Case No COMP/M.4439 – Ryanair / Aer Lingus

Only the English text is authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8 (3)
Date: 27/06/2007

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/06/2007
C(2007) 3104

PUBLIC VERSION

COMMISSION DECISION

of 27/06/2007

declaring a concentration to be incompatible with the common market and the EEA Agreement

(Case No COMP/M.4439 – Ryanair / Aer Lingus)

(Only the English text is authentic)

(Text with EEA relevance)

Commission Decision

of 27/06/2007

declaring a concentration to be incompatible with the common market

and the EEA Agreement

(Case No COMP/M.4439 – Ryanair / Aer Lingus)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(3) thereof,

Having regard to the Commission's decision of 20 December 2006 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case[3],

WHEREAS:

1. INTRODUCTION

1. On 30 October 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Ryanair Holdings Plc ("Ryanair", Ireland), acquires within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking Aer Lingus Group Plc ("Aer Lingus", Ireland), by way of public bid announced on 23 October 2006.

2. After its initial examination of the notification, the Commission concluded that the concentration fell within the scope of the Merger Regulation and, even taking into account commitments offered by Ryanair on 19 November 2006 as modified on 14 December

1 OJ L 24, 29.1.2004, p. 1.
2 OJ C ...,...200. , p....
3 OJ C ...,...200. , p....

2006, raised serious doubts as to its compatibility with the common market and with the EEA Agreement. It therefore decided on 20 December 2006 to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

3. In the interest of the investigation and with the agreement of Ryanair, the deadline for the decision in this case was extended by 20 working days on 22 February 2007, pursuant to Article 10(3), second subparagraph, of the Merger Regulation.

4. On 27 March 2007, a Statement of Objections was sent to Ryanair pursuant to Article 18 of the Merger Regulation.

5. On 17 April and 3 May 2007, Ryanair offered further commitments with a view to rendering the proposed concentration compatible with the common market.

6. The Advisory Committee discussed a draft of this Decision on 11 June 2007.

2. THE PARTIES

7. *Ryanair* is an airline offering point-to-point scheduled air transport services on more than 400 routes across 24 European countries. Ryanair operates more than 75 routes between Ireland (mainly Dublin, but also Shannon, Cork, Kerry and Knock) and other European countries. The company has a fleet of 120 aircraft (with firm order of 161 new aircraft to be delivered over the next six years)[4] and currently 20 bases across Europe, the most important ones being London-Stansted and Dublin. Ryanair is not a member of an airline alliance and does not have interlining agreements[5] with any other airline. It is an Irish public limited company listed on the Dublin, London and New York (NASDAQ) stock exchanges.

8. *Aer Lingus* is an Irish-based airline. As a publicly listed company, Aer Lingus offers essentially point-to point scheduled air transport services on more than 70 routes connecting the Irish airports of Dublin, Shannon and Cork with a number of European destinations. In addition, Aer Lingus offers long-haul flights, mainly to the United States, and cargo transport services. Aer Lingus is based principally at Dublin Airport (and to a smaller extent in Cork and Shannon) with a total fleet of currently 28 short-haul and 7 long-haul aircraft (and a further 4 short-haul and 2 long-haul aircraft on firm orders to be delivered by the end of 2007). Aer Lingus was previously a member of the OneWorld alliance but has terminated the membership and left the alliance as of April 2007.

9. Ryanair and Aer Lingus are referred to together as "the Merging Parties" in this Decision.

3. CONCENTRATION

10. The proposed transaction concerns an acquisition of sole control by Ryanair of Aer Lingus by way of a public bid for all outstanding shares not already acquired. Ryanair started to acquire a substantial number of shares of Aer Lingus on 27 September 2006. Ryanair acquired 43.7 million shares on 27 September 2006, 25.05 million shares on 28 September 2006, 8.3million

---

4 See: http://www.ryanair.com/site/EN/about.php?page=About&sec=fleet.

5 Interlining agreements allow airlines to combine their own flights with flights from other airlines in order to offer enlarge their portfolio of destinations. See in detail below.

shares on 29 September 2006, 7.775 million shares on 4 October 2006 and 16.56 million shares on 5 October 2006. These shares amounted to 19.16% of the share capital of Aer Lingus.

11. On 5 October Ryanair announced a public bid for the entire share capital of Aer Lingus. The offer document was sent to Aer Lingus shareholders on 23 October 2006 with a deadline for acceptance of 13 November 2006, which was subsequently extended by Ryanair first until 4 December 2006 and then until 22 December 2006. During the bid period, Ryanair acquired further shares of Aer Lingus and, by 28 November 2006, held 25.17% of the share capital in Aer Lingus. Ryanair has confirmed that its acquisition of shares in Aer Lingus since 26 September 2006 was part of its plan to acquire control of Aer Lingus[6].

12. As Ryanair acquired the first 19% of the share capital of Aer Lingus within a period of less than 10 days before launching the public bid, and the further 6% shortly thereafter, and in view of Ryanair's explanations of the economic purpose it pursued at the time it concluded the transactions, the entire operation comprising the acquisition of shares before and during the public bid period as well as the public bid itself is considered to constitute a single concentration within the meaning of Article 3 of the Merger Regulation.

4. COMMUNITY DIMENSION

13. In its decision of 20 December 2006 pursuant to Article 6(1)(c) of the Merger Regulation the Commission concluded that the notified concentration has a Community dimension pursuant to Article 1(3) of the Merger Regulation. For the sake of clarity, the arguments used in that decision are recalled in this section..

14. The concentration does not have a Community dimension within the meaning of Article 1(2) of the Merger Regulation since the combined aggregate worldwide turnover of Ryanair and Aer Lingus is less than EUR 5 000 million[7]. It therefore needs to be assessed whether the concentration has a Community dimension within the meaning of Article 1(3) of the Merger Regulation.

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million[8] and both Ryanair and Aer Lingus have a Community-wide turnover in excess of EUR 100 million[9]. The conditions of Article 1(3)(a) and (d) of the Merger Regulation are therefore met. Furthermore, it is clear that Ryanair and Aer Lingus do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Whether or not both Ryanair and Aer Lingus achieve a combined aggregate turnover of more than EUR 100 million in at least three Member States and each of them achieves at least EUR 25 million in these Member States, as required under Article 1 (3) (b) and (c) of the Merger Regulation, depends on the geographical allocation of the turnover of these undertakings.

---

6 See e-mail of Ryanair (A&L Goodbody) of 19.12.2006, folio no. 9861, and paragraph 866 of Ryanair's response to the Statement of Objections.

7 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C66, 2.3.1998, p. 25). Hereinafter referred to as "the Notice on the calculation of turnover".

8 Ryanair EUR 1,692 million, Aer Lingus EUR 883 million. […]*

9 Ryanair EUR [...]*, Aer Lingus above […]* EUR.

16. Article 5(1) of the Merger Regulation provides, with regard to geographic allocation of turnover: "*Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.*"

17. The aim of the turnover-based thresholds is to provide a simple and objective mechanism that can be easily handled by the companies involved in a merger in order to determine if their transaction has a Community dimension and is therefore notifiable[10]. At the same time, the calculation of turnover should reflect as accurately as possible the economic strength of the undertakings involved in a transaction in the Member State concerned[11]. The Notice on the calculation of turnover presumes that, in general, the geographical allocation of turnover is determined by the location of the customer at the time of the transaction (paragraphs 45 et seq.). In particular, paragraph 46 of the Notice presumes that this will correspond, for practical purposes, to the place of provision of services.

18. In previous airline cases[12], the Commission identified the following three possibilities for geographical allocation of turnover:

    (1) to allocate revenue from individual routes to the country of destination (this option was specifically mentioned in some cases for transatlantic routes[13] and was abandoned in the later decisions not involving transatlantic routes such as M.616 – Swissair /Sabena (II), M.857 – British Airways/Air Liberté and others; therefore it is listed only for completeness sake but will not be discussed further below);

    (2) to allocate the turnover in a 50%/50% ratio to the country of origin and the country of final destination so as to take into account the cross border character of the service provided ("50/50 method");

    (3) to allocate the turnover to the country where the ticket sale occurred (referred to also as "point of sale method").

19. As previous transactions had a Community dimension under all possible methods, the Commission left open which one would be the most appropriate one. It must be noted that most of the decisions pre-dated the Notice on the calculation of turnover.

20. Ryanair has notified the merger to the Commission in the belief that it has a Community dimension on the basis of the so called 50/50 methodology. It stresses that this methodology was used by the Commission in a number of previous decisions and that it is the appropriate method to be used in this case, given the cross-border character of the routes where the activities of Ryanair and Aer Lingus may overlap. Further, they argue that it is more in line with the industry practice as Ryanair itself monitors the national turnover on a 50/50 basis for its accounting and operational purposes. Ryanair also considers this methodology as sufficiently simple and easy to use without necessity of complex calculations.

---

10 See paragraph 5 of the Notice on the calculation of turnover; CFI judgment in the case T-417/05 – *Endesa v. Commission,* of 14 July 2006.

11 See paragraph 7 of the Notice on the calculation of turnover.

12 See the Commission decisions in cases M.130 – Delta Airlines/PanAm, M.157 - Air France/Sabena, M.259 British Airways/TAT, M.616 – Swissair/Sabena (II), M.857 – British Airways/Air Liberté, M.1354 – SAirGroup/LTU, M.1494 – Sair Group/AOM.

13 E.g. the Commission decision in case M.130 – Delta Airlines/PanAm.

21. Aer Lingus, on the other hand, submits that the merger does not have a Community dimension on the basis that the turnover is allocated to the place of departure of the customer. It argues that the general rule for geographic allocation of turnover according to Article 5(1) of the Merger Regulation and the Notice on the calculation of turnover is to allocate the turnover to that Member States where the customer is located. Taking into account the fact that a vast majority of tickets is sold by Aer Lingus via the Internet[14], Aer Lingus is not able to identify the location of the customer at the moment of the sale of the ticket. Therefore, as it is not practically possible to use the location of customer at the time of sale, Aer Lingus rather allocates the revenue to the Member State where the place of departure of the journey is located as it reflects the location of the customer at the moment at which the provision of the service commences. Aer Lingus also refers in this respect to paragraph 170 of the Draft Consolidated Jurisdictional Notice[15]. Aer Lingus further argues that under this place of departure methodology, return tickets are to be treated as having only one place of departure, namely the place where the first leg of the journey started. Although Aer Lingus does not sell traditional return tickets in which both legs of a journey are combined in a single ticket for a specific price, they argue that the return ticket is a service sold together with the outbound ticket in one place and therefore the revenue from both the outbound and inbound leg of the journey should be allocated to the original place of departure and not split for the two legs of the journey. According to the turnover data submitted under this methodology, Aer Lingus would have turnover in excess of EUR 25 million only in two Member States[16] and therefore the transaction would not have a Community dimension.

22. The Commission observes that neither Ryanair nor Aer Lingus is relying on the point of sale methodology mentioned in past cases. This method is also increasingly difficult to apply in the air transport sector, given the constantly growing shares of direct Internet sales (in particular in case of point-to-point, low-cost airlines such as Ryanair and, to a large extent, Aer Lingus with the majority of tickets sold over the Internet[17]). The absence of a physical transaction at a brick-and-mortar airline counter or travel agent makes it more difficult to physically locate customers purchasing tickets. Further, as the customer could buy the ticket on the Internet from practically any place in the world, this information would, even if available, not necessarily support the assumption of the Notice on the calculation of turnover that the location of customers when purchasing services will normally reflect where the parties to the transaction provide their services and the economic strength of the parties in a specific Member State. Both Aer Lingus and Ryanair have confirmed that they are not in a position to allocate their revenue on the basis of the location of the customer as they do not track the addresses or locations of customers at the time of sale. Therefore, the point of sale principle cannot serve as a methodology in the context of the current transaction.

23. The 50/50 method proposed by Ryanair has been accepted as a possible approach in a number of past cases and seems, as noted in M.157 – Air France / Sabena, close to the

---

14 According to Aer Lingus, [70-80%]* of all its intra EC tickets in the period November 2005 – October 2006 was sold over the Internet.

15 Draft Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, published on 28.9.2006, available at the Commission website: http://ec.europa.eu/comm/competition/mergers/legislation/jn.pdf.

16 Turnover of Aer Lingus allocated according to this methodology would exceed EUR 25 million only in Ireland (EUR […]*) and the United Kingdom (EUR […]*). The third largest national turnover within the Community amounting to EUR […]* would be generated in […]*.

17 Ryanair currently sells around [90-100]*% of tickets via Internet while Aer Lingus around [70-80%]*.

spirit of the Merger Regulation since it takes into account the two places between which the service is actually provided, reflecting the cross-border character of the service in question. This method also provides a simple and clear criterion, and in this respect appears therefore in line with the very purpose of the system of thresholds of the Merger Regulation, that is, to provide a simple and efficient method to determine the authority that is competent to review a merger.[18] Finally, the 50/50 method appears not to be contrary to the Notice on the calculation of turnover, to the extent that the basic principle of the Notice, that is to say, the location of customer at the time of the transaction, cannot be applied in a meaningful way in the case at hand, taking into account the difficulty of establishing that location and the very specific nature of scheduled air transport services.

24. Aer Lingus argues that considering the nature of the service provided, the relevant methodology in the air transport industry is to allocate the revenue from a flight to the Member State where the place of departure of the flight is located (place of departure methodology). It submits that this methodology reflects the wording of Article 5 of the Merger Regulation, does not contradict the Notice on the calculation of turnover and is proposed as a possible appropriate methodology by the Commission in the recently published Draft Consolidated Jurisdictional Notice[19].

25. As indicated above in paragraph 16, Article 5(1) of the Merger Regulation refers to the Member State where the *service is provided*. The place of departure seems to be a good proxy for determining where the service is provided as it is clear that at the commencement of the provision of the service, the customer is indeed located at the place of departure. In circumstances where the conditions of purchase are unlikely to be influenced by the place at which the customer conducts the transaction, the allocation of the turnover to the place of departure may also be said to reflect, in principle, where the airlines compete for customers to provide their services and corresponds to the economic strength of the airline in a certain Member State.[20] Further, the place of departure is simple to identify for each journey and customer, which is an important factor for the determination of jurisdiction, thereby ensuring legal certainty. This is particularly important in circumstances where the location of the customer at the time of sale cannot be identified and where satisfaction of certain of the subsidiary criteria identified in paragraph 46 of the Notice on calculation of turnover (where a deal was made, where the turnover for the supplier in question was generated) is equally difficult to determine.

26. For these reasons, the argument that the place of departure principle may be an appropriate basis for geographic allocation of turnover in the case of air transport would appear to be in line with Article 5(1) of the Merger Regulation and with the underlying approach of the Notice on calculation of turnover, having regard also to the evolution of business practices

---

18 Case T-417/05 *Endesa* v *Commission* judgment of 14 July 2006.

19 The Draft Consolidated Jurisdictional Notice published on 28 September 2006 states in paragraph 170: "*Air transport cases fall outside the categories set out above as the service consists in enabling the customer to travel. The turnover generated by air transport is to be attributed to the location of the customer at the moment at which provision of the service commences, i.e. the place of departure. This is normally the country where the ticket was bought*."

20 See the third subsidiary criterion mentioned in paragraph 46 of the Notice on calculation of turnover. This observation relates solely to the identification, for a whole category of cases and for the sole purposes of determining the geographical allocation of turnover, of the place where a given notifying party could be thought likely to face competition to provide services to customers departing from a given airport. It is without prejudice to the definition of markets for the purposes of the competitive assessment, which depends on a concrete examination of the circumstances of each individual case.

in the airline sector and, in particular, in the case of the two undertakings concerned by the concentration in this case[21].

27. The application of the place of departure principle would also raise questions about how the tickets for *roundtrips* bought at the same time should be treated. Such tickets, on the one hand, could be treated as “one service” with only one place of departure; then the total revenue from the return ticket should be allocated to one country, namely that where the place of departure of the original outbound flight is located. On the other hand, such tickets could be split and treated separately as two flights from different places of departure, with the distinct revenue from each leg of the journey being allocated to the country from which that leg departed.

28. In order to resolve this issue, the practice of Aer Lingus and Ryanair needs to be examined to determine whether, if the place-of-departure methodology were to be applied, the return tickets sold by these two airlines could be regarded as constituting a single service or rather as two separate services, each commencing at a different place of departure. The examination of this issue shows that neither Ryanair nor Aer Lingus sells "traditional" return tickets, whereby a return flight "bundle" is more advantageous than two one-way flights. On the contrary, they both sell one-way tickets, together or separately as the case may be, and simply sum up their individual prices in the case of simultaneous booking of tickets comprising a round trip, without any price or other advantages for the customer buying the tickets for such a round trip. Therefore, these are not "traditional" return tickets but rather two one-way tickets bought simultaneously in one transaction for a round trip. The customer, however, always has the possibility to buy such tickets in two different transactions without being penalised, including the possibility to buy the outbound ticket with one airline and the inbound ticket with another airline depending on the most advantageous price for each leg of the roundtrip. For the purposes of the turnover-allocation process, it could therefore be assumed that, in principle, the airlines compete with each other for each leg of the journey and not on the sale of round trip tickets. This argument would be supported by the fact that the customer is in a position, in the case of the predominant Internet sales, easily to compare the prices of the individual one-way flights and decide to fly with two different airlines if this is more attractive.

29. From the above, it can be argued that the airlines in this case provide two connected but distinct services, one provided at the place of departure of the outbound flight and the other at the place of departure of the inbound flight. In this situation, to the extent that it is concluded that the place of departure methodology should be applied, it would appear most appropriate, at least given the nature of the business activities of the undertakings concerned by the present concentration, to split the two one-way flights of a round trip. Therefore, the place-of-departure methodology as proposed by Aer Lingus must be rejected insofar as it applies the rule foreseen for return tickets also to the (simultaneous) purchase of two single tickets.

30. Therefore, it is concluded that, of the possible alternative methodologies for geographic allocation of turnover in respect of transactions for which the location of the customer at the time of purchase cannot be identified and cannot affect the conditions of such purchase, in particular the 50/50 methodology, as well as the methodology based on place

---

21 Aer Lingus cannot rely on the Draft Consolidated Jurisdictional Notice, which has not been formally adopted by the Commission yet.

of departure with splitting the two one-way flights of a round trip tickets bought at the same time, seem to be the most appropriate, especially in the case of point-to-point airlines such as Ryanair or Aer Lingus[22].

31. Under the place of departure methodology with splitting the two one-way flights of a round trip, the turnover of both Ryanair and Aer Lingus exceeds EUR 25 million at least in three Member States (Ireland, the United Kingdom and Spain) whereas the combined turnover of these two airlines in those three Member States exceeds EUR 100 million[23]. Further, the relevant thresholds would also be exceeded in these three Member States if the 50/50 methodology were to be used[24]. It is therefore not necessary in this case to decide which of these two possible methodologies is the more appropriate.

32. The notified operation therefore has a Community dimension pursuant to Article 1(3) of the Merger Regulation.

5. INVESTIGATION OF THE CASE

33. Given the complexity of the case, the Commission has sought to make use of all available means of investigation pursuant to Article 11 of the Merger Regulation. It has not only analysed questionnaires which were sent inter alia to competing scheduled airlines, charter airlines, airports and (corporate) customers but also other written and oral contacts with these and other third parties such as slot coordination authorities, civil aviation authorities and transport authorities.

34. Further, in view of the various economic and econometric submissions, in particular by the Merging Parties, the Commission has decided to address these submissions to the extent possible within the constraints (in particular timing) of a merger investigation. The Commission has reviewed the submitted data by generating descriptive statistics to better understand the factors affecting competition in the affected markets. It then conducted two sets of regression analysis, one based on comparisons of fares across routes (the "cross-section" analysis, Annex IV) and an assessment of price variations over time and across routes (the "fixed-effects" analysis, Annex IV). The objective in both cases was to identify the level of competitive constraints exercised between the Merging Parties as well as by their competitors. Further, a price correlation analysis for individual airport pairs and city pairs provided input in particular for the market definition section (see for further details Annex IV).

35. The Commission also had to cope with a specific problem concerning the gathering of relevant evidence in this case: although the transaction is likely to have an effect on more than 14 million passengers travelling with the Merging Parties' airlines, these are largely individual customers[25] that could not be contacted by the Commission by way of the

---

22 It should be noted that this does not prejudge the conclusion on whether it would be necessary to split return tickets also in case of more traditional network carriers selling the traditional return tickets under more advantageous conditions than two one-way tickets.

23 Ireland (Ryanair EUR [...]*, Aer Lingus around EUR […]*), the United Kingdom (Ryanair EUR [...]*, Aer Lingus EUR […]*), Spain (Ryanair EUR [...]*, Aer Lingus EUR […]*).

24 Ireland (Ryanair EUR [...]*, Aer Lingus EUR […]*), the United Kingdom (Ryanair EUR [...]*, Aer Lingus EUR […]*), Spain (Ryanair EUR [...]*, Aer Lingus EUR […]*).

25 As opposed to corporate customers which can be contacted via the respective corporations. The Merging Parties sell a large majority of their tickets over the internet and the share of corporate customers in total sales is limited.

classic investigative techniques (questionnaires, telephone interviews) in a meaningful way.

36. Although the Commission tried to have a representative view of the affected customers by contacting large corporations (including Aer Lingus' largest customers) in Phase I of the investigation, the responses showed that the replies of these "business customers" could only to a limited extent be regarded as representative of the preferences of the customers affected by this merger of two "low-frills" airlines. Indeed, corporate customers are by nature business customers and are likely to be more time-sensitive and less price-sensitive than the average "low-frills" customer[26]. Due to their specific needs, corporate customers are also less appropriate as a source of information on how and on the basis of which parameters Ryanair's and Aer Lingus' "typical" (low-frills) customers choose an airline. The Commission therefore assigned an independent consultant to carry out a Customer Survey at Dublin Airport to obtain a representative sample of responses from customers who departed from Dublin. The questions were sent to Ryanair and Aer Lingus for consultation before the Customer Survey was carried out during ten days in the month of February. The results of the Customer Survey cover 12 of the 35 overlap routes (that is to say, routes on which Aer Lingus and Ryanair both provide services), representing different characteristic types of all the overlap routes. Details of the survey and tables which contain the main results are set out in Annex I.

37. Ryanair has, notably in its response to the Statement of Objections, criticised the Commission's method of fact-finding in the present case. It has not only questioned the results of the Customer Survey[27], but is also of the view that the Commission quoted "selectively" from the results of the market investigation.

38. In this context it is important to stress that the Commission's assessment of the competitive impact of this transaction involves a complex legal and economic analysis, the result of which is not based only on certain parts of the collected evidence, but on the totality of all the available evidence. The fact that single pieces of evidence (answers to questions, result of econometric studies[28]) may not support a certain conclusion, cannot as such put into question the Commission's assessment, since the Commission cannot base its decision on one single piece of evidence, but must collect as many pieces of evidence as possible, analyse all available facts and opinions and weigh all the available evidence when deciding on the compatibility of a transaction with the common market.

39. In particular with a view to written questionnaires, it is important to note that the Commission's market investigation is by no means an "opinion poll". For instance, the fact that the majority of answering third parties may have a certain opinion can only be an indication for the Commission's own investigation. Nor is the Commission required to carry out a "representative" customer poll within the limited timeframe of a merger procedure and under the constraints of often narrow markets with third parties who are often reluctant to provide an answer[29]. Nor would it be appropriate to assume that the answers to the Commission's questionnaires can always be regarded as an objective and

---

26 See also Annex I, answers to question 9 and 3 of the Customer Survey.

27 See for a more detailed discussion of the criticism Section 7.3.5 and Annex I.

28 See e.g. Ryanair's quotes of single third party replies to the Commission's market investigation or the market test of the remedies in Ryanair's response to the Statement of Objections.

29 It should be noted that the number of customers who have been contacted and whose answer has been analysed in the Customer Survey carried out on behalf of the Commission is largest number of third parties the Commission has ever contacted in a merger investigation.

well-reflected response to the respective question. As Ryanair itself notes[30], the knowledge of the respondent on the subject matter can vary, he can have misunderstood the question, he can be more or less representative, and the answer can also be "biased" in order to influence the Commission's decision-making process[31]. Like in any other merger investigation, the Commission has therefore carefully analysed, interpreted and weighed all answers to the market investigation. The quotes from customers selected by Ryanair in its response to the Statement of Objections are indeed part of the large number of statements from third parties in this procedure. However, the Commission believes that the few selected quotes are neither representative of the majority of the answering customers, nor do they give a meaningful picture of the result of the Commission's market investigation.

40. In this respect it is important to stress that the Commission's market investigation is an on-going process, in the course of which the Commission usually refines and narrows down the issues it analyses[32] and uses the opportunity to clarify unclear and contradictory answers with third parties[33]. In the present case, for example, the Commission has tried to take into account the views of as many actual and potential competitors as possible. The Commission has therefore not only sent various written questionnaires to these competitors, but has also carried out detailed interviews with the most important competitors in order to clarify unclear answers and contradictions from the written responses and to learn more about some key facts of the case (for example, entry barriers). The minutes that were taken of these interviews were sent to the interviewees in order to give them the opportunity to correct them (and to delete business secrets) before they were added to the case file[34].

6. RELEVANT MARKETS

6.1. Introduction

41. Ryanair's and Aer Lingus' activities overlap in the field of *supply of scheduled passenger air transport services* within the European Economic Area. A large number of airlines[35] are currently offering such services within the EEA. However, these airlines form a heterogeneous group, with significant differences between each airline. Differences

---

30 See page 36 of the Ryanair's Response to the Statement of Objections: "Detailed examination of the responses makes clear that respondents often did not understand the questions with many contradictory answers".

31 The Commission analyses in particular answers by *competitors* very carefully, since they may have an interest to make the transaction of their competitors more difficult, in particular in the framework of a contested bid. However, in the present case many airlines were not directly affected by the merger, and other airlines indicated even that they would welcome the merger since they were generally in favour of airline consolidation. Indeed, since a number of airlines have just undergone merger control procedures at the occasion of national or European mergers, carriers interested in future acquisition might be rather interested to avoid the view that airline consolidation could have negative aspects.

32 For example, the first questionnaires to competitors and corporate customers were made on the assumption that it may be relevant to define separate markets for so-called time-sensitive and non-time-sensitive passengers in this case, see Section 6.8 below.

33 In its Response to the Statement of Objections, Ryanair quotes predominantly from questionnaires in Phase I and largely ignores the more detailed "follow-up" questionnaires and minutes with the respective third parties.

34 In case of unclear or contradicting answers, the Commission has attached greater weight to the later detailed conversation than to the previous written answer.

35 Also referred to as "carriers" in this decision.

between carriers relate mainly to (i) the operating model of the respective airline (in principle hub & spoke or "network" carriers as opposed to point-to-point models) and (ii) the level of service that is offered to passengers (full service as opposed to low-frills model).

6.1.1. Operating model

42. Certain carriers, usually referred to as "network carriers", operate a so-called "hub-and-spoke" system. Network carriers direct ("feed") traffic into their specific hub airport(s), from where they disperse the passengers via connections to numerous other destinations (often long haul destinations). By directing passengers through their hubs, network carriers can ensure a connection from every origin to every destination ("network") with a limited number of routes[36] and can fill their aircraft more easily. On the other hand, a hub-and-spoke network requires a significant level of co-ordination and harmonisation of schedules of the "feeder" and the respective (long-haul) services at the hub airport. Hub-and-spoke operations are characterised by a succession throughout the day of waves of incoming aircrafts (which bring connecting passengers (and cargo) onto the hub airport), followed by waves of departing aircrafts with sufficient time in between the two to allow passengers (and cargo) to connect. Between an incoming and an outgoing wave, there are usually few departures or arrivals. This makes the hub-and-spoke airline operating model more inflexible and complex than a simple point-to-point connection, where no connection has to be taken into account. Network carriers normally refrain from entering routes which are not connected to their hubs (for example, point-to-point services without connection to their hub)[37]. Network carriers, often former national "flag carriers", typically hold a relatively large slot portfolio at their main hub or "home airport".

43. In contrast, other airlines, usually referred to as "point-to-point" carriers, concentrate on providing point-to-point services. In a point-to-point operation, each individual route is in principle operated independently from the others. The point-to-point model simplifies significantly the airline operation. In general, point-to-point airlines are more flexible as regards maximisation of their aircraft utilisation or fixing schedules and destinations. This is because point-to-point airlines do not need to harmonise their schedules and to take into account connecting flights within the network; they are also more flexible to choose new destinations, without having to assess the potential contribution in terms of feeder traffic of a new city and without considering to what extent serving a particular destination fits into the rest of the network. Planning and operating routes on a point-to-point basis is not incompatible, however, with allowing passengers to connect, where such connections are possible and suit passengers' needs.

44. Although point-to-point carriers are not "hub" carriers, since they do not operate according to the hub-and-spoke system, most point-to-point carriers also concentrate their traffic at certain airports, the so-called base airports or "bases". The concept of a "base" has to be distinguished from the concept of a "hub". While the term "hub" relates to the "hub-and-spoke" system and the system of connecting "feeding" traffic into a network, the term "base" is used to characterise airports on which airlines base their aircraft and on which they concentrate their operations, offering mainly flights from and to these "base" airports. The concept of a base

---

36 Without a hub, a direct route from every origin to every destination would be necessary.

37 See CFI, T-177/04 *EasyJet v Commission*, of 4 July 2006, ECR [2006], II-1913, paragraph 118.

will be explained below in greater detail[38].

45. The actual operating model used by the airline may differ also in terms of the geographic area that is covered by the operations and the type of aircraft used. While network carriers often cover a world-wide or at least trans-continental network of destinations[39], European point-to-point carriers tend to operate on a regional, national or European-wide basis. However, differences in particular between point-to-point carriers can be significant. While some point-to-point carriers (regional carriers) offer two or three routes with one single plane, others (such as Ryanair or easyJet) cover almost every European country and offer hundreds of routes through a number of bases. Smaller regional and larger point-to-point carriers can also operate with significantly different aircraft: While the regional point-to-point carriers could operate with turboprop or with smaller jet aircrafts with only 20-100 seats, larger point-to-point carriers may operate with aircraft that can transport up to 200 passengers on short haul routes. The differences between the smaller regional and larger point-to-point carriers may not justify defining two separate markets, but the Commission will take into account the differences between the models in its competitive assessment[40].

46. There is a high degree of differentiation between the different airlines as concerns their operating model. While some airlines can clearly be characterised as network carriers (for example, KLM, Lufthansa, Air France or British Airways) or as true point-to-point airlines (for example, Ryanair, easyJet or most regional carriers), others have opted for an intermediate model[41].

47. In recent years, Aer Lingus has transformed its European operation into a point-to-point operation and marketed its services on European routes as such. As part of this strategy, Aer Lingus decided to leave the global airline alliance One World as of 1 April 2007. In doing so however, Aer Lingus has maintained the connectivity of its services from Dublin with some partner airlines at a few of Europe's main airports (London Heathrow, Amsterdam Schiphol and Frankfurt am Main in particular). However, a large majority of Aer Lingus' passengers also travel point-to-point on these routes[42].

48. Ryanair is a pure point-to-point carrier. This is because, further to providing and marketing their passenger air transport services as point-to-point, they actively discourage passengers

---

38 See below, Section 7.3.4.

39 It should be noted that most network carriers are members of international airline alliances.

40 Since smaller regional airlines with small aircraft need more frequencies than carriers with larger aircraft to transport the same passengers and have higher operation costs, they are usually only a limited competitive constraint to larger point-to-point carriers.

41 Typically, such carriers would be the former *small* to *medium sized* "flag carriers" in Europe. The term "flag carriers" refers to national airlines which were (or still are) state-owned and considered as the countries' only or leading airline (such as Air France for France, Lufthansa for Germany, British Airways for the UK etc.). Most of these airlines operate according to the network model. However, some smaller "flag carriers" (such as Aer Lingus) have changed their operating model into a low-frills model, while retaining some long-haul operations as a "second limb" of their operations. Such small flag carriers continue to operate a limited number of long haul services from their main airport. These operations and/or the portfolio of destinations that are otherwise available on a direct service from their main airport are not sufficient for these carriers to operate according to the hub and spoke model (see paragraph 42 above). To a varying degree however, these carriers seek to maintain some connectivity at this airport to feed their long haul services and are willing to adapt their operation and product offering to this effect.

42 See in greater detail in Section 7.9.

from connecting or interlining[43].

6.1.2. Type of airline service offered

49. In addition to the differences in the operating model, airlines can be distinguished according to the level of services they offer to passengers. Indeed, airlines do not only compete on routes and prices, but also on a number of qualitative features, in particular the level of services they offer to their customers. Airlines have traditionally not only offered "basic" services ("frills") to their customers (for example, transport by air between two points), but also ancillary services such as complimentary drinks and food, complimentary seat reservation, offering of different cabin classes, complimentary luggage transport, complimentary newspapers etc. Many airlines, however, have changed their "full service" model in the wake of the appearance of various so-called "low frills" or "no frills" airlines. These "low frills" airlines, such as Ryanair, were able to offer significantly cheaper fares than the established carriers, at least partly because they reduced the level of (complimentary) services drastically. Today, many established former "flag carriers" have reduced their free service offerings and introduced some elements of the "low frills" model. The distinction between "full-service" carriers (that is to say, carriers which offer a higher/upmarket level of service) and "low-frills" carriers (which, as the name suggests, offer a rudimentary level of service and compete mainly on the price of the flight) therefore characterises only the extreme ends of possible service levels. Most airlines offer an individual combination of services, without clearly falling into the category of a "no frills" or a "full service" carrier. The aspects, according to which airlines try to distinguish themselves more or less from their competitors include booking services (for example, seat reservation, on-line check in, last-minute bookings, differentiation in services and prices for different types of customers[44] (for example, unrestricted that is to say, flexible tickets, restricted roundtrip tickets), customer loyalty schemes such as frequent flyer programs ("FFPs")), services offered on the ground (for example, free luggage handling, availability of a business lounge, free newspapers), in the air (for example, availability of premium cabin classes, free drinks and food, number of crew, quality of the interior), or the destination airport (for example, "primary" airports close to city centres or more remote "secondary" airports).

50. Network carriers which operate a hub-and-spoke model normally fall into the category of "full-service" carriers. Similarly, low-frills carriers tend to be point-to-point carriers. However, point-to-point carriers can also be more low-frills or more full-service. For example Ryanair, easyJet and Aer Lingus (on its European services[45]) have, with some variances between them, the typical attributes of low-frills point-to-point carriers[46], whereas carriers like

---

43 See the Notification, paragraph 201.

44 See below Section 6.8.

45 Aer Lingus changed its former business model dramatically after 2001 from a "traditional" full-service flag carrier by significantly reducing the service offered. Today, Aer Lingus' European operation is perceived by most customers rather as a "low-frills" than a "full-service" business model , even though Aer Lingus still offers a somewhat more elaborate and "upmarket" product than Ryanair. Aer Lingus fulfils many criteria that qualify them as a low-frills carrier (very high percentage - more than 70% - of direct distribution over the Internet, only one-way restricted fares, baggage fees, single economy-type cabin class service, no complimentary meals on board, etc.). The market investigation has indeed confirmed that Aer Lingus has changed significantly in the recent years (see in particular replies to question 30 of the questionnaire sent to competitors on 6 November 2006 and question 8 and 15 of the questionnaire sent to customers on 31 October 2006). Further, the presentation "Aer Lingus Brand & Advertising Study" prepared for Aer Lingus by Research Solutions in January 2006 confirms the increased perception of Aer Lingus as a low fares airline (see also e-mail from Aer Lingus (Simone Warwick) of 27 March 2007) , folio no. 6316.

46 See the above footnote. For more details, see also Section 7.3 below.

Aer Arann or CityJet (on its Dublin – London City service[47]) are more "full-service" operators[48].

51. For the purpose of the assessment of the proposed transaction it is not appropriate to define separate markets according to the type of airline operations or the level of service offered. However, all of these differences between carriers are relevant when assessing the competitive impact of the proposed transaction. This is because the constraints that a competitor will exercise on the merged entity are determined by its business model and thus its incentives and/or its possibilities to compete effectively with the merged entity.

6.1.3. Ryanair is not in a market of its own

52. Ryanair has argued[49] that it is not constrained by any competitor but, due to its business model, rather by the overall price sensitivity of its customer base. It argued that its business model is to target discretionary passengers whose alternative is not so much to fly with another airline as not to fly at all, claiming that only Ryanair would be able to target such a customer base due to its low cost base.

53. This would, however, imply that Ryanair effectively operates in a different market than other airlines. The Commission has analysed the arguments put forward by Ryanair and found that Ryanair does react to competition on the routes from and to Ireland[50]. The evidence provided by Ryanair therefore does not allow the Commission to conclude that Ryanair acts independently from other competitors. Hence Ryanair cannot be considered to belong to a market of its own but rather competes as other carriers within differentiated markets for scheduled point-to-point passenger air transport services.

6.2. Definition of individual markets for each route (origin and destination) versus definition of a market for short-haul flights out of Dublin

54. Ryanair submits that the relevant product market is "point-to-point scheduled air transport passenger services[51]" whereby each route between a point of origin and a point of destination should be defined as a separate market ("Origin & Destination"- or "O&D-approach").

55. This is in line with the Commission's findings in previous cases involving scheduled air transport services[52]. The Court of Justice and the Court of First Instance of the European Communities have confirmed that markets for passenger air transport can be defined on the

---

47 CityJet is a 100% a subsidiary of Air France. On the services it operates to and from Paris CDG airport, CityJet acts as a provider of feeder traffic into Air France's hub airport.

48 For more details on individual competing airlines, see Section 7.8.9.

49 See in particular Ryanair's submission of 21 November 2006, folio no. 22736.

50 See in detail below in particular in Section 7.4.

51 Notification, paragraphs 170 and 183.

52 See e.g. cases M.3940 - Lufthansa/Eurowings, paragraph 10; M.3770 - Lufthansa/Swiss, paragraph 12; M.3280 - Air France/KLM, paragraphs 9-18 (confirmed by CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR [2006], II-1913, at paragraphs 54-61; M.1855 - Singapore Airlines/Virgin Atlantic, paragraph 16; M.1494 - Sair Group/AOM, paragraph 14; M.857 - British Airways/Air Liberté, paragraph 14; M.278 - British Airways/DanAir, paragraph 10 (confirmed by CFI case T-2/93 *Air France v Commission* , of 19 May 1994 ECR), ECR (1994), 320, at paragraphs 84 and 85); M.157 - AirFrance/Sabena, paragraph 25; see also ECJ, case 66/86 of *Ahmed Saeed Flugreisen*, of 11 April 1989 ECR (1989), 803, at paragraphs 39-41.

basis of individual routes or a bundle of routes, to the extent that there is substitutability between them according to the specific features or the case[53].

56. Due to the specific structure of the present transaction, which would combine two airlines having large scale operations from and to Ireland, the Commission has also examined whether aspects of substitutability, in particular for routes out of Dublin, might militate for the definition of a joint market.

6.2.1. Possible definition of a market for short-haul flights from/to Ireland

57. Aer Lingus and Ryanair are the two leading airlines in Ireland, with by far the largest number of aircraft based in Ireland, most of which in Dublin (around 41 out of in total around 48 short-haul aircraft of all airlines based in Dublin belong either to Ryanair or Aer Lingus). Moreover, unlike previous airline merger cases:

(a) this case involves two point-to-point low frills carriers as opposed to two full service network carriers;

(b) the overlap between the Merging Parties is concentrated on traffic out of one Member State (Ireland) and one airport (Dublin) in particular, as opposed to a collection of individual routes between various points located in the respective home countries of the Merging Parties as was, for example, the case in the Air France/KLM merger case[54].

58. Instead of a more "fragmented" market definition following the O&D approach, it could therefore be argued that the "bundle of routes" which form the relevant market in this case are all flights from or to Ireland. Indeed, customers and competitors (including Ryanair) do often refer to an "Irish market" and claim that the conditions in this market are at least to a certain extent different from conditions in other markets[55].

59. Aer Lingus and Ryanair hold a share of about 80% of all scheduled European traffic from and to Dublin.[56] Having a significant presence in particular in Dublin allows both airlines to switch between routes and to add other routes out of the airport more easily than other competitors without such a significant base[57]. From a supply-side perspective, it could therefore be argued that the "bundle" of routes out of Dublin forms one market, since suppliers operating from Ireland can switch between the different routes (supply-side substitutability).

60. The market investigation has confirmed that non-Irish airlines believe that there are significant barriers to entering the market as a non-Irish airline (or to "importing" flights). Non-Irish competitors refer to the difficulty of not having a base in Dublin from which they can easily operate on various routes out of Ireland. They also indicate that it is more difficult for non-Irish airlines to win sufficient customers for their Irish routes than for the

---

53 See ECJ, case 66/86 *Ahmed Saeed Flugreisen* of 11 April 1989 ECR (1989), 803, at paragraphs 39-41; See CFI case T-2/93 *Air France v Commission* , of 19 May 1994 ECR 320, at paragraphs 84 and 85; See CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR [2006], II-1913, at paragraphs 54-61.

54 See case M.3280 – Air France/KLM.

55 See e.g. Notification, paragraph 73; see also interview with easyJet of 15.2.2007, folio no. 6170.

56 For more details about the position of Ryanair and Aer Lingus in Ireland and in particular Dublin, see below Sections 7.2.

57 See for a more detailed analysis of the advantages of operating from airport bases in Section 7.3. below.

two well-established leading Irish airlines[58]. It should be noted that Ryanair and Aer Lingus enjoy by far the best brand recognition in Ireland. Third parties also argued that routes from/to Ireland differ from other European routes with respect to its relatively remote geographic position[59]. The low share of non-Irish companies in flights from/to Dublin on a number of routes seems to support the view. Finally, one could argue that defining an "Irish" market would have the advantage of taking into account those factors of competition which go beyond the single "O&D"-approach[60].

61. Some third parties argued that even from a demand-side perspective, the relevant markets could be defined wider than to one specific destination. They argue that a significant proportion of the groups of non time-sensitive or "leisure" passengers could be regarded as "destination insensitive" customers. These passengers would be looking for short breaks or extended holidays only in a certain area or even throughout Europe, without having in mind a specific destination. For this customer group, some third parties argued that it would be appropriate to define a market for "city-breaks" or "holiday flights" from Dublin[61].

6.2.2. Market definition according to the O&D-approach

62. However, the results of the Commission's market investigation suggest that defining a market for a "bundle" of all flights from or to Ireland is not the most appropriate way to define the market in the present case. Indeed, the arguments mentioned in Section 6.2.1. relate almost exclusively to supply-side considerations. They disregard the fact that, from the demand side, passengers are in principle flying a given route to a given destination rather than any route to anywhere. This is of particular importance given that the demand-side is, in principle, the Commission's starting point for the definition of relevant markets[62].

63. Customers normally wish to fly from a specific origin to a specific destination. While the "point" of origin and the "point" of destination may in reality be defined as an "area" from and to which customers are ready to fly, and while the O&D-approach also may include other means of transport in specific cases, the vast majority of airline customers book their flights according to plans to get from a *specific* city or region to another *specific* city or region. Following a small but significant and non-transitory price increase, these customers would not change their travel plans and choose another destination from Ireland[63]. Although the Commission acknowledges that some customers might consider flying to different city or holiday airports without having a clear preference for one destination ("destination insensitive customers"), it appears unrealistic to assume that a significant proportion of passengers would not care whether they flew to Rome, to Faro or to Riga or even to Turin. On the contrary, there are obvious differences between each destination

---

58 See in detail Section 7.8.3 below.

59 Other third parties mentioned that the Irish market is also different with respect to the absence of "pass by" customers which fly on to other destinations from Ireland see interview with easyJet of 15.2.2007, folio no. 6170. See further below in Section 7.8.6.

60 E.g. the common base in Dublin, the advantage of brand recognition for Irish operators, the possibility to shift flights between different destinations out of Dublin etc.

61 See e.g. submission of the DOT to the Commission of 13.11.2007, p 49, folio no. 6444.

62 See in particular paragraph 13 of the Commission Notice on the definition of the relevant market, OJ C 372, 09/12/1997, p. 03.

63 See e.g. case M.3770 - Lufthansa / Swiss, paragraph 12

which are highly relevant for the customers' choice of destination, even in the case of leisure passengers (language spoken, tourist infrastructure, climate and other individual features of the country/city). Furthermore, in the case of business passengers or passengers visiting friends and relatives, any substitutability of different destinations is unlikely as the purpose of their journey is itself connected with a specific destination (place of a business meeting or place of residence of friends or relatives). For the vast majority of passengers, therefore, a flight from Ireland to one destination is not simply substitutable with a flight to another destination. On the contrary, from a demand-side perspective, every combination of a point of origin and a point of destination forms a separate market from a customers' viewpoint.

64. Moreover, it is questionable whether the competitive constraints from the supply-side, that is to say, the possibilities for competitors to react to a price increase on a given route by entering into competition on this route, are sufficiently immediate and effective. In contrast to taxi-companies, which can easily serve any destination a customer wants to go to, the Commission's market investigation showed that there are a number of barriers which can effectively prevent airlines from reacting to competition by opening new routes and that opening routes requires investments, strategic decisions and time. If a route from Ireland is not connected to a "base" of a competitor, this competitor is less likely to enter this new route[64]. Opening a new route also requires sufficient airport capacity both at the origin and the destination, which may not be available[65]. A potential competitor might also have insufficient access to customers, due to a lack of brand awareness in the destination country, to fill his aircraft on a new route[66]. Further, opening a new route also involves opportunity costs as the aircraft and crew needs to be taken from another existing route which then needs to be abandoned or serviced with lower frequencies. As a result of these barriers, it cannot be expected that Irish-based airlines could immediately switch to any destination out of Ireland or that non-Irish competitors could easily fly to any Irish destination should they wish to. Therefore, the effects of supply-side substitution cannot be regarded as equivalent to those of demand substitution in terms of effectiveness and immediacy[67].

65. Finally, it should be noted that the O&D approach is in line with the Commission's established practice in a number of airline mergers and antitrust cases and that it has been approved by the Court of Justice and the Court of First Instance on various occasions; it was also supported by a large majority of competitors[68] in the Commission's market investigation.

66. For all these reasons, the O&D approach appears to be the most appropriate approach to define the relevant markets in the present case[69].

---

64 See more in detail below in Section 7.8.3.

65 *idem*.

66 *idem*.

67 See further Commission Notice on the definition of the Relevant Market for the purposes of Community competition law, OJ 97/C 373/03), para. 20 ff.

68 See replies to the Questionnaire to Competitors sent on 6 November 2006, question 19; it should be noted that even some network carriers, who in previous cases involving network carriers voted for a wider definition in order to cover the "network effects" (e.g. FFPs), supported the O&D approach in the present case involving two point-to-point carriers.

69 The Commission does, however, recognise that the single "O&D" markets are not entirely independent from each

6.3. Analysis of the relevant routes (airport pairs versus city-pairs)

67. The Commission has, as set out in Section 6.2. above, based its competitive assessment on an analysis of individual routes from one origin to one destination (O&D). Since airlines operating on the identified overlap routes normally offer connections in both directions of this route, no distinction between the directions of the flight is made on the single routes.

6.3.1. Connecting flights are not part of the same market

68. Moreover, it follows from the O&D approach that the Commission will assess the effects of the proposed transaction on some but not all passengers on certain flights. On a flight between Dublin and London Heathrow, some passengers will be flying point-to-point between Dublin and London, whilst others will be taking a connecting flight in London Heathrow to another destination like, for example Tokyo, Sidney or Moscow. Although Dublin-London is an O&D pair which is affected by the proposed transaction, passengers on Dublin-London flights who connect to Tokyo, Sidney or Moscow are in principle not affected by the proposed merger. This is because there is no overlap between the services of Aer Lingus and Ryanair on the routes Dublin-Tokyo, Dublin-Sidney or Dublin-Moscow. In contrast, those passengers who are, for example, on a Dublin to London Heathrow flight and who travel point-to-point between Dublin and London are likely to be affected by the proposed transaction to the extent that Dublin-London is an O&D pair on which the Merging Parties' services overlap. Indeed, customers who book a flight, for example, from Dublin to Tokyo using "connecting" or "feeder" services (such as partly offered by Aer Lingus), usually pay a price for the entire route and do not know the separate "price" for the Dublin-London limb of this route. Connecting passengers can in such a situation not compare prices, and airlines can price discriminate between connecting passengers and "classic" point-to-point customers. Although there are certainly passengers who book their "connecting" flight with a different airline and pay it separately, these passengers are regarded as "point-to-point" passengers for the purpose of this decision, even if their ultimate destination is different. The above distinction is of material importance with a view to assessing the effects of the proposed transaction on passenger air transport services in particular between Dublin and cities in which any of the carriers operates hub airports (for example London, Frankfurt, Paris, Madrid)[70].

6.3.2. Definition of the relevant "O&D" airport and/or city pairs

69. To establish whether an O&D pair forms a relevant market, the Commission considers the different possibilities offered to consumers to travel between these two points. Since many cities are connected to two or more airports, the Commission has not only considered the direct flights between the two airports concerned, but also alternative airports to the extent that they are regarded sufficiently substitutable to these direct flights[71]. The Commission therefore had to determine which "bundle of routes" between different airports belonging to two cities are substitutable and which are not (that is to say, which airports can be considered to belong to the same catchment area from the consumers' point of view). This analysis by the

---

other and will thus take account of the commonalities between different routes and of supply-side substitutability and other forms of potential competition considerations whenever appropriate.

70 See below Section 7.9.

71 See already M.3940 - Lufthansa/Eurowings, paragraph 10; M.3770 - Lufthansa/Swiss, paragraph 11; M.3280 - Air France/KLM, paragraph 12 and, CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR (2006), II-1913, at paragraph 56; M.1855 - Singapore Airlines/Virgin Atlantic, paragraph 16 with further references.

Commission mainly concerned the question whether the "main" airport of a city or region is substitutable with a "secondary" airport by which the same city or region may be served. The secondary airports which the Commission considered as potential substitutes are usually smaller airports (often former regional or military airports) in cities more or less remote from the "marketed" destination city (for example, "Paris/Beauvais" or "Frankfurt/Hahn"). In some other cases, the question of substitutability concerned two or more *main* airports of a city (for example, London).

70. Ryanair contends that secondary airports are, as a matter of principle, not substitutes for primary airports. In support of this view, it refers to Commission decisions that found that certain secondary airports were not substitutable with primary airports, particularly for time sensitive passengers[72]. It argues that, for Aer Lingus, time-sensitive passengers play an important role, hence secondary airports would not be an alternative for them. Ryanair also claims that the radius of an individual airport's catchment area should be drawn rather small given the overall short travelling time of point-to-point short haul flights.

71. The question of substitutability of scheduled air transport services from different airports is relevant with a view to determining to what extent the activities of the Merging Parties overlap in the present case. The activities of Ryanair only overlap with Aer Lingus on 16 routes on which Aer Lingus and Ryanair fly between the two same airports ("airport pair" approach). The Commission has also identified additional 19 cities ("city pairs"), to which Ryanair or Aer Lingus fly from Ireland, using different airports (in most cases Aer Lingus using "primary" and Ryanair "secondary" airports). Further, in the case of four airport overlaps Ryanair also operates flights to additional destination airports belonging to the relevant route which are also taken into account in this Section[73]. Moreover, the question of substitutability between airports is relevant with a view to determining to what extent the merged entity would be constrained on services to/from Dublin by services operated from either of the Belfast airports. For all these city pairs, the Commission has carried out a detailed analysis[74] in order to establish whether or not the respective airports are substitutable for flights between Dublin (Shannon and Cork) and the relevant destination[75].

6.3.3. Analytical framework

72. When analysing the substitutability of scheduled air transport services from different airports pairs, the Commission analysed whether passengers would consider passenger air transport services to/from neighbouring airports as reasonable alternatives. Do customers who wish to fly for example between Dublin (or its region) and Venice (or its region) consider as alternatives the services of Aer Lingus between Dublin Airport and Venice Marco Polo airport (the primary airport serving Venice), on the one hand, and the services of Ryanair between Dublin Airport and Treviso airport (a regional airport some 20 km North from Venice), on the other? If the answer to these questions is positive, then the air transport services concerned belong to the same market for the purposes of this Decision, that is to say, they form part of the same O&D pair. A *contrario*, if the answer to that question is negative, the air transport

---

72 See the Commission decisions in cases COMP.37.730 *Lufthansa / Australian Airlines*, M.3280 - Air France / KLM and COMP/38.712 *British Midland/ Lufthansa/ SAS.*

73 These routes are Dublin – Manchester, Dublin – Birmingham, Dublin – Newcastle and Dublin – Alicante.

74 The Commission has notably sought the view of the affected airports, competitors and the Civil Aviation Authorities of the respective Member States and conducted a price correlation analysis.

75 The Commission has also verified to what extent the airport of Dublin is potentially substitutable with the airport in Belfast.

services concerned belong to distinct markets, that is to say, they do not form part of the same O&D pair.

6.3.3.1. Relevant parameters

73. In order to analyse the substitutability of scheduled air transport services from different airports, the Commission has sought to identify the main factors which are relevant for individual customers when it comes to choosing between air transport services out of different airports. The results of the Commission's investigation show that the customers take into account mainly the following elements[76]:

    (i) Travel time: All customers have a preference to minimise the travel time (and costs) and prefer, other things being equal, the closer airport to the more remote one. However, for the majority of all passengers on the analysed routes, time is not the decisive criterion when considering different airport alternatives[77].

    (ii) Travel cost: Customers have a general preference for the cheapest solution for their journey. It should be noted that customers consider their *total* travel costs and not only the transfer/parking costs at a specific airport. Even a more expensive transfer to the alternative airport can therefore be a viable alternative if the *total costs* of the trip (flight ticket plus transfer & parking) are comparable to the costs for a trip from the closer main airport. Lower prices at a secondary airport may therefore outweigh the disadvantages of a longer and more expensive transfer.

    (iii) Flight times/schedules/frequencies: Most customers also have a preference for a specific departure and return time and date and will chose the airline (and the airport from which it is operating) which corresponds most to their preferences.

    (iv) Quality of service: As explained in Section 6.1. above, air carriers offer different levels of service. Similarly, airports offer different levels of service. By way of example, shopping facilities at large main airports may be relevant for the airport choice of some customers, while shorter check-in times at some airports might be considered as an advantage by other customers.

74. The criteria above are not necessarily listed in order of importance. It is the combination of these factors that drives passengers' choice for the one or the other airline service. For example, some passengers value convenience. This does not depend only on journey time, however, but also on timing and frequency. Passengers wanting to fly to an afternoon business meeting may find an afternoon flight to a secondary airport more suitable (even with the additional travel time) compared to a morning city flight. In summary, the relative importance of each of these criteria may vary from one consumer to the other when combining them depending on the consumer’s individual preferences or the specifics of his journey.

75. In principle, cheap airline fares reduce the total cost of a passenger's journey. However if these cheap fares are only available from a distant airport, additional costs have to be added to the airline fare for reaching the airport. These costs reduce the passenger's incentives to opt for the cheap airline services. In this regard, Ryanair refers to the

---

76 See replies to the Airport Questionnaire (substitutability) send on 3 January 2007, in particular questions 3 and 4.

77 See in detail Section 6.8.

statements of Aer Lingus in its Initial Public Offering Prospectus, where Aer Lingus believes that "*its customers have been willing to pay a premium over its low-cost competitors for its enhanced service offering, including seat allocation and flying to centrally located city airports*[78]." Moreover, the additional travel time to the distant airport represents an inconvenience that the passenger is willing to accept in principle only if this is reflected in a lower total cost for the journey. Similarly, very cheap airline fares are commonly associated with a lower level of airline service: this is another type of inconvenience, in comparison to higher levels of airline service that may be available from another airport, which the passenger is willing to accept in principle only if this is reflected in a lower total cost for the journey. On the other hand, the shorter turnaround times and less congestion at the secondary airports may also shorten the overall travelling time. The way in which these factors combine to result in a passenger's choice for the one or the other airline service depends on this consumer's individual preferences and financial constraints (consumers seek to maximise their personal utility under their personal budgetary constraints). Further, the catchment area of low-frills carriers may be larger than those of network carriers as customers are prepared to travel further to an airport to fly on their low cost flights[79].

76. The Commission is not in a position to assess the decision of every individual passenger according to all the criteria indicated in paragraph 73 above for the purposes of defining the relevant markets. The Commission, however, in its assessment whether services from Dublin to two or more neighbouring airports belong to the same market took into account these criteria to the extent possible. The assessment was undertaken, *inter alia*, on the basis of the elements described in sections 6.3.3.2 to 6.3.3.5 below.

6.3.3.2. Definition of catchment areas

77. For most passengers, the more distant the airport from the point of departure or arrival, the more inconvenient the airport and the cheaper the airline fare has to be for an equivalent level of airline service. This suggests that services from an airport within a reasonable distance from the point of departure or arrival are likely to exert a greater competitive constraint than services from an airport which is distant or only accessible with difficulty.

78. The Commission has compared the distances in kilometres and the travelling time from an airport to the city centre, but also the transfer time by car, bus/coach and, if available, by public transport to the respective city centres.

79. It should be noted that the relevant time to consider with regard to determining the catchment area is not the time it takes to transfer from an airport to the destination city, but the difference in the time between transferring to the city from one airport and another candidate substitute airport.

80. The Commission observes in this regard that the extra time it takes to get from the adjacent airport to the city is often relatively little in comparison to the total door to door travelling time (for example, 10-20% longer travelling time[80]). This is because the total door to door

---

78 Notification, paragraph 81, and Aer Lingus IPO Prospectus, page 67.

79 See e.g. minutes of the interview with Aer Arann of 13 February 2007, folio no. 6170, and reply of British Airways to the Questionnaire to Competitors sent on 6 November 2006, folio no. 22168, question 22 .

80 This is in line with evidence submitted by the DOT, which provided a table for the airports relevant for this case indicating the time difference, accounting for these factors, as a percentage of total travel time that it takes to reach the destination city. The table shows that, on average, passengers must spend just 15% more

286. The Commission market asked[296] the airports listed in Table 1 and the Civil Aviation Authorities of Member States whether the factors which passengers use are the same as those which airlines use when choosing to fly from one or more airports. Consistent with the replies from competitors[297] in the first phase of the investigation, the results show clearly that airport substitutability issues should be looked at differently from the standpoint of passengers or of air carriers. The responses suggest that the criteria that are relevant for airlines with a view to choosing to serve one or another airport relate mainly to the airport infrastructure itself (capacity and congestion, operational infrastructure, airport opening statistics (hours of opening, airport equipment adapted to local weather conditions), airport charges and aircraft handling costs) or to the market served by an airport (size of the city, intensity of competition at the airport, type of traffic (business or leisure)).

287. In the light of the foregoing, the Commission concludes that the substitutability between airports from the standpoint of carriers cannot be presumed from such substitutability from the standpoint of passengers. Whilst the latter is the most relevant criterion to define the relevant markets, the first is important in particular within the framework of the competitive assessment to evaluate the likelihood of air carriers to enter certain routes[298].

6.5. Joint market for direct flights and indirect flights?

288. Customers can travel to a given destination either by way of a direct flight between the point of departure and the point of destination or using an "*indirect*" flight via an intermediate destination. Indirect flights take significantly longer than direct flights, since they require the passenger to change plane. This requires the passenger to get back to the terminal, to wait for at the terminal, to check in for the second flight and to walk to the plane and to board the aircraft. Depending on whether the considered airlines offer connecting services, this may involve long waiting periods of several hours in between the two flights. Some airlines, in particular smaller ones, offer so-called "*stop-over*" flights, which have to be distinguished from indirect flights, since "stop-over" passengers can remain in the aircraft when it stops at the intermediate destination to pick up more passengers. However, also for these flights, flight times are longer, since they involve one stop more (landing, boarding of new passengers and take-off), and since the intermediate destination is in most cases not directly in between the point of origin and the end-destination.

289. As concerns the market definition for indirect flights, the Commission has in previously cases distinguished between short-haul and, to a lesser extent, medium-haul intra-European flights and long-haul inter-continental routes[299]: For the purpose of the current transaction the two parties' activities only overlap with regard to intra-European flights. As regards the substitutability of direct and indirect flights within Europe, the Commission has found in previous cases that indirect services do not normally provide a constraint to direct services on short-haul flights[300], mainly due to the short travelling time as customers are less likely to

---

296 Airport Substitutability Questionnaires of 9 November 2006, 3 January 2007 and 30 January 2007.

297 See replies to question 22 of the Questionnaire to Competitors of 06.11.2006.

298 For example, due to its business model or existing hub/base, a particular carrier may be only willing to enter a specific route if it obtains slots to operate from a primary airport.

299 See e.g. cases M.3940 - Lufthansa/Eurowings, paragraph 11; M.3770 -Lufthansa/Swiss, paragraph 16; M.3280 - Air France/KLM, paragraph 20; British Airways/DanAir, paragraph 10;M.2672 – SAS/Spanair.

300 In exceptional circumstances, customers might consider indirect flights on longer continental routes ("mid-haul"

consider indirect flights when the additional stop could easily double or triple the flight time. Indirect flights appear to be even less of a substitute to direct flights in the present case, since the main operators on the affected routes are point-to-point low frills carriers and not hub carriers (which commonly feed traffic indirectly through hubs). Ryanair offers no and Aer Lingus very limited connecting services, which leads to long waiting times in between two flights and makes indirect flights even more unattractive to customers.

290. Ryanair follows this approach and submits that indirect flights in the context of short-haul flights do not exert a competitive constraint over direct short-haul flights, given the limited duration of the journey[301]. The Commission therefore concludes that for the assessment of the proposed transaction indirect flights cannot be considered part of the same market as direct flights on the identified O&D pairs.

291. Although there are good reasons to also exclude indirect "stop-over" flights from the relevant market (in particular the longer travel time), the Commission can finally leave this question open, since there are only a very few "stop-over" flights offered by airlines on the relevant O&D pairs, hence, the competitive assessment would not materially change under either definition. In cases where relevant, "stop-over" flights will be discussed in more detail within the framework of the competitive analysis of individual routes.

6.6. Possible inclusion of other means of transport

292. The Commission has in its previous practice not only considered *air* transport services when defining the relevant O&D markets, but also other transport alternatives to the extent that they are substitutable to a flight (intermodal competition)[302]. This has been considered in cases where alternative modes of transport on the respective O&D market, can be considered comparable in terms of price, quality and travel time and can therefore be considered as substitutes by customers. The Commission's investigation of the proposed transaction has shown that intermodal competition does not impose any significant constraints on the scheduled air transport services offered by the parties to the concentration.

293. In particular, since the notified transaction combines two airlines operating from an island and since all overlapping O&D pairs in the present case concern routes from/to Ireland, the Commission's investigation found that customers have very limited possibilities to substitute a flight from Ireland by other means of transport, which would all require significantly more travel time than a flight.

294. The most pertinent transport alternative to air transport identified in previous cases was travel in *high speed trains*, which can come close to a flight in terms of price, quality and travel time[303]. Due to the geographic characteristics of the present case, however, this transport

---

routes, see case M.3940 - Lufthansa/Eurowings, paragraph 11). This might be the case when the direct flight does not allow for a typical one day return trip. Given that the mid-haul routes in the present case (in particular Dublin – Tenerife which is the only overlap routes with travelling time significantly above 3 hours and thus comparable to the flights between Spain and Scandinavia identified as mid-haul in the case M.2672 – SAS/Spanair, paragraph 14) are primarily non-business destinations, the need for a "same-day" return trip does not play a significant role in the customers' decision-making process here (see also see also Lufthansa/Swiss, paragraph 17; M.3280 - Air France/KLM, paragraph 20).

301 Notification, paragraph 236.

302 See e.g. cases M.3940 - Lufthansa/Eurowings, paragraphs 11, 51; M.3770 -Lufthansa/Swiss, paragraphs 12, 56; M.3280 - Air France/KLM, paragraphs 9 and 71; see also ECJ, case 66/86 *Ahmed Saeed Flugreisen*, of 11 April 1989 [1989] ECR 803, at paragraph 40.

303 See e.g. cases M.3940 - Lufthansa/Eurowings, paragraphs 11, 51; M.3770 - Lufthansa/Swiss, paragraphs 12,

alternative is not available to customers wanting to fly from/to Ireland. In the absence of a tunnel between Ireland and the United Kingdom/the continent, the existing train connections are indirect and require a crossing of the Irish Sea by ferry. Even to the closest destinations, a journey with train and ferry would take significantly more time (for example, more than 6 hours for Dublin-Manchester[304]) than a flight. Moreover, the differences in terms of quality of the offered service between a flight and a combined train/ferry trip which involves a sea crossing of one or more hours across the Irish Sea appear to be more significant than the differences between a (high speed) train connection and a flight.

295. The same applies to the possible transport alternative of combined *bus and ferry* travel. This appears evident for most *continental* routes, which often bridge distances of more than 1000 km, and which would require travelling in buses and ferries for more than 24 hours. Even on the shorter routes between Dublin and the United Kingdom, the competitive constraints exercised on airlines by bus companies appear to be too limited to justify the definition of a joint product market encompassing flights and bus/ferry travel. Although it cannot be excluded that some customers who are extremely time-insensitive may consider both alternatives when planning a journey, the Commission has not found evidence that a significant proportion of the flight passengers on the affected routes would be ready to switch to the bus and the ferry transfer should flight prices increase[305]. Even on the shortest routes, the travel times by bus and ferry remain manifestly longer than those by flight (for example, four and a half hours for Dublin-Manchester), and the product itself (involving crossing the Irish Sea) is hardly comparable to a flight in a large aircraft such as those operated by Aer Lingus and Ryanair. Neither Ryanair nor Aer Lingus or any other competitor takes into account ferry or bus prices when setting prices for their products or feels constrained by ferry routes[306].

296. It can thus be concluded that in the present case the limited possibilities of inter-modal substitution do not exercise any appreciable competitive pressure on the airlines operating on the affected routes and that these services can therefore be disregarded for the analysis of the competitive structure of the relevant city pairs.

6.7. Joint market for scheduled flights and charter flights?

297. Ryanair further suggests including not only so-called "scheduled" airline services (that is to say, air transport services which operate according to regular, published schedules), but, at least on certain routes, also so-called "charter" or non-scheduled air transport services in the relevant product market. Charter air transport services are usually defined as air transport services that take place outside normal schedules, normally by a hiring arrangement with a particular customer (for example, a tour operator). Indeed, charters airlines previously did not sell tickets directly to passengers, but to holiday companies who had chartered the flight.

56; M.3280 - Air France/KLM, paragraphs 9 and 71.

304 See www.bahn.de.

305 Although Ryanair mentions in the Notification that it may be "possible" to include ferries and buses "in certain contexts" in an O&D pair (see paragraph 173and 230/231 of the Notification), the Commission has not found any evidence in support of such an assumption. It should also be noted that Ryanair submits in the Notification that indirect flights on short-haul routes should be defined as separate markets because of the longer flight time of an indirect flight. The same reasons (significant time difference), however, apply to comparison of flights and bus/ferry or train/ferry trips.

306 See e.g. interview with CityJet (Air France) of 21.2.2007, folio no. 6170, in which CityJet particularly refers to the specific "island" situation of Dublin, the "poor ferry connections" and the absence of a train link.

These companies would offer the flight as (transport) part of a *package holiday*, in which the price paid includes flights, accommodation and other services. However, in recent years some charter airlines have started selling some of their seats directly to the end customer[307], for example, via the internet (hereinafter referred to as "dry seat" sales[308]).

298. Charter airlines often fly to destinations where no scheduled airline is active and usually operate on a seasonal basis with a relatively low frequency of flights, in response to the requirements of tour operators (for example, once a week on Saturday, only during the summer or only during the ski season). Different types of activities by charter airlines can be distinguished: Sales of seats to tour operators (6.7.1), sales of "dry-seats" to end customers (6.7.2) and sales of "package holidays" to end customers (6.7.3).

6.7.1. Sales of seats to tour operators

299. Charter airlines sell seats (or entire flights) to holiday companies, who then integrate the flight into a package holiday[309]. In previous decisions, the Commission regarded the supply of airline seats to tour operators ("wholesale") as a distinct market from the supply of scheduled air transport services to end customers[310]. Indeed, from a demand-side perspective, market conditions on the market for sales of seats to tour operators differ significantly from those on the market for sales to individuals. The market for sales of seat packages to tour operators is a market which is *upstream* to the market for seat sales to individuals. Accordingly, the competitive conditions in this market are manifestly different, since tour operators have different requirements from individual customers (for example, buying of large seat packages, negotiation of rebates, taking into account of customers' needs in terms of flight times etc.). It can thus be concluded that "wholesale" sales of seat packages to tour operators are not in the same market as scheduled air transport services for end customers.

6.7.2. Market for "dry seat" sales to end customers

300. When arguing that there is a competitive constraint from charter flights on Ryanair/Aer Lingus on certain routes, Ryanair refers particularly to sales of "dry seats[311]". Indeed, the differences between "dry seat" sales of charter airlines and "classic" sales of seats on scheduled flights appear to be very limited. Some differences might nevertheless justify arguing that sales of dry seats offered by charter airlines are not in the same market as sales of scheduled air transport services to end customers (for example, the limited frequency offered by charter airlines, frequent requirement of a "minimum stay" of 7 days since flights are usually offered only at weekends, limited access of charter airlines to "traditional" point-to-point customers and business customers, etc.). However, since "dry seats" can be booked individually (for example, via the internet) for a given date, these "charter" seats can, from a customer's point

---

307 The "seats" can also be sold to end customers by tour operators which bought them from the charter airline, see e.g. ThomasCook for FlyMonarch.

308 In previous decisions the Commission has also used the term "seat-only" for sales of charter airlines of seats without a holiday package to end customers, see e.g. case M.1494 - Sair Group/AOM, paragraph 11.

309 It should be noted that also scheduled airlines sell, to a limited extent, seat packages to tour operators. However, this is not the case for Ryanair. The merger is therefore not likely to have an impact on the market for sales of seats to tour operators.

310 See case M.1524 – Airtours/First Choice, paragraphs 34-50 (insofar not affected by the CFI's annulment decision); M.157 - AirFrance/Sabena, paragraph 25; see also cases M.1494 - Sair Group/AOM, paragraph 11 and M.3770 - Lufthansa/Swiss, paragraph 20.

311 See e.g. paragraph 171 of the Notification, where Ryanair refers to the example of Irish residents owning a holiday home (e.g. in Spain), who could turn to charter airlines to buy "dry seats".

of view, hardly be distinguished from other scheduled[312] flights. It can therefore not be excluded that dry seat sales exert a competitive pressure on scheduled services in countries where charter airlines offer significant numbers of dry seats on their charter flights.

301. The Commission, however, notes that while Ryanair seems to imply that a number of charter carriers offer a significant number of "dry seats" on the overlapping "leisure" routes, the Commission has found no evidence of charter carriers or tour operators offering "dry seats" on a larger or even significant scale in Ireland which could effectively constrain the Merging Parties' behaviour.

302. Ryanair has not put forward any convincing evidence to support its view that it faces a significant competitive constraint from charter carriers operating out of Ireland for "ski or sun" holiday destinations and on services to other destinations[313]. In particular, while pointing the Commission at some websites which also contain dry-seat offers by charter airlines[314], Ryanair, did not submit evidence that other charter airlines than those identified by the Commission are indeed offering "dry seats" to end customers on the relevant routes to/from Dublin, Shannon or Cork to a significant larger extent than estimated by the Commission, based on its results of the market investigation.

303. The various minutes of board meetings Ryanair referred to[315], in which the participants discussed, among others, issues related to charter operators, do not relate to any of the relevant O&D routes out of Dublin[316] but to [...]* where, in contrast to Ireland, many charter airlines offer a significant number of dry seats.

304. The Commission does not dispute that Ryanair may be subject to certain competitive constraints from charter carriers on some of its UK or, for example, German routes. However, the present decision concerns exclusively routes from and to Ireland. The evidence submitted by Ryanair on the effects of charter airlines on its Glasgow – Barcelona route is therefore of limited relevance for this decision[317]. Also the recent decision of the OFT in the "Flybe/BA Connect" case (in which the OFT took the view that charter flights were likely to constrain the merged Flybe-BA Connect on the Birmingham to Geneva route) does not imply

---

312 As concerns dry seat sales, the distinction between *scheduled* and *charter* flights is to a certain extent misleading. Indeed, although a flight might be regarded as a "charter flight" since it serves mainly package holiday customers, from the point of view of a dry seat customer, the same flight will be regarded as a "scheduled" flight which he booked individually for a specific date.

313 See e.g. Ryanair's Response to the Commission's 6(1)(c)-decision, pages 34 and 35; Ryanair's submission "Additional Information on Charter Airlines" of 31.1.2007 and 7.2.2007; RBB Position Paper on Barriers to Entry, 20.2.2007, folio no. 4135, pages 30-32.

314 See e.g. Response to the Statement of Objections, page 196/197.

315 See Ryanair's submission of 31.1.2007.

316 In particular, the Commission notes that none of the 36 references to Ryanair Board minutes and papers or filings with the US SEC contain a reference to an O&D pair that is affected by the present transaction. None of the 7 US SEC filings pointed to the Commission's attention by Ryanair identifies one or more charter carriers as competitors.

317 It should be noted, however, that the fact that the "market" share of one product drops if it is put together with another *seasonal* product (such as charter flights) during the time in which the seasonal product is sold (see e.g. RBB paper of 20.2.2007, folio no. 4135, page 31) does not necessarily show that both products are in one market. The dropping market share may just be a result of putting them in one market. It might also well be possible that charter flights just capture a *seasonal* demand for package holidays (including the related services) without any direct impact on scheduled flights. Customers might just prefer to buy the product "package holiday" in summer, without considering a simple flight.

that charter flights exert a similar constraint on Irish routes. Indeed, neither "Glasgow-Barcelona" nor "Birmingham-Geneva" are relevant markets for the purposes of this Decision. Both routes are routes to/from the United Kingdom where the Commission does not contest that a number of charter airlines offers "dry seats" for sale in substantial quantities. For example ThomasCook, My Travel, First Choice Airways and Monarch all offer flights from a number of UK cities to various holiday destinations on their websites. In Ireland, however, dry seat sales play a much smaller role according to the Commission's market investigation, where only a few charter airlines offer any dry-seat flights at all[318].

305. The Commission's market investigation has shown that there is very little competitive constraint from the few charter carriers selling "dry seats" to individuals on the relevant routes from or to Ireland. Indeed, most of the charter airlines mentioned as competitors by Ryanair who answered the Commission's questionnaire have indicated that they do not sell *any* "dry seats" for Irish flights to end customers on any of the overlapping routes. Most of the responding charter airlines indicated that they sell their seats for flights from Ireland *exclusively to tour operators,* who then sell them on to end customers as part of a holiday package. As set out in Section 6.7.1., the conditions in this "wholesale" market are fundamentally different from the market for sales to end customers. Some tour operators do, however, sell small numbers of dry seats to end-customers.

306. The Commission has identified just a few charter airlines (for example, XL Airways, MyTravel and FirstChoice) who offer directly or via tour operators a limited number of "dry seats" on a limited number of frequencies for three of the affected routes from Dublin[319]. In no market does the number of such dry seats exceed 0-5%.The competitive pressure from "dry seat" sales on all routes out of Ireland appears therefore to be negligible. Indeed, no charter airline answering the Commission's market investigation replied that it would enter a new route on which Ryanair and/or Aer Lingus are active, should the merged entity decide to increase their fares[320]. Finally, the Commission notes that both Ryanair and Aer Lingus have confirmed that they do not consider charter airlines when setting prices for their flights out of Dublin[321]. In view of the limited presence of dry seat sales in Ireland, the question whether to include "dry seat" sales in the relevant market or not can ultimately be left open for the purpose of the present decision, since the competitive assessment would not change under either delineation.

6.7.3. Market for tour operating or for "package holidays"

307. The Commission has also verified to what extent Ryanair and Aer Lingus might face

---

318 FirstChoice, for instance, estimates that only 3% of all its seats on flights to/from Ireland are sold as "dry seats" to end customers, see interview with FirstChoice of 8.3.2007, folio no. 6170.

319 The limited competitive impact of these charter airlines on the parties on the routes where the share of charter traffic (mainly "non-dry seats") is higher will be discussed further below within the framework of the competitive analysis of these individual routes.

320 See questionnaire of 21, 23 and 28 November 2006 sent to charter airlines, answers to questions 13(b) / 7, as well as additional questions to charter airlines during the Phase II investigation It should also be noted that a majority of airlines have answered that charter airlines would not exert any competitive pressure on Ryanair/Aer Lingus (See questionnaire of 6 November 2006 sent to scheduled airlines, answers to question 53).

321 See minutes from the meeting with Ryanair in Dublin of [...]* (folio no. 6170); the internal documents provided by Ryanair contain presentations on Ryanair's "main competitors" [...]*. See the documents named "Board Paper 3 for the Board Meeting of Reynar Holdings plc" for the meetings held on [...]*, [...]*, [...]*, [...]*, [...]* etc. (folio no. 629).

competition from "package holiday" operators. Since Ryanair and Aer Lingus provide the possibility to book a hotel and to rent a car on their websites, it could be argued that Ryanair and Aer Lingus are, at least to a certain extent, active in the market for "package holidays" and exercise pressure on tour operators and charter carriers and vice versa. The market for package holidays has undergone a change in recent years. Customers, who a few years ago could only book a package holiday if they wanted to fly cheaply to some destinations, can now book a cheap flight with a scheduled airline as an isolated product without any holiday package. Charter and scheduled airlines[322] as well as independent studies confirm that the rise of the low-frills carriers had a certain (negative) impact on the business-model of tour operators and charter airlines[323] that now face competition from low frills-carriers.

308. The fact that tour operators are negatively affected by low-frills carriers does, however, not mean that these tour operators exert any competitive pressure on the Merging Parties. Indeed, Ryanair does not argue that it is active in the market for package holidays. Ryanair and Aer Lingus do not sell and invoice accommodation or rental cars, but receive a fee if such products are booked via their website. In that respect, their service is rather similar to that of a travel agency or retailer. It should also be noted that the service of tour operators goes well beyond the product that can be booked on Ryanair's and Aer Lingus' website (flight plus hotel), since they offer a number of additional services (transfer from/to the hotel, travel guides, animation, insurance, etc.).

309. For the assessment of the question whether charter airlines/tour operators exercise a significant competitive constraint on scheduled airlines (beyond selling "dry seats"), it is important to stress that such a constraint would only affect those customers (i) who want to book a flight and accommodation and (ii) who would have considered booking a package holiday from a tour operator/charter airline. Many passengers flying with Ryanair or Aer Lingus, however, do not need a hotel (that is to say, passengers flying to holiday homes, passengers flying to visit friends and family, etc.). Even those customers who book a hotel via Ryanair or independently would not necessarily consider package holidays as an alternative, since they might not want to pay for "extra services" of a tour operator such as hotel transfer, travel guides, animation etc. The results of the Commission's Customer Survey carried out at Dublin Airport also showed that no passengers flying to "leisure" or so-called "ski & sun" holiday destinations considered charter airlines as an alternative. This confirms that package holidays are a manifestly different product.

310. The Commission therefore concludes that sales of package holidays offered by charter airlines and tour operators are not in the same market as the scheduled air transport services provided by Ryanair and Aer Lingus on the affected routes.

6.7.4. Conclusion on competition from charter airlines

311. The Commission therefore concludes that most of the services offered by charter airlines are

---

322 See e.g. questionnaire of 21, 23 and 28 November 2006 sent to charter airlines, answers to questions 15-18 as well as additional questions to charter airlines during the Phase II investigation; A number of respondents to the Commission's market investigation indicated that former package holiday customers at least partly switched from booking through a charter/tour operator to booking their holiday packages on a "do-it-yourself"-basis, combined of an independently booked accommodation and a scheduled flight with Ryanair or Aer Lingus.

323 CAA study "Low-Frills Carriers: Revolution or Evolution?", 15 November 2006, CAP 770, 2.33 ff.

not in the same market as scheduled air transport services (package holiday sales, seat sales to tour operators). It can be left open whether or not dry seat sales are part of the same relevant market, because this would not change the competitive assessment.

6.8. Separate market for non time-sensitive and time-sensitive passengers?

312. The Commission has, in several previous decisions concerning passenger air transport, defined separate markets for "time-sensitive" and "non time-sensitive" passengers[324]. Time-sensitive passengers were defined as passengers whose main concern is to reach their destination in the shortest possible time, who are not flexible in terms of time of departure/arrival, and who require that the airline offers them the possibility to change their reservation at short notice (so-called "unrestricted tickets")[325]. In order to distinguish between the two types, the Commission has grouped passengers travelling on "unrestricted" tickets in the category of time-sensitive and the remaining passengers in the category of non time-sensitive passengers.

313. All of the previous Commission decisions concerned at least one network carrier. This is not the case here in so far as Ryanair and Aer Lingus are both point-to-point low frills carriers. This difference is of particular importance because one of the typical features of low-frills carriers, in comparison to network full service airlines, is that their fare structure is much simpler. This is also the case in the present transaction where both Ryanair and Aer Lingus[326] have chosen to market their services only in the form of one-way restricted tickets for which, at any given point in time and for any one flight, there is only one price. The implication of this policy is that both Aer Lingus and Ryanair have foregone the possibility of price discriminating between customers on the basis of, for example, restricted/unrestricted tickets or the so called "Saturday night rule[327]".

314. It is indisputable that there exist different types of passengers, as explained by Ryanair in the Notification and many of its submissions. Various distinctions can be made in this regard. For example:

(10) the distinction which the Commission found relevant in previous cases between time-sensitive and non time-sensitive passengers;

(11) the distinction between business and leisure passengers;

(12) customers who are less price-sensitive and more price-sensitive ("low-frills") customers;

---

324 See e.g. cases M.3940 - Lufthansa/Eurowings, paragraph 12; M.3770 - Lufthansa/Swiss, paragraph 15; M.3280 - Air France/KLM, paragraph 19; the question was left open in case COMP/JV 19 – KLM/Alitalia, paragraph 21.

325 See COMP/JV 19 – KLM/Alitalia, paragraph 21.

326 On its European network, Aer Lingus issues exclusively one way restricted tickets, with the exception of tickets issued in accordance with corporate contracts. As explained above however, such contracts represent a negligible proportion of Aer Lingus' turnover.

327 The "Saturday Night Rule" is a typical restriction imposed on roundtrip tickets: these tickets are valid only if there is one Saturday night between the outbound and the inbound legs on the ticket. This rule is used to discriminate passengers travelling on business from leisure passengers. The latter are supposedly (i) more willing than business passengers to spend the Saturday Night away from home and (ii) more price sensitive. Therefore, roundtrip tickets subject to the Saturday night rule are normally cheaper.

(13) within leisure passengers, the distinction between passengers on holiday and those visiting friends or relatives; or

(14) on certain routes, in particular between Ireland and the Eastern European countries, passenger traffic associated with increasing numbers of migrants into the dynamic Irish economy.

315. The proportion of passengers in the above groups or subgroups may vary from one route to the other and the requirements or preferences of passengers in these groups or subgroups may also vary. For the present case therefore, the key question is whether different markets reflecting different types of passengers should be identified with a view to assessing the competitive effects of the proposed transaction and, if so, according to which distinction. Indeed, the fact that the present transaction, unlike previous merger cases, concerns in particular point-to-point customers flying with low-frills airlines, is an important difference to previous merger cases assessed by the Commission. It can be assumed that low-frills airline customers have, to a certain extent, different preferences from customers of more expensive network carriers. For instance, the Commission's market investigation has shown that customers of low-frills airlines are usually more ready to travel to remote "secondary" airports in order to obtain cheaper tickets[328].

6.8.1. The distinction between time sensitive and non time-sensitive passengers

316. One possibility to address the preferences of the customer group mainly concerned by this merger could be to classify them as "time-insensitive" in line with the distinction in previous merger cases. However, in its previous decisions the Commission has already observed that the formerly "clear" distinction between time-sensitive and non time-sensitive passengers had become more and more blurred in recent years, not least because the price-sensitivity of business customers has increased over time due to new possibilities to book cheaper flights with low-frills carriers[329]. These carriers operate on certain routes between city pairs with a relatively high number of frequencies and have therefore become more attractive for business customers. In fact up to 40% of the "business" customers responding to the Commission's survey mentioned "best price" as a reason why they had purchased the ticket. This proportion is less than the 62% of leisure passengers that mention this same factor but it is still significant. Furthermore it is the second most often cited factor, after "Best time" (48%). Closeness of airport to final destination was mentioned only by 30% of business passengers and "loyalty programs" by only 5%. This underscores the limited importance of loyalty schemes for business customers on the short-haul routes assessed in this case.

317. Moreover, neither Ryanair nor Aer Lingus price discriminate between time-sensitive and non-time sensitive passengers by offering unrestricted alongside restricted tickets. The

---

328 See for an example that summarizes the Commission's findings e.g. the interview with Aer Arann, folio no. 6170: *"...the catchment areas of airlines can vary significantly. In particular, the catchment area of Low Cost Carriers can be much larger than those of network carriers as customers are prepared to travel further to an airport to fly on their low cost flight."* In the view of competitors, non time-sensitive passengers (which can be deemed to represent the majority of Aer Lingus and Ryanair's passengers, see Annex I) are much more inclined to substitute primary with secondary airports than time-sensitive customers, see replies to the Questionnaire to Competitors sent on 6 November 2006, question 22.

329 See e.g. cases M.3280 - Air France/KLM, paragraph 19; M.3770 - Lufthansa/Swiss, paragraph 15. This trend was also confirmed by the market investigation in the current case - see replies to Questionnaire to Competitors of 6 November 2006, questions 20 and 21.

consequences of this are twofold. Firstly, it raises the question how, if appropriate, to identify and separate time sensitive from non time- sensitive passengers for the purposes of this assessment. Secondly, it is less obvious why a separate assessment should be relevant in the absence of a tailor made service with the corresponding price discrimination between these two categories of passengers. This is because, in the absence of this discrimination, passengers would be affected across the board, whether time sensitive or non time-sensitive, by any price increase or decrease by either Ryanair or Aer Lingus[330].

318. A separate assessment for time-sensitive and non time-sensitive appears all the less relevant in this case as Ryanair and Aer Lingus have both deliberately chosen not to explicitly discriminate between these categories of passengers. Aer Lingus changed its pricing policy, moving away from a complex pricing structure similar to those network carriers continue to apply today towards a simplified pricing structure with one-way restricted tickets only.

319. In the light of the foregoing, the Commission considers that the distinction between time-sensitive and non-time sensitive passengers is not relevant with a view to the assessment of the present transaction.

6.8.2. The distinction between business and leisure passengers

320. In the notification and various submissions thereafter, Ryanair argues that the distinction between *business* and *leisure* passengers is relevant in the assessment of this case. In support of its arguments, Ryanair refers to the recent Flybe/BA Connect decision of the Office of Fair Trading, where the OFT assessed to some extent separately the effects for business passengers of the Flybe/BA Connect merger.

321. The Commission observes that, similar to the distinction between time sensitive and non-time sensitive passengers, neither Ryanair nor Aer Lingus seek to discriminate between business and leisure passengers. Tickets are for sale under the same terms for both groups of passengers[331]. Both airlines have chosen to sell their tickets on a one-way basis, to the effect that they cannot discriminate passengers by means of the Saturday night rule. Similar to the distinction between time sensitive and non-time sensitive passengers, this has two fold consequences. Firstly, it raises the question how, if appropriate, to identify and separate leisure from business passengers for the purposes of this assessment. Secondly, it is questionable why a separate assessment should be relevant in the absence of a tailor made service with the corresponding price discrimination between these two categories of passengers. This is because, in the absence of this discrimination, passengers would be affected across the board, whether business or leisure, by any price increase or decrease by either Ryanair or Aer Lingus.

322. The Commission further notes in this regard that both Ryanair and Aer Lingus carry business and leisure passengers. The Customer Survey conducted by the Commission

---

330 It is noteworthy that the possibility to price discriminate between different customer groups was the main reason in previous decisions to define separate markets for time-sensitive and non-time-sensitive passengers (See in particular case M.3770 - Lufthansa/Swiss, paragraph 15).

331 It should be noted that Aer Lingus serves, but only to a very minor extent, also so-called "corporate customers", i.e. customers who can book flexible tickets under a framework contract with major corporate customers. These sales, however, apply only to customers under a corporate contract and account only for less than 5% of its total turnover (see Aer Lingus' e-mail of 27 March 2007, folio no. 6350) and are therefore no proper means to capture all time-sensitive passengers of Aer Lingus.

confirms that substantial proportions of both leisure passengers and business passengers consider Ryanair's services as a possible alternative for those of Aer Lingus and vice versa. Over the full sample 25.6% and 20.7% of Aer Lingus and Ryanair passengers, respectively, travel for business purposes. Furthermore 51.9% of Ryanair business customers had considered Aer Lingus as an alternative. Conversely 43.2% of Aer Lingus business customers considered Ryanair as an alternative. In fact this proportion is slightly higher than the proportion of leisure (holiday) and "visiting relatives" customers that considered Ryanair as an alternative, 42% and 40%, respectively. For Ryanair's passengers, the percentage that considered Aer Lingus is broadly similar, amounting to 43% for leisure (holiday) passengers and 33% for visiting friends/relatives passengers. There does not appear to exist, therefore, a clear relationship between differences in the needs or preferences of business and leisure passengers, on the one hand, and the differentiation between the services of Ryanair and Aer Lingus, on the other.

323. In the light of the foregoing, the Commission considers that it is not appropriate for the purpose of this case to define separate markets for business and leisure passengers[332].

6.8.3. Market for "late booking customers"?

324. Confronted with the difficulties regarding time sensitive *versus* non-time sensitive passengers and business *versus* leisure passengers described in Sections 6.8.1. and 6.8.2., the Commission explored whether any meaningful passenger groups could be identified on the basis of time lapsed between booking and departure for market definition purposes. In particular, the Commission considered the proportion of passengers who booked their flight seven days[333] or less before departure, hereinafter "late bookers".

325. It appears that the proportion of late bookers varies between continental "leisure" routes (late bookings usually between 5 and 15%) and the nine Ireland-United Kingdom routes (late bookings between 10% and 30%). Further, there are no major differences in the share of late bookings for Ryanair and Aer Lingus on individual overlap routes (see in more detail the competitive analysis of the individual routes).

326. However, it is unclear if differences in ticket prices, whether for early or late bookers, reflect real price discrimination by the carriers[334]. For Ryanair as well as for Aer Lingus, cheap fares remain available on certain flights almost up until departure. This is in particular the case for flights where demand (load-factor) is lower. Conversely on other flights, several weeks ahead of departure, only fairly expensive fares are available for booking. This is the case of flights where demand is high[335].

327. Accordingly, the Commission concludes that no relevant distinction can be made with a view to assessing the competitive effects of the proposed transaction on the basis of the "time between booking and departure" approach.

---

332 The Commission has, however, taken into account the differences between both customer groups where these differences were considered to be relevant for the competitive analysis.

333 The rationale for this "time to departure" approach is that low frills carriers like Ryanair or Aer Lingus tend to raise ticket prices for any given flight as the plane fills up with passengers. Late bookers therefore tend to pay a higher price, which could have constituted a meaningful form of price discrimination for the present purposes.

334 See minutes from the meeting with Ryanair in Dublin of 6 February 2007, folio no. 6170.

335 For more details on yield management systems of Ryanair and Aer Lingus, see the Section 7.4.1.

6.8.4. Separate market for "price insensitive" ("low-frills") customers?

328. Ryanair and Aer Lingus' customer appear to be more price-sensitive than, for example, customers of network carriers or business-customer oriented airlines (such as CityJet or Aer Arann), who offer a higher service level but charge higher prices than the Merging Parties. The Commission has therefore also considered distinguishing customers who are rather price insensitive (one typical group being again business customers) and customers who are more price sensitive ("low-frills" customers). Indeed, the fact that the present transaction, unlike previous merger cases, concerns mainly customers flying with low-frills airlines, is an important difference to previous merger cases. The Commission's market investigation has, for instance, shown that customers of low-frills airlines are usually more ready to travel to remote "secondary" airports in order to obtain cheaper tickets[336].

329. However, although the Commission again acknowledges that "price-sensitive" customers (typically flying with low-frill airlines) and "price-insensitive" customers (typically flying with network carriers) may have different preferences and needs, it is not appropriate to define two separate markets along this distinction in the present case. Indeed, it is questionable whether "price insensitive" customers *stricto sensu* exist at all, and it is in any event not possible to define a "dividing line" which distinguishes rather "price-sensitive" from rather "price-insensitive" customers.

6.8.5. Conclusion

330. In the light of the above, the Commission concludes, that, although an overall majority of Ryanair and Aer Lingus' "low frills" customers on the overlap routes are rather non time-sensitive and fly for private purposes[337], it is not appropriate to define separate markets for different categories of passengers, whether according to the time sensitive / non-time sensitive distinction, the business / leisure passenger distinction or the "time between booking and departure" approach.

331. This conclusion, however, is without prejudice to the actual existence of different groups of passengers. Any differences between passenger groups are considered as appropriate in the competitive assessment for each of the relevant O & D pairs in Section 7.9.

6.9. Conclusion

332. On the basis of the above the Commission finds that for the purpose of the assessment of the proposed transaction the relevant markets are the markets for direct[338] scheduled passenger air transport services between a given point (or region) of origin and a given point (or region) of destination[339].

---

336 See for example the interview with Aer Arann, folio no. 6170, which summarizes the Commission's findings in this regard: *"...the catchment areas of airlines can vary significantly. In particular, the catchment area of Low Cost Carriers can be much larger than those of network carriers as customers are prepared to travel further to an airport to fly on their low cost flight."* In the view of competitors, "non time-sensitive" passengers (which can be deemed to represent the majority of Aer Lingus and Ryanair's passengers, see e.g. Annex I) are much more inclined to substitute primary with secondary airports than "time-sensitive" customers See e.g. replies to the Questionnaire to Competitors sent on 6 November 2006, question 22.

337 See Annex I, answers to question 5 of the Customer Survey.

338 See Section 6.5.

339 See Section 6.3.

333. In view of the services currently offered by the Merging Parties, the proposed transaction would lead to actual overlaps between the Merging Parties on the following markets:

(i.) scheduled passenger air transport services between Dublin and Alicante, Barcelona, Berlin, Bilbao/Vitoria, Birmingham, Bologna, Brussels, Edinburgh, Faro, Frankfurt, Glasgow, Hamburg/Lübeck, Krakow, London, Lyon, Madrid, Malaga, Manchester, Marseille, Milan, Newcastle, Paris, Poznan, Riga, Rome, Salzburg, Seville, Tenerife, Toulouse/Carcassonne, Venice, Vienna/Bratislava and Warsaw;

(ii.) scheduled passenger air transport services between Cork and London as well as Cork and Manchester;

(iii.) scheduled passenger air transport services between Shannon and London.

334. Further, the proposed transaction may raise concerns on the following markets where currently only one of the Merging Parties operates:

(i.) scheduled passenger air transport services between Dublin and Aberdeen, Alghero, Almeria, Amsterdam, Athens, Biarritz, Bournemouth, Bremen, Bydgoszcz, Billund, Blackpool, Bordeaux, Bristol, Budapest, Cork, Doncaster, Dubrovnik, Düsseldorf, Eindhoven, Friedrichshafen, Gdansk, Geneva, Gothenburg, Jersey, Karlsruhe, Kaunas, Lanzarote, La Rochelle, Lisbon, Lodz, Malmo, Malta, Munich, Nantes, Naples, Nice, Oslo, Palma de Mallorca, Pisa, Porto, Prague, Pula, Rennes, Rzeszow, Santiago de Compostela, Shannon, Stockholm, Tampere, Trapani, Valencia, Vilnius, Wroclaw, Zurich;

(ii.) scheduled passenger air transport services between Shannon and Alicante, Barcelona, Biarritz, Birmingham, Bournemouth, Bristol, Brussels, Düsseldorf, Edinburgh, Faro, Frankfurt, Glasgow, Krakow, Lodz, Madrid, Malaga, Manchester, Milan, Nantes, Paris, Rome, Toulousse/Carcassonne, Venice, Wroclaw; flights between Cork and Alicante, Amsterdam, Barcelona, Berlin, Birmingham, Faro, Lanzarote, Malaga, Madrid, Nice, Paris, Prague, Rome, Tenerife, Warsaw.

7. COMPETITIVE ASSESSMENT

7.1. Introduction

335. The Commission has dealt with a number of airline mergers in the past years. However, the present case differs in some significant aspects from these past cases. All previous cases concerned mainly mergers of two carriers which had their main centres of operations at different airports, often in different countries and raised concerns on a relatively limited number of overlapping routes. In contrast, this merger concerns the two main airlines in Ireland with a significant base at the same airport, namely Dublin Airport. As a consequence, the merger raises concerns on a significant number of overlap routes, all with a common point of origin. Indeed, *all* affected routes in the present case are from or to Ireland.

336. Moreover, while past cases concerned airlines with complementary networks and operating models[340], the present transaction is the first case in which the Commission has

340 For example, the merger of a network carrier operating according to a hub and spoke model with a charter/tour operator (see cases M.2218 - British Airways/Thomas Cook; M.1354 - Sair (Swissair)/LTU;

to assess a merger combining two airlines which operate according to the low-frills/low-fares business model[341] and which are focused on point-to-point intra-European services. On a European level, the merger combines two of Europe's largest low-frills carriers. According to the Association of European Airlines, Ryanair and Aer Lingus ranked number one and three respectively in terms of weekly "no-frills" seats sold in summer 2006[342].

337. Previous airline cases dealt mainly with mergers which combined complementary networks and operating models, e.g. network carriers operating with a hub and spoke model and charter/ tour operators[343], network carriers and smaller regional airlines[344] or, in some cases, two (smaller and larger) network carriers[345].

338. Both the fact that Ryanair and Aer Lingus have a large base at Dublin Airport, where they are the two largest airlines with operations of a similar scale, and the fact that they operate according to a similar model of point-to-point / low-frills services have a significant effect on the nature of competition that they exert on each other and that would be lost following the proposed merger. As set out below in detail, the strength of both airlines at the same airports combined with their low frills/low cost business model would increase the already high barriers to entry or expansion for actual and potential competitors[346]. Since the nature of competition in the airline industry in general and between Ryanair and Aer Lingus in particular is not static but *dynamic*, this applies not only to those markets where both Merging Parties are currently active, but also to other routes that are operated only by Ryanair or Aer Lingus out of Dublin today[347].

339. In the competitive assessment set out below, the Commission first analyses the *market shares* on the actual routes on which Ryanair's and Aer Lingus' overlap (Section 7.2), and examines the degree of *closeness of competition* between Ryanair and Aer Lingus on the affected routes (Section 7.3) and whether both companies *actually compete* with each other in practice (Section 7.4). The Commission then describes the consequences of the merger for the *actual competition* between Ryanair and Aer Lingus (Section 7.5) as well as the

---

M.1128 - KLM/Martinair; M.2093 - Airtours/FTI; M.1524 - Airtours/First Choice), the merger of a network carrier and a smaller regional airline (see Cases M.157 - Air France/Sabena; M.278 - British Airways /DanAir; M.857 - British Airways /Air Liberté; M.806 - BA / TAT; M.1855 - Singapore /Virgin; M.1494 - Sair (Swissair)/AOM; M.3940 - Lufthansa Eurowings) or the merger of two network carriers (a smaller and a larger (see cases IV/JV.19 - KLM /Alitalia; COMP M.3770 - Lufthansa/Swiss; M.562 - Swissair/Sabena).

341 See above Section 6.1.

342 See Association of European Airlines, Yearbook 2006, page 10.

343 See cases M.2218 - British Airways/Thomas Cook; M.1354 - Sair (Swissair)/LTU; M.1128 - KLM/Martinair;M.2093 - Airtours/FTI; M.1524 - Airtours/First Choice.

344 Cases M.157 - Air France/Sabena; M.278 - British Airways /DanAir, M.857 - British Airways /Air Liberté; M.806 - BA / TAT; M.1855 - Singapore /Virgin; M.1494 - Sair (Swissair)/AOM; M.3940 - Lufthansa Eurowings.

345 See cases IV/JV.19 - KLM /Alitalia; COMP M.3770 - Lufthansa/Swiss; M.562 - Swissair/Sabena.

346 See Section 7.8.

347 Both airlines constantly seek to maximise the use of their fleet and crew as these are fixed costs. As a result, they will constantly adjust the number of routes they operate (and the frequencies on these routes) from a given hub or base. This is exemplified by the fact that the actual number of the overlap routes has changed significant in the past and would even have been different, had the merger been notified a few months earlier or later (and actually changed during the course of the Commission's investigation Since the Article 6(1)(c) decision, the overlap routes no longer include anymore the Dublin – Bristol route as Aer Lingus ceased its operations on this route at the end of March 2007. See in detail Section 7.6 on potential competition.

consequences for routes where they are *potential competitors* (Section 7.6). The Commission then assesses the *switching possibilities* and *buyer power* of Aer Lingus' and Ryanair's customers (Section 7.7), as well as the existing *barriers to entry* and the likelihood of the *existing competitors* to compensate for the expected loss of competition (Section 7.8). The Commission then analyses the individual effects of the merger on each individual route-pair *("route-by-route analysis"*, Section 7.9) and finally discusses whether *efficiencies* are likely to outweigh the competitive harm (Section 7.10).

7.2. The merger leads to very high market shares on a large number of routes

340. Ryanair and Aer Lingus account for the largest share of passenger traffic at the airports of Dublin, Shannon and Cork. Ryanair and Aer Lingus accounted for [30-40]*% and [30-40]*%, respectively of all passengers ex-Dublin in 2005, whereas British Midlands accounted for [less than 5]*% and Lufthansa for [less than 5]*%. Taking into account only intra-European traffic, the market shares of Ryanair and Aer Lingus amount to [40-50]*% and [30-40]*% respectively. Ryanair and Aer Lingus also serve the largest number of destinations ex-Dublin with over 110 destination airports in Europe for both airlines together and 80% of all intra-European traffic. The combined entity would be the largest short-haul carrier at Cork and Shannon airports. From both airports, they operate in total to around 20 destination airports, being by far the largest operator.

7.2.1. The merger creates a monopoly on 22 routes and leads to market shares above 60% on all remaining routes

341. The operations of Ryanair and Aer Lingus overlap currently on 35 routes[348]. Table 2 summarises all overlap routes together with market shares[349] of the Merging Parties and their main competitors.

---

348 It should be noted that Ryanair's and Aer Lingus' point-to-point operations are regularly adjusted and modified.

349 The market shares in the table are, except for Dublin-Paris and Dublin-Frankfurt, calculated on the basis of the capacity operated on the route (seats/week). The last passenger data for the parties and their competitors are available to the Commission only for the Summer 2006 season. Since then, there have been a number of changes in the structure of the markets (in particular competitors exiting or one of the mergin parties entering the route). The actual capacity data therefore give the most up-to-date "picture" of the current structure of the individual markets. Further, these market shares to a large extent correspond to the market shares calculated on the basis of the actual point-to-point passenger numbers (for the routes where these numbers are already available) with the exception of in particular *two* routes to major hub airports - Frankfurt and Paris - where existing network carriers have a significant proportion of connecting passengers and where thus the combined market share of the Merging Parties on the basis of point-to-point passenger traffic is significantly higher than on the basis of capacity data. For this reason, the table provides for these two routes market shares based on actual point-to-point passengers. For all other routes, the differences between market shares on the basis of capacity and actual point-to-point passenger numbers are only minor, if any (see for more details Section 7.9).

***Table 2**: Routes with existing overlaps between Ryanair and Aer Lingus with market shares of the Merging Parties and all existing competitors based on planned weekly seat capacity for Summer 2007 season (unless specified otherwise)[350].*

Route	Ryanair	Aer Lingus	COMBINED	Existing competitors	Share
Dublin - Alicante	[50-60%]*	[40-50%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin - Barcelona	[40-50%]*	[30-40%]*	**[70-80%]*** **[65-75%]***	Iberia/Clickair [Charter (dry seats[351])]	[20-30%]* [0-5%]*
Dublin - Berlin	[50-60%]*	[40-50%]*	**100%**		
Dublin - Bilbao/Vitoria	[50-60%]*	[40-50%]*	**100%**		
Dublin - Birmingham	[60-70%]*	[30-40%]*	**100%**		
Dublin - Bologna	[50-60%]*	[40-50%]*	**100%**		
Dublin - Brussels	[50-60%]*	[40-50%]*	**100%**		
Dublin - Edinburgh	[70-80%]*	[20-30%]*	**100%**		
Dublin - Faro	[40-50%]*	[50-60%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin - Frankfurt	[40-50%]*	[40-50%]*	**[80-90[352]%]***	Lufthansa	[10-20%]*
Dublin - Glasgow	[50-60%]*	[30-40%]*	**[90-100%]***	Loganair	[0-10%]*
Dublin - Hamburg/Lübeck	[60-70%]*	[30-40%]*	**100%**		
Dublin - Krakow	[30-40%]*	[40-50%]*	**[70-80%]***	SkyEurope	[20-30%]*
Dublin - London	[40-50%]*	[30-40%]*	**[70-80%]***	BMI British Airways CityJet	[10-20%]* [0-10%]* [0-10%]*
Dublin - Lyon	[30-40%]*	[60-70%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin - Madrid	[20-30%]*	[30-40%]*	**[60-70%]***	Iberia	[30-40%]*
Dublin - Malaga	[30-40%]*	[60-70%]*	**[90-100%]*** **[85-95]*%**	Spanair [Charter (dry seats)]	[0-10%]* [0-5%]*
Dublin - Manchester	[70-80%]*	[20-30%]*	**[90-100%]***	Luxair	[0-10%]*
Dublin - Marseille	[50-60%]*	[40-50%]*	**100%**		
Dublin - Milan	[30-40%]*	[60-70%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin - Newcastle	[70-80%]*	[20-30%]*	**100%**		
Dublin - Paris	[40-50%]*	[30-40%]*	**[80-90[353]%]***	AF/CityJet	[10-

350 For confidentiality reasons, the market shares as well as some other figures from third parties are provided in this Decision as ranges in square brackets.

351 The question whether dry seat sales of charter airlines or tour operators should be included in the affected markets was left open (see Section 6.7) and has, as the table shows, no significant effect on the assessment of the transaction. See more in detail in the detailed analysis of the respective routes in Section 7.9.

352 As indicated above in footnote 349, these figures take account of the significant number of connecting passengers of the network carrier Lufthansa which are disregarded (see Section 6.3.1). They are based on actual *point-to-point* passengers and not overall capacity.

353 As indicated above in footnote 349, these figures take account of the significant number of connecting passengers of the carrier CityJet which are disregarded (see Section 6.3.1). They are based on actual *point-*

Route	Ryanair	Aer Lingus	COMBINED	Existing competitors	Share
					20%]*
Dublin - Poznan	[60-70%]*	[30-40%]*	**100%**		
Dublin - Riga	[40-50%]*	[20-30%]*	**[70-80%]***	Air Baltic	[20-30%]*
Dublin - Rome	[40-50%]*	[50-60%]*	**100%**		
Dublin – Salzburg*	[50-60%]*	[40-50%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin – Seville	[50-60%]*	[40-50%]*	**100%**		
Dublin - Tenerife	[50-60%]*	[40-50%]*	**100%** **[95-100]*%**	[Charter (dry seats)]	[0-5%]*
Dublin - Toulouse/Carcassonne	[60-70%]*	[30-40%]*	**100%**		
Dublin - Venice	[40-50%]*	[50-60%]*	**100%**		
Dublin - Vienna/Bratislava	[20-30%]*	[50-60%]*	**[70-80%]***	SkyEurope Austrian Airlines	[20-30%]* [0-10%]*
Dublin - Warsaw	[30-40%]*	[30-40%]*	**[60-70%]***	LOT Norwegian Airline Shuttle	[10-20%]* [10-20%]*
Shannon - London	[50-60%]*	[40-50%]*	**100%**		
Cork - London	[50-60%]*	[40-50%]*	**100%**		
Cork - Manchester	[40-50%]*	[10-20%]*	**[60-70%]***	bmibaby Aer Arann	[30-40%]* [0-10%]*

* As Dublin-Salzburg route is operated only during the winter season, the provided market shares are based on winter 2006/2007 weekly seat capacities.

342. On these 35[354] overlapping routes, the transaction would be a merger to monopoly[355] on 22 routes and lead to very high combined market shares above 60% on further 13 routes. In the absence of competitors with considerable market shares on almost all routes, the merger would lead to very high Herfindahl-Hirschman-Index (hereinafter "HHI") levels. Even on those few non-monopoly routes where a number of different competitors are active, such as the London-Dublin route, the HHI level would reach [6000-6500]*, with a delta of [3000-3500]*. The concentration level created through this merger on all 35 overlapping routes would therefore be very high.

343. On 16 of the overlap routes, there are direct airport-to-airport overlaps between the

---

to-point passengers and not overall capacity

354 Unlike the Article 6(1)(c) decision, the overlap routes do not include anymore the routes Dublin–Bristol, Dublin-Fuerteventura and Dublin-Turin, as Aer Lingus ceased its operations on this route as of end of March 2007 (Bristol) and June (Fuerteventura, Turin). Further, the list of overlap routes does not include Dublin – Amsterdam/Eindhoven and Dublin – Nantes/Rennes routes where the in-depth investigation showed that the relevant destination airports cannot be regarded as substitutable (see above in the Section 6.3.). On the other hand, the Merging Parties have already announced to open new routes after the date of the sending of the Statement of Objections, some of which might create new overlap routes (e.g. Dublin – Copenhagen, to be opened by Aer Lingus as of Winter 2007/2008, very likely in competition with Ryanair's existing operation marketed as Malmö/Copenhagen, or Shannon – Dublin, to be opened by Ryanair as of Winter 2007/2008 in competition with the existing operations of Aer Lingus).

355 Even if dry seat sales from charter airlines were included, the market share would still come close to a monopoly due to the very limited number of places the offer of the parties.

Merging Parties' activities as both Merging Parties fly from the same airports at both ends of the O&D-pair[356]. On the remaining 19 routes, there is a city-to-city overlap with Ryanair and Aer Lingus using different airports on the non-Irish side of the leg as listed in Table 1 in the Market Definition section above (paragraph 82)[357].

344. The high market shares do not only relate to "thin" routes, but to a number of important routes from and to Dublin. According to the report of *Airport Coordination Limited* (hereinafter "ACL") on distribution of slots at Dublin Airport for the Summer 2006 season ("Start of Season Report"), the following routes from Dublin (on an airport-to-airport basis) are the most important as regards their capacity: London - Heathrow, London/Stansted, London/Gatwick, Manchester, Paris CDG, New York JFK, Malaga, Birmingham, Amsterdam and Faro. The markets where the *Merging Parties' activities overlap cover 8 out of these 10 most important routes to/from Dublin* (while one of the remaining two most important routes is a long-haul route to New York) and their combined market shares are very high in all these markets (London – [70-80%]*, Manchester – [90-100%]*, Paris – [60-70%]* on the basis of total capacity but up to [80-90%]* when connecting passengers are excluded, Malaga – [90-100%]*, Birmingham – 100%, Faro – 100%[358]. These figures further illustrate the effects of the transaction on short-haul air traffic to/from Dublin as the Merging Parties' activities overlap not only on a large number of routes, but these routes include a number of the most important routes to/from Dublin.

345. The overall importance of the overlap routes is also demonstrated by the fact that the total number of passengers on only the 32 "overlap routes" to/from Dublin represented in 2006 around 70% of all passengers carried on intra-European routes to/from Dublin[359]. The total passenger number on all overlap routes affected by the proposed merger amounts to more than 14 million[360].

346. Although the number of passengers and the frequency of operations on the overlap routes may vary[361], and although some of the routes are only operated by one airline on a seasonal basis[362], it remains that the merger will eliminate or significantly reduce customers' choice on all these routes, even thinner or seasonal ones. Even on "thinner"

---

356 These are: Dublin-Alicante; Dublin – Berlin, Dublin - Birmingham, Dublin - Edinburgh, Dublin - Faro, Dublin - Krakow, Dublin - Malaga, Dublin - Manchester, Dublin - Marseille, Dublin - Poznan, Dublin - Riga, Dublin - Salzburg, Dublin - Madrid, Dublin - Newcastle, Dublin – Seville, Dublin – Warsaw,.

357 It should be noted that in case of three routes (Dublin – Manchester, Dublin – Birmingham, Dublin - Alicante and Dublin – Newcastle) Ryanair flies both to the same airport as Aer Lingus (Manchester, Birmingham and Newcastle respectively) and to a secondary/adjacent airport(s) (Liverpool and Leeds, East Midlands and Durham respectively). Therefore, the airport substitutability was analysed in the market definition section also with respect to these routes, in addition to the 16 only city-to-city overlapping routes.

358 Even if dry seat sales from charter airlines were included, the market share would still come close to a monopoly due to the very limited number of places the offer of the parties.

359 The remaining "non-overlap routes" of the Merging Parties therefore represent only about 10% of intra-European customers at Dublin. The calculation is based on passenger data provided by DAA.

360 The total passenger number was calculated by the Commission on the basis of the (confidential) passenger numbers submitted by the Dublin Airport Authority ("DAA") on 1 February 2007 for individual routes.

361 See for a detailed analysis of the passenger number and the frequencies offered on each route the route-by-route analysis in Section 7.9.

362 Examples of such *seasonal routes* are: Aer Lingus operates only in summer Dublin – Bilbao, Dublin – Bologna, Dublin – Marseille and Dublin – Toulouse and only in winter Dublin – Salzburg. The majority of routes are however permanent.

routes, customers can currently choose between two airlines which successfully operate on these routes. The Commission therefore has to ensure that also customers of "thinner" or seasonal routes are not harmed by the elimination of the main competitor.

347. It should also be noted that on the routes to important hub destinations, in particular London, Paris and Frankfurt, the market shares based on capacity underestimate the importance of Ryanair and Aer Lingus for point-to-point flights to the extent that the main competitors on these routes usually have a higher proportion of connecting/transfer passengers than the Merging Parties. Ryanair serves only point-to-point customers and even discourages their customers from using their flights to transfer to other flights. The change in business model of Aer Lingus has also led to a focus on point-to-point passengers, which means that the share of transfer passengers on these routes is usually significantly lower than for traditional network carriers[363]. The assessment of the individual routes below provides more details on this issue.

7.2.2. The very high market shares on all overlap routes constitute evidence of a dominant position

348. According to the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.[364]

349. The Horizontal Merger Guidelines also state that according to well established case-law, very large market shares - 50% or more - may in themselves be evidence of the existence of a dominant market position[365]. The Court of First Instance recently confirmed that although the importance of market shares may vary from one market to another, very large shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position[366]. In a recent case concerning the airline sector, the Court of First Instance also stated that *'market shares held by the parties to the merger led the Commission to conclude that commitments should be offered on the markets affected and on which those parties enjoyed a market share of almost 50%, thereby respecting the presumption of dominance as laid down by the case-law'*[367].

350. The Merging Parties would have very high market shares on all 35 routes on which their activities overlap. For 22 routes the merger would create a monopoly, depriving customers of the only available alternative, but also for all remaining overlap routes. Also on the other 13 routes, given the very high market shares of the merged entity, convincing evidence is necessary to conclude that the merger would not result in the creation or strengthening of a dominant position.

351. The Commission has carefully analysed whether there are circumstances which might exclude a dominant position in the present case despite the high market shares. The relevant factors for the Commission's assessment will be first discussed in general terms in the following sections (see Sections 7.3 - 7.8). Many of the factors considered by the

---

363 Connecting or transit passengers accounted, according to Aer Lingus, only for [5-10%]* on the 34 overlap routes from/to Dublin as identified by the Commission in the Statement of Objections.

364 See Horizontal Merger Guidelines, OJ C 31, 5.2.2004, pages 5-6, paragraph 14.

365 See Horizontal Merger Guidelines, OJ C 31, 5.2.2004, page 5, paragraph 17.

366 See Case T-210/01 *General Electric* v *Commission* [2005] ECR II-5575, paragraph 115.

367 Case T-177/04 *easyJet* v *Commission* [2006] ECR II-1913, paragraph 174.

Commission apply to a greater or lesser extent to all overlap routes.

352. In order to take due account of the particularities of each route, the Commission has also analysed the competitive situation and notably the main potential factors that might counteract the effects of the merger on a route-by-route basis (see Section 7.9).

7.3. Ryanair and Aer Lingus are closest competitors on all affected routes

353. Ryanair argues that the product offering of the Merging Parties are significantly different in that Ryanair offers a pure low-cost no frills service and focuses on generating demand from low fares whereas the product offering of Aer Lingus is more "mid-frills". In particular, Ryanair notes that Aer Lingus' services are generally more expensive and that it offers additional services such as seat allocation. In addition, Aer Lingus flies into primary airports, while Ryanair mainly serves secondary airports. A service between primary airports can be perceived as offering higher quality with respect to, for example, reduced overall travelling time for customers who wish to go to the city centre or the availability of business lounges.

354. The concept of "closeness of competition" may play an important role to better understand the competitive constraint different competitors exert on each other in oligopolistic markets[368].This concept is however of limited added value on markets in which from the outset only two competitors are active (such as on the 24 current duopoly markets affected by this transaction), since both competitors in a duopoly are "by nature" each other's closest competitors.

355. Even on those routes on which Ryanair and Aer Lingus do face one or more competitors, the distance in terms of market share to this competitor(s) is in most cases significant. Similarly, even on those markets, where one or more smaller competitors are active, the transaction would have a significant competitive impact, including in cases where the Merging Parties would not be the closest substitutes in terms of product characteristics. In other words, even if customer diversion (switching) between Ryanair and Aer Lingus were somewhat less than proportional to their market shares on some routes, the transaction would still significantly impede effective competition.

356. It is also important to stress that although an existing airline (such as easyjet) operating outside the affected markets might be "overall" closer to Ryanair than Aer Lingus as concerns certain elements (e.g. the service model) this does not put into question that Ryanair and Aer Lingus are each other's closest competitors on the routes actually affected and analysed in this decision (i.e. the routes from and to Ireland). That is to say, for the analysis of closeness of competition, the Commission must focus on those competitors who actually compete with Ryanair and Aer Lingus on the affected markets. However, it does not only compare the two merging firms[369], but also the remaining competitors or "rivals" in the affected markets[370].

357. It should be particularly noted that for two airlines to be considered as offering services

---

368 See Horizontal Merger Guidelines, paragraphs 28-30.

369 In particular in markets where the two merging firms are *by far* the largest competitors, there is a strong presumption that they are each others' closest competitors.

370 See Horizontal Merger Guidelines, paragraph 28: *"(...) The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes"*

which are close substitutes to each other it is not necessary that the two services are *identical*. Some services may be closer substitutes than others. What matters from a substantive competition perspective is the (high) degree of substitutability between the services of Aer Lingus and Ryanair. The fact that there are certain differences between Ryanair and Aer Lingus in terms of overall size, cost structure, average fares, service offering, served regions and brand, does therefore not put into question that both airlines are each others' closest competitors on routes from and to Ireland. This is further explained in the next sections.

358. The only current competitors of Ryanair and Aer Lingus on the overlap routes offering scheduled services are Aer Arann, Air Baltic, Austrian Airlines, BMI/bmibaby, CityJet (Air France), Clickair (Iberia), LOT, Lufthansa, Luxair, Norwegian Airline Shuttle, Sky Europe. It is noted that these competitors are in most cases network carriers or (equally business-customer and feeder-traffic oriented) regional airlines. On some routes also charter airlines (e.g. XL, My Travel, FirstChoice) are active[371]. Hence, even those routes where competitors would remain post-merger, Ryanair and Aer Lingus are each other's closest competitors. Even if on some routes a competitor with a more similar service and operating model is active (such as e.g. bmibaby, SkyEurope, Clickair or Norwegian), the market shares of these carriers on the overlap routes are in most cases significantly smaller, and none of these competitors has significant operations or even a large base in Dublin. Hence, also on that basis, Aer Lingus and Ryanair can also be regarded as closer competitors than these carriers[372].

359. The Commission will nevertheless explain in more detail why Ryanair and Aer Lingus are regarded as the two closest competitors on those affected routes where they face a competitor.

360. Apart from Ryanair's and Aer Lingus similar size and market position in Ireland (1) and their similar business model (2) and cost structure (3), the fact that they both have a significant base in Dublin (4) makes Aer Lingus and Ryanair the closest competitors on routes out of these Irish airports. Both airlines are also viewed by customers as the two closest competitors (5). These individual factors will be analysed below in the given order.

7.3.1. Both companies have equally strong position in Ireland and face few competitors

361. Ryanair and Aer Lingus have a particularly strong position in Ireland[373]. On almost all routes, they are the only two or the two main carriers active, often with comparably high market shares. Even on routes where both airlines face competition, the position of their competitors is in most cases significantly weaker than the Merging Parties' position. Only on three of all 35 overlap routes, is there a competitor with a higher "nominal" market share than one of the Merging Parties. On at least two of these three routes, however, the "larger" competitor carries a high proportion of connecting passengers. If only looking at "point-to-point"-services, the Merging Parties would be the largest "point-to-point" carriers

371 See in more detail below, Section 7.9.

372 See Section 7.3.4.

373 See above, Section 7.2.1, Table 2.

also on these routes[374].

362. Ryanair and Aer Lingus are also each other's closest competitors as regards their ability to serve routes from/to Dublin. In Dublin, Aer Lingus and Ryanair currently base 23 and 20 larger short-haul aircraft respectively, while the other Dublin based airlines, Aer Arann and CityJet, have only 4 and 3 small aircraft (less than 130 seats) based in Dublin, and other airlines overnight only one aircraft at Dublin Airport[375]. As described in more detail below, as these latter two carriers concentrate on a different type of services (regional and feeder/business traffic), Aer Arann's and CityJet's fleets consist of airplanes which are much smaller than those operated by the Merging Parties.

7.3.2. Both companies' business model has become increasingly similar and is markedly different from most of their competitors

363. As concerns the main characteristics of an airline, a distinction can be made between different service and operating models. As pointed out above[376], airlines are highly differentiated and do not often fulfil all characteristics of a particular category ("full service" or "low frills" model or pure network carriers and point-to-point carriers).

364. Ryanair argues that the product offerings of the Merging Parties are significantly different in that Ryanair offers a pure low-cost no frills service and focuses on generating demand from low fares, whereas the product offering of Aer Lingus is more focused on quality than on offering low prices. Ryanair notably stresses that Ryanair's average fare on short-haul flights is significantly lower than Aer Lingus' average fare, that Aer Lingus offers additional services such as seat allocation, and that Aer Lingus flies into primary airports, while Ryanair mainly serves secondary airports. According to Ryanair, a service between primary airports can be perceived as offering higher quality with respect to, for example, reduced overall travelling time for customers who wish to go to the city centre or the availability of business lounges.

365. The Commission does not contest that there are a number of elements which may differ in the service from Aer Lingus and Ryanair. Aer Lingus offers some additional services which Ryanair does not offer (such as business lounges or a frequent flyer programme). In addition, Aer Lingus flies into primary airports, while Ryanair mainly serves secondary airports.

366. The market investigation has also clearly confirmed[377] that there is still some differentiation in terms of brand and service offering between Aer Lingus and Ryanair. Indeed, Aer Lingus' is generally perceived as offering a higher service level, and business and corporate customers seem to have a certain preference for Aer Lingus, while also regularly flying with Ryanair[378].

---

374 At least on two of these three routes (Dublin-Paris and Dublin-London), the large proportion of connecting passengers of cityJet and Lufthansa should be deducted in order to compare the market shares, see above Section 7.2.1.

375 See more in detail below, Section 7.3.4

376 See Section 6.1.

377 See replies to question 13, 14 and 15 of the Questionnaire to Customers of 31.10.2006 and replies to questions 28,29 and 30 of the Questionnaire to Competitors of 06.11.2006.

378 See in this respect e.g. Ryanair's comment in the Response to the Statement of Objections, Page 70; see

367. However, it should be noted that despite being a former flag carrier, Aer Lingus has undergone a major restructuring process, thereby changing its business model on its intra-European operations[379] and repositioning itself as a low-frills airline focused on point-to-point services. Indeed, for their short-haul operations, the main elements of the service and business model of Ryanair and Aer Lingus have become increasingly similar to each other. Both companies present themselves as low cost/low fares carriers[380], and operate a single ticket class, with no or little on-board frills or services on intra EU flights. They apply a similar unidirectional pricing model for one-way, one-class and not refundable tickets. They both realise most of their bookings from the web rather than via travel agents. Recently, Aer Lingus for example also followed Ryanair in charging an extra fee (€ 5 to 8 per piece) from its customers for check-in luggage, and Aer Lingus no longer offers free meals on short-haul flights. Ryanair's newly introduced express check-in makes in turn Ryanair more attractive for business customers. Although Aer Lingus' services might be regarded as "mid-frills" when compared to its direct competitor Ryanair (mainly because of the remaining service differentiation in terms of serving primary airports) and although Ryanair's services might be called "no-frills", the Commission considers, for the purposes of this decision, that both airlines can be considered "low-frills" carriers, since following the latest adaptations of Aer Lingus' service model, the services included in the Aer Lingus base fare are broadly in line with those included in the Ryanair base fare and in stark contrast to traditional "full service" airlines such as British Airways or Lufthansa.

368. Indeed, although Aer Lingus's fares are usually higher and Aer Lingus customers pay a certain "premium" for the additional services[381], it must be stressed that the business model of other competitors on the overlap routes is overall more remote from Ryanair's model than Aer Lingus' business model.

369. The competitors Ryanair faces on its routes are mainly[382] carriers focused on "feeder-

---

replies to question of the questionnaire to customers of 31.10.2006 (questions 8, 9, 16, 17 and 18). Although a number of corporate customers indeed emphasises the differences between both airlines for business customers, these differences are less relevant in the present case, which mainly affects leisure customers; see also some replies of the questionnaire to competitors of 06.11.2006 (questions 31, 32, 45). It should however be noted that even business customers do not at all disregard Ryanair but fly to a significant extent with Ryanair, see the results of the Commission's Customer Survey in Annexes I and II, the questionnaire to customers of 31.10.2006 (questions 15, 17 and 18)., the CAA-study "No-Frills Carriers: Revolution or Evolution" (2006), chapter 4 page 3 et seq.

379 The changed model of Aer Lingus does not relate to its long-haul operations. However, as the overlaps between the parties are limited to intra-European flights and these flights are no affected by the long-haul operations as Aer Lingus does not feed these flights through its short-haul network as traditional hub-and-spoke carriers, the long-haul operations of Aer Lingus can be disregarded for the purpose of the competitive assessment of the proposed concentration.

380 See for example Aer Lingus' slogan: "Low Fares -Way Better".

381 It should however be noted that Aer Lingus' customers usually have to pay less for the transfer to the airport and can reach the primary airports served by Aer Lingus easier.

382 On many routes, the parties face *network carriers* such as Lufthansa on the Dublin- Frankfurt route, Iberia on flights to Madrid, Air France/CityJet to Paris CDG, Austrian to Vienna, British Airways and bmi to London. These carriers feed traffic into their respective hub airport. As described above in Section 6.1, Ryanair's and Aer Lingus' "point-to-point" operating model differs from "feeder-oriented" services of network carriers. While network carriers mainly cater for transfer passengers and primarily feed their hub airport. Ryanair does not compete for transfer passengers at all, and also Aer Lingus, while carrying to a certain extent connecting passengers for third airlines, clearly focuses its strategy on point-to-point (and not feeder) services. Network carriers also provide a different service model (price/quality) mix than Aer Lingus and Ryanair, and therefore they are less close competitors. They operate into main airports (their "hubs") and

oriented" traffic and on business customers (e.g. CityJet, British Airways or Lufthansa) and smaller airlines with regional activities (Luxair, Loganair). Although not identical, Aer Lingus' business model is therefore closer to Ryanair's model than to the business customer/feeder-traffic oriented model of almost all its competitors on the overlap routes.

370. The Commission observes that Ryanair and Aer Lingus face only on a few routes other low-frills/point-to-point airlines as competitors[383]. Europe's largest no-frills airlines (such as easyJet, Air Berlin or the regional[384] low-frills carrier FlyBe) are not present on any of the overlap routes.

371. The same consideration applies to the fact that Aer Lingus' *average* prices are higher than Ryanair's prices. Even if Aer Lingus' prices are usually (but not always[385]) higher than Ryanair's prices[386], it should be noted that for a comparison it is important to know exactly which taxes and charges are included in the respective prices (e.g. airport charges, government taxes, credit card fees, baggage fees, insurance fees, "passenger service charges" and other charges[387]). According to the fare data made available to the Commission by Ryanair and Aer Lingus, the difference between Ryanair's and Aer Lingus' average fares amounted only to around €30 in 2006. In any event, both carriers' fares are usually well below the price level of the competitors they face on the respective routes. According to Ryanair's own estimates, the prices of full-service network carriers (such as Air France, British Airways or Lufthansa) are much higher, and far above Aer Lingus prices (according to Ryanair, between € 216 for Air France, € 225 for Lufthansa and € 268 for British Airways[388]). Moreover, when comparing Ryanair's and Aer Lingus' fares, it must be taken into account that Aer Lingus' often higher price reflects some quality advantages, such as the fact that Aer Lingus flies to primary airports, which saves transfer costs for the customer[389]. The *price correlation analysis* conducted by the Commission

---

mostly provide full-service. Their presence on a particular route is mainly driven by the number of transfer passengers they can feed into their network. Also many of the remaining competitors on the other routes cannot be regarded as closer to Ryanair than Aer Lingus in terms of their business model (e.g. Spanair operates on Dublin-Malaga only in the summer season around 2 weekly rotations limited to weekends and is thus rather closer to charter carrier operations than to the Merging Parties daily services throughout the year). The remaining "low frills" competitors Ryanair and Aer Lingus face (e.g. Sky Europe (on two routes) bmibaby, Clickair and Norwegian (on one route respectively), have no comparable base at Dublin.. Aer Arann's service model may also be characterised as a "low-frills" model, but Aer Arann operates with 70-seat aircraft and does thus not have a cost structure that would allow it to be considered as a closes competitor to Ryanair (see below, Section 7.3.3).

383 Referred to by the market also as "low cost carriers" ("LCCs", see above, paragraph. See as to the terminology Section 6.1.

384 See as to Flybe's characterisation as a "regional" low-frills carrier, flying with smaller aircraft to regional airports the minutes of the interview with FlyBe of 12.3.2007, folio no. 6170.

385 This does, however, not mean that Ryanair's prices are "always" lower than Aer Lingus' prices as claimed by Ryanair in its Response to the Statement of Objections (page 230). According to the booking status, it is well possible that a customer can buy a flight at a cheaper price from Aer Lingus than from Ryanair. The Commission's case team has observed examples of such instances at the occasion of the visit of Ryanair's and Aer Lingus' headquarters in Dublin (see in this respect also the minutes of the meeting with Ryanair of 6.2.2007 and with Aer Lingus of 5.2.2007, folio no.6170).

386 European average short-haul prices 2006 as indicated by Ryanair: € 41 (it is, however, unclear which taxes and charges such as credit card fees, airport charges, baggage fees, etc. are included); Aer Lingus: € 91 (€ [65-75]* before charges and taxes).

387 See e.g. http://business.guardian.co.uk/story/0,,1769707,00.html

388 See e.g. http://www.ryanair.com/site/about/invest/docs/present/quarter1_05.pdf, page 5.

389 At the same time, the airport charges included in Aer Lingus' prices are usually higher than the charges of

provides additional evidence that, at least with respect to a majority of overlap routes, Aer Lingus and Ryanair prices have also systematically moved together over time. As the price difference reflects (perceived) differences in quality, a price change by one carrier would affect demand for services provided by the other on the same route. Likewise at given prices, increases in frequencies or improved flight schedules by either of the Merging Parties can be expected to divert passengers to the other[390].

372. The Commission further observes that Aer Lingus' higher prices also reflect the remaining somewhat higher service level of Aer Lingus described above (e.g. serving primary airports, business lounges, higher service orientation and less rigid interpretation of customer service rules[391]). For the customer who takes into account the time and price for the transfer to the airport when purchasing tickets, the *effective price* difference may therefore be lower than the mere difference of the sales price.

373. The Commission finally notes that also independent websites which serve to compare and inform about airlines regularly describe Aer Lingus' transformation process into a "low-frills" (or "low cost") carrier[392].

7.3.3. The Merging Parties have lower business costs than most of their competitors on the overlap routes

374. Ryanair claims that Aer Lingus cannot be close to Ryanair because of its much higher cost basis[393]. The Commission acknowledges that Aer Lingus, until recently a state-owned flag carrier, has not reached Ryanair's unmatched low operating costs. However, this appears also to be true for the other main "low cost" airlines in Europe. Compared to the airlines it faces on the relevant markets, Aer Lingus costs are generally significantly lower and rather within the group of "low cost carriers" than within the group of network carriers.

375. While providing some level of product differentiation relative to Ryanair (higher service level resulting in higher costs), Aer Lingus has lower operating costs than other major airlines in Europe, and than the other airlines operating on the affected routes. An independent study, the IATA's "Airline Cost Performance" report[394] provides a comparison of the operating costs of major network carriers and a number of low-cost operators. The study was published in July 2006 and estimates operating costs per available seat kilometre

---

secondary airports Ryanair flies to.

390 See Annex III.

391 See Ryanair's comment in its Response to the Statement of Objections (page 187). When stressing the differences between both airlines, Ryanair particularly refers to Aer Lingus' *"...lack of robust interpretation of customer service rules and regulations"*.

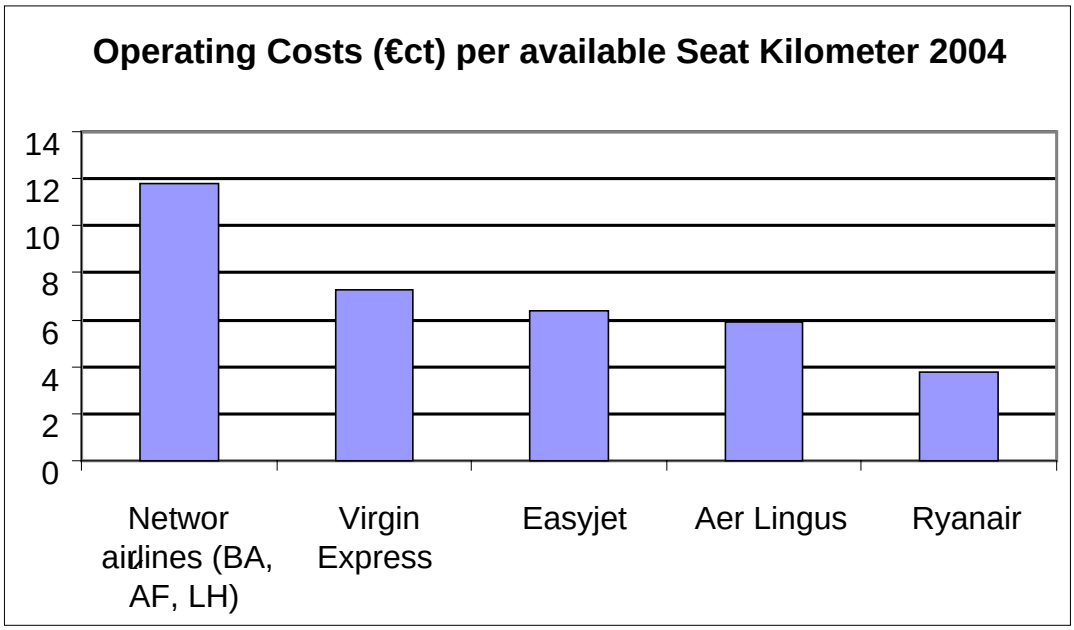
392 See e.g. the descriptions of websites describing Aer Lingus: http://www.eurodestination.com/european-low-cost-airlines-guide.html: "Irish National Carrier that has now gone low cost"; http://www.cheapflights.co.uk/low-cost-about.html: "Aer Lingus has repositioned itself as a low-cost carrier in recent years." http://en.wikipedia.org/wiki/Aer_Lingus: "They are currently positioning themselves as competition to the European no-frills airlines". See also Aer Lingus' study on the Aer Lingus brand (see e-mail from Aer Lingus (Simone Warwick) of 27 March 2007, folio no. 6316).

393 See e.g. Response to the Statement of Objections, page 223.

394 Stage-length adjusted operating cost per available seat kilometre. Sources for all carriers except Aer Lingus: IATA Economics Briefings n.5 ; http://www.iata.org/NR/rdonlyres/D1AFC924-8F16-4E9D-AEC1-FD18C1FE1336/51284/airline_cost_perfomance.pdf ; for Aer Lingus: "Circular in relation to Ryanair offer", page 8, www.flyaerlingus.com. Estimation of fuel costs for Aer Lingus based on IATA Economics Briefings n.5 (see above).

(ASK) in 2004 for network airlines, as well as for easyJet, Ryanair and Virgin Express. Comparing costs between airlines may be difficult because of the significant share of fixed and shared costs in airlines' operating expenses, which means that longer routes tend to generate lower costs per kilometre. At the same time, many assets are shared for short- and long-haul flights. IATA, in collaboration with McKinsey, has therefore adjusted its cost estimates for stage-length (i.e. flight length) and for the higher seat density of low-cost airlines. Aer Lingus is not included in the IATA analysis; however, the airline reports total unit costs exclusive of depreciation and lease costs of 5.28 €ct/ ASK in its published accounts (2005). Allowing for 11% ownership costs[395] leads to approximately 5.9 €ct operating costs per ASK. The IATA cost data and the Aer Lingus cost estimate are shown in Graph 1 below:

Graph 1: Operating cost comparison



376. Hence, while Ryanair is the clear cost leader among European airlines, Aer Lingus, together with easyJet and Virgin Express[396], have significantly lower operating costs than the major network airlines, based on the IATA/ Aer Lingus data. It is important to note that, in contrast to Aer Lingus, neither easyJet nor VirginExpress (or its successor Brussels Airlines) compete against Ryanair on any overlap route out of Ireland.

377. In response to the Statement of Objections Ryanair points out that Aer Lingus' cost data is not comparable to other European LCCs as it includes also long-haul flights, which generally have lower costs per ASK[397]. This is a justified caveat, although it should be noted that 87% of Aer Lingus passengers travel on short-haul routes[398]. Ryanair includes in its reply to the Statement of Objections a chart, according to which Aer Lingus' short-haul costs are "somewhat along the lines of" 8 ct/ASK, although no details are given as to

395 cf. RBB Economics: Ryanair/ Aer Lingus: Merger Efficiencies, folio no. 19873, p.6

396 Now part of Brussels Airlines

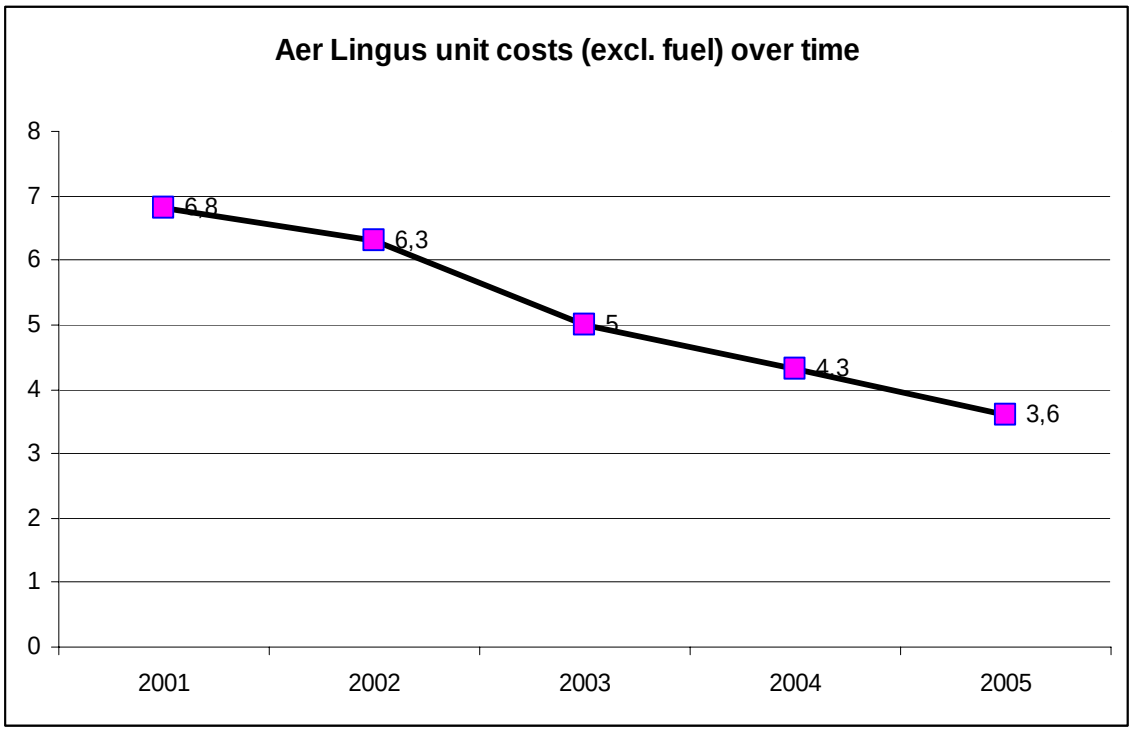
397 See e.g. Response to the Statement of Objections, page 223.

398 cf. Aer Lingus preliminary announcement of results for the year ended 31 December 2006, available on http://www.aerlingus.com/cgi-bin/obel01im1/Corporate/ir_finan_info_reports.jsp

how this number is calculated[399]. More generally, the IATA report cautions that no widely accepted cost reporting standards exist and that cost structure reporting may not always be consistent between network airlines and LCCs. However, even when allowing for a margin of error or, for that matter, assuming that Ryanair's estimate was accurate, the data indicate that Aer Lingus has successfully adopted a low-cost business model (albeit with elements of product differentiation) and now operates with unit costs well below traditional network airlines.

378. The evolution of Aer Lingus unit costs over time further highlights its gradual migration from a "traditional" to a low-cost business model:

Graph 2: Aer Lingus operating costs over time[400]



379. In conclusion, the cost data available to the Commission suggest that Aer Lingus is among the closest competitors to Ryanair even in terms of unit costs. Its restructuring towards a low-cost business model has enabled it to operate profitably and on a sustained basis in head-to-head competition with Ryanair in particular from its Dublin base.

7.3.4. Both airlines operate with a large a base at Dublin.

7.3.4.1.General advantages from operating with a "base"

380. As set out above[401], the term “base” is used in the airline industry to characterise airports where airlines base a certain number of aircraft and on which they concentrate their

399 cf. Response to the Statement of Objections, par.33. It appears from the Response that Ryanair derives its estimate from information about Aer Lingus average fares provided in its IPO prospectus.

400 €ct/ASK; source: Aer Lingus (http://www.aerlingus.com/cgi-bin/obel01im1/Corporate/ir_overview_about_ei.jsp) .

401 See Section 6.1.

operations, and from which they operate several routes[402]. At a "base" airport airlines typically concentrate a certain number of aircraft overnight; in addition to "overnighting" these aircraft; the airlines usually entertain additional facilities and services at the base airport, such as maintenance services, customer care services, ground-handling services or stand-by planes. A base also allows airlines to avoid accommodating their staff and crews in a hotel. Establishing a "base" is therefore more than just parking an aircraft overnight. It requires the commitment of infrastructure, personnel and equipment (with the concomitant capital expenditure) at an airport, which are used to operate several routes from that airport.

381. Concentrating aircraft and traffic at certain bases can generate considerable cost savings and increased flexibility. In comparison to providing a point-to-point service on a single route without a base at either end, base operations provide numerous competitive advantages for the routes operated from that base. There are mainly *two effects* which arise from base operations. First, the base allows realising cost savings due to economies of scale and scope. Secondly, there is a "competition effect", in that the airline can react more easily and more quickly to changes in supply and demand on routes out of this base. Dynamic reaction to the behaviour of competitors is therefore easier when operating from a base than outside a base.

Economies of scale and scope

382. The Commission's market investigation[403] has confirmed that carriers benefit in particular from the following economies of scale and scope by operating from a base:

- Sales and marketing costs: the costs associated with sales and marketing are largely fixed. Recovering these costs over a larger fleet of aircraft and a wider portfolio of routes therefore also translates into lower unit costs.
- Customer service/ground handling facilities: Sufficient scale allows carriers to operate their own dedicated facilities such as own check-in and customer information counters, etc. at an airport, thereby providing passengers with higher levels of service at a lower cost[404].
- Disruption costs: a larger pool of aircraft allows a carrier to reduce the cost associated with cancellations and to increase dispatch reliability by giving the carrier greater schedule recovery options. For example Aer Lingus has a stand-by aircraft at Dublin. Ryanair has pointed out that it does not base stand-by aircraft at a certain airport. Instead, it operates [2-6]* aircraft rotating across all of its 20 bases[405].

---

402 The term "base" is used in this decision to characterise the advantages of concentrating significant operations at one single airport. As further explained in this section, airlines use different concepts of the term "base" (see Base Questionnaire, e.g. questions 3 and 11). It is therefore not possible to define an "exact" set of qualitative and quantitative criteria for a "base" airport. However, it can be observed that the term "base" is usually only used when more then one route is served by an airport. As set out above in Section 6.1., the concept of a “base” has to be distinguished from the concept of a “hub”, since the term “hub” relates to the “hub-and-spoke” system and its system of connecting “feeding” traffic into a network which is not the case for the concept of a "base" (although a base can of course also be a hub).

403 See in particular answers 7, 8, 9 and 10 to the Questionnaire to Competitors (base competition) sent on 7 December 2007 (hereinafter "Base Questionnaire").

404 By way of example, Ryanair handles its luggage in dedicated luggage handling facilities at Dublin Airport.

405. In its response to the Statement of Objections (p. 54), Ryanair concludes therefore that a base would be irrelevant for such stand-by services. However, it should be noted that Ryanair's approach confirms that the

- Slots and stands: To start serving a particular route an airline requires departure and arrival slots as well as stand/gate facilities at the origin and the destination airports. When there are capacity constraints, airlines that have many routes from the airport will be able to substitute slots from one route to another, contrary to airlines with few or no existing routes, which will find entry by shifting from an existing route from the same airport more difficult[406].

383. Large scale carriers may also benefit from a stronger negotiation position of competitors with a base[407]:

- Ground handling: A base with multiple aircraft allows a carrier to obtain better terms for ground handling reflecting the greater volume.
- Negotiations with airport and regulators: A strong negotiation position, due to the overall amount of traffic a carrier brings to an airport may allow the carrier to gain access to preferential facilities, e.g. gates in close proximity to main terminals, lower airport charges and ultimately lead to an increase in product quality at little or no additional cost[408].
- Procurement: Sufficient scale both absolute as well as relative to other carriers at the airport may give a carrier more bargaining power in negotiations with suppliers, such as catering and maintenance companies, leading to cost advantages.

384. By having a number of aircraft based at the same airport, airlines can also benefit from *economies of scope* which may derive from the ability to easily switch assets between routes, thereby increasing the competitiveness of the routes operated from the base.

- The more flights a carrier operates from an airport, the easier it will be for that carrier to maximise the aircraft utilisation because there are more combinations of flights available to fill an eight or ten hour schedule. For example, Aer Lingus' short-haul network from Dublin varies in duration from approximately 50 minutes (e.g. Dublin-Manchester) to three hours and 10 minutes (e.g. Dublin-Rome). Operating rules set a 10 hour limitation on its crew utilisation. Therefore, as Aer Lingus has a base at Dublin it can easily operate a flight to Rome and Manchester with the same crew and equipment (assuming a turnaround time of 40 minutes). A larger fleet also allows the carrier to pool *reserve requirements* for pilots and cabin crew and to maximise the working hours of crew members, who can only work eight to ten hours per day and return to their home airport in the evening (thereby avoiding hotel costs). For the same reason (limited working-hours for crew members), airlines operating from a base airport can more easily operate longer than ten or eleven hours a day thereby maximising their aircraft utilisation time, since they can easily exchange the "morning crew" during the day at the base, which is not possible for airlines operating without a

---

cost of such stand-by-aircraft can be minimised with very large fleets, i.e.; there exist economies of scale when handling disruption cost. Second, the fact that Ryanair can spread such cost over a number of bases results from its particular business model (i.e. to operate with a base network). Third, given that Ryanair mainly connects its various bases, this in effect implies that – when not actually in used – in effect these [2-6]* aircraft are most likely on stand-by at Ryanair's base airports, one of them being Dublin.

406 Although it is true that some airports offer incentive schemes to new entrants, carriers holding already a slot at an airport have an advantage since they can easily enter on a new route using a slot previously used for another route ("grandfather rights").

407 See answers to question 8 and 9 of the Base Questionnaire.

408 While these advantages may at least until today not play an important role at Dublin Airport, Ryanair has been able to negotiate significant rebates and other advantages at other airports, see also Section 7.8.8.

base.

- A portfolio of aircraft also allows improved aircraft utilisation by reducing overall fleet downtime in order to meet punctuality requirements since any temporary delays can be absorbed by using the ground time allowed for other aircraft in the portfolio[409].
- Carriers operating from a base can use the *early morning slots* at its base airport which are economically important since the demand for flights is particularly high at that time, in particular for routes where a significant majority of passengers originate at this end of the route. If an aircraft had to fly to Dublin from another airport or base in the morning, the precious early morning slots would be lost[410].

385. Savings from operating from a base are usually higher at the beginning (e.g., vis-à-vis a point-to-point operation or when comparing a base with one or two aircraft with a base with 10 to 15 aircraft) and can decrease when a certain size is reached[411].

386. Ryanair does not deny the existence of economies of scale as such. However, in its view they do not arise from base operations but rather from overall size. Cost efficiencies are, according to Ryanair, determined by the airline's overall operations and scale[412]. Ryanair, however, acknowledges that operating with base airports allows operational complexity to be reduced, as technical support can be concentrated at such bases[413]. In its submission on the efficiency gains which Ryanair expects from the merger, it points to the benefits which would arise from base operations. For instance, Ryanair argues that the merger would "*alter the present base structure and [Aer Lingus'] schedule so that no crews are overnighted away from base. This would also reduce the crew ratio per aircraft*."[414]

387. A study submitted by Ryanair (RBB) that allegedly shows that for Ryanair operating costs do not decrease with a base does not put into question that such advantages exist for airlines in general, as evidenced by the market investigation[415].

---

409 See in more detail e.g. submission by Aer Lingus of 9 February 2007, folio no. 4122, pp.2-3.

410 This fact was stressed by competitors in the interviews conducted by the Commission, see interview with easyJet of 15.2.2007 and with Jet2.com of 1.2.2007, folio no. 6170.

411 The incremental scale efficiencies become, however, less important with very large bases (e.g. the additional savings from operating with 70 instead of 60 aircraft on a base are relatively lower).

412 Ryanair response to the Article 6(1)(c) decision of 19 January 2007, p.13

413 Fixing technical problems is more complex and expensive in the case of an aircraft break-down on routes which are not connected to a base where technical support is located.

414 See Ryanair's Response to Preliminary comments/questions on the efficiencies paper submitted on 20 October 2006, folio no. 24006, section Staff Costs.

415 See e.g. the results of the so-called Base Questionnaire sent to competitors. In its submission of RBB of 20.2.2007, folio no. 4135 (pages 45-51), RBB has, based on Ryanair data, considered a one off expansion from 10 to 15 aircraft at Dublin Airport and finds that this does not give rise to a reduction in Ryanair's operating costs. It also compares the cost of flying in the Summer 2006 season between Gatwick (not a Ryanair base) and Cork (where one Ryanair aircraft is based) with the cost of flying between Gatwick and Dublin (where 15 aircraft are based). RBB finds that flying from Dublin does not give rise to a cost advantage. The validity of the study's results is questionable. It is neither clear how RBB controls for the differences in the routes operated out of the various airports nor which part of maintenance and operating costs were included in the cost calculation. Further, as certain routes in the benchmark group were (rightly) excluded from the analysis (as explained in footnote 42 of the report, routes have been excluded which link the benchmark group airports with a base airport at the other end) it is not clear how possible scale economies linked to the particular base have been allocated between these routes and those which have been taken into account. The report does not discuss whether, when comparing Dublin with the benchmark group of 5 other Ryanair base airports (out of 18), there exists a bias in the selection of these airports. As regards

388. In any case, Ryanair's submission reflects its own business model of operating a network of different bases across Europe. The density of this network and its overall size may indeed give Ryanair the flexibility to spread (some) of the cost across its entire network. However, other low-cost carriers (notably the few competing with Ryanair on the overlap routes) do not operate with a similar network of base airports[416]. As regards such competitors, scale economies would only arise at their respective base airports. Finally, the fact that some of Ryanair's bases are rather small does by itself not imply that base advantages would not arise at all at such airports. As such secondary airports often grant strong incentives to attract new airlines, entering even at small scale (for instance during a trial period) is encouraged[417].

Increased flexibility to adjust to fluctuations in demand

389. Apart from economies of scale and scope, larger operations at one base airport also allow to react more quickly to shifts at the demand side. The dynamic nature of competition in the airline sector is shown by the fact that airlines constantly adjust the capacity (and routes operated) in their network. In particular Aer Lingus and Ryanair shift their frequencies and routes from their base in Dublin regularly, leading to significant fluctuations in daily frequencies and routes[418].

390. Two types of "demand shocks" (that is, a sudden increase or decrease in demand for the services provided) may be distinguished. Certain shifts in demand, for instance changed customer preferences or an increased overall income, can affect *all routes* out of an airport. Ryanair has indeed pointed out that the high growth rate of the Irish economy had a positive effect on overall demand for flights out of Ireland. This would also be a reason for the fast increase in the frequencies of existing routes and opening of new routes over recent years. On the other hand, it should be acknowledged that once investments have been made at a particular airport, a base operator could also be more vulnerable to negative demand shocks (*i.e.* a sudden overall demand decrease)[419].

391. The second type of changes in demand is route specific and does not affect all routes in the same way. Route specific demand fluctuations can arise due to seasonal demand for

---

marketing costs, it can be assumed that the study only includes current expenses without taking into account historic expenses linked to establishing the Ryanair brand. These costs are not comparable to the costs of Ryanair's competitors, as set out further below in Section 7.8.
Aer Lingus has also provided its own calculation on cost savings from having a base. It compares a 1-fleet aircraft to a 5-fleet one to illustrate the benefits of arising from operating having a base. It would not, however, necessarily imply that the minimum efficient scale for a base is uniformly 5 aircraft. The calculation takes into account cost for disruption, staff, ground handling, sales and marketing, total block hours etc. and concludes that a cost saving of about 20% can be realised with 5 aircraft. This would only marginally increase to 21% in the case of 10 aircraft (see Aer Lingus' submission of 19.2.2007, folio no.4122).

416 Aer Lingus, for instance, only operates with one base.

417 See, with regard to the example of Charleroi, e.g. Commission Decision of 12 February 2004, Official Journal L 137/1 p.2, 30.4.2004.

418 On 24 of the 35 overlap routes, Aer Lingus or Ryanair changed their weekly rotations operated in Winter 2006/2007 in Summer 2007. See also the various changes of overlapping routes during the time of the Commission's investigation e.g. on the routes Dublin-Bristol, Dublin-Turin, Dublin-Fuerteventura and Manchester-Cork; see also Ryanair's announced shift of six routes at Frankfurt on 18.4.2007, see Ryanair's Response to the Statement of Objections, page 219.

419 With regard to Dublin, this risk of a "negative demand shock" was, however not mentioned by any competitor in the market test, see answers to question 8 and 9 of the Base Questionnaire.

holiday destinations (sun and ski destinations). In the case of route specific "demand shocks", having a wider route network at a base allows the airline to adjust capacity to match such fluctuations in demand. The airline can more easily reallocate planes, slots and crew, between the different routes in response to changes in relative demand or profitability without incurring significant additional costs or risks. An airline which does not have a significant presence at the airport would find it more difficult and time-consuming to react to such an increase in demand on a certain route. Increasing frequencies or opening a new route from an origin where the airline has no such presence would require higher start-up investments (in particular for marketing and the necessary access to customers in the region) and more time than from an origin where the airline has already established a base[420]. Thus, a non-base carrier could not react quickly to a sudden increase in demand on a particular route in the same way as the Merging Parties.

392. A carrier with large scale operations at an airport has also advantages in generating demand on routes originating at that airport. The main source for this advantage appears to be inherent marketing advantages. If a carrier operates more than one route out of an airport, the more likely it is that consumers are generally aware of the carrier, and that they will consult its website when considering who to fly with[421]. Carriers with many routes from an airport can reduce costs of advertising, as these costs can be spread over more routes.

Most carriers use base airports

393. The Commission's investigation has shown that non-base operations (e.g. operating triangular or so-called "W-flights") are rare in the airline industry. Airlines have confirmed that it is uncommon and in most cases an economic disadvantage to operate routes which are not connected to a base[422]. For example, there are only very few routes from or to Dublin on which Aer Lingus faces a competitor that does not operate from a base[423].

394. Ryanair itself operates very few “non-base routes” (i.e. routes without a base at one end). In fact, of the almost 450 routes operated by Ryanair, there are only four non-base routes (i.e. less than 1% of Ryanair’s entire network)[424]. Similarly, from easyJet's more than 250 routes, only two are not connected to one of easyJet’s bases[425]. Ryanair has stated that it seeks over time to expand the number of bases which it has in Europe and to link those bases

---

420 See questionnaire to competitors of 6.11.2007, question 36.

421 This is particularly important in the present case as both Aer Lingus and Ryanair sell a large majority of their tickets via their website.

422 See replies to question 44 of the Commission's questionnaire sent to competitors on 6.11.2006; see also minutes of the interview with easyJet of 15.2.2007 and minutes of the interview with bmi of 9 March 2007, folio no. 6170.

423 Aer Lingus indicates at most six routes of all its routes ex-Dublin, see Aer Lingus' submission of 9 February 2007, folio no.4122, page 6. Further, with one exception (Luxair on the Dublin – Manchester route), the relevant carrier was Spanair, which partly operates according to a "charter airline" model (see further discussion of Spanair within the framework of the individual routes in Section 7.9.). Further, according to its website, Spanair currently offers scheduled flights from Dublin only to two of these destinations – Lanzarote and Gran Canaria.

424 According to Ryanair's response of 8 December 2006 these are Treviso-Beauvais, Beauvais-Porto, Tampere-Riga and Newcastle-Top.

425 See interview with easyJet of 15.2.2007, folio no. 6170.

with as many of the destination airports as is commercially sensible[426]. This leads to a geometric growth pattern, linking bases with each other[427]. Ryanair states that it aims "*to benefit from the cost savings and economies of scale arising from our route development strategy 'connecting the dots'*".[428]

Base advantages can increase with the size of the base

395. A large majority of competitors confirmed that operating from a base has significant advantages compared to non-base operations[429]. The investigation has also confirmed the view that a larger base may in general increase the flexibility and cost savings[430]. However, the Commission's market investigation has shown that different airlines have different estimates about the "optimal scale" of operations at a base[431]. This confirms the Commission's own assessment that in practice the minimum viable size for a base will depend on a number of factors, including the geographical proximity of that base to other established bases of the same carrier, the density of the airline's network, and the nature of the airport where the base is established. For example, for a secondary/regional airport, the absolute minimum number of aircraft will be lower if the airport offers incentives to the carrier to induce it to establish a base there.

7.3.4.2. Both competitors have similar advantages from their large base in Dublin

396. As noted above, the fact that Ryanair and Aer Lingus operate from a large base at Dublin Airport further supports the fact that both airlines are each other's closest competitors.

---

426 See also Ryanair's internal documents : "[...]*". Board paper 3 (Board Meeting the [...]*. P.3.4, folio no. 629). Ryanair's internal documents : [...]* (Board Paper 3; Board Meeting the [...]*: P. 3.4, folio no. 629); "[...]*" (Board Paper 4; Board Meeting the [...]*: P. 1, folio no. 629, text highlighted by the Commission); "[...]*″ (Board Paper 4; Board Meeting the [...]*: P. 2, folio no. 629); "[...]*" (Board Paper 3; Board Meeting the [...]* : P.3.2, folio no. 629; text highlighted by the Commission).

427 Ryanair reply of 8 December 2006; pages 8-9.

428 Ryanair press release of 06.02.06.

429 See answers to questions 8, 9 and 10 of the Base Questionnaire; see also answers to question 38 of the questionnaire to competitors sent on 6.11.2006. By way of example, discussing the advantages associated with having a base, a low-cost carrier has stated that it can "*start eight new routes using three aircraft by opening up a single new airport*". It is a way of increasing "*the efficiency of our operations in those destination cities and helps to improve asset utilisation and reduce unit costs*", see: easyJet press release of 13.02.2004; another carrier describes the disadvantages of not having a base airport as follows: "[...] *this means that for maintenance requirements the aircraft will have to position empty to a maintenance base and a substitute aircraft will have to position empty to replace it. Also if there is any disruption to the operation there is no opportunity to get the operation back on track by substituting another aircraft as there is at a hub/ base. Flight crew must either be positioned to the airport and night stop at a hotel at a cost or be based at the airport. The required number of crew would be higher than the average required per aircraft at a base to allow for standby duties. There are also probable inefficiencies in handling services at the airports if there is only the one aircraft based there*.", see Loganair's answer to question 38 in the Questionnaire to Competitors sent on 6.11.2006, folio no. 21059.

430 See answers to question 11 of the Base Questionnaire.

431 See answers to question 11 of the Base Questionnaire; for example British Airways has put forward that a base of 25 aircraft optimises the minimal fleet size with respect to maintenance and standby aircraft (see British Airways' answer of 7 February 2007 to the Commission's "follow-up questions" (No 14). Aer Lingus has provided a detailed account of cost advantages which it argues would arise from operating at a base airport. While it does not define what the minimum efficient scale for a base is, it carries out a comparison of a 1 aircraft fleet with a 5-aircraft fleet to illustrate economies of scale arising from a base. It calculated cost savings for the latter of about […]*%, see Aer Lingus' submission of 9 February 2007, folio no. 4122, p.4.

Ryanair has concentrated its traffic at 20 "base airports" all over Europe. After London-Stansted, Dublin is, with 20 aircraft, Ryanair's second most important base. Ryanair's base accounts for about [30-40]*% of all passengers in Dublin. Dublin is also Aer Lingus' principal airport where about 90% of its entire fleet is based[432]. Aer Lingus has currently based 23 short-haul aircraft at Dublin from which it serves around 70 routes to 15 countries across Europe. Its base accounts for approximately [30-40]*% of all passengers in Dublin[433].

397. Given that both carriers have a significant base at Dublin Airport, with a similar fleet size, a similar share of passengers and roughly a comparable number of routes out of that airport, it can be assumed that they both benefit to the same extent from the described advantages of having large scale operations at Dublin. In particular, their bases at Dublin Airport increase Aer Lingus' and Ryanair' abilities and incentives to offer new routes or adjust capacity on their existing routes, in order to develop an even wider portfolio with more options for capacity redeployment and allows them to compete more effectively, in a way which a carrier with only one (or a few) route(s) into Dublin would not be able to match.

398. At *Cork*, the same advantages apply in principle, however on a significant smaller scale. Aer Lingus has based 4 Airbus A 320 and operates 17 scheduled destinations. Ryanair operates four routes out of Cork with one Boeing 737-800 based aircraft. Ryanair has indicated that it would base more aircraft at Cork if an agreement can be reached with the airport. In the case of *Shannon* only Ryanair operates with a base as it has based four Boeing 737-800 serving 26 destinations from that airport. Aer Lingus operates into Shannon from Dublin and London without having based an aircraft at Shannon for the purpose of short-haul flights.

399. Ryanair strongly contests that the fact that Aer Lingus and Ryanair operate from strong bases in Ireland confer them any advantages over other airline and can be regard as an element that qualifies them as closest competitors. Ryanair notably argues that other competitors also have bases at Dublin (see Section 7.3.4.3) and that competitors operating from bases outside Dublin are equally close to the Merging Parties (see Section 7.3.4.4).

7.3.4.3. Competitors with bases <u>in Dublin</u> exert a limited constraint

400. Ryanair has argued that various airlines base aircraft at Dublin overnight, including Aer Arann, BMI/bmibaby, Lufthansa, CityJet/Air France, LOT, Malev, SAS and British Airways. Thus, according to Ryanair, these carriers should be considered as equally close to competitors who operate with a base. They also argue in their reply to the Statement of Objections that BMI should be considered to have a base at Dublin Airport[434]. However, as explained above, while overnighting one aircraft at Dublin allows an airline to offer an early morning departure, this is not akin to establishing a dedicated "base" at Dublin. An airline which only overnights aircraft does not benefit from the other scale and scope advantages of a base nor from the flexibility of switching between routes, and opening new

---

432 Ryanair's response to the Article 6(1)c decision of 19 January 2007, p.13.

433 As regards the Ireland-London (Cork, Dublin and Shannon combined) the two companies serve around 93% of traffic on the basis of 2005 data. Charter airlines have formed less than 1% of all traffic on such routes.

434 See Ryanair's Reply to the Statement of Objections, page 57.

routes[435] which is a further reason for airlines to operate from a base. In line with these results from the market investigation and from competitor's own replies[436], the Commission therefore considers the parked aircraft of BMI, Lufthansa, LOT, Malev, SAS and British Airways do not offer the same advantages as airlines operating with a "base" would have.

401. The competitors which might be considered as having a base in Dublin are Aer Arann and CityJet, who operate with 4 and 3 smaller jets respectively from Dublin and consider themselves as having a base in Dublin[437]. However, given their small scale of operations to and from Dublin, it is unlikely that they can realise similar cost savings as the Merging Parties. CityJet and Aer Arann have 3 BAe 146 aircraft (93 seater) and 4 ATR 42 and 72 turboprop (up to 66 seats) based in Dublin, respectively. With a maximum flight length of up to around 1.5 hours Aer Arann cannot compete effectively on routes to Continental Europe[438]. Smaller aircraft lead to higher cost per passenger and – in the case of turboprop aircraft – to a shorter maximum travel distance[439]. They are not suitable for many services offered by Aer Lingus and Ryanair out of Dublin. Both carriers have specialised on routes and services where they face limited competition from the Merging Parties. Aer Arann does not operate on any of the overlap routes. As an Air France subsidiary, CityJet provides mainly feeder services into Air France's Paris hub. The only other service out of Dublin which is not directly linked to Air France's network is the London-City route. CityJet's "full service" operation is specialised in time-sensitive business customers[440].

402. Moreover, Aer Arann's and CityJet's limited number of services do not allow to re-deploy capacity from one route to another in reaction to demand shifts as easily as Aer Lingus and Ryanair can do at Dublin Airport. Both companies account only for a fraction of total passengers at Dublin[441]. Apart from Ryanair and Aer Lingus, no other airline has a share of passengers from Dublin of more than 5%.

---

435 See above Section 7.3.4.1.

436 See replies to questions 3 and 15 of the Base Questionnaire. In the Reply to the Statement of Objections, even Ryanair does not argue that these carriers have a base at Dublin. Ryanair argues that the following 5 airlines have a base at Dublin: Ryanair, Aer Lingus, Aer Arann, CityJet and BMI (see page 57 of the Reply to the Statement of Objections). However, BMI itself has confirmed to the Commission that they do not consider their aircraft overnighted at Dublin as constituting a "base" (see e.g. BMI's reply to the Commission's "follow-up" questions of 26 February 2007, folio no.43348, answers to questions 5 and 15, and BMI's answer to the Commission's Market Test of the Final Commitments in Phase II, folio no. 9133).

437 This is also confirmed by the reply of DAA of 16 November 2006 to the Questionnaire to Airports, question 4.

438 Moreover, with a seating capacity of 50 seats for the ATR 42 and 66 seats for the ATR 72, it has a significantly higher cost base than Ryanair and Aer Lingus. To match the capacity of 1 Ryanair frequency, with these aircraft, it would have to put three frequencies on the route.

439 The fact that Air France has indicated in its very first reply to the Commission's questionnaire that its smaller aircraft are "perfectly appropriate for regional operations", the directly concerned company CityJet has later confirmed that CityJet must *"achieve a higher average yield than Ryanair/Aer Lingus to be profitable – which is secured by focusing on connecting passengers and business passengers"*. It must therefore focus on quality and not on low-frills/low cost (see e.g. interview with CityJet (Air France) of 21.2.2007, folio no. 6170.

440 See also Section 7.8.

441 Cork is only served by Aer Arann.

7.3.4.4. Competitors with a base at the destination airport are not equally close competitors

403. Ryanair has argued that even if base advantages existed, it would not be relevant whether the base is located in Ireland or at the other end of the route. Such an operator would be equally close to the Merging Parties since it would equally benefit from the cost advantages of a base and would have a similar flexibility to switch capacity to a route from this airport to Dublin, if that is commercially attractive.

404. The Commission does not contest that the scale advantages of a base are, in principle, the same at both ends of a given route. However, for the assessment of the competitive situation, the Commission observes that notably the "competition effect" (increased flexibility in particular in Dublin) confers a specific advantage to the Merging Parties which is relevant for the competitive assessment in the present case.

405. It must first be observed that the competitor on all of those 12 overlap routes does not always operate from a *base* at the other end. According to Ryanair[442], the competitors of Ryanair/Aer Lingus do, for example, not operate from a base on the routes from Dublin to Faro, Seville, Poznan, Tenerife, Salzburg and Bologna.

406. Secondly, while it is true that cost advantages from a base may also accrue if the base is at the destination airport, for the routes covered by this investigation, some of the cost savings are more significant for a base in Dublin. In part this is because there is an *asymmetry* of traffic origination on many of the overlap routes. On at least 15 of the 35 routes, the majority of the customer's originate in Ireland[443]. Accordingly, a competitor without a base in Dublin is likely to exercise a more limited competitive constraint even if it had a base at the destination airport, as most foreign carriers are likely suffer from a disadvantage in terms of brand recognition as explained in detail in Section 7.8.4 below. Ryanair's brand is usually well-known to low-frills customers at both ends of any route, which is not the case for most competitors.

407. Thirdly, unlike Ryanair and Aer Lingus, carriers with a base at the destination end would normally only operate one route into Dublin. The destination-based carriers are therefore unlikely to show the same degree of commitment to routes from/to Dublin or the same ability and incentive to adjust capacity to react to shifts in demand or to competition. For a destination-based carrier the Dublin route represents just one route from its destination base; it would have many other routes in which it would not face Ryanair/Aer Lingus as a competitor. Their "commitment" to routes to/from Dublin is therefore likely to be limited in the face of aggressive competition. As a result Ryanair may be more prone to compete more aggressively on a specific route since it may expect such "one-route" competitors to leave the route for good (and refrain from entering other Dublin markets). There has been significant exit on ex-Dublin routes by both network and low-frills carriers operating from bases at destination airports as further analysed below in Section 7.8.5.

408. Carriers with a base at the destination airport have indeed performed poorly on ex-Ireland routes[444]. On at least 9 of the 35 overlap routes a competing carrier has left the route as of

---

442 (see Ryanair's map. "Competitor Bases – All Ryanair City Pairs and Aer Lingus City Pairs from Dublin).

443 Taking into account a "safety margin" and only counting those routes as "outbound" on which Irish passengers account for more than 60% according to the Commission's data.

444 Ryanair rightly mentioned that the DAA offers an "incentive scheme" which is intended to attract new

January 2006, unable to compete with Aer Lingus and Ryanair (Alitalia to Rome and Milan, Hapag Lloyd Express to Hamburg, TAP Portugal to Faro, Spanair to Barcelona, Madrid and Tenerife, easyJet on routes to London from Cork and Shannon). As further analysed in the route-by-route section, the market shares (point-to-point passengers) of network carriers based at destination flying on routes also flown by the Merging Parties are generally low. If these carriers were strong competitive constraints, one might expect their share of these routes to be at least as high as Ryanair's or Aer Lingus'. On all routes on which Ryanair was an incumbent carrier and a competitor entered over the last five years, no airline has been successful - apart from Aer Lingus[445]. Seven airlines have attempted to enter Ireland – UK routes in competition with Ryanair. They have all since exited. Apart from the Dublin – London route, Ryanair faces no significant competition on any of its Ireland - Great Britain routes from any carrier other than Aer Lingus.

7.3.5. Customers consider Aer Lingus and Ryanair as the closest competitors

409. The Commission's market investigation has shown that customers overall consider Aer Lingus and Ryanair as the closets competitors in terms of product offering on routes to/from Ireland. In this regard it should be noted that the Commission generally places significant weight on the views and perceptions of customers.

410. In contrast with previous airline cases, any anti-competitive effects of the proposed merger would be felt primarily by individual passengers as opposed to corporate customers.

411. Ryanair has repeatedly argued during the course of the Commission's investigation that "*there is clear, consistent and cogent evidence from customers that they do not perceive FR [Ryanair] and EI [Aer Lingus] as close competitors, evidence that the Commission has chosen to ignore*"[446]. In this regard Ryanair refers in particular to the responses of corporate customers to the Commission's initial market investigation.

412. Further, Ryanair has argued that the Merging Parties do not constrain each other because Ryanair serves customers that would otherwise not fly with Aer Lingus but in the event of a price increase would choose not to fly. In spite of these strong claims Ryanair has not submitted concrete evidence, for example in the form of surveys or marketing studies which could provide some credible support to the claim that "customers do not perceive FR and EI as close competitors".

413. The factors detailed above clearly indicate that Ryanair and Aer Lingus are close competitors. The Commission nevertheless acknowledges that Ryanair has on average lower prices than Aer Lingus, and that, at least hypothetically, it would be possible that Aer Lingus and Ryanair serve two entirely separate consumer segments.

414. As regards Ryanair's arguments that the Commission ignores the results of its own market investigation it should be noted that the views of large corporate customers are not necessarily representative of the views of the customers of the merging parties. Large

---

entrants to Dublin. This scheme could, however, apparently not remove the existing entry barriers to a sufficient extent to attract a large number of new airlines competing with Ryanair.

445 The fact that some charter carriers offer some minor volumes (>5%) of dry-seats on some single routes does not alter this conclusion.

446 See e.g. Ryanair's Response to the Statement of Objections of 17 April 2007, paragraph 52; text in brackets inserted by the Commission.

corporate customers may generally be more time-sensitive and many have special deals (corporate deals) with network carriers that make them biased vis-à-vis such carriers. As the Commission's investigation had indicated that it would not be appropriate to consider mainly the views of so-called time-sensitive passengers as was the case in for example the Air France/KLM and Lufthansa/Swiss transactions, it was important for the Commission to try to ascertain, to the extent possible within the constraints of the Commission's investigation, the views of individual customers directly. As there was little information available as regards the views of individual customers on the substitutability between the two carriers, the Commission decided to conduct a Customer Survey at Dublin airport. The main purpose of the survey was to validate or refute, as the case might be, the claims made by Ryanair that passengers do not regard the Merging Parties as offering services which are close substitutes on routes out of Dublin[447].

415. Ryanair argues that the Customer Survey is deficient because "*it was undertaken on a self-completion basis*" and "*the questions posed are ambiguous and often leading "questions" requiring knowledge on the part of the respondent, particularly in the case of the Consumer (passenger) survey, which it was not reasonable to assume it existed*"[448]. The Commission cannot agree with these statements for the reasons set out in more detail in Annex I. In particular self-completion questionnaires are a standard technique for gathering information from consumers in all sectors, including air travel. Second, all questions refer to the respondents own actions, perceptions and beliefs so it is reasonable to assume that the respondent had sufficient knowledge[449]. Ryanair further claims that the survey was biased and was full of errors in many other aspects that would inflate and invalidate the results. The detailed rebuttal to these claims is found in Annex I to this decision.

7.3.5.1. Results based on unweighted data

416. The result of the Commission's Customer Survey shows that passengers flying on routes to/from Dublin consider Aer Lingus and Ryanair to be the closest substitutes. In particular, when customers have been asked which other airlines they have considered when planning their journey, the survey shows that overall the main alternative considered by both Ryanair and Aer Lingus customers are the other party[450].

417. The Commission also notes that there is a certain symmetry in the responses by passengers of Ryanair and Aer Lingus. In particular passengers travelling with other airlines other than the merging parties considered Aer Lingus more often than Ryanair. This is consistent with the hypothesis that Ryanair is less constrained by airlines other than Aer Lingus. This

---

447 See further Annex I on the details of the Customer Survey.

448 See Ryanair's Response to the Statement of Objections of 17 April 2007, for example, paragraph 69 or 370

449 Ryanair also argues that "*it is not correct to say that passengers were "interviewed" and the use of this expression gives more weight to the results than is due to a self completion questionnaire*" (See Ryanair's Response to the Statement of Objections of 17 April 2007, see paragraph 381). However, Ryanair itself uses this term repeatedly, for example four paragraphs above in 377, in 376, 374 etc.

450 477 passengers out of 1166 travelling with Ryanair (40.9%) said they had considered using Aer Lingus in the route they were going to travel on that day. Only 12.8% of Ryanair passengers considered any other carrier. The difference in percentages is statistically significant at less than 1% level. As regards Aer Lingus, 430 passengers out of 1042 travelling with Aer Lingus (41.3%) stated that they had considered using Ryanair on the route they were going to travel on that day. Only 10.4% of Aer Lingus passengers considered any other carrier. The difference in percentages is statistically significant at less than 1% level. For further details see Annex I, Section 3 and table A.4.5 in Annex II.

further suggests that the competitive constraint that both carriers impose on each other is symmetric. This is relevant because, in contrast to the Commission's regression analysis that focuses on the impact of presence of one firm on the prices of the other, respondents to the survey were not asked whether they considered the other carrier on the basis of a particular dimension (e.g. price).

418. Ryanair argues that the survey results are not conclusive proof of substitutability because the figures are inflated for two reasons. First "*respondents were prompted to tick FR and EI (but not other carriers)"* and second "*many consumers may "consider" both FR and EI only to conclude that the two airlines are not substitutable*"[451].

419. First, it should be emphasised that the primary goal of the survey was to test (i.e. validate or refute) Ryanair's claim that Ryanair and Aer Lingus are not considered as substitutes by their respective customers on routes out of Dublin. The Commission considers that asking passengers directly whether they considered Aer Lingus or Ryanair when flying in a particular route out of Dublin is the best way to avoid bias in the response to the critical question that serves to test Ryanair's claim that Merging Parties do not constraint each other.

420. In this regard, it is noted that both Aer Lingus and Ryanair were consulted on the questionnaire design before the survey was launched. With respect to the question in point, neither party expressed any concern or insisted in a reformulation of the question to ensure a balanced result[452].

421. Second, in order to assess the substitutability between the parties (and other parties), the Commission needed to understand which airline/s the customer had considered at the time of purchasing the ticket.

422. In this regard the Commission notes that of those Ryanair passengers that indicated that they always use Ryanair to travel on the route, a minority (22%) responded that they had considered Aer Lingus as an alternative (but only 5% considered any other airline)[453]. In comparison a clear majority (66.1%) of Ryanair passengers that do not only fly Ryanair to travel on the route had considered Aer Lingus as an alternative (and only 24.5% considered any other airline). This implies that for passengers that have not made up their mind to always travel with the same airline 2/3 of them had considered Aer Lingus[454].

---

451 See Ryanair's Response to the Statement of Objections of 17 April 2007, paragraph 71

452 Similarly neither party expressed any concern with respect to the use of the word "route". Ryanair in its response to the Statement of Objections (paragraph 387, 388 and 389) now claims that it is imprecise as respondents may not be aware that there may be other airports at the destination city. This, however, would only bias the responses towards less substitutability, not more. In any event it would be inappropriate to regard this as a bias since what is of interest is precisely whether the passengers regard other carriers as substitutes. One reason they might not is that they are unaware that a rival is flying to an airport nearby to the destination city. In any event, the respondent had the possibility to ask the interviewer for clarification if needed.

453 See further table A.4.4 in Annex II.

454 Similar proportions apply in the case of Aer Lingus passengers. Of those indicating that they always travel with Aer Lingus 21% had considered Ryanair and 8% other airlines). In contrast 68.9% of passengers that do not always travel with Aer Lingus considered Ryanair (and 16% other airlines)

7.3.5.2. Results based on unweighted data by route category

423. The Commission's survey showed that where both airlines fly into the same airport at the destination end, more than half Aer Lingus and Ryanair's passengers have considered the other carrier. On routes where Aer Lingus and Ryanair compete with a third carrier around 40% of Ryanair's passengers considered Aer Lingus as an alternative, while around 17% considered any other competitor. Similarly, for Aer Lingus, 32.5% of its passengers considered Ryanair as an alternative whilst only 15.7% considered any other competitor (see table A.4.1 in Annex II). Thus, this is additional evidence to support the findings that the two companies are perceived by customers as the closest substitutes.

424. These results hold also when distinguishing between different customer groups (as business or leisure travellers) or between different reasons why passengers bought a ticket (see table A.4.2 in Annex II). A further indication is the number of Ryanair passengers that have selected Best price, Best time, Close Airport and Punctuality (the four most popular reasons) and whether they had considered Aer Lingus and other airlines (all aggregated). Of the 860 passengers that indicated they had chosen Ryanair because it offered the best price 44.4% considered Aer Lingus as an alternative, as opposed to 14.7% who considered carriers other than Aer Lingus (see table A.4.3 in Annex II). The same pattern is apparent whether the respondent's preference for Ryanair is due to the fact that it offered a good departure time, the destination airport was conveniently located or punctuality.

425. The results are similar when one looks at Aer Lingus customers. Aer Lingus passengers also seem to have a strong preference for Ryanair as an alternative again irrespective of the reason why they have selected Aer Lingus in the first place.

7.3.5.3. Results based on weighted data

426. Ryanair argues in its Response to the Statement of Objections[455] that the Customer Survey data should be weighted by route. In particular, it argues that since different routes will have different characteristics, data should therefore have been weighted by the number of passengers carried on each flight as a proportion of all passengers carried by the relevant carriers from Dublin over the period[456]. Notwithstanding this concern, Ryanair did not make any attempt to produce results based on weighted data although it had full access to the survey data[457].

427. The Commission does not disagree with Ryanair that in some instances the results based on weighted data may produce very different, if not opposite results than if the data is left unweighted. In order to test Ryanair's claim, the Commission therefore also re-calculated the results on the basis of weighted data as suggested by Ryanair.

428. The re-calculation showed that the percentage of Aer Lingus passengers that considered Ryanair as an alternative is lower than in the case of the unweighted data (34.5% as opposed to 41.3%, see Annex I, second table in Section 3). However, it can still be regarded as significant that slightly more than 1/3 of Aer Lingus passenger had considered

---

455 See Ryanair's Response to the Statement of Objections of 17 April 2007, paragraph 70, second indent.

456 See Ryanair's Response to the Statement of Objections of 17 April 2007, paragraph 374.

457 The raw data was gathered by the Commission and therefore was not confidential in any way. To generate the weights it is possible to use as an approximation the number of yearly passengers on a given route (this is the approach followed by the Commission as explained below).

Ryanair as an alternative. It is also still above the 8.8% of Aer Lingus passengers that considered any other carrier.

429. All other percentages do not differ significantly from the results with unweighted data. It can therefore be concluded that the results do not differ significantly when based on weighted or unweighted aggregate data.

430. The closeness of Aer Lingus and Ryanair is also confirmed by another survey, conducted for Aer Lingus. The majority of respondents, irrespective of gender, age, social class or region of residence cited either Ryanair or Aer Lingus as their preferred airline of choice in routes departing out of Ireland for both UK and European destinations. Moreover they were also the number one and number two airlines in terms of overall spontaneous awareness and awareness of routes offered to UK and European destinations. Indeed the evidence led the survey analysts to compare both airlines with each other with respect to the most relevant factors that influence choice, without making such comparisons against any other airline[458].

7.3.6. Conclusion

431. On the basis of the above, it can be concluded that Aer Lingus and Ryanair are each others' closest competitors on the relevant routes out of Ireland.

7.4. The Merging Parties are currently competing with each other

432. It seems obvious that the Merging Parties compete with each other on a large number of routes. Ryanair claims, however, that it is not in competition with Aer Lingus. On the contrary, Ryanair argues that it behaves independently of Aer Lingus (and any other competitor) when setting prices and deciding on frequencies for its routes and does not consider the prices of its competitors[459]. Ryanair claims that it is constrained only by the price sensitivity of its customers and not by the pricing behaviour of its competitors.

433. A price increase as a result from the merger would, according to Ryanair, be excluded by the fact that such price increases would contradict Ryanair's strategy to optimise the number of passengers on its flights ("load factor"). In support of its view, Ryanair submitted economic evidence (price regression analysis) that was, *inter alia*, intended to show that Ryanair's prices on "monopoly routes" were not higher or even lower than on routes where it faces competition[460].

434. The Commission found, however, that Ryanair and Aer Lingus exercise a competitive constraint on each other and that they react directly on each other's pricing behaviour.

7.4.1. The Merging Parties' prices are directly influenced by the prices of its main competitor

435. The Commission has found that the pricing policy in the airline sector involves most often close monitoring of the other airlines flying on a route. Indeed, the Merging Parties regularly monitor each other's pricing policy and react regularly to price changes and to

---

458 Response of Aer Lingus of 28 November 2006 to Additional Questionnaire, Annex 4, folio no. 23422.

459 Notification, paragraph 50.

460 See also Section 7.4.3 and Annex IV.

price-driven variations in demand of the other competitor.

7.4.1.1. Prices in the airline sector are transparent

436. One specific feature of the markets for scheduled short-haul flights is the transparency of prices the different competitors charge on their routes. Indeed, an absolute majority of the tickets of Aer Lingus ([70-80]*%[461]) and Ryanair ([90-100]*%) are sold via the internet, and also their competitors also sell a large part of their tickets through the web. Given this, and with the help of specialised software[462], airlines are able to observe the fares their competitors apply on any given flight. Prices are therefore transparent in the airline sector, notably in the low-frills airline segment with few connecting passengers.

7.4.1.2. Aer Lingus and Ryanair take into account the prices of the other when setting prices on a respective route

437. The Commission has found evidence that shows that both Aer Lingus and Ryanair closely follow the behaviour of their main competitors. In particular, they use specific software to adjust their capacities and lower their prices *on a daily basis* in reaction to the competitive behaviour of its main competitor. Without the main competitor, the need to do so would immediately disappear. The mechanism by which the Merging Parties observe and react to each other will be explained in the following paragraphs.

438. Like many other carriers, Ryanair and Aer Lingus use a so-called "yield management system" for their pricing policy and the determination of individual prices. The Commission has found that Ryanair's and Aer Lingus' yield management systems are similar, notably since they use two similar types of software tools to set their prices.

439. The first software type which both companies use is a system that tracks the booking status of each flight, provides forecasts for the further development and makes proposals for the pricing pattern[463]. This software allows the responsible "yield manager" or "analyst" to verify the booking status for any given Ryanair or Aer Lingus flight. With the help of the program, the analyst can compare the actual booking status (or "load factor") of a flight with the booking forecast which is provided by the system. This booking forecast is based on previous experience with the same route at the relevant dates or on similar routes. The forecasts are adjusted according to forecasted growth and other relevant changes of the factors affecting supply and demand on the route. At the same time, the Revenue Management System (RMS) makes a proposal for the pricing pattern of each flight (the so-called "template"), *i.e.* for the number of places that should be available in a given price category ("booking class"). Both Ryanair and Aer Lingus have a certain number of "standard" templates, each with a different distribution of cheaper and more expensive seats. On a route with a relatively low demand, a template with more seats at lower prices would be used than on routes with high demand.

440. Should the load factor fall behind forecast, the analysts of both companies try to stimulate the demand, normally by making more seats available in the cheaper price categories. [CONFIDENTIAL – description of yield management system]*.

---

461 See also the figure for 2005 in Aer Lingus' IPO Prospectus, page 40.

462 See in more detail in the next paragraph.

463 Cf. the "Revenue Management System"/"RMS" for Ryanair and the "PROS 5.2" system for Aer Lingus'.

441. A decline or increase in the load factor can have different reasons, e.g. increased demand due to special events (e.g. football games) or holidays, which are not related the behaviour of a competitor. However, one important reason can also be the behaviour of the main competitor. If Ryanair or Aer Lingus lower their fares on a specific route (e.g. for a promotion or on a permanent basis), this can be assumed to have an immediate effect on the load factor of the respective competitor, since more customers will choose the cheaper airline than before. […]*.

442. According to Ryanair and Aer Lingus, [CONFIDENTIAL – description of yield management system]*[464].

443. It is clear that Merging Parties, although not necessarily *directly* comparing prices of each others flights, react to each others pricing behaviour on a daily basis. Should the load factor of either Ryanair or Air Lingus fall behind expectations, the competitor would reduce its fares for a number of seats, in order to attract more customers in such a situation. The Commission was shown at the occasion of its site visits of the headquarters of Aer Lingus […]* that a number of specialised yield managers monitor the single routes throughout the day and adjust the templates regularly in reaction to variations in demand. The reason for such a decrease of the fare could well be a promotion of a competitor or an entry of a new competitor on a route[465].

444. Ryanair and Aer Lingus do not only react "indirectly" (via the observation of a decreasing load factor) to each other. Both companies also use a price comparison software tool ("QL2") which allows them to track and compare air fares for every flight of all competing scheduled carriers that is distributed over the Internet. With QL2, Ryanair and Aer Lingus monitor regularly the competitive behaviour of their main competitors[466].

445. Ryanair explained to the Commission that [CONFIDENTIAL – description of yield management system]*[467].

446. The fact that Aer Lingus is constrained in its pricing by Ryanair is also confirmed by internal documents of Aer Lingus where their pricing strategy on intra-European routes is described in a presentation from April/May 2006 as follows: "*Our strategy is to be within €[…]* of Ryanair on UK routes and within €[...]* on European routes.*[468]". Also as concerns Ryanair, the Commission's investigation has found manifold evidence (including Ryanair's yield management system[469]) that Ryanair reacts to price changes of competitors. This is also supported by Ryanair's reaction to entry or to promotions of competitors[470],

---

464 See e.g. minutes of the Commission's site visit in Dublin (Ryanair) of 6.2.2007, folio no. 6170, and minutes of the Commission's site visit in Dublin (Aer Lingus) of 6.2.2007, folio no. 6170.

465 […]*

466 See minutes of the Commission's site visit in Dublin (Ryanair) of 6.2.2007 as changed and agreed by Ryanair by e-mail of 14 February 2007, folio no. 6170,.

467 See e.g. minutes of the Commission's site visit in Dublin (Ryanair) of 6.2.2007, folio no. 6170; see also minutes of the Commission's site visit in Dublin (Aer Lingus) of 6.2.2007, folio no. 6170.

468 See minutes of the meeting with Aer Lingus at Dublin on 5 February 2007and internal Aer Lingus presentation "Aer Lingus Revenue Management – April & May 2006 Presentations Combined", slide 24, folio no. 6170.

469 See Section 7.4.1.

470 See Section 7.4.2.

internal documents[471] and econometric evidence[472] that shows that also Ryanair is constrained by the pricing behaviour of other airlines, including Aer Lingus.

447. It can thus be concluded that both Ryanair and Aer Lingus regularly monitor and take into account each other's fares. Each of the Merging Parties reduces its fares (notably by offering more tickets at lower fares) when *fewer seats* are sold than expected (low "load factor"), in particular as a result of lower fares of the other (e.g. general price reductions, special promotions). Furthermore, Ryanair typically reduces its fares when it observes that it charges lower fares on a specific route[473], and also Aer Lingus reduces its fares if it observes that the difference between its fares and those of Ryanair exceeds a certain amount.

7.4.2. The Merging Parties react to each other's promotions and advertising campaigns

448. It should also be noted that Aer Lingus' and Ryanair's advertising strategy indicates that each considers the other as their closest competitor in Ireland and that they monitor and react to each other's promotions and advertising campaigns. Both Ryanair[474] and Aer Lingus[475] routinely publish advertisements in which they compare fares and services offered by the other. Ryanair and Aer Lingus also both carefully monitor and seek to react to each other's special promotional offers[476].

449. Aer Lingus has explained to the Commission that on a number of occasions, Ryanair reacted to Aer Lingus' promotions by reducing its fares. Once Aer Lingus' promotion was over, Ryanair raised its fares again[477]. As set out in the previous paragraph, Ryanair's

---

471 See as to the constraint of Ryanair by other airlines including Aer Lingus Ryanair's internal documents, e.g. Board Paper 1 (Board Meeting of [...]*, folio no. 629): P 3.3: "[...]*"; Board Paper 4 (Board Meeting the [...]*, folio no. 629): P. 2.2.: "[...]*" and Board Paper 3 (Board Meeting the [...]*, folio no. 629): P. 3.3.:"[...]*".

472 See Section 7.4.3.

473 See in this respect also Ryanair's "lowest fares" guarantee to customers, see http://www.ryanair.com/site/EN/notices.php?notice=070508_EN_doubledifference&pos=CDAY.

474 See for example press releases of Ryanair of 8 October 2006, "Ryanair opens 2 new routes to Warsaw and Stockholm"; of 9 August 2006, "Ryanair announces biggest ever expansion at Dublin (...)", in which Ryanair states: " *"On every route where there they have a choice, millions more passengers prefer Ryanair to Aer Lingus. Today's twelve new routes will end Aer Lingus' high fare monopoly to destinations such as Madrid, Bologna, Almeria and Seville. Irish passengers who previously had no alternative to Aer Lingus' high fares and frequent delays on these routes will now have a low fare, on-time option with Ryanair. Irish passengers will also enjoy Ryanair's low fares to new European destinations such as Norway (Oslo Torp), Denmark (Billund), Finland (Tampere) and Eastern Poland (Rzeszow) which are not currently served by Aer Lingus."* 10 May 2006, "Ryanair announces new route from Dublin to Berlin ", 21 December 2007, "Ryanair launches 18 routes from Dublin to Europe", in which Ryanair states: *"Aer Lingus can't compete with Ryanair's prices, they can't match our punctuality, and now they can't match our route network from Dublin to the UK or Europe".* See also Aer Lingus' submission of 28 November 2007, Annex 5, folio no. 4122.

475 See e.g. Aer Lingus' submission of 22 February 2007 Annex 9, in which Aer Lingus directly reacts to a recent Ryanair campaign; see also the examples of advertisements directly comparing Ryanair's and Aer Lingus' average fares in Aer Lingus' submission of 19 February ("Further Comments on the Relevance of Base Competition"), folio no. 4122.

476 See Ryanair's internal documents: "[...]*" Board Paper 4 (Board Meeting the [...]*, folio no. 629): P. 2.2. and "[...]*" Board Paper 3 (Board Meeting the [...]*, folio no. 629): P. 3.3.

477 See Annex 6 to Aer Lingus' Response of 28/11/2006 to Additional Questionnaire dated 22 November 2006, folio no. 4122. According to Aer Lingus, a Aer Lingus' promotion (in October 2001) covered flights to

internal documents also confirm that Ryanair reacts to promotion campaigns of Aer Lingus.

7.4.3. The Commission's price regression analysis confirms significant competitive interaction between Ryanair and Aer Lingus

450. The Commission believes that the factors described in the previous sections provide sufficient proof that Aer Lingus and Ryanair compete with each other. Nonetheless, Ryanair and Aer Lingus have presented additional econometric evidence using data sets provided by the respective carriers. The Commission has verified and assessed these submissions and has undertaken its own regression analysis intended to estimate the likely impact of the Merging Parties on each other's prices.

451. This section summarises the main findings from the various econometric reports and derives conclusions relevant to the competitive assessment. The Commission takes into account in its analysis the comments made by the Merging Parties in their response to the Statement of Objections. A more in-depth analysis is included in Annex IV. Annex IV (i) motivates the use of econometric analysis in this case, (ii) examines the strengths and limitations of particular methodologies, (iii) reviews the econometric evidence submitted by the Merging Parties, (iv) presents the results from the Commission's own price regression analysis and (v) discusses a number of technical issues in more detail in reaction to the comments made by both Ryanair and Aer Lingus in their response to the Statement of Objections.

452. The Commission's price regression analysis tests the following hypothesis:

- Whether the presence of one of the Merging Parties in the route is associated with a statistically and economically significant reduction in the fares of the other;
- Whether the Merging Parties exert on each other a stronger competitive constraint than any other existing competitor;
- Whether the existence of an actual or potential competitor with a significant presence at the destination airport on a route originating in Dublin has an impact on the Merging Parties' prices;
- Whether a stronger presence of one of the Merging Parties (in terms of number of frequencies) has a more pronounced effect on the other's fares.

453. Ryanair first proposed a regression technique known as *cross-section* analysis. This technique examines differences in prices across a number of affected routes at a given point in time (for example October 2006). The Commission considers this technique ill-suited for this case. This is because the routes served by the Merging Parties are highly

---

several cities, including destinations also served by Ryanair (e.g. Barcelona. Lyon, Milan, Berlin and Rome). In this instance, Ryanair lowered, according to Aer Lingus, its price in response to Aer Lingus' promotional prices both in the case of airport-pair and city-pair overlap routes, and extended the duration of its promotion in Ireland to match Aer Lingus' promotion. Similarly, during the time of Aer Lingus promotional prices to Lyon St Exupéry (LYS), Ryanair had, according to Aer Lingus, massively lowered its prices but increased them once Aer Lingus promotion came to an end. The same happened on the route to Milan (Aer Lingus flying to Linate (LIN) and Ryanair to Bergamo (BGY)). After Aer Lingus promotion ended, Aer Lingus' minimum fare rose, according to Aer Lingus.

heterogeneous. Routes differ significantly in ways that likely affect prices but are difficult to observe or measure. Without controlling for such differences, *cross-section* regressions are meaningless or biased. Notwithstanding these concerns the Commission has decided to test the usefulness of *cross-section* analysis, correcting to the extent possible some of the methodological difficulties identified in Ryanair 's submission.

454. The Commission constructed a data set combining data provided by the Merging Parties and the Dublin Airport Authority ("DAA"). It consists of data where the Merging Parties' average prices in multiple routes are observed every month for 5 years. Data in such format is commonly known as panel data. Panel data allows using a regression technique known as *fixed-effects*. This technique exploits the variation in market structure at individual routes over time to assess the extent to which the merging firms exert a competitive constraint on each other (holding constant competition from other airlines or other factors that vary over time).

455. The motivation for using *fixed-effects* is as follows: the entry of Ryanair on a route served by Aer Lingus may affect the latter's price (or vice-versa). The fixed-effect procedure compares the level of Aer Lingus prices on a route after Ryanair entered, with the level before Ryanair entered. This before-and-after comparison is done systematically over time and for all routes where Aer Lingus operates. In this way the regression generates the average effect of Ryanair's presence on Aer Lingus fares.

456. It should be noted that the *fixed-effects* procedure compares the incumbent's price before-and-after the entry of a rival within the given route. This offers a significant advantage over *cross-section* regressions. By focusing on a within-route comparison of prices, the *fixed-effects* procedure keeps constant any time-invariant factors that might affect prices, significantly reducing the risk of obtaining biased results[478]. Consequently, the Commission regards the panel data regression analysis with *fixed-effects* as the most suitable for testing all the hypotheses identified above.

7.4.3.1. Cross-section regression analysis

457. In the course of the market investigation Ryanair submitted three reports based on its own data. Ryanair's first report is based on a data set of 313 city pairs for the month of October 2006[479]. Ryanair estimates several *cross-section* regressions that examine differences in its fares across a number of EU routes at a point in time. The regression specification[480] includes a variable to indicate the presence or absence of Aer Lingus in a Ryanair route. The presence of Aer Lingus is measured by a dichotomous variable (or dummy) that takes the value 1 when Aer Lingus was present in the route on that particular month and zero if it was absent. This variable is intended to capture differences in prices across route that may be associated with Aer Lingus' presence. Ryanair also considers evidence on whether the absence of "base competition" leads to a statistically significant increase in its fares.

---

478 Sources of route heterogeneity possibly affecting fares include: characteristics of the destination city, number of alternative airports at destination, characteristics of these airports, the popularity of the route according to purpose of travel, customer awareness and expectations, route distance, duration of travel, air traffic regulations at country of destination, population levels and population density and population income at destination, cultural affinity between origin and destination countries. Not all these variables can be measured or indeed observed.

479 RBB "Bargepole: Ryanair cross-sectional regression results", 10 December 2006.

480 The term "specification" refers to the regression equation.

458. Ryanair in its Response to the Statement of Objections of 17 April 2007, paragraph 140 argues that "… *it is astonishing that the 265 pages of the Commission's SO did not find the time or space to consider the most relevant evidence of how FR actually sets prices on routes where it faces no actual or potential competition from El. Such evidence was presented to the Commission in the report by RBB Economics which analysed the fares charged by FR across 300 different routes, and specifically analysed the question of whether FR charged higher fares on monopoly routes than on routes where it faces active competition"*. The Commission notes that a full section in Annex IV was dedicated to reporting, discussing and extending Ryanair's cross-sectional analysis (section 5). The Commission's conclusion was reported in the main body of the SO – which incidentally is quoted by Ryanair further below in the same paragraph (140).

459. Ryanair finds that there is no statistically significant association between the presence of Aer Lingus and Ryanair prices in the selected sample of routes. According to Ryanair this implies that Aer Lingus is "*not an effective competitive constraint on Ryanair on existing overlap routes*".

460. The Commission cannot accept these results as evidence that Ryanair's prices are unconstrained by Aer Lingus. First, the Commission has verified that Ryanair's results are not robust to small changes in the specification used. Further technical problems concern the "market power dummy" and the "number of competitors" variable (see Annex IV for further details).

461. Second, as explained in more detail in Annex IV, the *cross-section* technique cannot control for unobserved or unmeasured factors that influence price but vary across routes. Failing to control for such factors likely leads to biased estimates[481]. For example, prices may be higher on monopoly routes not because there is no competition but because in this particular route, demand is relatively inelastic or costs are relatively high (e.g. when high entry barriers are correlated with high operation costs). The opposite is also true, prices on monopoly routes may be relatively low because demand is weak (or very elastic) in such routes.

462. Third, the data set is not constrained to routes out of Dublin (or even routes out of Ireland). Instead it includes more than 300 of Ryanair routes across Europe. Ryanair 's analysis is thus based largely on routes where Ryanair and Aer Lingus do not compete and are unlikely to ever do so (such as, for example routes from Germany to Italy). Ryanair argues that this argument "*is entirely formalistic and out of keeping with normal good practice in empirical economic analysis [...] observations of how prices are formed in situations where concentration is already high provide a basis for simulating the impact that a merger will have if it is allowed to go ahead, thus creating a similarly high level of concentration*".[482] The Commission cannot agree for two reasons:

- First, price differences between, say, routes from Germany to Italy and routes from

481 In technical terms the estimated coefficients will be subject to bias when important variables affecting price in different routes cannot be included in the regression (for example because they cannot be observed or measures) and are correlated with one or more of the explanatory variables in the regression. This problem is often referred to as omitted variable bias.

482 See Ryanair's Response to the Statement of Objections of 17 April 2007, paragraph 142.

Ireland to France are likely to be a result of many factors other than competition between the Merging Parties. While this does not in itself invalidate Ryanair 's *cross-section* analysis, effectively controlling for the structural differences between the routes in Ryanair 's sample would be a complex task. By choosing a particularly heterogeneous sample of routes, Ryanair has thus reduced the likelihood that its analysis yields statistically significant results.

- Second, Ryanair's *cross-section* analysis does not provide any indication of whether Aer Lingus' presence has a significant effect on Ryanair prices in overlap routes, relative to Ryanair's price in non-overlap routes out of Ireland. This would be a more informative comparison to provide "*a basis for simulating the impact of a merger*".

463. In any event, to assess the robustness of Ryanair 's *cross-section* regressions and assess the suitability of this technique in this case the Commission has also run a number of *cross-section* regressions. The Commission's initial specification tests whether the presence of one of the Merging Parties on a given route is negatively related with the fares charged by the other (this is labelled the *presence specification*). An alternative specification tests whether the number of frequencies of one merging party in a given route is associated with the other party charging lower fares (this is labelled the *frequency specification*). Following Ryanair, the Commission considers the two shoulder months of April 2006 and October 2006.

464. The Commission's *cross-section* regressions correct, to the extent possible, some of the problems identified in Ryanair's submission.

- First, for the reasons mentioned above, the Commission considers that in this case it is important to focus on routes out of Dublin since at least one end of the route is common to all routes included in the regression, and unobserved differences across routes can thereby be partially reduced. This approach also allows to directly assessing the primary question on interest to be directly assessed, namely the competitive constraint that the Merging Parties mutually exert on each other.

- Second, the Commission's specification includes dummy variables for the presence of both flag and non-flag carriers on the route and also for flag and non-flag carriers with a strong presence at the destination airport. A demand control and a cost control are also included.

465. The Commission's *cross-section* analysis does not confirm the results reported by Ryanair. This is not surprising since the Commission focuses on routes out of Dublin whereas Ryanair considers routes all across the EU. On the basis of the retained market definition (city-pairs database) the Commission's results indicate that Aer Lingus' prices are negatively related with Ryanair's presence. This association is statistically and economically significant despite the very small sample (48 observations). The same negative relationship is obtained when considering routes where the Merging Parties serve the same airport. However, it is statistically significant at least at the 10% level for both months only when the baseline regression is augmented to control for flag and non-flag carriers with a strong presence at the destination airport.

466. Conversely, the Commission's *cross-section* regressions indicates that Ryanair's fares are negatively associated with Aer Lingus' presence on both months only when they serve the same airport. When considering city-pairs the relationship is also negative but statistically not significant, so limited, if any, weight should be placed on this result.

467. The frequency specification would also suggest that the strength of presence of one of the Merging Parties has an effect on the prices of the other. This effect is statistically significant in all the regressions based on the city-pair database. However, as pointed out by Ryanair, omitting the variable distance in these regressions is likely to lead to biased estimates. The Commission agrees that the results from the regressions based on the *frequency specification* cannot be relied on.

468. In fact, as explained in Annex IV in more detail, the Commission considers that neither Ryanair's nor its own *cross-section* analysis is robust to the necessary standard. Indeed, no definite conclusions can be derived from *cross-section* regressions in this case given the impossibility to control for unobserved factors that affect prices and differ across routes, the small number of observations, the sensitivity of the results to the month considered or the fact that the inclusion of statistically insignificant explanatory variables sometimes affects the coefficients of other variables.

7.4.3.2. Ryanair's two stage regressions

469. Ryanair submitted two further reports to test the hypothesis that Aer Lingus' presence has an effect on its fares.

470. In the first report[483] Ryanair examines whether the presence of Aer Lingus has an effect on Ryanair prices on routes out of Dublin. Ryanair's dataset consists of a panel of Ryanair one-way fares from Dublin (i.e. single fares from Dublin to other European destinations) over the period April 2002–December 2006, as well as other potential explanatory variables. In this dataset, Ryanair identifies only a few instances of entry or exit of Aer Lingus over time into routes where Ryanair is already present. Ryanair argues that in such case the standard *fixed-effects* procedure is not appropriate. Instead they use a two step procedure that according to Ryanair "*still benefits from the panel nature of the data*" and "*is more robust than the standard fixed effect approach*"[484].

471. Ryanair reports that for all the considered specifications the presence of Aer Lingus has no statistically significant impact on its prices, either on a city pair or on an airport pair basis. According to Ryanair this finding supports its claim that its business model is to target a passenger base that other (higher cost) airlines cannot profitably target. It follows that the strongest competitive constraint on Ryanair is not Aer Lingus but the price sensitivity of its customer base. Ryanair concludes that attempts by Ryanair to sustain higher fares would not be profitable – not because of switching to Aer Lingus but due to passengers switching to alternative activities.

472. Ryanair submitted a complementary report[485] to show that it does not set higher fares on "monopoly" routes (on either a city or airport pair basis). Ryanair follows the same two-stage approach described in the previous submission. The main difference is that this report considers average monthly yield on all origin-destination pairs from Frankfurt Hahn, not Dublin, or Ireland. The variable of interest separates routes in which Ryanair is a monopolist and others where it faces actual or potential competition - note that Aer Lingus is not present on routes out of Frankfurt (except to Dublin). Ryanair's reported results

---

483 RBB "ANNEX: Is Aer Lingus a competitive constraint on Ryanair?", 08 February 2007

484 RBB "ANNEX: Is Aer Lingus a competitive constraint on Ryanair?", 08 February 2007, page 3.

485 RBB "Comparing prices on "monopoly" and non-monopoly routes out of Frankfurt Hahn" included as Annex 1 in RBB "Position Paper on Barriers to Entry" dated 20th February 2007, folio no. 4135.

indicate that the presence of carriers in routes out of Frankfurt-Hahn has no statistically significant effect on its prices.

473. The Commission acknowledges that in light of the reduced number of instances of Aer Lingus entry into Ryanair routes a standard *fixed-effects* regression may be uninformative as to the effect that Aer Lingus entry or exit might have on Ryanair's prices. However, the Commission considers that the two-step methodology proposed by Ryanair cannot resolve this difficulty. It is also inadequate to assess the effect of Aer Lingus on Ryanair over time, for the following main reasons:

- First, Ryanair's two-step methodology is effectively a *cross-section* analysis (see Annex IV, section 6.3 for a detailed explanation). Hence, the Commission's concerns with respect to the *cross-section*al regressions in this case also apply here. In particular, the small number of observations, which leads to high standard errors and the impossibility to control for unobserved factors that affect prices and differ across routes which results in omitted variable bias.

- Second, the second stage regression only includes Aer Lingus' presence. It does not include presence variables for other competitors. It is thus likely misspecified.

- Third, the use of the "matched-route" as a proxy variable for demand implies that the *fixed-effects* estimated in the first stage do not in reality correspond to the average fares. This source of misspecification further implies that Ryanair's two-stage regressions are unlikely to generate reliable estimates.

474. Further problems include inconsistencies in the quality of the data used by Ryanair and the wide variation in the estimates due to slight changes in the specification. Moreover, it should be noted that even Ryanair 's preferred specification fits very poorly and explains only 18 percent of the variance in average fares.

475. With respect to the analysis comparing prices on monopoly routes and non-monopoly routes out of Frankfurt Hahn the above mentioned concerns apply since Ryanair uses the same two-step analysis. Additionally, the analysis of routes out of Frankfurt-Hahn does not provide any direct evidence regarding the competitive constraints that Ryanair faces on the affected routes - that is routes out of Ireland.

476. It should be remembered in this context, that the regression techniques used by Ryanair, Aer Lingus and the Commission involve a one-sided test: A regression can either establish a statistical link between two parameters (say, simultaneous presence of Ryanair/ Aer Lingus and price levels) or it can fail to do so. However, failure to prove a statistical link is not equivalent to proving that no such link exists. Alternative explanations for an "unsuccessful" regression include, in particular, unsuitable data sets or misspecified regression equations. It would appear that Ryanair, by choosing a complex two-stage stage approach and a data set with routes outside Ireland, increased the likelihood that its regression would not yield statistically significant results. Because Ryanair had a vested interest in seeing its regressions "fail", the probative value of such an outcome is low and cannot be taken as evidence that Ryanair is not constrained by Aer Lingus on routes out of Ireland.

7.4.3.3. Fixed-effects regressions

477. A panel regression with route specific *fixed-effects* can mitigate the omitted variable bias

that affects *cross-section* regressions. This is because unobservable cost or demand factors, whose variation across routes would be likely to affect fares are more likely not to vary over time at any single route. The Commission regards this methodology as the most suitable to assess the competitive constraint exerted by Ryanair on Aer Lingus.

Aer Lingus' fixed-effects regression analysis

478. The economic consultants engaged by Aer Lingus submitted several econometric reports using data provided by Aer Lingus and the Dublin Airport Authority (DAA). They relied on a *fixed-effects* procedure to test the hypothesis that Ryanair's entry or exit on Aer Lingus routes had an effect on Aer Lingus' average fare and load factor.

479. Aer Lingus considers three alternative measures of Ryanair's presence on a route served by Aer Lingus: (i) share of total seat capacity, (ii) absolute monthly seat capacity and (iii) a dummy indicating presence of Ryanair in the route. Ryanair has criticised the inclusion of "capacity shares" as a explanatory variables for two reasons. First, to the extent this variable is endogenous it can lead to biased estimates. Second it imposes strong restrictions on the estimated coefficients which are not consistent with theory. The Commission agrees with Ryanair that the use of capacity shares in the regression is problematic.

480. However, the Commission also notes that the results based on regressions that include a "presence" dummy (similar to the Commission's own fixed effect regressions) are not affected by this criticism. Aer Lingus' reported results for this specification indicate that Ryanair's presence on a route is associated with Aer Lingus charging [5-10]* percent lower prices. These estimates are in line with the results from the Commission's fixed-effects regression reported below.

Commission's fixed-effects regression analysis

481. The Commission's panel data has been constructed on a city pair basis according to the geographic relevant market for each route as defined by the Commission. The data set tracks on a monthly basis all the information submitted by Aer Lingus, Ryanair and the DAA for routes out of Dublin.

482. Using this merged data set which covers the period January 2002 to December 2006, the Commission has used a standard *fixed-effects* procedure to assess the competitive constraint exerted by the Merging Parties on each other. The Commission's initial specification tests whether the presence of one of the Merging Parties in a given route is negatively related with the fares charged by the other (this is labelled as the *presence specification*). An alternative specification tests whether the number of frequencies of one merging party in a given route is associated with the other party charging lower fares (this is labelled as the *frequency specification*).

483. The Commission's analysis confirm Ryanair 's claim that there is not sufficient variation, within a reasonable time period, in the presence of Aer Lingus in routes operated by Ryanair. As a result the *fixed-effects* regression does not provide reliable estimates of the possible impact of Aer Lingus' presence on Ryanair prices[486]. In contrast, there are many

---

486 In order to capture more events of Aer Lingus entering, the extensive data set has enabled the Commission to consider a longer time period, starting from Aril 1997. While in fact Aer Lingus' presence has a significant

instances of Ryanair entering/exiting routes in which Aer Lingus was already present. Hence the *fixed-effects* procedure is very well-suited to assess whether Ryanair's presence is negatively associated with Aer Lingus prices.

484. The presence specification includes dummy variables for the presence of (i) Ryanair, (ii) one or more flag carriers and (iii) one or more non-flag carriers. It also includes dummy variables for the presence of Aer Arann and CityJet, which according to Ryanair also exercise a strong constraint on the Merging Parties on Dublin routes. The Commission extends the baseline specification to include various control variables for demand and costs and a dummy variable to indicate whether flag or non-flag carriers have a strong presence at the destination airport. In all cases, the presence of Ryanair is statistically significant and is related to Aer Lingus charging lower prices.

485. The Commission's *fixed-effects* regressions validates the following hypothesis set out ex-ante:

- First, depending on the specification, the Ryanair's presence is associated with Aer Lingus charging around 7-8% lower prices when considering city-pairs reflecting the Commission's retained market definition and around 5% lower prices when considering airport-pairs. This effect is economically and statistically significant in all tested regressions. This result is also robust, correcting for the presence of outliers, heteroskedasticity and serial correlation. It is also highly robust to the use of alternative specifications including alternative demand and supply controls. Notably, in practically all cases the control variables in the different regressions have the expected signs and are statistically significant. The explanatory power of the regression is also high with R2 consistently above 80%.
- Second, comparing the coefficients of Ryanair with that of flag-carriers and non-flag carriers, as well as Aer Arann and CityJet, Ryanair's presence or number of frequencies have a much stronger economic impact (at least double) than that of any other type of carrier. In most cases the regressions indicate that the presence of other carriers has no economic or statistically significant effect on Aer Lingus fares.
- Third, destination-based flag carriers exert only a very limited constraint on Aer Lingus. Destination-based non-flag carriers exert a higher constraint than flag based carriers. However, their constraint is around half or less than the constraint exerted by Ryanair on Aer Lingus retaining the Commission's market definition. Moreover flag carriers are only present on 8 of the 37 overlap routes upon which Aer Lingus and Ryanair competed in May 2007, and tend to be much smaller than either Ryanair or Aer Lingus where they are present (especially for point-to-point passengers). Thus, contrary to Ryanair's claim, it cannot be expected that the merged entity would be effectively constrained by flag or other non-flag carriers post-merger.
- Fourth, measuring the strength of Ryanair's presence using number of frequencies in the route as a proxy provides further confirmation that Ryanair constrains Aer Lingus. It is possible to examine the price change in overlap market only or across all markets under various assumptions. For example one can focus on the price effect on the last month for which data is available or the price effect on average over the full sample period. Depending on the specification the price effect of the merger implied by the

---

negative effect on Ryanair's prices in that regression, for a number of reasons – as set out in Annex IV – the Commission does not give weight to this result.

Commission's frequency regressions is around 5-6% (on average over all routes) or 10-12% (if only overlap routes are considered). This adds to the robustness of the results derived from the presence specifications. It is also worth noting that, as expected, Ryanair appears to impose a more significant constraint on Aer Lingus when it serves the same airport.

486. The *fixed-effects* regressions with Ryanair's prices as the dependent variable do not allow conclusions to be reached with respect to the impact of Aer Lingus on Ryanair prices. This is because there are insufficient instances of Aer Lingus exiting or entering into a route where Ryanair was already present. In other words there is little variation in the presence of Aer Lingus on Ryanair routes. It should be emphasised, however, that this neither validates nor refutes the hypothesis that Aer Lingus exerts a competitive constraint on Ryanair's prices. Indeed the evidence presented in the previous section makes it clear that Ryanair as well as Aer Lingus permanently monitor their own load factor and each other's prices and adjust prices accordingly. If Aer Lingus were to lower its prices this would tend to attract customers that would otherwise have flown Ryanair. If a sufficient number of customers switch to Aer Lingus (switching costs are very low and in most overlap routes there are no closer alternatives) this would lead to lower load factors. According to its pricing policy Ryanair would react by reducing its prices in order to meet its load factor targets. If Ryanair were not constrained by Aer Lingus there would be little logic in permanently monitoring their prices[487].

487. Moreover both economic theory and qualitative evidence suggest that Ryanair might also be constrained on parameters of competition other than price. As a result of the merger the ability to increase Aer Lingus fares would further relax the competitive constraint faced by Ryanair, allowing it to increase fares of ancillary services or to reduce quality without risking to lose as many customers as in the absence of the merger.

488. Finally, it should be noted that the estimated effect of Ryanair on Aer Lingus prices is likely to be underestimated. As pointed out below (Section 7.6), the presence of Ryanair in Dublin exerts a potential competitive constraint on Aer Lingus. On routes out of Dublin where it is the only carrier, it can be expected that Aer Lingus sets prices which are lower than what it would charge if Ryanair had no Dublin base. Since the regression analysis considers only fares' overtime variations within each route and only captures price reductions subsequent to Ryanair's entry, this potential competition constraint does not show up in the empirical results.

7.4.3.4.Conclusion

489. The Commission's regression analysis confirms and complements the conclusions derived from qualitative evidence that Ryanair and Aer Lingus are close competitors. Moreover the results from the regression analysis are also in line with the majority of respondents to the Customer Survey that consider the Merging Parties to be the closest competitors when other carriers are present on the route.

490. The fixed effects regressions therefore provide clear and convincing evidence that Aer Lingus' prices are currently constrained by competition from Ryanair.

---

487 See on the *mutual* competition between Ryanair and Aer Lingus also Section 7.4.2 (reaction to promotions) and on competition with other carriers e.g. Section 7.8.5 (retaliation in reaction to entry).

7.5. The merger eliminates actual competition between the Merging Parties to the detriment of customers

491. As shown in the above Sections (notably Section 7.4), Aer Lingus and Ryanair are in competition with each other and constrain each other when it comes to determining fares for flights on the overlap routes[488]. The proposed merger would eliminate this actual competition between the Merging Parties, giving the merged entity significantly increased market power with the likely consequence of increased fares and/or a reduction of the number flights for passengers wishing to travel to or from Ireland. Indeed, post-merger, as predicted by standard "non-coordinated effects" analysis (see paragraph 24 in the Horizontal Merger Guidelines), both carriers would internalise the effects of setting higher fares on each other. In particular, the merged entity would have the incentive to set higher fares for Aer Lingus since most of the customers lost would be captured by Ryanair.

492. The likely consequences of the elimination of competition on the overlap routes are, however, not limited to increased prices. Effective competition does not only bring low prices to consumers but also other benefits such as high quality products, a wide selection of goods, and services and innovation[489]. The elimination of competition between the Merging Parties would also deprive customers of these benefits of effective competition.

493. Another consequence of the combination of the two strongest short-haul airlines in Ireland may be that less new routes that would be developed without a merger. Indeed, the Commission observes that the presence of two base operators in Dublin, Ryanair and Aer Lingus, has in the past stimulated both to engage in competition for *opening new routes*, in particularly out of Dublin. Indeed, by 2001, Ryanair's operations from Ireland were mainly directed to Great Britain, having a share of approximately 50% of the overall Ireland-Great Britain traffic. At that time, it served only two destinations in Continental Europe from Ireland (Paris Beauvais and Brussels Charleroi). Aer Lingus then started its transformation process into a point-to-point airline, modernising its fleet and reducing significantly its costs. As a result, Aer Lingus increased significantly the number of destinations served from Dublin. While in 2001 Aer Lingus operated *29 routes* out of Dublin to European destinations, this number increased to 52 in 2004 and more than 70 in 2006. It can be observed that at the same time also Ryanair increased significantly the number of destinations served out of Dublin, operating 14 routes in 2002, which increased to 22 in 2004. It serves today more than 50 routes to Continental Europe only from Dublin[490].Given the expansion of both airlines in recent years, Irish customers therefore

---

488 It may in this context be noted that the Commission's evidence has shown that not only Aer Lingus reacts to Ryanair, but that also Ryanair reacts to Aer Lingus competitive behaviour. However, for a serious competition concern it would not even be necessary that both Aer Lingus and Ryanair constrain each other in equal measure. It is well possible (and in this case even likely) that one firm exercises on the other a stronger competition concern than conversely. If customers respond by switching to a change in relative prices in one direction (say from Aer Lingus to Ryanair) at least this customer group can be expected to switch back if the change of relative prices is reversed.

489 Horizontal Merger Guidelines, paragraph 8. Although not explicitly mentioned here, the merger will also reduce the choice for Irish customers who can currently choose between two differentiated airlines on most of the affected routes. The Commission also notes that the merger may well have an impact on the competition on quality between the two Merging Parties, to the detriment of the customers.

490 In its response to the Statement-of-Objections, Ryanair argues that its expansion was no reaction to the expansion of Aer Lingus, but that it was hindered by conflicts with Dublin Airport to expand. However, the Commission notes that only started expanding ex-Ireland subsequent to Aer Lingus' restructuring, possibly as a result of a need for Ryanair to re-orientate itself to the Irish market. Ryanair also argues that, in spite of

could benefit from a significant increase of new destinations by more than 100% . During this period, Dublin Airport also witnessed a 29% growth in terms of overall passenger numbers. Both Merging Parties have clearly documented plans to continue expanding their Irish network[491].

494. Although it is true that every airline has an incentive to develop new routes and that Ryanair has expanded its route network even from those bases where it does not face direct competition[492], the incentive to quickly develop new routes is higher in a situation in which an airline faces an equally strong competitor at the same base. This incentive would be reduced post-merger, since competition between Ryanair and Aer Lingus will be eliminated.

495. Indeed, the airline which first develops and opens a route may benefit from "first-mover advantages" which may make it more difficult for the late entrant to operate as profitably on the route as the "first mover". This may be the case for instance for small or "thin" routes which generate only limited traffic[493]. The presence of another strong airline is therefore likely to stimulate the fast development of new routes, since both airlines have an interest in securing the first-mover advantages. After the merger, the need to develop new routes as fast as possible would disappear, since the merged entity would not need to secure a "first mover advantage".

496. Furthermore, as shown inter alia by the Commission's regression analysis and internal documents of the Merging Parties, fares and margins are in general lower when an airline faces competition on a route than when it operates a monopoly route. At present, both airlines have therefore a strong incentive to discover such monopoly routes on which entry of the other airline is less likely (e.g. particular thin routes). Assuming that Aer Lingus and Ryanair deploy their aircraft to the most profitable use, the average yield required for opening a new route will depend, inter alia, on the yields available on existing routes. The more competitive (and, hence, less profitable) the existing routes are, the more attractive, in relative terms, it becomes to discover and open viable new routes[494].

---

opening new routes, Aer Lingus has not expanded capacity. However, while it is correct that Ryanair's has expanded more in terms of aircraft capacity and overall passenger figures on a European-wide level than Aer Lingus (and any other airline in Europe), the situation is more balanced if one looks at the development in Ireland. By way of example, Aer Lingus operates today more routes from/to Dublin than Ryanair). Further, by replacing its fleet with larger aircraft Aer Lingus has indeed added capacity on the market and increased its passenger numbers from 6.6 million in 2001 to 8,6 million in 2006.

491 See in detail Section 7.6. on potential competition.

492 Ryanair argues that Ryanair's "*pattern of opening routes at Dublin is a result from Ryanair's practice to "join the dots", i.e. to add routes between airports that are already in the [Ryanair] network", see* response to the Statement of Objections, page 46. However, as the total number of destinations served by Ryanair was steadily growing in recent years (according to the Ryanair's annual Form 20-F Statements for the US SEC (source: www.ryanair.com), their network of locations served evolved as follows: Sept 2003 - 83 locations served, Sept 2004 - 88 locations served, Sept 2005 - 107 locations served, Sept 2006 - 115 locations served) and in view of the overall expansion plans of Ryanair, it cannot be presumed that there will be no other "dots" added to the Ryanair's network in the near future.

493 Airlines opening new routes face typically some uncertainty about the size and the development of the market and demand often grows only over time. The "first-mover", once established in the market, is therefore well positioned to develop the market by adding more frequencies as demand grows.

494 The intensity of the competition to open new routes is also linked to the fact that both Ryanair and Air Lingus have a large base in Dublin. As discussed above, the base allows a more efficient use of aircraft and also provides the ability to shift capacity and enter new routes higher speed. To maximise aircraft utilisation,

497. The Commission therefore concludes that the proposed merger would eliminate actual competition between the Merging Parties on all overlap routes, giving the merged entity significantly increased market power with the likely consequence of increased fares[495] and/or a reduction of the number of flights for passengers wishing to travel to or from Ireland. The elimination of competition may also result in a reduction of service quality, of choice between different service models and in a reduced incentive for the merged entity to develop new routes. Thus the merger would eliminate actual competition between the Merging Parties to the detriment of consumers.

7.6. The merger would eliminate potential competition between the Merging Parties to the detriment of customers

498. There is a significant number of routes to/from the Irish airports where both Ryanair and Aer Lingus have short-haul activities (in particular Dublin as well as Shannon and Cork) where only one of the Merging Parties is present. It is therefore necessary, in line with the previous practice of the Commission[496], to analyse whether the transaction would affect competition by eliminating the other carrier as a potential competitor on these routes.

7.6.1. The analysis of potential competition reflects the dynamic character of competition in this case

499. Indeed, as set out in Section 6.2, competition on the individual routes operated by Ryanair and Aer Lingus from the same base cannot be regarded in isolation. Such an isolated analysis would imply that the respective product markets were entirely independent from each other. As set out in detail above (e.g. Section 6.2 on a possible market for flights from/to Ireland and Section 7.3.4 on the advantages of a base), the single routes or markets are linked by many elements to each other, notably by the fact that most of them are operated from a large *base* in Ireland. In particular, airlines operating pursuant to the low-frills/point-to-point model from a large base have the necessary flexibility to shift and add routes from their existing base in reaction to changes in the competitive structure of the different markets/routes operated from their base[497]. The Commission can therefore not only analyse in a "static" manner the situation on the 35 overlap routes which happen to exist at the time of the Commission's decision. Such an analysis would disregard the *dynamic character* of competition in the affected markets. This is already evidenced by the fact that the number of routes the Merging Parties operate from/to Dublin, Cork or Shannon is constantly changing and that even the number of the overlap routes is far from static, and has changed even during the time of the Commission's investigation[498]. It is

---

3-4 round trips per aircraft have to be carried out during one day. Such an efficient use of the fleet requires optimising schedules across routes. Only by operating on a *bundle of routes* out of the same airport an airline can fly on "thinner" routes which on their own would not generate sufficient traffic to dedicate one large aircraft (with 3-4 daily round-trips). Further, a large slot portfolio at a base airport allows for greater operational flexibility to react quickly to changes in the market.

495 The term "increased fares" in this context should be understood as encompassing also *lower decrease of fares* than absent the merger.

496 See e.g. the Commission decisions in cases M.3280 – Air France/KLM, M.3770 – Lufthansa/Swiss, M.3940 – Lufthansa/Eurowings; see also the discussion of potential competition by the CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR (2006) II-1913, at paragraphs 63 et seq.

497 See as regards the advantage of increased flexibility Section 7.3.4.1.

498 The previous overlap routes Dublin-Bristol, Dublin-Turin and Dublin-Fuerteventura identified in the Article 6(1)(c)-decision and the Statement of Objections "disappeared" during the time of the investigation because one airline ceased operations on these routes, while at least one other overlap route (Manchester-Cork) was

therefore necessary that the Commission also analyses to what extent the disappearance of the Merging Parties' closest and most important competitor might eliminate potential competition that would have constrained the Merging Parties in the absence of the transaction.

500. The Horizontal Merger Guidelines acknowledge that concentrations where an undertaking already active on a relevant market merges with a potential competitor may have anti-competitive effects and thus lead to significant impediment of effective competition. For this, two basic conditions must be fulfilled: (1) the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grew into an effective competitive force and (2) there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger[499].

501. As regards the first criterion, it is relevant to consider (i) the closeness of competition between Ryanair and Aer Lingus and the extent to which they constrain each other, (ii) the ability of Ryanair and Aer Lingus to enter into markets (routes) where currently only one of them is active, (iii) past evidence of entry by Ryanair and Aer Lingus is to these routes. As regards the second criterion (ability to enter), it is necessary to demonstrate that entry by other competing carriers on these routes is significantly less likely and thus would not provide sufficient competitive pressure on the merged entity. All these elements are analysed below, first in general, and then applied to the individual markets (routes).

7.6.2. The Merging Parties are close competitors that constrain each other and are capable of entering into each other's routes

502. Ryanair has put forward that it behaves independently of Aer Lingus as it is only constrained by the price sensitivity of its customers. This argument has been refuted in detail in Sections 7.3 and 7.4. The Commission also notes that the Horizontal Merger Guidelines acknowledge that a potential competitor significantly constraints the behaviour of firms active in the market in particular if it possesses *assets* that could easily be used to enter the market without incurring significant sunk costs[500].

503. As explained in detail in Section 7.3.4 above, both Ryanair and Aer Lingus enjoy a number of competitive advantages derived from their strong presence at the three Irish airports. In particular both airlines, unlike their competitors[501], enjoy significant flexibility to reschedule their operations across routes from/to Ireland without incurring significant sunk costs of entry and within a reasonably short time frame due to their strong presence in Dublin. The same flexibility also mitigates the costs of failed entry since again it allows both carriers to shift back capacity to another route out of the relevant Irish airport – for example as soon as it is identified that demand is weaker than expected or if costs

---

created during the investigation (it may also be noted that the Commission has evidence that further overlap routes will be created in the near future, e.g. through the announced opening of a route from Dublin to Copenhagen by Aer Lingus in Winter 2007/2008).

499 See paragraphs 58-60 of the Horizontal Merger Guidelines.

500 See paragraph 59 of the Horizontal Merger Guidelines.

501 Aer Lingus's and Ryanair's large operations in Dublin, their access to airport facilities and in particular their easy access to Irish (and for Ryanair even non-Irish) customers make shifting routes and opening new routes from/to Irish airports significantly easier and cheaper than it would be for their competitors, who would face considerably higher sunk costs. See in detail below, Section 7.8 on entry barriers (notably 7.8.3 and 7.8.4).

unexpectedly increase, thereby reducing profitability[502].

504. Further, both Ryanair and Aer Lingus plan to expand their operations which enforces the likelihood that they would enter one or more routes served currently only by one of them. As set in the previous Section (7.5), there is strong evidence that both Aer Lingus and Ryanair have significantly expanded their operations in Dublin in the past and that they would continue to do so without the merger. In 2001, Aer Lingus operated 29 short-haul routes which increased to 71 by 2005. Similarly, Aer Lingus' passenger numbers grew from 6.6 million in 2001 to 8 million in 2005. The total number of short-haul passengers carried by Aer Lingus increased only in 2006 by 9.3%[503]. Aer Lingus has also replaced its fleet with larger aircraft. Ryanair acknowledges that "*the introduction of the A-320 increased [Aer Lingus'] capacity on European routes by 22%...*"[504]. Furthermore, the Aer Lingus IPO was intended precisely to deliver additional capital and access to the capital markets for Aer Lingus in order to allow it to expand its fleet. This expansion is on-going as Aer Lingus currently has firm orders for 4 short-haul aircraft (two to be delivered in May 2007 and the remaining two in November and December 2007). Further, Aer Lingus plans to expand its short-haul fleet to a total of 42 aircraft by 2012. Ryanair argues that Aer Lingus has already confirmed that its firm orders for four short-haul aircraft will be committed to the launch of a new base in Continental Europe rather than to strengthen its presence in Dublin, Shannon and Cork[505]. Aer Lingus states that they intend to set up a new base with three aircraft outside Ireland (most likely in one of the UK airports) which would serve Dublin and destinations in Continental Europe[506]. Therefore, at least one of the additional aircraft would be still based in Dublin, Cork or Shannon. Further, as the aircraft at the new base would also serve Dublin, this would allow Aer Lingus to either increase frequencies between the new base and Dublin (and possibly also Shannon or Cork) and thus enable to reschedule the added capacity to other routes within its network out of the three Irish airports. This would further enhance the ability of Aer Lingus to compete with Ryanair which has a strong presence in the UK.

505. Also Ryanair envisages a further rapid expansion with firm orders for a further 170 new aircraft to be delivered over the next six years which should allow Ryanair to double the number of passengers carried to over 80 million passengers per annum by 2012[507]. Ryanair claims in the Notification that they have opened overall 170 routes in the last year and 42 new routes out of Dublin Airport over the last two years[508]. Further, Ryanair's CEO in his comments to the Q1 2006 results stated as follows: "*Ryanair will increase its fleet by 27*

---

502 See paragraph 59 of the Commission's Notice on the Assessment of Horizontal Mergers: *"A merger with a potential competitor can generate horizontal anti-competitive effects, whether coordinated or non-coordinated, if the potential competitor significantly constrains the behaviour of the firms active in the market. This is the case if the potential competitor possesses assets that could easily be used to enter the market without incurring significant sunk costs. Anticompetitive effects may also occur where the merging partner is very likely to incur the necessary sunk costs to enter the market in a relatively short period of time after which this company would constrain the behaviour of the firms currently active in the market."*

503 See Aer Lingus press release "Preliminary Announcement of Results for the Year Ended 31 December 2006" of 13 March 2007, available at: www.airlingus.com.

504 Table in paragraph 21 of Ryanair's Response to DoT Briefing Paper

505 See Ryanair's Response to the Statement of Objections of 17 April 2007, page 244.

506 See Aer Lingus Response to Commission Request of 19 March 2007 submitted on 21 March 2007, folio no. 5933.

507 See Notification, paragraph 21.

508 See Notification, paragraph 23.

aircraft this Winter (compared to last year's net increase of just 15) during which we will launch many more new routes and bases."[509] The growth plans of Ryanair specifically for Ireland are also confirmed by its internal documents[510] as well as published information[511]. Ryanair argued that their expansion reflects the "joining the dots" approach when they open new routes to destinations already served in their network. They argue that if Aer Lingus' non-overlap routes from Dublin are considered, there are only two airports in Ryanair's current network – Düsseldorf and Palma de Mallorca[512]. This would however be a very static approach to Ryanair's possible expansion. As the total number of destinations served by Ryanair has grown steadily in recent years[513] and in view of the overall expansion plans, it cannot be presumed that there will be no other "dots" added to the Ryanair's network in the near future. Furthermore, there are a number of Aer Lingus' non-overlap routes to/from Cork to destinations already in the current Ryanair's network (see below in the analysis of potential competition on routes to/from Cork).

7.6.3. Past evidence shows that in particular Ryanair enters into Aer Lingus' routes[514]

506. Past evidence shows that in particular Ryanair has in the past systematically entered on routes where Aer Lingus was active[515]. There are also a number of examples of Aer Lingus entering routes served by Ryanair.

507. The entry of the competitor on routes where previously only one of the Merging Parties was active led to a sharp increase in the number of overlap routes in previous years: Over the last 6 years the number of overlap routes has increased from 8 to 35 (or even to 37 if the situation in May 2007 is regarded[516]). This past evidence of entry is particularly compelling for Ryanair.

508. Indeed, Ryanair entered the following routes on which Aer Lingus operated previously: it commenced operations in March 2003 on Dublin-Faro where Aer Lingus operates since

---

509 See the public statement of 01/08/2006 "RYANAIR ANNOUNCE RECORD Q.1 RESULTS - NET PROFIT RISES 80% TO €116m - TRAFFIC GROWS 25% TO 10.7m" available at Ryanair's webpage: http://www.ryanair.com/site/EN/about.php?page=Invest&sec=download&ref=2007

510 See Board Paper 3 for the Board Meeting of Ryanair Holdings plc on [...]* (folio no. 629), page 3.6., section 3.4.1. – Aer Lingus stating [...]*.

511 See e.g. press release of 09/01/2007, "2 New Routes from Dublin to Bydgoszcz and Gdansk" stating among others as follows: "*Ryanair, Europe's largest low fares airline today (Tuesday, 9th January 2007) announced that from May it will launch 2 new routes from Dublin to Bydgoszcz and Gdansk in Poland and increased frequencies from Dublin to Bratislava, Biarritz, Carcassonne, Kaunas, Krakow, Malaga, Murcia, Riga and Rome. Ryanair will launch a total of 22 new European destinations from Dublin for Summer 2007.*"

512 It should be however noted, that there is at least one additional destination served by Aer Lingus from Dublin which is already part of the Ryanair's network, namely Santiago de Compostela (served by Ryanair currently from Liverpool, London, Frankfurt and Rome – see www.ryanair.com).

513 According to the Ryanair's annual "Form 20-F Statements" for the US SEC (source: www.ryanair.com), their network of locations served evolved as follows: Sept 2003 - 83 locations served, Sept 2004 - 88 locations served, Sept 2005 - 107 locations served, Sept 2006 - 115 locations served.

514 See e.g. Ryanair's internal documents: "[...]*". Board Paper 1 (Board Meeting the [...]*, folio no. 629) : P. 1.2

515 It is noted that Aer Lingus already had a strong presence in Ireland as the national "flag carrier".

516 As mentioned above, there will be no actual competition between the parties anymore on the overlap routes "Dublin-Turin" and "Dublin-Fuerteventura" as of Winter 2007/2008.

June 2002; in April 2006 on Dublin-Krakow where Aer Lingus operates since November 2005; in April 2006 it entered Dublin-Milan where Aer Lingus operates since March 2005, in March 2003 it entered Dublin-Malaga; in January 2006 it entered Dublin-Riga where Aer Lingus commenced operations in November 2005, in April 2006 it entered Dublin-Salzburg, where Aer Lingus operates since December 2005; on Dublin-Tenerife it entered in December 2006 where Aer Lingus operates since November 2003; in 2003 it entered Dublin-Barcelona on which Aer Lingus operates since March 2002; in April 2006 it entered Dublin-Marseille where Aer Lingus operates since March 2005; In April 2006 Dublin-Valencia, where Aer Lingus operated since March 2004; in April 2006 on Dublin-Bratislava competing with Aer Lingus which flies to Vienna since October 2002; in April 2005, it entered Dublin-Frankfurt-Hahn, competing with Aer Lingus which flies to Frankfurt main airport; it entered Dublin-Luebeck in April 2006 competing with Aer Lingus' operations to Hamburg; in April 2004, Ryanair entered Dublin-Murcia competing with Aer Lingus which operates on Dublin-Alicante; in 2006 it started operating on Dublin-Berlin where Aer Lingus operates since 2004; it commenced operations on Dublin – Carcassonne in December 2005 competing with Aer Lingus which flies to Toulouse; in December 2006 it entered Dublin-Madrid; in March 2006 it started operating Dublin – Treviso in competition with Aer Lingus' services to Venice operated as of March 2004; in December 2006 it started operating Dublin – Fuerteventura where Aer Lingus operated from November 2005 to May 2007; in December 2006 it started operating Dublin – Warsaw where Aer Lingus is active as of June 2004; in January 2007 it started operating Dublin – Vitoria in competition with Aer Lingus' services to Bilbao; in February 2007 it started operating Dublin – Forlì in competition with Aer Lingus' services to Bologna; in December 2006 it started operating Dublin – Grenoble in competition with Aer Lingus' services to Lyon; in January 2007 it started operating Dublin – Seville where Aer Lingus is active as of March 2005.

509. Therefore, there is a considerable evidence of entry *by Ryanair* into routes previously operated by Aer Lingus. In view of Ryanair's continuing expansion and to the extent that they fit into Ryanair's business model, also for the future, entry into routes served by Aer Lingus is very likely.

510. Also *Aer Lingus* has entered routes on which Ryanair operated previously as the incumbent[517]. This applies to Dublin-Bristol on which it resumed operations in March 2004 (but exited in March 2007), to Dublin-Liverpool where it entered in October 2004 (but left in June 2006, even though it still operates to Manchester airport which can be considered substitutable for Liverpool) and to Dublin Newcastle where Ryanair commenced operation in January 2003 and Aer Lingus entered in October 2006. Further, both entered at the same time Dublin-Poznan (April 2006). On Dublin-Rome, in spite of the fact that Ryanair entered in April 2005, Aer Lingus has increased its number of frequencies since 2002. Further, Aer Lingus starts as of 25 March 2007 a new route from Cork to Manchester in competition with existing operations of Ryanair from Cork to Liverpool.

511. In view of these more limited instances of actual entry by Aer Lingus, Ryanair claims in its response to the Statement of Objections claims that Aer Lingus is not a potential competitor to Ryanair. The above summary (paragraphs 508-512) shows in fact that there have been many more instances of Ryanair entry on routes where Aer Lingus operated

517 See Ryanair's internal documents: "[…]*". Board Paper 3 (Board Meeting the […]*, folio no. 629) : P. 3.4.

than vice versa. However, this may at least partly be explained by the historic development of the Irish air transport market. Until a few years ago; Ryanair concentrated only on Ireland – UK routes (in 2001, Ryanair operated only 2 routes between Dublin and Continental Europe). As part of its restructuring, Aer Lingus instead focused more on routes to Continental Europe, taking away capacity from the UK routes. As Ryanair started its expansion to Continental Europe only after Aer Lingus expanded its operations on these routes, it is only normal to find more instances of Ryanair's entry against existing operations of Aer Lingus than the other way round. It should be noted that the situation is different at present since also Ryanair has substantial operations to Continental Europe and it may be expected that there will be more examples of Aer Lingus' entry into Ryanair's routes from/to Ireland in the near future[518].

512. It is also noteworthy that on routes where Aer Lingus commenced services first and Ryanair followed later, Aer Lingus has remained in the market in nearly all cases. Thus, in contrast to other competitors, Aer Lingus has "survived" on a number of routes against Ryanair.

513. It can thus be concluded that there is a pattern of entry on routes on which previously only one of the two Merging Parties was active. This pattern is particularly strong for Ryanair.

7.6.4. Entry by other airlines on routes out of Dublin is less likely

514. Over the same period, one does not observe any similar pattern of entry on ex-Dublin routes by carriers with a base at the destination airport. For instance, on the Dublin-Berlin route two low-cost carriers easyJet and Germanwings have a base in Berlin. However, easyJet has tried and failed to enter other Irish routes in competition with Ryanair before. Further, neither easyJet nor Germanwings, each have tried to enter this specific route against Ryanair Thus, even on such a route where there are low cost carriers established at the other end, only the two Irish operators fly. The situation is similar for the route Dublin-Brussels; where Brussels Airlines has a base in Brussels[519]. Prior to its merger with SN Brussels, VirginExpress served Brussels-Shannon but it withdrew in the face of entry by Ryanair on that route. Brussels Airlines has not entered the Dublin-Brussels route. On the contrary, where such entry took place in competition with the Merging Parties, it often failed. For instance, on Dublin-Doncaster, Ryanair and Thomsonfly started services in 2005 but the latter has since withdrawn from the route. On Dublin-Hamburg, Hapag-Lloyd Express commenced operations to Hamburg in April 2004 but withdrew from the route in January 2006. On Dublin-Jersey, British Airways CitiExpress withdrew 5 weekly flights when Aer Lingus commenced operations in April 2003; on Dublin-Prague Smartwings commenced operations in October 2004 but has withdrawn since.

515. Moreover, where third carriers already operated, subsequent to entry by one of the Merging Parties there has been a tendency of such carriers to exit or reduce operation on ex-Dublin routes. For instance, Air France operated on Dublin-Bordeaux since 2002 but reduced frequencies following Aer Lingus entry in September 2005 and withdrew from the route in January 2006. On Dublin-East Midlands, bmibaby withdrew in March 2005 following Ryanair's entry in March 2004; on Dublin-Malaga CityJet withdrew 2 weekly frequencies in January 2006; on Dublin-Newcastle following Ryanair's entry British

---

518 See also the recently announced entry by Aer Lingus to the Dublin – Copenhagen route as described in footnote 357 above.

519 Brussels Airlines were formed through the merger of SN Brussels and Virgin Express.

Airways CitiExpress withdrew in 2003 all its 21 weekly frequencies; following Ryanair's entry, Alitalia withdrew 7 weekly services in October 2005 on Dublin-Rome; on Dublin-Stockholm FlyNordic entered in March 2005 but withdrew in October 2005 and Finnair in 2006. In 2001, Go Fly entered Dublin-Glasgow and Dublin-Edinburgh with 19 weekly frequencies each. After an aggressive fares war by Ryanair, which operated on Dublin-Edinburgh and Dublin-PIK, Go Fly left both routes in March 2002[520].

516. Other cases of entry are mainly a defensive reaction to increased competitive pressure exerted by the Irish airlines. For instance, on Dublin-Barcelona, the low-cost carrier Clickair, which is partly owned by Iberia, announced that it will take over Iberia's place. On Dublin-Faro, TAP Air Portugal recently commenced operations, taking over Air Luxor's place, but exited in February 2007. Even though there are two instances when the new entrants stayed on the route, it should be noted that these new entrants do not exercise significant competitive constraint on the Merging Parties. First of these entrants is CityJet on the Dublin – London route which entered in November 2003 against existing operations of both Ryanair and Aer Lingus. CityJet however focuses on business passengers by serving the specific London City airport by smaller jet aircraft and thus cannot be considered as a significant competitive constraint on Ryanair – see further below in Section 7.8. Its market share on the route is around [0-10]*%. The second case is Spanair on the Dublin – Malaga route which entered in February 2005 also against existing operations of both Ryanair and Aer Lingus. On that route Spanair operates only during the summer season with around 2 weekly rotations on weekends. This service therefore resembles more a charter operation than the Merging Parties' daily services which are operated throughout the year on this route. Spanair's market share on the route is around [0-10]*%. For more details, see the analysis of the Dublin – London and Dublin – Malaga routes in Section 7.9.

517. In comparison to the above, the list of successful entry in competition with the Irish carriers is rather short: On Dublin-Krakow SkyEurope started operating in parallel to Aer Lingus in 2005 and on Dublin-Vienna SkyEurope commenced in October 2005 with 3 weekly frequencies in competition with Aer Lingus which has been on the route since 2002. On Dublin-Madrid Iberia and on Dublin-Prague Czech Airlines increased frequencies in competition with Aer Lingus. There has been no example of entry by any third carrier on a Dublin route where Ryanair already operated.

518. Given past experience, such entry by third carriers on routes to/from Dublin operated by Ryanair can not be expected in the foreseeable future. As discussed in more detail in section 7.8.4., carriers without a base in Dublin have been vulnerable to strategic entry deterrence by Ryanair. In comparison to such airlines, due to its base in Dublin, Aer Lingus is better placed to compete with Ryanair. It would be much more costly for Ryanair to attempt to cause Aer Lingus to exit the affected markets than other carriers which operate only on a few routes to/from Ireland. Such an attempt would require aggressive competition (a "price war") not only on a few routes, but at least on most of the existing overlap routes. Such a "simultaneous attack" on a multitude of routes would be expensive for Ryanair and – given Aer Lingus' additional commitment to its long-distance services from Ireland – of uncertain outcome. If Ryanair instead entered aggressively against Aer Lingus only on a few Dublin routes, Aer Lingus, operating on about 70 routes only from

---

520 See: Barbara Cassani: Go – an airline adventure, p. 260; quoted from DoT briefing paper of 13 November 2006, folio no. 6444.

Dublin, might leave these routes, but would use the free capacity to re-enter other routes from the same airport where it has a strong base. Thus, unlike other competitors who were subject to aggressive pricing on individual routes and have withdraw from overlap routes in the past, Ryanair cannot reasonably expect that Aer Lingus would withdraw from the affected markets or even from Dublin in the foreseeable future. As a potential competitor, Aer Lingus exerts therefore a considerably stronger constraint on Ryanair than any other carrier.

519. This also holds for the two smaller carriers which already have significant operations in Dublin (CityJet and Aer Arann). Given their different business model and scope of activities in Ireland, these carriers cannot be considered to be likely entrants on Ryanair's or Aer Lingus' routes who could provide sufficient competitive pressure post merger (see also Sections 7.3. on closeness of competition and the individual analysis of the respective competitors in Section 7.8.).

520. In conclusion, while there has been a dynamic pattern of entry in particular by Ryanair on routes where Aer Lingus operates and to some extent also of entry by Aer Lingus on Ryanair-routes, the same is not true for third carriers. With two exceptions, the latter have not entered routes on which any of the two Irish airlines already operated. Moreover, where they faced entry by the latter they withdrew their services more often than Ryanair and Aer Lingus.

7.6.5. Dublin routes on which only one of the Merging Parties is present

521. The analysis of the development of the overlap routes has shown that both Ryanair and to a certain extent, Aer Lingus have the ability to enter onto each other's routes. They both derive important cost advantages from their strong presence at Dublin, including significant flexibility to reschedule capacity between routes. Also, there is a pattern of dynamic entry and capacity reallocation in routes out of Dublin, and both airlines have plans to continue expanding such their capacity. However, the Commission acknowledges that the threat of entry is not necessarily equally significant on all the routes where only one of the Merging Parties is present. Taking a prudent and "conservative" approach, the Commission has identified some routes on which the likelihood of entry is high[521] and has established certain criteria for such routes. Thus on the route in question and in light of the discussion in the above paragraphs, the merging party not present is a potential entrant.

522. The criteria on which the Commission has based its selection are as follows: (i) there is an *"attractive" airport* in the route for the potential entrant (this might differ for Aer Lingus and Ryanair in view of their focus on primary and secondary airports respectively) without any significant congestion hindering entry; (ii) the route is likely to have some *growth potential*[522]; (iii) there is *no other carrier* currently active on the route[523] (the presence of

---

521 The Commission notes that the number of "potential" overlap routes is much higher than the number of routes identified as "most likely" entry routes in the following paragraphs and that the fact that other routes are excluded does not mean that there is no threat of entry at all.

522 It is argued that it is not the current traffic on the route (i.e. how many frequencies are currently operated and thus how thick or thin the route is) which is relevant for possibilities of entry, but rather the potential for further growth. This is also evidenced by some current overlap routes as Ryanair for examples entered in January 2007 the route Dublin – Seville even though Aer Lingus operated only 2 weekly rotations on this route.

523 This criterion shows that the Commission's approach is rather prudent, since the remaining competitors may

an actual competitor is likely to constitute a stronger competitive constraint) (v) *entry by other competitor is relatively unlikely* and not imminent (e.g. as there is no significant potential entrant based at the destination airport or the existing entrants based at the other end are not likely to provide sufficient competitive pressure). There may, of course, be other reasons why a particular route may be particularly attractive for entry by either Ryanair or even Aer Lingus – for example the seasonality pattern complements well the existing networks and opening such route may increase overall profitability. Further, Ryanair is more likely to enter a route if it has already a base at the other end. Similarly, it is more likely that Ryanair or Aer Lingus enter the route if the destination is already served by them from other airport(s).

523. In May 2007, Aer Lingus operated on 20 intra-European routes to/from Dublin where Ryanair is not present[524]. Out of these 20 routes, Aer Lingus faced existing competitors on the following 6 non-overlap routes to/from Dublin: Budapest (BUD) where Malev operates around 7 weekly rotations[525] and Aer Lingus up to 7 weekly rotations; Düsseldorf (DUS) where Aer Lingus operates around 11 weekly rotations while Germanwings operate around 3 weekly rotations to Köln airport (CGN) which can possibly be regarded as substitutable with DUS; Lanzarote (ACE) where Spanair operates around 1 weekly rotations and Aer Lingus around 3 weekly frequencies in the winter season only; Prague (PRG) where Czech Airlines operate around 13 rotations and Aer Lingus around 6 weekly rotations; Vilnius (VNO) where Air Baltic operates around 6 weekly rotations, FlyLAL around 4 weekly rotations and Aer Lingus up to 3 weekly rotations; Zurich (ZRH) where Swiss operates up to 5 weekly rotations and Aer Lingus around 7 weekly rotations. On these routes, the existence of an actual competitor is likely to be a stronger competitive constraint on Aer Lingus than the threat of potential Ryanair's entry.

524. On the other hand, Aer Lingus is the only carrier currently active on 14 of these routes as there are no competing carriers active on the same airport-pair or to any destination airport which could be *prima facie* considered substitutable for the airport served by Aer Lingus. These Aer Lingus monopoly routes connect Dublin with the following destinations: Amsterdam (AMS), Athens (ATH), Bordeaux (BOD), Dubrovnik (DBV), Geneva (GVA), Jersey (JER), Lisbon (LIS), Naples (NAP), Nice (NCE), Palma de Mallorca (PMI), Rennes (RNS), Munich (MUC), Santiago de Compostela (SCQ)[526] and Shannon (SNN). According to the information provided by Ryanair, there are no competing carriers based at the destination airport at least in case of 7 of these destinations (BOD, DBV, NAP, NCE, RNS, SCQ as well as SNN where only the Merging Parties are based). Further, a number of these 14 routes are predominantly holiday destinations (in particular ATH, DBV, GVA, NAP, NCE, PMI, and SCQ) for which in general a large proportion of customers originate in Ireland and where a destination based carrier would be a less strong competitor compared to Ryanair (this would apply in particular in case of PMI where according to Ryanair Spanair, Iberia/Iberworld, LTE Volare and Air Europe are based)[527]. These

---

be small or following a different operating / service model and therefore be a very limited threat to expansion.

524 Based on the information available on the websites of Aer Lingus (www.airlingus.com), Ryanair (www.ryanair.com) and a Dublin Airport (www.dublinairport.com).

525 One rotation is defined as an outbound and inbound flight between the two ends of the O&D pair, i.e. two one-way flights in the opposite directions.

526 The route between Dublin and Santiago de Compostela is being launched by Aer Lingus as of 27 March 2007.

527 See Section 7.9.3.

holiday routes also in general have a potential for further growth of the scheduled traffic as evidenced by the actual overlap routes to holiday destinations (see in the Section 7.9. below the growth or even new emergence of the scheduled traffic in the recent years on the leisure routes to/from Dublin to sea & sun destinations such as Alicante, Faro, Malaga or Tenerife; ski destinations such as Lyon and Salzburg; or city break destinations such as Seville, Toulouse/Carcassonne and Venice). Further, Ryanair already operates flights from other destinations to at least 3 of these destinations (PMI, SCQ as well as SNN where Ryanair even has a base). However, even the other destinations cannot be excluded in view of the continuing expansion of the Ryanair's network of destinations[528], possibly with exception of capacity constraint and/or primary airports such as AMS, ATH, LIS or MUC.

525. In view of the above, Ryanair appears to be a likely entrant to a number of these routes served currently only by Aer Lingus. However, in determining and applying the criteria of the Horizontal Merger Guidelines, the Commission is taking a cautious and conservative approach to identify those concrete routes where it is most likely that entry has a significant constraining influence. Therefore, by applying the above discussed criteria in a restrictive manner, it is concluded that (i) Ryanair exerts a significant constraining influence on Aer Lingus or is significantly likely to grow into an effective competitive force for Aer Lingus, and (ii) there are no other potential competitors which could maintain sufficient competitive pressure after the merger[529], on the Aer Lingus' routes between Dublin and DBV, NAP, NCE, PMI and SCQ[530].

526. As regards Ryanair, it operates currently on 33 intra—European routes to/from Dublin where Aer Lingus is not present[531]. Ryanair currently faces existing competitors on the following 8 non-overlap routes to/from Dublin: Bournemouth (BOH) where Ryanair operates around 7 weekly rotations while Flybe operates around 20 weekly rotations to Southampton airport (SOU) which can possibly be regarded as substitutable with BOH; Malmo (MMX) where Ryanair operates up to 3 weekly rotations while SAS operates around 14 weekly rotations to Copenhagen airport (CPH) which can possibly be regarded as substitutable with MMX; Oslo (TRF) where SAS operates around 5 weekly rotations and Ryanair around 7 weekly rotations; Stockholm Skavsta (VST) where Ryanair operates up to 6 weekly rotations while SAS operates around 7 weekly rotations and Flynordic around 1 weekly rotation to Stockholm airport (ARN) which can possibly be regarded as substitutable with VST; Wroclaw (WRO) where Centralwings operate around 4 weekly rotations and Ryanair around 4 weekly rotations; Bristol (BRS) where Ryanair operates around 24 weekly rotations while Aer Arann operates around 16 weekly rotations to Cardiff airport (CWL) which can possibly be regarded as substitutable with BRS; Gdansk (GDN) where Centralwings operate around 4 weekly rotations and Ryanair around 2 weekly rotations; Cork (ORK) where Aer Arann operates around 40 weekly rotations and Ryanair around 34 weekly rotations. On these routes, the existence of an actual competitor

---

528 According to the Ryanair's annual Form 20-F Statements for the US SEC (source: www.ryanair.com), their network of locations served evolved as follows: Sept 2003 - 83 locations served, Sept 2004 - 88 locations served, Sept 2005 - 107 locations served, Sept 2006 - 115 locations served.

529 See paragraph 60 of the Horizontal Merger Guidelines.

530 As indicated above, all these five destinations are predominantly holiday destinations with majority of Irish passengers and potential for further growth. Further, there are no competing carriers based at the destination airports (DBV, NAP, NCE, SCQ) or these carriers would be less strong competitors compared to Ryanair (PMI). Finally, these airports are not capacity constraint and cannot be considered as primary airports.

531 Based on the information available on the websites of Aer Lingus (www.airlingus.com), Ryanair (www.ryanair.com) and of Dublin Airport (www.dublinairport.com).

is likely to be a stronger competitive constraint on Ryanair than the threat of potential Aer Lingus' entry.

527. On the other hand, Ryanair is the only currently active carrier on 25 of these routes as there are no competing carriers active on the same airport-pair or to any destination airport which could be *prima facie* considered substitutable for the airport served by Ryanair. These Ryanair monopoly routes connect Dublin with the following destinations: Aberdeen (ABZ), Alghero (AHO), Biarritz (BIQ), Billund (BLL), Blackpool (BLK), Doncaster (DSA), Friedrichshafen (FDH), Gothenburg (GSE), Karlsruhe (FKB), Kaunas (KUN), La Rochelle (LRH), Lodz (LCJ), Malta (MLA), Nantes (NTE), Pisa (PSA), Pula (PUY), Rzeszow (RZE), Tampere (TMP), Trapani (TPS), Eindhoven (EIN), Bydgoszcz (BZG), Porto (OPO), Almeria (LEI), Valencia (VLC) and Bremen (BRE). According to the information provided by Ryanair, there are no competing carriers based at the destination airport at least in case of 16 of these destinations (AHO, BIQ, FDH, GSE, KUN, LRH, LCJ, NTE, PUY, RZE, TMP, TPS, BZG, LEI, VLC and BRE). On the contrary, Ryanair is also based in Pisa and Bremen[532]. Further, a number of these routes are predominantly holiday destinations (in particular AHO, BIQ, LRH, MLA, PSA, PUY, TPS, OPO, LEI and VLC) for which in general a large proportion of customers originate in Ireland and where a destination based carrier would be less strong competitor compared to Ryanair[533]. These holiday routes also in general have a potential for further growth of the scheduled traffic as evidenced by the actual overlap routes to holiday destinations (see in the Section 7.9. below the growth or even new emergence of the scheduled traffic in the recent years on the leisure routes to/from Dublin to sea & sun destinations such as Alicante, Faro, Malaga or Tenerife; ski destinations such as Lyon and Salzburg; or city break destinations such as Seville, Toulouse/Carcassonne and Venice). Further, there are several destinations to the Central and Eastern Europe (KUN, LCJ, RZE and BZG) which are rather dynamically growing routes as evidenced by the similar actual overlap routes analysed in Section 7.12. (e.g. Dublin – Krakow, Dublin – Warsaw, Dublin – Poznan or Dublin – Riga).

528. In view of the above, Aer Lingus appears to be a likely entrant to a number of these routes served currently only by Ryanair. However, in determining and applying the criteria of the Horizontal Merger Guidelines, the Commission is taking a cautious and conservative approach to identify those concrete routes where it is most likely that entry has a significant constraining influence. As indicated above, the evidence of the past entry by Aer Lingus to Ryanair's routes is not as strong. Therefore, even though this may change in the near future, the Commission concludes that it is not able to establish to the necessary legal standard that Aer Lingus exerts a significant constraining influence or is significantly likely to grow into an effective competitive force on the above identified routes to/from Dublin operated by Ryanair.

7.6.6. Cork routes where only one of the Merging Parties is present

529. As regards Cork, Aer Lingus has four A320 aircraft based at that airport. It has increased the number of routes served from Cork from 1 in 2002 to 17 today. Ryanair opened a base in Cork in September 2005 and operates today four routes with a B737-800 (189 seater) also based at Cork. As discussed above, though Aer Arann has based 2ATR-72 (66 seater)

532 See also paragraph 569 below.

533 See Section 7.9.3.

and one ATR-42 (50 seater), it only exerts a limited constraint, given that it operates turboprop aircraft. It operates six routes to small regional airports in the UK. Several destination-based carriers have recently ceased operations at Cork. The remaining ones are bmibaby (Manchester/Liverpool and Birmingham) and Jet2 (Newcastle).

530. Presently, Aer Lingus operates on 15 intra-European routes to/from Cork where Ryanair is not present[534]. Only on two routes to/from Cork Aer Lingus currently faces competition from other carriers: Warsaw (WAW) where Centralwings operates up to 3 weekly rotations and Aer Lingus around 4 weekly rotations; Birmingham (BHX) where bmibaby operates around 7 weekly rotations and Aer Lingus around 4 weekly rotations.

531. On the other hand, Aer Lingus is the only currently active operator on 13 of these routes as there are no competing carriers active on the same airport-pair or to any destination airport which could be *prima facie* considered substitutable for the airport served by Aer Lingus. These Aer Lingus monopoly routes connect Cork with the following destinations: Tenerife (TNS), Lanzarote (ACE), Faro (FAO), Malaga (AGP), Madrid (MAD), Alicante (ALC), Barcelona (BCN), Nice (NCE), Rome (FCO), Paris (CDG), Prague (PRG), Amsterdam (AMS) and Berlin (SXF). According to the information provided by Ryanair, there are no competing carriers based at the destination airport in case of at least 4 of these destinations (TNS, ACE, FAO, NCE). It should also be noted that in particular full-service network carriers based at the destination airports are less likely to enter the less important Cork Airport. Ryanair is also based in Madrid, Barcelona and Rome (in the latter two cases at airports which can be considered as substitutable for BCN and FCO – see above Section 6.3) and they could thus use the aircraft based in these destinations to enter these routes to/from Cork. Further, it also operates to other destinations including TNS, FAO, AGP, ALC (Ryanair operates to a substitutable airport Murcia – see Section 6.3 above), Paris Beauvais (which can be considered as substitutable for CDG – see above Section 6.3) and SXF. Similarly as in case of the overlap routes to/from Dublin analysed in detail in Section 7.9 (route-by-route analysis), the carriers based at the destination airports on the Cork routes to these destinations are significantly less likely to be potential competitors providing significant competitive constraint as compared to Ryanair. Further, a number of these routes are predominantly holiday destinations (in particular TNS, ACE, FAO, AGP, ALC, NCE) for which in general a large proportion of customers originate in Ireland and where a destination based carrier would be less strong competitor compared to Ryanair[535]. These holiday destinations also in general have a potential for further growth of the scheduled traffic as evidenced by the actual overlap routes to holiday destinations (see Section 7.9). Further, as according to Section 7.9. Dublin – Barcelona route is steadily growing and Ryanair entered the Dublin – Madrid and the Dublin - Berlin routes (against existing operations of Aer Lingus) only in December 2006 and June 2006 respectively, it can be argued that there is a potential for Ryanair's entry also with respect to the routes from Cork to these two destinations. As regards FCO, even though the Dublin-Rome route operated by both Merging Parties is rather mature, it could be expected that there would be scope for Ryanair's entry from Cork to Rome, as Rome is an important destination currently served from Cork only by Aer Lingus. On the other hand, Ryanair is a less likely entrant on routes to capacity constraint and/or primary airports not served by them such as AMS, or PRG.

---

534 Based on the information available on the websites of Aer Lingus (www.airlingus.com), Ryanair (www.ryanair.com) and of Dublin Airport (www.dublinairport.com).

535 See Section 7.9.3.

532. It should be also acknowledged that Ryanair currently bases only one aircraft in Cork. However, in view of the fact that Ryanair have a significant number of aircraft on order they could easily increase their presence in Cork. Further, on the routes to Madrid, Barcelona and Rome, Ryanair could use the aircraft based at the destination airport to serve the route, as they do in several cases of the current overlap routes (including the Dublin – Rome route[536]). As regards a constraint from potential competition, given their already existing operations at Shannon airport, their brand recognition in Ireland and their rapid expansion on the Irish market[537], the Merging Parties can be considered to be each other's closest competitor on the routes to/from Shannon.

533. In view of the above, it can be considered that Ryanair would be a likely entrant to a number of these routes to/from Cork served currently only by Aer Lingus. However, in determining and applying the criteria of the Horizontal Merger Guidelines, the Commission is taking a cautious and conservative approach to identify those concrete routes where it is most likely that entry has a significant constraining influence. Therefore, by applying the above discussed criteria in a restrictive manner, it is concluded that (i) Ryanair exerts a significant constraining influence on Aer Lingus or is significantly likely to grow into an effective competitive force for Aer Lingus, and (ii) there are no other potential competitors which could maintain sufficient competitive pressure after the merger[538], on the Aer Lingus' routes between Cork and TNS, ACE, FAO, AGP, ALC, NCE, MAD, SXF, FCO and BCN.

534. As regards Ryanair, there are currently no Ryanair routes to/from Cork on which Aer Lingus is not present (apart from the Dublin – Cork route discussed already above as a non-overlap route to/from Dublin).

7.6.7. Shannon routes where only one of the Merging Parties is present

535. Four airlines operate short-haul operations to Shannon. FlyLAL offers a service from Shannon to Vilnius and Centralwings operates to Gdansk and Warsaw. Aer Lingus operates from Shannon to Dublin and London, with aircraft based at the other airports. Ryanair has a small base at Shannon with four B 737-800 aircraft, operating to more than 20 destinations. Several other carriers have failed to successfully enter routes to/from Shannon[539].

536. Presently, Ryanair operates on 24 intra-European routes to/from Shannon where Aer Lingus is not present[540]. On all these routes Ryanair is the only currently active operator as there are no competing carriers active on the same airport-pair or to any destination airport which could be *prima facie* considered substitutable for the airport served by Ryanair. These Ryanair monopoly routes connect Shannon with the following destinations: Faro (FAO), Malaga (AGP), Madrid (MAD), Murcia (MJV), Barcelona Girona (GRO), Biarritz

---

536 See Ryanair's Preliminary Response to the Article 6(1)(c) Decision of 19 January 2007.

537 For instance, Ryanair has indicated that it would be prepared to base more aircraft at Cork, if it can reach an agreement with the airport.

538 See paragraph 60 of the Horizontal Merger Guidelines.

539 Virgin Express closed its Shannon base in 2001. EUjet established a base in Shannon in May 2003 but ceased operations in July 2005. In 2004 Skynet withdrew, in 2005 Thomsonfly, Hapag-Lloyd, BA Cityexpress and Flybe and in 2006 easyJet.

540 Based on the information available on the websites of Aer Lingus (www.airlingus.com), Ryanair (www.ryanair.com) and of Dublin Airport (www.dublinairport.com).

(BIQ), Carcassonne (CCF), Rome (CIA), Milan (BGY), Venice-Treviso (TSF), Nantes (NTE), Paris Beauvais (BVA), Brussels Charleroi (CRL), Frankfurt Hahn (HHN), Düsseldorf Weeze (NRN), Krakow (KRK), Wroclaw (WRO), Lodz (LCJ), Glasgow Prestwick (PIK), Edinburgh (EDI), Liverpool and Manchester (LPL and MAN), East Midlands (EMA), Bristol (BRS) and Bournemouth (BOH). According to the information provided by Ryanair, there are no competing carriers based at the destination airport at least in case of 5 of these destinations (FAO, BIQ, NTE, WRO, LCJ). On the contrary, Ryanair is also based in Madrid, Barcelona, Rome, Milan, Brussels, Frankfurt, Düsseldorf Weeze, Glasgow, Liverpool and East Midlands[541]. Further, a number of these routes are predominantly holiday destinations (in particular FAO, AGP, MJV, BIQ, CCF, TSF) for which in general a large proportion of customers originate in Ireland and where a destination based carrier would be less strong competitor compared to Ryanair[542]. These holiday destinations also in general have a potential for further growth of the scheduled traffic as evidenced by the actual overlap routes to holiday destinations (see Section 7.9.). There are also several destinations to the Central and Eastern Europe (KRK, WRO and LCJ) which are rather dynamically growing routes as evidenced by the similar actual overlap routes analysed in Section 7.12. Further, Aer Lingus is already active to some of these destinations (to the same airports or airports substitutable in line with the conclusions of the Section 6.4.) from Dublin (FAO, AGP, MAD, MJV, GRO, CCF, CIA, BGY, TSF, BVA, CRL, HHN, KRK, PIK, EDI, LPL/MAN and EMA). Similarly as in case of the overlap routes to/from Dublin analysed in detail in Section 7.9., the carriers based on the destination airports on the Shannon routes to these destinations are significantly less likely to be potential competitors providing significant competitive constraint as compared to Aer Lingus.

537. As regards Aer Lingus, there are no routes to/from Shannon on which Ryanair is not present (apart from the Dublin – Shannon route discussed already above as a non-overlap route to/from Dublin).

538. In view of the above, Aer Lingus might enter some of these routes served currently only by Ryanair. However, in determining and applying the criteria of the Horizontal Merger Guidelines, the Commission is taking a cautious and conservative approach to identify those concrete routes where it is most likely that entry would have a significant constraining influence. As Aer Lingus is currently not based in Shannon with any short-haul aircraft, its flexibility to enter these routes is lower. Even though it could be presumed that should the opportunity arise, Aer Lingus would be able and willing to base aircraft in Shannon and enter new routes (in view of its experience with the Irish market as well as existing activities in Shannon), this entry appears less imminent than in the case of an existing base. Further, as described above, the evidence of the past entry by Aer Lingus to Ryanair's routes is not as strong. Therefore, the Commission concludes that it is not able to establish to the necessary legal standard that Aer Lingus would exert a significant constraining influence or is significantly likely to grow into an effective competitive force in case of the above identified routes to/from Shannon.

7.6.8. Conclusion on the elimination of potential competition

539. Against the backdrop of the pattern of entry in competition with each other and the limited

541 See also paragraph 569 below.

542 See Section 7.9.3.

impact of entry by other carriers on the two Merging Parties, the Commission concludes that Ryanair and Aer Lingus exert a competitive constraint on each other on a number of non-overlap routes. This applies in particular to Dublin and Cork, but also to a lesser extent to Shannon.

540. However, as regards the identification of the concrete routes where it is most likely that entry has a significant constraining influence, the Commission adopted a cautious and conservative approach. The Commission therefore concludes that the notified merger is likely to significantly impede effective competition as a result of the creation or strengthening of a dominant position by the elimination of a credible potential entrant on the above identified 5 current Aer Lingus' routes to/from Dublin (Dubrovnik - DBV, Naples - NAP, Nice - NCE, Palma de Mallorca - PMI and Santiago de Compostela - SCQ) and 10 further Aer Lingus' routes to/from Cork (Tenerife - TNS, Lanzarote - ACE, Faro - FAO, Malaga - AGP, Alicante - ALC, Nice - NCE, Madrid - MAD, Berlin - SXF, Rome - FCO and Barcelona – BCN).

7.7. The Merging Parties' fragmented customers have no countervailing buyer power and limited or no possibilities of switching suppliers

541. According to the Commission's practice set out in the Horizontal Merger Guidelines[543], a merger leading to high market shares is particularly likely to lead to price increases[544] when customers of the Merging Parties are likely to have difficulties or to be *unable to switch to* other suppliers, because there are few or no alternative suppliers. Such customers are, according to the Guidelines, "*particularly vulnerable to price increases*[545]".

542. The proposed transaction would significantly reduce customers' ability to switch between different suppliers, since it would not only reduce the number of alternative airlines to whom they could turn in case of a price increase post-merger, but remove the possibilities to switch for customers entirely on many routes. Indeed, on 22 routes, the merger would create a monopoly of the merged entity on these routes. On 9 other routes, the merger would reduce the number of alternatives from currently 3 to 2. Only on 4 of 35 markets, the merged entity would face competition from more than one competitor post merger.

543. It is also obvious that airline customers have *no countervailing buyer power* to offset Merging Parties the anti-competitive effects of the merger. This is particularly true since sales to larger corporate customers or tour operators are negligible. The vast majority of almost 15 million passengers per year who are potentially affected by the transaction cannot be expected to have any countervailing buyer power vis-à-vis the merged entity, since their individual ticket value is of no commercial significance for the Merging Parties and since they have few or no possibilities to switch to alternative suppliers[546].

---

543 Horizontal Merger Guidelines, paragraph 31.

544 The term "prices increase" in this context should be understood as encompassing also *lower decrease of prices* than absent the merger, as well as reduction of output, choice or quality or lower innovation (see paragraph 8 and footnote 7 of the Horizontal Merger Guidelines).

545 Horizontal Merger Guidelines, paragraph 31.

546 Horizontal Merger Guidelines, paragraph 64, in particular the definition of countervailing buyer power: *"Countervailing buyer power in this context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers."*

544. It can thus be concluded that customers are particularly vulnerable to price increases in the present case since they would have no or very limited possibilities to switch to other suppliers on almost all affected routes and no buyer power to offset such price increases. There is indeed a high risk of anti-competitive effects for those customers (in particular price increases, loss of choice and service quality), in particular because both competitors are currently the only or main source of competition on the affected routes, which would immediately disappear after the merger.

7.8. Entry is unlikely to defeat the anticompetitive effects of the mergers

7.8.1. Principles

545. The Commission has examined to what extent *entry* is likely to constrain the behaviour of the Merging Parties post-merger. For entry to be considered as a sufficient competitive constraint on the Merging Parties, it must be shown to be *likely*, *timely* and *sufficient* to deter or defeat any potential anti-competitive effects of the merger[547].

546. *Ryanair* submits that there are no or only insignificant barriers to enter the overlapping markets; competitors wishing to enter on routes from and to Dublin/Ireland could easily do so[548]. In particular, Ryanair argues that there are no significant barriers to entry on the overlapping routes for either low-frills or traditional network airlines, in particular as regulatory barriers and obstacles have been removed within the EU. Ryanair therefore considers that the mere perspective of entry should be sufficient for the Commission to dismiss any competition concerns and claims that the Commission had already established a case practice in this respect.

547. Barriers to entry can be defined as features of the market, which give the incumbent firms an advantage over potential competitors[549]. According to the Court of First Instance, barriers to entry

> *"(...) may consist in elements of various natures, in particular economic, commercial or financial elements, which are likely to expose potential competitors of the established undertakings to risks and costs sufficiently high to deter them from entering the market within a reasonable time or to make it particularly difficult for them to enter the market, thus depriving them of the capacity to exercise a competitive constraint on the conduct of the established undertakings[550]."*

548. Hence, the Commission has to make sure that potential entry is not only a theoretical and remote possibility, but will be an *immediate and actual threat* for the Merging Parties, which will exert a competitive constraint on them, and this to an extent that they would refrain from any merger-induced anti-competitive behaviour. It should be noted that it is not necessary to show that entry is *impossible* on a given route in order to dismiss the likelihood of entry as a countervailing factor. It is sufficient that the Commission finds that the degree of likelihood for entry is low or that the scope of the expected entry is not

---

547 Horizontal Merger Guidelines, paragraph 68.

548 See e.g. Notification, paragraph 210; Ryanair's answer to the Commission's Article 6(1)(c) –decision, pages 20—27; RBB paper of 20.2.2007 (Position Paper on Entry Barriers).

549 See Horizontal Merger Guidelines, paragraph 70. It is important to note that in order to constitute a barrier to entry, it is therefore not necessary to entirely *exclude* competitors from the market.

550 Case T-282/02 Cementbouw Handel & Industrie v Commission [2006] ECR II-319, paragraph 219.

sufficient to defeat the anticompetitive effects of the merger in all affected markets. This holds in particular true in the present case, where the Merging Parties hold very high market shares on all affected markets, often amounting to a monopoly position. In such a situation, new entry by potential competitors would need to be particularly likely, substantial and timely to reverse the competitive impact of a merger leading to near-monopoly market shares.

549. The Commission's market investigation[551] has, however, confirmed that there are a number of important barriers to enter and/or expand on all affected routes which altogether make it unlikely that any competitor would replace the competitive constraint exerted by the Merging Parties today after the merger.

550. The Commission also underlines that in markets in which the Merging Parties reach very high market shares or create even a monopoly on not less than 35 routes, affecting more than 14 million customers, a remote "likelihood" of entry which could offset the anti-competitive effects cannot be sufficient to dismiss the Commission's competition concerns on the relevant route-pairs. The Commission cannot dismiss the competition concerns in such a situation without clear indications that actual or potential entry would constrain the Merging Parties[552].

7.8.2. Regulatory barriers do not play an important role as an entry barrier

551. The Commission agrees with Ryanair[553] that regulatory barriers do not play an important role as a barrier to entry in the affected markets[554]. All overlaps are on routes within the European Union, in which regulatory barriers have been largely removed for EU-based airlines[555]. Although opening a new route may still require some regulatory and administrative approvals, these approvals can be obtained within a relatively short timeframe of several weeks or even days. The market investigation has confirmed that competitors do not consider the need for regulatory approvals as an important barrier to entry[556].

7.8.3. Entry barriers related to Ryanair's and Aer Lingus' strong position with large bases in Ireland

552. As described above, the fact that Ryanair and Aer Lingus operate from the same base in

---

551 In order to verify whether there exist significant entry barriers or not, the Commission has not only sent questionnaires to the actual and potential competitors and to customers of airlines. It has also taken into account the results of the Customer Survey at Dublin Airport that was carried out on behalf of the Commission and the data submitted by Aer Lingus and Ryanair on passenger numbers and market shares on the different routes. The Commission has also conducted specific interviews with the main potential entrants in order to learn more about the factual elements that might or might not prevent them from entering the Irish market.

552 It should be noted that this is in line with the Commission's case practice in previous cases, as confirmed by the ECJ, see: CFI, case T-177/04 *easyJet v Commission*, of 4 July 2006 ECR (2006), II-1913, at paragraphs 197 et seq.

553 See Notification, paragraph 210.

554 See for intra-European flights insofar already the Commission's decision in case M.3770 – Lufthansa/Swiss.

555 Although it might be argued that non-EU-based airlines still face significant regulatory entry barriers, entry of non-EU based airlines on the short-haul market is in any event very unlikely.

556 See replies to questions 35 and 42 of the questionnaire to competitors of 06.11.2006. Only one competitor mentioned regulatory barriers at all.

Dublin, and are also in the two other main airports in Ireland, Cork and Shannon, is one of the reasons why they are the closest competitors on routes from and to Ireland. This constraint on each other goes beyond the fact that they compete on a large number of routes. The "additional" competitive constraint comes from the fact that by operating a number of routes from bases in Ireland, the Merging Parties constrain each other also with a view to potential competition.

553. The Commission has also in the past passenger air transport cases recognised that economies of scale and scope stemming from flexibility of assets at a base and from ability to spread fixed costs over many markets (routes) constitutes a barrier to entry and that "*a carrier with an established base of operations at a particular airport will benefit from clear cost advantages*"[557]. None of these past cases, however, involved a combination of two carriers with such a strong presence at one airport as is the case in the notified concentration. The role of the base-related barriers to entry was thus less significant in those past cases.

554. The Commission has assessed under what conditions other carriers could replace the competitive constraint on the merged entity and to what extent the absence of a base in Dublin might constitute a barrier. Three different forms of entry can be distinguished. First, there may be an entrant which establishes a base at Dublin (or at the other Irish airports) to compete on a number of routes ex-Ireland. This could be either a carrier establishing a new base in the Irish airports, or a carrier which has already a base at these airports and would expand that base. Second, one may consider entry on a particular route by an operator which has already a base at the other end ("destination-based entrant"). The third option is an entrant which enters on a route-by-route basis without having a base at either end. The three options are discussed below.

7.8.3.1. Competitors which have a base at Dublin are not likely to efficiently constrain the Merging Parties

555. As set out above (Section 7.2), there exist two main advantages from having a significant operation at one airport (a base). First, it allows a carrier to benefit from certain cost advantages. Second, it raises the carrier's flexibility to react quickly to shifts in demand and competition on routes out of the same airport. The larger the number of operations from a particular airport, the larger is the slot portfolio, the number of aircraft and crew available, thus, the greater is the carrier's ability to react to changes in the market place.

556. The Merging Parties' main base in Ireland is Dublin. There are two other carriers with a base in Dublin – CityJet with 3 aircraft and Aer Arann with 4 aircraft. This compares with 22 short-haul aircraft of Aer Lingus (planned to be increased to 23 in May 2007) and 20 aircraft of Ryanair at Dublin. However, these two other carriers would exert only a limited competitive constraint on the merged entity on routes out of Dublin[558], in particular due to their different type of business model. Due to their large route portfolio, Ryanair and Aer Lingus can quickly react to entry, expansion or exit of a competitor on almost any route ex-Dublin. For a carrier such as Aer Arann, that operates only few routes served by small aircraft out of the airport, the scale and flexibility advantages are more limited. While each of the two Irish airlines already has a significant advantage over the other two base

---

557 See Commission Decision of 4 July 2005 in the case M.3770 – Lufthansa/Swiss, paragraph 43. Similarly, see also paragraph 73 of the Commission Decision of 11 February 2004 in the case M.3280 – Air France / KLM.

558 Aer Arann is also in Cork. However, its operations there are limited.

operators in Dublin, this advantage would increase post merger by merging their respective fleets[559].

557. In this respect it is noted that neither of the two smaller carriers in Dublin have expanded their Dublin base significantly in the last years. They have also refrained from developing new routes or – with a few exceptions – from switching to other Dublin routes. CityJet has stated that it would only be interested in opening some routes to the UK, notably the Dublin-London route (if some of the precious Heathrow slots were available). There is no indication that CityJet could and would enter on any of the continental "leisure" routes. Moreover, even if CityJet, currently operating with a limited number of smaller aircraft, were to significantly expand their operations in Dublin, the competitive constraint on the Merging Parties would still be limited, since CityJet is focused on business passengers and needs higher fares to cover the higher costs of their smaller aircraft[560]. As a subsidiary of Air France, CityJet mainly feeds the latter's network[561]. If CityJet wished to compete effectively with the merged entity, it would not only have to operate many more aircraft, it would also have to operate with a different type of aircraft, i.e. models which have a similar seat capacity as the ones employed by the Merging Parties (A320 or the B737NG). This would not only require the acquisition of new aircraft but also generate further cost of integrating different fleets, as for instance for the training of staff (pilots) etc.

558. Aer Arann defines itself as a regional carrier. It is positioned towards a full service offering focusing on business customers on shorter routes to and from Ireland. Aer Arann operates with a fleet of smaller aircraft and has stated that it would not enter any route on which Ryanair is present[562].

559. Any expansion would furthermore increase problems of slot congestion at Dublin Airport. Depending on the route they wish to enter, this competitor carrier may also face slot congestion at some of the destination airports.

560. Other charter and scheduled airlines that have an aircraft parked overnight at Dublin for a season or throughout the year do not enjoy the same advantages as the Merging Parties. While they may be able to use the early morning and late evening slots at Dublin, they are not able to reap the full benefits of flexibility of switching between routes, redeployment of aircraft, minimising disruption costs, exchange of crews, customer care, brand awareness etc.

7.8.3.2. There are not sufficient indications that a new carrier would

---

559 See Section 7.3.4. It should be noted that the most significant benefits from operating with a large number of based aircraft can be achieved at Dublin. As regards the other Irish airports, the benefits are smaller. Three airlines have declared to have a base at Cork. Aer Lingus has based 4 A320 aircraft, operating 17 destinations, Ryanair 4 destinations with one B 737-800 aircraft and Aer Arann 9 destinations with 3 aircraft. At Shannon, Ryanair operates 26 destinations with 4 aircraft, Aer Lingus long-haul services and two short-haul ones to Dublin and London. For the latter operations the aircraft are not based in Shannon. Thus, on these airports in comparison to newcomers the "base advantage" of the parties is more limited.

560 See interview with Aer Arann of 13.2.2007 and with CityJet (Air France) dated 21 February 2007, folio no. 6170.

561 See interview with CityJet (Air France) dated 21 February 2007, folio no. 6170.

562 See minutes with Aer Arann of 13.2.2007, folio no. 6170. It should be noted that the "base disadvantage" at Cork for Aer Arann is, if any, significantly smaller, given that it has already 3 aircraft at that airport. However, given its fleet of turboprop aircraft, it cannot be regarded as an effective competitor

enter with a base in Dublin or Cork and Shannon

561. Setting up a base in Dublin would require an even more significant upfront investment. In order to realise the flexibility of supply that Ryanair and Aer Lingus currently enjoy and even more so that the merged entity would enjoy post merger, a new carrier wishing to set up a base in Dublin would need a sizeable fleet of modern, fuel efficient jets with more than 130 seats (such as A320 or B737NG). In addition it would require investments e.g. for maintenance facilities, customer care facilities, etc.

562. The Commission has closely analysed whether there are indications that one of the airlines listed by Ryanair as potential competitors or any other airline would open a base in Ireland in the event of a post-merger price increase[563]. However there is no indication from the Commission's market investigation that any carrier has the incentive to establish or develop a significant base at Dublin. Indeed, most of the airlines cited by Ryanair are network carriers who are likely to be primarily interested in spoke development – feeding passengers to their respective home country hubs. The market investigation has confirmed that none of these carriers would be interested in setting up a base at Dublin[564]. Given their incentive to feed their existing hub, they would also consider it unprofitable and not in their business model to open and develop individual routes from Dublin to destinations such as Seville, Bologna, Milan, Brussels, Glasgow, Hamburg, Marseille, etc. Moreover, the Commission notes that a number of such carriers have pulled out of Dublin in the last years. For example, British Airways, cited by Ryanair consistently as one of its main potential competitors (together with CityJet (Aer France) and easyJet[565]), does not serve Dublin from its Heathrow hub (but only from London-Gatwick) anymore and Alitalia ceased its Dublin-Milan services in October 2006. Further, the aggressive behaviour with which Ryanair has reacted against entry on Irish routes is likely to be an additional barrier that will be considered by competitors before considering entry (see further below, Section 7.8.5.).

563. In addition, the existing congestion problems at Dublin[566] make Dublin an unattractive choice to establish a base for many potential competitors. Competitors may fear that they would not get the necessary contact stands or would not be able to use the runway at the commercially important peak-times are unlikely to choose Dublin as a new base if they have the choice of entering other destinations[567].

564. With regard to Cork and Shannon, entry by establishing a base could take place on a smaller scale. Moreover, at these airports there does not appear to exist any major congestion problems. However, due to the general entry barriers discussed further below, in particular the need to establish a brand and the entry deterring behaviour by Ryanair, it appears that any significant entry (or expansion) is unlikely. Due to this behaviour a

---

563 See minutes of the interviews with Ryanair's potential competitors, folio no. 6170 and 8091; see also replies to the Questionnaire to Competitors sent on 06/11/2006 and to the follow-up questions to individual competitors.

564 See e.g. replies of competitors to the Market Testing of Proposed Remedies – Competitors, sent on 30 November 2006, in particular question 10 and minutes of interviews with competitors, , folio no. 6170 and 8091.

565 See e.g. Ryanair's response to the Statement of Objections, page 238 et seq.

566 See in detail below in Section 7.9.6.

567 It should be noted that the other entry barriers discussed below militate not only against entry or expansion as such, but notably against opening a base at Dublin.

number of carriers which were operating at these airports have withdrawn their services in the last years[568]. In any event, any entry or expansion at these airports has to take into account the strong position of the merged entity post-merger. In both of these airports the merged entity will be the only carrier with a base of large jet aircraft that serves a significant number of European destinations.

565. On the basis of the above, the Commission concludes that any significant entry through the establishment of a base in Dublin, Cork and Shannon is unlikely in the short to medium term. Even if small scale entry were to take place, it is unlikely that such entry would be sufficient to replace the constraint that the two Merging Parties have had on each other until today.

7.8.3.3. Potential entrants with a base at the other end of a route face disadvantages

566. Ryanair has argued that even if some advantages from having a base existed, these advantages would not be decisive since on many routes there exists a competitor which operates already with a base at the other end. Such an operator ("destination-based competitor") would equally benefit from the cost advantages of a base and it would have a similar flexibility to switch capacity to a route from this airport to Dublin, if that is commercially attractive.

567. While the Commission agrees that the base advantages may, in theory, relate to both ends of a given route, it has found that in the present case competitors with a base outside Ireland face certain disadvantages on routes from and to Ireland.

568. The cost advantages the merged entity would enjoy by having a large base at Dublin are more significant for Dublin than Cork and Shannon. There is an asymmetry of origination on a number of the overlap routes (in particular continental destinations) as will be discussed in the route-by-route assessment. On these routes, carriers based at the destination end are in a less favourable position than carriers with a base at Dublin to attract Irish-originating passengers[569]. At the same time, as it operates only one route to Dublin, it would not be able to spread marketing expenses directed at Irish-origin passengers over several Irish routes. This implies that the unit marketing costs are lower in the case of a base competitor at Dublin, by virtue of the greater volumes that would be achieved on routes with predominantly Irish origination.

569. Further, destination based carriers are unlikely to show the same degree of commitment as a Dublin-based carrier to maintain a service to Dublin. For a destination base carrier the Dublin route represents just one route of several alternative routes out of its base. It would make a decision on which route to enter based on the likelihood of successful entry. For example, it may have the potential to enter other routes in which it would not face a competitor as aggressive as Ryanair/the merged entity. In this knowledge, the merged entity may be more prone to react aggressively against entry in the knowledge that those

---

568 Jetmagic, a low-cost airline, established its base in Cork with 3 Embraer 135/145 in 2003 but withdrew its operations in January 2004. As explained in detail below, easyJet withdrew from these airports as a result of Ryanair's strategic behaviour. In the case of Shannon, Virgin Express closed its base in 2001. Skynet withdrew in 2004, and Thomsonfly, Hapag-Lloyd, BA Cityexpress and Flybe in 2005. EUjet established its base in May 2003 with Fokker F100 aircraft but ceased its operations in July 2005..

569 See in more detail below, Section 7.8.4.

carriers could leave the route for good (and refrain from entering other Dublin markets) if faced with strong competition. As described above, there has been significant exit on ex-Dublin routes by both network carriers and low-frills/low-cost carriers operating from bases at destination airports. In addition, on many important routes the merged entity will already have a base also at the destination end, which gives them the advantage of having a base at both ends of the routes which potentially further increases their strength and flexibility vis-à-vis their competitors[570].

570. In addition many carriers based at the destination end operate a business model which is different from Aer Lingus and Ryanair. Most of them provide feeder services concentrating on transfer traffic for which the Merging Parties do not compete. Others provide full-frills services focussing on business customers. Such carriers exert a much smaller competitive constraint on the merged entity than Ryanair and Aer Lingus are exerting on each other today on routes ex-Ireland. Further, they would not be an alternative for a large part of Ryanair's and Aer Lingus' customers who are looking for a low fare alternative that would replace Aer Lingus.

571. In any case, it should also be noted that there exist today around 30 routes from Dublin on which Ryanair or Aer Lingus, or both of them, operate and where no competitor is based at the other end. On these routes, at least in the short run, the merger's elimination of actual or potential or actual competition could not be replaced by a destination-based carrier[571].

7.8.3.4. New point-to-point entry on a non-base route is unlikely

572. Ryanair has put forward two other alternatives for entry. First, a carrier could enter a route without a base at either end on a mere “point-to point” basis. Indeed, on all routes where there is no other competitor with a base on either end of the city pair, subsequent to the merger the competitive constraint would only arise from the possibility that another carrier enters point-to-point. This carrier would have to dedicate an aircraft to that route only. This competitor may fly to the route from its own base or just park the aircraft over night without having a base at the respective airport.

573. The most common option[572] of (non-base) point-to-point flights are so called "W" or "triangular" flights. On such a “W”-flight, the aircraft first flies from its base to a “non-base” destination. Instead of returning to the base, the aircraft then flies one or several times to another (non-base) destination (e.g. a shorter destination to use the "weak demand" over lunchtime) during the day and only returns to the base in the evening. There are some limited examples of carriers operating according to such a “W” or “triangular” model[573]. The Commission has, however, found that this operating model is not regarded

---

570 There are 14 overlap routes where the merged entity would have a base on both sides and they represent almost 75% of total traffic on all overlap routes. These routes are as follows: Dublin – London, Dublin – Glasgow, Dublin – Manchester, Dublin – Birmingham, Dublin – Brussels, Dublin – Frankfurt, Dublin – Madrid, Dublin – Barcelona, Dublin – Milan, Dublin – Rome, Dublin – Marseille, Cork – London, Shannon – London and Cork – Manchester.

571 Calculation based on information from Ryanair (map: competitor bases - all city pairs from Dublin).

572 Aircraft may also be flown in empty to the starting point of the route from a base in the morning and return empty in the evening, however, with additional costs; aircraft may also be parked over night at destinations where a carrier has no base (this however involves additional costs such as hotel expenses for the crew, technical support at non-base airport and others).

573 For instance, CityJet offers such a triangular service when flying Dublin-London, London-Paris and Paris-Dublin. See for other examples (often referring to the past or to charter carriers) RBB Paper of 20.2.2007,

as optimal by most carriers as they usually prefer operating from a base[574].

574. Operating between two points which are not connected to a base entails an increased risk. Such risk, arises for instance, if a replacement aircraft is needed in case of technical problems on the route. Moreover, such entry would only be commercially viable for routes which generate sufficient traffic for 3-4 roundtrips a day since otherwise the dedicated aircraft would not be used sufficiently. According to the market investigation, such simple point-to-point entry is therefore very rare[575]. As pointed out above, with only four exceptions, Ryanair itself does not operate in such a manner. Neither does e.g. easyJet[576].

575. The Commission's investigation has not supported the view that entry or entry on a sufficient scale can be expected through the use of W or triangular flights. Indeed, competitors have explained to the Commission that such an operation has significant disadvantages. Third parties mentioned, for instance, that it is difficult to operate on "W"-routes because the crews cannot be simply exchanged in the middle of the day on a non base-connected destination. W-routes would therefore only allow fewer return flights and reduce the total operation time of an aircraft. Although some smaller regional carriers operate some W-routes/triangular routes, these can be operated efficiently only under specific circumstances. The majority of carriers try to do avoid it or to operate such services only on a transitional basis[577].

576. "W" flights or triangular can be a targeted solution on certain routes and if the carrier wishes to make use of some idle aircraft capacity. "W" entry would mainly be an add-on to a route which is connected to the carrier's base. Maintaining such flights would depend inter alia on developments of the other leg of the "W" operation.

577. Thus, "W" or triangular flights provide an even less competitive constraint than destination and base-entry described above. This would normally only be used for certain routes which can be combined with another operation. The cost advantages which arise from operating from a base and the flexibility as regards route-by-route market entry do not, or only to a smaller extent, arise in the case of "W" flights. For instance, the carrier would not be free to add capacity on the route, in reaction to demand or supply shifts. This would only be commercially viable if at the same time it also wishes to add capacity to the other leg of the "W" operation.

578. This conclusion is supported by the evidence. The Commission has verified to what extent airlines actually operate flights between points which are not connected to a bases. The result clearly showed that such connections are the exception[578].

579. Already destination-based entry has been considered insufficient to replace the competitive constraint removed by the proposed merger. This is even more so for carriers which do not have a base at either end or provide "W" services. Such punctual entry may appear on

---

pages 17-19.

574 See answers to question 38 of the Questionnaire to Competitors of 6.11.2007.

575 idem.

576 See minutes from interview with easyJet, folio no. 6170.

577 See answers to question 38 of the Questionnaire to Competitors sent on 6 November 2006.

578 From all 437 routes Ryanair operates, only 4 are, according to Ryanair, not base-connected. From all 275 routes easyJet operates, only 2 are not base-connected, see submission of Ryanair/RBB Paper of 20.2.2007. See also minutes from interview with easyJet, folio no. 6170.

certain routes, however, it is even less likely to replicate the dynamic competitive environment which presently exists on routes out of Dublin and to a lesser extent out of the other two Irish airports.

580. Finally, even more than a destination-based carrier, a non-base competitors entering on a point-to-point basis faces the risk of a strategic response from the incumbent. This amounts to an additional entry barrier for such carriers:

581. After the merger, a non-base entrant on a particular route from Dublin may encounter a more aggressive response than an entrant which establishes a base in Dublin. A base-carrier has invested sunk cost (marketing, brand, service contracts etc) in establishing itself at a particular airport. As these investments would be lost if the base is given up, expelling such a competitor from its base is more costly/difficult. It would require attacking simultaneously this competitor on a number of markets. Indeed, if the merged entity is forced to leave only some routes, as it is dedicated to Dublin, it may use the free capacity to re-enter another route out of the same airport – on which it may then compete more fiercely with the other incumbent. This is different with regard to a carrier which enters a new route from Dublin without a base. A non-base-entrant may face a more severe response from the incumbent airline since the latter may expect the entrant to leave the route for good (and refrain from entering other Dublin markets).

582. Moreover, the merger itself could increase the scope for such strategic behaviour as the merged entity could use the base advantage for entry deterrence. For instance, if threatened by entry on a particular route, the base airline can quickly re-allocate slots such that it can offer the most attractive schedules on the challenged route. This flexibility can also be used for entry deterrence, for instance by arranging departure times close to the ones of the entrant ("sandwiching"). Without the merger, the scope for such strategic measures is reduced as the two base carriers control each other at Dublin Airport. If, for instance, today Ryanair withdrew capacity from one route to deter a non-base entrant on another, it would face the risk that Aer Lingus would enter (or expand on) the route from which Ryanair has withdrawn this capacity.

583. Thus, it can be concluded that non-base entrants are even more vulnerable and less likely to exert a competitive constraint than destination-based carriers. This conclusion applies as well to Shannon and Cork where the potential competition constraint exerted by the Merging Parties on each other today is more significant than the constraint which comes from non-base entrants.

7.8.3.5. Conclusion on base-airport related barriers to entry

584. Thus, on the basis of the above the Commission concludes that destination-based entry and non-base (triangular, W or point-to-point) entry are in general not sufficient to replace the competitive constraint exerted by the Merging Parties on each other pre-merger. On routes from Dublin, Aer Lingus and Ryanair have a number of advantages over other competitors due to their strong base in particular in Dublin in addition to their strong position in Cork and Shannon. Even though entry may occur on particular routes, such selected entry cannot replace the competitive pressure exerted by the two Merging Parties today.

585. In this regard it is noted that competitors with bases at the destination airports have performed badly on ex-Dublin routes compared to Ryanair or Aer Lingus. Both full service and low-cost carriers operating from destination airports have significantly lower

passenger shares on routes from Dublin compared to Aer Lingus and Ryanair and there has been significant exit on ex-Dublin routes of both legacy and low-cost carriers operating from bases at destination airports.

586. In the case of Cork and Shannon, entry barriers linked to a base are of a smaller scale than for Dublin. In order to replicate the existing competitive constraint, it would suffice to establish a small base in these airports. However, the entry barriers mentioned above also arise in the case of routes operated out of these airports. In particular since the merged entity would be the only carrier with a base with large aircraft offering services to a large number of European destinations at these airports.

7.8.4. Entry costs and risks would be significant in a market already served by two strong airlines with well-established brands

587. All potential competitors would have to take into account that post-merger the Irish market is served by an airline which combines two well-established brands. Today, the Merging Parties account for 68% of the total passenger traffic (and 80% of the relevant intra-European short-haul passenger traffic) from and to Dublin, against which any new entrant would have to compete.

588. Ryanair submits that reputation, brand-awareness and the high market share held by the incumbent do not play an important role for the decision of potential entrants to open new routes from or to Ireland. Ryanair mainly argues that any airline can easily open a new route in any country today without incurring significant costs or risks, e.g. by using the internet as a distribution channel. Ryanair particularly refers to its own example which, according to Ryanair, proved that opening new routes in countries where Ryanair was not active before can be done without major difficulties within a reasonably short period of time[579].

589. According to the Horizontal Merger Guidelines,

> *"(...) barriers to entry may also exist because of the established position of the incumbent firms on the market. In particular, it may be difficult to enter a particular industry because experience or reputation is necessary to compete effectively, both of which may be difficult to obtain as an entrant. Factors such as consumer loyalty to a particular brand, the closeness of relationships between suppliers and customers, the importance of promotion or advertising, or other advantages relating to reputation will be taken into account in this context[580]."*

590. Further the Commission has also in the past in the air transport sector indicated that branding and promotion costs represent a barrier to entry. It was acknowledged that "*any new entrant would face significant sunk costs in terms of marketing expenditures which will not be recovered upon exit*" and that "*customer information (or lack thereof) and promotional campaigns remain critical to the individual success of supp*liers"[581]. Further, the importance of the brand name of established operators developed over many years was

---

579 See e.g. Ryanair's reply to the Commission's Article 6(1)(c)-decision, pages 25 and 26and RBB report of 20 February 2007,p.24.

580 Horizontal Merger Guidelines, paragraph 71 (c).

581 See Commission Decision of 4 July 2005 in the case M.3770 – Lufthansa/Swiss, paragraph 44.

recognised as a barrier to entry for new carriers[582].

591. Ryanair and Aer Lingus have such an "established position" in Ireland. They are by far the two most important players on the markets for flights from/to Ireland, with the most experience with Irish customers and Irish routes, and both enjoy by far the highest brand-awareness of all airlines in Ireland as confirmed by a study prepared for Aer Lingus[583].

7.8.4.1. Advantages from Ryanair's and Aer Lingus' experience with the Irish market

592. As concerns experience and know-how on the specific market conditions in Ireland, Ryanair and Aer Lingus have been able to build up experience and knowledge on the particularities of the Irish market for decades (Aer Lingus) or more than 15 years (Ryanair) respectively. Ryanair itself stresses the importance of intimate knowledge of the Irish environment for potential competitors in its Notification[584]. The Merging Parties' experience with the Irish market constitutes therefore an advantage vis-à-vis other potential entrants, however it is in itself certainly not an insurmountable entry barrier.

7.8.4.2. Advantages from Aer Lingus' and Ryanair's well-known brand

593. More importantly, many third parties and potential competitors[585] pointed at the fact that Aer Lingus and Ryanair enjoy a manifest advantage as concerns reputation and brand-awareness, which makes it more difficult for potential competitors to compete for Irish customers. As one competitor put it, the issue is not whether it is "possible" to open a route, but to win sufficient customers for it[586].

594. Ryanair acknowledges in principle that a strong reputation of the incumbent competitors can be a barrier to enter a market[587], while it contests that this would be the case here.

595. The Commission's investigation has shown that it is much easier for Aer Lingus and Ryanair as the two best-known airlines in Ireland with an established marketing and distribution system to win new Irish customers for existing and new routes than for their competitors. In particular on routes where the majority of customers originate in Ireland, competitors face a significant disadvantage vis-à-vis Ryanair and Are Lingus. It should be noted that the overlap markets are to a large extent "outbound" markets, i.e. on most routes affected by the merger, a majority of customers buy their ticket in Ireland. On a number of routes (notably continental routes to holiday destinations), more than [75-85]*% of the traffic is outbound[588]. There are no routes where a comparable share high of passengers is "inbound" to Ireland[589].

596. To run "outbound" routes successfully, airlines must be able to sell tickets to Irish

---

582 Idem, paragraph 45.

583 Response of Aer Lingus of 28 November 2006 to Additional Questionnaire, Annex 4, folio no. 4122.

584 See e.g. Notification, paragraph 219.

585 See answers to Questions 35 and 42 of the Questionnaire to Competitors sent on 6 November 2006 and interview with competitors, folio no. 6170 and 8091.

586 See interview with easyJet of 15.2.2007, folio no. 6170.

587 See Ryanair's answer to the Commission's Article 6(1)(c)-decision, page 24.

588 See Ryanair Paper of 20.2.2007, page 4. For example [...]*.

589 See further on this point the route-by-route analysis.

customers. It is therefore crucial for potential competitors that want to enter such routes to have access to *Irish* customers. Non-Irish potential competitors on those routes cannot rely at all on their on customer base at the other end of the route, since these customers account only for a minority of the business.

597. Although on a number of other routes customers flying from Ireland seem to represent only 50% or slightly less of the customers[590], potential competitors even on these routes cannot economically offer flights without winning the 50% Irish customers for their routes. Further, as indicated in detail in Section 7.12. below, most of the routes where the shares of inbound and outbound customers are more balanced are routes between Ireland and the UK. In this regard it should be noted that Ryanair is not only very strong in Ireland but also in the UK (Ryanair has 5 base airports throughout the UK[591] with more than 50 based aircraft) and would thus still have an advantageous position. Most airlines currently not present in Ireland would have more difficulties in winning customers in Ireland than a merged Ryanair/Aer Lingus in their country after a possible merger. Although this disadvantage may play a more important role for smaller airlines from the continent than e.g. for larger UK carriers, the Commission notes that even Europe's second largest low-frills carrier, easyJet, has indicated that it faces a disadvantage in competition with Ryanair on UK-Irish routes. According to easyJet *"Ryanair had the advantage that it had a strong brand name in both, the UK and Ireland, while easyJet was only well-established in the UK[592]."* Indeed, Ryanair is already well known in a large number of countries and has a well established brand throughout Europe[593]. Ryanair is present today on more than 400 routes in 24 European countries. Ryanair offers therefore already today more destinations than e.g. the UK's largest carrier, BA, offers. The same is not true for most of the other potential competitors[594], who would need to establish a distribution system and, above all, to get sufficient brand-awareness to fill their flights with sufficient Irish customers, always in competition with the two well-known incumbents[595].

598. Ryanair argues that any company from any third country could have easily access to Irish

---

590 The Commission's Customer Survey and the data submitted by the DOT (see DOT submission of 8 February 2007, page 9, folio no. 6230) seem to suggest that the share of Irish-based passengers might be higher than 50% even on some of the Ireland-UK routes.

591 These are London Stansted, London Luton, Liverpool, East Midlands and Glasgow.

592 Interview with easyJet of 13.2.2007, folio no. 6170.

593 See e.g. minutes of interview with easyJet of 15.2.2007, folio no. 6170.

594 It should be noted that even a relatively well-known low-frills carriers such as easyJet indicated that it would be difficult to compete against the two well-established brands Aer Lingus and Ryanair in Dublin. Even on routes where about 50% of the customers originate in the UK, *"it would still not be profitable to start a route only on the basis of the UK customers knowing easyjet. An important share of Irish customers is necessary as well",* see interview with easyJet of 15.2.2007, folio no. 6170.

595 See in this respect e.g. the statement of Jet2.com, interview of 1.2.2007, folio no. 6170: *"...many Irish flights are outbound flights which makes entry for foreign companies more difficult";* interview with Flybe of 12.3.2007, folio no. 6170: *"[Flybe] would rather expand its activities in Northern Ireland (Belfast), where the "Flybe" brand is already established and well-known. Establishing a brand at a new destination, according to [Flybe], require[s] "a major investment"";* interview with BMI of 9.3.2007, folio no. 6170*: "Entering new markets requires establishing a brand, which is costly.";* interview with AerArann of 13.2.2007, folio no. 6170: *"Opening a new route would require significant investment due to the costs necessary to establish a brand on the Irish market which would be able to compete with two the well-established brands Aer Lingus and Ryanair";* interview with Air Berlin of 13.2.2007, folio no. 6170: *"An entry into the Irish market would, according to Mr Rautenberg, in any event require "a lot of money", in particular to establish a brand in Ireland against the now well-known Ryanair and Aer Lingus brands."*

customers, since tickets can be sold via the internet today. The Commission's investigation has, indeed, confirmed that both Ryanair and Aer Lingus, as well as many other low-frills carriers, sell the vast majority of their tickets via their web pages.

599. While the increased importance of the internet distribution channel has certainly reduced distribution costs, new competitors still face the problem that their web pages must be visited and used by Irish customers in order to win such customers. In fact, competitors have confirmed that brand-awareness and reputation still play an important role in the distribution of flight tickets and are key to winning new customers for a given route[596]. It would take a significant investment and a lot of time to build up a web site which would be as recognised and regularly visited as Aer Lingus' and Ryanair's pages are currently in Ireland.

600. Indeed, today most Irish customers wanting to fly from Ireland to another destination almost "automatically" turn to the web pages of either Ryanair or Aer Lingus. Although it is true that there are a number of websites available which collect fares of different competitors, it appears that the majority of flights are still booked via the companies' own websites. Ryanair's internet pages ("Ryanair.com" and "Bookryanair.com") are, according to independent third party research, the most popular airline internet pages in Ireland (ranking no 44 and no 64 respectively of Irelands most visited websites. Aer Lingus' internet page ("Flyaerlingus.com") is also in the group of the 50 most visited web sites in Ireland (ranking number 33). No web page from any actual or potential competitor appears in the "top 100" list of Irish web pages[597]. By contrast, Ryanair's webpage is among the most popular airline webpages not only in the UK, but also in almost all countries in Europe[598].

601. Also the Customer Survey at Dublin Airport confirmed that customers on all routes out of Ireland mainly consider either Ryanair or Aer Lingus and to a much lesser extent carriers based outside Ireland. On routes where they face also a third (or more) competitor, about 40% of Ryanair customers considered Aer Lingus, but only 17% considered the other competitor(s) on the route. In the case of Aer Lingus passengers, 33% considered Ryanair and 16% the other competitor(s) on the route[599].

602. As the previous "flag carrier" which used to have a quasi monopoly on the Irish market before the entry of Ryanair, Aer Lingus has traditionally a close relationship to their customers and a significant brand recognition in Ireland, where its service is perceived as particularly adapted to national culture[600]. Aer Lingus has build up its brand in Ireland over decades and can profit from that brand recognition today.

603. Ryanair started its operations more than 15 years ago from Dublin and has developed into a strong brand in Ireland, in particular for price-sensitive customers. Ryanair therefore benefits not only from the advantage of being an Irish company, but also from its strong reputation as the largest (and most profitable) European "low-frills" carrier with a clear

---

596 See e.g. notably minutes of interviews with Flybe of 12.3.2007, BMI of 9.3.2007; AerArann of 13.2.2007; Jet2.com of 1.2.2007, folio no. 6170.

597 See: http://www.alexa.com/site/ds/top_sites?cc=IE&ts_mode=country&lang=none

598 http://www.alexa.com/site/ds/top_500?qterm=

599 Even taking into account that no other competitor was explicitly mentioned, this result can still deemed to be relevant for the assessment; see further Annex I.

600 See Notification.

price-aggressive airline profile.

7.8.4.3. Entry would require high marketing costs

604. Potential competitors considering entering the Irish market would have to weigh the costs and the potential benefits of such entry. These costs can include not only costs for ground handling, customer care or offices at the respective airport where they do not yet have operations, but notably marketing and advertising costs. These may vary, e.g. dependent on whether the potential entrant is already active at the other end of the route and just expanding it operations ("connecting the dots") or not.

605. Any new entrant would have to consider incurring expenditure to market its service in the relevant catchment areas at both ends of the respective route. Potential entrants to routes from or to Ireland will therefore face significant sunk costs in terms of marketing expenditure, which cannot be recovered upon exit. The success of entry depends very much on the airlines ability to win sufficient customers for its service. Customer information (or lack thereof) and promotional campaigns are therefore critical to the individual success of airlines[601]. This holds particularly true for low-fills airlines, because the success of the low-frills business model depends to a large extent on a high load factor, i.e. the ability to fill the individual flights with as many passengers as possible.

606. Ryanair claims in its submissions to the Commission that winning customers for new routes is not very costly and can be done within a relatively short time period of three to four months or even weeks. In its reply to the Statement of Objections, it further quotes single competitors who have indicated in a general manner that there were "no entry barriers"[602]. Ryanair stresses that customers in every country can easily be reached via the internet today. It would therefore in principle be sufficient to launch a press conference, to offer some promotions (free seats) to radios and newspapers and to spend a limited amount of money for advertising in newspapers at both ends of the route. Altogether, the costs would, according to Ryanair, not amount to more than around EUR [60,000-80,000]* for a new route[603]. Ryanair refers to its own example with advertising costs of only EUR 0.40 per passenger, despite being in full expansion, which would be an "inconsequential issue" compared with many other cost airlines incurred in their operation[604].

607. The Commission's market investigation, however, showed that the costs for potential entrants to build the necessary brand-awareness in Ireland are perceived by many potential competitors named by Ryanair as significant and as an important entry barrier[605].

---

601 See e.g. case M.3770 – Lufthansa/Swiss, paragraph 44.

602 It should be noted that two of the four competitors Ryanair refers to (e.g. CityJet (AirFrance) or easyJet) have very well highlighted the existence of significant entry barriers, inter alia in terms of marketing costs, see e.g. CityJet (Air France), interview of 21.2.2007, folio no. 6170: *"...setting up operations in a new airport/country is a complex operation ("a massive operation"), requiring new ground services, customer care, technical operations, sales and marketing."*; interview with easyJet of 15.2.2007, folio no. 6170: *"entry to Ireland would be a 2significant decision" with significant investment (...); starting operations would need significant marketing efforts with significant costs. (...) Therefore, to get customers on any Ireland-UK route, easyJet would have to make significant investments into building a brand in Ireland."*

603 See e.g. Notification, paragraph 500.

604 See Ryanair's reply to the Commission's Article 6(1)(c)-decision, page 25; RBB Paper of 20.2.2007, page 24; Ryanair's response to the Statement of Objections, see e.g. page 241.

605 See in this respect e.g. the statement of Jet2.com, interview of 1.2.2007, folio no. 6170: *"It would be a "huge*

608. The required level of marketing expenditure is related to the brand recognition that each airline has developed over the past years in the targeted catchment area and to the brand recognition of the competitors operating in that area. As set out above, the Irish market is characterised by the existence of already two strong national airline brands. Having established a brand over many years and disposing of a joint customer base of 80% of Irish short- or mid-haul passengers on intra-European routes, the necessary efforts for Ryanair and Aer Lingus to raise attention for new flights and to attract potential passengers in Ireland via their web sites are much lower than for any new entrant.

609. Ryanair does not contest that it has a very strong brand throughout Europe and it rightly points out that Ryanair has been known as the "pioneer" of low-frills flights in Europe. Ryanair operates in 24 countries, offering flights to around 450 destinations. Apart from easyJet (active on about 250 airports), there is hardly any airline which could build on such a strong reputation on a European-wide scale, notably amongst the relevant "low frills" customers. It seems thus plausible that many competitors describe the marketing investments as much more significant than Ryanair does it from its own perspective.

610. The Commission notes that many relevant competitors perceive their own marketing costs necessary to establish a new route or even a base in Ireland as important. While the fact that Ryanair's own marketing costs are lower is not contested by the Commission, the relevant criterion for the Commission's analysis is whether *from the perspective of a potential competitor* the entry costs are so significant that they might contribute to deterring new entry. The fact that Ryanair has opened new routes elsewhere does not prove that other airlines could easily do the same on routes from or to Ireland in competition with Ryanair.

611. Marketing costs necessary for a new entrant to enter into competition with Ryanair in Ireland may differ significantly from Ryanair/Aer Lingus' marketing costs for a new route from or to Dublin. This is evident for marketing efforts to win customers in the Irish market, where Ryanair and Aer Lingus are already established and can have easily access to their large customer base, while the necessary marketing costs for any foreign competitor without such a customer access and an equally strong brand in Ireland would be

---

problem" to try to compete in Dublin*, where Ryanair is so well-known. In particular, it would be hard to establish a brand which is sufficiently recognised to be eligible for customers. Aer Lingus and Ryanair, being present in Ireland for 15 years, have a strong presence in Ireland and enjoy an important advantage over their competitors.";*
interview with Flybe of 12.3.2007, folio no. 6170: *"[Flybe] would rather expand its activities in Northern Ireland (Belfast), where the "Flybe*" brand *is already established and well-known. Establishing a brand at a new destination, according to [Flybe], require[s] "a major investment"";*
interview with BMI of 9.3.*2007*, folio no. 6170*: "Entering new markets requires establishing a brand, which is costly.";*
interview with AerArann of 13.2.2007, folio no. 6170: *"Opening a new route would require significant investment due to the costs necessary to establish a brand on the Irish market which would be able to compete with two the well-established brands Aer Lingus and Ryanair";*
interview with Air Berlin of 13.2.2007, folio no. 6170*: "An entry into the Irish market would, according to Mr Rautenberg, in any event require "a lot of money", in particular to establish a brand in Ireland against the now well-known Ryanair and Aer Lingus brands."*
Interview with Clickair (Iberia) of 26.3.2007, folio no. 8091*: "According to [Clickair], "not anybody will step in" in case of a merger between Ryanair and Aer Lingus. This is because it would require a critical mass of aircraft (more than 5) positioned at a base at Dublin. (...) Entry would therefore not be a realistic option, since a sufficient number of Irish customers could only be won with a base at Dublin and a very significant sustained marketing budget."*

significantly higher. While Ryanair and Aer Lingus would not incur any costs for getting enough web traffic on their web sites, any new competitor would have to invest in a marketing campaign for his website in order to attract customers.

612. Aer Lingus and Ryanair therefore have an advantage over potential competitors in terms of marketing due to the fact that marketing costs for entry on new routes would in most cases are "asymmetric". As set out above, on most overlap routes the majority of customers flies from Ireland to other countries and not the other way round. On these "outbound" routes (examples being continental leisure routes), the majority of the necessary marketing expenditure would relate to Ireland and not the destination country, which makes it much easier for Ryanair and Aer Lingus to fill these routes.

613. Even on those routes which are not predominantly used by Irish-based customers, but service more or less equally Irish and foreign passengers, competitors will normally face significantly higher marketing costs than Ryanair for several reasons:.

614. First, Ryanair's figures are calculated on the basis of an average of more than 40 million Ryanair passengers. Ryanair has referred to costs of € 0.40 per passenger for marketing. For smaller airlines with passenger numbers of 1 million or less passengers, the relative investment costs to open a new route to Ireland or even a base at Dublin would therefore be higher.

615. Second, as set out above, Ryanair has easier access to customers throughout Europe than most competing airlines, in particular smaller local carriers, since Ryanair is Europe's oldest and largest low-frills carrier, established and well-known in almost every European country. As a result, the Ryanair brand can benefit today from a high brand-awareness throughout Europe, and Ryanair also enjoys a strong *European-wide reputation* for offering flights at very low prices.

616. Finally, Ryanair's business model differs significantly from its potential competitors as regards marketing expenditure. Unlike its competitors, Ryanair flies mainly to secondary airports. These secondary airports have an interest to develop the airport and are therefore willing to support Ryanair (in most cases their most important customer) in terms of marketing, be it by own advertising, brochures or direct financial contributions to Ryanair's marketing expenses. Due to the contribution of secondary airports to Ryanair's marketing costs, these costs are naturally lower than those of its potential competitors on the overlap routes. Only very few competitors, however, would consider flying to secondary airports at all.

617. By way of example, the Commission has found that when establishing a new base in Charleroi, Ryanair itself had calculated marketing expenses not of 40 cent, but of EUR 8 per passenger. Under an agreement concluded in 2001 between Ryanair and Brussels South Charleroi Airport (BSCA), Ryanair and BSCA have formed a joint advertising and publicity company which contributes to Ryanair's publicity and marketing in relation to its activities at Charleroi. For example, the company financed parts of the price of Ryanair's promotional tickets. BSCA and Ryanair contributed in the same proportions to the so-called "Promocy" operation, which includes a marketing contribution (for each) of EUR 4 per passenger[606].

---

606 See the Commission's "Charleroi" decision concerning state aids, Commission Decision of 12 February

618. Ryanair rightly points at the fact that also the Dublin Airport Authority tries to attract new airlines by way of an incentive scheme, which, *inter alia*, provides for moderately reduced airport charges for new entrants. However, none of the competitors who answered to the Commission's market investigation regards these incentives as sufficient to "neutralise" the entry costs which are necessary for a new entry with a new route or even a base in Dublin. It should also be noted that the financial incentives Ryanair receives from secondary airports (which include active marketing participation of up to EUR 4 per passenger, see the "Charleroi" case) are much greater than the incentives the Dublin Airport Authority provides. In full knowledge of these incentives, many potential competitors still describe the necessary financial investment for an entry to Ireland as an important entry barrier and as "a major investment[607]".

619. Potential entrants have confirmed that entering against the merged entity would require a significant marketing investment.. By way of example, one competitor indicated that its costs for establishing operations from Manchester amounted to around EUR 4 million, mainly spent on advertising. Establishing a brand in a new country, and in particular entering to an airport like Dublin, where, unlike in Manchester, already two strong national low-cost airlines account for 80% of all short-haul passengers, is likely to require an even larger investment than entry into Manchester[608].

7.8.4.4. Entry entails a high risk of sunk costs for competitors

620. The likelihood of entry on a given route depends on the profitability the potential competitor would expect on this route. One important element for the decision of a potential entrant whether to enter or not a market is the level of sunk costs which he would have to write off in case of a failed entry. In this context, the Horizontal Merger Guidelines provide that:

> *"(...) a high risk and costs of failed entry may make entry less likely. The costs of failed entry will be higher, the higher is the level of sunk cost associated with entry[609]."*

621. The significant marketing expenditure which are necessary for any new entrant to establish its brand in Ireland and have access to new customers (and which represent the largest part of expenditure for opening a new route[610]) can be considered as sunk costs should the entry fail[611]. Competitors have also explained to the Commission that opening of a new route from and to Dublin would require additional investments in new or at least newly leased aircraft or for deploying an aircraft from another route (with the related opportunity costs of losing that plane for services on another route). Additional costs are necessary for installing and operating the necessary ground services (boarding personnel, customer care

---

2004, Official Journal L 137/1 p.3, 30.4.2004.

607 See interview of 12.3.2007 with flybe, folio no. 6170; see also interview of 15.2.2007 with easyJet, folio no. 6170: "important investment"; interview with Clickair of 26.3.2007, folio no. 8091: "very significant, sustained marketing budget"; interview with Aer Arann of 13.2.2007, folio no. 6170: "*significant* investment"; interview with Air Berlin of 13.2.2007, folio no. 6170: "[would require] a lot of money".

608 See in this respect also answers of competitors to the Market Test of Ryanair's Final Commitments, answers to questions 3 and 4.

609 Horizontal Merger Guidelines, paragraph 69.

610 See e.g. interview with Jet2.com of 1.2.2007, folio no. 6170: € 4 million, "mainly for advertising".

611 See also Commission Decision of 4 July 2005 in the case M.3770 – Lufthansa/Swiss, paragraph 44.

personnel[612], technical staff, office buildings, but also costs for luggage handling, security, and other airport related costs[613] etc.) in the new airport and often in a new country where no such facilities existed before. These costs, in particular for those competitors who were not active in Ireland before the entry at all, do indeed further increase the necessary investment to open a new route and, at the same time, the risk of incurring additional sunk costs[614].

622. A number of competitors mentioned that a further disincentive to enter routes from and to Ireland in competition with Ryanair and Aer Lingus were the preferential airport charges and treatment, in particular for Ryanair on many airports. With the exception of Dublin Airport, Ryanair was able to negotiate preferential airport charges with many airports in Europe, including for Shannon, which gives them an important financial advantage over potential competitors who would not be able to take advantage from the same discounts. This is particular the case for carriers based at main airports that are less likely to give significant discounts due to higher demand for flying from/to their airports than the secondary airports used by Ryanair. This aggravates further the existing cost disadvantage for competitors.

7.8.4.5. Conclusion on entry costs

623. As set out above, entering in competition with Ryanair/Aer Lingus in Ireland would require a significant investment in marketing, brand-building, and other start-up costs for any potential competitor who would wish to compete head-to-head with the merged entity. Since these costs cannot be recouped should the attempt to enter the market fail, any potential competitor takes a considerable financial risk. This is likely to deter entry.

7.8.5. The risk of aggressive retaliation by Ryanair/Aer Lingus is high

624. Another important element for the assessment of the likelihood of potential entry is the ability of the merged entity to react aggressively to the entry in order to prevent the potential competitor from successfully entering the market.

625. The Commission's investigation showed that Ryanair has a reputation of engaging in aggressive competition in case of new entry to Ireland, notably by temporarily lowering prices and expanding its capacity in order to drive out the new entrant on routes to or from Ireland[615].

---

612 Depending on the level of service the airline offers, airlines would also have to build or pay for lounges etc.; see in this respect also CityJet (Air France), interview of 21.2.2007, folio no. 6170: *"...setting up operations in a new airport/country is a complex operation ("a massive operation"), requiring new ground services, customer care, technical operations, sales and marketing."*

613 Some airports provide some of these services themselves (such as Dublin Airport for security and luggage handling) and include the costs in the airport charges.

614 See in this respect e.g. the interview with CityJet (Air France) of 21.2.2007, folio no. 6170.

615 See interview with Aer Arann of 13.2.2007, folio no. 6170 (referring to the examples of the failed entry by GO and easyJet); Aer Arann considers that Ryanair can afford to employ this strategy due their "deep pockets", i.e. it is financially much stronger than most of its competitors and *Aer Arann* in particular. See also interview with Jet2com of 1.2.2007, folio no. 6170. Jet2.com pointed out that the example of easyJet, having recently tried to enter the Irish market without success, showed very clearly that Ryanair reacts "very aggressively, offering flights "for nothing", using its size and its market power in such a situation". See also interview with easyJet of 15.2.2007, folio no. 6170;

626. The likelihood of aggressive retaliation is relevant because it has the *factual* consequence that potential entrants are likely to be deterred from entry and that it is less likely that a dominant firm will be constraint by the threat of new entry. This is also reflected in the text of the Horizontal Merger Guidelines, which provide in paragraph 69:

> *"For entry to be likely, it must be sufficiently profitable taking into account the price effects of injecting additional output into the market and the potential responses of the incumbents."*

627. Ryanair claims that the risk of aggressive retaliation by Ryanair/Aer Lingus is not relevant for potential competitors in the present case, since Ryanair would in any event charge the same low prices regardless of whether a competitor is active on the same route or not ("no higher prices on monopoly routes") and since many examples of successful entry showed that competitors are not deterred by the presence of Ryanair on a market[616].

628. However, as shown in detail in Section 7.4.1 above, Ryanair takes into account the pricing policy of its competitors, whether by adjusting its load factor when demand should decrease as a reaction of new entry or a price decrease or by direct comparison of Ryanair's prices with the prices of its competitors. Ryanair has expressly confirmed to the Commission that it has lowered prices in reaction to entry in previous case[617]. The examples in Sections 7.8.5.1-4 below further illustrate this behaviour.

629. The Commission's market investigation has shown[618] that Ryanair in the past successfully reacted to entry by competitors on Irish routes by systematically undercutting the competitors' prices and adding new capacity on the market which was, depending on the case, afterwards reduced when the competitor had left the route[619].

630. There are numerous examples where Ryanair has attacked the entrant by increasing frequencies and capacity. Ryanair has used its base-advantage by rapidly expanding capacity on routes in order to force new entrants out. Below are set out examples for routes where Ryanair has been the incumbent and a new carrier has entered, during the period 2000-2005. On each analysed route the result has been the same – the new entrant has left the route within a period of, on average, one and half years and there have been no new carriers entering the route thereafter.

631. Furthermore, on several of the routes detailed below, after the exit of the new entrant, Ryanair reduced its frequencies on the route to fewer frequencies than it had when the new carrier entered the route. This suggests that the frequency increase was rather a strategic one than a reaction to changes in demand. The Commission has also found evidence that indicates that following the exit of the competitor, Ryanair increased prices again by

---

616 See Ryanair's answer to the Commission's Article 6(1)(c)-decision, page 25; RBB Paper of 20.2.2007, pages 26 et seq.

617 See agreed minutes of the Commission's visit of Ryanair's headquarters of 6.2.2007, folio no. 6170: "[...]*".

618 See e.g. the description of Ryanair's aggressive reaction by Jet2.com (interview of 1.2.2007, folio no. 6170); Aer Arann (interview of 1.2.2007, folio no. 6170); easyJet (interview of 15.2.2007, folio no. 6170); Clickair (interview of 26.3.2007, folio no. 8091).

619 In its response to the Statement of Objections Ryanair points out that "Ryanair's entire business model revolves around systematically undercutting competitor's prices by a substantial degree on every market in which it operates". This would therefore not be a special reaction to entry. However, as discussed below, in the case of entry, this has been used strategically, i.e. with the intention to make the competitor leave the market.

reducing capacity.

632. It should be noted that in contacts with actual or potential competitors, none of these carriers mentioned an example of successful entry in the past; if the history of entry to Ireland was mentioned, it was to express that potential entrants were further discouraged by past experience[620]. The analysis of past entry cases confirms the existence of high entry barriers[621].

633. Although Ryanair argues that there is "extensive evidence" of entry by competing carriers against Ryanair[622], the Commission has found that these examples do not show that the barriers to entry on the identified overlap routes against Ryanair/Aer Lingus are low. First, it should be noted that only 11 of these examples of entry actually were on routes to/from Ireland[623]. In two of these cases the entrant was Aer Lingus itself[624]. In the remaining 9 cases, Ryanair itself indicates that 6 entrants exited the relevant routes the year following their entry[625]. In fact this is also the case for one additional entrant (TAP Portugal on Dublin – Faro), which exited in February 2007, after around 5 months of operation. Therefore, only in the two remaining cases the new entrants remained longer on the market: the first one is CityJet on the Dublin – London route. CityJet however focuses on business passengers by serving the specific London City airport with smaller jet aircraft and cannot be considered as a significant competitive constraint on Ryanair – see further below in Section 7.9. Its market share on the route is around [0-10]*%. The second example is Spanair on the Dublin – Malaga route. On that route, Spanair operates only during the summer season with around 2 weekly rotations on weekends. This service therefore only exerts a negligible constraint on the Merging Parties' daily services which are operated throughout the year on this route. Spanair's market share on the route is around [0-10]*%. Therefore, these examples of entry do not provide evidence of sustained entry against Ryanair on the routes to/from Ireland that would exercise significant competitive constraint

634. In its response to the Statement of Objections, Ryanair does not contest the conclusion that entrants have not been successful on routes where Ryanair is present. However, it argues that this is due to its lower cost base[626] and that the Commission should not penalise Ryanair simply because it is more efficient and has lower fares than other entrants.

---

620 Ryanair has argued that easyJet has set up a base in Madrid only after Ryanair had done so as well. As both would compete on Madrid-Paris and Madrid-London, it would be clear that easyJet is not deterred from entry against Ryanair. However, also this example refers to markets which are outside the scope of this investigation and therefore is not well suited to judge the likelihood of new entry on routes to / from Ireland. In comparison to such routes, on the Madrid-Paris and Madrid-London, easyJet seems to be in a particular strong position as it has a base airport at both ends.

621 See on the relevance of past experience with entry also the Horizontal Merger Guidelines, paragraph 70.

622 (in total 63 examples of such entry have been identified by Ryanair in the period April 2003 – October 2006), see Ryanair's submission "Ryanair/Aer Lingus: Position Paper on Barriers to Entry" of 20 February 2007, folio no. 4135.

623 See on the fact that Ireland on the specific difficulties to enter the Irish market above, Section 7..8.6.

624 On the routes Dublin – Liverpool and Dublin – Bristol.

625 This concerned the following routes: Cork – London (bmibaby), Glasgow – Shannon (Flybe), Dublin – Bristol (Air Southwest), Dublin – Glasgow (British Airways), Knock – London (easyJet) and Shannon – London (easyJet).

626 It points out: "It is no surprise that entrants cannot sustain competition against Ryanair, when Ryanair has significantly lower costs and lower fares than all other airlines" (p. 243).

However, in the context of the analysis of objective entry barriers, the absence of successful entry and Ryanair's reputation of aggressively driving entrants out of the market is relevant for the Commission's assessment. Being in a position of doing so due to its lower cost base and its financial strength discourages new entrants from entering routes on which Ryanair operates[627].

7.8.5.1.The example of easyJet's entry attempt

635. The example most cited for unsuccessful entry against Ryanair is probably the failed entry of European's second largest low-frill carrier, easyJet, to Ireland in 2005[628]. EasyJet, having discovered a "niche" on the UK-Ireland market[629], started to offer flights from Gatwick to Cork, Knock and Shannon in January 2005, which triggered, according to easyJet, an "immediate reaction" of Ryanair. Following Ryanair's response, easyJet left these routes in 2006 and no longer flies to Ireland. Ireland is the only Member State that easyJet has abandoned after an attempt to enter. Ryanair's reaction in this case is documented both by public and internal statements. The internal documents for the Board Meeting of Ryanair for example state [...]*[630].

636. The Irish Department of Transport has submitted a detailed analysis of the examples of previous entry of new competitors on Irish routes and on Ryanair's reaction[631]. The Commission has analysed this detailed description to the extent possible in the limited time available during the investigation of the case and carried out its own analysis of Ryanair's reaction on the basis of fares & frequencies data submitted by Ryanair.

London Gatwick-Cork-Gatwick (LGW- ORK)

637. Before easyJet's entry on Gatwick-Cork, in Summer 2004 Ryanair operated on the Cork-Stansted route with 21 and Aer Lingus on Cork-Heathrow with 28 weekly frequencies. EasyJet announced on 23 September 2004 its planned entry on the Gatwick-Cork route and started flying on this route on 28 January 2005. In Summer 2005 easyJet operated 14 weekly frequencies on this route which it increased to 21 in Winter 2005/6[632]. While maintaining 21 frequencies in Cork-Stansted, in Winter 2005/6 Ryanair in addition started operating also on Gatwick-Cork with 14 weekly frequencies. Thus, only after easyJet's entry into Gatwick Ryanair opened a second route from Cork to London-Gatwick. This service was therefore in direct competition to easyJet. EasyJet announced that it would leave this route in July 2006 and stopped operations on 1st October 2006. Subsequently

---

627 Public statements by Ryanair itself could be understood of building up such a reputation. Responding to a question what Ryanair would do with a surplus of EUR 2.4 bn, in an interview for "Wirtschaftswoche" on 12 March 2007, M. O'Leary declared that Ryanair would need most of the money to deter competitors in the case of a price war. http://www.wiwo.de/pswiwo/fn/ww2/sfn/bm_artikel/bmpara/1567bmpara/41525420

628 See e.g. the description by Jet2.com (interview of 1.2.2007, folio no. 6170); Aer Arann (interview of 1.2.2007, folio no. 6170) and easyJet itself (interview of 15.2.2007, folio no. 6170).

629 Interview with easyJet of 15.2.2007, folio no. 6170.

630 Ryanair's CEO Mr. O'Leary reacted publicly to easyJet's entry on the Irish Sea routes: "*We can't wait to welcome the sixth candidate from the UK that has come to liberate the people of the west of Ireland. They will follow in a long line of others who have left*" (emphasis added). See: Article in the Irish Times, 24 September 2004.

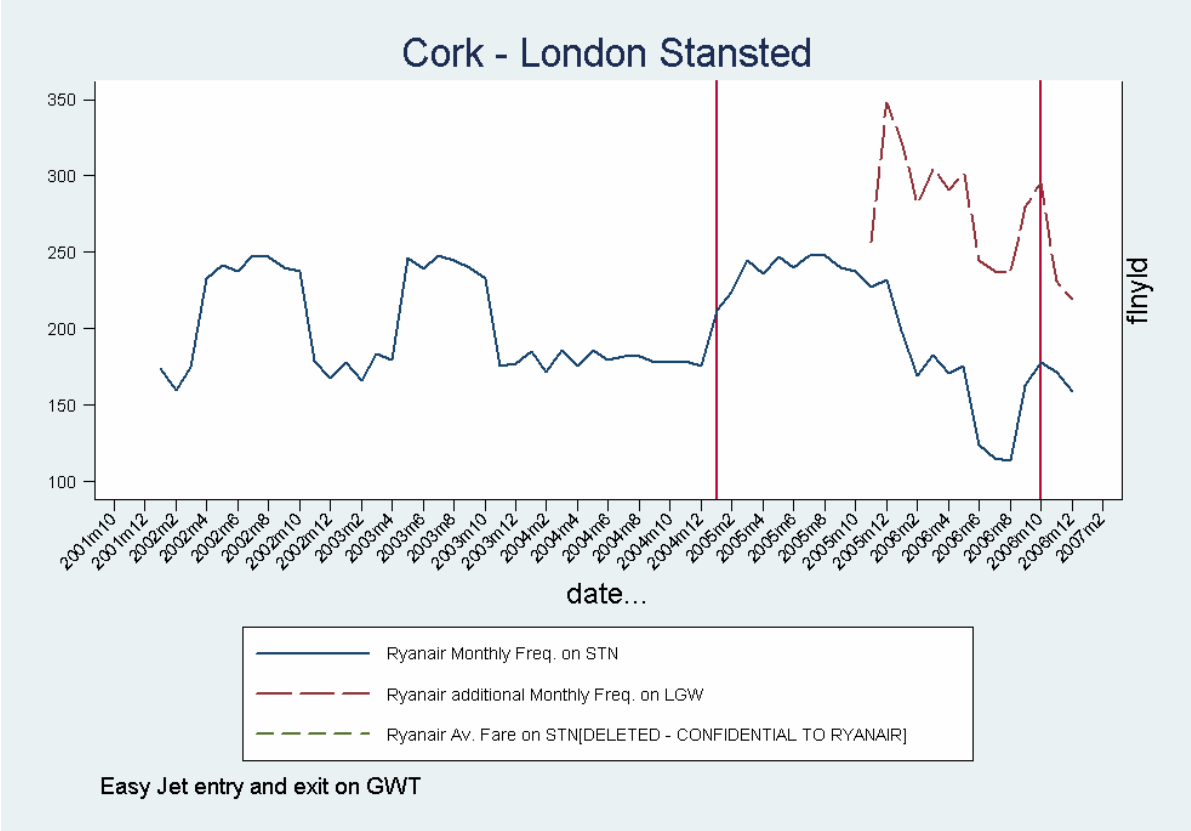
631 See submission of the DOT of 24.11.2006, folio no. 6233, and of 7.2.2007, folio no. 6233.

632 See for a confirmation of the dates related to easyJet's Irish operations e-mail sent by easyJet on 16 May 2007, folio no. 9859.

Ryanair reduced its frequencies from Cork to Gatwick from two to one per day.

638. In its response to the Statement of Objections, Ryanair has pointed out that it had announced its capacity reduction already in July 2006, *i.e.* 3 months before easyJet had announced its withdrawal. The frequency reduction was therefore, according to Ryanair, not a reaction to easyJet's exit[633]. Ryanair has, however, not provided further evidence in support of this assertion. The Commission notes that Ryanair's claim contrasts with its own statements that Ryanair *did* react to easyJet's entry[634]. Furthermore, according to easyJet, easyJet announced its exit from the routes Gatwick to Cork, Shannon and Knock already in July 2006[635], the same month, in which Ryanair reduced its capacity. Ryanair's claim has therefore no been confirmed.

Graph 3: Entry effects Cork - London



639. The graph above illustrates the fare and frequency development following easyJet's entry on the Gatwick-Cork route[636]. It uses data on Ryanair monthly frequencies and average

633 See Ryanair's Response to the Statement of Objections, paragraph 194.

634 See interview with Ryanair (visit of Ryanair's headquarters) of 6.2.2007, folio no. 6170. Further, this is also confirmed by a number of Ryanair's internal documents: the Board Paper No 8 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629), page 8.2: "[...]*"; Board Paper No 5 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): "[...]*"; Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): [...]*; Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]*, page 3.3 (folio no. 629), stating with regard to routes from Cork/Shannon/Knock to London as follows: "[...]*."

635 See easyJet's e-mail of 16 May 2007.

636 The Commission has based this and the following graph on frequency and fare data which have been submitted by DAA and Ryanair, respectively.

fares. The horizontal axis depicts time on a monthly basis from 2001 to 2007. On the vertical axis there is the number of monthly frequencies (on the left) and the average fare (on the right). STN refers to Stansted and LGW to Gatwick. Finally, the vertical bars (in red) indicate the moment of entry and exit by easyJet on this route.

640. First, as on many other routes, one observes a seasonal effect. Due to demand fluctuations, frequencies and average prices decrease in the Winter season while they increase in the Summer season. Second, one observes that in the Summer period 2004, i.e. before easyJet's entry, this pattern changed. Frequencies did not increase as previously (this also holds for Aer Lingus). As a result average prices were higher than in Summer 2003. This corresponds to easyJet's remark that they had observed high prices on the route before entry[637].

641. At the time of easyJet's entry, Ryanair's frequencies in Stansted went up. However, that may be considered a reaction to the seasonal effect. In Summer 2005, also Aer Lingus' number of frequencies went back to the level of Summer 2003. Nevertheless, given that due to easyJet's entry the total number of frequencies had increased, while maintaining a high load factor, it would be more profitable for Ryanair to reduce frequencies (or increase them by less than in previous years). As Ryanair did not adapt its frequencies, due to the overall increase in capacity in the market, its prices dropped significantly.

642. A significant change then happened in Winter 2005/6 when its total number of frequencies on the Cork-London market increased significantly due to the opening of the Gatwick route. That increase happened at a point in time when – according to the seasonal effect – one would have expected a capacity reduction. Moreover, there was a shift of frequencies from Stansted to Gatwick. Thus, Ryanair went closer to the competitor from a city pair overlap to an airport overlap. At that point Ryanair charged an average price of EUR [10-20]* (according to its own data) in Gatwick[638]. Finally, subsequent to easyJet's exit, one observes a frequency reduction by Ryanair on the Gatwick route.

643. Ryanair has pointed out that it is normal that Ryanair's monthly fare fell on the Cork-Stansted route following the arrival of easyJet, as it is its policy to always sell the lowest fares in every market[639]. Admittedly, a price reduction in the face of entry would be normal business behaviour. However, apart from the price reaction, one also has to look at capacity. Given that entry leads to an increase in overall capacity on the route, normally the incumbent would reduce its own capacity[640]. However, it is the reaction in capacity which brings the development on the Cork-London market in line with the above description of an entry deterrence strategy. Not only did Ryanair substantially increase capacity in the market, it also moved the capacity directly into the airport of its competitor. As a result, average prices went down more than they would have done in case of a capacity adjustment. Finally, subsequent to the competitor's exit, prices increased.

---

637 In its response to the Statement of Objections, Ryanair points out that just before easyJet's entry prices were already below €50 (p.244). However, as can be seen, this is due to the seasonal effect. Moreover, presumably easyJet had already taken its entry decision a few months before.

638 The frequency increase was accompanied by various promotions. For example, Ryanair announced in October 2005 that the price of seats on all its routes would start from 29 pence (excluding taxes and other charges) for the period 3 November 2005 to 9 February 2006.

639 Response to the Statement of Objections, p. 243.

640 On the assumption that there are no other changes on that particular route (as demand shifts etc).

644. In its response to the Statement of Objections, Ryanair points out that in spite of its frequency reduction after easyJet's exit, Ryanair's total capacity between Cork and London post- exit was [25-35]*% higher and its average fare [15-25]*% lower than for the corresponding months prior to easyJet's entry[641]. This observation is in line with the data in Graph 3. However, Graph 3 also shows that prior to easyJet's entry, Ryanair had reduced capacity and increased prices significantly[642], which had originally encouraged easyJet's entry. Thus, if post-exit capacity was higher and prices lower than during the pre-entry period, this change most likely resulted from easyJet's entry. In any case, it remains the fact that Ryanair has reacted aggressively against an entrant and caused the entrant to exit the route, which is relevant for the Commission's assessment of the likelihood of successful entry.

Shannon-London Stansted

645. On the Shannon-London route, prior to easyJet's entry, Ryanair operated to Stansted and Aer Lingus to Heathrow. Over the period 2003-2006, Aer Lingus' weekly frequencies have remained stable at 27 in the Summer and 21 in the Winter season. In Summer 2003 Ryanair operated 29 frequencies which were cut to only 14 in Summer 2004. Ryanair's average price went up from € [40-50]* to € [50-60]*[643]. In its response to the Statement of Objections, Ryanair points out that this capacity reduction was due to a cost dispute with Shannon airport.

646. EasyJet announced that it would start operating from Gatwick to Shannon on 23 September 2004[644]. On 30 November 2005, Ryanair announced that it had reached agreement with Shannon to open a substantial base at Shannon Airport[645]. EasyJet started flying the Gatwick-Shannon route in January 2005 with 1 daily frequency[646]. In May 2005, Ryanair also entered the Gatwick-Shannon route with 7 weekly frequencies while increasing the frequencies to 21 frequencies in Stansted. In comparison to Summer 2004, its average price went down from € [50-60]* to € [10-20]* in Summer 2005 and € [10-20]* in Winter 2005/6[647]. As can be seen from the graph, during the period when easyJet operated on this market, Ryanair also started flights to London Luton. Thus the overall number of Ryanair's frequencies increased significantly. In July 2006 easyJet announced that it would leave the route and stopped operations on 1 October 2006. In October 2006 Ryanair also stopped flying into Luton. Thus, following easyJet's exit, Ryanair reduced significantly its overall frequencies from Shannon to London. As in the case of Cork-Stansted, the increase of frequencies following entry and the reduction of frequencies after exit indicate strategic

---

641 See Ryanair's Response to the Statement of Objections, paragraph 191.

642 As can be seen from Graph 3, Ryanair's post-exit frequency and price level do not show an overall improvement, as they only correspond to its frequency and price levels in the period 2002-2003.

643 The fare and capacity figures in this and following paragraphs are based on a reply from Ryanair of 8 December 2006 to the Commission questions of 6 December 2006.

644 See for a confirmation of the dates related to easyJet's Irish operations e-mail sent by easyJet on 16 May 2007.

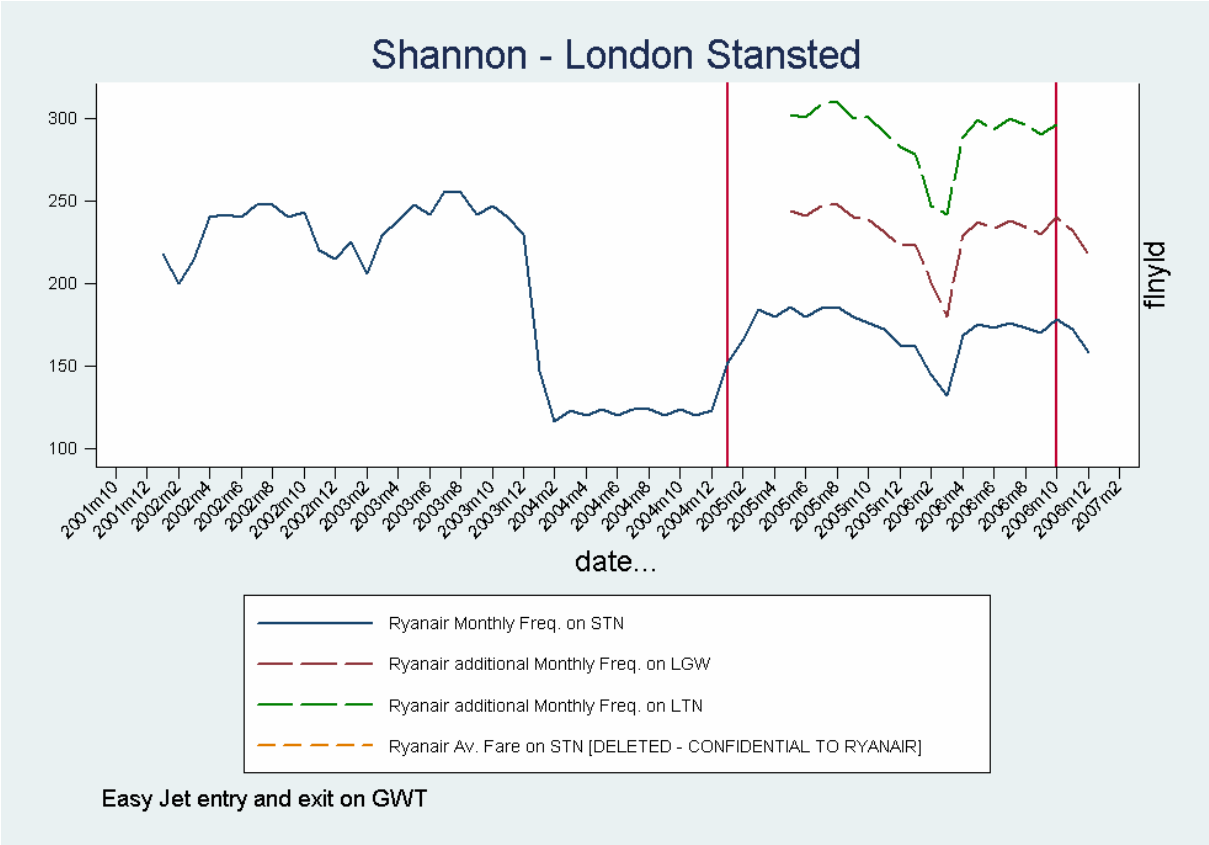
645 In its Response to the Statement of Objections (p. 244) Ryanair claims that this announcement was made before easyJet announced that it would start flying from Gatwick to Shannon.

646 easyJet then operated 2 daily frequency in Summer 2005 and again 1 in Winter 2005/6 and Summer 2006.

647 Ryanair introduced various promotions, including an offer of 20 000 'free' seats (excluding taxes) on SNN-UK routes, including SNN-LGW, LTN and STN, in conjunction with announcing SNN as its 12th European base. http://www.ryanair.com/site/EN/news.php?yr=05&month=apr&story=pro-en-.

behaviour on Ryanair's side[648]. In its Response to the Statement of Objections, Ryanair notes that compared to the situation before easyJet's entry, Ryanair's total number of frequencies on that market was still higher after the competitor exited[649]. This, however, does not imply that its previous behaviour was not aimed at deterring easyJet's entry. It may also be the result of a general increase in demand on that market over that period of time.

Graph 4: Entry effects Shannon - London



Gatwick-Knock (LGW-NOC)

647. EasyJet announced that it would start flying on the Gatwick-Knock route on 23 September 2004 and began operations on 28[t]January 2005. easyJet operated one daily frequency on that route until the end of Summer 2006. Ryanair announced, according to the Irish Department of Transport (hereinafter "DOT"), in November 2004 that it would enter the route with 1 daily frequency in January 2005, in addition to its existing daily Stansted-Knock operation. Ryanair's service started on 19 January 2005, 10 days before easyJet's operations on the route commenced.

---

648 This is also confirmed by a number of Ryanair's internal documents: Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]*, page 3.3 (folio no. 629), stating with regard to routes from Cork/Shannon/Knock to London: "[...]*"; Board Paper No 8 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629), page 8.2: "[...]*"; Board Paper No 5 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): "[...]*"; Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): [...]*.

649 Ryanair also mentions that Aer Lingus' fare reductions were equally "aggressive" on the Shannon-Heathrow route in response to easyJet's entrance. While this could not be verified, a similar behaviour by Aer Lingus would only strengthen the concern that the merged entity's reputation would constitute an entry barrier.

648. Following Ryanair's response, in July 2006 easyJet announced that it would withdraw from this route and it stopped operations on 1 October 2005[650]. In July 2006 also Ryanair announced that it would withdraw its flights on the Gatwick-Knock route. It switched its capacity to Knock-Luton.

649. Ryanair points out that on this route post-exit its frequency did not fall while fares were around [35-45]*% lower compared to the pre-entry period. However, as pointed out for the other routes above, this does not put into question that Ryanair's behaviour was a strategic move to force its competitor to leave the route[651]. As regards prices, one has to take into account the seasonality effect, as explained with regard to Graph 3 above, since the post-exit period falls in the Winter term where on these routes demand is lower, and as a result prices tend to be lower as well.

7.8.5.2.The example of MyTravelLite's entry attempt

Dublin - Birmingham (DUB-BHX)

650. MyTravelLite started operating on the Dublin-Birmingham route on 30 September 2003 with 2 daily frequencies[652]. Prior to this new entry, Ryanair operated, according to the DOT, approximately 40–45 weekly frequencies. MyTravelLite announced that it would be operating fares starting at €1.99 (excluding taxes). According to the DOT, Ryanair reduced its fare to down to €0.99 and increased its daily frequencies from three to five daily flights corresponding to 70 monthly frequencies. This strong capacity increase subsequent entry, which was accompanied by the sharp drop in average prices, again confirms a strategic behaviour by Ryanair.

651. However, Ryanair points out in its response to the Statement of Objections (p.45) further developments were then determined by a dispute between Ryanair and Birmingham airport. Following a strong price increase by the latter, in April 2004 Ryanair switched its capacity from Birmingham to East Midland's airport. The reduction in capacity in Birmingham was therefore not due to Ryanair abandoning its prior strategy with regard to MyTravelLite but driven by external events (the dispute with the airport). However, given the proximity between Birmingham and East Midland airports, the competitive constraint exerted on MyTravelLite remained. On 19 July 2004 MyTravelLite announced its exit from the route as of 31 October 2004.

652. Since MyTravelLite's exit, there have been no further attempts of entry on this route[653].

---

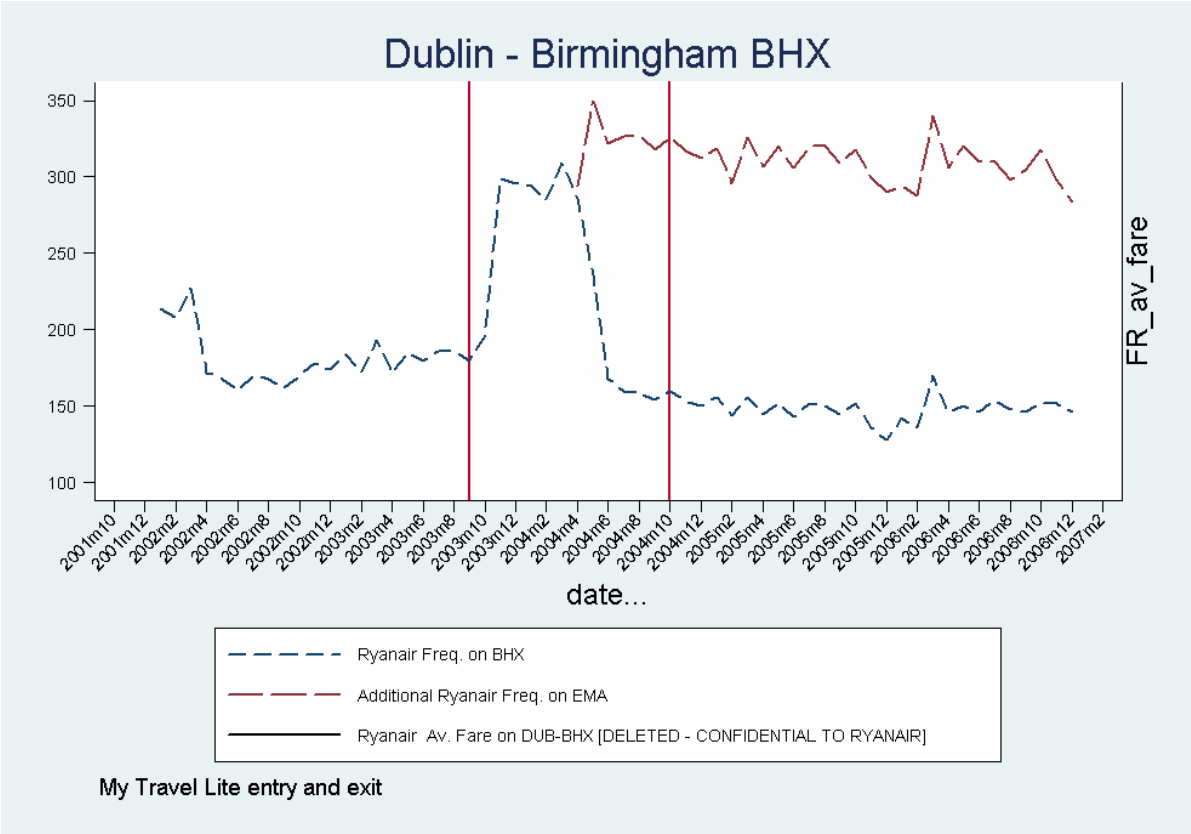
650 Submission of the DoT of 7 February 2007, p. 29, folio no. 6230. In its Response to the Statement of Objections, Ryanair claims that easyJet made its announcement to withdraw from this route only in September 2006.

651 This is also confirmed by a number of Ryanair's internal documents: Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]*, page 3.3 (folio no. 629), stating with regard to routes from Cork/Shannon/Knock to London: "[...]*"; Board Paper No 8 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629), page 8.2: "[...]*"; Board Paper No 5 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): "[...]*"; Board Paper No 3 for the Board Meeting of Ryanair Holding plc on [...]* (folio no. 629): [...]*.

652 See for a confirmation of the dates related to MyTravelLite's Irish operations e-mail sent by MyTravel on 15 May 2007, folio no. 9283.

653 See also DOT, submission of 24.11.2006, "*New entry to compete with Ryanair on any route post-merger is unlikely*", folio no. 2333, page 2.

Graph 5: Entry effects Dublin - Birmingham



7.8.5.3.The example of GOFly's entry attempt

Dublin-Glasgow (DUB-GLA, DUB-PIK)

653. Ryanair entered the Dublin-Glasgow route in May 1994 to compete with Aer Lingus. According to easyJet, which took over GO Fly on 1st August 2002[654], Go Fly started offering flights on this route on 19 September 2001, operating 38 flights per week. GoFly's starting fare on the route was £35 return (including taxes and charges) with maximum fare set at £140 return (including taxes and charges). As can be seen on the graph below, prior to entry, Ryanair's prices had gone up sharply. Subsequent to entry, Ryanair then increased the number of flights on this route[655] which led to a sharp decrease in its average price. At that time, the CEO of Ryanair announced its intention to cut prices to £1.50 per seat and extend the offer into the winter period if GoFly lowered its prices further[656].

654. On 21 March 2002 GoFly stopped its services between Dublin and Glasgow. The DOT quotes from a speech of the former Chief Executive of GoFly Cassani, who pointed out that "*the result is that no one else will come onto the Dublin route, and Irish consumers will have no one but Ryanair for the rest of their lives [...]. Why go up against the biggest and nastiest elephant in the china shop? [...] If anyone starts an airline out of Dublin, all I*

654 See for a confirmation of the dates related to GOFly's Irish operations e-mail sent by easyJet on 16 May 2007, folio no. 9859.

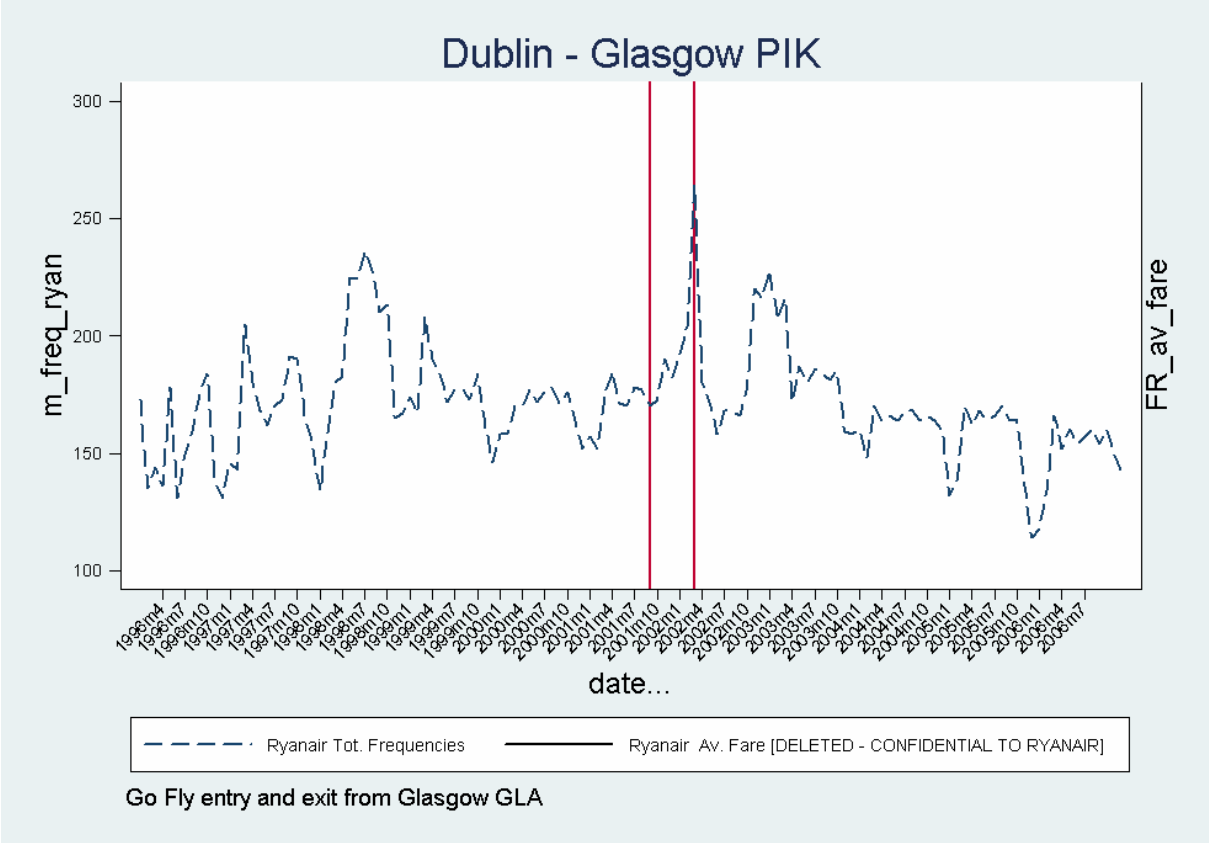
655 According to the DOT, by adding extra flights on the weekend. DOT, submission of 7.2.2007, folio no. 6230,page 10.

656 See http://archives.tcm.ie/irishexaminer/2001/07/14/story7930.asp.

would say to them is: make sure you have a lot of money. It would be commercial suicide [to go against Ryanair] [657]"

655. Indeed, Ryanair's increase in capacity, resulting in a price decrease, subsequent to GoFly's entry in this example appears, in the absence f any other convincing explanation, to follow the same pattern of a "retaliation" strategy as in the examples above.

Graph 6: Entry effects Dublin - Glasgow



Dublin-Edinburgh (DUB-EDI)

656. For several years Ryanair had been (unsuccessfully) seeking discounts from BAA Edinburgh Airport[658]. GoFly announced a new route from Edinburgh to Dublin on 4 July 2001 and started operations on 19 September 2001 on 4 July 2001. Following an agreement with Edinburgh Airport eight days later on 12 July 2001, Ryanair also announced to operate on the same route with four daily flights from 30 August 2001[659]. Go Fly's offered fares on this route (including taxes) ranging from £17,50 to £80. For the first 29 days of September 2001, Ryanair's return fare on the route was £29.99 for 70% of

657 Quote taken from the Barbara Cassani's monography "Go - an airline adventure", London 2003, p. 260; In its Response to the Statement of Objections, Ryanair points out that Ms Cassani had also acknowledged that Ryanair's cost were substantially lower than GoFly's. As regards this episode see also the bulletin from the Strategic Aviation Special Interest Group7/2001, page 5: *"Ryanair has announced that it is to add more capacity on its routes from Dublin to Edinburgh and to Glasgow to rival its competitor GO, a bid which will undoubtedly fuel a price war with GO. Ryanair will be adding 20% capacity on the Dublin-Edinburgh route and will be charging 37p each way on the route excluding taxes during its period of special fare promotions"*, see http://www.sasig.org/pdfs/bullet2001/July01.pdf..

658 See Ryanair's Response to the Statement of Objections, p. 259.

659 See Ryanair's Response to the Statement of Objections, p. 259.

flights and a maximum of £99.99 for the remaining flights on this route (including taxes)[660]. According to the DOT[661], Go Fly then lowered its prices to £10 (including tax) for a single flight and Ryanair, for a certain period of time in 2001, responded by offering single flights for £5 (including tax) on the Dublin-Edinburgh route.

657. Go Fly stopped the services between Dublin and Edinburgh on 21 March 2002. Since Go Fly's exit, there have been no new entrants on this route. Ryanair maintained its 4 daily frequencies through 2002 and 2003.Ryanair reduced its capacity on that market in April 2004. According to Ryanair, this was in reaction to a price increase by Edinburgh Airport. The Commission, however, notes that the ongoing dispute on prices with Edinburgh Airport did not prevent Ryanair to respond to GoFly's entry on the Dublin - Edinburgh route, which led to a failed entry attempt on a route to/from Ireland. It is therefore unlikely that the issue of the airport charges were the only reasons for Ryanair's withdrawal after the competitor had exited.

7.8.5.4. Conclusion

658. The analysis of previous examples of entry supports the view expressed by competitors that Ryanair systematically reduces prices and increases frequencies when competitors enter the Irish market.

659. While price reductions are an expected reaction to entry, a capacity increase, if not justified by other events, can only be explained by the aim to oust the competitor. Several examples mentioned above show that Ryanair has applied such strategic behaviour against entry in the past. This has been accompanied by public statements of Ryanair according to which Ryanair would deter competitors. Building up a reputation of deterring entry creates a factual barrier to enter for new competitors as set out in the Horizontal Merger Guidelines.

660. It would be significantly easier for an even stronger Ryanair/Aer Lingus entity to react aggressively on entry *after* the proposed merger, since the merged entity would be the dominant operator on literally all routes from and to Ireland. Already today, Ryanair and Aer Lingus offer a higher number of frequencies than their competitors on all of their 35 overlap routes except for one[662]. The fact that the merged entity would operate only large 190-seat aircraft and have, a large number of seats "to play with[663]" (i.e. to offer very low fares), and that the merged entity will have bases not only in Ireland, but at more than 15 other destinations would give the merged entity a high degree of flexibility to react swiftly to any attempt of entry on the Irish market.

7.8.6. Competitors consider other markets more attractive than the small Irish market

661. As set out above, the likelihood of entry is closely linked to the potential competitor's

---

660 http://rte.ie/business/2001/0712/go.html

661 See DOT, submission of 24.11.2007, "*New entry to compete with Ryanair on any route post-merger is unlikely*", folio no. 2333, page 4.

662 On the Dublin-Paris route, CityJet (flying with small aircraft) has more frequencies, but still only 20% of the passengers, while the Merging Parties hold 80%. See in more detail below.

663 See interview with Aer Arann of 13.2.2007, folio no. 6170.

expectations with respect to the profitability of the route which he might open[664].

662. Any decision for an airline to enter a specific route means that an aircraft needs to be redeployed from another route or that an additional aircraft is used which could otherwise be used for another route. Hence, any decision to open a route from or to Ireland entails opportunity costs as discussed above[665] which the potential entrants must weigh against the expected benefits of an entry to a route from or to Ireland.

663. The Commission's market investigation has shown that the Irish market is not considered by many competitors as a particularly attractive market and that many potential competitors the Commission interviewed indicated that they would rather seek to open new routes to other destinations than routes to Ireland[666].

664. First, entering this market would require significantly higher marketing costs than entry on other markets where there are no two strong low-cost carriers with a strong base[667].

665. Second, the Irish market is regarded as a relatively *small market*, with only four million inhabitants, which is not even half of the population of the greater London area[668]. The size of the market and the turnover to be achieved on this island with routes from and to Dublin and the other two potential airports is therefore limited.

666. Thirdly, when considering different potential markets for expansion plans, the small Irish market is in general not expected to be the fastest growing and most profitable market in the future by many competitors at least not on the main routes between Ireland and the UK. Many competitors have expressed a preference to start operations in regions where they are able to reach more potential customers with their flights and which are growing faster than the Irish market (e.g. Eastern Europe or Scandinavia[669]).

667. Fourth, the specific geographic situation of Ireland does not favour new entry but rather discourages it. Indeed, Ireland is not located centrally in Europe, but at the far North-West border of the continent, therefore not ideally placed for many central European airlines. More importantly, while bases in larger and more centrally located agglomerations allow connecting more traffic to other shorter and longer routes in any direction from this base, Dublin is not a "pass-by" destination[670] but more remote and allows only for short flights to the UK[671]. Further, many important routes out of Ireland such as the London routes, can

---

664 Horizontal Merger Guidelines, paragraph 69: "*For entry to be likely, it must be sufficiently profitable taking into account the price effects of injecting additional output into the market and the potential responses of the incumbents.*"

665 See e.g. interview with easyJet of 15.2.2007, folio no. 6170.

666 See minutes of interviews with competitors, folio no. 6170 and 8091.

667 See Section 7.8.4.

668 See interview with CityJet of 21.2.2007, folio no. 6170: "[Ireland is] "a drop in the Ocean"; interview with easyJet of 15.2.2007

669 See e.g. interview with Air Berlin of 13.2.2007, folio no. 6170: *"There s currently a number of better possible routes in Europe for Air Berlin to enter with better yield and profit prospects than Irish routes, for example routes to Russia or Scandinavia"*

670 See e.g. interview with easyJet of 15.2.2007, folio no. 6170.

671 See e.g. interview with Air Berlin of 13.2.2007, folio no. 6170: *"[Air Berlin has a] strategy to focus its operations to regions with a large catchment area, which allows to connect traffic from other points to this destination."*

be considered mature.

668. Fifth, when it comes to serving Dublin, it should be noted that the incentives of a network carrier operating a route between Dublin and its hub are different from those of a point-to-point carrier. The network carriers use these operations mainly to feed their hub and the constraints that they exercise on point-to-point carriers may as a result be more limited. The Commission's market investigation has also shown[672] that a number of such carriers do not see expansion or entry into individual routes to/from Ireland as part of other commercial strategy.

669. Finally, in particular for low-frills operators Ireland has the disadvantage that is has no "secondary" airport in the Dublin area but that all traffic to the most important agglomeration of the country must go through the main "primary" airport in Dublin. As recognised by Ryanair, "there is no secondary airport to Dublin. Dublin is the gateway to Ireland…"[673]. This does not only result in relatively higher airport charges. It leads also to the effect that any potential new entrant would have to compete directly with Ryanair and Aer Lingus at their home airport where both companies have based an important number of large aircraft. Airport congestion constitutes an important additional barrier to entry.

7.8.7. Airport congestion is an additional barrier to entry

670. Another barrier for potential entrants on routes from or to Dublin identified by the Commission concerns the airport capacity available at both ends of the routes. In order to start operations on a given route, potential entrants must be able to obtain sufficient terminal capacity (departure desks, queuing areas etc.), stand capacity (ideally with so-called "contact stands" which are directly connected to the terminals[674]) and, most importantly in practice, runway capacity. Airlines can request so-called "slots[675]", from the airport which allow the airline to use the runway for a specific "movement", i.e. a departure or arrival of their aircraft (landing and take-off slots). On many airports, the demand for such slots exceeds their availability, since the number of possible "movements" (arrivals or departures) at an airport is limited, notably because of the limited capacity of the runways and the requirement of security margins between the individual movements. The extent of slot scarcity depends on the congestion level of an airport. The attribution of slots is regulated by Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports[676] (the "Slot Regulation"). According to the Slot Regulation, different levels of congestion can be distinguished which require different rules for slot allocation. At airports which suffer from limited actual or potential congestion at some periods of the day, slots are distributed according to the rules for "schedules facilitated airports", which provide for a system of voluntary cooperation between air carriers in which a "schedules facilitator" is appointed in order to facilitate the

---

672 See replies to Question 38 of the Questionnaire to Competitors of 06.11.2006.

673 Notification, page 104.

674 Passengers can also be transported to their aircraft by bus; however this causes an additional delay and is not appreciated in particular by airlines focussing on business passengers, see e.g. interview with AerArann of 13.2.2007, folio no. 6170, and interview with CityJet (Air France)of 21.2.2007, folio no. 6170.

675 Also the term "Air Transport Movements" ("ATMs") is used, see e.g. Constitution of the Dublin Airport Coordination Committee.

676 OJ L 14, 22.1.1993, p. 1–6, as last amended by Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (OJ L 138, 30.4.2004, p. 50–60).

operations of air carriers, i.e. to allocate slots. For airports suffering from a high level of congestion, the Slot Regulation provides the status of a so-called "coordinated airport". According to the rules of the Slot Regulation, slots are then not distributed on a voluntary basis with the help of a scheduled facilitator, but by a slot co-ordinator.

671. The Commission has found in previous cases that the limited availability of slots can be an important barrier to enter for potential competitors[677]. Without access to a sufficient number of slots at commercially attractive times throughout the day, a new entrant is often unable to operate a regular service on a sufficient scale, and as a result, would not be able to provide an effective competitive constraint on the merged entity. Landing and take off slots are therefore critical inputs for any entrant wishing to operate a new service or expanding an existing service to or from Ireland. The Commission has analysed whether and to what extent airport congestion plays a role as an entry barrier in the present case.

7.8.7.1. Capacity constraints at Dublin Airport

672. The Commission's market investigation has shown that with respect to Dublin Airport, capacity issues were raised by potential competitors[678] and other third parties[679] mainly with regard to the availability of runway capacity, i.e. the availability of sufficient slots, of (contact-)stands and with regard to terminal throughput capacity.

673. Ryanair concedes that there may be some congestion problems for short periods in the morning, but takes the view that Dublin Airport can in general not be regarded as congested. In its view, at Dublin Airport there is still sufficient room for additional frequencies and hence for entry. As concerns runway capacity, Ryanair argues that congestion problems would only occur for a very short period of time (15 minutes[680]) in the morning. The existing problems were mainly the result of bad management of the airport. Not only do the relevant regulators, notably the Dublin Airport Authority (DAA) use too conservative standards[681]; the existing runways at Dublin Airport could also be used more effectively, notably by using an existing smaller runway[682] for general aviation and for all smaller aircraft[683].

674. As concerns congestion at the level of the terminal, Ryanair stressed that the congestion problems in the arrival area which led to security problems in particular last summer, cannot be expected to reoccur, because customers increasingly use the electronic check-in, and the 24 new desks in the newly created "Area 14" would absorb a large number of customers.

675. Even if Dublin Airport were congested, Ryanair submits that this would not constitute a relevant entry barrier, because most of the overlap routes concern holiday/leisure routes,

---

677 See e.g. cases M.3940 - Lufthansa/Eurowings, M.3770 -Lufthansa/Swiss; M.3280 - Air France/KLM.

678 See e.g. replies to questions 35 and 42 of the questionnaire to competitors of 6.11.2007.

679 See replies to Question 7, Questionnaire to airports, 09.11.2006; see also the statements by third parties summarised in the report "Dublin Airport Capacity Review" of 6.12.2006, prepared by Jacobs Consultancy for the Irish Commission for Aviation Regulation (the "Jacobs Report").

680 See RBB Paper of 20.2.2007, page 13.

681 E.g. a criterion for the definition of a "delay" of only 8 minutes, see RBB Paper of 20.2.2007, page 12.

682 Runway 11/29 is too short for Boeing or Airbus aircraft. It can only accommodate regional aircraft or planes designed specifically for short runway operations such as the BAe146/Avro RJ 85- 100.

683 See minutes of the meeting with Ryanair at Dublin of 6.2.2007; RBB Paper of 20.2.2007, page 13.

and customers on these routes had in general no preference for a specific departure time. Other, more time-sensitive passengers could book the two legs of their journey separately with different airlines, should one airline not be able to offer the preferred departure/arrival times.

676. The Commission's market investigation has, however, confirmed that potential entrants are deterred by congestion problems at Dublin Airport which are not likely to disappear in the near future.

The decisions by the CAR of February 2007

677. It should be noted that the competent Regulator for the Irish Airport, the Irish Commission for Aviation Regulation (CAR) has commissioned a detailed study into the current and future capacity at Dublin Airport (the "Jacobs Report") which was carried out by an independent consultant firm. The purpose of the Jacobs Report was to inform the Commission for Aviation Regulation on the appropriate scheduling status at Dublin Airport, in accordance with Article 3(3) of the Slot Regulation. Taking into account the results of the study and the comments of the main affected third parties, the CAR has, by way of two decisions of 12 and 13 February 2007[684], designated Dublin Airport as a *"coordinated" airport* for the summer and winter 2007 scheduling seasons in accordance with Article 3 of the Slot Regulation[685].

678. In the decision, the CAR explicitly stated the following:

"The Commission has accepted the conclusion of the Report that peak demand at Dublin Airport in Summer [and Winter] 2007 will be greater than the airport's capacity, that consequently the airport will suffer "significant delays" and that such problems cannot be resolved in the short term[686]."

679. As concerns Ryanair's doubts as to the appropriateness of this decision and of the way the Dublin Airport is organised, it should be stressed that it is not for the Commission to take a decision on how to organise best the traffic at Dublin Airport. The task of the Commission in the context of this merger procedure is to assess whether the conditions as found by competitors are likely to lead to new entry.

680. The Commission notes that the CAR's view that the Irish Airport is indeed congested is shared by the current schedule facilitator ACL as well as by the DAA[687] and the Irish Government[688], i.e. the competent authorities for the management of Dublin Airport. The above cited decisions, which are based on detailed studies and the views of all main stakeholders at Dublin Airport, contain therefore strong evidence for the existence of congestion problems in Dublin.

---

684 It should be noted that the CAR had had already designated Dublin Airport as a coordinated airport in April 2005 with effect from summer 2006. This decision, however, was the subject of a judicial review by Ryanair and was declared invalid in first instance; the procedure is still pending.

685 See http://www.aviationreg.ie/images/ContentBuilder/2007-02-13%20cp3%202007%20final.pdf.

686 See press statement of the CAR of 12.2.2007: http://www.aviationreg.ie/images/ContentBuilder/2007-02-12%20press%20release%20summer%2007%20designation%20of%20dublin%20airport.pdf.

687 See Jacob's Report.

688 See submission of Irish DOT of 2.2.2007 ("Impact of Ryanair's dominance at Dublin Airport"), folio no. 6444.

681. The fact that a previous decision of the CAR is still subject to court proceedings has no direct impact on the present decision, which is legally valid and reflects the view of the public regulator.

682. The CAR decisions are in line with the findings of the Commission's investigation with regard to airport congestion at Dublin Airport.

Runway congestion

683. As concerns the problem of runway congestion, the CAR has analysed in detail alternative suggestions of to increase the existing capacity (e.g. reducing the aircraft separation rules or the construction of a new taxiway). These proposals were found to be inappropriate to solve the congestions problems for the different airport users, partly for safety reasons (e.g. changing separation rules), partly because they would not provide a timely and effective solution (new taxiways[689]). No third other party than Ryanair has invoked that a changed use of the small runway 11/29 (putting all small aircraft traffic on this runway) would be an effective means against the congestion problem. This is in line with the Commission's findings. Indeed the DAA has informed the Commission that the small runway was already regularly used by smaller aircraft, which was confirmed also by affected competitors[690].

684. The CAR found that congestion problems were particularly to be expected for the hours between 05:00h and 08:00, without having to decide on specific congestion times. The Jacobs Report, one of the main sources of the CAR's decision on runway capacity[691], come to the conclusion that delays are to be expected also between 21:00 and 22:00[692]. The CAR decision concludes that it can be expected that during the (morning) peak hours "out of every 10 flights during this peak period, one will experience delays upwards of 32-45 minutes (...)".

685. These findings of the competent regulator are in itself evidence to show that Dublin Airport can be considered as congested during peak hours. However, also the results of the replies from airports and competitors to the Commission's market investigation show clearly that competitors are well aware of congestion problems at Dublin airport and regard that congestion problem as an entry barrier[693].

686. Although it may be expected that a new runway in Dublin, which is planned to open in 2011 or 2012, will increase the limited runway capacity situation at peak times in Dublin, this will not be sufficient to lead to timely entry of potential competitors which would be necessary to remedy the identified competition problems (even presuming that these

---

689 CAR decision of 12.2.2007, pages 21 et seq.; Jacobs Report, page 62.

690 See interview with Aer Arann of 13.2.2007, folio no. 6170.

691 The CAR refers also to a study carried out by the air traffic consultant NATS for the DAA.

692 Jacobs Report, page 58.

693 6 of 25 competitors responding to the Commission's market investigation in relation to this issue did not mention "congestion problems" or "missing airport capacity at Dublin" when they were asked to describe potential barriers to entry. Of these, only two of these 6 operators actually fly to Dublin. See also interview with CityJet, folio no. 6170: "*Dublin Airport is "completely congested" according to CityJet between 6am-9am and between 4pm- 7pm. CityJet does not consider the second smaller runway to be an alternative. Also due to the current capacity situation and lack of fair regulation at the Dublin Airport, CityJet recently announced its expansion out of London City airport to other cities in Europe (such as Madrid, Milan Linate, Geneva, Zurich, Nice, Belfast City). Operating these services from DUB would not be possible due to capacity situation and insufficient access to facilities such as contact stands*."

constraints were the only barrier to entry).

687. The maximum number of departing runway movements (take offs) at Dublin Airport is currently 25 per hour during the morning peak period. This has increased to a maximum of 31 take offs per hour from the start of the Summer 2007 IATA scheduling season. At certain peak times however, notably during the morning, ACL indicates that there remains runway congestion. Moreover, comparing it with its equivalent at the London Gatwick and Stansted airports, ACL indicates that a maximum of 31 take off movements is a relatively high number. Therefore, no other than marginal increases in the maximum number of runway movements can be expected.

Insufficient stand capacity

688. As concerns the problem of limited availability of stands, the CAR concludes (citing the Jacobs Report): "the number of stands available in Winter 2007 will not meet the peak demand requirements". In addition, the decision states that "between 40 and 50% of stands are likely to be remote". The Jacobs Report refers also to another study on stand availability which concluded that there would be a shortfall in stand availability between 2007 and 2010[694].

689. This is also in line with the Commission's findings, since in particular smaller competitors have mentioned that they would also face significant difficulties to obtain appropriate (contact-)stand which is linked to the airport building and that not being connected to the terminal is a significant disadvantage vis-à-vis Ryanair and Aer Lingus[695].

Congestion at terminal level

690. As concerns the existence of congestion problems at the terminal level, the CAR decisions state (again based on the Jacobs Report) that *"the departures concourse at Dublin Airport is significantly congested. In the Summer 2006 peak morning period of 3 a.m. to 8 a.m., (...), the capacity of the departures concourse was reached for 82% of the peak period."* The Jacobs Report expects that also in 2007 and 2008 congestion problems at security and immigration in Summer 2007. However, since the Jacobs report and the CAR expect that the capacity enhancements proposed by the DAA will mitigate these problems, and since competitors mainly refer to runway and stand capacity problems, the Commission concludes that congestion problems at the terminal can be disregarded as potential entry barriers at Dublin for the purpose of this decision.

Conclusion

691. In the light of the foregoing the Commission therefore considers that the congestion at Dublin Airport at certain peak times is likely to deter entry on routes from or to Dublin.

7.8.7.2. Constraints at other airports

692. As regards the capacity situation at other airports on the overlap routes, the following airports are "coordinated airports" within the meaning of the Slot Regulation: London-Heathrow, London-Gatwick, London-Stansted, Manchester, Paris CDG, Lyon St Exupéry,

---

694 Jacobs report, page 55.

695 See minutes from interviews with Aer Arann and CityJet, folio no. 6170.

Frankfurt, Amsterdam, Milan-Linate, Milan-Malpensa, Rome-Fiumicino, Rome-Ciampino, Madrid, Barcelona, Vienna and Brussels-Zaventem. As will be set out in detail below[696], the congestion problems at many of these airports are even more serious than in Ireland, since some of these airports (such as London Heathrow /Gatwick or Frankfurt) are congested throughout the whole day. Others only have congestion issues parts of the day.

693. Secondary airports are generally not congested. However, the fact that customers, in particular low-frills customers, are in most cases ready to substitute primary airports by secondary airports, does not, contrary to what Ryanair claims, imply that airlines could easily substitute congested primary airports by secondary airports[697]. Although many of these co-ordinated airports are in principle substitutable from a demand-side point of view with secondary airports, the possibility to fly to less congested airports is not an alternative for many airlines, in particular for those airlines whose service or operating model does not allow secondary airports to be used.

694. The level of congestion at the end of each analysed route will be discussed individually on a case by case basis in the context of the analysis of the competitive situation on the respective routes.

7.8.7.3. Airport congestion plays a role as a deterrent factor for potential entrants in the present case

695. As concerns Ryanair's argument that airport congestion play a more limited role than in other cases, since many of the routes relate to holiday/leisure routes, the Commission agrees with Ryanair that leisure customers are indeed more likely to accept departure/arrival times outside the peak-hours than time-sensitive business passengers.

696. The Commission also shares Ryanair's view that Dublin Airport is not congested throughout the whole day[698] and that there are usually no congestion problems outside the peak-hours.

697. However, the fact that it is possible for potential competitors to enter routes outside the peak hours does not exclude that operating outside the peak-hours might give an economic disadvantage to potential entrants, which might still deter them from entry to and preventing them from competing head-to-head with Aer Lingus and Ryanair.

698. This is particularly true for those routes, on which Ryanair and Aer Lingus operate already with a high number of frequencies, such as many routes between Ireland and the UK. The Commission's market investigation has shown that offering a wide range of slots, including early morning and late evening slots, allows Ryanair and Aer Lingus to attract a large number of time-sensitive passengers/business customers on these flights[699]. A competitor who would not be able to offer flights during peak hours, could not meet the demand of these customers and would therefore automatically attract less passengers, to the detriment of his profitability. Since many of the potential competitors are very much focused on profitable time-sensitive passengers for which they offer specific ticket classes, these carriers cannot be expected to compete successfully against Ryanair and Aer Lingus

---

696 See Section 7.9.

697 See Ryanair's Response to the Statement of Objections, page 249.

698 See e.g. replies to Question 5 of the Questionnaire to Airports of 09.11.2006.

699 The estimated percentage of business/time-sensitive passengers is between 20% and 30% on these routes.

without having certainty to obtain sufficient early-morning and late-evening slots at both sides of the routes. The fact that potential competitors, in particular those operating smaller aircraft, are aware that they will not even obtain a contact stand but will be forced to transfer their passengers via buses to remote stands (while the large Ryanair and Aer Lingus aircraft have better chances of obtaining a contact stand), is a further disincentive for all potential competitors on such routes.

699. On "leisure" routes, time-sensitive passengers are less relevant for competitors who want to enter a new route. Passengers flying on "leisure" routes are, in general, more willing to accept flight times outside the peak-hours. At the same time, the ability to offer early morning and evening slots also for these flights is not irrelevant, since it allows passengers to use the whole day of their holiday or short visit. The ability to offer early morning slots can therefore increase the attractiveness of a competitor's offer.

700. The risk of not being able to obtain slots during peak times is also a general problem that applies to all routes, regardless of whether UK-Ireland or continental "leisure" routes. This is because airlines (in particular low-frills airlines) aim at in general 3 to 4 turnarounds for an aircraft per day and try to start their operation as early as possible (i.e. during the peak-hours) in order to maximise their aircraft utilisation. As set out above, an entrant who wanted to successfully compete with Aer Lingus and Ryanair would ideally operate from a base in Dublin. Such an entrant, however, would expect to be able to use a large number of early-morning and late evening slots in order to maximise his aircraft utilisation. The congestion at Dublin discourages therefore airlines from establishing a base at Dublin.

7.8.8. The merged entity's strong position at Dublin Airport might hinder further expansion by competitors

701. The merger would also have an effect on the use of Dublin Airport, since it would combine the two airlines which are by far the largest users of the airport. Ryanair's acquisition of Aer Lingus would create a customer who would account for the largest part of the traffic (around 70% of all passengers), while the second largest user (Aer Arann) would not carry more than 5% of all passengers at Dublin and other competitors would be even more fragmented. In line with the Horizontal Merger Guidelines, the Commission has therefore assessed whether the merged entity could us its potential market power at Dublin Airport to hinder entry or expansion by competitors[700].

702. A number of third parties have raised concerns that the merged Ryanair/Aer Lingus' paramount position as a customer in Dublin could be used to further increase the existing barriers to entry at Dublin[701]. Some competitors expressed concerns that the merged entity could try to exercise its influence as an important customer to obtain preferential *airport*

---

700 See recital 36 of the Horizontal Merger Guidelines
[Merged entity able to hinder expansion by competitors]
"Some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. [...]"

701 See e.g. answers to question 49 of the questionnaire to competitors sent on 6.11.2006; see also interview with Aer Arann of 13.2.2007, folio no. 6170; interview with CityJet (Air France) of 21.2.2007, folio no. 6170; interview with Jet2.com of 1.2.2007, folio no. 6170; interview with Air Berlin of 13.2.2007, folio no. 6170; see also the Irish DoT's submission on "Impact of Ryanair's Dominance at Dublin Airport on the Development of the Airport and on Competition" of 2.2.2007, folio no. 6444.

charges, notably at Dublin Airport[702]. Indeed, Ryanair has been able to negotiate such preferential conditions at other airports[703]. The internal documents of Ryanair confirm that [...]*[704] Further, the internal documents of Ryanair also show that [...]*[705]. It should be noted that the airport charges are regulated as a price cap and thus the price regulation does not exclude possible discounts. In this context, a unique position of the merged entity could thus play an important role in the negotiations with Dublin Airport.

703. Competitors were also complaining about an increased influence of Ryanair on the allocation of the *existing airport facilities*, notably the existing contact stands, which are particularly important for business customer oriented airlines[706]. Entry could be deterred e.g. should the merged entity use its position to get easier access to preferential contact stands close to the terminal, since this would relegate smaller operators to distant spots on the tarmac, accessible only by bus, whereas Ryanair could park their aircraft next to the terminal building and use contact stands or air bridges[707]. In this regard it is noted that it is important for low-frills airlines to be close to the gates to facilitate quick turn-around times.

704. Many third parties also claimed that the merged entity's increased position might also allow them to block further expansion plans at Dublin Airport, thereby maintaining the existing congestion problems to the detriment of competitors who wish to enter on routes from and to Dublin[708]. In particular, the merged entity could use its increased buyer power to pressure the airport authority not to proceed with the development of a new terminal and a new runway.

705. Ryanair claims not to have any power to influence the airport charges or expansion plans

---

702 Answers to question 49 of the questionnaire to competitors sent on 6.11.2006

703 See in this context also interview with Aer Arann of 13.2.2007, folio no. 6170.

704 See Board Paper 1 for the Board Meeting of Ryanair Holdings plc on [...]*, page 1.4-1.5 (folio no. 629).

705 See Board Paper 1 for the Board Meeting of Ryanair Holdings plc on [...]* (folio no. 629), page 1.5. stating as follows: "[...]*" See also Board Paper 1 for the Board Meeting of Ryanair Holdings plc on [...]*, page 1.7 (folio no. 629).

706 See e.g. interviews with Aer Arann of 13.2.2007, folio no. 6170, or with CityJet of 21.2.2007, folio no. 6170. CityJet stated in this respect: *"Taking into account the focus of CityJet on high-yield business passengers who expect for the higher fares a certain level of services and comfort, this inconvenience for the passengers is particularly harmful for CityJet."*

707 See recital 71 of the Horizontal Merger Guidelines,
"Barriers to entry can take various forms:
(a) […]
(b) The incumbents may also enjoy technical advantages, such as preferential access to essential facilities, […] which make it difficult for any firm to compete successfully."

708 See answers to question 49 of the questionnaire to competitors sent on 6.11.2006; the Irish DoT's submission of 2.2.2007, folio no. 6444; see also interviews with Jet2.com of 1.2.2007, folio no. 6170: "…the merged entity's strong position on the Dublin Airport could also give rise to concerns, given the influence on flight times, landing rights and influence on decisions on the airport in general.";
interview with Aer Arann of 13.2.2007, folio no. 6170: "Ryanair/Aer Lingus could use its dominance as an airport customer at the Irish airports to make entry for competitors even more difficult (…)";
interview with Air Berlin, folio no. 6170: "[Air Berlin] expressed concerns that the merged entity could use its strength as a customer at Irish airports to cause these airports to discriminate other competitors as concerns airport charges, i.e. more favourable fees than its competitors."; see also interview with CityJet (Aer France) of 21.2.2007. .
interview with CityJet (Air France)of 21 February 2007, folio no. 6170: "…allowing them even more to dominate Dublin Airport policy".

of the Dublin Airport Authority. It notably referred to the example of Stansted airport, where Ryanair was not able to influence the expansion plans of the airport, although Ryanair strongly opposed such plans[709]. It has also provided evidence of the expansion plans of Dublin Airport.

706. The Commission's market investigation has indicated that the merged entity's strong position as a customer at Dublin could be used to exercise influence on decisions concerning the airport infrastructure which could further deter entry or expansion by competitors. Although the merger will not give Ryanair new legal rights to directly veto decisions on charges, facilities or expansion, it is noted that the regulatory framework obliges the CAR and the DAA to take the view of its then by far largest customer into account[710]. After the merger, the merged entity will be more than 15 times larger than its next competitor in Dublin. This will give the new company not only an increased factual influence in the decision-making process. It will also have more legal possibilities to influence the decision making process in its own interest. For instance, the merged entity's weight in the Dublin Airport Coordination Committee (DACC) will increase significantly after the merger. According to the constitution of the DACC, a carrier operating more than 56% of so-called "air transport movements[711]" would hold the majority of votes. This will be the case for the merged entity post merger. The merger would therefore lead to a situation in which one company would hold the majority of votes in the DACC, with only a small and fragmented number of other airlines present in the DACC. While it is true that the DACC is not itself the airport regulator, it has nevertheless an important advisory function in the process with regard to defining the capacity and service requirements at Dublin Airport[712].

707. The fear of Ryanair's competitors[713] that the merged entity could use its majority within the DACC and its unique strong position at Dublin Airport to influence the regulator to shape the airport according to Ryanair's requirements may therefore be not unfounded. Indeed, while Ryanair prefers only very basic airport services for its low-frills service model, most potential entrants follow a different business model, for which they prefer a higher service level (e.g. lounges, contact stands, modern buildings etc.). This conflict can be illustrated by the example of the current legal dispute over the expansion plans of the DAA at Dublin (concerning the new "Terminal 2" and a new runway). While airlines representing the majority of customers at Dublin are in favour of the DAA's expansion plans today, the merged entity (Ryanair) is the company strongly opposing to the

---

709 It should, however, be noted that Ryanair's reference to the situation at Stansted is not able to mitigate the Commission's concerns in this regard.

710 See section 33 of the Irish Aviation Regulation Act 2001 as amended by section 22 of the Irish State Airports Act 2004:

"(1) In making a determination the objectives of the Commission are as follows—

(a) to facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport,

(b) to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport (...)" (text highlighted by the Commission).

711 Air Transport Movements ("ATMs") are defined as *"the scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date at Dublin"*, see section 11 of the Constitution.

712 See notably 3.1.1. and 3.1.2 of the Constitution.

713 See e.g. answers to question 49 of the questionnaire to competitors sent on 6.11.2006; see also interview with Aer Arann of 13.2.2007, folio no. 6170; interview with CityJet (Air France) of 21.2.2007, folio no. 6170; interview with Jet2.com of 1.2.2007, folio no. 6170; interview with Air Berlin of 13.2.2007, folio no. 6170.

expansion. Ryanair's opposition to date will gain further weight post merger when it will represent more than two thirds of the customers at Dublin. The chances of influencing the expansion plans in order to make them more tailored to the Ryanair business model will therefore increase through the merger.

708. It can thus be concluded that the merger also allows the merged entity to increase its weight in the consultation process for airport charges, airport facility allocation or expansion plans. This may make entry/expansion of its competitors more difficult.

7.8.9. Analysis of Ryanair's and Aer Lingus' actual and potential competitors

709. Ryanair argues that a number of airlines would be able to enter the Irish routes or expand their current operations if Ryanair/Aer Lingus were to raise prices. These actual or potential competing airlines includes *inter alia*: Aer Arann, Air Berlin, Bmi/bmibaby, Lufthansa, British Airways, Clickair, easyJet, Flybe, and SkyEurope which are described in the following paragraphs[714]. This section describes those competitors which are considered by the Commission as belonging to the most important competitors on the overlap routes in order to provide a general overview of their abilities and incentives to enter the markets affected by the proposed transaction. The fact that some competitors are not mentioned in this Section does not mean that they are disregarded by the Commission, since the competitive constraint exercised by individual competitors will in any event be discussed in Section 7.9 (route-by-route analyses.

710. The Commission notes that Ryanair also mentions US airlines who are not yet present in the short-haul markets in Europe as their "main competitors". Ryanair also refers to the recently concluded "Open Skies" Agreement, which would lead to more activities of US airlines in Europe. While the Commission does not contest that the "Open Skies" Agreement will probably give rise to an increasing level of activities of US airlines in Europe, it can be expected that the activities of US airlines will, at least for a starting period and until they will be established in Europe, focus on the long-haul market. Indeed, the Commission has not received any indications from its market investigation that US carriers are regarded as credible competitors on the European short-haul markets in a short or even mid-term perspective. The Commission can therefore not rely on the potential entry of non-European airlines and will not further analyse this in this Section.

711. In the following paragraphs, the competing carriers based at the relevant Irish airports are discussed first (CityJet and Aer Arann), followed by the most important other competitors active in Europe.

7.8.9.1.CityJet (Air France)

712. CityJet is an airline registered and incorporated in Ireland, although it has been a 100% subsidiary of Air France since 1999. As is clear from its ownership and the radial structure of its current network to and from Paris CDG, CityJet is primarily a feeder of traffic for the hub and spoke operations at Paris CDG of its mother company Air France and the latter's partners in the Skyteam airline alliance.

713. CityJet operates a fleet of 20 BAe 146 aircraft capable of seating 93 passengers, i.e. more

[714] Section 7.8.9.1 -7.8.9.11.

or less half of the seating capacity of Boeing 737-800s as configured and operated by Ryanair. BAe 146s are particularly suitable for short runway operations due to their four jet engines. It should be stressed that the unit operating costs of these aircraft are significantly higher than those of the aircraft used by Ryanair and Aer Lingus. Although CityJet has in principle access to larger Aircraft operated by Air France, it has no intention using large aircraft on Irish routes[715].

714. In Ireland, CityJet is based in Dublin with in total 3 based aircraft operating two routes: Dublin – London City and Dublin - Paris CDG with high frequency flights. Therefore, compared to the number of aircraft based in Dublin and routes operated by the merged entity, the scope of its activities in Dublin is much more limited.

715. In terms of service differentiation CityJet is clearly a full service carrier. It describes itself as being "*a scheduled airline offering a network carrier service from a Low Cost Base [...]*" and "*a Network and Regional Business Carrier*"[716]. Further, CityJet confirms[717] that its main focus is first on the connecting passengers (in particular for routes from/to Paris CDG) and second on point-to-point business passengers which represent a substantial part of the point-to-point operations of CityJet. Given the significantly lower capacity of its planes, CityJet must achieve a higher average yield than Ryanair/Aer Lingus to be profitable – this is secured by focusing on connecting passengers and business passengers at key times of the day.

716. London City airport, to which CityJet operates, is subject to operational restrictions due to its short runway. This means that neither Ryanair nor Aer Lingus could, with the aircraft currently in their fleet, fly between Dublin and London City Airport. This allows CityJet to differentiate strongly its services from those of Ryanair or Aer Lingus. This differentiation on the basis of the airport that is served is reinforced by the differentiation in terms of service level to the extent that CityJet offers a "full service" type of product according to two service classes. The more "upmarket" positioning of CityJet is corresponds with the fact that at CityJet's destination airport, London City Airport, primarily business passengers are served[718].

717. The Commission observes in this regard that CityJet has recently announced the launch, starting 26 March, of 6 new routes to/from London City (Belfast, Geneva, Milan Linate, Madrid, Nice and Zurich). CityJet indicated that due to congestion and difficult access to

---

715 See minutes with CityJet (Air France) of 21.2.2007 ("CityJet must achieve a higher average yield than Ryanair/Aer Lingus"); according to the presentation of Morten, Beyer and Agnew, Inc. made at the Morgan Stanley Conference – Regional Jet Market Update in March 2004, slide 18, the operating unit costs (in terms of USD per ASM (air seat mile) of BAe 146 are around twice as those of the aircraft used by Ryanair and Aer Lingus. Even though according to other slides of the presentation the total operating costs per departure (slide 15) and block hour costs (slide 16) are lower for BAe 146, it is the unit cost per seat and mile which is most relevant from the point of view of the final fare paid by the customer and thus for the competitiveness of the airline. The same presentation (see slides 19-25) also acknowledges that regional jet carriers face a threat of the low-cost carriers and that as a result of that many of the regional jet operations may become unprofitable. See: http://www.mba.aero/presentations/040301_regional_jet_market_update.pdf, folio no. 13020.

716 Source: CityJet responses to questions 2 and 3, Competitor questionnaire of 15.11.2006, folio no. 1990.

717 See interview with CityJet (Air France)of 21 February 2007, folio no. 6170.

718 Source: London City Airport response to question 16, airport substitutability questionnaire.

infrastructure such as contact stands, such expansion would not be possible from Dublin[719].

718. In a telephone interview with the Commission on 21 February, CityJet indicated that it could be interested in the future in entering specific routes out of Dublin which fit best with its business oriented model. CityJet did not specify the routes but indicated that entry into these routes is not possible at present for CityJet as it would not be able to get access to the necessary peak slots and other infrastructure (e.g. contact stands) at Dublin and at the destination airports needed for its high frequency business/connecting passengers services. CityJet insisted that in particular lack of access to the contact stands in Dublin was particularly harmful to it in so far as remote/bus airside operations were viewed as an inconvenience by its high-yield business passengers. CityJet indicated that potential entry to any other of the overlap routes to/from Dublin (in particular Continental European routes) would "be further down the list of priorities for CityJet"[720]. It should also be noted that entry on a number of the "non-hub" or even leisure routes to Continental Europe would not be in line with CityJet's business model.

719. The Commission also notes that its regression analysis did indicate that CityJet does not exert a competitive constraint on Aer Lingus .In view of CityJet's business model, this will also be true with respect to Ryanair. For more details see Annex IV.

720. The Commission concludes that entry of CityJet on overlap routes that it currently does not serve is unlikely. Finally the Commission observes that, if entry by CityJet occurred or if CityJet expanded on the London-Dublin route, the resulting competitive constraints on the merged entity would be limited, given (i) the lower seating capacity of the aircraft operated by CityJet and resulting cost disadvantage and (ii) the fact that CityJet, on the one hand, and Ryanair or Aer Lingus, on the other, do not appear to be close competitors due to extensive differentiation in service level and business model.

7.8.9.2.Aer Arann

721. Aer Arann defines itself as a regional carrier. It operates 35 routes across the United Kingdom and Ireland, and has only two summer season destinations in Western France.

722. Aer Arann, although marketing itself as a "low cost" airline, is nevertheless more similar to carriers such as CityJet as concerns its business model, since is carries a large proportion of business and connecting passengers and uses small aircraft which does in general not allow the same low fares to be offered as airlines operating larger aircraft. The closeness to business oriented network carriers is further evidenced by its partnerships with full service carriers such as British Airways, Air France or SAS, and, more importantly by the fact that it sells unrestricted (fully flexible) tickets.

723. Aer Arann operates a fleet of ATR 42 and 72 turbopropeller aircraft Compared to Boeing 737 or Airbus 320 aircraft, ATR 42/72 aircraft are designed for (very) short haul

---

719 The Commission does not contest that CityJet (Air France) has indicated to be interested to expand its London-Dublin route if attractive slots were made available; however, CityJet indicated that *"entry on other routes, notably continental routes, would be further down the list of priorities for CityJet."*. This is because "Ireland is not a very attractive market to start operations [since] average yields are quite low." Furthermore, CityJet points inter alia at the difficulty of obtaining contact stands as a further entry deterrent for CityJet, see minutes of the interview with CityJet (Air France) of 21 February 2007, folio no. 6170.

720 Ibid.

operations, and have a limited operational range and cruising speed. Their seating capacity is much lower with 50 seats for the ATR 42 and 66 seats for the ATR 72. Due to the type of aircraft operated, it is practically excluded that Aer Arann would be able to enter any route beyond Ireland, the UK and the nearest Continental Europe destinations.

724. Aer Arann has 4 aircraft (2 ATR42 and 2 ATR72) based in Dublin and 3 aircraft (1 ATR42 and 2 ATR72) in Cork. Aer Arann also bases 4 aircraft in Galway, 1 aircraft in Waterford and 1 aircraft in the Isle of Man. Therefore, compared to the total number of aircraft based in Dublin and routes operated by the merged entity, the scope of its activities in Dublin is much more limited. The ability of Aer Arann to enter Cork – London in view of its base at Cork is discussed further also in the relevant analysis of the Cork – London route below.

725. As a result of the difference in the type of aircraft that they operate, Aer Arann explains that their operational costs per seat are higher than those of Ryanair[721]. The Commission observes that, should Aer Arann enter a route in competition with Ryanair, it would have to operate at a frequency three times higher than Ryanair with a view to offering the same capacity on the route. This is due to the lower seating capacity of Aer Arann's aircraft. Aer Arann explains that they would not enter any route where Ryanair is already present[722]. Ryanair itself admits with respect to Air Southwest's exit from the Dublin – Bristol route that it was likely that operating a 50-seat turbo prop aircraft on this route "was not economically sustainable"[723]. The Commission observes that in this is confirmed by the behaviour of Aer Arann in the recent years as there was no instance (at least in the last 5 years) of entry by Aer Arann on a route already operated by Ryanair[724].

726. The Commission also notes that the regression analysis conducted by the Commission indicated that Aer Arann would not exert any competitive constraint on Aer Lingus and it can be assumed that in view of the Aer Arann's business model it would be the case also with respect to Ryanair. For more details see the description of the regression analysis in Annex IV.

727. In the light of the above, the Commission considers that the possible entry of Aer Arann on one or more of the relevant routes (markets) for the present purposes is very unlikely. Given this unlikelihood moreover, the Commission takes the view that the threat of possible entry of Aer Arann onto one or more of the relevant routes in this case would not result in an effective competitive constraint on the merged entity. It should be stressed that in view of its cost disadvantage due to its fleet and differing business model, Aer Arann would not be able to offer a comparable substitute to Aer Lingus' services even on the Ireland – UK routes.

7.8.9.3.easyJet

728. easyJet is Ryanair's historical rival in its capacity as one of the first, fast growing low frills carriers in the European Union since the nineties. Starting from its original base in London Luton airport, easyJet has developed a European wide network of 289 point to point routes

---

721 Source: Telephone interview with Aer Arann, 13 February 2007, folio no. 6170.

722 Source: idem

723 See RBB document "Ryanair/Aer Lingus: Position Paper on Barriers to Entry", of 20 February 2007, folio no. 4135, page 29.

724 Even though both Aer Arann and Ryanair operate currently between Cork and Shannon, it was Ryanair who entered in November 2005 in competition with existing operations of Aer Arann.

across 74 routes. It has expanded across the UK and towards the West across continental Europe, and more recently to Morocco.

729. easyJet is a low-frills airline as evidenced by the company's mission statement[725] and the principles driving its business[726]: use of the Internet to reduce distribution costs, maximising the utilisation of substantial assets (in particular aircraft), ticketless travel, no free lunches, efficient use of airports, paperless operations.

730. In terms of the differentiation which air carriers seek to achieve between their respective services, easyJet positions its service slightly "upmarket" compared to Ryanair, as evidenced *inter alia* by its relative preference for primary airports and the fact that it does not charge passengers for the first piece of checked in luggage. In this regard, the respective services of easyJet and Aer Lingus and Ryanair can be regarded as close substitutes.

731. EasyJet operates a mixed fleet of Airbus 319 and Boeing 737-300 and 731-700 aircraft. Gradually, the latter are being phased out in exchange for the former. Except that they offer a lower seating capacity, the aircraft operated by easyJet are very similar to the Boeing 737-800 operated by Ryanair or the Airbus 320-321 operated by Aer Lingus.

732. Ryanair regards easyJet as its "main competitor[727]". EasyJet is, however, not an actual competitor on any of the 35 overlap routes, since easyJet does not operate flights from the Republic of Ireland. In view of the many points in common between easyJet, Ryanair and Aer Lingus, easyJet may be regarded as a potential competitor to the merged entity on several of the relevant routes in this case. However, the Commission observes that although Ryanair and easyJet have concurrently and at a fast pace expanded throughout Europe since the nineties, easyJet is not active on any Irish routes. Further the internal documents of Ryanair acknowledge that "[...]*[728]". *Furthermore,* easyJet made an attempt to enter the routes between London, on the one hand, and Shannon and Cork in the republic of Ireland, on the other, in January 2005 and was confronted with a vigorous competitive reaction from Ryanair until it exited the routes a year later. As explained in Section 7.8.5 above, the nature and intensity of this reaction as well as internal documents of Ryanair strongly suggest that Ryanair intended to deter easyJet from entering the Irish market.

733. Ryanair argues[729] that the unsuccessful entry to the Irish regional airports did not deter easyJet from competing with Ryanair as demonstrated by the fact that easyJet recently opened two bases (Milan in March 2006 and Madrid in February 2007) in cities where Ryanair was already based. However, the position of Ryanair in Milan (4 based aircraft and around 15 routes served) and Madrid (4 based aircraft and 24 destinations served) differs significantly from its much stronger position and reputation in Dublin and Ireland. Further, only in case of Madrid did easyJet set up a base at the same airport, as in Milan it chose Malpensa, while Ryanair is based at Bergamo (even though it should be

---

725 "To provide our customers with safe, good value, point-to-point air transport services. […]", Source: http://www.easyjet.com/EN/About/index.html, 02 March 2007.

726 Source www.easyJet.com/EN/About/Information/index.html, 02 March 2007.

727 Response to the Statement of objections, page 251.

728 See Board Paper 3 for the Board Meeting of Ryanair Holdings plc on [...]*, page 3.6. (folio no. 629).

729 See RBB document "Ryanair/Aer Lingus: Position Paper on Barriers to Entry", of 20 February 2007, folio no. 4135, page 29.

acknowledged that these airports are substitutable from low-frills customers' point of view for short-haul routes as described above in the Market Definition section[730]).

734. Moreover, easyJet has no concrete plans to enter the Irish market on a small or large scale to replace Aer Lingus in case of a merger with Ryanair. Any entry into Dublin, easyJet explained in an interview, would have to be of a sufficient scale and require "important investments[731]". Starting operations to Dublin would according to easyJet need significant marketing efforts with significant costs to compete against such two well-established brands in Ireland such as Aer Lingus and Ryanair. EasyJet confirms that it would still not be profitable to start a route only on the basis of the UK passengers knowing easyJet (even though on the Ireland/UK routes the passengers are divided around 50/50 between British and Irish passengers). An important share of the Irish originating customers would be necessary as well. Any potential entry would thus have to be with a number of routes, not only on one or two routes. In this respect it should be noted that entry with a larger number of routes to/from Dublin (and in particular in case of the thick Ireland-UK routes) would also require significant capacities at the Dublin Airport including peak-time slots, which would due to the capacity constraints at Dublin Airport make entry even more difficult and unlikely.

735. easyJet indicated that there are a number of more profitable and less risky routes in Europe where its aircraft can be used and the opportunity costs of entering Ireland are simply too high. Moreover, easyJet indicated that the Irish market is relatively small, has only three (major) airports, it is not a pass-by destination, but located at the very border of the European market and there are already two strongly established brands. Due to these various aspects, entry would according to easyJet be more difficult than elsewhere in Europe.

736. In the light of the above, the Commission does not consider that the establishment of a base or the entry of easyJet on one or more of the relevant routes in this case would be likely in the short to medium term. This is in particular because it is unclear whether such entry would be sufficiently profitable, taking into consideration the price effects of injecting additional capacity and the potential responses of a combined Ryanair-Aer Lingus. It follows that easyJet is unlikely to exert a significant competitive constraint on the merged entity in the relevant markets.

7.8.9.4.Sky Europe

737. SkyEurope is a low frills carrier incorporated and registered in Slovakia. It is a typical low frills airline, operating "point to point" to primary as well as to secondary airports on a one-way basis (no return tickets) and offering just basic on board services.

738. It operates 12 aircraft (14 aircraft from 25 March 2007 onwards) out of 5 bases in Central and Eastern Europe to 99 destinations in 19 countries. Its fleet is entirely composed of Boeing 737, of which it has 12 on order for delivery in 2007 and 2008.

739. Ryanair argues that SkyEurope is a potential entrant and close competitor on routes to/from Dublin, in particular for destinations in Central or Eastern Europe.

---

730 See Section 6.3.4.21.

731 Source: telephone interview with easyJet, 15 February 2007, folio no. 6170.

740. SkyEurope recognises the demand for air transport services between points in Ireland and point in Central or Eastern Europe is growing. This seems to result from to the large migrant workforce from the new Member States of the EU in Ireland. In its reply to the Market Test of Ryanair's Final Commitments, SkyEurope has clearly stated that it does not consider opening a base in Dublin. SkyEurope had already in previous submissions pointed out entry barriers to the Irish markets[732].

741. It can therefore not be expected that SkyEurope would enter on any of the overlap routes in the Irish market after a possible merger between Ryanair. Furthermore, given that even SkyEurope's whole actual fleet (12 aircraft) would not suffice to cover the 35 overlap routes according SkyEurope (which is in line with the results of the Market Test[733]), the Commission cannot rely on the mere possibility of entry by SkyEurope in this case.

742. In addition, the internal documents of Ryanair confirmed the pressure put on SkyEurope [...]*[734]. Further, as regards the financial situation of SkyEurope, Ryanair in its internal documents states that [...]*[735].

743. In the light of the above, the Commission considers that entry or expansion of SkyEurope against the strengthened merged entity on one or more of the relevant routes in this case is not likely in the short to medium term. This is in particular because it is unclear whether such entry would be sufficiently profitable, taking into consideration the price effects of injecting additional capacity and the potential responses of a combined Ryanair-Aer Lingus entity.

7.8.9.5.British Airways

744. British Airways is the United Kingdom's largest international scheduled airline, flying to over 550 destinations worldwide (it should be however noted that despite this, Ryanair carries significantly more passengers on its European routes than British Airways in their whole worldwide network – according to Ryanair's internal documents [...]*[736]). British Airways is a full service airline, with a hub and spoke operation at London Heathrow airport. It is a member of the One World airline alliance.

745. The fleet of British Airways consists of regional, short to medium haul as well as long haul aircraft. On European routes in particular, it consists of Boeing 737s, Airbus 319/320/321 aircrafts as well as regional aircraft with a lower seating capacity and operational range.

746. British Airways competes with Ryanair on the Dublin to London route, which British Airways serve from London Gatwick airport. Ryanair argues that British Airways could, in its capacity as one of the main carriers in Europe with its main hub and important operations in the United Kingdom, enter routes between points in Great Britain, on the one hand, and Dublin or other points located in the Republic of Ireland, on the other. Actual or potential entry by British Airways would exercise a competitive constraint on the merged

---

732 See reply of SkyEurope of 6 December 2006 to the Questionnaire on proposed commitments, folio no. 2596, questions 2 and 12.

733 See in detail Section 8.2.2.1.

734 See Board Paper 3 for the Board Meeting of Ryanair Holdings plc on [...]* (folio no. 629), page 3.4. which states as follows: [...]*.

735 See Board Paper No 3 for the Board Meeting of Ryanair Holdings plc on [...]*, page 3.7 (folio no. 629).

736 See Board Paper 3 for the Board Meeting of Ryanair Holdings plc on [...]*, page 3.6. (folio no. 629).

entity on routes between Ireland and the United Kingdom in particular. Ryanair names British Airways as its second most important competitor[737].

747. However the Commission observes that British Airways, despite its size and financial strength, is only active on one single route in competition with the Merging Parties, where it holds a relatively limited market share of below 10% on the Dublin-London route.

748. In the market investigation, British Airways has indicated not to have any concrete intention to enter or expand any other route than the Dublin-London route (which might be an attractive route for British Airways in order to channel passengers to its Hub in London Heathrow)[738]. Moreover, British Airways, similar in this respect to other major network carriers in the European Union, tends to disengage from regional or short haul point to point scheduled air transport services. On 3 November 2006, British Airways announced[739] that it has reached agreement in principle to sell the regional operation of its subsidiary airline BA Connect to Flybe. On this occasion, Willie Walsh, British Airways chief executive is reported to have said: *"Point to point regional operations are not a strategic part of our business and we believe that such activities are better undertaken by a regional low cost airline. Despite the best efforts of the entire team at BA Connect, we do not see any prospect of profitability in its current form. London City services complement our mainline business at Heathrow. For this reason they are not included in the proposed sale."*[740]

749. In the light of the above, the Commission does not consider that entry/expansion of British Airways on one or more of the relevant routes between Ireland and Great Britain except the Dublin-London route would be sufficiently likely in the short to medium term to remove the Commission's competition concerns on the overlap routes. This is in particular because such entry would deviate from British Airways' current strategy, as is apparent from the divestment of its participation in BA Connect.

7.8.9.6.Air Berlin

750. Air Berlin defines itself as a German charter and scheduled low frills as well as full service carrier[741]. It operates from several base airports in Germany, as well as a base in Palma de Mallorca and London Stansted.

751. Air Berlin serves popular holiday destinations along the Mediterranean coast, the Canary Islands, Northern Africa as well major European cities. Palma de Mallorca is the prime destination of Air Berlin's route network, where they operate a "shuttle" with daily flights from 12 German airports. The total number of weekly flights to Majorca should exceed 360 in the Summer 2007. In addition to its original focus on popular holiday destinations, Air Berlin launched in October 2002 the City Shuttle, whereby it connects German airports with major European cities like Amsterdam, Barcelona, Bournemouth, Budapest, Copenhagen, Helsinki, London-Stansted, Madrid, Milan-Bergamo, Manchester, Paris,

---

737 See response to the Statement of Objections, page 251.

738 See e.g. response to questions 3 and 4 of the Market Test of the Final Commitments.

739 Source: http://www.britishairways.com/travel/bapress/public/en_gb. On 5 March 2007, British Airways announced in the form of a press release that it had completed the sale of BA Connect to FlyBe.

740 See press release of British Airways "Proposed Sale of BA Connect to Flybe" of 03/11/2006, Ref 108/SR/06, available at the website: http://www.britishairways.com/travel/bapress/public/en_gb.

741 Source: Air Berlin responses to questions 2 and 3, Competitor questionnaire of 15.11.2006

Rome, Vienna and Zurich[742].

752. Air Berlin is positioned at the quality end of the low frills spectrum as appears from the various quality awards obtained by this carrier. Unlike other low frills carriers, its operation is not entirely point to point in so far as it operates three of its base airports as a hub: Nuremberg, Palma de Mallorca and London Stansted. It has also entered into the first alliance agreement between low frills carriers with Niki with a view to developing the Austria and Eastern European markets.

753. Air Berlin operate a mixed fleet of Airbus 320 (15 aircraft), Boeing 737 (40 aircraft) and, to a much lesser extent Fokker 100 (3 aircraft). Air Berlin is committed to a purchase order of 60 Airbus 320 aircraft, with purchase options for a further 40. It is therefore strongly geared towards growing.

754. Air Berlin explain that they are *"not interested in opening direct routes from Dublin to continental destinations[743]."*. This would not fit in Air Berlin's plan for growth. Moreover, other European routes such as Scandinavia or Russia would have better yield and profit prospects[744]. The Market Test of the Final Commitments has confirmed that Air Berlin does not even "consider" entry to any route from/to Dublin[745].

755. Further, from the internal documents of Ryanair it seems that even Ryanair does not see Air Berlin as a credible competitive threat as they state [...]*[746].

756. In the light of the above, the Commission considers that entry of Air Berlin on one or more of the relevant routes (markets) for the present purposes is unlikely. Given this unlikelihood moreover, the Commission takes the view that the threat of possible entry of Air Berlin into one or more Irish airports from airports in Germany or from London Stansted would not result in an effective competitive constraint on the merged entity.

7.8.9.7.bmi (British Midland Airways)

757. British Midland Airways (bmi) defines itself as a scheduled full service network airline[747] (bmi has a separate subsidiary, bmibaby, in the low frills segment of the market – see below, Section 7.8.9.8). It operates from London Heathrow as a hub, where it has long as well as short and medium haul services. In addition, bmi operates point to point regional air transport services under the "bmi regional" brand from Aberdeen, Edinburgh, Glasgow, Leeds Bradford, Manchester and East Midlands. bmi is a member of the Star Alliance. Lufthansa and SAS own respectively a 30% minus one share and a 20% shareholding in bmi.

758. As is apparent from the nature of its services, the radial structure (around London Heathrow) of its services[748] other than regional, or its ownership structure, bmi is

742 Source: http://www.air-berlin.com

743 Interview with Air Berlin, 13 February 2007, folio no. 6170.

744 Interview with Air Berlin, 13 February 2007, folio no. 6170.

745 See Market Test, response to questions 3 and 4.

746 See Board paper No 3 for the Board Meeting of Ryanair Holdings plc on the [...]*, page 3.5 (folio no. 629).

747 Source: bmi responses to questions 2 and 3, Competitor questionnaire of 15.11.2006, folio no. 22283.

748 It is noteworthy that, in addition to the services it operates with its own aircraft, bmi also offers several services to/from London Heathrow airport through code share agreements. This is in particular the case on

positioned as a full service network carrier focusing on operating to and from Europe's busiest airport, London Heathrow. This is also confirmed by the submission of bmi which indicates Heathrow as the airline's principal base of operations for its core mainline services[749]. Further, corporate contracts are an important component in bmi's overall sales activities contributing to a significant proportion of the airline's annual turnover as well as attracting a stronger level of yield compared to leisure sales[750].

759. bmi operates a fleet of Airbus 330 (long haul), Airbus 319, 320 and 321 (short to medium haul) and Embraer 135 and 145 (regional) aircraft.

760. bmi competes with Ryanair and Aer Lingus on the route between Dublin and London, where bmi operates a service between Dublin and London Heathrow[751]. The Commission cannot exclude the possibility that bmi may be interested in expanding the capacity and/or the frequencies it operates between Dublin and London Heathrow. Similarly, the Commission cannot exclude that bmi may show some interest for launching a service between Shannon and London Heathrow or Cork and London Heathrow. All such options appear prima facie as compatible with bmi's hub operation in Heathrow or its position in the market. The Commission observes, however, that London Heathrow is one of the busiest airports in the world. It is heavily congested. Therefore, airlines with a slot portfolio at London Heathrow seek to maximise revenue opportunities from this portfolio. Depending on the demand for connecting services on long haul flights operated by bmi via Heathrow, serving London Heathrow from Shannon or Cork may therefore imply substantial opportunity costs. It appears, therefore, unlikely that bmi would consider replacing the competitive constraint exercised today by Aer Lingus on the relevant routes between London and Dublin, Cork or Shannon.

761. As regards the strength of the merged entity, bmi stated that they would expect the combination of Ryanair and Aer Lingus to exert additional competitive pressure on bmi's services, even though it is difficult to assess without knowing what the transaction will involve[752]. As regards possible entry, bmi indicated that increase in competitors' fares on a route currently not served by bmi is not alone a credible reason that bmi (or any other airline) would consider entering such a route as there are further broad criteria which needs to be considered (e.g. consistency with bmi's network expansion strategy, slot availability, aircraft availability, financial resources, commercial viability and regulatory/bilateral issues[753]. It should be noted that bmi has not in the last five years entered any new route between Ireland and the UK in direct competition with Ryanair or Aer Lingus[754].

762. As regards potential entry on the Ireland – UK routes, bmi as well as bmibaby state that they are confident that they can provide a competitive service to Ryanair/Aer Lingus but that "*the ability to exercise a competitive constraint and to specifically enter or expand*

---

routes to/from points located in Germany or Scandinavia, the home market of its two airline shareholders.

749 Source: bmi responses to question 2, Competitor questionnaire of 15.11.2006, folio no. 22283.

750 Source: bmi responses to question 16, Competitor questionnaire of 15.11.2006, folio no. 22283.

751 bmi also offers connecting flights (via London Heathrow) between Dublin and some provincial cities in Great Britain which are served by Ryanair on the basis of a direct service from Dublin. As explained in section "5.5. Joint market for direct flights and indirect flights?" above however, indirect services are considered to be in a distinct market for the present purposes.

752 Source: bmi response to question 50, Competitor questionnaire of 15.11.2006, folio no. 22283.

753 Source: bmi response to question 33, Competitor questionnaire of 15.11.2006, folio no. 22283.

754 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 3.

services on a particular Ireland-UK route may be restricted by high barriers to market entry at both ends..."[755].

763. Bmi also under "bmi regional" brand operates niche UK domestic and intra-European scheduled passenger, cargo and mail and ad hoc charter air transport services from UK regional airports[756]. However, due to its full-service business model and a fleet of small aircraft (Embraer 145 with maximum 49 seats and Embraer 135 with maximum 37 seats), bmi regional cannot be considered as a potential entrant able to exert significant competitive constraints on the high volume services of the merged entity between Ireland and the UK.

764. Bmi has confirmed that neither bmi nor bmi regional can be expected to enter any routes in competition with the merged entity[757]. bmi's activities concentrate on the London-Heathrow route and thus it would not enter any other routes than the currently served Dublin – London. They also confirmed that establishing a brand in Ireland able to compete effectively with Aer Lingus and Ryanair brands is costly. Further, entry/expansion to Ireland would involve opportunity costs as bmi would have to use aircraft operating now elsewhere. The expansion strategy of bmi is focused rather towards mid-haul routes to Continental Europe (e.g. Moscow or holiday destinations with their recent acquisition of BMed).[758]

765. In the light of the above, the Commission considers that entry by bmi or bmi regional on one or more of the relevant routes (markets) for present purposes is unlikely.

7.8.9.8.bmibaby

766. Bmibaby is the low frills subsidiary of British Midland Airways (See above). It defines itself as a scheduled low frills airline[759]. It operates from four bases in Great Britain (Manchester, East Midlands, Birmingham and Cardiff). It was formed in 2002 by British Midland Airways in response to the intense competition from low frills carriers in the United Kingdom including Ryanair. Bmibaby serves 24 destinations in 8 EU Member States. It does not fly to any of the London airports[760].

767. Bmibaby operates a fleet of 19 Boeing 737 aircraft.

768. Bmibaby serves Knock and Cork in the Republic of Ireland from Manchester and Birmingham airports. The services of bmibaby on Knock-Manchester and Cork-Birmingham compete with the services offered by Ryanair respectively between Cork and East Midlands (as a substitute for Birmingham) and between Knock and Liverpool (as a substitute for Manchester). On these routes therefore, competition between Ryanair and bmibaby takes place on the basis of a differentiated service as regards the airports served. It is noteworthy that bmibaby and Ryanair used to compete on an airport to airport basis

---

755 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 8. See also bmi's reply to the Market Test, question 3.

756 See bmi response to question 3, Competitor questionnaire of 15.11.2006, folio no. 22283.

757 See minutes of the interview with bmi/bmibaby of 9 March 2007, folio no. 6170, and BMI's response to the Commission's Market Test of the Final Commitments.

758 See minutes of the interview with bmi/bmibaby of 9 March 2007, folio no. 6170.

759 Source: bmibaby responses to questions 2 and 3, Competitor questionnaire of 15.11.2006, folio no. 22283.

760 Source: http://www.bmibaby.com

during March 2004 and March 2005 following Ryanair's entry on the Dublin to East Midlands route. In March 2005, bmiBaby exited the route. Bmi itself acknowledges that the market entry of Ryanair onto the East Midlands – Dublin route prompted bmibaby to withdraw its services[761]. Commenting on this exit, bmi indicated the following: "*The decision to withdraw the service was a commercial decision because the route no longer produced a viable economic return in direct competition with Ryanair's services at the time. bmibaby's load factor and overall yield was no longer sustainable to continue scheduled operations.*"[762] Further, since bmibaby commenced scheduled operations in March 2002, it has entered only one route in direct competition with Ryanair (London Gatwick – Cork commenced in 2004) but withdrew this route in 2005 "under similar circumstances to bmibaby's East Midlands – Dublin"[763]. In the same period, bmibaby entered only one route in direct competition with Aer Lingus (Birmingham – Cork commenced in 2005)[764]. It should also be noted that bmibaby does not operate any route to/from Dublin and that the overlaps between the Merging Parties on routes to/from the UK regional cities served by bmibaby are limited to Dublin only.

769. As regards potential entry to the Ireland – UK routes, bmi as well as bmibaby state that they are confident that they can provide a competitive service to Ryanair/Aer Lingus but that "*the ability to exercise a competitive constraint and to specifically enter or expand services on a particular Ireland-UK route may be restricted by high barriers to market entry at both ends...*"[765].

770. The phone conference with bmi/bmibaby indicated that even though bmibaby may be more likely to enter any of the overlap routes than bmi or bmi regional, there are no plans for such entry[766]. Bmibaby confirmed that it had been difficult in the past for bmibaby to compete with Ryanair. Further, any entry would need to be with larger number of frequencies covering both morning and evening to serve also business customers. In that respect, congestion at the relevant airports represents a barrier to entry. Bmibaby indicated that Birmingham is particularly congested and thus capacity would be a crucial factor for the question of entering new routes.[767] Further, the interview with bmi/bmibaby indicated that bmibaby targets expansion to European leisure destinations (beach/city break)[768].

771. In the light of the above, the Commission considers that the possible entry of bmibaby on one or more of the relevant routes (markets) for the present purposes is unlikely.

7.8.9.9.Flybe / BA Connect

772. Flybe considers itself as a low fares regional airlines mainly with flights in the UK with bases in a number of regional cities in the UK. However, in comparison to Ryanair and Aer Lingus, Flybe is more focused on serving business passengers as they also offer

---

761 See reply of BMI of 17 November 2006 to the Questionnaire to competitors, folio no. 22283, question 34

762 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 4.

763 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 3.

764 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 3.

765 See bmi/bmi regional/bmibaby reply of 26 February 2007 to follow-up questions, folio no. 4348, question 8.

766 See minutes of the interview with bmi/bmibaby of 9 March 2007, folio no. 6170, and BMI's response to the Commission's Market Test of the Final Commitments.

767 See minutes of the interview with bmi/bmibaby of 9 March 2007, folio no. 6170.

768 Ibid.

separate more flexible type of tickets (Economy Plus), executive lounges at a number of UK airports, a frequent flyer program, corporate deals or dedicated check-in desks for Economy Plus passengers. The focus of Flybe/BA Connect on business passengers is also confirmed by the recent UK Office of Fair Trading decision concerning their merger which analysed in particular the impact of the merger on business passengers[769]. Currently, Flybe is in the process of acquiring BA Connect, a UK regional airline belonging to British Airways with similar business focus as Flybe.

773. In Ireland, Flybe currently operates three routes to/from Dublin (Exeter, Southampton and Norwich) and three routes to Galway (Southampton, Belfast and Birmingham). However, Flybe does not compete on any route directly with Ryanair (only indirectly on Dublin – Southampton where Ryanair operates Dublin – Bournemouth).

774. Flybe operates three types of aircraft: Q400 with 78 seats, Embraer 195 with 118 seats and BAe 146-300 with 112 seats. BA Connect operates a number of different types of aircraft which are in general even smaller than Flybe's aircraft (around 50 seats with only a few larger aircraft). Therefore, the aircraft of Flybe/BA Connect are significantly smaller than the aircraft used by Ryanair and Aer Lingus and less able to compete efficiently with the low-frills operations of the Merging Parties. Flybe indicated that the small 50-seat aircraft of BA Connect will be gradually replaced by larger and more efficient aircraft. They also indicated that in view of this replacement it is unlikely that any expansion to new routes would be possible at least in the next two years[770].

775. The strategy of Flybe (including BA Connect) is to focus on regional routes to/from UK provincial cities. In general, Flybe is trying to avoid capital cities and prefers flying to regional destinations[771]. Flybe has confirmed that it has no plans for further expansion of its activities to Ireland, even if prices increase on routes from/to Dublin[772]. It would rather expand its activities in Northern Ireland (Belfast). Even after the replacement of its fleet, other destinations are "more interesting" than Irish destinations for Flybe[773].

776. In the light of the above, the Commission considers that the possible entry of Flybe/BA Connect on one or more of the relevant routes (markets) for the present purposes is unlikely.

7.8.9.10.Clickair

777. Clickair is a newly established airline which started its operations in October 2006. The founding partners, each with 20% of the total shares, are Iberia Líneas Aéreas airlines, Cobra (a Service Company belonging to Grupo ACS), Iberostar tour operators, Nefinsa, and the venture capital fund Quercus Equity (Grupo Agrolimen).

778. Clickair is currently based in Barcelona (BCN) airport but plans to set up also other bases

---

769 Decision of the UK Office of Fair Trading in the case Flybe/BA Connect published 15 February 2007 http://www.oft.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2007/Flybe.

770 See minutes from the interview with Flybe of 12 March 2007, folio no. 6170.

771 See minutes from the interview with Flybe of 12 March 2007, folio no. 6170.

772 See minutes of the interview with Flybe of 12 March 2007, folio no. 6170, and Flybe's response to the Commission's Market Test of the Final Commitments.

773 See reply of Flybe of 11 December 2006 to Questionnaire to Competitors, question 33 and minutes from the interview with Flybe of 12 March 2007, folio no. 6170.

in other Spanish cities. By the end of 2007, it plans to base 2-3 aircraft also in Seville and Valencia. In total, they plan to have 24 Airbus 320 aircraft by the end of 2007 (of which 21-22 will be based in Barcelona)[774]. According to the web-page of Clickair, the creation of sub-bases will depend on the potential development of point-to-point routes that have a point of origin and place of destination other than Barcelona[775].

779. Clickair can be regarded as mid-frills carrier combining the low-frills model with some traditional features of network carriers. On its website, Clickair describes its mission as follows: "Our objective is to create a new, flexible and convenient product which combines the advantages of low cost airlines with the flexibility and value added services found at conventional companies, with the aim of becoming one of the top options for both leisure and business travellers."[776]. Clickair also has a code-sharing agreement with Iberia for all its flights and participates in Iberia's frequent flyer programme[777]. This code-sharing agreement allows Clickair to have its services available through GDS-powered points of sale. According to Clickair, the share of tickets sold under the code-share agreement with Iberia will indeed be important and in any event "*larger than the usual airline-to-airline marketing code-share agreement, which may contribute a few points of percentage share in individual markets*"[778].

780. As concerns possible entry plans to Dublin, Clickair has stated that it *"is in principle interested in expanding its routes and in further growth across all the non-domestic markets (...). This does in principle include the Irish market. However, Dublin would not be a "core market" for Clickair. In particular after a merger between Ryanair and Aer Lingus, Ireland would become a less attractive alternative. It would not be on the "top 5" or even "top 10" list of possible potential future aircraft bases for Clickair[779]."* In its reply to the Market Test of the Final Commitments, Clickair indicated that it would maybe consider to enter on two of the 35 overlap routes (Malaga, Barcelona[780]), but excluded that it would open a base in Dublin (*"to consider competing with Ryanair at its own base would be financially irresponsible for just about any company"*)[781]. Clickair therefore has no concrete plans at present as to when and which route they would be willing to enter. On the contrary, Clickair notes that it would have to face the strong "home carrier" against which it would be difficult to compete. According to Clickair, the home carrier would have the advantage of scale, which may provide the home carrier with the ability to significantly undercut the new entrant's proposed fares. Clickair also argued that it would require a critical mass of at least 5 aircraft based in Dublin to attract sufficient customers to have a chance to compete with the merged entity and that entry with only 2 or 3 aircraft would not be enough[782]. Further, Clickair started their operations only recently and thus does not have such established brands as Ryanair and Aer Lingus and it is not clear at present to what extent it will be able to successfully enter the short-haul air transport markets. Even though the Iberia brand is established and can assist to Clickair in view of their code-

---

774 See minutes of the interview with Clickair of 26 March 2007, folio no. 8091.

775 See http://www.clickair.com/view/default.aspx?lang=2&menu=81&pagina=0, folio no. 13021.

776 See: www.clickair.com, folio no. 13021.

777 See: http://grupo.iberia.es/portal/site/grupoiberia/menuitem.8d4d9fb9661bc259f54c0f10d21061ca/.

778 See minutes of the interview with Clickair of 26 March 2007, folio no. 8091.

779 See minutes of the interview with Clickair of 26 March 2007, folio no. 8091.

780 Clickair indicated that it would also consider opening a route to "North of Spain".

781 See reply to the Market Test, answers to questions 3 b) and d) and to question 6 a).

782 See minutes of the interview with Clickair of 26 March 2007, folio no. 8091.

sharing agreements, Iberia is not seen as a low-frills low-fares brand. Further, in the routes between Dublin and Spain, most of the passengers originate in Ireland and it is thus doubtful whether Clickair would be able to expand significantly its mid-frills operations against the merged entity's strong brands in Ireland, since it would have to win the large majority of its customers in Ireland, where it enjoys very little brand-awareness. Clickair explained that marketing costs to win customers on a new route from/to Dublin would not only be very high for the entry, but any new company would have to sustain its marketing investments, since the merged entity would fight constantly against the new competitor[783].

781. Clickair replaces Iberia on the Dublin – Barcelona route as of the Summer 2007 period. As regards possible entry into other overlap routes, it is less likely due to their centre of operations at Barcelona. If a base at Seville would be set up, the route Dublin – Seville could be potentially served by Clickair but it is doubtful whether Clickair would be able to exercise any significant constraints on the merged entity (for more details see bellow in Section 7.9.3 – Dublin – Seville). Clickair further claims that in case of a non-base entry (e.g. W-flights), the new entrant would face a significant disadvantage, because the costs of such a competitor would be higher[784].

782. In the light of the above, the Commission considers that the possible new entry of Clickair on one or more of the relevant routes is not likely enough. It is uncertain whether the relatively remote threat of a possible entry of Clickair onto one or more of the relevant routes in this case would result in an effective competitive constraint on the merged entity.

7.8.9.11.Other competitors

783. The Commission has not received an indication from any other airline that it would enter routes to\from Ireland. The Commission is therefore not able to conclude with the necessary degree of likelihood that actual or potential entry of another airline with a sufficient scale would compensate for the substantial loss of competition between the Merging Parties.

7.8.10. Conclusion on entry

784. The Commission has found that there are a number of important entry barriers to operating flights from or to Dublin in competition with Ryanair/Aer Lingus. These barriers go well beyond the problem of the partly congested airport and are in particular linked to Ryanair's and Aer Lingus' well established position at their home base. The investigation showed that, as a result of these barriers, entry is not likely, but even *unlikely* on almost all overlap routes. In the absence of potential entrants on the vast majority of overlap routes and given that competitors have unanimously indicated that they would *not even consider* entering in direct competition with the merged entity on a significant scale (in particular by opening a base at Dublin), the Commission concludes that entry is not likely, timely and sufficient to constitute a sufficient competitive constraint on the merged entity and defeat the likely anti-competitive effects of the proposed merger.

783 Idem.

784 Idem.