



**Jersey Competition Regulatory Authority (“JCRA”)**

**Decision M502/10**

**Proposed Merger**

**of**

**Iberia Líneas Aéreas de España S.A.**

**and**

**British Airways Plc**

### **The Notified Transaction**

1. On 24 June 2010, the JCRA received an application (the “**Application**”) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the “**Law**”) concerning a proposed merger of Iberia Líneas Aéreas de España S.A. (“**Iberia**”) and British Airways Plc (“**BA**”).
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website on 29 June 2010, inviting comments on the proposed merger by 13 July 2010. No comments were received.

### **The Parties**

#### *(a) Iberia*

3. Iberia is active in scheduled air transport of passengers and cargo, airport handling services and aircraft maintenance and engineering. Iberia is listed on the Spanish Stock Exchange. On 12 March 2010, no shareholder held a controlling interest in Iberia.
4. Iberia does not provide any services to or from Jersey.

#### *(b) BA*

5. BA is active in scheduled air transport of passengers and cargo, airport handling services and aircraft maintenance and engineering. BA is listed on the London Stock Exchange. On 4 March 2010, no shareholder held a controlling interest in BA.
6. BA currently provides between five or six daily arrivals and departures in between Jersey Airport and London Gatwick Airport.

### **The Requirement for JCRA Approval**

7. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. According to Article 2(1)(a) of the Law, a merger or acquisition occurs for the purpose of the Law if two or more undertakings that were previously independent of each other merge.
8. The parties requested JCRA approval under Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the “**Order**”). In particular, the Parties assess that BA has over 40% of the share of supply of scheduled passenger air transport services between Jersey Airport and London Gatwick Airport. On this basis, pursuant to the Order, the JCRA’s approval is required under Article 20(1) of the Law before the proposed merger is executed.

### **Assessment**

9. Under Article 22(4) of the Law, the JCRA must determine if the proposed merger would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline.<sup>1</sup> As detailed below, the JCRA concludes that this would not be the case.

### **Defining the affected relevant market(s)**

10. *“A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use.”*<sup>2</sup>
11. The Parties consider the relevant product market to be scheduled air passenger services for the Jersey-London city pair on a bi-directional basis. The Parties consider that there are no obvious connections by which Iberia’s services could be

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<sup>1</sup> JCRA Guideline, *Mergers and Acquisitions* at 6.

<sup>2</sup> *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (09.12.97).

utilised in routes that could be considered remotely substitutable from BA's Jersey-London services.

12. For the purpose of this Decision there is no need to define a relevant market as the proposed merger would not result in a substantial lessening of competition irrespective of the definition of the relevant market.

### **Effect on Competition**

13. The JCRA's assessment determines whether the proposed merger would result in a substantial lessening in Jersey or any part of Jersey. The proposed merger has also been submitted for approval with other competition authorities, for example the European Commission, who make a similar competitive assessment for their respective jurisdictions.
14. As indicated in sections 3 and 5 above, both undertakings are active in the supply of similar services, but only BA is active in the supply of those services in Jersey. Currently, Iberia does not provide services in Jersey, nor was there any evidence that it recently did so, or had future plans to commence service. Thus, there is no horizontal overlap concerning Jersey arising from the proposed merger. Moreover, there are no vertical connections between the parties that could affect competition in Jersey as a result of the proposed merger.
15. In light of there being no horizontal or vertical concerns arising from the proposed merger, the assessment of the JCRA centred on the question whether there are any indications that the merged entity would pursue a different commercial and operational policy following the proposed merger that could possibly result in a substantial lessening of competition in Jersey. In response to the JCRA's questions, both Parties responded that it is not envisaged that the proposed merger will impact on BA's London to Jersey service.
16. The JCRA does not have any evidence that contradicts the Parties' assessment that the proposed merger will have no effect on competition in Jersey. In particular, before the proposed merger, there was already a level of cooperation

between the Parties in the form of an alliance agreement<sup>3</sup> and code share and frequent flyer programme agreements, and there is no indication that the further integration resulting from the proposed merged would affect competition in Jersey or any part of Jersey.

### **Conclusion**

17. The JCRA concludes that the proposed merger is not likely to lessen competition in Jersey or in any part of Jersey. Because of this conclusion, it is not necessary for the JCRA to consider other factors such as barriers to entry or pro-competitive effects or efficiencies.
18. Given this conclusion, the JCRA hereby approves the proposed merger under Article 22(1) of the Law

**20 July 2010**

**By Order of the JCRA Board**

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<sup>3</sup> See COMP/D2/38.479 British Airways/Iberia/GB.