

**COMPLETED ACQUISITION BY FLYBE GROUP LIMITED OF THE BA CONNECT
BUSINESS OF BRITISH AIRWAYS PLC**

**UNDERTAKINGS GIVEN BY FLYBE GROUP LIMITED TO THE OFFICE OF FAIR
TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002**

WHEREAS:

- (a) On 5 March 2007 Flybe acquired the BA Connect Business (the Acquisition);
- (b) It appears to the OFT that as a consequence of the Acquisition a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the Acquisition to the CC;
- (f) The OFT further considers that the undertakings given below by Flybe are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE Flybe hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1 These undertakings shall take effect from the date that, having been signed by Flybe, they are accepted by the OFT.

Conditions Precedent for Vacation of Flybe Parking Stand

- 2.1 Flybe's obligations under these undertakings shall apply only if and to the extent that a Prospective New Entrant:
- (a) can satisfy the OFT that: (i) Flybe is currently operating a SOU-MAN Scheduled Passenger Service; (ii) no other airline is currently operating a SOU-MAN Scheduled Passenger Service; (iii) it has notified the OFT of its intention to enter and operate a SOU-MAN Scheduled Passenger Service by providing written notice to the OFT 10 Working Days prior to the IATA Deadline for Submissions; (iv) it has used all reasonable endeavours to secure a Parking Stand by applying to ACL prior to the IATA Deadline for Submissions; and (v) those reasonable endeavours have not resulted in that Prospective New Entrant securing such a Parking Stand within a reasonable time frame, the time frame to be determined by the OFT; and
 - (b) has given written notice to Flybe, ACL and the OFT of: (i) the fact that its reasonable endeavours to secure a Parking Stand at Southampton Airport have not been successful; and (ii) its intention to trigger Flybe's obligations under these undertakings to vacate the Flybe Parking Stand to allow it to secure the Flybe Parking Stand.

Vacation of Flybe Parking Stand

- 3.1 If the Conditions Precedent in paragraph 2.1 are satisfied in respect of any Prospective New Entrant, Flybe shall, using its best endeavours and acting in good faith, effect to the satisfaction of the OFT the complete vacation of the Flybe Parking Stand for the purpose of providing overnight parking in support of a SOU-MAN Scheduled Passenger Service and shall relinquish any rights associated thereto by the end of the Vacation Period to allow for the Prospective New Entrant in question to secure the Flybe Parking Stand in accordance with the provisions of these undertakings.
- 3.2 If for any reason the first Prospective New Entrant to meet the Conditions Precedent in paragraph 2.1 does not proceed to secure the Flybe Parking Stand, the obligations on Flybe under these undertakings shall continue to apply.
- 3.3 For the avoidance of doubt, Flybe shall:
- (a) not be remunerated or compensated for the vacation of the Flybe Parking Stand or for relinquishing any rights associated thereto;
 - (b) only be obliged to vacate one Flybe Parking Stand in accordance with the provisions of these undertakings at any one time;
 - (c) ensure that any fees, costs or charges payable to BAA Southampton Airport in respect of the use of the Flybe Parking Stand which is to be vacated to allow for a Prospective New

Entrant are paid in full prior to vacating the Flybe Parking Stand and that any outstanding obligations or other requirements are cleared or discharged in full;

- (d) to the extent within its control, facilitate the transfer of the Flybe Parking Stand to the Prospective New Entrant; and
- (e) not frustrate or impede, or permit, to the extent within its control, a third party to frustrate or impede, the prompt fulfilment of all or any part of the undertakings.

Appointment of Monitoring Trustee

- 4.1 The OFT may at any point require Flybe to appoint as soon as reasonably practicable and in any event within twenty Working Days of the OFT's request, a Monitoring Trustee nominated by Flybe and approved by the OFT in advance in writing on such terms to be approved by the OFT in advance in writing and remunerated by Flybe.
- 4.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 4.3 The Monitoring Trustee shall be independent of Flybe, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 4.4 In the event that:
 - (a) Flybe fails to nominate any person or persons in accordance with the provisions of paragraph 4.1 above within twenty Working Days of the request from the OFT; or
 - (b) none of the persons nominated by Flybe pursuant to paragraph 4.1 above is approved by the OFT; or
 - (c) Flybe is unable for any reason to conclude within the time limit stipulated in paragraph 4.1 above the appointment of any such person following approval by the OFT,

Flybe shall use its best endeavours to appoint from such person or persons nominated by the OFT one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the OFT. Flybe shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

- 4.5 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the OFT, Flybe shall, if directed to do so by the OFT, upon the direction of the OFT, use its best endeavours to appoint from such person or persons nominated by the OFT another person to act as Monitoring Trustee in accordance with such mandate as is approved by the OFT.

Flybe shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

Functions of Monitoring Trustee

- 5.1 The Monitoring Trustee shall monitor Flybe's compliance with all or any part of these undertakings.
- 5.2 Without prejudice to the generality of paragraph 5.1, the Monitoring Trustee may take any measures to the extent such measures may be necessary to effect the vacation of the Flybe Parking Stand in accordance with these undertakings.
- 5.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT and such person nominated by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT and/or ACL such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the OFT and/or ACL may require. The Monitoring Trustee shall promptly report in writing to the OFT if the Monitoring Trustee concludes on reasonable grounds that Flybe is failing to comply with any of its obligations under these undertakings.
- 5.4 The Monitoring Trustee shall ensure that:
 - (a) no arrangements are put in place or completed that affect the ability of Flybe to comply with its obligations under these undertakings;
 - (b) Flybe takes no action or make no omission that might adversely affect Flybe's compliance with its obligations under these undertakings; and
 - (c) Flybe takes no action or makes no omission that might adversely affect the ability of a Prospective New Entrant to secure the Flybe Parking Stand in accordance with the provisions of these undertakings or might otherwise.
- 5.5 The Monitoring Trustee shall:
 - (a) facilitate the provision of information by Flybe to ACL and/ or the OFT in accordance with paragraph 10 of these undertakings; and
 - (b) have access to all relevant information and documents which it shall pass to the OFT and/ or ACL if so requested.

5.6 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including:

- (a) giving such directions to the officers or staff of Flybe, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions; and
- (b) the monitoring of such communications between Flybe on the one hand and the OFT, ACL and/ or the Prospective New Entrant on the other including written and electronic communications, telephone conversations and attending any relevant internal and external meetings (including board meetings, and meetings of any committee of the board) of Flybe as the Monitoring Trustee considers reasonably necessary for the fulfilment of the Monitoring Trustee's functions.

Remuneration of Monitoring Trustee

6. Flybe shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions, as referred to in paragraph 5 above.

Obligations of Flybe following appointment of Monitoring Trustee

- 7.1 Flybe shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.
- 7.2 Flybe shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions, including but not limited to:
 - (a) complying with such written directions as the Monitoring Trustee may from time to time give pursuant to paragraph 5.6(a) above; and
 - (b) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions.

Compliance

- 8.1 Flybe shall comply with such written directions as the OFT may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or

- (b) to do or refrain from doing anything so specified or described which Flybe might be required by these undertakings to do or to refrain from doing.
- 8.2 Flybe shall procure that any member of the same Group of Interconnected Bodies Corporate as Flybe complies with these undertakings as if it had given them and actions of the members of the same Group of Interconnected Bodies Corporate as Flybe shall be deemed to be performance by Flybe for the purposes of these undertakings.
- 8.3 Where any Affiliate of Flybe is not a member of the same Group of Interconnected Bodies Corporate as Flybe, Flybe shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Dispute Resolution

- 9.1 In the event that there is more than one Prospective New Entrant that meets the Conditions Precedent in paragraph 2.1, the Flybe Parking Stand shall be allocated to the first Prospective New Entrant to give the OFT written notice in accordance with paragraph 2.1(b).
- 9.2 If there is a dispute arising out of the performance of these undertakings, other than that provided for in paragraph 9.1 above, the OFT having consulted with ACL as it deems necessary and/or appropriate shall act as the final arbiter in those cases.

Provision of Information

- 10. Flybe shall furnish promptly to the OFT:
 - (a) an explanation of any matter relevant to the undertakings that the OFT may require;
 - (b) such information and documentation as it can reasonably obtain, as the OFT may require to demonstrate to it whether or not any Prospective New Entrant meets or will fulfil the requirements in the Conditions Precedent set out in paragraph 2.1 as relevant; and
 - (c) such additional information and documentation as the OFT requires or considers appropriate to monitor the undertakings,

in each case including for the avoidance of doubt any confidential information or documentation.

Extension of time limits

- 11. The OFT may, where appropriate, in response to a written request from Flybe showing good cause, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings;

Continuation and Termination

- 12.1 Flybe accepts that the undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 12.2 Flybe accepts that the variation, release or supersession of the undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

Interpretation

- 13.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 13.2 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 13.3 For the purposes of these undertakings:

"ACL" means Airport Coordination Limited or its successors or assigns responsible for the coordination of landing and take off times at Southampton Airport;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Flybe within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"BA Connect Business" means the BA Connect regional business of British Airways PLC;

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Conditions Precedent" means the conditions set out in paragraph 2.1;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent

or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision on reference under section 33 of the Act given on 7 February 2007;

"Flybe" means Flybe Group Limited;

"Flybe Parking Stand" means a Parking Stand at Southampton Airport currently in use for overnight parking by Flybe for servicing, at the date of these undertakings, another route;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"IATA Deadline for Submissions" means 23:59 GMT on the 30th day prior to the start of the IATA Schedules Conference pursuant to the IATA Worldwide Scheduling Guidelines;

"IATA" means the International Air Transport Association;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Monitoring Trustee" means the person appointed pursuant to paragraph 4 to carry out the Monitoring Trustee Functions;

"Monitoring Trustee Functions" means the functions set out in paragraph 5;

"OFT" means the Office of Fair Trading;

"Parking Stand" means one parking stand located at Southampton Airport, United Kingdom, designated by ACL for use for overnight parking of one aircraft prior to the operation of a scheduled passenger service, including any space set aside by Southampton Airport for the overnight parking of commercial aircraft;

"Prospective New Entrant" means an airline which, save where the OFT agrees otherwise, satisfies the OFT that:

- (i) it did not offer a SOU-MAN Scheduled Passenger Service as at 7 February 2007;
- (ii) has not previously exercised its rights and triggered Flybe's obligations under these undertakings;

- (ii) is independent of and unconnected to the same Group of Interconnected Bodies Corporate to which Flybe belongs or any agent, Associated Person or Affiliate of Flybe or such Group of Interconnected Bodies Corporate; and
- (iii) has the financial resources, expertise, incentive and intention to operate a viable year-round SOU-MAN Scheduled Passenger Service in good faith in competition with Flybe on a lasting basis;

"SOU-MAN" means Southampton-Manchester;

"SOU-MAN Scheduled Passenger Service" means a scheduled passenger service on the SOU-MAN route, including an early morning flight departure from Southampton Airport requiring the use of a Parking Stand;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"Vacation Period" means a period of three calendar months from the date of the written notice provided in paragraph 2.1(b) unless otherwise determined by the OFT and notified by it in writing to Flybe; and

"Working Days" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England; and unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF FLYBE

..... <i>M Rutter</i>	Signature <i>[Signature]</i>	Signature
..... MIKE RUTTER	Name <i>J. Hancock</i>	Name
..... CHIEF COMMERCIAL OFFICER	Title CBO	Title
..... 5-6-07	Date 6.6.07	Date

(Director)

(Director/Company Secretary)