



EUROPEAN COMMISSION  
DG Competition

***Case M.8869 - RYANAIR / LAUDAMOTION***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 12/07/2018

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## EUROPEAN COMMISSION

Brussels, 12.7.2018  
C(2018) 4731 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

**To the notifying party :**

Dear Sir or Madam,

**Subject: Case M.8869 – Ryanair/LaudaMotion  
Commission decision pursuant to Article 6(1)(b) of Council  
Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the  
European Economic Area<sup>2</sup>**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

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## 1. INTRODUCTION

- (1) On 7 June 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Ryanair Holdings plc ("Ryanair", Ireland) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of LaudaMotion GmbH ("LaudaMotion", Austria), by way of purchase of shares (the "Transaction").<sup>3</sup> Ryanair and LaudaMotion are collectively referred to as the "Parties".

## 2. THE PARTIES

- (2) **Ryanair** is a low-cost point-to-point airline operating throughout Europe. It operates a domestic and international network using a fleet of over 400 Boeing 737-800 aircraft.
- (3) **LaudaMotion** is an Austrian Air Operator Certificate holder owned by the private foundation of Niki Lauda, which has recently started a range of scheduled passenger air transport services primarily from Germany, Austria and Switzerland to Mediterranean and Canary Island leisure destinations. In February 2018, LaudaMotion acquired as a partial take-over certain assets of the former airline NIKI Luftfahrt GmbH ("NIKI"), the leisure subsidiary of insolvent airline Air Berlin, after NIKI had filed for insolvency in Austria and ceased activity as an air carrier on 13 December 2017.<sup>4</sup>

## 3. THE CONCENTRATION

- (4) On 16 March 2018, the Parties reached agreement on binding Heads of Terms, pursuant to which Ryanair would acquire a 75% shareholding in LaudaMotion in two inter-related stages ("Step One" and "Step Two"). The Transaction was announced on 20 March 2018.<sup>5</sup> On 20 April 2018, the Parties executed the corresponding Share Purchase Agreement (the "SPA").
- (5) Step One consists in the following:
  - (a) The acquisition by Ryanair of a 24.9% shareholding in LaudaMotion;
  - (b) The provision by Ryanair to LaudaMotion of six aircraft under a wet-lease agreement to LaudaMotion for the Summer 2018 IATA<sup>6</sup> Season;

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<sup>3</sup> Publication in the Official Journal of the European Union No C 208 of 15.06.2018, p. 6.

<sup>4</sup> The acquisition of certain NIKI assets by LaudaMotion was approved by the Spanish *Comisión Nacional de los Mercados y la Competencia* and the Austrian *Bundeswettbewerbsbehörde*.

<sup>5</sup> See <https://corporate.ryanair.com/news/partnership-with-niki-lauda-to-develop-laudamotion-airline-in-austria/>

<sup>6</sup> The International Air Transport Association (IATA) is the trade association for the world's airlines, representing some 280 airlines or around 83% of total air traffic.

- (c) The addition by Ryanair of scheduled aircraft capacity of LaudaMotion to its website and the offering of these LaudaMotion seats for sale;
  - (d) The provision by Ryanair of the working capital for LaudaMotion's daily operations and the funding of any losses incurred.
- (6) Step Two involves the following:
- (a) Ryanair will acquire a further 50.1% shareholding in LaudaMotion, subject to LaudaMotion efficiently operating no less than 75% of the former NIKI slots<sup>7</sup> at Palma de Mallorca airport;
  - (b) Ryanair will acquire the right to appoint three of the five members of the Board of LaudaMotion;
  - (c) Ryanair will be responsible for growing the fleet of LaudaMotion to at least 30 aircraft over [...] years[...];
  - (d) Ryanair will assist LaudaMotion in growing its presence in the scheduled air travel sector in Europe. Ryanair will promote LaudaMotion's services and sales by referring to LaudaMotion as a "partner" airline.
- (7) After the Transaction, neither Niki Lauda nor any undertaking other than Ryanair will have any rights that might confer joint control over LaudaMotion. Therefore, by acquiring 75% of LaudaMotion's shareholding and the right to appoint the majority of its Board, Ryanair will acquire sole control over LaudaMotion within the meaning of Article 3(1)(b) of the Merger Regulation.<sup>8</sup>
- (8) In addition, the Commission notes that the acquisition by Ryanair of sole control over LaudaMotion is conditional upon the implementation of the whole of the Heads of Terms, including Steps One and Two. As a consequence, only the implementation of Steps One and Two together would enable Ryanair to acquire control over LaudaMotion. If Step Two would not be implemented, all of Ryanair's obligations, including those related to Step One, would become void.
- (9) In view of the unitary nature of Step One and Step Two, as well as the short period of time in which the two steps are to be implemented, and pursuant to paragraphs 38 and 48 of the Commission's Consolidated Jurisdictional Notice,<sup>9</sup> the Commission considers that Step One and Step Two constitute a single concentration within the meaning of Article 3 of the Merger Regulation.

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<sup>7</sup> Under Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (the "Slot Regulation"), slots are defined as the permission given to an air carrier to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off (see Article 2(a) of the Slot Regulation).

<sup>8</sup> This Decision is without prejudice to the assessment of the legality of the transfer of slots under the Slot Regulation.

<sup>9</sup> OJ C 95, 16.4.2008, p. 1.

- (10) The notification of the Transaction follows the adoption by the Commission of two decisions under Article 7(3) of the Merger Regulation.
- (11) On 19 March 2018, Ryanair requested a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation to implement Step One of the Transaction, as described above.
- (12) On 23 March 2018, the Commission granted the first derogation on the basis of Article 7(3) of the Merger Regulation (the "First Derogation Decision").<sup>10</sup>
- (13) On 3 May 2018, Ryanair requested that Step One of the Transaction, as described above, be amended so as to include the following additional measures (the "Additional Measures"): (i) Ryanair would provide between three and eight aircraft under a wet-lease agreement to LaudaMotion for the Summer 2018 IATA Season, in addition to the six aircraft covered by the First Derogation Decision; and (ii) Ryanair would provide operational support to LaudaMotion, including operations control and crew control. In addition, in its second application for a derogation, Ryanair committed itself to notify the Transaction to the Commission without any delay and, in any case, no later than one month from the adoption of the decision on the second derogation request.
- (14) Similarly to the measures approved under the First Derogation Decision, the Additional Measures would become void if Step Two of the Transaction would not be implemented.
- (15) On 8 May 2018, the Commission granted a second derogation on the basis of Article 7(3) of the Merger Regulation (the "Second Derogation Decision"), subject to Ryanair notifying the Transaction to the Commission pursuant to Article 4 of the Merger Regulation no later than one month from the adoption of the Second Derogation Decision.<sup>11</sup>

#### **4. EU DIMENSION**

- (16) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Ryanair: c. EUR 6 600 million; LaudaMotion: c. EUR [...] million).<sup>12</sup> Each of them has an EU-wide turnover in excess of EUR

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<sup>10</sup> Commission Decision C(2018)1946 of 23 March 2018, to be published.

<sup>11</sup> Commission Decision C(2018)2984 of 8 May 2018, to be published.

<sup>12</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission's Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1). Ryanair has extrapolated turnover data associated with LaudaMotion following its acquisition of part of former NIKI's business, by identifying the percentage of slots operated by NIKI in Summer 2017 IATA Season that LaudaMotion would use over the course of a full Summer IATA Season post-Transaction and by applying that percentage to NIKI's 2017 worldwide revenue. On this basis, LaudaMotion's worldwide turnover would amount to c. EUR [...] million in 2017. Ryanair considers that this approach provides a conservative estimate, as NIKI's slots retained by LaudaMotion are expected to generate a higher revenue per slot than NIKI's former operations based on its overall slot portfolio. The Commission considers that this approach is in line with previous precedents estimating turnover on the basis of sales of airline seats by using the corresponding slots (see Case M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 20).

250 million (Ryanair: c. EUR [...] million; LaudaMotion: c. EUR [...] million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.<sup>13</sup>

- (17) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## **5. DESCRIPTION OF LAUDAMOTION'S BUSINESS PLAN AND ACTIVITIES**

- (18) According to Ryanair, the Transaction arises out of the insolvency of Air Berlin in August 2017. Air Berlin's leisure subsidiary NIKI subsequently went into insolvency and definitively ceased operating as an active air carrier in December 2017. In February 2018, LaudaMotion acquired as a partial take-over certain assets formerly used by insolvent NIKI, including (i) slots at various airports in Germany, Austria, Switzerland, and at holiday destinations in the Mediterranean and Canary Islands, (ii) an expectation to enter into various lease arrangements with Lufthansa Group; and (iii) a 4-bay maintenance hangar in Vienna with up to 86 engineering staff.
- (19) At the time of entry into the binding Heads of Terms, LaudaMotion had obtained an Austrian Air Operator Certificate and was planning to commence operating scheduled passenger air transport services in the IATA Summer Season 2018 using slots transferred from NIKI.<sup>14:15</sup>

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<sup>13</sup> The Commission has identified three possibilities for the geographic allocation of the turnover of air carriers: (i) the "50/50 split" method, (ii) the "point of origin" method, and (iii) the "point of sale" method (see e.g. Case M.4439 – *Ryanair/Aer Lingus*, recital 13 *et seq.*). The "50/50 split" method consists in allocating the revenue from an individual route operated by an air carrier in a 50%/50% ratio to the country of origin and the country of final destination so as to take into account the cross border character of the service provided. The "point of origin" method consists in allocating the revenue from an individual route operated by an air carrier to the country where the place of departure of the flight is located. The "point of sale" method consists in allocating the turnover to the country where the ticket sale occurred. Ryanair's turnover is allocated on the basis of the "50/50 split" method and of the "point of origin" method. Due to the sale of almost all its tickets via Ryanair's website, Ryanair is unable to allocate turnover on the basis of the "point of sale" method. Ryanair however believes that the thresholds are also met by Ryanair's EU-wide turnover under the "point of sale" method. In addition, Ryanair submits that the thresholds are met by LaudaMotion's EU-wide turnover under the three methods. In 2016, by way of illustration, c. [...] % of NIKI's worldwide turnover was achieved in the EU using the "50/50 split" method, c. [...] % using the "point of origin" method and c. [...] % using the "point of sale method".

<sup>14</sup> Form CO, paragraphs 4 and 9. See also paragraph (41) and footnote 23 of the First Derogation Decision: "*LaudaMotion has launched its website on 16 March 2018 and will start its flight operations from Germany on 25 March 2018 and from Austria in June 2018 with a fleet of 14 aircraft, to be compared to NIKI's former fleet of 35 aircraft.*" See also: <https://onemileatatime.boardingarea.com/2018/03/16/laudamotion-airline/>

<sup>15</sup> Considering that (i) this decision is adopted under the EU Merger Regulation without prejudice to the application of the Slot Regulation and of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (and conversely), (ii) the Transaction is to be distinguished from the acquisition of certain NIKI assets by LaudaMotion, which has been cleared under national merger control rules, decisions taken by civil aviation authorities or slot coordinators in relation to the transfer of NIKI's slots



- (20) Considering that the target of the Transaction is LaudaMotion, not NIKI, it serves no purpose to consider the effects of the Transaction on the markets on which the assets now held by LaudaMotion were formerly used by NIKI (see section 6.1.1.1 below). The effects of the Transaction should rather be assessed on the markets that LaudaMotion had pre-Transaction planned to use the assets transferred from NIKI even though, for the time being and due to the very early stage of its development, it does not exert a significant constraining influence on those markets.

## **5.1. LaudaMotion's business plan and activities prior to the announcement of the Transaction**

### *LaudaMotion's business plan pre-Transaction*

- (21) LaudaMotion's original business plan [...] the supply of air transport services to four types of customer: (i) individual customers ("B2C"), [...];<sup>16</sup> (ii) travel agents ("B2B"), including leisure travel agents, online travel agents and dynamic packaging agents; (iii) tour operators ("B2T"), in the form of full charter flights or allotments; and (iv) other airlines ("B2A"), through interline agreements, block space agreements<sup>17</sup> and wet-lease agreements.<sup>18; 19</sup>
- (22) According to Ryanair, although LaudaMotion's initial focus was [...],<sup>20</sup> this approach was adopted only for the short-term purpose of attempting to secure sufficient revenues to operate in the Summer 2018 IATA Season, [...].<sup>21</sup> As further explained below, LaudaMotion's internal documents substantiate Ryanair's statements [...].<sup>22</sup> In any case, even if LaudaMotion intended to provide B2A

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pursuant to the Slot Regulation and Regulation (EC) No 1008/2008 are irrelevant for the assessment of the compatibility of the Transaction with the internal market under the EU Merger Regulation.

<sup>16</sup> An interline agreement is an agreement between two or more airlines under which the contracting airlines accept each other's travel documents (tickets).

<sup>17</sup> A block space agreement is an agreement for the purchase of reserved seating capacity by one airline (the marketing airline) on flights operated by another airline (the operating airline).

<sup>18</sup> A wet-lease agreement is an agreement by which an airline (the lessor) provides an aircraft, complete with crew, maintenance and insurance (ACMI) to another airline (the lessee).

<sup>19</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 7 – LaudaMotion Commercial Approach Presentation, dated 29 January 2018.

<sup>20</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 6 – LaudaMotion Commercial Functional Alignment Presentation, dated 7 February 2018, in particular page 5: "*LaudaMotion sold most of its production to Condor, only small fraction remains for own sales.*"

<sup>21</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

<sup>22</sup> See also reply of LaudaMotion to RFI 9 of 6 July 2018, Annex 1 – Email from LaudaMotion of 23 February 2018 to the Commission entitled "Re: Laudamotion/Niki assets – update on negotiation with Lufthansa": "*For the flights that our client [LaudaMotion] will fly under its own flight number and on its own slots, our client is interested in selling capacity to various clients (Thomas Cook, TUI and also Lufthansa group) under charter or blocked space agreements. This is essential because our client is starting very (much too) late into the summer season 2018. Such arrangements would be for a short period of time, in essence for the summer season 2018.*"

services [...], the Transaction would not affect the market for the supply of air transport services to other airlines (see section 6.1.3 below).

- (23) In addition, beyond the need to secure revenues, the use of [...] sales models by LaudaMotion was aimed at protecting the slots transferred from insolvent NIKI by maximising their use during the Summer 2018 IATA Season.<sup>23</sup>
- (24) Based on the latest four-year fleet plan (from Summer 2018 IATA Season to Winter 2021/2022 IATA Season) available at the date of the Heads of Terms, LaudaMotion was anticipating to operate a 14-aircraft fleet,<sup>24</sup> all dry leased from Lufthansa Group and of which (i) 11 were former NIKI aircraft<sup>25</sup> and (ii) three Lufthansa aircraft, not formerly operated by NIKI.<sup>26</sup>
- (25) LaudaMotion's fleet plan also mentioned the temporary use during the Summer 2018 IATA Season of [...] wet-leased aircraft from TUIfly, which were to be fully operated by LaudaMotion for TUI.<sup>27</sup> However, [...] by the time LaudaMotion agreed on the Heads of Terms with Ryanair<sup>28</sup> and consequently, LaudaMotion's corrected fleet plan refers to a 14-aircraft fleet only.<sup>29</sup> In any case, since the flight capacity (aircraft and crew) would have come from TUI and

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<sup>23</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 6 – LaudaMotion Commercial Functional Alignment Presentation, dated 7 February 2018.

<sup>24</sup> The size and lessors of the aircraft fleet to be operated by LaudaMotion has not been stable during LaudaMotion's inception phase. It appears notably that LaudaMotion initially planned to market [...] aircraft ([...], see reply of Ryanair to RFI 4 of 22 June 2018), while the binding Heads of Terms refer to [...] aircraft ([...], see Form CO, Annex 1, paragraph 2) and LaudaMotion's fleet scenario at the time of the entry into the binding Heads of Terms refers to a fleet of 14 aircraft (see Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario, latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair, and reply of Ryanair to RFI 3 of 18 June 2018). In any case, as will be further described in this Decision, LaudaMotion eventually secured access to only 10 aircraft, including eight operative aircraft for the Summer 2018 IATA Season (the delivery of the two remaining aircraft being delayed) and nine for the Winter 2018/2019 IATA Season (one aircraft being redelivered to the lessor at the end of the Summer 2018 IATA Season) and therefore the assets related to aircraft that are part of the Transaction are limited to 10 leases, out of which eight aircraft are operated during the Summer 2018 IATA Season and nine aircraft are to be operated during the Winter 2018/2019 IATA Season.

<sup>25</sup> One of these 11 aircraft is to be returned to Lufthansa Group at the end of the Summer 2018 IATA Season (Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario, latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair).

<sup>26</sup> Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario (latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair), reply of Ryanair to RFI 4 of 22 June 2018, and reply of Ryanair to RFI 3 of 18 June 2018, Annex 7 – LaudaMotion Commercial Approach Presentation, dated 29 January 2018.

<sup>27</sup> Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario (latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair), reply of Ryanair to RFI 4 of 22 June 2018, and reply of Ryanair to RFI 3 of 18 June 2018, Annex 7 – LaudaMotion Commercial Approach Presentation, dated 29 January 2018.

<sup>28</sup> Form CO, paragraph 159. See also reply of Ryanair to QP1 on the first request for a derogation of 19 March 2018, Annex 2 – Letter from LaudaMotion dated 21 March 2018: "[...]."

<sup>29</sup> Reply of Ryanair to RFI 4 of 22 June 2018.

would have been operated for TUI during one season only, it is the Commission's understanding that LaudaMotion would have mainly provided the slots necessary for the provision of air transport services by TUI on a temporary basis, without delivering other services. Therefore, LaudaMotion's temporary arrangements with TUI would not qualify as LaudaMotion entering the market for the supply of air transport services to tour operators. Likewise, the abandonment of LaudaMotion's temporary arrangements with TUI, even if it were the result of the Transaction (*quod non*), could not be deemed to have had any structural impact on the market for the supply of air transport services on any specific route.<sup>30</sup>

*LaudaMotion's agreements with Condor and Eurowings prior to the announcement of the Transaction*

- (26) Before being able to operate autonomously as from 2019, LaudaMotion intended to rely on agreements with two other airlines, Condor and Lufthansa Group, both for the provision of input services and for the sale of its output services. In particular, as further described below, these agreements implied that LaudaMotion's flight capacity would have been almost entirely pre-sold to Condor and Lufthansa Group (B2A), limiting very significantly LaudaMotion's presence on the markets for the wholesale supply of airline seats to tour operators (B2T) and for the retail supply of airline seats to passengers (B2C and B2B).<sup>31</sup>
- (27) Out of the 11 former NIKI aircraft dry-leased from Lufthansa Group,<sup>32</sup> (i) five aircraft would be operated by LaudaMotion under a block space agreement with Condor until the end of the Winter 2018/2019 IATA Season (B2A), (ii) five aircraft would be operated by LaudaMotion under a block space agreement with Eurowings until the end of the Summer 2018 IATA Season (B2A), and (iii) one aircraft would be wet-leased back to Lufthansa Group until the end of the Summer 2019 IATA Season. At the expiry of the block space and wet-lease agreements with Condor and Lufthansa Group, it stems from LaudaMotion's fleet scenario that LaudaMotion planned to operate the aircraft at its own risk.<sup>33</sup>
- (28) In addition, the three aircraft dry-leased from Lufthansa Group outside of NIKI's former fleet would be wet-leased back to Lufthansa Group until the end of the

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<sup>30</sup> It may be deemed to have an impact on the availability of slots for TUI's flight operations, which will be examined as part of the airport-by-airport assessment of the impact of the Transaction on access of airlines to airport infrastructure services in section 7.2 below.

<sup>31</sup> See paragraph (41) of the First Derogation Decision: "*In this regard, LaudaMotion plans to supply a very large proportion of its intended capacity in the Summer 2018 IATA Season to Thomas Cook/Condor and Lufthansa (...).*"

<sup>32</sup> One of these 11 aircraft is to be returned to Lufthansa Group at the end of the Summer 2018 IATA Season (Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario, latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair).

<sup>33</sup> Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario (latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair), and reply of Ryanair to RFI 3 of 18 June 2018. According to Annex 17 to the Form CO, the first aircraft is to be operated by LaudaMotion at its own commercial risk. However, paragraph 159 of the Form CO clarifies that this aircraft was actually to be wet-leased to Lufthansa Group, as confirmed by the next version of the fleet scenario provided as Annex 11 to the reply of Ryanair to RFI 3 of 18 June 2018.

Summer 2019 IATA Season. After that date, the aircraft would have been returned to Lufthansa Group.<sup>34</sup>

- (29) At the time of announcement of the Transaction, the block space agreement with Condor had been signed and was binding. Tickets were already on sale. Under the agreement, Condor would purchase 100% of LaudaMotion's capacity on the flights operated by LaudaMotion and identified in the agreement and would bear 100% of the financial and commercial risks of these flights. In particular, Condor would decide on the commercial conditions for the sale of the tickets (including the split between wholesale and retail supply of seats, the pricing policy for tour operators and end-customers, and the distribution channels) and market 100% of the purchased capacity under its own brand.<sup>35</sup>
- (30) The five aircraft covered by the block space agreement with Condor were to be based during the Summer 2018 IATA Season at (i) Duesseldorf airport (two aircraft), serving routes to Ibiza, Malaga and Palma de Mallorca, (ii) at Frankfurt airport (one aircraft), serving routes to Palma de Mallorca, and (iii) at Zurich airport (two aircraft), serving routes to Corfu, Fuerteventura, Heraklion, Ibiza, Lamezia Terme, Lanzarote, Olbia, Palma de Mallorca, and Rhodes. In addition, LaudaMotion had also block-sold to Condor 100% of its capacity on flights on three additional routes: Stuttgart-Palma de Mallorca, Basel-Palma de Mallorca and Basel-Heraklion.<sup>36</sup> Plans for the Winter 2018/2019 IATA Season were not finalised yet at the time of announcement of the Transaction.
- (31) In addition to the block space agreement, LaudaMotion and Condor had concluded other service agreements, by which Condor would provide operative flight support (e.g. operational control, crew planning and control, ground operations and passenger care) as well as service and infrastructure support (including a website and Internet booking engine) to LaudaMotion for its operations during the Summer 2018 IATA Season. Finally, LaudaMotion and Condor had signed an interline agreement that entitled them to sell each other's flights until the end of the Winter 2018/2019 IATA Season.<sup>37</sup>
- (32) At the time of announcement of the Transaction, LaudaMotion and Lufthansa Group had signed a non-binding term sheet commercial agreement, by which they had agreed on the basic terms for the block space and wet-lease agreements.

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<sup>34</sup> Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario (latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair), and reply of Ryanair to RFI 3 of 18 June 2018.

<sup>35</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

<sup>36</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 12 – Condor Schedule Development. See also Form CO, Annex 19, for the aircraft bases.

<sup>37</sup> The Commission has found in a prior decision that an airline selling under a franchise agreement its tickets exclusively through the sales channels of another airline and depending on the latter for a number of supporting services (such as customer relations management) could not be considered as an independent competitor and added the market shares of the two airlines for the purposes of the competitive assessment (see Case M.6663 – *Ryanair/Aer Lingus III*, paragraphs 442-460).

- (33) Under the block space agreement, Eurowings, a subsidiary of Lufthansa Group, would purchase 90% of LaudaMotion's capacity on the flights operated by LaudaMotion using up to five aircraft and agreed on by the parties.<sup>38</sup> Eurowings would bear 90% of the financial and commercial risks on these routes, and would decide on the commercial conditions for the sale of the 90% block-purchased capacity. The 10% remaining capacity would be sold by LaudaMotion at its own risk.<sup>39</sup>
- (34) The five aircraft covered by the block space agreement with Eurowings were to be based during the Summer 2018 IATA Season at Vienna airport (two aircraft), Duesseldorf airport, Cologne airport and Stuttgart airport.<sup>40</sup> While negotiations were on-going for the routes to be operated under the block space agreement, the latest version of the schedule development with Eurowings shows the following airport pairs: Basel-Palma de Mallorca, Berlin Tegel-Palma de Mallorca (later replaced by Hannover-Palma de Mallorca),<sup>41</sup> Cologne-Palma de Mallorca, Duesseldorf-Palma de Mallorca, Graz-Palma de Mallorca, Innsbruck-Palma de Mallorca, Linz-Palma de Mallorca, Salzburg-Palma de Mallorca, Stuttgart-Palma de Mallorca, Vienna-Brindisi, Vienna-Chania, Vienna-Ibiza, Vienna-Kalamata, Vienna-Malaga, Vienna-Palma de Mallorca, Vienna-Paphos, Vienna-Pisa, Vienna-Santorini, Zurich-Palma de Mallorca.<sup>42</sup>
- (35) Under the wet-lease agreement, Eurowings would purchase the full capacity of the three wet-leased aircraft, would choose the routes on which they would have operated (using Eurowings' slots) and would decide on the key commercial conditions for the sale of tickets. The financial risk for the sale of tickets would have resided with Eurowings, as the lessee.<sup>43</sup>

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<sup>38</sup> The block space agreement was due to start on 1 June 2018 and was preceded by a short-term wet-lease agreement between LaudaMotion and Lufthansa which expired, independently of the Transaction, at the end of May 2018 (Form CO, paragraph 159 and Annex 17 – LaudaMotion pre-Transaction fleet scenario, latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair; see also reply of Lufthansa Group to RFI of 8 June 2018). Considering its limited duration and its expiry prior to the start of LaudaMotion's operations on most of the Summer 2018 IATA Season routes (scheduled to start in June, see: <https://www.routesonline.com/news/38/airlineroute/277640/laudamotion-outlines-summer-2018-operations/?highlight=laudamotion>), this provisional wet-lease agreement will not be further considered in this Decision.

<sup>39</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

<sup>40</sup> Form CO, paragraph 159. See also Form CO, Annex 19, for the aircraft bases.

<sup>41</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 4.3 – Email from Eurowings of 15 March 2018 and Annex 13 – Eurowings Schedule Development, as well as Form CO, Annex 18. The route (be it Berlin Tegel-Palma de Mallorca or Hannover-Palma de Mallorca Berlin) was to be operated once a week using the aircraft based at Stuttgart airport.

<sup>42</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 13.

<sup>43</sup> Reply of Lufthansa Group to RFI of 8 June 2018.

*Routes to be operated by LaudaMotion prior to the announcement of the Transaction*

- (36) LaudaMotion published on 16 March 2018 the list of airport pairs for which it would operate flights during the Summer 2018 IATA Season schedule: Basel-Herakleion, Basel-Palma de Mallorca, Berlin Tegel-Palma de Mallorca, Cologne-Palma de Mallorca, Duesseldorf-Ibiza, Duesseldorf-Malaga, Duesseldorf-Palma de Mallorca, Frankfurt-Palma de Mallorca, Graz-Palma de Mallorca, Hannover-Palma de Mallorca, Innsbruck-Palma de Mallorca, Linz-Palma de Mallorca, Salzburg-Palma de Mallorca, Stuttgart-Palma de Mallorca, Vienna-Brindisi, Vienna-Chania, Vienna-Ibiza, Vienna-Kalamata, Vienna-Malaga, Vienna-Palma de Mallorca, Vienna-Paphos, Vienna-Pisa, Vienna-Santorini, Zurich-Corfu, Zurich-Fuerteventura, Zurich-Ibiza, Zurich-Herakleion, Zurich-Lamezia Terme, Zurich-Lanzarote, Zurich-Olbia, Zurich-Palma de Mallorca, Zurich-Rhodes.<sup>44</sup>
- (37) All of these routes correspond to routes for which flights were block-sold to Condor or to be block-sold to Lufthansa Group pursuant to the block seat agreements respectively signed with Condor and under negotiation with Lufthansa Group, with the exception of Berlin Tegel-Palma de Mallorca.<sup>45</sup> Therefore, for all of these routes except Berlin Tegel-Palma de Mallorca, LaudaMotion would mainly act as a provider of capacity to Condor and Lufthansa Group (B2A), which in turn would act as wholesalers of seats to tour operators or retailers of seats to passengers.
- (38) LaudaMotion would thus only be able to enter the markets for the supply of flight services to tour operators and end-customers with 10% of its capacity on flights to be block-sold to Lufthansa (corresponding to 18-21 seats per flight). Considering the limited available capacity for sale by LaudaMotion and the late finalisation of LaudaMotion's flight schedule (while tour operators tend to purchase capacity in advance), the Commission considers it unlikely that (i) LaudaMotion would be in a position to achieve material sales to tour operators for flights operated during the Summer 2018 IATA Season and would not have entered to any significant extent the wholesale market for passenger air transport services, and (ii) LaudaMotion would not have exerted a significant competitive pressure on the retail market for passenger air transport services.
- (39) At the time of announcement of the Transaction, LaudaMotion had neither published nor finalised its flight schedule for the Winter 2018/2019 IATA Season.<sup>46</sup>

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<sup>44</sup> See e.g. <https://www.routesonline.com/news/38/airlineroute/277640/laudamotion-outlines-summer-2018-operations/> and <https://onemileatatime.boardingarea.com/2018/03/16/laudamotion-airline/>

<sup>45</sup> Until 15 March 2018, the day before the publication of the Summer 2018 IATA Season schedule, the Berlin Tegel-Palma de Mallorca route was included in the routes to be operated by LaudaMotion under the block space agreement with Lufthansa Group. Upon request from Lufthansa Group, it was replaced by the Hannover-Palma de Mallorca route (reply of Ryanair to RFI 3 of 18 June 2018, Annex 4.3 – Email from Eurowings of 15 March 2018) and does not appear in the later version of the Summer 2018 IATA Season flight schedule in the routes to be operated by LaudaMotion using the aircraft dry-leased from Lufthansa Group and block-sold to Lufthansa Group or Condor (Form CO, Annex 18).

<sup>46</sup> Form CO, footnote 133 and reply of Ryanair to RFI 4 of 22 June 2018.

## 5.2. **LaudaMotion's business plan and activities after the announcement of the Transaction**

### *LaudaMotion's business plan post-Transaction*

- (40) According to the binding Heads of Terms, "[...]."<sup>47</sup> Considering that [...],<sup>48</sup> LaudaMotion's business model post-Transaction is expected to focus on the provision of passenger air transport services to retail customers (B2C).
- (41) However, after the signature of the binding Heads of Terms, management at LaudaMotion have been developing a possible business proposal for the next shareholders' meeting of LaudaMotion that [...]. [...].<sup>49</sup> In any case, [...], the Transaction would not affect the market for the wholesale supply of passenger air transport services (see section 6.1.2 below).
- (42) In addition, according to the binding Heads of Terms, "[i]t is agreed that LM [LaudaMotion] will honour its planned supply agreements with Thomas Cook/Condor, and any block seat agreements with Lufthansa to the extent that these agreements assist LM [LaudaMotion] to protect the scarce slots at the airports listed in clause 6 above."<sup>50</sup>
- (43) However, following announcement of the Transaction, the agreements with Condor were terminated and the negotiations with Lufthansa Group were terminated, both as regards the proposed block space<sup>51</sup> and wet-lease arrangements.<sup>52</sup> Some of the passengers which had booked tickets from Condor or Eurowings for flights on the block space capacity provided by LaudaMotion to the two airlines have been transferred to LaudaMotion.<sup>53</sup> The Commission

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<sup>47</sup> Form CO, Annex 1 – Heads of Terms, paragraph 12.

<sup>48</sup> Form CO, paragraph 277.

<sup>49</sup> Reply of Ryanair to RFI 4 of 22 June 2018. If the shareholders' meeting takes place before completion of Step Two of the Transaction, Ryanair will hold 24.9% of the votes on the decision whether to approve the business plan (if submitted for approval). If the shareholders' meeting takes place after completion of Step Two of the Transaction, Ryanair will hold 75% of the votes on the decision whether to approve the business plan (if submitted for approval).

<sup>50</sup> Form CO, Annex 1 – Heads of Terms, paragraph 13.

<sup>51</sup> Nevertheless, LaudaMotion and Lufthansa Group subsequently signed on 25 April 2018 a new block space agreement for significantly lower volumes on a limited number of routes (Form CO, paragraph 318 and Annex 25). For these routes, the number of block seats provided to Lufthansa Group varies depending on each flight and may be lower than 10. The Commission therefore considers that the new block space agreement does not modify significantly LaudaMotion's and Lufthansa Group's respective market position on the provision of air transport services to passengers on any route. As a consequence, it does not affect the outcome of the competitive assessment carried out in section 7.1 of this Decision.

<sup>52</sup> Following the end of the short-term wet-lease arrangements that LaudaMotion and Lufthansa Group had agreed from the start of LaudaMotion's operations until the end of May 2018, LaudaMotion does not wet-lease any aircraft to Lufthansa Group anymore.

<sup>53</sup> Form CO, paragraphs 317 and 318. According to Ryanair, passengers transferred to LaudaMotion following the termination of the negotiations with Lufthansa Group include [...] passengers from the

considers that the termination of the agreements with Condor and the negotiations with Lufthansa result from the Transaction.<sup>54</sup>

- (44) Following the termination of negotiations with Lufthansa Group, LaudaMotion's fleet was reduced to 10 aircraft dry-leased from Lufthansa as former NIKI aircraft.<sup>55</sup> The number of operative aircraft for the start of the Summer 2018 IATA Season was further reduced to 8 aircraft, due to factors independent of the Transaction, notably delays in delivery resulting from technical problems.<sup>56</sup> As a result of the lack of access to these two aircraft, LaudaMotion will not operate any routes out of Zurich airport,<sup>57</sup> nor the Basel-Heraklion route.<sup>58</sup> This implies that LaudaMotion will relinquish the summer slots at Zurich airport for which it had obtained NIKI's historic rights.

*Measures implemented by Ryanair as part of the Transaction*

- (45) Following the signature of the binding Heads of Terms, and prior to this Decision, Ryanair was authorised under the First and Second Derogation Decisions to implement part of the Transaction, notably to wet-lease aircraft to LaudaMotion to complete a 19-aircraft flight schedule during the Summer 2018 IATA Season.<sup>59</sup> As indicated in the First Derogation Decision (notably paragraph 28) and the

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tour operator TUI, who were originally booked on the block space capacity purchased by Eurowings on LaudaMotion flights (reply of Ryanair to RFI 3 of 18 June 2018). These minimal sales, representing less than [...] % of LaudaMotion's seat sales, should not be considered as resulting from LaudaMotion's activities on the market for the wholesale supply of airline seats to tour operators (B2T), since these sales were achieved by Lufthansa Group (and not LaudaMotion) on the basis of the B2A services provided by LaudaMotion. According to Ryanair, LaudaMotion has not sold other seats to tour operators, nor is it likely to sell seats to tour operators in Summer 2018 IATA Season (for seats sold under the block seat agreement with Condor, see: <https://condor-newsroom.condor.com/en/de/news-article/condor-will-continue-its-distribution-partnership-with-laudamotion-until-the-end-of-april/>: "Guests who booked their Laudamotion flights via Condor, with a departure after May 1st 2018 will be contacted directly by Condor over the next few days. Customers who have booked their flight in a tour operator package are kindly requested to contact the respective tour operator.")

<sup>54</sup> <http://thomascookairlinesuk-newsroom.condor.com/en/int/news-article/condor-will-continue-its-distribution-partnership-with-laudamotion-until-the-end-of-april/> and reply of Lufthansa Group to RFI of 8 June 2018.

<sup>55</sup> The eleventh aircraft that was to be wet-leased back to Lufthansa Group was eventually not purchased by Lufthansa Group (see reply of LaudaMotion to RFI 9 of 6 July 2018, Annex 2 – Letter of LaudaMotion to Lufthansa Group of 10 April 2018). In addition, one of these 10 aircraft is to be returned to Lufthansa Group at the end of the Summer 2018 IATA Season. Therefore, LaudaMotion's fleet for the Winter 2018/2019 IATA Season consists of nine aircraft (Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario, latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair).

<sup>56</sup> Form CO, footnotes 121 and 156.

<sup>57</sup> See e.g. <https://www.routesonline.com/news/38/airlineroute/278694/laudamotion-cancels-zurich-operation-in-s18/?highlight=laudamotion>

<sup>58</sup> Form CO, footnotes 121 and 156.

<sup>59</sup> Form CO, paragraph 10.



Second Derogation Decision (notably paragraph 27), these measures also aim at protecting the most valuable slots held by LaudaMotion.

- (46) On 28 March 2018, LaudaMotion published its extended flight schedule for the Summer 2018 IATA Season<sup>60</sup> and LaudaMotion and Ryanair started selling tickets for these flights on Ryanair's website. The flight schedule includes (i) flights on the routes already announced by LaudaMotion and operated using the eight aircraft dry-leased by Lufthansa Group to LaudaMotion (including three aircraft based at Duesseldorf airport, two aircraft based at Vienna airport, one aircraft at Cologne airport, one aircraft at Stuttgart airport and one aircraft at Frankfurt airport), as well as (ii) flights on the additional routes to be operated using the aircraft to be wet-leased by Ryanair to LaudaMotion.<sup>61</sup>
- (47) The aircraft wet-leased from Ryanair to LaudaMotion are deployed at Berlin Tegel airport (four aircraft), at Duesseldorf airport (three aircraft), Vienna airport (two aircraft), Munich airport (one aircraft) and Nuremberg (one aircraft). The table below provides an overview of the flights operated by LaudaMotion during the Summer 2018 IATA Season using respectively LaudaMotion's flight capacity and Ryanair's flight capacity made available under the First and Second Derogation Decisions.<sup>62</sup>

**Table 1 - Overview of LaudaMotion's flight schedule  
Summer 2018 IATA Season**

<b>Flights operated with LaudaMotion's flight capacity</b>	<b>Flights operated with Ryanair's flight capacity</b>
Basel-Palma de Mallorca	Berlin Tegel-Bari
Berlin Tegel-Palma de Mallorca	Berlin Tegel-Brindisi
Cologne-Palma de Mallorca	Berlin Tegel-Corfu
Duesseldorf-Ibiza*	Berlin Tegel-Faro
Duesseldorf-Malaga*	Berlin Tegel-Fuerteventuera
Duesseldorf-Palma de Mallorca*	Berlin Tegel-Girona

<sup>60</sup> Form CO, Annex 15a. See also e.g. <https://corporate.ryanair.com/news/laudamotion-and-ryanair-partnership-takes-off/>. This presentation was made on 28 March 2018, after the announcement of the Transaction (20 March 2018) and after the First Derogation Decision (23 March 2018), but before the delays in the delivery of two aircraft materialised. Therefore, the presentation of the flight schedule for the Summer 2018 IATA Season still refers to 21 aircraft, including two based in Zurich, while, due to factors independent of the Transaction, two of these aircraft were ultimately not available and LaudaMotion currently operates 19 aircraft, without any aircraft based in Zurich.

<sup>61</sup> Form CO, paragraphs 161-163 and Annex 18.

<sup>62</sup> Form CO, paragraph 160. As will be explained below, not all of the airport pairs operated with LaudaMotion's flight capacity are relevant markets. Only the routes also operated by Ryanair are relevant markets.

Frankfurt-Palma de Mallorca	Berlin Tegel-Gran Canaria
Graz-Palma de Mallorca	Berlin Tegel-Heraklion
Hannover-Palma de Mallorca	Berlin Tegel-Ibiza
Innsbruck-Palma de Mallorca	Berlin Tegel-Kos
Linz-Palma de Mallorca	Berlin Tegel-Lanzarote
Salzburg-Palma de Mallorca	Berlin Tegel-Malaga
Stuttgart-Palma de Mallorca*	Berlin Tegel-Milan Malpensa
Vienna-Brindisi	Berlin Tegel-Pula
Vienna-Chania	Berlin Tegel-Rhodes
Vienna-Ibiza	Berlin Tegel-Rijeka
Vienna-Kalamata	Berlin Tegel-Tenerife Sur
Vienna-Malaga	Duesseldorf-Corfu
Vienna-Palma de Mallorca*	Duesseldorf-Faro
Vienna-Paphos	Duesseldorf-Fuerteventura
Vienna-Pisa	Duesseldorf-Gran Canaria
Vienna-Santorini	Duesseldorf-Heraklion
	Duesseldorf-Kos
	Duesseldorf-Lanzarote
	Duesseldorf-Rhodes
	Duesseldorf-Tenerife Sur
	Hamburg-Palma de Mallorca
	Munich-Palma de Mallorca
	Nuremberg- Palma de Mallorca
	Paderborn/Lippstadt-Palma de Mallorca
	Rome Fiumicino-Palma de Mallorca

\*: Routes for which certain frequencies are operated using Ryanair's flight capacity

- (48) In addition, following the announcement of the Transaction, LaudaMotion also published its flight schedule for the Winter 2018/2019 IATA Season and LaudaMotion and Ryanair started selling tickets for these flights.<sup>63</sup> As for the Summer 2018 IATA Season, the flight schedule for the Winter 2018/2019 IATA Season is based on aircraft made available by Lufthansa Group to LaudaMotion independently of the Transaction and aircraft to be made available by Ryanair to LaudaMotion as a result of the Transaction.
- (49) Although, prior to the announcement of the Transaction, LaudaMotion had no fixed plans for the Winter 2018/2019 IATA Season, the Commission considers it likely, based on the information provided by LaudaMotion and its original business plan, that LaudaMotion's planned operations on certain routes during the Winter 2018/2019 IATA Season result from the Transaction and would not have been carried out absent the addition of Ryanair's flight capacity to LaudaMotion's own fleet. The table below provides an overview of the flights operated by LaudaMotion during the Winter 2018/2019 IATA Season using respectively LaudaMotion's and Ryanair's flight capacity.<sup>64</sup>

**Table 2 - Overview of LaudaMotion's flight schedule  
Winter 2018/2019 IATA Season**

[...]

- (50) In view of the number of frequencies made possible by the operation of LaudaMotion's eight-aircraft fleet during the Summer 2018 IATA Season (see Table 1 above) and of the fact that LaudaMotion will only have one more aircraft in its fleet for the Winter 2018/2019 Season, LaudaMotion may nevertheless not have sufficient capacity to operate all of the routes mentioned in Table 2 and which would be operated with LaudaMotion's own flight capacity. At least, it seems unlikely that LaudaMotion would be able to operate all of the frequencies announced in the Winter 2018/2019 IATA Season flight schedule. The Commission thus considers it likely that, on certain of these Winter 2018/2019 routes, certain flights (frequencies) would be operated using Ryanair's wet-leased aircraft. However, the Commission does not have sufficient information to identify these flights precisely. Therefore, for the purpose of this Decision, the Commission will assume, on a conservative basis, that all flights on sale for the routes listed in this paragraph are to be operated by LaudaMotion using its own nine-aircraft flight capacity.

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<sup>63</sup> Form CO, Annex 15b. See also e.g. <https://corporate.ryanair.com/news/laudamotion-and-ryanair-partnership-takes-off/> and <https://www.routesonline.com/news/38/airlineroute/278806/laudamotion-adds-vienna-base-in-w18/>

<sup>64</sup> Form CO, paragraphs 167-170 and Annex 19 and reply of Ryanair to RFI 7 of 27 June 2018. As will be explained below, not all of the airport pairs to be operated with LaudaMotion's flight capacity are relevant markets. Only the routes that will also be operated by Ryanair are relevant markets.

### **5.3. Conclusion on the impact of the Transaction on LaudaMotion's business plan and activities**

- (51) In light of the above, the impact of the Transaction on LaudaMotion's business plan and activities may be summarised as follows.
- (52) In terms of retail supply of air transport services to passengers (B2C and B2B), the Transaction results in the addition of LaudaMotion's flights for sale by Ryanair for the Summer 2018 and Winter 2018/2019 IATA Seasons.<sup>65</sup>
- (53) More specifically, for the Summer 2018 IATA Season, as a result of the Transaction and given the cancellation of the arrangements with Condor and Lufthansa Group, the flight capacity that was marketed by Condor (100% of the flight capacity of three aircraft),<sup>66</sup> Lufthansa (90% of the capacity of five aircraft) and LaudaMotion (the remaining 10% capacity of five aircraft) pre-Transaction is marketed by the merged entity post-Transaction.<sup>67</sup>
- (54) For the Winter 2018/2019 IATA Season, as a result of the Transaction and given the cancellation of the arrangements with Condor, the flight capacity that was to be marketed by Condor (100% of the flight capacity of five aircraft) and LaudaMotion (100% of the flight capacity of four aircraft) pre-Transaction is marketed by the merged entity post-Transaction.<sup>68</sup>
- (55) In terms of wholesale supply of air transport services to tour operators (B2T), the Transaction may result in LaudaMotion not entering the market, subject to the decision on LaudaMotion's business plan post-Transaction. For the Summer 2018 IATA Season, the Transaction has no impact, since LaudaMotion had not sold and did not plan to sell wholesale seats pre-Transaction.

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<sup>65</sup> As authorised by the First and Second Derogation Decisions, Step One of the Transaction has already been implemented, which involves (i) the addition, through wet-leases, of Ryanair's flight capacity to LaudaMotion's flight capacity to enable LaudaMotion to complete a 19-aircraft flight schedule, and (ii) the sale by Ryanair of LaudaMotion's tickets. Therefore, the effects of the Transaction for the Summer 2018 and Winter 2018/2019 IATA Season have already materialised.

<sup>66</sup> As described above, the block seat agreement with Condor foresaw the operation of five aircraft. However, the two aircraft that were to be based at Zurich airport are not being operated during the Summer 2018 IATA Season due to factors independent of the Transaction.

<sup>67</sup> The other routes for which flights are on sale in LaudaMotion's current schedule for Summer 2018 IATA season were not included in LaudaMotion's flight schedule pre-Transaction and the Transaction thus has no impact on those routes. While the flight capacity (11 aircraft) for the operation of these routes is provided by Ryanair post-Transaction, the corresponding slots are held by LaudaMotion. Therefore, the Transaction has an impact on Ryanair's (and other airlines') ability to expand their flight operations, which will be examined as part of the airport-by-airport assessment of the impact of the Transaction on access of airlines to airport infrastructure services in section 7.2 below.

<sup>68</sup> LaudaMotion did not intend pre-Transaction to include the other routes for which flights are on sale in its current flight schedule for the Winter 2018/2019 IATA Season and the Transaction has thus no impact on those routes. While the flight capacity for the operation of these routes is to be provided by Ryanair post-Transaction, the corresponding slots are held by LaudaMotion. Therefore, the Transaction has an impact on Ryanair's (and other airlines') ability to expand their flight operations, which will be examined as part of the airport-by-airport assessment of the impact of the Transaction on access of airlines to airport infrastructure services in section 7.2 below.

- (56) In terms of the supply of air transport services to other airlines (B2A), the Transaction does not have any structural impact, since LaudaMotion planned to completely cease providing those services at the end of the Summer 2019 IATA Season (see paragraph (28)). The Transaction nevertheless results in LaudaMotion not providing these services to Condor and Lufthansa Group during the next two and three IATA Seasons respectively.<sup>69</sup>
- (57) In section 6.1 below, the Commission will identify the markets relevant for the assessment of the competitive effects of the Transaction based on above-summarised changes brought about by the Transaction on LaudaMotion's business plan and activities.

## **6. ANALYTICAL FRAMEWORK**

- (58) Proper examination of the competitive effects of a transaction under the Merger Regulation rests in particular on a sound understanding of (i) the competitive constraints under which the merged entity will operate, and (ii) the specific causal effects of the transaction on the development of competition in the market.
- (59) Along those lines, and taking account of the forward-looking nature of merger control and of the changes brought about by the Transaction on the Parties' business plan and activities, the Commission will first identify the markets that may be relevant (section 6.1). Next, the markets identified as relevant will be defined (section 6.2). The Commission will then determine the circumstances likely to prevail on the relevant markets absent the Transaction (the relevant "situation absent the Transaction", section 6.3).

### **6.1. Identification of the relevant markets**

- (60) The Transaction relates to air transport services, which both Ryanair and LaudaMotion supply. Ryanair supplies air transport services directly to passengers. LaudaMotion provides air transport services to other airlines and, marginally, to passengers. Considering LaudaMotion's initial business plan described in paragraph (21) above, the Commission will examine whether the provision of air transport services to the three following customer groups constitutes relevant markets: (i) to passengers (section 6.1.1), (ii) to tour operators (section 6.1.2), and (iii) to other airlines (section 6.1.3).

#### *6.1.1. Air transport services to passengers*

- (61) The Commission has, in its prior decision practice related to air transport, defined the relevant markets for scheduled passenger air transport services on the basis of two approaches: (i) the "point of origin/point of destination" ("O&D") city-pair

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<sup>69</sup> The block space agreement with Lufthansa Group would have expired at the end of the Summer 2018 IATA Season. The block space agreement with Condor would have expired at the end of the Winter 2018/2019 IATA Season. The wet-lease agreement with Lufthansa Group would have expired at the end of the Summer 2019 IATA Season.

approach, where the target was an active air carrier;<sup>70</sup> and (ii) the "airport-by-airport" approach, when the target included an important slot portfolio.<sup>71</sup>

- (62) Under the O&D approach, every combination of an airport or city of origin to an airport or city of destination is defined as a distinct market. Such a market definition reflects the demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable for a different city pair. The effects of a transaction on competition are thus assessed for each O&D separately.
- (63) Under the airport-by-airport approach, every airport (or substitutable airports) is defined as a distinct market. Such a market definition has notably been adopted to assess the risks of foreclosure entailed by the concentration of slots at certain airports in the hands of a single undertaking. The effects of a transaction on competition are thus assessed for all O&Ds to or from an airport (or substitutable airports) taken together.

#### 6.1.1.1. Relevance of markets defined as O&Ds under the O&D approach

##### (a) Ryanair's views

- (64) Ryanair submits that NIKI ceased its activity as an air carrier on 13 December 2017, grounding all of its aircraft and ceasing to operate on any O&D market. Prior to the partial implementation of the Transaction permitted pursuant to the First and Second Derogation Decisions, LaudaMotion was in the very early stages of recommencing operations using the assets acquired from NIKI and was not an active independent operator. Besides, only in May 2018 did LaudaMotion announce plans to operate certain Winter 2018/2019 IATA Season routes. According to Ryanair, given that the decision to operate these routes was made well after the Transaction was announced, it is strongly arguable that such routes cannot be considered to be competitively affected. Therefore, to the extent that any assessment is made, Ryanair considers that it should focus on the Parties' combined slot holding rather than on O&D pairs.<sup>72</sup>
- (65) For completeness, however, Ryanair also provides information relating to O&D city pair routes on which both Parties are expected to operate in the Summer 2018 and Winter 2018/2019 IATA Seasons.

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<sup>70</sup> See e.g. Cases M.7541 – *IAG/Aer Lingus*, paragraph 14; M.7333 – *Alitalia/Etihad*, paragraph 63; M.6447 – *IAG/bmi*, paragraph 31.

<sup>71</sup> See e.g. Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 41; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 58; M.6447 – *IAG/bmi*, paragraph 483. For Cases M.8672 – *easyJet/Certain Air Berlin Assets* and M.8633 – *Lufthansa/Certain Air Berlin Assets*, the Commission only carried out an airport-by-airport assessment, since the target assets were not used on any route at the time of the transaction (Air Berlin had definitively ceased its flight operations on all routes due to its insolvency). By contrast, in the present case, LaudaMotion has published its flight schedule for the Summer 2018 and Winter 2018/2019 IATA Seasons and has already started its flight operations.

<sup>72</sup> Form CO, paragraph 58.

(b) Commission's assessment

- (66) The Transaction involves the acquisition by Ryanair of LaudaMotion, which, at the time of the Transaction, had started providing passenger air transport services on specific city pairs and planned to grow into an active competitor on these routes. Therefore, the Commission considers it appropriate to carry out an assessment of the competitive effects of the Transaction under the O&D approach.
- (67) However, such an assessment requires distinguishing between (i) the O&Ds, which LaudaMotion had already started to operate or had decided to operate pre-Transaction (first sub-section below), (ii) the O&Ds, which LaudaMotion could only operate following the early implementation of the Transaction (second sub-section below), and (iii) the routes that NIKI used to operate prior to insolvency (third sub-section). In addition, it is necessary to clarify that non-overlap routes are not relevant for the O&D assessment of the Transaction, since LaudaMotion is not considered as a likely potential competitor on any of these routes (fourth sub-section) and the Transaction has no specific effect on routes exited by Ryanair post-Transaction (fifth sub-section).
- i) Under the O&D approach, the relevant O&Ds should include the routes operated by LaudaMotion using LaudaMotion's own flight capacity (dry-leased aircraft and crew) pre-Transaction to the extent these overlap with the routes flown by Ryanair*
- (68) As indicated in paragraphs (53) and (54) above, the Transaction results in the transfer to Ryanair of the eight-aircraft flight capacity to be deployed by LaudaMotion on LaudaMotion's flight schedule published prior to the announcement of the Transaction for the Summer 2018 IATA Season and of the nine-aircraft flight capacity to be deployed by LaudaMotion on LaudaMotion's flight schedule published after the announcement of the Transaction for the Winter 2018/2019 IATA Season.
- (69) Since LaudaMotion's flight capacity has been made available to passengers on the retail market independently of the Transaction (by Condor, by Lufthansa and by LaudaMotion, see below), the Commission considers that the O&Ds on which LaudaMotion's flight capacity is deployed should serve to identify the relevant markets under the O&D approach.
- (70) More specifically, for the Summer 2018 IATA Season, LaudaMotion's entire eight-aircraft fleet was to be deployed prior to the announcement of the Transaction on flights pre-sold by LaudaMotion to Condor and Lufthansa Group. The corresponding capacity was marketed to passengers by the two airlines at their own risk as well as, to a marginal extent (10% of the capacity of five aircraft), by LaudaMotion at its own risk.<sup>73</sup> Post-Transaction, LaudaMotion's entire eight-aircraft flight capacity will be marketed by the merged entity. Therefore, although pre-Transaction LaudaMotion itself was marginally selling seats to passengers on the routes it operated and the number of seats actually sold on routes covered by the block-seat agreements prior to the Transaction is

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<sup>73</sup> For the list of O&Ds for the Summer 2018 IATA Season, see section 5 above.

limited,<sup>74</sup> the Transaction modifies the competitive constraints under which the merged entity operates on these O&Ds.

- (71) Therefore, the following Summer 2018 IATA Season airport pairs, on which LaudaMotion (and previously also via Condor and Lufthansa Group) markets tickets and on which Ryanair is also present (or on substitutable airport pairs) are relevant markets for the O&D assessment: Berlin Tegel-Palma de Mallorca, Cologne-Palma de Mallorca, Duesseldorf-Ibiza, Duesseldorf-Malaga, Duesseldorf-Palma de Mallorca, Frankfurt-Palma de Mallorca, Stuttgart-Palma de Mallorca, Vienna-Malaga, Vienna-Palma de Mallorca and Vienna-Paphos.
- (72) For the Winter 2018/2019 IATA Season, it is arguable whether the Transaction modifies the actual conditions of competition on any O&D, considering that the routes on which LaudaMotion's flight capacity would be deployed were neither finalised nor, to the Commission's best knowledge, made public at the time of announcement of the Transaction. Nevertheless, the Commission notes that the flight capacity of five LaudaMotion aircraft during the Winter 2018/2019 IATA Season had already been pre-sold to Condor pre-Transaction, although the corresponding block space flights still had to be defined. In addition, considering that the Winter 2018/2019 IATA Season flight plan was published and put on sale shortly after the agreement on the binding Heads of Terms and the announcement of the Transaction, LaudaMotion can be considered to be a potential competitor pre-Transaction on the routes that it will operate during the Winter 2018/2019 IATA Season using its own nine-aircraft flight capacity.<sup>75</sup> Therefore, even if LaudaMotion's flight capacity was considered as not exerting an actual competitive constraint but a potential one only, in accordance with paragraph 58 of the Commission's Horizontal Merger Guidelines<sup>76</sup>, these routes are relevant for the competitive assessment of the Transaction under the O&D approach, to the extent that Ryanair also plans to operate these routes during the Winter 2018/2019 Season on the basis of its Winter 2018/2019 IATA Season flight schedule.<sup>77</sup>
- (73) As a consequence, the following Winter IATA Season airport pairs, on which both Ryanair and LaudaMotion (using its own flight capacity) plan to operate (or on substitutable airport pairs) are relevant markets under the O&D assessment: Duesseldorf-Alicante, Duesseldorf-Faro, Duesseldorf-Fuerteventura, Duesseldorf-Gran Canaria, Duesseldorf-Lanzarote, Duesseldorf-Malaga, Duesseldorf-Palma de Mallorca, Duesseldorf-Tenerife Sur, Vienna-Larnaca and Vienna-Marrakech.

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<sup>74</sup> Form CO, Annex 12.

<sup>75</sup> For the list of O&Ds for the Winter 2018/2019 IATA Season, see section 5 above.

<sup>76</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, p. 5-18.

<sup>77</sup> See e.g. <https://www.routesonline.com/news/tagged/529/ryanair/?mode=detailed>



ii) *Under the O&D approach, the relevant O&Ds should not include the routes operated using Ryanair's flight capacity (wet-leased aircraft) made available to LaudaMotion as a result of the Transaction*

(74) In the *easyJet/Certain Air Berlin assets* decision, the Commission considered that the traditional O&D approach, under which each O&D city-pair is assessed separately, would fail to capture the structural effects on competition brought about by the concentration, in view of (i) the termination of Air Berlin's operations, hence its exit from all O&D markets, and (ii) the fact that the target consisted mainly of slots (in particular, aircraft and crew were not part of the target).<sup>78</sup> Similarly, in the *Lufthansa/Certain Air Berlin assets* decision, the Commission considered that the traditional O&D approach, under which each O&D city-pair is assessed separately, would fail to capture the structural effects on competition brought about by the concentration, in view of (i) the termination of Air Berlin's (including LGW's<sup>79</sup>) operations prior to the Transaction, hence its exit from all O&D markets, and (ii) the fact that LGW was used in particular as a vehicle for the transfer of Air Berlin's slots (Lufthansa already had the right to use the aircraft and crew that were part of the target).<sup>80</sup>

(75) In the case at stake, the Commission also considers that the O&Ds on which LaudaMotion uses or will use Ryanair's flight capacity (wet-leased aircraft) should not be treated as relevant markets, since (i) pre-Transaction, LaudaMotion did not operate and did not plan to operate these routes; the inclusion of these routes in LaudaMotion flight schedules results from the early implementation of the Transaction authorised under the First and Second Derogation Decisions; (ii) LaudaMotion does not hold any of the assets and rights necessary to operate on these routes other than slots and LaudaMotion's involvement is therefore limited to the provision of the slots necessary to operate the routes.<sup>81</sup>

(76) Consequently, the Transaction cannot be deemed to alter the competitive constraints under which Ryanair operates on these specific O&Ds. Nevertheless, since the merged entity's presence on these routes post-Transaction results from the transfer of LaudaMotion's slots, the effects on competition on these routes, as well as on all other routes to or from the same airports, will be captured under the airport-by-airport assessment.

iii) *The identification of the relevant markets under the O&D approach should not be based on NIKI's former flight operations*

(77) One respondent to the market investigation submits that *"the transaction would combine Ryanair and NIKI, the two closest competitors active on the route thus removing an important constraint on Ryanair in terms of pricing. In light of these*

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<sup>78</sup> Case M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 38.

<sup>79</sup> LGW means Luftfahrtgesellschaft Walter mbH.

<sup>80</sup> Case M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 44.

<sup>81</sup> These slots were formerly used by NIKI for its flight operations. However, NIKI's flight operations fully ceased in December 2017 as a result of its insolvency and NIKI exited all the routes on which slots later transferred to LaudaMotion were used.

*facts, the Commission should at the very least closely examine routes on which the parties' combined market share (based on NIKI's 2017 shares) would exceed 65%."*<sup>82</sup> The Commission considers that the approach put forward by this respondent, based on NIKI's former flight operations, is not appropriate for the following reasons.

- (78) In the two prior decisions involving assets from insolvent Air Berlin, the Commission did not assess the effects of the Transaction on the basis of the passenger air transport services that Air Berlin used to supply prior to its insolvency, considering notably that Air Berlin had, prior to and independently of the transaction, exited all O&D markets.<sup>83</sup>
- (79) In the present case, the target of the Transaction is LaudaMotion, a newly set-up provider of scheduled air transport services. While LaudaMotion's flight operations build upon the assets transferred from NIKI, in particular the dry-lease agreements with Lufthansa Group for 10 former NIKI aircraft, personnel formerly employed by NIKI<sup>84</sup> and a 19-aircraft equivalent slot portfolio formerly held by NIKI, LaudaMotion has to be distinguished from NIKI, as a formerly active air carrier.
- (80) First, at the time of transfer of parts of NIKI's former assets to LaudaMotion and even more so at the time of the Transaction, insolvent NIKI had completely and definitively ceased competing as an active air carrier. Therefore, the acquisition of NIKI's former assets by LaudaMotion did not entail any take-over of NIKI's former flight operations nor of the market position on routes that NIKI used to operate before it entered into insolvency proceedings. Attributing NIKI's former market position on routes operated until December 2017 to LaudaMotion would imply a backward looking assessment, contrary to the analytical framework prescribed by the Merger Regulation.
- (81) Second, the scope of LaudaMotion's assets is more limited than the scope of the assets formerly held and used by NIKI prior to its insolvency. In particular, LaudaMotion's fleet pre-Transaction consists of 10 leased aircraft (out of which eight are operable during the Summer 2018 IATA Season and nine during the Winter 2018/2019 IATA Season), compared to a 35-aircraft fleet for NIKI prior to its insolvency. In addition, LaudaMotion employs fewer pilots and crew than NIKI prior to its insolvency. Furthermore, LaudaMotion has obtained by transfer from NIKI a portfolio of summer slots, and has already had to handback slots (notably at Zurich airport) for failure to get access to a sufficient number of aircraft. Finally, due to NIKI's insolvency, LaudaMotion did not obtain any customer base nor any sales platforms or operational services from NIKI, thus

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<sup>82</sup> Reply to eQ1 – Questionnaire to Competitors, question 12.1.

<sup>83</sup> See Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 40; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 44.

<sup>84</sup> LaudaMotion has offered employment to all former NIKI employees (reply of Ryanair to RFI 4 of 22 June 2018).

necessitating the transitional support measures under agreements with Condor and Lufthansa Group during LaudaMotion's start-up phase prior to the Transaction.<sup>85</sup>

(82) Given the above circumstances, the Commission considers that NIKI's flight operations prior to its insolvency are not relevant for the purpose of the competitive assessment of the Transaction under the O&D approach.

*iv) Under the O&D approach, the relevant O&Ds should not include any other routes on account of LaudaMotion's potential competition*

(83) In prior decisions concerning air carriers, the Commission found that an airline active on a route could be constrained not only by its actual competitors on the route in question but also by potential competitors.<sup>86</sup> In this context, the Commission has identified, as relevant O&Ds, non-overlap routes on which one party was found to be a potential competitor of the other party.<sup>87</sup>

(84) In the present case, the Commission finds that potential competition is not an important parameter of competition between Ryanair and LaudaMotion, in view of LaudaMotion's limited ability to shift and add routes in reaction to changes in the competitive structure of routes.

(85) In particular, the Commission considers that the first condition for establishing loss of potential competition pursuant to paragraph 60 of the Horizontal Merger Guidelines<sup>88</sup> is not fulfilled, namely, a potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force.

(86) LaudaMotion does not possess all the assets necessary to start operating on routes and has required the operational support of other carriers (Condor and Eurowings pre-Transaction, Ryanair post-Transaction) to operate on any O&D. Furthermore, LaudaMotion does not exert a significant constraint on its competitors on any market for passenger air transport services. It has just established bases for the eight aircraft it is using during the Summer 2018 IATA Season, the largest of which (Vienna and Duesseldorf, which are not Ryanair bases<sup>89</sup>) would have numbered two aircraft. In addition, due to the scarcity of aircraft and crew in Germany, Austria and Switzerland and to the weak financial resources of LaudaMotion, it is unlikely that LaudaMotion would have significantly expanded its flight capacity in the short or medium term. In fact, LaudaMotion's internal

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<sup>85</sup> See notably reply of Lufthansa Group to eQ1 – Questionnaire to Competitors, question 14: *"Laudamotion did not have the sales and marketing organization to fill its aircraft with individual passengers, at least in the short to medium term."*

<sup>86</sup> See e.g. Cases M.5830 – *Olympic/Aegean Airlines*, recitals 1470-1502; M.4439 – *Ryanair/Aer Lingus*, recitals 498-540.

<sup>87</sup> See e.g. Case M.6663 – *Ryanair/Aer Lingus III*, recitals 1553-1629.

<sup>88</sup> *"First, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force."*

<sup>89</sup> Form CO, Annex 23.

fleet scenarios do not foresee an increase in the number of LaudaMotion's aircraft.<sup>90</sup>

- (87) The Commission acknowledges that (i) the slot portfolio held by LaudaMotion is larger than what the aircraft in its own fleet can operate, and that (ii) the opening of new routes by LaudaMotion would not necessarily require access to new aircraft. LaudaMotion could redeploy aircraft and reduce frequencies on less profitable routes to enter new routes.<sup>91</sup> However, the only evidence that the Commission has seen of any pre-Transaction intention by LaudaMotion to re-shuffle capacity relates to only two airport pairs, which are both part of the same route (from Vienna-Paphos to Vienna-Larnaca, see paragraph (179) below). In addition, the flexibility of airlines to adjust capacity and routes so as to react efficiently to demand-side or supply-side evolutions depends on having a sufficiently large fleet to optimise planning.<sup>92</sup> In the present case, LaudaMotion lacks sufficient scale to easily shift its frequencies from one route to another and to open, close or change frequencies on routes out of Austria, Germany or Switzerland regularly. Furthermore, LaudaMotion's lack of an established presence at any given airport, which might give it competitive advantages for marketing and advertisement, also constitutes a barrier to entry on new routes.<sup>93</sup>
- (88) In addition, the Commission considers that the second condition for establishing loss of potential competition pursuant to paragraph 60 of the Horizontal Merger Guidelines<sup>94</sup> is also not fulfilled. The Commission finds in this Decision that the addition of LaudaMotion's slot portfolio to Ryanair's slot portfolio does not give the merged entity the ability to prevent entry or expansion of the merged entity's competitors at any relevant airport (see section 7.2 below). Strong airlines already well-established on leisure routes out of Germany, Austria and Switzerland, such as the Lufthansa Group, easyJet, Condor or TUI, or which have announced their expansion in these countries, such as IAG, are likely potential competitors which would prevent the merged entity from raising prices on non-overlap routes on which LaudaMotion might have entered.
- (89) As a conclusion, the Commission considers that there is no non-overlap route that should be treated as a relevant O&D for the purpose of assessing any loss of potential competition between Ryanair and LaudaMotion.

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<sup>90</sup> Reply of Ryanair to RFI 3 of 18 June 2018, Annex 11 – LaudaMotion Fleet Scenario Evolution.

<sup>91</sup> See e.g. Case M.6663 – *Ryanair/Aer Lingus III*, paragraph 1607 concerning potential competition by Aer Lingus despite the absence of aircraft orders.

<sup>92</sup> See e.g. Case M.6663 – *Ryanair/Aer Lingus III*, paragraph 558 concerning large operations at base airports allowing faster responses to shocks on individual routes.

<sup>93</sup> See e.g. Case M.5335 – *Lufthansa/SN Airholding*, paragraph 240.

<sup>94</sup> "Second, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger."

v) *Under the O&D approach, the relevant O&Ds should not include the routes exited by Ryanair after the announcement of the Transaction*

- (90) One respondent to the market investigation points to press reports according to which, as a result of the Transaction, Ryanair would move two aircraft currently based in Greece to Germany. As a consequence, Ryanair would withdraw from a number of Greek domestic routes and would give up its base in Chania (Crete), leading to the end of Ryanair's services on a number of European short-haul routes from and to Chania airport.<sup>95</sup> In this context, the respondent submits that the Commission should investigate to what extent Ryanair's withdrawal will lead to a significant impediment of effective competition on the respective routes, for instance by leaving only a single carrier on those routes.<sup>96</sup>
- (91) Ryanair claims that, [...]. Therefore, according to Ryanair, there is no Transaction-specific effect on competition on Greek domestic routes or on other routes to or from Chania airport.<sup>97</sup> More generally, none of the reductions in the aircraft based at Ryanair's bases between June 2017 and June 2018 related to the Transaction.<sup>98</sup>
- (92) Even if the withdrawal from routes were related to the Transaction, the Commission underlines that, with respect to the determination of affected markets in horizontal mergers, affected markets consist of the relevant markets where the parties to the proposed transaction are engaged in business activities and hence on which the transaction produces merger-specific effects.<sup>99</sup> Accordingly, markets where the activities of the parties to the transaction do not overlap are in principle outside the scope of the investigation, as the transaction is not likely to produce merger-specific effects on these markets. Therefore, routes that are only operated by Ryanair and a third party, but not by LaudaMotion, should not, in principle, be considered as relevant markets.
- (93) The Commission acknowledges that, in certain prior decisions in the airline sector, it has assessed the effects on competition on such non-overlap markets. This was in particular the case where a factual inquiry indicated that, as a direct result of the merger or as its foreseeable consequence, close links, for instance through a co-operation agreement within the framework of an airline alliance, are likely to be established between one merging party and a close partner of the

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<sup>95</sup> <https://www.aerotelegraph.com/ryanair-zieht-jets-aus-hellas-ab-fuer-laudamotion>

<sup>96</sup> Reply to eQ1 – Questionnaire to Competitors, question 14.

<sup>97</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

<sup>98</sup> Reply of Ryanair to RFI 4 of 22 June 2018.

<sup>99</sup> See paragraph 6.3(a) in Annex I to the Commission Regulation (EC) 802/2004 of 7 April 2004 implementing Council Regulation (EC) 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p. 1.

other merging party.<sup>100</sup> In such cases, the incentives to compete in certain routes could indeed be altered as a result of the merger.<sup>101</sup>

- (94) In the present case, the Commission notes in particular that Ryanair is not a member of any airline alliance, nor is it a party to any code-share agreement, block-share agreement, or joint venture.<sup>102</sup> As to LaudaMotion, it is not a party to any cooperative agreements other than the short-term agreements with Condor and Lufthansa Group which were terminated as a result of the Transaction.<sup>103</sup> Therefore, the Commission considers it unlikely that the Transaction would give rise to any specific coordinated or spill-over effects.
- (95) The Commission thus considers that the routes exited by Ryanair, including those on which only one air carrier is left operating, are not relevant markets under the O&D approach.

(c) Conclusion

- (96) In light of the above, the Commission concludes that, for the purpose of this Decision, it is appropriate to apply the analytical framework designed to address the loss of O&D competition following the merger between two air carriers only to the routes included in LaudaMotion's Summer 2018 and Winter 2018/2019 IATA Seasons flight schedule and operated by LaudaMotion using its own assets, including aircraft dry-leased from Lufthansa Group.<sup>104</sup>
- (97) Therefore, under the O&D approach, the Commission will only consider as relevant markets the routes operated by LaudaMotion during the Summer 2018 IATA Season using its eight-aircraft flight capacity and the routes to be operated during the Winter 2018/2019 IATA Season by LaudaMotion using its nine-aircraft flight capacity.

6.1.1.2. Relevance of markets defined as airports under the airport-by-airport approach

- (98) As an introduction, the Commission will describe the relevance of slots as an input for air transport services and the EU rules that govern their allocation at EU

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<sup>100</sup> See e.g. Case M.3280 – *Air France/KLM*, paragraph 47

<sup>101</sup> See e.g. Case M.5440 – *Lufthansa/Austrian Airlines*, paragraphs 52-54.

<sup>102</sup> Form CO, paragraph 314. Ryanair sells a small volume of tickets on behalf of Air Europa on its website for flights from Madrid to South America. However, Ryanair does not set prices for these tickets and there are no arrangements pursuant to which passengers could check their bags through to their final destination, check-in all the way to their destination, or potentially be rebooked on another airline in the event of irregular operations. [...] [...] [...] (reply of Ryanair to RFI 7 of 27 June 2018).

<sup>103</sup> Form CO, paragraph 315.

<sup>104</sup> Should the dry-lease agreements between LaudaMotion and Lufthansa Group be terminated independently of the Transaction, LaudaMotion would be left with few, if any, aircraft. It would therefore be questionable whether any O&D would be a relevant market. Nevertheless, the present decision by which the Commission does not oppose the notified operation and declares it compatible with the internal market and with the EEA Agreement, would still be valid, considering that (i) the Commission concludes in this decision that, under the O&D approach, the Transaction does not raise serious doubts as to its compatibility with the internal market on any O&D, and (ii) the airport-by-airport assessment would still be applicable because Ryanair would obtain LaudaMotion's slots by transfer.

airports. The Commission will then determine the extent to which it is appropriate to carry out an airport-by-airport assessment of the competitive effects of the Transaction and identify the markets that are relevant in the context of such an assessment.

(a) Introduction

*i) Slots as an input for air transport services*

- (99) By virtue of the Slot Regulation, slots, i.e. the permission to land and take-off at a specific date and time at congested airports, are essential for airlines' operations. Indeed, only air carriers holding slots are entitled to get access to the airport infrastructure services delivered by airport managers and, consequently, to operate routes to or from those airports.
- (100) The Commission has, in its prior decision practice on mergers involving active air carriers, highlighted that the lack of access to slots constitutes a significant barrier to entry or expansion at Europe's busiest airports.<sup>105</sup>
- (101) The Commission has also insisted, in the framework of its airport policy, that "*slots are a rare resource*" and "*access to such resources is of crucial importance for the provision of air transport services and for the maintenance of effective competition.*"<sup>106</sup>
- (102) In addition, the Slot Regulation recalls that, with the increase of air traffic, there is a continuously growing demand for capacity at congested airports.<sup>107</sup> Therefore, the lack of available slots has become a prominent feature of the EU airline industry and is expected to become an even more critical issue for air carriers in the near future.

*ii) Rules for the allocation of slots*

- (103) In the context of the imbalance between demand and supply of airport capacity, the Slot Regulation defines the rules for the allocation of slots at EU airports. It aims to ensure that, where airport capacity is scarce, the latter is used in the fullest and most efficient way and slots are distributed in an equitable, non-discriminatory and transparent way.
- (104) Under the Slot Regulation, the general principle regarding slot allocation is that an air carrier having operated its particular slots for at least 80% during the summer or winter scheduling period is entitled to the same slots in the equivalent scheduling period of the following year (the "grandfather rights").<sup>108</sup>

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<sup>105</sup> See e.g. Cases M.5440 – *Lufthansa/Austrian Airlines*, paragraph 354; M.3770 – *Lufthansa/Swiss*, paragraph 34.

<sup>106</sup> Recital (4) of the Commission Proposal for a Regulation of the European Parliament and of the Council on common rules for the allocation of slots at European Union airports (COM/2011/827 final of 01 December 2011).

<sup>107</sup> Slot Regulation, first recital: "*Whereas there is a growing imbalance between the expansion of the air transport system in Europe and the availability of adequate airport infrastructure to meet that demand; whereas there is, as a result, an increasing number of congested airports in the Community.*"

<sup>108</sup> Slot Regulation, Article 8(2).

Consequently, slots which are not sufficiently used by air carriers are reallocated (the "use it or lose it" rule).

- (105) The Slot Regulation also provides for the setting up of "pools" containing newly-created time slots, unused slots and slots which have been given up by a carrier or have otherwise become available. 50% of the slots from the slot pool shall first be offered to new entrants. The other 50% of the slots from the slot pool shall be placed at the disposal of other applicant airlines (incumbent airlines). If applications by new entrants amount to less than 50% of the capacity made available through slots from the pool, this remaining capacity shall also be placed at the other applicants' disposal.<sup>109</sup>
- (106) Under the Slot Regulation, slots cannot be traded. They may however be exchanged or transferred between airlines in certain specified circumstances. If the Transaction is consummated, the transfer of slots from LaudaMotion to Ryanair could, subject to the explicit confirmation from the coordinator under the Slot Regulation,<sup>110</sup> take place in the framework of this exception.

(b) Ryanair's views

- (107) Ryanair submits that "*The most significant asset of LaudaMotion is its portfolio of slots*".<sup>111</sup> Ryanair thus considers that "*the competitive effects of the Transaction should be assessed in terms of the Parties' combined slot holdings in relation to the markets for air passenger services to or from particular airports for the IATA Summer Season 2018*".<sup>112</sup> As regards the Winter 2018/2019 IATA Season, Ryanair submits the Commission's assessment should "*focus on the Parties' combined slot holding*".<sup>113</sup>

(c) Commission's assessment

- (108) According to the Explanatory Memorandum for the Commission Proposal for a Regulation of the European Parliament and of the Council on common rules for the allocation of slots at European Union airports,<sup>114</sup> "*the emergence of a strong competitor at a given airport requires it to build up a sustainable slot portfolio to allow it to compete effectively with the dominant carrier (usually the "home" carrier)*."
- (109) In this context, in a number of prior decisions related to transactions entailing the transfer of slots at certain airports, the Commission has considered the effects of

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<sup>109</sup> Slot Regulation, Article 10(6).

<sup>110</sup> The coordinator is the person responsible for the allocation of slots (Slot Regulation, Article 4(5)). According to the first sentence of Article 8a(2) of the Slot Regulation, "[t]he transfers or exchanges referred to in paragraph 1 shall be notified to the coordinator and shall not take effect prior to the express confirmation by the coordinator."

<sup>111</sup> Form CO, paragraph 56.

<sup>112</sup> Form CO, paragraph 57.

<sup>113</sup> Form CO, paragraph 58.

<sup>114</sup> COM/2011/827 final of 01 December 2011.



the transaction on the operation of passenger air transport services at a given airport in terms of the slot portfolio held by a carrier at the airport, without distinguishing between the specific routes served to or from that airport.<sup>115</sup> Such an approach has notably been adopted to assess the effects of the strengthening of an airline's position at certain airports.<sup>116</sup>

- (110) In this case, the Transaction results in a concentration of slots at certain airports in the hands of a single undertaking. Indeed, through the Transaction, Ryanair will obtain slots currently held by LaudaMotion that can be used for its flight operations which, as explained above, exceed the flight operations that LaudaMotion can perform using its own fleet of eight aircraft for the Summer 2018 IATA Season and nine aircraft for the Winter 2018/2019 IATA Season.<sup>117</sup>
- (111) The Commission has found in two recent decisions involving the transfer of slots formerly held by Air Berlin that the demand for airport infrastructure services at many of the airports concerned by the Transaction is high.<sup>118</sup>
- (112) Therefore, the Commission considers it appropriate to carry out an assessment of the competitive effects of the Transaction under the airport-by-airport approach. For that purpose, and in line with the prior decisions on transactions involving the transfer of slots, the Commission will define two relevant markets: (i) the markets

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<sup>115</sup> See for instance Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 41; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 58; M.6447 – *IAG/bmi*, paragraph 483.

<sup>116</sup> See e.g. Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 91 *et seq.*; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 160 *et seq.*; M.6447 – *IAG/bmi*, paragraph 483,

<sup>117</sup> In Summer 2018 IATA Season, LaudaMotion holds slots (and historic rights thereto) at the following coordinated airports: Vienna, Berlin Tegel, Duesseldorf, Frankfurt, Hamburg, Munich, Stuttgart, Corfu, Chania, Kos, Kalamata, Santorini, Rhodes, Catania, Faro (coordinated in Summer only), Lanzarote, Malaga, Fuerteventura, Ibiza, Gran Canaria, Palma de Mallorca and Tenerife Sur (Form CO, Annex 2b). In addition, LaudaMotion held slots at Funchal, Nice, Olbia and Zurich but will not operate these slots (Form CO, footnote 86). Therefore, Ryanair would be transferred slots at 22 coordinated airports through the Transaction.

In Winter 2018/2019 IATA Season, LaudaMotion holds slots (and historic rights thereto) at the following coordinated airports: Vienna, Innsbruck, Brussels, Berlin Tegel, Duesseldorf, Frankfurt, Hamburg, Munich, Stuttgart, Venice, Funchal, Lisbon, Lanzarote, Malaga, Fuerteventura, Gran Canaria, Palma de Mallorca, Tenerife Sur and Zurich. However, LaudaMotion will hand back slots at the following airports ahead of the Winter 2018/2019 IATA Season: Brussels, Hamburg, Stuttgart, Munich, Frankfurt, Venice, Lisbon, Funchal and Zurich (reply of Ryanair to RFI 8 of 28 June 2018). For the sake of completeness, it can be noted that LaudaMotion was allocated slots at the following airports but does not have historic rights attached to them: Copenhagen, Dublin, Milan Malpensa, Milan Bergamo, Rome Fiumicino, Alicante, Barcelona, Madrid and London Stansted (Form CO, Annex 2c and reply of Ryanair to RFI 8 of 28 June 2018). Therefore, the 10 coordinated airports at which Ryanair would be transferred slots through the Transaction are: Vienna, Innsbruck, Berlin Tegel, Duesseldorf, Lanzarote, Fuerteventura, Gran Canaria, Malaga, Palma de Mallorca and Tenerife Sur.

Under the Slot Regulation, a coordinated airport is defined as an airport with a high level of congestion where demand exceeds capacity during the relevant period and where, in order to land or take off, it is necessary for an air carrier to have a slot allocated by a coordinator.

<sup>118</sup> See Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraph 117 *et seq.*; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraph 199 *et seq.*

for passenger air transport services to or from the relevant airports, on which the Parties, as slot holders, are both present on the supply side; and (ii) the market for passenger air transport services to or from the relevant airports, on which the Parties are both present on the demand side.<sup>119</sup> Indeed, slots relate to air carriers' ability to operate flights to or from the relevant airports, since air carriers, through slots, get access to airport infrastructure, notably to the available runway and terminal capacity, so that the market for airport infrastructure services to airlines is relevant for the assessment of the Transaction under the airport-by-airport approach.

- (113) For the purposes of this airport-by-airport assessment, it is necessary to identify the airports where both Ryanair and LaudaMotion hold slots (and historic rights thereto). Indeed, as explained in paragraph (92) above, the Transaction is likely to produce merger-specific effects only at airports, or at substitutable airports, where both Ryanair and LaudaMotion hold slots (and historic rights thereto).
- (114) The airports where LaudaMotion holds slots are only a sub-set of the airports where NIKI used to hold slots prior to insolvency.
- (115) As explained above, as part of its acquisition of certain NIKI assets in the framework of NIKI's insolvency proceedings in Austria, LaudaMotion only obtained part of the slot portfolio that NIKI held prior to insolvency. Furthermore, LaudaMotion lost access to a number of aircraft formerly used by NIKI and, therefore, had to abandon historic rights over the slots that it could not use anymore. Consequently, the target slot portfolio to be transferred to Ryanair as a result of the Transaction cannot be compared to the portfolio that NIKI used to hold before it ceased operations in December 2017.

(d) Conclusion

- (116) In light of the above, the Commission concludes that, for the purpose of this Decision, it is appropriate to apply the analytical framework designed to address the risk of foreclosure from access to airport infrastructure services stemming from the merger between two slot holders, at the airports where both Ryanair and LaudaMotion hold slots for the Summer 2018 and Winter 2018/2019 IATA Seasons.

*6.1.2. Air transport services to tour operators*

(a) Ryanair's views

- (117) Ryanair considers that the Transaction will have a positive impact for tour operators, as it brings more capacity to the market.<sup>120</sup>

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<sup>119</sup> See Cases M.8672 – *easyJet/Certain Air Berlin Assets*, paragraphs 47-48; M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraphs 53-54.

<sup>120</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

(b) Commission's assessment

- (118) Carriers, both charter and scheduled airlines, may sell seats (or entire flights) to tour operators, which then integrate the flights into package holidays or resell seats only to end customers.
- (119) In prior decisions, the Commission has regarded the wholesale supply of airline seats to tour operators as a distinct market from the supply of scheduled air transport services to end customers.<sup>121</sup> Indeed, from a demand-side perspective, tour operators have different requirements from those of individual passengers (for example, purchase of large seat packages in advance from the start of the season, negotiation of rebates, taking into account passengers' needs in terms of flight times).
- (120) As indicated in paragraph (37) above, LaudaMotion was not directly active pre-Transaction on the market for the supply of airline seats to tour operators to any significant extent. Part of its flight capacity was indirectly made available to tour operators by Condor and Eurowings, which acted as wholesalers.<sup>122</sup> Nevertheless, according to its business plan, LaudaMotion was planning to enter the wholesale market for the supply of air transport services to tour operations, even if such entry would likely have been limited (see paragraph (37) above).
- (121) According to Ryanair, no decision has been taken as to whether LaudaMotion will, post-Transaction, actually sell seat capacity to tour operators.<sup>123</sup> In any case, Ryanair is not active on the market for the wholesale of seats to tour operators in Germany, Austria or Switzerland.<sup>124</sup> Tour operators may occasionally purchase tickets for groups on Ryanair's scheduled services but Ryanair does not have any framework agreement with tour operators in Germany, Austria and Switzerland.<sup>125</sup> Therefore, regardless of LaudaMotion's intended entry on this market, there is no overlap between the Parties as regards the wholesale supply of seats to tour operators.

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<sup>121</sup> See e.g. Cases M.8046 – *TUI/Transat France*, paragraphs 66-88; M.5867 – *Thomas Cook/Öger Tours*, paragraph 16; M.4601 – *KarstadtQuelle/MyTravel*, paragraph 43; M.4600 – *TUI/First Choice*, paragraph 57; M.3770 – *Lufthansa/Swiss*, paragraph 20.

<sup>122</sup> In particular, TUI had booked with Eurowings 2 860 seats on its block capacity, which were eventually supplied by LaudaMotion following cancellation of the block space arrangements between LaudaMotion and Lufthansa Group. This volume is however marginal and no other seats have been sold not are likely to be sold to tour operators by LaudaMotion in the Summer 2018 IATA Season (reply of Ryanair to RFI 4 of 22 June 2018).

<sup>123</sup> Reply of Ryanair to RFI 4 of 22 June 2018.

<sup>124</sup> Ryanair has only entered the Polish charter market in April 2018 through its subsidiary Ryanair Sun (reply of Ryanair to RFI 4 of 22 June 2018).

<sup>125</sup> Ryanair owns the Ryanair Holidays brand, which is licensed to World 2 Meet, a Spanish online travel services provider, for the latter to operate the Ryanair Holidays services. World 2 Meet in turn subcontracts the operation of the Ryanair Holidays services to Holidays.ch AG. Holidays.ch AG is [...]. Holidays.ch [...]. Accordingly, ticket sales to Holidays.ch do not occur on the market for the wholesale supply of tickets to a tour operator (reply of Ryanair to RFI 4 of 22 June 2018).

- (122) In addition, Ryanair is not active to any material extent on the downstream market for tour operating services in Germany, Austria or Switzerland.<sup>126</sup> Therefore, the Transaction does not give rise to any vertical relationship.
- (123) One respondent to the market investigation considers that tour operators are the most likely customer group to be affected by the Transaction, since Ryanair's acquisition of LaudaMotion would inevitably lead to Ryanair imposing its single-seat business model on LaudaMotion, thus eliminating a carrier that would have been heavily focused on tour operators absent the Transaction.<sup>127</sup> A comparable theory had been evoked in the *Ryanair/Aer Lingus III* decision.<sup>128</sup>
- (124) The Commission considers that the concerns expressed by the respondent should be dismissed, for the following reasons.
- (125) As a preliminary comment, the Commission notes that it is unclear whether LaudaMotion's plans to enter the wholesale market will be abandoned post-Transaction.
- (126) In any case, since Ryanair is not and does not plan to be active on this market, LaudaMotion is neither an actual nor a potential competitor. Therefore, in general and as recalled in paragraph (92) above, the Transaction is unlikely to have any anti-competitive effects on this non-overlap market.
- (127) In addition, Ryanair is not active on the downstream market for tour operating services and does not have any cooperative agreement or other links with an airline<sup>129</sup> that could benefit from LaudaMotion's departure from its original wholesale-oriented business model.
- (128) Either of the above two reasons would thus be sufficient to conclude that the Transaction does not negatively affect tour operators to any significant extent.

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<sup>126</sup> Ryanair sells [...] package holidays through its website. The package product, Ryanair Holidays, is sold by Ryanair's partner Holidays.ch AG, under brand licensing and subcontracting arrangements (replies of Ryanair to RFI 3 and RFI 4 of 18 and 22 June 2018). In addition, customers who buy flights through Ryanair's website are also offered hotel bookings and car hire (reply of Ryanair to RFI 4 of 22 June 2018). The Commission understands that these services (which are not offered in a package) correspond to the distribution of travel services as a retailer, not to tour operating services (which involves to the combination of different travel services into a package) (see similar analysis in Case M.6663 – *Ryanair/Aer Lingus III*, recital 397). Therefore, for the purposes of this decision, Ryanair is not considered as significantly active on the tour operating market.

<sup>127</sup> Reply to eQ1 – Questionnaire to Competitors, question 14.

<sup>128</sup> See Case M.6663 – *Ryanair/Aer Lingus III*, footnote 348: "*It should be noted that also scheduled carriers sell, usually to a limited extent, seat packages to tour operators. This is for example the case of Aer Lingus. However, Ryanair does not sell to tour operators. The Transaction would therefore possibly have an impact on the market for sales of seats to tour operators as far as Ryanair would prevent Aer Lingus to continue selling seats to tour operators.*"

<sup>129</sup> Form CO, paragraph 314. See also footnote 102.

(c) Conclusion

- (129) In light of the above, the Commission concludes that, for the purpose of this Decision, the Transaction does not have material specific effects on the market for the wholesale supply of airline seats to tour operators. Therefore, this market is not considered as a relevant market and will not be further assessed in this Decision.

6.1.3. Air transport services to other airlines

(a) Ryanair's views

- (130) According to Ryanair, it is inconceivable that the Transaction could have any material adverse effects on other carriers intending to market flights to be operated by LaudaMotion or to wet-lease services from LaudaMotion.<sup>130</sup>

(b) Commission's assessment

- (131) The Commission notes that there are strong indications that the provision by LaudaMotion of air transport services to other airlines was conceived as a short-term solution, and that LaudaMotion did not intend to establish itself as a supplier of flight capacity to other airlines after 2019.<sup>131</sup> Therefore, the Transaction cannot be considered as bringing about any structural change in relation to the supply of air transport services to other airlines. Besides, considering that the binding Heads of Terms agreed between LaudaMotion and Ryanair provided for the continuity of the planned supply agreements with Condor and Lufthansa Group,<sup>132</sup> it appears that LaudaMotion's exit results in fact from decisions reached together with Condor and Lufthansa Group and not any anti-competitive strategy actively pursued by Ryanair in the framework of the Transaction.
- (132) Moreover, given the minimal scale of LaudaMotion's activities provided to Condor<sup>133</sup> and to Lufthansa Group,<sup>134</sup> the Transaction is unlikely to have any

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<sup>130</sup> Reply of Ryanair to RFI 3 of 18 June 2018.

<sup>131</sup> See Form CO, Annex 17 – LaudaMotion pre-Transaction fleet scenario (latest version of the fleet scenario prior to the conclusion of the binding Heads of Terms between LaudaMotion and Ryanair), and reply of Ryanair to RFI 3 of 18 June 2018. See also reply of LaudaMotion to RFI 9 of 6 July 2018, Annex 1 – Email from LaudaMotion of 23 February 2018 to the Commission entitled "Re: Laudamotion/Niki assets – update on negotiation with Lufthansa": "*For the flights that our client [LaudaMotion] will fly under its own flight number and on its own slots, our client is interested in selling capacity to various clients (Thomas Cook, TUI and also Lufthansa group) under charter or blocked space agreements. This is essential because our client is starting very (much too) late into the summer season 2018. Such arrangements would be for a short period of time, in essence for the summer season 2018.*"

<sup>132</sup> Form CO, Annex 1 – Heads of Terms, paragraph 13.

<sup>133</sup> LaudaMotion would provide the flight capacity of three aircraft (two at Duesseldorf and one at Frankfurt), while Condor operates scheduled and also charter flights with a fleet of 59 aircraft from German airports to leisure destinations in the Mediterranean, Asia, Africa, North America, South America and the Caribbean (reply to eQ1 – Questionnaire to Competitors, question 1).

substantial negative impact on the air transport operations of LaudaMotion's customers.

- (133) Lastly, Ryanair does not provide any passenger air transport services to other airlines through interline, block space or wet-lease agreements.<sup>135</sup> Therefore, in general and as recalled in paragraph (92) above, the Transaction is unlikely to have any anti-competitive effects on this non-overlap market.
- (134) Any of the above findings would be sufficient to conclude that the Transaction does not negatively affect other airlines to any significant extent.

(c) Conclusion

- (135) In light of the above, the Commission concludes that, for the purpose of this Decision, the Transaction does not have material specific effects on the supply of air transport services to other airlines. Therefore, these services are not considered as constituting a relevant market and will not be further assessed in this Decision.

## **6.2. Definition of the relevant markets under the O&D and airport-by-airport approaches**

### *6.2.1. O&D approach*

- (136) On the routes listed in paragraphs (71) and (73) above, the Transaction involves the combination of Ryanair's and LaudaMotion's flight capacity currently offered for sale to passengers. The Commission will consider below the possible various delineations of these relevant markets under the O&D approach.

#### 6.2.1.1. Distinction between groups of passengers

(a) Ryanair's views

- (137) Ryanair submits that it is not appropriate to define separate markets for different categories of passengers.<sup>136</sup>

(b) Commission's assessment

- (138) The Commission has in its decisional practice (mostly concerning network carriers) considered distinguishing, for a given O&D route, between (i) time sensitive ("TS" or premium) passengers who tend to travel for business purposes, require significant flexibility for their tickets and are willing to pay higher prices for this flexibility, and (ii) non-time sensitive ("NTS" or non-premium) passengers who travel predominantly for leisure purposes, do not require

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<sup>134</sup> LaudaMotion would have provided under the block space agreement and wet-lease agreement no more than eight aircraft, split between six bases, in particular Stuttgart (one aircraft), Vienna (two aircraft) and Duesseldorf (one aircraft). At these airports, Eurowings alone (not the whole of Lufthansa Group) has respectively 20, 8 and 35 based aircraft (reply to eQ1 – Questionnaire to Competitors, question 3).

<sup>135</sup> Reply of Ryanair to RFI 7 of 27 June 2018.

<sup>136</sup> Form CO, paragraph 120.

flexibility with their booking and are more price-sensitive than the first category.<sup>137</sup>

- (139) However, in recent decisions, the Commission has considered that the distinction between TS and NTS passengers has become blurred. Passengers are becoming increasingly price-sensitive and more corporate customers apply lowest fare policies. Moreover, on short-haul flights, the distinction between TS and NTS has become somewhat artificial, as the offerings for TS and NTS passengers on these routes has become very similar. The transportation of both categories of passengers usually takes place in the same cabin and further product differentiation (e.g. included meals, newspapers and magazines) are mostly also available to NTS passengers for an upgrade fee.<sup>138</sup> In particular, in *Ryanair/Aer Lingus III*, the Commission found that it was not appropriate on short-haul routes to define separate markets for different categories of passengers, whether according to the distinction between TS and NTS passengers, the distinction between business and leisure passengers, or other approaches such as the "time between booking and departure" approach.<sup>139</sup>
- (140) In this context, the Commission notes that the relevant routes for the purpose of the competitive assessment of the Transaction are all short-haul leisure routes, operated by both Ryanair and LaudaMotion as point-to-point carriers on the basis of an all-economy configuration.
- (141) Moreover, the market investigation has not produced evidence indicating that the Commission should depart from the approach it has recently taken in respect of short-haul routes. In particular, respondents have not submitted material comments suggesting that there is any need to define separate markets for the different categories of passengers for the purpose of analysing the Transaction.

#### (c) Conclusion

- (142) In light of the above, the Commission concludes that, for the purposes of the Transaction, it is not appropriate to define separate markets for different categories of passengers, whether according to the distinction between TS and NTS passengers, or any similar distinction.

#### 6.2.1.2. Distinction between direct flights and indirect flights

##### (a) Ryanair's views

- (143) Ryanair submits that indirect flights should not be treated as belonging to the same market as direct flights in respect of the relevant short-haul leisure routes.<sup>140</sup>

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<sup>137</sup> See e.g. Cases M.7333 – *Alitalia/Etihad*, paragraphs 70 *et seq.*; M.7270 – *Cesky Aeroholding/Travel Service/Ceske Aerolinie*, paragraph 20 *et seq.*; M.6663 – *Ryanair/Aer Lingus III*, recital 382; M.6607 – *US Airways/American Airlines*, paragraph 8; M.6447 – *IAG/bmi*, paragraph 36.

<sup>138</sup> See e.g. Case M.7541 – *IAG/Aer Lingus*, paragraph 28.

<sup>139</sup> See Case M.6663 – *Ryanair/Aer Lingus III*, recital 387.

<sup>140</sup> Form CO, paragraph 123.

(b) Commission's assessment

- (144) On a given O&D pair, passengers can travel either on a direct<sup>141</sup> flight between the point of origin and the point of destination or on an "indirect" flight on the same O&D pair but via an intermediate destination. The level of substitutability of indirect flights for direct flights largely depends on the duration of the flight. As a general rule, the longer the flight, the higher the likelihood that indirect flights exert a competitive constraint on direct flights.<sup>142</sup>
- (145) When defining the relevant O&D markets for air transport services, the Commission has considered in prior decisions<sup>143</sup> that with respect to short-haul routes (generally below 6 hours flight duration) indirect/one-stop flights do not generally provide a competitive constraint to direct/non-stop flights absent exceptional circumstances (for example when the share of indirect flights in the overall market is significant).<sup>144</sup>
- (146) The market investigation has not produced any evidence indicating that the routes concerned by the Transaction, which are all short-haul routes, present the exceptional features pursuant to which indirect flights could exert a significant constraint on direct flights.
- (147) Furthermore, Ryanair does not generally monitor and LaudaMotion does not currently monitor competitors' prices on indirect routes.<sup>145</sup> The Commission notes in this regard that Ryanair is unable to quantify the additional capacity corresponding to such indirect flights, thus indicating that Ryanair considers that such flights exert a limited constraint on its direct flights.<sup>146</sup>

(c) Conclusion

- (148) In any case, the question of whether indirect and direct flights would belong to the same market can be left open, as the Transaction would not raise serious

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<sup>141</sup> "Non-stop" flights are flights that take off at airport A and land at airport B where they unload/disembark passengers without any stops in between. By contrast, "direct" flights may entail a refuelling stop and/or a disembarking/re-embarking stop, but are marketed under a single flight code and are flown with a single aircraft. "One-stop" flights include direct flights that do not qualify as "non-stop", as well as indirect flights, which are journeys that require a change of aircraft or a change of flight code.

<sup>142</sup> See e.g. Case M.7541 – *IAG/Aer Lingus*, paragraph 30 *et seq.*

<sup>143</sup> See e.g. Cases M.7541 – *IAG/Aer Lingus*, paragraph 32; M.7333 – *Alitalia/Etihad*, paragraph 75 *et seq.*; M.6663 – *Ryanair/Aer Lingus III*, recital 375.

<sup>144</sup> The Commission has sometimes distinguished mid-haul routes, which are routes of more than three hours where direct flights normally do not provide the option of one-day return trips, so that indirect flights may be able to compete with direct flights (see Cases M.5440 – *Lufthansa/Austrian Airlines*, recital 26; M.5335 – *Lufthansa/SN Airholding*, recital 37 *et seq.*; M.3770 – *Lufthansa/Swiss*, recital 16 *et seq.*; M.2672 – *SAS/Spanair*, recital 12 *et seq.*). However, the question of mid-haul routes is less prominent in this case, given the relevant O&Ds in this case.

<sup>145</sup> Reply of Ryanair to RFI 4 of 22 June 2018.

<sup>146</sup> Form CO, paragraph 126.



doubts as to its compatibility with the internal market under either plausible market definition. Considering that neither Ryanair nor LaudaMotion offer connecting flights to any material extent and connecting traffic is not a matter of business focus for either Party,<sup>147</sup> including indirect flights for the purposes of market definition would only dilute the Parties' market position. By excluding indirect flights, the Commission has thus adopted a conservative approach, which, all other things being equal, would tend to underestimate the competition constraints exercised on the Parties in the O&D assessment conducted in Section 7.1.

#### 6.2.1.3. Distinction between charter flights and scheduled flights

##### (a) Ryanair's views

(149) Ryanair considers, as a general matter, that charter activity exercises a competitive constraint over the scheduled flights offered by Ryanair and LaudaMotion, in particular with regard to leisure passengers.<sup>148</sup>

##### (b) Commission's assessment

(150) Charter flights, as opposed to scheduled flights, are usually defined as air transport services that take place outside normal schedules, normally through a hiring arrangement with a particular customer (in particular a tour operator). Charter companies usually operate on a seasonal basis with a relatively low frequency of flights, in response to the requirements of tour operators (for example, once a week on Saturday, only during the summer season).

(151) In prior decisions, the Commission has held that the distinction between scheduled and charter airlines has become blurred, as even full-leisure airlines operate scheduled services<sup>149</sup> and has not disputed that Ryanair might be subject to certain competitive constraints from charter airlines on some of its German routes.<sup>150</sup>

(152) In addition, the market investigation has confirmed that some airlines operate under a mixed business model, offering charter and scheduled services.<sup>151</sup>

(153) However, the Commission notes that Ryanair is unable to quantify the activity of charter airlines on any of the affected O&Ds, thus indicating that Ryanair considers that such flights exert a limited constraint on its scheduled flights.<sup>152</sup>

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<sup>147</sup> Reply of Ryanair to RFI 4 of 22 June 2018.

<sup>148</sup> Form CO, paragraph 122.

<sup>149</sup> See Case M.5141 – KLM/Martinair, paragraph 114.

<sup>150</sup> See Case M.4439 – Ryanair/Aer Lingus, paragraph 304.

<sup>151</sup> See replies to eQ1 – Questionnaire to competitors, question 1, for example: "*Germania operates scheduled as well as charter (full charter, split charter) point-to-point-flights from/to bases in Berlin, Bremen, Düsseldorf, Dresden, Erfurt-Weimar, Friedrichshafen, Munich, Nuremberg, Palma de Mallorca and numerous other airports. The main business areas are Leisure, Visiting Friends and Relatives (hereinafter "VFR") and Special Charter (e.g. ACMI and ad-hoc Charter).*"

(c) Conclusion

- (154) The question of whether charter and scheduled flights belong to the same market can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition. Considering that Ryanair does not provide and does not plan to provide charter services in Germany, Austria or Switzerland,<sup>153</sup> including charter flights for the purposes of market definition would only dilute the Parties' market position. By excluding charter flights from its competitive analysis, the Commission has thus adopted a conservative approach, which, all other things being equal, would tend to underestimate the competition constraints exercised on the Parties in the O&D assessment conducted in Section 7.1.<sup>154</sup>

6.2.1.4. Airport substitutability

(a) Analytical framework

- (155) When defining the relevant O&D markets for passenger air transport services, the Commission has previously found that flights to or from airports with sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers (particularly if the airports serve the same main city). In order to correctly capture the competitive constraint that flights to or from two different airports exert on each other, a detailed analysis taking into consideration the specific characteristics of the case at hand is necessary.<sup>155</sup>
- (156) The evidence used to characterise airport substitutability includes *inter alia* a comparison of actual distances and travelling times to the indicative benchmark of 100 km/1 hour driving time,<sup>156</sup> the outcome of the market investigation (views

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<sup>152</sup> Form CO, paragraph 122.

<sup>153</sup> Ryanair has only entered the Polish charter market in April 2018 through its subsidiary Ryanair Sun (reply of Ryanair to RFI 4 of 22 June 2018). With regard to LaudaMotion, pre-Transaction, it did not provide charter services during the Summer 2018 IATA Season and was not planning to do so. However, according to its initial business plan, LaudaMotion did not exclude starting to provide charter services in Germany, Austria and Switzerland (see section 5.1 above). Considering that Ryanair does not currently and does not plan to operate charter flights in these countries, LaudaMotion would not be a (potential) competitor of Ryanair on the market for charter services, if it were considered as a separate market. Therefore, the supply of charter services would not be an overlap market. In addition, for the purpose of the O&D assessment, LaudaMotion's full capacity is, on a conservative basis, allocated to scheduled flights, which, all other things being equal, would tend to overestimate the competition constraint exercised by LaudaMotion in the O&D assessment conducted in Section 7.1.

<sup>154</sup> See section 7.1.2 below and paragraph 151 of the Form CO, according to which the data provided by Ryanair and used for the calculation of market shares "*relate only to scheduled flights.*" The exception to this is the Berlin-Palma de Mallorca route. For this route, the data provided by Ryanair and used to calculate the market shares include data for one charter airline which is marginally active on this route. This does not change the Commission's competitive assessment of the Berlin-Palma de Mallorca route.

<sup>155</sup> See e.g. Cases M.8361 – *Qatar Airways/Alisarda/Meridiana*, paragraph 29; M.7333 – *Alitalia/Etihad*, paragraph 82; M.6663 – *Ryanair/Aer Lingus III*, paragraph 65.

<sup>156</sup> The 100 km/1 hour driving time is nevertheless used as a first proxy only. It was defined by the Commission in the specific case of routes served out of Dublin by two airlines with typical attributes of low-frills point-to-point carriers. This "rule" is thus not necessarily strictly applicable for other cases

of the airports, the competitors, and other market participants), and the Parties' practices in terms of monitoring.

- (157) In the present case, taking account of the relevant routes according to Ryanair's and LaudaMotion's flight plans,<sup>157</sup> the question of airport substitutability arises for the routes to or from the following airports: Vienna, Paphos, Larnaca, Berlin, Duesseldorf, Cologne, Frankfurt, Stuttgart and Bratislava. The Commission will assess the substitutability of these airports on the overlap routes from a demand-side perspective (i.e. from the point of views of tour operators and passengers),<sup>158</sup> for the purposes of (i) identifying the routes where the Parties' activities overlap; (ii) ascertaining whether flights operated by other carriers would be part of the same market as flights operated by the Parties; and (iii) assessing the effectiveness of the entry plans by competitors at another airport.

(b) Assessment of airport substitutability

i) *Substitutability of Bratislava and Vienna airports*

- (158) Vienna city centre and Bratislava airport are located 87 kilometres apart. Ryanair operates passenger air transport services from Bratislava airport while LaudaMotion has included in its flight schedule passenger air transport services from Vienna airport.
- (159) For the purposes of the O&D assessment of the Transaction, the question of substitutability of Vienna and Bratislava airports is relevant for routes to Malaga, Palma de Mallorca, Marrakech, Paphos and Larnaca. LaudaMotion operates these routes from Vienna airport while Ryanair flies these routes from Bratislava airport.
- (160) In previous decisions, the Commission has found that Bratislava and Vienna airports are substitutable from the point of view of passengers.<sup>159</sup>
- (161) Accordingly, Ryanair has treated Vienna and Bratislava as possible substitutes for the purposes of the notification of the Transaction.<sup>160</sup> Yet, Ryanair underlines that

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(see Case M.6663 – *Ryanair/Aer Lingus III*, paragraph 82). In this regard, In "Airport Competition: Myth or Reality? IATA Economics Briefing", November 2017, it is noted that "[w]hile isochrones are a simple and powerful visual tool, they are of limited use in understanding the choices that passengers actually make. (...) Moreover, the proximity of an alternative airport can only represent a relevant choice if the airlines which compete with each other offer a substitutable service, for instance a comparable itinerary. Isochrone maps do not reflect the availability of services at comparator airports and are therefore likely to overstate the extent of effective airport competition."

<sup>157</sup> See Section 5.1 above. For LaudaMotion, only routes included in its flight plan that are or will be operated using its own flight capacity are to be taken into account (see section 6.1.1.1 above).

<sup>158</sup> The assessment may differ from the supply-side (that is to say from the air carriers') point of view. In line with paragraph 13 of the Commission's Notice on market definition and with its prior decision practice, the Commission will base its conclusions on demand-side substitutability (see e.g. Case M.6663 – *Ryanair/Aer Lingus III*, paragraphs 368-370).

<sup>159</sup> See Cases M.6663 – *Ryanair/Aer Lingus III*, paragraphs 324-337, M.4439 – *Ryanair/Aer Lingus*, paragraphs 218-225, and M.6447 – *IAG/bmi* (left open with respect to the London-Vienna route, paragraphs 66-67).

if Bratislava and Vienna were not treated as substitutable, the Parties' activities would not overlap on the provision of passenger air transport services to or from Bratislava airport or Vienna airport, even if Paphos and Larnaca were considered as substitutable airports.<sup>161</sup>

- (162) The travel times and distances to Vienna and Bratislava city centres are summarised below:

**Table 3 - Distance and travel time - Vienna/Bratislava**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Vienna				
Vienna	18 km	20 min	16 min	25 min
Bratislava	74 km	60 min	N/A	105 min
Bratislava				
Vienna	49 km	45 min	N/A	60 min
Bratislava	9 km	20 min	N/A	25 min

Source: Form CO, paragraph 83

- (163) The majority of the respondents to the market investigation having expressed a view submit that Vienna and Bratislava airports are substitutable from the point of view of passengers,<sup>162</sup> although a majority of the air carriers having expressed a view do not monitor competitors flying to or from the two airports on the relevant routes<sup>163</sup> and a majority of the travel agents having expressed an opinion do not offer flights to or from Bratislava airport to passengers wanting to fly to or from Vienna airport (and vice versa).<sup>164</sup>
- (164) The replies of the relevant airport managers are diverging. By comparing the flight schedules of Vienna and Bratislava airports during the last two Summer IATA Seasons, the manager of Vienna airport concludes that Vienna and

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<sup>160</sup> Form CO, paragraph 81.

<sup>161</sup> Form CO, paragraph 84.

<sup>162</sup> Replies to eQ1 – Questionnaire to Competitors, questions 4.1 - 4.6; eQ2 – Questionnaire to Consumer Associations, questions 3.1 to 3.3, eQ3 – Questionnaire to Travel Agents, questions 1.1 – 1.6.

<sup>163</sup> Replies to eQ1 – Questionnaire to Competitors, question 5.

<sup>164</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 2.

Bratislava airports are not substitutable.<sup>165</sup> On the contrary, the manager of Bratislava airport considers that the two airports are possible substitutes. In that respect, the Bratislava airport manager submits that Slovak leisure travellers are price sensitive and would switch from Bratislava airport to Vienna airport.<sup>166</sup>

- (165) In any case, for the purpose of this Decision, the question of whether Vienna and Bratislava airports belong to the same O&D markets can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.1).

*ii) Substitutability of Paphos and Larnaca airports*

- (166) Two airports serve Cyprus: Paphos airport and Larnaca airport.
- (167) For the purposes of the O&D assessment of the Transaction, the question of substitutability of Paphos and Larnaca airports is relevant for the route to Vienna/Bratislava. While Ryanair operates between Bratislava and Paphos airports in Summer 2018 and Winter 2018/2019 IATA Season, LaudaMotion operates between Vienna and Paphos airports in Summer 2018 IATA Season and, as indicated in paragraph (180) below, LaudaMotion will operate the Vienna-Larnaca airport pair as of Winter 2018/2019 IATA Season. Therefore, there is an overlap in Winter 2018/2019 Season only if Paphos and Larnaca airports are considered as substitutable.
- (168) While the Commission has not assessed the substitutability of Paphos and Larnaca airports under the Merger Regulation so far, it found in a relevant State aid decision that, "*because of the small size of the island, the two civil airport of Larnaca and Paphos have overlapping "catchment areas", i.e. most travellers from/to Cyprus can easily reach either airport*".<sup>167</sup>
- (169) Ryanair has treated Paphos and Larnaca airports as possible substitutes for the purposes of the notification of the Transaction.<sup>168</sup>
- (170) The travel times and distances to city centres of the four largest conurbations in Cyprus are summarised below:

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<sup>165</sup> See non-confidential minutes of a conference call with Vienna airport of 28 May 2018.

<sup>166</sup> See non-confidential minutes of a conference call with Bratislava airport of 24 May 2018.

<sup>167</sup> See case SA.35888 – *Rescue aid for Cyprus Airways*, decision of 6 March 2013, paragraph 23.

<sup>168</sup> Form CO, paragraph 86.

**Table 4 - Distance and travel time - Cyprus**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Larnaca				
Paphos	126 km	85 min	N/A	90 min
Larnaca	9 km	14 min	N/A	20 min
Limassol				
Paphos	60 km	40 min	N/A	45 min
Larnaca	67 km	45 min	N/A	50 min
Nicosia				
Paphos	142 km	100 min	N/A	105 min
Larnaca	50 km	45 min	N/A	35 min
Paphos				
Paphos	14 km	20 min	N/A	20 min
Larnaca	133 km	75 min	N/A	90 min <sup>169</sup>

Source: Form CO, paragraph 88

- (171) In prior decisions, the Commission has found that airports may be substitutable even where the 100 km/1 hour driving time "first proxy" thresholds are not met.<sup>170</sup> The Commission has also found that non-time-sensitive passengers "generally accept a longer total journey time in exchange for a competitive airline fare".<sup>171</sup> In that respect, given that Cyprus is a leisure destination for most passengers travelling from Vienna/Bratislava, the fact that Paphos airport falls outside the 100 km/1 hour driving time benchmark for passengers to or from Nicosia and Larnaca does not *per se* point towards the absence of substitutability

<sup>169</sup> To Paphos airport.

<sup>170</sup> See Case M.6663, *Ryanair/Aer Lingus III*, paragraph 202. The Commission found, for example, Frankfurt and Frankfurt-Hahn airports to be substitutable (in respect of certain flights to and from Dublin) notwithstanding that the distance from HHN to Frankfurt am Main is approximately 124km, and the driving time 85 minutes.

<sup>171</sup> See Case M.6663, *Ryanair/Aer Lingus III*, paragraph 87.

between Paphos and Larnaca airports for leisure passengers travelling on the Vienna/Bratislava – Cyprus route.

- (172) It can be noted that "*inexpensive*" public transportation options are available between the two airports and the four main conurbations of Cyprus.<sup>172</sup> For instance, a bus ticket between Limassol and Paphos airport or Limassol and Larnaca airport costs EUR 9 per adult and EUR 4 per child.<sup>173</sup>
- (173) Although [...], Ryanair's marketing materials provide evidence as to substitutability between Paphos airport and Larnaca airport in respect of short-haul leisure travellers to Cyprus. Ryanair markets its flights to Paphos airport for travellers wishing to visit sights on "*the whole of Cyprus*".<sup>174</sup> Online booking website Expedia refers to Paphos and Larnaca airports as "*the two main international airports in Cyprus*", notes the availability of land transport from Paphos airport to Limassol, Nicosia and Larnaca, and advertises flights to Larnaca airport and Paphos airport alongside one another.<sup>175</sup>
- (174) The overall outcome of the market investigation indicates that Paphos and Larnaca airports are possible substitutes for leisure passengers travelling to or from Vienna/Bratislava.
- (175) Indeed, a majority of air carriers having expressed an opinion submits that Paphos and Larnaca airports are substitutable from the point of view of passengers travelling between Vienna/Bratislava and Cyprus.<sup>176</sup> Similarly to Ryanair, a majority of air carriers having expressed a view during the market investigation do not monitor competitors flying to or from the two airports on the relevant routes.<sup>177</sup>
- (176) A majority of travel agents having expressed an opinion submit that Paphos and Larnaca airports are possible substitutes for leisure travellers.<sup>178</sup> Only one respondent to the market investigation considers it difficult to provide a straightforward response to the question as to whether Paphos and Larnaca airports are substitutable for passengers travelling to or from Vienna/Bratislava. However, this respondent acknowledges that both airports can be substitutes for a number of travellers, depending on where in Cyprus they choose to stay. In that regard, this respondent submits that "*Resorts and tourist accommodations on*

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<sup>172</sup> See for instance The Telegraph's website

<https://www.telegraph.co.uk/travel/destinations/europe/cyprus/articles/cyprus-getting-there/>

<sup>173</sup> See Limassol Airport Express' website <http://enlimassolairportexpress.eu/>

<sup>174</sup> See Ryanair's website <https://www.ryanair.com/ie/en/plan-trip/destinations/flights-to-paphos>

<sup>175</sup> See Expedia's website <https://www.expedia.co.uk/Destinations-In-Cyprus.d45.Flight-Destinations>

<sup>176</sup> Replies to eQ1 – Questionnaire to Competitors, question 4.1. It is worth noting that there is only one air carrier that responded that Paphos and Bratislava are not substitutable, while Vienna and Bratislava are on the routes from Vienna/Bratislava to Paphos/Larnaca.

<sup>177</sup> Replies to eQ1 – Questionnaire to Competitors, question 5.

<sup>178</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 1.1.

*Cyprus are spread out across the island. Typically, LCA [Larnaca airport] would be better suited to stays at "east coast" resorts, while PFO [Paphos airport] would be better suited for stays at "west coast" resorts. On the other hand, LCA and PFO are equidistant from the resorts in the southern destination of Akrotiri, and from inland destination like Lagoudera. Accordingly, whether a passenger would be willing to absorb a 10% price increase to avoid substituting airports would largely depend on where in Cyprus they ultimately choose to stay".<sup>179</sup>*

- (177) In addition, a majority of travel agents having expressed a view propose flights to or from Paphos airport to passengers wanting to fly to or from Larnaca airport (and vice versa).<sup>180</sup>
- (178) The airport manager of Paphos and Larnaca airports considers it difficult to draw a conclusion regarding the substitutability of Paphos and Larnaca airports.<sup>181</sup> In that regard, the airport manager submitted data that compare the number of frequencies and capacity offered on the various airport pairs between Vienna/Bratislava and Cyprus. However, these data do not allow any conclusion to be drawn on potential substitutability from the perspective of leisure passengers.<sup>182</sup>
- (179) On the basis of the above and of the available evidence, the Commission considers, for the purposes of this Decision, that the Vienna/Bratislava-Paphos and Vienna/Bratislava-Larnaca airport pairs constitute one single O&D market.
- (180) In any case, the Commission finds that LaudaMotion intended not to operate the Vienna-Paphos route beyond the Summer 2018 IATA Season and that its exit is not related to the Transaction.<sup>183</sup>
- (181) Operation on this airport pair was included in LaudaMotion's flight schedule at the request of Lufthansa Group, in the framework of the negotiations on the block space agreement referred to in paragraph (34) above. LaudaMotion had initially proposed to operate on the Vienna-Larnaca airport pair.<sup>184</sup> In addition, LaudaMotion's operation on the Vienna-Paphos airport pair is seasonal, meaning limited to the summer season.<sup>185</sup> Furthermore, based on information provided by Ryanair, the Vienna-Paphos airport pair is significantly under-performing in the Summer 2018 IATA Season relative to other LaudaMotion routes from and to

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<sup>179</sup> Reply to eQ3 – Questionnaire to Travel Agents, question 1.1.

<sup>180</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 2.

<sup>181</sup> See non-confidential minutes of the conference call with Hermes Airports of 25 May 2018.

<sup>182</sup> See non-confidential minutes of the conference call with Hermes Airports of 25 May 2018.

<sup>183</sup> Reply of Ryanair to RFI 5 of 22 June 2018.

<sup>184</sup> Form CO, Annex 22, reply of Ryanair to RFI 3 of 18 June 2018, Annex 4.4 and reply of Ryanair to RFI 4 of 22 June 2018.

<sup>185</sup> LaudaMotion will operate the Vienna-Larnaca airport pair (and not the Vienna-Paphos airport pair) during the Winter 2018/2019 IATA Season.



Vienna. In particular, load factors and yields on the Vienna-Paphos airport pair are materially lower than on routes between Vienna and Malaga, Chania, Ibiza and Santorini.<sup>186</sup> Therefore, the Commission finds it likely that LaudaMotion will exit the Vienna-Paphos airport pair and redeploy capacity on the year-round Vienna-Larnaca airport pair, as initially planned, and that such decision is independent of the Transaction.

- (182) As a consequence, should it be concluded that Paphos and Larnaca are not substitutable (*quod non*), the overlap between the Parties' activities on the Vienna/Bratislava-Paphos route would not last beyond the end of the Summer 2018 IATA Season. Consequently, the Transaction would not have any structural effect on that market and no serious doubts as to the compatibility of the Transaction with the internal market would have arisen on that market.<sup>187</sup>

*iii) Substitutability of Berlin Tegel and Berlin Schoenefeld airports*

- (183) Berlin currently has two airports, Berlin Schoenefeld and Berlin Tegel. Ryanair currently operates from Berlin Schoenefeld and Berlin Tegel, while LaudaMotion operates from Berlin Tegel. Berlin Tegel airport is scheduled to close when all Berlin flights move to the Berlin-Brandenburg International Airport, which is, in effect, an extension of Berlin Schoenefeld. However, Berlin-Brandenburg International Airport is still under construction.
- (184) For the purposes of the O&D assessment of the Transaction, the question of airport substitutability as regards Berlin Tegel and Berlin Schoenefeld airports is relevant for passengers travelling to Palma de Mallorca.<sup>188</sup> While LaudaMotion operates only the Berlin Tegel-Palma de Mallorca airport pair in both IATA Seasons, Ryanair operates to Palma de Mallorca from both Berlin Tegel and Berlin Schoenefeld airports.
- (185) The Commission has found, in prior decisions, that Berlin Tegel and Berlin Schoenefeld airports are substitutable from the point of view of passengers.<sup>189</sup>
- (186) Accordingly, Ryanair has treated Berlin Tegel and Berlin Schoenefeld as possible substitutes for the purposes of the notification of the Transaction.<sup>190</sup>
- (187) The travel times and distances to Berlin city centre are summarised below:

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<sup>186</sup> Reply of Ryanair to RFI 5 of 22 June 2018.

<sup>187</sup> See for similar conclusions e.g. Cases M.6663 – *Ryanair/Aer Lingus III*, footnotes 1420 and 1451 concerning the Cork-Fiumicino and Dublin-Krakow routes which Aer Lingus would exit.

<sup>188</sup> As indicated in Section 5 above, it is unclear whether LaudaMotion operates on this route using its own assets. Nevertheless, considering that the route was included in LaudaMotion's flight plan for the Summer 2018 IATA Season prior to the Transaction, the Commission will treat the Berlin-Palma de Mallorca route as a relevant route for the purpose of the O&D assessment.

<sup>189</sup> See Cases M.5335 – *Lufthansa/SN Airholding*, paragraphs 205-206, M.8672 – *easyJet/Certain Air Berlin Assets*, paragraphs 58-66 and M.8633 – *Lufthansa/Certain Air Berlin Assets*, paragraphs 62-70.

<sup>190</sup> Form CO, paragraph 62.

**Table 5 - Distance and travel time - Berlin**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Berlin Tegel	8 km	12-20 min	N/A	20 min
Berlin Schoenefeld	23 km	22-40 min	29 min	N/A

Source: Form CO, paragraph 64

- (188) Therefore, the catchment areas of the two airports largely overlap, although their centres of gravity (to the north or south of Berlin) slightly diverge.
- (189) A majority of air carriers having expressed a view consider the two Berlin airports as substitutable for the short-haul routes included in both Ryanair's and LaudaMotion's respective flight plans.<sup>191</sup>
- (190) A majority of air carriers operating at one or two of the Berlin airports declare that they monitor competitors flying to or from the other Berlin airport on most of the relevant routes.<sup>192</sup>
- (191) The outcome of the market investigation among travel agents is more nuanced, since they express diverging views as to whether passengers consider the two Berlin airports as substitutable for the relevant routes,<sup>193</sup> and whether, for a relevant route, they also propose flights from the other Berlin airport to customers flying from one Berlin airport.<sup>194</sup>
- (192) In any case, for the purpose of this Decision, the question of whether Berlin Tegel and Berlin Schoenefeld airports belong to the same O&D market can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.1 below).

*iv) Substitutability of Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports*

- (193) According to Ryanair, Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports are located in a heavily populated area of Germany, the Rhine-Ruhr metropolitan region, which contains a number of contiguous towns

<sup>191</sup> Replies to eQ1 – Questionnaire to Competitors, question 4.14 to question 4.26.

<sup>192</sup> Replies to eQ1 – Questionnaire to Competitors, question 5. As regards the Berlin – Eilat and Berlin – Marrakech routes, the outcome of the market investigation is inconclusive.

<sup>193</sup> Replies to eQ3 – Questionnaire to Travel Agents, questions 1.14 – 1.26.

<sup>194</sup> Replies to eQ3 – Questionnaire to Travel Agents, questions 2.

and cities. Alongside Duesseldorf, other cities within a 100 km catchment area of the four above-mentioned airports include Duisburg, Essen, Dortmund, Cologne and Bonn.<sup>195</sup> Both Ryanair and LaudaMotion operate at Duesseldorf and Cologne-Bonn airports, while Ryanair also operates at Dortmund and Weeze Niederrhein airports.

- (194) For the purposes of the O&D assessment of the Transaction, the question of substitutability of Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports is relevant for passengers travelling to Faro, Alicante, Fuerteventura, Gran Canaria, Ibiza, Lanzarote, Malaga, Palma de Mallorca and Tenerife Sur.
- (195) The airport pairs operated respectively by LaudaMotion and Ryanair are listed in the table below.

**Table 6 - Airport pairs operated by the Parties from/to the Rhine-Ruhr region**

<b>LaudaMotion's airport pairs</b>	<b>Ryanair's airport pairs</b>
Duesseldorf-Faro	Weeze/Cologne-Faro
Duesseldorf-Alicante	Duesseldorf/Weeze/Cologne-Alicante
Duesseldorf-Fuerteventura	Weeze-Fuerteventura
Duesseldorf-Gran Canaria	Weeze/Cologne-Faro
Duesseldorf-Ibiza	Weeze-Ibiza
Duesseldorf-Lanzarote	Weeze-Lanzarote
Duesseldorf-Malaga	Duesseldorf/Weeze/Cologne-Malaga
Duesseldorf/Cologne-Palma de Mallorca	Duesseldorf/Weeze/Cologne/Dortmund -Palma de Mallorca
Duesseldorf-Tenerife Sur	Weeze/Cologne-Tenerife Sur

- (196) In prior decisions, the Commission's assessment on whether Duesseldorf and Cologne-Bonn airports are substitutable depended on the type of passengers.<sup>196</sup> In a recent decision, while the responses of air carriers and airport managers to the market investigation were inconclusive as to the substitutability between Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports for short-haul routes, a majority of tour operators and travel agents did not consider

<sup>195</sup> Form CO, paragraph 72.

<sup>196</sup> See cases M.5440 – *Lufthansa/Austrian Airlines*, paragraph 125; M.3940 – *Lufthansa/Eurowings*, paragraph 96.

them as substitutable.<sup>197</sup> Ryanair has treated the four airports as possible substitutes for the purposes of the notification of the Transaction.<sup>198</sup>

(197) Taking Duesseldorf as the centre of the catchment area, the distances and travel times are as follows:<sup>199</sup>

**Table 7 - Distance and travel time - Duesseldorf**

Airport	Approximate distance to city centre <sup>200</sup>	Approximate travel time to city centre		
		Road	By car/taxi	By train
Duesseldorf	10 km	10 min	11 min	30-35 min
Cologne-Bonn	60 km	50 min	35 min	50 min
Dortmund	80 km	70 min	80 min	130 min
Weeze	85 km	60 min	N/A	100 min

*Source: Form CO, paragraph 73*

(198) All airports are located within 100 km of Duesseldorf city centre. Regarding the 1 hour travel time benchmark, Cologne-Bonn airport is within the boundaries. Dortmund and Weeze Niederrhein airports are on the edge of the benchmark by car but well above by train and bus.

(199) Taking Cologne as the centre of the catchment area, the distances and travel times are as follows:

<sup>197</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraphs 79-82.

<sup>198</sup> Form CO, paragraph 71.

<sup>199</sup> The Commission notes that taking account of Duisburg, Essen and Bonn as centres of the catchment areas would not affect the assessment of airport substitutability.

<sup>200</sup> Duesseldorf central station.

**Table 8 - Distance and travel time - Cologne**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Cologne-Bonn	15 km	20 min	15 min	32 min
Duesseldorf	60 km	50 min	40 min	-
Dortmund	105 km	90 min	100 min	-
Weeze	140 km	105 min	N/A	145 min

Source: Form CO, paragraph 73

- (200) Regarding Cologne city centre, Duesseldorf and Cologne-Bonn airports are within the 100 km and 1 hour travel time benchmark. Dortmund airport is on the edge for distance but exceeds the benchmark for travel time. Weeze Niederrhein airport exceeds the benchmark for both distance and travel time.
- (201) Taking Dortmund as the centre of the catchment area, the distances and travel times are as follows:

**Table 9 - Distance and travel time – Dortmund**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Dortmund	15 km	20 min	25 min	40 min
Duesseldorf	65 km	45 min	50 min	75 min
Cologne-Bonn	100 km	70 min	10 min	80 min
Weeze	115 km	80 min	N/A	N/A

Source: Form CO, paragraph 73

- (202) Taking Dortmund city centre as the centre of the catchment area, the distances and travel times to Duesseldorf airport are within the benchmark for distance and travel time (except by bus). For Cologne-Bonn and Weeze Niederrhein airports, the benchmarks for both distance and travel time are exceeded.

- (203) The majority of air carriers having expressed a view submit that Duesseldorf, Cologne-Bonn, Dortmund and Weeze Niederrhein airports are substitutable for passengers for the relevant routes.<sup>201</sup> The monitoring practices of air carriers (i.e. the degree to which air carriers monitor competitors flying from the four airports) diverge with regard to the four airports, making it difficult to draw conclusions.<sup>202</sup>
- (204) Likewise, the manager of Duesseldorf airport submits that the different airports are substitutable for the relevant routes in the eyes of leisure passengers.<sup>203</sup>
- (205) The views of travel agents having responded to the market investigation are split as to whether Duesseldorf, Cologne-Bonn, Dortmund and Weeze Niederrhein airports are substitutable for passengers for the relevant routes.<sup>204</sup> In addition, they express diverging views as to whether, for a relevant route, they propose flights from another airport to customers wanting to fly from Duesseldorf/Cologne.<sup>205</sup>
- (206) In any case, for the purpose of this Decision, the question of whether Duesseldorf, Cologne-Bonn, Dortmund and Weeze Niederrhein airports belong to the same O&D markets can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition (see section 7.1 below).

*v) Substitutability of Frankfurt and Frankfurt-Hahn airports*

- (207) For the purposes of the O&D assessment of the Transaction, the question of substitutability of Frankfurt and Frankfurt-Hahn airports is relevant for passengers travelling to Palma de Mallorca. Ryanair operates from both Frankfurt and Frankfurt-Hahn airports, while LaudaMotion only flies from Frankfurt airport.
- (208) In previous decisions, the Commission found that Frankfurt and Frankfurt-Hahn airports could be considered as substitutable.<sup>206</sup> Accordingly, Ryanair has treated the two airports as possible substitutes for the purposes of the notification of the Transaction.<sup>207</sup>
- (209) Taking Frankfurt city centre as the centre of the catchment area, the distances and travel times are as follows:

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<sup>201</sup> Replies to eQ1 – Questionnaire to Competitors, questions 4.8-4.13.

<sup>202</sup> Replies to eQ1 – Questionnaire to Competitors, question 5.

<sup>203</sup> See emails of Duesseldorf airport of 14 June 2018 and 26 June 2018.

<sup>204</sup> Replies to eQ3 – Questionnaire to Travel Agents, questions 1.8-1.13.

<sup>205</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 2.

<sup>206</sup> See Cases M.6663 – *Ryanair/Aer Lingus III*, para. 198-211, M. 4439 – *Ryanair/Aer Lingus*, para. 204-211.

<sup>207</sup> Form CO, paragraph 76.

**Table 10 - Distance and travel time – Frankfurt**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Frankfurt	9 km	20 min	12 min	15 min
Frankfurt-Hahn	124 km	85 min	N/A	105 min

Source: Form CO, paragraph 78

- (210) The outcome of the market investigation is inconclusive.
- (211) A majority of air carriers having expressed a view consider Frankfurt and Frankfurt-Hahn airports as substitutable for the short-haul routes included in both Ryanair's and LaudaMotion's respective flight plans.<sup>208</sup> Yet, the monitoring practices of air carriers (i.e. the degree to which air carriers monitor competitors flying from the four airports) diverge with regard to the two airports, making it difficult to draw conclusions.<sup>209</sup>
- (212) The responses of the travel agents having expressed a view are split as to whether Frankfurt and Frankfurt-Hahn airports are substitutable for passengers for the relevant routes.<sup>210</sup> In addition, they express diverging views as to whether, for a relevant route, they propose flights from another airport to customers wanting to fly from Frankfurt.<sup>211</sup>
- (213) In any case, for the purpose of this Decision, the question of whether Frankfurt airport and Frankfurt Hahn airports belong to the same O&D market can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.1 below).

*vi) Substitutability of Stuttgart and Karlsruhe/Baden-Baden airports*

- (214) For the purposes of the O&D assessment of the Transaction, the question of substitutability of Stuttgart and Karlsruhe/Baden-Baden airports is relevant for passengers travelling to Palma de Mallorca. While Ryanair operates from the two airports, LaudaMotion only flies from Stuttgart airport.

<sup>208</sup> Replies to eQ1 – Questionnaire to Competitors, question 4.7.

<sup>209</sup> Replies to eQ1 – Questionnaire to Competitors, question 5.

<sup>210</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 1.7.

<sup>211</sup> Replies to eQ3 – Questionnaire to Travel Agents, question 2.

- (215) In a prior decision, the Commission has indicated that, while a number of air carriers regarded Stuttgart airport and Karlsruhe/Baden-Baden airport as substitutable, airport managers, and tour operators considered them not to be.<sup>212</sup> Nevertheless, Ryanair has treated the two airports as possible substitutes for the purposes of notification of the Transaction.<sup>213</sup>
- (216) Taking Stuttgart city centre as the centre of the catchment area, the distances and travel times are as follows:

**Table 11 - Distance and travel time – Stuttgart**

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Stuttgart	14 km	20 min	30 min	N/A
Karlsruhe/Baden-Baden	107 km	80 min	105 min	N/A

*Source: Form CO, paragraph 105*

- (217) Karlsruhe/Baden-Baden airport is located beyond the 100 kilometre radius and the one hour drive from Stuttgart city centre.
- (218) In any case, for the purpose of this Decision, the question of whether Stuttgart airport and Karlsruhe/Baden-Baden airport belong to the same O&D market can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.1 below).

(c) Conclusion

- (219) For the purpose of this Decision, the question of whether the geographic scope of the markets for passenger air transport services to or from a relevant airport is limited to an airport or encompasses airports in the same catchment area can be left open for Bratislava, Vienna, Duesseldorf, Cologne, Frankfurt, Stuttgart and Berlin airports, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.
- (220) As regards the substitutability of Paphos and Larnaca airports, the Commission considers that, for the purpose of this Decision, the two airports are substitutable for the route from Vienna/Bratislava to Cyprus.

<sup>212</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraphs 92-98.

<sup>213</sup> Form CO, paragraph 103.



### 6.2.2. Airport-by-airport approach

(221) As described in paragraph (110) above, the Transaction results in a concentration of slots at certain airports in the hands of a single undertaking. Accordingly, the Commission will assess below the impact of the Transaction in terms of the merged entity's slot holding in relation to the markets for passenger air transport services to or from the relevant airports and the market for airport infrastructure services provided at the relevant airports. The Commission will consider below the various possible delineations of these two relevant markets under the airport-by-airport approach.

#### 6.2.2.1. Passenger air transport services to or from the relevant airports

##### (a) Product market

(222) In prior decisions, the Commission has not deemed it necessary to consider under the airport-by-airport approach, when all O&Ds to or from an airport are aggregated, the same distinctions as those considered when each O&D market is examined separately (e.g. time sensitive vs. non-time sensitive passengers, direct vs. indirect flights, charter flights vs. scheduled flights, air transport vs. train transport, wholesale vs. retail supply of airline seats, feeder traffic).<sup>214</sup> On the basis of the information in its possession, the Commission considers that there are no grounds for it to deviate from this past practice for the purposes of this Decision.

##### (b) Geographic market

(223) In prior decisions, the Commission has considered whether the relevant airports, notably Berlin Tegel, Duesseldorf, Munich and Stuttgart airports, are substitutable with other airports in view of their overlapping catchment areas.<sup>215</sup>

(224) In the present case, the substitutability from the point of view of passengers of (i) Bratislava and Vienna airports, (ii) Berlin Tegel and Berlin Schoenefeld airports, (iii) Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports, (iv) Frankfurt and Frankfurt-Hahn airports, and (v) Stuttgart and Karlsruhe/Baden-Baden airports has been considered in respectively paragraphs (165), (192), (206), (213) and (218) above.

(225) The assessment of the substitutability of Munich and Memmingen airports from the point of view of passengers is only relevant under the airport-by-airport approach, as LaudaMotion does not operate any route to or from Munich airport using its own fleet and does not operate at all at Memmingen airport (see Tables 1 and 2 above).

(226) In two prior decisions, the Commission has reached different conclusions as to the substitutability of Munich and Memmingen airports, depending on the routes,

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<sup>214</sup> See Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraph 52; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 58; M.6447 – *IAG/bmi*, paragraphs 492-506.

<sup>215</sup> See Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraphs 53 *et seq.*; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraphs 59 *et seq.*

air carriers and customers. While Munich and Memmingen airports were found to belong to the same market for the routes between Dublin and Munich in one decision,<sup>216</sup> Memmingen airport was deemed unlikely to be substitutable to Munich airport, except for a very limited number of particularly non-time sensitive passengers in another decision.<sup>217</sup> In its most recent decision in the sector, the Commission has left open whether Munich and Memmingen airports are substitutable from the point of view of passengers.<sup>218</sup>

(c) Conclusion

- (227) For the purpose of its airport-by-airport assessment of the Transaction in this Decision, the Commission will assess the competitive effects of the Transaction on the markets for the provision of passenger air transport services, encompassing all routes to or from an airport, or to or from substitutable airports.
- (228) For the purpose of its airport-by-airport assessment of the Transaction in this Decision, the question of whether Berlin Tegel and Berlin Schoenefeld airports belong to the same geographic markets for passenger air transport can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see Section 7.2 below).
- (229) With regard to the substitutability between (i) Bratislava and Vienna airports, (ii) Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports, (iii) Frankfurt and Frankfurt-Hahn, and (iv) Munich and Memmingen, and (v) Stuttgart and Karlsruhe/Baden-Baden, considering that, for the purpose of this Decision, the geographic scope of the relevant markets for airport infrastructure services to which slots give access is found to be limited to, respectively, Vienna, Duesseldorf, Frankfurt, Munich and Stuttgart airports (see paragraphs (243), (258), (264), (270) and (277) below), the Commission will consider the impact of the Transaction on competition in the markets for passenger air transport, encompassing all routes to or from the airport, at Vienna, Duesseldorf, Frankfurt, Munich and Stuttgart airports only.

6.2.2.2. Airport infrastructure services

- (230) For the purpose of providing passenger air transport services at congested airports, airlines have to source infrastructure services at those airports. As indicated in paragraph (103) above, at congested airports, infrastructure capacity is managed through the allocation of slots, which enable air carriers to fly to and from the airports. Slots are therefore defined, from the point of view of airports, as *"a planning tool for rationing capacity at airports where demand for air travel exceeds the available runway and terminal capacity."*<sup>219</sup> From the point of view

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<sup>216</sup> See Case M.6663 – *Ryanair/Aer Lingus III*, paragraph 265.

<sup>217</sup> See Case M.5335 – *Lufthansa/SN Airholding*, footnote 185.

<sup>218</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraphs 84 *et seq.*

<sup>219</sup> Press release of 1 December 2011 accompanying the Airport Package ([http://europa.eu/rapid/press-release\\_MEMO-11-857\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-857_en.htm)).

of airlines, the granting of a slot at an airport means that the airline may use the entire range of infrastructure necessary for the operation of a flight at a given time (runway, taxiway, stands and, for passenger flights, terminal infrastructure). This in turn enables the airlines to provide passenger air transport services to and from that airport.

- (231) As a consequence, through the Transaction, Ryanair obtains a right of access to a higher share of airport infrastructure capacity. The Transaction therefore has an impact on (the demand-side of) the markets for airport infrastructure services at the relevant airports and also on the markets for passenger air transport to and from those airports.

(a) Product market

- (232) The Commission has, in its prior decision practice, delineated a product market for the provision of airport infrastructure services to airlines, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure.<sup>220</sup> The Commission has considered sub-dividing the market for airport infrastructure services on the basis of airline customers (i.e. charter operators, scheduled full service carriers and scheduled low cost carriers) and on the basis of the type of flights (i.e. short haul and long haul).<sup>221</sup>
- (233) However, in prior decisions relating to the transfer of slots at airports, the Commission has not considered it appropriate to further distinguish within the market for airport infrastructure services, considering that slot portfolios give access to all infrastructure services necessary to operate at the airport.<sup>222</sup> The Commission considers that there is no element that would require deviating from the Commission's past practice for the purposes of this Decision.

(b) Geographic market

- (234) The Commission has, in its prior decision practice, defined the geographic scope of the market for airport infrastructure services as the catchment area of individual airports.
- (235) The Commission has also considered additional criteria relevant for assessing airport substitutability in relation to the market for airport infrastructure services, while acknowledging that the airlines' choice of airports ultimately depends on passengers' demand. In addition to the catchment area of a particular airport, the Commission has notably analysed the costs of operating from a particular airport, capacity constraints for slots and facilities, passenger volumes or the positioning

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<sup>220</sup> See e.g. Cases M.7270 – *Český Aeroholding/Travel Service/České aerolinie*, paragraph 50; M.7008 – *Aena International/Axa PE/LLAGL*, paragraph 12.

<sup>221</sup> See e.g. Case M.7398 – *MIRAEL/Ferrovial/NDHI*, paragraph 19.

<sup>222</sup> See Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraph 72; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 116.

of the airport (e.g. a niche airport serving high yield time-sensitive passengers or an airport serving mainly leisure, less time-sensitive passengers).<sup>223</sup>

- (236) The Commission has taken account of all the above-mentioned criteria when assessing the geographic scope of the airport infrastructure services markets relevant for the assessment of the effects of transfer of slots.<sup>224</sup>

#### *Overview of the relevant airports*

- (237) As indicated in paragraph (110) above, through the Transaction, Ryanair would be transferred slots at 23 coordinated (Level 3)<sup>225</sup> airports.<sup>226</sup> The question of substitutability is relevant only for six airports, which serve cities or regions also served by another airport. These airports are discussed below.

#### *Airport substitutability*

##### *i) Substitutability of Bratislava and Vienna airports*

- (238) Only LaudaMotion holds slots (and historic rights thereto) at Vienna airport. The Transaction only gives rise to an overlap between LaudaMotion's and Ryanair's slot portfolios if the two airports are considered as substitutable.
- (239) The question of the catchment area of Bratislava and Vienna airports is addressed in section 6.2.1.4.
- (240) Bratislava airport is a schedules facilitated airport<sup>227</sup> (Level 2)<sup>228</sup> during Summer and Winter IATA Seasons, while Vienna airport is a coordinated (Level 3) airport during both IATA Seasons.

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<sup>223</sup> See e.g. Cases M.5652 – *GIP/Gatwick Airport*, paragraph 14; M.4164 – *Ferrovial/Quebec/GIC/BAA*, paragraphs 15-17; M.3823 – *MAG/Ferrovial Aeropuertos/Exeter Airport*, paragraphs 16-19.

<sup>224</sup> See Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraph 73 *et seq.*; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 117 *et seq.*

<sup>225</sup> Under the 8th Edition of Worldwide Slot Guidelines issued by IATA (effective 1 January 2017), a Level 3 airport "is one where: a) Demand for airport infrastructure significantly exceeds the airport's capacity during the relevant period; b) Expansion of airport infrastructure to meet demand is not possible in the short term; c) Attempts to resolve the problem through voluntary schedule adjustments have failed or are ineffective; and d) As a result, a process of slot allocation is required whereby it is necessary for all airlines and other aircraft operators to have a slot allocated by a coordinator in order to arrive or depart at the airport during the periods when slot allocation occurs." A Level 3 airport under the IATA Worldwide Slot Guidelines corresponds to a coordinated airport under the Slot Regulation.

<sup>226</sup> These are Vienna, Innsbruck, Berlin Tegel, Duesseldorf, Frankfurt, Hamburg, Munich, Stuttgart, Corfu, Chania, Kos, Kalamata, Santorini, Rhodes, Catania, Faro (coordinated airport in Summer only), Lanzarote, Malaga, Fuerteventura, Ibiza, Gran Canaria, Palma de Mallorca, Tenerife Sur.

<sup>227</sup> Under the Slot Regulation, a schedules facilitated airport is "an airport where there is potential for congestion at some periods of the day, week or year which is amenable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services at that airport."

- (241) The number of passengers at Vienna airport reached 24.4 million in 2017,<sup>229</sup> compared to 1.9 million for Bratislava in 2017.<sup>230</sup>
- (242) Vienna airport is used by 74 airlines serving 195 destinations in 70 countries, in particular Lufthansa Group (61% in terms of passenger volume in 2017 for Austrian Airlines, Eurowings and Lufthansa together).<sup>231</sup> Bratislava airport is mainly used by low-cost carriers, in particular Ryanair (with 1 million passengers in 2017), Travel Service (SmartWings), Wizz Air or Pödeba.<sup>232</sup>
- (243) Considering that (i) only Vienna airport is a coordinated airport, and (ii) Vienna airport has a different positioning and market strategy (serving in particular full service carriers), the Commission concludes that, for the purpose of this Decision, the geographic scope of the market for the provision of airport infrastructure services to airlines is limited to Vienna airport.
- (244) Therefore, the Transaction does not give rise to an overlap at Vienna airport, which will not be further considered in the airport-by-airport assessment.
- ii) Substitutability of Berlin Tegel and Berlin Schoenefeld airports*
- (245) Ryanair holds slots (and historic rights thereto) at Berlin Schoenefeld airport, while LaudaMotion holds slots (and historic rights thereto) at Berlin Tegel airport. The Transaction only gives rise to an overlap between LaudaMotion's and Ryanair's slot portfolios if the two airports are considered as substitutable.
- (246) In two recent decisions, the Commission has left open the question of whether Berlin Tegel and Berlin Schoenefeld airports belong to the same geographic market for airport infrastructure services.<sup>233</sup>
- (247) In the present case, the question of the catchment area of Berlin Tegel and Berlin Schoenefeld airports is addressed in section 6.2.1.4.

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<sup>228</sup> Under the 8th Edition of Worldwide Slot Guidelines issued by IATA (effective 1 January 2017), a Level 2 airport "is one where there is potential for congestion during some periods of the day, week or season, which can be resolved by schedule adjustments mutually agreed between the airlines and facilitator." A Level 2 airport under the IATA Worldwide Slot Guidelines corresponds to a scheduled facilitated airport under the Slot Regulation.

<sup>229</sup> See website of Vienna airport: <https://www.viennaairport.com/en/company/flughafen-wien-ag/fwag-group-facts-figures>

<sup>230</sup> See website of Bratislava airport: <https://www.bts.aero/en/airport/press/latest-news/the-3rd-best-bratislava-airport-traffic-result-in-history/>

<sup>231</sup> See website of Vienna airport: <https://www.viennaairport.com/en/company/press-news/press-releases-news-1?news-beitrag-id=1516031056393>

<sup>232</sup> See website of Bratislava airport: <https://www.bts.aero/en/airport/press/latest-news/the-3rd-best-bratislava-airport-traffic-result-in-history/>

<sup>233</sup> See Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraph 80; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 123.

- (248) The two airports are large airports with more than one terminal, used in 2017 by over 21 million passengers for Berlin Tegel airport and approximately 13 million passengers for Berlin Schoenefeld airport.<sup>234</sup>
- (249) Berlin Tegel and Berlin Schoenefeld airports are coordinated airports in both IATA Seasons. Nevertheless, Berlin Tegel airport appears more congested than Berlin Schoenefeld airport during peak periods and for longer periods throughout the day.<sup>235</sup>
- (250) Besides, it can be noted that Berlin Schoenefeld is mainly used by low cost carriers, while Berlin Tegel is more used for business traffic and long-haul destinations.<sup>236</sup>
- (251) In any case, for the purpose of this Decision, the question of whether Berlin Tegel and Berlin Schoenefeld airports belong to the same geographic market for airport infrastructure services can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.2.2.3).

*iii) Substitutability of Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports*

- (252) Only LaudaMotion holds slots (and historic rights thereto) at Duesseldorf airport.<sup>237</sup> The Transaction only gives rise to an overlap between LaudaMotion's and Ryanair's slot portfolios if Duesseldorf airport is considered as substitutable with Cologne-Bonn, Dortmund, or Weeze Niederrhein airports.
- (253) In a recent decision, the Commission has considered that the provision of airport infrastructure services at Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports are distinct markets.<sup>238</sup>
- (254) In the present case, the question of the catchment area of Duesseldorf, Cologne-Bonn, Dortmund, and Weeze Niederrhein airports is addressed in section 6.2.1.4.
- (255) Duesseldorf airport presents very different features from the other three airports. It is coordinated (Level 3) during both IATA Seasons, while Cologne-Bonn airports is schedules facilitated (Level 2). Dortmund and Weeze Niederrhein airports are neither coordinated nor schedules facilitated.

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<sup>234</sup> See website of Berlin airport: <http://www.berlin-airport.de/en/documents/press/basisinformationen/2018-02-press-kit-fbb-en.pdf>

<sup>235</sup> Reply of the German slot coordinator to Q1 – Questionnaire to Slot Coordinators in Case M.8633 – Lufthansa/Certain Air Berlin assets. By email dated 14 June 2018, the German slot coordinator authorised the Commission to use this reply for the purpose of this Decision.

<sup>236</sup> See for instance Centre for Aviation's website <https://centreforaviation.com/analysis/reports/berlin-schoenefeld-airport-dramatic-passenger-growth-figures-and-it-may-have-an-extended-shelf-life-343820> and Berlin Airport's website <https://www.berlin-airport.de/en/business-partners/airlines-and-handling/airlines/brief-profile/index.php>

<sup>237</sup> See also footnotes 427 and 428 below.

<sup>238</sup> See Case M.8633 – Lufthansa/Certain Air Berlin assets, paragraph 130.

- (256) In terms of size, Duesseldorf airport is, with 24.6 million passengers in 2017,<sup>239</sup> significantly larger than Cologne-Bonn (12.4 million passengers),<sup>240</sup> Dortmund and Weeze Niederrhein (approximately 2 million passengers each).<sup>241</sup>
- (257) In addition, the airports have different positionings and marketing strategies vis-à-vis passengers traffic. Duesseldorf airport is used by 74 airlines (led by the Lufthansa Group in terms of passenger volumes), serving 202 destinations in 52 countries.<sup>242</sup> Cologne-Bonn airport is more oriented towards low-cost carriers: "Since 2002, the Airport has focused increasingly on low-cost business and is one of the front runners in this sector in Europe."<sup>243</sup> Dortmund and Weeze Niederrhein almost exclusively depend on low-cost carriers, in particular Wizz Air for Dortmund<sup>244</sup> and Ryanair for Weeze Niederrhein.<sup>245</sup>
- (258) Considering that (i) only Duesseldorf airport is a coordinated airport, and (ii) Duesseldorf airport has a different positioning and market strategy (serving in particular full service carriers offering intercontinental flights), the Commission concludes that, for the purpose of this Decision, the geographic scope of the market for the provision of airport infrastructure services to airlines is limited to Duesseldorf airport.
- (259) Therefore, the Transaction does not give rise to an overlap at Duesseldorf airport, which will not be further considered in the airport-by-airport assessment.
- iv) Substitutability of Frankfurt and Frankfurt-Hahn airports*
- (260) Both LaudaMotion and Ryanair hold slots (and historic rights thereto) at Frankfurt airport. The Transaction therefore gives rise to an overlap between

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<sup>239</sup> See website of Duesseldorf airport: <https://www.dus.com/~media/fdg/dus.com/konzern/presse/medieninformationen/pdfs%202018/dsseldorf%20airport%20at%20a%20glance%20april%202018.pdf>

<sup>240</sup> See website of Cologne-Bonn airport: <https://www.cologne-bonn-airport.com/en/press/press-releases/airport-cracks-the-12-million-mark.html>

<sup>241</sup> See website of Dortmund airport: <https://www.dortmund-airport.com/all-about-the-company/facts-figures> and website of Weeze airport: [http://unternehmen.airport-weeze.com/en/short\\_profile.html](http://unternehmen.airport-weeze.com/en/short_profile.html)

<sup>242</sup> See Annual Report 2017 of Duesseldorf airport: [https://www.dus.com/~media/fdg/dus.com/konzern/unternehmen/zahlen\\_und\\_fakten/geschaeftsbericht/dus\\_gb\\_2017\\_engl.pdf](https://www.dus.com/~media/fdg/dus.com/konzern/unternehmen/zahlen_und_fakten/geschaeftsbericht/dus_gb_2017_engl.pdf)

<sup>243</sup> See website of Cologne-Bonn airport: <https://www.cologne-bonn-airport.com/en/company/flughafen-koelnbonn-gmbh.html>

<sup>244</sup> See Annual Report 2016 of Dortmund airport: <https://cdn0.scrvt.com/airportdtm/6e268df30ae08e6e/ee0ea9f7a643/DTM-Geschaeftsbericht2016-DE.PDF>

<sup>245</sup> See website of Weeze airport: [http://unternehmen.airport-weeze.com/en/short\\_profile.html](http://unternehmen.airport-weeze.com/en/short_profile.html), in particular "The main client of the airport is the low-cost-airline Ryanair which has established the airport as its base in Germany. In total 6 airlines operate at Weeze and fly to 51 destinations nonstop."

LaudaMotion's and Ryanair's slot portfolios. The question of the catchment area of Frankfurt and Frankfurt-Hahn airports is addressed in section 6.2.1.4.

- (261) Frankfurt airport is a coordinated (Level 3) airport during Summer and Winter IATA Seasons, while Frankfurt-Hahn airport is neither coordinated nor schedules facilitated (Level 2).
- (262) The number of passengers at Frankfurt airport reached 64.5 million in 2017,<sup>246</sup> compared to 2.5 million for Frankfurt-Hahn in 2017.<sup>247</sup>
- (263) Frankfurt airport serves 99 airlines and 311 destinations,<sup>248</sup> while Frankfurt-Hahn airport markets itself as *"the first and most consistently run low-cost airport in Germany"*, serving *"fifty attractive holiday destinations throughout Europe and North Africa"*.<sup>249</sup>
- (264) Considering that (i) only Frankfurt airport is a coordinated airport, and (ii) Frankfurt airport has a different positioning and market strategy (serving in particular full service carriers), the Commission concludes that, for the purpose of this Decision, the geographic scope of the market for the provision of airport infrastructure services to airlines is limited to Frankfurt airport.

v) *Substitutability of Munich and Memmingen airports*

- (265) Only LaudaMotion holds slots (and historic rights thereto) at Munich airport in Summer 2018 IATA Season only.<sup>250</sup> The Transaction only gives rise to an overlap between LaudaMotion's and Ryanair's slot portfolios if the two airports are considered as substitutable.
- (266) The question of the catchment area of Munich and Memmingen airports is addressed in paragraph (225) above.
- (267) Munich airport is a coordinated (Level 3) airport during both IATA Seasons, while Memmingen airport is neither coordinated nor schedules facilitated during both IATA Seasons.

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<sup>246</sup> See website of Frankfurt airport: [https://www.frankfurt-airport.com/en/b2b/airlines---tourism.detail.suffix.html/article/b2b/airlines\\_tourism/airlines/facts-and-figures.html#facts-and-figures](https://www.frankfurt-airport.com/en/b2b/airlines---tourism.detail.suffix.html/article/b2b/airlines_tourism/airlines/facts-and-figures.html#facts-and-figures)

<sup>247</sup> See website of Frankfurt-Hahn airport: [https://www.hahn-airport.de/default.aspx?menu=traffic\\_data&cc=en](https://www.hahn-airport.de/default.aspx?menu=traffic_data&cc=en)

<sup>248</sup> See website of Frankfurt airport: [https://www.frankfurt-airport.com/en/b2b/airlines---tourism.detail.suffix.html/article/b2b/airlines\\_tourism/airlines/facts-and-figures.html#facts-and-figures](https://www.frankfurt-airport.com/en/b2b/airlines---tourism.detail.suffix.html/article/b2b/airlines_tourism/airlines/facts-and-figures.html#facts-and-figures)

<sup>249</sup> See website of Frankfurt-Hahn airport: [https://www.hahn-airport.de/default.aspx?menu=about\\_us&cc=en](https://www.hahn-airport.de/default.aspx?menu=about_us&cc=en)

<sup>250</sup> See footnote 117 above for LaudaMotion and Form CO, footnote 86.



- (268) The number of passengers at Munich airport reached 44 million passengers in 2017,<sup>251</sup> compared to 1,2 million passengers for Memmingen airport in 2017.<sup>252</sup>
- (269) Munich airport is a European hub, serving 102 airlines, 74 countries and 266 destinations and accounting for the highest share of business travellers in Germany in 2017,<sup>253</sup> while Memmingen airport is a regional airport targeting low-cost or destination air carriers (Wizz Air, Ryanair, Corendon or Fly Egypt).<sup>254</sup>
- (270) Considering that (i) only Munich airport is a coordinated airport, and (ii) Munich airport has a different positioning and market strategy (service in particular full service carriers offering intercontinental flights), the Commission concludes that, for the purpose of this Decision, the geographic scope of the market for the provision of airport infrastructure services to airlines is limited to Munich airport.
- (271) Therefore, the Transaction does not give rise to an overlap at Munich airport, which will not be further considered in the airport-by-airport assessment.
- vi) Substitutability of Stuttgart and Karlsruhe/Baden-Baden airports*
- (272) Both LaudaMotion and Ryanair hold slots (and historic rights thereto) at Stuttgart airport. The Transaction therefore gives rise to an overlap between LaudaMotion's and Ryanair's slot portfolios. In a recent decision, the Commission has considered that the provision of airport infrastructure services at Stuttgart and Karlsruhe/Baden-Baden airports are distinct markets.<sup>255</sup>
- (273) In the present case, the question of the catchment area of Stuttgart and Karlsruhe/Baden-Baden airports is addressed in section 6.2.1.4.
- (274) Stuttgart airport is a coordinated (Level 3) airport during Summer and Winter IATA Seasons, while Karlsruhe/Baden-Baden airport is neither coordinated nor schedules facilitated.
- (275) The number of passengers at Stuttgart airport reached 11 million in 2017,<sup>256</sup> compared to 1 million for Karlsruhe/Baden-Baden airport in 2016.<sup>257</sup>

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<sup>251</sup> See website of Munich airport: <https://www.munich-airport.com/b/00000000000000003927622bb5ad5ed61/Annual-Traffic-Report-2017.pdf>

<sup>252</sup> See website of Memmingen airport: <https://www.allgaeu-airport.com/home/company/memmingen-airport/facts-figures-2/>

<sup>253</sup> See website of Munich airport: <https://www.munich-airport.com/b/00000000000000003927622bb5ad5ed61/Annual-Traffic-Report-2017.pdf>

<sup>254</sup> See website of Memmingen airport: <https://www.allgaeu-airport.com/home/flights-and-flying/flying/airlines/>

<sup>255</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 138.

<sup>256</sup> See website of Stuttgart airport: <http://www.stuttgart-airport.com/company-information/facts-and-figures>

<sup>257</sup> See Development of passenger traffic at Karlsruhe/Baden-Baden airport: [https://www.baden-airpark.de/wp-content/uploads/Passagiere\\_engl.pdf](https://www.baden-airpark.de/wp-content/uploads/Passagiere_engl.pdf)

(276) Stuttgart airport serves 55 airlines and 100 destinations,<sup>258</sup> while Karlsruhe/Baden-Baden markets itself as a "regional airport of short distances", targeting leisure or low cost air carriers.<sup>259</sup>

(277) Considering that (i) only Stuttgart airport is a coordinated airport, and (ii) Stuttgart airport has a different positioning and market strategy (serving in particular full service carriers), the Commission concludes that, for the purpose of this Decision, the geographic scope of the market for the provision of airport infrastructure services to airlines is limited to Stuttgart airport.

(c) Conclusion

(278) For the purpose of this Decision, the question of whether the geographic scope of the market for airport infrastructure services is limited to the airport or encompasses several airports in the same catchment area can be left open for Berlin Tegel and Berlin Schoenefeld airports, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition (see section 7.2).

(279) For the purpose of this Decision, for Vienna, Duesseldorf, Frankfurt, Munich and Stuttgart airports, the Commission considers that, in view of the evidence available to it, the market for airport infrastructure services is limited to the airport.

### 6.3. Relevant situation absent the Transaction

(280) Pursuant to paragraph 9 of the Horizontal Merger Guidelines,<sup>260</sup> "*[i]n assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.*"

(a) Ryanair's views

(281) Ryanair submits that, in the event that the Transaction did not go ahead, notably absent the implementation of Step One of the Transaction as authorised by the First and Second Derogation Decisions, LaudaMotion would have gone out of business entirely, either during or shortly after the Summer 2018 IATA Season. Ryanair notably refers to a letter by LaudaMotion dated 21 March 2018, in which LaudaMotion argued that "*[u]nless the Commission lifts the bar on implementation [...] there is a significant chance that we lose slots and ultimately go out of business.*" In this context, Ryanair considers that, absent the

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<sup>258</sup> See website of Stuttgart airport: <http://www.stuttgart-airport.com/company-information/facts-and-figures>

<sup>259</sup> See website of Karlsruhe/Baden-Baden airport: <https://www.baden-airpark.de/en/company/company/>

<sup>260</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, p. 5-18.

Transaction, LaudaMotion would have exited each relevant market with effect in both the Summer 2018 and Winter 2018/2019 IATA Seasons, defined either on the basis of O&D city pairs or slot holdings.<sup>261</sup>

(b) Commission's assessment

*O&D approach*

- (282) In the First and Second Derogation Decisions, the Commission has acknowledged LaudaMotion's difficulty in getting access to a sufficient number of aircraft to grow into a competitive force. In particular, the Commission has considered it likely that *"if no derogation from the suspension obligation is granted regarding Step One, LaudaMotion would not be able to deploy a sufficiently large fleet to use its portfolio of slots and to offer a sufficient volume of seats for sale to end customers to operate independently on the retail market. Without immediate financial and operational support, LaudaMotion would risk losing critical slots and the scale necessary to prevent a significant deterioration of its assets, which would threaten its competitive sustainability."*<sup>262</sup>
- (283) In light of the further evidence made available to it during the market investigation, the Commission maintains the opinion expressed in the First and Second Derogation Decisions, according to which, absent the Transaction, LaudaMotion would not have obtained access to more aircraft than the ones currently dry-leased from Lufthansa Group in the short- to medium-term,<sup>263</sup> due notably to its weak financial capacity and the severe scarcity of aircraft that LaudaMotion is entitled to operate.<sup>264</sup> In particular, LaudaMotion stated on 21 March 2018 that *"[t]he reality of the situation in which we find ourselves is that the transaction with Ryanair represents our only available source of financial and operational support. The start-up of our operations has so far been significantly undermined by uncertainty as to the funding of the business. This has been compounded by our need to date to rely on incumbent airlines, that have limited interest in our success, for funding and leased aircraft"* and *"in addition to financial support, we need a reliable partner from whom we can lease sufficient aircraft to ensure that our valuable slots are not lost."*<sup>265</sup> LaudaMotion later indicated, in a letter dated 5 June 2018: *"With respect to financing, as a company without significant tangible assets, it is impossible for us to agree debt financing with banks in the time available. With respect to aircraft, our troubles with*

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<sup>261</sup> Form CO, paragraphs 152-157.

<sup>262</sup> First Derogation Decision, paragraph 25.

<sup>263</sup> Since LaudaMotion has, independently of the Transaction, to return one aircraft to Lufthansa Group at the end of the Summer 2018 IATA Season, the Commission considers that LaudaMotion would have access to no more than nine aircraft absent the Transaction.

<sup>264</sup> The LaudaMotion AOC supports a fleet of Airbus aircraft (see <https://corporate.ryanair.com/news/partnership-with-niki-lauda-to-develop-laudamotion-airline-in-austria/>).

<sup>265</sup> Reply of Ryanair to QP1 on the first request for a derogation of 19 March 2018, Annex 2 – Letter from LaudaMotion dated 21 March 2018.

*Lufthansa and Condor illustrate the difficulty of negotiating in a short period the lease of aircraft with other airlines who have their own interests to look after.*"<sup>266</sup>

- (284) Nevertheless, for the purposes of analysing the competitive impact of the Transaction on those O&D markets, the Commission considers that it does not have sufficient evidence to conclude that the most likely scenario absent the Transaction would be that LaudaMotion would completely and definitively cease operating as an active provider of air transport services by the start of the Winter 2018/2019 IATA Season.
- (285) Indeed, the market investigation indicates that the agreements concluded with Condor and under negotiations with Lufthansa would be implemented absent the Transaction (see section 5.1 above). Therefore, LaudaMotion would have had the financial means to cover its operating costs for its fleet of eight aircraft during the Summer 2018 IATA Season. Although, during the Summer 2018 IATA Season, LaudaMotion would not have been able to sell seats directly to passengers to any material extent, these arrangements would have given to LaudaMotion the opportunity to cater for its immediate financial needs, to maintain economic viability, and to prepare for its entry on the retail markets for passenger air transport services with a limited number of aircraft during the Winter 2018/2019.<sup>267</sup>
- (286) Absent the Transaction, LaudaMotion's financial situation would be less stable as from the Winter 2018/2019 IATA Season, when LaudaMotion would start being exposed to commercial risks for the operation of part of its fleet. However, the Commission does not have enough evidence to indicate that LaudaMotion would have incurred losses endangering its survival until the next, more lucrative, Summer 2019 IATA Season.
- (287) In any case, for the purpose of this Decision, the Commission does not need to take a firm position as to whether, absent the Transaction, LaudaMotion would have ceased all operations, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any scenario.
- (288) However, due in particular to LaudaMotion's limited financial and operational capabilities, the Commission considers that LaudaMotion would have exerted weak competitive pressure on Ryanair (or any other competitor) in the foreseeable future on the O&D markets for passenger air transport services absent the Transaction. In particular, with such a small fleet, LaudaMotion would have had difficulty to operate a profitable business, due to its limited schedule flexibility and its limited ability to achieve cost savings and economies of scale, putting it at a disadvantage against strong incumbent air carriers and reducing the attractiveness of its offering to passengers (see also section 7.1.3 below).
- (289) The Commission will take this element into account in its O&D and airport-by-airport assessments.

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<sup>266</sup> Form CO, Annex 19.

<sup>267</sup> Initially four aircraft, the capacity of the five other ones being pre-sold to Condor under the block space agreement that had been signed prior to the Transaction.

- (290) Moreover, under the O&D approach, LaudaMotion would have operated a nine-aircraft fleet absent the Transaction (as from Winter 2018/2019 IATA Season). In such a scenario, LaudaMotion would continue to operate the routes that it currently operates during the Summer 2018 IATA Season and that it plans to operate during the Winter 2018/2019 IATA Season, subject to the potential redeployment of capacity during the following IATA Seasons.<sup>268</sup>
- (291) For the sake of cautiousness, the Commission will also consider that absent the Transaction, LaudaMotion would sell all its available capacity on O&Ds to retail customers (passengers, either directly or through travel agencies), in competition with Ryanair, and would not sell any of its capacity to wholesale customers (tour operators) or to other airlines. As LaudaMotion's business plan pre-Transaction in fact provided for LaudaMotion's entry in the wholesale market for airline seats to tour operators in Germany, Austria and Switzerland, where Ryanair is not active and does not plan to be, the Commission's approach of considering that, absent the Transaction, LaudaMotion would have sold all its available capacity to retail customers overestimates the market position of LaudaMotion on the relevant O&D markets. Similarly, as LaudaMotion intended, on a transitional basis, to supply air transport services to Condor and Lufthansa Group (which in turn would sell the supplied capacity to tour operators and passengers), and Ryanair does not provide such services, the Commission's approach of considering that, absent the Transaction, LaudaMotion would have sold all its available capacity to retail customers overestimates the market position of LaudaMotion and underestimates the market position of Condor and Lufthansa Group on the relevant O&D markets (at least for the Summer 2018 IATA Season, and for Condor, also for the Winter 2018/2019 Season).

*Airport-by-airport approach*

- (292) Under the airport-by-airport approach, the most conservative approach is to assume that, absent the Transaction, LaudaMotion would have failed to establish itself as a competitor of Ryanair and would have stopped operating at all the relevant airports. In that scenario, all of LaudaMotion's slots to be transferred to Ryanair (corresponding to the operation of 19 aircraft) would be made available to third parties.
- (293) More specifically, absent the Transaction, these slots would either be made available to third parties other than Ryanair through the sale of all or parts of LaudaMotion (e.g. during LaudaMotion's insolvency proceedings), or, in the absence of acquirers, fall back to the slot pools and be subsequently reallocated by the relevant slot coordinators (see section 6.1.1.2 above).
- (294) These scenarios impact the situation absent the Transaction in two respects. First, the number of slots that Ryanair would obtain is impacted, as Ryanair would likely obtain slots in the second scenario through the reallocation process of slots

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<sup>268</sup> As indicated in section 6.1.1.1 above, the Commission has only evidence of such redeployment from the Vienna-Paphos airport pair during the Summer 2018 IATA Season to the Vienna-Larnaca airport pair during the Summer 2019 IATA Season (the latter airport pair being also served by LaudaMotion during the Winter 2018/2019 IATA Season). No other redeployment will be considered for the purpose of this Decision.

returned to the pool, but not in the first scenario. This, in turn, has an impact on the difference between the number of slots obtained through the Transaction and the number of slots that Ryanair would have obtained absent the Transaction (i.e. the "net increment" brought about by the Transaction).

- (295) Second, the question of the distribution of LaudaMotion's slots absent the Transaction has an impact on the slot holding of Ryanair's competitors at the relevant airports (as they would also obtain slots through a possible reallocation process), hence on the competitive constraint they would be able to exert on Ryanair absent the Transaction.
- (296) In any case, for the purpose of this Decision, the question of whether, absent the Transaction, LaudaMotion's slots would be transferred to other air carriers rather than Ryanair or would fall back to the slot pools can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either scenario.
- (297) In section 7.2 below, the Commission has adopted the most conservative approach by conducting a competitive assessment that compares the effects of the Transaction with a situation where all the slots would be transferred to other air carriers (and none to Ryanair). A finding that the Transaction does not raise serious doubts in that scenario necessarily means that it also does not raise serious doubts when compared to a situation in which the slots return to the slot pools. That is so because the comparison to the latter situation would consider a lower increment (the net increment) in slot holdings for Ryanair resulting from the Transaction given that it is assessed against a situation in which Ryanair would have obtained some slots via the pools.

(c) Conclusion

- (298) In light of the above, the Commission does not need to take a firm position on the questions whether, absent the Transaction, LaudaMotion would cease all of its flight operations and, if so, what would happen to its slots, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any alternative scenario.

## **7. COMPETITIVE ASSESSMENT**

### **7.1. Assessment under the O&D approach**

#### *7.1.1. Introduction*

- (299) The target of the Transaction, LaudaMotion, is a newly established air carrier, which has recently started a range of scheduled services. As explained in section 6.1.1.1 above, the target of the Transaction must be distinguished from NIKI, which ceased to operate as an active air carrier on all routes in December 2017. As a result, it serves no purpose to consider the effects of the Transaction on the markets on which the assets now held by LaudaMotion were formerly used by NIKI.<sup>269</sup> The Commission thus should not assess the effects of the Transaction on

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<sup>269</sup> See also paragraph (20) of this Decision and the case law referred to therein.

the relevant O&Ds based on data for the last IATA Seasons, but should conduct a forward-looking assessment for the Summer 2018 IATA Season and the Winter 2018/2019 IATA Season of the effects of the Transaction on the O&Ds on which LaudaMotion had planned to progressively operate using its own assets. Indeed, the jurisprudence of the Union courts has clarified that the Commission is required in its substantive assessment under the Merger Regulation, to undertake a prospective analysis on how the transaction alters the market conditions in the future.<sup>270</sup>

- (300) In addition, while the Commission has underlined that the concept of "closeness of competition" may play an important role in assessing the competitive constraint exerted by different competitors on each other in differentiated markets such as airline markets<sup>271</sup> and has notably relied on a comparison of the respective business models (service offerings and brand) of the merging parties,<sup>272</sup> this criterion is of limited added value for the purpose of the competitive assessment of the Transaction. Indeed, the conditions of the recent entry of LaudaMotion on the relevant O&Ds are such that LaudaMotion has not marketed and does not market its flight capacity using its own commercial policy and under its brand alone. Pre-Transaction, its flight capacity was marketed by Condor and Lufthansa Group under their own responsibility and on their own account. The marginal capacity that LaudaMotion could sell at its own risk was sold using services provided by Condor under a website and Internet booking engine agreement. Following the adoption of the First and Second Derogation Decisions, LaudaMotion's flight capacity is now marketed on Ryanair's website.
- (301) Other criteria used by the Commission to carry out an in-depth assessment of the closeness of the competition between the merging parties may, nevertheless, prove more relevant. In particular, in the *Ryanair/Aer Lingus III* decision, the Commission has also taken into account (i) the current market positions of the parties, and (ii) their bases.<sup>273</sup> LaudaMotion, as a newly established provider of scheduled services, has not had time to establish its market position on any O&D and, contrary to Ryanair, is not expected to exert significant competitive pressure in the short or medium term. From that perspective, LaudaMotion and Ryanair do not compete closely. Furthermore, as will be further detailed for each of the relevant routes (see section 7.1 below), Ryanair and LaudaMotion often operate from different airports. In particular, LaudaMotion uses as main bases Vienna and Duesseldorf airports, neither of which is a base for Ryanair.
- (302) In this context, considering that LaudaMotion had barely started applying its own commercial policy pre-Transaction, assessing the closeness of competition between the Parties on the basis of this factor would be of limited relevance.

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<sup>270</sup> See in this respect C-12/03P – *Tetra Laval*, at paragraph 42, T-342/00 – *Petrolessence*, at paragraph 102 and T-310/01 – *Schneider*, at paragraphs 443, 444.

<sup>271</sup> See Case 6663 – *Ryanair/Aer Lingus III*, paragraph 482, referring to paragraphs 28-30 of the Horizontal Merger Guidelines.

<sup>272</sup> See e.g. Case 6663 – *Ryanair/Aer Lingus III*, paragraph 498 *et seq.*; Case M.5440 – *Lufthansa/Austrian Airlines*, paragraph 187.

<sup>273</sup> See Case 6663 – *Ryanair/Aer Lingus III*, paragraph 478 *et seq.*

Therefore, the Commission will not further consider the degree of substitutability between Ryanair's and LaudaMotion's services from the point of view of passengers in the competitive assessment.

#### 7.1.2. Methodology used to calculate market shares

##### 7.1.2.1. Capacity and frequency shares

- (303) In prior airline decisions where market shares for the past were not informative of the parties' market position on a relevant route<sup>274</sup> or where the competitive constraint exerted by new entrants needed to be measured,<sup>275</sup> the Commission has relied on the expected frequencies and capacities for the next season.
- (304) In the present case, the Commission considers that the Parties' market shares on the relevant O&Ds should be based on capacity (and on frequencies as relevant)<sup>276</sup> for the Summer 2018 and Winter 2018/2019 IATA Seasons. Indeed, LaudaMotion is a new entrant on all these routes and there has been discontinuity between NIKI's operations (which definitively exited all routes in December 2017) and LaudaMotion's operations based on a much reduced fleet, crew and slot portfolio.
- (305) Furthermore, following Air Berlin's (including NIKI's) insolvency, other air carriers have entered or expanded in the German, Austria and Swiss markets for the supply of passenger air transport services through internal growth (e.g. Condor, IAG) or external growth (e.g. Lufthansa Group, easyJet), in order to respond to the demand previously served by Air Berlin. Therefore, even if passengers formerly carried by NIKI on the relevant routes were notionally allocated to LaudaMotion in order to calculate market shares (which would be inconsistent with the forward-looking analytical assessment to be made under the Merger Regulation and would rely on an incorrect identification of the target and of its activities), these market shares would not reflect the situation of the O&D markets following Air Berlin's winding-up.
- (306) In order to estimate the Parties' market shares on the relevant routes, the Commission has used the capacity and frequency data provided by Ryanair, and checked against frequency data and entry and expansion plans provided by respondents to the market investigation.<sup>277</sup> Ryanair has compiled O&D data for the Parties using Schedules Reference Service Analyser ("SRS Analyser") as well

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<sup>274</sup> See Case 5335 – *Lufthansa/SN Airholding*, paragraph 346 for the Brussels-Milan route on which "the market structure has considerably changed in recent months (economic difficulties of Alitalia and merger between Alitalia and Air One, creation of Lufthansa Italia)."

<sup>275</sup> See e.g. Case 6663 – *Ryanair/Aer Lingus III*, paragraph 1205 for the Dublin-Madrid route, Case M.5440 – *Lufthansa/Austrian Airlines*, paragraph 217 for the Innsbruck-Hamburg route.

<sup>276</sup> See footnote 278 below.

<sup>277</sup> See notably to replies to eQ1 – Questionnaire to Competitors. The Commission has also used public sources of information (e.g. websites of the air carriers) where entry or expansion plans are already published and tickets are on sale.



as internal Ryanair and LaudaMotion data.<sup>278</sup> Ryanair has taken O&D data for competitors from SRS Analyser. While the SRS Analyser data are generally comprehensive as to scheduled and low-cost airlines, they may not include all operating airlines. In particular, data relate only to scheduled flights,<sup>279</sup> in line with the Commission's approach to the assessment of the effects of the Transaction on O&D markets excluding charter activity (see section 6.2.1.3 above), which, all other things being equal, would tend to underestimate the competition constraints exercised on the Parties in the O&D assessment conducted in this Section.

#### 7.1.2.2. No distinction between wholesale and retail capacity of scheduled airlines

- (307) As indicated in section 6.1.2 above, in prior decisions relating to mergers between active air carriers, the Commission has distinguished between the wholesale and retail markets for passenger air transport services, also examining whether charter airlines and tour operators selling dry-seats to passengers or package holidays including airline seats to travellers exert a significant competitive constraint on scheduled airlines offering services on the affected routes.<sup>280</sup>
- (308) In the present case, considering that Ryanair is only active on the retail market, the Commission needs to assess the horizontal effects of the Transaction on the market of retail airline seats sold to passengers. For that purpose, and as explained in section 6.1.2 above, the Commission has adopted an approach considering that (i) LaudaMotion would, absent the Transaction, act as a pure retailer of airline seats (leaving open the question of LaudaMotion's business model post-Transaction) and (ii) excluding charter flights from the scope of capacity and frequency reported on the relevant routes. All other things being equal, this approach would tend to overestimate the Parties' combined market shares on the retail market for airline seats to passengers and underestimate the competition constraints exercised on the Parties in the O&D assessment conducted in this Section.
- (309) For other airlines active on the retail market for passenger air transport services in competition with Ryanair on relevant routes, i.e. for other scheduled airlines, the Commission acknowledges that some of them are also active on the wholesale

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<sup>278</sup> For LaudaMotion's activities during the Summer 2018 IATA Season, Ryanair has (i) calculated LaudaMotion's market shares using the capacity deployed and number of frequencies operated using both LaudaMotion's own fleet and Ryanair's wet-leased aircraft, and (ii) presented separately the number of frequencies operated by LaudaMotion using its own aircraft (Form CO, Annex 12 as revised in the version submitted as a reply to RFI 6 on 27 June 2018, and paragraph 163). In accordance with the relevant O&Ds identified in section 6.1.1.1 below, the Commission has also recalculated the capacity market shares on the basis of the number of frequencies operated using the target's assets. As will be described below, the reduction in LaudaMotion's capacity in proportion to the number of frequencies not operated by LaudaMotion using its own aircraft and crew does not materially affect the capacity shares provided by Ryanair.

<sup>279</sup> Form CO, paragraph 151.

<sup>280</sup> See e.g. Cases M.6663, *Ryanair/Aer Lingus III*, paragraphs 418-419, M.5141 – *KLM/Martinair*, paragraphs 111-121, paragraph 149 *et seq.*, M.4439 – *Ryanair/Aer Lingus*, paragraphs 300-311.

market. The prominence of the wholesale supply of airline seats is likely to depend on the business model of the competitor<sup>281</sup> and on the route.

- (310) Nevertheless, considering the specificities of the Transaction, the Commission considers that it is neither possible nor appropriate to provide for a breakdown of the capacity and frequencies operated by these competitors on the relevant routes for the Summer 2018 and Winter 2018/2019 IATA Seasons, for the following reasons.
- (311) First, as a response to the demand from tour operators for less risky flight capacity bookings and a reduced financial exposure,<sup>282</sup> airlines have developed flexible solutions for tour operators. As an example, Lufthansa indicates that *"Eurowings offers allotments, pro-rata and pooling fares. Pro-rata and pooling fares provide tour operators with a maximum of flexibility up until 72 hours prior to departure."*<sup>283</sup> As a consequence of the change in the tour operating market dynamics, airlines are tending to increasingly shift away from the model whereby they sell, far in advance of the start of the season, fixed allotments to tour operators. Therefore, the allocation of airline capacity between retail and wholesale customers is generally not fixed, so that airlines can reallocate capacity from wholesale to retail customers (and conversely) in a flexible manner.
- (312) Second, as a result of the flexible allocation of capacity by scheduled airlines, Ryanair considers that *"[e]ven scheduled capacity that has been sold to tour operators on a fixed allotment basis in one IATA Season can be switched to either pool allotment or retail in the following IATA Season, such that fixed allotment scheduled capacity exerts the same competitive constraint on any given route (particularly given that rivals have no insight as to what proportion of scheduled capacity has been sold as a fixed allotment)."*<sup>284</sup> In this regard, the Commission notes that neither LaudaMotion nor Ryanair distinguishes between capacity likely to be offered to wholesale and retail customers when monitoring the capacity to be deployed by competitors on routes for future IATA Seasons.<sup>285</sup>
- (313) Third, to support its views about the loss of competition entailed by the Transaction on the relevant O&Ds, a respondent to the market investigation active in the retail and wholesale markets relied on published frequencies, without

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<sup>281</sup> For examples, the business model of Eurowings (Lufthansa Group) also encompasses sales to tour operators (see reply to eQ1 – Questionnaire to Competitors, question 2), while Wizzair's business model is that of *"an ultra low-cost airline operating short-haul point-to-point scheduled services, selling predominantly directly to passengers"* (see reply to eQ1 – Questionnaire to Competitors, question 1). The flights operated by TUIfly are *"used by TUI Deutschland for the supply of package holidays by TUI Deutschland and other tour operators belonging to TUI Group or marketed by TUI Deutschland externally to third-party tour operators and end customers"* (see reply to eQ1 – Questionnaire to Competitors, question 1).

<sup>282</sup> Due notably to the thin margins in the tour operating industry and the rapid changes in the destination preferences of travellers.

<sup>283</sup> See reply to eQ1 – Questionnaire to Competitors, question 2.

<sup>284</sup> Reply of Ryanair to RFI 8 of 28 June 2018.

<sup>285</sup> Reply of Ryanair to RFI 8 of 28 June 2018.

distinguishing between capacity offered to tour operators and passengers.<sup>286</sup> This is in line with the Commission's practice with regard to the assessment of whether entry or expansion by an air carrier would defeat attempts to increase prices by the merged entity, which is mainly based on the frequencies added by the competitor on the O&D.

- (314) In light of the above, the Commission will assess the market positions of the airlines operating or planning to operate scheduled services on the basis of the full capacity that they will deploy on the relevant O&D (complemented as relevant by data on frequencies).

*7.1.3. LaudaMotion's market shares overstate its competitive position*

- (315) The Commission considers that LaudaMotion's market shares calculated on the basis of the capacity deployed using its nine aircraft overstate its position on the relevant O&Ds for the following main reasons.

- (316) As described in Section 6.3 above, LaudaMotion had weak financial and operational means pre-Transaction, which has the following consequences in terms of gain in passenger market shares and load factors.

- (317) First, absent the Transaction, LaudaMotion's fragile situation would have hindered it from building up passenger confidence and establishing a recognised brand, necessary for the exercise of an actual competitive pressure on other air carriers in the foreseeable future. In particular, the Commission considers that it would have proven very difficult for LaudaMotion, which has no significant tangible assets, to secure debt financing with banks in a timely manner, in order to (i) lease a sufficient number of suitable aircraft and minimise the disruption of its services in case of delays in their delivery or need for maintenance, (ii) retain its staff, in particular pilots and other crew, and (iii) invest in the building of a marketing and sales organisation that it did not have pre-Transaction.<sup>287</sup> LaudaMotion's cash flow statement of 31 March 2018 illustrates a material cash need, which absent the Transaction would likely have impaired LaudaMotion's operations at the peak Summer 2018 IATA Season.<sup>288</sup>

- (318) Second, the Commission has found in prior decisions that strong airlines may deploy strategies aimed at undermining competition at their home bases.<sup>289</sup> In the present case, some large airlines, for instance from Lufthansa Group, have large bases at airports where LaudaMotion will base its own aircraft, such as Vienna

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<sup>286</sup> See replies to eQ1 – Questionnaire to competitors.

<sup>287</sup> See reply of Lufthansa to eQ1 - Questionnaire to Competitors, question 14: "*Laudamotion did not have the sales and marketing organization to fill its aircraft with individual passengers, at least in the short to medium term.*"

<sup>288</sup> See reply of Ryanair to QP1 on the first request for a derogation of 19 March 2018, Annex 2 – Letter from LaudaMotion dated 21 March 2018, Appendix 1.

<sup>289</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 165 *et seq.*

and Duesseldorf airports.<sup>290</sup> With regard to the latter airport, in a recent merger decision, the Commission assessed whether Lufthansa would have the ability and incentive to prevent its competitors from entering or expanding the routes from and to Duesseldorf, notably on the basis of an analysis of its internal documents.<sup>291</sup> The Commission also noted that the significant difference in slot holdings and deployed capacity at Duesseldorf airport limited the capacity of its competitors to react to any anti-competitive behaviour by Lufthansa Group.<sup>292</sup> The Commission considers that, absent the Transaction, LaudaMotion would likely not have had the ability to counter such strategies and their negative effects on its operations. As a consequence, it would likely not reach for instance load factors similar to those of its competitors.

- (319) Third, absent the Transaction and due to its limited access to aircraft, LaudaMotion would have based respectively only three and two aircraft at Duesseldorf and Vienna airports,<sup>293</sup> which would likely have been insufficient to achieve base effects and establish efficient airline operations. In prior airline decisions, the Commission has found that concentrating aircraft and traffic at a base can generate (i) considerable cost savings, due to economies of scale and scope; and (ii) increased flexibility, by which airlines can respond more easily and more quickly to changes, in particular unexpected demand shocks.<sup>294</sup> The base effects, which could have accrued to LaudaMotion, would have been very limited in comparison to those enjoyed by its competitors, with much larger bases. Therefore, LaudaMotion would have operated at higher costs, limiting its attractiveness as a new air carrier.
- (320) Therefore, considering in particular the weak financial and operational situation of LaudaMotion, the Commission considers that the loss of competition between Ryanair and LaudaMotion on the relevant routes is materially less important than suggested by the increment in Ryanair's capacity brought about by the Transaction.

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<sup>290</sup> For instance, Eurowings, a subsidiary of Lufthansa Group, has 35 aircraft (1 reserve) based at Dusseldorf airport and 8 aircraft based at Vienna airport (see reply of Lufthansa to eQ1 - Questionnaire to Competitors, question 3). Austrian Airlines, another subsidiary of Lufthansa Group, has also a hub at Vienna airport, where it has "a strong market position" which regarded as a strength by Lufthansa Group (Lufthansa Group, Annual report 2017, p. 19, available at: <https://investor-relations.lufthansagroup.com/fileadmin/downloads/en/financial-reports/annual-reports/LH-AR-2017-e.pdf>).

<sup>291</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 175 *et seq.*

<sup>292</sup> See Case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 287.

<sup>293</sup> Form CO, paragraph 159.

<sup>294</sup> See e.g. Cases M.6663 – *Ryanair/Aer Lingus III*, recital 915 *et seq.*, notably paragraph 920: "in order to be an effective competitor, an airline has to have a base to enjoy the same benefits in terms of cost savings but also to offer a comparable product in terms of wide network portfolio with a competitive schedule which includes morning departure times." See also Case M.5830 – *Olympic/Aegean Airlines*, recital 558.

#### 7.1.4. Market investigation

- (321) The Commission conducted a market investigation *inter alia* on the impact of the Transaction on the relevant O&Ds. The Commission asked the views of airlines competing with the Parties on the relevant O&Ds, as well as of travel agents and consumer associations. The Commission also asked the views of several airport managers, including the managers of Duesseldorf airport, Vienna airport, Bratislava airport, Larnaca and Paphos airports, and AENA, which manages Spanish airports. Airport managers provide airport infrastructure services to airlines.<sup>295</sup> The Commission considers the views of airport managers to be important in the present case, since airport managers often possess in-depth market knowledge concerning the evolution of routes to and from the airports they manage, the market structure and dynamics of these routes, notably the market position of air carriers and their development plans.
- (322) The Commission has carefully analysed, interpreted and weighed all views expressed during the market investigation.

#### 7.1.5. Duesseldorf/Cologne/Weeze Niederrhein-Alicante

##### 7.1.5.1. Operations

- (323) Ryanair and LaudaMotion will both operate on the Duesseldorf-Alicante airport pair in the Winter 2018/2019 IATA Season.<sup>296</sup> The Duesseldorf-Alicante airport pair will not be operated by LaudaMotion in the Summer 2018 IATA Season.<sup>297</sup> The competitive assessment therefore focuses on the winter season.
- (324) The total capacity on the Duesseldorf-Alicante airport pair is around 104 700 in the Winter 2018/2019 IATA Season.
- (325) While Laudamotion will only operate on the Duesseldorf-Alicante airport pair, Ryanair will also operate on the Cologne-Alicante airport pair and on the Weeze Niederrhein-Alicante airport pair in the Winter 2018/2019 IATA Season.

##### 7.1.5.2. Market shares Winter 2018/2019 IATA Season

- (326) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Winter 2018/2019 IATA Season on the Duesseldorf-Alicante airport pair.<sup>298</sup>

Winter 2018/2019	Capacity	Weekly frequency	Market shares
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<sup>295</sup> See e.g. Cases M.8672 – *easyJet/Certain Air Berlin assets*, paragraph 26; M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraph 32.

<sup>296</sup> Form CO, Annex 12, in the revised version submitted as reply of Ryanair to RFI 6 of 26 June 2018.

<sup>297</sup> Form CO, paragraph 71 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>298</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<b>IATA Season</b>			<b>(capacity)</b>
Ryanair	41 202	5	39%
LaudaMotion	24 360	3	23%
<b>Total</b>	<b>65 562</b>	<b>8</b>	<b>63%<sup>299</sup></b>

(327) The merged entity's competitors are Lufthansa Group with a market share of 14% and Norwegian with a market share of 23%.

(328) The following table indicates Ryanair's and Laudamotion's and their competitors' market shares on the following plausible markets in the Winter 2018/2019 IATA Season: if Duesseldorf and Cologne airports are considered substitutable as well as if Duesseldorf and Weeze Niederrhein airports are considered substitutable.<sup>300</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Duesseldorf/Cologne to Alicante</b>	<b>Duesseldorf/Weeze to Alicante</b>
<b>Market share (capacity) combined</b>	70%	72%
<b>Market share Lufthansa</b>	11%	11%
<b>Market share Norwegian</b>	19%	18%

(329) The following table shows the merged entity's capacity, the weekly frequencies and market shares in the Winter 2018/2019 IATA Season in a broader catchment area comprising Duesseldorf, Cologne, and Weeze Niederrhein airports.<sup>301</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares ( capacity)</b>
Ryanair	99 414	12	61%

<sup>299</sup> Rounding effects.

<sup>300</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>301</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018 and reply of Ryanair to RFI 8 of 28 June 2018.

LaudaMotion	24 360	3	15%
<b>Total</b>	<b>123 774</b>	<b>15</b>	<b>76%</b>

- (330) The merged entity's competitors are Norwegian with a market share of 15% and Lufthansa Group with a market share of 9%.
- (331) In the Winter 2018/2019 IATA Season, the merged entity's combined market shares on the route are highest if a broader catchment comprising Duesseldorf, Cologne, and Weeze Niederrhein airports is considered.

#### 7.1.5.3. Further competitive assessment

- (332) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Duesseldorf/Cologne/Weeze Niederrhein-Alicante route post-Transaction.<sup>302</sup> This was also stated by the airport manager of Duesseldorf airport.<sup>303</sup>
- (333) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>304</sup>
- (334) Post-Transaction, there will be three airlines left to operate on the route. The merged entity will face sufficient competitive pressure from two strong competitors, Lufthansa Group and Norwegian under any plausible market definition.

#### 7.1.5.4. Conclusion

- (335) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (336) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein-Alicante route under any plausible market definition.

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<sup>302</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>303</sup> See emails of Duesseldorf airport of 14 June 2018 and 26 June 2018.

<sup>304</sup> See Section 6.3 of this decision.

## 7.1.6. Duesseldorf/Weeze Niederrhein-Ibiza

### 7.1.6.1. Operations

- (337) LaudaMotion operates on the Duesseldorf-Ibiza airport pair, and Ryanair on the Weeze Niederrhein-Ibiza airport pair in the Summer 2018 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if either Duesseldorf and Weeze Niederrhein airports or Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable.<sup>305</sup> Since neither LaudaMotion nor Ryanair operates the Cologne-Ibiza route, the merged entity's combined market shares are lower if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable than in case Duesseldorf and Weeze Niederrhein airports are considered substitutable. The Commission thus focuses on assessing the competitive effects of the Transaction if Duesseldorf and Weeze Niederrhein airports are considered substitutable.
- (338) The Duesseldorf-Ibiza airport pair will not be operated by LaudaMotion in the winter season.<sup>306</sup> The competitive assessment therefore focuses on the summer season.
- (339) The total capacity on the Duesseldorf-Ibiza airport pair is around 167 600 and around 46 900 on the Weeze Niederrhein-Ibiza airport pair in the Summer 2018 IATA Season.

### 7.1.6.2. Market shares Summer 2018 IATA Season

- (340) The following table indicates the capacity, the weekly frequencies<sup>307</sup> and the market shares of Ryanair and LaudaMotion in the Summer 2018 IATA Season if Duesseldorf and Weeze Niederrhein airports are considered substitutable.<sup>308</sup>

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	46 872	4	22%
LaudaMotion	55 986	6	27%
<b>Total</b>	<b>102 858</b>	<b>10</b>	<b>49%</b>

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<sup>305</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>306</sup> Form CO, paragraph 71 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>307</sup> A competing airline submitted market shares based on frequencies for the catchment area Duesseldorf and Weeze Niederrhein. These data do not affect the Commission's conclusion since the combined market share of the Parties provided by this competitor would be lower than the combined market share based on capacity as mentioned in the table.

<sup>308</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.



- (341) The merged entity's competitors in the Summer 2018 IATA Season are Lufthansa Group with a market share of 27% and TUI with a market share of 24%.
- (342) Considering only LaudaMotion's operations using its own flight capacity, LaudaMotion operates three frequencies less on the Duesseldorf – Ibiza airport pair.<sup>309</sup> Based on this, the merged entity's combined market shares would amount to 41% on the Duesseldorf/Weeze Niederrhein-Ibiza route, with its competitors being the Lufthansa Group (31%) and TUI (28%).

#### 7.1.6.3. Further competitive assessment

- (343) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Duesseldorf/Cologne/Weeze Niederrhein-Ibiza route post-Transaction.<sup>310</sup> This was also stated by the airport manager of Duesseldorf airport.<sup>311</sup>
- (344) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>312</sup>
- (345) Post-Transaction, there will be three airlines left to operate on the route. The merged entity will face sufficient competitive pressure from two strong competitors, the Lufthansa Group and TUI.

#### 7.1.6.4. Conclusion

- (346) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity post-Transaction would be sufficient to prevent it from raising prices post-Transaction.
- (347) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Weeze Niederrhein-Ibiza route under any plausible market definition.

### 7.1.7. *Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Malaga*

#### 7.1.7.1. Operations

- (348) LaudaMotion and Ryanair both operate and will both operate on the Duesseldorf-Malaga airport pair in the Summer 2018 IATA Season and in the Winter

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<sup>309</sup> Form CO, paragraph 163.

<sup>310</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>311</sup> See emails of Duesseldorf airport of 14 June 2018 and 26 June 2018.

<sup>312</sup> See Section 6.3 of this decision.

2018/2019 IATA Season.<sup>313</sup> The total capacity on the Duesseldorf-Malaga airport pair is around 223 600 in the Summer 2018 IATA Season and 127 000 in the Winter 2018/2019 IATA Season.

- (349) In the Summer 2018 IATA Season, while Laudamotion will only operate on the Duesseldorf-Malaga airport pair, Ryanair will also operate on the Cologne-Malaga airport pair, on the Weeze Niederrhein-Malaga airport pair, and on the Dortmund-Malaga airport pair.<sup>314</sup>
- (350) In the Winter 2018/2019 IATA Season, while Laudamotion will only operate on the Duesseldorf-Malaga airport pair, Ryanair will also operate on the Cologne-Malaga airport pair, on the Weeze Niederrhein-Malaga airport pair and on the Dortmund-Malaga airport pair.<sup>315</sup>

#### 7.1.7.2. Market shares Summer 2018 IATA Season

- (351) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Summer 2018 IATA Season on the Duesseldorf-Malaga airport pair.<sup>316</sup>

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	56 332	4	25%
LaudaMotion <sup>317</sup>	49 566	4	22%
<b>Total</b>	<b>105 898</b>	<b>8</b>	<b>47%</b>

- (352) The merged entity's competitors are Lufthansa Group with a market share of 32% and Norwegian with a market share of 21%.

<sup>313</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>314</sup> Form CO, paragraph 71 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>315</sup> Form CO, paragraph 71 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>316</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>317</sup> According to Ryanair, LaudaMotion would operate only three frequencies without the aircraft wet-leased by Ryanair (Form CO, paragraph 163). Based on this, the merged entity's combined market share would amount to 44%, Lufthansa Group's market share to 34% and Norwegian's market share to 22% on the Duesseldorf-Malaga airport pair. However, the flight schedule published by LaudaMotion pre-Transaction refers to a weekly frequency of four flights. Therefore, on a conservative basis, the market shares are presented in this section under the assumption that LaudaMotion operates four weekly frequencies on the Duesseldorf-Malaga airport pair using its own flight capacity.

(353) The following table indicates Ryanair's and Laudamotion's and their competitors' market shares as well as the merged entity's combined market share on the following plausible markets in the Summer 2018 IATA Season: if Duesseldorf and Cologne airports are considered substitutable; if Duesseldorf and Weeze Niederrhein airports are considered substitutable; and if Duesseldorf and Dortmund airports are considered substitutable.

<b>Summer 2018 IATA Season</b>	<b>Duesseldorf/ Cologne to Malaga</b>	<b>Duesseldorf/ Weeze to Malaga</b>	<b>Duesseldorf/ Dortmund to Malaga</b>
<b>Market share (capacity) combined</b>	49% <sup>318</sup>	65% <sup>319</sup>	52% <sup>320</sup>
<b>Market share Lufthansa</b>	25%	21%	29%
<b>Market share Norwegian</b>	26%	14%	19%

(354) The following table indicates Ryanair's and Laudamotion's and their competitors' market shares as well as the merged entity's combined market share on the following plausible markets in the Summer 2018 IATA Season: if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable; if Duesseldorf, Cologne and Dortmund airports are considered substitutable; and if Duesseldorf, Weeze Niederrhein and Dortmund airports are considered substitutable.

<b>Summer 2018 IATA Season</b>	<b>Duesseldorf/ Cologne/Weeze to Malaga</b>	<b>Duesseldorf/ Cologne/ Dortmund to Malaga</b>	<b>Duesseldorf/ Weeze Niederrhein/ Dortmund to Malaga</b>
<b>Market share (capacity) combined</b>	63% <sup>321</sup>	53% <sup>322</sup>	68% <sup>323</sup>
<b>Market share Lufthansa</b>	18%	23%	20%
<b>Market share Norwegian</b>	19%	24%	13%

<sup>318</sup> 47% if LaudaMotion operates three weekly frequencies.

<sup>319</sup> 64% if LaudaMotion operates three weekly frequencies.

<sup>320</sup> 50% if LaudaMotion operates three weekly frequencies.

<sup>321</sup> 62% if LaudaMotion operates three weekly frequencies.

<sup>322</sup> 51% if LaudaMotion operates three weekly frequencies.

<sup>323</sup> 66% if LaudaMotion operates three weekly frequencies.

(355) The following table shows the merged entity's capacity, the weekly frequencies<sup>324</sup> and market shares in the Summer 2018 IATA Season in a broader catchment area comprising Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports.<sup>325</sup>

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	243 253	20	54% <sup>326</sup>
LaudaMotion	49 566	4	11% <sup>327</sup>
<b>Total</b>	<b>292 819</b>	<b>24</b>	<b>65%</b> <sup>328</sup>

(356) The merged entity's competitors are Norwegian with a market share of 18%<sup>329</sup> and Lufthansa Group with a market share of 17%.<sup>330</sup>

(357) In the Summer 2018 IATA Season, the merged entity's combined market shares are highest in one of the following plausible markets: if Duesseldorf and Weeze Niederrhein airports are considered substitutable, if Duesseldorf, Weeze Niederrhein and Dortmund airports are considered substitutable, and if a broader catchment area comprising Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports is considered. However, the merged entity's market position as well as the one of its competitors Norwegian and Lufthansa Group does not change significantly irrespective of which of those markets is considered.

#### 7.1.7.3. Market shares Winter 2018/2019 IATA Season

(358) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Winter 2018/2019 IATA Season on the Duesseldorf-Malaga airport pair.<sup>331</sup>

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<sup>324</sup> A competing airline submitted market shares based on frequencies for the catchment area Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports. These data do not affect the Commission's conclusion since the combined market share of the Parties provided by this competitor would be lower than the combined market share based on capacity as mentioned in the table.

<sup>325</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>326</sup> 56% if LaudaMotion operates three weekly frequencies.

<sup>327</sup> 8% if LaudaMotion operates three weekly frequencies.

<sup>328</sup> 64% if LaudaMotion operates three weekly frequencies.

<sup>329</sup> 19% if LaudaMotion operates three weekly frequencies.

<sup>330</sup> 17% as well if LaudaMotion operates three weekly frequencies.

<sup>331</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	41 202	5	32%
LaudaMotion	32 480	4	26%
<b>Total</b>	<b>73 682</b>	<b>9</b>	<b>58%</b>

(359) The merged entity's competitors in the Winter 2018/2019 IATA Season are Lufthansa Group with a market share of 23% and Norwegian with a market share of 19%.

(360) The following table indicates Ryanair's and Laudamotion's and their competitors' market shares on the following plausible markets in the Winter 2018/2019 IATA Season: if Duesseldorf and Cologne airports are considered substitutable; if Duesseldorf and Weeze Niederrhein airports are considered substitutable; and if Duesseldorf and Dortmund airports are considered substitutable.

<b>Winter 2018/2019 IATA Season</b>	<b>Duesseldorf/Cologne to Malaga</b>	<b>Duesseldorf/Weeze to Malaga</b>	<b>Duesseldorf/Dortmund to Malaga</b>
<b>Market share (capacity) combined</b>	62%	67%	63%
<b>Market share Lufthansa</b>	18%	18%	20%
<b>Market share Norwegian</b>	20%	15%	17%

(361) The following table indicates Ryanair's and Laudamotion's and their competitors' market shares on the following plausible markets in the Winter 2018/2019 IATA Season: if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable; if Duesseldorf, Cologne and Dortmund airports are considered substitutable; and if Duesseldorf, Weeze Niederrhein and Dortmund airports are considered substitutable.

<b>Winter 2018/2019 IATA Season</b>	<b>Duesseldorf/ Cologne/Weeze to Malaga</b>	<b>Duesseldorf/ Cologne/ Dortmund to Malaga</b>	<b>Duesseldorf/ Weeze Niederrhein/ Dortmund to Malaga</b>
<b>Market share (capacity) combined</b>	68%	65%	70%
<b>Market share Lufthansa</b>	15%	17%	16%
<b>Market share Norwegian</b>	17%	19%	14%

(362) The following table shows the merged entity's capacity, the weekly frequencies and market shares in the Winter 2018/2019 IATA Season in a broader catchment area comprising Duesseldorf, Cologne, Dortmund and Weeze Niederrhein to Malaga airport.<sup>332</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares ( capacity)</b>
Ryanair	115 668	14	56%
LaudaMotion	32 480	4	15%
<b>Total</b>	<b>148 148</b>	<b>18</b>	<b>71%</b>

(363) The merged entity's competitors are Norwegian with a market share of 16% and Lufthansa Group with a market share of 14%.

(364) In the Winter 2018/2019 IATA Season, the merged entity's combined market shares are highest in one of the following plausible markets: if Duesseldorf, Weeze Niederrhein and Dortmund airports are considered substitutable, and if a broader catchment comprising Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports is considered.

#### 7.1.7.4. Further competitive assessment

(365) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient

<sup>332</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

to prevent it from raising prices on the Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Malaga route post-Transaction.<sup>333</sup> This was also stated by the airport manager of Duesseldorf airport.<sup>334</sup>

- (366) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>335</sup>
- (367) Post-Transaction, there will be three airlines left to operate on the route. The merged entity will face sufficient competitive pressure from two strong competitors, Lufthansa Group and Norwegian, also on the Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Malaga route.

#### 7.1.7.5. Conclusion

- (368) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction in summer as well as winter IATA seasons.
- (369) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Malaga route under any plausible market definition.

#### 7.1.8. *Duesseldorf/Cologne/Weeze Niederrhein-Faro*

##### 7.1.8.1. Operations

- (370) Laudamotion will operate on the Duesseldorf-Faro airport pair, and Ryanair on the Cologne-Faro airport pair and on the Weeze Niederrhein-Faro airport pair. Ryanair and LaudaMation thus only overlap if either Duesseldorf and Cologne airport, Duesseldorf and Weeze Niederrhein airport or Duesseldorf, Cologne and Weeze Niederrhein airport are considered substitutable.<sup>336</sup>
- (371) The Duesseldorf-Faro airport pair is not operated by LaudaMotion in the Summer 2018 IATA Season using its own flight capacity and is thus not a relevant route in the Summer 2018 IATA Season.<sup>337</sup> The competitive assessment therefore focuses on the winter season.

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<sup>333</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>334</sup> See emails of Duesseldorf airport of 14 June 2018 and 26 June 2018.

<sup>335</sup> See Section 6.3 of this decision.

<sup>336</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>337</sup> Form CO, paragraph 162.



(372) The total capacity on the Duesseldorf-Faro airport pair is around 48 200, on the Weeze Niederrhein-Faro airport pair around 16 600, and on the Cologne-Faro airport pair around 29 100 in the Winter 2018/2019 IATA Season.

#### 7.1.8.2. Market shares Winter 2018/2019 IATA Season

(373) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Winter 2018/2019 IATA Season on the Duesseldorf/Cologne-Faro airport pair.<sup>338</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	16 632	2	22%
LaudaMotion	24 360	3	32%
<b>Total</b>	<b>40 992</b>	<b>5</b>	<b>53%<sup>339</sup></b>

(374) The merged entity's competitors in the Winter 2018/2019 IATA Season are Lufthansa Group with a market share of 36% and TUI with a market share of 11%.

(375) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Winter 2018/2019 IATA Season on the Duesseldorf/Weeze Niederrhein-Faro airport pair.<sup>340</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	16 632	2	26%
LaudaMotion	24 360	3	38%
<b>Total</b>	<b>40 992</b>	<b>5</b>	<b>63%<sup>341</sup></b>

(376) The merged entity's competitors in the 2018/2019 IATA Winter Season are Lufthansa Group with a market share of 23% and TUI with a market share of 13%.

<sup>338</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>339</sup> Rounding effects.

<sup>340</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>341</sup> Rounding effects.

(377) The following table shows the merged entity's capacity, the weekly frequencies and market shares in the Winter 2018/2019 IATA Season in a broader catchment area comprising Duesseldorf, Cologne, and Weeze Niederrhein airports.<sup>342</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares ( capacity)</b>
Ryanair	33 264	4	35%
LaudaMotion	24 360	3	26%
<b>Total</b>	<b>57 624</b>	<b>7</b>	<b>61%</b>

(378) The merged entity's competitors are TUI with a market share of 9% and Lufthansa Group with a market share of 29%.

(379) In the Winter 2018/2019 IATA Season, the merged entity's combined market shares are highest if either Duesseldorf and Weeze Niederrhein airports are considered substitutable, and if a broader catchment area comprising Duesseldorf, Cologne and Weeze Niederrhein airports is considered.

#### 7.1.8.3. Further competitive assessment

(380) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Duesseldorf/Cologne/Weeze Niederrhein-Faro route post-Transaction.<sup>343</sup> This was also stated by the airport manager of Duesseldorf airport.<sup>344</sup>

(381) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>345</sup>

(382) Post-Transaction, there will be three airlines left to operate on the route. The merged entity will continue to face sufficient competitive pressure from two strong competitors, Lufthansa Group and TUI.

<sup>342</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>343</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>344</sup> See emails of Duesseldorf airport of 14 June 2018 and 26 June 2018.

<sup>345</sup> See Section 6.3 of this decision.

#### 7.1.8.4. Conclusion

- (383) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity post-Transaction would be sufficient to prevent it from raising prices post-Transaction.
- (384) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein – Faro route under any plausible market definition.

#### 7.1.9. *Duesseldorf/Weeze Niederrhein-Lanzarote*

- (385) LaudaMotion will operate on the Duesseldorf-Lanzarote airport pair, and Ryanair on the Weeze Niederrhein-Lanzarote airport pair in the Winter 2018/2019 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Duesseldorf and Weeze Niederrhein airports are considered substitutable or Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable.<sup>346</sup> Since neither LaudaMotion nor Ryanair will operate on the Cologne-Lanzarote airport pair, the merged entity's combined market share are lower if Duesseldorf, Cologne and Weeze Niederrhein are considered substitutable than in the case Duesseldorf and Weeze Niederrhein are considered substitutable. The Commission thus focuses on assessing the competitive effects of the Transaction if Duesseldorf and Weeze Niederrhein airports are considered substitutable.
- (386) The Duesseldorf-Lanzarote airport pair is not operated by LaudaMotion in the Summer 2018 IATA Season using its own flight capacity and is thus not a relevant route in the Summer 2018 IATA Season.<sup>347</sup> The competitive assessment therefore focuses on the winter season.
- (387) The merged entity's combined market share amounts to 33% on the Duesseldorf/Weeze Niederrhein-Lanzarote route, with Lufthansa Group being the biggest competitor with a market share of 31%.<sup>348</sup>
- (388) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>349</sup>
- (389) No substantiated concern regarding this route was received in the context of the market investigation.

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<sup>346</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>347</sup> Form CO, paragraph 162.

<sup>348</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>349</sup> See Section 6.3 of this decision.

- (390) Post-Transaction, there will be four airlines left to operate on the route. The merged entity will face sufficient competitive pressure from its competitors, especially from the Lufthansa Group.
- (391) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (392) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Weeze Niederrhein – Lanzarote route under any plausible market definition.

#### *7.1.10. Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Palma de Mallorca*

- (393) LaudaMotion operates on the Duesseldorf-Palma de Mallorca airport pair and on the Cologne-Palma de Mallorca airport pair in the Summer 2018 IATA Season and will only operate on the Duesseldorf-Palma de Mallorca airport pair in the Winter 2018/2019 IATA Season. Ryanair operates and will operate on the Duesseldorf-Palma de Mallorca airport pair, on the Cologne-Palma de Mallorca airport pair, on the Dortmund-Palma de Mallorca airport pair, and on the Weeze Niederrhein-Palma de Mallorca airport pair in both the Summer 2018 IATA Season and Winter 2018/2019 IATA Season.<sup>350</sup>
- (394) Based on the total number of frequencies operated by LaudaMotion (using its own flight capacity and Ryanair's flight capacity), in the Summer 2018 IATA Season, the merged entity's market shares are highest if Duesseldorf and Weeze Niederrhein airports are considered substitutable (35%), if Duesseldorf, Cologne, Weeze Niederrhein and Dortmund airports are considered substitutable (33%), or if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable (33%). Lufthansa Group's market share amounts to 31% if Duesseldorf and Weeze Niederrhein are considered substitutable, to 39% if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable and to 40% if Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports are considered substitutable.<sup>351</sup>
- (395) Considering only LaudaMotion's operations using its own flight capacity, LaudaMotion operates twelve frequencies less ex-Duesseldorf airport.<sup>352</sup> Based on this, the merged entity's combined market share would amount to 30% in any of the plausible markets mentioned in the previous paragraph. Lufthansa Group's market share would amount to 33% if Duesseldorf and Weeze Niederrhein airports are considered substitutable, to 40% if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable and to 42% if Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports are considered substitutable.

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<sup>350</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>351</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>352</sup> Form CO, paragraph 163.

- (396) In the Winter 2018/2019 IATA Season, the merged entity's market shares are highest if Duesseldorf and Weeze Niederrhein airports are considered substitutable (37%) or if Duesseldorf, Cologne, Weeze Niederrhein and Dortmund airports are considered substitutable (36%). Lufthansa Group's market share amounts to 32% if Duesseldorf and Weeze Niederrhein are considered substitutable and to 42% if Duesseldorf, Cologne, Dortmund and Weeze Niederrhein airports are considered substitutable<sup>353</sup>
- (397) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>354</sup>
- (398) No substantiated concern regarding this route was received in the context of the market investigation.<sup>355</sup>
- (399) Post-Transaction, there will be several airlines left to operate on the route, in both the Summer 2018 IATA Season (including the merged entity, Lufthansa Group, TUI and Condor) as well as in the Winter 2018/2019 IATA Season (including the merged entity, Lufthansa Group, Condor, TUI and Norwegian). The merged entity will face sufficient competitive pressure from its competitors.
- (400) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (401) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein/Dortmund-Palma de Mallorca route under any plausible market definition.

#### 7.1.11. Duesseldorf Cologne/Weeze Niederrhein-Tenerife Sur

- (402) LaudaMotion will operate on the Duesseldorf-Tenerife Sur airport pair, and Ryanair on the Weeze Niederrhein-Tenerife Sur airport pair as well as the Cologne-Tenerife Sur airport pair in the Winter 2018/2019 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Duesseldorf and Weeze Niederrhein airports are considered substitutable, if Duesseldorf and Cologne, or Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable.<sup>356</sup> The Commission thus focuses on assessing the competitive effects of the Transaction on these three plausible markets.

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<sup>353</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>354</sup> See Section 6.3 of this decision.

<sup>355</sup> AENA, the airport manager of Palma de Mallorca, considered it "*difficult to predict the concrete effects of the proposed transaction*", see non-confidential minutes of a conference call with AENA of 24 May 2018.

<sup>356</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

- (403) The Duesseldorf-Tenerife Sur airport pair is not operated by LaudaMotion in the Summer 2018 IATA Season using its own flight capacity and is thus not a relevant route in the Summer 2018 IATA Season.<sup>357</sup> The competitive assessment therefore focuses on the winter season.
- (404) The merged entity's combined market share amounts to 29% on the Duesseldorf/Weeze Niederrhein-Tenerife Sur route, with Condor being the biggest competitor with a market share of 31%.<sup>358</sup> Other competitors are Lufthansa Group (17%), TUI (12%) and Norwegian (11%).
- (405) The merged entity's combined market share amounts to 22% on the Duesseldorf/Cologne-Tenerife Sur route, with Condor being the biggest competitor with a market share of 27%. Other competitors are Lufthansa Group (24%), TUI (16%) and Norwegian (10%).<sup>359</sup>
- (406) On the Duesseldorf/Cologne/Weeze Niederrhein-Tenerife Sur route, the merged entity's combined market share amounts to 29%, with Condor being the biggest competitor with a market share of 25%. Other competitors are Lufthansa Group (22%), TUI (15%) and Norwegian (9%).<sup>360</sup>
- (407) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>361</sup>
- (408) No substantiated concern regarding this route was received in the context of the market investigation.
- (409) Post-Transaction, there will be five airlines left to operate on the route. The merged entity will face sufficient competitive pressure from its competitors.
- (410) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (411) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein-Tenerife Sur route under any plausible market definition.

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<sup>357</sup> Form CO, paragraph 162.

<sup>358</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>359</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>360</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>361</sup> See Section 6.3 of this decision.

### 7.1.12. Duesseldorf/Cologne/Weeze Niederrhein-Gran Canaria

- (412) LaudaMotion will operate on the Duesseldorf-Gran Canaria airport pair, and Ryanair on the Weeze Niederrhein-Gran Canaria airport pair as well as the Cologne-Gran Canaria airport pair in the Winter 2018/2019 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Duesseldorf and Weeze Niederrhein airports are considered substitutable, if Duesseldorf and Cologne airports are considered substitutable, or Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable.<sup>362</sup> The Commission thus focuses on assessing the competitive effects of the Transaction on these three plausible markets.
- (413) The Duesseldorf-Gran Canaria airport pair is not operated by LaudaMotion in the Summer 2018 IATA Season using its own flight capacity and is thus not a relevant route in the Summer 2018 IATA Season.<sup>363</sup> The competitive assessment therefore focuses on the winter season.
- (414) The merged entity's combined market share amounts to 27% on the Duesseldorf/Weeze Niederrhein-Gran Canaria route. Competitors are Condor (18%), Lufthansa Group (18%), TUI (17%) and Norwegian (17%) and Germania 3%.<sup>364</sup>
- (415) On the Duesseldorf/Cologne-Gran Canaria route, the merged entity's combined market share amounts to 24%. Competitors are Condor (16%), Lufthansa Group (21%), TUI (21%), Norwegian (15%) and Germania (2%).<sup>365</sup>
- (416) On the Duesseldorf/Cologne/Weeze Niederrhein-Gran Canaria route the merged entity's combined market share amounts to 28%. Competitors are Condor (15%), Lufthansa Group (20%), TUI (21%), Norwegian (14%) and Germania (2%).<sup>366</sup>
- (417) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>367</sup>
- (418) No substantiated concern regarding this route was received in the context of the market investigation.
- (419) Post-Transaction, there will be six airlines left to operate on the route. The merged entity will face sufficient competitive pressure from its competitors.

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<sup>362</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>363</sup> Form CO, paragraph 162.

<sup>364</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>365</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>366</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>367</sup> See Section 6.3 of this decision.

- (420) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (421) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Cologne/Weeze Niederrhein- Gran Canaria route under any plausible market definition.

#### *7.1.13. Duesseldorf/Weeze Niederrhein-Fuerteventura*

- (422) LaudaMotion will operate on the Duesseldorf-Fuerteventura airport pair, and Ryanair on the Weeze Niederrhein-Fuerteventura airport pair in the Winter 2018/2019 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Duesseldorf and Weeze Niederrhein airports are considered substitutable or Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable.<sup>368</sup> Since neither LaudaMotion nor Ryanair will operate on the Cologne-Fuerteventura route, the merged entity's combined market share is lower if Duesseldorf, Cologne and Weeze Niederrhein airports are considered substitutable than in case Duesseldorf and Weeze Niederrhein airports are considered substitutable. The Commission thus focuses on assessing the competitive effects of the Transaction if Duesseldorf and Weeze Niederrhein airports are considered substitutable.
- (423) The Duesseldorf-Fuerteventura airport pair is not operated by LaudaMotion in the Summer 2018 IATA Season using its own flight capacity and is thus not a relevant route in the Summer 2018 IATA Season.<sup>369</sup> The competitive assessment therefore focuses on the winter season.
- (424) The merged entity's combined market share amounts to 23% on the Duesseldorf/Weeze Niederrhein-Fuerteventura route. Competitors are Condor (27%), Lufthansa Group (26%) and TUI (24%).<sup>370</sup>
- (425) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>371</sup>
- (426) No substantiated concern regarding this route was received in the context of the market investigation.
- (427) Post-Transaction, there will be four airlines left to operate on the route. The merged entity will face sufficient competitive pressure from its competitors.

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<sup>368</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>369</sup> Form CO, paragraph 162.

<sup>370</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>371</sup> See Section 6.3 of this decision.



(428) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.

(429) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Duesseldorf/Weeze Niederrhein-Fuerteventura route under any plausible market definition.

#### 7.1.14. *Stuttgart/Karlsruhe Baden Baden-Palma de Mallorca*

(430) LaudaMotion operates on the Stuttgart-Palma de Mallorca airport pair, and Ryanair on the Stuttgart-Palma de Mallorca airport pair and on the Karlsruhe/Baden-Baden-Palma de Mallorca airport pair in the Summer 2018 IATA Season.<sup>372</sup>

(431) The Stuttgart-Palma de Mallorca airport pair will not be operated by LaudaMotion in the Winter 2018/2019 IATA Season.<sup>373</sup> The competitive assessment therefore focuses on the summer season.

(432) The merged entity's combined market share amounts to 32% on the Stuttgart-Palma de Mallorca airport pair. Competitors are Lufthansa Group (36%), TUI (13%) and Condor (10%).<sup>374</sup>

(433) If Stuttgart and Karlsruhe/Baden-Baden airports are considered substitutable, the merged entity's combined market share amounts to 34%. Its biggest competitors are the Lufthansa Group (35%), TUI (15%) and Condor (8%).<sup>375</sup>

(434) Considering only LaudaMotion's operations using its own flight capacity, LaudaMotion operates six frequencies less on the Stuttgart – Palma de Mallorca airport pair.<sup>376</sup> Based on this, the merged entity's combined market shares would amount to 27% on the Stuttgart-Palma de Mallorca airport pair. Its biggest competitors would be the Lufthansa Group (39%), TUI (14%) and Condor (10%). If Stuttgart and Karlsruhe/Baden-Baden airport are considered substitutable, the merged entity's combined market shares would amount to 31%, with its biggest competitors being the Lufthansa Group (38%), TUI (17%) and Condor (8%).

(435) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive

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<sup>372</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>373</sup> Form CO, paragraph 103 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>374</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>375</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>376</sup> Form CO, paragraph 163.

constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>377</sup>

- (436) No substantiated concern regarding this route was received in the context of the market investigation.
- (437) Post-Transaction, there will be several airlines left to operate on the route in the Summer 2018 IATA Season (including the merged entity, Lufthansa Group, TUI and Condor) as well as in the Winter 2018/2019 IATA Season (including the merged entity, Lufthansa Group, Condor and TUI). The merged entity will face sufficient competitive pressure from its competitors.
- (438) Therefore, the Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (439) In the light of the above and of the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Stuttgart/Karlsruhe Baden Baden-Palma de Mallorca route under any plausible market definition.

#### *7.1.15. Vienna/Bratislava-Paphos/Larnaca*

- (440) LaudaMotion will be operating on the Vienna-Larnaca airport pair, and Ryanair on the Bratislava-Paphos airport pair in the Winter 2018/2019 IATA Season.<sup>378</sup>
- (441) Ryanair and LaudaMotion thus only overlap if Vienna and Bratislava airport are considered substitutable.
- (442) The Vienna/Bratislava-Paphos/Larnaca route does not constitute an affected market in the Summer 2018 IATA Season. The competitive assessment therefore focuses on the winter season.
- (443) The merged entity's combined market share amounts to 29% on the Vienna/Bratislava-Paphos/Larnaca route. Its competitors are Lufthansa Group (48%) and Wizz Air (23%).<sup>379</sup>
- (444) The Commission's investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>380</sup>
- (445) Post-Transaction, there will be three airlines left to operate on the route. The merged entity will face sufficient competitive pressure from its competitors.

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<sup>377</sup> See Section 6.3 of this decision.

<sup>378</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>379</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>380</sup> See Section 6.3 of this decision.

- (446) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (447) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Vienna/Bratislava-Paphos/Larnaca route under any plausible market definition.

#### 7.1.16. Vienna/Bratislava-Marrakech

##### 7.1.16.1. Operations

- (448) LaudaMotion will operate on the Vienna-Marrakech airport pair, and Ryanair on the Bratislava-Marrakech airport pair in the Winter 2018/2019 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Vienna and Bratislava airport are considered substitutable.
- (449) The route is not operated by Ryanair or LaudaMotion in the Summer 2018 IATA Season.<sup>381</sup> The competitive assessment therefore focuses on the winter season.
- (450) The total capacity on the Vienna/Bratislava-Marrakech route is around 48 800 in the Winter 2018/2019 IATA Season.

##### 7.1.16.2. Market shares Winter 2018/2019 IATA Season

- (451) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Winter 2018/2019 IATA Season on the Vienna/Bratislava-Marrakech route.<sup>382</sup>

<b>Winter 2018/2019 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	16 254	2	33%
LaudaMotion	16 240	2	33%
<b>Total</b>	<b>32 494</b>	<b>4</b>	<b>67%<sup>383</sup></b>

- (452) The merged entity's competitor in the Winter 2018/2019 IATA Season is Lufthansa Group with a market share of 33%, which is operating the Vienna-Marrakech route.

<sup>381</sup> Form CO, paragraph 81 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>382</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>383</sup> Rounding effects.

### 7.1.16.3. Further competitive assessment

- (453) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Vienna/Bratislava-Marrakech route post-Transaction.<sup>384</sup> This was also stated by the airport manager of Vienna airport who does not expect the proposed merger to increase prices.<sup>385</sup> The airport manager of Bratislava airport considers that there is "*hardly any or minimal risk of price increase*".<sup>386</sup>
- (454) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>387</sup>
- (455) Post-Transaction, the merged entity will face sufficient competitive pressure from Lufthansa Group.
- (456) In addition, the market investigation has shown that Air Arabia is scheduled to operate on the Vienna-Marrakech airport pair in Winter 2018/2019 IATA Season with two weekly frequencies for which seats are already on sale. The Commission considers that Air Arabia would further constrain the merged entity post-Transaction. Therefore, post-Transaction, there will be three airlines left to operate on the route.

### 7.1.16.4. Conclusion

- (457) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (458) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Vienna/Bratislava-Marrakech route under any plausible market definition.

### 7.1.17. Vienna/Bratislava-Malaga

#### 7.1.17.1. Operations

- (459) LaudaMotion operates on the Vienna-Malaga airport pair, and Ryanair on the Bratislava-Malaga airport pair in the Summer 2018 IATA Season. Ryanair's and

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<sup>384</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>385</sup> See non-confidential minutes of a conference call with Vienna airport of 28 May 2018.

<sup>386</sup> See non-confidential minutes of a conference call with Bratislava airport of 24 May 2018.

<sup>387</sup> See Section 6.3 of this decision.

LaudaMotion's activities thus only overlap if Vienna and Bratislava airport are considered substitutable.

(460) The route will not be operated by Ryanair in the Winter 2018/2019 IATA Season.<sup>388</sup> The competitive assessment therefore focuses on the summer season.

(461) The total capacity on the Vienna/Bratislava-Malaga route is around 93 900 in the Summer 2018 IATA Season.

#### 7.1.17.2. Market shares Summer 2018 IATA Season

(462) The following table indicates the capacity, the weekly frequencies<sup>389</sup> and the market shares of Ryanair and LaudaMotion in the Summer 2018 IATA Season on the Vienna/Bratislava-Malaga route.<sup>390</sup>

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	23 436	2	25%
LaudaMotion	15 480	2	16%
<b>Total</b>	<b>38 916</b>	<b>4</b>	<b>41%</b>

(463) The merged entity's competitors in the Summer 2018 IATA Season are Lufthansa Group with a market share of 27% and Wizz Air with a market share of 20%, who are operating on the Vienna-Malaga airport pair, as well as Travel Service (SmartWings) with a market share of 12% who is operating on the Bratislava-Malaga airport pair.

#### 7.1.17.3. Further competitive assessment

(464) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Vienna/Bratislava-Malaga route post-Transaction.<sup>391</sup> This was also stated by the airport manager of Vienna airport who does not expect the proposed merger to increase prices.<sup>392</sup> The airport manager of

<sup>388</sup> Form CO, paragraph 81 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>389</sup> A competing airline submitted market shares based on frequencies. These data do not affect the Commission's conclusion since the combined market share of the Parties provided by this competitor would be lower than the combined market share based on capacity as mentioned in the table.

<sup>390</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>391</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>392</sup> See non-confidential minutes of a conference call with Vienna airport of 28 May 2018.

Bratislava airport considers that there is "hardly any or minimal risk of price increase".<sup>393</sup>

- (465) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>394</sup>
- (466) In addition, the market investigation has shown that Level, a new low-cost Austrian subsidiary of IAG, is scheduled to operate on the Vienna-Malaga airport pair in the Summer 2018 IATA Season with three weekly frequencies as of 30 July 2018.<sup>395</sup>
- (467) Post-Transaction, there will be five airlines left to operate on the route. The merged entity will face sufficient competitive pressure from Lufthansa Group, Level, Wizz Air and Travel Service.

#### 7.1.17.4. Conclusion

- (468) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (469) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Vienna/Bratislava – Malaga route under any plausible market definition.

#### 7.1.18. *Vienna/Bratislava-Palma de Mallorca*

##### 7.1.18.1. Operations

- (470) LaudaMotion operates on the Vienna-Palma de Mallorca airport pair, and Ryanair on the Bratislava-Palma de Mallorca airport pair in the Summer 2018 IATA Season. Ryanair's and LaudaMotion's activities thus only overlap if Vienna and Bratislava airport are considered substitutable.
- (471) The route will not be operated by Ryanair in the Winter 2018/2019 IATA Season.<sup>396</sup> The competitive assessment therefore focuses on the summer season.
- (472) The total capacity on the Vienna/Bratislava-Palma de Mallorca route is around 395 300 in the Summer 2018 IATA Season.

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<sup>393</sup> See non-confidential minutes of a conference call with Bratislava airport of 24 May 2018.

<sup>394</sup> See Section 6.3 of this decision.

<sup>395</sup> See press release of IAG of 28 June 2018: "*IAG launches new Austrian subsidiary*".

<sup>396</sup> Form CO, paragraph 81 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

### 7.1.18.2. Market shares Summer 2018 IATA Season

(473) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion in the Summer 2018 IATA on the Vienna/Bratislava to Palma de Mallorca route.<sup>397; 398</sup>

Summer 2018 IATA Season	Capacity	Weekly frequency	Market shares (capacity)
Ryanair	23 436	2	6%
LaudaMotion	181 440	23	46%
<b>Total</b>	<b>204 876</b>	<b>25</b>	<b>52%</b>

(474) The merged entity's biggest competitors in the Summer 2018 IATA Season are Lufthansa Group with a market share of 36%, IAG with a market share of 8% who are operating on the Vienna-Palma de Mallorca airport pair as well as and Travel Service (SmartWings) with a market share of 5% who is operating on the Bratislava-Palma de Mallorca airport pair.

(475) Considering only LaudaMotion's operations on the Vienna-Palma de Mallorca airport pair using its own flight capacity, LaudaMotion would have operated 14 frequencies less and operated only 9 frequencies.<sup>399</sup> Based on this, the merged entity's combined market share would amount to 41%, Lufthansa Group's market share to 43% and IAG's market share to 10%.

### 7.1.18.3. Further competitive assessment

(476) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on the Vienna/Bratislava-Palma de Mallorca route post-Transaction.<sup>400</sup> This was also stated by the airport manager of Vienna airport who does not expect the proposed merger to increase prices.<sup>401</sup> The airport manager of Bratislava airport considers that there is "*hardly any or minimal risk of price increase*".<sup>402</sup>

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<sup>397</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>398</sup> A competing airline submitted market shares based on frequencies. Even without considering the distinction between frequencies operated by LaudaMotion using its own fleet and those operated using Ryanair's flight capacity, the Parties' combined market share would be only slightly superior according to this competitor (53%), so that the Commission's conclusion is not affected.

<sup>399</sup> Form CO, para. 163.

<sup>400</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>401</sup> See non-confidential minutes of a conference call with Vienna airport of 28 May 2018.

<sup>402</sup> See non-confidential minutes of a conference call with Bratislava airport of 24 May 2018.

- (477) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>403</sup>
- (478) The market investigation has shown that Level, a new low-cost Austrian subsidiary of IAG, is scheduled to operate on the Vienna- Palma de Mallorca airport pair in the Summer 2018 IATA Season with seven weekly frequencies as of 17 July 2018.<sup>404</sup>
- (479) Post-Transaction, there will be four airlines left to operate on the route. The merged entity will face sufficient competitive pressure especially from Lufthansa Group, but also from IAG and Travel Service.

#### 7.1.18.4. Conclusion

- (480) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (481) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Vienna/Bratislava-Palma de Mallorca route under any plausible market definition.

#### 7.1.19. Frankfurt/Frankfurt Hahn-Palma de Mallorca

- (482) Ryanair and LaudaMotion both operate on the Frankfurt-Palma de Mallorca airport pair in the Summer 2018 IATA Season.<sup>405</sup>
- (483) The Frankfurt-Palma de Mallorca airport pair will not be operated by LaudaMotion in the Winter 2018/2019 IATA Season.<sup>406</sup> The competitive assessment therefore focuses on the summer season.
- (484) The total capacity offered on the Frankfurt-Palma de Mallorca airport pair is around 895 500 in the Summer 2018 IATA Season.
- (485) While Laudamotion only operates on the Frankfurt-Palma de Mallorca airport pair, Ryanair also operates on the Frankfurt Hahn-Palma de Mallorca airport pair in the Summer 2018 IATA Season.

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<sup>403</sup> See Section 6.3 of this decision.

<sup>404</sup> See press release of IAG of 28 June 2018: "*IAG launches new Austrian subsidiary*".

<sup>405</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>406</sup> Form CO, paragraph 76 and Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.



(486) The following table indicates the capacity, the weekly frequencies and the market shares of Ryanair and LaudaMotion as well as of its competitors for the Summer 2018 IATA Season on the Frankfurt-Palma de Mallorca airport pair.<sup>407</sup>

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<sup>407</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares</b>
Ryanair	128 898	11	14%
LaudaMotion	207 816	21	23%
<b>Total</b>	<b>336 714</b>	<b>32</b>	<b>38%<sup>408</sup></b>

(487) The merged entity's competitors are Lufthansa Group with a market share of 25%, Condor with a market share of 25% and TUI with a market share of 11%.

(488) The following table indicates the merged entity's capacity, the weekly frequencies and market shares in the Summer 2018 IATA Season in a broader catchment area comprising Frankfurt and Frankfurt Hahn airports.<sup>409</sup>

<b>Summer 2018 IATA Season</b>	<b>Capacity</b>	<b>Weekly frequency</b>	<b>Market shares (capacity)</b>
Ryanair	257 796	22	25%
LaudaMotion	207 816	21	20%
<b>Total</b>	<b>465 612</b>	<b>43</b>	<b>45%<sup>410</sup></b>

(489) The merged entity's competitors are Condor and Lufthansa Group, both with a market share of 22% as well as TUI with a market share of 10%.

(490) The merged entity's combined market shares are highest if a broader catchment area comprising Frankfurt and Frankfurt Hahn airports is considered. However, the merged entity's market position as well as the one of its competitors does not change significantly irrespective of whether Frankfurt airport or Frankfurt and Frankfurt Hahn airports are considered.

(491) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient

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<sup>408</sup> Rounding effects.

<sup>409</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

<sup>410</sup> A competing airline submitted market shares based on frequencies. The Parties' combined market share would be only slightly superior according to this competitor (49%), so that the Commission's conclusion is not affected.

to prevent it from raising prices on Frankfurt/Frankfurt Hahn-Palma de Mallorca route post-Transaction.<sup>411</sup>

- (492) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>412</sup>
- (493) Post-Transaction, there will be four airlines left to operate on the route. The merged entity will face sufficient competitive pressure especially from Condor and Lufthansa Group.
- (494) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity post-Transaction would be sufficient to prevent it from raising prices post-Transaction.
- (495) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Frankfurt/Frankfurt Hahn- Palma de Mallorca route under any plausible market definition.

#### *7.1.20. Berlin Tegel/Berlin Schoenefeld-Palma de Mallorca*

- (496) Ryanair and LaudaMotion both operate on the Berlin Tegel-Palma de Mallorca airport pair in the Summer 2018 IATA Season.<sup>413</sup> Ryanair also operates on the Berlin Schoenefeld-Palma de Mallorca airport pair in the Summer 2018 IATA Season.
- (497) The Berlin Tegel-Palma de Mallorca airport pair will not be operated by LaudaMotion in the Winter 2018/2019 IATA Season using its own flight capacity and is thus not a relevant route in the Winter 2018-2019 IATA Season.<sup>414</sup> The competitive assessment therefore focuses on the summer season.
- (498) The merged entity's combined market share amounts to 24% on the Berlin Tegel-Palma de Mallorca airport pair. Its biggest competitors are easyJet (43%), Lufthansa Group (22%) and Germania (6%).<sup>415</sup>

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<sup>411</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>412</sup> See Section 6.3 of this decision.

<sup>413</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018. The O&D assessment for the Berlin-Palma de Mallorca route is carried out for the sake of caution, considering that it appeared in the flight schedule published pre-Transaction by LaudaMotion for the Summer 2018 IATA Season but did not appear in later fleet scenarios (Form CO, Annex 18).

<sup>414</sup> Form CO, paragraph 170.

<sup>415</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018.

- (499) If Berlin Tegel and Berlin Schoenefeld airports are considered substitutable, the merged entity's combined market share amounts to 25%. Its biggest competitors are easyJet (44%), Lufthansa Group (17%) and Germania (7%).<sup>416; 417</sup>
- (500) The majority of respondents to the market investigation that expressed a view indicated that the competitive constraints on the merged entity would be sufficient to prevent it from raising prices on Berlin Tegel/Berlin Schoenefeld-Palma de Mallorca route post-Transaction.<sup>418</sup>
- (501) The Commission's market investigation has confirmed, as explained above, that LaudaMotion's market share based on capacity overstates the weak competitive constraint LaudaMotion would likely have exerted, due to the lack of material financial and operational means, absent the Transaction.<sup>419</sup>
- (502) Post-Transaction, there will be several airlines left to operate on the route, including the merged entity, Lufthansa Group, easyJet and Germania. The merged entity will face sufficient competitive pressure from its competitors, especially from easyJet and the Lufthansa Group.
- (503) The Commission considers that irrespective of the precise market definition, the competitive constraints on the merged entity would be sufficient to prevent it from raising prices post-Transaction.
- (504) In the light of the above and of the other available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the Berlin Tegel/Berlin Schoenefeld-Palma de Mallorca route under any plausible market definition.

#### *7.1.21. Conclusion*

- (505) In light of the above, the Commission concludes that, under the O&D approach, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the relevant routes, under any plausible market definition.

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<sup>416</sup> Form CO, Annex 12, in the revised version submitted as a reply of Ryanair to RFI 6 of 26 June 2018 and reply of Ryanair to RFI 8 of 28 June 2018.

<sup>417</sup> A competing airline submitted market shares based on frequencies. The Parties' combined market share would be only slightly superior according to this competitor (28%), so that the Commission's conclusion is not affected.

<sup>418</sup> Replies to eQ1 – Questionnaire to competitors, question 12; eQ2 – Questionnaire to travel agents, question 4; eQ3 – Questionnaire to consumer associations, question 4.

<sup>419</sup> See Section 6.3 of this decision.

## 7.2. Assessment under the airport-by-airport approach

### 7.2.1. Introduction

- (506) According to paragraph 36 of the Horizontal Merger Guidelines,<sup>420</sup> *"some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. In such a case, competitors may not, either individually or in the aggregate, be in a position to constrain the merged entity to such a degree that it would not increase prices or take other actions detrimental to competition. For instance, the merged entity may have such a degree of control, or influence over, the supply of inputs or distribution possibilities that expansion or entry by rival firms may be more costly."*
- (507) Accordingly, the Commission will first assess whether the Transaction, by reinforcing Ryanair's slot holding at a number of airports and granting it broader access to their infrastructure, gives Ryanair the ability and incentive to prevent other air carriers from getting access to airport infrastructure and therefore to the markets for the provision of passenger air transport services from those airports, preventing or reducing competition on those markets (sections 7.2.2 and 7.2.3). The Commission will then analyse the overall effects of Ryanair's slot holding position on the ability of Ryanair's rivals to compete at the relevant airports (section 7.2.4).

### 7.2.2. Ability of Ryanair to foreclose access to the markets for the provision of passenger air transport services

#### 7.2.2.1. Conditions for the ability to foreclose access

- (508) For Ryanair to be able to foreclose its competitors post-Transaction, the following conditions must be fulfilled: (i) the slots that Ryanair would hold post-Transaction represent a significant share of the airport capacity, in particular at peak times; (ii) the Transaction has a material impact on Ryanair's slot holding at the airport, in particular at peak times; and (iii) Ryanair's slot holding could negatively affect the overall availability of slots as an input for the passenger air transport markets to or from the relevant airport.
- (509) As the slots that Ryanair would hold post-Transaction do not represent a significant share of the capacity of any airport and as the Transaction has no material impact on Ryanair's slot holding at any airport, as described in section 7.2.2.3 below, it is not necessary to assess whether the third condition is fulfilled.
- (510) The Commission also considered whether rival firms would be likely to deploy effective and timely counter-strategies in case of foreclosure. In this case, the Commission notes that there are limited effective and timely counter-strategies that Ryanair's competitors would be likely to deploy in the case of a foreclosure strategy by Ryanair. There is no possibility for an air carrier to be less reliant on

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<sup>420</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2017, p. 5.

access to airport infrastructure and very limited possibility to sponsor the expansion of airport capacity or the opening of new airports.<sup>421</sup>

- (511) In light of the above, the Commission will assess the ability of Ryanair post-Transaction to foreclose access to the markets for the provision of passenger air transport at the relevant airports by taking account of the following three factors together: (i) the share of slots held by Ryanair post-Transaction at the airport or at substitutable airports being high, in particular at peak times and (ii) the gross increment in Ryanair's slot holding brought about by the Transaction at the airport or at the substitutable airports being material, in particular at peak times. Considering that Ryanair's slot holdings at the relevant airports vary between the Summer and Winter IATA Seasons, the Commission will carry out separate assessments for each IATA Season.
- (512) Before conducting an airport-by-airport assessment of Ryanair's ability to foreclose access to the markets for the provision of passenger air transport (section 6.2.2.3), the Commission will detail the methodologies for determining Ryanair's slot holding post-Transaction and the increment brought about by the Transaction.

#### 7.2.2.2. Methodologies

- (513) A slot holding is defined as the ratio between the number of slots held by an air carrier (or the air carriers that are part of the same group) at an airport and the total available slots at that airport (i.e. the airport runway capacity).
- (514) Ryanair has estimated its slot holding and LaudaMotion's slot holding at an airport on the basis of statistical data collected by the Online Coordination System and e-Airportslots.aero, as well as LaudaMotion's internal slot management system in order to determine the slots for which LaudaMotion had applied in the Winter 2018/2019 IATA Season.<sup>422</sup>
- (515) The Commission has calculated two values for Ryanair's slot holding post-Transaction: (i) its average slot holding during the opening hours of the airport, and (ii) its average slot holding during peak times.

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<sup>421</sup> Without prejudice to the exceptional cases of joint ventures between an airport manager and an airline (see e.g. the joint venture between Lufthansa and Flughafen München GmbH, the company managing Munich airport).

<sup>422</sup> Reply of Ryanair to RFI 8 of 28 June 2018.

- (516) In order to adopt a conservative approach, the Commission has calculated Ryanair's combined highest slot holding at any given hour band throughout the whole week (including any peak hour), which exceeds its combined average slot holding during peak times. In addition, it is noteworthy that the data used for the calculation of the average slot holding and of the highest slot holding in Winter IATA Season over-state LaudaMotion's slot holdings.<sup>423</sup>
- (517) The "gross increment" of Ryanair's slot holding corresponds to the difference between Ryanair's slot holding post-Transaction and Ryanair's slot holding pre-Transaction.<sup>424</sup>
- (518) To assess the impact of the Transaction, the Commission therefore considers Ryanair's slot holding post-Transaction, as well as the gross increment in Ryanair's slot holding as a result of the Transaction.

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<sup>423</sup> LaudaMotion's slot holdings data for the Winter 2018/2019 IATA Season are based on the number of slots for which LaudaMotion has applied and for which LaudaMotion does not necessarily have historical rights. Indeed, in Spain, Portugal, Germany and Switzerland, LaudaMotion will retain historical rights only in respect of slots from the beginning of the Winter 2018/2019 IATA Season until mid-December 2018. However, on a conservative basis, Ryanair has submitted slot holdings for LaudaMotion under the hypothesis it would hold historical rights for the whole Winter IATA Season. (Form CO, paragraphs 129 and 134).

<sup>424</sup> As explained in paragraphs 69 *et seq.* above, the net increment is the difference between the number of slots obtained through the Transaction and the number of slots that Ryanair would have obtained in the situation absent the Transaction. Considering the two possible scenarios absent the Transaction, the net increment brought about by the Transaction would be either equal to or lower than the gross increment.

### 7.2.2.3. Airport-by-airport assessment

- (519) Through the Transaction, Ryanair would obtain slots (and historic rights thereto) at 22 coordinated (Level 3) airports in Summer 2018 IATA Season<sup>425</sup> and at 10 coordinated (Level 3) airports in Winter 2018/2019 IATA Season.<sup>426</sup> Ryanair already operates at 17 of these airports in Summer 2018 IATA Season<sup>427</sup> and at 7 airports in Winter 2018/2019 IATA Season.<sup>428</sup> Through the Transaction, Ryanair would expand its slot portfolio at 17 airports in Summer 2018 IATA Season and at 7 airports in Winter 2018/2019 IATA Season.<sup>429</sup>
- (520) Therefore, the Commission will assess Ryanair's slot holding in Summer IATA Season at these 17 overlap coordinated airports and in Winter IATA Season at these 7 overlap coordinated airports.

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<sup>425</sup> These are: Vienna, Berlin Tegel, Duesseldorf, Frankfurt, Hamburg, Munich, Stuttgart, Corfu, Chania, Kos, Kalamata, Santorini, Rhodes, Catania, Faro, Lanzarote, Malaga, Fuerteventura, Ibiza, Gran Canaria, Palma de Mallorca and Tenerife Sur airports.

<sup>426</sup> These are: Vienna, Innsbruck, Berlin Tegel, Duesseldorf, Lanzarote, Fuerteventura, Gran Canaria, Malaga, Palma de Mallorca and Tenerife Sur airports.

<sup>427</sup> In Summer 2018 IATA Season, it must be noted that Ryanair has been allocated slots for Summer 2018 IATA Season and Winter 2018/2019 IATA Season at Duesseldorf but does not have historic rights (Form CO, paragraph 127 and reply of Ryanair to RFI 8 of 28 June 2018). Accordingly, the Commission considers that Ryanair does not have a slot holding position at Duesseldorf airport. Should the Commission consider that Ryanair does have a slot holding position at Duesseldorf airport, the competitive assessment would not be impacted, given Lufthansa's extensive slot position at Duesseldorf airport (see case M.8633 – *Lufthansa/Certain Air Berlin assets*, paragraphs 202 *et seq.*). Likewise, Ryanair does not have historic rights at Munich (Form CO, paragraph 86). Besides, Ryanair does not operate from Kos and Kalamata airports. As explained above in paragraph (238) *et seq.*, the market for airport infrastructure is limited to Vienna airport, where Ryanair is not active. Therefore, Vienna, Duesseldorf, Munich, Kos and Kalamata airports do not constitute overlap airports for the purpose of the airport-by-airport assessment in Summer 2018 IATA Season.

<sup>428</sup> In Winter 2018/2019 IATA Season, Ryanair does not have historic rights at Duesseldorf (see reply of Ryanair to RFI 8 of 28 June 2018). Therefore, the Commission does not consider that Ryanair holds a slot holding position at Duesseldorf (see footnote 427). In addition, Ryanair will not operate from Innsbruck in Winter 2018/2019 IATA Season. Furthermore, as explained above in paragraph (238), the geographic market for airport infrastructure is limited to Vienna airport, where Ryanair is not active in Winter 2018/2019 IATA Season. Therefore, Vienna, Duesseldorf and Innsbruck airports do not constitute overlap airports for the purpose of the airport-by-airport assessment in Winter 2018/2019 IATA Season.

<sup>429</sup> In Summer 2018 IATA Season, these are: Berlin, Frankfurt, Hamburg, Stuttgart, Corfu, Chania, Santorini, Rhodes, Catania, Faro, Lanzarote, Malaga, Fuerteventura, Ibiza, Gran Canaria, Palma de Mallorca and Tenerife Sur airports.

In Winter 2018/2019 IATA Season, these are: Berlin, Lanzarote, Malaga, Fuerteventura, Gran Canaria, Palma de Mallorca and Tenerife Sur airports.



**Table 12 - Slot holding<sup>430</sup> - Summer**

Airport	Average slot holding			Highest slot holding		
	Ryanair	LaudaMotion	Combined	Ryanair	LaudaMotion	Combined
Berlin <sup>431</sup>	6%	1%	7%	10%	3%	13% Hour band 20:00-20:59
Frankfurt	1%	0%	1%	2%	1%	3% Hour band 20:00-20:59
Hamburg	4%	0%	4%	14%	0%	14% Hour band 8:00-8:59
Stuttgart	0%	1%	1%	2%	3%	6% Hour band 14:00-14:59
Corfu	2%	0%	2%	7%	0%	7% Hour band 17:00-17:59
Chania	9%	0%	9%	29%	0%	29% Hour band 17:00-17:59
Santorini	1%	0%	1%	14%	1%	15% Hour band 21:00-21:59
Rhodes	1%	0%	2%	9%	1%	10% Hour band 15:00-15:59

<sup>430</sup> Rounding effects.

<sup>431</sup> In Summer IATA Season, Berlin Schoenefeld airport is open 24/24 while Berlin Tegel airport is open between 4.00 UTC and 20:59 UTC. For better comparison, the two Berlin airports are considered as open between 3.00 UTC and 21:59 UTC. It is noteworthy that the number of slots used at Berlin Schoenefeld airport outside these hour bands is negligible.

Catania	10%	0%	10%	29%	0%	29% Hour band 13:00-13:59
Faro	10%	0%	11%	16%	0%	16% Hour band 14:00-14:59
Lanzarote	6%	0%	7%	26%	0%	26% Hour band 10:00-10:59
Malaga	8%	0%	8%	31%	0%	31% Hour band 19:00-19:59
Fuerteventura	4%	0%	4%	10%	0%	11% % Hour band 10:00-10:59
Ibiza <sup>432</sup>	7%	1%	7%	18%	0%	19% Hour band 20:00-20:59
Gran Canaria	3%	0%	3%	10%	1%	11% Hour band 16:00-16:59
Palma de Mallorca	6%	4%	9%	13%	13%	26% Hour band 18:00-18:59
Tenerife Sur	5%	0%	5%	20%	1%	21% Hour band 10:00-10:59

Source: Form CO, Annex 13 as revised in the version submitted as a reply to RFI 8 of 28 June 2018

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<sup>432</sup> According to an email sent by Ryanair to the Commission dated 7 June 2018, some of LaudaMotion's slots at Ibiza airport will be operated by Ryanair in order to preserve LaudaMotion's historical rights at this airport. However, given that LaudaMotion has a 1% slot holding on average at Ibiza airport, this practice is unlikely to have any impact on the market structure and on the ability of Ryanair's competitors to compete on the routes from and to Ibiza.

- (521) In Summer 2018 IATA Season, Ryanair estimates that slot holding post-Transaction at each of the overlap airports would be no more than 11% on average during the relevant airport's opening hours, with a gross increment of 4% at most. Such levels of slot holding indicate that the Transaction is unlikely to be problematic.
- (522) Ryanair's highest slot holding during any specific hour band at each of the overlap airports would not exceed 31% with a gross increment of 13% at most.
- (523) Therefore, the level of Ryanair's slot holdings post-Transaction is unlikely to give rise to competition concerns. Furthermore, the limited increment in slot holdings brought about by the Transaction at the overlap airports is unlikely to have any material impact on the slot holding of Ryanair at these airports.

**Table 13 - Slot holding<sup>433</sup> - Winter**

Airport	Average slot holding			Highest slot holding		
	Ryanair	LaudaMotion	Combined	Ryanair	LaudaMotion	Combined
Berlin <sup>434</sup>	6%	1%	7%	8%	5%	13% Hour band 5:00-5:59
Lanzarote	6%	1%	7%	21%	0%	21% Hour band 11:00-11:59
Malaga	5%	0%	5%	10%	1%	10% Hour band 10:00-10:59
Fuerteventura	4%	1%	4%	13%	3%	16% Hour band 10:00-10:59
Gran Canaria	3%	1%	3%	5%	4%	9% Hour band 10:00-10:59
Palma de Mallorca	2%	0%	2%	2%	4%	6% Hour band 18:00-18:59
Tenerife Sur	5%	1%	5%	16%	2%	18% Hour band 16:00-16:59

Source: Form CO, Annex 13 as revised in the version submitted as a reply to RFI 8 of 28 June 2018

(524) In Winter 2018/2019 IATA Season, Ryanair estimates that slot holding post-Transaction at each of the overlap airports would be no more than 7% on average during the relevant airport's opening hours, with a gross increment of 1% at most.

<sup>433</sup> Rounding effects.

<sup>434</sup> In Winter IATA Season, Berlin Schoenefeld airport is open 24/24 while Berlin Tegel airport is open between 5.00 UTC and 21:59 UTC. For better comparison, the two Berlin airports are considered as open between 4.00 UTC and 22:59 UTC. It is noteworthy that the number of slots used at Berlin Schoenefeld airport outside these hour bands is negligible.

Such levels of slot holding indicate that the Transaction is unlikely to be problematic.

- (525) Ryanair's highest slot holding during any specific hour band at each of the overlap airports would not exceed 21% with a gross increment of 5% at most.
- (526) Therefore, the level of Ryanair's slot holdings post-Transaction is unlikely to give rise to competition concerns. Furthermore, the limited increment in slot holdings brought about by the Transaction at the overlap airports is unlikely to have any material impact on the slot holding of Ryanair at these airports.

#### 7.2.2.4. Conclusion

- (527) In light of the above, given Ryanair's slot holding at the relevant airports post-Transaction during the relevant IATA Seasons, the Commission considers that Ryanair would not have a dominant position at these airports and would likely not have the ability to foreclose competitors' access to the markets for the provision of passenger air transport services.

#### 7.2.3. *Incentive of Ryanair to foreclose access to the markets for the provision of passenger air transport services*

- (528) Although the Commission considers that Ryanair will not have the ability to foreclose its competitors in either IATA Season, the Commission will briefly assess whether Ryanair would have the incentive to foreclose access to markets for the provision of passenger air transport.
- (529) A dominant carrier at a relevant airport would in principle have a strong incentive to pursue a foreclosure strategy, as any new service or expansion by another carrier would be likely to introduce or increase competition on one of the dominant carrier's routes. Such dominant carrier would have a greater incentive than any other carrier at the airport to keep slots out of reach of other carriers. The incentive to foreclose would also grow with the increased size of the slot portfolio it would control at the airport.
- (530) As noted in Section 6.2.2.2 above, Ryanair will expand its slot holdings at 17 coordinated airports. Therefore, the Commission needs to analyse the market share of the merged entity in the provision of passenger air transport at the relevant airports.
- (531) The Commission notes that the presence of Ryanair and LaudaMotion at these airports is limited. Indeed, LaudaMotion does not have a base at any of the relevant airports, except for Frankfurt airport, where LaudaMotion has based one aircraft.<sup>435</sup> Ryanair has a base at only 13 of the relevant airports: Lanzarote (3 aircraft), Malaga (9 aircraft), Corfu (1 aircraft), Catania (3 aircraft), Faro (7 aircraft), Frankfurt (10 aircraft), Hamburg (2 aircraft), Ibiza (1 aircraft), Gran Canaria (4 aircraft), Palma de Mallorca (10 aircraft), Berlin Schoenefeld (9 aircraft) and Tenerife Sur (4 aircraft).<sup>436</sup> In addition, at most of the airports where

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<sup>435</sup> Form CO, paragraph 300.

<sup>436</sup> See Form CO, Annex 13.

LaudaMotion or Ryanair have a base, the Parties are competing with air carriers that operate a fleet which is at least comparable in size to the fleet of LaudaMotion or Ryanair.<sup>437</sup>

- (532) Finally, respondents to the market investigation have not raised substantial concerns according to which Ryanair had previously engaged or would engage in exclusionary practices such as "slot hoarding",<sup>438</sup> "slot babysitting"<sup>439</sup> or use of its "slot shuffling power".<sup>440</sup>
- (533) Given the relatively limited size of Ryanair's and LaudaMotion's fleets currently based at the relevant airports, the Commission considers that Ryanair would not have the incentive to foreclose competitors' access to the markets for the provision of passenger air transport services at any of the relevant airports, during any of the relevant IATA Season.

#### 7.2.4. Overall effect on competition for passenger air transport

- (534) Effective competition would be significantly harmed if the foreclosed air carriers played a sufficiently important role in the competitive process on the passenger air transport markets from and to the overlap airports. The higher the proportion of carriers which would be foreclosed on these markets, the more likely it would be that the merger would result in a significant price increase in the passenger air transport markets and, therefore, to significantly impede effective competition therein.
- (535) On that basis, the Commission will assess whether the strengthening of Ryanair's slot holdings post-Transaction would result in less effective competition for passenger air transport to or from the relevant overlap airports.
- (536) The Commission notes that, when an air carrier holds a significant slot portfolio at a given airport while the remaining slot holding is very fragmented and slots are held by a large number of small air carriers, the latter are unable to translate these slots into a viable alternative to dominant air carriers.<sup>441</sup> However, as noted in section 7.2.2 above, Ryanair will not have a dominant position post-

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<sup>437</sup> Replies to eQ1 – Questionnaire to Competitors, question 3. No responsive information has been gathered as regards Corfu and Lanzarote airports.

<sup>438</sup> "Slot hoarding" involves the operation of small aircraft and/or low load factors in order to keep slots rather than lose them under the "use-it-or-lose-it" principle described in section 6.1.1.2.

<sup>439</sup> "Slot babysitting" involves the transfer of slots to non-competing airlines, such as partner airlines within an alliance before shifting them to uses that are more profitable. As indicated in footnote 432, Ryanair may be seen as "babysitting" some of LaudaMotion's slots at Ibiza. Nevertheless, this is a temporary, exceptional measure which, considering LaudaMotion's limited slot holding, does not indicate a conduct aimed at preventing entry or expansion of other carriers at the airport.

<sup>440</sup> "Slot shuffling power" refers to the ability to move a flight to a timing close to the timing envisaged by a new entrant.

<sup>441</sup> See paragraph 27 of the Explanatory Memorandum to the Commission Proposal for a Regulation of the European Parliament and of the Council on common rules for the allocation of slots at European Union airports (COM/2011/827 final of 01 December 2011).

Transaction at the relevant airports and is consequently unlikely to prevent competitors from holding a large portfolio of slots at these airports.

- (537) The Commission notes that Ryanair will continue to face strong competition at the relevant airports. For instance, at Palma de Mallorca airport, where Ryanair's slot holding post-Transaction would be 9% in Summer 2018 IATA Season and 2% in Winter 2018/2019 IATA Season, it will compete with about 70 airlines. Among them, Vueling, easyJet, Eurowings and Air Europa each transported between 7% and 8% of the passengers, while Ryanair accounted for 15% of the passenger share in 2017.<sup>442</sup> These competitors will likely have the ability to react to any anti-competitive behaviour by Ryanair. It is also noteworthy that five airlines entered the market for the provision of passenger air transport services to or from Palma de Mallorca in 2017.<sup>443</sup> Likewise, at Lanzarote airport, Ryanair will compete against more than 40 airlines. While Ryanair's share in terms of passengers transported in 2017 reaches 24%, Vueling and easyJet respectively accounted for 19% and 7% of the passenger share. These competitors will likely have the ability to react to any anti-competitive behaviour by the merged entity.
- (538) The Commission considers therefore unlikely that the Transaction will harm effective competition for the provision of passenger air transport services at any of the airports where the Transaction would reinforce Ryanair's slot holding.

#### 7.2.5. Conclusion

- (539) In light of the above, and considering in particular Ryanair's lack of ability to foreclose access of competitors to the markets for the provision of passenger air transport services at any relevant airports during the relevant IATA Seasons, the Commission concludes that, under the airport-by-airport approach, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the markets for passenger air transport to or from the overlap airports, under any plausible market definition.

## 8. CONCLUSION

- (540) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

*Margrethe VESTAGER*  
*Member of the Commission*

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<sup>442</sup> See Palma de Mallorca airport's website:

<http://www.aena.es/csee/ccurl/574/590/P.%20Mallorca%20Airport%202017%20web.pdf>

<sup>443</sup> *Ibid.* These are Air France, AzurAir, NordStar, Travel Service (SmartWings) and Corsair.