



EUROPEAN COMMISSION
DG Competition

***Case M.8137 - HNA
GROUP / SERVAIR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/12/2016

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EUROPEAN COMMISSION

Brussels, 8.12.2016
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Dear Sir or Madam,

**Subject: Case M.8137 - HNA GROUP / SERVAIR
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 3 November 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which HNA Group Co., Ltd ("HNA" or the "Notifying Party", People's Republic of China) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of La Compagnie d'Exploitation des Services Auxiliaires Aériens S.A. ("Servair", France), by way of purchase of shares (the "Transaction")³. HNA and Servair are collectively referred to as the "Parties".

1. THE PARTIES

- (2) HNA is a Chinese conglomerate currently operating across the core divisions of aviation, real estate, financial services, tourism and logistics. The core focus of HNA is China and the Asia-Pacific region. However, due to some recent acquisitions, HNA has also gained presence in the European Economic Area ("EEA"), notably in the markets for: (i) airport handling services, through the acquisition of Swissport⁴, (ii) in-flight catering and retail on-board services through the acquisition of Gategroup⁵, and (iii) passenger transport activities at a limited number of airports.⁶
- (3) Servair is a subsidiary of Air France S.A. ('Air France'), which currently owns 97.58% of its shares. Servair's core business relates to the provision of in-flight catering and its core focus is in France. Among others, Servair provides also retail on-board services and, to a more limited extent, ground handling services.⁷

2. THE OPERATION

- (4) On 30 May 2016, HNA and Air France signed an offer letter whereby Air France may exercise a binding put option to sell 50% minus one shares of Servair to HNA.
- (5) Post-Transaction, Servair's Board of Directors ('BoD') will be composed of eleven members among which [...] members will be appointed by HNA;

³ Publication in the Official Journal of the European Union No C412 of 09.11.2016.

⁴ See case M. 7766 - *HNA Group / Aguila*.

⁵ See case M. 8104 - *HNA Group / Gategroup*.

⁶ HNA also provides maintenance, repair and overhaul (MRO) services for commercial aircrafts through the acquisition of SR Technics (See Case M.8210 – *HNA Aviation / SR Technics*). MRO services however are not relevant to the Transaction because they are not an input to any of the markets where Servair is active, and because MRO services are typically subject to separate invitations to tender from retail on board and/or in-flight catering by airlines (Form CO, paragraph 310).

⁷ Servair provides retail on-board services to airlines either directly (currently [...]) or through Dutyfly Solutions (for duty-free products). Dutyfly Solutions is a joint venture owned [...] % and [...] % by Servair and Aeroboutique Inflight Retail respectively. Dutyfly Solutions is [details on control] according to Dutyfly Solutions' Shareholder Agreement. Form CO, Footnote 31.

[...] members will be appointed by Air France; and [...] members will be employee representatives.

- (6) Strategic decisions, such as the approval of the business plan and the annual budget require a reinforced majority of [...] of the members of the BoD. This implies that both HNA and Air France will have to agree upon these matters.
- (7) In case of disagreement at the BoD level, the matter is escalated to the CEOs of both HNA and Air France. In case the disagreement persists, the matter is referred again to the BoD, which takes a final decision at the simple majority of its members. As a consequence, if the arbitration procedure fails, HNA may ultimately exercise a casting vote and decide alone on the budget and the business plan.⁸
- (8) In addition, the senior management of Servair, including the CEO, is appointed and dismissed by the BoD at simple majority, that is by HNA.
- (9) Air France will have the right to propose and appoint the "Directeur General Délégué" (the French Operation Executive Officer or the "French OEO") among professionals of the catering industry as long as it maintains [...] % of the share capital of Servair.⁹ However, the mere appointment of the French Operations Executive Officer upon proposal of Air France is unlikely to be sufficient on its own to confer joint control to Air France, as the French OEO does not enjoy a sufficient degree of operational autonomy from Servair's CEO and the BoD.¹⁰
- (10) For all the reasons stated above, HNA will acquire the sole control over Servair within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹¹ (HNA: EUR 23 247 million in 2015; Servair: EUR 797 million in 2015). Each of them has an EU-wide

⁸ HNA's casting vote is relevant and effective within the meaning of paragraph 82 of the Commission's Jurisdictional Notice and thus it will confer sole control on HNA. In particular, in this case the casting vote only requires a single round of conciliation to be triggered, and it does not entail a disproportionate financial burden for HNA to be exercised.

⁹ Upon closing, the first French OEO of Servair will be mutually agreed upon by the Parties (Parties' response to the Commission's request for information of 7 October 2016, submitted on 12 October 2016)..

¹⁰ First, Servair's CEO will be able to give instructions to the French OEO, including the implementation of the budget, the annual business plan and strategy of Servair, which are also decided by the BoD at simple majority. Second, the French OEO will assist the CEO in the day-to-day running of Servair's activities in France (Article 13 of the Term Sheet). Lastly, the French OEO will also be bound by the decisions of the BoD relating to any agreement between Air France and Servair. Parties' response to the Commission's request for information of 7 October 2016, submitted on 12 October 2016.

¹¹ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

turnover in excess of EUR 250 million (HNA: EUR [>250] million in 2015; Servair: EUR [>250] million in 2015), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

- (12) The Transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (13) Servair supplies (i) in-flight catering and (ii) retail on-board services¹². To a limited extent, it is also active in (iii) ground handling services.¹³

- (14) In the EEA, HNA supplies (i) in-flight catering and (ii) retail on-board services via Gategroup, (iii) ground handling services via Swissport, and (iv) maintenance, repair, and overhaul services for commercial aircraft through the acquisition of SR Technics. HNA is also active in (v) the downstream market for air transport of passengers.¹⁴

4.1. Retail on-board services

4.1.1. Relevant product market

4.1.1.1. Past decisional practice

- (15) In its previous practice, the Commission has considered that the market for travel retail services consists in the retail sale of a variety of products at various travel locations.¹⁵

- (16) In previous cases, the Commission assessed the retail travel market as a whole and left open whether it should be further segmented (i) by type of travel location (for example, retail outlets at airports, on-board aircraft and on-board ships); (ii) between airside sales (that is duty-free and "travel value" only accessible to ticket holding passengers and staff who have passed through customs, immigration and security) and landside sales (that is duty paid, accessible to non-travellers as well as ticket holders); and/or (iii) by retail product category (for example, perfumes and cosmetics, confectionery, wine, spirits and tobacco).¹⁶

¹² Servair supplies also certain ancillary activities to the provision of its core services, for instance, serving trays, plastic cutlery, warehousing and supply chain logistics of food and beverages.

¹³ Servair provides ground handling services only in France and only at the airports of Paris – Charles de Gaulle, Paris-Orly and Lyon.

¹⁴ HNA controls the following airlines operating flights to/from Europe: Hainan Airlines, Beijing Capital Airlines, Tianjin Airlines and Yangtze River Express.

¹⁵ See cases M.3728 – *Autogrill / Aldeasa*, M.4762 – *Autogrill / Alpha Airport Group*, M.5123 – *Autogrill / World Duty Free and M.6263 – Aelia / Aéroports de Paris / JV*.

¹⁶ See case M.7622 – *Dufry / World Duty Free*, M.5114 – *Pernod Ricard / V&S* and M.6263 – *Aelia / Aéroports de Paris / JV*.

4.1.1.2. *The Notifying Party's view*

- (17) According to the Notifying Party, retail on-board services constitute a distinct product market from in-flight catering both from a demand-side and supply-side perspective. In addition, according to the Notifying Party, no further segmentation of the retail on-board services market by retail product category is warranted. In particular snacking (food and beverages for sale) and duty-free products belong to the same retail on-board services market, as snacking and duty free are usually tendered together. Finally, the Notifying Party also submits that captive sales are part of the retail on-board services market, notably as not only the operations performed both in insourcing and outsourcing are the same, but also as airlines may quite easily switch between outsourcing and insourcing retail on-board services.¹⁷

4.1.1.3. *Commission's assessment*

- (18) As regards the possible distinction between retail on-board and in-flight catering services, during the market investigation a majority of respondents indicated that retail on-board is not interchangeable with in-flight catering services in terms of price, product offering and characteristics of the two services.¹⁸
- (19) From a demand-side perspective, a majority of the airlines that responded to the market investigation questionnaires indicated that retail on-board services and in-flight catering services are typically tendered out separately and provided alternatively.¹⁹ For example, a customer indicated that "*in-flight catering and retail on-board are generally tendered separately by airlines*".²⁰ From a supply-side perspective, large suppliers appear to be able to provide both in-flight catering and retail on-board services (among them, Newrest, Dnata, LSG and DO&CO), whereas some companies may choose to specialise in retail on-board only, such as Tourvest, ISG and DFASS.²¹ However, according to a majority of the respondents to the market investigation questionnaires, it would be easier for an in-flight caterer to provide also retail on-board services, than the

¹⁷ For example, in 2014, French-based airlines Aigle Azur and Corsair International had switched from insourcing to outsourcing the provision of retail on-board services to ISG/Newrest. Form CO, paragraph 178. In 2015, Luxair and Flybe outsourced retail on-board services to Servair and Newrest respectively. In 2016, Aer Lingus started outsourcing retail on-board services to Tourvest; Air Baltic and Orbest started outsourcing retail on-board services to ISG/LSG and Newrest respectively. In addition, also in 2016, [...] decided to terminate the contract for retail on-board services with Gategroup and resort to insourcing for its subsidiaries [...] and [...] (Form CO, paragraphs 239 and 246).

¹⁸ Replies to Q2 – questionnaire to customers, question 6; and replies to Q1 – questionnaire to competitors, question 6.

¹⁹ Replies to Q1 – questionnaire to competitors, questions 14, 24 and 29.

²⁰ See minutes of the call with one of the Parties' customers of 1 September 2016.

²¹ Replies to Q1 – questionnaire to competitors, question 12.

other way round, as generally retail on-board service providers are retailers, without any logistic or catering facilities.²²

- (20) In addition, a majority of respondents to the market investigation questionnaires indicated that retail on-board (especially snacking) may constitute to a certain extent an alternative to in-flight-catering services, but only on short-haul flights. Passengers on long-haul routes expect a different service to be provided by airlines. Despite a current trend to switch from in-flight catering to a retail on-board model on short-haul routes, airlines pointed out that the provision of retail on-board and in-flight catering services reflect completely different business models, the first being focused on profits and the second on costs.²³ Furthermore, retail-on board services and in-flight catering services are provided alternatively depending not only on the length of the flight, but also on the travel class, as business class travellers are typically offered meals even on short-haul flights, whereas economy class travellers have to buy food and beverage on-board.²⁴
- (21) With regard to a possible segmentation of retail on-board by type of product (that is, between snacking and duty free/duty paid products), a majority of market participants reported that most on-board retailers are active in the provision of both categories of products.²⁵ Further, both snacking and duty free/duty paid products are offered together²⁶, although there are instances where the airlines are provided with snacks and beverages separately from duty free products.²⁷ In particular, requests for proposals for retail on-board services generally comprise both snacking (that is, food and beverage) and duty-free/duty-paid products in one single tender.²⁸ For example, ISG, a duty-free only supplier, and Newrest, present across all retail categories, often bid together to provide both food and beverage programmes and duty-free/duty-paid items to an airline (in particular, charter airlines).²⁹
- (22) With regard to whether in-house suppliers of retail on-board services may constrain third-party providers, a majority of respondents to the market investigation questionnaires indicated that self-supplied retail on-board services compete only to a limited extent with retail on-board services

²² Replies to Q1 – questionnaire to competitors, questions 12 and 13; and replies to Q2 – questionnaire to customers, questions 12 and 13.

²³ Replies to Q1 – questionnaire to competitors, question 11; and replies to Q2 – questionnaire to customers, question 11

²⁴ Form CO, paragraph 174.

²⁵ Replies to Q1 – questionnaire to competitors, question 9; and replies to Q2 – questionnaire to customers, question 9.

²⁶ See minutes of the call with one of the Parties' competitors of 1 September 2016: "*on-board retail comprises both food and beverages as well as duty free cigarettes, perfumes and a range of other products to be sold to passengers on the plane*".

²⁷ Replies to Q2 – questionnaire to customers, questions 9 and 10.

²⁸ Replies to Q2 – questionnaire to customers, question 9.

²⁹ Form CO, paragraph 219.

offered by third parties.³⁰ As reasons for their procurement strategies in relation to retail on-board services, customers stated that outsourcing retail on-board services allows them to offer "*a better product range and more attractive prices due to size of purchasing of snacking and duty free products*" and that "*all back office and crew training are taken care off*".³¹ Further, "*we don't have the expertise in-house and it would be inefficient for us to bring the expertise in. A specialist is able to lead us in new technology and trends and is more able to flex offering based on our growing network*".³²

- (23) A majority of customers that responded to the market investigation questionnaires indicated that switching from an in-house model to outsourcing retail on-board services would be relatively easy. Outsourcing would entail changing IT solutions, staff cut downs and relative costs, but it is overall implementable.³³ Conversely, a majority of airlines indicated that switching from an outsourcing model to self-supplying would be difficult or very difficult.³⁴ When requested how long it would take to switch back to in-house retail on-board services previously outsourced, a majority of airlines that responded to the market investigation questionnaires said that it would last a year and costs may vary according to the complexity and the size of the airline. Only one airline, however, responded that it has switched from outsourcing to in-sourcing retail on-board services in the last five years, and it was only for the snacking products, keeping the duty-free products outsourced.³⁵
- (24) With regard to whether retail on-board competes with retail at the airport³⁶, a majority of respondents to the market investigation questionnaires indicated that there is little substitutability between retail on-board products and the retail products sold at the airports. In addition, substitutability would depend on the type of product and also on the type of travellers (regular vs occasional travellers)³⁷. Notwithstanding that prices are quite comparable, especially for duty-free products, the product

³⁰ Replies to Q1 – questionnaire to competitors, question 21; and replies to Q2 – questionnaire to customers, question 22.

³¹ Replies to Q2 – questionnaire to customers, question 21.2.

³² Replies to Q2 – questionnaire to customers, question 21.2.

³³ Replies to Q2 – questionnaire to customers, question 23.

³⁴ Replies to Q2 – questionnaire to customers, question 25.

³⁵ Replies to Q2 – questionnaire to customers, question 26.

³⁶ Gategroup has airport retail activities following the acquisition of the Swedish company Inflight Service Group in early 2016. However, Gategroup is in the process of selling its airport retail business in Europe to Lagardère Travel Retail sp. z o.o. In any event, Gategroup's airport retail activities consist of six (airside) duty-free retail stores at the airports of Tallinn (Estonia) and Warsaw-Modlin (Poland) with approximately EUR [...] million annual sales. Although Servair also operates a limited number of (airside/landside) airport retail stores in Africa, the Parties' activities would only overlap to a de minimis extent on a possible worldwide basis – less than 0.1% (Form CO, paragraph 204 and Footnote 137).

³⁷ Replies to Q2 – questionnaire to customers, question 18.

offering at the airport is much broader than that in the airplane.³⁸ As a customer pointed out: "*Inflight duty free retail is made of small and valuable products (perfumes, cosmetics, accessories) which are also available in airport duty free shops. The narrow selection made for the inflight duty free retails does not compare with the retail services offered at the airports, where a wider range of products/brands is made available to the travellers*".³⁹

- (25) In view of the above and all evidence available to it, the Commission concludes that the market for the provision of retail on-board services is separate from the market for the provision of in-flight catering services.
- (26) As regards a possible segmentation of retail on-board by type of product, it can be left open whether the market for retail on-board services comprises both snacking (comprising both food and beverage) and duty free products, as the Transaction would not raise any serious doubts irrespective of the precise product market definition.
- (27) In addition, the provision of self-supplied retail on-board services does not seem to constrain the provision of retail on-board services by third party providers to a substantial extent. The Commission therefore concludes that the provision of self-supplied retail on-board services does not belong to the same relevant product market as the provision of retail on-board services by third party providers.
- (28) Finally, although there seems to be an indication that certain retail at the airport (especially duty free) can be seen as an alternative to retail on-board products, for the purposes of this decision, it can be left open whether the provision of retail services at the airport is part of the same relevant product market as the provision of retail on-board services. as the Transaction would not raise any serious doubts under any plausible product market definition.

4.1.2. Relevant geographic market

4.1.2.1. Past decisional practice

- (29) In its previous practice, the Commission considered that travel retail services are at least EEA-wide, if not global.⁴⁰

4.1.2.2. The Notifying Party's view

- (30) The Notifying Party claims that the geographic market for retail on-board services cannot be narrowly defined on a per-airport basis due to the way

³⁸ Replies to Q1 – questionnaire to customers, questions 7 and 8; and replies to Q2 – questionnaire to competitors, questions 7 and 8.

³⁹ Replies to Q2 – questionnaire to customers, question 7.1.

⁴⁰ See cases M.7622 – *Dufry / World Duty Free*, M.5123 - *Autogrill /World Duty Free*; and IV/M.782 – *Swissair / Allders International*.

that companies active in this segment carry out their operations,⁴¹ to demand and supply side considerations and to the fact that prices for retail on-board services are homogeneous across the EEA. Accordingly, the Notifying Party claims that the most appropriate geographic dimension for retail on-board services is at least EEA-wide.

4.1.2.3. Commission's assessment

- (31) During the Commission's market investigation, a majority of respondents indicated that competition for retail on-board services takes place at EEA if not at world-wide level.⁴² Equally, a majority of respondents to the market investigation questionnaires considered that retail on-board providers active in one particular airport of departure exert competitive pressure on competing providers at EEA or world-wide level.⁴³ In addition, a large majority of respondents to the market investigation questionnaires indicated that the price of retail on-board services is homogenous within the EEA, with any significant price difference taking place only between airlines depending on their brand position or currency fluctuations rather than their routes within the EEA or between the EEA and the rest of the world.⁴⁴ In addition, airlines' invitation to tender for retail on-board services typically covers the whole network of an airline (the selected supplier may then subcontract the last mile, that is the logistics service necessary to transport the retail offering on-board the aircraft to third parties at the airports where it is not active).⁴⁵
- (32) Finally, a competitor noted that "*the geographic market for retail on-board services is wider than local in scope*".⁴⁶ Further, another competitor reported that "*on a geographic level, retail on-board tenders are generally done at a wider level (meaning national, EEA or global) and very rarely are limited to a specific airport (e.g. if the airline operated at just one airport)*".⁴⁷
- (33) In view of the above and all evidence available to it, the Commission concludes that the geographic scope of the market for the provision of retail on-board services is at least EEA-wide, if not global.

⁴¹ In particular, retail on-board the aircrafts involves loading a plane at one airport in the morning, but loading it for all of the flight segments planned for that day.

⁴² Replies to Q1 – questionnaire to competitors, questions 16 and 17; and replies to Q2 – questionnaire to customers, question 17.

⁴³ Replies to Q1 – questionnaire to competitors, question 19; and replies to Q2 – questionnaire to customers, question 19

⁴⁴ Replies to Q1 – questionnaire to competitors, question 20; and replies to Q2 – questionnaire to customers, question 20.

⁴⁵ Form CO, paragraph 184 and 253.

⁴⁶ See minutes of the call with one of the Parties' customers of 10 August 2016.

⁴⁷ See minutes of the call with one of the Parties' customers of 1 September 2016.

4.1.3. Overall conclusion

- (34) In view of the above and all evidence available to it, the Commission will assess the impact of the Transaction on the plausible markets for the provision of (i) retail on-board services comprising both snacking and duty free products; (ii) retail on-board services comprising only snacking products; and (iii) retail on-board services comprising only duty-free products in the EEA.

4.2. In-flight catering services

4.2.1. Relevant product market

4.2.1.1. Past decisional practice

- (35) In previous decisions, the relevant product market for in-flight catering has been considered by the Commission to encompass all in-flight catering services.⁴⁸ In particular, the Commission has 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).⁴⁹
- (36) The Commission has also decided in its previous practice⁵⁰ to leave open a possible sub-segmentation of the market attending to the nature of the suppliers between the so-called traditional and non-traditional suppliers.⁵¹

4.2.1.2. The Notifying Party's view

- (37) The Notifying Party submits that, for the purpose of the Transaction, the relevant product market corresponds to in-flight catering services as a whole.
- (38) The Notifying Party also indicates that in addition to traditional caterers which prepare the food and bring it to the aircraft, there are so-called "non-traditional" caterers which obtain the food from third parties and negotiate directly with the airlines on quality and price, and are thus in direct competition with the traditional caterers.

⁴⁸ See case M.6179 – *Alpha Flight / LSG Sky Chefs / JV*.

⁴⁹ See cases M. 4170 – *LSG Lufthansa Service Holding / Gate Gourmet Switzerland* and M. 8104 – *HNA Group / Gategroup*.

⁵⁰ See cases M.6179 – *Alpha Flight Group / LSG Sky Chefs / JV* and M.6037 – *Dnata / Alpha Flight Group*.

⁵¹ "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, (for example, logistic companies acting in joint ventures with branded or non-branded food suppliers) while formally acting as suppliers to the "traditional" caterers who bring the food to the aircraft, negotiate directly with the airlines on quality and price.

4.2.1.3. Commission's assessment

- (39) A majority of the customers consulted during the market investigation confirmed that there is no distinction to be made between caterers supplying first/business class and those supplying economy class in-flight catering services, with one airline noting that "*all suppliers are able to supply all classes on-board*".⁵²
- (40) Although the market participants report that the contract requirements of in-flight catering can be different for long-haul compared to short-haul flights,⁵³ a majority of both competitors and customers indicate that airlines do not organise their tenders for short- and long-haul flights separately.⁵⁴ In addition, a majority of both competitors and customers also submit that companies providing in-flight catering services for short-haul flights are also capable to provide such services for long-haul flights at a comparable quality and price level.⁵⁵
- (41) With regard to a possible distinction between traditional and non-traditional in-flight caterers, while the market investigation yielded mixed results among competitors, a majority of customers submits that traditional and non-traditional suppliers are substitutable to some extent.⁵⁶
- (42) In the light of the results of the market investigation, and in line with the Commission's past decisional practice,⁵⁷ the Commission concludes that the market for the provision of in-flight catering services comprises the entire range of meals (economy/business/first class) for all types of flights (short-haul/long-haul) 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 competition concerns under any plausible product market definition.⁵⁸

4.2.2. Relevant geographic market

4.2.2.1. Past decisional practice

- (43) The Commission has considered in its prior decisions that the geographic market for in-flight catering services is limited to the relevant airport or

⁵² Replies to Q2 – questionnaire to customers, question 42.

⁵³ Replies to Q1 – questionnaire to competitors, question 38.

⁵⁴ Replies to Q1 – questionnaire to competitors, question 39; and replies to Q2 – questionnaire to customers, question 45.

⁵⁵ Replies to Q1 – questionnaire to competitors, question 40; and replies to Q2 – questionnaire to customers, question 46.

⁵⁶ Replies to Q2 – questionnaire to customers, question 40.

⁵⁷ See case M. 8104 – *HNA Group / Gategroup*.

⁵⁸ See recital 64 of this Decision.

airport region, where several airports are located in close proximity to each other.⁵⁹

- (44) In particular, as regards in-flight catering services provided at Paris airports (Charles de Gaulle and Orly), the Commission previously considered that the relevant geographic market was either Paris-Charles de Gaulle airport or airports in the region of Paris, but ultimately left open the exact delineation of the relevant geographic market.⁶⁰

4.2.2.2. *The Notifying Party's view*

- (45) The Notifying Party considers that it can be left open whether the precise scope of the geographic market definition is on an airport-by-airport basis or an airport region.

4.2.2.3. *Commission's assessment*

- (46) The majority of replies gathered from the market investigation supports the view that the market for in-flight catering is, at most, regional.
- (47) First, a majority of the customers who responded to the market investigation questionnaires submits that the geographic coverage of in-flight catering agreements entered into with suppliers has local (airport level) coverage or a catchment area covering multiple airports.⁶¹ The answers of competitors yielded mixed results. During pre-notification calls, a competitor stated that "*the market is local in scope, that is considered on an airport-by-airport basis*",⁶² whereas another declared that "*in-flight catering tenders may comprise a specific airport only, or a cluster of airports or at global level*".⁶³
- (48) Second, a majority of the customers who responded to the market investigation questionnaires considers that competition between the various providers of in-flight catering services takes place at airport level.⁶⁴
- (49) Third, a large majority of both competitors and customers indicate that they load the flights with enough food and drinks in one airport in a quantity that is sufficient for both legs of a return flight (so called 'back-catered' flights) mostly for short-haul flights.⁶⁵

⁵⁹ See cases M.5830 – *Olympic / Aegean Airlines*; Commission and M. 4170 – *Lufthansa Service Holding / Gate Gourmet Switzerland*.

⁶⁰ See case COMP/M.4170 – *Lufthansa Service Holding / Gate Gourmet Switzerland*.

⁶¹ Replies to Q2 – questionnaire to customers, question 50.

⁶² See minutes of the call with one of the Parties' customers of 10 August 2016.

⁶³ See minutes of the call with one of the Parties' customers of 1 September 2016.

⁶⁴ Replies to Q2 – questionnaire to customers, question 51.

⁶⁵ Replies to Q1 – questionnaire to competitors, question 42; and Q2 – questionnaire to customers, question 48.

- (50) In the light of the results of the market investigation, and in line with its previous decisional practice, the Commission considers that the market for the provision of in-flight catering services comprises at most an airport region for the purpose of the present case.

4.3. Ground-handling services

4.3.1.1. Past decisional practice

- (51) In its previous practice, the Commission has defined ground handling services as a product market consisting of ramp, passenger, and baggage handling services as well as airside cargo handling services.⁶⁶
- (52) In its practice, the Commission has also concluded that "the geographic market for ground handling services remains – at least for the time being – local in size and does not extend beyond a single airport or possibly two or more neighbouring airports."⁶⁷

4.3.1.2. The Notifying Party's view

- (53) The Notifying Party agrees with the product and geographic market definition in the Commission's decisional practice, but submits that it can be left open in the present case.

4.3.1.3. Commission's assessment

- (54) In line with its previous decisional practice, the Commission considers that the market for the provision of ground-handling services comprise ramp, passenger, and baggage handling services as well as airside cargo handling services. The geographic scope of the market is considered as local in size, and not extending beyond a single airport or, possibly, the catchment area of an airport (for instance Paris area or London area).

4.4. Passenger air transport

4.4.1. Relevant product market

4.4.1.1. Past decisional practice

- (55) 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).⁶⁸

⁶⁶ See case M.7021 – *Swissport/Servisair*, recital 18.

⁶⁷ See case M.7021 – *Swissport/Servisair*, recital 44.

⁶⁸ See Cases 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.

- (56) 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.⁶⁹ However, in more recent cases the 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.⁷⁰

4.4.1.2. The Notifying Party's view

- (57) The Notifying Party agrees and submits that any segmentation into scheduled and charter flights or into "time-sensitive" and "non-time sensitive" passengers can be left open.

4.4.1.3. Commission's assessment

- (58) For the purpose of the 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.⁷¹

4.4.2. Relevant geographic market

4.4.2.1. Past decisional practice

- (59) The Commission has traditionally defined the market for scheduled passenger air transport services on the basis of the "point of origin/point of destination",⁷² 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.

4.4.2.2. The Notifying Party's view

- (60) The Notifying Party agrees and submits that there is no need to further segment the market by type of flight routes.

⁶⁹ 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.

⁷⁰ See cases M.4439 – Ryanair/Aer Lingus recitals 312 and subsequent; M.6663 – Ryanair/Aer Lingus III, recitals 382 - 387; M.7541 – IAG/Aer Lingus recitals 22-29.

⁷¹ See Sections 5.2 and 5.3 of this Decision.

⁷² See case M.5747 – Iberia/British Airways, recitals 9-10.

4.4.2.3. Commission's assessment

- (61) 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.⁷³ 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.
- (62) In line with Commission's prior decisional practice, the Commission considers that the market for the provision of passenger air transport services comprises every combination of a point of origin and a point of destination.

5. COMPETITIVE ASSESSMENT

5.1. Introduction

- (63) As regards the horizontal effects of the Transaction, the Parties' activities would overlap in the market for the provision of retail on-board services due to the combined presence of HNA's wholly owned subsidiary Gategroup; and Servair in the EEA.
- (64) The Transaction does not lead to any horizontal overlap in the markets for the provision of in-flight catering services⁷⁴ and ground-handling services⁷⁵, as on these markets each Party is active at different airports in the EEA.⁷⁶
- (65) As regards non-horizontal effects, the Transaction would lead to vertical relationships between Servair's upstream activities in retail on-board services in the EEA and the HNA's downstream activities in the markets

⁷³ See case M.6179 – *Alpha Flight LSG/JV* recitals 28-30; M.6037 *Dnata/Alpha* recitals 17, 21 and 25.

⁷⁴ Within the EEA, Servair only provides in-flight catering services in the French airports of Paris - Charles de Gaulle, Orly and Lyon, while Gategroup is only present at Mulhouse-Bâle airport in France. See Form CO, paragraph 203.

⁷⁵ Within the EEA, Servair only provides ground-handling services in France and only at the airports of Paris - Charles de Gaulle, Orly, and Lyon. In France, HNA (through Swissport) only provides limited ground-handling services to executive aviation at Nice airport. In the EEA, Swissport is mainly active in the United Kingdom, Germany and Spain (with a more limited foothold in Belgium, Bulgaria, Cyprus, Finland and the Netherlands). Gategroup provides only limited ground-handling services in the EEA through Gate Aviation (only at London Heathrow airport) and Performa (only at London Heathrow airport and at three German airports).

⁷⁶ Likewise, the Transaction would not lead to any overlap on a market for retail on-board ship services, as only Gategroup is active in this market, further to its acquisition of Swedish company Inflight Service Group in early 2016. With the acquisition of Inflight Services, Gategroup entered the market of airport retail (at Tallinn and Warsaw-Modlin airports), but it is currently in the process of disposing of its non-core (and in any event marginal) airport retail business in Europe.

for air passenger transport activities at certain airports in the EEA (notably, Paris Charles de Gaulle and Rome Fiumicino, via HNA's subsidiary Hainan Airlines; and Madrid airport, via HNA's subsidiary Beijing Capital Airlines).

- (66) The Transaction would also lead to a vertical relationship between Servair's upstream activities in in-flight catering services and HNA's downstream activities in a market for air passenger transport activities at Paris Charles de Gaulle airport (via HNA's subsidiary Hainan Airlines).
- (67) In addition, the Transaction could result in conglomerate effects as a result of the combination of the Parties' activities in (i) retail on-board, (ii) in-flight catering and (iii) ground-handling services.

5.2. Horizontal effects

- (68) The Transaction would only give rise to horizontally affected markets at the EEA level when excluding captive sales and/or if the market were segmented by retail product category (that is, snacking vs. duty free).

5.2.1. Market shares

- (69) The evolution of the market shares of the Parties and their competitors in the EEA market for retail on-board services during the period from 2013 to 2015 is set out below.

Table 1 – Merchant sales for retail on-board services in the EEA

	2013	2014	2015
Gategroup (HNA)	[50-60]%	[50-60]%	[40-50]%
Servair	[5-10]%	[5-10]%	[5-10]%
Combined	[50-60]%	[50-60]%	[50-60]%
Lufthansa/LSG	[10-20]%	[10-20]%	[10-20]%
Tourvest	[10-20]%	[5-10]%	[10-20]%
DO&CO	[5-10]%	[5-10]%	[5-10]%
Alpha Flight LSG	[5-10]%	[5-10]%	[5-10]%
Newrest	[0-5]%	[0-5]%	[0-5]%
ISG	-	[0-5]%	[0-5]%
DFASS	[0-5]%	[0-5]%	[0-5]%
Nuance (Dufry)	[0-5]%	[0-5]%	[0-5]%
Hamila	[0-5]%	[0-5]%	[0-5]%

Source: Form CO. Parties' internal figures and best estimates for competitors and total market size

- (70) According to the data collected from competitors that responded to the market investigation questionnaires, despite some differences, the Notifying Party's best estimates on the EEA retail on board services market are broadly in line with the reality for the total market size (which was overestimated) and with the relative position of the competitors in the market. The only exceptions are Gategroup and Tourvest which were

slightly overestimated, and Nuance which was significantly underestimated.⁷⁷

- (71) The EEA Parties' combined market share for merchant sales for retail on-board services would amount to [50-60]% in 2015, with an increment of [5-10]%.⁷⁸ This increment can be considered relatively limited since approximately [a majority]% of Servair's market shares for retail on-board sales in 2013-2015 relate to sales to its parent company Air France. Such sales would therefore be considered captive sales, but they would become merchant sales post-Transaction.⁷⁹
- (72) In addition, market shares may fluctuate to a certain extent over the years, due to airlines switching retail on-board suppliers or deciding to out-source retail on-board services that were previously in-sourced, or the other way around. As a result, market shares do not necessarily reflect the market strength of a competitor.
- (73) For example, in table 1, the market shares of HNA's subsidiary Gategroup include sales of Swedish-based Inflight Service Group, which was acquired by Gategroup in early 2016. In 2014, Gategroup lost to Inflight Service Group a contract with Norwegian Air Shuttle for retail on-board services (snacking and duty free), worth roughly EUR [...] million of annual sales, that is approximately [...] % of Gategroup's sales in 2014. Since Inflight Service Group's market shares have been retrospectively attributed to Gategroup for the period 2013-2015, the loss of Gategroup's contract with Norwegian Air Shuttle is not reflected in the market shares, which are conservative and overestimate Gategroup's market position.
- (74) In addition, in 2016 Gategroup lost two significant contracts with two charter airlines belonging to [...]. In fact, in early 2016 [...] decided to terminate the contract for retail on-board services with Gategroup and to have recourse to insourcing for its [...] charter airlines altogether, adding [...] and [...] to the in-house service agreements. Due to the loss of these two contracts, the incumbent Gategroup lost approximately [...] % of its duty free retail on board sales.⁸⁰ In 2016 however Gategroup won a contract with Airberlin, effective in the fourth quarter of 2016 which will completely offset the loss of the [...] contracts.⁸¹ These fluctuations illustrate the truly bidding and competitive nature of the market for the provision of retail on-board services.

⁷⁷ See replies to Q1 – questionnaire to competitors, question 2.

⁷⁸ If captive sales were included, the market would not be affected, as the Parties' combined market share would amount to [10-20]% in 2015.

⁷⁹ Servair's sales to third parties only accounted for EUR [...] million in both 2013 and 2014 out of EUR [...] and EUR [...] million respectively, and EUR [...] million in 2015 out of EUR [...] million.

⁸⁰ Form CO, paragraph 239 and 246.

⁸¹ See the Notifying Party's response of 6 December 2016 to the Commission's request for information of 5 December 2016.

- (75) Servair was also confronted with the high competitive nature of the market for retail on-board services. In 2015/2016 Servair lost a contract with [...] to ISG/Newrest (effective on [...]), which represented roughly [...]% of its total retail on-board sales in 2015; but it won [...] tender corresponding approximately to [...]% of its total annual retail on-board sales in 2015.⁸²
- (76) In addition, in 2015 Aer Lingus and Flybe decided to switch from providing retail on-board services in-house to outsourcing them to Tourvest and Newrest respectively, increasing competition in the market for retail on-board services.⁸⁴
- (77) These examples illustrate that the EEA market for retail on-board services is highly contestable.
- (78) The market shares of the Parties and their competitors in the EEA market for retail on-board services comprising only snacking retail on-board services in 2015 are set out below.

Table 2 – Merchant sales for snacking retail on-board services in the EEA

	2015
Gategroup (HNA)	[70-80]%
Servair	[0-5]%
Combined	[70-80]%
Lufthansa Group/LSG	[5-10]%
Newrest	[5-10]%
Alpha Flight LSG	[5-10]%
Tourvest	[5-10]%

Source: Form CO. Parties' internal figures and best estimates for competitors and total market size

- (79) On a narrower product market in the EEA retail on-board services comprising only snacking, the Parties' combined market share would amount to [70-80]%, with an increment slightly below [0-5]% in 2015.⁸⁵ Despite the Parties' combined high market shares in 2015, the increment would be marginal, below [0-5]%. The low increment, coupled with the presence of credible competitors to the merged entity, make it unlikely

⁸² Other examples of switching are as follows: in 2015, Luxair started outsourcing the provision of retail on-board services to Servair; Orbest started outsourcing those services to Newrest and Air Baltic to ISG/LSG; in 2014, Aigle Azur and Corsair International outsourced the provision of retail on-board services to ISG/Newrest.

⁸³ Gategroup's loss of [...] and [...], together with the win of Airberlin by Gategroup and [...] by Servair in 2016, would not have a significant effect, with overall forecasted lost revenues for the Parties of [...] euros in 2016 as compared to 2015 – the combined market shares would likely remain the same in 2016 as in 2015 for the plausible markets of overall on-board retail (Table 1), snacking only (Table 2), and duty free only (Table 3). See the Notifying Party's response of 6 December 2016 to the Commission's request for information of 5 December 2016.

⁸⁴ Form CO, paragraph 217.

⁸⁵ If captive sales were included, the Parties' combined market share would amount to [20-30]% with an increment of [0-5]% in 2015.

that the Transaction would raise serious doubts on an EEA market for retail on-board services comprising only snacking.

- (80) The market shares of the Parties and their competitors in the EEA market for retail on-board services comprising only duty-free retail on-board services in 2015 are set out below.

Table 3 – Merchant sales for Duty-free retail on-board services in the EEA

	2015
Gategroup (HNA)	[20-30]%
Servair/Dutyfly solutions	[10-20]%
Combined	[30-40]%
Lufthansa Group/LSG	[10-20]%
Tourvest	[10-20]%
DO&CO	[10-20]%
DFASS	[5-10]%
Alpha Flight LSG	[5-10]%
Inflight Sales Group	[5-10]%
Newrest	[0-5]%
Nuance (Dufry)	[0-5]%
Hamila Duty Free	[0-5]%

Source: Form CO. Parties' internal figures and best estimates for competitors and total market size

- (81) On a narrower market for retail on-board services comprising only duty-free in the EEA, the Parties' combined market share for merchant sales would amount to [30-40]% with an increment of [10-20]%.⁸⁶ Despite the increment, the Parties' combined market shares would remain moderate. This, coupled with the presence in this narrow segment of sizeable credible competitors to the merged entity, make it unlikely that the Transaction would raise serious doubts on an EEA market for retail on-board services comprising only duty-free.

5.2.2. *The Notifying Party's view*

- (82) The Notifying Party submits that the Transaction is unlikely to raise competition concerns due to (i) the bidding nature of the market, (ii) the presence of several large competitors, (iii) the competitive constraint exerted by airlines' switching back in-house the provision of retail on-board services, (iv) low barriers to entry and switching costs, (v) airlines' strong countervailing buyer power, and (vi) strong anticipated market growth ahead of legacy carriers' expected move towards a buy-on-board business model for snacking on short-haul flights in Europe.

5.2.3. *Commission's assessment*

- (83) The Commission considers that the Transaction is unlikely to raise competition concerns in relation to the EEA market for retail on-board

⁸⁶ If captive sales were included, this possible market would not be affected, as the Parties' combined market share would amount to [10-20]% in 2015.

services, and its possible further segmentations into snacking and duty free products, for the following reasons.

- (84) First, all the examples mentioned in paragraphs 73 to 77 above illustrate that the market for retail on-board services is a highly competitive and contestable bidding market. In bidding markets, market shares are an imperfect proxy for establishing the effective market strength of parties. Customers can quickly shift large volumes of business each time that they issue a tender and the systematic bidding for new businesses provides attractive opportunities for third-party suppliers and strong incentives for competition among them.
- (85) Respondents to the market investigation questionnaires indicated that retail on-board suppliers are selected almost exclusively through tender procedures. The main criteria for selecting a retail on-board supplier are price, quality of the product, and quality of delivery.⁸⁷ Retail on-board contracts are then concluded for a period usually no longer than five years⁸⁸. Termination clauses appear to be standard and contracts are regularly tendered out. The Commission therefore considers that the provision of retail on-board services is routinely contestable, as airlines run tenders on a regular basis every two to five years.
- (86) With regard to a possible competitive advantage that the incumbent retail on-board provider might have over competing bidders, a majority of customers indicated that the incumbent retail on-board supplier does not have any advantage or, if any, such advantage would not prevent other players from winning the tender.⁸⁹
- (87) Second, there are several large and internationally active competitors that can effectively constrain the merged entity post-Transaction, such as Lufthansa Group, Tourvest, DO&CO, Newrest, Inflight Sales Group (ISG), and Duty Free Air & Ship Supply (DFASS).
- (88) Third, changing retail on-board supplier is relatively easy. A majority of customers indicated that it would be relatively easy to find a suitable supplier or to switch to a different supplier of retail on-board service in the EEA.⁹⁰ Some market participants also pointed out that it would be feasible for airlines to sponsor a new entrant in the market for the provision of retail on-board services, should they have any need for it.⁹¹

⁸⁷ Replies to Q1 – questionnaire to competitors, question 25; and replies to Q2 – questionnaire to customers, question 30.

⁸⁸ Replies to Q2 – questionnaire to customers, question 32.

⁸⁹ Replies to Q2 – questionnaire to customers, question 31.

⁹⁰ Replies to Q2 – questionnaire to customers, question 33.

⁹¹ Replies to Q2 – questionnaire to customers, question 36. A customer noted that "*an airline could provide a retail provider with the first experience needed for market entry in a specific region*".

- (89) Fourth, a majority of respondents to the market investigation questionnaires pointed out that the provision of retail on-board services in-house by airlines constrains to a certain extent third party providers.⁹²
- (90) Fifth, there is a tendency in the market according to which full-service carriers gradually shift from offering complimentary food and beverage to retail snacking on-board services especially for short-haul flights. An example of this trend is British Airways' recently announcement that as of January 2017 it will replace its complimentary snacking with a Mark & Spencer menu available to buy on-board for passengers travelling in the economy cabin on short-haul and domestic flights.⁹³ This is an indication that there is a wide range of alternatives for airlines to offer retail on-board services, that is, they can provide the service in-house, alone or partnering with a retailer (such as Mark & Spencer) or outsource the services to a third party retail on-board provider, choosing among several specialised players.
- (91) In light of the above and all available evidence to it, the Commission considers that the Transaction does not raise competition concerns with regard to its compatibility with the internal market in relation to the provision of retail on-board services in the EEA.

5.3. Vertical effects

5.3.1. Introduction

- (92) The Transaction would lead to the following vertical relationships between⁹⁴:
- i. Servair's upstream retail on-board activities in the EEA and the air passenger transport activities of HNA downstream at Paris Charles de Gaulle and Rome Fiumicino airports (via HNA's wholly-owned airline Hainan Airlines) and at Madrid airport (via HNA's wholly owned airline Beijing Capital Airlines);
 - ii. Servair's upstream in-flight catering activities at Paris Charles de Gaulle airport and the air passenger activities of HNA downstream at Paris Charles de Gaulle airport (via HNA's wholly owned airline Hainan Airlines).

⁹² Replies to Q1 – questionnaire to competitors, question 21; and replies to Q2 – questionnaire to customers, question 22.

⁹³ See press release by British Airways at: <http://mediacentre.britishairways.com/pressrelease/details/86/2016-72/7309#sthash.ZGzYHl4w.dpuf>.

⁹⁴ Servair's upstream activities of ground-handling services at Paris Charles de Gaulle airport (which does not exceed 30% market share) and the air passenger transport activities of HNA Group downstream would not result in vertically affected markets.

5.3.2. Commission's assessment

- (93) The Notifying Party claims that the Transaction would not raise any risk of input or customer foreclosure essentially due to HNA's marginal presence in the downstream market of passenger air transport.
- (94) The Commission assessed the vertical relationships between the Parties' activities which will arise as a result of the Transaction and considers that Servair 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 for the following reasons:

5.3.2.1. Input foreclosure

- (95) 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.⁹⁵
- (96) 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;⁹⁶ (ii) the merged entity needs to have the incentive to do so;⁹⁷ and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market.⁹⁸ In practice, these factors are often examined together since they are closely intertwined.

5.3.2.1.1 Retail on-board services

- (97) Post-Transaction, the Parties will have an EEA-wide combined market share of [50-60]% in the upstream market for retail on board services (and up to [70-80]% on a potential subsegment for snacking only). However, first, HNA's market share does not exceed [0-5]% market share in the downstream market for air passenger transport services at the EEA level or 1% at any of the EEA airports where both HNA and Servair operate.
- (98) Furthermore, the market participants consulted during the market investigation confirmed that competitive tenders are regularly launched for the provision of retail on-board services ensuring the quality of the services offered and competitive prices⁹⁹; such tendering process hinders the ability of the Parties to affect the prices and conditions in the market despite Servair and Gategroup (HNA) combined having a high market share at the EEA level.

⁹⁵ See Non-Horizontal Merger Guidelines ("NHMG"), paragraphs 29-30.

⁹⁶ See NHMG, paragraphs 33 to 39.

⁹⁷ See NHMG, paragraphs 40 to 46,

⁹⁸ See NHMG, paragraphs 47 to 57.

⁹⁹ 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.

- (99) During the market investigation, both a majority of competitors and a majority of customers indicated that Servair (as part of the HNA) would not have the incentive or ability to restrict access to its retail on-board services in order to raise the cost of airlines competing with HNA's controlled airlines.¹⁰⁰
- (100) In the light of the above, the Commission considers that the risk of the combined entity (Servair/Gategroup (HNA)) engaging in an input foreclosure strategy post-Transaction with relation to retail on-board services is remote.

5.3.2.1.2 In-flight catering services

- (101) The market investigation yielded mixed results concerning the market participants' view on the ability and incentive of Servair to restrict access to its in-flight catering services in order to raise the cost of airlines competing with HNA's controlled airlines departing/landing in the EEA post-Transaction.¹⁰¹
- (102) The Commission considers that, while Servair's market shares upstream in the affected market (namely Charles de Gaulle airport) are around [80-90]% (Gategroup (HNA) is not active in this market), HNA's market share downstream (in air passenger transport services at this airport) is negligible (less than 1%). Furthermore, Servair already provides in-flight catering to HNA and the very limited air passenger traffic derived from the three flights a week operated by Hainan Airlines at Paris Charles de Gaulle airport would fall far short of the current production capacity available at Servair's kitchen at Paris Charles de Gaulle.¹⁰²
- (103) A few competing in-flight catering providers with a strong EEA footprint such as Newrest and LSG are also present at the Paris Charles de Gaulle airport.¹⁰³ Furthermore, customers and competitors responding to the market investigation have confirmed the competitive conditions present in the market for in-flight catering services, where regular competitive tenders are issued by airlines, and which constrain the ability of the Parties to affect market prices and conditions.¹⁰⁴

¹⁰⁰ Replies to Q1 – questionnaire to competitors, question 32; and replies to Q2 – questionnaire to customers, question 37.

¹⁰¹ See replies to Q1 – questionnaire to competitors, question 47; and replies to Q2 – questionnaire to customers, question 53.

¹⁰² See Parties' submission dated 24 November 2016 in reply to Commission's RFI of 22 November 2016.

¹⁰³ Form CO paragraphs 99 and 354. See also competitors websites (<http://www.newrest.eu/en/unit/paris-charles-de-gaulle/>) and 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.

¹⁰⁴ 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.

- (104) In the light of the above, and in particular of the negligible share of HNA's controlled airlines in the demand for in-flight catering services at Paris - Charles de Gaulle airport, the Commission considers that the risk of combined entity (Servair/Gategroup (HNA)) engaging in an input foreclosure strategy post-Transaction with relation to in-flight catering services is remote.

5.3.2.1.3 Conclusion

- (105) The Commission concludes that it is unlikely that the combined entity will engage in an input foreclosure of retail on-board services or in-flight catering services strategy post-Transaction.

5.3.2.2. Customer foreclosure

- (106) According to the Non-Horizontal Merger Guidelines, "[c]ustomer foreclosure may occur when a supplier integrates with an important customer in the downstream market".¹⁰⁵
- (107) 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".¹⁰⁶
- (108) First, based on the Notifying Party's best estimates in relation to both in-flight catering and retail on-board services, HNA accounts for only a *de minimis* share of demand at each airport in which it operates within the EEA (less than 1%) for each of in-flight and retail on board services, and consequently it cannot be considered to be an "important customer" within the meaning of the Non-Horizontal Merger Guidelines.¹⁰⁷ Even if HNA hypothetically were to purchase exclusively from Gategroup (HNA)/Servair, the overwhelming 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.
- (109) Second, none of market participants consulted during the market investigation had any concern regarding a possible customer foreclosure scenario either regarding retail on-board or in-flight catering services by the Parties.¹⁰⁸

¹⁰⁵ See NHMG, paragraph 58.

¹⁰⁶ See NHMG, paragraphs 58-74.

¹⁰⁷ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

¹⁰⁸ 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.

(110) On the basis of the above, and in light of the results of the market investigation, the Commission considers that it is unlikely that the combined entity (Gategroup (HNA)/Servair) would have the ability or incentive to successfully engage in a customer foreclosure strategy post-Transaction.

5.3.3. Conclusion

(111) The Commission concludes the risk of HNA engaging in any foreclosure strategy with respect to either retail on-board services or in-flight catering services is remote.

5.4. Conglomerate effects

5.4.1. Introduction

(112) The Transaction would create a link between the 'neighbouring' markets for (i) the provision of retail on-board and in-flight catering services offered by each of the Parties on the one hand, and (ii) the retail on-board and/or in-flight catering services by the Parties and the ground-handling services offered by HNA's Swissport on the other hand. The Commission has examined whether the merged entity would be able to leverage its position in any of these markets in order to foreclose such services.

5.4.2. The Notifying Party's view

(113) The Notifying Party submits that the merged entity will not have the ability and incentive to engage in anticompetitive conglomerate effects post-Transaction in the supply of retail on-board and in-flight catering services.¹⁰⁹

(114) First, the Notifying Party submits that in-flight catering and retail on-board services are typically tendered out separately.

(115) Second, neither Gategroup (HNA) nor Servair has engaged in bundling practices in the past between in-flight catering and retail on-board.¹¹⁰

(116) Third, according to the Notifying Party, airlines have strong countervailing buyer power and select suppliers mostly based on price and efficiency parameters. Airlines regularly benchmark the quality of the in-flight catering and retail on-board services, and do switch at no significant cost to alternative providers whenever they are not satisfied with performance levels.

See replies to Q1 – questionnaire to competitors, questions 32, 47 and 48; and replies to Q2 – questionnaire to customers, questions 39, 54 and 57.

¹⁰⁹ See the Notifying Party's response to the Commission's request for information of 22 November 2016.

¹¹⁰ By exception, some airlines such as Norwegian Air Shuttle (which is a customer of Gategroup) have a hybrid business model where retail on-board services are offered on short-haul flights and in-flight catering services consisting of traditional complementary food (usually a mixture of pre-packaged food and freshly prepared meals) are offered on long-haul flights. No would-be customer ever made such a request similar to the hybrid to Servair (see Form CO, paragraph 303).

- (117) Fourth, the Notifying Party submits that, should the combined entity bundle in-flight catering and retail on-board, it would face competitors with a matching portfolio of products, such as Lufthansa, DO & CO and Newrest). Further, DNATA (part of the Emirates Group) is another integrated company currently active in the EEA as supplier of in-flight catering and retail on-board services (through its subsidiary Alpha Flight Group and the Alpha LSG joint venture) and also offering ground-handling services.
- (118) As regards possible conglomerate effects brought about by the Transaction between the Parties' activities in retail on-board and/or in-flight catering services on the one hand, and the ground-handling services by HNA's Swissport on the other hand, the Notifying Party submits that, in addition to the arguments above, Swissport does not offer ground-handling services neither in France nor in any of the EEA airports where Servair is active.¹¹¹

5.4.3. Commission's assessment

- (119) The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.¹¹²
- (120) The Commission has assessed whether as a result of the Transaction the Parties could leverage their strong position in one market to increase the sales in a weaker product market by bundling the two products together.
- (121) Generally, it is unlikely that the merged entity would be willing to forego sales on one highly profitable market in order to gain market shares on another market where turnover is relatively small and profits are modest.¹¹³

5.4.3.1. Parties' ability and incentives to bundle their on-board and in-flight catering offering together

- (122) First, as previously described in Section 5.1.1, all the competitors and the majority of customers that responded to the market investigation questionnaires confirmed that retail on-board services are tendered out separately from in-flight catering services.¹¹⁴ In addition, in the case at hand, the significance of airlines' captive sales both for retail on-board

¹¹¹ In France, Swissport is only active for ground-handling services at Nice airport for executive aviation (with an estimated market share of [30-40]%). Swissport is not present either in Italy, Luxemburg or at Madrid airport, where Servair is active outside France through its retail on-board offering.

¹¹² See NHMG, paragraph 93.

¹¹³ See NHMG, paragraph 107.

¹¹⁴ Replies to Q1 – questionnaire to competitors, question 14; and replies to Q2 – questionnaire to customers, question 38 .

services and in-flight catering services would make the implementation of such a bundling strategy unprofitable.

- (123) Second, the relative value of retail on-board versus in-flight catering is very unlikely to lead to a mixed bundling strategy. Based on the Parties' estimations, in-flight catering is generally more profitable than retail on board. In addition, retail on-board sales in the EEA are also more than three times lower than overall in-flight catering sales in the EEA.¹¹⁵
- (124) Lastly, the current ownership over the in-flight catering services entities is very unlikely to lead to a bundling/tying strategy. HNA fully owns Swissport and Gategroup, while Servair holds only [...] % of the retail on-board joint venture Dutyfly Solutions. Gategroup (HNA) would therefore only perceive [...] % of the additional margins it would make on retail on-board services, whereas it benefits from the full margins for in-flight catering. Therefore, it would not be in Gategroup (HNA)'s interest to forego 100% of the profits achieved on the supply of in-flight catering services to the benefit of the retail on-board joint venture Dutyfly Solutions.
- (125) For the reasons described above, the Commission considers that it is unlikely that the merged entity would post-Transaction be in a position to leverage its position in its retail on-board business in order to successfully engage in any bundling strategy with their business for retail in-flight catering of vice-versa.

5.4.3.2. Parties' ability and incentives to bundle retail on-board and/or in-flight catering with HNA's Swissport ground-handling services

- (126) First, airlines rarely procure their ground-handling services together with retail on-board or in-flight catering. An airline has indicated that it "*does not consider that for a bidder offering catering, retail and/or ground handling services together would represent a key competitive advantage against other bidders.*"¹¹⁶
- (127) Second, a majority of both competitors and customers indicated that HNA's position in neighbouring markets such as ground handling services will not have an impact on the availability of competing providers for retail on-board and in-flight catering services.¹¹⁷
- (128) Third, Article 9 of the Ground Handling Directive provides that free access of suppliers shall be ensured at airports and the number of authorised suppliers can be limited only "*where at the airport, specific*

¹¹⁵ The total market size of retail the on-board market amounts to EUR [...] million in the EEA as compared to EUR [...] million for in-flight on-board (captive sales excluded). See Parties' submission dated 24 November 2016 in reply to Commission's Request for Information of 22 November 2016.

¹¹⁶ See minutes of the call with one of the Parties' customers of 15 July 2016.

¹¹⁷ Replies to Q1 – questionnaire to competitors, question 49; and replies to Q2 - questionnaire to customers, question 55.

constraints of available space or capacity arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this directive".¹¹⁸

- (129) A retailer or caterer is therefore able to bid for the supply of services at any liberalised airport once it has completed the short pre-approval process run by the airport authority. A supplier does not need to receive any permit to operate from the airport authority. The airports where Servair operates (i.e., Paris – Charles de Gaulle, Paris-Orly, Madrid, Rome Fiumicino, Milan Malpensa and Luxemburg) are liberalised, meaning that there is no limit on the current number of retail on-board or in-flight catering suppliers at those airports.
- (130) Finally, the fact that HNA's Swissport does not offer ground handling services in any of the airports where Servair is currently active within the EEA makes it unlikely that the merged entity will be in a position to tie or bundle retail on-board and/or in-flight catering services with ground-handling services.
- (131) For the reasons described above, the Commission considers that it is unlikely that the merged entity would post-Transaction be in a position to leverage its position in the ground-handling services to successfully engage in any bundling strategy with their business for retail on-board and/or in-flight catering.

5.4.4. Conclusion

- (132) In view of the above, and considering all evidence available to the Commission, the Transaction does not raise any serious doubts as regards its compatibility with the internal market as a result of conglomerate effects.

6. CONCLUSION

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

*For the Commission
(signed)
Margrethe VESTAGER
Member of the Commission*

¹¹⁸ Council Directive 96/67/EC of 15 October 1996 on access to the ground-handling market at Community airports.