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***Case No COMP/M.4170 - LSG LUFTHANSA SERVICE HOLDING / GATE GOURMET SWITZERLAND***

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: 19/07/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.07.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject:** **Case No COMP/M.4170 - LSG LUFTHANSA SERVICE HOLDING / GATE GOURMET SWITZERLAND**
**Notification of 30.05.2006 pursuant to Article 4 of Council Regulation No 139/2004**[1]

1. On 30.05.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertakings LSG/Sky Chefs Europe Holdings Ltd ("LSG", UK) belonging to the Lufthansa group and Gate Gourmet GmbH ("Gate Gourmet", Switzerland) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a company to which they will contribute in-flight catering services in the Paris region ("JV").

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement. After having been informed that it could not be excluded at that stage of the procedure that the notified operation might raise serious doubts as to its compatibility with the common market with regard to the in-flight catering market at Charles De Gaulle airport ("CDG"), on 28 June 2006 the Parties offered commitments with a view to remove possible serious doubts. However, after being informed by the Commission

1 OJ L 24, 29.1.2004 p. 1.

that the operation would not lead to serious doubts, the Parties on 12 July 2006 withdrew the commitments offered.

## I. THE PARTIES

3. LSG, which is wholly-owned subsidiary of Deutsche Lufthansa AG, under the brand LSG/Sky Chefs, provides airline catering and related business activities. Based in Germany, LSG owns and operates airline catering facilities (i.e. kitchens, highloaders) in Belgium, Denmark, Estonia, France, Germany, Italy, Latvia, Lithuania, Norway, Portugal, Spain, Sweden, and the UK. It also owns airline catering facilities in the Netherlands, which are not being used..

4. Gate Gourmet is a Swiss company providing airline catering and related business activities. With its European headquarters based in Switzerland, it owns and operates airline catering facilities in Denmark, France, Germany, Ireland, Lithuania, the Netherlands, Norway, Portugal, Spain, Sweden and the UK.

## II. THE CONCENTRATION

5. LSG/Sky Chefs Europe Holdings Ltd., LSG/Sky Chefs France SA ("LSG France"), Gate Gourmet Switzerland GmbH and Gate Gourmet France SAS ("Gate Gourmet France") intend to enter into a Joint Venture Agreement according to which LSG/Sky Chefs Europe Holdings Ltd and Gate Gourmet will each own 50% of a joint venture combining their activities in the airline in-flight catering business in the Paris region airports (CDG, Orly, Le Bourget), in France. The operation of the joint venture would be limited to servicing airlines operating flights to and from the Paris airports.

6. The envisaged joint venture will operate as a full function autonomous entity, at arms' length from the parties, within the meaning of Article 3(4) of the Council Regulation 139/2004. The JV is created for an indefinite period of time and will benefit from sufficient production assets, financial resources and personnel to operate independently on the market. The JV will source directly raw materials and will engage into production (in its kitchen facilities located in CDG), distribution (by its own highloaders) and marketing (through dedicated sales teams) of its products. In addition, the management employed by the JV will not exercise any function within either of the parents to the JV.

## III. COMMUNITY DIMENSION

7. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover in excess of €5,000 million (LSG €[…] billion, Gate Gourmet €[…] billion), and each has a Community-wide turnover in excess of €250 million (LSG over €[…] billion and Gate Gourmet over €[…] million). The undertakings concerned did not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

## IV. COMPETITIVE ASSESSMENT

## 5.1. Market definitions

*A. Relevant product market*

8. The parties submit that the relevant product market is the general category of in-flight catering services and that both traditional in-flight and new non-traditional suppliers are part of the market. These new non-traditional suppliers can be logistics providers which assemble simple economy class meal boxes, branded food groups that supply confectionary products, sandwiches and beverages for inclusion in cold meal boxes or trays, frozen food suppliers who supply frozen pre-cooked meals etc. Certain new type suppliers can provide entire meal boxes ready to be served to the passengers or parts of the meal delivered to traditional in-flight caterers for assembly. Those suppliers can supply around 10-40% of the overall product mix ordered by the airlines. Airlines have either direct contract with these new type suppliers or nominate them as a subcontractor to their in-flight service provider.

9. In its previous decisions the Commission has defined the relevant product market as comprising all in-flight catering services[2]. Furthermore, the Commission found that catering companies often provide in-flight catering services in conjunction with a series of ancillary services such as trucking to and from the aircraft, galley loading/off loading, supervision, equipment, warming, preparation, menu design and promotion. It was also found that the major caterers normally provide the entire range of required meals (cold/hot/snacks, first/business/economy class meals) which can meet all the different needs of airlines, the same company catering both for long-haul and short-haul flights.

10. A majority of respondents to the market investigation agreed with the parties position that the relevant product market should be defined on the basis of one single market for in-flight catering services and that it should not be further segmented on the basis of long-haul or short-haul flights, economy/business/first class and/or the type of food served (hot meals/cold meals/snacks) etc. Tenders for contracts generally include the full range of products and all the needs for the airline at the specific airport including the ancillary services.

11. The parties acknowledge that from a demand side airlines tend to view traditional caterers as providing "one stop shopping". They usually appoint one main supplier to provide the full range of products and services. From the supply-side traditional airline catering companies have also set up their businesses accordingly. However, due to changes in the market, a number of non-traditional “new type” suppliers have entered the market.

12. In particular, the parties have pointed out that due to cost considerations airline companies have in the last years significantly reduced the spending on in-flight catering, the size of the meals served in planes and other expenses dedicated to in-

[2] See Case No IV/M.1269 – LSG/ONEXCorp/Sky Chefs/Caterair and Case No COMP/M.2190 - LSG/OFSI).

flight-catering services, and have even for some categories of customers put an end to the provision of in-flight catering services (on short-haul flights). The parties therefore argue that in-flight catering services have evolved significantly over the recent years and airline companies are imposing (or at least trigger) new concepts and methods to suppliers (such as return catering, assembling trays with pre-designed products, replacing hot meals with snacks and, shipping meal boxes from central locations outside the airports, switching from freshly made meals to less costly frozen food, etc.).

13. The market investigation has revealed that airlines tend to have one main supplier and that this supplier is one of the large and integrated in-flight caterers such as the parties. This is mainly because such companies are active at the airports and can provide the ancillary services such as the trucking to and from the aircraft. However, the investigation has also confirmed the trend that the traditional catering model built on one-stop-shopping that was the prevailing model before is changing. Airlines outsource more and more the total demand to new or specialised suppliers. These “new type” suppliers, alone or in co-operation with each other have been able to enter the market and to provide a more or less broad range of catering services to airlines, depending on their business model. These may be logistics providers such as Supplair, which assembles simple economy class meal boxes at a central location in The Netherlands for delivery by traditional caterers to British Airways, KLM and Swiss aircrafts at their respective hubs; branded food groups such as Nestlé, Unilever and Masterfoods that supply confectionary products, sandwiches and beverages for inclusion in cold meal boxes or trays, frozen food suppliers such as Fleury Michon and Frankenberg, who supply frozen pre-cooked meals etc. Third party suppliers can supply around 10-40% of the overall product delivered to the aircraft by the traditional airline caterer.

14. The market investigation further confirmed that while formally acting as suppliers to the traditional caterers, “new type” suppliers also negotiate directly with the airlines on quality and price, in direct competition with the traditional caterer. Actual shipping of the meals into the plane requires *inter alia* an administrative authorisation to operate on the airport, special trucks and lifts to transport products within the plane etc. This is then provided by the traditional caterers.

15. Some respondents the market investigation have argued that “new type” suppliers are constrained in their competitiveness due to the lack of proximity of facilities to the airport and/or logistics and full service capabilities. Generally this means that “new type” suppliers need to rely on the traditional airline caterers for such services (or "the last-mile"), and only exceptionally (not one currently in Paris) have their own fleet or are able to find special modes (e.g. contracting the cleaning companies) to deliver services to the airlines. Moreover, even if it would be possible for such suppliers to provide the last handing and loading to the aircraft these suppliers are not generally interested in this and they normally deliver their products to a main contractor (the traditional airline caterer in most circumstances) that assembles the trays and load these on to the aircraft.

16. Despite the fact that non-traditional new type suppliers are not always active in close proximity to an airport to which it delivers products both customers and competitors generally considered that these suppliers could be considered to be part of the in-flight catering market although admitting that they are not fully substitutable to traditional airline caterers.

17. In view of the above, it can be concluded that in line with the Commission's past decisional practice in the present case the market for the provision of in-flight catering services comprises the entire range of meals (economy/business/first class) for all types of flights (short-haul/long-haul). For the purposes of this case, it is not necessary to decide whether the in-flight catering market should be further segmented into traditional catering services and new type suppliers' services or comprises both, since the proposed operation would not raise competition concerns under any possible product market definition.

*B. Relevant geographic market*

18. The Commission has in the past left open the geographic market for in-flight catering services. The parties have submitted that in-flight catering was traditionally considered to be restricted to the area of a given airport as airlines viewed a particular airport as the location of demand for on-board food, which is not normally interchangeable with other airports. However they  have pointed to a number of factors that may have recently changed this: the use of return-catering, some airline caterers supplying Paris airports are operating from outside France, multi-station players and multi-station bids, substitutability with airports outside France and substitutability with airports within the Paris region.

19. The Commission's investigation shows that from the demand-side customers (airlines) on the one hand consider it essential to have a supplier that is active at the airport, has sufficient facilities/infrastructure there to load aircrafts. On the other hand, as mentioned above, it is also clear that airlines do not only source the food product from caterers that have kitchens and production facilities in the airport's neighbourhood, but they do more and more often choose to outsource the production of meals to "new type" suppliers, that are not located in the close proximity of the airports.

20. Further, on the demand side it may have an impact on the geographic scope of the in-flight catering market is that not all bids entered into concern only one airport and some are "multi-station" (cover more than one airport). During 2003-2006 [less than 25%] of bids including the Paris airports were multi-station bids. The majority of bids were however exclusively for the Paris airports and out of the customers contacted, a majority of bids were for CDG only (with the possible add-on that in case of need the company should also be able to deliver to a neighbouring airport in the Paris region). The market investigation has also confirmed the generally preferences of the airlines to have single bids followed by bilateral negotiations.

21. As regards supply-side substitution, it has been argued that it would be difficult to provide sufficient quality of service for an airline caterer, at least as regards CDG, if the facilities are located remotely from the airport due to the complexity of logistics, heavy traffic, and security, need to respond to last minute changes etc. This would be confirmed by the fact that traditional airline caterers operate kitchens and facilities at larger distances from their main airport only marginally[3], exceptionally and

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[3] For example Europe Inflight that has [10-15]% of in-flight catering market in the Paris region, has its main activities in other Paris airports, exceptionally, however, it supplies CDG as well (where it is estimated to have 1% of the market), from a distance of 37km (Orly). Furthermore, LSG has supplied Corsair, a small airline company based in Orly from its CDG premises for 6 months.

temporarily[4] in order to address special needs of their contracted airlines. It has therefore been argued that traditional catering competitors based only at Orly and Le Bourget cannot be considered as providing a real constraint on competitors based in CDG.

22. Therefore, it can be concluded that the relevant geographic market in the present case is not larger than the Paris airport region. It seems likely that the relevant geographic market is actually smaller and limited to the CDG airport, but there is no need to draw a final conclusion on this issue, since the proposed operation would not raise competition concerns under either market definition. Since both parties are for the moment not active in the Le Bourget and Orly airports, those airports do not need to be analysed separately.

23. Based on the Commission's past decisional practice[5] either scenario (i.e. CDG airport or the airports in the region of Paris) can be considered as a substantial part of the common market The total size of the in-flight catering EEA market, accounted for 2.5 billion euro in 2005, of which Paris airports represented about 7%, and CDG airport about 5,5%, all figures excluding captive sales.

## 5.2. Competitive Analysis

### B.1. Non-Coordinated Effects

24. Although the proposed transaction leads to an overlap in the market for in-flight catering services for the parties to the JV in CDG airport and/or on a wider market for Paris region airports, it will not result in the creation of a single dominant firm. As both parties are not active in the Le Bourget and Orly airports, those two airports will not be analysed separately.

25. LSG and Gate Gourmet are providing in-flight catering services at a worldwide level. At CDG airport the combined market share of the parties amounts to [40-55]% (LSG [25-35]%, GG [15-25]%). The other main competitor is Servair (the catering subsidiary of Air France) with a market share of around [40-55]%. The proposed operation will thus lead to a near duopoly, where the new joint venture and Servair will have market shares around [85-95]% in CDG. Other competitors, namely Europe Inflight Services (a traditional airline caterer), and new type suppliers such as Pourshins, Supplair and Frankenberg all have market shares of less than [5]% at this airport. (See Table 1). If the new type suppliers are not considered part of the in-flight catering market, the market share of LSG, GG and Servair would not be substantially different.

4 For example Europe Inflight supplied Corsair from Lyon where it own catering facilities for 6 months, before it formally established facilities at Orly.

5 See for example Case T-128/98 Aéroports de Paris v Commission [2000] ECR II-3929, para.152.

Table 1: Inflight catering at Charles de Gaulle airport, 2003-2005 (excluding captive sales)

| | **2003 (%)** | **2004 (%)** | **2005 (%)** |
|---|---|---|---|
| **LSG France** | **[25-35]** | **[25-35]** | **[25-35]** |
| **Gate Gourmet France** | **[15-25]** | **[15-25]** | **[15-25]** |
| Servair | [40-55] | [40-55] | [40-55] |
| Europe Inflight | [0-1] | [0-1] | [0-1] |
| Pourshins | [1-5] | [1-5] | [1-5] |
| Supplair | [0-1] | [0-1] | [0-1] |
| Frankenberg | [0-1] | [0-1] | [0-1] |
| **LSG France+ Gate Gourmet France** | **[40-55]** | **[40-55]** | **[40-55]** |

26. On a wider geographic market encompassing the Paris region airports (CDG, Orly and Le Bourget), the combined market shares of the parties is around [35-45]% (LSG [20-30]%, GG [15-20]%). The main competitor Servair has a market share of [40-50]%, which is higher than the combined market share of the parties. Another competitor is Europe Inflight Services which has an estimated market share of about [10-15]%. This company, formerly Eurest, was integrated with the Compass Group Plc in 2003. Its main activities are in Orly, where it has an estimated market share of [60-70]% (as stated above this company has a limited presence in CDG (around [0-1]%)(see Table 2). If the new type suppliers are not considered part of the in-flight catering market, the market share of LSG, GG and Servair would not be substantially different.

Table 2: Inflight catering at Paris airports (CDG+Orly+Le Bourget airports), 2003-2005 (excluding captive sales)

| | **2003 (%)** | **2004 (%)** | **2005 (%)** |
|---|---|---|---|
| **LSG France** | **[20-30]** | **[20-30]** | **[20-30]** |
| **Gate Gourmet France** | **[10-20]** | **[10-20]** | **[10-20]** |
| Servair | [45-55] | [45-55] | [40-50] |
| Europe Inflight | [5-10] | [5-10] | [10-15] |
| Pourshins | [1-5] | [1-5] | [1-5] |
| Supplair | [0-1] | [0-1] | [0-1] |
| Frankenberg | [0-1] | [0-1] | [0-1] |
| Others | [0-1] | [0-1] | [0-1] |
| **LSG France+ Gate Gourmet France** | **[35-45]** | **[35-45]** | **[35-45]** |

27. The market shares presented above exclude captive sales. This leads to an underestimation of the actual market position of Servair. Servair is Air France‘s catering subsidiary and Air France is buying airline catering services in Paris exclusively from Servair. The demand of Air France represents about 60% of total the in-flight catering demand in the Paris region and 75% at CDG.

28. The proposed transaction therefore leaves the in-flight catering market of CDG with two strong actual market players: the JV and Servair, none of which individually possesses a dominant position. In a wider geographic market of the Paris region airports, a third important player next to the JV and Servair is Europe Inflight.

29. Even without creating a dominant firm, one could argue that the proposed transaction could lead to price increases (or other deteriorated conditions) as a result of reduced competition among the two main remaining in-flight catering suppliers (i.e. Servair and the JV) in the Paris airports and CDG airport in particular. There are however several elements which allow the Commission to conclude that the merger will not entail a significant impediment to effective competition in the EEA as a result of non-coordinated effects.

30. Based on the information from the parties, the market investigation and the bidding data obtained from Servair, LSG and Gate Gourmet it can be concluded that there has been a reasonable amount of switching not only between LSG and Gate Gourmet in the past but also between the JV parents and Servair[6]. In addition, some other new type suppliers, new entrants, did win part of the contracts on the basis of being subsequently nominated by the airlines as suppliers of specialised products. The Commission has also learned that one of the contracts of LSG in CDG has recently been won by a traditional airline caterer, Europe Inflight. Despite the fact that there will be one less competitor post-merger, sufficient competitive constraints (current competitors and new entrants) will remain to ensure no significant impediment of efficient competition.

31. The market investigation has confirmed that prices in the airline catering market have stabilised and not risen in the last three years and that the margins for traditional airline caterers have been reduced, mainly due to shifts in demand and the entry of new suppliers that provide cheaper alternatives to the food provided by traditional airline caterers. In addition, airlines are trying to cut costs on specific services and therefore try to obtain lower prices for catering services from the in-flight catering companies. The market investigation has shown that this appears to be a trend not only for the Paris airports but also for other airports in the EU.

32. As competition for passenger traffic is increasingly fierce and airlines have found that catering services is one cost area that they can directly impact, giving rise to intense cost pressure on the caterers. The airlines contract for catering services through complex bid procedures and impose the contractual terms on the caterers. Although contracts are awarded for a number of years (1 to 5 years), airlines make no purchase commitment and can usually terminate the contract with little notice and at no significant cost. Switching is easy.

[6] The data shows that during 2003-2005, 7 of LSG’s customers switched from Servair and 4 from Gate Gourmet, 3 of Gate Gourmet's customers from Servair and 2 from LSG, and Servair gained 6 customers from LSG and 2 from Gate Gourmet.

33. This has been generally confirmed by airlines during the market investigation. In particular, airlines acknowledge that they are able to set the terms and conditions of their contracts and nominate suppliers for parts of the meal. The investigation also confirmed that airlines do not face significant costs in switching caterer as long as the caterer can ensure the required quality of service.

34. In addition, a number of customers have further stated that the JV will benefit from the transaction, and will therefore constitute a more credible competitive alternative to Servair. It should be noted that all customers contacted were only active in CDG and that these airlines were not aware of the entry of Europe Inflight at CDG.

35. Moreover, barriers to entry into the in-flight catering market are relatively low and there are a number of actual and potential suppliers in the market. There is no need to have a facility at close proximity to the airport or even in the Paris region to provide a competitive constraint in the market. It has been shown with the new business model and with new non-traditional airline caterers entering the market without having facilities at the airport they supply airlines.

36. Gate Gourmet has not been the only new entrant to the CDG market since 2000. In the Paris region overall, Europe Inflight has been able to enter Orly successfully in 2001 with gaining a market share of more than [55-65]% of in-flight catering services at this airport in only a short period of time. This company also recently[7] won a contract in CDG from LSG for Europe Airpost. Further, a number of non-traditional caterers have entered the Paris market, although not yet to such extent as Gate Gourmet or Europe Inflight.

37. The market investigation has shown that new competitors still generally go through the traditional airline caterers to deliver their products to the airlines. However, the reduction of the number of traditional airline caterers in Paris has generally not been seen by such new entrants as a concern. New type suppliers are generally not interested to become operative at the airport mainly because they believe that they can compete without having a specific facility at the airport and by supplying significant parts of the in-flight meals (the Commission's investigation has shown that they account for 10-40% of the meals). They also contract directly with the airlines and deliver ready parts of the meal to the airlines' caterers for assembling.

38. Further, it was shown that in other airports new "last mile suppliers" such as cleaning companies have been used by such new type suppliers in order to access the airport with their catering products and it was not excluded that this could be done also for the Paris airports. In this way, new non-traditional suppliers in cooperation with companies which have access to the airport (e.g. cleaning companies), could be as efficient as traditional catering companies to place the catering products onto the aircrafts. The parties have also further pointed out that there are no significant regulatory barriers to entry and that ground handling services are liberalised in the Paris region. Further, it was not excluded by many new entrants that they may, if the scope of the business became significant, establish themselves at or in close proximity to the airport (as for example Supplair did go traditional).

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7 June 2006.

39. The market investigation has also shown that although airlines responding to the market investigation seemed reluctant to sponsor entry, there exist examples that this has been done in the past and it was not excluded by some airlines that this practice could be done in relation to the CDG airport. In particular, Gate Gourmet's entry was sponsored by American Airlines in 2000. Further Europe Inflight's entry into Orly was sponsored by Corsair (it previously supplied Corsair in Lyon). Corsair was previously supplied by LSG. In addition, non-traditional caterers will exercise a competitive constraint on the JV. These non-traditional caterers such as frozen meal and lunch boxes suppliers have already entered the Paris market or are able to enter and are taking growing volumes away from the traditional caterers, including the parties. The market investigation confirmed this also: new types of suppliers exercise a measurable competitive constraint on traditional caterers; there are cost constraints on the side of airlines; new concepts of airline food have been introduced, for example there is an apparent move from fresh cooked food to frozen ready meals, and many niche players gained significant foothold on the market etc. This has put a strong pressure on traditional caterers normal revenue flow and business model, which was build on being a full service supplier. There is no indication in the Commission's investigation that this trend should not continue.

**Conclusion**

40. It can be concluded, especially in the view of a recent entry into CDG that the proposed transaction is unlikely to lead to non-coordinated effects raising serious doubts as to its compatibility with the common market.

## B.2. Coordinated Effects

41. A third party has argued that the proposed transaction could lead to co-ordinated effects. However, coordinated effects seem unlikely for the following reasons.

*Difficulties in reaching terms of coordination*

42. The Commission's market investigation has shown that the JV and Servair would face difficulties in reaching terms of coordination as a result of the combination for several reasons. First, while being enhanced by the JV, there will still by asymmetry between the two main suppliers in Paris, as neither LSG nor Gate Gourmet can compare either in size or production facilities with Servair. LSG and Gate Gourmet have smaller infrastructures, kitchens and different skills than Servair. Servair being the hub carrier for Air France/KLM, needs more complex facilities and logistics than other operators (the JV parties do not provide such services in Paris). Due to the tremendous volume catered to Air France (it has a daily capacity of 85. 000 meals compared to LSG's [20.000 – 30.000]) Servair benefits not only from larger economies of scale but also from privileged territorial allocations and the most modern installations at CDG. Therefore, even after the transaction the JV will not be able to compete with Servair for a big part of total demand at the airport[8]. The market investigation has shown that both the JV and Servair will continue to have significant excess capacities and should be able to easily cater for bigger parts of demand than

[8] Contracts with Air France as well as demand for specialized ethnic food; i.e. kosher, Japanese, etc. Servair is the only provider in Paris that has all specialised cooks and kitchen facilities.

they do at the current stage[9]. In addition, it should be stressed that free market contracts for which all three caterers compete account for almost 100% of the total commercial activities of each of the parties to the JV, whereas this proportion is significantly lower for Servair; i.e. 40% of Servair's activities at CDG.

43. Second, in-flight catering is not a homogeneous product. In addition to the distinction between the type of the meal (snack, hot meal), there exists a wide variety of meal characteristics, notably in terms of size, quality, way of preparation, freshness, etc. given that it is specifically tailored to the clients specifications. Furthermore, in-flight catering delivered to each customer may differ in that each airline has its specific quality specifications due to the individual requirements of each end-customer (i.e. passengers). In view of this, even meals with similar characteristics provided for different airlines are in general not interchangeable. The market investigation has also shown that prices of catering services are not transparent and rather complex and differ depending on the size, type and number of meals as well as the quality and service required.

44. Third, the market investigation showed that airlines are able to renegotiate the terms and conditions of their contracts and airlines do not face significant costs in switching caterer as long as the caterer can ensure the required quality of service. These contracts with the different airlines are staggered over time.

*Coordination would not be sustainable over time*

45. Even if the JV and Servair were able to coordinate their behaviour, this coordination is not likely to be sustainable over time. There are two different types of constraint that will be able to make coordination between the JV and Servair unstable: new entrants into the traditional catering market and new non-traditional catering providers on the one hand , and customers (i.e. airlines) on the other.

46. As noted above, there has been recently a new entry into CDG which can hinder the coordination attempts between Servair and the JV. Moreover, airlines may shift significant part of their contracts to the new suppliers and therefore make any attempts of coordination void[10]. In addition, big airlines may also ultimately sponsor a new entrant in the Paris region. This has been done previously and it has not been excluded by some airlines responding to the Commission's investigation.

47. Retaliation does not seem to constitute a credible threat to a caterer which would deviate from coordination as a deterrent mechanism could only be implemented with a significant time lag. This is due to the fact that in-flight catering contracts are generally entered for a relatively long period of time (usually 1-5 years) with rather fixed number of meals to be delivered and purchased each year. In addition, demand for airline catering services fluctuates and contracts tend to be large and infrequent.

48. The contracts with the different airlines are also staggered over time, which means that a rival caterer could only retaliate several months or even years after the

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[9] Servair uses its capacity in 65%, LSG, Gate Gourmet in 50% and LSG in 50%

[10] As regards new non-traditional catering, it has already been established above that these new type suppliers indirectly impose a significant competitive pressure on caterers as 10-40% of the overall product delivered to the aircraft may be outsourced to them.

deviation occurred. This increases the profit that either the JV or Servair can achieve by deviating from the terms of coordination and makes retaliation even less credible.

**Conclusion on coordinated effects**

49. In view of the foregoing, it can be concluded that the proposed transaction will not result in coordinated effects that raise serious doubts as to the compatibility of the concentration with the common market.

**B.3. Co-operative effects of the JV**

50. Pursuant to Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture has as its object or effect the co-ordination of the competitive behaviour of (at least two) undertakings that remain independent, such co-ordination shall be appraised in accordance with the criteria of Article 81(1) and (3) of the EC Treaty. In order to establish a restriction of competition in the sense of Article 81(1) of the EC Treaty, it is necessary that the co-ordination of the parent companies' competitive behaviour is likely and appreciable and that it results from the creation of the joint venture, be it as its object or its effect.

51. The parties have put in place legal measures which are explained below to ensure that the joint venture will not be used as a conduit to exchange sensitive market information or as a forum to discuss operations outside the scope of the joint venture.

52. In particular, in the Joint Venture Agreement as notified to the Commission, a mechanism has been put in place that ensures that in multi-station bids (bids involving more than one airport and one of those including Paris) Gate Gourmet and LSG will continue to compete on prices for catering services in Paris. According to this mechanism, each of the Parties shall request a quote from the JV; and in case they negotiate with the airline companies a lower price than the price quoted by the JV, they shall reimburse such price difference directly to the airline company, without the JV or the other company being informed of the price quoted The Commission considers that this mechanism together with other measures will prevent the JV to be used to exchange information about prices.

53. To further ensure that the JV will not be a conduit for information exchange, the the Joint Venture Agreement and the Shareholders' agreement provide that (i) there is a strict incompatibility between the functions of Board Member and sales and marketing functions; the parties shall not appoint individuals with a sales and marketing function at LSG and GG from outside France in order to avoid the exchange of information between the parties at different airports; and that (ii) members of the Board of Directors of the joint venture commit not to disclose any confidential information, broadly defined, about the joint venture or the other Party to their respective appointing shareholder. The parties have further added that the conditions of competition for the possibility to coordinate outside Paris is restricted for the same reasons as indicated for coordinated effects in Paris i.e. large and infrequent bids, etc.

54. The respondents to the market investigation have pointed out to the increased possibility for future joint ventures between the parties at other airports. However, the

market investigation has not provided evidence in order to conclude that the JV would have as its object or its effect the co-ordination of the parties' competitive behaviour and that it would result from the creation of the JV. The parties argue that the object of the JV is to reduce the parties' respective loss making activities in Paris. Since the year 2000 the parties have suffered severe losses in their Paris operations. […] has a cumulative loss of […] million €, which represents […]% of the group turnover for that period; […] cumulative losses amount to […] million €, accounting for […]% of the group turnover.

55. As further indicated above, the proposed concentration only deals with the in-flight catering business of the parties in the Paris region. The activities of the JV is further restricted to competing for long-haul flights to and from Paris airports given the presence of Servair. The parties activities in Paris generated in 2005 a turnover of EURO […] million for LSG France and EURO […] million for Gate Gourmet France [Euro […] million for GG (whole company)] out of a total turnover of EURO […] million and EURO […] million respectively. This represents less than 2% of the total global turnover and about 5% of their EEA turnover. Taking into account the modest share of the Paris market in the total turnover of the parties to the JV, it is unlikely that the parties would have incentives to coordinate their activities in other airports via the JV in Paris.

56. It is therefore concluded that the creation of the proposed JV is not likely to have as an object or as effect the coordination of the competitive behaviour of the parties to the JV.

## V. CONCLUSION

57. For the above reasons, the Commission has decided not to oppose the notified transaction and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission