Jersey Competition Regulatory Authority

Case M852J/12

Proposed acquisition of British Midland Limited by International Airlines Group

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Decision

Document No: CICRA 12/26 **March 2012**

Jersey Competition Regulatory Authority
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The Notified Transaction

1. On 21 February 2012, the JCRA received an application (the "**Application**") under Articles 20 and 21 of the *Competition (Jersey) Law 2005* (the "**Law**"), seeking the JCRA's approval of the proposed acquisition by International Airlines Group ("**IAG**") of 100% of the issued share capital in British Midland Limited ("**BMI**"), from LHBD Holding Company Limited ("**Vendor**"), a wholly-owned subsidiary of Deutsche Lufthansa AG ("**Lufthansa**"). IAG is the holding company of both British Airways Plc ("**British Airways**") and Iberia Líneas Aéreas de España S.A. ("**Iberia**").

2. The proposed acquisition has also been the subject of a notification to the European Commission under the EC Merger Regulation, and notifications to the competition authorities in Brazil and Ukraine, and will be notified after completion to the competition authority in Egypt.

3. The JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website on 22 February 2012, inviting comments on the proposed acquisition by 7 March 2012. No comments were received.

The Parties

(a) BMI

4. BMI is an indirect but wholly-owned subsidiary of Lufthansa, a German-registered company listed on the Frankfurt stock exchange. The acquisition of BMI by Lufthansa was the subject of a decision of the JCRA of 20 July 2010 concerning an infringement of Article 20(1) of the Law[1].

5. BMI, through its low cost operation, bmi baby, currently provides scheduled air transport services between Jersey Airport and East Midlands Airport twice a week, with two extra flights per week during peak season.

6. IAG is principally interested in acquiring BMI's mainline business, based at London Heathrow. As such, BMI is currently looking to find other purchasers for its bmi baby business, although the notification has been lodged with the JCRA to allow for the possibility that that sale will not occur before the proposed acquisition by IAG.

[1] Decision C332/08

BMI is also looking for a purchaser for its other division, bmi Regional, based in Aberdeen.

7. For the financial year ending 31 December 2010, the worldwide turnover of BMI was £580.3 million and its turnover in Jersey was £[Redacted].

(b) IAG

8. IAG (also known as the International Consolidated Airlines Group, S.A.) is the parent company of British Airways and Iberia. It is a Spanish registered company whose shares have been traded on the London Stock Exchange and Spanish Stock Exchange since January 2011.

9. British Airways is active in scheduled air transport of passengers and cargo, airport handling services and aircraft maintenance and engineering. It currently provides between five and six flights daily between Jersey Airport and London Gatwick Airport.

10. For the financial year ending 31 December 2010, the worldwide turnover of British Airways was £7,717.3 million and Iberia was £4,592.7 million.

11. For the financial year ending 31 December 2010, the turnover in Jersey of British Airways was £[Redacted] and Iberia was £[Redacted].

The Requirement for JCRA Approval

12. Under 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)(b) of the Law, a merger or acquisition occurs for the purpose of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

13. The proposed acquisition involves IAG acquiring control of the target, BMI, as defined under Article 2(1)(b). The parties applied for JCRA approval of the proposed acquisition on the basis that the acquiring party, IAG, is likely to have a share of 40% or more in the supply of passenger air services between Jersey and London and that the proposed acquisition therefore falls within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order* 2010 (the "**Order**"). This

follows the JCRA's approach in previous cases of basing calculations of shares of supply on a point of origin/point of destination ("**O&D**") approach to city pairs[2].

14. While the parties did not submit the notification on the basis of BMI's share of supply on the Jersey to Nottingham/East Midlands city pair, the JCRA notes that BMI's activities on that route were, in part, used by the JCRA as evidence in its decision that Lufthansa infringed Article 20(1) of the Law[3]. At the time of Lufthansa's acquisition of BMI in July 2009, BMI was the only airline that provided scheduled air passenger transport services on the Jersey to Nottingham/East Midlands city pair, and this implied that BMI's share of supply for that city pair was 100%.

15. Aurigny Air Services Ltd now also provides an indirect service from Jersey to East Midlands (Wednesday to Sunday), with passengers changing planes in Guernsey. The parties have not provided data for the shares of rival airlines for this city pair, although the notification does note that BMI accounts for 90-100% of demand for direct flights. Given that the Aurigny services are indirect, and typically involve a stop-over of at least 1 hour in Guernsey, it seems likely that BMI may retain more than 40% share of supply for scheduled air passenger transport services on the Jersey to Nottingham/East Midlands city pair. If this is the case, then BMI's activities alone would have triggered an obligation to notify the proposed acquisition under Article 4 of the Order, since neither of the exceptions in Article 4 would appear to apply.

16. In the event, the JCRA is not required to conclude whether BMI's activities would give rise to a notification obligation, since, pursuant to the Order and Article 20(1) of the Law, British Airways' activities alone are sufficient to mean that the JCRA's approval is required before the proposed acquisition is executed.

<u>Assessment</u>

17. Under Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA's *Guidelines for Mergers and Acquisitions*.[4]

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[2] Decision C332/08, paragraph 13
[3] Decision C332/08, paragraph 27, and the cases cited there
[4] JCRA (2010), *Mergers and Acquisitions*, at page 6

18. The JCRA has concluded that the proposed acquisition will not substantially lessen competition in Jersey or any part thereof, for the reasons set out below.

Defining the affected relevant market(s)

19. 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[5]. The relevant geographic market is, stated simply, the area in which competition takes place.

20. Both IAG and BMI are active in the supply of:

    (a) Air transport for passengers;

    (b) Air transport for cargo;

    (c) Airport ground handling services; and

    (d) Maintenance, repair and overhaul services ("**MRO**").

Air transport for passengers

21. Previous case law of the JCRA[6] and the European Commission[7] suggests that as far as passenger air services are concerned, each O&D city pair should be regarded as a separate relevant market.

22. The parties submit that the relevant markets comprise scheduled air passenger services for the Jersey-London city pair (including services to London Gatwick, London Heathrow, London City, London Luton, London Stansted and London Southend Airports) and the Jersey-Nottingham/East Midlands city pair, each on a bi-directional basis. As noted above, British Airways currently provides passenger air services between Jersey Airport and London Gatwick Airport, while BMI provides passenger air services between Jersey Airport and East Midlands Airport.

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[5] *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (9 December 1997)

[6] Decision M093/06 – Flybe/British Regional Air Lines Group Limited (29 January 2007); Decision M170/08 concerning an infringement of Article 20(1) of the *Competition (Jersey) Law* 2005 by TUI AG (24 January 2008)

[7] Case No. M.3280 - Air France/KLM (11 February 2004)

23. A horizontal overlap between the activities of the parties would only arise if the scope of the relevant market/s was considerably broader than is suggested by the definitions adopted in other merger cases in the same sector; for example, if the market comprised all passenger air services between Jersey and England. However, there is no evidence before the JCRA that would suggest that relevant market should be defined anywhere near this broadly. Moreover, the combined share of the parties in such a wide market would be relatively small.

24. Given that the proposed acquisition will not lead to a substantial lessening of competition on any plausible market definition, for the purposes of this Decision, the JCRA accepts the parties' submission that the relevant markets are scheduled air passenger services for the Jersey-London city pair and the Jersey-Nottingham/East Midlands city pair, each on a bi-directional basis.

Air transport for cargo

25. IAG's cargo business comprises British Airways World Cargo (mail and courier traffic) and Iberia Cargo (Iberia's cargo division). These businesses use capacity in the belly-hold of passenger aircraft and on three long-haul freighter aircraft. Neither British Airways World Cargo nor Iberia Cargo service Jersey and any freight services required by IAG in Jersey are outsourced to a third party provider.

26. BMI's cargo business is limited to the use of spare capacity in the belly-hold of its passenger aircraft.

27. In light of the absence in overlap between the O&D city pairs that are serviced by the parties as they relate to Jersey, the proposed acquisition will not result in any material effect on competition in the provision of air cargo services in Jersey. As such, the JCRA has not sought to reach a definitive conclusion on market definition in relation to the provision of these services.

Groundhandling services

28. IAG's groundhandling operations comprise Iberia's provision of groundhandling services to third parties at airports located in Spain, Israel and Equatorial Guinea and

British Airways' very limited provision of groundhandling services to its oneworld partner, Qantas, at London Heathrow.

29. BMI provides groundhandling services to third parties at London Heathrow and airports in Edinburgh, Belfast, Glasgow and Manchester. It also provides intra-group groundhandling services to other airlines within the Lufthansa Group.

30. As neither party provides groundhandling to third parties at Jersey Airport, the JCRA has concluded that the proposed acquisition will not affect competition in groundhandling services in Jersey, and so has not sought to reach a definitive conclusion on market definition in relation to the provision of these services.

MRO Services

31. Neither of the Parties provides MRO Services in Jersey and therefore the JCRA has concluded that this is not a relevant market for the purposes of its analysis of the proposed acquisition.

<u>Effects on competition</u>

32. The JCRA is required to assess whether the proposed merger would result in a substantial lessening of competition in Jersey or any part of Jersey. The proposed merger has also been submitted for approval to other competition authorities - for example, the European Commission - who will make a similar competitive assessment for their respective jurisdictions.

33. In light of there being no horizontal or vertical overlaps in Jersey arising from the proposed acquisition, the assessment of the JCRA has centred on 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.

34. Both parties have previously operated services between Jersey Airport and London Heathrow Airport: British Airways ceased this service in 2000, and BMI operated this service between March 2007 and March 2009. Moreover, it could be argued that British Airways and BMI are the two airlines currently flying to Jersey that would be most likely to use existing slots and operations at London Heathrow Airport to

recommence serving this route: the only other airlines that presently operate from both Jersey Airport and London Heathrow Airport are Aer Lingus and Lufthansa.

35. However, the lack of success that airlines have had in the recent past serving the route between Jersey and London Heathrow Airports would tend to support the existence of a relevant market comprising the Jersey-London city pair, rather than a separate potential market for Jersey-London Heathrow flights; and, as the parties note, there are a number of different airlines providing services on the Jersey-London city pair. As such, the JCRA does not consider that there is any basis for concluding that the proposed acquisition would substantially lessen competition in air transport services to or from Jersey.

Conclusion

36. The JCRA concludes that the proposed acquisition will not substantially lessen competition in Jersey or any part of Jersey, and hereby approves the proposed acquisition under Article 22(1) of the Law.

16 March 2012 **By Order of the JCRA Board**