



EUROPEAN COMMISSION
DG Competition

***Case M.8985 - BOEING /
KLX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/10/2018

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EUROPEAN COMMISSION

Brussels, 1.10.2018
C(2018) 6508 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

**Subject: Case M.8985 - Boeing / KLX
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**

Dear Sir or Madam,

- (1) On 29.8.2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which The Boeing Company ('Boeing', United States) acquires, within the meaning of Article 3(1)(b) of that Regulation, control of the whole of KLX Inc. ('KLX', United States) by way of purchase of shares ('Transaction').³ Boeing and KLX are designated hereinafter as the 'Parties'.

1. THE PARTIES AND THE OPERATION

- (2) Boeing is a US-based company, active in the aircraft, defence and space industries and related services. Boeing is also a supplier of security systems and provider of aftermarket services for the aerospace market, including the distribution of aerospace parts and chemicals.

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').

³ Publication in the Official Journal of the European Union No C 314, 06.09.2018, p. 14.

- (3) KLX, also based in the US, is active in the distribution of small aerospace parts and chemicals.
- (4) The envisaged Transaction concerns the acquisition of all shares in KLX by Boeing. The proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Boeing: [...], KLX: [...], combined: [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Boeing: [...], KLX: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

3. MARKET DEFINITION

3.1. Introduction

- (6) The Transaction primarily concerns the distribution of aerospace parts and chemicals to aircraft manufacturers and the aftermarket.
- (7) Aerospace parts and chemicals includes several and diversified categories of products required as inputs across all phases of a lifecycle of an aircraft. These products can be divided into four broad categories: A-class parts (high-value repairable parts), B-class parts (parts that can be economically repaired when damaged), C-class parts (low value parts that are not repaired, but replaced when damaged), and aerospace chemicals (liquids, composite materials and other consumables used for the manufacture, repair and general upkeep of an aircraft).
- (8) In light of the activities of the Parties, as explained below under 4.1, for the purpose of the assessment of the proposed Transaction, only C-class parts, in particular aerospace fasteners and aerospace chemicals are relevant.
- (9) Fasteners are small C-class parts, such as bolts, nuts and screws, used to connect all the different parts of an aircraft together in primary structural areas, secondary structure, pressurized and non-pressurized applications, and to transfer loads from one part to another. Most fasteners are manufactured according to industry standards ('standard fasteners'), while other fasteners are produced according to specifications developed by manufacturers and aircraft producers who hold the design rights ('proprietary fasteners').
- (10) The distribution of aerospace small parts and consumables takes place through different channels. They are distributed either directly by parts manufacturers, independent distributors, or through brokers. The customers' preference about which channel to use is highly dependent on the quantity required, lead time and desire for value-add services. Manufacturers often require minimum order quantities, while distributors are able to provide smaller quantities, have shorter

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

delivery times as they have product stocks and can also provide additional services like kitting. In most cases, customers rely on multiple distribution channels and they procure the needed aerospace small parts via competitive tender offers, long term contracts, or ad-hoc quotes.

- (11) The demand for small aerospace parts depends both on the demand for new aerospace equipment and on the demand for replacement parts during the life cycle of an aircraft. The customer base is therefore diversified and encompasses original equipment manufacturers ('OEMs') and aircraft manufacturers, as well as the so-called 'aftermarket', e.g. airlines, maintenance, repair and overhaul operators ('MROs') and fixed based operators.

3.2. Product Market Definition

3.2.1. Commission's Precedents

Upstream market: distribution of aerospace parts and chemicals

- (12) In a previous decision, the Commission considered that the distribution of aerospace parts could be divided into different submarkets, such as, on the one hand, the distribution of large aerospace parts by airframe and component manufacturers, and, on the other hand, the distribution of small parts, requiring regular and quick replacement, by independent distributors. Alternative markets segmentations were also considered for parts dedicated for large commercial aircraft and for general aviation/regional aircraft and for commercial and for military aircraft. However, the product market definition was ultimately left open.⁵
- (13) In a more recent decision, the Commission also considered that the market for the supply of aerospace parts could be segmented based on the difference between customers, i.e.: OEMs and aircraft manufacturers for original parts and MROs or airlines for spare parts.⁶
- (14) The Commission did not address in any previous decision the distribution of aerospace chemicals.

Downstream markets: aircraft manufacturing and aftermarkets

- (15) In relation to aircraft manufacturing, Commission precedents have generally differentiated the following main categories of aircraft: commercial aircraft, military aircraft, helicopters and general aviation aircraft.⁷ Within commercial aircraft the precedents further differentiated between three segments:⁸ large commercial aircraft, regional aircraft and business/corporate jets. As to large commercial aircraft, a further distinction was considered between narrow-body (or single-aisle) aircraft, and wide-body (or twin-aisle) aircraft. In its most recent decision,⁹ the Commission also considered that, in light of the introduction of

⁵ Commission Decision in Case M.4241, *Boeing/Aviall*, para. 10.

⁶ Commission Decision in Case M.6410, *UTC/Goodrich*, paras 192-195.

⁷ Case M.1601, *Allied Signal / Honeywell*, para 11.

⁸ Case IV/M.877, *Boeing / McDonnell Douglas*, paras 15 and 16; Case M.1601, *Allied Signal / Honeywell*, paragraph 13; Case M.2220, *General Electric / Honeywell*, para 10.

⁹ Commission Decisions in Case M.8858, *Boeing/Safran/JV*, para 14.

additional aircraft, the previous distinction between narrow-body large commercial aircraft and regional aircraft may be blurred, but the sub-segmentation of the product market for commercial aircraft was ultimately left open.

- (16) The Commission's decisional practice has also differentiated four main categories of aviation MRO services based on the part of the aircraft to be serviced and the level of service required: line maintenance, heavy maintenance, engine maintenance and component maintenance (here referred to as "component MRO"). The Commission also considered that these markets might be subdivided into separate markets according to the type of the aircraft, distinguishing between commercial aviation on the one hand and business aviation on the other hand, but did not reach a conclusion as regards market definition.¹⁰

3.2.2. *The Parties' view*

- (17) As regards the upstream market, the Parties submit that it is appropriate to consider an overall market including distribution of all categories of aerospace parts. In their view, this product market includes also the distribution of aerospace chemicals. This market may be further segmented between larger and more complex parts and small spare parts. Further, given that customers [...], the Parties agree with the approach in *Boeing/Aviall*¹¹ not to distinguish between different categories of spare parts.
- (18) The Parties further submit that at the distribution level the market should not be further segmented according to customer categories. From the demand-side, the products are functionally interchangeable, there are similar product and service requirements across all categories and pricing is also similar. From the supply-side, most manufacturers and distributors are able to serve all customer categories. However, the Parties acknowledge that for some products it may be relevant to distinguish between supply to OEMs (i.e. first install) and supply to the aftermarket (where both Parties are active), as they request different services.
- (19) As concerns the downstream market, the Parties acknowledge the previous segmentation between commercial aircraft, military aircraft, helicopters and general aviation aircraft.
- (20) Further, the Parties note that there are three key categories of market participants in the aftermarket, namely MROs, FBOs and airlines, but submit that the aftermarket should not be segmented accordingly.

3.2.3. *Commission's assessment and conclusion*

- (21) As concerns the upstream market, respondents to the market investigation explained that they procure aerospace parts both from distributors and manufacturers, stressing that while the same products can be purchased through both channels, distributors are able to offer additional services.¹² Furthermore, respondents suggested that the relevant market may encompass the distribution of

¹⁰ Commission Decisions in Case M.6410, *UTC/Goodrich*, paras 174-181, and in Case M.8658, *UTC/Rockwell*, paras 129-138.

¹¹ Commission Decision in Case M.4241, *Boeing/Aviall*, para. 10.

¹² Non-confidential minutes of a phone call with an OEM on 6 August 2018

all aerospace parts or at least broad categories of aerospace parts and aerospace chemicals. However, one respondent highlighted that about 78% of the distribution takes place through distributors exclusively dedicated to fasteners.¹³ Market participants also did not consider any further sub-segmentation on the basis of narrower categories of products (e.g. standard and proprietary fasteners, different types of fasteners).¹⁴

- (22) As regards a segmentation of the distribution market for aerospace small parts and chemicals based on the type of aircraft for which the parts are dedicated, or based on the end customer, the market investigation confirmed that a segmentation might only be justified on the basis of the end customer and such between OEMs (first install) and the aftermarket (spare parts), but not further in relation to different subsegments of the aftermarket.¹⁵
- (23) The Commission therefore considers that the relevant product market may include the distribution via all channels of all small aerospace parts and chemicals or of categories of products, such as fasteners, while a narrower segmentation would not be appropriate.
- (24) In any event, for the purposes of the present decision, the exact product market definition for the distribution of aerospace small parts and aerospace chemicals can be left open as no serious doubts arise under either of the alternative market definitions.
- (25) As regards the downstream markets, the Commission considers it appropriate to assess the aircraft manufacturing market in line with the segmentation followed in its precedents described above at paragraph (15), while the exact sub-segmentation of the product market for commercial aircraft can be left open in this case as no serious doubts arise under either of the alternative market definitions.
- (26) As regards aftermarkets, one respondent to the market investigation indicated that it would not be appropriate to segment the MRO services as described above at paragraph (16)¹⁶, while the market investigation as a whole was not conclusive on the relevant segmentations.
- (27) In any case, as regards aftermarkets, the Commission considers that, for the purposes of the present decision, the exact product market definition can be left open as far as it concerns any possible distinction based on the level of service required, the part of the aircraft to be serviced or to be replaced, or the type of aircraft concerned, as no serious doubts arise under either of the alternative market definitions.

¹³ Non-confidential minutes of a phone call with a distributor on 14 September 2018.

¹⁴ Non-confidential minutes of a phone call with two distributors on 23 August 2018 and 14 September 2018.

¹⁵ Non-confidential minutes of a phone call with two distributors on 23 August 2018 and 14 September 2018.

¹⁶ Non-confidential minutes of a phone call with an independent MRO on 11 September 2018.

3.3. Geographic market definition

3.3.1. Commission's precedents

- (28) In previous decisions, the Commission took the view that the appropriate geographic market definition for distribution of aerospace parts is at least EEA-wide, if not worldwide. However, the precise geographic market definition was ultimately left open.¹⁷
- (29) The Commission also considered in its precedents¹⁸ that the downstream markets, both for aircraft manufacturing and aftermarket services, are worldwide in geographic scope, without ultimately reaching a final conclusion.

3.3.2. Parties' views

- (30) The Parties submit that the market for the distribution of small aerospace parts is at least EEA-wide and likely global.
- (31) In line with the Commission's precedents, the Parties submit market shares for the downstream market at worldwide level.

3.3.3. Commission's assessment and conclusion

- (32) As regards the upstream market, the market investigation provided indications that both manufacturers and independent distributors of aerospace parts supply world-wide.¹⁹ For aerospace chemicals, the respondents indicated similarly that the market is worldwide or at least EEA-wide.²⁰
- (33) As regards the downstream markets, the Commission considers it appropriate to assess the aircraft manufacturing market and the aftermarkets as worldwide in line with the segmentation followed in established precedents.
- (34) Accordingly, the Commission considers, in line with its precedents, that the relevant markets are worldwide or at least EEA-wide. For the purpose of this decision, the precise geographic market definition can be left open as no serious doubts arise under either of the alternative market definitions.

4. COMPETITIVE ASSESSMENT

4.1. Activities of the Parties and relevant overlaps

- (35) Both parties are active in the distribution of small aerospace parts and aerospace chemicals. Boeing is also active downstream as an aircraft manufacturer and an MRO.

¹⁷ Commission Decision in Case M.4241, *Boeing/Aviall*, paras 11-12.

¹⁸ Commission Decisions in Case M.2220, *General Electric/Honeywell*, paras 10-34; Case M.1601, *Allied Signal/Honeywell*, para. 13; Case M.6410, *UTC/Goodrich*, recitals 196-200, Case M.8658, *UTC/Rockwell*, paras 208-211.

¹⁹ Non confidential version of the minutes of the phone call with an OEM on 6 August 2018.

²⁰ Non confidential version of the minutes of the phone call with a manufacturer on 23 August 2018; Non confidential version of the minutes of the phone call with an airline on 27 July 2018.

- (36) Boeing distributes aerospace parts through two different channels. Boeing's Global Services business unit ('Boeing Spares') primarily sells Boeing and third-party proprietary parts as well as a small amount of industry standard parts, to aftermarket customers. In addition, in 2006, Boeing acquired Aviall Inc. ('Aviall'), a distributor of aerospace parts and aerospace chemicals, active also in the sale of large aerospace parts such as engine components.
- (37) Further, Boeing set up a captive distributor, under the name 'Boeing Aggregated Standards Network ('BASN'), that supplies Boeing approved fasteners ('BAC fasteners') to Boeing internally and to OEM (component) suppliers for use in manufacturing components for Boeing aircraft.
- (38) Boeing operates on the downstream market for aircraft manufacturing and it procures parts essentially from its OEM suppliers, which may supply it with the final assembled aircraft part or the individual component. Furthermore, Boeing has also a [...] activity on the aftermarket as an MRO.
- (39) KLX is a distributor of small aerospace parts and aerospace chemicals, offering a range of services such as logistics and management kitting. The two most important categories of products sold by KLX are fasteners, which make-up [60-70]% of its total turnover, and aerospace chemicals accounting for [10-20]% of its turnover.²¹
- (40) In light of the activities of the Parties, the Transaction gives rise to limited horizontal overlaps on the distribution of small aerospace parts and aerospace chemicals, which do not result in any affected markets. Further, from the information provided by the Parties, it follows that the sub-categories of small parts where the Parties mainly overlap are: fasteners, lighting, electrical products and bearings.
- (41) The Transaction also leads to vertical links between the upstream distribution activities of KLX and Boeing's activities downstream as an aircraft manufacturer and an MRO.

4.2. Market structure

4.2.1. Upstream market: distribution of small aerospace parts and aerospace chemicals

- (42) On the market for the distribution of small aerospace parts and aerospace chemicals, the Parties have a post-merger combined share of [5-10%] worldwide and [5-10%] EEA-wide (Boeing: [0-5%] WW and below [0-5%] EEA, KLX: [5-10%] WW and [5-10%] EEA). Table 1 below reports the market shares of the Parties on the market for the distribution of narrower categories of small aerospace parts and chemicals where the Transaction would give rise to overlaps between the Parties. Table 2 reports estimated market shares for the distribution of fasteners based on end-customers.

²¹ Form CO, Table 2 at p. 5.

Table 1 – Market shares for the distribution aerospace fasteners, aerospace lightings and aerospace chemicals, based on value (2017)

	Aerospace Fasteners	Aerospace Chemicals	Aerospace Lighting	Aerospace Electrical Products	Aerospace Bearings
Boeing	[0-5]% WW [0-5]% EEA	[0-5]% WW [0-5]% EEA	[5-10]% WW [0-5]% EEA	<[5-10]% WW <[5-10]% EEA	<[5-10]% WW <[5-10]% EEA
KLX	[10-20]% WW [10-20]% EEA	[0-5]% WW [0-5]% EEA	[0-5]% WW [0-5]% EEA	<[5-10]% WW <[5-10]% EEA	<[5-10]% WW <[5-10]% EEA
Combined	[10-20]% WW [10-20]% EEA	[0-5]% WW [0-5]% EEA	[5-10]% WW [0-5]% EEA	<[10-20]% WW <[10-20]% EEA	<[10-20]% WW <[10-20]% EEA

Source: Estimates of the Parties, Form CO Table 4 at p. 7.

Table 2 – Market shares for the distribution of aerospace fasteners to OEMs and the aftermarket, based on value (2017)

	OEMs	Aftermarket
Boeing (Aviall and Boeing Spares)	<[0-5]% WW <[0-5]% EEA	[0-5]% WW [0-5]% EEA
KLX	[10-20]% WW [10-20]% EEA	[5-10]% WW [5-10]% EEA
Combined	[10-20]% WW [10-20]% EEA	[5-10]% WW [10-20]% EEA
Wesco	[10-20]% WW [10-20]% EEA	[0-5]% WW [0-5]% EEA
Pattonair	[5-10]% WW [5-10]% EEA	[5-10]% WW [0-5]% EEA

Source: estimates of the Parties, Form CO Annex 7B

(43) As concerns the competitive landscape, according to the information provided by the Parties and respondents to the market investigation,²² the distribution market is highly fragmented. KLX is the market leader for fasteners, followed by Wesco, Pattonair and Aligne Aerospace.

4.2.2. Downstream markets

(44) Boeing's estimated worldwide market share for 2017 in the market for the manufacture of large commercial aircraft is [40-50]%. In the segment of large commercial aircraft above 90 seats, Boeing held market shares of [50-60]%. If regional aircraft with less than 90 seats are included in the market definition, Boeing's market share amounts to [40-50]%. In the segment of large commercial aircraft of more than 120 seats, Boeing's market share amounts to [50-60]%. Finally, in the sub-segment of wide-body commercial aircraft of 200 seats or more, Boeing held a market share of [50-60]%.²³ Therefore the transaction results in vertically affected markets.²⁴

²² Non-confidential version of the minutes of the phone call with a distributor on 23 August 2018.

²³ Estimates of the Parties, in terms of number of aircraft deliveries in 2017. See Response by Parties to RFI of 20 September 2018.

²⁴ Boeing is also active in the manufacture of military aircraft, but its share in this segment is under 30%, and it has a limited share in the manufacture of business aviation aircraft. The market shares

- (45) As regards aftermarkets, Boeing has an estimated market share of [0-5]% on the overall global aftermarket, and below [5-10]% under any conceivable product or geographic segmentation²⁵ thereof.

4.3. Assessment of horizontal effects

4.3.1. Parties' arguments

- (46) The Parties submit that, for the distribution of small aerospace parts, their combined market shares on an EEA and worldwide basis are modest and do not result in a horizontally affected market. The same applies even considering a narrower level, at the specific product categories where the Parties' distribution activities overlap.

- (47) Further, the merged entity would be constrained by the numerous other competitors present in the small aerospace parts distribution segment as well as the narrower distribution segments for each of the aforementioned product categories.

4.3.2. Commission's assessment

- (48) The Commission observes that, according to the available information, with respect to the distribution of small aerospace parts (including aerospace chemicals) on a worldwide market as well as EEA-wide, the estimated combined market shares of the parties are limited (below [10-20]%). The combined market shares for any narrower overlapping category are also below [5-10]%. Only on the market for the distribution of fasteners to OEMs, the estimated combined EEA market shares are close to [20-30]%.

- (49) In light of the comments received by market participants during the investigation, the Commission has carefully examined whether it is likely that, further to the Transaction, the Parties would be able to raise prices for aerospace fasteners.

- (50) From the evidence collected during the market investigation²⁶, it results that KLX is in a leading position on the distribution market, at least, for aerospace fasteners, where it can offer a wide product portfolio and very competitive services.

- (51) However, the Transaction is not likely to remove an important competitive constraint. The addition of Boeing market share is very small and KLX and Boeing are not close competitors.²⁷ Their customers' base is different, as KLX is more dedicated to OEMs while Boeing is focused on the aftermarket. Further, KLX distributes predominantly standard fasteners, Boeing proprietary fasteners.

- (52) The market shares suggest that the merged entity would continue facing strong competition from small parts manufacturers, independent distributors and brokers.

are calculated in in terms of deliveries: estimates of the Parties, Form CO and reply to an RFI of 20 September 2018.

²⁵ See above para. (16).

²⁶ Non-confidential version of the minutes of the phone call with a distributor on 11 September 2018, non-confidential version of the minutes of the phone call with an airline on 30 July 2018.

²⁷ Non-confidential version of the minutes of the phone call with a aerospace hardware manufacturer on 8 August 2018.

The vast majority of respondents to the market investigation confirmed that customers would not have difficulties switching to other suppliers. The distribution market is said to be competitive and there are several alternative suppliers, who would not face capacity constraints and would have the ability and incentive to increase their supplies.²⁸

- (53) Further, from the feedback received during the market investigation, it results that switching costs and entry barriers are limited. First, KLX's services are not considered as 'must-have' in the industry and the Parties do not have a network of exclusive agreements with small parts manufacturers that may limit otherwise the ability of downstream players to switch to competitors. The contractual relationships in the industry are indeed rather diversified: exclusive agreements are not common. Customers have normally both long term contracts as well as *ad hoc* purchases. Long term contracts are usually concluded after a competitive selection through a tender and renegotiations of the contractual terms are possible under certain circumstances. Furthermore, market participants have business relations with multiple manufacturers and distributors. Overall, switching costs are not considered as high by the respondents to the market investigation. In addition, customers can revert directly to small parts manufacturers (thus bypassing distributors) and/or, as e.g. done in the past by Boeing and Airbus, can internalise their distribution.²⁹
- (54) As mentioned above at paragraph (43), the market does not present a concentrated structure and coordinated effects are therefore unlikely.
- (55) Furthermore, during the investigation, manufacturers of aerospace fasteners and of aerospace chemicals did not raise any concerns about the fact that the Transaction would impede competition by creating buyer power.³⁰ One manufacturer of hardware explained that "*while it is true that KLX and Boeing will increase their combined procurement share, [...] further to the Transaction the parties would [not] increase their buyer bargaining power*", while according to one manufacturer of aerospace chemicals "*aircraft manufacturers like Boeing are relatively small customers for chemical products, compared to the quantities of aerospace chemicals procured by airlines, MROs and OEMs*".
- (56) For the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regard any horizontal effect of the concentration on the distribution of small aerospace parts and aerospace chemicals.

4.4. Assessment of vertical effects

- (57) As the Parties are not active in the manufacture of neither aerospace parts nor aerospace chemicals, the Transaction does not raise any vertical links with the market upstream from those products.

²⁸ Non-confidential version of the minutes of the phone call with an OEM on 27 July 2018.

²⁹ Non-confidential version of the minutes of the phone call with an OEM on 27 July 2018.

³⁰ Non-confidential version of the minutes of the phone calls with two aerospace hardware manufacturers and with a aerospace chemicals manufacturer on 7 August 2018, 8 August 2018, and 23 August 2018.

- (58) However, the proposed Transaction leads to two vertical links with the activities of Boeing on markets *downstream* from the markets for the distribution of aerospace parts and chemicals. As to the aftermarket, as indicated above at paragraph (44) and (46), Boeing has a [...] market share of [0-5]% on the overall aftermarket, and below [5-10]% under any conceivable product and geographic sub-segment. However, the Transaction gives rise to a vertically affected market in relation to the manufacture of large commercial aircraft.
- (59) The Commission has thus investigated whether the Transaction is likely to give rise to a significant impediment to effective competition by restricting downstream rivals' access to an important input (input foreclosure) or by restricting upstream rivals' access to a sufficient customer base (customer foreclosure).

4.4.1. Parties' arguments

- (60) The Parties submit that the Transaction does not create a risk of input nor customer foreclosure.
- (61) As concerns the risk of input foreclosure, the Parties explain that the merged entity would not have the ability to foreclose. KLX and Boeing are not 'must have' suppliers and for each category of small parts distributed by them there are a number of manufacturers selling directly as well as a range of other distributors.
- (62) The merged entity would also not have any incentive to foreclose. At present, KLX sells to customers other than Boeing, who could turn to the other numerous suppliers. As such, any attempt to foreclose competitors or raise prices would only drive customers away, and lead to higher losses than any potential gains.
- (63) In addition, the overlapping products' categories would not be important cost factors. The cost of small aerospace parts is a *de minimis* portion of the total cost to manufacture or maintain an aircraft.
- (64) As to the risk of customer foreclosure, the Parties contend that Boeing would not have the ability to foreclose. This would be the case because Boeing and all the OEMs supplying Boeing do not represent a significant portion of total demand for small aerospace parts. Other distributors would continue to have access to a large customer base even if Boeing shifted all of its small parts (or of any sub-categories thereof) purchases to KLX post-Transaction.
- (65) Boeing would have no incentive to reduce its purchases from third-party distributors where those distributors offer better pricing or service. Boeing has continued to purchase from independent distributors despite owning Aviall for over a decade.
- (66) There would be no risk of detrimental effects on the downstream market. There could in any event be no noticeable impact on cost of Boeing's competitors even if other small parts suppliers would raise their prices, given the insignificance of the cost of small spare parts products in relation to the manufacturing cost of the aircraft overall.

4.4.2. Commission's assessment

A. Input foreclosure

- (67) A vertical relationship presupposes that the product or service of the undertaking active in the upstream market in question constitutes an important input to the product or service of the undertaking active in the downstream market. The market investigation confirmed that fasteners are critical components despite the fact that they do not represent a significant cost factor.³¹
- (68) However, evidence from the market investigation supports the conclusion that it is unlikely that the merged entity would have the ability to foreclose Boeing's competitors on the downstream market. As already explained above at paragraphs (51) to (54) and (55), the Commission considers, on the basis of the evidence available to it, that the merged entity does not have a significant degree of market power and the input market does not present an oligopolistic structure.
- (69) Further, the incentive to foreclose depends on the degree to which foreclosure would be profitable. The Commission understands that Boeing would not have the incentive to raise prices to the OEMs, current customers of KLX, in order to raise costs for competing aircraft manufacturers as this strategy would be countervailed by the fact that Boeing's main competitor on the downstream market for the aircraft manufacturing, (i.e. Airbus) does also have integrated distribution services (i.e. its subsidiary Satair) and could easily switch its demand from KLX to Satair, if not to other parts distributors and manufacturers..
- (70) In addition, the market investigation has indicated that the merged entity would have little scope for raising rival aircraft manufacturers or MRO's costs. Owing to the low input cost that small aerospace parts represent in the overall price of an aircraft or of the services provided by MROs, any possible price increase could not materially affect the ability of rival aircraft manufacturers or MROs to compete in the downstream markets.
- (71) For the reasons set out above, the Commission considers that the Transaction would be unlikely to have detrimental effects on competition on the downstream markets as it would not result in foreclosure of downstream competitors' access to small aerospace parts or aerospace chemicals.

B. Customer foreclosure

- (72) As regards customer foreclosure, in light of the evidence available, the Commission finds that the Transaction is not likely to result in customer foreclosure for the reasons set out below.
- (73) First, the Commission notes that at present Boeing [...] on its captive BASN program for the sourcing of proprietary Boeing fasteners. From the information submitted by the Parties, and as also confirmed by the respondents to the market investigation³² and public sources³³, in the effort to better control the quality of

³¹ Non-confidential version of the minutes of the phone call with a distributor on 14 September 2018.

³² Non-confidential version of the minutes of the phone call with an aerospace hardware manufacturer on 8 August 2018.

fasteners, Boeing switched from using standard fasteners to proprietary BAC fasteners for approximately [...] of its requirements. As a consequence Boeing's demand for standard fasteners from third parties is very limited.

- (74) Furthermore, from the information submitted by the Parties, it results that Boeing sources [...]. Purchases from independent distributors tend to be [...], whereas purchases from manufacturers tend to account for [...].
- (75) Despite its market share (see paragraph (44)), the overall demand of Boeing to independent distributors is therefore too limited to provide the ability to engage in any strategy that could result in any plausible customer foreclosure of upstream competitors of KLX.
- (76) Second, as submitted by the Parties, past conduct of Boeing after the acquisition of Aviall supports the claim that Boeing does not have any incentive to engage in customer foreclosure. Boeing has continued to purchase from independent distributors despite owning Aviall for over a decade.
- (77) Third, as regards the possible overall impact of a foreclosure strategy, fasteners are low value parts that make up less than 5% of the total cost of any aircraft component, so that any impact on final customers appears remote even in the unlikely event that Boeing would stop purchasing small parts from third party sources and, as a result, potentially raise costs for competitors on the downstream markets.

4.4.3. *Conclusion*

- (78) For the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards any vertical effect of the concentration between, on the one hand, the distribution of small aerospace parts and aerospace chemicals and, on the other hand, the manufacturing of aircraft and relevant aftermarkets.

5. CONCLUSION

- (79) 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)

*Margrethe VESTAGER
Member of the Commission*

³³ E.g. Tauber institute for Global operations: Boeing: The Fight for Fasteners, available online <https://www.supplychainmarket.com/doc/boeing-case-study-0001> (25th September 2028).