



EUROPEAN COMMISSION
DG Competition

***Case M.8104 - HNA
GROUP / GATEGROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/09/2016

***In electronic form on the EUR-Lex website under
document number 32016M8104***



EUROPEAN COMMISSION

Brussels, 20.09.2016
C(2016) 6101 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case M.8104 - HNA GROUP / GATEGROUP
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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1. On 16 August 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which HNA Group Co., Ltd ("**HNA**", China) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Gategroup Holding Ltd. ("**Gategroup**", Switzerland), by way of public bid ("the Transaction")³. HNA ("the Notifying Party") and Gategroup are collectively referred to as "the Parties", while the undertaking resulting from the Transaction is referred to as "the merged entity".

I. THE PARTIES

2. **HNA** is a Chinese conglomerate encompassing core divisions of aviation, real estate holdings, capital/financial services, tourism, and shipping/food cold chain logistics. Its main operations are in Asia, although it has recently started to operate in the EU, notably with flights to the EU, a number of hotels,⁴ and ground handling services in particular following the acquisition of Swissport.⁵
3. **Gategroup** is a publicly listed Swiss group that globally provides, under different brands, products, services and solutions related to airline on-board services for passengers. Its main activities consist of in-flight catering and retail on-board services.

II. THE TRANSACTION

4. The Transaction consists, as the result of a public bid announced jointly by the Parties on 11 April 2016, in the indirect acquisition by HNA of 95% of the share capital and voting rights of Gategroup, following which HNA will have sole control over Gategroup.
5. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million (HNA Group: EUR [>5,000] million, Gategroup: EUR [<5,000] million). Each of them has a Union-wide turnover in excess of EUR 250 million (HNA Group: EUR [>250] million, Gategroup: EUR [>250] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
7. The Transaction therefore has a Union dimension under Article 1(2) of the Merger Regulation.

IV. MARKET DEFINITION

8. Gategroup is mainly active in the market for the provision of in-flight catering and retail on-board services, although it is also active to a limited extent in the management of airport lounges in the UK and Germany and the supply of certain ancillary activities to the provision of its core services, for instance serving trays, plastic cutlery,

3 Publication in the Official Journal of the European Union No C 308, 24.08.2016, p. 3.

4 Case M.8126 – *HNA Group/Carlson Hotels*.

5 Case M.7766 – *HNA Group/Aguila*.

warehousing, supply chain logistics of food and beverages and providing specific software relating to in-flight catering services.

9. Although HNA is not present in the same markets as Gategroup, it is active on the downstream market for air transport of passengers. In particular, it controls a number of airlines, some of which are operating flights to/from Europe such as: Hainan Airlines, Beijing Capital Airlines, Tianjin Airlines and Yangtze River Express.

IV.1. In-flight catering services

Relevant product market

10. In prior decisions, the relevant product market for in-flight catering was considered by the Commission to be the overall category of in-flight catering services.⁶ The Commission concluded that in-flight catering services comprise the provision of the entire range of meals (economy/business/first class) for all types of flights (short-haul/long-haul).⁷
11. The Commission also decided in prior decisions⁸ to leave open the question on a possible sub-segmentation of such market with respect to the nature of the suppliers (i.e. the so-called "traditional" and "non-traditional" suppliers).⁹
12. The Notifying Party submits that, for the purpose of the present Transaction, the relevant product market is the in-flight catering services as a whole. The Notifying party argues that most suppliers are able to offer a very wide range of meals (hot, cold, snacks), which meet all of the different needs of airline customers, ranging from economy to business and first class.¹⁰
13. The Notifying Party further supports its view that the market for in-flight catering should not be further distinguished between short-haul or long-haul by arguing that airlines usually negotiate all in-flight catering services for a given airport through one single bid, regardless of the destination of their flights, following a "one-stop-shop" approach for the supply of the full range of in-flight catering services at a given airport. According to the Notifying Party, this also includes back-catered flights that is, those flights that are loaded with food and drinks at one airport in a quantity that is sufficient for both legs of a return flight or even more flights during the whole day.¹¹
14. In addition, the Notifying Party considers that the market for in-flight catering has significantly evolved in the recent years and "non-traditional" market players have emerged in the market. In this respect, the Notifying Party considers that traditional

⁶ Case M.6179 - *Alpha Flight/LSG Sky Chefs/ JV*.

⁷ Case M. 4170 - *LSG Lufthansa Service Holding / Gate Gourmet Switzerland*.

⁸ Case M.6179 - *Alpha Flight/LSG Sky Chefs/ JV*; Case M.6037 – *DNATA/Alpha Flight Group*.

⁹ "Traditional" airline catering companies normally provide the entire range of required meals to meet the different needs of airline companies, that is, economy/business/first class, hot/cold meals/snacks and standard/special meals, both for long and short-haul flights. On the other hand, "non-traditional" caterers are, for example, logistic companies acting in joint ventures with branded or non-branded food suppliers which can compete with the "traditional" caterers in bidding and negotiating directly with the airlines for the supply of in-flight catering services.

¹⁰ Form CO, paragraph 243.

¹¹ Form CO, paragraph 239.

and non-traditional caterers are in direct competition in the market. To this regard, it argues that, although shipping the meals into the plane requires *inter alia* an administrative authorization to operate on a particular airport, this does not raise a barrier to entry for these new "non-traditional" suppliers; especially since some of those non-traditional players either (i) already operate their own fleet of vehicles to deliver other kind of services to the airlines or (ii) they can subcontract the last mile services to a range of service providers that have access to the aircrafts, such as aircraft cleaning. The Notifying Party argues that this is especially easy now since in general airline meals have become smaller and less sophisticated, thus facilitating logistics.¹²

15. All market participants consulted during the investigation confirmed a shift by airlines towards a "retail-like" concept for in-flight catering services as well as the emergence of non-traditional caterers as competitors of the traditional ones.¹³ In this context, logistics increases its importance in the business model of in-flight caterers and access to the "last mile" is very important.¹⁴ In addition, market participants have also confirmed that non-traditional caterers can outsource access to the last mile to other companies which have access to the aircraft, such as ground handling providers.¹⁵
16. Although some market participants indicated that different airlines might have different quality requirements for their in-flight catering and also that the same airlines might have different requirements for their comfort classes (i.e. economy/business/first class) or for their short- vs. long-haul flights, they also pointed out that food for different airlines often originates from the same facility and that the same processes apply to all kinds of services provided; in particular, customers indicated that the same companies are competing in all the plausible segments.¹⁶ Overall, the feedback received from market participants indicates that no further segmentation needs to be made between the different comfort classes (i.e. economy/business/first class), or between types of flights (short-haul/long-haul).
17. In line with the Commission's past decisional practice and in the light of the results of the contacts with market participants, for the purposes of this case, it can be concluded that the relevant product market for in-flight catering comprises the provision of the entire range of meals (economy/business/first class) for all types of flights (short-haul/long-haul) and it can be left open whether the in-flight catering market should be further segmented between "traditional" and "non-traditional" suppliers or comprises both, since the proposed Transaction would not raise serious doubts about its compatibility with the internal market under any plausible product market definition.

¹² Form CO, paragraph 243-246.

¹³ See minutes of the calls with three of Gategroup's competitors on 19 July 2016, 10 August 2016 and 1 September 2016; and minutes of the calls with three of Gategroup's customers, two of which on 15 July 2016 and one on 16 August 2016.

¹⁴ See minutes of the call with two of Gategroup's competitors on 10 August 2016 and 1 September 2016.

¹⁵ See minutes of the call with two Gategroup's competitors on 10 August 2016 and 1 September 2016.

¹⁶ See minutes of the calls with of Gategroup's customers on 15 July 2016 and to Gategroup's competitors on 19 July 2016 and 10 August 2016.

Relevant geographic market

18. The Commission considered in prior decisions that the geographic market for in-flight catering services is limited to the relevant airport or airport region where several airports are located in close proximity to each other.¹⁷
19. The Notifying Party agrees with the Commission's previous practice.
20. The majority of replies gathered from the market investigation support the view that the market for in-flight catering is, at most, regional.
21. On the one hand, both airlines and in-flight caterers have confirmed that contracts for the provision of in-flight catering are most generally done on an airport-by-airport basis, although some multi-airport contract exists especially for major airlines.¹⁸ This system allows airlines to select the best offer in terms of quality and price, since there is a high degree of competition at a local level between not only international catering providers but also local players. In this context, the presence of a caterer in several airports is generally not as important as the price and quality of the offer.¹⁹
22. On the other hand, in certain occasions it is more convenient for the airline to tender and contract these services on a regional basis through a framework agreement, covering several nearby airports.²⁰ Once the framework contract is awarded to one bidder, airlines might also individually negotiate the specific conditions of the supply on an airport-by-airport basis.²¹
23. In light of the above, the geographic scope of market for the provision of in-flight catering services comprises at most an airport region. Nevertheless, for the purpose of the present case, the question of the precise geographic scope of the in-flight catering market can be left open, as no serious doubts about its compatibility with the internal market arise regardless of the geographic market definition retained.

IV.2. Retail on-board services

Relevant product market

24. In prior decisions, the Commission considered a market for retail travel consisting of the retail sale of articles of various types in travel locations.²² The Commission nevertheless left open the question of whether a further sub-segmentation based on the

¹⁷ Case M.5830 - *Olympic/Aegean Airlines*; Case M. 4170 – *Lufthansa Service Holding / Gate Gourmet Switzerland*.

¹⁸ See minutes of the calls with two of Gategroup's competitors on 19 July 2016 and 10 August 2016; and minutes of the calls with three of Gategroup's customers on 15 July and 16 August 2016.

¹⁹ See minutes of the calls with three of Gategroup's customers on 15 July 2016 and 16 August.

²⁰ See minutes of the calls with two of Gategroup's competitors on 19 July 2016 and 10 August 2016; and minutes of calls with three of Gategroup's customers on 15 July and 16 August 2016.

²¹ See minutes of the calls with one of Gategroup's competitors on 10 August 2016.

²² Case M.3728 – *Autogrill/Aldeasa*; M.4762 – *Autogrill/Alpha Airports Group*; M.6263 – *AELIA/Aéroports de Paris/JV*.

type of travel location is necessary to distinguish, for instance, between retail sales on-board aircraft only, at airport only or a combination of both.²³

25. In the present case, the Commission considers that, as regards retail on-board services further distinctions could be envisaged, such as (i) a possible sub-segmentation of the market into snacks and duty free / duty paid products (i.e. non-edible products such as cigarettes, perfumes, alcohol etc.)²⁴ and (ii) separate products markets for retail on-board services outsourced to third party companies and retail on-board services offered by air carriers..²⁵
26. In this respect, the Notifying Party firstly argues that tenders for retail on-board services typically include (i) snacking (food and beverage) and (ii) duty-free / duty-paid (cigarettes, alcohol) products in one single tender.²⁶
27. Secondly, The Notifying Party submits that any definition of the segment for retail in aircrafts should also include products insourced by airlines,²⁷ notably as not only the operations with regards to insourcing and outsourcing are similar, but also as airlines may switch back from contracting with third parties to insourcing those activities with limited spent and in limited time, hence imposing a significant competitive constraint on third-party providers.
28. Market participant consulted during the market investigation yielded mixed results as to whether the market for retail on-board services comprises snacking, i.e. food and beverages, and other duty-paid products or not. Whereas some competitors and customers argue that all those products are generally tendered together and that they should be considered in conjunction,²⁸ others argue that a distinction shall be made between snacking and duty-free products,²⁹ In particular, some of the respondents note that they offer duty-free products while not providing retail on-board products.³⁰ By contrast, some airlines procure the cold snacks and/or beverages themselves, outside an in-flight catering contract; the in-flight catering supplier will then include these items in the trolleys delivered to the airplanes.³¹

²³ Case M.3728 – *Autogrill/Aldeasa*; M.4762 – *Autogrill/Alpha Airports Group*; M.5123 – *Autogrill/World Duty Free*; M.6263 – *AELIA/Aeroports De Paris/ JV*.

²⁴ See minutes of call with one of Gategroup's competitors on 1 September 2016.

²⁵ Alternatively, in-flight services can also be divided in (i) in-flight catering, (ii) on board retail (buy on board food and beverage in conjunction with payment services) and (iii) in-flight duty free (there is a possibility that the latter might be only supplied from the airline company's hub airports). Some companies offering in-flight catering and on-board retail of food and beverages also provide in-flight duty free. Some in-flight caterers also offer a so-called "hybrid" model, which combines retail on-board solutions with classical catering (complementary meals for passengers). See minutes of calls with market participants on 15 July and 10 August 2016.

²⁶ Form CO, paragraph 248.

²⁷ That is when airlines take care of their own retail requirements and do not outsource all or part of their retail requirements. Form CO paragraphs 254-526.

²⁸ See minutes of the calls with one of Gategroup's competitors on 19 July 2016 and with one of Gategroup's customers on 15 July 2016.

²⁹ See minutes of the call with one of Gategroup's competitors on 10 August 2016.

³⁰ See minutes of the call with one of Gategroup's customers on 15 July 2016.

³¹ See minutes of the call with one of Gategroup's customers of 15 July 2016.

29. For the assessment of this Transaction, the precise product market definition for the provision of retail on-board services can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

Relevant geographic market

30. The Notifying Party considers that, given that retail on-board services for aircraft involve loading a plane at one airport for all flights of the day, there can be no meaningful comparison at the level of each airport and, accordingly, the most appropriate geographic dimension for retail aircraft on-board services is, at least, EEA-wide. The Notifying Party further supports this claim by arguing that normally sales are not allocated on an airport basis, but on a European wide basis.³²
31. Market participants consulted during the investigation suggest that the market for on-board retail may be at least regional in scope,³³ covering in certain cases the whole territory of a country³⁴ or even the totality of the airline's network.³⁵
32. For the purpose of the present case, the precise geographic market definition for the provision of retail on-board services can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

IV.3. Passenger air transport

Relevant product market

33. In prior decisions, the Commission considered that passenger air transport should be separated into two distinct markets that is scheduled and charter flights, given that most of the services offered by charter airlines are not in the same market as scheduled air transport services (package holiday sales, seat sales to tour operators).³⁶
34. Traditionally, the Commission has also envisaged a possible sub-segmentation of the market into "time-sensitive" and "non-time sensitive" passengers, while ultimately leaving the exact market definition open.³⁷ However, in more recent cases the

³² Form CO, paragraph 248.

³³ See minutes of the calls with two of Gategroup's competitors on 19 July 2016 and 10 August 2016 and minutes of the calls with three of Gategroup's customers, two of which on 15 July and one on 16 August 2016.

³⁴ See minutes of the calls with one of Gategroup's competitors on 19 July 2016 with one of Gategroup's customers on 15 July.

³⁵ See minutes of the calls with one of Gategroup's competitors on 10 August 2016; and with one of Gategroup's customers on 15 July 2016.

³⁶ Case M.4439 – *Ryanair/Aer Lingus*, recital 299; M.5141 – *KLM/Martinair*, recital 115; M.5747 – *Iberia/British Airways*, recitals 35 and 125-126; M.5830 – *Olympic/Aegean Airlines*, recital 51; M.6828 – *Delta Air Lines/Virgin Group/Virgin Atlantic Limited*, recitals 64-71.

³⁷ While "time sensitive" passengers tend to travel for business purposes, require significant flexibility with their tickets and tend to pay higher prices, "non-time sensitive" passengers travel predominantly for leisure purposes, book long time in advance, do not require flexibility and are generally more price-sensitive. See cases M.7270 – *Cesky Aeroholding/Travel Service/Ceske Aerolinie*; M.7333 – *Alitalia / Etihad*; M.6663- *Ryanair/Aer Lingus III*; M.6607 – *US Airways / American Airlines*; M.6447 – *IAG / BMI*.

Commission considered that the differences between time-sensitive and non-time sensitive passengers became more blurred and therefore concluded that the delineation between time-sensitive and non-time-sensitive passengers was not relevant (at least) for short-haul flights.³⁸

35. However, for the purpose of the present transaction, it can be left open whether the market might be further sub-segmented into scheduled and charter flights or into "time-sensitive" and "non-time sensitive" passengers, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

Relevant geographic market

36. The Commission has traditionally defined the market for scheduled passenger air transport services on the basis of the "point of origin/point of destination",³⁹ meaning that, from the demand-side perspective, customers consider all possible alternatives of travelling from a city of origin to a city of destination which they do not consider substitutable to a different city-pair. As a result, every combination of a point of origin and a point of destination is considered to be a separate market.
37. In line with Commission's prior decisions, it can be concluded for the present case that the market for the provision of passenger air transport services comprises every combination of a point of origin and a point of destination. Nevertheless, given the specificities of in-flight catering, and in particular the fact that airlines do not procure in-flight catering on a route by route basis, for the assessment of the vertical relationships between the airlines and the in-flight catering providers the Commission considered it relevant to look at the share of the particular airline into the total demand for in-flight catering services at the relevant airports instead of making a route by route assessment.⁴⁰ There is no reason to depart from this approach in the present case. The same applies to the assessment of the retail on board services.

V. COMPETITIVE ASSESSMENT

38. The Transaction does not give rise to any horizontally-affected market⁴¹ but it leads to vertical relationships between the supply of (i) in-flight catering and (ii) retail on-board services by Gategroup upstream and the air passenger transport activities of HNA Group downstream via its controlled airlines a certain airports in the EEA.

³⁸ See M.4439 – *Ryanair/Aer Lingus* recitals 312 and subsequent; M.6663 – *Ryanair/Air Lingus III*, recitals 382 - 387; M.7541 – *IAG/Aer Lingus* recitals 22-29.

³⁹ M.5747 - *Iberia/British Airways*, recitals 9-10.

⁴⁰ See case M.6179 – *Alpha Flight LSG/JV* recitals 28-30; M.6037 *Dnata/Alpha* recitals 17, 21 and 25.

⁴¹ The Parties overlap to a very limited extent in the management of airport lounges at London Heathrow. Given that there are no reportable markets with respect to airport lounges, this aspect is no longer discussed in this decision.

V.1. Affected markets

V.1.1. In-flight catering

39. According to the Notifying Party, Gategroup's market share on the upstream market amounts to less than 30% in the EEA, whereas HNA's share of demand in the downstream market is immaterial in Europe (below [0-5]%).
40. When considering a narrower geographic scope, the Transaction would give rise to two vertically affected markets at the Amsterdam airport and at London Gatwick Airport. In that context, Gategroup's market shares on the upstream market for in-flight catering would exceed 30% at the Amsterdam airport ([30-40]%) and at the London Gatwick Airport ([40-50]%), while HNA's market shares downstream are less than [0-5]% in each of those airports.

V.1.2. Retail on-board

41. On the upstream overall market for retail on-board services, Gategroup's market share in 2015 accounts for [40-50]% on an EEA-wide basis when excluding captive sales⁴² by air carriers. Moreover, in the EEA, Gategroup is the largest player in the potential narrower market for the on-board retail of snacks (as opposed to duty-free products), with a market share of [70-80]% in 2015.
42. On an airport-by-airport basis and excluding captive sales by air carriers, Gategroup's market share for retail on-board services amounts to [70-80]%⁴³ in 2015 at the London Gatwick airport, where HNA's controlled airlines are present downstream. Similarly, at the Rome-Fiumicino and Prague airports, where HNA is present downstream with its controlled airlines, Gategroup's market shares upstream in 2015 reach [30-40]% and [30-40]% respectively.⁴⁴
43. HNA's market share in the downstream market for air transport of passengers in each of London Gatwick, Rome-Fiumicino and Prague airport is less than [0-5]%

V.1.3. Conclusion on affected markets

44. The Transaction would give rise to vertically affected markets in relation to in-flight catering and retail on-board services at the airports of Amsterdam, London Gatwick, Rome-Fiumicino and Prague.
45. According to the Notifying Party, the vertical relationships brought about by the Transaction will not give rise to any competition concerns. In particular, the merged entity will not have, post-merger, the ability and/or the incentive to engage in any (i) input foreclosure strategy given HNA's marginal position on the downstream market, the bidding nature of the market for in-flight catering and on-board service entailing that market shares of suppliers are not alone an indicator of market power, the significant competition on the upstream markets where Gategroup is present, and/or (ii)

⁴² Captive sales are the activities insourced by airlines.

⁴³ This percentage represents Gategroup's market share in value, whereas Gategroup's market share in volume (number of departures) is [50-60]% in 2015.

⁴⁴ This percentage represents Gategroup's market share in value, whereas Gategroup's market share in volume (number of departures) is [10-20]% for Rome – Fiumicino and [30-40]% for Prague airport in 2015.

customer foreclosure, notably as HNA – through its controlled airlines – accounts for only a minimal share of demand at the airports at which is active in the EEA, and is therefore unable to foreclose access to these services.

V.2. Input foreclosure

46. According to the Non-Horizontal Merger Guidelines, input foreclosure occurs when actual or potential rivals' access to supplies or markets is hampered, thereby reducing those companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit.⁴⁵
47. In order for input foreclosure to be a concern, three conditions need to be met post-merger: (i) the merged entity needs to have the ability to foreclose access to inputs;⁴⁶ (ii) the merged entity needs to have the incentive to do so;⁴⁷ and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market.⁴⁸ In practice, these factors are often examined together since they are closely intertwined.
48. The Commission assessed the vertical relationships between the Parties' activities which will arise as a result of the present Transaction and considers that Gategroup would not have the ability and/or the incentive post-Transaction to foreclose in-flight catering and retail on-board services to airlines competing with HNA Group for the following reasons.

V.2.1. *In-flight catering*

49. First, while Gategroup's market shares upstream in the affected markets are above 30%, HNA's market share downstream is negligible and almost immaterial (below [0-5]%) under the narrowest plausible market definition. Moreover, as confirmed by market participants, there are several competing in-flight catering providers in the EEA airports where the Parties are active.
50. Second, both customers and competitors responding to the market investigation have emphasized the particularly competitive conditions present in the market for both in-flight catering and retail on-board services, where regular competitive tenders are issued by airlines, therefore constraining the ability of the Parties to affect market prices and conditions. This process makes it unlikely for Gategroup to increase the overall price of in-flight catering services post Transaction, despite having considerable market shares at a given airport.
51. Third, despite certain airports issuing only a relatively low amount of licenses for providers to operate within their premises as a caterer or service suppliers in general, the barriers to entry in the market for in-flight catering and retail on-board appear to be low. In particular, for in-flight catering, airlines themselves are constantly searching for investment opportunities in order to bring new entrants into the market, and indeed

⁴⁵ See Non-Horizontal Merger Guidelines ("NHMG"), paragraphs 29-30.

⁴⁶ See NHMG, paragraphs 33 to 39.

⁴⁷ See NHMG, paragraphs 40 to 46,

⁴⁸ See NHMG, paragraphs 47 to 57.

new sponsorships have recently taken place, for instance British Airways sponsored the entry of DHL in London Heathrow.⁴⁹

52. Moreover, any denial of service would sacrifice Gategroup's own profits without reducing other airlines' ability to obtain services from competing caterers, and therefore such a strategy would not yield any increased profits for the HNA Group airlines overall, but losses.
53. Finally, the majority of customers and competitors considered that the Transaction will not have a significant effect on the markets for in-flight catering and retail on-board services in the EEA.

V.2.2. *Retail on-board services*

54. The market for retail on-board aircraft is competitive as there are several on-board retail providers in all EEA airports. Moreover, the capacity of airlines to insource their retail on-board requirements renders the market for retail on-board even more competitive.
55. Additionally, barriers to entry appear to be low, as entrants only need logistics operation and access to airports and warehouses, which in many cases can be obtained by subcontracting the last mile services to other service providers already present at a given airport and having already access to airplanes.⁵⁰
56. Finally, similarly to in-flight catering services, particularly competitive tenders are regularly launched for the provision of retail on-board services ensuring the quality of the services offered and competitive prices; such tendering process hinders the ability of the Parties to affect the prices and conditions in the market despite Gategroup might have a high market share at a given airport.

V.2.3. *Access to in-flight services related software*

57. Some concerns on the effects of the Transaction were however expressed over a specific software supplied by Gategroup to airlines ("*e-gate*"). It was notably mentioned that, post-Transaction, HNA will have access to *e-gate* which manages airline's sensitive information such as prices, reservation system, passenger loads or catering choices, and prices at worldwide level.⁵¹
58. The risk that the airlines owned by HNA might use such information to unfairly compete on a number of routes is assessed below.
59. First, it appears that Gategroup concluded stringent contract with its *e-gate* customers whereby the data collected by Gategroup remain property of the air carriers, are stored separately and their access is monitored under strictly audited industry best practices.⁵² Second, the users of *e-gate*, if concerned, could replace this software by

⁴⁹ See minutes of calls with market participants on 15 July 2016, 19 July 2016, 10 August 2016 and 16 August 2016.

⁵⁰ See minutes of call with one of Gategroup's customers on 16 August 2016.

⁵¹ See minutes of calls with one of Gategroup's customers on 16 August 2016.

⁵² See Notifying Party reply to Commission's request for information of 17 August 2016, submitted on 19 August 2016, paragraphs 5-10.

specific software developed by certain specific software companies⁵³ or, alternatively, develop an in-house solution that could be put in place within a relatively short period of time and at a moderate cost.⁵⁴ Recent examples of customers switching to/from Gategroup in the context of procurement processes for IT solutions are supporting this view.⁵⁵ Third, the concerns expressed were not precisely substantiated.

60. As a result, the Commission considers that the issues linked to the data stored using the *e-gate* software do not seem to be cause for concerns since several alternatives exist in the market and if concerned, market participants are able to take action.
61. On basis of the above, and in light of the outcome of the market investigation the Commission concludes that it is unlikely that Gategroup would have the ability or incentive to successfully engage in input foreclosure strategy post-Transaction.

V.3. Customer foreclosure

62. According to the Non-Horizontal Merger Guidelines, "[c]ustomer foreclosure may occur when a supplier integrates with an important customer in the downstream market".⁵⁶
63. The Non-Horizontal Merger Guidelines acknowledge that, "for customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market", as only then does an integrated firm have a potential ability to "foreclose access to a sufficient customer base". No such concerns arise, however, where a "sufficiently large customer base" is likely to turn to alternative suppliers, as this would provide upstream competitors with "sufficient economic alternatives".⁵⁷
64. The Commission assessed the vertical relationships between the Parties' activities which will arise as a result of the present Transaction and considers that Gategroup would not have the ability and/or the incentive post-Transaction to foreclose access of Gategroup's competitors to HNA's demand of in-flight catering and retail on-board services for the following reasons.
65. First, based on the Notifying Party's best estimates in relation to both in-flight catering and retail on-board activities, HNA accounts for only a *de minimis* share of demand at each airport in which it operates within the EEA (less than [0-5]%), and consequently it cannot be considered to be an "important customer" within the meaning of the Non-Horizontal Merger Guidelines.⁵⁸ Even if HNA Group hypothetically were to purchase exclusively from Gategroup, the overwhelming

⁵³ The most relevant competitors of Gategroup for the supply of retail applications include Guest Logix, Retail in Motion, Avenade, whereas the most relevant competitors for catering and ordering solutions include Sabre Solutions, Mercator and Tata Consultancy Services.

⁵⁴ See minutes of call with one of Gategroup's customers on 16 August 2016.

⁵⁵ See Notifying Party reply to Commission's request for information of 22 August 2016, submitted on 24 August 2016, paragraphs 5-10.

⁵⁶ See NHMG, paragraph 58.

⁵⁷ See Non-Horizontal Merger Guidelines, paragraphs 58-74.

⁵⁸ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

majority of customer demand for its services at any given airport would remain available to upstream suppliers, providing them with "sufficient economic alternatives" to avoid being foreclosed.

66. Second, the majority of customers and competitors responding to the market investigation considered that the Transaction will not have a significant effect on the markets for in-flight catering and retail on-board services in the EEA. In particular, none of market participants consulted had any concern regarding a possible customer foreclosure scenario.⁵⁹
67. The Commission is of the view that upstream suppliers would still have available sufficient economic alternatives to avoid being foreclosed. Even in the case that HNA would conclude contracts exclusively with Gategroup after the Transaction in those airports where it is present, the very limited share of demand HNA currently represents to in-flight caterers and suppliers of retail on-board services would have no impact on its rivals' costs upstream, and therefore would not give rise to a distortion in the price upstream.
68. On that basis and in light of the results of the market investigation, the Commission concludes that it is unlikely that Gategroup would have the ability or incentive to successfully engage in customer foreclosure strategy post-Transaction.

V.4. Conclusion on competitive assessment

69. In light of the above and in view of the outcome investigation and the information available to it, the Commission considers that the Transaction does not raise serious doubts about its compatibility with the internal market.

VI. CONCLUSION

70. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)

Neven MIMICA

Member of the Commission

⁵⁹ See minutes of the calls with two of Gategroup's competitors on 19 July 2016 and 10 August 2016 and with three of Gategroup's customers, two of which on 15 July 2016 and one on 16 August 2016.