



## COMPETITION APPEAL TRIBUNAL

### SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

#### CASE No. 1219/4/8/13

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Rules”), the Registrar gives notice of the receipt on 23 September 2013 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”), by Ryanair Holdings plc (“Ryanair”) of Ryanair Corporate Headquarters, Dublin Airport, Co. Dublin, Ireland against a decision dated 28 August 2013 made by the Competition Commission (the “Commission”) titled “A report on the completed acquisition by Ryanair Holdings plc of a minority shareholding in Aer Lingus Group plc” (the “Decision”). Ryanair is represented by Cleary Gottlieb Steen & Hamilton LLP of City Place House, 55 Basinghall Street, London, EC2V 5EH (ref: Nicholas Levy / Paul Gilbert).

By its Decision, the Commission concluded that Ryanair’s acquisition of a 29.82% shareholding in Aer Lingus plc (“Aer Lingus”) had led or may be expected to lead to a significant lessening of competition (“SLC”) in the markets for air passenger services between Great Britain and Ireland. In order to remedy the SLC, the Commission concluded that it should require Ryanair to reduce its shareholding in Aer Lingus to 5% of Aer Lingus’ issued ordinary shares, such divestiture to be accompanied by obligations on Ryanair not to seek or accept board representation or acquire further shares in Aer Lingus (unless clearance is given under the EU Merger Regulation for a concentration between Ryanair and Aer Lingus). Further, a divestiture trustee should be appointed from the outset to sell the divestiture package to suitable purchasers in an agreed time period.

In summary, the principal grounds of review on which Ryanair relies are that:

1. The Commission’s decision to require a divestiture is contrary to the EU duty of sincere cooperation in circumstances where the European Commission may yet decide, if Ryanair succeeds in its appeal from the European Commission’s 27 February 2013 decision prohibiting the then-proposed merger between Ryanair and Aer Lingus, that Ryanair is entitled to acquire all of the shares in Aer Lingus.
2. The Commission’s procedure was unfair, in that the Commission’s case relies upon evidence and allegations that have been kept secret from Ryanair. In particular, the Commission withheld evidence that it relies upon to establish that, absent Ryanair’s minority shareholding, other airlines would have or would in the foreseeable future enter into combinations with Aer Lingus.
3. The Commission erred in law in failing to show a causal link between the acquisition by Ryanair of material influence over Aer Lingus’ policy and the finding of an SLC. Instead, the Commission proceeded by asking itself firstly whether Ryanair’s minority stake gave rise to material influence; and secondly whether Ryanair’s minority stake has resulted or may be expected to result in an SLC. In answering that second question the Commission relied on several ways in which the minority stake may result in an SLC but which have nothing to do with the alleged material influence identified in answer to the first question.
4. The Commission’s finding that the alleged material influence has led or will lead to an SLC is unsupported by the evidence and unreasonable. In particular, the Commission has argued that the alleged material influence could influence Aer Lingus’ commercial policy and strategy in certain ways. However, the Commission has failed to conduct a proper analysis of the various scenarios which it posits. In some cases, it is very unlikely that the underlying factual scenario will ever arise. In some, the evidence does not disclose that Ryanair’s material influence would make any difference

to the result. And in some cases, the Commission has failed properly to demonstrate that an SLC would result.

5. The divestment remedy and the immediate appointment of a divestiture trustee are disproportionate, in particular in light of Ryanair's willingness to offer effective but less intrusive undertakings.
6. The Commission does not have jurisdiction to impose requirements on Ryanair, an Irish company which does not carry on business in the UK, to do things or to refrain from doing things outside of the UK.

According to the notice of application, the relief sought by Ryanair will depend upon which of the above grounds are upheld, and for what reasons. Accordingly, Ryanair invites the Tribunal to make the following orders:

1. If Ground 1 is upheld, the appropriate relief would be an order quashing the decision to impose a divestiture order without first waiting for the outcome of the EU procedure.
2. If Ground 2 is upheld, the appropriate relief would be an order quashing the Commission's entire report.
3. If Grounds 3 or 4 are upheld, the appropriate relief would be an order quashing the SLC finding and the proposed remedies.
4. If Ground 5 is upheld, the appropriate relief would be an order quashing the divestiture order, and/or an order quashing the decision to impose a divestiture order without first waiting for the outcome of the EU procedure, and/or an order quashing the decision to appoint a divestiture trustee.
5. If Ground 6 is upheld, the appropriate relief would be an order quashing the Commission's decision to impose a remedy on Ryanair.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules. Pursuant to the Order of the Chairman abridging time for applying for permission to intervene (made 24 September 2013), any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received **no later than 12 noon on 9 October 2013**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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