EUROPEAN COMMISSION

DG Competition

Case M.9546 - GATEGROUP / LSG EUROPEAN BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)

Date: 03/04/2020

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EUROPEAN COMMISSION

Brussels, 03.04.2020
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

gategroup Holding AG
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Switzerland

Subject: **Case M.9546 – GATEGROUP / LSG EUROPEAN BUSINESS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Contents

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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Dear Sir or Madam,

(1) On 14 February 2020**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Gategroup Holding AG ("Gategroup") intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over parts of the European business of LSG Lufthansa Services Holding AG ("LSG") by way of a purchase of shares and selected assets (the "Transaction"). The target of the Transaction, the European business of LSG, is referred to as "LSG EU".

(2) Gategroup is referred to as the "Notifying Party". Gategroup (and its controlling parents) and LSG EU are collectively referred to as the "Parties".

1. THE PARTIES

1.1. Gategroup

(3) Gategroup is headquartered in Switzerland and provides airline catering, retail on-board, equipment services and hospitality products and services to its customers globally.

(4) In the EEA, Gategroup is mainly active in aviation-related services. Through its brands Gate Gourmet and Servair, Gategroup provides in-flight catering services, which accounted for […] % of its turnover in the EEA in 2018.[3] Gategroup also provides inter alia (i) on-board services through its brands Gateretail and Dutyfly, (ii) packaged food solutions, (iii) equipment services (including the manufacturing) to airlines and foodservice providers through its subsidiary deSter and (iv) lounge management services in Paris Charles de Gaulle, Frankfurt airport and London Heathrow. These activities respectively accounted for […]% of its EEA turnover in 2018.[4]

(5) Gategroup is ultimately jointly controlled by Temasek Holdings Limited (Singapore) and RRJ Capital (Hong Kong).[5] Temasek is an investment company that owns a majority shareholding in Singapore Airlines, which operates passenger flights to/from certain European airports, in particular in France, Germany, Italy and the Netherlands.[6]

1.2. LSG EU

(6) LSG is headquartered in Germany and is a wholly-owned subsidiary of Deutsche Lufthansa AG ("DLH"). DLH is the holding company of Lufthansa Group, an aviation group which notably operates Lufthansa, Austrian, Swiss, Eurowings and Brussels Airlines.

(7) LSG EU comprises the European airline and train catering business of LSG, the global lounge business of LSG, the European frozen food production of LSG

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3 Form CO as updated on 9 March 2020, paragraph 28.

4 Form CO as updated on 9 March 2020, paragraphs 28, 38, 36, 45 and 49.

5 The acquisition of joint control by Temasek and RRJ Capital was approved by the Commission in a decision of 29 August 2019 in case M.9418 – *Temasek/RRJ Master Fund III/Gategroup* [to be published].

6 Form CO as updated on 9 March 2020, paragraph 53.

(operated through the brand Evertaste), the equipment business of LSG (through the brand Spiriant) and airport retail services in Germany (through the retail store chain Ringeltaube).[7] However, they do not include LSG's airline catering business at UK airports,[8] nor its retail on-board business (provided under the brand Retail-in-Motion).

(8) In-flight catering services represents the largest part of LSG EU's revenues.[9] In 2018, the Lufthansa Group was the main client of LSG EU, representing approximately EUR […] of revenues.[10]

2. THE CONCENTRATION

(9) On 7 December 2019, the Parties entered into a share and asset purchase agreement (the "SPA"), pursuant to which Gategroup agreed to acquire all of the shares of the entities composing LSG EU.

(10) In addition, pursuant to the SPA,[11] Gategroup and DLH will establish a joint venture with respect to the in-flight catering operations at Lufthansa Airline's hub airports Frankfurt and Munich. Gategroup and DLH will respectively hold […]% and […]% of the share capital. According to the term sheet for the proposed shareholders' agreement (the "Term Sheet"),[12] Gategroup will have sole control over the joint-venture company (the "JVC"). More specifically, [description of the governance structure in relation to the adoption of strategic decisions].

(11) In light of the above, the Transaction consists in the acquisition of sole control by Gategroup over LSG EU within the meaning of Article 3(1)(b) of the Merger Regulation.

(12) As an inherent part of the proposed Transaction, the Parties have agreed to enter into a long-term framework agreement for catering services, through which DLH will appoint Gategroup as its catering supplier for Lufthansa Airline's hubs Munich and Frankfurt and outlying airports in Germany (the Framework Agreement for Catering Services or "LHCC")[13] for a duration of […] years.[14]

(13) DLH Group and LSG EU have also entered into a long-term strategic partnership on [date] under which DLH Group will [details on supply sources] source inter alia [details on supply sources].[15]

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7 Form CO as updated on 9 March 2020, paragraphs 1 and 54 et seq. Ringeltaube offers a wide range of products to airlines, airport staff and other members of the travel industry and generated […] turnover in 2018.

8 LSG was active in the UK through Alpha LSG Limited, a joint venture with Alpha Flight Group Limited, a subsidiary of Dnata. The Commission approved the acquisition of sole control by Dnata over Alpha LSG Limited in its decision of 6 March 2020 in case M.9700 – *Dnata/Alpha LSG*.

9 Form CO as updated on 9 March 2020, paragraph 57.

10 Form CO as updated on 9 March 2020, paragraph 56.

11 Form CO, Annex 1.1 – Share & Asset Purchase Agreement, clause 31.A.

12 Form CO, Annex 1.3 – *JVC Term Sheet*.

13 Form CO, Annex 1.2 – *Framework Agreement for Catering Services*.

14 Form CO, Annex 1.2 – *Framework Agreement for Catering Services,* Clause 31.1.

15 Form CO as updated on 9 March 2020, footnote 178 and reply of the Parties to the Commission's request for information 15 dated 22 March 2020, Annex A.

3. EU DIMENSION

(14) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[16] in 2018 [Gategroup: […], LSG EU: […]]. The EU-wide turnover of each of the undertakings concerned is more than EUR 250 million [Gategroup: […], LSG EU: […]]. The Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within the same Member State.[17] The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. In-flight catering services

4.1.1. Product market definition

(15) In-flight catering services comprise the provision and delivery of food and beverage solutions to airlines, which will be served to passengers on an aircraft during the flight.

4.1.1.1. Past decisional practice

(16) In previous decisions, the Commission concluded that there exists a separate market for in-flight catering services,[18] which comprise the provision of the entire range of meals for all travel classes (economy/business/first class) for all types of flights (short haul/long haul).[19]

(17) The Commission also decided in its previous practice[20] to leave open the question whether a distinction should be made between the provision of in-flight catering services by type of suppliers, namely between the so-called "traditional" and "non-traditional" suppliers.[21]

4.1.1.2. The Notifying Party's view

(18) The Notifying Party agrees with the Commission's decisional practice that the product market includes all in-flight catering services for all types of flights (short-

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16 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

17 While LSG EU achieved more than two thirds of its EU-wide turnover in Germany, Gategroup does not achieve more than two thirds of its EU-wide turnover in any single member state.

18 See Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 23 [to be published], M.8137 – *HNA Group/Servair*, paragraphs 35, 42; M.6179 - *Alpha Flight / LSG Sky Chefs / JV,* paragraph 12.

19 See M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 23 [to be published], Case M.8137 – *HNA Group/Servair*, paragraph 42.

20 See Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 23 [to be published], M.8137 – *HNA Group/Servair*, paragraphs 36, 42; M.6179 - *Alpha Flight / LSG Sky Chefs / JV,* paragraph 12.

21 "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.

haul/long-haul) and that a segmentation between flight classes (i.e., economy/business/first class) is not warranted.[22]

(19) In addition, the Notifying Party considers that the market for in-flight catering services should not be segmented by type of supplier.[23]

4.1.1.3. Commission's assessment

(20) Although the majority of competitors and customers indicated that customers have different requirements for in-flight catering depending on the type of flight,[24] the majority of customers indicated that they do not purchase in-flight catering services for short/medium haul flight separately from in-flight catering services for long haul flights.[25] The majority of in-flight catering providers consider that in-flight caterers can generally provide services on both short/medium haul and long haul flights. In that respect, a competitor explained, "*in the production process there is no big difference between service short/mid haul and long haul. The only difference is the hot kitchen which becomes necessary for a long haul carrier flying with first class*".[26]

(21) The Commission notes that airline requirements with respect to in-flight catering services may differ depending on the type of flight. The Commission further observes that the provision of in-flight catering services on long haul flights may require additional infrastructure investments in comparison to the supply of such services on short/medium haul flights. However, in view of the results of the market investigation and in line with its past decisional practice, the Commission considers that a segmentation of in-flight catering services by type of flights (short/medium haul vs long haul) is not warranted.

(22) With respect to the possible segmentation of in-flight catering services by type of travel class, the majority of customers having replied to the market investigation indicated that their requirements for in-flight catering differ depending on the travel class (economy/business/first class).[27] However, all airlines having responded to the market investigation purchase catering services for the different travel classes from one single supplier.[28] In that respect, an airline explained, "*All classes have a different product proposition with regards to equipment, menu and spend. However, a single supplier is able to meet our requirements for all travel classes (providing it has hot and cold kitchens)*".[29] Some airlines indicated that sourcing from one single supplier is "*the most efficient and cost saving*" way, in particular because it allows to "*avoid multiple visits to aircraft and potential departure delays*".[30] The majority of

[22] Form CO as updated on 9 March 2020, paragraph 116.
[23] Form CO as updated on 9 March 2020, paragraph 120.
[24] Replies to Q1 – Questionnaire to Competitors, question 11; Q2 – Questionnaire to Customers, question 13.
[25] Replies to Q2 – Questionnaire to Customers, question 14.
[26] Reply of a competitor to Q1 – Questionnaire to Competitors, question 13.1.
[27] Replies to Q2 – Questionnaire to Customers, question 16.
[28] Replies to Q2 – Questionnaire to Customers, question 17.
[29] Reply of a customer to Q2 – Questionnaire to Customers, question 16.1.
[30] Replies of two customers to Q2 – Questionnaire to Customers, question 17.1.

competitors also indicated that while requirements differ between travel classes, this does not prevent customers from usually contracting with one single supplier.[31]

(23) In view of the results of the market investigation and in line with its past decisional practice, the Commission considers that a segmentation of in-flight catering services by travel class (economy/business/first class) is not warranted.

(24) With regard to a possible segmentation of in-flight catering services by type of supplier, the market investigation yielded mixed results among competitors as well as customers.[32] The market investigation indicates that the substitutability of traditional and non-traditional suppliers would depend on the requirements of airlines.[33] A customer considers that "*non-traditional caterers are able to provide many of the services offered by traditional caterers. However where the catering includes hot food, often logistics firms will partner with traditional caterers so that they can provide a seamless end-to-end service*".[34] Some customers and competitors explained that non-traditional suppliers would not be a viable alternative for certain travel classes (business/first class) or for long haul flights, because "*long haul business and first class are typically more complex and therefore that market is dominated by traditional catering service providers*."[35] By contrast, the distinction between traditional and non-traditional suppliers would not be warranted when the airline service proposition consists in frozen meals and snacks.[36]

(25) For the purpose of this decision, it is not necessary to conclude whether the market for in-flight catering services should be segmented by type of supplier, because the competitive assessment would remain unchanged since no non-traditional suppliers are currently active at the airports where the Parties' activities overlap and where the Transaction creates vertical links.[37]

(26) In view of the above considerations and in line with its decisional practice, the Commission concludes that the market for the provision of in-flight catering services comprises the entire range of meals for all travel classes (economy/business/first class) and for all types of flights (short-haul/long-haul). Furthermore, in view of the above considerations and in line with its decisional practice, the Commission considers that, for the purpose of this decision, the question whether in-flight catering services should be segmented by type of supplier ("traditional" and "non-traditional" suppliers) can be left open, as this would not change the outcome of the competitive assessment.[38]

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31 Replies to Q1 – Questionnaire to Competitors, questions 14 and 15.

32 Replies to Q1 – Questionnaire to Competitors, question 6; Replies to Q2 - Questionnaire to Customers, question 7.

33 Replies to Q1 – Questionnaire to Competitors, question 6.1; Replies to Q2 - Questionnaire to Customers, question 7.1.

34 Reply of a customer to Q2 – Questionnaire to Customers, question 7.1.

35 Reply of a customer to Q2 – Questionnaire to Customers, question 7.1.

36 Replies to Q1 – Questionnaire to Competitors, question 6.1.

37 Replies of the Parties to Question to the Parties 3 dated 4 February 2020, question 25.

38 See Sections 5.1.1, 5.2 and 5.3 below.

4.1.2. Geographic market definition

4.1.2.1. Past decisional practice

(27) The Commission has considered in previous decisions that the geographic market for in-flight catering services is the relevant airport[39] or at most an area comprising several airports located in close proximity to each other.[40]

4.1.2.2. The Notifying Party's view

(28) The Notifying Party considers that that the relevant geographic area to assess competition for in-flight catering services may be either the airport level or an area comprising several airports.[41] In that regard, with respect Germany, the Notifying Party considers a catchment area of up to 450 km around a given airport or a travel time of up to 10 hours (in a chilled truck) could be considered as the relevant geographic market for the provision of in-flight catering services.[42] Therefore, the Notifying Party submits that the following geographic markets would comprise several airports: (i) Frankfurt, Dusseldorf and Cologne-Bonn airports; (ii) Hamburg and Hannover airports; (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.[43]

4.1.2.3. Commission's assessment

(29) The majority of customers indicated that they generally source in-flight catering services on an airport-by-airport basis.[44] The majority of customers and competitors consider it important that the supplier of in-flight catering services has production facilities in the catchment area of the relevant airport.[45] An airline indicated that "*the supplier's proximity to the airport is extremely important to [name of the customer] for flexibility, food safety, operational complexity, and service*".[46] Another customer explained, "*Aircraft turnaround and loading time is limited. Caterer needs to have facilities and proximity [sic] to the airport apron area in order to be able to cater aircraft within time limits*".[47] Furthermore, the majority of airlines have negotiated the possibility to place last-minute orders up to 60 minutes before the flight departure.[48] Consequently, the majority of airlines having expressed a view indicated that they would accept a transport time of up to one hour between the airport and the facility of the caterer.[49]

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39 See e.g. Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 26 [to be published], M.8137 – *HNA Group/Servair*, paragraph 50.

40 In a previous decision, the Commission left open the question whether the relevant geographic market was limited to Paris Charles de Gaulle airport or would comprise Paris Charles de Gaulle, Paris Orly and Paris Le Bourget airports (Case M.4170 – *Lufthansa Service Holding/Gate Gourmet Switzerland*, paragraph 22).

41 Form CO as updated on 9 March 2020, paragraph 124.

42 Form CO as updated on 9 March 2020, paragraph 126 and reply of the Parties to the Commission's request for information 3 dated 25 February 2020, question 6.

43 Form CO as updated on 9 March 2020, paragraph 127.

44 Replies to Q2 – Questionnaire to Customers, question 18.

45 Replies to Q1 – Questionnaire to Competitors, question 17; Q2 – Questionnaire to Customers, question 19.

46 Reply of a customer to Q2 – Questionnaire to Customers, question 19.1.

47 Reply of a customer to Q2 – Questionnaire to Customers, question 19.1.

48 Replies to Q2 – Questionnaire to Customers, question 23.

49 Replies to Q2 – Questionnaire to Customers, question 22.

(30) On the other hand, the majority of airlines that responded to the market investigation indicated that they do purchase in-flight catering services from caterers with a remote facility located outside of the airport catchment area or at a neighbouring airport. In addition, the majority of competitors supply or would supply in-flight catering from a remote facility.[50] However, some customers explained that they prefer to have a supplier with a facility within the catchment area of the relevant airport but they might be forced to accept remote catering because of the absence of alternative, for example, when the supplier closes its production facility.[51] Some competitors consider that catering from a remote facility is possible, but this would be a "*Far from optimal set-up but possible with some constraints*" and "*it gives you a bit more stress where there are traffic jams or something is wrong*". [52]

(31) Considering that that the outcome of the competitive assessment would remain unchanged under any of the plausible geographic market definitions,[53] the Commission considers that it is not necessary to decide whether the geographic scope of in-flight catering services is a given airport or a geographic area encompassing several neighbouring airports.[54]

(32) In view of the above considerations and in line with its previous decisional practice,[55] the Commission considers that, for the purpose of this decision, the geographic market for the provision of in-flight catering services is either the airport's catchment area or at most a geographic area encompassing several neighbouring airports, namely (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports, where the Notifying Party argues that the geographic market is broader than the airport's catchment area. Therefore, the Commission will assess the effects of the Transaction on the narrowest plausible geographic market definition (i.e. the airport's immediate catchment area) and on the plausible broader geographic areas where the Notifying Party claims that the geographic market definition is broader than the airport's catchment area.

4.1.3. Conclusion

(33) In view of the above considerations and in line with its past decisional practice, the Commission concludes for the purpose of this decision that the relevant product market for in-flight catering services comprises the entire range of meals for all travel classes (economy/business/first class) for all types of flights (short-haul/long-

50 Replies to Q1 – Questionnaire to Competitors, question 18.

51 Replies to Q2 – Questionnaire to Customers, questions 20 and 21.

52 Replies of two competitors to Q1 – Questionnaire to Competitors, question 17.1.

53 Namely for geographic markets defined as the immediate catchment area of an airport or as broader geographic areas comprising several neighbouring airports, namely (i) Frankfurt, Dusseldorf, Cologne-Bonn; (ii) Hamburg, Hannover; (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports. The Notifying Party does not submit that other geographic markets are broader than the immediate catchment area of the relevant airport.

54 As explained in Section 5.1.1 below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services under any plausible geographic market definition, namely on an airport-by-airport basis or on areas comprising (i) Frankfurt, Dusseldorf, Cologne/Bonn airports, (ii) Hamburg and Hannover airports and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.

55 E.g. Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 26 [to be published], M.8137 – *HNA Group/Servair*, paragraph 50.

haul) and that the question whether the market for in-flight catering services should be segmented by type of supplier can be left open. For the purpose of this decision, the Commission leaves open the question whether the relevant geographic market is limited to the airport's catchment area or encompasses several neighbouring airports with respect to the following geographic areas that may comprise several airports (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports, as this would not change the outcome of the competitive assessment.

4.2. In-flight equipment services

(34) In-flight equipment services comprise the provision of custom-made concepts of a range of serving products used on aircraft (such as cutlery, cardboard containers, tray settings, tray dressings, bespoke beverage solutions, casseroles, tableware) and on-board comfort articles (such as sleepwear, amenities and textiles). In-flight equipment providers have different business models, some focusing more on service aspects (design, consulting, management etc.) without having their own production facilities, while others design and manufacture the items in-house.[56]

4.2.1. Product market definition

4.2.1.1. Past decisional practice

(35) In some previous decisions, the Commission suggested that the provision of in-flight equipment services was ancillary to an overall market for in-flight catering services and has not distinguished further between these product markets.[57] In the case *EQT/Smurfit Munksjö*, the Commission has nevertheless considered a separate market for the provision of custom-made concepts of serving products and comfort items for airline passengers consisting in the "*provision of various concepts of serving products and comfort items for airline passengers, such as plastic serving trays, plastic glasses, pillows, blankets, tablecloths, porcelain cups*".[58]

4.2.1.2. The Notifying Party's view

(36) The Notifying Party considers that there is no separate market for the provision of in-flight equipment services, but that it should rather be considered as ancillary to the provision of in-flight catering services.[59] The Notifying Party argues that in-flight equipment products are often "nominated" and supplied by airlines as part of the in-flight catering service agreement.[60] Moreover, the Notifying Party claims that in-flight catering equipment is always purchased with a direct link to the in-flight catering business.[61] In addition, the Notifying Party reasons that most in-flight caterers have in-flight equipment activities ancillary to their core business.[62]

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56 Form CO as updated on 9 March 2020, paragraph 137.

57 See Cases: M.8137 – *HNA Group/Servair*, footnote 12; M.4170 – *LSG Lufthansa Service Holding/Gate Gourmet Switzerland*, paragraph 12; M.2190 *LSG/OFSI*, paragraph 10.

58 See Case M.3699 – *EQT/Smurfit Munksjö*, paragraph 21.

59 Form CO as updated on 9 March 2020, paragraph 140.

60 Form CO as updated on 9 March 2020, paragraph 141.

61 Form CO as updated on 9 March 2020, paragraph 146.

62 Form CO as updated on 9 March 2020, paragraph 147.

(37) The Notifying Party further submits that should equipment services nonetheless be considered a separate market by the Commission, the relevant product market would encompass all equipment services for the travel/foodservice industries and not just for the in-flight catering industry. According to the Notifying Party, all providers of in-flight equipment services (including the Parties) also supply equipment services to non-aviation customers, as there is little differentiation between equipment products for airlines and non-aviation customers. Moreover, the Notifying Party submits that competitors generally supply the full range of equipment and from a customer's perspective, there is no need to source from specialised suppliers.[63]

4.2.1.3. Commission's assessment

(38) First, the Commission notes that airlines generally purchase in-flight equipment services separately from in-flight catering services. In that respect, the Notifying Party itself submits that in-flight equipment services are generally not tendered by airlines together with in-flight catering services "*but generally tendered separately and independent of in-flight catering services contracts*". The airlines tend to purchase in-flight equipment services centrally[64] and then make the in-flight equipment products available to the in-flight caterer that "will be in charge of handling the equipment" and bring it on-board.[65] The Notifying Party's submission was confirmed by the majority of customers during the market investigation. The majority of airline customers purchase the in-flight equipment services themselves and subsequently make the equipment products available to their in-flight caterer.[66] The majority of airline-customers that purchase other services than in-flight catering (such as in-flight equipment services) do not typically purchase in-flight catering services and other services together from one single supplier. Often, even different components of equipment services are tendered individually.[67] The majority of customers also indicated that they have no problem with purchasing in-flight catering services separately from other services such as in-flight equipment services, citing flexibility, greater choice, better prices as well as quality of products offered as the main reason for sourcing these other services separately from in-flight catering.[68]

(39) Second, contrary to the Notifying Party's claim,[69] the majority of in-flight caterers do not provide in-flight equipment services as ancillary services to their core business, or only to a very limited extent.[70] None of the Parties' in-flight catering services competitors are among their main competitors with regards to the provision of in-flight equipment services.[71]

63 Form CO as updated on 9 March 2020, paragraph 149.

64 Form CO as updated on 9 March 2020, paragraphs 143-144.

65 Form CO as updated on 9 March 2020, paragraph 144.

66 Replies to Q2 - Questionnaire to Customers, question 67; Reply of a competitor to the Commission's request for information dated 5 March 2020, question 3.

67 Replies to Q2 - Questionnaire to Customers, question 69.

68 Replies to Q2 - Questionnaire to Customers, question 70.

69 Form CO as updated on 9 March 2020, paragraph 148.

70 Replies to Q1 - Questionnaire to Competitors, question 65; Reply of the Parties to the Commission's request for information 6 dated 5 March 2020, question 1.

71 Reply of the Parties to the Commission's request for information 6 dated 5 March 2020, question 1.

(40) In view of the above considerations, for the purpose of this decision, the Commission considers that equipment services are not ancillary to in-flight catering services and constitute a relevant separate market. The question whether equipment services should be segmented by type of customers can be left open, as the Transaction is unlikely to raise competition concerns with respect to the market for equipment services, even on a plausible narrower market for in-flight equipment services.

4.2.2. Geographic market definition

4.2.2.1. Past decisional practice

(41) The Commission has not previously defined the exact geographic scope of in-flight equipment services. In the case *EQT/Smurfit Munksjö*, the Commission had considered the market for custom-made concepts of serving products and comfort items for airlines passengers to be either EEA or worldwide in scope, but ultimately left the question open in this case.[72]

4.2.2.2. The Notifying Party's view

(42) The Notifying Party submits that the geographic market for equipment services and the narrower market for in-flight equipment services would be worldwide in scope, as the main providers of equipment services and in-flight equipment services are active globally and there are no barriers to cross-border supply of equipment, as airlines tend to procure equipment centrally and comprehensively and even regional customisations[73] can be provided by suppliers located in other regions.[74]

4.2.2.3. Commission's assessment

(43) The Commission considers the geographic scope for a market for in-flight equipment services to be either EEA- or worldwide for the following reasons: the main providers of in-flight equipment services are active globally and airlines tend to procure equipment centrally and comprehensively.[75]

(44) For the purpose of this Decision, the Commission considers that the geographic market definition can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition, including the narrowest plausible geographic market definition, which is EEA-wide.

4.2.3. Conclusion

(45) In light of the above and the results of the market investigation, the Commission finds the market for the provision of equipment services to be separate from the market from in-flight catering services. The question whether in-flight equipment services constitute a separate market can be left open, as the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market under any

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72 Case M.3699 – *EQT/Smurfit Munksjö*, paragraph 24-25, 28.

73 For instance customised Asian set-up can be provided by suppliers located in Europe (Form CO as updated on 9 March 2020, paragraph 156).

74 Form CO as updated on 9 March 2020, paragraph 156.

75 Form CO as updated on 9 March 2020, paragraph 156.

plausible market definition. For the purpose of this decision, the Commission will assess the effects of the Transaction on a plausible narrower product market for in-flight equipment services. The Commission will also leave open the question whether the geographic market is EEA-wide or worldwide and will assess the effects of the Transaction under each of the two plausible geographic market definitions.

4.3. Lounge management services

(46) Lounge services comprise the provision of a rest area in an airport, typically accompanied by additional food, beverage, rest and shower facilities. Lounges may be provided by airports, airlines and third-party service providers, and entry is typically based on payment of a fee, purchase of a business or first class airline ticket or inclusion in a travel membership programme.[76] Consequently, lounge management services are provided to an airport or to an airline or airline alliance.

4.3.1. Product market definition

(47) While the Commission concluded in previous decisions that the provision of lounge services is part of an overall market for ground handling services, the Commission suggested in its two latest decisions that lounge services constitute a separate product market.[77]

(48) The Notifying Party considers that lounge services are part of an overall market for ground handling services.[78]

(49) A horizontally affected market arises only under the narrowest plausible market definition comprising a separate market for lounge services at a certain airport.[79]

(50) For the purpose of the Decision, the question of whether the relevant product market comprises only lounge management services or whether lounge management services are part of an overall market for ground handling services can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under the narrowest plausible market definition.

4.3.2. Geographic market definition

(51) The Commission has not previously considered the geographic scope of a separate market for lounge management services.

(52) For the overall market for ground handling services, the Commission considered that this market is local and does not extend beyond a single airport or possibly two or more neighbouring airports.[80] The Notifying Party agrees with the Commission's geographic market definition.[81]

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76 Form CO as updated on 9 March 2020, paragraph 168.

77 See e.g. Cases M.8104 *HNA Group/Gategroup*, footnote 41; M.7021 *Swissport/Servisair*, footnote 3; M.5830 – *Olympic /Aegean Airlines*, paragraph 310.

78 Form CO as updated on 9 March 2020, paragraph 170.

79 Form CO as updated on 9 March 2020, paragraph 188 et seq.

80 See e.g. Case M.7021 *Swissport/Servisair*, paragraph 44.

81 Form CO as updated on 9 March 2020, paragraph 173.

(53) For the purpose of this Decision, the Commission considers that the geographic market definition can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market under the narrowest plausible geographic market definition (i.e. the catchment area of a single airport).

4.3.3. Conclusion

(54) In view of the above considerations, the Commission leaves the question open whether there is a separate market for lounge management services or whether lounge management services belong to the market for ground handling services, as the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market, under the narrowest plausible product and geographic market definition of lounge management services.

4.4. Ready-made food products

(55) Ready-made food products to the commercial foodservice sector comprise ready-made food products (such as fresh pre-packed sandwiches, snacks, frozen meals, etc.) that are supplied, among others, to airlines. In the in-flight catering sector, the supply of ready-made food products is sometimes referred to as the supply of "convenience products".[82]

4.4.1. Product market definition

(56) In previous decisions, the Commission found a separate market for ready-made food products. It has further considered a possible sub-division of this market by customers into the retail sector (supermarkets, open markets and speciality stores) and the commercial foodservice sector, the latter of which could further be subdivided between commercial (restaurants, snack-bars, hotels, fast-food chains, leisure sector) and social (public institutions such as canteens, schools and hospitals) segments.[83] The question whether within the retail sector and both the commercial and social segments of the food service sector, the markets for ready-made foods can be further subdivided into frozen foods, chilled foods and fresh foods was left open.[84]

(57) The Notifying Party does not disagree with the Commission's decisional practice.[85]

(58) In line with its past decisional practice, the Commission considers that, for the purpose of this decision, the relevant market is the supply of ready-made food products to the commercial foodservice sector. The question whether the market for ready-made food products to the commercial foodservice sector should be further subdivided by type of products (frozen foods, chilled foods and fresh foods) can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any such plausible market definition.[86]

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82 Form CO as updated on 9 March 2020, paragraph 157.

83 See e.g. Cases M.4896 – *CVC Capital Partners/Katope International,* paragraph 14, M.3658 – Orkla/Chips, paragraph 9.

84 See e.g. Case M.4896 – *CVC Capital Partners/Katope International,* paragraph 15.

85 Form CO as updated on 9 March 2020, paragraph 159 *et seq*.

86 The Parties' combined share in the supply of ready-made food products to the commercial foodservice sector and its potential segmentations would be below 20% on any plausible geographic market (Form CO

4.4.2. *Geographic market definition*

(59) In previous decisions, the Commission has left open whether the geographic market definition of ready-made food products was national or EEA-wide.[87]

(60) The Notifying Party considers that the geographic scope of the market for ready-made food products is likely EEA-wide.[88]

(61) Considering that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market under either geographic market definition, the Commission considers that the question whether the market for ready-made food products to the commercial foodservice sector is national or EEA-wide can be left open for the purpose of this decision.[89]

4.4.3. *Conclusion*

(62) In view of the above considerations and in line with its past decisional practice, the Commission concludes that, for the purpose of this decision, the relevant market will be considered as the market for ready-made food products to the commercial foodservice sector. It can be left open whether the market should be further subdivided by type of products (frozen foods, chilled foods and fresh foods) as well as whether the geographical scope is national or EEA-wide, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.5. **Retail on-board services**

(63) Retail on-board services comprise the provision of shopping services during the flight, such as snacks and duty-free goods.

4.5.1. *Product market definition*

(64) In previous decisions, the Commission left open the question whether the market for retail on-board services should be segmented by type of product, namely snacking products and duty-free products.[90]

(65) The Notifying Party agrees with the previous decisional practice of the Commission and considers that the exact product market definition can be left open.[91]

(66) In line with the Commission's past decisional practice, the Commission considers that, for the purpose of this decision, the question whether the market for retail on-

as updated on 9 March 2020, paragraph 193, Reply of the Parties to request for information 18 to the Parties dated 30 March 2020, question 1). The potential conglomerate effects related to the Parties' activities in ready-made food products are analysed in Sections 5.3.3 and 5.3.6 below.

87 See e.g. Case M.4896 – *CVC Capital Partners/Katope International,* paragraph 19.

88 Form CO as updated on 9 March 2020, paragraph 167.

89 The Parties' combined share in the supply of ready-made food products to the commercial foodservice sector and its potential segmentations would be below 20% on any plausible geographic market (Form CO as updated on 9 March 2020, paragraph 193). The potential conglomerate effects related to the Parties' activities in ready-made food products are analysed in Sections 5.3.3 and 5.3.6 below.

90 See e.g. Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 30 [to be published]; M.8137 – *HNA Group/Servair*, paragraph 27.

91 Form CO as updated on 9 March 2020, paragraph 132.

board services should be segmented by type of product (i.e. between snacking and duty-free products) can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition mentioned above.[92]

4.5.2. Geographic market definition

(67) In previous decisions, the Commission concluded that the market for retail on-board services was at least EEA-wide and left open whether the relevant geographic market was global.[93]

(68) The Notifying Party agrees with the previous decisional practice of the Commission and considers that the geographic scope of retail on-board services is at least EEA-wide.[94]

(69) Considering that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market under any of the plausible geographic market definitions above and in line with its past decisional practice, the Commission considers that the question whether the market for retail on-board services is EEA-wide or worldwide can be left open for the purpose of this decision.[95]

4.5.3. Conclusion

(70) In view of the above considerations and in line with its past decisional practice, the Commission concludes that, for the purpose of this decision, it can be left open whether retail on-board services should be segmented by type of product (snacking and duty-free products) and whether the geographic market is EEA-wide or worldwide, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.6. Passenger air transport services

(71) Gategroup is co-controlled by Temasek, which holds a majority shareholding in Singapore Airlines, active in passenger air transport services.[96]

4.6.1. Product market definition

(72) In previous decisions, when assessing vertical relationships,[97] the Commission considered that there is an overall market for passenger air transport services, but left

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[92] The Parties do not overlap in the supply of retail on-board services (as explained in Section 2 above, the retail on-board business of LSG is not part of the Transaction). However, the Transaction leads to conglomerate effects that are assessed in Sections 5.3.4 to 5.3.6 below.

[93] See e.g. Cases M.9418 – *Temasek/RRJ Master Fund III/Gategroup*, paragraph 33 [to be published]; M.8137 – *HNA Group/Servair*, paragraph 33.

[94] Form CO as updated on 9 March 2020, paragraph 134.

[95] The Parties do not overlap in the supply of retail on-board services (as explained in Section 2 above, the retail on-board business of LSG is not part of the Transaction). However, the Transaction leads to conglomerate effects that are assessed in Sections 5.3.4 to 5.3.6 below.

[96] Form CO as updated on 9 March 2020, paragraph 53.

[97] More specifically, the Commission considered that 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, do not warrant a definition of the market for passenger air transport on a route-by-route basis for the purpose of assessing vertical

open whether this market might be further sub-segmented into scheduled and charter flights or into "time-sensitive" and "non-time-sensitive passengers.[98]

(73) The Notifying Party agrees with the previous decisional practice of the Commission and considers that the for the purpose of assessing vertical relationships, there is no need to distinguish between time-sensitive and non-time-sensitive passengers or between charter and scheduled flights because an airline's demand for in-flight catering or retail-on-board products is a function of total passenger numbers, irrespective of the time-sensitivity of those passengers.[99]

(74) In line with its past decisional practice, Commission considers that, for the purpose of this decision and the assessment of the vertical relationship between the Parties' activities in in-flight catering and passenger air transport, the relevant market is an overall market for passenger air transport services. The question whether the market for passenger air transport services should be segmented into charter and scheduled flights or "time-sensitive" and "non-time-sensitive" passengers can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any such plausible market definitions.[100]

4.6.2. Geographic market definition

(75) In previous cases involving a vertical relationship between in-flight catering and retail on-board services on the one hand and passenger air transport services on the other hand, the Commission found that airlines procure in-flight catering and retail on-board services on an airport-by-airport basis and not on a route-by-route basis. Therefore, it was considered necessary to look at the market share of the particular airline into the total demand for in-flight catering services at the relevant airport (i.e. for every route to or from the relevant airport) instead of making a route-by-route assessment.[101]

(76) The Notifying Party agrees with the Commission's decisional practice and submits that the relevant geographic market for the assessment of the vertical relationship between Singapore Airlines' passenger air transport services and the provision of in-flight catering is an airport-by-airport approach (i.e. every route to or from a given airport).[102]

(77) In line with its past decisional practice, the Commission considers that, for the purpose of this decision and the assessment of the vertical relationship between the Parties' activities in in-flight catering and passenger air transport, the geographic market for the provision of passenger air transport services comprises every route to or from a given airport. The Commission will therefore assess the vertical effects of the Transaction on an airport-by-airport approach.

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links between in-flight catering services and passenger air transport. See e.g. case M.8137 – *HNA/Servair*, paragraph 61.

[98] See e.g. Cases M.8104 – *HNA Group/Gategroup*, paragraph 35; M.8137 – *HNA Group/Servair*, paragraph 58; M.9418 – *Temasek/RRJ Masterfund III/Gategroup*, paragraph 34 [to be published].

[99] Form CO as updated on 9 March 2020, paragraph 178 *et seq*.

[100] The vertical relationships between the activities of Singapore Airlines in passenger air transport and the activities of LSG EU in in-flight catering are assessed in Section 5.2. below.

[101] See Cases M.9418 – *Temasek/RRJ Mastefund III/Gategroup,* paragraph 39 [to be published]; M.8137 – *HNA Group/Servair*, paragraph 61; M.8104 – *HNA Group/Gategroup,* paragraph 37.

[102] Form CO as updated on 9 March 2020, paragraphs 183 and 184.

4.6.3. Conclusion

(78) In view of the above considerations and in line with its past decisional practice, the Commission concludes that, for the purpose of this decision, the relevant market is an overall market for passenger air transport services to or from a given airport. The question whether the product market should be further segmented into charter and scheduled flights or "time-sensitive" and "non-time-sensitive" passengers can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.[103]

5. COMPETITIVE ASSESSMENT

5.1. Horizontal non-coordinated effects[104]

5.1.1. Framework for the competitive assessment

(79) Effective competition brings benefits to consumers, such as low prices, high quality products, a wide selection of goods and services, and innovation. Through its control of mergers, the Commission prevents mergers that would be likely to deprive customers of those benefits by significantly increasing the market power of firms.[105]

(80) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The notion of "significant impediment to effective competition" must be interpreted as extending, beyond the concept of dominance, to the anticompetitive effects of a concentration resulting from the non-coordinated behaviours of undertakings which do not have a dominant position on the market concerned.[106]

(81) As regards its non-coordinated effects, a merger presenting horizontal overlaps may significantly impede effective competition in a market, even if it does not result in the creation or strengthening of a dominant position, by removing important competitive constraints and influencing parameters of competition.[107]

(82) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that merging firms are close competitors, the limited possibilities for customers to access to the services

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[103] The relevant geographic markets are the airports where LSG EU is active in the upstream market for in-flight catering services and where Singapore Airlines provides passenger air transport (downstream market). Therefore, the relevant geographic markets are: Dusseldorf, Frankfurt, Berlin Tegel, Munich, Rome Fiumicino and Milan Malpensa airports.

[104] An analysis of coordinated effects is unnecessary, as it would not change the outcome of the competitive assessment for the markets in relation to which the Decision has raised serious doubts based on non-coordinated effects. In the other horizontally affected markets, the Commission has not found plausible indications of coordinated effects.

[105] Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines", OJ C 31, 5.2.2004), p.5, paragraph 8.

[106] Recital 25 of the Merger Regulation.

[107] Horizontal Merger Guidelines, paragraph 8.

provided by the parties and their competitors and the fact that the merger would eliminate an important competitive force.[108]

(83) It is in light of the principles set out above that the Commission must analyse whether and to what extent the Transaction may raise serious doubts as to its compatibility with the internal market due to its horizontal non-coordinated effects.

5.1.2. In-flight catering services

5.1.2.1. Introduction

(84) The Notifying Party submits that the competitive concerns that might arise due to the Transaction are being mitigated by (i) the bidding nature of the market, (ii) the presence of strong competitors on the markets, (iii) the ease of switching between in-flight catering suppliers and (iv) the evolution of airline catering needs.

(A) Market shares are a reliable indicator in in-flight catering bidding market

(85) The Parties submit that the in-flight catering services market is a bidding market, as nearly all in-flight catering products are awarded through competitive tenders, issued on a regular basis by airlines. The parties argue that, in line with previous Commission decisions, "*in bidding markets, market shares are an imperfect proxy for establishing the effective market strength of parties*", due to quick shifts in large volumes of business.[109] According to the Parties, the mere aggregation of market shares would overstate the strength of the combined entity.[110]

(86) While the results of the market investigation show that most airlines launch tender processes for in-flight catering contracts, airlines also do negotiate contracts with suppliers bilaterally.[111] More importantly, several airlines indicated that launching a tender is sometimes futile because there is only one (viable) caterer active at the particular airport.[112] In that respect, the bidding data submitted by the Parties shows that caterers not yet present at the airport generally do not bid on contracts covering that airport.[113] It thus cannot be argued that competitors not yet active at a given airport are potential bidders that would exert a competitive pressure on the Parties post-Transaction.

(87) Therefore, in view of the above considerations, the Commission considers that market shares are a reliable indicator of the actual market position of the Parties at the relevant airports over the past years.

(88) With respect to German airports, the Parties have submitted their market share estimates for each airport or certain geographic areas which, in the Parties' view, comprise several airports, in two versions: including and excluding captive sales. Prior to the merger, all sales of LSG to the Lufthansa Group were internal, i.e. captive sales. As explained in paragraph (12) above, Gategroup will enter into a

[108] Horizontal Merger Guidelines, paragraphs 26 *et seq*.

[109] Based on Commission decision in Case M.8137 – *HNA Group/Servair*, paragraph 84. For completeness' sake: This analysis related to the retail on-board services market, not the in-flight catering services market.

[110] Form CO as updated on 9 March 2020, paragraph 203.

[111] Replies to Q2 – Questionnaire to Customers, question 30.

[112] Replies to Q2 – Questionnaire to Customers, questions 30, 39-40 and 43.2.1.

[113] Tender data submitted by Gategroup in an email sent by [name] on 19 September 2019, 2.20 pm.

long-term supply contract with Lufthansa for the hub airports Frankfurt and Munich, as well as outlying German airports. In the absence of this long-term agreement, the demand of the Lufthansa Group airlines could have been part of the contestable market. Therefore, the Commission will take account of the formerly captive sales between LSG and the Lufthansa Group airlines in the calculation of the merged entity's share at German airports or broader geographic areas comprising several airports. However, the competitive assessment will remain unchanged, should formerly captive sales be excluded from the calculation of the merged entity's market share post-Transaction, notably since the merged entity shares without (formerly) captive sales would remain high at these airports or in these broader geographic areas and the merged entity would not face sufficient competition constraint post-Transaction. With respect to the Amsterdam airport, where the Parties' activities in in-flight catering services overlap, the Commission assessment will exclude the captive sales between KCS and the KLM group which are not part of the contestable market, as these sales between KCS and the KLM group were captive sales pre-Transaction and will remain captive post-Transaction.

(B) Barriers to entry

(89) According to the Parties, barriers to entry in the in-flight catering business are low.[114]

(90) The market investigation has shown however that significant barriers to entry exist regarding the market for in-flight catering services. Replies were mixed amongst competitors regarding the question how difficult it is for a company already providing in-flight catering services at certain airports to enter an airport at which it does not operate,[115] whereas the majority stated that it would be relatively or very difficult for a company not already active in in-flight catering services to start doing so.[116]

(91) According to respondents, depending on which airport a company intends to start providing catering services at, a relatively high degree of assets or knowledge are necessary to start doing so. These include e.g. available spaces and/or facilities for a catering unit close to the airport, experience and knowledge in the catering industry, experienced staff, high-loaders & trucks, specific IT-infrastructure as well as kitchen equipment, some of which are scarce resources or require a relatively high upfront investment.[117] In addition, entering a new airport will only be viable if a critical number of customers will award the new supplier a contract from day one of operation.[118]

(92) Competitors further stated that depending on whether entering a hub- or non-hub airport, it would take between six months and two years to set up a business at a new airport and even longer if the company was not previously active in the provision of in-flight catering services.[119] The complexity and timeframe of entry is further

[114] Form CO as updated on 9 March 2020, paragraph 211.
[115] Replies to Q1 – Questionnaire to Competitors, question 40.
[116] Replies to Q1 – Questionnaire to Competitors, question 39.
[117] Replies to Q1 – Questionnaire to Competitors, question 37; Replies to Q2 – Questionnaire to Customers, questions 45 and 47.
[118] Replies to Q2 – Questionnaire to Customers, questions 45 and 47.
[119] Replies to Q1 – Questionnaire to Competitors, questions 41 and 42.

exacerbated by the fact that many airlines have multi-airport-contracts with in-flight caterers, which for a new entrant might require simultaneous entry at several airports.[120] The geographic footprint (i.e. prior presence of the supplier at the relevant airport) as well as the (size of the) existing network of the supplier were both named as important criteria for airlines when selecting an in-flight catering services supplier.[121] Prior presence at an airport is therefore a major advantage to a supplier of in-flight catering services and lack thereof constitutes a significant barrier to entry. Correspondingly, analysing the Parties' recent tendering data, it can be observed that competitors generally do not bid at airports where they are not already active.[122] The majority of customers that replied to the market investigation also did not expect new entries in the coming five years into the market for the supply of in-flight catering services in the EEA.[123]

(C) Switching suppliers

(93) According to the Parties, switching suppliers in the in-flight catering services market is easy. The Parties state that airlines usually make no purchase commitment and can often terminate the contract with little notice and at no significant cost. Moreover, the Parties submit that barriers to entry are low and that airlines are able and willing to introduce and sponsor new entrants for in-flight catering services to an airport. In addition, the Parties claim that airlines could further exercise significant constraints on in-flight caterers due to the possibility of switching back to in-house sourcing or switching to return-catering (meaning aircraft are catered and loaded at a given airport with sufficient catering to last for several flight legs), the latter of which would allow airlines to not use any caterer at a particular airport and supply their aircraft with catering from their central hub instead.[124]

(94) The parties provide recent examples of airlines switching their in-flight caterers, such as British Airways' and Iberia's switch to Do&Co for their hubs in London and Madrid, [customer]'s switch from LSG to Gategroup at Rome Fiumicino Airport and [customer] switching from Gategroup to LSG at Amsterdam Schiphol Airport.[125] Indeed, the majority of customers responding to the Commission's market investigation confirmed that they have switched their in-flight catering services supplier in the last five years. However, some airlines point towards the exit of their previous supplier, leaving them no choice but to switch despite higher prices.[126]

(95) Although in past decisions, the Commission indicated that switching suppliers in the in-flight catering market was relatively easy,[127] the market investigation has revealed that this is no longer the case. In fact, the majority of customers responding to the Commission's market investigation expressed the view that it was relatively or very difficult for an airline to switch to a different supplier. The reasons for this ranged

[120] Replies to Q2 – Questionnaire to Customers, question 27.
[121] Replies to Q2 – Questionnaire to Customers, question 32.
[122] Tender data submitted by Gategroup in an email sent by [name] on 19 September 2019, 2.20 pm
[123] Replies to Q2 – Questionnaire to Customers, question 44.
[124] Form CO as updated on 9 March 2020, paragraphs 210-214.
[125] Form CO as updated on 9 March 2020, paragraph 211.
[126] Reply of a Customer Q2 – Questionnaire to Customers, question 40.
[127] See Case M.4170 – *LSG Lufthansa Service Holding/Gate Gourmet Switzerland*, paragraphs 32-33.

from a lack of alternative suppliers and capacity constraints in some markets to the time and additional investments needed by the airline to switch suppliers.[128]

(96) Furthermore, the case of Do & Co in Heathrow and Madrid cannot be seen as a normal switching, as it is a case of sponsoring entry at a hub airport by the hub carrier, therefore guaranteeing a high volume. Similarly, the case of [customer]'s switch from LSG to Gategroup at Rome Fiumicino Airport is special, as [customer] owns the kitchen and other infrastructure, which it lets to the caterer. Therefore, these examples of switching work only in hub airports for the hub carrier, and cannot be cited as a general possibility at all airports.

(97) The majority of customers also stated that it was impossible or difficult for an airline to switch to source in-flight catering services in-house, citing the lack of experience and infrastructure, high investment-costs as well as different business models as the main reasons[129]. The majority of customers responding to the market investigation have also not switched to in-house catering services in the past[130]. In fact, only one airline, Finnair, has done this for their entire in-flight catering needs in the EEA according to the market-investigation.[131]

(98) Similarly, while responses by customers as to whether it would be feasible for an airline to sponsor the entry of a supplier of in-flight catering services in the EEA at which it does not operate yet were mixed,[132] the majority of airlines was not aware of any airline doing so in the past other than IAG and many airlines expressed the view that they have never considered this as an option.[133] The majority of customers also currently does not deem it feasible to switch to return-catering for long-haul flights.[134]

(D) Competitors on the market

(99) According to the Parties, they face strong competition regarding the provision of in-flight catering services from several large and internationally active operators such as Newrest, Do&Co and dnata. All of them provide a wide range of in-flight catering services. In addition, competitors do not only rely on their own infrastructure and presence at particular airports, but frequently enter into joint venture agreements (such as Newrest and Servair in Belgium). The Parties moreover argue that they face additional pressure from non-traditional suppliers.[135]

(100) The Commission considers companies such as Newrest, Do&Co and Dnata as viable competitors with regards to the provision in-flight catering services in the EEA. Considering that the geographic scope of in-flight catering services is local (i.e. the catchment area of an airport or an area comprising several neighbouring airports), the Commission will assess the competitive constraint exerted by competitors on the relevant geographic market, taking account of potential entry.

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128 Replies to Q2 – Questionnaire to Customers, questions 39-39.1.
129 Replies to Q2 – Questionnaire to Customers, question 41.
130 Replies to Q2 – Questionnaire to Customers, question 42.
131 Replies to Q2 – Questionnaire to Customers, question 42.
132 Replies to Q2 – Questionnaire to Customers, question 45.
133 Replies to Q2 – Questionnaire to Customers, questions 45-46.
134 Replies to Q2 – Questionnaire to Customers, question 36.
135 Form CO as updated on 9 March 2020, paragraphs 206-209.

(E) Negotiation power of customers

(101) The market investigation has shown that contrary to the Parties' assertion, depending on the airport in question, the negotiation power of customers vis-à-vis in-flight caterers is limited. In particular, if there is no alternative supplier present at a given airport, airlines would only have two options: threatening them that they would switch to in-house catering, as explained in paragraph (97) above, or to return-catering (see paragraph (93)). In particular, resorting to return-catering in a destination airport (or several) is not likely to be an option because, by switching to return-catering in those airports, the airline would lose the efficiencies and economies of scale linked to the purchase of in-flight catering services for the numerous flights departing from its hub/base airport. In addition, the majority of customers responding to the market investigation having expressed a view stated that the merged entity will have the ability and incentive to foreclose competitors by inciting an airline to conclude multi-airport contracts post-Transaction by leveraging its position at the overlap airports where the merged entity's position will be strengthened.

(F) Conclusion

(102) The Commission will assess the horizontal effects of the Transaction in the market for in-flight catering on the relevant geographic markets, taking account of the general characteristics of in-flight catering services in the EEA described in the sections above.

5.1.2.2. Berlin Tegel

(103) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Berlin Tegel airport. The evolution of the market shares of the Parties and their competitor at Berlin Tegel airport during the period from 2016 to 2018 is set out in the table below.

Table 1 - Market shares for in-flight catering services at Berlin Tegel airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[0-5]%	[…]	[10-20]%	[…]	[20-30]%
LSG EU	[…]	[70-80]%	[…]	[70-80]%	[…]	[60-70]%
Combined	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**
Do&Co	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.5(a)

(104) As shown in the table above, the proposed Transaction would lead to a combined market share of [80-90]% in the provision of in-flight catering services at Berlin Tegel airport.

(105) The Commission considers that post-Transaction, the merged entity would face limited competition at Berlin Tegel airport, because Do&Co will be the only remaining competitor with a market share of [10-20]%. The respondents to the market investigation gave mixed replies as to whether the merged entity would have

the ability to restrict the expansion or the entry of competitors post-Transaction at Berlin Tegel airport.[136]

(106) The majority of competitors having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Berlin Tegel airport.[137] However, the views of customers as to whether the Transaction would have a negative impact on in-flight catering services at Berlin Tegel are mixed.[138] A customer indicated that the proposed transaction "*would likely have a negative impact on cost and service quality levels, particularly at the following airports stations in the EEA: Berlin (TXL)*".[139] Respondents that consider that the impact of the Transaction would not be negative did not further substantiate their reply.

(107) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Berlin Tegel airport.[140] More specifically, a customer explained that "An incumbent (or purchaser) in limited size markets can impact competitors primarily due to volume (i.e. if there is not enough volume, competitors may be reluctant to enter the market)".[141] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Berlin Tegel airport.

(108) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Berlin Tegel airport, since the Transaction would create a dominant position for Gategroup.

5.1.2.3. Berlin Tegel/Berlin Schönefeld/Leipzig

(109) The Transaction also leads to a horizontal overlap between the Parties' activities in in-flight catering on a geographic market encompassing Berlin Tegel/Berlin Schönefeld and Leipzig airports since Gategroup is active in Berlin Tegel, Berlin Schönefeld and Leipzig airport and LSG EU is active in Berlin Tegel. The evolution of the market shares of the Parties in this geographic market during the period from 2016-2018 is set out in the table below.

136 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

137 Replies to Q1 – Questionnaire to Competitors, question 52.

138 Replies to Q2 – Questionnaire to Customers, question 54.

139 Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

140 Replies to Q1 – Questionnaire to Competitors, question 43 ; Q2 – Questionnaire to Customers, question 44.

141 Reply of a customer to Q2 – Questionnaire to Customers, question 49.1.

Table 2 - Market shares for in-flight catering services in the TXL/SXF/LEJ region

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[30-40]%	[…]	[40-50]%	[…]	[40-50]%
LSG EU	[…]	[50-60]%	[…]	[40-50]%	[…]	[40-50]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Do&Co	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.5(b)

(110) As shown in the table above, the Transaction would lead to a combined share of more than [90-100]% in a broader geographic market encompassing Berlin Tegel/Berlin Schönefeld and Leipzig airports. The merged entity would face limited competition from the only other in-flight caterer Do&Co with a [5-10]% market share.

(111) In view of the merged entity's high market share and of the considerations set out in Section 5.1.1.2 above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services in a geographic area encompassing Berlin Tegel/Berlin Schönefeld and Leipzig airports since it would create a dominant position for Gategroup in a geographic area comprising Berlin Tegel/Berlin Schönefeld and Leipzig airports.

5.1.2.4. Cologne-Bonn

(112) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Cologne-Bonn airport. The evolution of the market shares of the Parties at Cologne-Bonn airport during the period from 2016 to 2018 is set out in the table below.

Table 3 - Market shares for in-flight catering services at Cologne-Bonn airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[80-90]%	[…]	[90-100]%	[…]	[90-100]%
LSG EU	[…]	[10-20]%	[…]	[5-10]%	[…]	[0-5]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.3(b)

(113) Gategroup and LSG EU were the only providers of in-flight catering services at Cologne-Bonn airport in the past years. The proposed Transaction would therefore lead to a monopoly situation at Cologne-Bonn airport.

(114) The majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight

catering services at Cologne-Bonn airport.[142] An airline indicated "*if GG becomes sole source, we anticipate increased costs in the future*".[143] Another customer explained that "*we have seen in airports today […] where Gate Group is the only supplier that the cost is substantially higher than on other airports as well as they deliver lower quality and higher degree of errors and we have higher percentage of flight delays due to catering than in other airports*".[144]

(115) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Cologne-Bonn airport.[145] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Cologne-Bonn airport.

(116) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Cologne-Bonn airport since it would create or strengthen a dominant position for Gategroup.

5.1.2.5. Dusseldorf

(117) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Dusseldorf airport. The evolution of the market shares of the Parties and their only competitor at Dusseldorf airport during the period from 2016 to 2018 is set out in the table below.

Table 4 - Market shares for in-flight catering services at Dusseldorf airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[50-60]%	[…]	[50-60]%	[…]	[40-50]%
LSG EU	[…]	[30-40]%	[…]	[20-30]%	[…]	[30-40]%
Combined	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**
Do&Co	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.3(a)

(118) As shown in the table above, the proposed Transaction would lead to a combined market share of [80-90]% in the provision of in-flight catering services at Dusseldorf airport.

(119) The Commission considers that post-Transaction, the merged entity would face limited competition at Dusseldorf airport, because Do&Co will be the only remaining competitor with a market share of [10-20]%. The majority of respondents

[142] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

[143] Reply of a customer to Q2 – Questionnaire to Customers, question 54.1.

[144] Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

[145] Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

to the market investigation having expressed a view consider that the merged entity would have the ability to restrict the expansion or the entry of competitors post-Transaction at Dusseldorf airport.[146]

(120) In addition, the majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Dusseldorf airport.[147] A customer indicated that the proposed transaction "*would likely have a negative impact on cost and service quality levels, particularly at the following airports stations in the EEA: […] Duesseldorf (DUS)*".[148]

(121) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Dusseldorf airport.[149] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Dusseldorf airport.

(122) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Dusseldorf airport since the Transaction would create a dominant position for Gategroup.

5.1.2.6. Frankfurt

(123) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Frankfurt airport. The evolution of the market shares of the Parties and their competitors at Frankfurt airport during the period from 2016 to 2018, as well as the estimates for 2020,[150] are set out in the table below.

Table 5 – Market shares for in-flight catering services at Frankfurt airport

Sales	2016		2017		2018		2020	
(in EUR million)	Value	Market share	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%	[…]	[5-10]%
LSG EU	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Do&Co	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
GIC	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.1(a) and Table 7.1(b)

146 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

147 Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

148 Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

149 Replies to Q1 – Questionnaire to Competitors, question 43 ; Q2 – Questionnaire to Customers, question 44.

150 The estimated revenues for 2020 reflect [confidential element about Gategroup's business].

(124) As shown in the table above, the proposed Transaction would lead to a combined market share of [90-100]% in the provision of in-flight catering services at Frankfurt airport.

(125) The Commission considers that post-Transaction, the merged entity would face limited competition at Frankfurt airport because Do&Co and GIC would respectively have a market share of [5-10]% and [0-5]%. The respondents to the market investigation gave mixed replies as to whether the merged entity would have the ability to restrict the expansion or the entry of competitors post-Transaction.[151]

(126) However, the majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Frankfurt airport.[152] An airline indicated that "*less competition results in higher catering costs and lower quality […]. From a passenger point of view, there is also a high risk of less innovation and variation in inflight catering concepts with less supplier competition in the market*".[153] A competitor considers that the merged entity "*will drive the prices too high because they have the major client base in FRA. Opportunities to bid for business will reduce as more customers will automatically transfer to the new entity*".[154]

(127) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry in Frankfurt.[155] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Frankfurt airport.

(128) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Frankfurt airport, since it would create a dominant position for Gategroup.

5.1.2.7. Frankfurt/Dusseldorf/Cologne-Bonn

(129) The Transaction also leads to a horizontal overlap between the Parties' activities in in-flight catering on a geographic market encompassing Frankfurt, Dusseldorf and Cologne-Bonn airports since both Gategroup and LSG EU are active in Frankfurt, Dusseldorf and Cologne-Bonn. The evolution of the market shares of the Parties in this geographic market during the period from 2016-2018 is set out in the table below.

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151 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

152 Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

153 Reply of a customer to Q2 – Questionnaire to Customers, question 76.

154 Reply of a competitor to Q1 – Questionnaire to Competitors, question 75.

155 Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

Table 6 - Market shares for in-flight catering services in FRA/DUS/CGN region

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
LSG EU	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Do&Co	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
GIC	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.3(c).

(130) As shown in the table above, the Transaction would lead to a combined share of more than [90-100]% in a broader geographic market encompassing Frankfurt, Dusseldorf and Cologne-Bonn airports. The merged entity would face limited competition from Do&Co and GIC, with a market share of respectively [5-10]% and [0-5]%.

(131) In view of the merged entity high market share and of the considerations set out in Sections 5.1.1.4 to 5.1.1.6 above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services in a geographic area encompassing Frankfurt, Dusseldorf and Cologne-Bonn airports, since it would create a dominant position for Gategroup.

5.1.2.8. Hamburg

(132) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Hamburg airport. The evolution of the market shares of the Parties at Hamburg airport during the period from 2016 to 2018 is set out in the table below.

Table 7 - Market shares for in-flight catering services at Hamburg airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[70-80]%	[…]	[70-80]%	[…]	[80-90]%
LSG EU	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.4(a)

(133) Gategroup and LSG EU were the only providers of in-flight catering services at Hamburg airport in the past years. The proposed Transaction would therefore lead to a monopoly situation at Hamburg airport.

(134) The majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight

catering services at Hamburg airport.[156] An airline indicated "*If a monopoly or dominant position, this would mean increased prices*."[157]

(135) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Hamburg airport.[158] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Hamburg airport.

(136) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Hamburg airport, since it would create or strengthen a dominant position for Gategroup.

5.1.2.9. Hannover

(137) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Hannover airport. The evolution of the market shares of the Parties at Hannover airport during the period from 2016 to 2018 is set out in the table below.

Table 8 - Market shares for in-flight catering services at Hannover airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[40-50]%	[…]	[60-70]%	[…]	[90-100]%
LSG EU	[…]	[60-70]%	[…]	[30-40]%	[…]	[0-5]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.4(c)

(138) Gategroup and LSG EU were the only providers of in-flight catering services at Hamburg airport in the past years. The proposed Transaction would therefore lead to a monopoly situation at Hannover airport.

(139) The majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Hannover airport.[159] An airline indicated "*We are worried that monopoly and oligopoly will lose cost competitiveness*"[160] while another explained

[156] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

[157] Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

[158] Replies to Q1 – Questionnaire to Competitors, question 43 ; Q2 – Questionnaire to Customers, question 44.

[159] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

[160] Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

"*There is the possibility that the cost of service may increase slightly as Gate has tended to be more expensive than LSG when we have tendered our contracts*."[161]

(140) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Hannover airport.[162] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Hannover airport.

(141) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Hannover airport, since it would create or strengthen a dominant position for Gategroup.

5.1.2.10. Hamburg/Hannover

(142) The Transaction also leads to a horizontal overlap between the Parties' activities in in-flight catering on a geographic market encompassing Hamburg and Hannover airports since both Gategroup and LSG EU are active in Hamburg and Hannover. The evolution of the market shares of the Parties in this geographic market during the period from 2016-2018 is set out in the table below.

Table 9 - Market shares for in-flight catering services in HAM/HAJ region

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[60-70]%	[…]	[70-80]%	[…]	[80-90]%
LSG EU	[…]	[30-40]%	[…]	[20-30]%	[…]	[10-20]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.4(c)

(143) As shown in the table above, the Transaction would lead to a monopoly in a broader geographic market encompassing Hamburg and Hannover airports.

(144) In view of the merged entity high market share and of the considerations set out in Sections 5.1.1.8 and 5.1.1.9 above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services in a geographic area encompassing Hamburg and Hannover airports since it would create or strengthen a dominant position for Gategroup.

5.1.2.11. Munich

(145) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Munich airport. The evolution of the market shares of the Parties

161 Reply of a customer to Q2 – Questionnaire to Customers, question 53.1.

162 Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

and their competitors at Munich airport during the period from 2016 to 2018, as well as the estimates for 2020,[163] are set out in the table below.

Table 10 – Market shares for in-flight catering services at Munich airport

Sales (in EUR million)	2016		2017		2018		2020	
	Value	Market share	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
LSG EU	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Do&Co	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
ACM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.2(a) and Table 7.2(b)

(146) As shown in the table above, the proposed Transaction would lead to a combined market share of [90-100]% in the provision of in-flight catering services at Munich airport.

(147) The Commission considers that post-Transaction, the merged entity would face limited competition at Munich airport because Do&Co and ACM would respectively have a market share of [5-10]% and [0-5]%. In fact, the takeover would leave airlines with only one accredited alternative, Do & Co, and a niche player, ACM. The respondents to the market investigation gave mixed replies as to whether the merged entity would have the ability to restrict the expansion or the entry of competitors post-Transaction at Munich airport.[164]

(148) However, the majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Munich airport.[165] An airline considers that "*In case LSG and Gate Gourmet are present at the same station, an impact on the competitive landscape is expected, particularly a potential increase in prices and potentially less choice. This also of course depends highly on the amount and position of remaining competitors. It is important to have a choice in supplier in case of quality reduction or operational issues*".[166] A competitor considers that the proposed Transaction "*will create a powerful Giant*".[167]

(149) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Munich airport.[168] The Commission therefore notes the lack of entry projects that would defeat or deter the

163 The estimated revenues for 2020 reflect [confidential element about Gategroup's business].

164 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

165 Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

166 Reply of a customer to Q2 – Questionnaire to Customers, question 54.1.

167 Reply of a competitor to Q1 – Questionnaire to Competitors, question 75.

168 Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

anticompetitive effects of the Transaction on the market for in-flight catering services at Munich airport.

(150) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Munich airport, since it would create a dominant position for Gategroup.

5.1.2.12. Brussels

(151) LSG EU is active in the provision of in-flight catering services at Brussels airport. Gategroup holds a […]% interest in Newrest Servair Belgium SPRL (the "Newrest-Servair JV"), a joint venture between Newrest Group Holdings S.A. and Servair Investissements Aéroportuaires ("Servair") created in 2014. Servair is controlled by Gategroup.[169]

(152) The Notifying Party submits that it does not have control over the Newrest-Servair JV.[170] More specifically, [description of the governance structure in relation to the adoption of strategic decisions].[171]

(153) However, the Commission notes that [description of the governance structure in relation to the adoption of decisions]. […][172] […][173]. The Commission therefore considers that Gategroup has at least the possibility to exercise decisive influence, if not actual decisive influence, over the commercial strategy of the Newrest-Servair JV.

(154) Therefore, in view of the above considerations and the evidence available to it, the Commission considers on balance that Gategroup has joint control over the Newrest-Servair JV within the meaning of Article 3(2) of the Merger Regulation.

(155) The Transaction therefore leads to a horizontal overlap between the Parties' activities in in-flight catering services at Brussels airport. The evolution of the market shares of the Parties and their competitor at Brussels airport during the period from 2016 to 2018 is set out in the table below.

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169 The Commission approved unconditionally the acquisition of Servair by Gategroup in the decision of 8 December 2016 in Case M.8137 – *HNA Group/Servair*.

170 Form CO as updated on 9 March 2020, paragraph 292.

171 Replies of the Parties to the Commission's request for information 3 dated 25 February 2020, Annex A - *Pacte d'Associés,* Article 4.1.1 and *Management Services Contract*, Article 2.

172 Replies of the Parties to the Commission's request for information 5 dated 28 February 2020, Annex A.

173 Replies of the Parties to the Commission's request for information 3 dated 25 February 2020, Annex A - *Pacte d'Associés,* Article 3.2.3.

Table 11 - Market shares for in-flight catering services at Brussels airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Newrest-Servair	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%
LSG EU	[…]	[80-90]%	[…]	[80-90]%	[…]	[70-80]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.6

(156) The Transaction would therefore lead to a monopoly situation.

(157) The Commission considers that the entry of new competitors at Brussels airport is unlikely until at least October 2025 because the number of catering transport licences at Brussels Airport is limited to two by Royal Decree of 6 November 2010.[174] As a result, competitors cannot enter into the market for in-flight catering services at Brussels airport, unless they subcontract the last-mile services (i.e. the loading on board of aircraft) to either LSG EU or Newrest-Servair. The Commission therefore considers that there would not be sufficient competition at Brussels airport to deter or defeat any anticompetitive effects of the Transaction.

(158) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Brussels airport, since it would create or strengthen a dominant position for Gategroup.

5.1.2.13. Paris Charles de Gaulle

(159) Gategroup provides in-flight catering services at Paris Charles de Gaulle airport, through its subsidiary Servair, which used to be Air France's in-house in-flight catering supplier.[175] LSG EU currently serves only one airline, [customer], since 2018, for a relatively small volume. However, LSG EU bid unsuccessfully for several tenders at Paris Charles de Gaulle airport since 2018.[176] For that reason, several airlines considered in their replies to the market investigation LSG EU as an alternative supplier.

(160) The Transaction therefore leads to a horizontal overlap between the Parties' activities in in-flight catering at Paris Charles de Gaulle airport.

(161) The evolution of the market shares of the Parties and their competitor at Paris Charles de Gaulle airport during the period from 2016 to 2018 is set out in the table below, as well as the Parties' estimates for 2020.

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174 Form CO as updated on 9 March 2020, paragraphs 295 and 457.

175 The Commission approved unconditionally the acquisition of Servair by Gategroup in the decision of 8 December 2016 in Case M.8137 – *HNA Group/Servair*.

176 Form CO as updated on 9 March 2020, paragraphs 316 et seq. and replies of the Parties to the Commission's request for information 7 dated 11 March 2020, question 4. The Parties claim that in all of these unsuccessful tenders, LSG pulled out on its own motion at an early stage, as they had realized not to be in a position to actually serve these contracts.

Table 12 - Market shares for in-flight catering services at Paris Charles de Gaulle airport

Sales (in EUR million)	2016		2017		2018		2020	
	Value	Market share	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[90-100]%	[…]	[90-100]%	[…]	[90-100]%	[…]	[90-100]%
LSG EU	n/a	n/a	[…]	n/a	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Newrest	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Total	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.10, Reply to Request for Information to the Parties 7 dated 11 March 2020 and Form RM, Table 9a.

(162) As shown in the table above, the proposed Transaction would lead to a combined market share of [90-100]% in the provision of in-flight catering services at Paris Charles de Gaulle airport. The takeover of LSG would remove at least a potential alternative source for airlines, given that LSG has in the recent past participated in tenders. The second player pre-Transaction, Newrest, is a relatively small supplier.

(163) The Commission considers that post-Transaction, the merged entity would face limited competition at Paris Charles de Gaulle airport, because Newrest will be the only remaining competitor with a market share of less than [5-10]%. The respondents to the market investigation gave mixed replies as to whether the merged entity would have the ability to restrict the expansion or the entry of competitors post-Transaction at Paris Charles de Gaulle airport.[177] In that respect, a customer explained "*Paris – less competition and the new merged company will become a large player. Still competition from Newrest but will become a duopoly*".[178] Respondents who consider that the merged entity would not have the ability to restrict competition did not further substantiate their views.

(164) The market investigation also yielded mixed results as to whether the Transaction would have a negative impact on the market for in-flight catering services at Paris Charles de Gaulle.[179] No respondent considers that the Transaction would have a positive impact on price or quality of service.[180] By contrast, some customers and competitors consider that the Transaction would likely result in higher prices and in a decrease in quality of service.[181] A customer indicated "*when competition at specific locations is limited […] prices tend to be higher and the caterer leverages this position. Quality can also suffer because of limited competition. Caterers' incentives to invest in assets such as new trucks, facilities, technology, people, and process improvements will generally be directed to locations where there is healthy*

[177] Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

[178] Reply of a customer to Q2 – Questionnaire to Customers, question 54.1.

[179] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

[180] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

[181] Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

competition and where the caterer has to maintain certain quality levels to win business."[182]

(165) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Paris Charles de Gaulle airport.[183] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Paris Charles de Gaulle airport.

(166) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Paris Charles de Gaulle airport, since it would create or strengthen a dominant position for Gategroup.

5.1.2.14. Milan Malpensa

(167) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Milan Malpensa airport. The evolution of the market shares of the Parties and their competitors at Milan Malpensa airport during the period from 2016 to 2018 is set out in the table below.

Table 13 - Market shares for in-flight catering services at Milan Malpensa airport

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	n/a	n/a	[…]	[0-5]%	[…]	[5-10]%
LSG EU	[…]	[40-50]%	[…]	[30-40]%	[…]	[30-40]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[30-40]%**	**[…]**	**[40-50]%**
Dnata	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
Do&Co	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.9

(168) As shown in the table above, the proposed Transaction would lead to a combined market share of [40-50]% in the provision of in-flight catering services at Milan Malpensa airport.

(169) While the majority of competitors having expressed a view consider that the merged entity will not have the ability to restrict the expansion or the entry of competitors at Milan Malpensa airport, the customers gave mixed replies as to whether the Transaction would result in a lessening of competition.[184] In addition, the market investigation yielded mixed results as to the impact of the Transaction on the market

182 Reply of a customer to Q2 – Questionnaire to Customers, question 55.

183 Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

184 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

for in-flight catering at Milan Malpensa airport.[185] A customer indicated that in Milan Malpensa "*DNATA could stay and expand with other airlines*",[186] while another explained "*The merger will reduce competition in the market, reducing customer choice*."[187]

(170) The Commission considers that post-Transaction, the merged entity will continue facing significant competition from established in-flight caterer Dnata, with a [40-50]% market share. Do&Co will also be an alternative supplier with a [10-20]% market share.

(171) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Milan Malpensa airport.

5.1.2.15. Rome Fiumicino

(172) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Rome Fiumicino airport. The evolution of the market shares of the Parties and their competitor at Rome Fiumicino airport during the period from 2016 to 2018 is set out in the table below. The Parties have also provided their best estimates of their 2020 market shares, taking account of the revenues generated by the [customer] contract that Gategroup won in [year]. Prior to that, LSG EU was supplying in-flight catering services to [customer] at Rome Fiumicino.[188]

Table 14 - Market shares for in-flight catering services at Rome Fiumicino

Sales (in EUR million)	2016		2017		2018		2020	
	Value	Market share	Value	Market share	Value	Market share	Value	Market share
Gategroup	n/a	n/a	[…]	[0-5]%	[…][189]	[10-20]%	[…]	[40-50]%
LSG EU	[…]	[90-100]%	[…]	[90-100]%	[…]	[70-80]%	[…]	[40-50]%
Combined	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**
Dnata	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Form CO as updated on 9 March 2020, Table 7.8 and Form RM, Table 8a for the 2020 estimates

(173) As shown in the table above, the proposed Transaction would lead to a combined market share of [80-90]% in the provision of in-flight catering services at Rome Fiumicino airport, and a reduction of suppliers from 3 to only 2.

(174) The Commission considers that post-Transaction, the merged entity would face limited competition at Rome Fiumicino airport, because Dnata will be the only

185 Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

186 Reply of a customer to Q2 – Questionnaire to Customers, question 49.1.

187 Reply of a customer to Q2 – Questionnaire to Customers, question 54.1.

188 Form CO as updated on 9 March 2020, paragraph 307.

189 Only [specifics about internal accounting of Gategroup] are included in Gategroup's 2018 revenues (Form CO as updated on 9 March 2020, footnote 171)

remaining competitor with a market share of [10-20]%. The respondents to the market investigation gave mixed replies as to whether the merged entity would have the ability to restrict the expansion or the entry of competitors post-Transaction at Rome Fiumicino airport.[190]

(175) However, the majority of respondents to the market investigation having expressed a view consider that the Transaction will have a negative impact on the market for in-flight catering services at Rome Fiumicino airport.[191]

(176) Furthermore, the majority of respondents to the market investigation indicated that they are not aware of any recent or potential entry at Rome Fiumicino airport.[192] The Commission therefore notes the lack of entry projects that would defeat or deter the anticompetitive effects of the Transaction on the market for in-flight catering services at Rome Fiumicino airport.

(177) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Rome Fiumicino airport, since it would create a dominant position for Gategroup.

5.1.2.16. Amsterdam Schiphol

(178) The Transaction leads to a horizontal overlap between the Parties' activities in in-flight catering at Amsterdam Schiphol airport. The overlap results from one contract with United, which LSG serves out of its Brussels hub.[193] The evolution of the market shares of the Parties and their competitors at Amsterdam Schiphol airport during the period from 2016 to 2018 are set out in the tables below. As explained in paragraph (88) above, the market shares presented below exclude captive sales between KCS and the AF-KLM group.

Table 15 - Market shares for in-flight catering services at Amsterdam Schiphol

Sales (in EUR million)	2016		2017		2018	
	Value	Market share	Value	Market share	Value	Market share
Gategroup	[…]	[80-90]%	[…]	[80-90]%	[…]	[80-90]%
LSG EU	n/a	n/a	n/a	n/a	[…]	[0-5]%
Combined	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**
KCS	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Newrest	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Expert Catering	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	100%	[…]	100%	[…]	100%

190 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

191 Replies to Q1 – Questionnaire to Competitors, question 52; Q2 – Questionnaire to Customers, question 54.

192 Replies to Q1 – Questionnaire to Competitors, question 43; Q2 – Questionnaire to Customers, question 44.

193 The contract (worth [value of the contract] in 2018) is part of a multi-airport Master Catering Services Agreement in place between LSG and [contract details] (See: Form CO as updated on 9 March 2020, paragraph 289; Replies of the Parties to the Commission's questions to the parties 3 dated 4 February 2020, addition to response to question 10).

(179) As shown in the table above, the proposed Transaction would lead to a combined market share of [80-90]% in the provision of in-flight catering services at Amsterdam Schiphol airport. The market shares presented above exclude captive sales. This leads to an underestimation of the actual position of KCS, which is by far the largest player in the market is by far KCS, which also provides in-flight catering services to other airlines than KLM. The demand of the AF-KLM group represents more than 60% of the total demand for in-flight catering services at Amsterdam Schiphol airport.[194] Due to its size and capacities, KCS will be able to exert significant pressure on the merged entity post-Transaction. Thus, post-Transaction, there would remain two credible alternative suppliers for airlines to choose from, each of them larger than the target, namely KCS and Newrest.

(180) This analysis is also confirmed by the replies to the market investigation. While competitors gave mixed replies as to whether the Transaction would result in a lessening of competition, the majority of customers having expressed a view in the market investigation stated that the merged entity would not have the ability to restrict the expansion or the entry of competitors post-Transaction,.[195] An airline present in Amsterdam Schiphol indicated that "*no dominant position would be created at those airports*"[196] and that the "*effect of the Transaction on Amsterdam Schiphol Airport is considered to be limited*".[197]

(181) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for in-flight catering services at Amsterdam Schiphol airport.

5.1.2.17. Conclusion

(182) The Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the markets for in-flight catering services at Milan Malpensa and Amsterdam Schiphol airports.

(183) The Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects due to the creation or strengthening of a dominant position in the markets for in-flight catering services at Frankfurt, Munich, Cologne-Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.

5.1.3. In-flight equipment services

(184) As explained in Section 4.2 above, the Commission will assess the effects of the Transaction on a plausible narrower market for in-flight equipment services.

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194 KCS achieved a turnover of […] in 2018 with the AF-KLM group and third-party customers.

195 Replies to Q1 – Questionnaire to Competitors, question 47; Q2 – Questionnaire to Customers, question 49.

196 Reply of a customer to Q2 – Questionnaire to Customers, question 49.

197 Reply of a customer to Q2 – Questionnaire to Customers, question 54.

(185) The Transaction would give rise to horizontally affected markets for the provision of in-flight equipment services in the EEA or worldwide.[198]

(186) The following table shows the Parties' market shares on the market for in-flight equipment services in the EEA and worldwide in 2018. The overall market volume is based a) on the Parties' estimates of the total value based on seats per airline and estimated airline spending in EUR per seat and b) on IATA air passenger data for the Parties' top customers and subsequent extrapolation of these numbers to calculate the overall market. This table includes the pre-Transaction captive sale of LSG EU to companies within the Lufthansa Group to fully capture the market position of the Parties post-Transaction.[199]

	Worldwide	EEA
Gategroup	[10-20]%	[10-20]%
LSG EU	[5-10]%	[20-30]%
Combined	**[20-30]%**	**[30-40]%**
Other competitors	[70-80]%	[60-70]%

Source: Form CO as updated on 9 March, para. 323-324 and Replies of the Parties to the Commission's request for information 12 dated 18 March 2020.

(187) Post-Transaction, customers in the EEA and worldwide will continue to have the ability to switch to other existing suppliers. While even the largest competitors of the Parties have individual market shares considerably smaller than those of the Parties, post-Transaction, a sufficient number of competitors offering in-flight equipment services will remain on the market (such as Formia or Buzz with market shares of approximately 4.6% and 4.1% worldwide).[200] Some, particularly smaller airlines, prefer to purchase the "full range" of services (comfort items, tableware and trolleys) from a single vendor and thus only consider these vendors as potential suppliers. This will not however allow the Parties to obtain a dominant position in the market post-Transaction, as at least several competitors also offer in-flight equipment services related to in-flight comfort items and serving concepts/, such as Global C, Galileo Watermark and Buzz.[201] The Parties will therefore continue to face strong competition from players which are already active in the market.

(188) In addition, post-Transaction, new entrants would continue to be able to enter the market for in-flight equipment services with relatively little capital expenditure.[202]

(189) The relative size and capacity of the Parties to supply the whole range of in-flight equipment services compared to their closest competitors may provide them with a competitive advantage when entering a tender for some contracts. However, the

198 Form CO as updated on 9 March, paragraph 320 et seq.

199 Replies of the Parties to the Commission's request for information 8 dated 11 March 2020, question 1.

200 Form CO as updated on 9 March 2020, paragraph 323 and Replies of the Parties to the Commission's request for information 6 dated 5 March 2020, question 1. The Notifying Party was not in a position to provide estimates of competitor market shares at the EEA-level.

201 Replies of the Parties to the Commission's request for information 8 dated 11 March 2020, question 3.

202 Replies of the Parties to the Commission's request for information 8 dated 11 March 2020, question 5.

"critical" size and capacity necessary to bid for in-flight equipment service contracts is relatively small and will be fulfilled by numerous competitors post-Transaction.[203]

(190) Finally, while the market investigation yielded mixed results among competitors with regards to the impact of the transaction on "other services"[204] than in-flight catering services, a majority of customers responding to the Commission's market investigation having expressed a view did not anticipate a substantial impact on the market for in-flight equipment services (with several customers indicating that a sufficient number of alternative suppliers will remain post-Transaction).[205]

(191) Taking the above considerations into account, the Commission considers that the Parties will face sufficient competition in the market for in-flight equipment services in the EEA and worldwide post-Transaction and that the competitive constraints on the Parties would be sufficient.

Conclusion

(192) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the markets for in-flight equipment services in the EEA or worldwide.

5.1.4. Lounge management services

(193) A horizontally affected market arises only under the narrowest plausible market definition comprising the provision of lounge management services at Frankfurt airport only.[206]

(194) The following table shows the Parties' market shares on the market for lounge management services at Frankfurt airport, based on the Parties' estimates of the total value based on average revenue per potential lounge user. This table includes the pre-Transaction captive sale of LSG EU to companies within the Lufthansa Group to fully capture the market position of the Parties post-Transaction.

Table 16 - Market shares in lounge management services at Frankfurt airport in 2016-2018

	2016	2017	2018
Gategroup	[0-5]%	[0-5]%	[0-5]%
LSG EU	[40-50]%	[40-50]%	[50-60]%
Combined	**[40-50]%**	**[40-50]%**	**[50-60]%**
Other competitors[207]	[50-60]%	[50-60]%	[40-50]%

Source: Form CO as updated on 9 March, para. 331.

203 Replies of the Parties to the Commission's request for information 8 dated 11 March 2020, question 4.

204 Such as in-flight equipment services, provision of ready-made food products and in-flight retail services.

205 Replies to Q2 - Questionnaire to Customers, question 75.

206 Form CO as updated on 9 March 2020, paragraph. 188 et seq.

207 Other competitors include Do&Co and Köfler & Kompanie.

(195) The increment brought about by the Transaction is moderate and comes from one lounge operated by Gategroup. Do&Co is also active on the market for lounge management services. In particular, Do&Co operates the Lufthansa First Class Lounges at Frankfurt airport;[208] the Emirates Lounge at Frankfurt airport;[209] and was awarded the contract to operate the Cathay Pacific Lounge at Frankfurt airport.[210] The Parties estimate Do&Co's market share based on the number of lounges at around 16% in 2016, 2017 and 2018.[211] The Commission therefore considers that the Parties will be sufficiently constrained post-Transaction by other competitors active on the market for lounge management services at Frankfurt airport, especially Do&Co or Köfler & Kompanie.

(196) Finally, while the views of competitors and customers responding to the Commission's market investigation were mixed on the potential impact of the Transaction on the market for the supply of lounge management services at Frankfurt airport,[212] the majority of competitors and customers considered that there would be sufficient competition in the market for the supply of lounge management services at Frankfurt airport post-Transaction.[213]

(197) Taking the above considerations into account, the Commission considers that the Parties will face sufficient competition in the market for lounge management services at Frankfurt airport post-Transaction and that the competitive constraints on the Parties would be sufficient.

Conclusion

(198) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for the supply of lounge management services at Frankfurt airport.

5.2. Vertical effects

5.2.1. Framework for the competitive assessment

(199) Vertical mergers involve companies operating at different levels of the supply chain. The Commission Guidelines on the assessment of non-horizontal mergers,[214] acknowledge that vertical mergers may have pro-competitive effects, for example through the internalisation of double mark-ups.[215] However, there are circumstances

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208 See Do&Co "Airline Lounges – Lufthansa Frankfurt" http://www.doco.com/en/airline/airline-lounges/lufthansa-frankfurt, accessed 25 March 2020.

209 See Do&Co "Airline Lounges – Emirates Lounges" http://www.doco.com/en/airline/airline-lounges/emirates accessed 25 March 2020.

210 See Do&CO "Portal – Jahres- und Quartalsberichte" http://www.doco.com/Portals/8/berichte/jahres-und-quartalsberichte/de/PA_Q3_2019-2020.pdf, page 6, accessed 25 March 2020.

211 Form CO as updated on 9 March 2020, paragraph 331 et seq.

212 Replies to Q1 – Questionnaire to Competitors, question 62; Q2 – Questionnaire to Customers, question 64.

213 Replies to Q1 – Questionnaire to Competitors, question 60; Q2 – Questionnaire to Customers, question 62.

214 Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (OJ C 265, 18.10.2008), p.6 (the "Non-Horizontal Merger Guidelines").

215 Non-Horizontal Merger Guidelines, paragraphs 13 and 14.

in which vertical mergers may significantly impede effective competition, for example through anticompetitive foreclosure.

(200) The Non-Horizontal Merger Guidelines distinguish two forms of foreclosure. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[216]

(201) In order for input foreclosure to be a concern, three conditions need to be met post-Transaction: (i) the merged entity has the ability to foreclose access to important inputs;[217] (ii) the merged entity has the incentive to foreclose access to inputs;[218] and (iii) the foreclosure strategy is likely to have significant detrimental effects on competition on the downstream market.[219] In practice, these factors are often examined together since they are closely intertwined.

(202) For customer foreclosure to be a concern, three conditions need to be met post-Transaction: (i) the merged entity has the ability to foreclose access to an important customer base;[220] (ii) the merged entity has the incentive to do so;[221] and (iii) the foreclosure strategy is likely to have significant detrimental effects on competition on the upstream market.[222]

5.2.2. Vertical relationship between in-flight catering and passenger air transport services

(203) While the vertical link between LSG EU and the Lufthansa group is pre-existing, the Transaction creates a vertical relationships between LSG EU's activities in in-flight catering (upstream market) and Singapore Airlines' activities in passenger air transport (downstream market).[223, 224]

5.2.2.1. Overview of the vertically affected markets

(204) The proposed Transaction would give rise to vertically affected markets for in-flight catering services at the following airports in the EEA.

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[216] Non-Horizontal Merger Guidelines, paragraph 30.

[217] Non-Horizontal Merger Guidelines, paragraphs 33-39.

[218] Non-Horizontal Merger Guidelines, paragraphs 40-46.

[219] Non-Horizontal Merger Guidelines, paragraphs 47-57.

[220] Non-Horizontal Merger Guidelines, paragraphs 60-67.

[221] Non-Horizontal Merger Guidelines, paragraphs 68-71.

[222] Non-Horizontal Merger Guidelines, paragraphs 72-77.

[223] The Transaction creates vertical relationships between LSG EU's activities in in-flight catering and Singapore Airlines' activities in passenger air transport at the following EEA airports: Paris Charles de Gaulle, Berlin Tegel, Düsseldorf, Frankfurt, Munich, Milan Malpensa, Rome Fiumicino, Amsterdam Schiphol (Form CO as updated on 9 March 2020, Table 6.2). For the sake of completeness, the Notifying Party indicated that Singapore Airlines will commence passenger air transport services at Brussels airport as of 22 October 2020 (Form CO as updated on 9 March 2020, footnote 64).

[224] LSG will have a […]% shareholding in the JVC related to in-flight catering at Frankfurt and Munich, and [description of governance structure]. With respect to the vertical competitive relationship between the JVC and the Lufthansa Group, the Commission has not found indications of any merger-specific effects arising from the Transaction. The competitive assessment will remain the same regardless of such pre-existing relationships.

Table 17 - Parties' shares in vertically affected markets in 2018

Airport	Singapore Airlines' passenger air transport share[225]	LSG EU in-flight catering share[226]	Parties' combined in-flight catering share
Dusseldorf	[0-5]%	[30-40]%	[80-90]%
Frankfurt	[0-5]%	[50-60]%	[90-100]%
Berlin Tegel	[0-5]%	[50-60]%	[80-90]%
Munich	[0-5]%	[50-60]%	[90-100]%
Rome Fiumicino	[0-5]%	[70-80]%	[80-90]%
Milan Malpensa	[0-5]%	[40-50]%	[40-50]%

Source: Form CO as updated on 9 March 2020, Tables 7.1(a), 7.2(a), 7.3(a), 7.5(a), 7.8, 7.9, 7.13 and reply of the Parties to the Commission's request for information 14 dated 22 March 2020, question 1.

(205) The Commission will assess whether the Transaction will result in anti-competitive foreclosure strategies in the vertically affected markets for in-flight catering and passenger air transport services at Dusseldorf, Frankfurt, Berlin Tegel, Munich, Rome Fiumicino and Milan Malpensa airports.

5.2.2.2. Input foreclosure

(206) While LSG EU's (and the merged entity's) share in the upstream markets for in-flight catering services is high at the vertically affected airports, Singapore Airlines' share in the downstream markets for passenger air transport is very low.

(207) The Commission considers that the merged entity will not have the ability or incentive to foreclose the access airlines to in-flight catering services post-Transaction for the following reasons.

(208) First, Singapore Airlines' demand of in-flight catering services is very low at any relevant EEA airport.[227] Therefore, any denial of service would sacrifice Gategroup's own profits without reducing other airlines' ability to obtain services from competing caterers. Therefore, such an input foreclosure strategy would likely result in losses for Gategroup. The merged entity thus does not have any incentive foreclose the access of Singapore Airlines' competitors to in-flight catering services. In addition, Temasek only owns approximately 56% of Singapore Airlines and 50% of Gategroup. RRJ Capital owns the remaining 50% of Gategroup and is not active

225 Singapore Airlines' shares in the narrower markets for passenger air transport (i.e. scheduled passenger air transport services for time-sensitive passengers and scheduled passenger air transport services for non-time-sensitive passengers) would be below [5-10]%. The competitive assessment of the vertical links would therefore remain unchanged under narrower market definitions (Replies of the Parties to the Commission's request for information to the Parties 16 dated 25 March 2020, question 3).

226 For the purpose of determining the vertically affected markets, LSG EU's shares exclude captive sales to the Lufthansa Group. Should captive sales be included, LSG EU's market shares would be higher but the competitive assessment would remain unchanged. LSG EU's shares in a plausible narrower market for in-flight catering services provided by traditional suppliers would not change, given that no non-traditional supplier is active at the relevant airports.

227 As explained above, Singapore Airlines' market shares in passenger air transport is very low in the relevant EEA airports. Therefore, its demand of in-flight catering services is also very low.

in passenger air transports in the EEA.[228] As acknowledged by the Commission in the Non-Horizontal Merger Guidelines, "*in cases where two companies have joint control over a firm active in the upstream market, and only one of them is active downstream, the company without downstream activities may have little interest in foregoing input sales*".[229] In the present case, RRJ Capital is likely to have limited interest to support an input foreclosure strategy.

(209) Second, at airports where the Transaction gives rise to vertically affected markets, airlines will continue having access, to a sufficient extent, to credible alternative in-flight catering suppliers. More specifically, airlines could purchase in-flight catering services from Do&Co in Dusseldorf, Frankfurt, Berlin Tegel, Munich and Milan Malpensa and from Dnata in Rome Fiumicino and Milan Malpensa.

(210) Finally, customers of in-flight catering services having expressed a view indicated that the merged entity would not have the ability or incentive to supply in-flight catering services solely to Singapore Airlines post-Transaction.[230]

(211) In view of the above considerations and all evidence available to it, the Commission considers it unlikely that the merged entity would engage in input foreclosure post-Transaction.

5.2.2.3. Customer foreclosure

(212) The Commission considers that the merged entity will not have the ability or incentive to foreclose LSG EU's competitors in in-flight catering.

(213) Singapore Airlines cannot be considered as an "important customer" within the meaning of the Non-Horizontal Merger Guidelines.[231] Singapore Airlines' share in the downstream market for passenger air transport services at the vertically affected EEA airports is very low, ranging between [0-5]%. Therefore, its demand of in-flight catering services is also very low. Even if Singapore Airlines were to source in-flight catering services exclusively from the merged entity, the majority of customer demand for in-flight catering services at any relevant airport would remain available to other suppliers of in-flight catering services. Therefore, the merged entity is unlikely to have the ability and incentive to foreclose suppliers of in-flight catering services.

(214) While, in theory, Singapore Airlines could decide post-Transaction to solely source in-flight catering services from the merged entity, the market investigation did not provide plausible indications that post-Transaction, the merged entity would have the incentive to engage in customer foreclosure.[232] As explained in Sections 5.1.2.6 and 5.1.2.11 above, Singapore Airlines recently decided to switch suppliers at Frankfurt and Munich airports. Indeed, Singapore Airlines switched from Gategroup to Do&Co.

[228] Form CO as updated on 9 March 2020, paragraph 343.

[229] Non-Horizontal Merger Guidelines, paragraph 45.

[230] Replies to Q2 – Questionnaire to Customers, questions 50 and 51.

[231] Non-Horizontal Merger Guidelines, paragraphs 58 and 61.

[232] Although respondents have indicated that Singapore Airlines would have the ability to switch to the merged entity, in the context set out in this section this fact is insufficient for a finding of customer foreclosure.

(215) In view of the above considerations and all evidence available to it, the Commission considers it unlikely that the merged entity would engage in an anti-competitive customer foreclosure strategy in in-flight catering services post-Transaction.

5.2.2.4. Conclusion

(216) In view of the above considerations and all evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between LSG EU's activities in in-flight catering services and Singapore Airlines' activities in passenger air transport services at EEA airports, under any plausible market definition.

5.3. Conglomerate effects

5.3.1. Framework for the competitive assessment

(217) Conglomerate mergers are mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). In practice, the focus is on mergers between companies that are active in closely related markets (for example mergers involving suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use).[233]

(218) The proposed Transaction exhibits such a feature as most airlines purchase complementary products from the Parties for the provision of passenger air transport services. For example, [customer] and [customer] purchase ready-made food products and in-flight catering services from Gategroup in Germany (among other countries).[234]

(219) In the Non-Horizontal Merger Guidelines, it is acknowledged that conglomerate mergers in the majority of circumstances will not lead to any competition problems.[235] However, in certain specific cases, there may be harm to competition. The main concern in the context of conglomerate effects is that of foreclosure.[236] While the combination of products in related markets through tying and bundling are common practices that may provide customers with better products of offerings in cost-effective ways, these practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity, allowing it to increase prices.[237]

(220) The Non-Horizontal Merger Guidelines provides for a framework of assessment of such a foreclosure strategy: "*In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so*

233 Non-Horizontal Merger Guidelines, paragraph 5.
234 Reply of the Parties to Questions to the Parties 4 dated 6 February 2020, question 4 and to Questions to the Parties 3 dated 4 February 2020, question 10.
235 Non-Horizontal Merger Guidelines, paragraph 92.
236 Non-Horizontal Merger Guidelines, paragraph 93.
237 Non-Horizontal Merger Guidelines, paragraph 93.

and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers".[238]

(221) In Sections 5.3.2 to 5.3.6, the Commission will assess the likelihood of a foreclosure strategy with respect to (i) in-flight catering services and in-flight equipment services, (ii) in-flight catering services and ready-made food products to the commercial foodservice sector and (iii) in-flight catering services and retail on-board services, (iv) retail on-board services and in-flight equipment services and (v) retail on-board services and ready-made food products to the commercial foodservice sector under any of the plausible market definitions.[239]

(222) In its assessment of the conglomerate effects related to in-flight catering services, the Commission will take account of the fact that the competition concerns raised on the markets for in-flight catering services at Frankfurt, Munich, Cologne-Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports; (ii) Hamburg and Hannover airports; and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports are removed by the proposed Commitments analysed in Section 6 below.

5.3.2. In-flight catering services and equipment services

(223) As in-flight equipment services and in-flight catering services have the same customer base (i.e. airlines) and the same end-use (i.e. the provision of passenger air transport services), these markets can be considered as neighbouring markets. The Transaction would thus create a link between the neighbouring markets for in-flight catering services at the airports where LSG EU is active and the market for in-flight equipment services in the EEA and worldwide.

(224) The Transaction is unlikely to raise competition concerns with respect to the hypothetical conglomerate effects related to in-flight catering and in-flight equipment services for the following reasons.

Ability to foreclose

(225) The merged entity is unlikely to gain the ability, post-Transaction, to engage in a strategy of tying or bundling its in-flight catering and in-flight equipment services in the EEA and worldwide causing significant foreclosure of competitors. Despite having the same customer base, the airline's practice of issuing separate tenders for both services limits the Parties' ability to tie or bundle together both services.

(226) The market investigation provided mixed results with regards to potential for bundling or tying in-flight catering and equipment services. Some competitors and customers indicated that bundling or tie-ins might happen post-Transaction.[240] At the same time, the market investigation did not suggest that these tying/bundling

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238 Non-Horizontal Merger Guidelines, paragraph 94.

239 The competitive assessment of conglomerate effects under the narrower plausible product and geographic market definitions would remain unchanged. See replies of the Parties to the Commission's request for information 19 dated 2 April 2020, question 6.

240 Replies to Q1 - Questionnaire to Competitors, questions 72.1 and 74; Q2 - Questionnaire to Customers, questions 74 and 75.

strategies would foreclose competitors, with respondents citing that a sufficient amount of suppliers would be left post-Transaction.[241]

(227) In addition, cases of pure bundling[242] are very unlikely to be possible if products are not bought simultaneously or by the same customers.[243] As the Parties' have submitted, in-flight equipment services are generally not tendered by airlines together with in-flight catering services[244] and provided to the caterer by the airline.[245] This is confirmed by the market investigation. The majority of airline customers responding to the market investigation nominate the equipment services provider and purchase the services themselves and subsequently make the equipment services available to their in-flight caterer.[246] Correspondingly, the majority of airline customers that purchase "neighbouring" services (such as in-flight equipment services) does not typically purchase in-flight catering services and other services together from one single supplier.[247]

(228) The combined market share of both Parties in the market for in-flight equipment services in 2018 amounts to [30-40]% in the EEA and [20-30]% worldwide.[248] The lack of a dominant position in the market for in-flight equipment services (*see*: section 5.1.2.) and the commitments proposed by the Notifying Party concerning the affected in-flight catering markets (reducing the risk for a dominant position of the merged entity in the in-flight catering market) further decrease the risk of conglomerate effects between the in-flight equipment services and the in-flight catering services market caused by the Transaction.

(229) Besides, the merged entity would not have the power to impose its in-flight equipment services on airlines, as the services provided are not "must have". This limits the ability of the merged entity to engage into mixed bundling practices.[249] The Commission is thus convinced that customers will be able to easily find alternatives among the numerous in-flight equipment service providers because products, in particular amenities kits, are standardised.[250]

(230) Therefore, should the Parties attempt to tie or bundle in in-flight equipment services with offers for in-flight catering services, this would likely not be accepted by airlines.

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241 Replies to Q1 - Questionnaire to Competitors, question 74; Q2 - Questionnaire to Customers, questions 74 and 75.

242 In case of pure bundling (as opposed to mixed bundling), both products are sold jointly in fixed proportions (See: Non-Horizontal Merger Guidelines, paragraph 96).

243 Non-Horizontal Merger Guidelines, paragraph 98.

244 Form CO as updated on 9 March 2020, paragraph 141.

245 Form CO as updated on 9 March 2020, paragraph 141.

246 Replies to Q2 - Questionnaire to Customers, question 67; Reply of a competitor to the Commission's request for information dated 5 March 2020, question 3.

247 Replies to Q2 - Questionnaire to Customers, question 69.

248 Form CO as updated on 9 March 2020, paragraphs 323-324.

249 In case of mixed bundling, both products are available separately but the sum of the stand-alone prices is higher than the bundled price (See: Non-Horizontal Merger Guidelines, paragraph 96).

250 Form CO as updated on 9 March 2020, paragraph 420.

Incentive to foreclose

(231) The merged entity is unlikely to have the incentive to enter into bundling/tying strategies. 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.[251] The combined overall turnover achieved by the Parties with in-flight equipment services in 2018 in the EEA amounted to EUR […],[252] compared to EUR […][253] for in-flight catering services. Given the significantly larger size of the in-flight catering services market, the Parties are not likely to risk a loss in revenue in their "core" business for an increased share in their in-flight equipment services business.[254]

(232) Moreover, the majority of airline customers responding to the market investigation having expressed a view believes that the merged entity would not have the ability and incentive to prevent customers from procuring in-flight catering services and/or equipment services in the EEA by entering into tying/bundling strategies, while the market investigation yielded mixed results amongst competitors regarding this issue.[255] While some respondents pointed towards the increased market shares in both markets as allowing for foreclosure strategies, the majority of respondents did not express this concern. Respondents stated that sufficient competition will remain post-Transaction, that it would be unlikely that these separate markets would be combined together and that airlines have sufficient bargaining power to counteract any such strategy.[256]

Overall impact on competition

(233) The effect on competition further needs to be assessed in light of countervailing factors such as presence of countervailing buyer power[257] or the likelihood that entry would maintain effective competition in the upstream or downstream market.[258] In addition, if there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate merger.[259] In view on the above statements by customers in the market-investigation with regards to sufficient remaining alternative suppliers for in-flight equipment products and the influence of airlines, the Commission considers that the Transaction is unlikely to have an overall negative impact on competition in the markets for in-flight catering services and the market for in-flight equipment services because of conglomerate

[251] Non-Horizontal Merger Guidelines, paragraph 107.

[252] Form CO as updated on 9 March 2020, paragraph 45 and 66. The combined worldwide turnover for equipment services in 2018 amounted to EUR […].

[253] Reply of the Parties to request for information 18 to the Parties 4 dated 30 March 2020, question 2.

[254] see also: Form CO as updated on 9 March 2020, paragraph 362.

[255] Replies to Q2 - Questionnaire to Customers, question 73, Q1 - Questionnaire to Competitors, question 72.

[256] Replies to Q2 - Questionnaire to Customers, question 73.1 and 74, Q1 - Questionnaire to Competitors, question 72.1.

[257] To be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers. In the assessment of buyer-power, it is not just sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger (See: Horizontal Merger Guidelines, paragraph 64 and 67.)

[258] Non-Horizontal Merger Guidelines, paragraph 114.

[259] Non-Horizontal Merger Guidelines, paragraph 113.

effects, as any bundling or tying strategy is unlikely to reduce the ability and incentive to compete of suppliers active in each market in the EEA.

Conclusion

(234) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to conglomerate effects in the market for in-flight catering and equipment services in the EEA and worldwide, under any of the plausible product market definitions.[260]

5.3.3. In-flight catering services and ready-made food products to the commercial foodservice sector

(235) In-flight catering services and ready-made food products to the commercial foodservice sector may be considered as neighbouring markets since they share the same customer base for the same end-use (i.e. the provision of passenger air transport services by airlines). The Transaction would thus create a link between the neighbouring markets for in-flight catering services in the airports where LSG EU is active and the supply of ready-made food products to the commercial foodservice sector in the EEA where both Parties are active. At the EEA level as well as in the Member States where the Parties' activities overlap (Italy, Germany, United Kingdom), the combined market shares of both parties in the market for ready-made food products for the commercial foodservice sector, as well as a plausible subdivision into markets for frozen food, chilled food and fresh foods is less than 20 % in 2018.[261]

(236) The Transaction is unlikely to raise competition concerns with respect to the hypothetical conglomerate effects related to in-flight catering services and the supply of ready-made food products to the commercial foodservice sector for the following reasons.

Ability to foreclose

(237) The merged entity is unlikely to gain the ability, post-Transaction, to engage in a strategy of tying or bundling its in-flight catering services and ready-made food products to the commercial foodservice sector in the EEA causing significant foreclosure of competitors. The combined market shares of both Parties would be below 20% in the market for ready-made food products to the commercial foodservice sector in the EEA as well as all potential national markets.[262] Furthermore, according to the market investigation, the majority of customers nominates the ready-made food provider themselves, with only one respondent

260 i.e. under the plausible narrower product market for in-flight catering services provided by traditional suppliers.

261 Replies of the Parties to the Commission's questions to the parties 4 dated 4 February 2020, question 9, Reply of the Parties to Commission's request for information 17 to the Parties dated 26 March 2020, question 3 and Reply of the Parties to Commission's request for information 18 to the Parties dated 30 March 2020, question 1 and Reply of the Parties to Commission's request for information 19 to the Parties dated 2 April 2020, question 3

262 Replies of the Parties to the Commission's Questions to the Parties 4 dated 4 February 2020, question 9 and Reply of the Parties to request for information 17 to the Parties 4 dated 26 March 2020, question 3.

leaving the choice of ready-made food providers to the in-flight caterer.[263] Moreover, the majority of customers does not purchase in-flight catering services and other services (including ready-made food products) together from one single supplier[264] and also has no problem with having multiple suppliers.[265] In addition, the majority of those customers expressing a view did not expect the merged entity to have the ability and incentive to prevent their company from procuring in-flight catering services and/or ready-made food products in the EEA by entering into tying/bundling strategies,[266] while the responses of those competitors having expressed a view regarding this issue were mixed.[267]. Therefore, attempts by the Parties to tie or bundle in ready-made food products would likely not be accepted by airlines.

Incentive to foreclose

(238) The merged entity is unlikely to have the incentive to enter into bundling/tying strategies. The overall turnover achieved with ready-made food products in 2018 in the EEA amounted to EUR […] for Gategroup[268] and EUR […] for LSG EU.[269] The combined turnover of the Parties in this market are thus considerably smaller than those in the market for in-flight catering services, where Gategroup and LSG EU achieved a combined turnover of EUR […][270] in the EEA. Therefore, any tying or bundling strategy is unlikely to be profitable. The merged entity has no reason to risk losing profits in in-flight catering services by trying to link them with ready-made food products for such a small return.

Overall impact on competition

(239) The Commission considers that the Transaction is unlikely to have an overall negative impact on competition in the markets for in-flight catering services and the market for ready-made food products to the commercial foodservice sector under any plausible market definition because of conglomerate effects, as any bundling or tying strategy is unlikely to reduce the ability and incentive to compete of suppliers active in each market in the EEA. In addition, for a large range of ready-made food products, the Parties would continue to be in competition with large branded-food manufacturers, which are likely to be seen as alternative options by airlines.[271]

Conclusion

(240) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the conglomerate effects in the market for in-

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263 Replies to Q2 - Questionnaire to Customers, question 68.
264 Replies to Q2 - Questionnaire to Customers, question 69.
265 Replies to Q2 - Questionnaire to Customers, question 70.
266 Replies to Q2 - Questionnaire to Customers, question 74.
267 Replies to Q1 - Questionnaire to Competitors, question 73.
268 Form CO as updated on 9 March 2020, paragraph 36.
269 Reply of the Parties to the Commission's request for information 18 dated 30 March 2020, question 2.
270 Reply of the Parties to Commission's request for information 18 dated 30 March 2020, question 2.
271 Form CO as updated on 9 March 2020, paragraph 368.

flight catering and ready-made food products to the commercial foodservice sector in the EEA, under any of the plausible narrower product market definitions.[272]

5.3.4. In-flight catering services and retail on-board services

(241) While Gategroup provides retail on-board services, the retail on-board business of LSG is not part of the scope of the Proposed Transaction as explained in Section 2 above. Retail on-board services may be considered as a neighbouring market of in-flight catering services.[273] The Transaction would create a link between the neighbouring markets for in-flight catering services at the airports where LSG EU is active and the provision of retail-on-board services in the EEA where Gategroup is active.

(242) Gategroup's market share in the provision of retail on-board services in the EEA is [60-70]% (and [70-80]% on a potential market for snacking only and [40-50]% on a potential market for duty-free products only in the EEA) in 2018.[274] Gategroup's market share in the provision of retail on-board services worldwide is [50-60]% (and [30-40]% on a potential market for snacking only and [70-80]% on a potential market for duty-free products only in the EEA).[275]

(243) The Transaction is unlikely to raise competition concerns with respect to the hypothetical conglomerate effects related to in-flight catering services and retail on-board services for the following reasons.

Ability to foreclose

(244) The merged entity would have high market shares post-Transaction at some EEA airports in the provision of in-flight catering services and Gategroup's share of [60-70]% in retail on-board services in the EEA and [50-60]% worldwide. However, the merged entity is unlikely to gain the ability, post-Transaction, to engage in a strategy of tying or bundling its in-flight services and retail on-board services in the EEA and worldwide causing significant foreclosure of competitors. In case an airline purchases both in-flight catering services and retail on-board services, it will usually nominate the supplier of retail on-board services and ask the in-flight caterer to load it onto the aircraft. Consequently, the supplier of in-flight catering cannot impose itself as the supplier of retail on-board services on its customer.[276] Therefore, should the merged entity insist on tying or bundling in-flight catering and retail on-board services, the merged entity's offer would in most case be rejected from the tender process.

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272 i.e. under the plausible narrower product market for in-flight catering services provided by traditional suppliers and the plausible narrower product markets for frozen foods to the commercial foodservice sector, chilled foods to the commercial foodservice sector and fresh foods to the commercial foodservice sector.

273 See Case M.8137 – *HNA Group/Servair*, paragraph 112 et seq.

274 Form CO as updated on 9 March 2020, paragraph 348 and Replies of the Parties to the Commission's request for information 3 dated 25 February 2020, question 51.

275 Replies of the Parties to the Commission's request for information 16 dated 25 March 2020, question 1.

276 Replies to Q1 – Questionnaire to Competitors, question 67; Q2 – Questionnaire to Customers, question 66.

Incentive to foreclose

(245) The merged entity is unlikely to have the incentive to enter into bundling/tying strategies. Retail on-board sales in the EEA represent a lower volume than in-flight catering sales (approximately EUR 755 million vs EUR 3 900 million in 2018).[277] Similarly, at a worldwide level, retail on-board sales represent a lower volume than in-flight catering sales (approximately EUR 2 224 million vs EUR 12 600 million) in 2018.[278] The Parties' combined turnover in in-flight catering in 2018 amounted to EUR […] in the EEA and EUR […] worldwide, while Gategroup's turnover in retail on-board was EUR […] in the EEA and EUR […] worldwide. Therefore, the merged entity is unlikely to forego profits in the market for in-flight catering services by entering into an anticompetitive tying/bundling strategy. Furthermore, based on Gategroup's estimates, in-flight catering is generally more profitable than retail on-board services.[279] Therefore, any tying or bundling strategy is unlikely to be profitable. The merged entity has no reason to risk losing in-flight catering services by trying to link them with retail on-board services for such a small return.

Overall impact on competition

(246) The Commission considers that the Transaction is unlikely to have an overall negative impact on competition in the markets for in-flight catering services and retail on-board services because of conglomerate effects, as any bundling or tying strategy is unlikely to reduce the ability and incentive to compete of suppliers active in each market in the EEA and worldwide. Customers will continue to have access to providers of both in-flight catering services and retail on-board services on a standalone basis. Even if the customer did accept the tied or bundled products, the merged entity would still face competition of competitors with the same capacity to provide bundles such as Dnata and Newrest.

Conclusion

(247) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the conglomerate effects in the market for in-flight catering and retail on-board services in the EEA and worldwide, under any of the plausible product market definition.[280]

5.3.5. Retail on-board services and in-flight equipment services

(248) Retail on-board services and in-flight equipment services may be considered as neighbouring markets since they share the same customer base for the same end-use (i.e. the provision of passenger air transport services by airlines). The Transaction would create a link between the neighbouring markets for in-flight equipment services where LSG EU and Gategroup are active in the EEA and worldwide and the

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277 Form CO as updated on 9 March 2020, paragraph 356.

278 Replies of the Parties to the Commission's request for information 16 dated 25 March 2020, question 3.

279 Gategroup's average margins are […]% for in-flight catering and [...]% for retail on-board services (Replies of the Parties to the Commission's request for information 3 dated 25 February 2020, question 54).

280 i.e. under the plausible narrower product market for in-flight catering services provided by traditional suppliers and the plausible narrower product markets for retail on-board services of snacking products and retail on-board services of duty-free products.

provision of retail on-board services in the EEA and worldwide where Gategroup is active.

(249) The Transaction is unlikely to raise competition concerns with respect to the hypothetical conglomerate effects related to retail on-board services and in-flight equipment services for the following reasons.

Ability to foreclose

(250) The merged entity is unlikely to gain the ability, post-Transaction, to engage in a tying or bundling strategy in the EEA or worldwide causing significant foreclosure of competitors. While the merged entity's share in retail on-board services would be high in the EEA ([60-70]%) and worldwide ([50-60]%), the Parties' combined share in the provision of in-flight equipment services is [30-40]% in the EEA and [20-30]% worldwide.[281]

(251) Although in-flight equipment services and retail on-board services share the same customer base (i.e. airlines), these customers usually do not purchase retail on-board services and equipment services together. In that respect, the procurement of in-flight equipment services and retail on-board services are generally handled by different departments within airlines by issuing tenders with very precise specifications, which do not leave room for bundling/tying strategies.[282] Therefore, should the merged entity insist on tying or bundling retail on-board services and equipment services, the merged entity's offer would in most cases be rejected from the tender process.

(252) Besides, the merged entity would not have the power to impose its in-flight equipment services on airlines, as the services provided are not "must have". Customers can and will continue to be able to easily find alternatives among the numerous in-flight equipment service providers because products, in particular amenities kits, are standardised.[283]

Incentive to foreclose

(253) The merged entity is unlikely to have the incentive to enter into bundling/tying strategies. The combined turnover achieved with in-flight equipment services in 2018 in the EEA by the Parties is lower than the turnover achieved by Gategroup in retail on-board services. Gategroup and LSG EU achieved a combined turnover of EUR […] in the EEA in 2018 through in-flight equipment services,[284] while Gategroup alone generated revenue of EUR […] through retail on-board services.[285] Therefore, the merged entity is unlikely to forego profits in the market for retail on-board services by entering into an anticompetitive tying/bundling strategy. In addition, equipment contracts are usually not long-term and rarely contain fixed volume commitments of airline customers.[286] The merged entity has thus no reason

281 Form CO as updated on 9 March 2020, paragraphs 323-324.

282 Replies of the Parties to the Commission's request for information 13 dated 21 March 2020, question 7.

283 Form CO as updated on 9 March 2020, paragraph 420.

284 Form CO as updated on 9 March 2020, paragraph 45 and 66. The combined worldwide turnover for equipment services in 2018 amounted to EUR […]. At a worldwide level, Gategroup achieved a turnover of EUR […] through retail on-board services.

285 Form CO as updated on 9 March 2020, paragraph 38.

286 Form CO as updated on 9 March 2020, paragraph 112.

to risk losing some of its retail on-board business by trying to link retail on-board services with in-flight equipment services.

Overall impact on competition

(254) The Commission considers that the Transaction is unlikely to have a negative overall impact on competition in the markets for retail on-board services and in-flight equipment services because of conglomerate effects, as any bundling or tying strategy is unlikely to reduce the ability and incentive to compete of suppliers active in each market in the EEA and worldwide. Customers will continue to have access to providers of both retail on-board services and in-flight equipment services on a standalone basis. In that respect, there are more than 50 competitors in the market for in-flight equipment services, including Formia, Kaelis and Global C.[287]

Conclusion

(255) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the conglomerate effects in the market for retail on-board services and in-flight equipment services in the EEA and worldwide.[288]

5.3.6. Retail on-board services and ready-made food products

(256) Retail on-board services and ready-made food products may be considered as neighbouring markets since they share the same customer base for the same end-use (i.e. the provision of passenger air transport services by airlines). The Transaction would create a link between the neighbouring markets for ready-made food products to the commercial foodservice sector where LSG EU and Gategroup are active in the EEA and the provision of retail-on-board services in the EEA where Gategroup is active.

(257) Gategroup's market share in the provision of retail on-board services in the EEA is [60-70]% (and [70-80]% on a potential market for snacking only and [40-50]% on a potential market for duty-free products only in the EEA) in 2018.[289] At the EEA level, as well as in the Member States where the Parties' activities overlap, the combined market share of both parties in the market for ready-made food products to the commercial foodservice sector is below 20 % in 2018.[290]

(258) The Transaction is unlikely to raise competition concerns with respect to the hypothetical conglomerate effects related to retail on-board services and ready-made food products to the commercial foodservice sector for the following reasons.

287 Form CO as updated on 9 March 2020, paragraph 327.

288 i.e. under the plausible narrower product markets for retail on-board services of snacking products and retail on-board services of duty-free products.

289 Form CO as updated on 9 March 2020, paragraph 348 and Replies of the Parties to the Commission's request for information 3 dated 25 February 2020, question 51.

290 Replies of the Parties to the Commission's questions to the parties 4 dated 4 February 2020, question 9.

Ability to foreclose

(259) Despite Gategroup's high share of [60-70]% in retail on-board services in the EEA, the merged entity is unlikely to gain the ability, post-Transaction, to engage in a strategy of tying or bundling its retail on-board services with ready-made food products to the commercial foodservice sector in the EEA causing significant foreclosure of competitors. As explained above, the combined market shares of the Parties post-Transaction in ready-made food products to the commercial foodservice sector would be below 20% under any geographic market definition. When an airline purchases both retail on-board services and ready-made food products, the airline usually nominates the supplier of ready-made products, which is then included in the retail on-board offering of the airline.[291] Consequently, the supplier of retail on-board services cannot impose itself as the supplier of ready-made food products on its customer.[292] Therefore, should the merged entity insist on tying or bundling retail on-board services and ready-made food products, the merged entity's offer would in most case be rejected from the tender process.

Incentive to foreclose

(260) The merged entity is unlikely to have the incentive to enter into bundling/tying strategies. The combined turnover achieved with ready-made food products to the commercial foodservice sector in 2018 in the EEA by the Parties is lower than the turnover achieved by Gategroup in retail on-board services. Gategroup and LSG EU achieved a combined turnover of EUR […] in the EEA in 2018 in ready-made food products to the commercial foodservice sector,[293] while Gategroup alone generated revenue of EUR […] through retail on-board services in the EEA in 2018.[294] Therefore, the merged entity is unlikely to forego profits in the market for retail on-board services by entering into an anticompetitive tying/bundling strategy. Besides, the Parties are in competition with branding-food product manufacturers, which are likely to be seen by airlines as viable alternative options.[295] The merged entity has no reason to risk losing some of its retail on-board business by trying to link retail on-board services with ready-made food products.

Overall impact on competition

(261) The Commission considers that the Transaction is unlikely to have a negative overall impact on competition in the markets for retail on-board services and ready-made food products to the commercial foodservice sector because of conglomerate effects, as any bundling or tying strategy is unlikely to reduce the ability and incentive to compete of suppliers active in each market in the EEA. Customers will continue to have access to providers of both retail on-board services and ready-made food products to the commercial foodservice sector on a standalone basis. Even if the customer did accept the tied or bundled products, the merged entity would still face competition of competitors with the same capacity to provide bundles such as Dnata.

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291 Replies of the Parties to the Commission's request for information 13 dated 21 March 2020, question 7.

292 Replies to Q1 – Questionnaire to Competitors, question 67; Q2 – Questionnaire to Customers, question 66.

293 Reply of the Parties to the Commission's request for information 18 dated 30 March 2020, question 2.

294 Form CO as updated on 9 March 2020, paragraph 38.

295 Replies of the Parties to the Commission's request for information 13 dated 21 March 2020, question 7.

Conclusion

(262) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the conglomerate effects in the market for retail on-board services and ready-made food products to the commercial foodservice sector in the EEA.[296]

5.4. Conclusion of the competitive assessment

(263) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal effects due to the creation or strengthening of a dominant position in the markets for in-flight catering services at Frankfurt, Munich, Cologne/Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.

(264) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to (i) the horizontal effects in the markets for in-flight catering services at Milan Malpensa and Amsterdam Schiphol airports, (ii) the horizontal effects in the markets for equipment services worldwide or in the EEA, (iii) the horizontal effects in the markets for lounge management services in the EEA and at Frankfurt airport, (iv) the vertical effects in the markets for in-flight catering services and passenger air transport at certain airports, (v) the conglomerate effects related to in-flight catering services and equipment services in the EEA and worldwide, (vi) the conglomerates effects related to in-flight catering services and ready-made food products to the commercial foodservice sector in the EEA, (vii) the conglomerate effects related to in-flight catering services and retail on-board services in the EEA and worldwide, (viii) the conglomerate effects related to retail on-board services and in-flight equipment services in the EEA and worldwide, (ix) the conglomerate effects related to retail on-board services and ready-made food products to the commercial foodservice sector in the EEA.

6. PROPOSED COMMITMENTS

(265) In order to render the concentration compatible with the internal market, the Notifying Party has modified the notified concentration by submitting a set of commitments under Article 6(2) of the Merger Regulation on 13 March 2020. The Notifying Party made some technical modifications on the text and schedules of the commitments on 16 March 2020 ("Initial Commitments"). The Commission market tested the Initial Commitments on 16 March 2020 in order to assess whether they are sufficient and suitable to remedy the serious doubts identified.

[296] i.e. under the plausible narrower product markets for retail on-board services of snacking products and retail on-board services of duty-free products and the plausible narrower product markets for frozen foods to the commercial foodservice sector, chilled foods to the commercial foodservice sector and fresh foods to the commercial foodservice sector.

(266) The Commission informed the Notifying Party of the results of the market test on 24 March 2020. Following the Commission's feedback on the market test and the assessment of the Initial Commitments, the Notifying Party submitted a revised set of commitments on 1 April 2020 and, following feedback from the Commission, amended on 2 April 2020 and further amended on 3 April 2020 (the "Final Commitments").

(267) These Final Commitments are annexed to this Decision and form an integral part thereof.

6.1. Framework for the assessment of Commitments

(268) Where a concentration raises serious doubts as regards its compatibility with the internal market, in particular as a result of the creation or strengthening of a dominant position, the Parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission.

(269) As set out in the Commission's Remedies Notice,[297] the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[298] It is for the parties to the concentration to put forward commitments.[299]

(270) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the Transaction is likely to significantly impede effective competition, including the position of the Parties and other participants on the market.[300]

(271) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[301] The requisite degree of certainty concerning the implementation of the proposed commitments may in particular be affected by risks in relation to the transfer of a business to be divested, including the risks of finding a suitable purchaser.[302] In the latter case, an up-front buyer will allow the Commission to conclude with the requisite degree of certainty that the commitments will be implemented.[303] The remedies in Phase I need to be so clear-cut that it is not necessary to enter into an in-depth investigation as to whether they are sufficient to rule out 'serious doubts' within the meaning of Article 6(1)(c) of the Merger Regulation.[304]

(272) Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite

297 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice") (OJ C 267, 22.10.2008, p. 1-27.), paragraph 5.
298 Remedies Notice, paragraphs 9 and 61.
299 Remedies Notice, paragraph 6.
300 Remedies Notice, paragraph 12.
301 Remedies Notice, paragraph 9.
302 Remedies Notice, paragraph 11.
303 Remedies Notice, paragraph 54.
304 Remedies Notice, paragraph 81.

standard. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.[305] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

(273) It is against this background that the Commission assessed the viability, the workability, the effectiveness and the ability of the proposed commitments to entirely eliminate the competition concerns identified.

6.2. Initial Commitments

(274) The Initial Commitments relating to the horizontal overlap at various airports consist of a set of five divestment packages: (1) Gategroup's German low cost carrier business ("German LLC Network Divestment Business"); (2) Gategroup's network carrier business at Frankfurt International Airport ('FRA') and Munich International Airport ('MUC') ("FRA/MUC Divestment Business"); (3) Gategroup's shareholding in the joint venture Newrest Servair Belgium SPRL ("Belgian Divestment Business"); (4) certain of LSG EU's in-flight catering business at Rome Fiumicino Airport ("Rome FCO Divestment Business") and (5) LSG EU's in-flight catering business at Paris Charles de Gaulle Airport ('CDG') ("Paris CDG Divestment Business").

6.2.1. Description of the Initial Commitments

6.2.1.1. German LLC Network Divestment Business

(275) The German LLC Network Divestment Business comprises Gategroup's in-flight catering network operations in Germany (excluding the FRA/MUC Divestment Business), including certain customer contracts with low-cost charter airlines for the provision of services at relevant airports, as well as certain related assets. The German LLC Network Divestment Business consists of two main multi-airport customer contracts ([customers]) and several smaller contracts ([customers]).

(a) [Details on agreements and revenue]

(b) [Details on agreements and revenue]

(c) [Details on agreements and revenue]

(d) [Details on agreements and revenue]

(e) [Details on agreements and revenue]

(f) [Details on agreements and revenue]

[305] Remedies Notice, paragraph 10.

(276) The German LCC Network Divestment Business further includes the following elements:

(a) Tangible assets: All tangible assets and equipment of the Divestment Business, including high loaders, unit equipment and customer-dedicated movable assets.

(b) Intangible assets: The license to continue using the brand "Gate Gourmet" for a transitional period.

(c) Contracts: Leases agreements for facilities currently leased by Gategroup in [airport locations].

(d) Personnel: All current employees of Gategroup in the affected locations, subject to consent of employees pursuant to applicable labour laws.

6.2.1.2. FRA/MUC Divestment Business

(277) The FRA/MUC Divestment Business comprises Gategroup's customer contracts at Frankfurt International Airport ('FRA') and Munich International Airport ('MUC'), including, where applicable and at the option of the Purchaser, corresponding customer-dedicated (movable) assets.

(278) The customer contracts in the FRA/MUC Divestment Business are focused on the provision of in-flight catering services to (legacy) airlines at or from FRA and MUC. Overall, the FRA/MUC Divestment Business comprises 16 contracts with 10 airlines ([customers]) for in-flight catering services representing a revenue of EUR […] per year ([revenue per customer]).

(279) The FRA/MUC Divestment Business further includes the following elements:

(a) Tangible assets: All tangible assets and equipment of the Divestment Business, including high loaders, unit equipment and customer-dedicated movable assets.

(b) Intangible assets: The license to continue using the brand "Gate Gourmet" for a transitional period.

(c) Contracts: At the option of the purchaser, the lease agreement for a facility currently leased by Gategroup near [airport location].

(d) Personnel: Transferred alongside the needs of the Purchaser and subject to the consent of employees pursuant to applicable labour laws.

6.2.1.3. Belgian Divestment Business

(280) The Belgian Divestment Business comprises Gategroup's […]% shareholding in the joint venture Newrest Servair Belgium SPRL. The joint venture is operating an in-flight catering business in Belgium and is one of the two holders of a license to operate at Brussels Airport ('BRU').

6.2.1.4. Rome FCO Divestment Business

(281) The Rome FCO Divestment Business comprises certain of LSG EU's customer contracts at Rome Fiumicino Airport ('FCO'). Overall, the FCO Divestment Business comprises 7 contracts with 7 airlines ([customers]) for in-flight catering services representing a revenue of EUR […] per year ([revenue per customer]).

(282) The Rome FCO Divestment Business further includes the following elements:

(a) Tangible assets: At the option of the purchaser, certain customer-dedicated assets.

(b) Intangible assets: [description of intangible assets].

6.2.1.5. Paris CDG Divestment Business

(283) The Paris CDG Divestment Business comprises LSG EU's in-flight catering customer contract with [customer] at Paris Charles de Gaulle Airport ('CDG'), representing a revenue of EUR […] per year.

(284) The Paris CDG Divestment Business further includes the following elements:

(a) Tangible assets: At the option of the purchaser, certain customer-dedicated assets.

(b) Intangible assets: [description of intangible assets].

6.2.2. Commission's assessment of the Initial Commitments

(285) The Commission launched a market test of the Initial Commitments on 16 March 2020, which was addressed to competitors and customers.

Elimination of the serious doubts as to the compatibility of the Transaction with the internal market

(286) The Commission considers that the Initial Commitments remove the serious doubts identified in the market for in-flight catering services at Brussels airport. However, the Initial Commitments do not fully address the serious doubts as to the compatibility of the Transaction with the internal market in relation to the horizontal effects on the markets for in-flight catering services at Frankfurt, Munich, Cologne/Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.

(287) In particular, while the Initial Commitments fully remove the overlap in Frankfurt, Munich, Cologne-Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels and Paris Charles de Gaulle airports, this is not the case in Rome Fiumicino airport. In fact, for Rome Fiumicino, the Initial Commitments are well below the market share increment brought about by the Transaction, based on projected 2020 figures, and no infrastructure, assets and personnel required by any newcomer to this airport is included. While the proposed FCO Divestment Business is equivalent to the volume achieved by Dnata (the Parties' competitor at Rome Fiumicino), in the

absence of assets and personnel that would facilitate the entry of a competitor in FCO, the Commission considers it unlikely that the Initial Commitments would fully remove the competition concern created by the elimination of a significant competitor in Rome Fiumicino in a clear-cut manner.

(288) The market test confirmed the Commission's assessment. Indeed, the feedback of the market test was inconclusive as to the elimination of competition concerns by the Initial Commitments.[306] More specifically, while the majority of competitors indicated that the proposed commitments would remove the identified competition concerns related to the horizontal overlaps in the supply of in-flight catering services at Frankfurt, Munich, Cologne-Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports, customers gave mixed replies. In that regard, an airline indicated that "*the proposed remedies will remove any potential competition concerns raised by this Transaction at the airports in which we operate*" while another one considers that "*[e]ven if Gategroup (GG) were to spin off certain less profitable businesses like GG FRA, MUC, LSG TXL, CDG, and FCO, it would not necessarily mitigate the competitive harm. Absent more information about the potential purchaser or purchasers, it is not clear whether the alternatives would be viable*."[307]

(289) In view of the above considerations and the result of the market test, the Commission concludes that the Initial Commitments are insufficient to fully remove the serious doubts as to the compatibility of the Transaction with the internal market and the EEA Agreement.

Purchaser criteria

(290) The Commission considers that the purchaser criteria set out in the Initial Commitments are generally suitable to identify an appropriate purchaser of the different Divestment Businesses.

(291) This assessment was confirmed by the market test. The majority of market test respondents consider that the purchaser criteria are appropriate to identify a suitable purchaser of the various Divestment Businesses.[308] Nevertheless, several respondents indicated that experience in catering long-haul flights would be an advantage.[309]

(292) In view of the above considerations and the results of the market test, the Commission considers that the Purchaser criteria could generally be suitable to identify an appropriate purchaser of the different Divestment Businesses.

Viability and competitiveness of the Initial Commitments

[306] Replies to R1 – Market test - Questionnaire to Competitors, question 1; R2 – Market test – Questionnaire to Customers, question 1.

[307] Replies of two customers to R2 – Market test – Questionnaire to Customers, question 1.1.

[308] Replies to R1 – Market test - Questionnaire to Competitors, questions 26, 54, 73, 84; R2 – Market test – Questionnaire to Customers, questions 26, 53, 72, 83.

[309] Replies to Replies to R1 – Market test - Questionnaire to Competitors, questions 29, 32, 57, 76, 86; R2 – Market test – Questionnaire to Customers, questions 29, 33, 56, 75, and 85.

(293) On the one hand, the Commission considers that the Belgian Divestment Business is viable. In addition, the CDG Divestment Business is viable, in particular for an existing player since the small volume of the overlap business is unlikely to be attractive for a new entrant.

(294) On the other hand, the Commission considers that the Initial Commitments show some shortcomings, which could negatively impact the viability and the competitiveness of the other Divestment Businesses.

(295) More specifically, the Commission notes that the German LCC Network Divestment Business and the FCO Divestment Business do not constitute stand-alone businesses.

(296) Generally, the Commission considers that the lack of inclusion of assets and key personnel in the German LCC Network Divestment Business, the FRA/MUC Divestment Business and the FCO Divestment Business could entail risks for the timely access to the markets of the purchaser(s).

(297) The German LCC Network Divestment Business might also be too dependent on […] ([customers]) whose future is uncertain at this stage. Therefore, and in line with the replies of some respondents (see paragraph (300) below) the Commission considers that it would be beneficial to give a preference to a single purchaser of the two German divestment businesses, namely the German LCC Network Divestment Business and the FRA/MUC Divestment Business.

(298) The FCO Divestment Business may not be viable for a new entrant given the lack of certain assets and personnel (e.g. facility with kitchen, trucks, and key personnel).

(299) While all the respondents to the market test having expressed a view consider that the Belgian Divestment Business is viable,[310] the results of the market test concerning the viability and competitiveness of the other Divestment Businesses are inconclusive.

(300) Some respondents indicated that the sale of the German LCC Network Divestment Business and the FRA/MUC Divestment Business to one single purchaser would make the German Divestment Businesses more viable.[311] For example, a customer stated, "*Only one purchaser for both businesses will reach a sufficient size to remain a viable alternative in Germany as airlines (at least)*".[312] Correspondingly, respondents stated that the viability of both the LCC Network Divestment Business and the FRA/MUC Divestment Business would be diminished if sold separately due to synergies and scale effects lost[313] and that "*At least a minimum of competitiveness could be achieved*", if both businesses were sold to the same purchaser.[314] Moreover, a customer expressed the view that all tangible assets should be transferred to make

[310] Replies to R1 – Market test - Questionnaire to Competitors, question 83; R2 – Market test – Questionnaire to Customers, question 82.

[311] Replies to R1 – Market test - Questionnaire to Competitors, question 7.1; R2 – Market test – Questionnaire to Customers, question 1.2 and 2.1.

[312] Replies to R1 – Market test - Questionnaire to Competitors, question 2.1; R2 – Market test – Questionnaire to Customers, question 2.1.

[312] Reply of a customer to R2 – Market test – Questionnaire to Customers, question 2.1.

[313] Reply of a competitor to R1 – Market test - Questionnaire to Competitors, question 9.1; Replies of customers to R2 – Market test – Questionnaire to Customers, questions 8 and 9.

[314] Replies of customers to R2 – Market test – Questionnaire to Customers, questions 6 and 7.

the German LCC Network Divestment Business viable[315] and that any purchaser should have the option to also take over all or at least key employees of these businesses.[316] Furthermore, competitors also pointed to the need to transfer the premises in Berlin and Hamburg[317] as well as to the difficulties in finding suitable facilities in Frankfurt or Munich.[318]

(301) Market participants also gave mixed replies as to the viability of the CDG Divestment Business[319] and the FCO Divestment Business.[320]

(302) With respect to the FCO Divestment Business, a competitor stated, "*yes the contracts are a viable business*"[321] while a customer indicated, "*The size of the business is quite small. Would require integration with alternative catering company that is already present at FCO*".[322] One customer stated that any "*External company without prior operation at FCo [sic] would need catering facilities, trucks, licences etc to operate and transfer the agreements*"[323] while another stated that the transfer of a kitchen would "*almost certainly be necessary to replicate the level of service that LSG and Gategroup can currently provide to airline customers*".[324] Moreover, several competitors pointed to the need or additional benefit of transferring a catering unit, one competitor calling these units "vital" to the viability of the divestment.[325] In addition, multiple customers stated that a transfer of personnel would be needed as well, in particular key personnel such as culinary chefs or those in charge of planning.[326]

(303) With respect to the CDG Divestment Business, while competitors do not further substantiate their replies, a customer indicated, "*The divestiture does not seem sufficient to provide a competitive alternative*".[327] Another customer stated that the CDG Divestment Business "*Would require integration to established other catering operation at CDG*".[328] Several customers have expressed the view that the contract divested would be too small to allow for a new entrant to establish a catering business at CDG.[329] In addition, because no catering unit is offered in the divestment, a customer stated that "*purchaser should also already have a unit at CDG*".[330]

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315 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 15.
316 Replies of customers to R2 – Market test – Questionnaire to Customers, question 18.1.
317 Reply of a competitor to R1 – Market test - Questionnaire to Competitors, question 14.
318 Reply of a competitor to R1 – Market test - Questionnaire to Competitors, question 42.1.
319 Replies to R1 – Market test - Questionnaire to Competitors, question 64; R2 – Market test – Questionnaire to Customers, question 63.
320 Replies to R1 – Market test - Questionnaire to Competitors, question 45; R2 – Market test – Questionnaire to Customers, question 44.
321 Reply of a competitor to R1 – Market test - Questionnaire to Competitors, question 45.1.
322 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 44.1.
323 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 48.
324 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 49.
325 Replies of competitors to R1 – Market test – Questionnaire to Competitors, questions 47.1. and 49.
326 Replies of customers to R2 – Market test – Questionnaire to Customers, question 52.
327 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 63.1.
328 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 63.1.
329 Replies of customers to R2 – Market test – Questionnaire to Customers, questions 63.1, 65.1, 67 and 74.1.
330 Reply of a customer to R2 – Market test – Questionnaire to Customers, question 76.1.

(304) In view of the above considerations and the results of the market test, the Commission considered that improvements were required in order to make the German LCC Network Divestment Business, the FRA/MUC Divestment Business, the CDG Divestment Business and the Rome FCO Divestment Business viable and competitive.

Interest of competitors in the Divestment Businesses

(305) The Commission notes that the market test allowed to identify some interest from competitors in four of the Divestment Businesses, namely the German LCC Network Divestment Business, the FRA/MUC Divestment Business, the Belgian Divestment Business and the Rome FCO Divestment Business. However, no interest was shown for the Paris CDG Divestment Business.

Conclusion and identified areas for improvement

(306) In view of the above, the Commissions considered that the Initial Commitments could in principle be suitable to address the competition concerns identified by the Commission in relation to the horizontal effects in the markets for in-flight catering services at Frankfurt, Munich, Cologne/Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports, provided however that they would be improved along the lines suggested below, since the Commission considered that the Initial Commitments showed certain shortcomings, which could negatively impact the viability and competitiveness of the Divestment Businesses.

(307) With respect to the different Divestment Businesses, areas for improvement were identified as follows:

– For the German LCC Network Divestment Business, the FRA/MUC Divestment Business and the FCO Divestment Business: inclusion of an option to transfer assets and personnel (including the personnel in charge of the planning and dispatching, and, as far as they are currently part of the respective Divestment Businesses, in charge of account management and culinary development) upon the request of the purchaser.

– For the German Divestment Businesses: inclusion of a clause giving a preference to purchasers of the entire German Divestment Businesses (i.e. the German LCC Network Divestment Business and the FRA/MUC Divestment Business).

– For the Proposed Commitments as a whole: inclusion of an upfront buyer requirement to limit the significant risks that the commitments would not be effectively implemented,[331] in particular […].

(308) The Commission informed the Notifying Party of the results of the market test on 24 March 2020. Following the Commission's feedback on the market test and the

[331] See paragraph (271).

assessment of the Initial Commitments, the Notifying Party submitted a revised set of commitments on 1 April 2020, which were amended on 2 April 2020, and further amended on 3 April 2020 (the "Final Commitments").

6.3. Final Commitments

6.3.1. Description of the Final Commitments

(309) The Final Commitments essentially follow the structure of the Initial Commitments. The Notifying Party made improvements to address the shortcomings identified during the market test. Specifically, the Final Commitments submitted by the Notifying Party provide for the following additional improvements compared to the Initial Commitments.

(310) Regarding the FRA/MUC Divestment Business:

(a) Certain related assets necessary to the customer contracts in FRA and MUC at the option of the Purchaser are included.[332]

(b) The transfer of the employees at the option of the Purchaser is provided.[333]

(c) The necessary tangible assets at MUC at the option of the Purchaser would be included. By way of example, the Parties state that this could include the necessary infrastructure for the operation of the Divestment Business.[334]

(d) An offer by Gategroup to support the Purchaser to obtain the necessary infrastructure at MUC is included.[335]

(311) Regarding the Rome FCO Divestment Business:

(a) Where applicable, certain related necessary assets at the option of the Purchaser would be included.[336]

(b) The necessary employees at the option of the Purchaser would be included.[337]

(c) An offer by Gategroup to reasonably support the Purchaser to enable the Purchaser to establish and effectively run the business is included.[338]

(312) The Final Commitments further include a clause giving a preference to Purchasers of the entire German Divestment Businesses (i.e. the German LCC Network Divestment Business and the FRA/MUC Divestment Business). [339]

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[332] Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 6b and Schedule B, paragraph 1.

[333] Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 6b and Schedule B, paragraphs 4 and 16.

[334] Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 6b and Schedule B, paragraph 13.

[335] Form RM, as updated on 02 April 2020, Annex I – Commitments, Schedule B, paragraph 13.

[336] Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 6d and Schedule C, paragraphs 1 and 6.

[337] Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 6d and Schedule C, paragraph 11.

[338] Form RM, as updated on 02 April 2020, Annex I – Commitments, Schedule C, paragraph 14.

(313) The Final Commitments also include an upfront buyer requirement, meaning that the Transaction shall not be implemented before Gategroup or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Businesses and the Commission has approved the Purchaser(s) and the terms of sale.[340]

(314) The full description of the assets and obligations of the Final Commitments is contained in the Schedules and Annexes thereof.

6.3.2. Assessment of the Final Commitments

(315) The Commission considers that the Final Commitments effectively address the specific shortcomings of the Initial Commitments.

(316) In particular, the inclusion of an upfront buyer requirement limits the risks that the Final Commitments would not be effectively implemented,[341] in particular in relation to […].

(317) With respect to the Commission's concerns about the viability and competitiveness of the German divestment businesses (i.e. the FRA/MUC Divestment Business and the German LCC Network Divestment Business), the Commission notes that the Notifying Party included a clause that gives a preference to a single purchaser of both German divestment businesses. The Notifying Party also included in the FRA/MUC Divestment Business the option to transfer assets and personnel upon the purchaser's request in order to enhance the viability of the divestment business.

(318) The Commission notes that the Notifying Party did not include the option to transfer facilities at Cologne, Hamburg, Berlin Tegel and Berlin Leipzig, while the necessity to transfer of a facility in Hamburg and Berlin Tegel was mentioned by a competitor responding to the market test. Nevertheless, the Commission notes that these airports could potentially be served remotely from Hannover airport, where the Notifying Party offers to transfer a lease for a facility, or Berlin Schönefeld airport. The Commission therefore considers that the improvements included in the Final Commitments address the Commission's concerns as to the viability and competitiveness of the German LCC Network Divestment Business and the FRA/MUC Divestment Business.

(319) With respect to the FCO Divestment Business, additional assets and personnel needed for the operation of the business are included at the option of the purchaser. The Commission's concerns about the ability of the purchaser to have adequate resources to operate the FCO Divestment Business in a timely and viable manner are therefore addressed by the Final Commitments. The purchaser could be a new entrant with a size that is equivalent to the merged entity's competitor Dnata. Therefore, the FCO Divestment Business would remove the competition concerns related to the elimination of an important competitive constraint because of the Transaction.

339 Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 7.

340 Form RM, as updated on 02 April 2020, Annex I – Commitments, paragraph 3.

341 See paragraph (271).

(320) With regard to CDG Divestment Business, the inclusion of an upfront buyer clause mitigates the risks related to […].

(321) The Belgian Divestment Business would fully remove the overlap that would have been brought about by the Transaction. Therefore, the Belgian Divestment Business is sufficient to fully eliminate the serious doubts as to the compatibility of the Transaction with the internal market related to the horizontal effects on the market for in-flight catering services at Brussels airport.

(322) More generally, the inclusion of an upfront buyer requirement mitigates the risks related to […].

(323) Therefore, in view of the above considerations, the Commission considers that the Final Commitments address the Commission's concerns about the effectiveness, viability and competitiveness of the Divestment Businesses.

6.4. Conclusion on the Final Commitments

(324) For the reasons outlined above, the Final Commitments offered by the Notifying Party are sufficient to fully eliminate the serious doubts as to the compatibility of the Transaction with the internal market related to the horizontal effects in the markets for in-flight catering services at Frankfurt, Munich, Cologne/Bonn, Dusseldorf, Hamburg, Hannover, Berlin Tegel, Brussels, Paris Charles de Gaulle and Rome Fiumicino airports and in the broader geographic areas encompassing (i) Frankfurt, Dusseldorf and Cologne-Bonn airports, (ii) Hamburg and Hannover airports, and (iii) Berlin Tegel, Berlin Schönefeld and Leipzig airports.

7. CONDITIONS AND OBLIGATIONS

(325) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(326) The fulfilment of the measures that give rise to the structural change of the market is a condition, whereas the implementing steps that are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Article 14(2) and 15(1) of the Merger Regulation.

(327) In accordance with the basic distinction between conditions and obligations described in the preceding paragraph, the commitments in section B of the Final Commitments as well as in Schedules A to D and their annexes constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments in the Final Commitments constitute obligations, as they concern the implementing steps which

are necessary to achieve the modifications sought in a manner compatible with the internal market and the functioning of the EEA Agreement.

8. CONCLUSION

(328) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the Final Commitments as well as in Schedules A to D and their annexes annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Case M.9546 – GATEGROUP/LSG EUROPEAN BUSINESS

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), gategroup Holding AG (the "***Notifying Party***") hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of the European business of LSG Lufthansa Services Holding AG (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses.

Belgian Divestment Business: as defined in paragraph 6(c).

CDG Divestment Business: as defined in paragraph 6(e).

Closing: the transfer of the legal title to the Divestment Businesses to the Purchaser(s). For the avoidance of doubt, Closing of the Belgian Divestment Business, the FCO Divestment Business, the FRA/MUC Divestment Business and the German LCC Network Divestment Business could occur on different dates.

Closing Period: the period of […] following the approval of the Purchaser and the terms of sale by the Commission. Should this period expire prior to the end of the First Divestiture Period, the closing Period will be extended to no longer than […] after the end of the First Divestiture Period.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Businesses: the Belgian Divestment Business, the CDG Divestment Business, the FCO Divestment Business and the German Divestment Businesses.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by gategroup and who has/have received from gategroup the exclusive Trustee Mandate to sell the Divestment Businesses to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

FCO Divestment Business: as defined in paragraph 6(d).

FRA/MUC Divestment Business: as defined in paragraph 6(b).

gategroup: gategroup Holding AG, incorporated under the laws of Switzerland, with its registered office at Sägereistrasse 20, 8152 Glattbrugg, Switzerland and registered with the Commercial Register of the Canton of Zurich under number CH-114.132.915.

German Divestment Businesses: the FRA/MUC Divestment Business and the German LCC Network Divestment Business.

German LCC Network Divestment Business: as defined in paragraph 6(a).

Hold Separate Manager: the person appointed by gategroup for the Divestment Businesses to manage the day to day business under the supervision of the Monitoring Trustee.

LCC: means low-cost and charter carriers.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by gategroup and who has/have the duty to monitor gategroup's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: the personnel of the German and FCO Divestment Businesses as set out in the Schedules, including the personnel in charge of the planning and dispatching, and, as far as they are currently part of the respective divestment business, in charge of account management and culinary development. (if any, as the case may be).

Purchaser(s): the entity(ies) approved by the Commission as acquirer(s) of the Divestment Businesses in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 20 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

Schedules: the schedules to these Commitments describing more in detail the German Divestment Businesses, the CDG Divestment Business and the FCO Divestment Business.

Transitional Support Arrangements: the necessary transitional support services to be agreed between the Notifying Party and the Purchaser(s) and to be supplied to the Purchaser(s) as more fully described in the Schedules.

Transitional Support Period: a period to be agreed between the Notifying Party and the Purchaser(s), beginning on Closing and not to exceed (without the Commission's prior approval) […] during which gategroup shall supply to the Purchaser(s) the Transitional Support Arrangements.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Businesses

Commitment to divest

2. In order to maintain effective competition, gategroup commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a running business to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 21 of these Commitments. To carry out the divestiture, gategroup commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the

Divestment Businesses within the First Divestiture Period. If gategroup has not entered into such an agreement at the end of the First Divestiture Period, gategroup shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 33 in the Trustee Divestiture Period.

3. The Concentration shall not be implemented before gategroup or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Businesses and the Commission has approved the purchaser(s) and the terms of sale in accordance with paragraph 21.

4. gategroup shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, gategroup or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 21; and

   (b) the Closing of the sale of the Divestment Businesses to the Purchaser takes place within the Closing Period.

5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 47 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Businesses

6. The Divestment Businesses consist of:

   Germany

   (a) gategroup's in-flight catering network operations in Germany, including certain customer contracts with low-cost and charter airlines for the provision of services at relevant airports, as well as certain related assets and employees, (the "**German LCC Network Divestment Business**" as described in more details in Schedule A);

   (b) gategroup's customer contracts at Frankfurt International Airport ("FRA") and Munich International Airport ("MUC"), including, where applicable and at the option of the

Purchaser, certain related assets (that, by way of example, could also include the necessary infrastructure for the operation of the divested business) and employees (the "**FRA/MUC Divestment Business**" as described in more details in Schedule B);

Belgium

(c) gategroup's […]% shareholding in Newrest Servair Belgium SPRL operating an in-flight catering business in Belgium (the "**Belgian Divestment Business**");

Italy

(d) certain LSG EU's customer contracts at Rome Fiumicino Airport ("FCO") including, where applicable and at the option of the Purchaser, certain related assets and employees (the "**FCO Divestment Business**" as described in more details in Schedule C);

France

(e) LSG EU's in-flight catering customer account at Paris Charles de Gaulle ("CDG") (the "**CDG Divestment Business**", as described in more details in Schedule D).

7. The Divestment Businesses may be divested to more than one Purchaser. Regarding the German Divestment Businesses, preference is given to one purchaser instead of two purchasers.

8. The divestiture of the Divestment Businesses will proceed by way of one or more asset divestiture transactions, including transfer, sale, assignment as the case may be and in so far as legally permissible. The Divestment Businesses include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

(a) all leases of the units transferred to the German Divestment Businesses;

(b) all tangible and intangible assets attached to the Divestment Businesses (tangible assets consisting of (i) equipment included in the respective units transferred to the Divestment Businesses or (ii) customer-dedicated moveable assets);

(c) the transfer of all customer contracts of the CDG Divestment Business, German Divestment Businesses and the FCO Divestment Business; and

(d) if any, the Personnel, subject to applicable employment laws.

9. In addition and at the option of the Purchaser, the Divestment Businesses includes the benefit, for a transitional period of up to […] after Closing and at variable cost, of all current arrangements under which gategroup, LSG EU or their Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular gategroup undertakes:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all relevant Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to gategroup's remaining business, unless such Personnel has objected to its transfer to the Purchaser pursuant to applicable employment laws. Where, nevertheless, individual members of the relevant Personnel exceptionally leave the Divestment Businesses, gategroup shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. gategroup must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the relevant Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

11. gategroup commit(s), from the Effective Date until Closing, to procure that the Divestment Businesses are kept separate from the business(es) it will be retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es)

retained by gategroup have no involvement in the Divestment Businesses; (ii) the Personnel of the Divestment Businesses have no involvement in any business retained by gategroup and do not report to any individual outside the Divestment Businesses.

12. Until Closing, gategroup shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the business which gategroup is retaining. Immediately after the adoption of the Decision, gategroup shall appoint a Hold Separate Manager. The Hold Separate Manager, which shall be part of the Personnel, shall manage the Divestment Businesses independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the business retained by gategroup. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(c) of these Commitments. The Commission may, after having heard gategroup, require gategroup to replace the Hold Separate Manager.

13. To ensure that the Belgian Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise gategroup's rights as shareholder in the legal entity or entities that constitute the Belgian Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling gategroup*'s* obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of gategroup. Upon request of the Monitoring Trustee, gategroup shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

14. gategroup shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by gategroup before the Effective Date will be eliminated and not be used by gategroup. This includes measures vis-à-vis gategroup's appointees on the supervisory board and/or board of directors of the Divestment Businesses. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. gategroup may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to gategroup is required by law.

Non-solicitation clause

15. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Businesses for a period of […] after Closing.

16. The Parties undertake not to solicit, and to procure that Affiliated Undertakings do not solicit, customers of the Divestment Businesses for the respective durations of the current customer contracts (possibly extended) with the Divestment Businesses. For the avoidance of doubt, this non-solicitation clause restricts the Parties from engaging with such customers for the sale of in-flight catering services, and the Parties are obligated to refuse to supply the customers in case the customers contact the Parties directly.

Due diligence

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, gategroup shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Businesses;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

18. gategroup shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). gategroup shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Businesses to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

19. gategroup shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

20. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Notifying Party/Notifying Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors;

(c) The acquisition of the Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

21. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When gategroup has reached a final agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. gategroup must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. <u>Appointment procedure</u>

22. gategroup shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party/Notifying Parties commit(s) not to close the Concentration before the appointment of a Monitoring Trustee.

23. If gategroup has not entered into a binding sale and purchase agreement regarding the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by gategroup at that time or thereafter, gategroup shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

24. The Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party/Notifying Parties and its/their Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

25. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by gategroup

26. No later than two weeks after the Effective Date, gategroup shall submit the name or names of one or more natural or legal persons whom gategroup proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, gategroup shall submit a list of one or more persons whom gategroup proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 24 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

27. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, gategroup shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, gategroup shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission’s approval, in accordance with the mandate approved by the Commission.

New proposal by the gategroup

28. If all the proposed Trustees are rejected, gategroup shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 22 and 27 of these Commitments.

Trustee nominated by the Commission

29. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom gategroup shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

30. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or gategroup, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

31. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by gategroup with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 11 and 12 of these Commitments;

(b) supervise the management of the Divestment Businesses as saleable businesses, in accordance with paragraph 12 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that gategroup does not after the Effective Date obtain more Confidential Information relating to the Divestment Businesses,

- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,

- make sure that any Confidential Information relating to the Divestment Businesses obtained by gategroup before the Effective Date is eliminated and will not be used by gategroup and

- decide whether such information may be disclosed to or kept by gategroup as the disclosure is reasonably necessary to allow gategroup to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and gategroup or Affiliated Undertakings;

(iii) propose to gategroup such measures as the Monitoring Trustee considers necessary to ensure gategroup's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending gategroup a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending gategroup a non-confidential copy at the same time, if it concludes on reasonable grounds that gategroup is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 21 of these Commitments, submit to the Commission, sending gategroup a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Businesses after the Sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

32. If the Monitoring and Divestiture Trustee are not the same [legal or natural] persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

33. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 20 and 21 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of gategroup, subject to the Notifying Party/Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

34. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party/Notifying Parties.

III. Duties and obligations of the Parties

35. gategroup shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of gategroup's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and of gategroup and the Divestment Businesses shall provide the Trustee upon request with copies of any document. gategroup and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

36. gategroup shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. gategroup shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. gategroup shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

37. gategroup shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, gategroup shall cause the documents required for effecting the sale and the Closing to be duly executed.

38. gategroup shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to gategroup for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

39. At the expense of gategroup, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to gategroup's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should gategroup refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard gategroup. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 38 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served gategroup during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

40. gategroup agrees that the Commission may share Confidential Information proprietary to gategroup with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

41. The Notifying Party/Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

42. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

43. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and gategroup, require gategroup to replace the Trustee; or

(b) gategroup may, with the prior approval of the Commission, replace the Trustee.

44. If the Trustee is removed according to paragraph 43 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 22-29 of these Commitments.

45. Unless removed according to paragraph 43 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

46. The Commission may extend the time periods foreseen in the Commitments in response to a request from gategroup or, in appropriate cases, on its own initiative. Where gategroup requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall gategroup be entitled to request an extension within the last month of any period.

47. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

48. The Commitments shall take effect upon the date of adoption of the Decision.

……………………………………

[…] duly authorised for and on behalf of
gategroup Holding AG

SCHEDULE A
GERMAN LCC NETWORK DIVESTMENT BUSINESS

1. The Divestment Business as operated to date has the following legal and functional structure:

(1) The German LCC Network Divestment Business (hereafter in this Schedule A, the "**Divestment Business**") consists of gategroup's in-flight catering network operations in Germany, including certain customer contracts with low-cost and charter airlines for the provision of services at relevant airports, as well as certain related assets and employees.

(2) The main activity of the Divestment Business is the provision of in-flight catering and related services to [customer] and [customer] at German airports where they have departing flights.

(3) The constituent parts of the Divestment Business are currently mainly held, directly or indirectly, by Gate Gourmet Deutschland GmbH and comprise all essential assets which are necessary to ensure its viability and competitiveness, as set forth below. The Divestment Business will be carved out by way of pre-closing reorganisation or transferred to the Purchaser by way of an asset deal.

Functional organisation

(4) Day-to-day operations of the Divestment Business are currently conducted by dedicated employees at the various locations that have their own leadership teams. This represents a total of […] FTEs, staffed as follows:

- [breakdown by airport location]
- [breakdown by airport location]
- [breakdown by airport location]
- [breakdown by airport location]

(5) The staffing for each unit depends on the type of activities that are conducted, namely food production, warehousing, etc.

(6) The transfer of all these employees will be offered by gategroup, subject to the consent of the employees concerned pursuant to applicable labour laws. If the respective employee does not consent, gategroup considers that the Purchaser can easily recruit adequate personnel for each function.

(7) Certain functions (and in particular administrative functions such as HR, Finance/Accounting, etc.) are performed by employees of the regional or country head offices of gategroup having responsibilities and competences for other businesses. gategroup does not consider these employees to be needed for the Divestment

Business to be successful and is of the view that the relevant functions could be taken over by the Purchaser's own organisation.

(8) Supply is also organised at regional or national level: gategroup purchases raw materials essential to the operation of its business principally through regional and national food distributors in each of the geographical regions it operates. Because of the relatively short storage life of food inventories, especially perishables, customers' requirements for freshness, a minimum amount of inventory is maintained at any given time.

(9) Generally, gategroup is not substantially dependent on one supplier and could obtain comparably priced alternative products or services from other suppliers should a supply contract be terminated or not be renewed. This is reinforced by the fact that an important part of the total raw materials and other supply purchases (approx. […]% for Germany in 2018) corresponds to customer-nominated products.

(10) Organisational charts depicting the current functional structure of the Divestment Business are attached as ***gategroup Confidential Annex 1***.

<u>Customer descriptions</u>

(11) The Divestment Business' operations are focused on the provision of in-flight catering and related services (mainly) to low-cost and charter airlines in Germany.

(12) The main customer contracts of the Divestment Business are network contracts with [customer] and [customer] relating to in-flight catering services at German airports where the two airlines operate.

(13) The most important provisions of these two contracts are as follows:

a) [customer]:

- **Scope:** The contract concerns the provision of services for [customer] flights at the following airports: […].
- **Revenue: […]**
- **Term:** The contract started on […] expires on […].
- **Change of control:** The contract is [contract details].

b) [customer]:

- **Scope:** The contract concerns the provision of services for flights at the following airports: […].
- **Revenue:[…]**

- **Term:** The contract started on […] and expires on […].
- **Change of control:** The contract is [contract details].

(14) A complete list of all customer contracts of the Divestment Business, is included in ***gategroup Confidential Annex 2***.

2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

(15) All tangible assets and equipment of the Divestment Business, including high loaders, unit equipment, customer-dedicated moveable assets etc.

(16) An overview of all assets that will be transferred with the Divestment Business per location is contained in ***gategroup Confidential Annex 3***.

(17) A list of high-loaders is submitted as ***gategroup Confidential Annex 4.***

(b) the following main intangible assets:

- the licence to continue using the brand "Gate Gourmet" for such time as required to complete the transition to the Purchaser's brand ([…]);

(c) the following main licences, permits and authorisations:

- Not applicable;

(d) the following main contracts, agreements, leases, commitments and understandings:

- **(Sub-)Lease contracts:**

(18) The Divestment Business leases facilities comprising:

- […].
- […].
- […].
- […].
- […].

- **Supply contracts with third parties**

(19) Not applicable.

(e) all customer, credit and other records;

(20) A list of the customer contracts of the Divestment Business is included in ***gategroup Confidential Annex 2***.

(f) the following Personnel:

(21) All current employees of the German Network Divestment Business are set out in ***gategroup Confidential Annex 5***. This, however, will be determined alongside the needs of the Purchaser and is subject to the consent of employees under applicable labour laws.

(g) the arrangements for the supply with the following products and services by gategroup or Affiliated Undertakings:

(22) Transition services arrangements will be offered [pricing formula] at the option of the Purchaser, to use for a transitional period of up to […] after Closing in order to facilitate a smooth transfer of the Divestment Business.

(23) At the option of the Purchaser, this will include an arrangement for the provision of food items at fair market value as required to serve airlines in accordance with the transferred customer contracts.

3. The Divestment Business shall not include:

(a) The Divestment Business does not include the following customer contracts:

- Contracts for the provision of in-flight catering services that are transferred as part of the FRA/MUC Divestment Business;
- Contract for the provision of in-flight catering services to [customer] at HAM;
- Contract for the provision of in-flight catering to seasonal flights of [customer] and [customer] in Berlin.

(b) The Divestment Business does not own any real estate.

(c) The Divestment Business does not include leases for facilities at CGN, HAM, TXL and LEJ (these can be served for instance remotely).

(d) The Divestment Business does not include any agreement with suppliers.

(e) The Divestment Business does not include the following employees:

(24) Any employee at locations where no unit is transferred.

(25) Other employees to be excluded once the Purchaser determines what employees will be needed with the Divestment Business.

4. If there is any asset or personnel which is not covered by paragraphs 2 or 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

ANNEXES

- **gategroup Confidential Annex 1:** Organizational charts

[…]

- **gategroup Confidential Annex 2:** List of customer contracts

[…]

- **gategroup Confidential Annex 3:** Overview of assets per location

[…]

- **gategroup Confidential Annex 4:** List of high loaders

[…]

- **gategroup Confidential Annex 5:** List of employees (anonymised)

[…]

SCHEDULE B
FRA-MUC DIVESMENT BUSINESS

1. The Divestment Business as operated to date has the following legal and functional structure:

(1) The FRA/MUC Divestment Business (hereafter in this Schedule B the "**Divestment Business**") consists of gategroup's customer contracts at Frankfurt International Airport ("**FRA"**) and Munich International Airport ("**MUC**") including, where applicable and at the option of the Purchaser, certain related assets (that, by way of example, could also include the necessary infrastructure for the operation of the divested business) and employees.

(2) The constituent parts of the Divestment Business are currently mainly held, directly or indirectly, by Gate Gourmet GmbH Deutschland, Admiral-Rosendahl-Straße 2, 63263 Neu-Isenburg, Deutschland, and comprise all the elements which are necessary to ensure its viability and competitiveness, as set forth below.

Functional organisation

(3) Day-to-day operations of the Divestment Business are currently conducted by dedicated employees at FRA and MUC

(4) The transfer of the employees will be offered by gategroup, subject to the consent of the employees concerned pursuant to applicable labour laws. If the respective employees do not consent, gategroup considers that the Purchaser can easily recruit adequate personnel for each function.

(5) Certain functions (and in particular administrative functions such as HR, Finance/Accounting, etc.) are performed by employees of the regional or country head offices of gategroup having responsibilities and competences for other businesses. gategroup does not consider these employees to be needed for the Divestment Business to be successful and is of the view that the relevant functions could be taken over by the Purchaser's own organisation.

(6) Supply is also organised at regional or national level: gategroup purchases raw materials essential to the operation of its business principally through regional and national food distributors in each of the geographical regions in which it operates. Because of the relatively short storage life of food inventories, especially perishables, customers' requirements for freshness, a minimum amount of inventory is maintained at any given time.

(7) Generally, gategroup is not substantially dependent on one supplier and could obtain comparably priced alternative products or services from other suppliers should a supply contract be terminated or not be renewed. This is reinforced by the fact that an

important part in of the total raw materials and other supply purchases (approx. […]% for Germany in 2018) corresponds to customer-nominated products.

Customers description

(8) The Divestment Business' operations are focused on the provision of in-flight catering services to (legacy) airlines at or from FRA and MUC.

(9) A complete list of all customer contracts of the Divestment Business, is included in ***gategroup Confidential Annex 1***.

2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

(10) All tangible assets and equipment of the Divestment Business, including, but not limited to high loaders, unit equipment, etc.

(11) An overview of all assets that will be transferred with the Divestment Business at FRA is contained in ***gategroup Confidential Annex 2***.

(12) A list of high-loaders at FRA is included as ***gategroup Confidential Annex 3.***

(13) At the option of the Purchaser, the necessary tangible assets at MUC. By way of example, this could include the necessary infrastructure for the operation of the Divestment Business. In the event of a single Purchaser, the necessary infrastructure is already included in the German LCC Network Divestment Business package (i.e. sub-lease for a facility at MUC which could also be used for the additional contracts of FRA/MUC Divestment Business). Should there be multiple Purchasers, gategroup would support the Purchaser of the FRA/MUC Divestment Business to get the necessary infrastructure at MUC.

(b) the following main intangible assets:

- the licence to continue using the brand "Gate Gourmet" for such time as required to complete the transition to the Purchaser's brand (but for no longer than […]);

(c) the following main licences, permits and authorisations:

- Not applicable;

(d) the following main contracts, agreements, leases, commitments and understandings:

- **At the option of the Purchaser:** the lease contract for the […]

- **Supply contracts with various third parties:**

(14) Not applicable.

(e) all customer, credit and other records;

(15) A list of the customer contracts of the Divestment Business is included in ***gategroup Confidential Annex 1***.

(f) the following Personnel:

(16) This will be determined alongside the needs of the Purchaser and be subject to the consent of employees under applicable labour laws.

(g) the arrangements for the supply with the following products and services by gategroup or Affiliated Undertakings:

(17) The following supply arrangements will be offered, at the option of the Purchaser:

- certain transitional services by gategroup, including IT systems and processes, application engineering, etc., in order to facilitate a smooth transfer of the Divestment Business;

- a transitional supply agreement.

3. The Divestment Business shall not include:

(a) The Divestment Business does not include the following customer contracts:

- Contracts that are transferred as part of the German LCC Network Divestment Business;

(b) The Divestment Business does not own any real estate.

(c) The Divestment Business does not include a lease for facility at MUC.

(d) The Divestment Business does not include any agreement with suppliers.

(e) The Divestment Business does not include the following employees:

(18) Employees to be excluded once the Purchaser has determined which employees will be needed with the Divestment Business.

4. If there is any asset or personnel which is not covered by paragraphs 2 or 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

ANNEXES

- **gategroup Confidential Annex 1:** List of customer contracts

  […]

- **gategroup Confidential Annex 2:** Overview of FRA assets

  […]

- **gategroup Confidential Annex 3:** List of FRA high loaders

  […]

SCHEDULE C
FCO DIVESMENT BUSINESS

1. The Divestment Business as operated to date has the following legal and functional structure:

(1) The FCO Divestment Business (hereafter in this Schedule C the "**Divestment Business**") consists of certain LSG EU's customer contracts at Rome Fiumicino Airport ("**FCO**") including, where applicable and at the option of the Purchaser, certain related assets and employees.

Functional organisation

(2) The Divestment Business is currently fully integrated within LSG EU.

(3) gategroup considers that all that the relevant functions that are currently involved in the operations of the Divestment Business could be taken over by the Purchaser's own organisation or, alternatively, that the Purchaser would not face any difficulties in recruiting adequate personnel.

Customers description

(4) The Divestment Business' operations are focused on the provision of in-flight catering services to (legacy) airlines at FCO.

(5) The customer contracts that are currently part of the package represent a budgeted revenue of EUR […] and are listed in ***Confidential Annex 1.***

2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:

the following main tangible assets:

(6) At the option of the Purchaser, all necessary assets (in particular customer-dedicated assets) to be determined with the Purchaser.

(a) the following main intangible assets:

(7) The Divestment Business will include the necessary intangible assets, if any, subject to their availabilities.

(b) the following main licences, permits and authorisations:

(8) Not applicable.

(c) the following main contracts, agreements, leases, commitments and understandings:

(9) Not applicable.

(d) all customer, credit and other records;

(10) The Divestment Business will include the customer contracts described at para. 8.

(e) the following Personnel:

(11) At the option of the Purchaser, the necessary personnel to be determined with the Purchaser.

(f) the arrangements for the supply with the following products and services by gategroup or Affiliated Undertakings:

(12) The following supply arrangements will be offered, at the option of the Purchaser:

- certain transitional services, including IT systems and processes, application engineering, etc., in order to facilitate a smooth transfer of the Divestment Business;

- a transitional supply agreement.

3. The Divestment Business shall not include:

(a) The Divestment Business does not include the following customer agreements:

(13) Locations that are covered by the transferred customer contracts but will continue to be served by the merged entity (for instance, [customer-contract]) will be carved out.

(b) The Divestment Business does not include any real estate nor lease to facilities at FCO.

(14) At the option of the Purchaser, if needed, gategroup will reasonably support that the Purchaser will be enabled to establish and effectively run the business.

(c) The Divestment Business does not include any agreement with suppliers.

(d) The Divestment Business does not include the following employees:

(15) Employees to be excluded once the Purchaser has determined which employees will be needed with the Divestment Business.

4. If there is any asset or personnel which is not covered by paragraphs 2 or 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

ANNEXES

- **Confidential Annex 1:** List of customer contracts
  […]

SCHEDULE D
CDG DIVESMENT BUSINESS

1. The Divestment Business as operated to date has the following legal and functional structure:

(1) The CDG Divestment Business (hereafter in this Schedule D the "**Divestment Business**") consists of LSG EU's in-flight catering customer account at Paris Charles de Gaulle Airport ("**CDG"**) including, where applicable, customer-dedicated moveable assets.

Functional organisation

(2) The Divestment Business is currently fully integrated within LSG EU.

(3) gategroup consider that all that the relevant functions that are currently involved in the operations of the Divestment Business could be taken over by the Purchaser's own organisation or, alternatively, that the Purchaser would not face any difficulties in recruiting adequate personnel.

Customers description

(4) The Divestment Business' operations are focused on the provision of in-flight catering services to [customer] at CDG, currently served by LSG EU. The business with [customer] is mainly seasonal and represents a revenue of approx. EUR […].[342]

2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

(5) At the option of the Purchaser, customer-dedicated assets to be determined with the Purchaser.

(b) the following main intangible assets:

[342] Representing a market share of [0-5]% (in 2018, revenue was below […] million and market share below [0-5]%).

(6) The Divestment Business will include the necessary intangible assets, if any, subject to their availabilities.

(c) the following main licences, permits and authorisations:

(7) Not applicable.

(d) the following main contracts, agreements, leases, commitments and understandings:

(8) Not applicable.

(e) all customer, credit and other records;

(9) The Divestment Business will include the relevant available information on the services provided to the customer as described above at para. 4.

(f) the following Personnel:

(10) Not applicable.

(g) the arrangements for the supply with the following products and services by gategroup or Affiliated Undertakings:

(11) The following supply arrangements will be offered, at the option of the Purchaser:

- certain transitional services, including IT systems and processes, application engineering, etc., in order to facilitate a smooth transfer of the Divestment Business;

- a transitional supply agreement.

3. The Divestment Business shall not include:

(a) The Divestment Business does not include any real estate.

(b) The Divestment Business does not include any agreement with suppliers.

(c) The Divestment Business does not include any employees.

4. If there is any asset or personnel which is not covered by paragraphs 2 or 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.