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AIRLINE COMPETITION

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1. Introduction

1. Air transport has traditionally been highly regulated and dominated by national flag carriers. For many years, key parameters of competition have been determined by national governments, rather than market forces. Since the early 1990ies the EU economic and regulatory landscape of the sector has undergone important changes. The gradual completion of the internal market has led to the removal of all commercial restrictions for airlines flying within the Union, such as restrictions on routes or number of flights and the setting of fares.¹ Since the liberalisation of air transport in 1997², the industry has expanded as never before, and this has contributed to economic growth and job creation.

2. These changes in the regulatory framework has also paved the way for the emergence of low-cost carriers, operating a new business model based on quick turn-around times and very efficient fleet use. In 1992, over 65% of passenger seats were sold by incumbent air carriers and only 1.5% by low-cost carriers. This development has generated a tremendous increase in traffic, with low-cost carriers' traffic growing at a fast pace since 2005. In 2011, low-cost carriers achieved a market share of 42.4% and thus exceeded the market share of incumbent air carriers (42.2%) for the first time. A trend, which continued in 2012 (low-cost airlines 44.8 %, incumbent air carriers 42.4 %) and 2013 (45.94 % for low-cost and 40.42 % for incumbent).

3. The emergence of low cost carriers combined with the effects of the financial and subsequently economic crisis (2008-2012) led to financial difficulties faced especially by the traditional flag carriers. As a result, an increasing number of Member States have decided to assist their troubled national airlines by providing State aid. In addition, this situation has also lead to an increase in the concentration of EU airlines, even though the Union's market is still very fragmented, and an increasing importance of alliances

4. The emergence of new market players in the air transport sector and the tremendous growth in air traffic in general has lead also to changes in the market environment for airports. Many regional airports have been set up in the EU, often duplicating airport capacity at local level, while in large hubs congestion³ problems have arisen. While still predominantly publicly owned and managed⁴, airports across the Union

¹ This liberalised legal framework also applies to some non-EU countries with whom the EU has signed specific bilateral agreements.

² Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p.1), Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8), and Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15).

³ At airports where demand exceeds capacity and where it is not possible to resolve the problem through voluntary co-operation, an air carrier needs to be allocated a slot by an independent slot coordinator. Consequently, such airport slots are critical inputs for airline operations. The EU slot allocation system is governed by Council Regulation (EC) No 95/93 on common rules for the allocation of slots at Community airports. Accordingly, airports are divided into three basic categories depending on their level of congestion. 13 airports in the Union are forecasted to be operating at full capacity eight hours a day every day of the year in 2030, compared to 2007 when only 5 airports were operating at or near capacity 100 % of the time (see Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Airport policy in the European Union - addressing capacity and quality to promote growth, connectivity and sustainable mobility of 1 December 2011, COM(2011) 823) ('the Communication on Airport policy in the European Union').

⁴ According to Airport Council International Europe, 77 % of airports were fully publicly owned in 2010, while 9 % were fully privately owned, see Airport Council International Europe: The Ownership of Europe's Airports 2010.

are currently witnessing growing involvement of private undertakings. New markets have been created in the last decade through partial privatisation of certain airports, as well as through competition for the management of publicly owned airports, including regional airports.

5. However, smaller airports display still the greatest proportion of public ownership and most often rely on public support to finance their operations. The prices of these airports tend not to be determined with regard to market considerations and in particular sound ex ante profitability prospects, but essentially having regard to local or regional considerations. Under the current market conditions the profitability prospects of commercially run airports also remain highly dependent⁵ on the level of throughput, with airports that have fewer than 700 000 passengers per annum typically struggling to cover their operating costs. Consequently the vast majority of regional airports are subsidised by public authorities on a regular basis.

6. The pricing system in most Union airports has traditionally been designed as a published scheme of airport charges based on passenger numbers and aircraft weight⁶. However, the evolution of the market and the close cooperation between airports and airlines have gradually paved the way for a wide variety of commercial practices, including long-term contracts with differentiated tariffs and sometimes substantial amounts of incentives and marketing support paid by airports and/or local authorities to airlines. In particular, public funds earmarked for supporting airport operations may be channelled to airlines in order to attract more commercial traffic, thereby distorting air transport markets⁷.

7. Against this background, this paper will address the following two main areas important in terms of level playing field and competition in the air transport sector:

- State aid issues arising from the financing of airports and how to deal with any State aid issues arising from airport-airline arrangements (such as airport charges, incentives and marketing support) as well as State aid to support airlines in financial distress situations in section 2;
- Antitrust and merger experience in the air transport sector, in particular in view of market definition, treatment of airline alliance partners and mergers, in section 3.

2. State aid in the air transport sector

2.1 State aid issues arising from financing of airports and airport-airline arrangements - General context

8. As part of the general plan to create a single airspace of the Union and taking account of market developments, in 2005 the Commission adopted guidelines on financing of airports and start-up aid to airlines departing from regional airports⁸ (the '2005 Aviation guidelines'). Those guidelines specified the conditions under which certain categories of State aid to airports and airlines could be declared compatible

⁵ As shown in 2002 by the 'Study on competition between airports and the application of State aid rules' - Cranfield University, June 2002, and subsequently confirmed by industry reports.

⁶ As evidenced by the International Civil Aviation Organization's policies on charges for airports and navigations services (Document 9082), last revised in April 2012.

⁷ In particular where aid is determined on the basis of ex post calculations (making good for any deficits as they arise), airports may not have much incentive to contain costs and charge airport charges that are sufficient to cover costs.

⁸ Communication from the Commission - Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

with the internal market. They supplemented the 1994 Aviation guidelines⁹, which mainly contained provisions with regard to the restructuring of flag carriers and social aid for the benefit of Union citizens.

9. On 31 March 2014 the Commission adopted EU guidelines on State aid to airports and airlines¹⁰ in order to take stock of the new legal and economic situation concerning the public financing of airports and airlines and specify the conditions under which such public financing may constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and, when it does constitute State aid, the conditions under which it can be declared compatible with the internal market pursuant to Article 107(3)(c) of the Treaty. The Commission's assessment is based on its experience and decision-making practice, as well as on its analysis of current market conditions in the airport and air transport sectors. In particular, the Commission considers that the mere fact that an airport operator receives or has received State aid does not automatically imply that its customer airlines are also aid beneficiaries. If the conditions offered to an airline at a given airport would have been offered by a profit-driven airport operator, the airline cannot be deemed to receive an advantage for the purposes of State aid rules.

10. Where public support constitutes State aid, the Commission considers that under certain conditions, certain categories of aid to regional airports and airlines using those airports can be justified, in particular to develop new services and contribute to local accessibility and economic development. Nevertheless, distortions of competition on all markets concerned should be taken into consideration and only State aid which is proportional and necessary to contribute to an objective of common interest can be acceptable.

11. In this context, it should be pointed out that operating aid constitutes, in principle, a very distortive form of aid and can only be authorised under exceptional circumstances. Airports and airlines should normally bear their own operating costs. Nevertheless, the gradual shift to a new market reality, explains the fact that regional airports have received widespread operating support from public authorities prior to the adoption of these guidelines. Against this backdrop, for a transitional period, and to enable the aviation industry to adapt to the new market situation, certain categories of operating aid to airports might still be justified under certain conditions. Under the current market conditions the available data and industry consensus point to a link between an airport's financial situation and its traffic levels, with financing needs normally being proportionately greater for smaller airports. In the light of their contribution to economic development and territorial cohesion in the Union, managers of smaller regional airports should therefore be given time to adjust to the new market environment, for example, by gradually increasing airport charges to airlines, by introducing rationalisation measures, by differentiating their business models or by attracting new airlines and customers to fill their idle capacity.

12. At the end of the transitional period, airports should no longer be granted operating aid and they should finance their operations from their own resources. Whilst the provision of compensation for uncovered operating costs of services of general economic interest should remain possible for small airports or to allow for connectivity of all regions with particular requirements, the market changes stimulated by these guidelines should allow airports to cover their costs as in any other industry.

13. Development of new air traffic should, in principle, be based on a sound business case. However, without appropriate incentives, airlines are not always prepared to run the risk of opening new routes from unknown and untested small airports. Therefore, under certain conditions, airlines may be granted start-up aid during and even after the transitional period, if this provides them with the necessary incentive to create

⁹ Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).

¹⁰ OJ 99, 4.4.2014.

new routes from regional airports, increases the mobility of the citizens of the Union by establishing access points for intra- Union flights and stimulates regional development. As remote regions are penalised by their poor accessibility, start-up aid for routes from those regions is subject to more flexible compatibility criteria.

14. The allocation of airport capacity to airlines should therefore gradually become more efficient (that is to say demand-oriented), and there should be less need for public funding of airports as private investment becomes more widespread. If a genuine transport need and positive externalities for a region can be established, investment aid to airports should nevertheless continue to be accepted after the transitional period, with maximum aid intensities ensuring a level-playing field across the Union.

2.2 State aid to support airlines in financial distress situations

15. When an airline company is in financial distress (qualifies as a company in difficulty under EU law) then the only type of aid which the airline can benefit from is rescue and/or restructuring aid. This aid has to be granted in line with the 2004 rescue and restructuring aid guidelines otherwise it would be considered incompatible and would have to be recovered by the Member State.

2.2.1 Conditions for approval of restructuring aid to airlines

16. The criteria for the assessment of restructuring cases of airlines are the same as for the restructuring of companies in other sectors. These criteria have been adapted to the specificities of the aviation sector in a number of decisions over the past couple of years.

17. One of the main criteria for obtaining the approval for the granting of state aid is the presentation of a **viable restructuring plan** to the Commission. The main elements of the return to viability in the airline industry focus on the streamlining of operations in order to focus on the core business of passenger transportation. Airlines also try to address their cost base by e.g. focusing on more unified fleet of aircraft, reducing catering costs in the economy class, minimising personnel costs and so on. As regards revenue initiatives, many traditional carriers under restructuring took inspiration from low-cost carriers and introduced base fare product to which extra services can be added in exchange for a fee (i.e. extra leg space, priority handling of passengers, etc.) Last but not least the network needs to be redefined in order to focus on the most profitable connections and synergies which can be exploited on the basis of geographical position of the respective carriers.

18. Another condition is the **own contribution** of the carrier to the cost of the restructuring. The guidelines require that large companies contribute at least 50% of the restructuring costs with a real and actual contribution, meaning money which the company received and excluding any theoretical potential future profits. The own contribution of airlines in restructuring in most cases consisted in commercial bank loans at market rates, sales of subsidiaries and/or assets (spare parts, slots, aircraft etc.).

19. Another important requirement of the rescue and restructuring guidelines is a reduction of (non-loss-making) activities as **compensatory measures** in order to limit the distortive effect of the state aid. A compensatory measure cannot be a measure which is anyway required for the company's return to viability, i.e. a measure which the company would take anyway to optimize its operation. The Commission has accepted in its decision making practice the reduction of capacity on non-lossmaking routes, and the giving up of slots on congested airports (i.e. a measure which has a benefit for competitors).

20. The rescue and restructuring guidelines also contain a very strong principle of "**one time, last time**", meaning that no more rescue and restructuring aid is available for a company which received such aid in the past ten years. This principle ensures that public money is not wasted for repetitive interventions to the benefit of companies which perhaps cannot compete and be viable in their relevant markets.

2.2.2 *Past airline restructuring cases*

21. The Commission has adopted the following decisions approving restructuring aid decisions under the 2004 rescue and restructuring guidelines: Austrian Airlines , Cyprus Airways, Air Malta and Czech Airlines.

22. In the case of Malev, the Hungarian flag carrier, the Commission ordered the recovery of past aid granted to this carrier, since it found that the company benefited from state aid measures between 2007 and 2010 without a duly notified restructuring plan. The aid to be repaid to Hungary was so important, that the carrier had to file for bankruptcy.

23. There are a number of formal investigations procedures on-going, concerning aid granted to SAS, Cyprus Airways, Air Baltic, Adria Airways, Estonian Air and LOT Polish Airlines. In addition, the Commission has opened several ex-officio cases exploring possible State aid issues related to other airlines.

24. In conclusion, if a financially distressed EU airline is to receive State aid, such aid can be given only in compliance with the provisions of the rescue and restructuring guidelines which allow for the granting of aid under strict conditions, ensuring that the aided company will become viable without continued state support, that the company contributes to the costs of the restructuring and that the distortion of competition created by the aid is effectively off-set. These principles thus lead to effective restructuring efforts being undertaken by the troubled air carriers and thus help to transform the European aviation market into an arena with strong and healthy airlines. If these conditions are not met, the aid cannot be granted which may eventually lead to a bankruptcy of the airline. Aid that has already been granted illegally will need to be recovered. However, recent examples of airline bankruptcies show that such market exits do not necessarily lead to lasting losses of connectivity as the space freed by the bankrupt airline may relatively quickly be filled by the expansion of competitors.

25. The Aviation guidelines set out the conditions under which Member States and local authorities can grant state aid to airports and airlines in the EU. The Commission, which is competent for controlling state aid in order to preserve fair competition in the Single Market, will apply these criteria when it receives notifications from Member States and when it carries out state aid investigations in the aviation sector.

26. These new rules aim to ensure that airports located in regions with a genuine transport need get access to the public funding that they need while also maintaining a level playing field for airports and airlines irrespective of their business models.

27. The guidelines allow public authorities to support investments into airport infrastructure and equipment as well as, for a transitional period of 10 years, the operating losses of small airports (below 3 million passengers), before they become profitable. Since very small airports with annual traffic of less than 700 000 passengers may face specific difficulties, they may benefit from operating aid to cover losses without such a transitional period.

28. Under certain conditions, airlines may also receive "start-up aid" that gives them the necessary incentive to create new routes from regional airports, increases the mobility of EU citizens by establishing access points for intra-EU flights and stimulates regional development. As remote regions are handicapped by their poor accessibility, the criteria for granting start-up aid for routes from these regions are more flexible.

3. Antitrust and merger experience in the air transport sector

3.1 Market definition

29. Competition amongst airlines providing scheduled passenger air transport services takes place on the basis of various key parameters, such as pricing, scheduling, frequencies, product and service quality, network-based parameters (such as network coverage and frequent flyer programmes) and sales and distribution. The importance of each parameter may vary depending on the type of customer (e.g., business v. leisure). Price is usually considered to be the main selection criterion for non-premium (e.g., leisure, non-time sensitive) customers. This is less so for premium (e.g., business, time sensitive) passengers, who attach more value to other factors such as flexibility, convenience of schedules, comfort, etc.

30. Network carriers typically distinguish between (i) published fares, (ii) corporate fares (net fares, discounts off published fares or rebates negotiated between airlines and corporate customers), and (iii) travel agency fares/discounts (net fares/discounts agreed upon by airlines with travel agencies). Airlines which have better access to distribution partners are usually better positioned to sell their tickets (although some low-cost airlines have successfully relied on a direct sales strategy). Of particular importance is the mix of distribution channels that is chosen (travel agencies, internet sites, consolidators, tour operators, code-share airlines, etc.).

31. In its recent merger and antitrust practice the Commission has consistently based its market definition analysis on the concept of O&D (Origin and Destination) pairs (possibly including, depending on a case-by-case analysis, several airports at a given point of origin or destination, e.g. the London airports). In US Airways/American Airlines, for example, the Commission looked at a number of O&D pairs (more than 70), but found competition concerns only on the route London–Philadelphia. The antitrust cases involved the assessment of transatlantic O&Ds; in Case 39596 – AA/BA/IB concerns were found to exist on six routes and on one in Case 39595 – AC/CO/LH/UA. Despite being challenged on a regular basis, the O&D approach has constantly been confirmed as being the appropriate market definition.

32. Subject to the specific conditions of a given O&D pair, the relevant market may or may not include (i) services offered between the two ends of the pair via other modes of transport, such as train or ferry (intermodal competition, e.g. a high speed train connection between Brussels and London or ferries to Greek islands) – the issue of intermodal competition was discussed in merger decisions in relation to short-haul routes; (ii) both non-stop and one-stop air transport services; or (iii) "dry seats" on charter flights (seats that are sold directly to individual passengers and not to travel agencies which usually bundle them in holiday packages).

33. The Commission regularly considers a distinction between two main categories of passengers: (i) "premium" (time sensitive) passengers, who attach more value to comfort and flexibility; and (ii) "non-premium" (non-time sensitive) passengers, who attach more importance to price. The rationale behind this distinction is that airlines' usually apply substantially different fares to these two categories of passengers. The Commission has noted in its more recent decisions that this distinction has become somewhat blurred over time, but continues to distinguish on that basis considering the results of market investigations.

34. Carriers currently offering scheduled air transport services within Europe are a heterogeneous group, with significant differences between each single carrier. Such differences relate mainly to the operating model chosen. In essence, there are two categories: full service carriers and low cost carriers. "Full service" carriers usually operate a so-called "hub-and-spoke" system whereby they direct traffic into their specific hub airport(s), from which they disperse the passengers via connections to numerous other destinations (including long-haul destinations). "Low-cost" or "low-frills" carriers offer a more basic and genuinely cheaper product, with a focus on short- or mid-haul routes and point-to-point services.

Intermediate levels of services between full service and low-cost however also exist. The differences between the operating models within the EEA can therefore not be grouped clearly into distinct categories. Consequently, the Commission does not distinguish relevant markets according to the type of carriers, but applies the O&D approach to both.

3.2 *Treatment of airline alliance partners*

35. Airlines cooperate to extend their network by selling seats on their partner airline's planes, to fill their planes with their partner airline's passengers, and to improve the value of their frequent flier programs, which in turn improves the value of their network as a whole. Such airline alliances vary from relatively loose arrangements to revenue-sharing or profit-sharing joint ventures on specific routes where the participating airlines not only code-share and ensure compatibility of their frequent flier programs, but also cooperate in other areas (for example, joint purchasing and sharing of common airport facilities). Such revenue-sharing or profit-sharing joint ventures may aim at selling seats without preference to the airline that will actually carry the passengers ('metal neutrality') to maximize the value of their entire combined network and it is the deepest form of cooperation. Airline alliances and integrated cooperation agreements between airlines on specific routes are common in the international airline industry.

36. In antitrust cases, the Commission aggregates the shares of the integrated joint venture parties with the shares of their subsidiaries and those of other carriers with which they enjoy antitrust immunity in the U.S. By contrast, regular alliance members are treated as competitors.

37. The assessment of the integrated transatlantic airline joint venture agreements in the framework of the international alliances oneworld (Case 39596 – AA/BA/IB), Star Alliance (Case 39595 – AC/CO/LH/UA) and Skyteam (Case 39964 AF/KL/DL/AZ – pending) focused in particular on assessing the overall competitive dynamics on O&Ds where two or more alliance partners operated flights, in particular having regard to the combined market shares, barriers to entry, closeness of competition, etc.

38. As regards mergers, if airlines are parties to a metal-neutral revenue or profit sharing joint venture, the joint venture partners and their related market shares will be taken into account when determining the affected markets (e.g. in US Airways/American Airlines, American Airlines was a partner of British Airways and Iberia in a 'metal neutral' transatlantic joint venture; therefore the Commission included the activities of this joint venture in its assessment). The reason for this lies in the fact that metal-neutral joint venture partners not only share revenues or profits, but also determine fares and capacity jointly, whereby these two main parameters of competition are eliminated. If airlines have entered into cooperation agreements on certain routes only (like BA and Iberia on some routes between the UK and Spain prior to their merger),¹¹ the competitive effect of such cooperation will be assessed on a case-by-case basis on the specific routes affected by the combination.

39. Product markets where one party and a third party's (e.g. an alliance partner's) activities overlap are outside of the scope of the Commission's merger investigation, as the transaction is usually not likely to produce merger-specific effects on these markets. However, where a factual inquiry indicates that close links are to be established between one merging party and a close partner of the other merging party, the Commission may take this into account. This was the case between KLM and Alitalia in the Air France/KLM merger case where the merger led to a change in incentives to co-ordinate and eliminated competition between the merged entity and Alitalia.

¹¹ This cooperation had been exempted under antitrust rules by the Commission subject to certain commitments in 2003.

3.3 *Substantive assessment*

3.3.1 *Mergers*

40. Only real mergers. The Commission has so far only treated "genuine" mergers or the acquisition of control of the whole or parts of an undertaking as concentrations under the merger regulation (as opposed to the acquisition by an airline of assets, such as slots, or gates).

41. Theory of harm. Most decisions in airline mergers have focused on the potential elimination of the only or most important actual or potential competitor on a given O&D pair. In the most problematic case (e.g. Ryanair/Aer Lingus III or Aegean/Olympic II), the merger would have led to monopolies on several routes.

42. Evidence. The Commission relies in particular on questionnaires to competitors, business customers, airport managers and authorities, consumer associations, etc. In addition, quantitative analyses may be undertaken by the Commission's Chief Economist Team to assess the impact of the merger on specific routes. A typical method is to estimate how an entry or exit affects the fares on a given route by the means of a regression analysis. Moreover, customer surveys may help shed light on questions such as whether there are different markets for time-sensitive or non-time sensitive customers or whether the parties are close competitors.

43. Remedies. The most frequent remedies in airline mergers are so-called "slot-remedies", whereby the parties commit to make available slots to allow a prospective entrant to operate on an O&D pair where competition concerns have been identified. At congested airports (e.g. London-Heathrow, Paris-CDG or Frankfurt/Main), slots often have a high value and can sometimes be traded among airlines. By giving up slots, the Parties provide other airlines with the opportunity to enter the market.

44. Feeder traffic. In some cases, one of the merging airlines may have provided a competitor with so-called "feeder traffic": in particular for long-haul flights, this is traffic made up by passengers connecting at either one or both ends of the route. Such feeder traffic may constitute an important input for a competitor. Therefore, restriction of access to that input can potentially raise competition problems. To address this vertical issue, the Parties may offer a special prorated agreement commitment, which will allow other carriers than the merging parties to offer competitive fares for indirect journeys that used to be provided by one of the merging parties (e.g. in IAG/bmi).

45. Efficiencies. No extensive efficiency claims have been so far put forward by notifying parties in merger cases in this sector (a notable exception being US Airways/American Airlines).

46. Prohibition. If no appropriate remedies can be found (e.g. in Olympic/Aegean I or Ryanair/Aer Lingus III), the transaction leads to a prohibition.

3.3.2 *Antitrust*

47. Extent of the cooperation. Antitrust investigations under Article 101(1) of the Treaty are only warranted where an airline alliance leads to the limitation or elimination of competition between the parties, namely if they cooperate on the main parameters of competition, in particular on fares, capacity and schedules, especially if such a cooperation involves revenue or profit sharing (see Case 39596 – AA/BA/IB, Case 39595 – AC/CO/LH/UA, and Case 39964 AF/KL/DL/AZ – pending). If an alliance agreement provides for coordination of the main parameters of competition, the Commission considers this to constitute a "by object" restriction under Article 101(1) TFEU. In practice, however, the Commission focusses its investigations and assessment on the routes where the cooperation is likely to produce anti-competitive effects.

48. Efficiencies. A specific focus of the recent airline alliance cases was the Commission's assessment of efficiencies under Article 101(3) of the Treaty. In the first of the three alliance cases (Case 39596 – AA/BA/IB) the parties' submissions on efficiencies were not sufficiently substantiated to offset the resulting harm to competition. In Case 39595 – AC/CO/LH/UA, the parties relied extensively on efficiency arguments. The efficiencies recognised by the Commission stem largely from time savings in better schedules, economies of density, benefits from reciprocal lounge access and from a significant reduction in double marginalisation. In its assessment the Commission also credited so-called "out-of-market efficiencies", which are those accruing on behind and beyond segments of a route of concern.

49. Decisions types. In Case 39596 – AA/BA/IB and Case 39595 – AC/CO/LH/UA, the parties offered binding commitments under Article 9 of Council Regulation 1/2003 to address the Commission's competition concerns, on the basis of which the Commission closed proceedings.

50. Content of the commitments. The Commitments offered in Case 39596 – AA/BA/IB and Case 39595 – AC/CO/LH/UA cover the mandatory release of slots at the hub airports concerned at the request of an eligible competitor and other measures enabling competitors to establish services on the routes of concern or expand services by improving their economic viability, for example by giving access to feeder traffic (e.g. fare combinability, special prorated agreements, frequent flier program cooperation).

3.4 Financial distress in merger cases

51. Failing firm defence. A formal failing firm defence has been put forward or implied as the relevant counterfactual by the Parties in several cases (IAG/bmi or Olympic/Aegean I), but was accepted by the Commission only once in an airline merger case (Aegean/Olympic II).

52. Counterfactual. In IAG/bmi, the Commission dismissed the failing firm defence because its strict criteria were not met but concluded, following an extensive review of internal documents and financial data that the most likely counterfactual would indeed be the winding down of bmi.