



EUROPEAN COMMISSION

Competition DG

Directorate E – Markets and Cases IV Basic Industries, Manufacturing and Agriculture
Unit E3 – State aid Industrial restructuring

Brussels, 27 July 2023
COMP/E-3/FL/MGP*pp

CUB Trasporti
National Secretary
Mr. Antonio Amoroso
cub.romaeprovincia@legalmail.it

Subject: Ita Airways Slots at Milan Linate

Dear Mr Amoroso,

Thank you for your letter dated 19 June 2023 on behalf of the trade union “CUB Trasporti” to the attention of the Executive Vice-President, Mrs Margrethe Vestager, as Commissioner for Competition of the European Commission. In the letter you express concerns on the future of the former employees of Alitalia in Extraordinary Administration (“Alitalia”), who were not hired by ITA-Italia Trasporto Aereo S.p.A. (“ITA”) and raise doubts as to the legality of the slot transfer from Alitalia to ITA in view of the rules established by the EU Slot Regulation (Reg. 95/93, henceforth referred to as “the Slot Regulation”)¹.

With regards to the first issue raised by your letter, namely the allegedly illegal slot transfer from Alitalia to ITA, I would like to reassure you that such transfer has been carefully assessed in the light of the existing sectoral rules. Under the commitments undertaken by Italy and accepted by the Commission in its Decision of 10 September 2021², concerning Italy’s capital injection into ITA, ITA was allowed to lease 52 aircraft from Alitalia, together with the commensurate number of slots. Regarding slots, in particular, Italy committed to ensure that (i) there was proportionality between the volume of slots to be transferred and the flight capacity to be acquired from Alitalia, and that (ii) ITA operated the slots transferred from Alitalia as from the start-up phase. Hence, there was no transfer of slots alone (“naked slots”) from Alitalia to ITA in breach of the Slot Regulation, but rather a transfer of slots to be used immediately in line with Art. 8a(1)(b)(iii) of the Slot Regulation.

Furthermore, in the letter you refer to the policy paper on “Slot Mobility” (“the paper”) published by the Dutch public coordinator for slots, Airport Coordination Netherlands (“ACNL”)³, to support your allegation that a takeover of some “assets” or the “business” by

¹ Regulation (EEC) No 95/93, amended by Regulation (EC) No 793/2004, see the consolidated text in <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01993R0095-20221026>.

² Commission Decision of 10 September 2023 in Case SA.58173-Newco ITA, <https://competition-cases.ec.europa.eu/cases/SA.58173>.

³ 210603-ACNL-Policy-Rule-Slot-Mobility-version-1.0.pdf (slotcoordination.nl).

ITA would not qualify as “partial takeover of an air carrier”. Preliminarily, it must be noted that under the relevant sectoral rules the national slot coordinators are directly responsible for approving the transfer of slots and, hence, for the application of the Slot Regulation in relation to their national territory. In the case of ITA, the slot transfer has been reviewed and approved by the competent Italian slot coordinator in the light of the applicable rules. Secondly, in relation to the interpretation of the concept of ‘*partial takeover*’, contrary to what you maintain, the same Dutch coordinator considers that in the case of a company in bankruptcy or liquidation, as was the case of Alitalia, where the purchaser hires part of the redundant staff of the failing firm while taking over part of its assets, the acquisition qualifies as a “partial takeover” within the meaning of Art. 8a of the Slot Regulation (see point 39 of the paper). Similarly, in the case of Air Berlin where the staff had been dismissed before Air Berlin was taken over by another airline, the German coordinator validated the staff transfer as “*partial takeover*” in accordance with Article 8a(1)(b)(iii) of the Slot Regulation.

Finally, I would like to recall that, given that Alitalia could not benefit neither from additional restructuring aid nor from the rules on recapitalisation under the State aid COVID-19 Temporary Framework⁴, since it was an undertaking in difficulty well before the outbreak of the pandemic (see points 25 h), 27 g) and 49 d) of that Framework), the only way to ensure that the service of passenger air transport could be maintained was to go through a scenario of discontinuity.

Yours sincerely,

e-signed
Flavio LAINA
Head of Unit E3

⁴ Communication from the Commission of 20 March 2020 Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I:01), with further modifications; OJ C11, 20 March 2020, p. 1