Completed acquisition by CAE Inc of Oxford Aviation Academy

ME/5637/12

The OFT's decision on reference under section 22(1) given on 26 October 2012. Full text of decision published 8 November 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **CAE Inc. ('CAE')** is a global company engaged in providing simulation and modelling technologies and integrated training services primarily to the civil aviation industry and defence forces. CAE manufactures and supplies full flight simulators. In the year ended 30 April 2012, CAE's UK revenue was £95.8 million. Approximately [ ] of its revenue is derived from the sale of simulation products, software and simulator updates and the balance from services including training, maintenance, aviation services and professional services.

2. **The Oxford Aviation Academy Group ('OAA')** is an independent provider of civil aviation training and personnel resourcing solutions, including the provision of **ab initio** training for airline pilots, initial and recurrent aircraft type training for airline pilots, cabin crew and maintenance engineers and the provision of personnel to airlines worldwide. The UK turnover of Oxford Aviation Academy in the financial year ended 30 April 2012 was £[ ] million.

TRANSACTION

3. On 16 May 2012 CAE, through Luxembourg Acquisition SARL, acquired sole control of OAA by way of a share purchase agreement. The OAA Group itself comprises three separate businesses. These businesses are:

- Parc Aviation Limited ('Parc') is essentially a temporary employment agency which provides pilots/flight crew to airlines in the short to medium term

- The Flight Training Organisation ('FTO') which consists of flight academies which provide **ab initio** training to pilots in the UK. The business comprises the training of new cadets in live aircraft, flight simulators and classrooms, to be become accredited pilots. This training can typically take 18 to 20 months to complete and is provided on a residential basis. At the end of the course cadets will obtain a pilots' licence from the relevant national aviation authority (in the UK, this will be from the Civil Aviation Authority ('CAA')) for a commercial flying licence, and

- Oxford Aviation Training Limited ('OAT') and its subsidiaries train accredited pilots on full flight simulators otherwise known as FFSs.

4. CAE's rationale for acquiring the OAA Group was to extend its global reach in civil aviation training by increasing its training centre footprint, to grow its **ab initio** flight training network by adding a presence in the UK market and the East coast of Australia (where CAE was not previously present), and by extending into a new area with the addition of OAA's Parc business. Specifically with respect to its training business, the attraction was to acquire a presence in Scandinavia and Hong Kong, with better customer contracts and relationships with other local carriers.

5. The OFT investigated this transaction following the receipt of a complaint about the parties' high share of supply of training on A320 FFS.

6. The transaction was notified to the OFT on 15 August 2012. The extended statutory deadline is 26 October 2012.

JURISDICTION

7. As a result of this transaction CAE and OAA have ceased to be distinct. The parties overlap in the supply of A320 FFS and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

8. The parties overlap i) in the supply of 'type rated training' (both conversion and recurrent) given to pilots and ii) in the supply of FFS simulator time to training suppliers.

Product market

9. Pilots principally have to undertake three types of training on aircraft.

(i) Pilots have to first undertake **ab initio** training in order to obtain their Commercial Pilots Licence or an Airline Transport Pilot Licence to be permitted by the CAA[1] to fly commercial aircraft. This typically takes 18 to 20 months to complete and is generally undertaken on a residential basis by student pilots in their country of origin. FFS are not generally used in **ab initio** training courses. A pilot must complete **ab initio** before they can undertake any form of type rated training.

(ii) Pilots then need to undertake 'type rated training' to expand or preserve their skills and to gain endorsements that allow them to fly particular aircraft. There are two types of type rated training.

- conversion training – this is when a pilot is first trained at the controls of a particular aircraft and gains the necessary licence endorsements. This takes around four weeks to complete, with a mix of classroom and simulator training. Once the training course has been completed, the pilot has a 'type rating' registered on their licence. This is generally funded by a pilots employer,[2] and

- recurrent training – this is required annually to ensure the pilot retains the necessary licence endorsements.[3] This typically takes two days of training to complete, including approximately eight hours of simulator time. This is largely funded by the pilot's employer.

[1] The CAA is the UK aviation authority. As a result of international harmonisation a pilot can obtain a licence from any relevant aviation regulator.

[2] Pilots may hold endorsements for a number of aircraft.

[3] Although the CAA requires annual training, the policy for most airlines is that training should be undertaken every six months.

10. The parties submit that **ab initio** training is in a separate market from type rated training. The OFT agrees that there is no demand side substitution because trained pilots will not need to undertake **ab initio** training, and those wishing to become pilots need to undertake **ab initio** training before they are in a position to undertake any type rated training. **Ab initio** training has therefore been considered separately.

11. Type Rated Training Organisations (TRTOs), such as the parties, who run conversion type rated training courses generally also offer recurrent type rate training since the same trainers and equipment can be utilised for both courses and airlines are likely to contract with the same trainers, particularly where pilots have built up relationships with them. It is access to particular FFSs that is critical to ensure pilots can be given type training to meet the regulatory requirements of their licences. Therefore, if a TRTO has access to a FFS, in this case an A320 FFS, then there is little impediment to offering each of these types of training interchangeably.

12. For these reasons, for market definition purposes these two types of training (conversion and recurrent training) have been considered to form part of the same market.

Ab initio Training

13. In respect of **ab initio** training, OAA has three training schools globally, only one of which is located in the UK (in Oxford). CAE has nine training schools globally, none of which are in the UK. The parties state that such training is undertaken by student pilots in their country of origin to avoid the additional costs of travel and accommodation incurred by training overseas. This preference was confirmed by third parties, therefore indicating that the relevant geographic market for such **ab initio** training is likely to be national in scope.

14. There is no overlap between the parties since CAE does not offer **ab initio** training in the UK. This market has not therefore been given further consideration in this decision and the remainder of the decision focuses on conversion and recurrent training (considered together as type rated training).

Aircraft Type

15. The OFT considered segmenting the market for type rated training further by the aircraft they were used for training on.

16. Simulators are built to resemble a specific aircraft model and cannot be adapted to a completely different model although they can be adapted for different aircraft which are part of the same 'family' (so for example, the A320 simulator will cover the A318, A319, A320 and A321 aircraft). The parties overlap only in A320 FFSs. No other simulators covering different models of aircraft would be suitable or adaptable for training pilots to fly A320 aircraft. For these reasons the market definition considers only A320 FFS.

Ownership of A320 FFSs

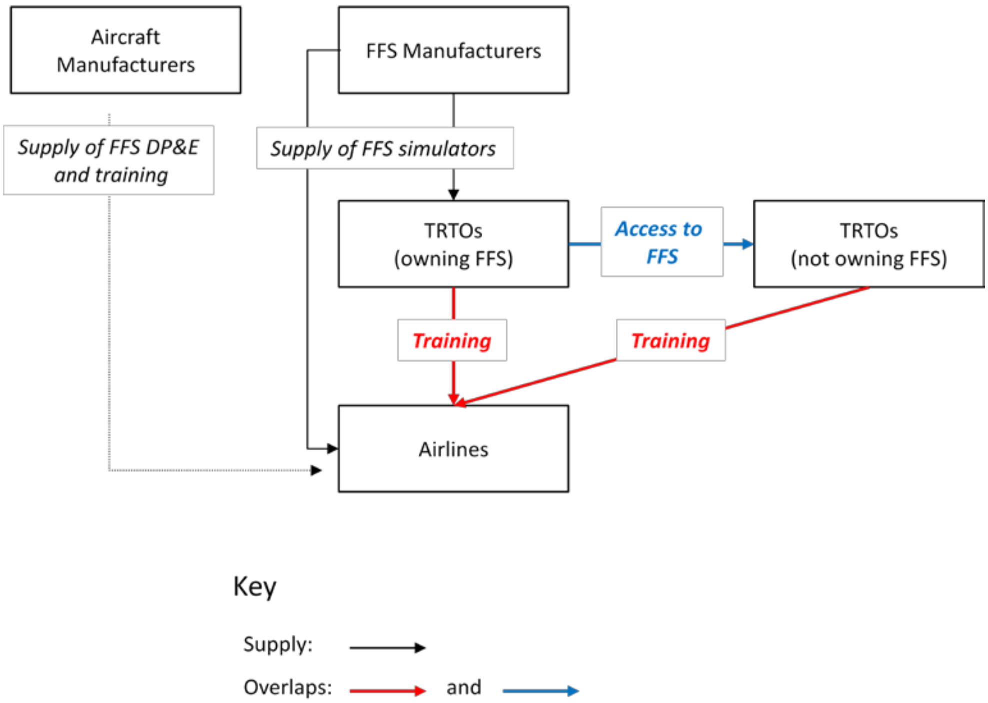
17. The OFT considered whether TRTOs leasing simulators by the hour, 'dry leased time', provide a sufficiently strong competitive constraint upon TRTOs which own FFS so as to be capable of being considered part of the same market.

18. The parties submit that ownership of FFSs are not an essential requirement in offering training because TRTOs can and do buy in the necessary simulator hours from FFSs owned by airlines, other TRTOs and OEMs (original equipment manufacturers).

19. Customers of type rated training confirmed that the ownership of FFS by a TRTO is not a relevant factor in choosing a provider of training.

20. The parties themselves offer training on their FFS directly to airlines, that is 'wet 'training. They also sell 'dry' leased time on their FFS to other TRTOs who do not own their own simulators. These could be other airlines or training organisations. The TRTOs who purchase dry leased time will provide their own trainers and provide much the same service as the parties to pilots. The diagram below shows the different ways in which a pilot could gain access to training on an FFS.

Supply chain



Source: based on information from the parties and third parties

21. There are more than 50 TRTOs in the UK, only 11 of which own their own FFSs. For A320 simulators, there are 15 TRTOs in the UK, five of whom own their own simulators (the owners of A320 FFSs other than the parties are Boeing, British Airways plc and CTC Aviation Group plc). This of itself would tend to suggest that ownership of a simulator is not necessary to run type rated training.

22. The parties argue that TRTOs do not need to purchase a simulator since there is plenty of capacity available and simulator time can be purchased by the hour. Indeed, the parties note that around [in excess of 60] per cent of their business is conducted on a 'dry' basis, where the TRTO rents access to the FFS and provides their own training instructors. Third party TRTOs who responded to the OFT confirmed that ownership of a simulator was not necessary for them to conduct their businesses.

23. On a cautious basis, the OFT has assessed the transaction on the basis of the narrowest plausible candidate markets in which the parties overlap, i) in the supply of type rated training (both conversion and recurrent) given to pilots and ii) in the supply of FFS simulators to training suppliers.

Geographic market

24. The parties submitted that the relevant geographic market for type rated training is global or at least EMEA wide because pilots are geographically mobile and, so, in theory at least, they can undertake type rate training on simulators located anywhere in the world.

25. Simulators are physically large, weighing in excess of two tonnes and need to be fixed to a reinforced concrete floor. It is therefore easier to move pilots to simulators than to move simulators. However, it is not impossible for simulators to be moved. A recent example of this has been where the parties themselves have moved a simulator [ ].

26. A third party noted that the cost of simulator time was small in comparison to the costs of moving and accommodating crews and that rescheduling to allow for training time overseas would cause operational difficulties. One airline noted that pilots on stop-overs may be in a different time zone and in need of rest and that training schedules would need to accommodate these issues, but this might not be so much of a concern when training was being undertaken within Europe. Airlines indicated that a small but significant increase in price is unlikely in itself to lead to them looking overseas for training facilities because the simulator time is in itself a small proportion of the overall training costs of recurrent type rate training.

27. In general, the airlines expressed a preference to train their pilots in the UK. Where no FFS is available in the UK type rate training does takes place overseas for some airlines. Several airline customers indicated that they would use simulators overseas and that they had certainly used the existence of overseas providers to negotiate better rates in the UK.

28. A significant percentage of non-UK based airlines use UK training facilities. The parties noted that a high proportion of the training is undertaken for overseas based airlines, with only [25 to 35] per cent of OAA's UK-trained customers and [25 to 35] per cent of CAE's UK-trained being UK based airlines. A competitor gave the OFT similar figures in relation to the training it undertakes for overseas airlines.

29. Overall the OFT considers that the geographic market for the supply of each of i)the supply of type rated training (both conversion and recurrent) given to pilots and ii) in the supply of FFS simulators to training suppliers is

likely to be wider than national, probably EMEA in scope. However, on a cautious basis, the OFT has also considered these markets at UK level.

HORIZONTAL ISSUES

Market shares in the supply of type rated training on A320 FFS

30. In the market for type rated training on A320, that is 'wet training', that is where the parties provide both access to a simulator and trainers, the parties own [ ] of the 13 FFS in the UK post-merger. This would equate to a share of supply of around [50 to 60] per cent in number of A320 FFSs.[4] However, the OFT considers that this share of ownership of A320 FFS should not be equated with market power in the supply of type rate training on A320 FFS since there is an excess of capacity in the utilisation of A320 FFSs and a well established market for TRTOs to buy in time on FFSs which acts as a competitive constraint on the parties. Whilst post merger there will be four owners of A320 FFS in the UK, there are approximately 15 suppliers of A320 type rate training operating in the UK, the majority of which purchase time on third-party-owned FFS. As a result, if the parties attempted to increase prices for wet training, customers would switch to another TRTO.

Market shares in the Leasing of A320 FFS

31. In the leasing market for A320 FFS, that is the market for dry time, the parties have in excess of 60 per cent of supply based on current capacity utilisation across the market. There will be four owners of A320 FFS in the UK after the merger. CAE has a turnover of around £[ ] and OAA a turnover of just over £[ ] associated with type rated training the majority of which is for conversion training as might be expected given the length of this training. The parties leasing of A320 FFS accounts for around [in excess of 80] per cent of their total type rated training revenues.[5]

[4] The OFT considered whether it was appropriate to consider the A320 FFS (and capacity) owned by British Airways in any market share calculation. Original information suggested it did not operate in the merchant market and only self-supplied. During the course of the investigation, however, it emerged that British Airways currently supply [ ] and they expressed an intention to expand their supply to TRTOs and other airline customers. Therefore, the OFT considered it appropriate to include A320 FFS owned by BA in its market share calculations.

[5] The remaining [ ] per cent comes from supplying type rated training on A320 FFS.

32. These market shares are at a level which could be considered to raise prima facie competition concerns. For this reason, the OFT has proceeded to examine the closeness of competition between the parties, unilateral issues, barriers to entry and buyer power.

Closeness of competition in the supply of type rated training on A320 FFS the leasing of A320 FFS

33. Training programmes and licence requirement are set by regulatory bodies. Both companies are reputable businesses with sufficient scale to accommodate training requirements of large airlines, to this extent the parties can be considered to compete in both the markets considered.

34. However, a review of the parties' customers shows that although they have one common customer there is generally quite a significant divergence in the range of customers and the value of their contracts across both markets identified (that is in the supply of type rated training on A320 FFS and the leasing of A320 FFS). OAA has significantly more customers than CAE and its typical contract values are generally lower. Some smaller third parties did not consider the parties were close competitors where training location was particularly important to them in choosing a simulator or training provider and where they were less willing to travel abroad to a simulator.

35. Overall, based on the third party views, the OFT considers that the evidence suggests that the parties are not especially close competitors in the supply of training on A320 FFSs training and in the leasing of dry time on A320 FFS beyond what would be suggested by their market shares.

Analysis of unilateral effect issues in relation to the supply of type rated training on A320 FFS and dry-leasing of A320 FFS

36. The parties submitted and third parties confirmed that there are several ways that customers may gain access to a simulator and to type rated training:

- OEMs frequently provide type rated training to new customers of their aircraft soon after the purchase of those aircraft. Most airlines own a mix of planes and will therefore require access to different FFS' for their training needs. The parties note that there is increasing utilisation of Airbus A320 aircraft and therefore it can be considered likely that the training market on A320s is likely to grow.

- Airlines can purchase an FFS and undertake their own training in-house (on the FFS or in the aircraft itself, although this may be a more expensive option) or they can outsource the training to a third party accredited TRTO. TRTOs may buy or lease simulators from a manufacturer or may lease time on simulators from other TRTOs, using flight training devices (FTDs) – being mock-ups of cockpits or multiple large touch screens in 2D or 3D – as a supplementary training tool to the FFS. The parties submitted that airlines have a competitive cost advantage as their FFS are less expensive as a result of the purchase of the aircraft for which the training is required although some airlines submitted that having their own FFS may be uneconomical unless they themselves can dry-lease it to others.

- Third party access (airline) – in the UK, BA appears to be the only airline to offer access to third parties for its FFSs.

37. As mentioned above, ownership of an FFS is therefore not essential to provide type rate training, although access to an FFS is. Many TRTOs do not own their own simulators, choosing instead to buy in time from other TRTOs who do have their own simulators. The typical cost of hiring an FFS (without an instructor) ranges from £[ ] to £400 per hour, depending on the volume requested, the time of day and the aircraft platform in question.

38. Importantly, there is excess capacity in the market which would act as a disincentive to the parties and other FFS providers restricting access. Internal board papers show that OAA's utilisation of FFSs is around [ ] per cent and that prices have been largely static over the past three years. The parties submitted that there is significant FFS training overcapacity for the A320 FFS in Europe; this is reflected in profit margins in the competitive training sector in Europe; for example, OAA reported losses to its shareholders of in excess of €[ ] in 2010 and €[ ] in 2011. A competitor indicated that it has [30] per cent excess capacity in the utilisation of its A320 FFS.

39. The OFT also notes that considering UK shares of supply in isolation – both in relation to the supply of type rated training on A320 FFS and the leasing

of A320 FFS – does not take account of the fact that customers in both of these markets are able to access training on A320 FFS (that is either on a wet or dry basis) overseas as a result of pilot mobility. As such, consideration of UK shares of supply alone greatly exaggerates the appearance of market power on the part of the merged parties.

40. Third parties were not generally concerned about the transaction. When the one third party that had initially complained was asked what it believed the result of the parties hypothetically raising their prices would be, it stated that it believed that customers for either wet or dry time would be able to switch to other providers either within the UK or overseas. Furthermore, TRTO purchasers of dry time informed the OFT that they believed they had a choice of providers and that the parties were constrained by the existence of other A320 owners and by the excess capacity existing in the market.

41. Based on the factors set out above, and taking account of the lack of third party concerns, the OFT considers that the transaction does not create a realistic prospect of a substantial lessening of competition in the leasing of A320 FFS.

Barriers to entry and expansion

42. The parties submit that barriers to entry and expansion are low although purchasing a simulator costs around £[in excess of five] million. There is excess capacity on existing simulators and leasing a simulator is a viable alternative option. This excess capacity may be a strong disincentive for parties considering the purchase of another simulator. If a buyer wished to purchase a simulator, one airline informed the OFT that it may take up to 18 months from placement of an order for a manufacturer to deliver a simulator. Purchases are made after a competitive process in which simulator manufacturers are invited to bid for contracts. The procurement process and the cost of running a simulator may limit the availability of simulators in the UK, which in turn may limit the availability of third party leasing of simulators.

43. In relation to training organisations which purchase dry time, barriers may be considered to be low as there is excess capacity. The parties informed the OFT that Boeing and Airbus have a backlog order book of 8,000 aircraft. This is anticipated to generate opportunities for training products

and services. They also informed the OFT that new entrants are emerging and others are positioning themselves to take greater market share.

44. However, given the outcome of its competition assessment the OFT has not found it necessary to conclude on whether there are barriers to entry and expansion are high in this case.

Countervailing buyer power

45. Countervailing buyer power arises where an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise its prices. However, the OFT notes that where individual negotiations are prevalent, such as in this case, the buyer power possessed by one customer will not typically protect other customers from adverse effects that might arise from the merger.

46. Customers of conversion and recurrent training are often major airlines who are large sophisticated buyers with a good understanding of the available training options and suppliers. They may be able to choose to undertake their training in-house by either buying or hiring simulator time.

47. Both large customers and small ones indicated that there are alternatives in the market, that they can easily switch suppliers, and that they have bargaining power. For example, one customer told the OFT that were the parties to raise their prices the customer could and would look to the other providers in the UK and indeed abroad. They gave an example, where they had used the threat of taking their contract to an overseas training provider in order to negotiate a preferential rate with the parties in the UK.

48. Given the outcome of its competition assessment, the OFT has not found it necessary to conclude on countervailing buyer power.

COORDINATED EFFECTS

49. The OFT has considered whether the merger creates or enhances the likelihood of successful coordination (tacit or explicit) occurring or strengthens existing co-ordination. Coordination can occur on prices, volumes, capacity, customer or sales area allocation, or other aspects of competition.

50. In brief, the conditions for coordination to be successful and stable are that firms have the ability and mutual incentive to align their behaviour and sustain a coordinated outcome, and that such an outcome is also sustainable in the face of external factors. If these conditions are present and a merger strengthens any of these elements, then coordinated effects may arise from the merger.[6]

51. In this case, the OFT has not received any evidence of existing co-ordination whether in the UK or over some wider geographic area. In any case, given that the parties have an incentive to lease out their simulators given the excess capacity, and that there are 15 A320 TRTOs operating in the UK any attempt to co-ordinate is likely to be unsuccessful.

52. Customers did not raise concerns to indicate that the merger would make uniformly timed/parallel price increases more likely.

53. Overall, the OFT therefore believes that the merger situation does not increase the likelihood of coordinated behaviour.

VERTICAL ISSUES

54. A third party complainant initially suggested that the parties could restrict access to A320 simulators, thus restricting competition in the UK market for type rated training.[7] Having regard to this concern, and the vertical relationship between the parties' activities, the OFT has considered whether any foreclosure concerns could arise from the transaction.

55. In assessing vertical concerns, the OFT in the present case considers whether the merged entity will be able and have the incentives to engage in input or customer foreclosure.[8] While CAE is a manufacturer of FFS, as noted above, it supplies a range of simulators for different aircraft types and different aircraft manufacturers and also is a provider of leasing of A320 FFS to TRTO.

[6] See OFT/CC Merger Assessment Guidelines (OFT1254), paragraph 5.5.9.

[7] In follow up discussions they conceded that in the event that the parties raised their prices or restricted their service in some way post mergers, that customers would switch to other suppliers.

[8] The OFT does not consider that any customer foreclosure theory of harm can apply to the present case, because of the parties' limited market power in the downstream markets, as discussed above.

56. CAE supplies FFSs to customers including to itself. Given this vertical relationship between the parties, the OFT considered whether the parties would have the ability and incentive to foreclose supply to downstream market participants, or foreclose a route to market for upstream market participants, and whether any such foreclosure would result in harm to competition.

57. CAE has supplied [ ] commercial aircraft FFS in the UK, including [ ] used by its (own downstream) type rate training business, to [ ] customers, half of whom are airlines and the other half TRTOs.

58. CAE has estimated that there are four competing FFS manufacturers in the UK, the largest of which (L-3 Link Simulation) has supplied the UK with 28 simulators equivalent to 46 per cent of the market. CAE itself has installed 25 FFS equivalent to 41 per cent of the market.

59. CAE submitted that competition is intensifying in the FFS manufacturing market with competition from relatively new or small start up companies and from existing large aerospace/defence conglomerates. CAE notes that L-3 Link Simulators recently acquired Thales training while Sim Industries was acquired in 2011 by Lockheed Martin.

60. One third party informed the OFT that aircraft manufacturers, such as Airbus and Boeing, supply conversion type rate training alongside new aircraft. The relationships they have with airlines may mean that airlines are able to buy FFS more cheaply than as a bundle from a supplier such as CAE. The CAE manufacturing business operates independently of the CAE flight training business mostly because the buyers of FFSs are direct competitors of the CAE flight training business.

61. One third party competitor expressed concern that the parties could offer long-term training contracts to airlines buying its simulators. The competitive processes used for purchasing FFS and for purchasing simulator training time means that these two contracts would have to be procured at the same time for this to occur. However, CAE submitted that it is unable to supply FFS as cheaply as aircraft manufacturers can enable it, by giving airlines discounts or free data inputs and equipment used to build FFS, effectively providing an incentive for the airlines to buy from the aircraft manufacturers.

62. The OFT does not consider that there is evidence that CAE has the ability or incentive to foreclose its downstream competitors of type rate training through its sales of FFSs. For this strategy to be profitable, CAE would need to expand downstream in the supply of dry or wet training and increase its profits to such an extent that the higher profits exceed the cost of the lower upstream sales of FFS. The OFT considers that, as explained above, the ownership of FFS is not necessary for competing TRTOs to successfully provide training to their customers, as it is common practice for TRTOs to lease FFS hours from FFS owners (including the parties).

63. Further, the OFT considers that, even if the parties, in addition to, or alternatively to, refusing to supply FFS to competing TRTOs, refused to provide access to their FFS to third party TFTO providers without their own FFS, they would still be unable to foreclose competing TRTOs because a significant amount of unused FFS capacity is available in the market (see further the reasoning in relation to the OFT's conclusions unilateral effects analysis in paragraphs 36 to 41).

64. Therefore, the OFT does not consider it plausible that the parties would be able sufficiently to expand in the downstream market to recoup the losses from lost sales of FFS or from restricting access to FFS (generated by their foreclosing strategy). Failing to do so, the parties would not have neither the ability nor the incentive to foreclose their downstream rivals, to the detriment of competition.

THIRD PARTY VIEWS

65. Where relevant, third party comments have been incorporated above. The majority of TRTO competitors, both those who owned their own FFSs and those who leased time on FFSs (and were therefore both customers and competitors) were unconcerned by the merger.

66. One third party expressed a concern that CAE had an exclusive contract with Airbus to supply conversion training to airlines buying its aircraft. A review of CAE's contracts shows that its contract with Airbus accounts for only [ ] per cent of its revenues, suggesting this is unlikely to be a concern. Moreover, this agreement was concluded prior to the merger and therefore does not relate to a merger-specific concern.

ASSESSMENT

67. The merger qualifies for investigation under the share of supply test, since, in the supply of A320 FFS in the UK the parties have a share in excess of 25 per cent.

68. There are different simulators for use for training on different aircraft models. There is limited substitutability between type specific simulators such that airlines are required to type rate train their pilots on simulators that accord with the aircraft the pilots are trained to fly. Therefore the OFT has viewed A320 FFS as a distinct market. This is the only FFS in which the parties overlap.

69. The OFT has assessed the transaction on the basis of the narrowest plausible candidate markets in which the parties overlap, i) in the supply of type rated training (both conversion and recurrent) given to pilots and ii) in the supply of FFS simulators to training suppliers. The OFT believes the geographic market is likely to be wider than national in respect of both markets, probably EMEA in scope. However, on a cautious basis, the OFT has also considered these markets at UK level.

70. The parties would have a significant market share in ownership of A320 FFS at UK level. However, third parties were generally unconcerned given that there is unused capacity in simulators and this allows for negotiation between airlines keen to reduce their training expenditure and simulator owners who are keen to cover their simulator costs. In addition, third parties pointed to the constraint available from accessing TRTO and A320 FFS on a dry basis overseas.

71. In relation to wet leasing of A320 FFS, although the parties may hold a significant share in relation to current utilisation, there is a high amount of excess capacity and if the parties attempted to raise their prices or somehow worsen their offering post-merger third parties would be able to switch to one of the other 15 TRTOs. In relation to dry leasing of A320 FFS, nearly all third parties were clear that they could and would go overseas if they believed the cost of dry leasing simulators was too high in the UK, with many respondents noting that for some aircraft types, training on simulators overseas is already required because of the absence of simulators in the UK.

72. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

73. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.