

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

**COMMITMENTS PACKAGE**

**CASE COMP/M. 5364 – IBERIA/CLICKAIR/VUELING**

Pursuant to Article 6(2) the Merger Regulation, Iberia submits the commitments specified below (the ***Commitments***) in order to enable the Commission to declare the Transaction compatible with the common market by means of a decision pursuant to Article 6(1)(b) of the Merger Regulation (the ***Decision***).

These Commitments shall take effect upon receipt of the Decision and will be binding on Iberia, Clickair and Vueling, its subsidiaries and successors (the ***Parties***) since then, including the Resulting Entity.

These Commitments are offered in the context of the Notified Concentration and are without prejudice to the position of Iberia and/or its strategic partners in other cases examined by the European Commission or other relevant authorities.

This text shall be interpreted in the light of (i) the Decision to which the Commitments are attached as conditions and/or obligations; (ii) Community law; and in particular (iii) the Merger Regulation, and the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ***Commission Notice on Remedies***).

**0. DEFINITIONS**

<b>Applicant</b>	Any airline interested in obtaining Slots from the Parties in accordance with these Commitments.
<b>Clickair</b>	Clickair, S.A.
<b>Commission</b>	The European Commission.
<b>Commitment(s)</b>	The slot commitment for each Identified Route as well as the commitment granting the Prospective New Entrant access to the frequent flyer program of Iberia (i.e. Iberia Plus) in the Identified Routes.
<b>Competitive Air Service</b>	Scheduled passenger air transport on a direct basis operated in one or more of the Identified Routes.
<b>Concentration or Notified Transaction</b>	Acquisition of sole control by Iberia over the Resulting Entity after the merger between Clickair and Vueling.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

<b>Decision</b>	Decision by the Commission declaring the Transaction compatible with the common market pursuant to Article 6(1)(b) of the Merger Regulation.
<b>Effective Date</b>	The date of the Decision.
<b>Execution of the Concentration</b>	The date on which Iberia will acquire control over the New Vueling within the meaning of Article 3.1 (b) of the Merger Regulation and which will be immediately notified to the Commission.
<b>Fast-Track Dispute Resolution</b>	This term will have the meaning given in Clause 5.
<b>Final Slot Request Date</b>	The final date for the request for Slots to the slot coordinator, that is, 35 days before the IATA Scheduling Conference.
<b>Frequency(ies)</b>	Means a roundtrip on an Identified Route.
<b>IATA Scheduling Conference</b>	Industry conference of airlines and airport coordinators worldwide to solve scheduling issues where there are discrepancies between the slots requested by the airlines and allocated by the airport coordinators. The IATA scheduling conference for the winter Season takes place in June, the one for the summer season in November.
<b>IATA Season</b>	<p>The IATA Summer season begins the last Sunday of March and ends on the Saturday before the last Sunday of October.</p> <p>The IATA Winter season begins the last Sunday of October and ends on the Saturday before the last Sunday of March.</p>
<b>Iberia</b>	Iberia Líneas Aéreas de España, S.A.
<b>Iberia Plus</b>	Iberia's frequent flyer program.
<b>ICC</b>	International Chamber of Commerce
<b>Identified Routes</b>	The Identified Domestic Routes and the Identified European Routes.
<b>Identified Domestic Routes</b>	Malaga-Barcelona, Barcelona-Granada, Barcelona-Oviedo, Barcelona-Santiago de Compostela, Barcelona-Seville, Malaga-Bilbao, Alicante-Ibiza, Bilbao-Ibiza, Bilbao-Seville, Ibiza-Seville, Ibiza-Valencia and Seville-Valencia.
<b>Identified</b>	Barcelona-Rome, Barcelona-Venice, Barcelona-Nice, Athens-Barcelona, Madrid-Naples, Madrid-Venice and Ibiza-

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

<b>European Routes</b>	Paris.
<b>Merger Regulation</b>	Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.
<b>Misuse</b>	This term will have the meaning provided under Clause 1.3.6.
<b>Monitoring Trustee</b>	Means an individual or institution, independent from the Parties, who is approved by the Commission and appointed by Iberia and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision as more fully described in Clause 12.
<b>New Air Service Provider</b>	An airline that is not a member of the Oneworld alliance and that commences a new nonstop service on an Identified Route or that increases the number of Frequencies it operates on an Identified Route in accordance with these Commitments.
<b>Notifying Party</b>	Iberia Líneas Aéreas de España, S.A. or Iberia.
<b>Parties</b>	Iberia, Clickair and Vueling including their subsidiaries and successors.
<b>Prospective New Entrant</b>	<p>Any Applicant airline that is not a member of the Oneworld alliance, able to offer a Competitive Air Service individually or collectively by codeshare and needing a Slot or Slots to be made available by the Parties in accordance with the Slot Commitment to operate a Competitive Air Service.</p> <p>For clarification purposes, the Prospective New Entrant shall comply with the following requirements:</p> <ul style="list-style-type: none"><li>• it must be independent of and unconnected with the Parties;</li><li>• it has the intention to begin or increase regular direct operations in one or several of the Identified Routes; and</li><li>• to that effect needs a Slot or several Slots for the operation of a direct Competitive Air Service which competes with those of the Parties.</li></ul>
<b>Reduced Utilisation Period</b>	Period of two (2) consecutive IATA Seasons (e.g. Summer/Winter or two consecutive Summer seasons in those routes which are not operated during the whole year) for the utilisation of the Slots transferred by means of the Transfer Procedure in the Identified Routes as foreseen under Clause

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

	1.3.5.
<b>Regulation 95/93</b>	Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports
<b>Requesting Party</b>	This term will have the meaning given in Clause 6.
<b>Resulting Entity</b>	The entity resulting from the merger between Clickair and Vueling.
<b>Final Slot Return Date</b>	15 January for the Summer IATA Season and 15 August for the Winter IATA Season.
<b>Slot Transfer Agreement</b>	An agreement between any of the Parties and a Prospective New Entrant that provides for conditions on the transfer of slot(s) to the Prospective New Entrant according to the principles laid down in Clause 1 and Clause 3 of these Commitments.
<b>Slot(s)</b>	The Slots on the Identified Domestic Routes and the Slots on the Identified European Routes.
<b>Slots in Identified Domestic Routes</b>	The scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date at a coordinated airport under the terms of Regulation 95/93 in relation to each of the Identified Domestic Routes.
<b>Slots in Identified European Routes</b>	The scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date at a coordinated airport under the terms of Regulation 95/93 in relation to each of the Identified European Routes.
<b>Standard Slot Allocation Procedure</b>	This term will have the meaning given in Clause 1.3.1.
<b>Transfer Procedure</b>	Slot Transfer Procedure stated under Clause 1.3.1.
<b>Utilisation Period</b>	Period of four (4) consecutive IATA Seasons (e.g. Summer/Winter/Summer/Winter or four consecutive Summer seasons in those routes which are not operated during the whole year) for the utilisation of the Slots transferred by means of the Transfer Procedure in the Identified Routes as foreseen under Clause 1.3.5.
<b>Vueling</b>	Vueling Airlines, S.A.

## **1. SLOTS**

### **1.1 SLOTS FOR CERTAIN IDENTIFIED EUROPEAN ROUTES**

1.1.1 The Parties undertake to make slot(s) available in Barcelona and/or Venice and/or Rome and/or Nice and/or Athens and/or Madrid and/or Naples and/or Ibiza and/or Paris to allow one or more Prospective New Entrant(s) to operate or increase the following number of additional frequency(ies), that is, a roundtrip in an Identified Route (hereinafter, the ***Frequency(ies)***), in the following Identified European Routes:

- (i) **Barcelona-Venice** - up to seven (7) Frequencies per week.
- (ii) **Barcelona-Rome** - up to fourteen (14) Frequencies per week.
- (iii) **Barcelona-Nice** - up to four (4) Frequencies per week.
- (iv) **Barcelona-Athens** - up to three (3) Frequencies per week.
- (v) **Madrid-Venice** - up to seven (7) Frequencies per week.
- (vi) **Madrid-Naples** - up to four (4) Frequencies per week.
- (vii) **Ibiza-Paris** - up to seven (7) Frequencies per week during the IATA Summer Season.

### **1.2 SLOTS FOR CERTAIN IDENTIFIED DOMESTIC ROUTES**

1.2.1 The Parties undertake to make slot(s) available at Barcelona and/or Malaga and/or Santiago de Compostela and/or Seville and/or Granada and/or Oviedo and/or Bilbao and/or Ibiza and/or Valencia and/or Alicante to allow one or more Prospective New Entrants to operate or increase the following number of additional Frequencies in the following Identified Domestic Routes:

- (i) **Barcelona-Malaga** - up to seven (7) Frequencies per week.
- (ii) **Barcelona-Santiago de Compostela** - up to seven (7) Frequencies per week.
- (iii) **Barcelona-Seville** - up to twenty-one (21) Frequencies per week.
- (iv) **Barcelona-Granada** - up to fourteen (14) Frequencies per week.
- (v) **Barcelona-Oviedo** - up to six (6) Frequencies per week.
- (vi) **Bilbao-Malaga** - up to seven (7) Frequencies per week.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

(vii) **Bilbao-Ibiza** - up to three (3) Frequencies per week during the IATA Summer Season.

(viii) **Bilbao-Seville** - up to seven (7) Frequencies per week.

(ix) **Ibiza-Seville** - up to four (4) Frequencies per week during the IATA Summer Season.

(x) **Ibiza-Valencia** - up to seven (7) Frequencies per week during the IATA Summer Season.

(xi) **Alicante-Ibiza** - up to seven (7) Frequencies per week during the IATA Summer Season.

(xii) **Seville-Valencia** - up to fourteen (14) Frequencies per week.

### **1.3 CONDITIONS PERTAINING TO SLOTS**

#### **1.3.1 The Prospective New Entrant shall comply with the following procedure to obtain Slots from the Parties (the *Transfer Procedure*).**

The Prospective New Entrant wishing to commence/increase a Competitive Air Service in one or more of the Identified Routes, shall notify its request for Slots to: (i) the slot coordinator, through the normal slot procedure (the ***Standard Slot Allocation Procedure***); and (ii) the Monitoring Trustee, within the period foreseen in Clause 3.1.

The Prospective New Entrant shall be eligible to receive slots from the Parties only if it has not obtained slots and can demonstrate that all reasonable efforts to obtain the necessary slots to operate in the Identified Routes through the normal workings of the Standard Slot Allocation Procedure have failed. The Prospective New Entrant shall apply for the necessary slots to commence/increase a Competitive Air Service on one or more of the Identified Routes to the slot coordinator through the Standard Slot Allocation Procedure, including the allocation of slots by the slot coordinator after the final slot return date, which shall be 15 January for the IATA Summer scheduling period and 15 August for the IATA Winter scheduling period (***the Final Slot Return Date***).

For these purposes, the Prospective New Entrant will be deemed not to have exhausted all reasonable efforts to obtain necessary slots either if:

- (i) slots were obtained through the Standard Slot Allocation Procedure within twenty (20) minutes of the times requested but, once obtained, such slots were refused by the Prospective New Entrant; and/or
- (ii) slots were obtained through the Standard Slot Allocation Procedure more than twenty (20) minutes from the times requested and the Prospective New

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

Entrant did not give the Parties the opportunity to exchange those slots for slots within equal or less than twenty (20) minutes of the times requested.

- 1.3.2 The maximum number of Slots to be released by the Parties shall not exceed, by airport, the aggregate of the necessary slots corresponding to the number of Frequencies offered in the Identified Routes from that airport in the context of these Commitments. To this effect, with the exception of what is foreseen under Clause 1.3.7., any Slot transferred on an indefinite basis in accordance with the Transfer Procedure or any Slot that has lost its grandfather rights shall be counted against the maximum number of Slots per airport to be transferred in accordance with the Commitments.
- 1.3.3 Without prejudice to the Commitments of this document and, particularly, of this paragraph, the Parties shall not be obliged to transfer the Slots to the Prospective New Entrant in the following cases: (i) the Prospective New Entrant has not carried out all reasonable efforts in the Standard Slot Allocation Procedure to obtain the necessary slots to operate the Identified Routes; and (ii) the Prospective New Entrant has been found to be in a situation of misuse as referred to in Clause 1.3.6 below (the *Misuse*).
- 1.3.4 The Parties undertake to release slots within twenty (20) minutes of the time requested by the Prospective New Entrant if the Parties have slots available within this time-window. In the event that the Parties do not have slots available within this time-window, they shall offer to release the slots closest in time to the Prospective New Entrant's request. The arrival and departure slots made available to the Prospective New Entrant shall be such as to allow for reasonable aircraft rotation. The Parties do not have to offer slots if the slots that the Prospective New Entrant may have obtained through the Standard Slot Allocation Procedure are closer in time to the Prospective New Entrant's request than the slots that the Parties have available.
- 1.3.5 As a general rule, the Slots obtained by the Prospective New Entrant as a result of the Transfer Procedure shall only be used to provide a Competitive Air Service on the Identified Route for which the Prospective New Entrant has requested the slots to the Parties. Those Slots cannot be used on another route unless the Prospective New Entrant has operated the Identified Route for which the Slots have been transferred at least during four (4) consecutive IATA Seasons (i.e. Summer/Winter/Summer/Winter or four consecutive Summer seasons in those routes which are not operated during the whole year) (the *Utilisation Period*).

The transfer of the Slots will become definitive and the Prospective New Entrant will be deemed to have acquired the rights arising from the Slots once appropriate use of these Slots has been made on the Identified Route during the Utilisation Period. Thus, once the Utilisation Period has elapsed, the Prospective New Entrant will be entitled to reassign the Slots obtained on the basis of this Commitment from the Identified Route to another short or medium haul route operated by the Prospective New Entrant.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

During the Utilisation Period the Prospective New Entrant shall not be entitled to transfer, assign, sell or charge in any way any Slot transferred by the Parties.

The Utilisation Period shall be reduced to two (2) full and consecutive IATA Seasons for such a Prospective New Entrant that requests Slots to operate a significant number of Identified Routes from one same airport (i.e. Summer/Winter or two consecutive Summer seasons in those routes which are not operated during the whole year) (the ***Reduced Utilisation Period***). To this effect, please refer to Clause 3.3.(i)(C).

The transfer of the Slots will become definitive and the Prospective New Entrant will be deemed to have acquired the rights arising from the Slots once appropriate use of these Slots has been made in the Identified Route during the Reduced Utilisation Period. Thus, once the Reduced Utilisation Period has elapsed, the Prospective New Entrant will be entitled to reassign the Slots obtained on the basis of this Commitment from the Identified Route to another short or medium haul route operated by the Prospective New Entrant.

During the Reduced Utilisation Period the Prospective New Entrant shall not be entitled to transfer, assign, sell or charge in breach of these Commitments any Slot transferred by the Parties.

- 1.3.6 During the Utilisation Period or the Reduced Utilisation Period, a situation of Misuse shall be deemed to arise where a Prospective New Entrant that has obtained Slots released by the Parties decides: (i) not to commence services on an Identified Route(s); or (ii) to operate less weekly Frequencies on an Identified Route(s) or to cease operating on an Identified Route(s); (iii) to transfer, assign, sell or charge in breach of these Commitments any Slot transferred by the Parties on the basis of the Transfer Procedure; (iv) not to use the Slots on an Identified Route(s); and (v) not to use the Slots properly: this situation shall be deemed to exist where the Prospective New Entrant (a) has not used at least 80% of each series of slots to which the slots were assigned (principle of “*use it or lose it*”) or (b) operates on a schedule different from the slot assigned on the basis of the Transfer Procedure, thereby not consolidating the grandfather rights (implying thus the loss of the grandfather rights and accordingly the return of the Slot to the *pool*).
- 1.3.7 During the Utilisation Period or the Reduced Utilisation Period, the Prospective New Entrant who has obtained at any time Slots under the Transfer Procedure and has been found or is foreseen to be found in a situation of Misuse shall immediately inform the Monitoring Trustee and the Parties with a sufficient time frame to, in practice, allow the Parties to use the Slots again and will return such non-used or misused Slots to them. In this case, the returned Slots will not be counted for the purposes foreseen under Clause 1.3.2.
- 1.3.8 Slots released under the Transfer Procedure described shall be offered free of charge without the Parties obtaining any compensation for the transfer.



**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

- 1.3.9 The Parties shall enter into a slot transfer agreement with the Prospective New Entrant in relation to the Identified Routes (the ***Slot Transfer Agreement***). Such an agreement shall be subject to the prior approval of the Commission, and shall provide for a fast-track dispute resolution procedure in accordance with Clause 6.

**2. DURATION OF THE COMMITMENTS**

- 2.1 In order to ensure that the Prospective New Entrant has guaranteed access to a structural remedy, the Slot transfer obligations in relation to the Identified Routes referred to above are unlimited in duration and may therefore be invoked at any time by a Prospective New Entrant subject to Clauses 1 and 8.

**3. SELECTION PROCEDURE, ROLE OF THE MONITORING TRUSTEE AND APPROVAL BY THE COMMISSION**

- 3.1 Before the deadline for the submission of slot applications to slot coordinators (i.e. 35 days before the IATA Scheduling Conference) (hereinafter, the ***Final Slot Request Date***), any airline wishing to obtain Slots from the Parties pursuant to the Transfer Procedure shall send a slot request to: (i) the slot coordinator, through the Standard Slot Allocation Procedure; and (ii) the Monitoring Trustee.
- 3.2 At least 3 weeks before the IATA Scheduling Conference of the relevant season, the Monitoring Trustee shall forward the slot request to the Parties. The Monitoring Trustee shall ask the Parties which slots (as preliminarily allocated in the *Slot Preliminary Allocation List - SAL*) they would release, if necessary, during the time-window requested by each Applicant (with a time margin of +/- 20 min), or if they do not have any slots in that time-window, the closest available slot. The Parties shall respond to the Monitoring Trustee within two (2) weeks.
- 3.3 Between the Final Slot Request Date and the beginning of the IATA Scheduling Conference:
- (i) the Commission, advised by the Monitoring Trustee:
    - (A) shall assess whether the Applicant qualifies as a Prospective New Entrant and whether the service to be provided by the Applicant qualifies as a Competitive Air Service;
    - (B) if there is more than one Applicant, it shall assess which applicant should be preferred. On the proposal for the selection of the Prospective New Entrant on the Identified Routes, preference shall be given to the Applicant that intends to operate the greatest number of Identified Routes from one same airport;
    - (C) shall assess, if applicable, whether the Applicant may benefit from the Reduced Utilisation Period in accordance with Clause 1.3.5.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

- 3.4 As provided for under Clause 3.3.(i).(A), the Commission shall decide after consulting with the Monitoring Trustee whether or not it considers the Applicant as a Prospective New Entrant pursuant to the following criteria:
- (i) the Applicant is independent of and unconnected to the Parties; and
  - (ii) the Applicant is a viable potential competitor, with the ability, resources and commitment to operate the Identified Route(s) in the long term as a viable and active competitive force.
- 3.5 To assist the Monitoring Trustee in the preparation of his advice and/or the Commission in taking its decisions, the Monitoring Trustee and/or the Commission may request the Applicant to provide to the Monitoring Trustee and/or the Commission a detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The detailed business plan shall provide information on the plans that the company has in terms of development of its network, fleet etc, and detailed information on its plans for the Identified Route(s) on which it wants to operate. The latter should specify in detail planned operations on the Identified Route(s) over a period of at least two (2) IATA Seasons (size of aircrafts, number of frequencies operated, planned time-schedule of the flights) and expected financial results (expected traffic, revenues, profits). The Monitoring Trustee and/or the Commission may also request a copy of all co-operation agreements the Applicant may have with other airlines. Business secrets and confidential information will be kept confidential by the Commission and the Monitoring Trustee and will not become accessible to the Parties, other undertakings or the public.
- 3.6 Upon receiving the SAL messages<sup>1</sup> from the slot coordinator, and in advance of the beginning of the IATA Scheduling Conference, the Monitoring Trustee shall inform each Applicant (if the latter did not receive slots within the time-window of +/-20 minutes as indicated through the SAL) and the slot coordinator:
- (i) Whether it qualifies for the Slots Commitment;
  - (ii) Whether it is:
    - (A) the only Applicant or the preferred Applicant; or
    - (B) not the preferred Applicant
  - (iii) Whether the Applicant may benefit from the Reduced Utilisation Period foreseen in Clause 1.3.5;

---

<sup>1</sup> In this regard, the slot coordinator will have already sent the SAL messages (by means of which the slot coordinator informs about the situation of the slot requests) to each carrier.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

- (iv) The exact Slot(s) that the Parties would release through the Transfer Procedure.

In any case, the applicant shall attend the IATA Scheduling Conference and try to improve its slots.

- 3.7 At the end of the IATA Scheduling Conference, it will be clear, also for the Monitoring Trustee, for instance through the *European Union Airport Coordinators Association* (EUACA) database, whether each Applicant has obtained slots within the window of +/-20 minutes through the Standard Slot Allocation Procedure.
- 3.8 Within 2 weeks of the end of the IATA Scheduling Conference, the preferred Applicant shall inform the Monitoring Trustee and the Parties whether it will commit to operate the Slots offered eventually by the Parties in case it has not obtained them through the Standard Slot Allocation Procedure. The Monitoring Trustee shall otherwise offer the slots to the next Applicant (if any).
- 3.9 Within one week of the confirmation that the Applicant will operate the Slots, the Parties shall offer the dedicated Slots for transfer to the preferred Applicant; the Slot Transfer Agreement shall be signed and the slot coordinator shall be informed of the transfer in order to obtain the required confirmation.
- 3.10 In those airports of the Identified Routes which are schedule facilitated airports within the meaning of Article 2(i) of Regulation 95/93, the Parties commit to assist any Prospective New Entrant and *mutatis mutandi* the relevant schedule facilitator to resolve any congestion so the mechanism foreseen under Clauses 3.1. to 3.9. has the same effect in these airports.

**4. COMMITMENT PROVIDING ACCESS TO IBERIA'S FREQUENT FLYER PROGRAM FOR USE BY PROSPECTIVE NEW ENTRANTS ON THE IDENTIFIED ROUTES**

- 4.1 In case the Prospective New Entrant does not participate in Iberia's frequent flyer program (*Iberia Plus*) or does not have its own comparable frequent flyer program, Iberia shall allow it, on request, to become a member of Iberia Plus for the Identified Routes.
- 4.2 The agreement with the Prospective New Entrant concerning the use of the Iberia Plus program shall be based on terms and conditions similar to those that currently apply to Iberia's alliance partners on the same Identified Routes. Financial conditions will reflect the average conditions agreed upon with the Iberia's alliance partners in routes similar to the Identified Routes.
- 4.3 Disputes between the Parties and the Prospective New Entrants regarding the use of the Iberia Plus program pursuant to this Clause 4 shall be subject to mediation pursuant to the fast-track dispute resolution procedure provided for in Clause 6.

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

- 4.4 Any agreement for the use of the Iberia Plus program shall be unlimited in duration and may be invoked by a Prospective New Entrant at any moment without prejudice to what is stated under Clause 8.

**5. MONITORING TRUSTEE**

**5.1 APPOINTMENT OF MONITORING TRUSTEE**

- 5.1.1 A Monitoring Trustee shall be appointed by the Notifying Party in the terms and in accordance with the procedure described below and, once approved by the Commission, shall perform the functions of monitoring the Parties' fulfilment of the Commitments and further obligations that may be contained in the Decision authorizing the Transaction.

The Monitoring Trustee shall be independent of the Notifying Party and the companies belonging to its respective groups, and must be familiar with the airline industry and have the experience and competence necessary for this appointment (e.g., investment bank, consultant specialized on the air transport sector or auditor). In addition, he shall not be exposed to any conflict of interest and shall not have had any direct or indirect work, consulting or other relationship with Iberia, Clickair or Vueling in the last three (3) years and shall not have a similar relationship with the Parties for two (2) years after completing its mandate.

- 5.1.2 The Notifying Party shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.

Within one (1) week of the Effective Date, Iberia shall submit to the Commission for approval a list of one or more persons whom Iberia considers adequate to fulfil the duties of the Monitoring Trustee.

The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out above and shall include:

- (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
- (ii) the outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to him.

The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Iberia shall appoint the individual or institution concerned as Monitoring Trustee. If more than one name is approved by the Commission, Iberia shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee should be appointed within one (1)

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

week of the Commission's approval, in accordance with the mandate approved by the Commission.

If all the proposed Monitoring Trustees are rejected by the Commission, Iberia shall submit the names of at least two more individuals or institutions within one (1) week of being formally informed of the rejection by the Commission.

If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Iberia shall appoint in accordance with the mandate approved by the Commission.

## **5.2 MONITORING TRUSTEE'S MANDATE**

5.2.1 The Monitoring Trustee's mandate shall include, in particular, the following obligations and responsibilities:

- (i) to monitor the satisfactory discharge by the Parties of the obligations entered into in these Commitments in so far as they fall within the scope of these Commitments;
- (ii) to propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision;
- (iii) to advise and make a written recommendation to the Commission as to the suitability of any Slot Transfer Agreement and Prospective New Entrant submitted for approval to the Commission under Clauses 1 and 3;
- (iv) to provide written reports to the Commission on the Parties' compliance with these Commitments and the progress of the discharge of his mandate, identifying any respects in which the Parties have failed to comply with these Commitments or the Monitoring Trustee has been unable to discharge his mandate;
- (iv) to mediate in any disagreements relating to any Slot Transfer Agreement, if mediation is agreed to by the other party or parties to the agreement in question, and submit a report upon the outcome of the mediation to the Commission; and
- (iv) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the scope of these Commitments.

5.2.2. The Parties shall receive simultaneously a non-confidential version of any recommendation made by the Monitoring Trustee to the Commission (as provided for in Paragraph 5.2.1(iii)).

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

- 5.2.3 The reports provided for in Paragraphs 5.2.1(iii) to (vi) shall be prepared in Spanish. The reports provided for in Paragraph 5.2.1(iv) shall be sent by the Monitoring Trustee to the Commission within ten (10) working days from the end of every IATA Season following the Monitoring Trustee's appointment or at such other time(s) as the Commission may specify and shall cover developments in the immediately preceding IATA Season. The Parties shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.
- 5.2.4 The Parties shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out his mandate. The Notifying Party shall pay reasonable remuneration for the services of the Monitoring Trustee as agreed in the mandate.
- 5.2.5 The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel facilities, sites, technical information necessary to fulfil his duties under these Commitments.
- 5.2.6 The Parties shall indemnify the Monitoring Trustee (and, where appropriate, his employees, agents and advisors) (each an ***Indemnified Party***) and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, his employees, agents and advisors).

At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval, if the Monitoring Trustee considers the appointment of such advisors necessary for the performance of his duties under the mandate, provided that any fees incurred are reasonable and upon which the Parties have been consulted.

**5.3 TERMINATION OF MANDATE**

- 5.3.1 If the Monitoring Trustee ceases to perform his functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (i) the Commission may, after hearing the Monitoring Trustee, require the Parties to replace the Monitoring Trustee; or
  - (ii) the Parties, with the prior approval of the Commission, may replace the Monitoring Trustee.
- 5.3.2 If the Monitoring Trustee is removed he may be required to continue in his function until a new Monitoring Trustee is in place to which the Monitoring Trustee has

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Paragraph 5.3.1.

- 5.3.3 Aside from being removed in accordance with Paragraph 5.3.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged him from his duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.

**6. FAST-TRACK DISPUTE RESOLUTION PROCEDURE**

- 6.1 In the event that a Prospective New Entrant or a New Air Services Provider has reasons to believe that the Parties are failing to comply with the requirements of the Slot Transfer Agreement and of the agreement concerning the Iberia Plus program vis-à-vis that party, the fast-track dispute resolution procedure (the ***Fast-Track Dispute Resolution Procedure***) described in this Clause 6 will apply.
- 6.2 Any Prospective New Entrant or New Air Services Provider who wishes to avail itself of the Fast-Track Dispute Resolution Procedure (a ***Requesting Party***) must notify the Parties in writing setting out in detail the reasons leading that party to believe that the Parties are failing to comply with the requirements of the Slot Transfer Agreement and the agreement concerning the Iberia Plus program (the ***Notice***). The Requesting Party and the Parties will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time which shall not exceed fifteen (15) business days after receipt of the Notice, which may be extended by mutual consent.
- 6.3 Should the Requesting Party and the Parties fail to resolve their differences of opinion through cooperation and consultation as provided for in the previous paragraph, the Requesting Party shall nominate an arbitrator.
- 6.4 The Parties shall, within two (2) weeks of receiving notification in writing of the appointment of the Requesting Party's arbitrator, nominate their arbitrator and provide to the Requesting Party in writing detailed reasons for their challenged conduct.
- 6.5 The arbitrators nominated by the Parties and the Requesting Party shall, within one (1) week from the nomination of the former, agree to appoint a third arbitrator. If the arbitrators nominated by the Parties and the Requesting Party cannot agree on the nomination of a third arbitrator, they shall ask the President of the International Chamber of Commerce (***ICC***) to appoint the third arbitrator.
- 6.6 The arbitrators shall be instructed to establish an arbitration tribunal and to make a preliminary ruling on the contested issues within one (1) month of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all three arbitrators. The preliminary ruling shall be applicable immediately and until the final decision is issued. The final decision shall be taken

**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

by the arbitrators within six (6) months of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all three arbitrators.

- 6.7 In their preliminary ruling and their final decision, the arbitrators shall also decide the action, if any, to be taken by the Parties in order to ensure compliance with the Slot Transfer Agreement and the Iberia Plus agreement regulated in these Commitments vis-à-vis the Requesting Party, including making a preliminary or binding decision of the disputed contractual conditions regarding the Iberia Plus agreement.
- 6.8 Any of the arbitrators shall be entitled to request any relevant information from the Parties or the Requesting Party in order to enable them to reach a decision.
- 6.9 The burden of proof in any dispute under the Fast-Track Dispute Resolution Procedure shall be borne as follows: (i) the Requesting Party must produce evidence of a *prima facie* case, and (ii) if the Requesting Party produces evidence of a *prima facie* case, the arbitrator must find in favour of the Requesting Party unless the Parties can produce evidence to the contrary.
- 6.10 The arbitrators shall be instructed not to disclose confidential information and to apply the standards attributable to confidential information and business secrets by European Community competition law.
- 6.11 The arbitration shall be in Spanish and conducted pursuant to ICC rules. The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing party upon the party that is unsuccessful.
- 6.12 In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the arbitrators shall seek the Commission's interpretation of the Commitments, in accordance with the Decision, before finding in favour of any party to the arbitration. The Commission may, at any time, submit a proposal during the arbitration procedure.
- 6.13 Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the EC Treaty.

**7. GENERAL PROVISIONS**

- 7.1 If the Concentration is abandoned, abrogated, unwound, not approved or disapproved by a relevant government authority, or otherwise terminated, then these Commitments shall automatically cease to apply.
- 7.2 In this regard, in case the Execution of the Concentration does not take place for any reason, any Slot transferred before the Execution of the Concentration shall be returned to the Parties by the Prospective New Entrant at the end of the ongoing



**Translation of Commitments for information purposes only**

**Only the Spanish version is authentic**

IATA Season in which the concentration is abandoned, abrogated, unwound, not approved or disapproved.

- 7.3 If the approval of the Concentration by another governmental authority is made subject to requirements that are potentially inconsistent with these Commitments, the Notifying Party may request a review and adjustment of these Commitments in order to avoid such inconsistencies.

**8. REVIEW CLAUSE: WAIVER REQUEST**

- 8.1 The Commission may, if appropriate, in response to a request from Iberia duly justified and provided together with the relevant report prepared by the Monitoring Trustee, grant an extension of the terms foreseen in these Commitments. In case Iberia asks for any term extension, such a request shall be filed no later than one (1) month before the end of the period. Only in exceptional circumstances shall Iberia be entitled to request an extension within the last month of any period.
- 8.2 In addition, the Commission may, if appropriate, in response to a request from Iberia duly justified and provided together with the relevant report prepared by the Monitoring Trustee, in exceptional circumstances, waive, modify or substitute one or more of the obligations stated in these Commitments.

Madrid, 8 January 2009

Signed