EN

Case No COMP/M.6671 - LBO FRANCE / AVIAPARTNER

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/11/2012

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6671 – LBO FRANCE / AVIAPARTNER
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1 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.

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(1) On 24 October 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation"),[2] by which the undertaking WFS Global Holding SAS ("**WFS**"), ultimately controlled by funds managed by LBO France Gestion SAS ("**LBO France**"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the undertaking Aviapartner Holding NV ("**Aviapartner**"), by way of purchase of the majority of its shares ("**the Transaction**").

1. THE PARTIES

(2) **LBO France** ("**the Notifying Party**") manages investment funds, with interest in a broad range of businesses and without sector specific specialisation.

(3) **WFS** is a company active in the provision of ground handling services incidental to air transport markets (ramp, passenger and cargo handling services) and other freight related services (namely offline services and freight forwarding by truck). WFS provides services in North America, the Caribbean, Europe, Asia and Africa. It is the number one cargo handling service provider in the world.

(4) **Aviapartner** is also active in the provision of ground handling services incidental to air transport markets and other freight related services. Aviapartner provides services only at European airports (Aviapartner and WFS together are referred to as "**the Parties**").

2. CONCENTRATION

(5) The Transaction consists of the acquisition of 100% of Aviapartner's shares by WFS. The current shareholders of Aviapartner would keep a non-controlling interest in the consolidated group WFS/Aviapartner. As a result, private equity funds managed by LBO France would acquire the ultimate sole control of Aviapartner and its subsidiaries.

(6) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover[3] of more than EUR 5,000 million (LBO: EUR […]; Aviapartner: EUR […]). Both LBO and Aviapartner have a Union-wide turnover in excess of EUR 250 million (LBO: EUR […]; Aviapartner: EUR […]). Neither LBO nor Aviapartner achieve more than two-thirds of their turnover within one and the same Member State.[4]

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

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2 OJ L 24, 29.1.2004, p.1 (the "Merger Regulation").

3 Turnover calculated in accordance with the Commission’s consolidated Jurisdictional Notice.

4 Form CO, Section 3.3.

4. MARKET DEFINITION

(9) WFS and Aviapartner are both active in the provision of various ground handling[5] and freight related services at several airports in Europe.

(10) According to the Notifying Party, these services can be grouped into four separate product and geographic markets: (i) ramp, passenger and baggage handling services at a specific airport; (ii) landside cargo handling services at a specific airport; (iii) offline freight related services on a regional geographic market; and (iv) freight forwarding by truck on a national geographic market.

(11) The Commission has found this delineation to correspond to the situation in the overall ground handling services sector and will therefore largely base its market definition on it.

4.1. Product Markets

4.1.1. Ramp, passenger and baggage handling services

(12) Ramp, passenger and baggage handling services comprise many different activities. Ramp services include aircraft loading/unloading, marshalling, push back and towing, cleaning, toilet and water servicing, de-icing, airport transportation (for both crew and passengers), freight and baggage transfer, traffic operations (flight documentation and planning, crew briefing, weight and balance, load planning, ground to air communication, flight supervision).[6] Passenger handling services include reservation and ticketing, check-in services, arrival and departure services and boarding assistance.[7]

4.1.1.1. A separate product market

(13) Ramp, passenger and baggage handling services as well as cargo handling services are both part of the so-called "ground handling services". However, the Notifying Party argues that ramp, passenger and baggage handling services form a separate product market. In particular, the Notifying Party claims ramp, passenger and bag-

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5 Aviapartner is also active in the following services which are provided at the airport level: ground administration and supervision services, aircraft maintenance services, flight operations and crew administration, surface transport services, catering services. WFS is not active in all of these services and in any event there are no overlaps between the Parties at any airport. These services will therefore not be assessed further.

6 They do not, however, include fuelling and catering, which are separate markets, because these services require different facilities, a different know-how and are generally supplied by different providers.

7 Cf. Council Directive 96 / 67 / EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272, 25.10.1996, p. 36, Annex. See also the IATA Standard Ground Handling Agreement ("SGHA"), Annexes 6.4.1-1 et seq., for a slightly different delineation of the market. In its *FAG-Flughafen Frankfurt / Main AG* decision, the European Commission confirmed that all services provided on the ramp – or more broadly in restricted areas – can be regarded as a distinct market and referred to a wider list of services than those expressly mentioned by the directive; see Commission Decision 98/190/EC in Case No IV / 34.801 – *Flughafen Frankfurt / Main AG*, OJ L072, 11.03.1998, p.30.

gage handling services are to be distinguished from cargo handling services which do not belong to the same product market.[8]

(14) At many airports across the EEA[9] a ground handler requires a ramp licence to access the tarmac and aircraft, and the number of ramp licences is limited.[10] These services are therefore referred to as "airside activities": namely those provided on the ramp and those provided in restricted areas, such as baggage handling. Consequently, ramp, passenger and baggage handling services are mainly airside activities.[11] By contrast, landside activities (most notably cargo handling services) are provided in warehouses or in public areas of airports without a license or authorisation being required.

(15) The Notifying Party further explains that ramp, passenger and baggage handling services necessitate different expertise, personnel and equipment on the supply side and, for most services, provide a clear separation between airside activities and landside activities. Different companies within the WFS group provide these different types of services under different brands.

(16) On the demand side, the Notifying Party mentions that ramp, passenger and baggage services are generally contracted jointly, while cargo handling services are dealt with under a different contract. Those two contracts (ramp, passenger and baggage on the one hand, and cargo handling on the other hand) are negotiated by different procurement services of airlines, with separate contracts and at different times depending on their respective termination dates. Additionally, the circle of customers of ramp, passenger and baggage handling services is not completely congruent with that of cargo handling services; cargo handling services are also provided to full-freight airlines and freight forwarders.[12]

(17) The market investigation has broadly confirmed the Notifying Party's claim that ramp, passenger and baggage services on the one hand and landside cargo handling services on the other hand indeed constitute two separate markets.[13] Respondents considered *inter alia* that these services constitute two different types of activities which require different skills and different authorisations. One respondent argued for instance that cargo handling was "*a completely different business than aircraft ramp*

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8 See Form CO, paragraph 192.

9 In the present case, the affected airports which still require a licence for airside services are Paris Roissy, Paris Orly, Nice-Côte d'Azur, and Frankfurt/Main.

10 Cf. Council Directive 96 / 67 / EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272, 25.10.1996, p. 36.

11 Ramp, passenger and baggage services may also include some landside services such as check-in services.

12 See Section 4.1.2 and Form CO, paragraph 255.

13 See replies to questionnaires Q1, Q2, Q3 and Q4 of 24 October 2012 sent to competitors (question 8 and 9), customers (questions 11 and 12), ground handling licence granting authorities (question 7) and airport managers (questions 12 and 13).

handling". Yet another claimed that the two types of services do not exhibit the same ways of working and procedures.

(18) The Commission has in previous decisions[14] left open whether a segmentation between ramp, passenger and baggage services and landside cargo handling services is necessary on the basis that no competition concerns have been found on narrower markets.

(19) Concerning the present Transaction, the Commission notes that there is a broad consensus among the respondents of the market investigation and the Notifying Party on the question of whether two separate markets exist. Besides, in case of a price increase in ramp, passenger and baggage handling services, no switch to cargo handling would take place, and *vice versa.* Moreover, the Commission also takes note of the fact that these services are normally dealt with under separate contracts and that cargo handling services are requested by a broader circle of customers. Finally, these services require different expertise, personnel and equipment.

(20) The Commission therefore considers that ramp, passenger and baggage handling services form a specific product market, separate from cargo handling services.

4.1.1.2. Self-handling by airlines

(21) A number of airlines engage in self-handling. Self-handling is defined as *"a situation in which an airport user directly provides ground handling services for itself and concludes no contract with any third handling party for the provision of such services"*.[15]

(22) In the context of ground handling services, previous decisions of the European Commission[16] as well as the Study on the impact of Directive 96/67/EC on Ground Handling Services 1996–2007 made a distinction between self-handling and handling services to third-parties.

(23) Given that independent ground handlers do not have access to the part of the market that airlines cover through self-handling, the Commission considers that self-handling does not form a part of the contestable market.

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14 In some earlier decisions, the Commission had considered a possible further segmentation along the different services but given that the Parties' activities did not overlap in the ramp, passenger and baggage services segment, it was not necessary in those cases to consider potential narrower markets. See Commission decision of 30 June 1998 in Case No IV / M.1165 – *Lufthansa / Menzies / LCC*, p. 3. See also OFT decision of 27 May 2010 in *Servisair UK / Aviance UK limited*, paragraph 21. In the Commission decision of 26 January 2011 in Case No M.5830 – *Olympic / Aegean Airlines*, p. 71, the Commission concluded that the relevant product market comprised ground handling services encompassing both passenger and aircraft handling, in other words, all ramp, passenger and baggage handling services. However, it was not the focus of the assessment and the Commission did not have to investigate further possible sub-segmentation.

15 Form CO, paragraph 351. Compare Study on the impact of Directive 96 / 67 / EC on Ground Handling Services 1996–2007 of February 2009, p. 13.

16 See for instance COMP / M.5747 – *Iberia / British Airways,* of 14 July 2010.

4.1.1.3. Airside cargo handling services

(24) As regards airside cargo handling, which is the transportation of cargo between the aircraft and the warehouse of the cargo handlers, the Notifying Party argues that this is part of ramp, passenger and baggage handling services. The Commission has not previously considered this issue specifically.[17]

(25) The Notifying Party argues that it is part of ramp, passenger and baggage services, in particular at airports where ramp services have not been liberalised but require a licence since at these airports; only the ramp licence holders can provide this service.

(26) The market investigation has broadly confirmed the Notifying Party's view.[18]

(27) The Commission notes that the transfer of cargo and mail from the ramp requires access to the ramp. The Commission further notes that this service is commonly rendered by the ramp, passenger and baggage handling services provider and that a large majority of competitors and customers alike support the view that these cargo transfer services should be included in the market for ramp, passenger and baggage handling services.

(28) However, the Commission considers that there is no need to come to a definitive conclusion on this point as no competition concerns would arise under any plausible market definition.

4.1.1.4. Competition for the market for airside services

(29) Ramp, passenger and baggage handling services are, for the major part, airside services.[19] Therefore, access to the provision of these services is subject to a licence at a certain number of airports in the EEA.[20] At these airports, the relevant authority organises tenders on the basis of which it chooses the licensees (the recipients of licences generally providing all ramp, passenger, and baggage services at a given airport).

(30) As such, a separate market for the tendering of ramp licences may exist, distinct from the product market for the actual provision of ramp, passenger and baggage services.

(31) The results of the Commission's market investigation have proven inconclusive as to the question whether there indeed is a separate market for the competition for the

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17 The Belgian competition authority, however, has in August 2012 considered airside cargo services at Brussels airport to be a distinct market. The acquisition of Flightcare by Swissport was authorised by the Belgium Competition Council on 31 August 2012, decision 2012-C/C-21, http://economie.fgov.be/en/binaries/20120905_press_release_tcm327-196709.pdf (retrieved 19 November 2012).

18 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (questions 12) and customers (questions 15).

19 See Recital (14).

20 See footnote 9.

market.[21] However, this issue can be left open as no competition concerns would arise, should such a market be considered.

4.1.2. Landside cargo handling services

(32) Landside cargo handling may comprise many different services, including cargo terminal operations, warehousing and inventory control, cargo security, handling of dangerous goods, documentation for import and export, customs clearance, global cargo tracking or even live animal management.[22]

(33) The Notifying Party submits that cargo handling services mainly involves the physical handling and storage of freight and mail, as well as the handling of related documents and the implementation of customs and security procedures. Possibly airside cargo handling could be part of an overall cargo handling market. However, the Notifying Party contests such a delineation.[23]

(34) Cargo handling is provided to airlines or freight forwarders in warehouses or sheds which are generally not in the same area within the airport as the passenger terminals where ramp and passenger services are provided.[24] Therefore, cargo handling services are landside services.[25]

(35) Generally, it is the ramp handler who provides the airside cargo handling services, which concerns the transportation of the cargo between the warehouse and the ramp or the loading and unloading on the ramp.[26]

(36) In one previous decision, the Commission has considered landside cargo handling services to constitute a separate product market from other ground handling services but ultimately left the product market definition open.[27]

(37) The market investigation broadly confirmed the Notifying Party's assertions. The majority of respondents considered that there was indeed a separate market for the provision of landside cargo handling services.[28]

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21 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (questions 11) and customers (questions 14).

22 Cf. Council Directive 96 / 67 / EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272, 25.10.1996, p. 36, Annex. See also the IATA Standard Ground Handling Agreement ("SGHA"), Annex A, Section 5.

23 See Section 4.1.1.3.

24 Form CO, paragraph 255 et seq.

25 See Recital (14).

26 However, there may exist exceptions to this rule at some airports.

27 Commission Decision in Case No Case IV / M.1165, *Lufthansa / Menzies / LCC*, OJ C 238, 29.7.1998, p. 8, p. 3.

28 See footnote 13.

(38) As also explained in Section 4.1.1.1, the Commission considers that there is a separate product market for the provision of cargo handling services, distinct from that of ramp passenger and baggage handling.

(39) The Commission concludes that a relevant market for the purpose of the assessment of this Transaction is the market of landside cargo handling services. As regards airside cargo handling services, it can be left open for the purposes of this decision whether these services form part of cargo handling services or ramp, passenger and baggage handling services since the Transaction does not lead to any competition concerns under either definition.

4.1.3. Offline cargo handling services

(40) Cargo handling services also relate to on-board freight (inbound) or freight to be loaded (outbound), so-called "online services". Online freight handling services involve online freight which is linked to a flight number and was or will be loaded at the airport where it is handled.

(41) Offline services are services provided for freight which will not be or was not loaded at the airport where it is handled. Offline services are not covered by the Directive 96/67/EC. Offline services do not necessarily need to be provided at airports (the cargo is handled and prepared for flight at one airport, then transported by truck to another airport for loading onto the aircraft). Moreover, contracts and orders do not need and do not refer to this classification.

(42) These services are generally provided in different warehouses than those used by ground handlers to provide ground handling services and, the service is provided by the freight bring sent to the freight forwarder's premises, to the final client of the freight forwarder or to the cargo handling warehouse of a ground handler (the one offering this offline service or, frequently, another one).

(43) According to the Notifying Party, these services could also be provided by freight forwarders with sufficient expertise.

(44) The Notifying Party argues that offline services should not be considered as part of cargo handling services. These services should rather be included in the overall market of freight forwarding services.[29]

(45) There is no Commission precedent relating to offline services provided by ground handlers. However, the French competition authority has considered offline services to be a distinct market.[30]

(46) The market investigation did not provide conclusive evidence on the question whether offline service constitute a separate product market of their own, belong to

29 Form CO, paragraph 295.

30 Opinion of the Conseil de la concurrence n° 05-A-13 of 3 March 2006, paragraph 32 and the Minister of Economy's Letter C2004-132 of 25 July 2005, concerning the acquisition of France Handling by Vinci Services Aéroportuaires.

cargo handling services or rather to the overall market of freight forwarding.[31] However, most respondents considered that they were either part of freight forwarding or cargo handling services.

(47) The Commission considers that the exact delineation of the market can be left open, since no competition concerns arise under any plausible market definition.

4.1.4. Freight forwarding by truck

(48) The Commission has defined the freight forwarding market as *"the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs"*.[32]

(49) According to the Notifying Party, freight forwarding by truck should be considered as part of freight forwarding services.[33] It argues that where airlines do not wish to use such a service proposed by ground handlers, they indeed directly contract with freight forwarders or trucking companies that are not active in ground handling services, including for trucking of air cargo pallets, which can be provided by a number of freight forwarders.

(50) The Commission has previously considered freight forwarding by truck to be distinct from cargo handling services, including when they are provided by ground handlers.[34] However, the Commission has left the exact market definition open in most cases.

(51) The results of the market investigation are inconclusive on the question of whether freight forwarding by truck constitutes a separate product market of its own, is a part of the cargo handling services market or belongs to the overall freight forwarding market.[35]

(52) The Commission notes that freight forwarding by truck does not necessarily have to be provided by the landside cargo handlers. Moreover, neither the Notifying Party, nor a majority of respondents to the market investigation argue that these services are part of cargo handling; furthermore, the Parties' activities in freight forwarding by truck are limited.

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31 See replies to the questionnaires Q1, Q2 and Q4 of 24 October 2012 sent to competitors (question 14), customers (question 17) and airport managers (question 20).

32 See Commission Decision in Case No COMP / M.1794 – *Deutsche Post / Air Express International*, OJ C46, 19.2.2000, p. 25, Recital 8, and Commission Decision in Case No COMP / M.6059 – *Norbert Dentressangle / Laxey Logistics*, OJ C122, 20.4.2011, p. 5, Recital 17.

33 Form CO, paragraph 299.

34 Commission Decision in Case No Case IV / M.1165, *Lufthansa / Menzies / LCC*, OJ C 238, 29.7.1998, p. 8, paragraph 10.

35 See replies to the questionnaires Q1, Q2 and Q4 of 24 October 2012 sent to competitors (question 16), customers (question 19) and airport managers (question 22).

(53) The Commission therefore sees no reason to divert from its prior practice to define freight forwarding by truck as distinct from cargo handling services, including when they are provided by ground handlers. Whether this market is a market on its own or part of the overall market for freight forwarding as a whole can be left open in this case since the Transaction does not lead to competition concerns on any plausible market definition.[36]

4.2. Geographic markets

4.2.1. Ramp, passenger and baggage handling services

(54) The Notifying Party proposes that the geographic markets are limited to the specific airports concerned for all ground handling services including ramp, passenger and baggage handling services.

4.2.1.1. Competition in the market for ramp, passenger and baggage handling services

(55) The Commission has considered in previous decisions[37] that the geographic scope for the provision of all ground handling services is restricted to a specific airport (or possibly two neighbouring airports), given that the services required at a particular airport cannot be substituted for services provided at other airports. This is in line with the case law of the Court Justice concerning services provided at ports.[38]

(56) In some recent decisions, the Commission has, however, considered the possibility that markets could be larger under specific circumstances.[39] More precisely, the Commission reached the conclusion that it could not be excluded that markets for ground handling services in Spain and in Greece may have a wider geographic dimension encompassing in some cases more than one airport. The question was final-

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36 This issue will not be discussed in the competitive assessment. Indeed, while the Parties' activities overlap in the provision of freight forwarding by trucks at Roissy-CDG (Form CO, paragraph 676), the Transaction does not lead to any affected market under any plausible market definition (the market share of the merged entity in France for freight forwarding by trucks is below 5%. The market share of the Parties for freight forwarding in France for freight forwarding is also below 5%).

37 See notably Commission Decision in Case No Case IV / M.1165, *Lufthansa / Menzies / LCC*, OJ C 238, 29.7.1998, p. 8, Commission Decision in Case No COMP / M.4164 – *Ferrovial / Quebec / GIC / BAA*, OJ C182, 4.8.2006; or Commission decision of 28 August 2009 in Case No COMP / M.5440 – *Lufthansa / Austrian Airlines.* See also Commission Decision in Case No IV /M.1124 – *Maersk Air / LFV Holdings*, OJ C 253, 12.8.1998, p. 4; Commission Decision in Case No COMP / M.2254 – *Aviapartner / Maersk / Nova*, OJ C 27, 27.1.2001, p. 60; Commission decision of 8 August 2005 in Case No COMP / M.3823 – *MAG / Ferrovial Aeropuertos / Exeter Airport;* Commission Decision in Case No COMP / M.5747 – *Iberia / British Airways*, OJ C 241, 8.9.2010, p. 1.

38 Case C-179/90 *Merci Convenzionali Porto di Genova SpA / Siderurgica Gabrielli spA* [1991] ECR I-05889, paragraph 15. The Court has not called this approach into question in cases concerning relevant markets for air transport, see Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 56.

39 See notably Commission decision of 26 January 2011 in Case No M.5830 – *Olympic / Aegean Airlines*, paragraph 314 et seq. and Commission Decision in Case No COMP/M.6447 – *IAG / BMI*, OJ C 161, 7.6.2012, p. 2, paragraph 101 et seq.

ly left open, as the precise geographic market definition had no material impact on the assessment.

(57) As concerns ramp, passenger and baggage handling services, a majority of respondents in the Commission's market investigation considered the market related to single airports only.[40] A majority of respondents confirmed that (where these services are still subject to licencing) licences for airside services are still mainly attributed on a single airport basis. Moreover, a majority of customers and competitors confirmed that even if a service provider provides ramp, passenger and baggage handling services to the same customer at multiple airports under one contract, the service price list is not the same for each airport covered.[41]

(58) While bids organised by airline customers may increasingly encompass more than one airport in the future, the Commission considers that the market still remains local for now: once an airline opts to land at a given airport, only the handlers which are active at this airport can assist the airline. A ground handler which has no authorisation, no warehouses, equipment and personnel at the airport cannot provide ground handling services at that airport, without first organising such a local presence.

(59) However, there is no need to come to a firm conclusion as to the geographic size as the Transaction does not lead to any competition concerns under any plausible geographic market definition.

4.2.1.2. Competition for the market for airside services

(60) The Notifying Party holds that the assessment of competition for the market for airside services should be considered at least on a national basis and possibly on an EEA-wide basis.

(61) The Notifying Party argues that the EEA level is the most appropriate level for the assessment as ramp handlers active in some Member States (under a license or in liberalized airports) are able to bid effectively in license allocation processes in other Member States. For instance, in the last licence allocation process at Brussels National, five companies submitted offers: Aviapartner, Flightcare and Menzies (all already providing ramp services in Belgium) but also Celibi and Swissport, which so far were not providing ramp services in Belgium. Swissport was one of those awarded a licence in that license allocation process.[42]

(62) The Commission has not yet considered the competition for the market for airside services in previous decisions.

40 See replies to questionnaires Q1, Q2 and Q3 of 24 October 2012 sent to competitors (questions 18 and 19), customers (questions 21 and 22) and airport managers (questions 24 and 25).

41 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (question 21) and customers (question 24).

42 The award of this licence is currently challenged before Belgian courts.

(63) The results of the market investigation have proven inconclusive as to the question of whether such a market exists or how the geographic scope of this market could be defined.[43]

(64) The Commission notes however that companies like the Parties and their main competitors bid in various European countries for licences.

(65) The Commission therefore considers that the market for the competition for airside services could be considered to be at least national and possibly EEA-wide. However, the exact geographic scope of this market can be left open in the present decision as the Transaction does not lead to any competition concerns under any plausible market definition.

4.2.2. Landside cargo handling services

(66) The Notifying Party proposes that the geographic markets are limited to airports for all ground handling services including cargo handling services.

(67) As already explained,[44] the European Commission has considered in previous decisions[45] that the geographic scope for the provision of all ground handling services is restricted to a specific airport (or possibly two neighbouring airports), given that the services required at a particular airport cannot be substituted for services provided at other airports. This is in line with the case law of the Court Justice concerning services provided at ports.[46]

(68) In its *Vinci/France Handling* decision,[47] the French competition authority has even considered that the two neighbouring airports of Paris (Roissy and Orly), which are quite close to each other, constituted two separate geographical markets for the provision of cargo handling services.

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43 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (question 11 and 19) and customers (question 14 and 22).

44 See Section 4.2.1.1.

45 See notably Commission Decision in Case No IV/M.1913 – *Lufthansa / Menzies / LGS / JV*, OJ C 127, 27.4.2001, p. 11; Commission Decision in Case No COMP / M.4164 – *Ferrovial / Quebec / GIC / BAA*, OJ C 182, 4.8.2006, p. 12; or Commission decision of 28 August 2009 in Case No COMP / M.5440 – *Lufthansa / Austrian Airlines*. See also Commission Decision in Case No IV /M.1124 – *Maersk Air / LFV Holdings*, OJ C 253, 12.8.1998, p. 4; Commission Decision in Case No Case IV / M.1165, *Lufthansa / Menzies / LCC*, OJ C 238, 29.7.1998, p. 8; Commission Decision in Case No IV/M.2254 – *Aviapartner / Maersk / Nova*, OJ C 27, 27.1.2001, p. 60; Commission decision of 8 August 2005 in Case No COMP / M.3823 – *MAG / Ferrovial Aeropuertos / Exeter Airport*; Commission Decision in Case No COMP / M.5747 – *Iberia / British Airways*, OJ C 241, 8.9.2010, p. 1.

46 Case C-179 / 90 *Merci Convenzionali Porto di Genova SpA / Siderurgica Gabrielli spA* [1991] ECR I-05889, paragraph 15.

47 Conseil de la concurrence, Opinion n°05-A-13, paragraph 42 et seq. and Minister of the Economy Letter C2004-132.

(69) As concerns the results of the market investigation, a clear majority of competitors and customers professed to buying or tendering cargo handling contracts at the level of a single airport.[48]

(70) While the same trend, described above, to conclude multi-airport contracts may be gaining momentum in the future also as regards cargo handling, the Commission considers that the fact that cargo handlers still need to maintain a presence at every single airport in order to be eligible for contracts that cover more than one airport to be important and sees it as an indication that the geographic markets are limited to the airport concerned.

(71) However, given that the Transaction does not lead to any competition concerns on any plausible market definition (airport, national or EEA), there is no need to come to a firm conclusion on the exact geographic delineation of the market.

4.2.3. Offline cargo handling services

(72) The Notifying Party argues that it is not necessary in the present case to determine whether those services constitute a distinct market or are part of the global freight forwarding market. They claim that at the very least, the market for these offline services is regional as the service does not need to be provided on the airport where the ground handlers are providing them.

(73) A large majority of competitors and customers indicated in the Commission's market investigation that they provided or purchased offline services either at the airport or at a regional level.[49]

(74) Given that the Transaction does not lead to any competition concerns on either geographic market, the exact geographic definition of the market for offline services to freight forwarders and airlines can be left open.

4.2.4. Freight forwarding by truck

(75) The Notifying Party considers that the relevant market for freight forwarding services by truck for the purpose of the present case is national.[50]

(76) The Commission has previously considered that, given notably the perception of the consumer, the national nature of both pick-up and delivery, different pricing levels (mainly linked to varying fuel and labor costs), and language and regulatory barriers, freight forwarding by truck is of a national dimension.[51] The Commission has how-

48 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (question 22), customers (question 25).

49 See replies to questionnaires Q1 and Q2 of 24 October 2012 sent to competitors (question 26), customers (question 25).

50 Form CO, paragraph 340.

51 See for instance Commission Decision in Case No IV/M.1649 – *Gefco / KN Elan*, OJ C 319, 6.11.1999, p. 6, Commission Decision in Case No COMP/M1794 – *Deutsche Post / Air Express International*, OJ C 46, 19.2.2000, p. 25, Commission Decision in Case NO COMP/M.3971 – *Deutsche Post / Excel*, OJ C 55, 7.3.2006, p. 60, Commission Decision in Case No COMP/M.4045 – *Deutsche*

ever noted that there are indications that the market for freight forwarding services may be wider than national.[52]

(77) The market investigation has not led to conclusive results as to whether the market should be defined nationally or more widely than national. While a majority of competitors considered the market to be wider than national, customers and airport managers were evenly divided.[53]

(78) In any event, the exact geographic scope of the market can be left open in the present case since in any event the trucking services proposed by the Parties relate to airports located within one Member State where all freight is taken to or departs from, whatever the distance covered to the point of origin or destination.[54]

5. COMPETITIVE ASSESSMENT

5.1. Focus of the assessment

(79) The Parties are both active in the provision of various ground handling and freight related services in many airports in Europe. The ground handling industry is still quite fragmented. Independent ground handlers, like WFS and Aviapartner, service only about 25% of the ground handling sector in the European Union,[55] the other 75% being mainly provided by airport operators and airlines. In addition, there is a competition between the market players. The Parties, like all independent ground handlers, are in essence subcontractors that compete against the airport operators and the airlines which can and do self-handle.

(80) The Parties' activities are, for the most part, largely complementary. While both Parties are ground handlers, they operate on different markets. In the European Union, WFS is rather active in landside cargo handling services while Aviapartner rather operates in the provision of ramp, passenger and baggage handling services. Table 1 below identifies the 15 airports where WFS and Aviapartner are both active in the European Union:

Bahn / Bax, OJ C 43, 21.2.2006, p. 3, Commission Decision in Case No COMP/M.5096 – *RCA / MAV Cargo*, OJ C 29, 5.2.2009, p. 4, Commission Decision in Case No COMP/M.6059 – *Norbert Dentressangle / Laxey Logistics*, OJ C 122, 20.4.2011, p. 5.

52 See notably Commission Decision 2006/C 43/03 in Case No M.4045 – *Deutsche Bahn / Bax Global*, OJ C43, 22.12.2005; Commission Decision 2006/C 55/27 in Case No. M.3971 – *Deutsche Post / Exel*, OJ C55, 24.11.2005, p. 60, paragraph 26.

53 See replies to the question 24 of Q1 – Questionnaire to Competitors of 24.10.2012; question 27 of Q2 – Questionnaire to Customers of 24.10.2012; and question 30 of Q4 – Questionnaire to Airport Managers of 23.10.2012.

54 Form CO, paragraph 338. See also footnote 36 above.

55 Commission Staff Working Paper, Impact assessment accompanying the proposal for a Regulation of the European Parliament and of the Council on ground handling services at Union airports and repealing Council Directive 96/67/EC, 1 December 2011, p. 14, paragraph 28.

Table 1: Airports where both WFS and Aviapartner ("AP") are active in the European Union

Member State	Ramp and passenger services		Landside Cargo handling services		Offline services to freight forwar-ders and non-assisted airlines		Trucking organization services	
	WFS	AP	WFS	AP	WFS	AP	WFS	AP
Brussels National								
Basel-Mulhouse								
Bordeaux Merignac								
Lille Lesquin								
Lyon St-Exupéry								
Marseille Provence								
Nantes Atlantique								
Nice								
Roissy CDG								
Strasbourg Entzheim								
Toulouse Blagnac								
Frankfurt Main								
Amsterdam Schiphol								
Milan Malpensa								
Rome Fiumicino								

Source: Form CO (overlaps in dark grey)

(81) As confirmed in Section 4.1, the provision of landside cargo handling and the provision of ramp, passenger and baggage handling services belong to two separate product markets.

(82) In the absence of overlapping activities between the Parties in the market for the provision of ramp, passenger and baggage handling services at any airports in the European Union, the assessment of the Transaction will consider the competition for airside services but focus on cargo handling services.

(83) Should a national market for the provision of ramp, passenger and baggage handling services be considered, the Transaction would lead to only one affected market, namely France as it is the only Member State where both Parties provide ramp and passenger handling services, with a combined market share estimated to be around [20-30]% (and an increment by WFS of below [5-10]%). Moreover, WFS only provides ramp and passenger services in Roissy-CDG (essentially as a subcontractor)

and in Orly, two airports where Aviapartner does not provide ramp and passenger services.[56] However, the Commission considers that even if the market were to be considered as national in scope, individual competitors would still have to be established at the same airport in order to compete directly with each other. Therefore, this will not be discussed further, as the transaction would not raise concerns on the national market for the provision of ramp, passenger and baggage handling services in France.

(84) However, the activities of the Parties on the market for the provision of ramp, passenger and baggage handling services will be taken into account as part of the assessment of the potential conglomerate effects of the Transaction.[57]

(85) The competitive assessment will focus on the provision of landside cargo handling services in which the Parties overlap at five airports, namely Amsterdam Schiphol, Brussels National, Basel-Mulhouse, Frankfurt/Main and Roissy – Charles de Gaulle ("Roissy-CDG"). The position of the merged entity at national and EEA levels will also be examined.

(86) The Transaction does not result in any vertically linked markets.

5.2. Competition for the market for airside services

(87) The Commission has considered whether the Parties could be considered as competitors "for the market" at airports where the number of ramp licences is limited.

(88) The market investigation[58] has clearly indicated that a sufficient amount of competitors (both international and local) would remain active post-merger to compete for the tendering of ramp licences. A number of market respondents have mentioned entry projects.

(89) Would a separate market for competition for airside services be defined, there would only be affected markets at a national level. The Member States in which the Parties both compete and would hold a market share above 15% are France and Belgium.[59]

(90) The combined market share of the Parties in Belgium in 2011 reaches [30-40]% but WFS does not operate under a licence at any Belgian airport. The Transaction does not increase the ability of Aviapartner to obtain licences in Belgium to a significant extent.

(91) The combined market share of the Parties in France in 2011 reaches [20-30]% and there is no overlap of airside services between the Parties in France at airport level.

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56 It should be noted that licences for airside services are required at Paris-CDG and Orly (and also at Nice-Côte d'Azur airport where Aviapartner is active).

57 See Recital (144).

58 See replies to questions 72, 111 and 131 of Q1 – Questionnaire to Competitors of 24.10.2012.

59 Form CO, paragraph 377 to 379. The combined market share of the Parties in the Netherlands reaches [20-30]% but there is no license requirement in the Netherlands.

The Parties' face significant competition from 3S-Alyzia with a market share of [10-20]% and Group Europe Handling ("GEH") with [10-20]%.

(92) Finally, the Parties have not recently submitted competing offers to obtain licences.[60]

(93) The merged entity will continue to face significant competitors when submitting offers in those license allocation processes, both from existing licenced handlers, such as Swissport or GEH. In addition, other potential candidates include ground handlers already active at other national airports (such as MAP at Nice-Côte d'Azur) and numerous other potential new entrants active at other airports within the European Union (Menzies, Acciona, etc.).

(94) Therefore, the Commission considers that the Transaction does not raise serious doubts to its compatibility with the internal market on a potential market for the competition for airside services.

5.3. The provision of landside cargo handling services

5.3.1. Competition at the airport level

(95) As regards landside cargo handling services, the Parties' activities overlap at five airports, namely Amsterdam Schiphol, Brussels National, Basel-Mulhouse, Frankfurt/Main, and Roissy-CDG. This Section deals with the general features of competition; the specificities for each of these airports will be discussed separately.

(96) Table 2 below summarises the effects of the Transaction in terms of market share by volume, for the provision of landside cargo handling services, excluding airside cargo handling services :

Table 2: Landside cargo handling services (excluding airside cargo handling services) – Market Shares

Airport	*WFS*	*Aviapartner*	*Combined*
Amsterdam Schiphol	[0-5]%	[40-50]%	[40-50]%[61]
Basel-Mulhouse	[0-5]%	[20-30]%	[20-30]%
Brussels National	[20-30]%	[30-40]%	[50-60]%
Frankfurt/Main	[10-20]%	[5-10]%	[20-30]%
Roissy-CDG	[60-70]%	[0-5]%	[70-80]%

Source: Form CO (based on volume (tons) handled at affected airports)

(97) With the exception of Brussels National and Frankfurt-Main, the increments in market shares are very limited, so that no significant merger-specific effect would occur. As regards Frankfurt/Main, the increment is higher ([5-10]% by Aviapartner) but the combined market share of the Parties would still be limited to [20-30]%. The combined market share of the Parties at Brussels National would be [50-60]%, with an increment of [30-40]% by Aviapartner.

60 Form CO, paragraph 396 to 401 and 460 to 463.

61 Due to rounding effect.

(98) Table 3 below summarises the effects of the Transaction in terms of market share by volume, for the provision of landside cargo handling services, including airside cargo handling services:

Table 3: Landside cargo handling services (including airside cargo handling services) – Market Shares

Airport	*WFS*	*Aviapartner*	*Combined*
Amsterdam Schiphol	[0-5]%	[40-50]%	[40-50]%
Basel-Mulhouse	[0-5]%	[20-30]%	[20-30]%
Brussels National	[10-20]%	[40-50]%	[50-60]%
Frankfurt/Main	[10-20]%	[5-10]%	[20-30]%
Roissy-CDG	[60-70]%	[0-5]%	[60-70]%

Source: response to request for information of 16 November 2012 submitted on 21 November 2012.

(99) Again, with the exception of Brussels National and Frankfurt/Main, the increments in market shares are very limited, so that no significant merger-specific effect would occur. As regards Frankfurt/Main, the increment is higher ([5-10]% by Aviapartner) but the combined market share of the Parties would still be limited to [20-30]%.

(100) Strong competitors appear to exist at each of these airports. The main competitor is Swissport/Flightcare. Swissport has recently acquired Flightcare.[62] The merged entity would also face competition from other international companies (such as Celibi, Menzies and Servisair) as well as local operators (such as Air Cargo Logistics at Basel-Mulhouse). Furthermore, the Parties may also face competition from the airports themselves acting as ground handlers, such as FCS (subsidiary of Fraport AG, the airport manager of Frankfurt/Main).

(101) Table 4 sets out the Parties' performance at winning tenders from airlines compared to their competitors at major airports. The data provided shows that competitors have been able to win bids at the Parties' expense. The Parties have therefore faced, and are likely to continue to face sufficient competition in bidding situations also post-Transaction.

Table 4: Airlines tenders at the main airports concerned

Airport	*Year concerned*	*Number of contract bids made by one of the parties*	*WFS won*	*AVIAPARTNER won*	*Competitors won*
Brussels National (BRU)	2009	[…]	[…]	[…]	[…]
	2010	[…]	[…]	[…]	[…]
	2011	[…]	[…]	[…]	[…]
	2012	[…]	[…]	[…]	[…]

62 The acquisition of Flightcare by Swissport was authorised by the Belgium Competition Council on 31 August 2012. See: http://economie.fgov.be/en/binaries/20120905_press_release_tcm327-196709.pdf (retrieved 19 November 2012).

Roissy Charles de Gaulle (CDG)	2009	[…]	[…]	[…]	[…]
	2010	[…]	[…]	[…]	[…]
	2011	[…]	[…]	[…]	[…]
	2012	[…]	[…]	[…]	[…]
Frank-furt/Main (FRA)	2009	[…]	[…]	[…]	[…]
	2010	[…]	[…]	[…]	[…]
	2011	[…]	[…]	[…]	[…]
	2012	[…]	[…]	[…]	[…]
Amsterdam Schiphol (AMS)	2009	[…]	[…]	[…]	[…]
	2010	[…]	[…]	[…]	[…]
	2011	[…]	[…]	[…]	[…]
	2012	[…]	[…]	[…]	[…]

Source: Form CO

(102) Moreover, customers (airlines) hold significant buyer power and will continue to do so post-Transaction. They can not only decide to self-handle but also more decisively to switch between different cargo handlers. The majority of the respondents to the market investigation have indicated that switching is rather easy and frequent, thus making market shares volatile.[63]

(103) In addition, the markets are characterised by low barriers to entry/expansion. A number of respondents to the market investigation have referred to entry project at each of these 5 airports.

(104) At the affected airports, a new entrant only needs to acquire or rent warehousing facilities, rent limited equipment and train employees. As will be demonstrated below, the market investigation has confirmed that there is sufficient warehousing capacity at all airports concerned for actual competitors to increase capacity, for ground handlers that are already operating on the airport but do not provide cargo handling to extend their range of services and for other cargo handlers to start cargo handling activities at the airport. Generally, there appears to be space capacity in warehousing space due to a decrease in cargo traffic resulting from the general economic downturn.

(105) The only other main factor that could have had an impact on the development of competition is the access to warehousing space and the possibility to be in so-called "first line warehousing". The key difference between first line and second line warehousing is that first line warehouses have direct access to the ramp (where a licence is required)[64] while second line warehouses are in public areas.

63 See replies to question 40 of Q1 – Questionnaire to Competitors of 24 October 2012; replies to question 41 of Q2 – Questionnaire to Customers of 24 October 2012; replies to question 56 of Q4 – Questionnaire to Airport Managers of 23 October 2012.

64 See footnote 9.

(106) However, the market investigation has not indicated that being in second line is detrimental to the development of competition. WFS' warehouses were in second line for a number of years at Brussels National and this did not prevent WFS from extending its business. At Frankfurt/Main, WFS currently operates effectively from second line.

(107) Moreover, at the five airports where the Parties' activities overlap, the airport managers have generally indicated that either there is warehouse space available or they are building new facilities for cargo operators.[65]

(108) The Parties also point to the fact that cargo handling prices have been stable or decreasing over the past years, thus illustrating the competitive nature of the industry.

(109) Finally, the majority of the respondents to the market investigation[66] has not raised concerns as regards the overall impact of the Transaction on any market and in particular on the market for the provision of landside cargo handling services. This applies both on a general level as well as in relation to the five airports where the Parties have overlapping activities.

5.3.1.1. Amsterdam-Schiphol

Table 5: Landside cargo handling – 2011 market shares in Amsterdam Schiphol

Competitors	*Share (excluding airside cargo handling)*	*Share (including air side cargo handling)*
WFS	[0-5]%	[0-5]%
Aviapartner	[40-50]%	[40-50]%
Combined	**[40-50]**[67]	**[40-50]%**
Menzies	[40-50]%	[40-50]%
Swissport/Flightcare	[10-20]%	[10-20]%

Source: Form CO; response to request for information of 16 November 2012 submitted on 21 November 2012.

(110) The merged entity would have a combined market share of [40-50]% at Amsterdam-Schiphol. However, the increment is low and Menzies would remain the strongest

65 Amsterdam Schiphol Airport, reply to question 58 of Q4 – Questionnaire to Airport Managers of 24 October 2012; The Brussels Airport Company, reply to question 58 of Q4 – Questionnaire to Airport Managers of 25 October 2012; Euroairport BSL/MLH, reply to questions 58 of Q4 – Questionnaire to Airport Managers of 26 October 2012; Aéroports de Paris, reply to questions 57–60 of Q4 – Questionnaire to Airport Managers of 24 October 2012.

66 Replies to questions 69 and 70 of Q1 – Questionnaire to Competitors of 24 October 2012; replies to questions 61–63 of Q2 – Questionnaire to Customers of 24 October 2012; replies to questions 34–36 of Q3 – Questionnaire to Licence Granting Authorities of 23 October 2012; replies to questions 84–86 of Q4 – Questionnaire to Airport Managers of 23 October 2012; replies to questions 15 and 16 of Q5 – Questionnaire to Freight Forwarders of 24 October 2012.

67 Difference due to rounding effect.

independent cargo handler in terms of market shares. The same conclusion applies whether airside cargo services are included or not.

(111) Menzies and Swissport/Flightcare are strong competitors. Swissport has just announced having won two new clients at Schiphol (Air China and Turkish Airlines).[68]

(112) There are no significant barriers to entry to the provision of landside cargo handling at Amsterdam-Schiphol. Warehousing space is available. The majority of the respondents to the market investigation have not raised any concerns as regards the availability of space for warehousing at Amsterdam-Schiphol.[69] At Amsterdam-Schiphol Airport, the airport manager has indicated that the current warehouse capacity is sufficient until at least 2020 and there is ample space for warehouse locations, even in first line.[70]

(113) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at Amsterdam-Schiphol.

5.3.1.2. Basel-Mulhouse

Table 6: Landside cargo handling – 2011 market shares in Basel-Mulhouse

Competitors	*Share (excluding airside cargo handling)*	*Share (including airside cargo handling)[71]*
WFS	[0-5]%	[0-5]%
Aviapartner	[20-30]%	[20-30]%
Combined	**[20-30]%**	**[20-30]%**
Swissport/Flightcare	[70-80]%	n/a
Air Cargo Logistics	[0-5]%	n/a

Source: Form CO; response to request for information of 16 November 2012 submitted on 21 November 2012.

(114) At Basel-Mulhouse, the leading supplier of landside cargo handling services is Swissport/Flightcare with [70-80]% of the market. The merged entity would become the second largest provider of landside cargo handling services with a market share

68 Swissport cargo service continues to grow in Amsterdam, Press release dated 3 August 2012: http://www.swissport.com/news-media-center/news-releases/news-detail/?no_cache=1&tx_ttnews%5Btt_news%5D=339&cHash=31eb81ce7008f186b032e04e86a8d720 (retrieved 19 November 2012).

69 Replies to question 150 of Q1 – Questionnaire to Competitors of 24 October 2012.

70 Amsterdam Schiphol Airport, reply to question 58 of Q4 – Questionnaire to Airport Managers of 24 October 2012.

71 The Parties are unable to provide precise competitors names and/or give precise market share estimates as they are not active on the airside.

of [20-30]%. The increment is extremely low (WFS has a market share below [0-5]%).

(115) Swissport/Flightcare is a strong competitor whose market share in the provision of landside cargo handling services, excluding airside cargo handling, increased from [60-70]% to [70-80]% between 2009 and 2011.

(116) The majority of the respondents to the market investigation that have expressed their views have confirmed that Swissport/Flightcare is the closest competitor of each of the Parties in the provision of landside cargo handling services at Basel-Mulhouse.[72]

(117) There are no significant barriers to entry to the provision of landside cargo handling at Basel-Mulhouse. Air Cargo Logistics ("ACL"), a Swiss company, has recently entered. The absence of barriers was confirmed by the market investigation where a number of market respondents referred to entry projects at Basel-Mulhouse. The vast majority of the respondents to the market investigation did not raise any concerns as regards warehouse space availability.[73] This was confirmed[74] by Euroairport BSL/MLH, the airport manager, which indicated that warehouse space is available and that the building of new cargo facilities is planned for 2014 for the strategic development of cargo at the airport.[75]

(118) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at Basel-Mulhouse.

5.3.1.3. Brussels National

Table 7: Landside cargo handling– 2011 market shares in Brussels National

Competitors	*Share (excluding airside cargo handling)*	*Share (including airside cargo handling)*
WFS	[20-30]%	[10-20]%
Aviapartner	[30-40]%	[40-50]%
Combined	**[50-60]%**	**[50-60]%**
Swissport/Flightcare	[40-50]%	[40-50]%

Source: Form CO; response to request for information of 16 November 2012 submitted on 21 November 2012.

72 Replies to question 82 of Q1 – Questionnaire to Competitors of 24 October 2012; replies to question 73 of Q2 – Questionnaire to Customers of 24 October 2012.

73 Replies to question 87 of Q1 – Questionnaire to Competitors of 24 October 2012.

74 Euroairport BSL/MLH, reply to questions 57 of Q4 – Questionnaire to Airport manager of 26 October 2012.

75 Euroairport BSL/MLH, reply to questions 58 of Q4- Questionnaire to Airport manager of 26 October 2012.

(119) Post-Transaction, the merged entity would become the first provider of landside cargo handling services with a market share of [50-60]%, Swissport/Flightcare being the only remaining competitor, if airside cargo handling is excluded. The same conclusion applies if airside cargo handling is included: the merged entity would have a market share of [50-60]%; Swissport would hold [40-50]%.

(120) Swissport has been a very active competitor whose market share in the provision of landside cargo handling services increased from [5-10]% to [10-20]% between 2009 and 2011. Its combination with Flightcare[76] will enable it to compete effectively against the merged entity on the market for the provision of landside cargo handling services (as well as on the provision of ramp, passenger and baggage handling services). Moreover, Swissport/Flightcare also provides ramp, passenger and baggage handling services, offline services and freight forwarding by truck at Brussels National.

(121) Furthermore, there are no significant barriers to entry to the provision of landside cargo handling at Brussels National. Warehousing space availability is not a source of concern. The majority of the respondents to the market investigation have not raised any concerns as regards the availability of space for warehousing at Brussels National, even if some customers stressed the advantage of being in first line.[77] In any case, to be in second line has proven not to be detrimental to the development of competition at Brussels National given that for years, WFS was in second line and it did not prevent it from developing its business successfully. Moreover, The Brussels Airport Company has indicated that it plans to create 22.000 sqm of additional cargo handling space and that 95% of the work will start in 2013 with buildings ready in 2014.[78]

(122) The fact that WFS and Swissport (before its acquisition of Flightcare) managed to have a market share of [10-20]% and [10-20]% in 2011 respectively demonstrates that not holding a licence for the provision of airside services does not prevent ground handling companies to compete effectively and successfully in the provision of landside cargo handling services.

(123) The Notifying Party submits that there has been entry or expansion in the provision of ground handling services at Brussels National in particular by Swissport, strengthened by its acquisition of Flightcare. This was confirmed by the market investigation during which a number of market respondents referred to entry projects at Brussels National.

(124) In view of the above, and in particular given the relative ease of entry into this market at Brussels National, the Commission considers that the proposed Transaction does not

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76 See decision of the Belgian Competition Council 2012-C/C-21 of 31 August 2012, http://economie.fgov.be/en/binaries/20120905_press_release_tcm327-196709.pdf (retrieved 19 November 2012).

77 Replies to question 74 and 75 of Q1 – Questionnaire to Competitors of 24 October 2012; replies to question 67 of Q2 – Questionnaire to Customers of 24 October 2012.

78 The Brussels Airport Company, reply to question 58 of Q4 – Questionnaire to Airport Managers of 24 October 2012.

raise serious doubts as regards the provision of landside cargo handling at Brussels National.

5.3.1.4. Frankfurt/Main

Table 8: Landside cargo handling – 2011 market shares in Frankfurt/Main

Competitors	*Share (excluding airside cargo handling)*	*Share (including airside cargo handling)*[79]
WFS	[10-20]%	[10-20]%
Aviapartner	[5-10]%	[5-10]%
Combined	**[20-30]%**	**[20-30]%**
FCS (FRAPORT)	[40-50]%	n/a
Lug	[20-30]%	n/a
Swissport/Flightcare	[5-10]%	n/a
Celibi	[0-5]%	n/a
Others	[5-10]%	n/a

Source: Form CO; response to request for information of 16 November 2012 submitted on 21 November 2012.

(125) At Frankfurt/Main, the combined market shares remain relatively low and the merger entity would face strong competitors on cargo handling services, notably Fraport Cargo Services ("FCS"), LUG, Swissport/Flightcare and Celebi.

(126) FCS is a 100 per cent subsidiary of Fraport AG, the airport managing body for Frankfurt's airports. It provides cargo handling services as well as ramp and passenger services in Frankfurt/Main and Frankfurt-Hahn airports.

(127) LUG is a German cargo handler, mainly active in Frankfurt. LUG is part of the Dettmer group, a group with diversified activities in the freight forwarding sector.[80]

(128) Swissport/Flightcare started operating at Frankfurt/Main in 1999 and is a strong competitor. Celebi, a Turkish handling company, currently holding a [0-5]% market share, is progressively gaining market shares on cargo handling at Frankfurt/Main.

(129) There are no significant barriers to entry to the provision of landside cargo handling at Frankfurt/Main. Moreover, the market investigation has indicated that a number of market respondents have entry projects at Frankfurt/Main. In addition, the respondents to the market investigation did not raise any material concerns as regards warehouse space availability, even though a number of them raised the advantage of be-

79 The Parties are unable to provide precise competitors names and/or give precise market share estimates as they are not active on the airside.

80 See: http://www.dettmer-logistics.de/ (retrieved 19 November 2012).

ing in first line.[81] However, being in second line does not seem to prevent a ground handler from being successful. In Frankfurt/Main, WFS operates from second line […].

(130) Fraport and Acciona have both ramp licences at Frankfurt/Main. The fact that a number of other competitors (such as LUG with [20-30]% but also WFS and Aviapartner) managed to be successful demonstrates that not holding a licence for the provision of airside services does not constitute an impediment to the provision of landside cargo handling services.

(131) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at Frankfurt/Main.

5.3.1.5. Roissy-CDG

Table 9: Landside cargo handling – 2011 market shares in Roissy-CDG

Competitors	***Share (excluding airside cargo handling)***	***Share (including airside cargo handling)***
WFS	[60-70]%	[60-70]%
Aviapartner	[0-5]%	[0-5]%
Combined	**[70-80]%**	**[60-70]%**
Swissport/Flightcare	[20-30]%	[10-20]%
First Handling	[10-20]%	[5-10]%
VE Airport	0%	[10-20]%
GEH	0%	[5-10]%
3S-Alyzia	0%	[0-5]%
Others	0%	[0-5]%

Source: Form CO; response to request for information of 16 November 2012 submitted on 21 November 2012.

(132) At Roissy-CDG, as regards the provision of landside cargo handling (excluding air-side cargo handling), the merged entity would be the largest provider of landside cargo handling services with a market share of [70-80]%, followed by Swissport/Flightcare ([20-30]%) and First Handling ([10-20]% - However, First Handling will be put into receivership in the near future. One of the existing players or potential entrants could consider taking over part of its assets to increase its shares on the market. Otherwise, it is likely that First Handling's existing clients will be taken by the presently active cargo handlers on the airport, in proportions which cannot yet be determined).

(133) The increment is extremely low ([0-5]% by Aviapartner).

81 Replies to questions 133 and 134 of Q1 – Questionnaire to Competitors of 24 October 2012.

(134) As already mentioned, Swissport/Flightcare is a very active competitor which will be ble to compete effectively against the merged entity on the market for the provision of landside cargo handling services (as well as on the market for the provision of ramp, passenger and baggage handling services). The majority of the respondents to the market investigation that have expressed their views have generally identified Swissport as the closest competitor to each of the Parties.[82]

(135) The market investigation has indicated that a number of market respondents have entry projects at Roissy-CDG.

(136) On a market including airside cargo handling, the merged entity would have a combined market share reduced to [60-70]% (still with a very small increment), as a number of various other competitors are active in the provision of airside cargo handling services: Swissport, VE Airport, First handling, GEH, etc.

(137) There are no barriers to entry to the provision of landside cargo handling at Roissy-CDG. Warehousing space availability is not a source of concern. The majority of respondents to the market investigation have not raised any concerns as regards the availability of space for warehousing at Roissy-CDG.[83] Moreover, Aéroports de Paris, the airport manager of Roissy-CDG (and Orly), has indicated that there is warehousing space for cargo handling, even in first line, readily available for rent. ADP Real Estate Division developed in 2011 a Cargo redevelopment program which encompasses different warehousing projects over the next two to three decades at Roissy-CDG, including refurbishment of existing assets, and investment in new assets, all of those being systematically in first line, with direct access to the ramp (45 000m^2 at both Roissy-CDG and Orly).[84]

(138) Moreover, the fact that WFS managed to have a market share of [60-70]% in 2011 demonstrates that not holding a licence does not prevent ground handling companies to compete effectively and successfully in the provision of landside cargo handling services.[85]

(139) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at Roissy-CDG.

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82 Replies to question 112 of Q1 – Questionnaire to Competitors of 24 October 2012. Replies to question 111 of Q2 – Questionnaire to Customers of 24 October 2012.

83 Replies to question 114 of Q1 – Questionnaire to Competitors of 24 October 2012.

84 Aéroports de Paris, replies to questions 57–60 of Q4 – Questionnaire to Airport Managers of 24 October 2012.

85 In 2009, the ramp licences for baggage handling to Roissy-CDG have been granted to Air France and GEH for CDG1, to Air France and GEH for CDG2 and to Swissport for CDG3 the period from 1 November 2009 to 31 October 2014. WFS was granted the licence to handle freight and mail handling services on the ramp together with GEH, Swissport and Air France ("Décision du 25 août 2009 portant désignation de prestataires de services d'assistance en escale autorisés à exercer sur l'aéroport de Paris-Charles de Gaulle").

5.3.2. Competition at the national level

(140) Should the geographic market definition for the provision of landside cargo handling services, excluding airside cargo services, be national in scope, the Parties would have an estimated combined market share of [40-50]% in Belgium (WFS: [5-10]%; Aviapartner : [30-40]%), [60-70]% in France (WFS: [50-60]%; Aviapartner : [0-5]%), [10-20]% in Germany (WFS: [5-10]%; Aviapartner : [0-5]%) and [30-40]% in the Netherlands (WFS: [0-5]%; Aviapartner : [30-40]%). On a national market for the provision of landside cargo handling services including airside cargo services, the Parties would have an estimated combined market share of [50-60]% in Belgium (WFS: [5-10]%; Aviapartner: [50-60]%), [50-60]% in France (WFS: [50-60]%; Aviapartner: [0-5]%), below [5-10]% in Germany (WFS: below [5-10]%; Aviapartner below [0-5]%) and [30-40]% in the Netherlands (WFS: [0-5]%; Aviapartner: [30-40]%).

(141) The increments and/or the combined market shares at national level are low, except for Belgium.

(142) In Belgium, the increment comes from the presence of both Parties at Brussels National; they do not have any overlapping activities in any other airports in that Member State. Moreover, the competition at national level presents the same general features as discussed at airport level.

(143) In view of the above and in the absence of material concerns expressed during the market investigation, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at national level.

5.3.3. Competition at the EEA level

(144) Should the geographic market definition for the provision of landside cargo handling services, excluding airside cargo services, be of EEA dimension, the Parties would have an estimated combined market share of [20-30]% (WFS: [10-20]% and Aviapartner: [10-20]%). On a EEA-wide market for the provision of landside cargo handling services including airside cargo services, the Parties would have an estimated combined market share below [10-20]% (WFS: [10-20]%; Aviapartner: below [5-10]%),

(145) In addition, competition at EEA level presents the same general features as discussed at airport level.

(146) In view of the above and in the absence of material concerns expressed during the market investigation, the Commission considers that the Transaction does not raise serious doubts as regards the provision of landside cargo handling at EEA level.

5.4. Offline cargo handling services

(147) The Parties' activities overlap in the provision of offline services at five airports, namely Amsterdam Schiphol, Brussels National, Basel-Mulhouse, Lyon Saint-Exupéry, Frankfurt/Main and Roissy-CDG.

(148) As explained in Section 4.1.3, it is not clear whether the provision of offline services belongs to the market for the provision of landside cargo handling services or whether these services should be considered as part of the freight forwarding market.

(149) In the latter case, the Transaction would not raise any serious doubts since no affected markets would arise due to low market shares.

(150) In the former case, the activity of offline services carried out by ground-handlers represents a complimentary activity to their core business and, in any case, the market share of each of the Parties on a market encompassing landside cargo handling services and offline services would be in the same range as their market shares in the provision of landside cargo handling services.[86]

(151) In view of the above and in the absence of material concerns expressed during the market investigation, the Commission considers that the Transaction does not raise serious doubts as regards the provision of offline services, whatever the geographic dimension of the market.

5.5. Conglomerate effects

(152) Conglomerate effects concern companies that are active in closely related markets.[87] Ramp, baggage and passenger handling services on the one side and cargo handling services on the other side can be considered as neighbouring markets. These services can be provided to the same customers (although the range of customers for cargo handling services are wider because it includes full-cargo airlines and freight forwarders), at the same venue (although there is a strict separation between airside services with access to the ramp and landside services that lack this access) and both belong to the overall sector of ground handling services. Similarly, landside cargo handling and freight forwarding by truck can be said to be closely related.

(153) However, the Transaction is unlikely to lead to any conglomerate effects, neither (i) between ramp, passenger and baggage handling services and landside cargo handling services nor (ii) between landside cargo handling and freight forwarding by truck.

5.5.1. Ramp, passenger and baggage handling services and landside cargo handling services

(154) The Transaction will not result in foreclosure through the ability and incentive of the merged entity to leverage a position on one market to another by means of tying or bundling or other exclusionary practices (conglomerate foreclosure). The merged entity will not have the ability to foreclose its rivals.

(155) Cargo handling services and ramp, passenger and baggage handling services are usually provided under separate contracts and usually negotiated by different procurement services within airlines. At the airports where the Parties already propose both services, they have not entered into any full service agreement for the provision

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86 The competitive assessment of the merged entity in the provision of landside cargo handling services at Amsterdam Schiphol, Brussels National, Basel-Mulhouse and Roissy – CDG is the subject of this present Decision. As regards Lyon Saint Exupéry, Aviapartner has no activity in the landside cargo handling services; its activities in offline services are *de minimis* and the Transaction will not have any material impact.

87 Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6, paragraph 91.

of ramp, passenger and baggage handling as well as cargo handling services and their main clients are not the same for the two types of services.

(156) The only airport where bundling practices have been observed is Brussels National where landside cargo handling services have been bundled with one particular ramp service (transport of freight on the ramp).

(157) Some competitors however believe that the merged entity would be able to foreclose the market.[88] In particular, one competitor, Swissport/Flightcare, argues that the merged entity would certainly have the ability and incentive to bundle its services and offer rebates in order to convince customers to buy the whole service package including both landside cargo handling and ramp, passenger and baggage services. The merged entity's strong position in some European airports may also convince airlines to switch at other airports to the merged entity's services.[89]

(158) The Commission is of the opinion that these concerns are unfounded for the following reasons.

(159) The decision of an airline to source two types of services from a given ground handler is dependent on the ability of this ground handler to propose competitive offers on both services. Prices are in any event separated for each of ramp, passenger and baggage handling, on the one hand, and cargo handling, on the other hand.

(160) Bundling only substantially influences competition when one of the services proposed is viewed by many customers as particularly important and there are few relevant alternatives for that product. At all airports, airlines will however have credible alternatives to the merged entity for both types of services.[90]

(161) Furthermore, the benefits of bundling strategies would be limited considering economies of scale between ramp and passenger services and landside cargo handling services are low: these services are provided in different areas of the airport, by different personnel and with different equipment. Bundling strategies would therefore be costly.

(162) In addition, according to the Parties,[91] both services are activities with low margins with the consequence that there would therefore be no incentive to accept losses on one activity to gain sales on the other. Margins vary widely from one airport to another but generally amount to between […] for Aviapartner.[92] These levels of mar-

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88 See footnote 93.

89 Response of Swissport / Flightcare to questionnaire Q1 of 24 October 2012 sent to competitors (question 59).

90 See Sections 5.3.1.1 to 5.3.1.5. In particular, post Transaction, at least two independent competitors will remain active in ramp and cargo handling services on the airside (see Decision of the Belgian Competition Council 2012-C/C-21 of 31.8.2012).

91 Form CO, paragraph 479.

92 EBIT/Turnover, before overheads.

gins are standard in this sector. The global EBIT margin of WFS is […] globally for ramp, passenger and baggage handling compared to […] for cargo handling.

(163) Besides, at the only airport where bundling practices have been observed (Brussels National), these bundling practices have not produced any material foreclosure effect: the market shares of WFS have steadily increased over the past few years despite WFS' inability to bundle.

The Commission also notes that the market investigation has broadly confirmed the Notifying Party's claims. A majority of all respondents considered that the merged entity would not enjoy any special competitive advantage over competitors active in only one of the markets. The respondents also confirmed that contracts for cargo as well as for ramp, passenger and baggage handling services are usually negotiated separately.

(164) While a majority of competitors considered that the merged entity could foreclose competitors in the landside cargo handling sector at a given airport through the fact that they also provide ramp, passenger and baggage services, this concern was not shared by customers or airport managers.[93] The latter stressed the absence of competitive advantage to provide landside cargo handling services together with ramp, passengers and ground handlings services and the absence of a competitive advantage post-transaction on any markets at Brussels national.[94]

(165) In any event, the arguments brought forward by competitors were of a very general nature and not substantiated. They related mostly to the merged entity's increased size which allegedly would allow it to offer lower prices and its worldwide network of airports. Moreover, a majority of competitors, some of them active in both markets, stated that bundling was uncommon, that they did not bundle their services and that customers did not prefer to purchase ramp, passenger and baggage services from the same service provider as their cargo handling services (or *vice versa*) at a given airport.[95] These competitors' own actions therefore suggest an inability to bundle in the ground handling sector.

(166) Besides, the customers of the Parties are large airline companies that have the power to exert competitive constraint on their ground handling providers, particularly as they can self-handle. This was confirmed by the market investigation that indicated the ability of airlines to switch from one provider of cargo handling services to another.[96]

(167) The Commission therefore considers that on balance, the arguments and evidence against the ability and incentive to foreclose are stronger than the arguments for such

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93 See replies to questionnaires Q1, Q2 and Q4 of 24 October 2012 sent to competitors (question 59), customers (questions 54) and airport managers (question 79).

94 Replies to questions 71 and 72 of Q2 – Questionnaire to Customers of 24 October 2012.

95 See replies to questionnaires Q1 of 24 October 2012 sent to competitors (questions 55 and 56).

96 See replies to questionnaires Q1, Q2 and Q4 of 24 October 2012 sent to competitors (question 40), customers (questions 41) and airport managers (question 56).

ability and incentive.[97] The Commission concludes that for these reasons, the Transaction is unlikely to lead to any conglomerate effects between ramp, passenger and baggage handling services and cargo handling services.

5.5.2. Non-coordinated conglomerate effects between landside cargo handling and freight forwarding by truck

(168) The Transaction will also not result in foreclosure on the markets for landside cargo handling and freight forwarding by truck through conglomerate effects.

(169) First, as with ramp services, cargo handling and freight forwarding by truck are proposed under a different contractual framework: the cargo handling agreement designates the cargo handler for one given station for the whole duration of the agreement. On the other hand, freight forwarding by truck are procured at arm's length depending on the needs of the airline, which depend on the point of origin and destination of the freight and the offers the airline can obtain from other players.

(170) In addition, airlines have other credible alternatives. Other ground handlers as well as freight forwarders by land provide similar services.

(171) There are no material economies of scale between the two services and freight forwarding by truck itself is subcontracted by WFS, which limits the availability of pricing strategies on this service in order to gain additional cargo handling volumes.

(172) Therefore the Commission concludes that the Transaction will not lead to any conglomerate effects on markets for landside cargo handling and freight forwarding by truck.

6. CONCLUSION

(173) For the above reasons, the European Commission has decided not to oppose the notified concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted pursuant to Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)

Joaquín ALMUNIA
Vice-President

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97 See Recitals (159) et seq.

Please note that the Commission will publish the decision in its non-confidential version on the DG COMP website (http://ec.europa.eu/competition/index_en.html). You are therefore invited to inform the Commission, within 7 days following notification of this decision, whether you consider that it contains business secrets or other confidential information which you consider necessary to have deleted before publication. You should provide reasons to substantiate any such request which the Commission will evaluate before publication. Your request should be sent by registered letter or telefax to:

European Commission
Competition DG
Merger Control Services
Rue Joseph II / Jozef II-straat 70
1000 Brussels
BELGIQUE/BELGIË
Fax No 32 2 296.43.01