings, it will send Korean Air, copying the 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 submitted bids. Within three (3) weeks, Korean Air shall provide the Trustee with a ranking of these offers.

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

- (a) assess whether each Applicant is a viable existing or potential competitor, with the ability, resources and commitment to operate a Competitive Air Service on the London-Seoul City Pair in the long term as a viable and active competitive force; and
- (b) evaluate the formal bids of each Applicant, that meets (a) above, and rank these Applicants in order of preference.

6.37 In conducting its evaluation in accordance with paragraph 6.36, the CMA shall, in consultation with the KFTC as necessary, give preference to the Applicant (or combination of Applicants) which will provide the most effective overall competitive constraint on the Relevant Routes without regard to the

country in which the Applicant(s) is licensed or has its principal place of business or the London airport from which it plans to operate. For these purposes, the CMA shall take into account the strength of the Applicant's business plan and in particular give preference to the Applicant(s) meeting one or more of the following criteria:

- (a) the largest passenger capacity (as measured in seats offered on services for two (2) consecutive IATA Seasons) and/or greatest number of services/frequencies from/to LHR and/or ICN;
- (b) a pricing structure and service offerings that would provide the most effective competitive constraint on the Relevant Passenger Route;
- (c) plans to offer feed to third party carriers operating services from behind and beyond cities; and
- (d) overall strength air cargo offering on the Relevant Cargo Routes, including services offered, pricing structure that would provide the most effective competitive constraint, and the largest cargo capacity.

If, following the CMA's evaluation, several Applicants are deemed to provide similarly effective competitive constraints on services on the Relevant Routes, the CMA shall rank these Applicants following the ranking provided by Korean Air under paragraph 6.35.

6.38 In advance of the beginning of the IATA Slot Conference, the Trustee shall inform each Applicant (if the latter did not receive Slots within the Time Window as indicated through the slot allocation list) and the slot coordinator:

- (a) whether the Applicant qualifies for the Slots undertaking; and
- (b) the Applicant's ranking.

In any case, the Applicant shall attend the IATA Slot Conference and try to improve its Slots. Following confirmation of the CMA's approval pursuant to paragraph 6.36, the Applicants and Korean Air shall be deemed to have agreed the Key Terms of the Slot Release Agreement and that Korean Air will facilitate the transfer of Slots to the Applicants, as well as any compensation which was offered by the Applicant to Korean Air under paragraph 6.35. The Key Terms may only be changed after such date by mutual agreement between the Applicant and Korean Air if the Trustee

confirms that the changes are not material or if the CMA (advised by the Trustee) approves the changes.

- 6.39 Within two (2) weeks of the end of the IATA Slot Conference, each Applicant shall inform the Trustee (who must in turn share such information with the KFTC Trustee) and Korean Air whether it will commit to operate the Slots offered eventually by Korean Air in case it has not obtained them through the General Slot Allocation Procedure.
- 6.40 To the extent an Applicant requested ICN Slots in the General Slot Allocation Procedure and these have not been obtained, such Applicant shall be entitled to receive ICN Slots through the KFTC Slot Remedies Procedure. Promptly following the conclusion of the KFTC Slot Remedies Procedure, the Applicant shall notify the Trustee and the CMA of the Slots obtained through the KFTC Slot Remedies Procedure.
- 6.41 Within three (3) weeks of the end of the IATA Slot Conference (or such longer period required to accommodate the KFTC Slot Remedies Procedure referred to in paragraph 6.40 above), the Trustee (in consultation with the KFTC Trustee) shall confirm to the highest ranked Applicant(s) that has provided the confirmation in accordance with paragraph 6.39 that it is entitled to receive Slots from Korean Air (if required). Korean Air shall offer the dedicated Slots for release to such Applicant. The Slot Release Agreement shall be subject to review by the Trustee and approval by the CMA.
- 6.42 Unless both Korean Air and the relevant Applicant agree to an extension and subject to paragraph 6.41, the Slot Release Agreement shall be signed and the Slot release completed within six (6) weeks after the IATA Slot Conference (or such longer period required to accommodate the KFTC Slot Remedies Procedure referred to in paragraph 6.40 above), and the slot coordinator shall be informed of the Slot exchange in order to obtain the required confirmation.

## **7 ENTRY BY ALTERNATIVE PROSPECTIVE ENTRANT(S): ADDITIONAL MEASURES**

### **CODESHARE AGREEMENT**

- 7.1 At the request of a New Air Services Provider on the London-Seoul City Pair, Korean Air shall enter into a codeshare agreement for air passenger services in the form requested by the New Air Services Provider (i.e. free-flow or

blocked-space) allowing the New Air Services Provider to place its code on flights operated by Korean Air from Seoul for purposes of offering a service on the London-Seoul City Pair or any connecting service to/from Seoul (including future routes launched by Korean Air) and, at the request of the new entrant, for Korean Air to place its code on flights operated by the New Air Services Provider for purposes of offering a service on the London-Seoul City Pair for as long as the New Air Services Provider operates on the London-Seoul City Pair. The conditions for these agreements shall be on terms such that the New Air Services Provider shall have equal treatment with Korean Air's SkyTeam Airline Alliance partners on the routes operated out of Seoul. The settlement rate per coupon will be reasonable and at least as favourable or competitive in comparison to market prices at the date of the codeshare agreement or the date the rates are reviewed. The final terms of the codeshare agreement are subject to the approval of the CMA, advised by the Trustee. The CMA will in particular assess whether the settlement rate per coupon of the codeshare agreement is reasonable.

- 7.2 At the request of a New Air Services Provider on the London-Seoul City Pair, Korean Air shall enter into a unilateral agreement for air cargo services with the New Air Services Provider to provide the New Air Services Provider with capacity on Korean Air freighter flights between LHR and ICN for as long as the New Air Services Provider operates on the London-Seoul City Pair. The conditions for this agreement shall be on terms that are fair and reasonable. The final terms of the agreement are subject to the approval of the CMA, advised by the Trustee.

#### **INTERLINE AGREEMENT OR SPECIAL PRORATE AGREEMENT FOR AIR PASSENGER SERVICES**

- 7.3 At the request of a New Air Services Provider, irrespective of whether the Competitive Air Service is commenced on the basis of Slots obtained from Korean Air under these undertakings, Korean Air shall enter into an interline agreement or special prorate agreement with such airline relating to air passenger services for traffic with a true origin/destination in Europe, and a true destination/origin in Asia, provided that part of the journey involves the London-Seoul City Pair, for as long as the New Air Services Provider operates on the London-Seoul City Pair. At the request of the New Air Services Provider, the interline agreement or special prorate agreement shall

apply to all of the New Air Services Provider's air services on the London-Seoul City Pair.

- 7.4 The conditions for an interline agreement or special prorate agreement shall be on terms such that the New Air Services Provider shall have equal treatment with Korean Air's SkyTeam Airline Alliance partners on the London-Seoul City Pair. The settlement rate per coupon will be reasonable and at least as favourable or competitive in comparison to market prices at the date of the Special Prorate Agreement or the date the rates are reviewed. The final terms of the interline agreement or special prorate agreement are subject to the approval of the CMA, advised by the Trustee. The CMA will in particular assess whether the settlement rate per coupon of the interline agreement or special prorate agreement is reasonable.

### **FREQUENT FLYER PROGRAMMES**

- 7.5 At the request of a New Air Services Provider that does not have a comparable Frequent Flyer Programme of its own and does not participate in Korean Air's Frequent Flyer Programme, Korean Air shall allow it to be hosted on their Frequent Flyer Programme for the London-Seoul City Pair on which the New Air Services Provider has commenced an air passenger service and for as long as the New Air Services Provider operates air passenger services on the London-Seoul City Pair. The Frequent Flyer Programme 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 London-Seoul City Pair as compared with other members of Korean Air's alliances.
- 7.6 Any agreement relating to the London-Seoul City Pair and entered into pursuant to paragraph 7.5 shall:
- (a) lapse automatically in the event that the New Air Services Provider ceases to operate a non-stop service on the London-Seoul City Pair; and
  - (b) have an effective duration of up to five (5) years at the choice of the New Air Services Provider. Thereafter, or if it elects to have a shorter initial duration than that to which it is entitled pursuant to this paragraph 7.6, the New Air Services Provider shall have a right to renew the agreement on an evergreen basis for further periods of one (1) year (i.e. rolled over on the same terms) as long as these undertakings are in force, provided it exercises its right of extension by informing Korean

Air in writing no later than two (2) weeks after the IATA Slot Conference preceding the requested extension. 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.

- 7.7 Subject to paragraph 7.8, Korean Air shall use commercially reasonable efforts to ensure any term included in the Frequent Flyer Programme agreement entered into pursuant to paragraph 7.5 offers equal treatment to the New Air Services Provider as per the corresponding term in any Frequent Flyer Programme agreement which the relevant Party and the New Air Services Provider have in place as at the Effective Date.
- 7.8 The final terms of the Frequent Flyer Programme agreement shall be subject to the approval of the CMA, as advised by the Trustee, in particular as to whether its terms are reasonable.

#### **LOUNGE ACCESS AGREEMENTS**

- 7.9 At the request of a New Air Services Provider, Korean Air shall enter into a lounge access agreement with such airline for the provision of lounge access at ICN, provided that part of the journey involves the London-Seoul City Pair for as long as the New Air Services Provider operates on the London-Seoul City Pair. The final terms of any lounge access agreement entered into pursuant to this undertaking will be on fair and reasonable terms and will be subject to the approval of the CMA, as advised by the Trustee, in particular as to whether its terms are reasonable.

#### **GROUND HANDLING SERVICE**

- 7.10 At the request of a New Air Services Provider, Korean Air shall enter into a ground handling agreement with such airline for the provision of ground handling services at ICN for air passenger services and/or the Relevant Cargo Routes for air cargo services (if requested by the New Air Services Provider) for as long as the New Air Services Provider operates on the London-Seoul City Pair, provided that part of the journey involves the London-Seoul City Pair. The final terms of any ground handling services agreement entered into pursuant to this undertaking will be on fair and



reasonable terms and will be subject to the approval of the CMA, as advised by the Trustee, in particular as to whether its terms are reasonable.

## **8 APPOINTMENT OF A TRUSTEE**

8.1 Within five (5) Working Days of the CMA notifying Korean Air in writing that it must do so, Korean Air shall propose to the CMA for approval:

- (a) the names of at least two (2) individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

8.2 Korean Air and/or any individuals nominated pursuant to paragraph 8.1 shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of Korean Air and of the Group of Interconnected Bodies Corporate to which Korean Air belong and of any Associated Person or Affiliate of Korean Air or of such Group of Interconnected Bodies Corporate and of any Proposed Remedy Taker to enter the London-Seoul City Pair pursuant to these undertakings, and, in the reasonable opinion of Korean Air, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

8.3 Within two (2) Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Korean Air and their proposed mandates pursuant to paragraph 8.1 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Korean Air shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 8.1 above.

8.4 In the event that:

- (a) Korean Air fails to propose any person or persons in accordance with paragraph 8.1 above; or
- (b) none of the persons proposed by Korean Air pursuant to paragraph 8.1 are approved by the CMA; or
- (c) Korean Air is unable for any reason to appoint within the time limit stipulated in paragraph 8.3 above any such person following approval by the CMA,

Korean Air shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Korean Air shall use its best endeavours to make such appointment within five (5) Working Days of receiving the nominations from the CMA.

8.5 The appointment of the Trustee pursuant to paragraph 8.3 or paragraph 8.4 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

8.6 In the event that the appointment of the Trustee is terminated in accordance with paragraph 8.5 above, Korean Air shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Korean Air shall use its best endeavours to make such appointment within seven (7) Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

## **9 THE MANDATE**

9.1 The terms of the mandate proposed by Korean Air pursuant to paragraph 8.1 above shall, as a minimum, contain all provisions necessary to enable the

Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) to monitor the satisfactory discharge by Korean Air of the obligations entered into in these undertakings in so far as they fall within the scope of these undertakings;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to give effect to the undertakings;
- (d) to propose to Korean Air such measures as the Trustee considers necessary to ensure Korean Air's compliance with the conditions and obligations attached to the Decision;
- (e) to advise and make a written recommendation to the CMA as to the suitability of any Applicant or Slot Release Agreement submitted for approval to the CMA under paragraphs 6.36 and 6.41 respectively;
- (f) a mandate to comply with any orders and/or directions given by the CMA;
- (g) to provide written reports to the CMA on Korean Air's compliance with these undertakings and the progress of the discharge of its mandate, identifying any respects in which Korean Air has failed to comply with these undertakings or the Trustee has been unable to discharge its mandate;
- (h) 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
- (i) at any time, to provide to the CMA, at its request, a written or oral report on matters falling within the scope of these undertakings.

## **10 FUNCTIONS OF TRUSTEE**

- 10.1 The Trustee shall supervise the implementation of these undertakings including (for such period as the undertakings are in effect):
- (a) supervising the entry onto the London-Seoul City Pair by the Proposed Remedy Taker or any Prospective Entrant(s);
  - (b) facilitating the application and selection process for any Prospective Entrant following the Alternative UILs Effective Date (including through liaising with the KFTC Trustee and KFTC as needed);
  - (c) advising the CMA on the appropriateness of various rights, terms and conditions under the undertakings, including grandfathering rights, the codeshare agreement, the interline agreement or special prorate agreement, Frequent Flyer Programme cooperation agreement, lounge access agreement and ground handling service agreement; and
  - (d) reporting in writing to the CMA if the Trustee concludes on reasonable grounds that Korean Air is failing or may fail to carry out its functions in accordance with these undertakings.
- 10.2 For the avoidance of doubt, subject to paragraph 9, there is no requirement for the Trustee to be involved in the commercial negotiations between Korean Air and a third party carrier entering into any of the agreements under the undertakings. Any such agreements however remain subject to the CMA's approval.
- 10.3 Any request made by a third party carrier for the Trustee to verify Korean Air's compliance with these undertakings must be reasonable. In particular, the Trustee must refuse to conduct such a verification where the third party carrier fails to produce any evidence of a suspected breach of the undertakings and/or appears to be making a vexatious request.
- 10.4 Korean Air shall receive simultaneously a non-confidential version of any recommendation made by the Trustee to the CMA (as provided for in paragraph 9.1(e)).
- 10.5 The reports provided for in paragraphs 9.1(e) to 9.1(i) shall be prepared in English. The reports provided for in paragraph 9.1(g) shall be sent by the Trustee to the CMA within ten (10) Working Days from the end of every IATA Season following the Trustee's appointment or at such other time(s) as the CMA may specify and shall cover developments in the immediately

preceding IATA Season. Korean Air shall receive simultaneously a non-confidential copy of each Trustee report.

- 10.6 The Trustee shall have access to Korean Air's books, records, documents, management or other personnel facilities, sites and technical information necessary to fulfil its duties under these undertakings.
- 10.7 At Korean Air's expense, the Trustee may appoint advisors, subject to the CMA's prior approval, if the 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 Korean Air has been consulted on the appointment and has approved the amount of the fees.

## **11 OBLIGATIONS OF KOREAN AIR FOLLOWING APPOINTMENT OF TRUSTEE**

- 11.1 Korean Air shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 11.2 Korean Air shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 9.1(b) above; and
  - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **12 INTERIM ACTION**

- 12.1 Pending the conclusion of Korean Air's obligations under these undertakings to the satisfaction of the CMA (in accordance with the provisions of these undertakings), save as otherwise agreed in advance in writing by the CMA, Korean Air shall ensure that its Slots at LHR and ICN that are or might reasonably be required to be made available to the Proposed Remedy Taker and/or a Prospective Entrant under these undertakings are maintained and preserved and not disposed of.

## **13 REMUNERATION OF TRUSTEE**

- 13.1 Korean Air shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the

Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 9 above.

## **14 FAST-TRACK DISPUTE RESOLUTION PROCEDURE**

- 14.1 The agreements concluded to implement the undertakings in accordance with paragraphs 3 to 7 shall provide for any dispute to be resolved in accordance with the Fast-Track Dispute Resolution procedure (the "**Fast-Track Dispute Resolution Procedure**") described in this paragraph 14 (the "**Arbitration**"). In the event that a Proposed Remedy Taker, Prospective Entrant, Applicant, or New Air Services Provider, as relevant, has reason to believe that Korean Air is failing to comply with the requirements of the undertakings vis-à-vis that party, this Fast-Track Dispute Resolution Procedure will apply.
- 14.2 Any Proposed Remedy Taker, Prospective Entrant, Applicant, or New Air Services Provider, as relevant, which wishes to avail itself of the Fast-Track Dispute Resolution Procedure (the "**Requesting Party**") shall send a written request to Korean Air (with a copy to the Trustee) setting out in detail the reasons leading that party to believe that Korean Air is failing to comply with the requirements of these undertakings (the "**Request**"). The Requesting Party and Korean Air 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.
- 14.3 The Trustee shall present its own proposal (the "**Trustee Proposal**") for resolving the dispute within eight (8) Working Days, specifying in writing the action, if any, to be taken by the Proposed Remedy Taker in order to ensure compliance with these undertakings vis-à-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.
- 14.4 Should the Requesting Party and Korean Air fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph 14.2, the Requesting Party shall serve a notice (the "**Notice**"), in the sense of a request for Arbitration, to the International Chamber of Commerce (the "**ICC**") (the "**Arbitral Institution**"), with a copy of such Notice and request for Arbitration to be sent to Korean Air.
- 14.5 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 Korean Air (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.

- 14.6 Korean Air shall, within ten (10) Working Days from receipt of the Notice, submit its answer (the “**Answer**”), which shall provide detailed reasons for its 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 Korean Air proposes 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**

- 14.7 The Arbitral Tribunal shall consist of three persons. The Requesting Party shall nominate its arbitrator in the Notice; Korean Air shall nominate its arbitrator in the Answer.
- 14.8 The arbitrators nominated by the Requesting Party and Korean Air 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 Korean Air 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 Korean Air 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**

- 14.9 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.

- 14.10 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.
- 14.11 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 Arbitration 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.
- 14.12 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.
- 14.13 The Arbitral Tribunal shall not disclose confidential information. 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 Trustee, the CMA and outside counsel and experts of the opposing party.
- 14.14 The burden of proof in any dispute under these Rules shall be borne as follows:
- (a) the Requesting Party must produce evidence of a prima facie case; and
  - (b) if the Requesting Party produces evidence of a prima facie case,
- the Arbitral Tribunal must find in favour of the Requesting Party unless Korean Air can produce evidence to the contrary.

#### **INVOLVEMENT OF THE CMA**



- 14.15 The CMA shall be allowed and enabled to participate in all stages of the procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made by the parties to the Arbitration;
  - (b) 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);
  - (c) giving the CMA the opportunity to file amicus curiae briefs; and
  - (d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the parties to the Arbitration to forward, the documents mentioned to the CMA without delay. In the event of disagreement between the parties to the Arbitration regarding the interpretation of these undertakings, the Arbitral Tribunal may seek the CMA's interpretation of these undertakings before finding in favour of any party to the Arbitration and shall be bound by the interpretation.

### **DECISIONS OF THE ARBITRAL TRIBUNAL**

- 14.16 The Arbitral Tribunal shall decide the dispute on the basis of these undertakings and the Decision. Issues not covered by these undertakings and the Decision shall be decided (in the order as stated) by reference to the Act, English and Welsh law and general principles of common law. The Arbitral Tribunal shall take all decisions by majority vote.
- 14.17 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.
- 14.18 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 these undertakings if asked by the Arbitral Tribunal.

- 14.19 The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by Korean Air in order to comply with these undertakings 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.
- 14.20 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.
- 14.21 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.
- 14.22 Nothing in the Arbitration procedure shall affect the powers of the CMA to take decisions in relation to these undertakings in accordance with its powers under the Act.

## **15 COMPLIANCE**

- 15.1 Korean Air shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 15.2 Korean Air shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
  - (b) investigating potential breaches of the provisions of these undertakings.
- 15.3 Korean Air shall procure that any member of the same Group of Interconnected Bodies Corporate as Korean Air complies with these undertakings as if it had given them and actions and omissions of the

members of the same Group of Interconnected Bodies Corporate as Korean Air shall be attributed to Korean Air for the purposes of these undertakings.

- 15.4 Where any Affiliate of Korean Air is not a member of the same Group of Interconnected Bodies Corporate as Korean Air, Korean Air shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **16 PROVISION OF INFORMATION**

- 16.1 Korean Air shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

## **17 EXTENSION OF TIME LIMITS**

- 17.1 The CMA may, in response to a written request from Korean Air, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

## **18 SERVICE**

- 18.1 Korean Air hereby authorises Slaughter and May, whose address for service is One Bunhill Row, London, EC1Y 8YY, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Korean Air, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 18.2 Unless Korean Air informs the CMA in writing that Slaughter and May has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Korean Air if it is served on Slaughter and May; and service shall be deemed to have been acknowledged by Korean Air if it is acknowledged by Slaughter and May or such other nominee.
- 18.3 Paragraph 18.2 above has effect irrespective of whether, as between Korean Air and Slaughter and May or other nominees, Slaughter and May or other nominees have or continue to have any authority to accept and acknowledge service on Korean Air's or any of its respective Subsidiaries' behalf.

- 18.4 No failure or mistake by Slaughter and May or other nominees (including a failure to notify Korean Air of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 18.5 Any communication from Korean Air to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ or such other person or address as the CMA may direct in writing.

## **19 EFFECT OF INVALIDITY**

- 19.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Korean Air undertakes to continue to observe the remaining provisions.

## **20 GOVERNING LAW**

- 20.1 Korean Air recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 20.2 In the event that a dispute arises concerning these undertakings, Korean Air undertakes to submit to the courts of England and Wales.

## **21 SUNSET CLAUSE**

- 21.1 Subject to paragraph 21.2, the obligation on Korean Air to procure that Slots are made available at LHR and ICN pursuant to paragraph 6 shall apply in respect of twenty (20) full consecutive IATA Seasons starting from completion of the Transaction. Subject to the requirements set out above, one or more Prospective Entrant(s) can thus apply for Slots through the ICN Slot Release Procedure or LHR Slot Release Procedure to commence a Competitive Air Service in IATA Winter Season 2032/2033 as the last IATA Season.
- 21.2 To the extent the Proposed Remedy Taker or Prospective Entrant(s) operate a Competitive Air Service on the London-Seoul City Pair for the Minimum Period, Korean Air is taken to have complied with its obligations under these undertakings and the undertakings will cease to have effect.
- 21.3 After the Sunset Date:

- (a) a Prospective Entrant will no longer be able to commence a Competitive Air Service pursuant to paragraph 6; and
- (b) paragraph 7 will cease to have effect.

21.4 For the avoidance of doubt, paragraphs 21.1 to 21.3 will not affect the validity of the Slot Release Agreements, codeshare agreements, interline agreements (or special prorated agreements), Frequent Flyer Programme agreements, lounge access agreements or ground handling service agreements already entered into operation prior to the Sunset Date. As long as such agreements continue to apply, the provisions in these undertakings that concern those agreements also continue to apply.

21.5 If there are no Slot Release Agreements in operation on the Sunset Date, then these entire undertakings will expire on the Sunset Date.

## **22 TERMINATION**

22.1 Korean Air recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.

22.2 Korean Air recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **23 INTERPRETATION**

23.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

23.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

23.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

23.4 For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Affiliate”** a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

**“Alternative UIs Effective Date”** has the meaning given to it in paragraph 5.2;

**“Answer”** has the meaning given to it in paragraph 14.6;

**“Applicant”** means any airline interested in obtaining Slots from Korean Air in accordance with these undertakings, as defined in paragraph 6.28;

**“Arbitral Institution”** has the meaning given to it in paragraph 14.4;

**“Arbitral Tribunal”** has the meaning given to it in paragraph 14.8;

**“Arbitration”** has the meaning given to it in paragraph 14.1;

**“Asiana”** means Asiana Airlines Inc.;

**“Associated Person”** means a person or persons associated with Korean Air within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“CMA”** means the Competition and Markets Authority or any successor body;

**“Confidential Information”** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

**“Competitive Air Service”** means a non-stop service operated on the Relevant Passenger Route and a belly hold air cargo service operated on Relevant Cargo Routes;

**“Control”** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“Decision”** means the CMA’s decision under section 22 of the Act dated 14 November 2022 in connection with the Transaction;

**“Dispute”** has the meaning given to it in paragraph 14.5;

**“Effective Date”** means the date of the adoption of the Decision;

**“enterprise”** has the meaning given in section 129(1) of the Act;

**“Entry Notification Date”** means the date which is one (1) month before the initial submission deadline (as determined by the General Slot Allocation Procedure) for the relevant IATA Season in which the Target Entry Date falls in accordance with and subject to the conditions of the Framework Agreement;

**“Extended Entry Notification Date”** means the date which is three (3) months before the initial submission deadline (as determined by the General Slot Allocation Procedure) for the relevant IATA Season in which the Extended Target Entry Date falls in accordance with and subject to the conditions of the Framework Agreement;

**“Extended Target Entry Date”** means the later of any date during IATA Summer Season 2025 or the date that is twelve (12) months after closing of the Transaction in accordance with and subject to the conditions of the Framework Agreement;

**“Fast-Track Dispute Resolution Procedure”** has the meaning given to it in paragraph 14.1;

**“Framework Agreement”** means the legally binding framework agreement of 24 February 2023 entered into by Korean Air to facilitate entry onto the London-Seoul City Pair by the Proposed Remedy Taker, on terms approved by the CMA;

**“Frequency”** means a round-trip on the London-Seoul City Pair;

**“Frequent Flyer Programme”** means 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 free 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”** means the slot allocation procedure for ICN or LHR (as applicable) as set out in the IATA Worldwide Airport Slot Guidelines (including participation at the IATA Slot Conference to try to

improve slots and allocation by the slot coordinator from the waitlist following the Slot Handback Deadline);

**“Grandfathering”** has the meaning given to it in paragraph 6.6 and 6.20;

**“Group of Interconnected Bodies Corporate”** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“IATA”** means the International Air Transport Association;

**“IATA Slot Conference”** means 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 Slot Conference for the IATA Winter Season takes place in June, and the one for the IATA Summer Season in November;

**“IATA Season”** means (i) the IATA Summer Season beginning on the last Sunday of March and ending on the Saturday before the last Sunday of October; or (ii) the IATA Winter Season beginning on the last Sunday of October and ending on the Saturday before the last Sunday of March;

**“IATA Slot Request Submission Deadline”** means the date for the request for slots to the slot coordinator referred to as the “Initial Submission Deadline” in the IATA Worldwide Slot Guidelines.

**“ICC”** has the meaning given to it in paragraph 14.4;

**“ICN”** means Incheon International Airport, Seoul, Korea;

**“ICN Misuse”** has the meaning given to it in paragraph 6.9.

**“ICN Slot Release Procedure”** has the meaning given to it in paragraph 6.2;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Key Terms”** means the following terms that shall be included in the Applicant’s formal bid for Slots: timing of the Slot, number of frequencies, and IATA Seasons to be operated (year-round service or seasonal);



**“KFTC”** means the Korea Fair Trade Commission;

**“KFTC Remedies Order”** means the order given by the KFTC on 31 May 2022 imposing measures on the Parties as conditions for approving the Transaction. The order may be amended on or around the completion of the Transaction including to reflect the outcome of the review by competition authorities outside Korea, such as the CMA;

**“KFTC Slot Remedies Procedure”** has the meaning given to it in paragraph 3.2;

**“KFTC Trustee”** means the monitoring committee to be established by the KFTC under the KFTC Remedies Order;

**“Korean Air”** means Korean Air Lines Co., Ltd.;

**“LHR”** means London Heathrow Airport, London, UK;

**“LHR Misuse”** has the meaning given to it in paragraph 6.23;

**“LHR Slot Release Procedure”** has the meaning given to it in paragraphs 6.13 to 6.18;

**“London-Seoul City Pair”** means the city pair consisting of airports in London and Seoul;

**“Miles”** means the credits awarded by an airline to members of its Frequent Flyer Programme. Such credits include standard reward points only and do not include their status points;

**“Minimum Period”** has the meaning given to it in paragraph 3.3(b);

**“MOLIT”** means the Korean Ministry of Land, Infrastructure and Transport;

**“New Air Services Provider”** means an airline, excluding the Proposed Remedy Taker, which commences a Competitive Air Service, in accordance with these undertakings;

**“Notice”** has the meaning given to it in paragraph 14.4;

**“Parties”** means Korean Air and Asiana, each a Party;

**“Proposed Remedy Taker”** means Virgin Atlantic Airways Limited;

**“Prospective Entrant”** means any Applicant that is able to offer a Competitive Air Service and needing a Slot or Slots to be made available by Korean Air in accordance with these undertakings in order to operate a

Competitive Air Service, excluding the Proposed Remedy Taker. For the avoidance of doubt, the Prospective Entrant shall comply with the following requirements:

- (a) it must be independent of and unconnected with the Parties. For the purpose of these undertakings, 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 London-Seoul City Pair in the provision of passenger air transport services, except if this cooperation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis;
- (b) it must have the intention to begin or increase regular non-stop operations on the London-Seoul City Pair; and
- (c) 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;

**"Proposed Remedy Taker Entry End Date"** means the end of IATA Winter Season 2025 / 2026;

**"Relevant Cargo Routes"** means the air cargo services on each of the Europe to Korea route for customers transporting cargo from the UK to Korea and the Korea to Europe route for customers transporting cargo from Korea to the UK;

**"Relevant Passenger Route"** means air passenger services on the London-Seoul route (consisting of airports in London and Seoul);

**"Relevant Routes"** means the Relevant Passenger Route and Relevant Cargo Routes;

**"Request"** has the meaning given to it in paragraph 14.2;

**"Requesting Party"** has the meaning given to it in paragraph 14.2;

**"Rules"** has the meaning given to it in paragraph 14.9;

**"Russia Overflight Condition"** means that formal confirmation has been given by competent authorities that the Russian airspace will be open to UK carriers during the course of IATA Summer Season 2024;

**“Share Subscription Agreement”** means the binding agreement entered into by Korean Air, pursuant to which it will subscribe for shares in Asiana representing 63.88% of the total issued and outstanding stock of Asiana;

**“SkyTeam Airline Alliance”** refers to the alliance of 19 airlines in Europe, America and Asia.

**“Slot”** means the permission (as defined by clause 1.6.1 of the IATA Worldwide Airport Slot Guidelines as amended) for an aircraft operator to land and take-off on a specific date and time in order to operate an air service at the airport, to be used in combination with the full range of airport infrastructure parking and access to gates at the airport that are necessary to operate such service;

**“Slot Handback Deadline”** means 15 January for the IATA Summer Season and 15 August for the IATA Winter Season;

**“Slot Release Agreement”** means an agreement between Korean Air and a Prospective Entrant that provides for the exchange of Slot(s) at LHR with the Prospective Entrant;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**“Sunset Date”** means the last day of IATA Winter Season 2032/2033;

**“Target Entry Date”** means the later of any date during IATA Summer Season 2024 or the date that is twelve (12) months after closing of the Transaction, as further provided for in the Framework Agreement;

**“Terms of Reference”** has the meaning given to it in paragraph 14.11;

**“Time Window”** means the period of sixty (60) minutes either side of the Slot time requested by the Prospective Entrant;

**“the Transaction”** means Korean Air’s expected completion of the acquisition of 63.88% of Asiana by way of a Share Subscription Agreement;

**“Trustee”** means the person appointed pursuant to paragraph 8.3, paragraph 8.4 or paragraph 8.6 to carry out the Trustee Functions;

**“Trustee Functions”** means the functions set out in paragraph 8;

**“Trustee Proposal”** has the meaning given to it in paragraph 14.3;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

unless the context requires otherwise, the singular shall include the plural and vice versa.

**FOR AND ON BEHALF OF KOREAN AIR**

Signature

Name

Title

Date

**DATE ACCEPTED BY THE CMA:**

**Signed by Korean Air and accepted by the CMA on 1 March 2023**