

Aer Lingus

Competition Law in the Transport Sector

Practical Considerations in Aviation Merger Cases-
Laurence Gourley

Aer Lingus joins IAG in 2015

500+ aircrafts across Group



€23bn revenue, €2.3bn operating profit in 2015

Aer Lingus

- Acquired by IAG in 2015
- 62 aircrafts
- Irish flag carrier



vueling[•]

- Acquired by IAG in 2013
- 103 aircraft
- Hubs in Barcelona and Rome

BRITISH AIRWAYS 

- Founding IAG member in 2011
- 268 aircrafts
- UK flag carrier

IBERIA 
EXPRESS 

- Founding IAG member in 2011
- 100 aircrafts
- Spanish flag carrier

IAG

The Aer Lingus Journey – Key Milestones

European Commission (Bids)

- Oct 2006: first bid – prohibited by EC in June 2007 but Ryanair allowed to retain its minority stake (29.8%)
- December 2008: Ryanair makes second bid – subsequently withdrawn
- June 2012: Ryanair makes third bid - prohibited in February 2013
- December 2014: IAG announces plan to acquire Aer Lingus conditional upon Ryanair's exit
- July 2015: EU Phase 1 clearance for IAG bid
- September 2015: IAG completes acquisition of Aer Lingus

UK Authorities (minority shareholding)

- September 2010: OFT initiates investigation into 29.8% minority shareholding
- August 2013: UK Competition Commission requires Ryanair to reduce its 29.8% stake to 5%
- June 2015: After various appeals, CMA confirms sell-down requirement and adopts Order requiring divestiture
- August 2015: Ryanair accepts IAG's offer and agrees to sell its shares in Aer Lingus

Minority Shareholdings under EU Law

- Articles 101 / 102 TFEU inadequate - requirement for there to be an “agreement” or dominance
- Philip Morris (1987) case law no longer applied by the EC – only one case where divestment enforced Warner-Lambert/Gillette and Others (1992)
- EU Merger Regulation – only possible for EC to scrutinise minority shareholdings where concentration “*has already been implemented*” (Article 8(4)(a)) –
- EU General Court held in Aer Lingus v EC (July 2010) that Article 8(4)(a) EUMR requires actual control to have been acquired before EC can order disposal of shares but Member States remain free to apply their national competition law
- Consultation Paper issued by European Commission in 2013 followed by 2014 White Paper proposing system of Targeted Transparency whereby acquirers of minority shareholdings which constitute a “competitively significant link” would be required to submit an “information notice”
- Reform has stalled and enforcement gap under EU law remains

Aer Lingus Model - Value carrier across short & long haul

