

Anticipated acquisition by Amadeus IT Group S.A. of Navitaire LLC

REQUEST PURSUANT TO ARTICLE 22 OF COUNCIL REGULATION (EC) 139/2004

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

The purpose of this document is to set out the evidence and issues that the CMA considered in making a preliminary assessment as to whether the criteria for making a referral request under Article 22 EUMR have been met, as noted in paragraph 4. In this context, the evidence set out in this document, including third party views, has not been subject to full merger investigation, since this case was referred by the UK to the European Commission under Article 22 EUMR after the date of this document (see the [European Commission website](#) for further information).

Introduction

1. The Competition and Markets Authority (**CMA**) submits this request to the European Commission (the **Commission**) pursuant to Article 22(1) of Council Regulation 139/2004 (**EUMR**). It requests that the Commission examines the UK aspects of the acquisition by Amadeus IT Group S.A. (**Amadeus**) of Navitaire LLC (**Navitaire**) (together the **Parties**).

Timing

2. The Parties submitted to the CMA that the deadline for making a request under Article 22 EUMR lapsed on 3 September 2015, 15 working days after filing its last batch of annexes to the first request for information (**RFI**) on 13 August 2015.
3. Under Article 22(1) EUMR the period of 15 working days in which a Member State may make a referral request begins on the date on which the concentration was notified or, if no notification is required, otherwise made known to the Member State concerned. The Commission interprets the notion

of 'made known' in this context as implying sufficient information to make a preliminary assessment as to whether the criteria for making a referral request under Article 22 are met.¹

4. The Parties have been in pre-notification discussions with the CMA since 22 July 2015. They have provided a draft Merger Notice and responded to two RFIs, but their response to a third RFI from the CMA of 10 September 2015 remains outstanding. The CMA therefore has not yet received a satisfactory submission and considers (on the basis of its policy interpreting the application of Article 22(1) EUMR) that the period of 15 working days to make a referral under Article 22(1) EUMR, has not yet started.²
5. Since pre-notification discussions commenced, information has also been received from third parties and other national competition authorities (NCAs),³ which, together with the information received so far from the Parties, has enabled the CMA to make a preliminary assessment as to the fulfilment of the criteria for the making of a referral request.⁴
6. This acquisition has been notified in Germany (on 20 August 2015) and Austria (on 25 August 2015) and is in pre-notification in Spain. The NCAs in Germany and Austria have told the CMA that they would be supportive of an Article 22 referral request and the NCA in Spain has indicated that it is open to considering joining a referral request.⁵ The Commission has also agreed the suitability of referring this case for review by the Commission under Article 22 EUMR.

¹ Commission Notice on Case Referral in respect of concentrations (2005/C 56/02), footnote 43 to paragraph 50.

² Since the UK has a voluntary system of notification, the CMA considers that the 15 working day period begins on the date the concentration is made known to it, which the CMA equates with the date on which the cumulative information supplied by the merging parties constitutes a satisfactory submission in the form of a Merger Notice that meets the requirements under section 96(2A) of the Enterprise Act 2002. The CMA considers that any other interpretation as to when the period begins would place the UK at odds with the period in all other Member States, which have compulsory notification regimes, and would in practice potentially deprive Article 22 of substantial effect in respect of the UK. See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 18.53.

³ On 8 September, a telephone discussion was held with the Spanish, Austrian and German NCAs. Following this call, the German NCA provided a spreadsheet providing a detailed breakdown of global market shares for passenger service systems (**PSS**) providers.

⁴ In other cases this would not have been possible by this time but, in this case, due to some third parties proactively contacting the CMA and the CMA engaging in good time with some other third parties and other NCAs (subject to when waivers were received), the CMA has received sufficient information to make its preliminary assessment on the Article 22(1) criteria ahead of receiving a complete Merger Notice. Therefore, even if the 15 working day period to make a referral request under Article 22(1) started on 2 September 2015, when the Parties provided further information that was necessary for the CMA to make its preliminary assessment, this period is still running on the date of this referral request (it ends on 22 September 2015).

⁵ Notification in the USA was filed on 16 July 2015 and early termination was received. The Parties are also in pre-notification discussions in Brazil. The Parties have stated that there is no overlap in their activities in Austria and that the Spanish notification [REDACTED].

Parties and Transaction

7. The **Acquirer**, Amadeus, is a company incorporated in Spain, listed on the Stock Exchanges of Madrid (and others) and has its registered office in Madrid, Spain. Amadeus provides technology solutions to travel service providers (TSPs), like airlines, and travel agencies worldwide. Amadeus' main activities are (i) the provision of Global Distribution System (**GDS**) services and (ii) internal IT solutions for airlines and airports. Amadeus' IT solutions for airlines includes a PSS called 'Altéa'. Amadeus' EU and worldwide turnover in the financial year ending 31 December 2014 was [REDACTED] and €3.4 billion (£2.6 billion) respectively. Its UK turnover in the same period was approximately [REDACTED].
8. The **Target**, Navitaire, is a wholly owned subsidiary of Accenture plc (**Accenture**), headquartered in the USA. Navitaire forms part of Accenture's 'Air, Freight & Travel Services' industry group, through which it delivers services to airlines, freight and logistics companies, and other TSPs.⁶ Navitaire provides technology and business solutions primarily to airlines, as well as high-speed rail and long-haul bus companies. Within the area of technology and business solutions, Navitaire is active mainly in the area of reservations and inventory management services and ancillary products, where it offers a PSS called 'New Skies'. Navitaire's EU and worldwide turnover in the financial year ending 31 December 2014 was around [REDACTED] and €136 million (£106 million) respectively. Its UK turnover in the same period was approximately [REDACTED].
9. The transaction involves the acquisition by Amadeus of all of the equity of Navitaire and related assets from Accenture (the **Merger**). On 1 July 2015, the Parties signed an agreement for the sale and purchase of Navitaire and all assets related to its business (the **Agreement**). Following the Transaction, Amadeus will have sole control over Navitaire and the assets related to its business. At the same time, Amadeus and Accenture: (i) agreed an alliance agreement⁷ whereby Accenture will be designated as an Amadeus 'Strategic Partner' for its Airline IT business for management consulting, technology consulting, systems integration, business process outsourcing and digital services, and both Parties will jointly market their services (on a non-exclusive basis) to airlines; and (ii) signed an outsourcing agreement under which

⁶ Accenture is listed on the New York Stock Exchange and has its registered office in Dublin, Ireland. Its net revenues in 2014 were US\$30 billion (£18.2 billion).

⁷ [REDACTED]

Accenture will provide Amadeus with infrastructure outsourcing, application and research and development services.⁸

10. The consideration for the Merger is around USD 830 million (£533 million).
11. The Agreement is *inter alia* conditional upon clearance by the CMA (as well as by other governmental entities with jurisdiction over enforcement of any applicable antitrust law).

Article 22 requirements

12. In considering whether to make a referral request to the Commission under Article 22 EUMR, the CMA has considered whether the Merger satisfies the following criteria:
 - it is a concentration that does not have a European Union dimension,
 - that affects trade between Member States; and
 - that threatens to significantly affect competition in the UK.⁹

As discussed below, the CMA considers that each of these criteria is met.

Concentration under Article 3 EUMR

13. The CMA believes that the Merger meets the requirements for a concentration under Article 3 EUMR. A concentration occurs where two or more undertakings merge, or where one or more undertakings acquires 'control' over the whole or parts of one or more undertakings. For these purposes, 'control' is defined as the ability to exercise 'decisive influence' over one or more undertakings.¹⁰
14. The CMA believes that the Merger creates a 'concentration' as defined in Article 3(1) EUMR. Amadeus will acquire full control over Navitaire,¹¹ each of which constitutes an 'undertaking' for the purposes of the EUMR. However,

⁸ [X] Accenture will continue to provide hosting services for current Navitaire clients as well as Amadeus' future clients which purchase the Navitaire solution.

⁹ As set out in paragraph 44 of the Commission Notice on case referral, 'a referring Member State or States is/are required in essence to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves close scrutiny. Such preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.'

¹⁰ Article 3(2) EUMR.

¹¹ Paragraph 2.6 of the draft Merger Notice notes that 'Amadeus will have sole control over Navitaire'.

this ‘concentration’ does not have a European Union dimension since the turnover thresholds in Article 1 EUMR are not met.

Transaction subject to UK jurisdiction

15. The CMA is satisfied that the Merger qualifies for domestic assessment under the merger control provisions of the Enterprise Act 2002 (the **Act**). Amadeus and Navitaire are enterprises for the purpose of section 23 of the Act. The Merger will bring these two enterprises under the common control of Amadeus and thus they will cease to be distinct.
16. The CMA believes that the share of supply test under section 23 of the Act is met. Amadeus and Navitaire overlap in the supply of PSS in the UK and, as a result of the Merger, Amadeus’ share of supply in relation to the supply of PSS in the UK will be more than 25% (see Table 1 below).
17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of the Act.¹²

The Merger affects trade between Member States

18. The CMA considers that the Merger affects trade between Member States for the following reasons:
 - (a) The market affected by the Merger appears to be wider than national. This was submitted by the Parties. Further, Commission decision precedents (eg COMP/M.7334 – *Oracle/Micros*) relating to IT software have considered that the market is at least EEA wide. Some third parties have also confirmed that the Merger has an impact wider than the UK.
 - (b) The Parties’ customers procure and their competitors compete on a trans-national basis. The Parties’ customers are located in many countries globally, with little if any differentiation in the products supplied according to national requirements. Airlines operate across jurisdictions, often independent of where they are incorporated, and therefore turnover generated by the Parties does not necessarily accrue where their customers are active. Furthermore, many airlines in Europe are in

¹² *Mergers: Guidance on the CMA’s jurisdiction and procedure* sets out at paragraph 18.49 that the CMA would be unlikely, absent unusual circumstances, to make a referral request under Article 22 EUMR unless the merger would qualify for investigation under the Act, even though Article 22 EUMR does not restrict referral requests to Member States that have jurisdiction to review a concentration under their own domestic legal provisions.

alliances which provide connectivity via codesharing and interlining agreements for passengers (eg Star Alliance, Oneworld, SkyTeam, etc).

- (c) In relation to the location and nature of the relevant assets, submissions from the Parties suggest that the location of IT infrastructure is largely independent of the location of the purchase decision and the place of fulfilment. Moreover, the staff and facilities for the development and maintenance of these IT services are often located in different countries, independent of the Parties' or the customers' locations. In addition, the goods and services offered by the Parties are partly intangible (eg software licenses). Marketing, sales, and/or service activities may however be provided from local branches or representatives.¹³
- (d) Amadeus provides GDS across the EEA,¹⁴ [✂].

The Merger threatens to significantly affect competition in the UK

19. As set out in more detail below, based on the information currently before it, the CMA's preliminary analysis indicates that the Merger threatens to significantly affect competition in the UK. It raises the possibility of horizontal and non-horizontal effects in the UK and warrants the close scrutiny that a merger assessment will bring.

Relevant markets

Product scope

20. **Supply of PSS:** The Parties submit that the relevant market is the supply of PSS.¹⁵ The Parties overlap in the supply of PSS in the UK, where PSS are IT solutions used by TSPs, in particular airlines, to run, *inter alia*: (i) internal reservations; (ii) inventory; (iii) departure control system, and sometimes other functions. The CMA is not aware of any UK or EU precedent related to these markets, although case precedents exist for IT services, IT software and GDS.
21. **Supply of stand-alone/additional modules:** Amadeus and Navitaire also sell ancillary IT products and services to customers including: (i) eCommerce; (ii) revenue accounting; (iii) loyalty management; (iv) revenue management products; etc. In this context, there are some differences between the Parties'

¹³ For instance, Navitaire's operations include R&D activities in Manila, globally outsourced R&D activities and datacenter operations (manpower resources in US, Australia, Poland, UK and Argentina).

¹⁴ It is one of three major GDS providers across the EEA.

¹⁵ PSS solutions only constitute a small proportion of Amadeus' turnover (about [10–20]%).

products: eg Amadeus does not consider eCommerce to be part of PSS and does not market this under the Altéa PSS brand, while Navitaire only offers its revenue accounting system separately, and its other products (eCommerce products, loyalty management products and yield management solutions) are all sold as an integral part of its PSS solution. One third party PSS supplier told the CMA that it does not consider inventory to be part of a PSS but as one of a triple package of e-commerce, inventory and shopping which are typically purchased as a bundle to be added to a PSS.

22. **GDS:** GDS are networks which enable automated transactions between travel agents and TSPs (eg airlines, car rental companies) by establishing a real-time link to a TSP's PSS. Airlines wishing to sell via travel agents (ie not only through direct sales) need to subscribe to one or more GDS providers. Although the CMA has not commenced its merger investigation, the third parties which have already contacted the CMA have indicated that this route to market is increasingly important for 'hybrid' airlines (ie airlines with a business model between low cost and full service carriers) as these airlines are increasingly targeting customer groups which do not use direct sales channels. Third parties indicated that full service carriers typically contract with all major GDS providers (multi-homing) while travel agents typically only subscribe to one provider.¹⁶
23. The Parties submit that GDS are not affected by the Merger. Navitaire is not a provider of GDS services and there is no vertical link between Navitaire's activities and Amadeus' GDS services. However, as many low cost carriers appear to be moving into becoming hybrid carriers, seeking to engage with GDS providers in order to reach customers through travel agents, and as Navitaire has several such customers, it is possible that the combined entity's stronger position post-Merger in the PSS market might affect competition in the GDS market. Third parties also indicated that GDS and PSS contract terms may be linked to each other. In addition, the CMA understands that Navitaire has an E-Ticketing Agreement and a Master Services Agreement with Travelport, where Travelport is one of three major GDS providers globally (Sabre and Amadeus being the other two).
24. **Other markets/customer groups:** Amadeus has business activities such as Airport IT, Rail IT, Hotel IT, Mobile, Travel Payments and Travel Intelligence. Navitaire offers its New Skies PSS to rail customers and competes with Amadeus in some jurisdictions for rail contracts.

¹⁶ The Commission has previously looked at this market; for example, see: COMP/M.4523 – *Travelport/Worldspan*.

25. The CMA has not found it necessary to conclude on the relevant market at this stage in its assessment because it does not affect its conclusion on the suitability of a referral request under Article 22 EUMR.

Geographic scope

27. The Parties submit that the geographic market for the supply of PSS is global. In their view, competitive conditions are broadly similar across countries. On the basis of the evidence available to the CMA at this stage, it believes that the relevant geographic scope is likely to be wider than national.

Significant adverse impact on competition

28. Without prejudice to the Commission’s investigation and its conclusions on the relevant geographic market, the CMA’s preliminary analysis to assess whether this concentration threatens to significantly affect competition in the UK has focused on evidence on the supply of PSS to UK customers.¹⁷

26. The Parties submit that they serve [X] UK airline clients (increment of [X] airlines).¹⁸ Due to the size of British Airways alone, they submit that the combined share of supply of PSS in the UK exceeds 25%.¹⁹ In terms of passengers boarded, the Parties submit that they have a combined share in the UK (global) of [40-50]% ([30-40]%) including airlines which use in-house solutions.

Table 1: Shares of supply by passengers boarded (2014; UK, global)

	%	
	<i>UK</i>	<i>Global</i>
Amadeus	[30–40]	[20–30]
Navitaire	[10–20]	[10–20]
Combined	[40–50]	[30–40]
Other providers	[5–15]	[45–55]
In-house	[40–50]	[10–20]
Total	100	100
Total Passengers Boarded	[X]	[X]

Source: Draft Merger Notice to the CMA.

27. However, the CMA is not aware that any of the in-house solutions are available to other airlines on the market²⁰ and therefore believes that it might be appropriate to exclude these airlines from the market share calculations. If

¹⁷ This approach is consistent with the legal requirements of Article 22 EUMR as explained in paragraphs 42 to 44 of the Commission Notice on case referrals. See footnote 2 above.

¹⁸ Navitaire: [X]; Amadeus: [X].

¹⁹ See for instance: UK Civil Aviation Authority, ‘UK Airlines - Annual Operating and Traffic Statistics’ (2014): British Airways: 43.3% of all available seat-kilometres in the UK.

²⁰ The CMA understands that Delta’s PSS only started being used by Virgin after the former acquired a stake in the latter.

in-house solutions are removed from the data, the combined share of supply of the Parties is [75–85]% in the UK ([40–50]% worldwide). If in-house solutions *and* unknown/other solutions are removed from the data, the combined share of supply of the Parties is [75–85]% in the UK ([45–55]% worldwide). The Parties, in further submissions to the CMA, have said that market shares should include in-house supply and ‘other/unknown solutions’.

28. The Parties also submit that share of supply by ‘number of airlines’ is the most relevant parameter for an assessment of competition. However, the CMA believes that the ‘passengers boarded’ figures are likely to reflect more accurately the importance of the Parties in the UK (and the EEA), and the size of the potential detriment resulting from the Merger. The CMA does not consider that the turnover figures in the UK are a true representation of the importance of the Parties in the UK as these do not include turnover generated with airlines headquartered outside the UK, which may nevertheless transport passengers to and from the UK (the same applies to the EEA). For instance, in 2014, 40% of passengers on scheduled flights in the UK were transported by non-UK operators.²¹ A third party confirmed that passengers boarded is a better indicator of market share than number of airlines. However, the CMA recognises that using the passengers boarded metric rather than number of airlines or turnover will result in higher market shares for Navitaire, which supplies principally to low cost carriers and hybrid airlines.²²
29. The CMA has considered a number of competition concerns on the basis of the evidence received by it to date, which are discussed below.

Horizontal effects

30. For the reasons set out below, the CMA believes that, based on its preliminary analysis, there is a real risk that the Merger may have a significant adverse impact on competition as a result of loss of actual/potential competition in the supply of PSS services, in particular in relation to ‘hybrid’ airlines.
- (a) *Loss of actual competition*: The evidence obtained by the CMA to date²³ suggests that Amadeus and Navitaire are two of the leading global PSS suppliers and that the Merger would lead to a reduction in the number of

²¹ See UK Civil Aviation Authority, ‘UK Airlines - Annual Operating and Traffic Statistics’ (2014).

²² Indeed, Navitaire’s largest customer is [REDACTED] which has major operations in the UK but is registered in Ireland.

²³ [REDACTED]

credible suppliers of PSS solutions from four to three, at least for ‘hybrid’ airlines (which appears to be an increasing segment).²⁴

The Parties submit that it is not possible to characterise the Merger as a reduction from four to three as UK airlines have existing contracts not just with each of the Parties and [REDACTED] but also with [REDACTED]. However, one third party informed the CMA that it did not believe that [REDACTED] and [REDACTED] were competing strongly or credibly in the market (ie they are not being shortlisted on many tenders).

With regard to [REDACTED], our review of recent tenders on an international basis confirmed that it has participated in a very low proportion of tenders.²⁵ However, we note that the nature of a tendering market requires a forward-looking assessment of competitive constraints as well as use of current and historic market shares.

- (b) *Closeness of competition:* The Parties told the CMA that bidding data shows that they rarely compete. However, the CMA found that, while this is true for tenders for full-service carriers and low cost carriers, the international tender data for hybrid carriers from the last four years shows that, in this period, the Parties have both won [REDACTED] tenders [REDACTED]. This would suggest that, for this possible segment, they are each other’s closest competitor. A third party told the CMA that the extent of competition between Amadeus and Navitaire has been increasing, in particular to supply hybrid carriers.
- (c) *Increasing competition:* Three third parties told the CMA that Navitaire has been developing new modules for its system in order to serve customers moving ‘upscale’ from low-cost to hybrid carriers. One third party also said that Amadeus has been seeking to offer a ‘slimmed-down’ version of its PSS to similar customers. Third parties told the CMA that competition between Amadeus and Navitaire had been increasing over time and they expected it to continue to increase.

[REDACTED]²⁶

[REDACTED].²⁷ Navitaire is the current supplier of PSS to Gol but [REDACTED] third parties have told the CMA that Gol was looking to increase the functionality of its PSS as it ‘upscaled’. [REDACTED]

²⁴ A third party told us that airlines have a limited choice of PSS suppliers, namely Navitaire, Amadeus, Sabre and SITA. This third party added that SITA’s clients are mainly very small airlines.

²⁵ [REDACTED]

²⁶ [REDACTED]

²⁷ [REDACTED]

The CMA notes that Amadeus has considered competing with Navitaire in relation to low cost carriers moving into the hybrid segment and possibly in relation to low cost carriers, though the parties told the CMA that [REDACTED].

Figure 1 presents the current market shares as calculated by the Parties. [REDACTED]

The Parties distinguished between ‘simple hybrid’ and ‘complex hybrid’ carriers. However, to date the CMA has not found evidence to support this particular segmentation.

- (d) *Removal of a ‘maverick’*: A third party told the CMA that Navitaire had been driving innovation in PSS and putting significant pressure on prices (currently pricing well below Amadeus). The Merger would remove this market disruptor.

Non-horizontal effects

- 31. For the reasons set out below, the CMA believes that, based on its preliminary analysis, there is a real risk that the Merger would have a significant adverse impact on competition as a result of the following non-horizontal effects:

- (a) *Common ownership of PSS solutions*: The CMA considers that the Parties may have an increased ability and incentive to engage in (partial) foreclosure of other third-party PSS, PSS modules, or related IT solutions which require connectivity/interoperability with their PSS systems. This could be achieved in at least two different ways:

- (i) (Mixed) bundling of PSS modules and/or related IT solutions; and/or
- (ii) Ending or worsening connectivity/interoperability with third party PSS modules or related IT solutions from third parties.²⁸

- (b) *Common ownership of Navitaire’s PSS and Amadeus’ GDS*

- (i) (Mixed) bundling of GDS and PSS: the CMA notes that some customers purchase both GDS and PSS from the same provider and that the price of the two systems together, and the interoperability between the systems, may affect significantly the choices these customers would consider as credible. However, the Parties

²⁸ In addition, the CMA understands that Navitaire currently offers Travelport’s e-ticketing solution to its customers but might no longer need to do so once it merges with Amadeus. A third party told the CMA that this could lead to Travelport’s exit from the market as Amadeus could terminate the arrangement between Navitaire and Travelport and provide its own ticketing module instead.

submitted that such customers are likely to represent a small proportion of overall sales. A third party noted that it has experienced Amadeus implicitly linking the terms on which it supplies its GDS to carriers with the terms on which it supplies its PSS. One third party said that customers of Amadeus' reservation system (part of its PSS) are implicitly signed up to Amadeus' GDS solution due to shared technology between the two systems. As TSPs commonly multi-home (see above), the Parties could leverage their market power in the GDS market to disadvantage Navitaire's rivals in the PSS market. The evidence before the CMA at this stage indicates that switching costs are high for customers of PSS and that the two-sided nature of the GDS market (where both TSPs and travel agents are customers of a provider) may strengthen a provider's negotiating position against a TSP.

- (ii) Lessening of innovation: Third parties have told the CMA that the acquisition of Navitaire, which is currently a PSS provider without a GDS offering, may lead to the removal of an innovator in relation to product distribution options for TSPs. In particular, third parties have raised concerns that, post-Merger, the Parties, and Navitaire in particular, may have the ability and incentive to favour technical innovations and developments which enhance interconnection with the existing GDS distribution channel, rather than to encourage the development of emergent alternative solutions.

Conclusion regarding competition concerns

- 32. Based on its preliminary assessment, for the reasons set out above, the CMA believes that the Merger threatens to significantly affect competition in the UK.²⁹

Further reasons for using Article 22 EUMR

- 33. According to the Commission's Notice on case referral, in making a request Member States should take account of the principle of subsidiarity, and, in particular, which is the more appropriate authority for carrying out the investigation, the benefits inherent in a 'one-stop shop' system and the importance of legal certainty with regard to jurisdiction.¹⁷ In this case, the CMA understands that the Merger also qualifies for notification in Germany,

²⁹ As stated in paragraph 42 of the Commission Notice on case referrals, '[s]uch preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.'

Austria and Spain. Therefore, the locus of any impact on competition may well be in other Member States in addition to the UK.

34. The features of this case set out in this request match the type of cases for which Article 22 offers the efficiencies of a 'one-stop-shop' for both the notifying parties (although in this case the Parties have commenced notification discussions with four Member States separately³⁰ and have indicated to the CMA that they oppose a referral) and the competition authorities.
35. The CMA has also had due regard to the factors outlined in its own guidance on making an Article 22 request.³¹ These factors are whether:
- (a) the Merger would qualify for investigation under UK domestic law;³²
 - (b) the relevant geographic market is likely to be wider than national;
 - (c) the Merger is subject to filing in two or more Member States (and as such the Parties, third parties and NCAs would benefit from a 'one-stop shop' review);
 - (d) suitable remedies to competition concerns may lie outside of the CMA's jurisdiction; and
 - (e) the Merger has not yet been reviewed by any other Member States and, if so, a further review by the Commission would be useful and proportionate.
36. Points (a) and (b) have already been discussed above. The key considerations for the remaining points are summarised below.
37. **Location of customers and competitors:** given the similarity of customers and competitors across multiple Member States (same airlines, same competitors, potentially similar market conditions), it appears more effective for a single authority to undertake the substantive assessment of the Merger (with appropriate input from the NCAs if required/helpful). The Parties and their competitors operate worldwide and there are no distinctive features related to their sales in the UK. As noted above, the customer activities in which the relevant products are used are inherently cross-border and purchased by final consumers across the EEA. In the absence of a successful

³⁰ The CMA understands that Austria and Germany have been notified and the Parties are in pre-notification discussions with both the UK and Spain.

³¹ *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraphs 18.48-58.

³² Enterprise Act 2002. The CMA's Jurisdictional and Procedural Guidance expressly notes that whilst this is not a prerequisite for making (or joining) an Article 22 request (paragraph 18.49) it is nevertheless a factor the CMA will take into account.

Article 22 referral, it is likely that the same customers and competitors will receive similar information requests from multiple NCAs. For this reason, the CMA considers that the case would benefit from a 'one-stop shop' review.

38. **Suitable remedies:** designing national remedies in this case appears complicated in view of the features of the products, location of the Parties and customers. At this early stage, the CMA cannot dismiss the possibility, were it to investigate the Merger, of finding a substantial lessening of competition,³³ at which point it could be challenging to design a remedy given the possible effects of any changes across a range of jurisdictions. As the Parties note, 'Both Amadeus and Navitaire compete for business in the UK despite being based in Spain and the US respectively. Navitaire neither has a subsidiary nor any distribution infrastructure outside of the US which evidences the global nature of the market, because customers basically have to call the same US number from all over the world if they want to buy New Skies, and they do'.³⁴ For this reason the CMA considers that the Commission is better placed to examine the Merger.
39. **Coherent treatment of the case:** it is important to avoid inconsistent decision making across NCAs. The CMA's preliminary analysis has raised various substantive issues as set out above and, at this stage, it cannot dismiss the significant risk of diverging outcomes and remedies (if necessary).
40. **Small turnover does not necessarily reflect strength of competitive effects:** the Parties have highlighted that the turnover of the Parties, and in particular Navitaire, is relatively small in the Member States in which it has notified/plans to notify. However, turnover does not always reflect the strength of competitive effects and, as discussed above, the CMA believes, based on its preliminary assessment, that the Merger may give rise to significant effects in the UK. Moreover, the CMA notes that a single consideration of the Merger might evaluate the multiple interactions in multiple locations between PSS suppliers and their customers and may provide a more accurate picture of its competitive impact.

Conclusion

41. The CMA's view is based on its preliminary assessment for the purposes of Article 22 and on the information before it at this stage of its pre-notification discussions with the Parties and third parties. The CMA has not yet come to a view on whether a referral to a phase 2 investigation in the UK would be likely

³³ This is the CMA's substantive test under the Act.

³⁴ Paragraph 13.37 of the 2nd draft MN.

and this preliminary view is without having conducted a full merger investigation.

42. For the reasons set out above, the CMA considers that the conditions set out in the Commission Notice on Case Referrals in respect of concentrations,³⁵ and its own guidance on handling Article 22 requests, indicate that a referral of jurisdiction to the Commission in this case is appropriate.
43. In line with its own guidance and the Commission's Notice on Case Referrals, and for the reasons set out above, the CMA is therefore requesting the Commission to accept this case referral and to investigate the Merger.

18 September 2015

³⁵ 2005/C 56/02.