

To:

for the kind attention of

EU COMMISSIONER FOR COMPETITION

Mrs. Margrethe Vestager

And:

for knowledge of

PRESIDENT OF THE EUROPEAN COMMISSION

Mrs. Ursula von der Leyen

for knowledge of

EU COMMISSIONER FOR ECONOMY

Mr. Paolo Gentiloni

Subject: Ita Airways Slots at Milan Linate

Dear President Vestager

CUB Trasporti is a trade union organization that represents a significant number of employees among the personnel of Alitalia in Extraordinary Administration (AS) and of Ita Airways. With this letter, Cub Trasporti intends to represent to you some important issues regarding the future of the aforementioned company and the future of thousands of employees of ITA itself and of those who were not hired in the newCo at the time of the acquisition of the assets from Alitalia.

We wish to remind you that Ita Airways was born exclusively through the acquisition of leased aircraft, commercial activities, codes, processes and business systems from the former Alitalia under AS. However, personnel in the Aviation sector were hired by ITA Airways without following the standard procedures for the transfer of the Aviation branch, as was done for the Handling sector (transferred to SwissportItalia) and Maintenance (transferred to Atitech). Around 3500 people are currently unemployed and hoping to be employed by ITA Airways.

In particular, with regard to the non-transfer of the Aviation branch, regardless of the proceedings in progress before the Italian Courts with approximately 1,300 labor lawsuits, I would like to underline that the transfer of the Slots from Alitalia to Ita Airways (especially those of Milan Linate, which hold a significant economic value) has taken place, albeit expressly prohibited by European legislation (reg. 95/93 and following) for over thirty years, through a simple "Slot sale" between Alitalia in AS and Ita Airways. Furthermore, the European Commission, as you know, in defining the terms of the economic discontinuity between Alitalia and Ita, had explicitly stated that the sale of the Slots could only take place through the sale of a functionally autonomous and operationally continuous Aviation branch. However, this was not respected.

Therefore, it is evident that the registered transfer is completely illegitimate according to the current

European regulations and decisions. Once other carriers report this situation, the entire Ita Airways corporate structure would run an extremely high risk of operational suspension due to lack of slot ownership. We are informally aware that some low cost airlines, currently operating in the Italian market, are already evaluating with the competent European authorities how to act against this transfer.

As known, the aforementioned provision (reg. 95/93 and subsequent amendments) constituted and still constitutes one of the fundamental pillars of the European Sky Deregulation and, in its absence, the path of the European deregulation would have been, as it is easy to imagine, completely different. The rigorous application of the legislation has contributed significantly to slowing down the entry of new incoming Carriers and has facilitated the consolidation of the market around the old Carriers, thus also slowing down the process of expulsion and replacement of workers in the Aviation sector and, at the same time, has guaranteed greater stability of the Incumbent Carriers, as the original holders of the Slots on saturated European airports (coordinated airports).

In recent months we have conducted an in-depth analysis, supported by legal and technical consultants, which fully confirms the illegitimacy of the transfer. We are available to provide you with the results of this analysis if you are interested, for a correct and informed assessment of the risks and the actions to be taken. It is important to underline that the risks associated with this situation have not been adequately

disclosed with due care and responsibility by the directors of Ita Airways in the 2021 and 2022 financial report.

Attached you will find a descriptive technical note of the events, with important references to the regulatory, contractual and procedural aspects. We believe that a solution can and should be the hiring of all personnel who have not been transferred to ITA. If this does not happen, then we ask how DG Competition intends to intervene and if it will endorse what has been done in the transfer of activities from Alitalia to ITA, profoundly transforming the European rules.

Awaiting your kind feedback on the issue, I am available any time for further examination of the matter, and looking forward to meeting you as soon as possible, I send you my

Best regards,

For CUB Trasporti

National Secretary

Antonio Amoroso (mobile 3939103997)

Rome, June 19th 2023

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NOTE RELATING TO THE AIRPORT SLOTS TRANSFER FROM ALITALIA TO ITA AIRWAYS

The transfer of air transport activities from Alitalia Sai in extraordinary administration proceedings (AS) to Italia Trasporto Aereo (ITA), took place on 15 October 2021 without including the personnel of the Aviation business branch. Before starting (sep/oct 2021) ITA approximately hired 2500 people from AS (mostly flight personnel) through a letter of direct employment sent (and accepted by individuals) effective as from 15 October 2021. No Union procedure relating to the Aviation branch take over was carried out.

The European Regulation 95/93 (and subsequent) which has governed, for over thirty years, the Slot transfer and exchange of from one Carrier to another, does not allow the free sale of Slots which, on the contrary, is explicitly forbidden by the European legislation. In the years between 2010 and 2012, there were political confrontations in the EU parliament to legitimize the sale of Slots on requests presented by some Member States, particularly by the UK. Debates and proposals that never found convergence towards the mere freedom of buying and selling Slots. In the UK where the sale, although not permitted, has occurred several times, the regulatory case that is referred to is that of the "Slots exchange" (and not that of the "Slots transfer") in a contest of very different (economic) values between the two slots ("asymmetric exchange") and which therefore allow, in a "grey market", monetary compensation between parties (the EU has often turned a blind eye to this practice). In no case, in the history of European air transport, has the transfer of slots occurred without the transfer of an entire airline or an Aviation business branch including at least flight crew and the ground staff personnel functional to the aviation activity and continuity.

As known, the referenced provision (UE reg. 95/93 and subsequent) constituted and still constitutes one of the fundamental pillars of the European Sky Deregulation and, in its absence, the path of European deregulation would have been, as it is easy to imagine, completely different. The rigorous application of the aforementioned legislation has contributed significantly to slowing down the entry of new incoming Carriers and has facilitated the market consolidation around the old Flag Carriers like Lufthansa, thus also slowing down the process of expulsion and replacement of workers from the Aviation sector and, at the same time, ensuring higher stability of the Incumbent Carriers, as original holders of the Slots on saturated European airports (coordinated airports).

In more concrete terms, in the face of this well-defined thirty-year path, it is difficult to hypothesize that the EU Commission could, brusquely, interpret the existing regulation in the sense of allowing the sale and purchase of Slots without a profound debate and without the necessary official modification of the Regulations. An analogous assessment can be made about future decisions of the European Court of Justice which one day should be called upon to evaluate contrasting cases with reference to the Alitalia/ITA Slot transfer case.

As far as the ITA case is concerned, the parties involved (including ITA) publicly state that the transfer of the Slots from the AS to the ITA took place according to Italian legislation (Legislative Decree No. 73 of 25 May 2021 and Legislative Decree No. 121 of 10 September 2021) and in compliance with the Decision of the European Commission of 10 September 2021. Without going into the details of the Italian regulations referred to, it should be noted in any case that the Italian legislation does not regulate - nor could it ever do so as this matter falls within the strict competence of the European legislator and not that of the Member Countries - the transfer of Slots from AS to ITA. Anyway, while not explicitly dealing with the issue of the transfer of the Slots, those Italian Decree authorize and regulate the transfer of assets from the former Italian flag carrier (AS) to ITA only following the specific related 10.09.21 EU Decision.

Now, going into the merits of the EU Decision - reading the only official document that establishes what the conditions must be to create an "economic discontinuity" between the old Alitalia and ITA - it is appropriate to highlight and underline that the Decision of the European Commission of 10.9.2021, very differently from what is generally stated, explicitly acknowledges that the transfer of activities from Alitalia in A.S. to ITA Airways, precisely to legitimize the Slot transfer, it should have taken place only and exclusively in the context of one of the five cases provided for by Regulation (EC) n. 93/95, as subsequently amended by Regulation (EC) n.73/2004 to which the same Decision refers to the transfer procedure (Paragraph 194, side note n° 92: "See Article 8a(1)(b)(iii) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 21.1.1993, p. 1"

For ease of reading, the following is an excerpt from the texts of the EU Decision of 10.9.2021 "State Aid SA.58173 (2021 N) (ex 2020 PN) - ITALY - Newco ITA", where in paragraph no. 194, p. 39 of the English version (the official one on the EU Commission website) declares:

As regards the aviation business, ITA expects to lease no more than 52 aircraft that were part of the Alitalia fleet. (90) Therefore, at the start of its operations, ITA's fleet will comprise a maximum of 52 aircraft, which is less than half of Alitalia's fleet of 108 aircraft in 2020. (91) In accordance with the partial acquisition rules of business aviation (92), ITA will manage only a part of Alitalia's slots (within the limits set by Italy's commitments). In particular, ITA will use the slots corresponding to the flight capacity taken over by Alitalia and operated by ITA in the start-up phase of its business.

In which note no. 92, to which reference is made in paragraph no. 194 of the EU Decision of 10.9.2021, mentions:

See Article 8a(1)(b)(iii) of Regulation (EEC) No 95/93 of the Council of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14 of 21.1.1993, p. 1.

Article 8a(1)(b)(iii) of Regulation (EEC) No 95/93 of the Council of 18 January 1993, referred to in the side note no. 92 of the same EU decision regulates exactly one of the five situations envisaged for the transfer and exchange of Slots: (iii) in the event of total or partial takeover when the slots are directly attributable to the taken over air carrier.

Therefore, unlike the untruthful claims superficially supported by many parties, the EU Decision of 10.9.2021 did not provide for and did not authorize, nor did it have the powers to do so, the sale of Slots, albeit combined with other goods or services sold at the same time, such as - for example - lease contracts for aircraft, software or spare parts, as the sale of Slots is expressly prohibited by Community legislation. For further support, if it can be of help, it should be noted that the Dutch Airport Coordinator (Airport Coordination Netherlands) on 06/03/2021, published a very clear compendium on the rules for the transfer of Slots for the benefit of the Community with an understandable and exhaustive "description" of the only cases envisaged to legitimize the transfers between Slot Carriers of the coordinated European airports. In the document "Policy Rule - Slot Mobility", on page 8 par. 35, with reference to the transfer of Slots between Carriers, the Dutch Coordinator explains that said transfer can take place "... when there is a full or partial takeover and when slots are directly related to the air carrier taken over, as referred to in Article 8a (1) (b) (iii) of the Slot Regulations".

Subsequently, the document "Policy Rule - Slot Mobility", better explains the meaning of the "Takeover": Takeovers. Pursuant to Article 8a (1) (b) (iii) of the Slot Regulation, slots may be transferred by an air carrier in the case of a total or partial takeover, when the slots are directly related to the air carrier taken over. This article aims to enable the transfer of slots in order to facilitate the continuity of an ongoing operation. Therefore, there must be such a connection between the transfer of slots and the (partial) takeover of the air carrier that almost all the production resources of the air carrier concerned are taken over that are

necessary to use the relevant slots. This means that there must be a takeover of aircraft, personnel and any form of organization necessary for the operation of the slots to be taken over. The takeover of some "assets" or the "business" cannot therefore qualify as the (partial) takeover of an air carrier. Below is a further explanation.

The same document "Policy Rule - Slot Mobility", clarifies the difference between the "Total takeover" and the "Partial takeover":

Total takeover. The definition of an air carrier, as described in section 'Relevant legislation' in accordance with Article 2 (f) (i) of the Slot Regulation, is easily applicable if an entire air carrier is taken over. So a takeover of all aircraft, all personnel and the entire organization. 3

Partial takeover. Assuming that in the case of a partial takeover of an air carrier, the licenses are not necessarily transferred, which does not seem necessary if the purchasing undertaking already has licences, the question remains what exactly should be understood by the partial takeover of an air carrier. The purpose and system of the Slot Regulation indicate that there can only be a partial takeover of an air carrier if that part of the air carrier is taken over with the elements that enable that part to actually use the associated slots. This means that the part of the air carrier that has been taken over must be able to continue operating flights. In any case, this requires aircraft, personnel, and some form of organization.

There is no question of a partial takeover of an air carrier if the takeover only relates to a few 'assets' or the 'business', without also aircraft, personnel and some forms of organization are taken over. The fact that the assets may be transferred to an undertaking that can use the slots with these and other assets and its own personnel, does not affect the fact that what is taken over as such must still qualify as a 'partial takeover of an air carrier', as referred to in Article 8a (1) (b) (iii) of the Slot Regulation. Otherwise, improper use of the possibilities of Article 8a of the Slot Regulation would be facilitated. If it were not required that what is transferred should reasonably be able to actually use slots by operating flights, air carriers could proceed with a takeover of a limited number of assets, together with the takeover of the desired number of slots as a disguised means of obtaining slots without applying the priority rules of the Slot Regulation. This detracts from the restrictive system for obtaining slots provided in Articles 8, 8a and 10 of the Slot Regulation. When interpreting the Slot Regulation in which slots can be transferred to other air carriers relatively easily (and possibly against payment), the relevant slots will not flow back to the slot pool. As a result, these slots cannot be allocated according to the priority rules of the Slot Regulation.

In addition, as further confirmation of the existing vulnerability in the application of regulations and UE decisions, it should be noted that the document drawn up by the Commissioner's College of Alitalia Sai in A.S. relating to the "Amendment of the Program for the Sale of Alitalia Sai in A.S. and Alitalia Cityliner in A.S." of 10.13.2021, reported, on p. 21, that:

➤ "On 10.9.2021 the European Commission issued the final decision with the specific and binding indications to which the Italian Government, the Extraordinary Commissioners and ITA have to adapt". Subsequently, in the same document of "Amendment of the Transfer Program of Alitalia Sai in A.S. and Alitalia Cityliner in A.S.", on page 22, stated that:

➤ "The Extraordinary Commissioners therefore immediately took steps to receive a copy of the decision in order to carry out the duties required by law", or article 79, paragraph 4-bis, of Legislative Decree no. 18 of 2020 which, in fact, required the adaptation of the extraordinary administration to the decision of the European Commission.

However, in the same document the Extraordinary Commissioners of Alitalia Sai in A.S. and Alitalia Cityliner in A.S. they argued that:

➤ "With pec communications dated 11 September, 30 September and 5 October 2021, a request was made the acquisition of the decision to the Ministry of Economy and Finance, Ministry of Economic Development, Ministry of Infrastructure and Sustainable Mobility, Ministry of Labor and Social Policies and Italy Air Transport and, later, also to the Presidency of the Council of Ministers. Despite multiple requests, the document has never been acquired in the records of the Procedure, thus generating a serious offence vis-à-vis the Commissioner's College, made up of public officials, in charge of a specification function required by law.

For the sole purpose of in any case allowing the progress of the Procedure, it is represented that this amendment is drawn up on the basis of the principles brought by the "comfort letter" of 15.7.2021,

postponing the definitive assessment of conformity to the decision of the European Commission to the Directorate of the Ministry of Economic Development which, we trust, may have more means of acquiring the same decision which the present one program must comply”.

These statements by the Commissioners of Alitalia in A.S., therefore, show that the sale of the Aviation Business of Alitalia Sai in A.S., including of course the Slots, should have taken place in compliance with a decision of the Commission that they themselves were unable to consult!

In fact, by their express declaration, therefore, the "Amendment of the Alitalia Transfer Program You know in A.S. and Alitalia Cityliner in A.S." was drawn up "...on the basis of the principles brought by Comfort Letter of 15.7.2021", prior to the Decision itself of 10.9.2021 but remitting the definitive evaluation to the Management of the MISE regarding the conformity of the transfer program same to the aforementioned Decision of the European Commission: a rebus which in any case, in the case of the slot transfer from Alitalia Sai in A.S. to ITA, does not appear that it was carried out in compliance of the existing rules, as reaffirmed in the Decision of the European Commission of 10.9.2021.

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