



EUROPEAN COMMISSION
DG Competition

***Case M.10959 - SATS / TEMASEK /
PH 243WFS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/02/2023

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.10959 – SATS / TEMASEK / PH 243WFS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 16 January 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which SATS Ltd ('SATS', Singapore), through SATS International SAS ('SATS International', France), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of WFS Global Holdings S.A.S ('WFS', France). The concentration is accomplished by way of purchase of shares ('the

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').

Transaction’).³ SATS is designated hereinafter as the ‘Notifying Party’ and together with WFS the ‘Parties’ or the ‘Parties to the Transaction’.

1. THE PARTIES

- (2) WFS primarily provides cargo handling services (including warehousing and storage of cargo, freight related services (offline services), global logistics for cargo air shipping and cargo facilities management) and ground handling services (including ramp, baggage, and passenger services). WFS also provides engineering and maintenance services for airport equipment and fuel infrastructure equipment outside the EEA, and in particular in North America.
- (3) SATS provides ground handling, cargo handling and other aviation related services mainly in Asia. SATS is *de facto* controlled by Temasek, an investment company headquartered in Singapore, mainly active in Singapore and the rest of Asia. Temasek also controls Singapore Airlines (‘SIA’), an aviation company that provides air transport services for passengers and cargo, airport lounge services and technical, maintenance and repair services, and Gategroup,⁴ a company providing in-flight catering services, retail on-board services, in-flight catering equipment and related services, airport lounges and airport retail services.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 28 September 2022, SATS entered into a Sale and Purchase Agreement to acquire all of the issued shares of Promontoria Holding 243 B.V. (‘PH243WFS’), a holding company which, indirectly, owns 100% of the shares in WFS. The Transaction will therefore result in the acquisition of sole control by SATS over WFS within the meaning of Art.3 (1)(b) of the Merger Regulation.

2.1. Ownership structure of SATS and assessment regarding Temasek’s *de facto* control

- (5) SATS is listed on the Singapore stock exchange. Its current shareholder structure is reflected in Table 1 below:

Table 1: SATS’ shareholders as of 31 August 2022

Name of the shareholder	Percentage of shares held
Venezio Investments Pte. Ltd (Temasek)	[...]%
Citibank Nominees Singapore Pte Ltd	[...]%
Raffles Nominees (Pte) Limited	[...]%
DBS Nominees Pte Ltd	[...]%
HSBC (Singapore) Nominees Pte Ltd	[...]%
Other shareholders	[...]%
Total	100%

Source: Form CO, Table 2.

³ Publication in the Official Journal of the European Union No C 23, 23.01.2023, p. 20.

⁴ See Commission decision in case M.10152-Temasek/Gategroup.

- (6) Venezia Investments Pte. Ltd ('Venezio'), which owns [...] % of SATS' shares, is an indirectly wholly owned subsidiary of Temasek.
- (7) Pursuant to paragraph 59 of the Commission Consolidated Jurisdictional Notice ('CJN'),⁵ a minority shareholder may have *de facto* control when it is highly likely to achieve a majority at the shareholders' meetings, given the level of its shareholding and the evidence resulting from the level of attendance at shareholders' meeting in previous years. Moreover, the position and role of other shareholders, the level of dispersion of the remaining shares, the structural, economic or family links between the large minority shareholder and other shareholders, and the potential strategic (or rather purely financial) interest of the shareholders should also be considered. Where, on the basis of its shareholding, the historic voting pattern at the shareholders' meeting and the position of other shareholders, a minority shareholder is likely to have a stable majority of the votes at the shareholders' meeting, then that large minority shareholder is taken to have sole control.
- (8) For the reasons set out below, the Commission considers that Temasek exercises *de facto* sole control over SATS.
- (9) First, in SATS, strategic commercial decisions within the meaning of the CJN, such as decisions on the budget, business plan and appointment of senior management are taken [...].⁶ [...];⁷ [...].⁸ Based on the past attendance and voting patterns in SATS' AGM from 2014⁹ until 2021, [...].¹⁰
- (10) Second, besides Temasek, the other main shareholders of SATS are financial institutions (such as [...]).
- (11) Third, resolutions in SATS's AGM (including the appointment of the Board) were [...] which is by far SATS's largest shareholder. The remaining shareholders, mainly financial institutions, are widely dispersed and unlikely to outvote Temasek also in view of the lack of any structural, economic or family links between them. Moreover, the Parties are not aware of [...].
- (12) Fourth, SATS indicated that, pursuant to its By-Laws, no single shareholder aside from Temasek may have [...].¹¹
- (13) The information provided by the Parties therefore shows that Temasek has [...] while the remaining shares are dispersed amongst mainly financial investors and

⁵ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008.

⁶ Form CO, paragraph 41.

⁷ Form CO, paragraph 41.

⁸ Form CO, paragraph 41 and 43. Besides the AGM ordinary resolutions, which are passed by simple majority, special resolutions of SATS' AGM require 75% of votes in accordance with the requirements of the Singapore Companies Act. Venezia would be able to block any special resolution with its shareholding of [...] %.

⁹ The Notifying Party has no records available for the 2012 and 2013 AGM.

¹⁰

¹¹ Although Citibank Nominees Singapore Pte Ltd holds over [...] % shareholding in SATS ([...] %), the Notifying Party submits that Citibank is a financial institution holding SATS' shares [...]. Form CO, paragraph 49.

there is no evidence of possible commonality of interests among the remaining shareholders.

- (14) Based on the above, Temasek (through Venezia) currently exercises de facto sole control over SATS.

3. UNION DIMENSION

- (15) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Temasek: EUR [...], WFS: EUR [...]).¹² Each of them has a Union-wide turnover in excess of EUR 250 million (Temasek: EUR [...] and WFS: EUR [...]), but they do not each achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Product Market Definition

4.1.1. The Commission's past decisional Practice

4.1.1.1. Ground handling services

- (16) In its past decisional practice, the Commission has considered a market for the provision of ground handling services, including ramp, passenger, baggage handling, (airside) cargo handling services, fuel and oil handling, aircraft maintenance, ground administration and supervision and crew administration.¹³ It has however left open the question of whether each of the individual ground handling services constituted a distinct product market.

4.1.1.2. Landside cargo handling services.

- (17) The Commission previously considered that landside cargo handling services, comprising of cargo terminal operations, warehousing and inventory control, cargo security, handling of dangerous goods, documentation for import and export, customs clearance, global cargo tracking or even live animal management,¹⁴ belong to a distinct product market from ground handling services.¹⁵

4.1.1.3. In-Flight Catering Services

- (18) The Commission concluded in the past that the relevant product market for in-flight catering comprises the provision of the entire range of meals

¹² Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹³ M.6447 – IAG/BMI, paragraph 99; M.7021 – Swissport/Servisair, paragraph 18; M.6671 – LBO France/Aviapartner, paragraph 20; M.8137 – HNA Group / Servair, paragraphs 51 and 54; M.8470 – DAAM / Infravia / FIH / AI, paragraphs 16-18; M.9270 – Vinci Airports / Gatwick Airport, paragraph 9.

¹⁴ M.6671 - LBO France (WFS)/Aviapartner, paragraph 32.

¹⁵ M.7021 – Swissport/Servisair, paragraphs 32; M.6671 - LBO France (WFS)/Aviapartner, paragraph 39.

(economy/business/first class) for all types of flights (short-haul/long-haul),¹⁶ as well as the provision of in-flight catering equipment services.¹⁷

4.1.1.4. Passenger Air Transport Services

- (19) In its past decisional practice, the Commission's market definition for passenger air transport was considered on a route-by-route basis (i.e. on a point of origin/point of destination (O&D)).¹⁸ However, in relation to vertical assessments,¹⁹ the product market definition was considered as the overall market for passenger air transport services, with no further segmentation based on the route or the time sensitive nature of the passengers.²⁰ This reflects the fact that an airline's demand for upstream services (ground handling, in-flight catering, retail on-board products) is homogenous and does not depend on the routes covered.

4.1.1.5. Cargo Air Transport Services

- (20) In its prior decisions, the Commission considered a product market for air transport of cargo including all kinds of transported goods provided by all types of cargo air carriers,²¹ without any further segmentations according to the nature of the goods transported (for example, dangerous or perishable goods) or the type of cargo air carrier.²²

4.1.2. *The Notifying Party's View*

- (21) The Notifying Party's submissions do not depart from the Commission's past decisional practice.²³ They do indicate, however, that, in terms of the ground handling product market, for the purposes of the assessment of this Transaction where the Parties' activities do not overlap in any of the ground-handling sub-segments, all the above-mentioned services should be considered as part of the same relevant product market.²⁴

¹⁶ M.9418 – Temasek/RRJ Master Fund III/Gategroup, paragraph 23.

¹⁷ M.9546 - Gategroup / LSG European Business, paragraph 38-40.

¹⁸ M.7333 – Alitalia/Etihad, paragraph 69; and M.5747 – Iberia/British Airways, paragraph 10.

¹⁹ 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 links between in-flight catering services and passenger air transport. (See e.g. M.8137 – HNA/Servair, paragraph 61). As there is no horizontal overlap between the activities of WFS and those of SATS/Temasek in passenger air transport, but only a vertical link between the WFS activities in ground handling services (upstream) and Temasek's activities in the provision of passenger air transport services downstream (through SIA), the Commission will consider for the purposes of this Decision, that the relevant product market definition would be the one related to vertical assessments.

²⁰ M.9546 – Gategroup/LSG European Business, paragraph 74; M.9418 – Temasek/RRJ Master Fund III/Gategroup, paragraph 34 and 36; M.8104 – HNA Group/Gategroup, paragraph 35.

²¹ M.8964 - Delta/Air France-KLM/Virgin Group /Virgin Atlantic, paragraph 156 and 161; M.8361 – Qatar Airways/Alisarda/Meridiana, paragraph 37; M. 6828 – Delta Airlines/Virgin Group/Virgin Atlantic Limited, paragraph 76; M.6447 – IAG/BMI, paragraph 92; M.5747 - Iberia/British Airways, paragraph 40.

²² M.8964 - Delta/ Air France-KLM /Virgin Group /Virgin Atlantic, paragraphs 156 and 161; M. 6828 – Delta Airlines/Virgin Group/Virgin Atlantic Limited, paragraphs 73-74; M.6447 – IAG/BMI, paragraphs 91-92; M.5747 – Iberia/British Airways, paragraph 40.

²³ Form CO, paragraphs 155, 159, 165 and 170.

²⁴ Form CO, paragraph 170.

- (22) Finally, the Notifying Party considers that airside cargo handling services could either belong to the market for the provision of landside cargo handling services or to the market for the provision of ground-handling services, depending on whether or not in the relevant airport, a (ground-handling) licence is required to operate these services.²⁵ Nonetheless the Notifying Party submits that, in the absence of competition concerns, whether airside and landside cargo handling services are considered a part of the same market is of limited relevance to the competitive assessment in this case.²⁶

4.1.3. *The Commission's assessment*

- (23) The results of the Commission's market investigation do not suggest a departure from its past decisional practice. Therefore, the impact of the Transaction will be assessed on the basis of the product market definitions followed by the Commission in past cases.

4.1.4. *Conclusion*

- (24) In light of the above, the Commission concludes that, for the purposes of this decision, a separate relevant product market should be defined for ground-handling services, landside cargo handling services, in-flight catering services, passenger air transport services and cargo air transport services. The questions whether (i) the relevant market for ground-handling services should be sub-segmented by the type of services; and, (ii) airside and landside cargo handling services should be considered as part of the same market can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any of the plausible alternative product market definitions.

4.2. **Geographic Market Definition**

4.2.1. *The Commission's past decisional practice*

4.2.1.1. Ground Handling Services

- (25) In its previous decisions, the Commission has considered that the geographic scope of the market for ground handling services is restricted to a specific airport area (or could possibly encompass also two neighbouring airports),²⁷ given that the services required at a particular airport cannot normally be substituted by services provided at other airports.²⁸

²⁵ Form Co, paragraphs 150-151.

²⁶ Form CO, paragraph 143.

²⁷ M.9270 – Vinci Airports / Gatwick Airport, paragraphs 12; M.8470 – DAAM/Infravia/FIH/AI, paragraph 19; M.7398 – Mirael/Ferrovial/NDHI, paragraph 22; M.7021 – Swissport / Servisair, paragraph 44; M.6671 – LBO France/Aviapartner, paragraph 57 and 58.

²⁸ M.8470 – DAAM / Ifravia / FIH / AI, paragraph 19. The Commission has previously considered whether a wider geographic market could be possible (see e.g.: M.7021 – Swissport / Servisair, paragraph 38 *et seq.*; M.6671 – LBO France/Aviapartner, paragraph 55 *et seq.*). Nevertheless in the present case (similarly to M.7021 – Swissport / Servisair) the market investigation confirmed that these markets show localized characteristics as indicated above.

4.2.1.2. Landside Cargo Handling Services

- (26) The Commission has considered in its past decisional practice that the geographic scope of the market is restricted to a specific airport (or neighbouring airports).²⁹

4.2.1.3. In-flight catering

- (27) The Commission has previously left open the geographic market definition for in-flight catering services, while noting that the relevant market would be either the airport's catchment area or at most a geographic area encompassing several neighbouring airports.³⁰

4.2.1.4. Passenger Air Transport Services

- (28) In cases involving a vertical relationship,³¹ the Commission previously found that the relevant geographic market for passenger air transport is the relevant airport,³² because various services (including in-flight catering and retail on-board services) are procured on an airport-by-airport basis and not on a route-by-route basis.³³

4.2.1.5. Cargo Air Transport Services

- (29) In its past decisional practice, when considering horizontal overlaps, the Commission defined the market for intra- European routes of cargo air transport as European-wide. As regards intercontinental routes, the Commission established that catchment areas at each end of the route broadly correspond to continents where local infrastructure is adequate to allow for onward connections, such as Europe and North America. For continents where local infrastructure is less developed, the relevant catchment area has been considered the country of destination.³⁴
- (30) The Commission has not assessed the geographic market in relation to cargo air transport services in a transaction involving vertical relationships with cargo handling providers.

²⁹ M.7021 – Swissport/Servisair, paragraph 52; M.6671 - LBO France (WFS)/Aviapartner, paragraph 69-70.

³⁰ M.9418-Temasek/RRJ Master Fund III/Gategroup; M.9546-Gategroup/LSG European Business.

³¹ More specifically, the Commission considered 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, and 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 and retail on-board services at the relevant airports instead of making a route-by-route assessment (See *e.g.* M.8137 – HNA Group/Servair, paragraph 61; and, M.8104 – HNA Group/Gategroup, paragraph 35). As there is no horizontal overlap between the activities of WFS and those of SIA in passenger air transport, but only a vertical relationship between WFS' upstream activity in ground handling services, and Temasek's activity in passenger air transport (through SIA) downstream, the Commission will consider for the purposes of this Decision, that the relevant geographic market definition would be the one related to vertical assessments.

³² M. 9546 – Gategroup/LSG European Business, paragraph 77; M. 8137 – HNA Group/Servair, paragraph 61; M.8104 – HNA Group/Gategroup, paragraph 37; M.9418 - Temasek / RRJ Master Fund III / Gategroup, paragraphs 38- 39.

³³ M.9418 – Temasek/RRJ Master Fund III/Gategroup, paragraphs 38-39.

³⁴ M.8964 - Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraph 162.

4.2.2. *The Notifying Party's view*

- (31) The Notifying Party's submissions do not depart from the Commission's past decisional practice.³⁵ They do indicate, however, that by analogy with the approach adopted in relation to passenger air transport services when vertical relationships are assessed, the relevant geographic market for cargo air transport services in case of a vertical transaction should be considered at the level of the 'total demand (...) at the relevant airports'³⁶ (rather than on a route-by-route basis).

4.2.3. *The Commission's assessment*

- (32) The results of the Commission's market investigation do not suggest a departure from its past decisional practice. Therefore, the impact of the Transaction will be assessed on the basis of the geographic market definitions followed by the Commission in past cases.

4.2.4. *Conclusion*

- (33) In light of the above, the Commission concludes that, for the purposes of this decision, the geographic market definitions for the provision of (i) ground handling services; (ii) cargo handling services; and (iii) in-flight catering services are restricted to a specific airport area or could possibly encompass also two neighbouring airports. This geographic market definition applies to any of the plausible alternative product market definitions mentioned under section 4.1 above.
- (34) Furthermore, the Commission concludes that there is no reason to deviate from its precedents on the geographic market for passenger air transport for the assessment of vertical cases, which was defined on a relevant airport basis. By analogy, the geographic scope of the market for the provision of cargo air transport services in the case of a vertical assessment will also be considered by the Commission on a relevant airport basis for the purposes of this Decision. However, the exact geographic scope of the cargo air transport services market can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any of the plausible alternative geographic market definitions.

5. **COMPETITIVE ASSESSMENT**

- (35) Within the EEA, WFS mainly provides cargo handling services as well as ground handling services. In the EEA, Temasek is active in passenger and cargo air transport through SIA and in the provision of ground handling, in-flight catering, retail on-board and airport lounge services through Gategroup. SATS is mainly active outside the EEA in the provision of ground handling, cargo handling and in-flight catering services.

³⁵ Form CO, paragraphs 166, 172 *et seq.* 174-176, 188, 196 and 200.

³⁶ Form CO, paragraph 198. See also M.8137 – HNA Group/Servair, para. 61; M.8104 – HNA Group/Gategroup, para. 35; M. 6179 – Alpha Flight LSG/JV, paras. 28-30; M.6037 – Dnata/Alpha, paras. 17, 21, and 25; M.9418 – Temasek/RRJ Master Fund III/Gategroup, para. 38

- (36) In this context, SATS has no material activities in the EEA and the Transaction does not give rise to any horizontal overlaps or non-horizontal relationships between the activities of WFS and SATS in the EEA.³⁷
- (37) A horizontal overlap arises only between the WFS and Gategroup's activities in ground handling services only at Paris CDG airport but according to the information provided, the Parties' combined market share remains below 20%. This overlap will therefore not be further discussed in this Decision.³⁸
- (38) Nevertheless, the Transaction gives rise to vertical links (and vertically affected markets) between the activities of WFS in air cargo handling³⁹ upstream and the activities of SIA in cargo air transport downstream.
- (39) The Transaction also gives rise to a conglomerate relationship between WFS' ground handling activities and Gategroup's in-flight catering activities at Paris CDG.
- (40) However, WFS is not directly active in the market for the provision of ground-handling services at Paris CDG as it only acts as a sub-contractor for a small range of ground handling services (i.e., baggage handling services) to Air France/KLM which holds a general ground handling license at Paris CDG. WFS did not obtain a ground handling licence of its own at Paris CDG.⁴⁰
- (41) Therefore, the relationship between WFS' ground handling activities and Gategroup's in-flight catering activities at Paris CDG will not be further discussed in this decision.

5.1. Analytical Framework

- (42) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing, pursuant to Articles 2(2) and (3), whether they 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.

³⁷ Form CO, paragraph 13.

³⁸ As neither Gategroup nor SIA provide any air cargo handling services anywhere in the EEA, there is no overlap arising from the Transaction in the market for air cargo handling services. For the definition of air cargo handling services see footnote 39 below.

³⁹ Any reference to 'air cargo handling' for the purposes of this Decision, mostly refers to landside cargo handling and relates to the assessment of the vertical links arising between the activities of WFS in landside cargo handling upstream and the activities of SIA in cargo air transport downstream. However, the Commission takes a more conservative approach in the airports where WFS is active both in landside cargo handling and airside cargo handling, and includes in WFS' air cargo handling market shares, the sum of both airside and landside cargo handling services. That means that the 'airside' cargo volumes provided by WFS have been considered as part of the cargo volumes at, for instance, Paris CDG, CPH and BRU, see Form CO, paragraph 361. In FRA and BCN, airside cargo handling services are only provided by licensed ground handlers and WFS does not have such a license in these airports. Form CO, paragraph 362.

⁴⁰ Form CO, see for instance, paragraphs 15, 218, 222, 230 and 396. If WFS were considered to be active in ground handling services at Paris CDG, a vertical link would arise between the WFS ground handling services upstream and SIA air passenger transport services downstream. However, this vertical link would not give rise to affected markets (the WFS/Gategroup combined market share upstream is below 20% and SIA's market share downstream is very low, below [0-5]%) and thus will not be further discussed in this Decision.

- (43) Pursuant to Article 6(1)(b) of the Merger Regulation, where the Commission finds that the notified concentration does not raise serious doubts as to its compatibility with the internal market, the Commission shall decide not to oppose the concentration and declares it compatible with the internal market.

5.1.1. *Vertical effects*

- (44) According to the Non-Horizontal Merger Guidelines,⁴¹ foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.⁴² Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;⁴³ and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.⁴⁴

- (45) In assessing the likelihood of input or customer foreclosure scenarios, the Commission examines, first whether the merged entity has the *ability to foreclose its rivals*, second, whether the merged entity has *the incentive to foreclose its rivals*, and third, whether the foreclosure strategy has a *significant detrimental effect on competition*.⁴⁵ In practice, these factors are often examined together since they are closely intertwined.

5.2. **Vertical links in relation to air cargo handling services (upstream) and cargo air transport (downstream)**

5.2.1. *Overview of the vertically affected markets*

- (46) WFS provides cargo handling services in the following airports where SIA purchases such services (either for a full freighter plane or for belly-cargo services in a passenger flight): Brussels (BRU) and Amsterdam (AMS) - full freighter plane; Copenhagen (CPH), Paris Charles de Gaulle (CDG), Frankfurt (FRA), Rome (FCO), Milan (MXP), and Barcelona (BCN) – only belly cargo services.

- (47) Based on the information provided by the Parties, vertically affected markets arise in the following airports due to WFS' market share in the upstream market for cargo handling services being above 30% in 2021: BCN ([30-40]%), FRA ([30-40]%) and CPH ([30-40]%). When the volumes self-handled by integrators, such as DHL, UPS or FedEx⁴⁶ and by airlines themselves are deducted from the overall market size in each airport,⁴⁷ then affected markets also arise, as seen in Table 2 below, in BRU and Paris CDG where the 2021 WFS market share was [30-40]% and [70-80]% respectively. In this most conservative scenario, which will be the basis for the Commission assessment, the WFS market share in BCN,

⁴¹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C265, 18.10.2008, p.7

⁴² Non-Horizontal Merger Guidelines, paragraphs 20-29.

⁴³ Non-Horizontal Merger Guidelines, paragraphs 31.

⁴⁴ Non-Horizontal Merger Guidelines, paragraphs 58.

⁴⁵ Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

⁴⁶ Integrators generally self-handle their cargo volumes and they do not provide cargo handling services to third parties; Form CO, paragraphs 332 and 333.

⁴⁷ See, for instance, M.7021 – Swissport/Servisair, paragraph 191 where market shares excluding self handled volumes were also considered; M.6671-LBO France/Aviapartner, paragraph 23.

CPH and FRA further increases and reaches [50-60]%, [80-90]% and [40-50]% respectively.

Table 2: WFS market share in air cargo handling services market (in volume)⁴⁸

Airport	2021 WFS market share	2020 WFS market share	2019 WFS market share
BRU ⁴⁹	[30-40]%	[20-30]%	[30-40]%
FRA ⁵⁰	[40-50]%	[50-60]%	[40-50]%
BCN ⁵¹	[50-60]%	[60-70]%	[60-70]%
CDG ⁵²	[70-80]%	[80-90]%	[70-80]%
CPH ⁵³	[80-90]%	[80-90]%	[70-80]%

Source: Form CO, Tables 28, 35, 31, 34 and 36.

- (48) In addition, the Parties have confirmed that the WFS 2021 market share on a neighbouring airport group basis would be lower than the market shares indicated in Table 2 above.⁵⁴
- (49) Regarding the downstream market for cargo air transport, as seen in Table 3 below, SIA's market share is below 5% on an airport basis.

⁴⁸ 'Air cargo handling' services as explained in footnote 39 above. All market shares are based on WFS best estimates and the reporting of the respective airport authority, that is, Brussels Airport for BRU, Fraport for FRA, AENA for BCN, ADP for Paris CDG, Copenhagen Airport for CPH. WFS does not have any third party data which would allow it to calculate market shares on a value basis. However, the Parties expect that the market share of WFS and its cargo handling competitors on a value basis would be comparable to those provided on a volume basis. Form CO, footnote 115.

⁴⁹ Based on 2022 data from January to November, the WFS market share would be [30-40]%, Form CO, paragraph 348.

⁵⁰ Based on 2022 data, from January to November, the WFS market share would be [40-50]%, Form CO, paragraph 357.

⁵¹ Based on 2022 data, from January to November, the WFS market share would be [60-70]%, Form CO, paragraph 354.

⁵² Based on 2022 data, from January to November, the WFS market share would be [70-80]%, Form CO, paragraph 351.

⁵³ Based on 2022 data, from January to November, the WFS market share would be [80-90]%, Form CO, paragraph 358.

⁵⁴ See reply to q 1b of RFI 1. The Parties submit that regarding AMS, CPH, FRA, BCN, FCO and MXP, as WFS does not have activities in neighbouring airports, the WFS market share would necessarily be lower. In addition, regarding both BRU airport and CDG Paris airport, the WFS market share would be lower in a neighbouring airport group basis encompassing, BRU, Liege (LGG), Charleroi (CRL) and Antwerp (ANR) on the one hand and CDG, Beuvais (BVA) and Orly (ORY) on the other hand.

Table 3: SIA’s market share in the cargo air transport services market on an airport-by-airport basis⁵⁵

Airport	2021 SIA market share	2020 SIA market share	2019 SIA market share
CDG	[0-5]%	[0-5]%	[0-5]%
FRA	[0-5]%	[0-5]%	[0-5]%
CPH	[0-5]%	[0-5]%	[0-5]%
BCN	[0-5]%	[0-5]%	[0-5]%
BRU	[0-5]%	[0-5]%	[5-10]%

Source: Form CO, Table 44.

- (50) In addition, the SIA’s 2021 market share remains below 30% also when the relevant trade lanes are considered: EU-Asia (both outbound and inbound): [0-5]%; EU-North America (both outbound and inbound): [0-5]%; EU-India (both outbound and inbound): [0-5]%; EU-South East Asia: [10-20]%; South East Asia-EU: [5-10]%; EU-Singapore: [20-30]%; Singapore-EU: [20-30]%.⁵⁶

5.2.2. Assessment of the vertically affected markets

5.2.2.1. Input Foreclosure

- (51) In this Section, the Commission assesses whether the Transaction would result in input foreclosure of the combined entity’s rivals in the market for cargo air transport pursuant to which the combined entity would foreclose its downstream competitors (that is, providers of cargo air transport services) by restricting access to or deteriorating the access to the air cargo handling services that it provides to them.

5.2.2.1.1. The Notifying Party’s view

- (52) The Notifying Party submits that the merged entity will not have the ability or the incentive to restrict airlines’ access to cargo handling services at any of the airports where WFS is active. This is mainly because airlines that operate in these airports have alternative suppliers available to whom they can turn and, as WFS derives significant revenues from providing cargo handling services to a large number of

⁵⁵ While complete data for the entire year of 2022 is not yet available, the Parties took the data available (January to July 2022) in order to arrive to a conservative estimate regarding 2022 market shares. These 2022 figures show a limited increase in the market shares of SIA in certain locations, including [...], where the market shares are [5-10]% and [5-10]% respectively. The Commission considers that given the very limited extent of this potential increase and the highly conservative nature of these estimates, the assessment of the vertically affected markets outlined below would also apply if the Commission were to consider these 2022 figures.

⁵⁶ Form CO, Table 27 and reply to RFI 2. The Parties confirmed that the market shares would remain below 30% considering 2022 as well.

cargo air providers, any input foreclosure strategy would have reputational and economic consequences resulting in lost revenues for WFS/ the combined entity.⁵⁷

5.2.2.1.2. The Commission's Assessment

5.2.2.1.2.1. Ability to foreclose

- (53) In terms of **ability** to engage into a full or partial input foreclosure strategy, the Commission notes that WFS has a relatively moderate market share at BRU airport, which is below 40%, while in FRA its market share remains below 50% and has fluctuated over the last three years. In both these airports WFS faces significant and long-established competitors, such as, Swissport, Aviapartner and dnata who are also active in BRU airport with a market share in 2021 of [30-40]%, [20-30]% and [10-20]% respectively⁵⁸ or LUG, Celebi, LH Cargo, Swissport which are active in FRA with a market share of [10-20]%, [10-20]%, [10-20]% and [5-10]% respectively⁵⁹. Consequently, even if the combined entity decided to serve solely SIA post-Transaction, other airlines would -have access to cargo handling services provided by competitors of WFS in these airports.
- (54) In addition, there do not appear to be significant barriers to entry to the provision of cargo handling services at BRU as space available is not a concern and additional cargo handling space has been created, including by dnata.⁶⁰ In addition, there is no indication that the remaining competitors are less efficient or offer less preferred alternatives.⁶¹ Over the last three years (2019-2021), WFS, Swissport and Aviapartner have held similar market positions, with Swissport generally being the market leader.⁶² In addition, dnata is a recent entrant at BRU airport⁶³ and has expanded its presence in the last three years with its market share increasing from [5-10]% in 2019 to [10-20]% in 2021.⁶⁴ Regarding FRA airport, where a variety of other cargo handlers are active,⁶⁵ the Commission notes that Lufthansa Cargo also serves third party airlines while the market shares of Swissport and Celebi have been increasing between 2019 and 2021. CHI, a new local operator opened cargo handling operations at FRA in 2020 with Air India.⁶⁶ In addition, [...] ⁶⁷ Finally, the Commission notes that WFS already handles [...] both BRU and FRA airports, while at the same time still offering cargo services to other airlines in both these airports⁶⁸ and that none of the cargo handling providers contacted during the

⁵⁷ See, for instance, Form CO, paragraph 339.

⁵⁸ Form CO, Table 28.

⁵⁹ Form CO, Table 35.

⁶⁰ Form CO, paragraph 256.

⁶¹ Non-Horizontal Merger Guidelines, paragraph 36.

⁶² Form CO, Table 28.

⁶³ See also paragraph 20 of Non-Confidential minutes of a conference call with a competitor, dated 7 December 2022.

⁶⁴ Form CO, Table 28.

⁶⁵ See Form CO, Table 35. See also Non-Confidential Minutes of a conference call with a market participant, dated 8 December 2022, paragraph 9.

⁶⁶ Form CO, Table 35 and paragraph 343.

⁶⁷ Form CO, paragraph 343

⁶⁸ Form CO, Annex 45 with the WFS top 5 customers in cargo handling services per airport. For instance, in BRU, [...].

market investigation raised any capacity concerns regarding BRU and FRA airports.⁶⁹

- (55) The WFS market share remained below 60% in BCN in 2021, where there are other sizeable competitors active, such as ACL, IAS and Swissport with a market share of [20-30]%, [10-20]% and [5-10]% respectively.⁷⁰ The Commission notes that in BCN, market shares have been fluctuating and the WFS market share has decreased since 2019, as seen in Table 3 above,⁷¹ while the market share of ACL and IAS has been increasing. For instance, ACL's market share has increased from [5-10]% in 2019 to [20-30]% in 2021 while the IAS market share has almost doubled between 2019 and 2021.⁷² IAS, which was established in 2017, is a recent entry at BCN airport and has started gaining a solid position at BCN since 2019, with a market share above [10-20]%, reaching [10-20]%, in 2021.⁷³
- (56) Regarding Paris CDG, the Commission notes that Air France (Cargo), FCH and Groupe Europe Handling ('GEH'), a recent entry at Paris CDG,⁷⁴ are also active and could provide cargo handling services to SIA's competitors in this airport. Air France has, for instance, recently offered services to third parties such as Delta Airlines. In addition, the Parties submit that WFS has [...].⁷⁵
- (57) Regarding CPH, WFS competes with Spirit Air Cargo, a cargo services provider with a strong presence at CPH airport, which forms part of the SAS Group and provides cargo handling services to, among others, SAS airline at CPH airport. Spirit Air Cargo owns the biggest cargo terminal at CPH airport, which is almost [...] the size of the WFS warehouse.⁷⁶ In addition, CPH airport has made space available for other potential operators to operate first line cargo handling facilities. There is, for instance, around [...] of first line warehousing space available immediately and [...].⁷⁷ The Commission also notes that while WFS already handles the [...] at CPH airport, [...] etc.⁷⁸ None of the airlines contacted during the market investigation raised any input foreclosure concerns regarding CPH airport.⁷⁹

⁶⁹ See, for instance, Non-Confidential minutes of a conference call with a competitor dated 17 November 2022; Non-Confidential minutes of a conference call with a competitor dated 7 December 2022; Non-Confidential minutes of a conference call with a competitor dated 19 January 2022; Non-Confidential minutes of a conference call with a competitor/customer dated 8 December 2022.

⁷⁰ Form CO, Table 31.

⁷¹ Remaining below the 2019 market share also when 2022 data between January and November is considered. Form CO, paragraph 354.

⁷² Form CO, Table 31.

⁷³ Form CO, Table 31.

⁷⁴ GEH entered the Paris CDG cargo market in November 2022 [...]. Form CO, paragraph 328. On available competition in cargo handling at Paris CDG, including GEH's recent entry and future prospects, see also Non-Confidential Minutes of a conference call with a customer, dated 16 November 2022, paragraphs 21-22.

⁷⁵ Form CO, paragraphs 307, 329 and 337. See also Non-Confidential minutes of a conference call with a customer, dated 16 November 2022.

⁷⁶ Form CO, paragraph 337.

⁷⁷ Reply to q.2 d of RFI 1.

⁷⁸ Form CO, Annex 45.

⁷⁹ See, for instance, Non-Confidential Minutes of a conference call with a customer, dated 29 November 2022 or Non-Confidential Minutes of a conference call with a customer, dated 8 December 2022 or Non-Confidential reply of a customer received on 20 January 2023 to RFI.

- (58) Based on the above, the Commission considers that WFS/ the combined entity does not have the ability to enter into an input foreclosure strategy at BRU and FRA airports. However, in view of its market share, which exceeds 50% at BCN, Paris CDG and CPH airports, it cannot be excluded that WFS/the combined entity could have the ability to engage into an input foreclosure strategy post-Transaction in these airports.

5.2.2.1.2.2. Incentive to foreclose

- (59) Even if it was considered that, because of its market share in BCN, Paris CDG and CPH, WFS could have the ability to engage into input foreclosure in these airports, the Commission considers that it would likely not have any **incentive** to do so for the reasons mentioned below.
- (60) First, pursuant to paragraph 43 of the Non-Horizontal Merger Guidelines, the incentive to foreclose actual or potential rivals may depend on the extent to which the downstream division could benefit from higher price levels as a result of a strategy to raise rivals' costs. In this sense, the greater the market shares of the merged entity downstream, the greater the base of sales on which to enjoy increased margins. In the present case, any foreclosure attempts by WFS will likely not be profitable, in view of SIA's low market share in the downstream market which, as seen in Table 4 above, is below 5% at airport level in 2021 and in any case below 30% on any of the trade lanes to be considered in this case.⁸⁰
- (61) Second, WFS provides cargo handling services to several cargo air transport providers in these airports and any strategy whereby it would only offer services to SIA would result in a loss of revenues and could result in reputational and economic consequences extending to other stations and customers. Globally SIA represented only [0-5]% of WFS cargo handling revenues in 2021⁸¹ which means that, if WFS engaged into an input foreclosure strategy, it would risk excluding over [90-100]% of its revenue stream. For instance, in BRU, where SIA provides a full freighter service and [...], it represented only [10-20]% of WFS cargo handling volumes in 2021.⁸² For CPH, SIA represented only [10-20]% of WFS cargo handling volumes in 2021 while it represented only [0-5]% and [0-5]% of WFS' cargo volumes handled in Paris CDG and FRA respectively.⁸³ The Commission also notes that in FRA, BCN, Paris CDG and CPH, SIA only provides belly cargo air transport services carrying trivial volumes of cargo and does not operate full freighter planes. Consequently, even if WFS were to foreclose other cargo airlines access to its cargo handling services, SIA would not have the capacity to capture a significant portion of any diverted revenues. Pursuant to paragraph 42 of the Non Horizontal Merger Guidelines, this would further lower the combined entity's incentive to engage into input foreclosure since this incentive depends on the extent to which the downstream division can capture diverted demand.
- (62) Third, profit margins in the upstream market appear to be higher than those in the downstream market. The Parties have indicated that WFS average profit margin in the upstream market in Europe (excluding the UK) generally ranges between

⁸⁰ See Table 3 and paragraph 49 above.

⁸¹ Form CO, paragraph 339.

⁸² Form CO, paragraph 313.

⁸³ Form CO, paragraphs 321, 319, 317 respectively and Tables 22-24.

15-25% for most years; in 2021, it was around [10-20]% as compared with [10-20]% in 2019.⁸⁴ On the other hand, the net profit margin for air transport services was estimated at around 5-10% during the 2010-2022 period.⁸⁵ In line with paragraph 41 of the Non Horizontal Merger Guidelines, this would further lower the combined entity's incentive to engage into an input foreclosure strategy as its losses from restricting input sales would be higher.

(63) Fourth, the lack of incentive to engage into input foreclosure was confirmed also by the market investigation, where market participants confirmed that SIA is one of the smaller players in cargo air transport⁸⁶ and indicated, for instance, that *'it would not make sense for the cargo handling agents to reject customers like us'*.⁸⁷

(64) Based on the above, the Commission concludes that WFS/the combined entity will not have the incentive to engage into an input foreclosure strategy post-Transaction.

5.2.2.1.2.3. Effect on competition

(65) The Commission notes that, while providing services to other airlines, WFS already provides cargo handling services to SIA in most of the airports where affected markets arise, that is, in BRU, Paris CDG, CPH and FRA.⁸⁸ Consequently, as also noted by one market participant, the Transaction will not affect the current competitive situation.⁸⁹ In addition, the Commission notes that in several of these airports there remain sufficient credible downstream competitors whose costs are not likely to be raised as they are themselves vertically integrated.⁹⁰ For instance, Emirates, AirFrance/KLM, Lufthansa, Iberia, SAS all belong to groups that also have a cargo handling division.⁹¹ For instance, AirFrance/KLM self handles its cargo at Paris CDG, Lufthansa self handles in FRA, SAS belongs to the same SAS group as Spirit Air Cargo, the cargo provider active at CPH airport while dnata, part of Emirates group, is active in various airports within the EEA, including Brussels and Amsterdam.

(66) Finally, none of the airlines contacted by the Commission raised any input foreclosure concerns. On the contrary, one of them indicated that they did not expect the Transaction to interfere in the cargo air services they provide⁹² while others also indicated that the Transaction could have an overall positive impact on competition based on the efficiencies arising due to the complementary activities of the Parties and that they would welcome the creation of a larger player likely to invest into future technological improvements in the cargo handling industry.⁹³

⁸⁴ Form CO, paragraph 290.

⁸⁵ Form CO, paragraph 291.

⁸⁶ See, for instance, Non-Confidential minutes of a call with a customer dated 29 November 2022.

⁸⁷ See Non-Confidential reply of a customer received on 20 January 2023 to RFI.

⁸⁸ Form CO, Table 43. In BCN, where an affected market also arises, [...].

⁸⁹ Non Confidential Minutes of a conference call with a competitor, dated 17 November, paragraph 6.

⁹⁰ Non-Horizontal Merger Guidelines, paragraph 50.

⁹¹ Form CO, paragraph 416 and Table 47.

⁹² See Non-Confidential reply of a customer received on 20 January 2023 to RFI.

⁹³ See, for instance, Non-Confidential minutes of a conference call with a customer dated 16 November 2022, Non-Confidential minutes of a conference call with a customer dated 29 November 2022 and Non-Confidential minutes of a conference call with a customer dated 8 December 2022.

- (67) Based on the above, the Commission concludes that the likely impact, if any, on effective competition downstream from an input foreclosure strategy post-Transaction would be limited.

5.2.2.1.3. Conclusion

- (68) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy by the combined entity post-Transaction in order to exclude or deteriorate access of other airlines purchasing air cargo handling services is unlikely.

5.2.2.2. Customer Foreclosure

- (69) In this Section, the Commission assesses whether the Transaction would result in customer foreclosure of the combined entity's rivals in the market for cargo handling.

5.2.2.2.1. The Notifying Party's view

- (70) The Parties submit that customer foreclosure post-Transaction is implausible as SIA will not have the ability or incentive to prevent cargo handling operators competing with WFS from providing cargo handling services to cargo air transport operators.⁹⁴

- (71) In addition, the Parties submit that SIA is primarily active only with belly cargo in the majority of the airports where it is active within the EEA. The Parties submit that belly cargo transport within cargo air transport services constitute an ancillary activity aimed at optimizing the capacity of passenger aircrafts. Notably the Parties take the view that this activity does not compete directly with cargo transport through dedicated freighter aircrafts. Not only do passenger aircrafts have significant capacity constraints, but there are also certain pieces of cargo which passenger aircrafts are not suitable to carry (due to size and other constraints).⁹⁵

5.2.2.2.2. The Commission's Assessment

5.2.2.2.2.1. Ability to foreclose

- (72) According to the Non-Horizontal Merger Guidelines, for customer foreclosure to be a concern, the vertical merger must involve *"a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground"*.⁹⁶

- (73) As indicated above, SIA's market share in cargo air transport within the EEA is below [0-5]%⁹⁷ in each of the airports where WFS is active in cargo handling.⁹⁸

⁹⁴ Form CO, paragraph 295.

⁹⁵ Form CO, paragraph 268-273.

⁹⁶ Non-Horizontal Merger Guidelines, paragraph 61.

⁹⁷ Considering 2021 market shares. For market shares between 2019 and 2021 see Table 4 above.

⁹⁸ The Parties confirmed that SIA's market share remains [20-30]% also when the relevant trade lanes are taken into account (*see* Form CO, paragraph 210.). In addition, in their reply to RFI 1 the Parties

Therefore, SIA does not seem to have a significant degree of market power, which would allow it to engage in foreclosure. Even if SIA sourced cargo handling services exclusively from WFS, there would be several other potential customers active in cargo air transport in any given airport, providing the rivals of WFS with "*sufficient economic alternatives*".⁹⁹ Moreover, WFS is not active in every airport where SIA operates, therefore SIA would in any case remain as a potential customer for the rivals of WFS in these airports.

- (74) In addition, SIA is only active in cargo air transport with dedicated freighter aircrafts in BRU and AMS.¹⁰⁰ The handling of the cargo transported by passenger or by freighter aircrafts is largely the same¹⁰¹, however, freighter aircrafts have more capacity, and are more suited to carry specific (e.g. odd sized) or heavier goods.¹⁰²
- (75) In light of the above, regarding BRU and AMS, the Commission highlights the following:
- (a) SIA is a very small cargo air transport operator in BRU. It operates on average one cargo flight a day out of more than 60.¹⁰³
 - (b) SIA is similarly very small in AMS, an airport which is Europe's third largest cargo gateway. It operates on average one or two cargo flights a day out of up to 127 departing cargo flights a day.¹⁰⁴
 - (c) In addition, there are several airlines operating cargo flights to and from these airports. In BRU, there are several airlines operating cargo flights, including Emirates SkyCargo, Brussels Airlines Cargo, IAG Cargo, Qatar Airways Cargo, Turkish Airlines Cargo.¹⁰⁵ Similarly a number of airlines are active in cargo air transport in AMS, including Air China Cargo, Emirates SkyCargo, China Airlines Cargo, LATAM Cargo, Lufthansa Cargo, Qatar Airways Cargo, Saudia Cargo, China Southern Airlines Cargo.¹⁰⁶
- (76) In all other airports where WFS is active in cargo handling and SIA is active in cargo air transport, namely FCO, MXP, CDG, BCN, FRA and CPH, SIA is active through belly cargo. SIA's market share in these airports is similarly minimal. Moreover, there are several airlines providing (dedicated) cargo air transport services in each of these airports, including IAG Cargo, Delta Cargo, Nippon Cargo Airlines, Korean Air, etc. Therefore, there are sufficient alternative customers active in the downstream market representing sales opportunities for the rivals of WFS.¹⁰⁷

confirm that "the competitive assessment would not have differed if "neighbouring airports" were included in the geographic market definitions."

⁹⁹ Non-Horizontal Merger Guidelines, paragraph 61.

¹⁰⁰ Form CO, paragraph 248.

¹⁰¹ See, Non-Confidential minutes of conference calls with airlines dated 29 November 2022 and 8 December 2022.

¹⁰² See, Non-Confidential minutes of a conference call with a competitor dated 8 December 2022 and Form CO, paragraph 269.

¹⁰³ Form CO, paragraph 257.

¹⁰⁴ Form CO, paragraph 265.

¹⁰⁵ Form CO, paragraph 257.

¹⁰⁶ From CO, paragraph 265.

¹⁰⁷ From CO, paragraph 274.

(77) Finally, the majority of market participants contacted during the market investigation did not raise any customer foreclosure concerns. In fact, market participants confirmed that SIA has a relatively low market share in cargo air transport within the EEA. Only one of the market participants considered SIA as a potentially important customer, however this market participant also confirmed that SIA has limited market shares and that the transaction does not raise competition concerns.¹⁰⁸

5.2.2.2.2.2. Incentive to foreclose

(78) The Commission has not identified any significant gains the Parties could realise post-Transaction by engaging in a customer foreclosure strategy.¹⁰⁹ Notably, the limited market shares of SIA and the ample availability of alternative customers as described above suggest that the Parties are unlikely to benefit from higher price levels in the upstream or downstream markets in the event of a hypothetical customer foreclosure.¹¹⁰

5.2.2.2.2.3. Effect on competition

(79) As mentioned above, SIA's downstream market share is limited in the EEA, remaining [0-5]% at airport level. Moreover, it already uses WFS as its supplier in [...] % of the airports where it currently operates with cargo air transport services. Therefore, even if post-Transaction SIA switches to WFS in all airports where it currently procures services from other market participants, the impact of SIA's actions is likely to be trivial. Notably, as shown above, SIA is unlikely to constitute a significant customer base in either of these airports.

5.2.2.2.3. Conclusion

(80) In light of the above, the Commission concludes that a customer foreclosure strategy by the combined entity post-Transaction is unlikely.

5.2.3. Conclusion on the vertical effects

(81) Based on the above considerations and in light of all the evidence available to it, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement due to vertical effects.

¹⁰⁸ See, Non-Confidential minutes of a conference call with a competitor dated 19 January 2023.

¹⁰⁹ Non-Horizontal Merger Guidelines, paragraph 68.

¹¹⁰ According to paragraph 70 of the Non-Horizontal Merger Guidelines “*The incentive to engage in customer foreclosure also becomes higher, the more the downstream division of the integrated firm can be expected to enjoy the benefits of higher price levels downstream resulting from the foreclosure strategy. In this context, the greater the market shares of the merged entity's downstream operations, the greater the base of sales on which to enjoy increased margins.*” As shown above, SIA's market share is very limited, which further substantiates the lack of incentive to foreclose.

6. CONCLUSION

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

For the Commission

(Signed)

*Margrethe VESTAGER
Executive Vice-President*