



## Case M1450J

Proposed acquisition of Flybe Group Plc and its trading subsidiaries, Flybe Ltd and Flybe.com Ltd by Connect Airways Ltd

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## Decision

Document No: CICRA 19/09

Date: 27 February 2019

Jersey Competition Regulatory Authority  
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## Summary

1. Connect Airways Ltd (**Connect Airways**) proposes to acquire control of Flybe Group, including its subsidiaries, Flybe Ltd and Flybe.com Ltd (**Flybe**), which operates air routes into and from Jersey.
2. The transaction has been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).
3. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

## The Notified Transaction

4. On 11 February 2019, the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (**CICRA**) received a joint application from Connect Airways' shareholders for the proposed acquisition of the entire issued and to be issued share capital of Flybe, which will become a wholly-owned subsidiary of Connect Airways.
5. CICRA registered the application on its website with a deadline for comments of 25 February 2019. One submission was received.

## The Parties

6. Flybe Group is a UK regional airline, incorporated in England and Wales with registered number 01373432. The shares of Flybe Group are listed on the London Stock Exchange. Flybe Ltd is incorporated in England and Wales, with registered number 02769768. Flybe.com Ltd is also incorporated in England and Wales, with registered number 024252085.
7. Connect Airways is incorporated in England and Wales, with registered number 11732177. Connect Airways is a joint venture company, the share capital of which is owned 40% by DLP Holdings, S.a.r.l. (a company wholly owned by funds managed by Cyrus), 30% by Stobart Aviation, a wholly-owned subsidiary of Stobart Group, and 30% by Virgin Travel Group, a wholly-owned subsidiary of Virgin Atlantic Ltd.

## Jersey: Requirement for JCRA Approval

8. Under Article 2(1)(b) of the 2005 Law, a merger<sup>2</sup> occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the notified transaction, Connect Airways will acquire control of Flybe. The notified transaction therefore constitutes a merger as defined by the 2005 Law.
9. According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. Article 4 of the

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<sup>1</sup> The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. For the purposes of this document, the JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

<sup>2</sup> For brevity, mergers and acquisitions are referred to as 'mergers' in this document.

Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then the merger must be notified to the JCRA for approval under Article 20(1) of the 2005 Law.

10. According to information provided by the parties to the transaction, Flybe has more than a 40% share of certain air routes to and from Jersey. The notified transaction therefore requires the approval of the JCRA prior to its execution.

## **Market Definition**

11. Under Article 22(4) of the 2005 Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. To this end, CICRA will identify the markets which are likely to be affected by the merger and then assess whether competition in these markets will be substantially lessened<sup>3</sup>.

## **Views of the Parties**

### *Scheduled Passenger Air Transport Services*

12. Flybe operates certain short haul scheduled passenger air transport routes to and from Jersey. The EU Commission's decisional practice is to consider short haul routes on an origin / point of destination (**O&D**) basis<sup>4</sup>. This reflects the demand side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable to a different city pair.

### *Charter Passenger Air Transport Services*

13. In addition to scheduled air transport services, Flybe also operates a small number of charter services.

## **CICRA Consideration**

14. The relevant product market is defined primarily by reference to the likely response of consumers and competitors<sup>5</sup>. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.
15. CICRA has previously considered scheduled passenger air transport services on an O&D basis<sup>6</sup> and considers that this is a reasonable frame of reference within which to assess this transaction.

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<sup>3</sup> In many cases, a market may already have been investigated and defined by CICRA or another competition authority. CICRA may take note of market definitions applied by other competition authorities, although these are not precedents. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

<sup>4</sup> See IAG/BMI [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_6447](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_6447)

<sup>5</sup> CICRA Guideline 7 – Market Definition

<sup>6</sup> See for example M093/06J Flybe Group Ltd, British Air Lines Group Ltd - <https://www.cicra.gg/cases/2006/m09306j-flybe-group-ltd-and-british-air-lines-group-ltd/>

However, reaching a definitive conclusion on the scope of the relevant market is not necessary because CICRA concludes that on the balance of probabilities, the transaction will not give rise to a substantial lessening of competition on any reasonable basis.

## Effect on Competition

### Horizontal effects

16. After defining the relevant market, CICRA estimates the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

17. Adopting an O&D approach, Flybe operates the on the following routes:

Route	Summer Flybe Share	2018 Market Share
Jersey Airport – Aberdeen International Airport		90-100%
Jersey Airport – Birmingham International Airport		90-100%
Jersey Airport - Bristol Airport		90-100%
Jersey Airport – Cardiff Airport		90-100%
Jersey Airport – Doncaster Sheffield Airport		90-100%
Jersey Airport – Exeter Airport		90-100%
Jersey Airport – Guernsey Airport		90-100%
Jersey Airport – Humberside Airport		90-100%
Jersey Airport – Inverness Airport		90-100%
Jersey Airport – Manchester Airport		90-100%
Jersey Airport – Durham Tees Valley Airport		90-100%
Jersey Airport – Nottingham Airport		90-100%
Jersey Airport- Southampton Airport		90-100%
Jersey Airport – East Midlands Airport		90-100%
Jersey Airport – London City Airport		90-100%
Jersey Airport – Edinburgh Airport		20-30%
Jersey Airport – Glasgow Airport		10-20%
Jersey Airport – Geneva International Airport		40-50%
Jersey Airport – London 3 (Heathrow, Gatwick and London City)		5-10%
Jersey Airport – London 5 (Heathrow, Gatwick, London City, Stanstead, Luton)		5-10%
Jersey Airport – London 6 (Heathrow, Gatwick, London City, Stanstead, Luton, Southend)		5-10%
Jersey Airport – Norwich Airport		30-40%
Jersey Airport – Zurich Airport		50-60%

18. These figures include the Blue Island franchise routes. There is no impact on this arrangement as a result of the transaction.

19. Stobart Group operates between Jersey Airport and Dublin under a franchise agreement with Aer Lingus<sup>7</sup>. Flybe does not operate any services between Jersey and Dublin. The transaction will

<sup>7</sup> The EU Commission has previously reviewed this franchise agreement and has found that the routes operated by Stobart Air under that agreement should be attributed to Aer Lingus and not to Stobart Air. CICRA does not disagree with the analysis of the Commission but can leave this point open since, even if the

therefore not give rise to any loss of competition between Flybe and Stobart Group on any Jersey – Dublin route.

20. Virgin Atlantic does not operate any flights to or from Jersey and so the transaction will not give rise to any loss of competition between Virgin Atlantic and Flybe on any route to or from Jersey.
21. None of the acquiring parties other than Flybe are active in providing charter passenger air transport services to or from Jersey and so the transaction will not give rise to any loss of competition in the charter flight segment on any route to or from Jersey.
22. The transaction will therefore not give rise to any loss of competition between Flybe and any of the acquiring parties on any route to or from Jersey.
23. Given that there is no overlap between the services operated by Connect Air and/or its parent companies and Flybe, the transaction will not give rise to a substantial lessening of competition in Jersey on any plausible basis.

#### **Vertical Effects**

24. Vertical mergers are mergers where one party has a ‘vertical’ relationship with the other (for example, as a supplier to or customer of that party). The focus of control of these types of merger is to examine the ability and incentive to foreclose an actual or potential rival’s access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.
25. There are some limited vertical relationships between the parties to the transaction involving (i) codeshare agreements, (ii) the provisions of maintenance, repair and overhaul services, (iii) franchise agreements, (iv) aircraft leasing, (v) the provisions of ground handling services, and (vi) the provision of airport infrastructure services to airlines.

#### *Codeshare Agreements*

26. There is a Virgin Atlantic and Flybe Codeshare Agreement whereby Flybe provides feeder traffic for Virgin Atlantic’s long haul transatlantic services. The only route covered by this agreement affecting Jersey is the Jersey – Manchester route.
27. There is also a limited vertical relationship between Flybe and Virgin Atlantic’s future minority shareholder, AFKL as a result of a codeshare agreement covering the Jersey – Birmingham and Jersey – Southampton routes.
28. Given the small scale of these relationships, CICRA concludes that they will not, on the balance of probabilities, give rise to any anti-competitive vertical foreclosure in Jersey on any basis.

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routes were to be attributed to Stobart Air, the transaction would not give rise to a reduction of competition on any Jersey – Dublin route, since Flybe is not active on that route.

### *Other Vertical Relationships*

29. All other vertical relationships exist outside of Jersey and therefore have no effect on any relevant market in Jersey.

### **Third Party Submission**

30. One response to the CICRA invitation to comment on the proposed acquisition was received which has been considered by the Board.
31. The submission expressed concerns about the parties' suggestion that the barriers to entry for any airline to compete with Flybe in Jersey would be low. In the respondent's view, the parties' view on barriers to entry may not be accurate due to the availability of slot times at the destination airports. The respondent also questioned whether the number of flights offered by Flybe into Jersey might be reduced by the acquisition. The respondent also considered that CICRA should seek more detailed customer feedback on the transaction.
32. The respondent also questioned whether the recent acquisition of 31% of Virgin Atlantic by Air France / KLM might have an impact on services offered by Flybe to Jersey, and also whether there may be an impact from the entry of Loganair into Jersey. The respondent questioned whether Flybe operates any other codeshare arrangements with groups not included in the Connect Airways consortium which might impact services to Jersey if Flybe ceased to operate them, and also whether there are any concerns with the Aer Lingus arrangements with Stobart Aviation for freight services to Jersey
33. For the reasons set out above, CICRA has concluded that the transaction cannot give rise to anti-competitive horizontal effects because there is no overlap between the activities of the parties in Jersey on any plausible basis. Given this lack of overlap, it is not relevant to consider barriers to entry, future market behaviour or to seek detailed customer feedback as the respondent suggests. Nor is it necessary to consider the nature of the Aer Lingus / Stobart Aviation franchise agreement.
34. For the reasons set out above, CICRA has concluded that the transaction will not give rise to anti-competitive vertical foreclosure and it is therefore not necessary to consider further the issue of codesharing.

### **Decision**

35. On the basis of the above analysis, it follows that the acquisition of Flybe by Connect Airways will not affect the competitive strength of Connect Airways in Jersey, either through increasing its share of any relevant market in Jersey or by creating anti-competitive foreclosure of any market in Jersey. The merger will therefore not substantially lessen competition in Jersey or any part of Jersey.
36. The merger is therefore approved under Article 22(1) of the 2005 Law.

**27 February 2019**

**By Order of the Board of the JCRA**