



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**

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Decision on the implementation of the commitments -  
Waiver of the Commitments  
Date: 29/10/2021



EUROPEAN COMMISSION

Brussels, 29.10.2021  
C(2021) 7681 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Dear Sir/Madam,

**Subject: Case M.9546 – GATEGROUP / LSG EUROPEAN BUSINESS  
Commission decision on Gategroup’s request of 21 May 2021 under  
clause 47 of the Commitments annexed to the Commission decision of  
3 April 2020 for a modification and partial waiver of the Commitments<sup>1</sup>**

- (1) On 21 May 2021, Gategroup Holding AG (“Gategroup”) requested a modification and partial waiver of the Commitments in relation to the German Divestment Businesses.<sup>2</sup> This Decision presents the Commission's assessment of Gategroup’s request.

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<sup>1</sup> All abbreviations and capitalised terms used in this decision have the meaning as set out in the Commission's decision of 3 April 2020 in Case M.9546 – GATEGROUP / LSG EUROPEAN BUSINESS and the Commitments attached thereto, unless indicated otherwise.

<sup>2</sup> Gategroup complemented its request by letter of 11 June 2021

## 1. BACKGROUND

- (2) By decision of 3 April 2020 (“the Clearance Decision”) based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,<sup>3</sup> the Commission declared the operation by which Gategroup intended 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”) compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by the notifying party annexed to the clearance Decision (the “Commitments”).
- (3) The Commitments aimed at eliminating 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.
- (4) In order to address the competition concerns identified by the Commission, Gategroup committed to divest: (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”); (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”) (the German LCC Network Divestment Business and the FRA/MUC Divestment Business, together “the German Divestment Businesses”); (c) Gategroup’s [...] % shareholding in Newrest Servair Belgium SPRL operating an in-flight catering business in Belgium (the “Belgian Divestment Business”); (d) certain of 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”); (e) LSG EU’s in-flight catering customer account at Paris Charles de Gaulle (“CDG”) (the “CDG Divestment Business”).
- (5) On 15 June 2020, RSM Corporate Finance LLP was appointed as the Monitoring Trustee.
- (6) On 30 July 2020, the Commission approved Newrest as the purchaser of the Belgian Divestment Business and the CDG Divestment Business. On 15 October 2020, the Commission approved Horizon Star Catering GmbH (now ‘FDAC’<sup>4</sup>) as the purchaser of the German Divestment Businesses. On 26 November 2020, the Commission approved dnata s.r.l. as the purchaser of the FCO Divestment Business. The main transaction closed on 2 December 2020.

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<sup>3</sup> OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

<sup>4</sup> As of 8 October 2021, Newrest Group Services SAS (“Newrest”), an established in-flight catering provider, holds 60% in and has sole control over FDAC. [Shareholder] and [Shareholder] remain shareholders with [...] % each, via [Details on structure], respectively, in FDAC.

- (7) On 23 September 2020 and 23 October 2020, the Commission issued two subsequent decisions pursuant to clause 46 of the Commitments, extending the First Divestiture Period for a total period of two months. Accordingly, the First Divestiture Period expired on 3 December 2020.
- (8) On 26 February 2021, 30 March 2021, 31 May 2021 and 30 June 2021, the Commission issued four subsequent decisions pursuant to clause 46 of the Commitments, extending the Closing Period in respect of the FCO Divestment Business. The last of these decisions granted an extension until 31 October 2021.
- (9) On 15 January 2021, 30 March 2021, 31 May 2021 and 30 June 2021, the Commission issued four subsequent decisions extending the Closing Period in respect of the German Divestment Businesses. The last of these decisions granted an extension until 31 October 2021.
- (10) So far, Gategroup has been unable to divest some of its customer contracts, which are part of the German Divestment Businesses to FDAC, for the following reasons:<sup>5</sup> [...]. The overlap with regard to these customer contracts has therefore been removed, as explained in Section 5.2.2.2.

## **2. GATEGROUP'S REQUEST FOR A MODIFICATION AND A PARTIAL WAIVER OF THE COMMITMENTS**

- (11) On 21 May 2021, Gategroup requested, pursuant to clause 47 of the Commitments, to partially waive and modify the Commitments relating to the German Divestment Businesses, due to the changes to the relevant German in-flight catering markets brought about by the COVID-19 pandemic. Specifically, Gategroup requested (i) a modification of the Commitments for the replacement of the transfer of the contract with [Customer] by a subcontracting arrangement in relation to [Replacement Customer], with continued efforts to turn the subcontracting into a full transfer of the contract prior to its expiration; (ii) a partial waiver of the Commitments for the transfer of the contracts with [List of Customers] and the stations [List of facilities]; (iii) as well as a partial waiver of the Commitments for the transfer of lease (or sub-lease) agreements for the facilities in [List of facilities].

## **3. VIEW OF THE REMEDY TAKER FDAC**

- (12) The purchaser of the German Divestment Businesses (FDAC) has agreed to the replacement of Gategroup's customer contract with [Customer] with a subcontracting arrangement for the [Replacement Customer] customer contract of Gategroup (previously served by LSG) at FRA and MUC. In addition, with regard to the partial waiver for the (sub-)lease agreements, the composition of the lease arrangements proposed to be transferred has been reached in agreement with, and reflecting the requirements of, FDAC.

## **4. OPINION OF THE MONITORING TRUSTEE**

- (13) On 31 May 2021, RSM Corporate Finance LLP ("the Monitoring Trustee") submitted its opinion on Gategroup's request. In the opinion, the Monitoring Trustee

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<sup>5</sup> Gategroup's waiver request of 21 May 2021 and Monitoring Trustee report of 31 May 2021.

stated that the impact of the COVID-19 pandemic on the overall aviation and in-flight catering industry constitutes exceptional circumstances and that this impact could not have been readily foreseen at the time of the Decision. Furthermore, the Monitoring Trustee deems it reasonable that the proposed modification and partial waivers are unlikely to have a negative impact on the viability and competitiveness of the German Divestment Businesses.

## **5. ASSESSMENT OF THE REQUEST FOR A MODIFICATION AND PARTIAL WAIVERS OF THE COMMITMENTS**

- (14) For the reasons explained below, the Commission considers that the arguments and evidence provided by Gategroup in its request for a modification and a partial waiver of the Commitments meet the conditions set out in clause 47 of the Commitments and therefore justify granting the requested modification and partial waivers of the Commitments.

### **5.1. Legal Test**

- (15) As regards the conditions under which such a waiver or modification may be granted, under clause 47 of the Commitments (the "review clause"), the Commission may, *"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 [the] Commitments"*.
- (16) Unlike extensions of divestment periods, which, pursuant to clause 46 of the Commitments, can be granted on the basis of the mere "good cause" shown by Gategroup, a waiver of Commitments under the review clause can only be granted in cases where there are also "exceptional circumstances".
- (17) In this respect, paragraph 73 of the Remedies Notice<sup>6</sup> states the following specifically as regards divestiture commitments: *"[t]he Commission may grant waivers or accept modifications or substitutions of the commitments only in exceptional circumstances. This will very rarely be relevant for divestiture commitments. As divestiture commitments have to be implemented within a short time-frame after the decision, it is very unlikely that changes of market circumstances will have occurred in such a short time-frame and the Commission will normally not accept any modifications under the general review clause."*
- (18) Paragraph 74 of the Remedies Notice states that *"[a] waiver, modification or substitution of commitments may be more relevant for non-divestiture commitments, such as access commitments, which may be on-going for a number of years and for which not all contingencies can be predicted at the time of the adoption of the Commission decision. Exceptional circumstances justifying a waiver, modification or substitution may, first, be accepted for such commitments if parties show that market circumstances have changed significantly and on a permanent basis. For showing this, a sufficient long time-span, normally at least several years, between the Commission decision and a request by the parties is required."*

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<sup>6</sup> Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1-27 ('Remedies Notice').

- (19) The Remedies Notice<sup>7</sup> also stipulates that “[f]or any waiver, modification or substitution of commitments, the Commission will also take into account the view of third parties and the impact a modification may have on the position of third parties and thereby on the overall effectiveness of the remedy. In this regard, the Commission will also consider whether modifications affect the right already acquired by third parties after implementation of the remedy.”
- (20) Within this framework, a waiver or modification of commitments can be justified when the requesting party demonstrates that the changes in the market (i) are significant, permanent and unforeseeable, and (ii) ensure that the competition concerns laid out in the clearance decision no longer arise and are not likely to arise again.<sup>8</sup>

## 5.2. Application to the present case

- (21) In the following paragraphs the Commission assesses Gategroup’s waiver request against the above criteria in order to determine whether exceptional circumstances exist, that is to say, it assesses (i) whether the circumstances put forward by Gategroup constitute a significant, permanent and unforeseeable change in market circumstances, (ii) whether those changed circumstances mean that the competition concerns laid out in the Clearance Decision no longer arise and are not likely to arise again, and (iii) the impact of the waiver on third parties.

### 5.2.1. Significant, permanent and unforeseeable change in the market

- (22) The Commission considers that the circumstances put forward by Gategroup in the present case qualify as a significant, permanent and unforeseeable change in market circumstances leading to the loss of cause to continue procuring some of the Commitments.

#### 5.2.1.1. Significant change in market circumstances

- (23) The Commission notes that the overall aviation and in-flight catering industry has been and continues to be severely impacted by the continued COVID-19 crisis due to travel restrictions and a decrease in the number of passengers. Many airlines have been struggling financially or even declared bankruptcy, with some having ceased operations, while others are flying with significantly reduced schedules. In addition, airlines that are currently flying or planning a ramp-up of their operations have to deal with the regular adjustment of their schedules and uncertainties linked to future travel restrictions that depend on the status of the pandemic and vaccination campaigns as well as measures agreed by and between countries, and this with limited workforce and financial means. Unlike in the passenger air transport industry, where airlines can take up suspended routes with relative ease and within a short timeframe even after a longer suspension, the contracts in the in-flight catering industry normally only last for a limited number of years. Therefore, a temporary crisis such as the COVID-19 crisis may have a permanent effect on the in-flight catering market, leading to significant changes in the market circumstances.

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<sup>7</sup> Remedies Notice, Paragraph 74.

<sup>8</sup> Commission decision C(2018) 5887 final of 4 September 2018 in case COMP/M.8465 – Vivendi/Telecom Italia, para. 18; Commission decision C(2016) 4964 final of 25 July 2016 in case COMP/M.3770 – Lufthansa/Swiss, para. 20; Commission decision C(2019) 6964 final of 24.09.2019 in Case M.4494 – Evraz/Highveld, para. 23.

- (24) These changes in the market have impacted the German Divestment Businesses in several ways. Firstly, two customer agreements of the German Divestment Businesses cannot be transferred, due to insolvency proceedings, as a result of which these volumes are no longer available to the market. Namely, [Details on customers].<sup>9</sup>
- (25) Secondly, the COVID-19 pandemic has had a negative impact on some customers' ability and/or willingness to transfer their contracts to a third party, in this case a remedy-taker, as the ensuing uncertainty about future opportunities to offer flights, as well as the COVID-19 related restrictions on testing new suppliers rendered any change of suppliers an additional, unwelcome business risk. Specifically [Customer] has refused the transfer of its contract to FDAC.
- (26) In addition, certain carriers (including customers included in the German Divestment Businesses such as [Customers]) have terminated or not renewed/extended their existing contracts and tender for services again on the basis of newly reduced volumes in light of the COVID-19 crisis, in order to obtain better (pricing) conditions, or turn to alternative solutions such as return catering.
- (27) These facts demonstrate how significantly market circumstances have changed in the relevant in-flight catering markets in Germany since adoption of the Clearance Decision.

#### 5.2.1.2. Change of market circumstances on a permanent basis

- (28) The Commission notes that the German Divestment Businesses, amongst additional elements, consist of customer contracts with airlines for the provision of in-flight catering services. Most of these contracts contained in the divestment business are of limited duration.<sup>10</sup> Should these contracts cease to exist, the part of the divestment business represented by those contracts would therefore have ceased to exist as well. This is due to the fact that the German Divestment Businesses stipulate specific contracts to be divested, including references to their duration and value.<sup>11</sup> Thus, should the Notifying Party conclude a new contract with the same customer, for example, these would not become part of the divestment business. If a contract ceases to exist, this change in circumstances is therefore permanent, regardless of what may happen to the airline customer after the end of the contract.
- (29) In addition, also if an airline merely suspends the relevant routes served by a contract included in the German Divestment Businesses or serves its flights via return-catering for the remainder of the contract-duration, a temporary suspension/switch to return-catering would have a permanent effect on that in-flight catering contract, in that the contract and therefore this part of the German Divestment Businesses becomes worthless for the full remainder of its duration.
- (30) Therefore, overall, due to the specific nature of the divestment business as consisting of specific customer contracts, the above-mentioned changes brought about by the COVID-19 pandemic, even if the pandemic and the effects on the overall aviation

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<sup>9</sup> Gategroup's waiver request of 21 May 2021, p.5; Monitoring Trustee report of 31 May 2021, p.9.

<sup>10</sup> The contracts affected by the waiver have the following duration: [List of customer contracts].

<sup>11</sup> Commitments, paragraph 6 (a) and (b); Schedule A to the Commitments, paragraph 11-14 and Annex 2 to Schedule A, as well as Schedule B to the Commitments, paragraphs 8-9 and Annex 1 to Schedule B.

industry can likely be considered temporary, have a permanent effect on the German Divestment Businesses.

- (31) The Commission also notes that FDAC's viability and competitiveness is also enhanced by its recent acquisition by the experienced in-flight catering supplier Newrest which improves its position as a supplier of in-flight catering services in the affected relevant German airports to gain further contracts from airlines either directly or by submitting its bids to future tenders.
- (32) In view of the foregoing, the Commission considers that market circumstances have permanently changed in the relevant in-flight catering markets in Germany since adoption of the Clearance Decision.

#### 5.2.1.3. Unforeseeability of the change in market circumstances

- (33) At the time of the Clearance Decision (3 April 2020), while the COVID-19 pandemic had already spread across the world and affected the aviation industry (including in the markets relevant to the German Divestment Businesses), it was nevertheless not apparent that the crisis would continue to affect the aviation industry for the duration and in the magnitude it actually has. The Commission did not have reliable data with regard to the expected recovery of the aviation sector at the time of the Clearance Decision. Moreover, early forecasts may have underestimated the duration of the crisis. For instance, contrary to actual developments, IATA forecasts on the re-opening of air travel markets published on 9 June 2020 assumed that the airline industry would significantly recover by January 2021 (to 64% of Global revenue passenger kilometres), including an assumption that long haul travel would start to resume in the fourth quarter of 2020.<sup>12</sup> In reality, in January 2021, industry-wide revenue passenger kilometres were still down by 72%, compared to pre-crisis levels.<sup>13</sup>
- (34) The changes in market circumstances described in section 5.2.1.1. were therefore not foreseeable at the time of the Clearance Decision.

#### 5.2.1.4. Conclusion

- (35) In summary, the changes in market circumstances described in the preceding paragraphs are permanent, significant and were unforeseeable at the time of the Clearance Decision.

5.2.2. *The competition concerns laid out in the Clearance Decision no longer arise and are no longer likely to arise in view of the changed market circumstances supporting the request for a modification and partial waivers of the Commitments.*

- (36) The Commission considers that the described changed market circumstances, combined with the Commitments as modified following the request, ensure that the competition concerns laid out in the Clearance Decision (i.e. 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,

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<sup>12</sup> <https://www.iata.org/en/iata-repository/publications/economic-reports/airline-industry-economic-performance-june-2020-presentation/>

<sup>13</sup> <https://www.iata.org/en/iata-repository/publications/economic-reports/air-passenger-monthly-analysis--january-2021/>



Hannover and Berlin Tegel, 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) no longer arise and are no longer likely to arise also following a modification of the Commitments.

#### 5.2.2.1. Modification with respect to the [Customer] contract

- (37) According to the modification request by Gategroup, the customer contract of Gategroup with [Customer], which formed part of the overlap to be divested as part of the German Divestment Businesses, would be replaced by its contract with [Replacement Customer].
- (38) The Commission is of the view that, in the case at hand, the [Replacement Customer] arrangement ensures that the competition concerns laid out in the Clearance Decision no longer arise, for the reasons provided below.
- (39) The contract with [Replacement Customer] is of similar magnitude and relevance to the remedy-taker. In fact, Gategroup's 2021 revenue forecast for [Replacement Customer] is higher than for [Customer].<sup>14</sup> In addition, according to the modification request, [Replacement Customer] is actually serving the routes to [airport] with a higher frequency than [Customer], and is more likely to ramp-up further operations than [Customer]. Moreover, the contribution margin of the subcontracted [Replacement Customer] business would be higher than for the [Customer] contract. The Monitoring Trustee confirms this view, considering [Replacement Customer] to be a very suitable alternative to [Customer].
- (40) The modification foresees that Gategroup would remain [Replacement Customer]'s contractual partner, with FDAC providing catering services under a sub-contracting agreement. This has been agreed to by [Replacement Customer] and FDAC. According to this solution, [Details on agreement between the Parties]. Moreover, the modification will commit Gategroup to provide continued efforts to turn the subcontracting into a full transfer of the contract prior to its expiration.
- (41) While sub-contracting the [Replacement Customer] contract would not amount to an actual divestment as foreseen by the Commitments, it would provide FDAC with an opportunity to further gain experience in the sector. Moreover, due to [Details on agreement between the Parties], FDAC would also gain customer exposure with contacts, food presentations and placement of its products. In addition, [Replacement Customer] seems to be a suitable replacement for [Customer], not just in terms of turnover and volume. As a [Details on Customer], it supplements FDAC's strong foothold [...].
- (42) The modification therefore does not impede the accomplishment of the objective pursued by the Commitments (namely the removal of competition concerns identified in the Clearance Decision) and therefore it guarantees that a new viable and competitive in-flight catering competitor is established in the concerned markets and, accordingly, that the competition concerns with regard to the German Divestment Businesses, as laid out in the Clearance Decision, no longer arise and are no longer likely to arise.

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<sup>14</sup> Gategroup's waiver request of 21 May 2021, p.9 and Monitoring Trustee report of 31 May 2021, p.7.

#### 5.2.2.2. The partial waiver request concerning other customer contracts

- (43) The same can be said for the contracts included in the partial waiver request, namely the customer contracts with [Customers]. The exclusion of these contracts from the German Divestment Businesses does not impede the accomplishment of the objective pursued by the Commitments, nor does it impede the intended effect of the divestment (namely the establishment of a viable new competitor in the concerned markets), for the reasons provided below.
- (44) [Customer] has informed Gategroup that it will be contracting with another supplier, with no services to be obtained from Gategroup going forward.
- (45) [Customer] has filed for Chapter 11 under the US bankruptcy code and has issued a cancellation notice to the FRA/MUC Divestment Business in respect of its contract.
- (46) [Customer] has noted that they consider that, as they [Information on customer contract]. According to the Monitoring Trustee, Gategroup will not provide the services specified in the Commitments to this customer after Closing. The airline has decided to switch to return catering for the upcoming months.
- (47) Furthermore, as [Customer] was seeking to restructure its debts following [Customer] entering into administration, the customer notified Gategroup that it cannot provide consent to transfer its contract due to the administration proceedings. Subsequently, Gategroup has sent the customer a letter to notify it of the change in catering services provider to FDAC. However, [Customer] has cancelled its routes to [Information on customer contract].
- (48) Lastly, as regards the locations of the [Customer] contract included in the German Divestment Businesses which are not being operated by FDAC in the future (namely [...]), they will also not be served by Gategroup going forward. The contract for [...] was awarded to another supplier, as confirmed by [Customer]. The [...] station will be served via return-catering by [Customer].<sup>15</sup>
- (49) Of the contracts initially included in the German Divestment Businesses, only the [Customer]-contract will continue to be serviced by Gategroup, which will however be replaced by the [Replacement Customer] contract previously served by LSG (see section 5.2.2.1).
- (50) However, all of the contracts for which a partial waiver is requested accounted, combined, only for a limited share of the revenue of the German Divestment Businesses. Finally, the Commission notes that in a context where FDAC will become a stronger competitor through the acquisition by Newrest, their exclusion will therefore not affect the viability and competitiveness of the German Divestment Businesses.
- (51) In light of the above, the divestiture of the modified German Divestment Businesses still ensures that a new competitor (FDAC) enters the relevant in-flight catering markets at German airports with a viable and competitive business.

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<sup>15</sup> It should be noted that the inability to divest the [...] station would not affect the ability of the Commitments to ensure that the competition concerns identified no longer arise in any case, as the Commission did not identify any competition concerns at [...] in the Clearance Decision.

5.2.2.3. The request for a partial waiver with respect to (sub-)leases for certain facilities

- (52) The purpose of including (sub-)leases for certain facilities in the Commitments was to enable a remedy-taker to serve the customer contracts included in the DBs as well as possible with a viable and competitive business. However, FDAC has decided that it does not need the facilities in [List of facilities] to adequately serve the divestment business and therefore decided that it does not want to enter into the (sub-)lease arrangements for these facilities.
- (53) Should a remedy-taker decide that it can service all customer contracts from other locations, these facilities would then not be necessary anymore to ensure that the competition concerns laid out in the Clearance Decision no longer arise and are no longer likely to arise. In fact, it would be counterproductive if the remedy-taker were forced to incur the cost of these (sub-) leases, should these not be necessary to operate the German Divestment Businesses viably and competitively. This rationale becomes apparent when looking at the fact that the sub-lease for the [...] premises was explicitly included in the Commitments only as an option for the proposed purchaser in the event the latter needed it. The Commission is furthermore of the view that also the absence of a transfer of the lease agreements for facilities in [...] will not compromise the viability or competitiveness of the German Divestment Businesses, as these locations can easily – and, in light of the reduction of the total market volume at these airports, in a more commercially sustainable way – be served remotely from other facilities. This view was confirmed by the Monitoring Trustee Report.
- (54) Therefore, the waiver ensures that the competition concerns laid out in the Clearance Decision no longer arise and are no longer likely to arise.
- (55) In addition, the Commission is of the view that the intended effect of the divestment (namely to create a new viable competitor in the affected in-flight catering markets where competition concerns were identified) would likely be better achieved if the specific modalities were changed,<sup>16</sup> namely by granting the waiver request from the Notifying Party.

5.2.3. *The modification and partial waiver of the Commitments would have no significant negative effects on third parties.*

- (56) The Commission considers that the partial waivers and modification of the Commitments as requested by Gategroup would have no significant negative effect on third parties, in particular the purchaser of the German Divestment Businesses, for the following reasons.
- (57) With regard to the replacement of the [Customer] contract with a subcontracting agreement for the [Replacement Customer] contract, not only has the Commission determined that this replacement would not affect the ability of the Commitments to ensure that the competition concerns with regard to the replaced contract, as laid out in the Clearance Decision, no longer arise and are no longer likely to arise (see: Section 5.2.2.1), but FDAC also considers the proposed [Replacement Customer] subcontracting arrangement to be acceptable.

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<sup>16</sup> For this legal standard, see: Remedies Notice, Paragraph 74.

- (58) Concerning the customer contracts included in the partial waiver, these contracts combined represent a limited volume of sales and would in any event not be included in the German Divestment Businesses anymore, due to the above-mentioned reasons (see: Section 5.2.2.2). The partial waiver will therefore not negatively affect FDAC or their ability to operate the German Divestment Businesses viably and competitively.
- (59) With regard to the waiver for the (sub-)lease agreements, the composition of the lease arrangements proposed to be transferred has been reached in agreement with, and reflecting the requirements of FDAC. Should FDAC nevertheless require these stations to be served at a later date, the exclusion of these leases from the German Divestment Businesses will not compromise the viability or competitiveness of the German Divestment Businesses as these locations can easily – and, in light of the reduction of the total market volume at these airports, obviously in a more commercially sustainable way – be served remotely.
- (60) Finally, FDAC's viability and competitiveness is also enhanced by its recent acquisition by the experienced in-flight catering supplier Newrest.

## 6. CONCLUSION

- (61) In light of the foregoing, the Commission considers that Gategroup has shown that the market conditions since the adoption of the Clearance Decision have significantly and permanently changed, in a way which was not reasonably foreseeable at the time of the adoption of such decision.
- (62) The Commission furthermore considers that also with these changes to the Commitments the competition concerns outlined in the Clearance Decision no longer arise and are no longer likely to arise.
- (63) The Commission concludes that Gategroup's arguments satisfy the requirements of "exceptional circumstances" laid down in clause 47 of the Commitments. The Commission therefore accepts Gategroup's request to modify and partially waive the Commitments with regard to the German Divestment Businesses.

*For the Commission*

*(Signed)*  
Margrethe VESTAGER  
Executive Vice-President