

## Brand Licence Dispute Resolution

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easyJet PLC

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#### **easyJet announces resolution of Brand Licence dispute with easyGroup and Sir Stelios Haji-Ioannou**

easyJet today announces that it has reached agreement to resolve its ongoing dispute with easyGroup IP Licensing Limited (eGIP) and Sir Stelios Haji-Ioannou (Sir Stelios) over the terms and operation of the easyJet brand licence. The proposals will be put to a vote of independent shareholders. The key components of the settlement are:

- Resolution of the long standing High Court litigation and dispute between eGIP and easyJet
- Termination of the Relationship Agreement, ending the right of eGIP to appoint Directors to the Board of easyJet and of Sir Stelios to appoint himself as its Chairman
- The amending and restating of the brand licence agreement with eGIP to give greater clarity over certain key terms and to allow easyJet greater operational and commercial flexibility
- Greater clarity and freedom in relation to easyJets entitlement to generate revenues in the airline and travel market
- Removal of the need for consent from eGIP in various circumstances including for co-branding and promotions with reputable brands
- Related personal undertakings from Sir Stelios regarding non-competes, communications and mutuality of respect
- Payment of an annual royalty to eGIP of 0.25% of easyJets total revenues, fixed at £3.9 million and £4.95 million in the first and second years respectively (together the Transaction).

The Transaction is conditional upon the approval of shareholders (other than easyGroup which as the related party shareholder will not be permitted under the Listing Rules to vote its 26% holding in the Company at an extraordinary general meeting to be convened in respect of the Transaction)

#### **Background to and reasons for the Transaction**

Immediately prior to the Companys initial public offering in November 2000, in order to facilitate Sir Stelios and easyGroups plans to develop the easy brand across a range of new activities, the Company agreed to transfer the easyJet brand rights to eGIP in exchange for the current licence of brand rights. These rights were granted in perpetuity at an annual royalty of £1, but subject to certain limitations, for example in relation to the extent of the revenues to be derived from activities ancillary to the carriage of passengers and co-branding. The licence operated effectively for a number of years, but with the Companys significant growth and the evolution of the low cost carrier market it has recently become more difficult to apply the licence provisions to the Companys activities. In 2008 those difficulties led to proceedings being commenced by eGIP in the High Court seeking declarations and injunctions in relation to several aspects of the licence. Those matters were heard in the High Court in June 2010.

A judgment in that action was expected to be delivered later this year. However, it was not expected that the judgment would resolve all of the parties differences, some of which had prevented the Company from exploiting commercial opportunities and imposed some operational restrictions. The Board therefore concluded that the combination of the ambiguity of the existing licence and the restrictions it placed on the Company made it no longer suitable for the scale and breadth of the Companys operations, especially given that the continuing dispute was causing material management distraction. The Board decided therefore that it would be in the interests of all shareholders to seek a commercial settlement with eGIP and Sir Stelios, including in relation to the current board appointment rights. The Transaction represents the outcome of discussions with easyGroup and Sir Stelios.

The amended licence agreement continues easyJets exclusive worldwide rights to the use of its brand on a basis which protects easyJets current commercial activities and provides clarity and certainty over the terms of the licence. Operational flexibility is

considerably improved and easyJet will have the freedom to enter new co-branding agreements with other travel service providers as well as white label partners such as car hire, hotels and travel insurance companies. In addition, easyJet will also now have the right to enter co-branding promotions with other leading brands.

As the Transaction is with a company controlled by easyGroup, a substantial shareholder in easyJet, and Sir Stelios, who has been a director within the last 12 months, it is classified under the Listing Rules as a Related Party Transaction. As a consequence the Transaction is conditional upon the approval of shareholders (other than easyGroup which as the related party shareholder is not permitted under the Listing Rules to vote its 26% holding in the Company on the Transaction). Approval of shareholders will be sought at an Extraordinary General Meeting expected to be held in the fourth quarter of 2010. The circular containing the notice convening the Extraordinary General Meeting is subject to prior approval by the UK Listing Authority and will be posted to shareholders as soon as practicable.

### **Principal terms and conditions of the Transaction**

The amended and restated licence agreement continues the Companys exclusive worldwide rights to the use of the easyJet brand on a basis that affords the Company greater commercial certainty, including the removal of restrictions on certain commercial opportunities. The restriction on easyJets ancillary revenue growth (the so called 75:25 rule) which has been the principal subject of the recent High Court litigation is removed. The licence will continue for a 50 year period from 1 October 2010, with a minimum committed use by easyJet of 10 years, in return for an annual royalty payment of 0.25% of easyJets total revenues, fixed at £3.9 million and £4.95 million respectively in the first two years of the term.

The following is a high level summary of the effect of the variations to the Brand Licence, which shall be conditional only on the passing of the necessary resolutions of easyJet shareholders in general meeting:

- continuation of the Companys exclusive worldwide rights to use of the easyJet brand in relation to operating passenger carrying flights using fixed wing aircraft under an AOC , for a period of 50 years
- a minimum term commitment to the brand of 10 years, with any earlier termination by easyJet (other than for eGIPs breach of the licence) triggering the payment of the previous years annual royalty (not applying any cap) multiplied by the balance of the minimum 10 year term
- an annual royalty of 0.25% of easyJets total revenues, capped at £3.9 million and £4.95 million in the first and second years respectively. On the 30th anniversary of the licence, the parties will conduct a good faith review of its terms which may lead by mutual agreement only to an upward review of the royalty rate
- the right for easyJet to offer any product or service that is sold or delivered in-flight or in an airport or its environs. There are some restrictions over regulated businesses
- the right for easyJet to carry on all activities carried out by easyJet in the year ending September 2010 and, in addition, an initial list of specified permitted activities
- the right for easyJet to provide any new product or service which is, when easyJet commences provision, provided by at least one competitor airline, subject to a list of prohibited categories of business including financial services, telecoms, gaming, high street retailing, office accommodation, fitness clubs, food offerings, end-to-end courier services, entertainment and media, cruises and ferries, fashion & cosmetics, healthcare, recruitment, social networking, railways coaches & buses, construction, manufacturing and the automotive sector
- a right to co-brand with third parties operating in an agreed list of business areas, and with all reputable airports, airline alliances or partners, local government agency and tourism boards, car hire firms, hotel operators and travel insurance companies. Outside these categories, easyJet will enjoy a new right (without consent of eGIP) to co-brand for its sole and mutual promotion with reputable brands for periods of up to 3 years
- in common with other brand licence agreements easyJet will adopt service level indices in relation to on time performance, delay, cancellations and lost bags. Operational performance against these indices will be reported to eGIP monthly and the service levels reviewed annually to be changed only following a material change in the market. Mayday alert reports will be provided to eGIP as will summaries of mandatory reports to safety regulators
- performance against service level indices will be measured over a full financial year excluding flights disrupted by force majeure. If the service levels are not met, a cure notice may be served in the next financial year and performance measured over the third financial year. If not compliant for that third year, eGIP may serve a termination notice
- freedom for easyJet to lease-in non easyJet-branded aircraft to meet operational requirements within annual limits without the need for eGIPs consent (as is currently required)
- freedom for easyJet to lease-out aircraft to other operators within annual limits without the need for eGIPs consent
- a new brand protection regime, with all enforcement costs for eGIP to protect both the easy family brand and the easyJet brand to be shared between easyJet and eGIP on a ratio of 10:1 up to a combined cost contribution of £5.5 million for any individual action, after which all costs will be borne by easyJet and easyJet will have the right to conduct the action
- that eGIP may terminate the licence (i) for material remediable breach if not remedied within 9 months of service of a cure notice and (ii) for irremediable breach leading to material damage to the brand without service of a cure notice
- that in the event of termination otherwise than for easyJets breach, easyJet shall have the right to continue to use the easyJet brand, with or without a co-brand, for up to 12 months following termination, and eGIP will not use the easyJet brand for up to two years after that, in each case for as long as easyJet continues to pay the royalty
- that in the event of termination for easyJets breach, easyJet shall have the right continue to use the easyJet brand for 9

months following a court judgment

- mutual respect by the parties in relation to each others brand use
- swift dispute resolution procedures without recourse to the courts
- that in the event that eGIP proposes to sell the easyJet brand (subject to the licence) a right for easyJet to be notified of that fact and to table a bid in any sale process within one month of notification, and for the assignee of the brand to be notified of the licence and provided with a copy

In addition, in substitution for the commitments given at the time of easyJets initial public offering, Sir Stelios has entered into a separate agreement under which, in return for a fee of £300,000 per annum (net) for a period for 5 years from 1 October 2010, he undertakes

- to procure that eGIP does not license the "easy" brand to an ATOL holder on terms permitting the sale of airline seats for a period of 12 months
- not to sell the shares in eGIP or the easyJet brand or any part of it for a period of 2 years and not to any airline (or the owner of any airline) licensed in the EEA or Switzerland for a period of 3 years
- not to acquire an interest in any other airline licensed in any EEA country (nor Switzerland) for a period of 2 years (unless the interest is less than 10% and he is not involved in an executive capacity)
- not to use his own name or a derivation of it to brand any other airline which flies to or from any country in Europe for a period of 5 years;
- to abide by the mutual brand respect provisions and certain public communication protocols agreed with easyJet.

The Company, easyGroup and Sir Stelios have also entered into a Deed of Termination, conditional only on the passing of the necessary resolutions of easyJet shareholders in general meeting, terminating the Relationship Agreement without liability. This will bring to an end the contractual right of easyGroup to appoint up to 2 non-executive directors of easyJet and the additional right of Sir Stelios to appoint himself Chairman of easyJet. The resolutions to be proposed at the forthcoming Extraordinary General Meeting will include a special resolution to amend the articles of association of the Company to remove the board and Chairman Appointment rights which correspond to those in the Relationship Agreement. Upon this Deed of Termination becoming unconditional, easyGroup will have no rights beyond those afforded to an equivalent shareholder by the general law.

### **Financial impact**

The Board believes that continuing to operate under the current form of the brand licence agreement was no longer in the best interests of shareholders.

In agreeing to the proposed level of the royalty the Board was mindful of the negative financial impact to the Company from maintaining the status quo. A continuing dispute with the Licensor would have led to ongoing legal costs (the costs of the current dispute have been around £4 million since June 2008). It has been estimated that approximately £3 to 4million per annum of revenue is currently at risk in relation to easyJets ability to continue selling current white labelled activities should the judgment of the High Court in the current brand licence dispute find that easyJet had been providing such services outside the terms of the licence. The deal will also mean that easyJet no longer has to gain eGIP approval for the circa £3 million per annum of co-branding and marketing deals within the airport or airline environment. eGIP has withheld consent to these activities on a number of occasions over the past 12 months.

The further alternative of rebranding the business, including nearly 200 aircraft across 27 countries and 110 airports within the 90 day time frame currently stipulated in the licence would have been logistically very difficult and meant easyJets flying programme would have been disrupted. Rebranding in such a short period of time would have meant the business incurring significant costs and presented an unacceptable potential risk to revenues.

The existing Brand Licence Agreement was entered into in 2000, prior to the listing of the ordinary shares of easyJet on the London Stock Exchange. In the view of the Board and eGIP, the current proposals represent a variation to the existing brand licence providing for a royalty to be paid annually in exchange for which easyJet will receive additional commercial benefits and clarification around certain factors which have been the subject of dispute between easyJet and eGIP.

As the Board consider this to be a variation of the existing brand licence, advice received is that it is unlikely that any adverse tax consequences will arise to the Group as a result of the Transaction.

### **Principal benefits of the Transaction for easyJet**

The Board considers that the Transaction better aligns the interests of easyGroup and Sir Stelios with those of easyJet and delivers improved clarity in relation to easyJet's use of eGIP's brand. The new arrangements remove the 75:25 rules constraint on ancillary revenues and remove certain constraints on the Companys ability to undertake its activities and initiatives including the removal of obligations to seek consent from eGIP in certain circumstances. They will also protect the Company's successful white labelled service offerings and resolve a key issue in relation to the governance of the Company for the future. The Board believes that the securing of these benefits creates the right platform for easyJet and its new executive management team to deliver future value for all shareholders.

Further information on the Transaction and on the forthcoming Extraordinary General Meeting will be set out in a circular to be

posted to shareholders as soon as practicable.

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Enquiries should be directed to:

**easyJet plc**

Investor:

Rachel Kentleton, Investor Relations

+44 (0) 7961 754 468

Media:

Oliver Aust, Corporate Communications

+44 (0) 7985 891 586

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