

APPENDIX 2.1  
(referred to in paragraph 2.36)

### **Issues statement**

1. The Competition Commission has today sent an Issues letter to Air Canada as part of its inquiry into the merger between Air Canada and Canadian Airlines. An issues letter is always sent to main parties before the Competition Commission has reached any conclusions and is designed to highlight those matters which have been identified by the investigating group for further consideration and to ensure nothing has been missed. The Statement of Issues is being made public to inform all interested parties should there be any further points they wish to raise with the Competition Commission in the next week. No conclusions have yet been reached by the Competition Commission about whether any matters operate or may be expected to operate against the public interest.

2. The issues we are likely to consider are as follows:

- (a) What is the most appropriate means of analysing the markets affected by the merger, eg, particular point to point services such as London (or specifically Heathrow) to Toronto, Vancouver and Calgary; or by reference to all services between UK and Canada (possibly also taking into account services from elsewhere in Europe or to North America); whether to distinguish between time and price sensitive customers and/or between direct and indirect services, and/or between scheduled and charter flights.
- (b) Whether the merger has directly or indirectly reduced competition between airline operators in these markets, primarily on passenger transport, but also on freight transport, and having regard to previous code sharing arrangements. As well as considering whether there has been a loss of a former competitor in these markets, the Commission will need to consider whether the position of any remaining competitors may have been weakened as a result of the merger given, for example, frequent flyer programmes and commission payments, and changes to the terms on which pro-rate agreements are now available for connecting flights, and to code sharing/interlining arrangements.
- (c) What would have happened if the merger had not occurred and whether, in the absence of the merger, competition could have been sustained in these markets.
- (d) The prospects for new entry into or expansion of existing operators in these markets, or whether there are barriers to entry or expansion. Possible barriers we may wish to consider include:
  - (i) regulatory restrictions;
  - (ii) availability of slots, particularly at Heathrow, Gatwick and Toronto;
  - (iii) restrictions on charter operators (including the continuing requirement for whole plane charter, the requirement not to sell directly to the public, and the suggestion that consumer protection requirements in Canada make it difficult for UK charter operators in these markets);
  - (iv) the effects of frequent flyer programmes and commission overrides;
  - (v) the importance of frequency, connecting flights, and code-sharing and pro-rate arrangements;
  - (vi) the nature of competitive responses from existing operators.
- (e) The effectiveness of measures adopted by the Canadian authorities following the merger to maintain competition or potential competition in these markets.
- (f) On the basis of the considerations outlined above, whether the merger operates or may be expected to operate against the public interest, including whether it may be expected to affect the level of fares or the level or quality of service or choice in these markets.
- (g) Should the Commission conclude that the merger operates or is expected to operate against the public interest, what would be the appropriate remedies to any adverse effects identified, for example, any structural or behavioural remedies.