

***Case No COMP/M.7458 -
IBM/ INF BUSINESS
OF DEUTSCHE
LUFTHANSA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/12/2014

***In electronic form on the EUR-Lex website under
document number 32014M7458***



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 15.12.2014
C(2014) 9988 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7458 – IBM / INF BUSINESS OF DEUTSCHE LUFTHANSA
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 18 November 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking IBM Central Holding GmbH ("IBM C.H.", Germany), indirectly acquires from Lufthansa Systems Aktiengesellschaft ("LSY", Germany) within the meaning of Article 3(1)(b) of the Merger Regulation sole control over a business responsible for the provision of certain IT services (the "INF Business") through acquisition of all shares in INF KG ("INF", Germany).

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.

- (2) IBM C.H. is designated hereinafter as the "Notifying Party" and IBM C.H and INF collectively as the "Parties".

1. THE PARTIES AND THE OPERATION

- (3) **IBM C.H.** is a wholly-owned indirect subsidiary of International Business Machines Corporation ("IBM", USA). IBM is active worldwide in the development, production, and marketing of a wide variety of IT solutions, comprising software, systems (servers, storage systems, appliances), and services (business consulting and IT infrastructure services).
- (4) **IBM Deutschland Aviation** Industry Services GmbH ("IBM Deutschland Aviation", Germany) is a 100% owned subsidiary of IBM C.H.
- (5) **INF** is a newly-formed company which, at the latest on the closing date of the proposed transaction, will be, directly or indirectly, wholly owned by Deutsche Lufthansa Aktiengesellschaft ("DLH" or "Lufthansa", Germany).
- (6) The **INF Business** is currently part of LSY, a wholly-owned subsidiary of DLH. The INF Business provides certain information technology services, including the operation of data centres, electronic workplaces, data&voice communication, user helpdesk, service management and specific individual information technology services both to the Lufthansa group and, to a limited extent, to external customers.
- (7) The **proposed transaction** consists of IBM C.H. indirectly acquiring sole control over the INF Business through acquisition of all shares in INF by IBM Deutschland Aviation. Before the closing of the proposed transaction, LSY will transfer to INF the INF Business as a going concern.
- (8) In addition to the share purchase agreement, DLH will enter into a **Framework Agreement for IT outsourcing ("FWA")** with LSY.² The FWA will be part of the INF Business to be transferred to INF (which in turn will be acquired by IBM Deutschland Aviation). Therefore, post-transaction, IBM C.H. will, through the INF Business, provide IT outsourcing services to companies of the Lufthansa group pursuant to the FWA. The FWA will be non-exclusive and of a duration of seven years, after which DLH will be free to again issue a tender for the relevant services.
- (9) The proposed transaction involves the transfer of a business with access to the market. Indeed, the assets and personnel forming the INF Business are currently already engaged in the provision of services to third parties and will enable IBM to continue providing services to third parties in addition to Lufthansa.³
- (10) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² The FWA will come into effect on 1 April 2015.

³ See paragraph 26 of the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

2. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (IBM: EUR [...] million; INF Business: EUR [...] million).⁴ Each of them has an EU-wide turnover in excess of EUR 250 million (IBM: EUR [...] million; INF Business: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed concentration therefore has an EU dimension.

3. MARKET DEFINITION

3.1. Introduction

- (12) The proposed transaction gives rise to horizontal relationships, since the Parties are both active in the provision of IT outsourcing services,⁵ particularly to customers in the transportation sector.
- (13) In addition, IBM (but not the INF Business) is active in the supply of IT software and IT systems, comprising electronic information processing systems (including servers and storage). Thus, since the use of IT software and IT systems may be required to provide IT services, the proposed transaction also gives rise to a vertical relationship between the Parties' activities.

3.2. IT services

3.2.1. Product market definition

- (14) The Notifying Party submits that, from a supply-side perspective, the relevant product market comprises at least all IT services, but that the exact product market definition can be left open, since the proposed transaction does not give rise to competition concerns under any possible market definition.
- (15) In its previous decisional practice,⁶ the Commission considered that the market for IT services could be segmented depending on (i) the functionality of the services and (ii) the different industries in which customers are active, as identified in market reports by independent industry analyst companies such as Gartner. However, in its past decisions, the Commission ultimately left open the precise product market definition.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

⁵ IT outsourcing services provide day-to-day management and operation of computing and processes, including infrastructure and business applications. IT outsourcing contracts are differentiated from project services in that they are ongoing, performance-based contracts to deliver day-to-day IT operations and management, as opposed to project-based efforts. Except for help desk services, IT outsourcing market segments are differentiated by the degree and type of vendor responsibility specified in the service contract.

⁶ See Cases M.6921 – *IBM Italia / UBIS*, Commission decision of 19 June 2013; M.6237 – *Computer Sciences Corporation / iSoft Group*, Commission decision of 20 June 2011; M.6127 – *Atos Origin / Siemens IT Solutions & Services*, Commission decision of 25 March 2011; M.5666 – *Xerox / Affiliated Computer Services*, Commission decision of 19 January 2010; M.5301 – *Cap Gemini / Bas*, Commission decision of 13 October 2008.

3.2.1.1. Segmentation of IT services by functionality

- (16) As regards a segmentation of the IT services market by functionality, according to the Notifying Party, Gartner's most recent reports identify the following segments: (i) consulting; (ii) implementation; (iii) IT outsourcing; (iv) business process outsourcing; (v) software support; and (vi) hardware support.⁷
- (17) While IBM is active in a broader range of IT services, the activities of the INF Business are limited to the provision of IT outsourcing services.
- (18) The Notifying Party considers that a sub-segmentation according to the different functionalities of IT services is not appropriate, since suppliers have gradually been expanding their service offerings to encompass multiple segments in order to offer customers a broader range of IT service solutions (either through the expansion of in-house offerings and/or acquisitions, or through alliances and sub-contracting arrangements with other service providers).
- (19) In previous decisions, the Commission considered that the IT services market could be segmented into several categories according to functionality, based on market reports by Gartner.⁸ However, the Commission ultimately left open the precise product market definition.

Sub-segments of IT outsourcing services

- (20) According to the Notifying Party, within the segment for IT outsourcing services, Gartner further identifies the following sub-segments: (a) public cloud computing services, (b) infrastructure as a service ("IaaS"),⁹ (c) infrastructure outsourcing services (including potential further sub-segments for data centre services, network outsourcing, end-user device outsourcing, and help desk outsourcing), and (d) application outsourcing services.
- (21) Among the various sub-segments identified above, the INF Business only provides (a) cloud services, (b) infrastructure as a service and (c) infrastructure outsourcing services (which accounts for [the majority] of the total IT outsourcing services provided by the INF Business), but not (d) application outsourcing services. By contrast, IBM is active across all sub-segments of IT outsourcing services.
- (22) The Notifying Party considers that a sub-segmentation according to the different categories of IT outsourcing services (and, in particular, between categories (a), (b) and (c) above) is not appropriate since: (i) the purpose of all these services is to deliver day-to-day IT operations and management of infrastructure, applications, and

⁷ See Gartner's 2014 report named "*Market Share: IT Services, 2013*".

⁸ For example, the Commission considered the following categories: (i) hardware maintenance; (ii) software maintenance and support; (iii) consulting; (iv) development and integration; (v) IT outsourcing (formerly referred to as "IT management"); (vi) business process outsourcing (BPO); (vii) management services; and (viii) education and training. See, e.g., case M.6921 – *IBM Italia / UBIS*, Commission decision of 19 June 2013.

⁹ IaaS is a standardized, highly automated offering in which compute resources, complemented by storage and networking capabilities, are owned and hosted by a service provider and offered to the customer on demand.

the flow of information; (ii) even if a supplier would not be able to offer specific services within the IT outsourcing segment, it could act as prime contractor and entrust other suppliers with the provision of the services that are not in its portfolio; (iii) infrastructure outsourcing services are generally the same with respect to all industry sectors (whereas application outsourcing services may be tailor-made based on the specific applications needed within each industry sector); and (iv) there would be full demand-side substitutability between infrastructure outsourcing services, IaaS, and cloud services as they are all aimed at satisfying the same needs of a customer, the difference residing in the technical way of achieving this.

- (23) In a previous decision, the Commission found that, although certain factors from a demand-side perspective could point towards a separate market for infrastructure outsourcing services, there is a high degree of substitutability between IT outsourcing services and other types of IT services from a supply-side perspective, as providers of IT services that do not currently provide IT outsourcing services would have the ability to start providing these services in the short term.¹⁰ The Commission ultimately left the precise product market definition open.

3.2.1.2. Segmentation of IT services by industry sector

- (24) As regards a segmentation of the IT services market based on the industry sector, according to the Notifying Party, Gartner's more recent reports identify the following segments: (i) banking & securities; (ii) communications, media & services; (iii) education; (iv) government; (v) healthcare providers; (vi) insurance; (vii) manufacturing & natural resources; (viii) retail; (ix) transportation; (x) utilities; and (xi) wholesale trade.¹¹
- (25) The INF Business provides the vast majority of its IT (outsourcing) services to customers in transportation sector, mainly to the benefit of companies of the Lufthansa group. In addition, the INF Business has a few third-party customers in industry sectors other than transportation (e.g., banking, communication & media, manufacturing sectors). However, these customers together accounted for business worth only EUR [...] million in 2013, i.e., only [0-5]% of the total turnover of the INF Business.¹² As a result, the acquisition of such contracts by IBM is unlikely to lead to any significant accretion of IBM's market share or to enable IBM to improve its position in the market for provision of IT outsourcing services to any other industry segment. Accordingly, the assessment in this decision is focussed on the transportation sector.
- (26) According to the Notifying Party, a distinction of IT services along industry sectors is not meaningful as: (i) businesses in the different vertical industries would use the same kind of IT services across all six functional segments of IT services; and (ii) the majority of skills, technology and know-how involved in providing IT services, for the large part, would be standard and readily transferable between industries. The high

¹⁰ Case M.6921 – *IBM Italia / UBIS*, Commission decision of 19 June 2013.

¹¹ See Gartner's April 2014 pivot-table named "*Market Share: IT Services, 2013*".

¹² Within this portion of [0-5]%, the biggest contract of the INF Business is for the provision of primarily IT outsourcing services to a German bank for a value of only approximately EUR [...] million (part of this amount is paid for the rental for physical space to house IT systems (i.e. "Housing")).

degree of supply-side substitutability would be substantiated by the fact that IBM's percentage of sales of IT services in each industry closely reflects its percentage of sales for all industries combined.

- (27) These arguments of full supply-side substitutability would be especially applicable to the infrastructure outsourcing sub-segment of IT outsourcing services, since these services are exactly the same irrespective of the industry in which they are provided. All data centres and networks would function in the same way regardless of the customer's domain of activity. IBM does not have industry-specific divisions and the same employees often work for clients active in completely different industries.¹³
- (28) The Commission in previous decisions considered that the IT services market could be segmented into several categories based on market reports by Gartner.¹⁴ However, the Commission ultimately left open the precise product market definition.
- (29) The majority of the respondents to the market investigation conducted in the present case submitted that providers of IT outsourcing services not currently active in the transportation sector would be able to easily start providing such services in the transportation sector. Indeed, according to these respondents, IT outsourcing services are becoming increasingly standardised across all sectors, which makes it easier for providers to gain new customers in other sectors.¹⁵

3.2.2. *Geographic market definition*

- (30) The Notifying Party submits that the geographic market should be considered wider than national and at least EEA-wide, since: (i) IT services providers offer the same IT services throughout the EEA; (ii) the pricing process is similar throughout the EEA; and (iii) IT services providers offer services on a global or at least EEA basis, either in-house or through alliances, subcontracting or sometimes distribution arrangements. This would also be confirmed by the outsourcing agreement between IBM Deutschland Aviation and DLH, which concerns sales of IT services to the benefit of all the subsidiaries of the Lufthansa group located worldwide.
- (31) While previously the Commission considered that IT services are provided on a national basis, a more recent decision pointed towards a geographic scope broader

¹³ The only difference in the needs of the customers would possibly concern more stringent requirements for data security and the privacy of the persons in industries like banking and securities, insurance, healthcare, and government. However, once a supplier would be able to provide services ensuring an adequate level of security, it will not reduce its security standards only because it is working with a client that does not have high requirements.

¹⁴ For example, the Commission considered the following categories: (i) agriculture, mining and construction; (ii) process manufacturing; (iii) discrete manufacturing; (iv) utilities; (v) wholesale; (vi) retail; (vii) transportation; (viii) communications; (ix) financial services; (x) healthcare; (xi) services; (xii) education; (xiii) national and international government; and (xiv) local and regional government. See, e.g., Cases M.6237 – *Computer Sciences Corporation / iSoft Group*, Commission decision of 20 June 2011 and M.5197 – *HP / EDS*, Commission decision of 25 July 2008.

¹⁵ See responses to the Questionnaire for Competitors and Customers, question 3.

than national, as major providers of IT services operate on a worldwide basis and customers frequently have worldwide/EEA-wide tenders.¹⁶

- (32) The majority of the respondents to the market investigation conducted in the present case submitted that providers of IT outsourcing services not currently active in, e.g., Germany, would be able to easily start providing such services in Germany. In particular, respondents pointed, e.g., to the fact that IT outsourcing services are highly standardised across all countries, that they can easily be provided cross-border and that the award of contracts often takes place on the basis of EU-wide tenders.¹⁷

3.2.3. *Conclusion on market definition for IT services*

- (33) For the purpose of this decision, the exact delineation of the relevant product and geographic market(s) for the provision of IT services can be left open, as the proposed transaction does not give rise to competition concerns under any alternative market definition.

3.3. IT software and IT systems

3.3.1. *Product market definition*

3.3.1.1. IT software

- (34) The Notifying Party submits that the relevant product market should be defined broadly, without necessarily taking into account the segments identified by IT research organisations.
- (35) In previous decisions, the Commission considered that software markets could be segmented on the basis of (i) the different functionalities of the software and the sector concerned, and (ii) the end uses offered by the particular software.¹⁸ With particular regards to functionality, the Commission considered a distinction between the following types of software: (i) infrastructure software (i.e., servers and databases), (ii) middleware (i.e., integration platforms), (iii) application software and office software, and (iv) operating/browser software.

3.3.1.2. IT systems

- (36) The Notifying Party submits that, within IT systems, servers could be distinguished from external storage systems in light of the more limited functions of such storage systems.

¹⁶ Case M.6237 – *Computer Sciences Corporation / iSoft Group*, Commission decision of 20 June 2011, paras. 17-18.

¹⁷ See responses to the Questionnaire for Competitors and Customers, question 4.

¹⁸ M.6237 – *Computer Sciences Corporation / iSOFT Group*, Commission decision of 20 June 2011.

(37) In previous decisions relating to servers, although suggesting a possible segmentation of the server market by price band, the Commission ultimately left the product market definition open.¹⁹

(38) In previous decisions relating to storage systems, the Commission identified different categories of storage, such as disk storage, tape storage systems and hard disk drives (HDDs), as well as further possible sub-segmentations.²⁰

3.3.2. *Geographic market definition*

3.3.2.1. IT software

(39) The Notifying Party submits that the relevant geographic market is worldwide.

(40) In previous decisions, the Commission took the view that the geographic scope of the market for software was at least EEA-wide, but ultimately left the exact geographic market definition open.²¹

3.3.2.2. IT systems

(41) In previous decisions, the Commission concluded that the relevant geographic market for both servers²² and storage systems²³ appeared to be at least EEA-wide or worldwide.

3.3.3. *Conclusion on market definition for IT software and IT systems*

(42) For the purpose of this decision, the exact delineation of the relevant product and geographic markets for the provision of IT software, servers and storage systems can be left open since the proposed transaction does not give rise to competition concerns under any alternative market definition.

4. **COMPETITIVE ASSESSMENT**

4.1. **Assessment of horizontal relationships**

(43) The INF Business' activities are mostly captive, as it currently provides the majority of its IT services to companies of the Lufthansa group. In 2013, merchant sales of the INF Business amounted to approximately [10-20]% of its overall worldwide turnover (EUR [...] million out of EUR [...] million). The merchant sales of the INF Business are in decline since 2009, when DLH took the decision to withdraw from the merchant

¹⁹ See Cases M.2609 – *HP / Compaq*, Commission decision of 1 January 2002 and M.5529 – *Oracle / Sun Microsystems*, Commission decision of 21 January 2010.

²⁰ See, e.g., Cases M.3866 – *Sun / Storagetek*, Commission decision of 26 August 2005 and M.6203 – *Western Digital Ireland / Viviti Technologies*, Commission decision of 23 November 2011.

²¹ Cases M.4944 – *SAP / Business Objects*, Commission decision of 27 November 2007 and M.6237 – *Computer Sciences Corporation / iSOFT Group*, Commission decision of 20 June 2011.

²² Case M.2609 – *HP / Compaq*, Commission decision of 1 January 2002, paragraph 23.

²³ See, e.g., Cases M.3866 – *Sun / Storagetek*, Commission decision of 26 August 2005 and M.6203 – *Western Digital Ireland / Viviti Technologies*, Commission decision of 23 November 2011.

market for IT outsourcing services and focus on providing such services internally to other companies of the Lufthansa group.

- (44) In this section, the Commission assesses the impact of the proposed transaction in the market for the provision of IT services and its segments, by taking into account both (i) the "merchant" market for the provision of IT services (i.e., without the INF Business' captive sales), and (ii) a broader market also including the value of the IT services which, pre-transaction, were sold captively by the INF Business to the Lufthansa group and which, post-transaction, will be sold by IBM to the Lufthansa group pursuant to the FWA.

4.1.1. Market shares at EEA level

- (45) The following tables list the market shares of IBM and of the INF Business in the various IT services markets/segments potentially concerned by the proposed transaction at EEA level, (i) in the merchant market and (ii) in a market also including the INF Business' captive sales:

Parties' Market Shares in Merchant Market – EEA (2013)²⁴

Party	IT Services	IT Outsourcing	IT Services/ Transportation	IT Outsourcing/ Transportation
IBM	[5-10]%	[5-10]%	[5-10]%	[10-20]%
INF Business ²⁵	[0-5]%	[0-5]%	[0-5]%	[0-5]% ²⁶
Combined	[5-10]%	[5-10]%	[5-10]%	[10-20]%

Source: Notifying Party, based on Gartner Market Share Data IT 2013 and LSY internal estimations

Parties' Market Shares Incl. INF Business Captive Sales – EEA (2013)

Party	IT Services	IT Outsourcing	IT Services in Transportation	IT Outsourcing in Transportation
IBM	[5-10]%	[5-10]%	[5-10]%	[10-20]%
INF Business	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Combined	[5-10]%	[5-10]%	[10-20]%	[10-20]%

Source: Notifying Party, based on Gartner Market Share Data IT 2013 and LSY internal estimations²⁷

- (46) According to the information provided by the Notifying Party, IBM was the market leader at EEA level in 2013 in all segments considered in the table above. However, in each of these segments, IBM faced competition from a large number of companies including, e.g., Accenture, Atos, BT, Capgemini, Deloitte, Fujitsu, HP and T-Systems.

²⁴ The Notifying Party notes that the data include Western European and Eastern European sales, as estimated by Gartner. Therefore, this data also includes sales outside the EEA (e.g., in Switzerland and in certain Eastern European countries).

²⁵ The market size data from the Gartner Report has been amended to reflect the merchant sales of the INF Business only and not the sales of the entire INF Business.

²⁶ Based on the fact that EUR [...] million/USD [...] million of the INF Business' total sales of EUR [...] million are attributable to sectors other than transportation.

²⁷ For purposes of calculating shares of sales, the total 2013 merchant sales figures provided by Gartner have been grossed up to include the captive sales of the INF Business.

- (47) As regards the sub-segments of the market for the provision of IT outsourcing services where the Parties are both active (i.e., infrastructure outsourcing services, cloud services and IaaS) in the EEA, the Notifying Party submits that, while Gartner does not make available detailed market share data, the Parties' market shares in such more narrowly defined segments would not significantly differ from their respective shares in the broader IT outsourcing segment at the EEA level.²⁸

4.1.2. *Market shares at national level*

- (48) At national level, the Parties' activities only overlap in Germany and in the United Kingdom.

Germany

- (49) The following tables list the market shares of IBM and of the INF Business in the various IT services markets/segments potentially concerned by the proposed transaction in Germany, (i) in the merchant market and (ii) in a market also including the INF Business' captive sales:

Parties' Market Shares in Merchant Market – Germany (2013)

Party	IT Services	IT Outsourcing	IT Services/ Transportation	IT Outsourcing/ Transportation
IBM	[5-10]%	[5-10]%	[5-10]%	[10-20]%
INF Business	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	[5-10]%	[5-10]%	[5-10]%	[10-20]%

Source: Notifying Party, based on Gartner Market Share Data IT 2013 and LSY internal estimations

Parties' Market Shares Incl. INF Business Captive Sales – Germany (2013)

Party	IT Services	IT Outsourcing	IT Services/ Transportation	IT Outsourcing/ Transportation
IBM	[5-10]%	[5-10]%	[5-10]%	[5-10]%
INF Business	[0-5]%	[0-5]%	[10-20]%	[30-40]%
Combined	[5-10]%	[10-20]%	[20-30]%	[30-40]%

Source: Notifying Party, based on Gartner Market Share Data IT 2013 and LSY internal estimations

- (50) According to the information provided by the Notifying Party, IBM was the second largest player (following T-Systems) in Germany in 2013 in all markets/segments considered in the table above. In each of these markets/segments, IBM faced competition from a large number of companies, including T-Systems, Accenture, Atos, Capgemini, Fiducia, HP and NTT Data.
- (51) Post-transaction, taking into account the INF Business' captive sales, the merged entity's market share in Germany will be around 20% in the segment for IT services in the transportation sector and close to 40% in the sub-segment for IT outsourcing services in the transportation sector. As a result, IBM will become the leading provider in Germany in each of these potential segments.

²⁸ In particular, according to the Notifying Party, the shares of the INF Business are likely to be lower in the sub-segments for cloud services and IaaS compared to the sub-segment for infrastructure outsourcing services, as infrastructure outsourcing services account for the majority (approximately [...]%) of the total IT outsourcing services provided by the INF Business.

United Kingdom

- (52) The following table lists the market shares of IBM and of the INF Business in the various IT services markets/segments potentially concerned by the proposed transaction in the United Kingdom. Since the INF Business did not have any captive sales in the United Kingdom in 2013, only the merchant market is considered below.

Parties' Market Shares in Merchant Market – United Kingdom (2013)

Party	IT Services	IT Outsourcing	IT Services/ Transportation	IT Outsourcing/ Transportation
IBM	[0-5]%	[5-10]%	[5-10]%	[5-10]%
INF Business	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	[0-5]%	[5-10]%	[5-10]%	[5-10]%

Source: Notifying Party, based on Gartner Market Share Data IT 2013 and LSY internal estimations

- (53) According to the information provided by the Notifying Party, IBM was the third largest player in the United Kingdom in 2013 in the segments for IT services and IT outsourcing services, and the first largest player in the segments for IT services in the transportation sector and IT outsourcing services in the transportation sector. In each of these segments, IBM faced competition from a large number of companies including Accenture, Atos, BT, Capgemini, Capita Group, Fujitsu and HP.
- (54) As regards the sub-segments of the market for the provision of IT outsourcing services where the Parties are both active (i.e., infrastructure outsourcing services, cloud services and IaaS) in Germany and in the United Kingdom, the Notifying Party submits that, while Gartner does not make available detailed market share data, the Parties' market shares in such more narrowly defined segments would not significantly differ from their respective shares in the broader IT outsourcing segment in Germany and in the United Kingdom.²⁹

4.1.3. Competitive assessment

- (55) The Commission notes that, even if the INF Business' captive sales are taken into account, the merged entity's market share will remain below 20% in any potential product market on even the narrowest geographic market definition, except in Germany. Moreover, as described above at paragraphs (46), (50) and (53), several alternative providers will remain active in the market alongside the merged entity.
- (56) As regards Germany, the Commission considers that the proposed transaction will not raise competition concerns of a horizontal nature for the following reasons.
- (57) First, although the market share increment arising from the proposed transaction is significant in certain sub-segments of the market, such increment is primarily represented by the INF Business' captive sales to the Lufthansa group. Thus, the increment arises from classifying those captive sales as merchant sales.
- (58) Second, post-transaction, IBM's competitors will continue to be able to compete with IBM for the provision of IT outsourcing services to Lufthansa for the part of its requirements that Lufthansa will not be sourcing from IBM under the FWA, i.e.,

²⁹ See footnote 28 above.

approximately [more than 65]%³⁰ of Lufthansa's total demand for IT outsourcing services. Moreover, once the FWA expires, after seven years, IBM's competitors will be able to compete for Lufthansa's entire demand for IT outsourcing services.

- (59) Finally, in any event, the respondents to the market investigation did not raise any concerns as regards the possible impact of the proposed transaction on competition in any possible product or geographic market, including the market/segment for IT outsourcing services in the transportation sector in Germany.³¹ Moreover, all the respondents expressing a view considered that, post-merger, there will continue to be a sufficient number of credible alternative IT service providers who are able to provide the same range of IT outsourcing services for the transportation sector as the merged entity.³²

4.1.4. Conclusion on horizontal relationships

- (60) In light of the above, the proposed transaction does not raise serious doubts as regards the potential market for the provision of IT services and its possible sub-segments in the internal market or any substantial part of it. This conclusion applies irrespective of whether the INF Business' captive sales are taken into account.

4.2. Assessment of non-horizontal relationships

- (61) The provision of IT services may require the use of (i) IT software (and, in particular, in this case, system infrastructure software, since the INF Business' activities are focused on infrastructure outsourcing services), and (ii) IT systems, comprising electronic information processing systems (including servers and storage). IBM is active in all of these markets.
- (62) According to the Notifying Party, the proposed transaction will not have a significant impact on IBM's position in these markets.
- (63) First, the Notifying Party submits that IBM's market share is below 30% as regards both (i) IT software (including the potential sub-segment of system infrastructure software) at the global and European level;³³ and (ii) IT systems (including narrower markets for servers and storage) at the European level and in Germany.³⁴ Moreover, while the provision of servers is part of the services to be provided to Lufthansa by IBM under the FWA, the Notifying Party submits that there will be only very limited

³⁰ These figures have been provided by the Notifying Party on the basis of the average IBM revenue expected under the FWA over a period of seven years.

³¹ See Responses to the Questionnaire for Competitors and Customers, question 1.

³² See Responses to the Questionnaire for Competitors and Customers, questions 6-7.

³³ Europe refers to the region including Europe, Middle East and Africa ('EMEA'). All figures are according to Gartner, *'Market Share: All Software markets, Worldwide 2013'*.

³⁴ Europe refers to the region including Europe, Middle East and Africa ('EMEA'). All figures are according to IDC, *'IDC EMEA Quarterly Server Tracker, Q2'* (2014), *'IDC Server Tracker Q2'* (2014), *'IDC EMEA Quarterly Disk Storage Systems Tracker, Q2'* (2014), and *'IDC Storage Tracker Q1'* (2014).

scope for IBM to increase its sale of servers to LSY/Lufthansa Group as a result of the proposed transaction.³⁵

- (64) Moreover, according to the Notifying Party, the part of Lufthansa's demand for IT software and IT systems that will be satisfied by the services provided by IBM would only represent a negligible portion of the total European³⁶ demand for IT software (i.e., EUR [...] million out of EUR 77 642 million) and IT systems (i.e., EUR [...] million out of EUR 24 357 million).
- (65) The respondents to the market investigation did not raise any concerns as regards potential customer foreclosure in the markets for the provision of IT software, servers and storage as a result of IBM potentially limiting competitors' access to Lufthansa's demand for these products.
- (66) In light of the above, it can therefore be concluded that the proposed transaction will not give rise to any vertical concerns in the markets for IT software, servers and storage.

5. CONCLUSION

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

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

³⁵ Indeed, Intel based server systems represent the majority (approximately [...]%) of the servers that are in use by the INF Business for the Lufthansa Group and IBM has no servers in the Intel area.

³⁶ The data have been provided by the Notifying Party on the basis of the *IDC report 'Worldwide Vertical Markets IT Spending 2013-2018 Forecast: 1Q14'* (published in June 2014). For the purposes of this report, data for Europe only includes data for UK, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland.