



## DETERMINATION OF MERGER NOTIFICATION M/14/028 - ASL AVIATION/FARNAIR GROUP

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### Section 21 of the Competition Act 2002

### Proposed acquisition of the Farnair Group by ASL Aviation

Dated 20 November 2014

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#### Introduction

1. On 24 October 2014, in accordance with section 18(1) of the Competition Act 2002 (“the 2002 Act”), the Competition Authority (“the Authority”) received a notification of a proposed transaction whereby ASL Aviation Group Limited (“ASL Aviation”) would acquire the entire issued share capital and thus sole control of Farnair Holding S.A., Farnair Rail GmbH, Farnair Rail Logistics GmbH & Co. KG and Farnair Handling Szolgáltató Korlátolt Felelősségű Társaság (collectively “the Farnair Group”).
2. On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014 (“the 2014 Act”), the Authority was dissolved and all of the functions vested in the Authority immediately before that date became vested in the Competition and Consumer Protection Commission (“the Commission”). Section 39(2) of the 2014 Act provides that references in any Act of the Oireachtas, passed before 31 October 2014, to the Authority shall, on and after 31 October 2014, be construed as references to the Commission.
3. Section 6 of the 2014 Act provides that where a merger or acquisition was notified under Part 3 of the 2002 Act before the commencement of section 7(1)(b) and Parts 3 and 4 of the 2014 Act (i.e. before 31 October 2014), then, upon such commencement, the 2002 Act shall apply to the merger or acquisition as if the amendments effected by section 7(1) and Parts 3 and 4 of the 2014 Act had not been made.

#### The Undertakings Involved

##### *The Acquirer – ASL Aviation*

4. ASL Aviation is headquartered in Dublin and is a joint venture, between:
  - Compagnie Maritime Belge (51%), a major Belgian maritime group based in Antwerp, mainly active in shipping, especially the transport of dry cargo, and
  - 3P Air Freighters Ltd (49%), a holding company incorporated in Ireland and owned by Petercam S.A./N.V., a Brussels-based independent investment firm which specialises in private banking, institutional asset management and investment banking.



5. Compagnie Maritime Belge, 3P Air Freighters Ltd and Petercam S.A./NV do not have any turnover or activities in the State apart from their shareholding in ASL Aviation.
6. ASL Aviation is a diversified aviation group, providing passenger and air cargo services, maintenance and parts support services, aircraft leasing services and value-added services such as consultancy and training.<sup>1</sup> ASL Aviation's worldwide turnover in the financial year ending 31 December 2013 was €323 million of which €[redacted]<sup>2</sup> million was generated in the State.

### **The Target – The Farnair Group**

7. The Farnair Group is headquartered in Allschwil, close to the Basel EuroAirport, in Switzerland and focuses primarily on providing air cargo transportation services for freight companies (integrators) and servicing the ad-hoc charter sector with cargo and passenger flights, mainly in Europe but it also has operations in West Africa, the Middle East, India, Southeast Asia and Oceania, where it holds four airlines.<sup>3</sup>
8. The Farnair Group's activities can be summarised as:
  - Air cargo transportation services, which is its main area of business, operating European network feeder services for the integrator and third party logistics industries and ad-hoc short notice charters for manufacturers and freight forwarders,
  - Air passenger transportation services, offering some individualised passenger activities, which include supplying flights to governmental and relief agencies, supplying ACMI (aircraft, crew, maintenance and insurance; also known as wet leasing) flight services to regional airlines and providing ad-hoc flights for the events industry,
  - Other aviation related services:
    - o Cargo handling services and other ground services at Budapest Ferihegy International Airport only (e.g. ramp handling, aircraft towing/pushback, crew transportation, road transportation, temporary customs warehouses, aircraft dry-wash, internal cleaning and hangar storage and technical handling),
    - o Ground, simulator and flight training services at the Farnair training centre in Austria, and
    - o Logistics services and solutions including air cargo, intermodal train, rail/road, rail/air and rail/sea were anticipated when the rail companies were first formed. Rail services were to be provided within the German rail network only but these services were never initiated and the rail companies are dormant.
9. The Farnair Group's worldwide turnover in its most recent financial year (from 1 January 2013 to 31 December 2013) was €[redacted] of which €[redacted] was generated in the State.<sup>4</sup>

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<sup>1</sup> The companies controlled by ASL Aviation include: Air Contractors (ACL) – Ireland; Europe Airpost – France; ACLAS Global – England; ACLAS Technics (formerly Air Contractors Engineering) – Scotland; and Safair - South Africa.

<sup>2</sup> [redacted] Claimed as being confidential to ASL Aviation.

<sup>3</sup> The four airlines in question are Farnair Switzerland, Farnair Hungary, a 50.93% share in Quikjet (India), and a 45% share in K-Mile Air (Thailand).

<sup>4</sup> [redacted] Claimed as being confidential to the Farnair Group.



### **The Vendor**

10. Each of the four companies in the Farnair Group is 100% owned by the vendor, Mindoro Investments Limited, a Cypriot registered company, whose shares in turn are held 51% by Lacourio Investments Limited (also Cypriot registered), and 49% by Falcon Aviation Group Ltd (British Virgin Island registered).

### **Rationale for the Proposed Acquisition**

11. The notification states: “[ASL Aviation] envisages that the proposed acquisition will give it the scale and mass to allow greater efficiencies and the streamlining of its current airline and cargo operations outside Ireland. [...] In addition, the proposed acquisition will give [ASL Aviation] global reach outside Ireland through [the] Farnair [Group]’s activities in India and Asia.”

### **Third Party Submissions**

12. No submission was received.

### **Competitive Analysis**

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets.<sup>5</sup>
14. ASL Aviation is a neutral provider of airline services to express integrators on a global scale and also offers an extensive passenger charter and inclusive-tour network. ASL Aviation also provides leasing and maintenance and parts support services and for the 2013 financial year it generated around [redacted]% of its worldwide turnover in the State.
15. The Farnair Group has been involved in express air cargo transport and logistics for 30 years and its primary freighter activities, consisting of operating network feeder services for integrator and logistics industries, are complemented by ad-hoc charter flights.
16. Both ASL Aviation and the Farnair Group focus mainly on air cargo transportation services but also carry out a certain amount of individualised air passenger services (charter airline) services.
17. The Farnair Group’s activities on the island of Ireland are limited. For the period 1 January 2013 – 31 July 2014 it generated only €[redacted], or [redacted]% of its worldwide turnover, in Ireland. This turnover was generated solely by four transactions in 2013 and 2014 combined, which consisted of a) flights in/from Ireland (total €[redacted]); and b) flights occurring outside Ireland for entities located in Ireland (total €[redacted]).
18. The Farnair Group does not have any other activities that are connected with the State except for the formation of Farnair Trading and Leasing Limited in May 2014, whose aim

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<sup>5</sup> The European Commission previously took the view that charter airline services can be regarded as national in character, as they fly out of and return to their country of origin and licensing. In relation to cargo transportation services, the European Commission considered the air cargo transport market to be divided on the basis of one-way continent-to-continent pairs with respect to routes connecting Europe and North America and on a continent-to-country basis for all other routes. See Case No COMP/M.5141 – KLM/Martinair.



was to support the Farnair Group subsidiary in India (Quickjet) and whose only financial activity thus far has been the payment of the share capital by its shareholder, Farnair Holding SA.

19. As stated above, the Commission is not defining a precise relevant market in this matter but if one were to treat the activities of the parties in air cargo and charter passenger transportation as two separate markets, there should be no overlap. Even if air cargo and charter passenger transportation services were treated as a single market, the market share of the merged entity in Europe would be negligible (Table 1). In addition, post transaction the merged entity will face competition from a number of larger competitors including Swift Air, West Air, Atlas Air, FedEx, UPS and Cargolux.<sup>6</sup>

<b>Company</b>	<b>Turnover information (Europe)</b>	<b>Share</b>
<b>The Farnair Group</b>	approx. €[...] <sup>8</sup>	approx. [0-5]%
<b>ASL Aviation</b>	approx. €[...]	approx. [0-5]%
<b>Combined</b>	approx. €[...]	approx. [0-5]%
<b>TOTAL MARKET</b>	<b>approx. €14 - 17 billion<sup>9</sup></b>	100.0%

20. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

21. The proposed transaction contains covenants restricting the vendor and a certain listed individual from carrying on any business which competes with the business of ASL Aviation and the Farnair Group, which includes any activity relating to the operation of a cargo airline or passenger airline in Europe, Africa and a number of countries in Asia, for a period of 18 months following completion of the transaction.
22. The vendor and the relevant individual are also restricted from soliciting the custom of any existing customer or supplier and/or offering employment to any existing employee, for a period of 18 months following completion of the transaction.
23. The parties state that the covenants are necessary in order to protect the full value of the business and goodwill transferred in the proposed transaction.
24. The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

<sup>6</sup> Commercial airlines that transport cargo are also competitors in air cargo transportation and include some of the largest providers of air cargo services, such as Cathay Pacific Airways, Korean Air, Emirates and Lufthansa Cargo.

<sup>7</sup> Based on the parties' estimates, extracting total market turnover from information published by the International Air Transport Association (<http://www.iata.org/Pages/default.aspx>)

<sup>8</sup> The Farnair Group's turnover is for the period 1 January 2014 to 31 July 2014 and is therefore overstated somewhat.

<sup>9</sup> The parties based their market shares on the lower level of their estimation of the European market i.e. €14 billion.



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition by ASL Aviation Group Limited of the entire issued share capital and thus sole control of Farnair Holding S.A., Farnair Rail GmbH, Farnair Rail Logistics GmbH & Co. KG and Farnair Handling Szolgáltató Korlátolt Felelősségű Társaság, will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald  
Member  
Competition and Consumer Protection Commission