



## COMPETITION APPEAL TRIBUNAL

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

#### CASE No. 1239/4/12/15

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 18 June 2015 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”), by Ryanair Holdings plc (“Ryanair”) of Ryanair Dublin Office, Airside Business Park, Swords, County Dublin, Ireland against a decision dated 11 June 2015 made by the Competition and Markets Authority (the “CMA”) titled “Ryanair/Aer Lingus Merger Inquiry, Final Decision on possible material change of circumstances” (the “Decision”) and an order dated 11 June 2015 made by the CMA titled “The Ryanair Holdings plc Inquiry Order 2015” (the “Final Order”). Ryanair is represented by Cleary Gottlieb Steen & Hamilton LLP of City Place House, 55 Basinghall Street, London, EC2V 5EH (ref: Nicholas Levy / Paul Gilbert).

In its Decision, the CMA concluded that the public takeover bid for Aer Lingus by International Airlines Group (“IAG”) that is in progress was not a material change in circumstances since the preparation of its report dated 28 August 2013 on the completed acquisition by Ryanair of a minority shareholding in Aer Lingus Group plc (the “Report”) that required it to consider remedial action different from that set out in the Report (the “MCC Decision”). The CMA therefore decided to proceed with the implementation of the remedial action identified in the Report. The Final Order required the appointment of a divestiture trustee to sell all but 5% of Ryanair’s shareholding in Aer Lingus.

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

1. The MCC Decision and the decision to impose a Final Order are unlawful. In reaching those decisions, the CMA misconstrued and misapplied the legal test under section 41(2) of the Act. In particular, section 41(2) requires the CMA to take a fresh decision on remedies having regard to the considerations set out in section 41(4), including an assessment of proportionality, which the CMA failed to do.
2. The MCC Decision is irrational: it is inconceivable that a reasonable competition authority could fail to conclude that there had been a material change in circumstances when the very thing it predicted would not happen (a bid for Aer Lingus), and which was critical to its original assessment, has in fact taken place.
3. The CMA’s decision to impose a Final Order is unreasonable, disproportionate and in breach of Ryanair’s legitimate expectation that no order would be imposed while its appeal of the Report remains unresolved (an application for permission to appeal is pending before the Supreme Court); alternatively it is in breach of Ryanair’s legitimate expectation that the CMA would consult Ryanair and would conscientiously consider its representations before imposing the Final Order while Ryanair’s appeal was unresolved.

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 and/or Ground 2 is upheld, the appropriate relief would be an order quashing the MCC Decision and the decision to impose a Final Order.

2. If Ground 3 is upheld, the appropriate relief would be an order quashing the decision to impose the Final Order until Ryanair's appeal of the Report has been determined.

In addition to the final relief sought, Ryanair applies to the Tribunal for an order pursuant to Rule 61 of the Rules to suspend the CMA's Final Order pending determination of this application. According to the application, the Final Order, if implemented, would bring about the divestment of substantially all of Ryanair's shareholding in Aer Lingus. Ryanair contends that if it were to be deprived of its shares during the currency of the present proceedings, the proceedings would be rendered sterile and devoid of purpose; the shares could not be recovered once they had been sold.

Any person who considers they have 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 on 19 June 2015), 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 23 June 2015**.

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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